

**Marine Drive, Valley and Canal Community Council**  
**May 30, 2012**

**TO:** Chair and Members of Marine Drive, Valley and Canal Community Council

**SUBMITTED BY:**   
Brad Anguish, Director, Community and Recreation Services

**DATE:** May 11, 2012

**SUBJECT:** Case 17038: Appeal of Variance Approval, 23 Mannette Court, Porters Lake

**ORIGIN**

Appeal of the Development Officer's decision to approve a variance request.

**RECOMMENDATION**

It is recommended that Council uphold the Development Officer's decision to approve the variance at 23 Mannette Court, Porters Lake.

## **BACKGROUND**

The subject property at 23 Mannette Court, Porters Lake, is zoned RE, Rural Enterprise, under the Land Use By-Law for Planning Districts 8 & 9. The current authorized use of the property is a single unit dwelling with a residential garage. A permit for the garage was issued in 2007.

In response to a land use compliance complaint, staff determined that a truck repair business was operating on the property without the necessary permits. The business operates in the existing accessory building and the exterior grounds of the lot.

In June, 2011, the property owner applied for a Development Permit to operate a “Truck Repair Business” on the property. With the use of the garage changing from residential to commercial, a building separation distance of 16feet is required between the dwelling and the garage. A variance application was submitted requesting that this separation distance be reduced to 12 feet which represents the existing distance between the two buildings.

The variance was approved by the Development Officer on June 30, 2011 and was appealed in July (see Attachment A).

The Development Officer did not proceed with advancing the variance appeal to Community Council until it could be determined that the proposed truck repair business was capable of meeting the requirements of the RE Zone. Although it is not relevant to the variance request and the appeal, staff has received numerous concerns about the operation of the business from area residents. In addition to generous zone standards (lot coverage, building height, building setbacks etc.) that the dwelling and garage meet, the RE Zone prohibits any industrial or commercial use which is obnoxious and provides the following definition of “obnoxious use”:

“OBNOXIOUS USE means a use which, from its nature or operation, creates a nuisance or is offensive by reason of noise, vibration, glare or objectionable odour, by the emission of gas, fumes, dust, oil or by the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials and shall include operations which produce wastes that cannot be treated by an approved on-site sewage disposal system or which involve, as the primary function, the handling of hazardous materials.”

In response to these concerns, the property owner has provided written confirmation of the truck repair business practices as follows:

1. hours of operation in compliance with HRM Noise By-law (By-law N-200);
2. a lighting plan indicating that outdoor illumination is screened so that light is directed away from adjoining properties;
3. outdoor welding is located in a screened area; confirmation of screening of materials, equipment and vehicles under repair in the front yard of the property; and
4. approval from Nova Scotia Environment for waste disposal of fluids recovered from vehicles.

Staff has visited the site to confirm the implementation of these practices and it is their opinion that the identified measures are suitable to satisfy the Land Use By-law requirements in this regard. Should Council uphold the decision of the Development Officer to approve the variance, a Development Permit for the truck repair business could then be granted.

## **DISCUSSION**

The *Halifax Regional Municipality Charter* sets out the following criteria by which the Development Officer may not grant variances to the requirements of the Land Use By-law:

250(3) *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 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, a proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

### **1. Does the proposed variance violate the intent of the land use by-law?**

The existing accessory building is separated from the dwelling by a distance of 12 feet. As the garage is changing from residential to commercial, it becomes another main building on the lot and the Land Use By-law requires a separation distance of 16 feet between main buildings. To require the property owner remove a portion of the garage or the dwelling in order to meet the extra four feet required separation is considered unreasonable. The RE Zone is a fairly open zone that permits a wide range of land uses from residential to industrial. As the use is permitted and the property owner could, in effect, remove a portion of one of the buildings to meet the required separation distance, the requested variance was considered to be reasonable and generally in keeping with the intent of the by-law. Furthermore, the requested variance of separation distance is wholly contained within the lands. There is no relaxation of setbacks to abutting properties. Therefore, the variance was approved.

### **2. Is the difficulty experienced general to the properties in the area?**

The difficulty experienced is unique to this application due to the change of use from residential to commercial. Although Mannette Court is zoned RE (Rural Enterprise), all other properties on this street are developed for residential purposes only. Therefore, the difficulty experienced is not general to the properties in the area.

### **3. Is the difficulty experienced the result of intentional disregard for the requirements of the land use by-law?**

There is no intentional disregard. The original building was constructed under permit and used as an accessory residential building. Over time, the owner began to repair trucks in the garage. As the business has grown in scale, it would appear to be a reasonable request to allow the conversion of the existing accessory building to a commercial main building as an alternative to building a new structure or altering the existing buildings to comply with the required 16 foot separation distance.

## **Conclusion**

Staff has reviewed all the relevant information in this case. As a result of that review, the variance was approved as it was determined that the proposal does not meet any of the criteria for refusal as provided by the *Charter*.

## **BUDGET IMPLICATIONS**

None.

