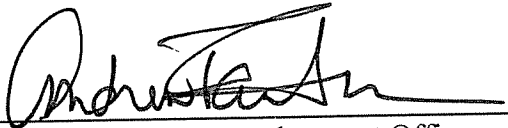




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
August 4, 2011

TO: Chair and Members of the Harbour East Community Council

SUBMITTED BY: 
Andrew Faulkner, Development Officer

DATE: July 25, 2011

SUBJECT: Appeal of the Development Officer's decision to approve an application for variances at the corner of Lakewood Court and Lakewater Court, PID 41329202, Dartmouth

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve variances on the minimum street line setback requirements of the Land Use By-law (LUB) for Dartmouth to permit the construction of a single unit dwelling.

RECOMMENDATION

It is recommended that Council upholds the Development Officer's decision to approve the variances.

BACKGROUND

Zoning:

The property is zoned R-1, Single Family Residential, under the Land Use By-law (LUB) for Dartmouth.

Existing Use:

The lot is currently vacant.

Proposal:

The owner of the property wishes to construct a single unit dwelling on the subject property. Under the LUB, the smallest existing street line setback within the block determines the minimum required street line setback that would apply.

Variances were requested to reduce the street line setbacks on Lakewood Court from 23.4 feet to 20 feet and on Lakewater Court from 56.5 feet to 10 feet.

DISCUSSION

The *Halifax Regional Municipality Charter* sets out criteria in Section 250(3) under which the Development Officer may consider variances to land use by-law requirements. The criteria are as follows:

“A variance may not be granted if:

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

In order to be approved, the proposed variances 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 intent of the street line setbacks is to provide an aesthetic quality to suburban type development, as well as safety and to permit potential future street widening.

Being a Municipal street, Development Engineering has jurisdiction over safety and the requirement for future road widening. Development Engineering examined the variance proposals and had no objections over the proposed setbacks. It is worth noting that the two streets in question are small cul-de-sacs which would not be likely candidates for street widening.

It was not felt that the proposed setbacks would cause aesthetic issues, as established front yard setbacks in the area vary widely and the area has a significant tree cover and variation in slopes, creating a very organic pattern of development.

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

The lot, which was approved on July 6, 2010, is the smallest lot in the block. Furthermore, existing dwellings, on lots within the block, are built a fair distance away from the street lines. For instance, on Lakewater Court, the closest house (6 Lakewater Court) to the street line within the block is setbacked 56.50 feet from the street line, according to a location certificate prepared by a surveyor. The dwelling at 4 Lakewater Court is further away from the street line. Complying with the established setback of 56.5 feet would render the lot unfeasible for development.

In terms of Lakewood Court, the dwelling located at civic number 7 was measured to be approximately 23.4 feet away from the street line. This established setback would also serve to limit the development potential on the lot, but not as much as the established setback on Lakewater Court.

Is the difficulty experienced the result of intentional disregard to the requirements of the land use by-law?

The difficulty experienced was not an intentional disregard to the requirements of the LUB and was not a consideration in the decision.

In summary, staff carefully reviewed all the relevant information in this case. As a result of the review, the variances were approved as they were not determined to be contrary to the provisions of the *HRM Charter*.

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 Variance request is appealed a public hearing is held which is the opportunity for residents (within 30 meters) to speak to staff's recommendation.

ALTERNATIVES

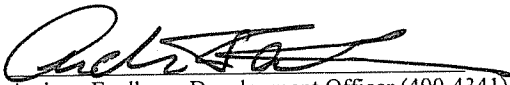
1. Council could uphold the decision of the Development Officer to approve the variances. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance requests.

