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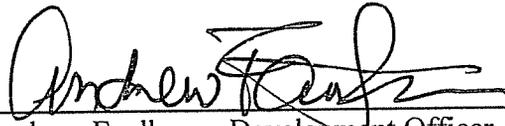


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Chebucto Community Council**  
**January 8, 2007**

**TO:** Chairman and Members of Chebucto Community Council

**SUBMITTED BY:**

  
Andrew Faulkner - Development Officer

**DATE:** January 2, 2007

**SUBJECT:** Appeal of the Development Officer's decision to refuse an application for a Variance - 269 Bedford Highway, Halifax; Variance No. 13426

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to refuse a variance from the lot area, front yard setback and rear yard setback requirements of the Halifax Mainland Land Use Bylaw to permit conversion of a single unit dwelling to a three unit dwelling.

**RECOMMENDATION**

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

### **BACKGROUND**

The subject property is located at 269 Bedford Highway in Halifax. The property is zoned C-2A, Minor Commercial, and the C-2A permits R-2P, General Residential Zone, uses. The R-2P zone requires 15 feet front yard setback, where 13 exists; 20 foot rear setback, where the existing deck is at 18.5 feet; and, a lot area of 6,000 square feet, where the existing is 4,215 square feet.

In October 2006, Development received a request for zoning confirmation that the building was a "triplex". A review of property records found that Construction Permits issued in 1983 and 1985 stated the use was "single family dwelling". Those applications were made by Mr. David Dore. The applicant for this variance is Mr. Dennis Dore, Executor of the Estate of Mr. David Dore.

Following discussion with staff, Mr. Dore made application for a variance to legalize the three unit dwelling on November 7, 2006. The variance was refused and Mr. Dore appealed the refusal on December 15, 2006 (refusal letter and appeal attached).

### **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.

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

The C-2A zone permits a wide range of land uses including high density residential uses on lots of appropriate size. In all cases the zone refers any development back to the applicable residential zone, which is R-2P in this case.

Throughout the Land Use Bylaw, density is directly or indirectly controlled by lot area requirements. Staff believes the intent of the regulations is clearly established by requiring larger lots for developments containing larger numbers of dwelling units. For example, the standard R-2P guidelines require a lot area of 4000 square feet for single unit dwellings, 5000 sq ft. for duplexes and 6000 sq ft for three and four unit buildings. Side lot line setbacks are increased as density increased, from 4 feet to 6 feet and frontage on a street increase from 40 to 60 feet. For low density residential development, it is clear the bylaw intends to restrict higher numbers of dwelling units to lots with comparatively larger lot areas and greater open space between the buildings and the lot line.

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

The C-2A zone permits a wide range of land uses on varying lot sizes. There is no consistency in use or lot area within the general area and this was not a consideration for refusal.

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

Permit records indicate that in 1985 the owner of the day stated the use was as a single family dwelling. There are no records of permits being issued to convert to a three unit dwelling. Since 1978 the Mainland Land Use Bylaw would have prohibited this development. There has been intentional disregard of the land use bylaw and the request for a variance was refused.

**BUDGET IMPLICATIONS**

There are no implications on the Capital Budget associated with this report.

**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.

**REGIONAL PLANNING IMPLICATIONS**

There are no implications on the Regional Planning process associated with this application.

