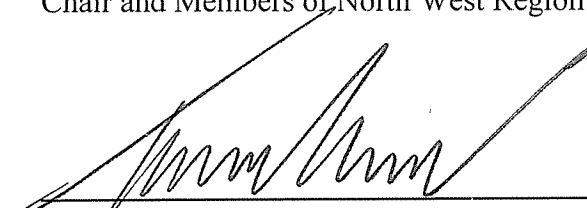


HALIFAX PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada
REGIONAL MUNICIPALITY

North West Region Community Council
November 4, 2010

TO: Chair and Members of North West Region Community Council

SUBMITTED BY:



Trevor Creaser, Development Officer

DATE: October 25, 2010

SUBJECT: Appeal of the refusal of a Variance # 16393 - 73 Sackville Cross Rd., Lr. Sackville

ORIGIN

This is an appeal of the Development Officer's decision to refuse an application for a variance from the right property line and the rear property line under the Sackville Drive Land Use Bylaw for the construction of four additional service bays to the existing automotive centre.

RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to refuse the request for the variance.

Community Council Report
Appeal of refusal of Variance # 16393

BACKGROUND

The subject property is located at 73 Sackville Cross Road, Lower Sackville (refer to Attachment 1). This property is zoned PC (Pinehille Cobequic) under the Sackville Drive Land Use By-Law.

An application for variance was made on August 10, 2010 to construct an addition to the existing automotive centre which currently includes six automotive bays and offices. The current footprint of the existing building is 5135 square feet. The proposed size of the addition is 40' x 46.6' which is 1864 square feet in area. The proposed addition results in a 3 foot setback from the rear property and 4 feet from the right property line (refer to Attachment 2). The requirement under the land use bylaw is **15 feet** from both side and rear property lines.

The Development Officer refused the variance on October 7, 2010 (refer to Attachment 3). This was then appealed by the applicant on October 12, 2010 (refer to attachment #4).

DISCUSSION

The *Halifax Municipality Regional Charter* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines are as follows:

“A variance may not be granted where the:

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

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

(a) variance violates the intent of the land use bylaw;

The intent of minimum side and rear yard setback requirements is to provide adequate separation of buildings and uses from adjacent properties. This is necessary to ensure compatibility of uses and to minimize potential conflicts between neighbouring land uses. The property in the rear at 75 Sackville Cross Road contains 36 residential dwelling units which may be impacted by the increase in automotive repair activity by permitting this expansion.

Further, the intent of the minimum setback is to ensure that the buildings can be accessed on their own property for maintenance and repair. Permitting a 3 and 4 foot setback will make construction and future maintenance of this addition challenging as adjacent properties maybe affected. It is therefore determined that permitting the addition to be 3 feet from the rear line and 4 feet from the side property line would *violate the intend of the land use bylaw*.

Community Council Report
Appeal of refusal of Variance # 16393

(b) difficulty experienced is general to the properties in the area;

Lot sizes, configuration and building placement vary in the neighbourhood and therefore not a consideration for refusal.

(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”

Intentional disregard is not a consideration in this variance.

BUDGET IMPLICATIONS

None

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital 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.

