

8.2.1

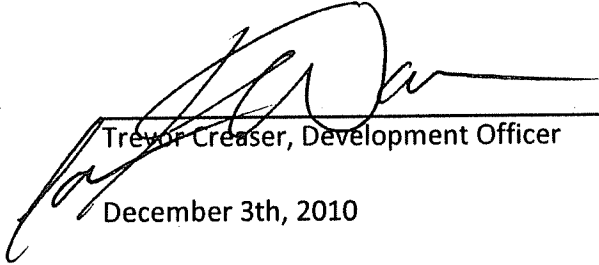


PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Canada

Peninsula Community Council
December 13th, 2010

TO: Members of Peninsula Community Council

SUBMITTED BY:



Trevor Creaser, Development Officer

DATE:

December 3th, 2010

SUBJECT: Appeal of the Refusal of Variance #16473 – 2692 Belle Aire Terr., Halifax

ORIGIN

This is an appeal of the Development Officer's decision to refuse a variance application to reduce the lot frontage and area requirements to legalize of a third dwelling unit in an existing two unit dwelling under the Halifax Peninsula By-Law.

RECOMMENDATION

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

Community Council Report
Appeal of Refusal of Variance # 16473

BACKGROUND

The subject property is located at 2692 Belle Aire Terr. Halifax (refer to Attachment 1). 2692 Belle Aire Terrace is zoned R-2 (Two Unit Dwelling) under the Land Use Bylaw for Halifax Peninsula. (refer to Attachment 2)

The authorized use on the property is a two unit dwelling for which an occupancy permit was issued on Jan 26, 2004 (see Attachment 3). Further, a variance was granted to reduce the lot frontage and lot area requirements from 50' and 5000sqft to 45' and 4366sqft respectively to permit a two unit dwelling. This was granted on July 7, 2000.

In April of 2010 a complaint was received that a third dwelling unit was being installed in the building. A follow up site inspection by staff confirmed there was a third dwelling unit created in the basement without the required permits.

On August 26, 2010 the applicant applied to legalize the third unit, the permit was denied because it did not meet the minimum frontage and area requirements. The lot frontage and area requirements in the R-2 zone for a three unit dwelling are 80' and 8000sqft.

On September 20, 2010 the applicant applied for a variance to legalize the third unit which was refused by the Development Officer on October 13, 2010 (refer to Attachment 5). This decision was subsequently appealed by the applicant (refer to Attachment 5).

DISCUSSION

The *Municipal Government Act* 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 purpose for the minimum required frontage and area is to control the density. The intent is that when units are increased, as do the requirements for frontage and area. It is the opinion of the Development Officer that legalizing this third unit would *violate the intent of the land use bylaw*.

Community Council Report
Appeal of Refusal of Variance #16473

(b) Difficulty experienced is general to the properties in the area:

The size and configuration of the lot is consistent with other properties on this street and is therefore *general to properties in the area*.

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

It was in the opinion of the Development Officer this was a disregard to the requirements of land use by-law. The applicant previously entered into the permit and variance process knowing the lot did not meet the frontage and area requirements of the zone for the two unit dwelling. They were given an approved permit to construct a two-unit dwelling and there was no indication on basement floor plans of a future third Unit (refer to Attachment #6).

As the discovery of the third unit was brought to staffs attention through a complaint, it is evident the applicant had no intention to apply for the necessary approvals prior to install this unit and this is therefore *an intentional disregard for the requirements of the land use bylaw*.

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.

BUDGET IMPLICATIONS

None

ALTERNATIVES

1. Uphold the decision of the Development Officer to refuse the application for variance.
This is the recommended alternative.
2. Overturn the decision of the Development Officer, thereby permitting the third dwelling unit.