## **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*. Where the variance request has been appealed, a hearing is held by Community Council to provide the opportunity for the Council members to hear from the applicant and the appellant.

## **ALTERNATIVES**

1. Council may uphold the decision of the Development Officer to approve the variance. This is the staff recommendation.
2. Council may overturn the decision of the Development Officer and refuse the variance request.

## **ATTACHMENTS**

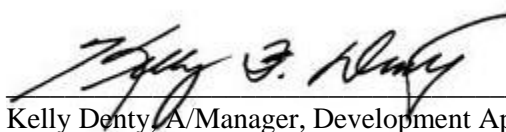
Map 1: Site Plan  
Map 2: Location Map  
Attachment A: Letter of Appeal

---

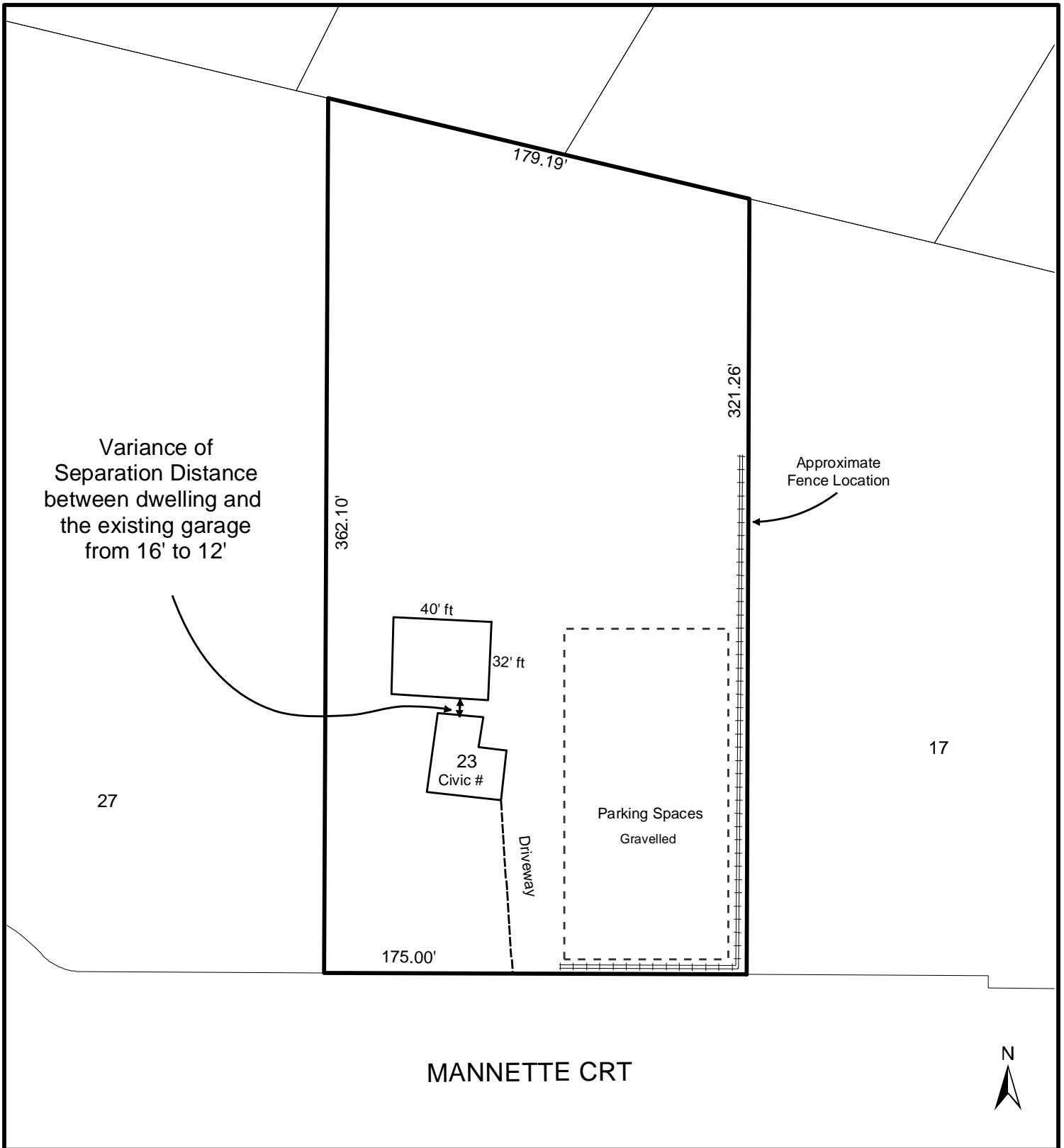
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Brenda Seymour, Development Technician, 490-3328 and  
Andrew Faulkner, Development Officer, 490-4341

Report Approved by:

