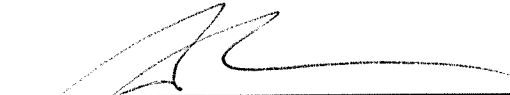


**Peninsula Community Council
December 12, 2011**

TO: Chair and Members of Halifax Peninsula Community Council

SUBMITTED BY: 
Sean Audas, Development Officer

DATE: December 1, 2011

SUBJECT: **5528 Merkel Place, Halifax- Appeal of the Development Officer's
decision to refuse an application for a variance**

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the side yard setback requirements of the Halifax Peninsula Land Use Bylaw to permit the construction of a detached garage.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 5528 Merkel Place in Halifax (see Attachment 1- 'Map 1 – Location'). The property is zoned R-2 (General Residential Zone) under the Halifax Peninsula Land Use By-law.

The applicant is proposing to add an attached garage to the end dwelling unit of a block of dwellings in the Hydrostone. (See Attachment 2- 'Map 2- Site Plan').

The property description registered with the deed indicates that the property is 29.25' wide. The applicant illustrated that the dwelling unit on the property is 18 feet wide, leaving 11 feet between the side wall of the building and the property line. The applicant is proposing an 11 foot wide attached garage, which would result in a 0 (zero) foot side setback.

It should be noted that HRM's GIS mapping of the property indicates an existing 8 foot side setback. If a permit application is received on the property, a survey, by way of a location certificate will be required to verify the existing setback and the buildable area will have to be adjusted accordingly on any submitted plans.

DISCUSSION

The Halifax Regional Municipal 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 by-law;*
- (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 by-law."*

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.

Does the proposed variance violate the intent of the land use by-law?

The intention of the side yard setback is to provide access to the rear yard, and allow for open, green space on the property. While the Hydrostone area typically has a lane in the rear of the houses for access and amenity and service space, a reduction to zero feet from the property line does not allow for these intended elements, and as such, the reduction violates the intent of the Land Use Bylaw.

Is the difficulty experienced general to properties in the area?

If the area is considered to extend throughout the Hydrostone, as the regulations under the bylaw are uniform for the whole neighbourhood and the Hydrostone has a unique and uniform character and built form, the relaxation would set the precedent for approximately 120 end units. Each end

unit would have issues meeting the side setback if proposing an addition of this size. The difficulty experienced in regards to the side yard variance is general to the area.

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

There is no intentional disregard for the requirements of the land use bylaw. The applicant has applied for a Development Permit and the variance prior to commencing construction on the property, and is proceeding with the proper process.

As the application to decrease the side yard setback requirement violates the intention of the Land Use Bylaw, and the difficulty experienced is general to the area, the application has been **refused**.

The applicant filed an appeal of the refusal on November 16, 2011 (see Attachment 3 -Appeal Letter).

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

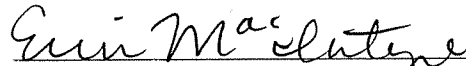
1. Council could overturn the decision of the Development Officer and approve the variance.
2. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.

ATTACHMENTS

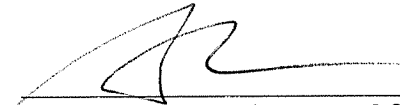
1. Attachment 1- 'Map 1 – Location'
2. Attachment 2- 'Map 2- Site Plan'
3. Attachment 3 - Appeal Letter