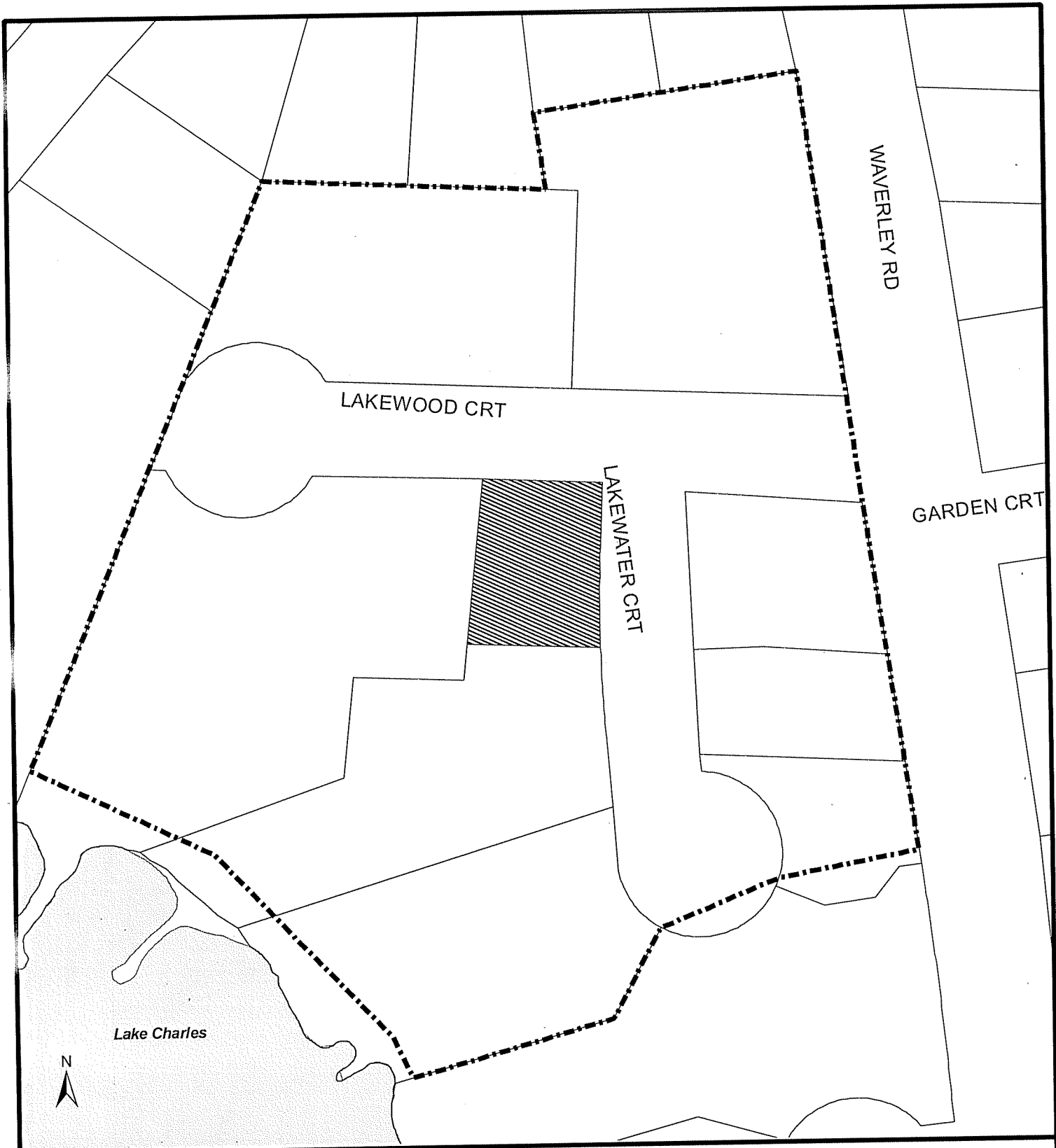
ATTACHMENTS

1. Area Map
2. Site Plan
3. Approval Letter
4. Appeal Letter
5. Withdrawal of Appeal Letter
6. Withdrawal of 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 : Marc Ouellet, Development Technician (490-5985)

Report Approved by: 
Andrew Faulkner, Development Officer (490-4341)

