

Harbour East Community Council
July 07, 2011

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Cathy Spencer, Development Officer

DATE: June 30, 2011

SUBJECT: Appeal of Site Plan Approval & Variance Approval – 78 Shore Road,
Dartmouth

ORIGIN

This report outlines the appeal of the Development Officer's decision on two approvals issued for 78 Shore Road in Dartmouth, NS

- 1) The Development Officer's decision to approve a site plan for a three unit townhouse dwelling.
- 2) The Development Officer's decision to grant a variance of the setback from the Best Street street line from 15 feet to 10 feet.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to:

- 1) approve the site plan for a three unit townhouse dwelling; and
- 2) grant the variance.

BACKGROUND

An application was received to construct a three unit townhouse dwelling on the property located at 78 Shore Road in Dartmouth - corner of Shore Road and Best Street. The use and development of this property is regulated by the Downtown Dartmouth Land Use By-law. The property is zoned DN (Downtown Neighbourhood) under the Downtown Dartmouth Land Use By-law. Townhouse dwellings may be considered through Site Plan Approval.

DISCUSSION

The property, 78 Shore Road, has an area of 6,589 square feet. The proposal is to construct a three unit townhouse dwelling and subdivide the property so that each unit is on a separate lot, each with an area of approximately 2200 square feet. The end units will measure 23 feet wide by 32.5 feet deep. The centre unit will be 32 feet wide by 23 feet deep. The proposed design is intended to break up the front wall of the building so as not to have one continuous 77 foot wall. Further this design will enable the units to be subdivided for separate ownership as noted above. The proposed design results in the end unit (unit at the corner of Shore Road and Best Street) being 10 feet from the street line along Best Street, thus requiring a Variance to the setback requirements of the Downtown Neighbourhood Zone.

The subject property is outside of the area of Downtown Dartmouth that is subject to the View Plane and View Corridor requirements of the Downtown Dartmouth Land Use By-law. The height of the proposed townhouse dwelling will comply with the maximum height requirements of 30 feet within the Downtown Neighbourhood Zone.

Site Plan Approval for townhouse dwellings:

The Downtown Dartmouth Land Use By-law sets out requirements for approval of townhouse dwellings under the site plan approval process. The By-law stipulates the Development Officer shall approve a site plan where the following matters have been addressed:

- (a) Adequate separation distances shall be provided for townhouse dwelling units which abut single detached dwellings.*

The Land Use By-law requires townhouse dwellings to maintain a minimum side yard of 10 feet for end units. The end unit next to 80 Shore Road will be 10 feet from the side lot line and approximately 25 feet from the existing dwelling. The end unit along Best Street will be 10 feet from the street line and approximately 60 feet from the dwelling across Best Street. In addition the end unit along Best Street will be a minimum of 10 feet from the rear lot line and approximately 36 feet from the semi detached dwelling directly behind (65/67 Fairbanks Street).

- (b) The front yard setback required for townhouse buildings to be in context with the setbacks of buildings within the immediate neighbourhood.*

The Land Use By-law requires the minimum front yard shall be the front yard of the majority of the residential buildings fronting on the same side of the same block in which the building is to be constructed. The setbacks for buildings along Shore Road vary in setback from 3 inches to 28 feet. The proposed setbacks for the townhouses from the Shore Road street line ranges from 11 feet to 22 feet 8 inches. This is in keeping with the requirements of the By-law.

- (c) Driveways should not be located so as to dominate the front yard of the lot, and the remainder of the front yard not required for parking shall be landscaped.*

There is one driveway located off Shore Road for the end unit next to 80 Shore Road. A second driveway will be located off Best Street at the rear of the property. This driveway will be used by the owners of the center and end units. The driveways do not dominate the front yard of the lots.

- (d) Any common parking areas shall be screened from adjacent single unit dwellings and the street by landscaping and/or fencing.*

There are no common parking areas for this project. However, the parking space directly off Shore Road will be lower than the neighbouring dwelling located at 80 Shore Road as the owner intends to dig out part of the slope for one (1) parking space. The neighbour has an existing fence which will screen any parking. As previously stated, the driveway entrance on Best Street will be used for the two remaining units. There is presently a 13 foot high gabion wall and a fence along the back of 65 & 67 Fairbanks Street which will screen any parking area from the neighbours.

