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Halifax, Nova Scotia
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8.2.1

Peninsula Community Council
February 13, 2012

TO: Chair and Members of Peninsula Community Council

SUBMITTED BY: 
Sean Audas, Development Officer

DATE: February 3, 2012

SUBJECT: Case #17322 - Appeal of the Development Officer's Decision to Refuse a
Variance – 3360 Agricola Street, Halifax

ORIGIN

Appeal of the Development Officer's Decision to refuse a variance for front and side yard setback requirements.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the Variance.

BACKGROUND

The subject property is located at 3360 Agricola Street in Halifax (See Map 1) and zoned R-2 (General Residential) Zone under the Halifax Peninsula Land Use Bylaw.

On August 22, 2011, staff presented an ‘Order to Comply’ to the property owner, as a deck was under construction without a permit. The owner made application for the deck September 1, 2011, and on September 7, 2011 was advised that the proposal did not meet the setback requirements of the zone. A variance application was made October 18, 2011 and subsequently the unfinished deck was completed.

In 1991, a variance was approved for a 5.5’ X 12’ enclosed front porch and steps, which were to be located no closer than 10.3 feet to the front property boundary. A variance for a reduced right yard setback was not requested. The survey plan provided with the application (Map 2) shows a deck within the right side yard which was not shown on the approved Variance plan of 1991 (Map 3).

Zone Requirements for a Single Unit Dwelling

	Requirements	Proposal
Front Yard Setback	10.3 feet (approved Variance from 1991)	0 feet
Side Yard Setback	4 feet	0 feet

Municipal Operations staff has advised that several of the steps to the deck are in the street right-of-way and will have to be removed as they pose a hazard for maintenance equipment. They recognize that there are many other properties with existing steps within the right-of way, however they do not wish to perpetuate the situation.

DISCUSSION

The *Halifax Regional Municipality 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 if:

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

An analysis of the requested Variance against each of the criterion is as follows:

Does the proposed variance violate the intent of the land use bylaw?

The applicant has proposed to reduce the front yard setback from 10.3 feet to 0 feet. A slight reduction may have been considered as some adjacent dwellings are very close to the front yard setback. However, an entire reduction which includes steps within the right of way is felt to violate the intent of the Land Use By-law.

The applicant is also proposing a side yard setback from 4 feet to 0 feet for the right side yard setback of the deck. This was not approved as the intent of a side yard setback is to provide adequate separation of buildings from adjacent properties and to maintain access, safety and privacy. To reduce this setback entirely is also felt to violate the intent of the Land Use By-Law.

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

There are many other properties with decks, porches, and steps within the required setbacks however, this was not a consideration in refusing the Variance.

Is the difficulty the result of intentional disregard for the requirements of the land use bylaw?

Construction occurred without the necessary permits and approval. The applicant was advised to not continue with the deck until the process was completed. It was confirmed from a follow up site inspection that the deck was completed before the process was concluded.

In summary, during the application review it was determined that the proposal did not meet two of the criteria. The proposal does not meet the intent of the Land Use By-Law and resulted in intentional disregard for the requirements of the Land Use By-Law.

A notice was sent to the applicant (Attachment 1) which included the reasons for the refusal. The applicant subsequently appealed this decision (Attachment 2), which refers the matter to Community Council for a decision.

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 a

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

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance.
2. Council could overturn the decision of the Development Officer and approve the variance.

