

**Halifax and West Community Council**  
**February 18, 2013**

**TO:** Chair and Members of Halifax and West Community Council

**SUBMITTED BY:** Original Signed  
\_\_\_\_\_  
Brad Anguish, Director, Community and Recreation Services

**DATE:** January 31, 2013

**SUBJECT:** Case 17658: Appeal of Variance Approval – PID No. 41267873, Blink  
Bonnie Terrace, Halifax

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**ORIGIN**

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

**LEGISLATIVE AUTHORITY**

*HRM Charter; Part VIII, Planning and Development*

**RECOMMENDATION**

It is recommended that Council uphold the Development Officer's decision to approve the request for variance at PID No. 41267873, Blink Bonnie Terrace, Halifax.

## **BACKGROUND**

### **Proposal:**

A variance request has been submitted for an undeveloped property (PID No, 41267873) on Blink Bonnie Terrace to permit the site to be developed with a new, single unit dwelling (Map 2 and Attachment 1). In order to facilitate this project, a variance has been requested to relax the required front yard setback for a portion of the proposed building's second storey where it overhangs the first storey. The purpose of the overhang is to accommodate a kitchen and living area. The remainder of the building is proposed to meet all other requirements of the Land Use By-law.

### **Site Details:**

**Zoning:** R-1 (Single Family Dwelling) Zone, Halifax Peninsula Land Use By-Law

	<b>Zone Requirement</b>	<b>Variance Requested</b>
<b>Min. Front Yard:</b>	15 feet	10 feet, 6 inches

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment 2) and notified property owners within 30 metres of the site of this decision and their right to appeal this decision to community council. Appeals were subsequently filed by seven of the property owners within the notification area (Attachments 3 and 4). The matter is now before Halifax and West Community Council for decision.

## **DISCUSSION**

### **Development Officer's Assessment of Variance Request:**

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to 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;*
  - (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, any 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?**

It is the Development Officer's opinion that this proposal does not violate the intent of the Land Use By-Law as the variance requested is necessary for a portion of the second floor resulting in a minor reduction of the required 15 foot front yard.

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The lot is irregular in shape and shallow in depth making it difficult to locate a standard dwelling within the required setbacks. The main level of the proposed dwelling will meet the required front yard setback as well as all other Land Use By-Law requirements. The variance requested is to allow a second floor cantilever, which is limited in size, to be closer to the street, not an abutting property.

The proposed building meets the side and rear yard setback requirements. The front yard setback reduction is considered to be minor relative to the requirements of the by-law and, therefore, is believed to be in keeping with the general intent of the Land Use By-Law.

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

The difficulty experienced is not general to properties in the area. The property is irregular in shape and area for the neighbourhood and is the only undeveloped lot in the vicinity. The lot is shallow in depth (27 feet on the northwest boundary and 77 feet on the southeast) when compared to the other nearby lots whose depths are a standard 100 feet.

The R-1 Zone requires a minimum lot area of 4,000 square feet and a minimum frontage of 40 feet. The Land Use By-law permits the development of single family dwellings on lots that pre-date the by-law (May 1950) provided they are no less than 3,000 square feet in area and have 30 feet of frontage. The lot was created in 1948 and has an area of 3,442 square feet and 83 feet of street frontage. The lot may be developed, however, the location of any new building on the site is constrained by its unique configuration and small lot area. As such, the difficulty experienced is not general to the area.

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

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements. That is not the case in this request. The applicant has applied for a Development Permit in good faith and requested the variance prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in the approval of the variance request.

