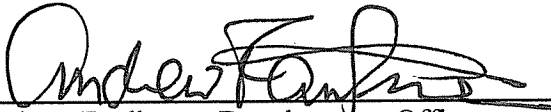




Chebucto Community Council
November 6, 2006

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: October 26, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance No. 13366 - 60 Walter Havill Drive, Halifax.

STAFF REPORT

ORIGIN

Pursuant to Section 236(3) of the Municipal Government Act any person served notice of a variance may appeal the decision of the Development Officer to the Municipal Council.

This is an appeal of the Development Officer's decision to refuse a variance for 60 Walter Havill Drive, Halifax.

RECOMMENDATION

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

BACKGROUND

The subject property is zoned RDD (Residential Development District Zone) under the Halifax Mainland Land-Use Bylaw, Mainland South Secondary Planning Strategy, and is under Development Agreement No. 5419 and Development Agreement Case No. 00183. The property is currently has a construction permit to erect a multi unit dwelling.

On August 3, 2006, the property owner applied for a Building Permit to place a 10' x 48' trailer on that portion of the property on Osborne Drive to be used as a sales office. This Building Permit was refused by Development Services as it did not meet the front yard setback requirement of 20' and the right side yard setback requirement of 8'.

Sometime between August and October the owner proceeded to place the temporary trailer on the property without a permit and contrary to the setback requirements of the Land Use Bylaw. On October 13, 2006, the property owner then applied for a variance to vary the front yard setback to 0 feet and the right yard setback to 0 feet to correct siting deficiencies.

This application for variance was refused by the Development Officer and the owner has appealed that refusal. Notification in accordance with the Municipal Government Act was sent to the surrounding affected property owners.

DISCUSSION

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 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?

Setbacks are generally prescribed to provide emergency access to yards and for aesthetic reasons. Front yard setbacks are created to permit street widening and to maintain or create streetscapes. As the left side yard setback is approximately 20 feet access is not an issue and as Osborne Street is relatively new it is unlikely to be scheduled for improvements other than maintenance.

Aesthetically, relaxation of the right side yard and front yard setbacks to zero feet may impose on the neighbouring property. However the adjacent properties are either owner by the applicant or commercial in nature. It is not possible to determine the impact on the general public using Osborne Street. Clearly the Land Use Bylaw intends some separation between structures and abutting properties and structures and the street line in all residential zones. A complete disregard for that setback must violate the intent of the Land Use Bylaw and the variance was refused.

There is presently a construction permit on the property for a multi unit dwelling. Included in that permit is an approved landscape plan indicating tree retention areas that encompass the land where the sales trailer is sited. Although this conflicts with the approved plan it is likely that a reduction of the tree retention area would and still can be approved for the trailer at 20 feet from the street line and 8 feet to the left lot line. This would have very little impact on the tree retention area as can be seen in the photographs attached. To the rear and left of the trailer is scrub and boulders and it is unlikely any vegetation of value would be removed to site in accordance with the bylaw and DA.

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

The property at 60 Walter Havill Drive is greater than 5 five acres in area. There are no comparable lots of that size in the immediate area. However other lands within the same DA have been built on in compliance with the agreement and Land Use Bylaw and this parcel has more area and greater frontage than those parcels. The difficulty experienced is general to properties in the area and the variance was refused.

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

There has been an intentional disregard for the requirements of the Land Use By-law as the temporary trailer was placed on the property without a permit being issued and the variance was refused.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was not seen to be reasonable and was contrary to the provisions of the MGA.

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.