- (e) Landscaping and/or trees of an adequate calliper shall be provided in the front yard of townhouse dwellings at a rate of one tree per two townhouse units.*

A landscaping plan showing proposed landscaping, including grass, trees and shrubs has been provided. Any area not used for driveway or walking path will have grass and shrubs.

- (f) To create additional opportunity for development on designated sites A, B, C, D, and E on Schedule B of this Bylaw, provisions are established to permit construction of laneways narrower than the standard public street width to provide access to the development, provided that the laneway is of adequate width to facilitate the safe movement of traffic to and from the site, and adequate addresses maintenance.*

Does not apply to this report.

(g) Measures including lot grading shall be required to adequately dispose of storm and surface water.

A lot grading plan indicating the drainage will be directed away from the neighbouring properties has been provided and tentatively approved by the Development Engineer.

(h) Provisions are established to ensure individual townhouse units and any required site improvements are maintained to a high standard.

Property standards are maintained through part 14 of the MGA – unsightly premises.

The Development Officer reviewed the proposed development against the requirements for site plan approval and found the proposal met the requirements of the Land Use By-law. Hence, the site plan was approved.

Variance:

The HRM Charter stipulates the criteria against which a variance must be evaluated. The variance may not be granted where the:

- (a) variance violates the intent of the land-use by-law;*
- (b) difficulty experienced is general to properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use by-law.*

In order to be approved, the proposed variance must not conflict with any of the above statutory criteria. An assessment of the proposals relative to these stipulations is set out below.

Do the proposed variances violate the intent of the land use by-law ?

The Land Use By-law for Downtown Dartmouth stipulates the minimum front/flanking yards shall be the yard of the majority of the residential buildings fronting on the same side of the same block in which the building is to be constructed. In this case the front yard is Shore Road; the flanking yard is Best Street. There is only one other dwelling along Best Street on the same side and in the same block as the proposed townhouse dwelling. That dwelling is a semi detached dwelling located at 65/67 Fairbanks Street, and is directly behind the subject property. The east building wall of 65 Fairbanks Street is 15 feet from the Best Street street line. A Variance of 5 feet to permit a 10 feet setback does not violate the intent of the Land Use By-law.

Is the difficulty experienced, general to the properties in the area ?

The front/flanking yard setbacks in the Shore Road, Best Street, Fairbanks Street neighbourhood vary greatly from almost zero to 28 feet. As previously mentioned, the minimum flanking yard shall be the yard of the majority of the dwellings on the same side of the same block. In this case there is only one other dwelling on the same side of

Best Street in the same block. Dwellings on the other side are setback 1'11" & 2'7" from Best Street. The difficulty experienced is not general to the area.

Does the difficulty experienced result from an intentional disregard of the by-law ?

The difficulty is not the result of an intentional disregard of the By-law. This was not a consideration in this application.

The Development Officer reviewed the proposal against the requirements of the Land Use By-law and concluded the proposed Variance does not conflict with the statutory criteria. As a result, the Variance was granted.

BUDGET IMPLICATIONS

There are no budget implications related to this Variance.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Community Engagement as described by the Community Engagement Strategy is not applicable to this process. The procedure for public notification is mandated by the HRM Charter. If the Site Plan or Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to spread to staff's recommendation

ALTERNATIVES

Site Plan Approval for townhouse dwellings:

Council can uphold the decision of the Development Officer to approve the site plan. This is the recommended action.

Council can overturn the decision of the Development Officer and refuse the Site Plan.

Variance:

Council can uphold the decision of the Development Officer to grant the Variance to the street setback. This is the recommended action.

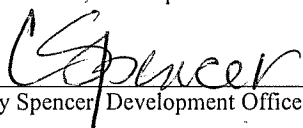
Council can overturn the decision of the Development Officer and refuse the Variance.