**Appellant's Appeal:**

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachments 3 and 4) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<i>The land use by-law is meant to provide adequate building separation to maintain access, safety and privacy. As the portion of the building that is departing from the guidelines is the second floor, it has a significant impact on the privacy of the adjacent homes.</i>	Staff does not concur that a reduction in the front yard setback for a portion of the building would impact privacy. Further, privacy is not a criterion that can be considered in the decision to grant the variance.
<i>The property in question, although identified as an individual parcel of land in the original deed, has been managed and utilized as part of the 2259 MacDonald Street property for more than 60 years.</i>	Although this property was used as amenity area for 2259 MacDonald Street for some time, this lot was created prior to there being a legislated requirement for municipal subdivision approval. The lot on Blink Bonnie Terrace was shown on a plan of subdivision in 1929 and described in a deed in 1948. Accordingly, the subject lot was created through appropriate and legal means and, as such, may be developed as per the requirements of the Halifax Peninsula Land Use By-law.
<i>An addition was added to the original house (2259 MacDonald) and does not fall within the regulations of the land use bylaw as it did not allow the required 20 foot provision for the rear yard between the building and the back property line.</i>	Based on a review of permit records, the addition was constructed in 1969 and is located 7 feet from the rear property boundary. At the time of construction, the land use by-law did not specify a rear yard setback requirement. The land use by-law was amended in 1976 to require a minimum rear yard of 20 feet. Therefore, the addition is a "non-conforming structure" pursuant to Section 254 of the <i>HRM Charter</i> .

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved refused as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

**FINANCIAL IMPLICATIONS**

There are no financial implications related to this variance.

**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 approval decision is appealed, a hearing is held by Council to provide the opportunity for the applicant and all assessed owners within 30 metres of the variance to speak.

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications.

### **ALTERNATIVES**

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

### **ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment 1:	Building Elevations
Attachment 2:	Variance Approval Notice
Attachment 3:	Letter of Appeal from owner of 2199 Blink Bonnie Terrace
Attachment 4:	Letter of Appeal from owners of 2211, 2221, 2231, 2199, 2191, 2170 and 2181 Blink Bonnie Terrace

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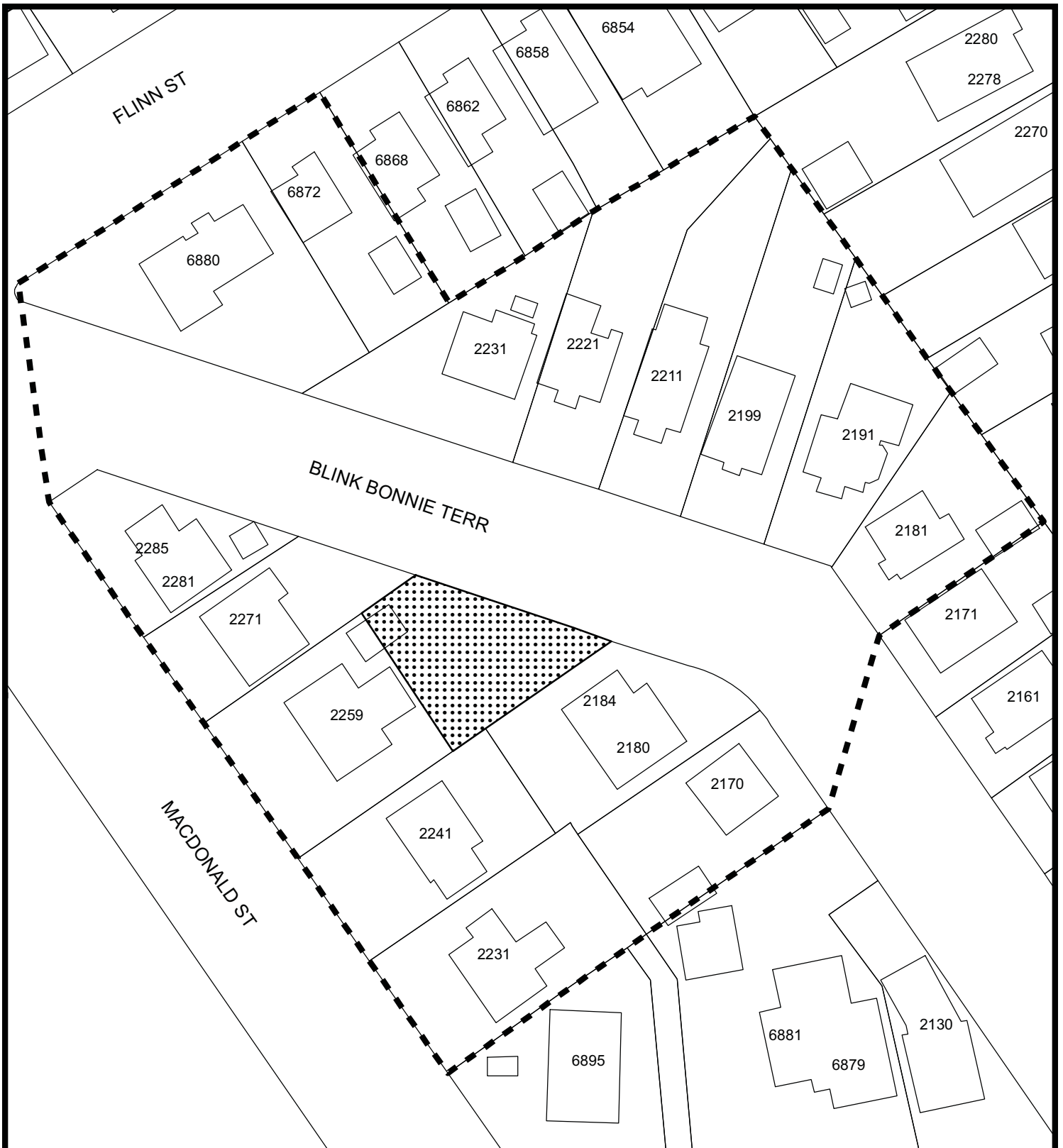
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Connie Sexton, Development Technician. 869-4005 and  
Trevor Creaser, Development Officer, 869-4235