  
Kelly Denty, Manager, Development Approvals, 490-4800

---



# Map 1 Site Plan

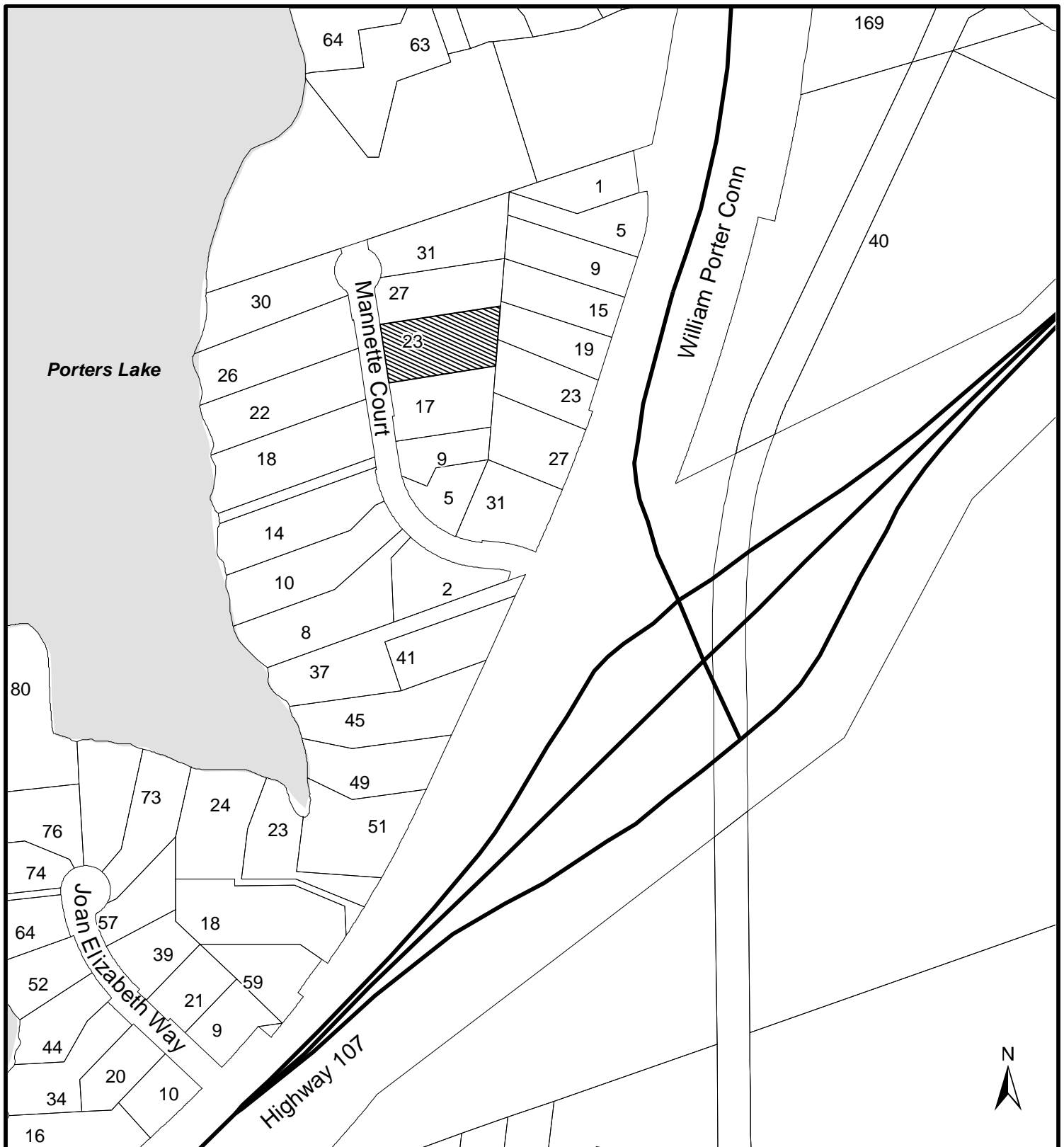
 Subject Property

**HALIFAX**  
REGIONAL MUNICIPALITY  
Community & Recreation Services  
Development Approvals

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

February 29, 2012

T:\work\planning\Holly\Development Variances\Brenda\Case 17038 (HK)



## Map 2 Location Map



Subject Property

**HALIFAX**  
REGIONAL MUNICIPALITY  
Community & Recreation Services  
Development Approvals

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

February 29, 2012

T:\work\planning\Holly\Development Variances\Brenda\Case 17038 (HK)

**Attachment A- Letter of Appeal**

**Case No. 17038**

Pls. fax this to 902-490-4661 Attn: Andrew Faulkner

To: Municipal Clerk,  
c/o Andrew Faulkner  
Halifax Regional Municipality,  
Planning and Development - Eastern Region,  
P.O. Box 1749, Halifax, NS  
B3J 3A5

Re: Case No. 17038 - Variance at 23 Mannette Court, Porters Lake, NS PID 40693707

We have been notified that a request for a variance has been approved at 23 Mannette Court  
Property Owner: Vincent Fitzmorris

We are notifying you of our intention to appeal.

We would appreciate acknowledgement of receipt of this fax to the email address below. Thank you.

Sincerely,  
Pam and Bill Sanford

[Redacted signature]

Marine Dr. Valley/Canal CC  
Aug. 4/11