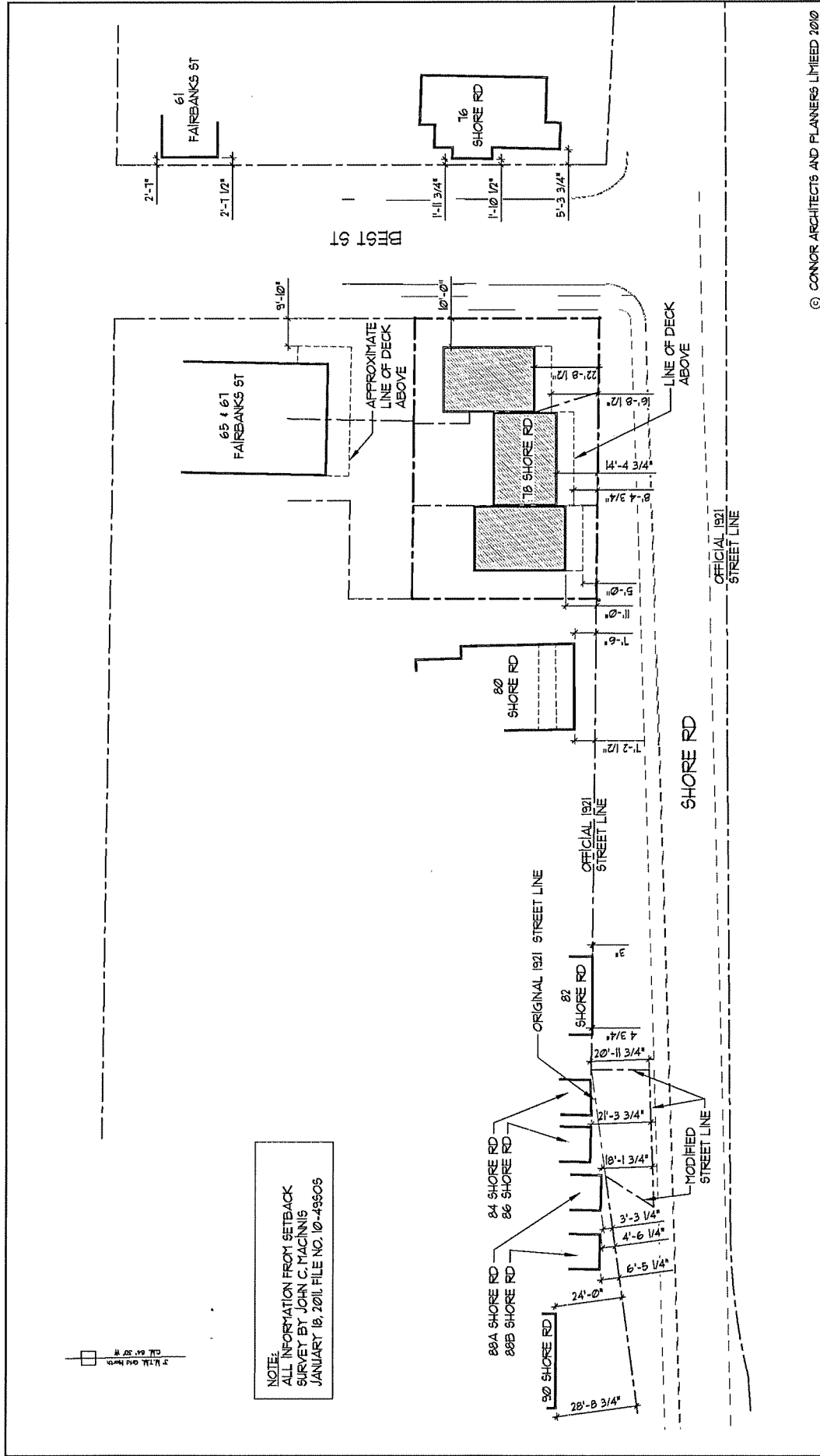
ATTACHMENTS

1. Site Plan
2. Proposed Landscaping plan.
3. Proposed Grading Plan.
4. Front elevation.
5. Right elevation.
6. Approval letter for Site Pan.
7. Appeal letter for Variance
8. Appeal Letter.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Paul Boucher, Development Technician 490-4321