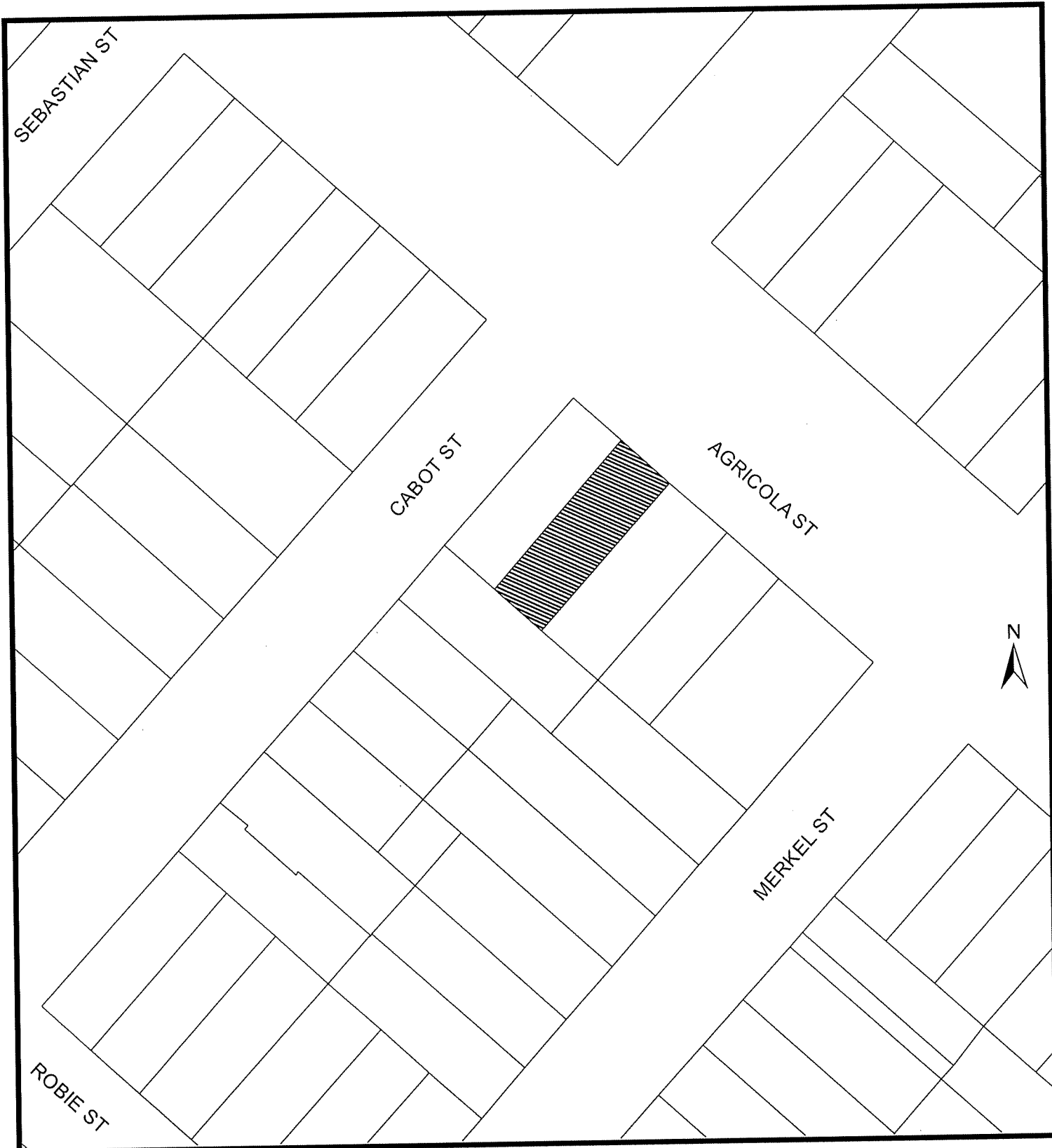
ATTACHMENTS

1. Map 1 – Location
2. Map 2 – Location Certificate 2010
3. Map 3 – Site plan from Variance in 1991
4. Attachment 1 – Refusal letter
5. Attachment 2 – 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: Sean Audas, Development Officer 490-4402

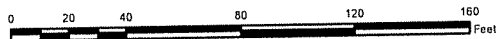
Report Approved by: Kelly Denty, Manager Development Approvals 490-4800