Original Signed

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

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# Map 1 Notification Area

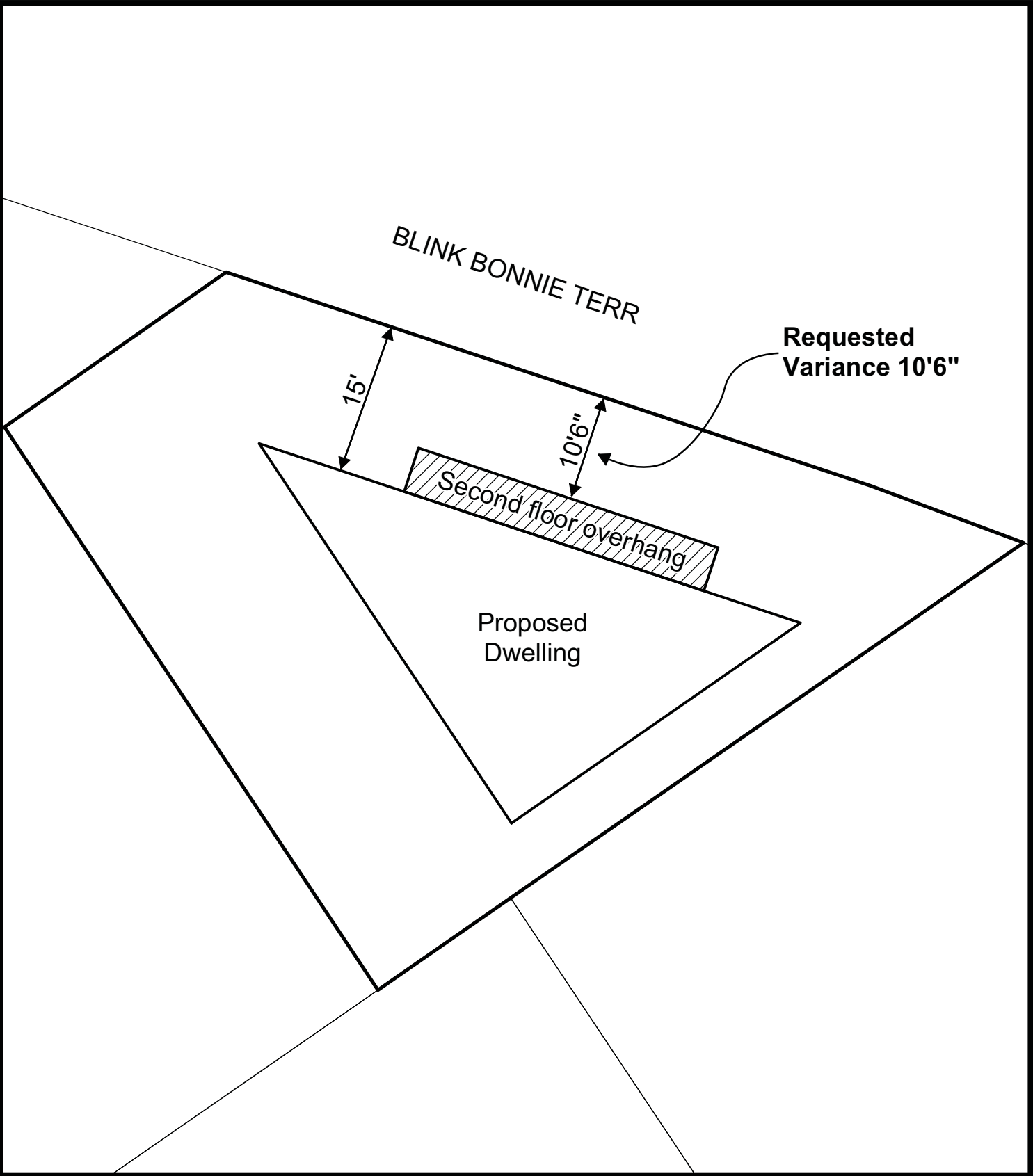
**HALIFAX**  
REGIONAL MUNICIPALITY  
Planning Services