Report Approved by: 
Cathy Spencer Development Officer, 490-4416



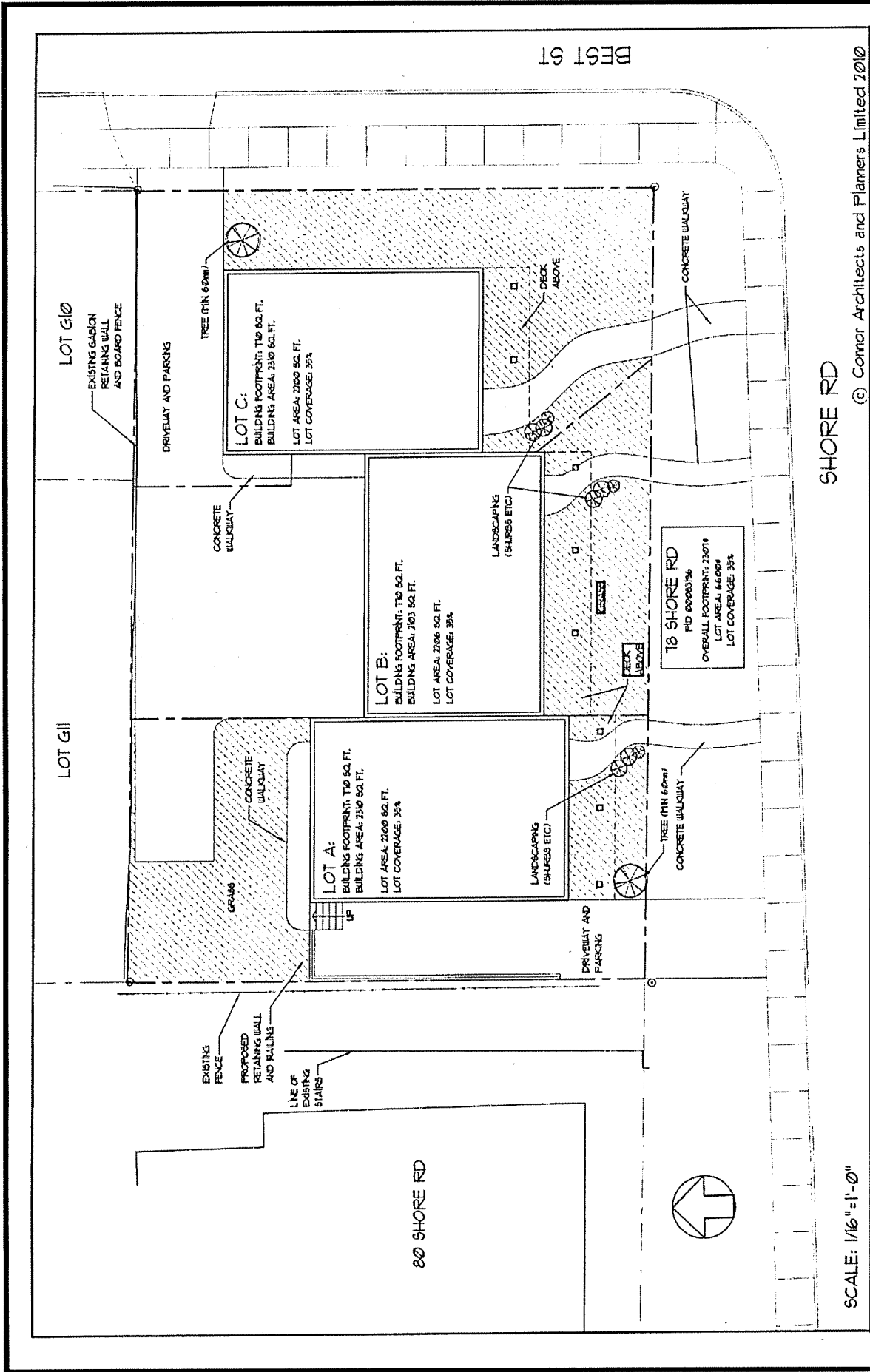
NOTE:
 ALL INFORMATION FROM SETBACK
 SURVEY BY JOHN C. MACINNIS
 JANUARY 18, 2011 FILE NO. 10-49508