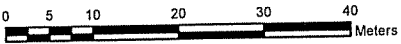


Attachment 1

**Map 1
Notification Area**

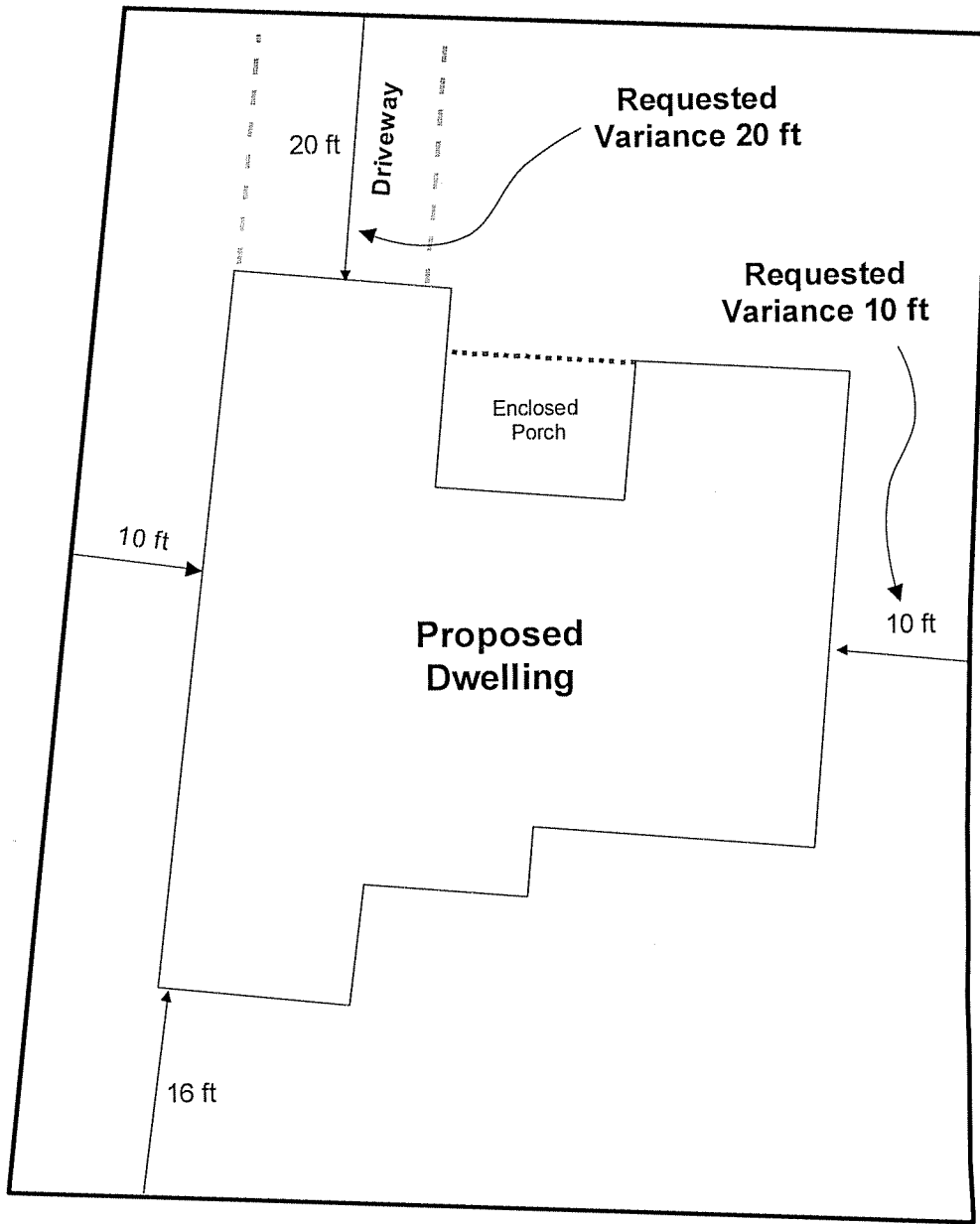
--- Notification Area

▨ Subject Property



HRM does not guarantee the accuracy of any base map information on this map.

Lakewood Crescent



Lakewater Crescent

Curb



Attachment 2

**Map 2
Site Plan**



HRM does not guarantee the accuracy of any base map information on this plan.

Attachment 3: Approval Letter

HALIFAX REGIONAL MUNICIPALITY

Planning & Development Services
Eastern District, Alderney Gate Office

PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Telephone: 902-490-4490
Fax: 902-490-4661

June 24, 2011

Dear Sir or Madame:

Re: Case No.16955 - Variance at Corner of Lakewood Court and Lakewater Court, PID 41329202, Dartmouth, NS

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variances as per requirements of the Halifax Regional Municipality Charter, Section 251.

Location:	Corner of Lakewood Court and Lakewater Court
Project proposal:	Construct new single unit dwelling
Minimum required street line setbacks:	23.4 feet from Lakewood Court & 56.5 feet from Lakewater Court
Approved variances:	Street line setbacks of 20 feet from Lakewood Court & 10 feet Lakewater Court

In accordance with Section 251 of the Halifax Regional Municipality Charter all assessed owners of property within 30 metres (100 feet) of PID 41329202, Dartmouth, NS, have been notified of these variances. As one of these property owners you have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Erin MacIntyre, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

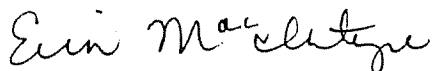
Notice of the appeal must be filed on or before July 11, 2011.