Notification Area



Subject Property





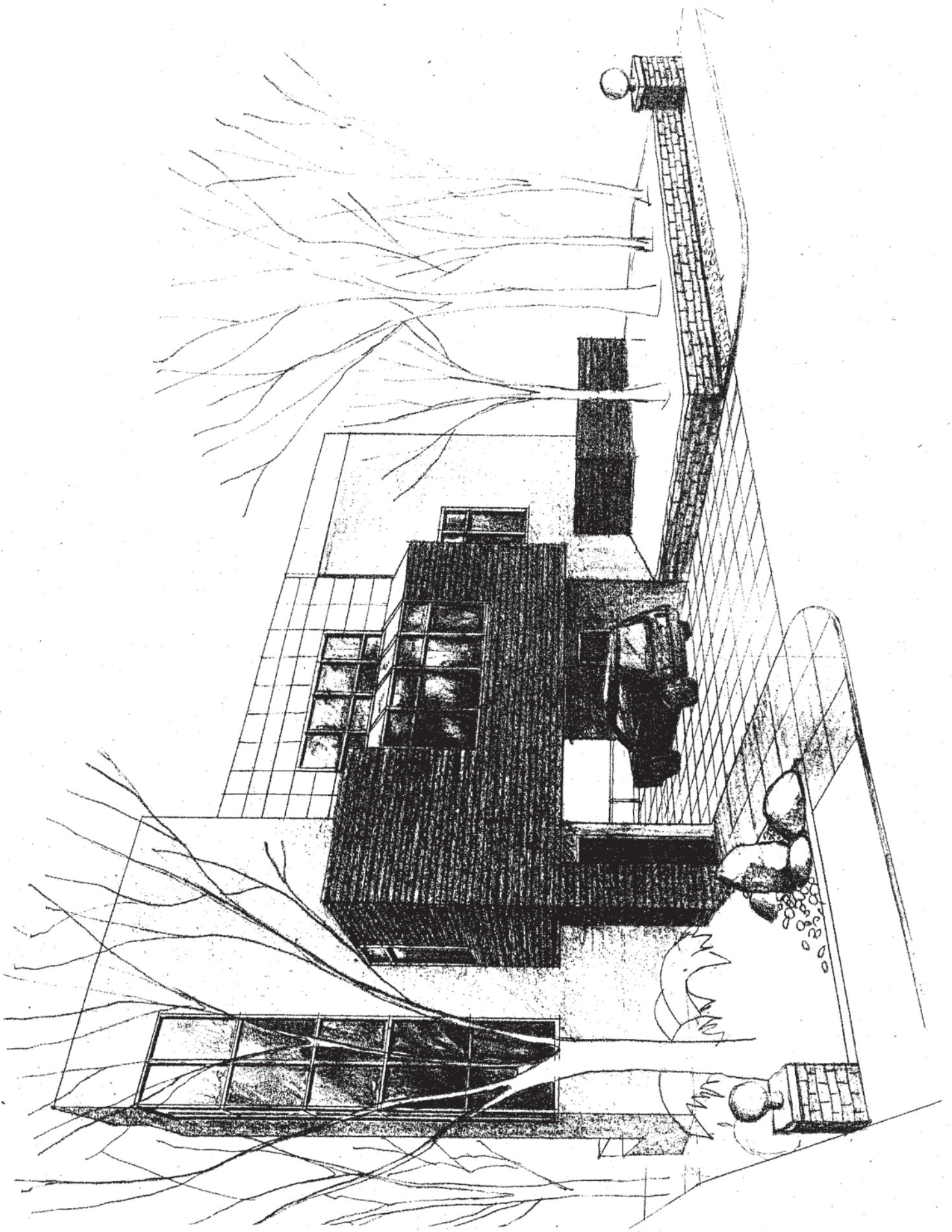
Map 2  
Site Plan



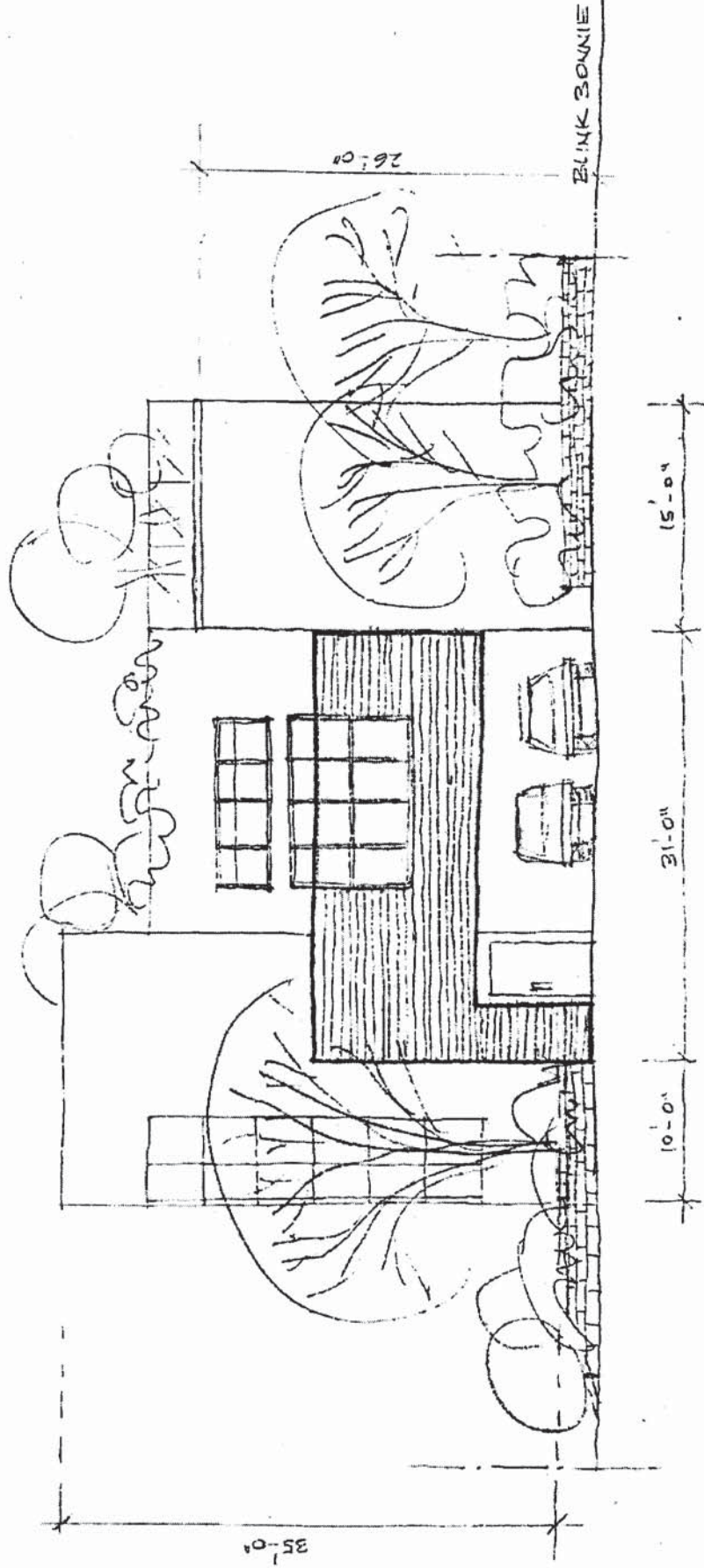
Area of Requested Variance











STREET ELEVATION CONF 12.1

May 28, 2012

Ms. Colleen Mizerit  
6088 Oakland Rd  
Halifax, NS B3H 1N8

Dear Ms. Mizerit:

**RE: Variance # 17658 – Blink Bonnie Terrace PID # 41267873**

This will advise that I have approved your request for a variance from the requirements of the Land Use Bylaw for Halifax Peninsula as follows:

<b>Location:</b>	<b>Blink Bonnie Terrace</b>
<b>Project Proposal:</b>	<b>Construct a portion of the second floor of a single unit dwelling closer to the front property line than permitted by the Halifax Peninsula Land Use By-law</b>
<b>Required Front Yard:</b>	<b>15 feet</b>
<b>Requested Front Yard:</b>	<b>10 feet and 6 inches</b>

In accordance with Section 251 of the Halifax Regional Municipality Charter, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **June 14, 2011**.

No permits will be issued until the appeal period has expired and any appeals disposed of.

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

Sincerely,  
Original Signed

Development Officer

cc. Cathy Mellett, Municipal Clerk  