Community Council Report
Appeal of Approval of Variance #14805

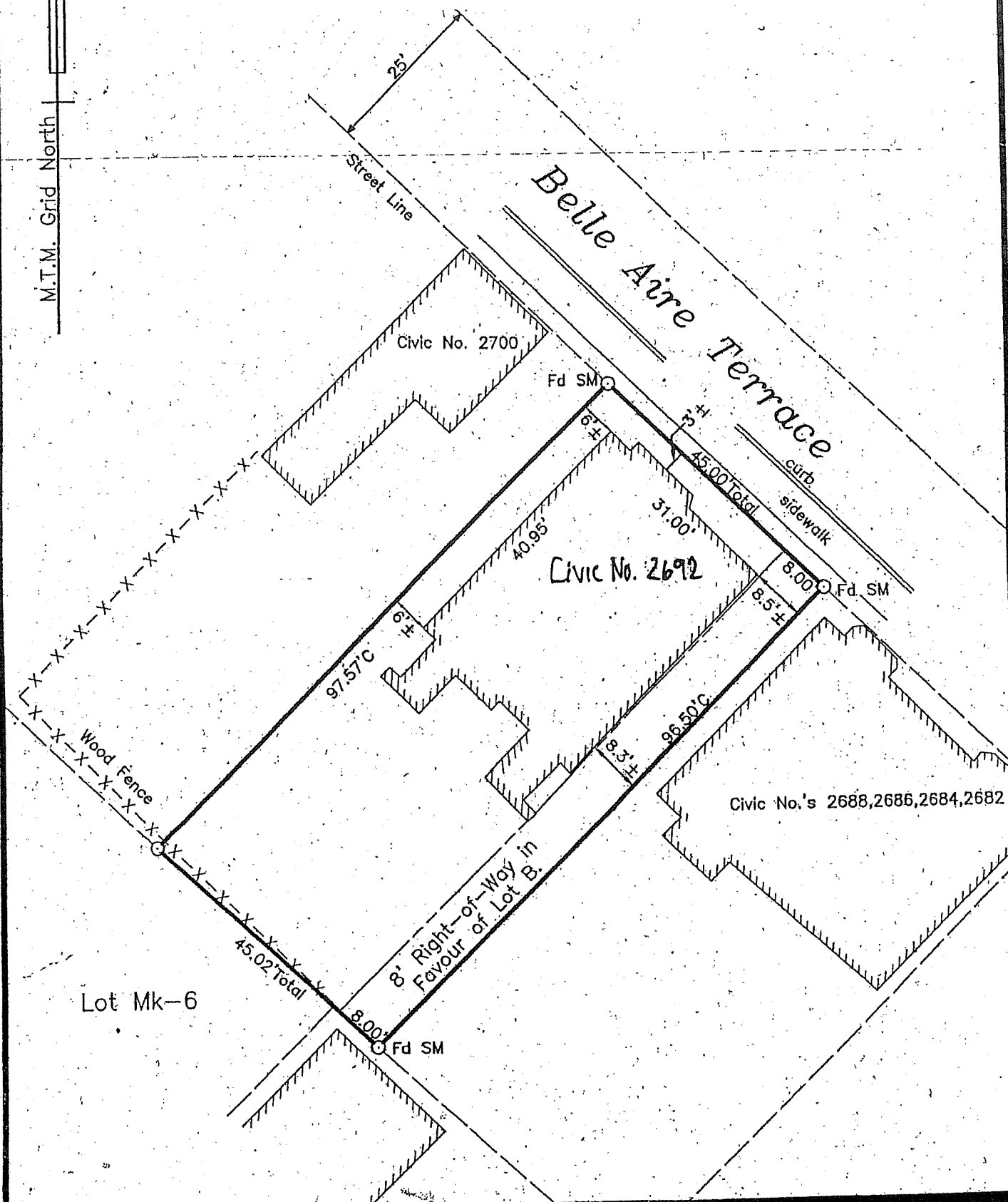
ATTACHMENTS

1. Location map
2. Zoning Map
3. Approved permit
4. Refusal Letter