Please note, this does not preclude further construction on this property provided the proposed construction does not require a variance.

Please find enclosed site plan and map identifying lot.

If you have any questions or require clarification of any of the above, please call Marc Ouellet at 490-5985.

Yours truly,



Erin MacIntyre, Development Officer
Halifax Regional Municipality

copy to: Cathy Mellett, Municipal Clerk
Darren Fisher, Councillor District 06

Encls.

July 10, 2010

Attachment 4: Appeal Letter

Via Fax: 902-490-4661

Municipal Clerk
c/o Erin MacIntyre, Development Officer
Halifax Regional Municipality
Development Services – Eastern Region
P. O. Box 1749
Halifax, Nova Scotia
B3J 3A5

Dear Ms. MacIntyre:

Re: Case No. 16955 – Variance at Corner of Lakewood Court and Lakewater Court
PID 41329202 Dartmouth, Nova Scotia

This letter is on behalf of the undersigned members of the above-noted community. Please be assured that while we have no objection to a house being built on the property, we are appealing your decision to grant the variance set out in your June 24th letter.

Previously the terminology referred to a “minor” variance. Our understanding was that the intent was to allow for small changes to the regulations, where strict adherence would prohibit development. A reduction in the required setback from 56.5 feet to 10 feet does not, in our opinion, qualify as minor or small. We recognize that the property owner has a right to build on this approved lot, and that in order to do this a variance must be granted. However we feel that the proposed dwelling is too close to the corner and will cut down on driver visibility. While our streets are small and local, we have our share of motor vehicle traffic. Children play and bike on these streets and corner visibility is of utmost importance.

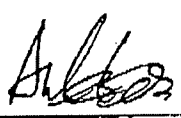
We hereby request that this matter be reconsidered. We believe that setbacks in the order of 25 feet from both streets would drastically reduce the possibility of a visibility related accident and permit the development to integrate into the existing neighbourhood with more harmony than the current proposal.

Respectfully,

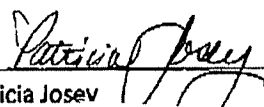

Bob Harris & Heather Hampson

(On vacation – verbal agreement)

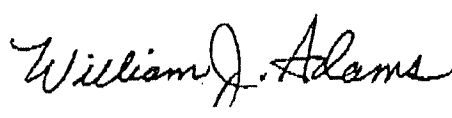
Mike & Kerri Fougere

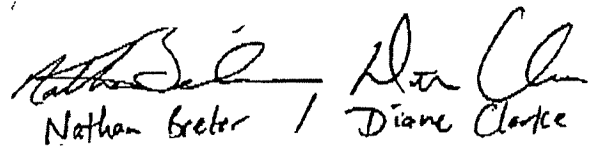


Allen & Colleen Peters



Patricia Josev




Nathan Greter / Diane Clarke

Attachment 5: Withdrawal of Appeal Letter

July 16, 2011

Via Fax 902 490 4661

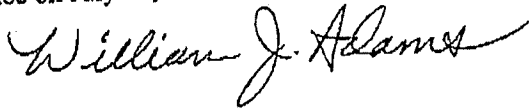
Municipal Clerk,
C/o Erin MacIntyre, Development Officer
Halifax Regional Municipality
Development Services- Eastern Region
PO Box 1749
Halifax, Nova Scotia
B3J 3A5

Dear Ms. MacIntyre:

RE Case 16955 Variance at Corner of Lakewood Court and Lakewater Court
PID 41329202 Dartmouth, Nova Scotia

Following a conversation with the owner of this property, he has satisfied me that his building will not impede the driver visibility, nor will it impact on the harmony of the existing neighbourhood. I would therefore withdraw my name from the appeal letter sent to your office on July 10, 2011.

Sincerely



William J. Adams

Handwritten note:
July 12/11

Attachment 6: Withdrawal of Appeal Letter

23 July 2011

TO: Halifax Regional Municipality - Erin MacIntyre
Planning & Development Services - Eastern District

FROM: Patricia Josey

RE: Case No. 16955 - Variance at corner of Lakewood Court and Lakewater Court
PID 41329202

On July 10, 2011 I signed a letter expressing concerns for the proposed variance at the above property. I have received clarification on the proposed set-back along Lakewater Court and have no further objection to the property owner's application for a variance.

Sincerely,


Patricia C. Josey