Councilor, Jennifer Watts

Attachments (3)

2199 Blink Bonnie Terrace  
Halifax, NS B3L 3E8

RECEIVED

JUN 13 2012

DEPARTMENT OF PLANNING  
AND DEVELOPMENT

12 June 2012

Mr. Trevor Creaser  
Development Officer  
Development Services – Central Region  
Halifax Regional Municipality  
636 Sackville Drive  
Lr. Sackville, NS B4C 2S3

**RE: Application for Variance # 17658 – Blink Bonnie Terrace PID # 41267873**

References: A. Viewpoint map indicating property sizes;  
B. HRM Map Output Page reference 2121 Blink Bonnie Terrace and Surrounding Properties;  
C. Viewpoint map indicating lot size and PID;  
D. Property Valuation Services Corporation website for PID 30270;  
E. Property Valuation Services Corporation website for PID 41267873;  
F. Viewpoint Listing Information depicting pictures of shed;  
G. Explore HRM GISS map indicating distance from structure to property line.

Dear Mr. Creaser,

The Municipal Government Act sets out the guidelines under which the Development Officer may not 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 for the variance to be approved, it must not conflict with any of the above statutory guidelines. The purpose of this letter of appeal is to attest that the requested variance application does conflict with these guidelines.

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

The Land Use Bylaw states that a front yard shall be provided of not less than 15 feet in depth. This bylaw is meant to provide adequate building separation to maintain access, safety, and privacy. The subject application intends on departing from this bylaw by coming within 10 feet 6 inches of the property line. As the portion of the building that is departing from the guidelines is the second floor, it has a significant impact on the privacy of the homes adjacent to it.



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

Of the 15 assessed property owners within 30 metres of the property in question, only one has experienced the difficulty of having the building structure (not including access stairs) within the 15 foot bylaw stipulation. This one property is also on the inner side of a street curve. Therefore this difficulty is not considered to be general to the properties in the area. When considering the entire community or neighbourhood, it is estimated that 15% or less of the properties experience the difficulty of having the building structure within 15 feet of the front property line.