5. Appellant's Letter
6. Elevation and floor plan

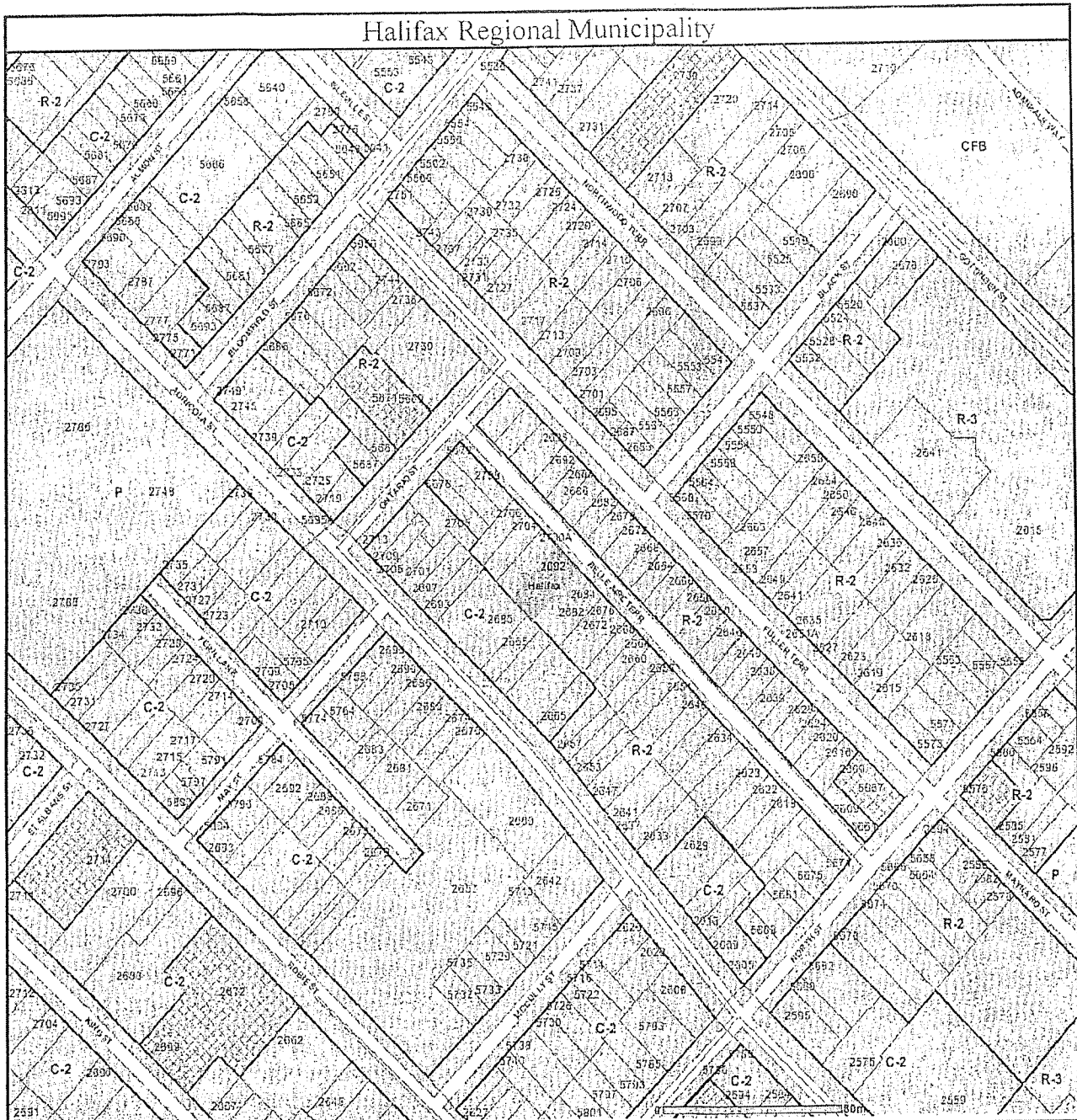
Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.
Report prepared by: Trevor Creaser, 869-4235.