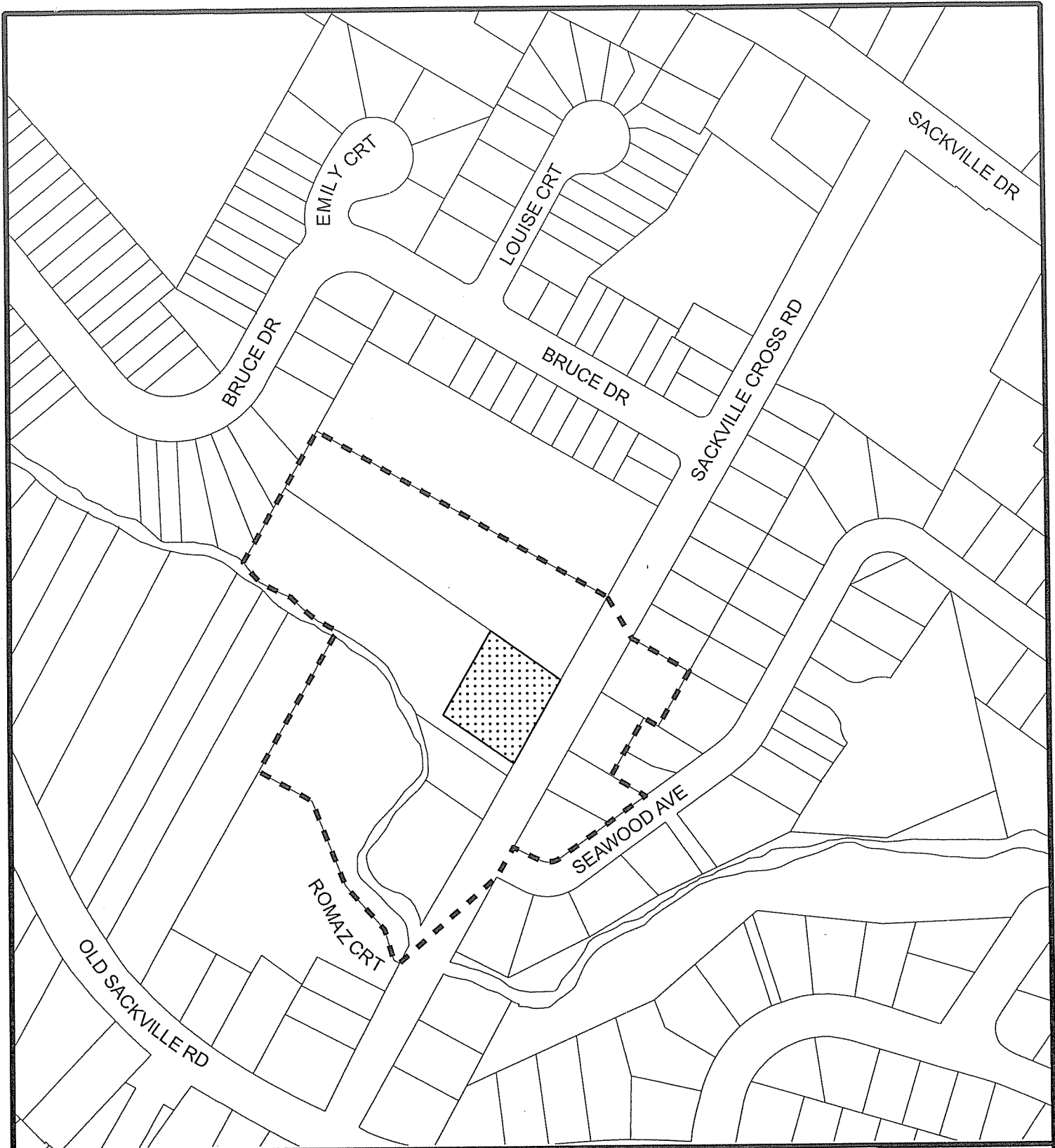
ALTERNATIVES

- 1. Uphold the decision of the Development Officer to refuse the application for variance.*
- 2. Overturn the decision of the Development Officer, thereby allowing the variance.*

ATTACHMENTS

- 1. Location map*
- 2. Site Plan*
- 3. Variance denial Letter*
- 4. Appellant's Letter*

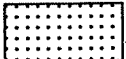
Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.
Report prepared by: Trevor Creaser, 869-4235.