It may be suggested that the shape of the lot, in order to accommodate a house, is the difficulty being experienced. This is also not a difficulty experienced in general to the properties in the area. There are many irregular shaped lots in the area of both similar size and shape, as well as smaller lots of similar shape, who have not experienced the difficulty of meeting the 15 foot front yard bylaw stipulation as indicated in reference A.

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

Although the applicant has submitted the request for a variance to the land use bylaw prior to any building permits being issued and no construction has started, I believe there is intentional disregard for the requirements of the land use bylaw. The property in question, although identified as an individual parcel of land in the original deed, has been managed and utilized as part of the 2259 MacDonald Street property for more than 60 years. Up until 2009 these two lots were identified under one Parcel Identification (PID) number which was 00030270 (noted in references B and C). Property taxes for this parcel of land were assessed under PID 30270 for the entire property of 2259 MacDonald St. In 2008 an application was made to divide the property and assign a PID to the lot in question to which it was assigned number 41267873. In 2009 this was now assessed separately for property taxes (noted in references D and E).

As the property was utilized as a single lot, actions were taken that would have been in violation of the land use bylaw. For example prior to the subdivision of the 2259 MacDonald St estate there had been a building (shed or garage) that straddled the line between these parcels of land (shown in reference F). This would have been in violation of the bylaw. Also, an addition was added to the original house and does not fall within the regulations of the land use bylaw as it did not allow the required 20 foot provision for the rear yard between the building and the backyard property line. According to Explore HRM webpage the distance from the addition to the property line is 2.5 feet (0.73 metres) as indicated in reference G. (understanding there is some degree of error, however a 10 to 20 foot degree of error is substantial for a GIS program). Likely the building permits were issued for this addition as the two parcels of land were considered one property encompassed by PID 30270. Subdividing and developing the property now causes a violation of the land use bylaw for PID 30270.

In summary, I believe that it is clearly evident that the variance is contrary to the Municipal Government Act and should not be approved.

Bylaws are in place to protect the residents of the neighbourhood and we trust that they will be upheld. There is no legitimate reason that a variance needs to be granted in this case. The Land Use Bylaw gives direction and clearly states the requirements for a new development. If this lot is to be developed then it should be developed in accordance with the regulations.