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Attachment 1 : Site Plan



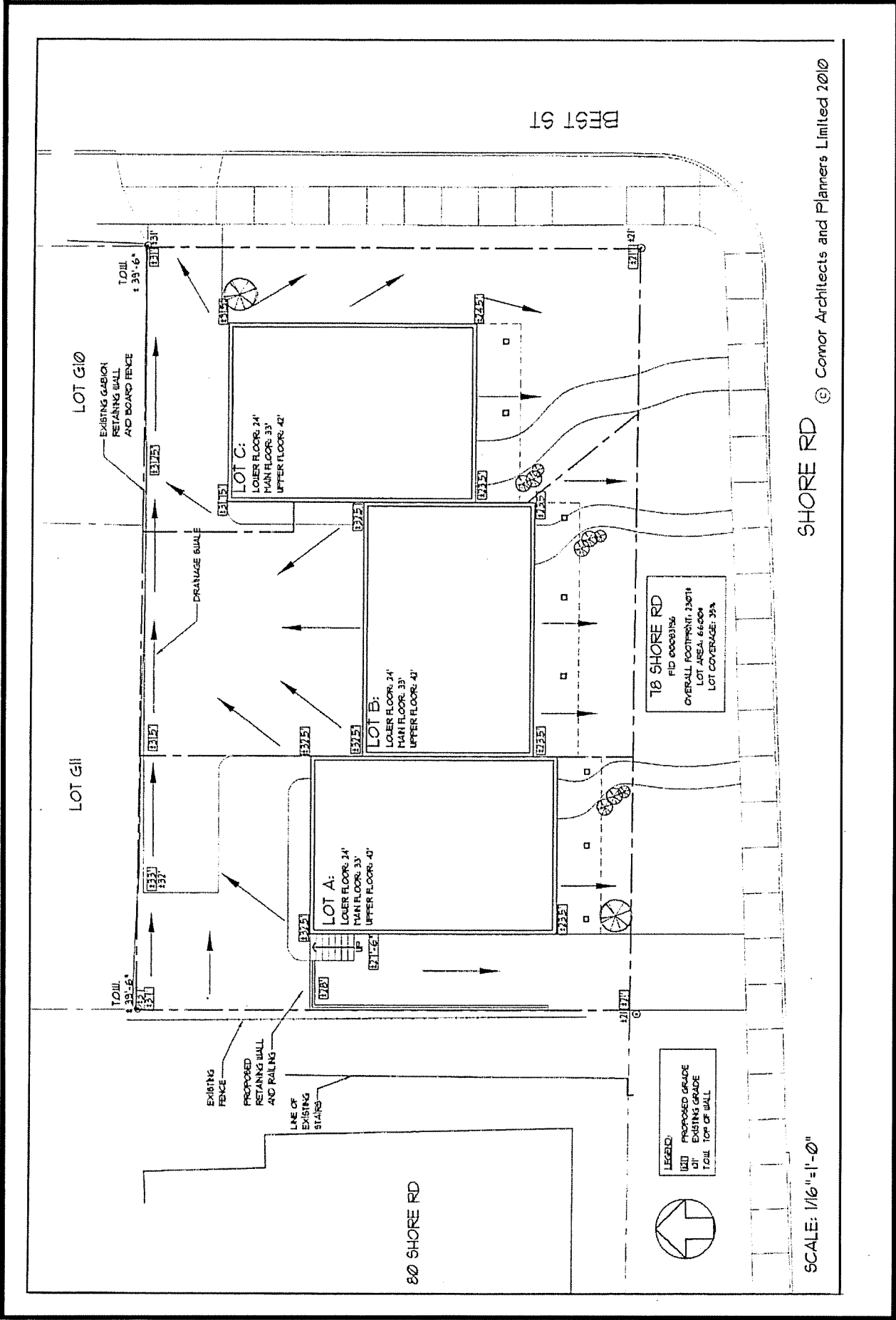
HRM does not guarantee the accuracy of any base information.