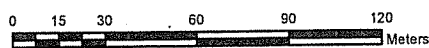


Map 1
Notification Area

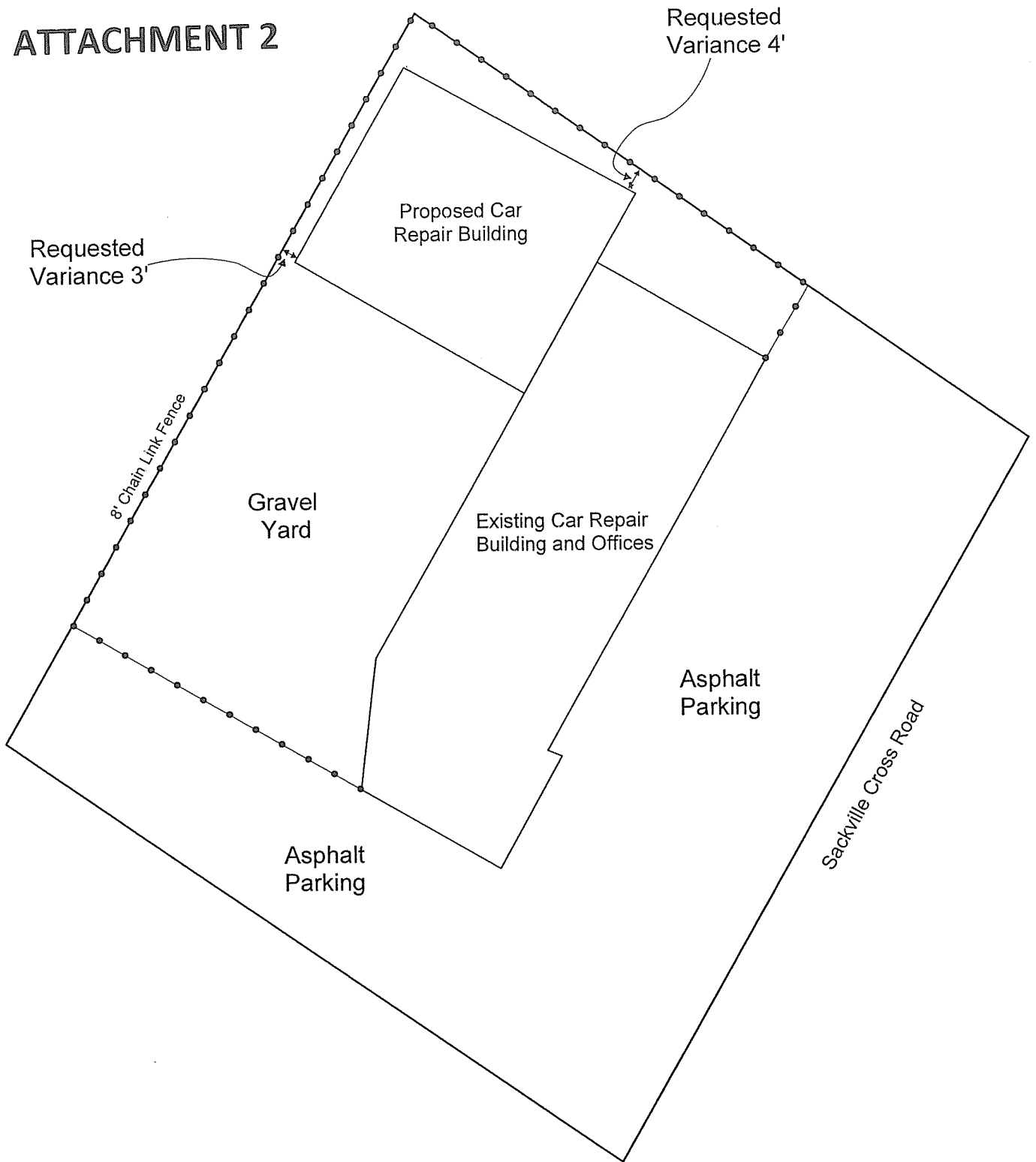
ATTACHMENT 1



- Notification Area
-  Subject Property



ATTACHMENT 2



Map 2
Site Plan



HALIFAX
REGIONAL MUNICIPALITY
Planning Services

COMMUNITY DEVELOPMENT

October 7, 2010

Mr. Dwaine Corbin
73 Sackville Cross Rd.
Lower Sackville, NS B4C 2M2

Dear Mr. Corbin:

RE: Application for Variance # 16393- 73 Sackville Cross Road, Lower Sackville

This will advise that I have refused your request for a variance from the requirements of the Land Use Bylaw for Sackville Drive as follows:

Location: 73 Sackville Cross Road
Project Proposal: Addition of 4 bays to existing automotive centre
Required Setback: 15' from side property line and 15' from rear property line
Proposed Setback: 4' from right side property line and 3' from rear property line

Section 250(3) of the **Halifax Regional Municipality Charter** states that:

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 the intentional disregard for the requirements of the development agreement or land-use by-law.**

It is the opinion of the Development Officer that this variance would *violate the intent of the Land Use By-Law*. The intent of the By-Law is to provide adequate separation of structures from property boundaries as well ensuring that incompatible use(s) are adequately buffered (ie: commercial versus residential). Proposing an eighty percent (80%) reduction in the required setback does not meet the intent of the bylaw.


Pursuant to Section 251 (4) of the **Halifax Regional Municipality Charter** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Trevor Creaser
Development Officer
Halifax Regional Municipality
Development Services - Central Region
636 Sackville Drive
Sackville, NS B4C 2S3**

Your appeal must be filed on or before October 15, 2010.

If you have any questions or require additional information, please contact **Connie Sexton** at **869-4005**.

Sincerely,


Trevor Creaser
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Robert Harvey

ATTACHMENT 4

October 12, 2010

Mr. Trevor Creaser
Development Officer
Halifax Municipality
Development Service- Central Region
636 Sackville Drive
Sackville, NS B4C 2S3

RECEIVED

OCT 14 2010

DEPARTMENT OF PLANNING
AND DEVELOPMENT

Dear Mr. Creaser:

Re: Application for Variance #16393- 73 Sackville Cross Road, Lower Sackville, NS.

Upon receipt of the correspondence dated October 07, 2010, I carefully reviewed same; specifically your opinion stating, 'This variance would violate the intent of the Land Use By-Law. The intent of the By-Law is to provide adequate separation of structures from property boundaries as well ensuring compatible use(s) are adequately buffered (ie: commercial versus residential). Proposing an eighty (80%) reduction in the required setback does not meet the intent of the bylaw.'

Based on my review of your opinion, I am respectfully exercising my right to appeal your decision to Municipal Council under Section 251(4) of the Halifax Municipality Charter.

Grounds of the appeal:

The property in question is bounded by a frontage road that being Sackville Cross Road, to the left of the property is the Sackville Branch of the Canadian Legion parking lot that can accommodate approximately 200 vehicles??, to the right of the property is a roadway and adjacent commercial properties. To the rear of the property is an apartment building complex parking lot with a capacity of approximately 30 vehicles??. Thus the property at 73 Sackville Cross Rd is significantly buffered by parking lots and roadways from other properties, as noted in the attached photographs. The apartment complex to the rear of the property is separated by a double wide parking lot with no apartments facing my property.

The intent of my application is to develop my business and stay within the current footprint of land at 73 Sackville Crodd Rd; this is the only option that is viable as there is no land for sale adjacent to my property.

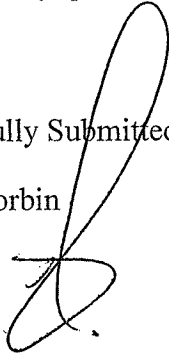
Corbin's Automotive has been in business for 13 years at its current location and maintains an excellent working relationship with all of the neighboring property owners. By utilizing the existing property to its potential will not infringe on existing properties nor compromise the existing relationship with our neighbors.

The existing buffers as depicted in the photographs (attachment 1), confirm the distance from all bordering properties to 73 Sackville Cross Rd and the addition to the business will not interfere upon the use of any

other property nor does it detract from the esthetics of the area. As noted in your correspondence the by-law serves to ensure that there is adequate buffer between properties, it is my belief that I have demonstrated there is adequate buffer surrounding the entire property at 73 Sackville Cross Rd and by proceeding with development of the property will in no way infringe on the use of adjacent properties. I thank you for your reconsideration of this issue and would be pleased to answer any questions that will assist you in your current decision process.

Respectfully Submitted,

Dwain Corbin

A handwritten signature in black ink, appearing to be 'Dwain Corbin', written over the printed name. The signature is stylized with a large loop at the top and a horizontal stroke across the middle.