Map 1 Location

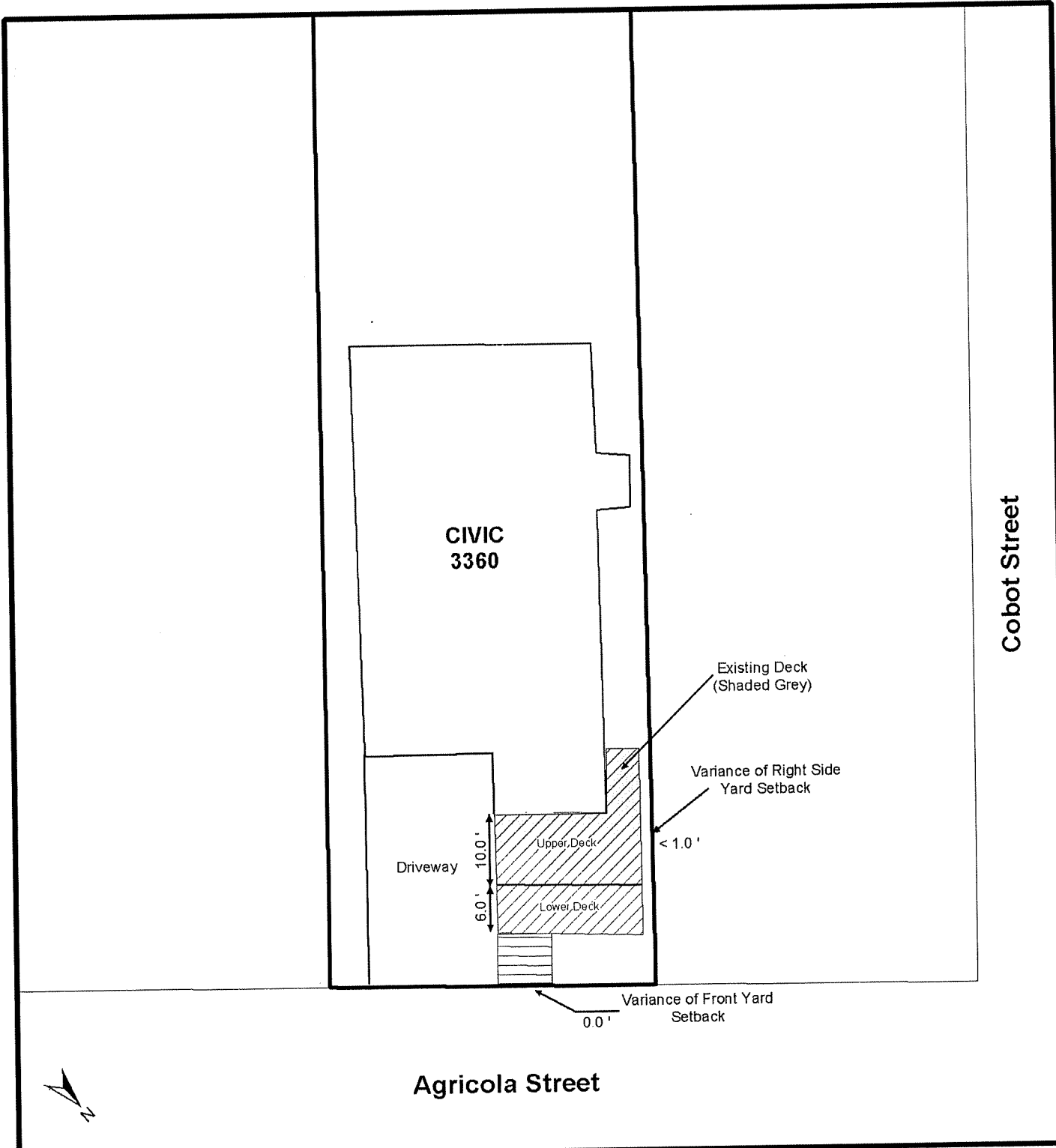


Subject Property



HALIFAX
 REGIONAL MUNICIPALITY
 COMMUNITY DEVELOPMENT
 & RECREATION
 DEVELOPMENT SERVICES

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



Cobot Street

CIVIC
3360

Existing Deck
(Shaded Grey)

Variance of Right Side
Yard Setback

< 1.0'

Driveway

10.0'
6.0'

Upper Deck

Lower Deck

Variance of Front Yard
Setback

0.0'