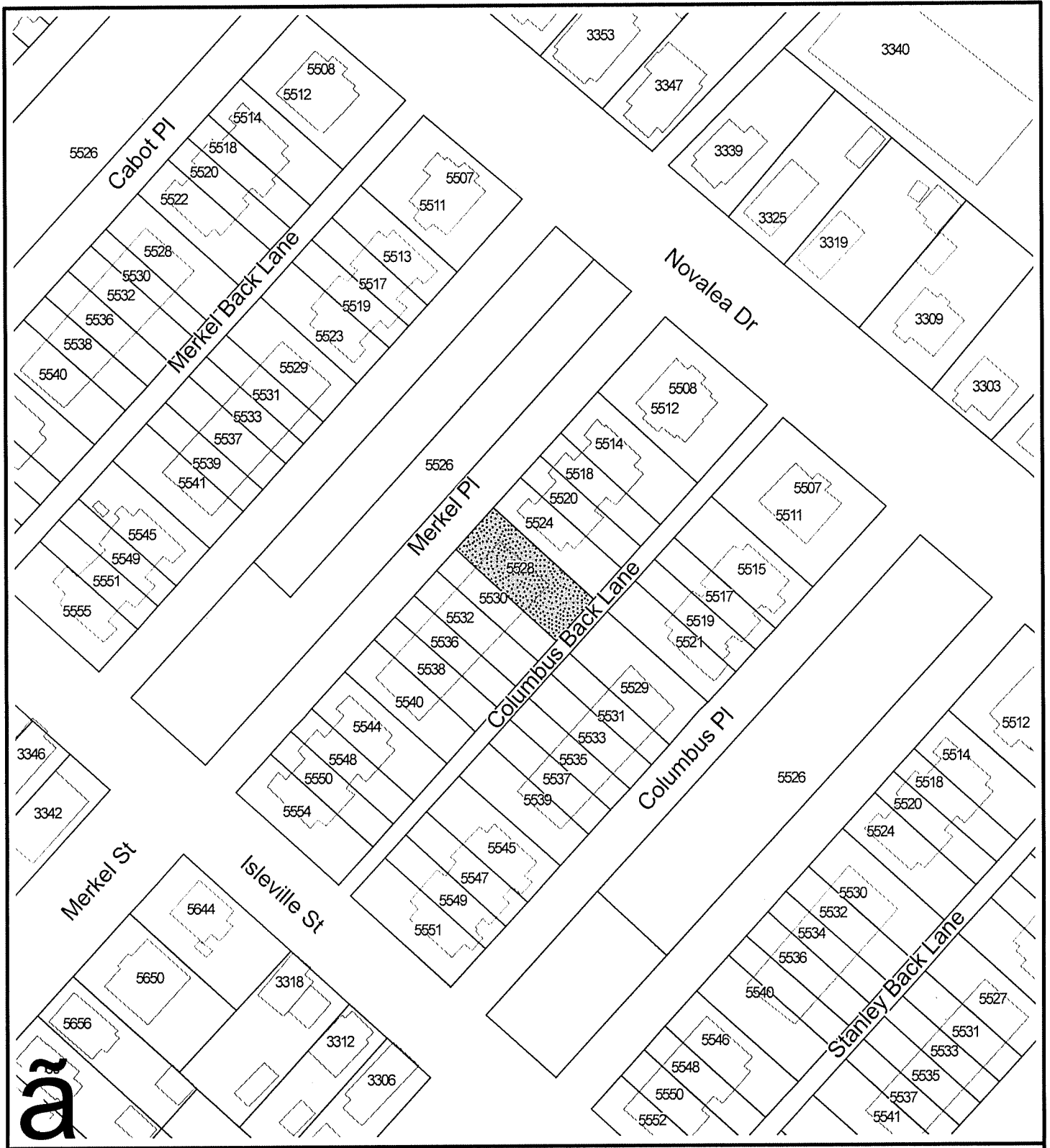
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by :


Erin MacIntyre- Development/Technician, 490-4338

Report Approved by:



Sean Audas- Development Officer, 490-4402

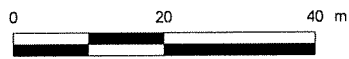


Map 1 - Location

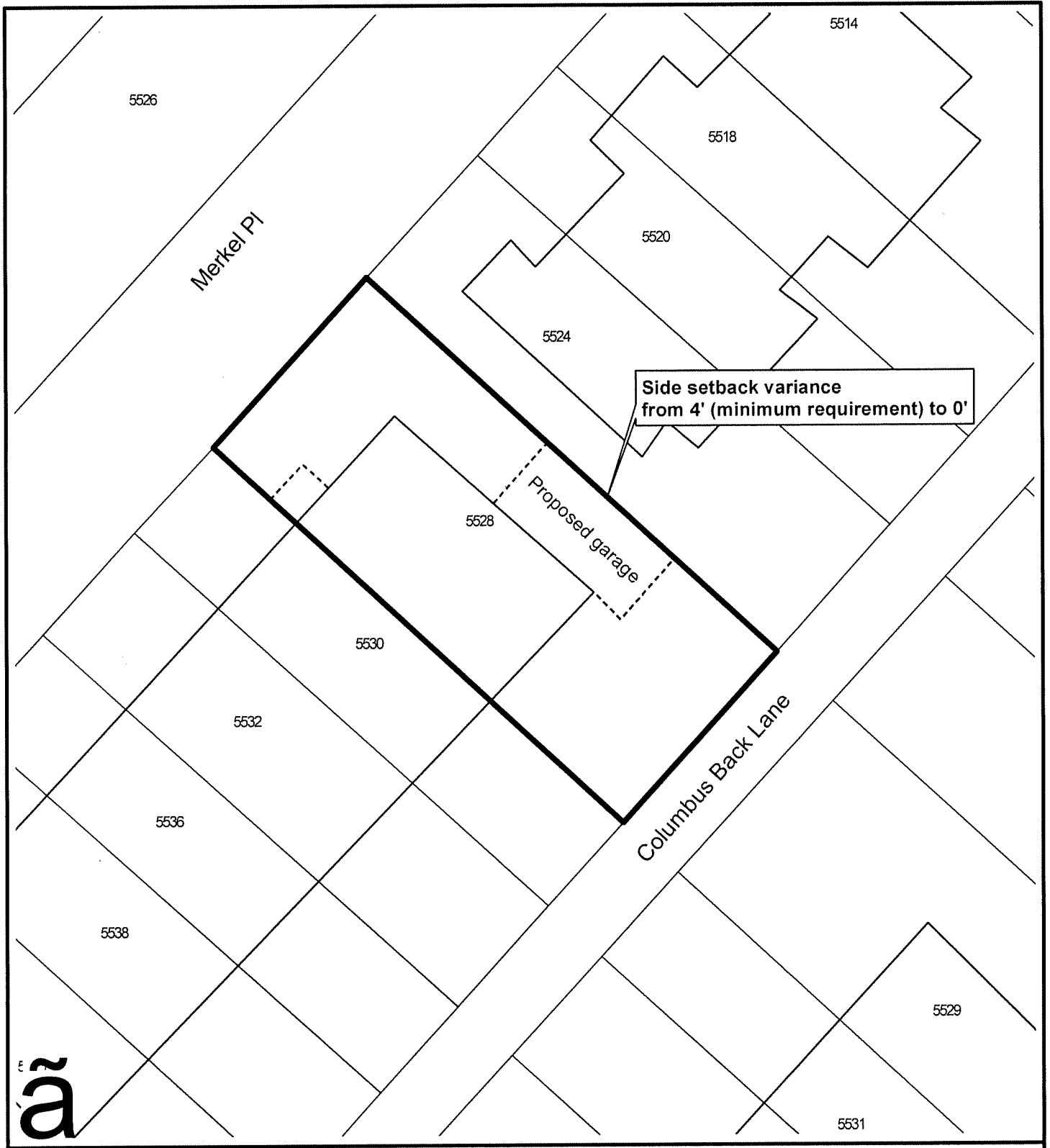
5528 Merkel Place
Halifax



 Subject property




HRM does not guarantee the accuracy of any representation on this plan



Map 2 - Site Plan

5528 Merkel Place
Halifax



 Subject property

HRM does not guarantee the accuracy of any representation on this plan

APPEAL - Case No 17331 - Variance

Nov 16, 2011
Anne Mackay
5521 Merkel Place
Hfx NS B3K 2H8

RECEIVED NOV 15 2011

(a) I do not understand the "intent" of the By-law. The garage will replace a deck structure which has been in place since the 1970's. It will sit on the footprint of the deck with no change from the back lane and only a slight difference in length - not noticeable from the street view.

(b) Re "difficulties"
Our neighbours have absolutely no objection to the garage. The deck has been there since the 1970's.

Enclosed are photographs of several similar garages located between end unit buildings. They all have (0) Zero feet of clearance.

We are senior citizens and plan to remain in our home as long as possible. Having a garage will make ~~keep~~ for less snow-shovelling and much easier storage of gardening supplies.

I have spoken to our Alderman, Jerry Blumenthal, who is supportive of our project.

Thank you for your consideration.

Sincerely,

Anne Mackay