**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 grant the appeal.

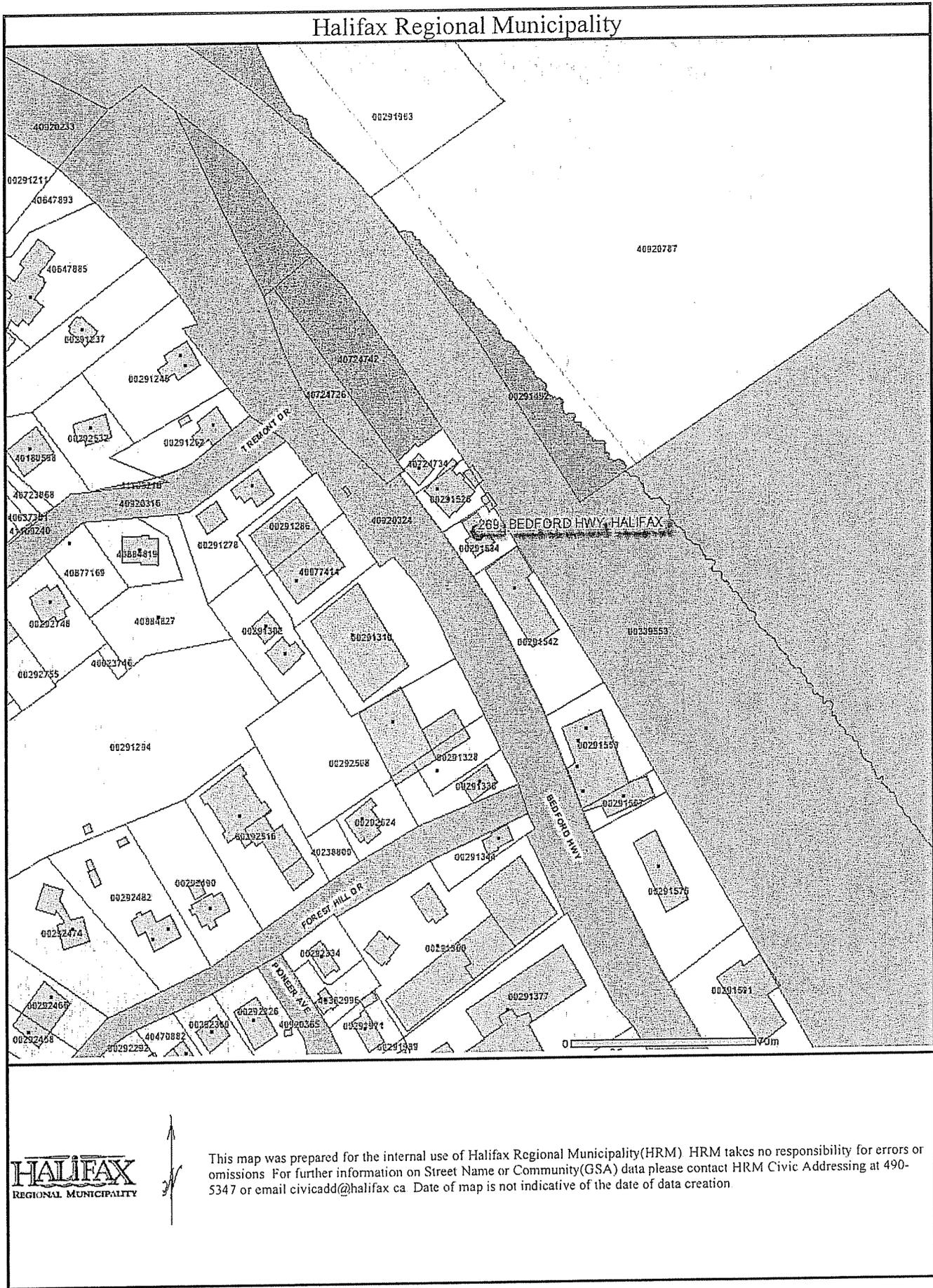
**ATTACHMENTS**

1. Location Map
2. Site Plan
3. Refusal Letter
4. Appeal Letter from Mr. Dennis Dore

**INFORMATION BLOCK**

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.