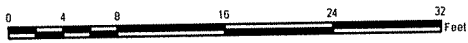
Agricola Street



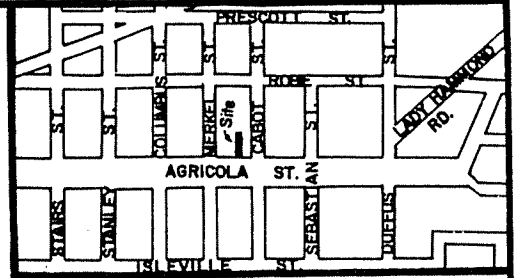
Map 2 Site Plan
3360 Agricola Street

HALIFAX
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COMMUNITY DEVELOPMENT
& RECREATION
DEVELOPMENT SERVICES

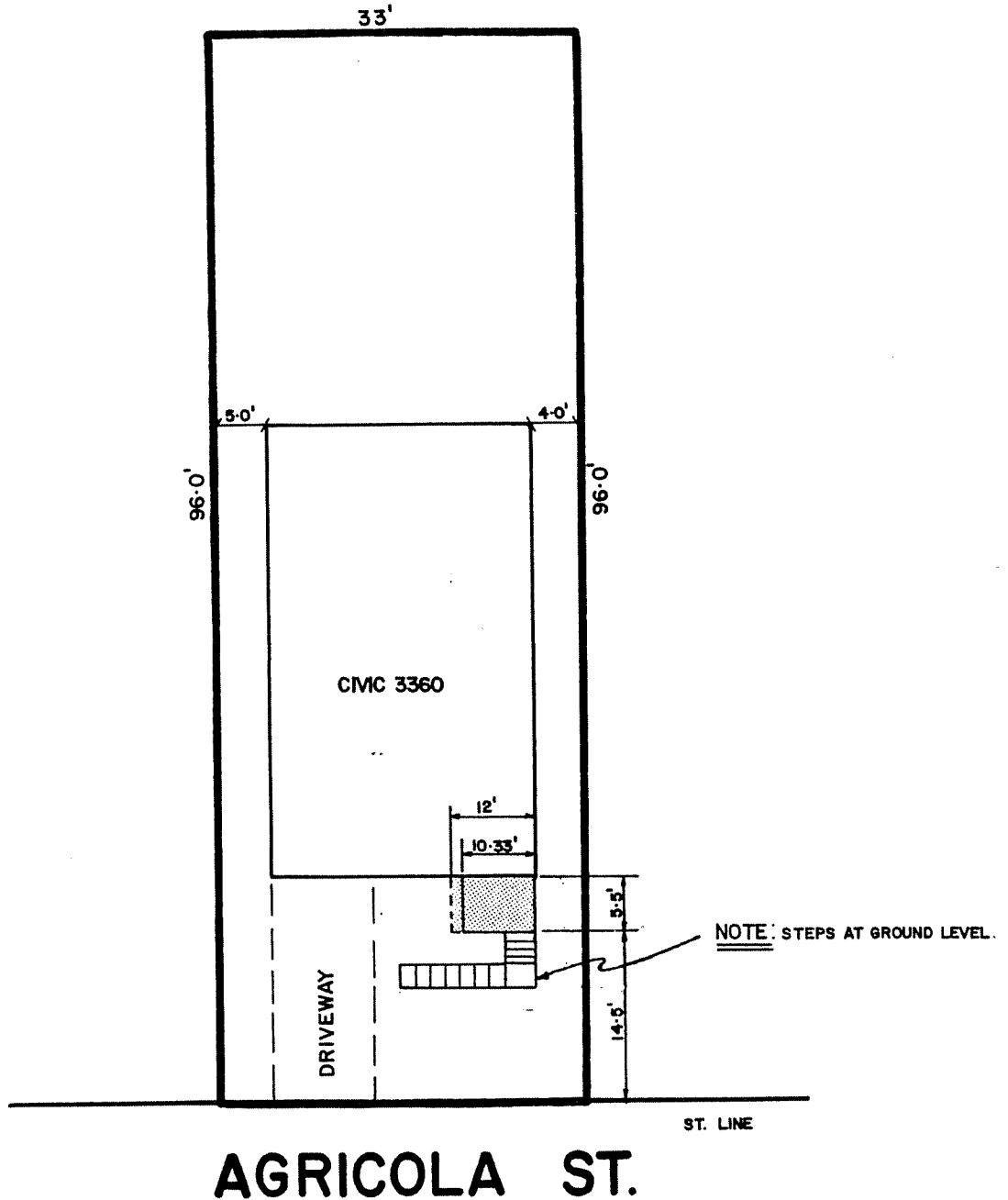
HRM does not guarantee the
accuracy of any base map
information on this map.



MAP 3



KEY: N. T. S.



SITE PLAN CASE 6339

— LOT IN QUESTION
▨ - PROPOSED ADDITION
SCALE: N. T. S.



ATTACHMENT 1



COMMUNITY DEVELOPMENT - WESTERN REGION
7071 Bayers Road
PO Box 1749
Halifax, NS B3J 3A5
Ph: (902) 490-5650
Fax: (902) 490-4645

Ms. Norma Edwards
3360 Agricola St
Halifax, NS B3K 4H9

November 14, 2011

Dear Ms. Edwards:

RE: Variance #17322 – 3360 Agricola St., Halifax

This will advise you that as the Development Officer for the Halifax Regional Municipality I have refused your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

Location: 3360 Agricola St
Project: Construct Front Deck
Required Front Setback: 10.3 feet (approved 1991 variance)
Refused Variance: 0 feet
Required Right Setback: 4 feet
Refused Variance: 0 feet

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 land use bylaw**
- (b) the difficulty experienced is general to properties in the area**
- (c) the difficulty experienced results from intentional disregard for the requirements of the Land Use Bylaw**

It is the opinion of the Development officer that the variance cannot be granted because the variance violates the intent of the land use bylaw and the difficulty experienced results from intentional disregard for the requirements of the Land Use Bylaw.

Pursuant to Section 251(5) of the Halifax Regional Municipality Charter you have the right to appeal the decision of the Development Officer. **Any appeal must be received prior to 4:30 pm November 24, 2011.**

If you have any questions or require clarification of any of the above, please call Mike Cowper at 490-7455.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Audas", written over a horizontal line.

Sean Audas
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor Jerry Blumenthal

RECEIVED NOV 24 2011

ATTACHMENT 2

File # 17322

Nov 24/11

①

I AM HERE to appeal the decision on
to 3360 Agricol St Halifax NS. this

Date Nov 24/11

Norma Edwards
Norma Edwards