Attachment 1

M.T.M. Grid North



Attachment 2



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation. User: geoinfo@halifax.ca

Legend

- | | | | | | |
|--|---------------------|--|-----------------------|--|------------|
| | Highlighted Feature | | Development Agreement | | Streams |
| | Selected Features | | Zoning | | Plan Areas |
| | Wetlands | | Streets | | Lakes |
| | Parcels | | | | |



Halifax Regional Municipality Development Services

PERMIT TYPE

OCCUPANCY PERMIT

PERMIT NUMBER

030481 OCC

PERMISSION IS HEREBY GRANTED TO

NAME AND ADDRESS OF PERMIT RECIPIENT

ARSENAULT THOMAS W SR. 2686 FULLER TERRACE HALIFAX NS CA B3K 3V7 452 2176

DESCRIPTION OF APPLICATION

CONSTRUCT 2 UNIT DWELLING

CIVIC ADDRESS OF JOB

2692 BELLE AIRE TERRACE

COMMUNITY

HALIFAX

LOCATION REMARK

LOT NUMBER

PID NUMBER

AAN NUMBER

HRM DISTRICT

LOT AREA

ZONING

PLAN AREA

1

40875882

11

4,366.00 F

R-2

51

NAME AND ADDRESS OF PROPERTY OWNER

CONDITIONS OF ISSUANCE

The issuance of this permit does not imply compliance with all the requirements of Municipal By-laws or the Provincial Building Code.

OFFICE PERMIT ISSUED BY

Development Services
6960 Mumford Rd., PO Box 1749
Halifax, NS B3J 3A5

Tel: (902) 490-5650 (902) 490-4645

ISSUE DATE

26 Jan 2004

EXPIRY DATE

APPROVED BY

Derrick Arsenault, Building Inspector, 490-6071

SIGNATURE

Attachment 5

Thomas W. Arsenault, Sr,
2696 Belle Aire Terrace, Halifax, Nova Scotia B3K 3W8

October 21, 2010

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

RECEIVED OCT 22 2010

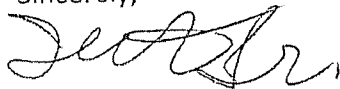
Dear Sir:

Re: Application for Variance # 16473 – 2696 Belle Aire Terrace, Halifax, Nova Scotia.