Attachment 2 : Landscape Plan

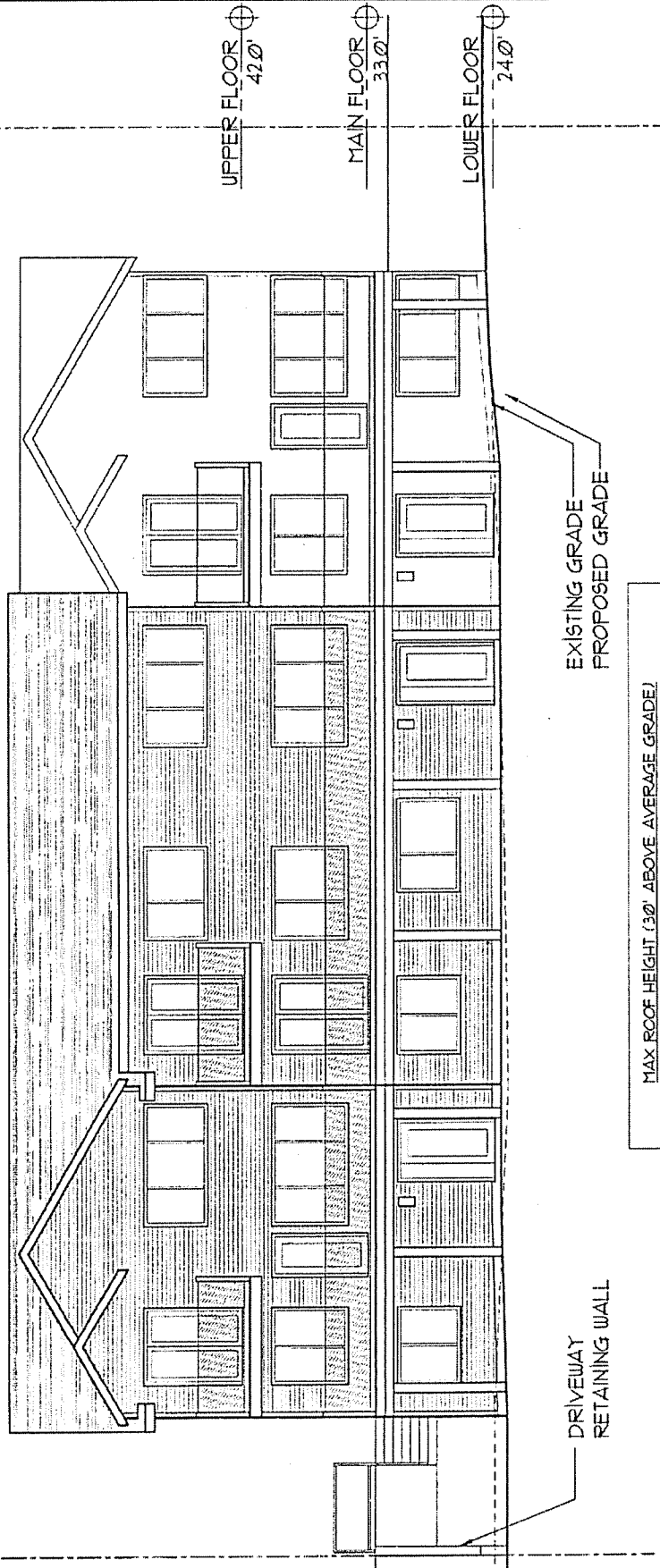
HRM does not guarantee the accuracy of any base information.





Attachment 3 : Grading Plan

HRM does not guarantee the accuracy of any base information.