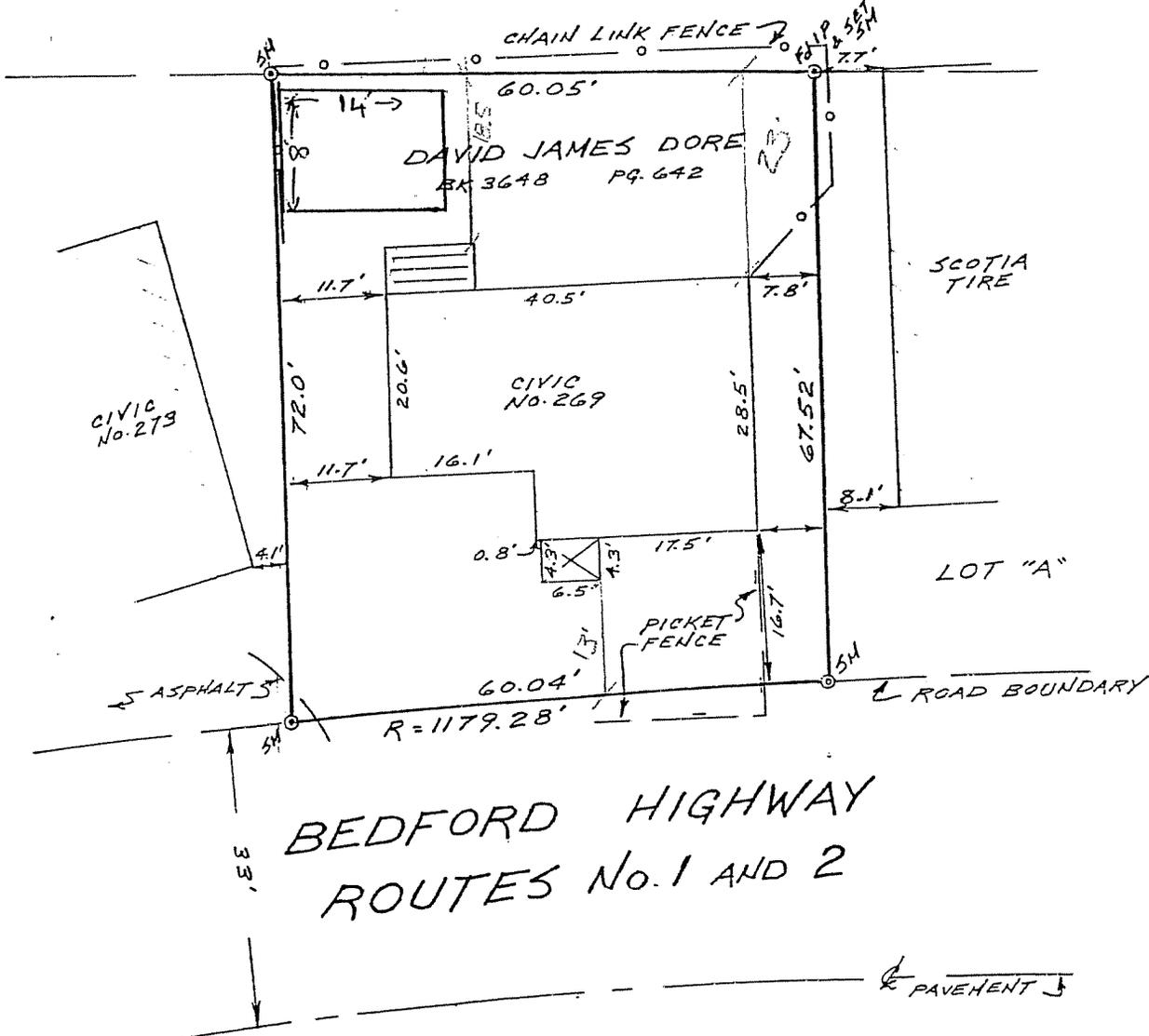
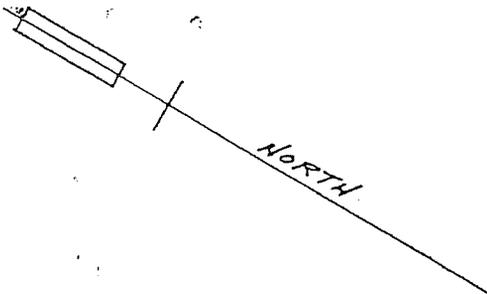
Report Prepared by: Andrew Faulkner - Development Officer (490-4402)



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.