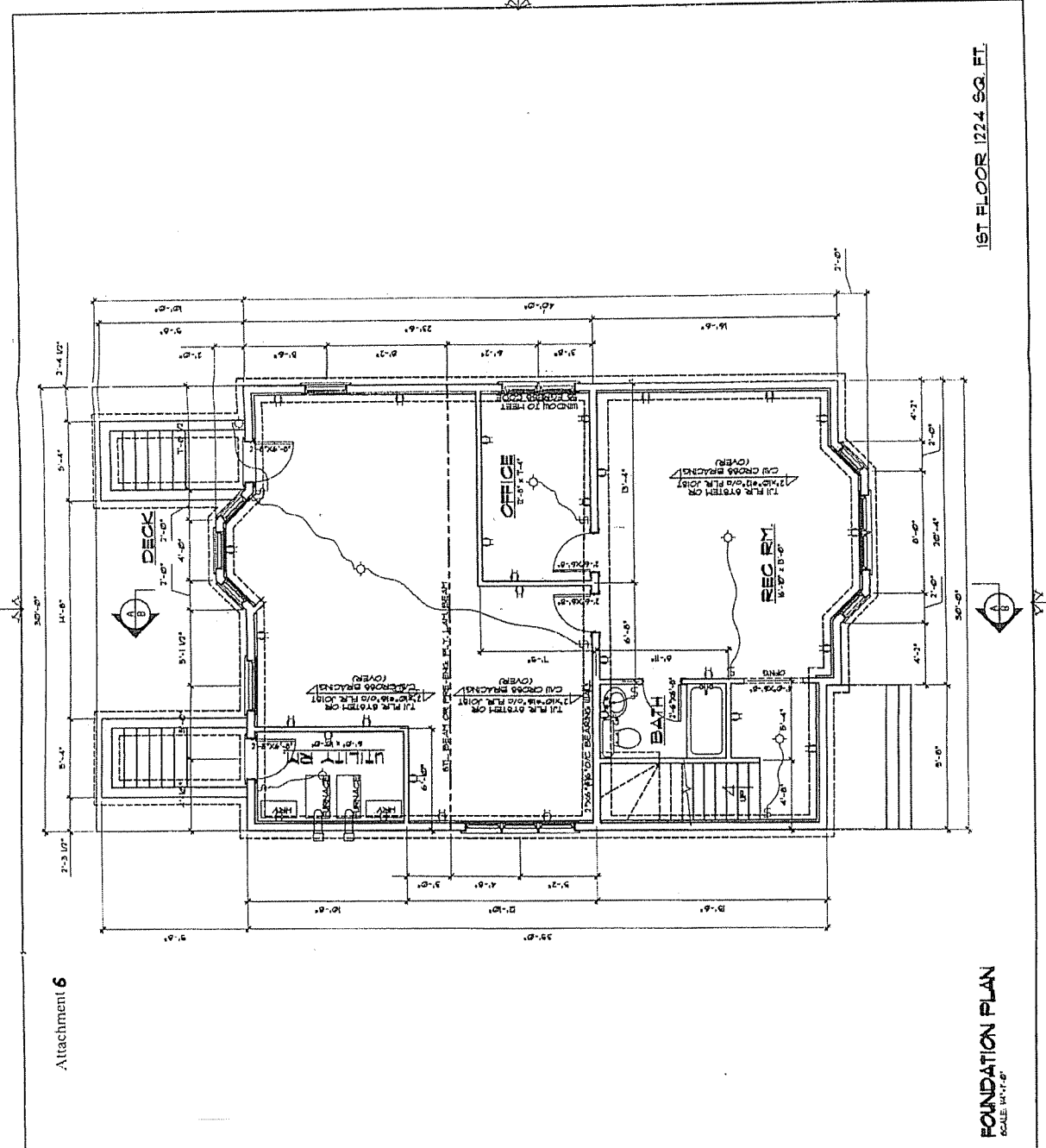
I wish to appeal the decision of the Development Officer regarding the use of 2696 Belle Aire Terrace, Halifax, Nova Scotia. The property has two units of which one unit has an in-law suite. During the property construction inspection, the property was designed for two units with one unit with an in-law suite, with an intention of a third unit in the future. I lived in the main level of the property of 2696 Belle Aire Terrace, Halifax, Nova Scotia since 2002 and my son and his wife live in the in-law suite, 2696 B Belle Aire Terrace, Halifax. After my son moved out to his new home, my daughter moved in.

The in-law suite was no an intentional disregard to the requirements of the by-law. I wished to appeal the decision of the Development Officer.

Sincerely,



Thomas W. Arsenault, Sr.



FOUNDATION PLAN
SCALE 1/4" = 1'-0"

1ST FLOOR 1224 SQ. FT.

NOTES:
1. ALL WORK TO BE COMPLETED IN ACCORDANCE WITH THE NATIONAL BUILDING CODE OF CANADA - 1995 EDITION.
2. ALL FEDERAL, PROVINCIAL, AND MUNICIPAL REQUIREMENTS SHALL BE CONSIDERED AS PART OF THE SPECIFICATIONS. TAKE PRECEDENCE OVER ANYTHING SHOWN DISCREPANCY SHALL BE THE PRECEDENCE.
3. ALL UTILITIES TO BE BUILT UP OF 7500 PSI STEEL OR BETTER.
4. ALL UTILITIES TO BE SIZED BY PLUMBER.
5. USED IN SMOKE DETECTORS TO BE INSTALLED.
6. ALL UNDOOR SIZES (WIDTH) SHALL BE AS SHOWN ONLY. DIMENSIONS REFER TO MANUFACTURER'S SPECIFICATIONS.

GENERAL NOTES:
1. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. ALL UTILITIES AND DIMENSIONS SHALL BE AS SHOWN ON THE DRAWING. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION AND DEPTH OF ALL UTILITIES.

NEW dimensions
The CAD Drafting Professionals

PROJECT	DATE
NO.	LOCATION
FILE	

FOUNDATION PLAN

SCALE	DATE
1/4" = 1'-0"	1/1/20
1/4" = 1'-0"	1/1/20
1/4" = 1'-0"	1/1/20
1/4" = 1'-0"	1/1/20
1/4" = 1'-0"	1/1/20

7

FRONT ELEVATION