Sincerely,  
Original Signed

 Aaron Mitchell, PEng, PMP





Search Listings and Properties

Min Price: \$50,000 Max Price: \$500,000

Min Bedrooms: 0 Listed Within: Any Date: Any

Property Type: Any Property Style: Any MLS and PreList: Any

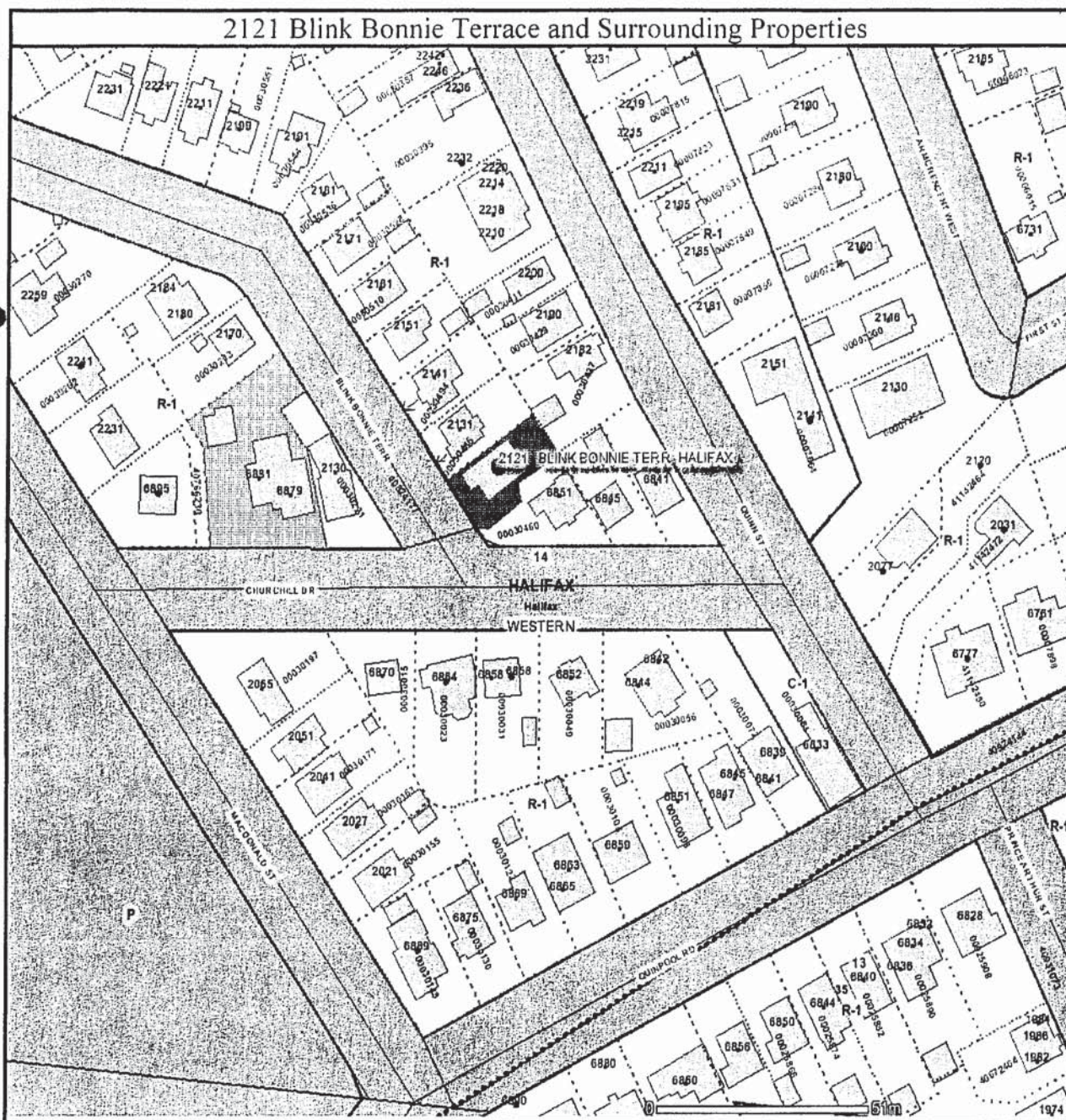
Map View (currently visible area)

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Summary

Values

Year	Market Value Assessment
2012	\$210,300
2011	\$210,300
2010	\$175,200
2009	\$166,900

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DATA PANEL

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2259 Macdonald St

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This history

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Blink Bonnie Terrace  
Halifax, NS B3L 3E8

June 12, 2012

Mr. Trevor Creaser  
Development Officer  
Development Services – Central Region  
Halifax Regional Municipality  
636 Sackville Drive  
Lr. Sackville, NS B4C 2S3

cc Councillor Jennifer Watts

**RECEIVED**

JUN 14 2012

DEPARTMENT OF PLANNING  
AND DEVELOPMENT

**RE: Application for Variance # 17658 – Blink Bonnie Terrace PID #  
41267873**

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In summary, we believe that it is clearly evident that the variance is contrary to the Municipal Government Act and should not be approved.

Bylaws are in place to protect the residents of the neighbourhood and we trust that they will be upheld. There is no legitimate reason that a variance needs to be granted in this case. The Land Use Bylaw gives direction and clearly states the requirements for a new development. If this lot is to be developed then it should be developed in accordance with the regulations.

Sincerely,

**Residents of Blink Bonnie Terrace:**

Original Signed

2211 Blink Bonnie Terrace ✓

Original Signed

2211 Blink Bonnie Terrace ✓

Original Signed

2221 Blink Bonnie Terrace ✓

Original Signed

2231 Blink Bonnie Terrace ✓

Original Signed

2231 Blink Bonnie Terrace ✓

Original Signed

2199 Blink Bonnie Terrace ✓

Original Signed

Original Signed

2191 Blink Bonnie Terr. ✓

Original Signed

2170 Blink Bonnie Terrace ✓

Original Signed

2221 Blink Bonnie ✓

Original Signed

2181 Blink Bonnie Terr, Halifax, NS.  
BCL 350 ✓