LOCATION CERTIFICATE

CANADIAN GOVERNMENT RAILWAYS

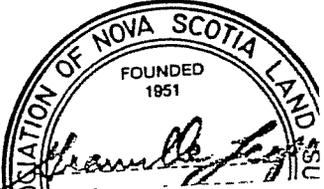


⊙ S.M . . . . . DENOTES SURVEY MARKER (IRON BAR WITH CAP)  
 ⊙ I.P. . . . . DENOTES IRON PIPE

NOTE 1. CLEARANCES SHOWN ARE PERPENDICULAR TO THE BOUNDARY AND ARE TO THE CLOSEST CORNERS OF THE STRUCTURE.  
 2. CLEARANCES ARE DEFINED TO A TOLERANCE OF 0.1 FT.

Scale 1" = 20'

CAUTION: The level of dimensional refinement implicit in this document is sufficient only for the express certification contained hereon. Therefore, it is not to be used for absolute boundary definition or as a reference document for the





P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

*December 6, 2006*

Estate of David Dore  
c/o Dennis Dore  
11999 Peggy' Cove Road  
French Village, NS  
B3Z 2X7

Dear Mr. Dore:

**RE: Variance Application #13426 at civic 269 Bedford Highway, Halifax, NS**

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

**Location:** 269 Bedford Highway  
**Project Proposal:** convert to a three unit dwelling  
**Variance Requested:** reduce lot area, front and rear yard setback requirements

Section 235(3) of the **Municipal Government Act** states that:

**No variance shall be granted where:**

- (a) the variance violates the intent of the Land Use Bylaw;**
- (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 Land Use Bylaw.**

(a) Throughout the Land Use Bylaw, density is directly controlled by lot area requirements. The intent of the regulation is clearly established by requiring larger lots for developments containing larger numbers of dwelling units.

(c) The difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw. In October, 1985 a building permit was applied for and subsequently issued for renovations to a single family residence. No permits are on record to convert this building to a three unit dwelling

Therefore, the variance is denied as provided for in Section 235(3) (a) & (c) of the Municipal Government Act.

Pursuant to Section 236(4) of the **Municipal Government Act** 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

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of the appeal, and be directed to:

**Municipal Clerk**  
*c/o Andrew Faulkner, Development Officer*  
**Halifax Regional Municipality**  
**Development Services - *Western Region***  
**P.O. Box 1749**  
**Halifax, NS B3J 3A5**

**Your appeal must be filed on or before *December 15, 2006.***

If you have any questions or require additional information, please contact this office at **490-5660**.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner", with a long horizontal flourish extending to the right.

***Andrew Faulkner***  
Development Officer

cc.

Jan Gibson, Municipal Clerk  
Councillor Debbie Hum, District 16

Municipal Clerk  
C/O Andrew Faulkner, Development Officer  
Halifax Regional Municipality  
Development Services -Western Region  
P.O. Box 1749  
Halifax , NS B3J 3A5

RECEIVED DEC 15 2006

Dear Municipal Clerk:

Pursuant to Section 236 (4) of the Municipal Government Act I wish to appeal the decision made with regards to Variance Application #13426 at Civic 269 Bedford Highway, Halifax Nova Scotia.

It is my understanding that this variance application was denied because no building permit was requested to change the use from a single unit dwelling to a rental property thereby the deceased owner created the problem we are now trying to correct. As executor of the estate of David Dore it is my responsibility to dispose of this asset and distribute the proceeds to his heirs. We have had this property on the market for almost a year and the only interest we have had is based on its legal use as a 3 unit rental property. In that block on the water side of the Bedford Highway there are no single family residences except for this property. Properties directly adjacent are a Retail /Rental store one side and a Tire Repair shop on the other. This property has little if any value as a residence and if left undeveloped could become a liability to both the owners and the city. The variance as I understand it is related to the property area only; it does meet the minimum distance requirements for front side and back and would provide ample parking for 3 units.

We have a buyer who has the resources to develop the property (only if it can be legally used as 3 units) add value which would only benefit the surrounding area and the city.

I hope that you give this appeal due consideration and vote favorable so we can move forward on this property and allow those who have the resources, turn this property into a city asset and not a liability.

Yours Truly



Dennis Dore

Executor of the Estate David Dore