MAX ROOF HEIGHT (.30' ABOVE AVERAGE GRADE)	
<u>AVERAGE GRADE</u>	<u>PROPOSED ROOF HEIGHT</u>
LOT A: ±28'	LOT A: ±59'
LOT B: ±28'	LOT B: ±59'
LOT C: ±28'	LOT C: ±58'-8"
OVERALL: ±28'	OVERALL: ±58'-10"

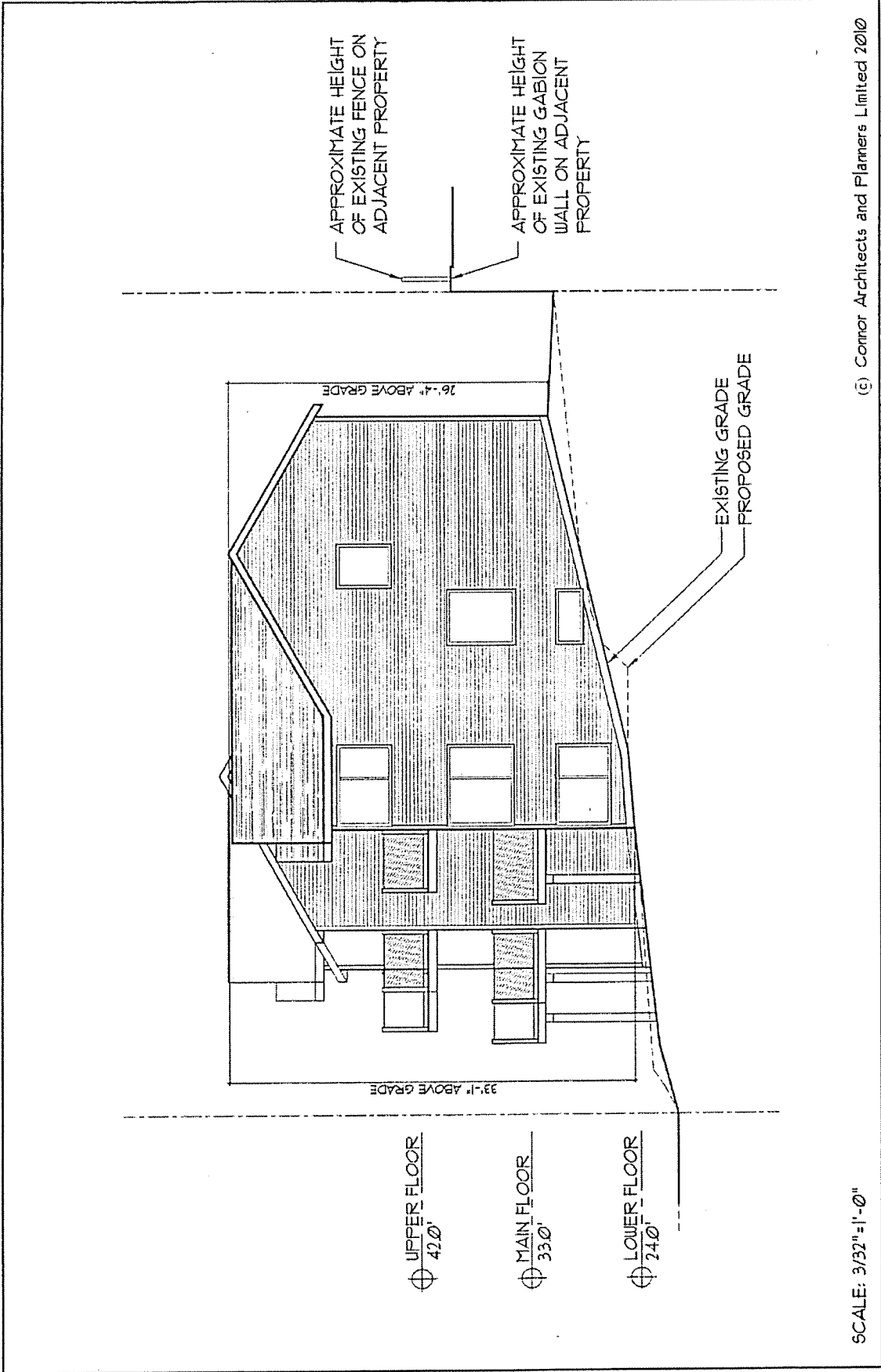
SCALE: 3/32" = 1'-0"

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Attachment 4 : Front Elevation



HRM does not guarantee the accuracy of any base information.



SCALE: 3/32" = 1'-0"

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Attachment 5 : Side Elevation

HRM does not guarantee the accuracy of any base information.





May 09, 2011

Dear Sir or Madame:

Rè: Case No.16689- Site Plan Approval Application, Dartmouth, Nova Scotia.

As the Development Officer for the Halifax Regional Municipality, I have approved a request for site plan approval under Section 9(14) of the Land Use Bylaw for Downtown Dartmouth (refer to Attachment 1), as follows:

Location: 78 Shore Road, Dartmouth, NS.
Project Proposal: Construct 3 unit townhouse.

Pursuant to Section 247 of the HRM Charter, as an assessed property owner within 30 meters of the subject property you have the right to appeal the approval of this application. In order to appeal you must file notice, in writing, to the Development Officer on or before May 26, 2011. Permits will not be issued to the applicant until any appeal has been disposed of or the appeal period has expired.

If you have any questions or require clarification of any of the above, please call Paul Boucher at 490- 4321.

Sincerely,

A handwritten signature in black ink that reads "Cathy Spencer". The signature is written in a cursive style with a large initial "C".

Cathy Spencer, Development Officer
Halifax Regional Municipality

cc: Cathy Mellett - Municipal Clerk.
Councillor Gloria McCluskey
Rick MacMillan- Supervisor, Building Officials

COMMUNITY PLANNING - EASTERN REGION

COPY

May 09, 2011

Dear Sir or Madame:

Re: Case No. 16949 - Variance at 78 Shore Road, Dartmouth, NS PID- 00083916

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the Land Use Bylaw for Downtown Dartmouth as follows:

Project proposal: Construction of 3 unit townhouse.
Required (i.e. setback): 15 from street line along Best Street.
Approved (i.e. setback): 10 feet from street line along Best Street.

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the above noted variance as per requirements of the Section 251 of the HRM Charter.

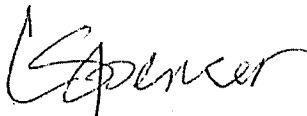
If you wish to appeal, please do so in writing, on or before May 26, 2011, and address your appeal to:

**Municipal Clerk,
c/o Cathy Spencer, Development Officer
Halifax Regional Municipality
Planning and Development - Eastern Region
Alderney Gate - 40 Alderney Drive
P.O. Box 1749, Halifax, N.S. B3J 3A5.**

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY, THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require clarification of any of the above, please call Paul Boucher at 490- 4321.

Sincerely,



Cathy Spencer, Development Officer
Halifax Regional Municipality

cc: Cathy Mellett, Municipal Clerk
Councillor Gloria McCluskey

Encls.

Attachment 8

May 25th, 2011

To Whom It May Concern: Municipal Clerk in care of Cathy Spencer

RE: Appeal of Case Numbers 16949 and Case Number 16689

I, Lynn Gray, owner of property located at 65 and 67 Fairbanks St. hereby am giving notice to appeal the variance request of case number 16949.

The view plane will be compromised by the applicants request to utilize an additional 5 feet of property located on the Best St. side of property located at 78 Shore Rd. in Dartmouth. As the current set back is 15 feet from Best Street the decrease in the setback to 10 feet is not in the best interest of the property owners in and around the immediate vicinity and will create devalued property situation.

As there is ample space located on said property I feel the application if granted will compromise adjacent properties and take away from the rightful views at outlined in the current downtown Dartmouth bylaws. The owner of property located at 78 Shore Rd. has ample square to suit building needs under the current bylaws and there is no need to extend the property lines.

In addition I am appealing development application for site plan approval of case number 16689 which refers to the construction of the proposed 3 unit townhouse at 78 Shore Rd.

Should you require any further information pertaining to this appeal please contact me at 832-5226 or 225-7665.

Sincerely,

Lynn Gray
Property Owner of 65/67 Fairbanks St. Dartmouth