ALTERNATIVES

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

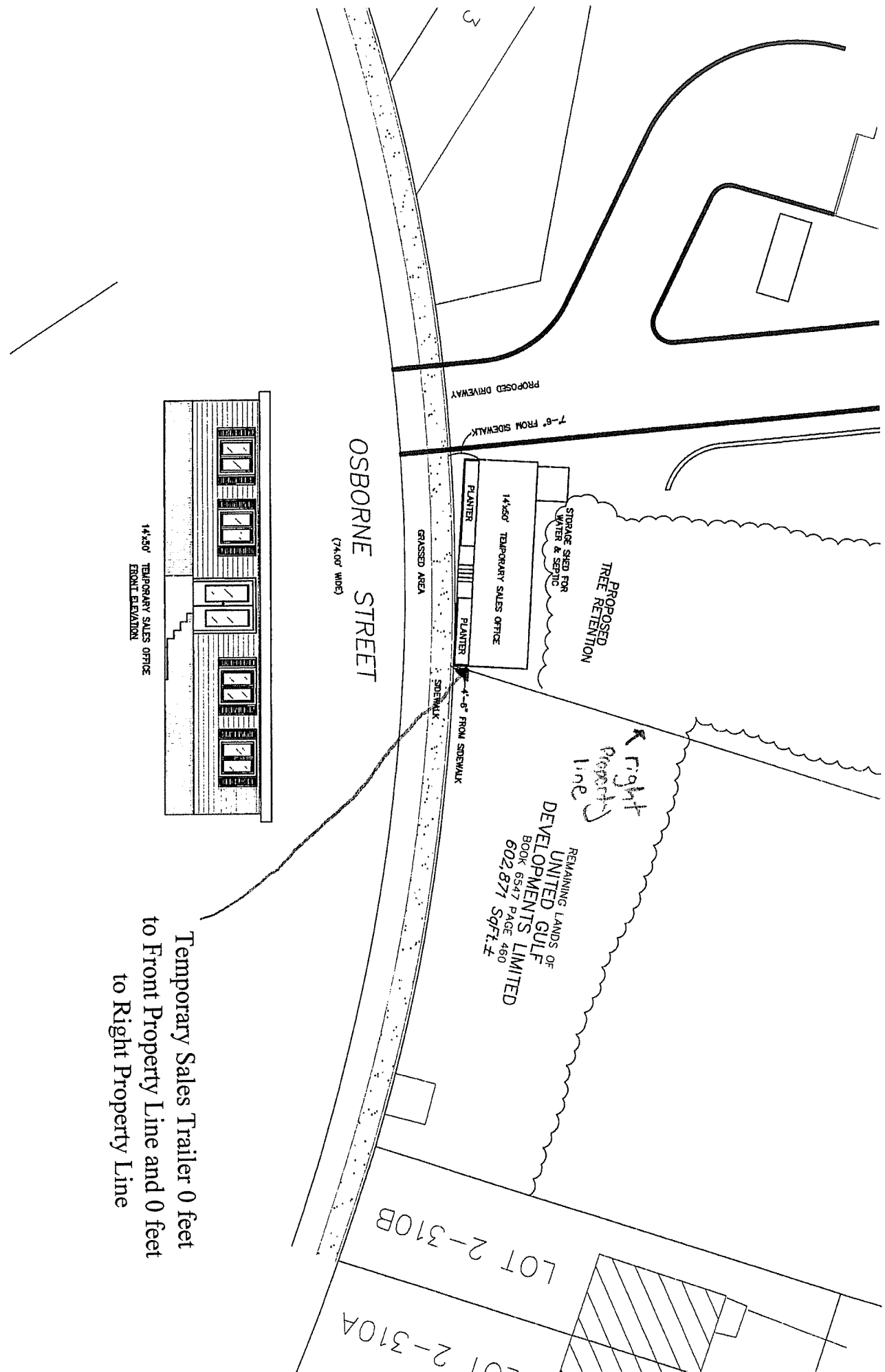
ATTACHMENTS

1. Site Plan
2. Location Map
3. Front Elevation
4. Photographs
5. Refusal letter
6. Appeal letter

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)

Site Plan



14x30' TEMPORARY SALES OFFICE
FRONT ELEVATION

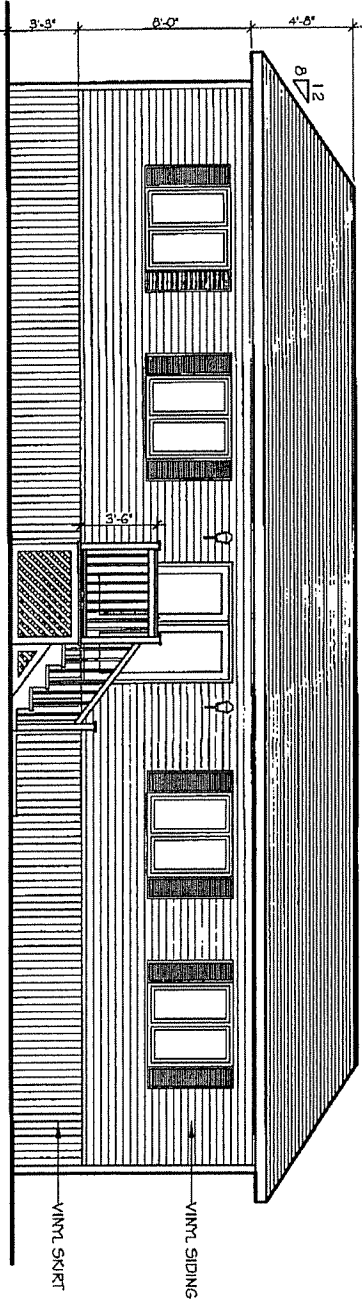
Temporary Sales Trailer 0 feet
to Front Property Line and 0 feet
to Right Property Line

OSBORNE STREET
(74.00' WIDE)

REMAINING LANDS OF
UNITED GULF
DEVELOPMENTS LIMITED
BOOK 6547 PAGE 460
602,871 Sq Ft. ±

LOT 2-310B

LOT 2-310A



14X50' TEMPORARY SALES OFFICE
FRONT ELEVATION

GENERAL NOTES:

ALL WORK MUST BE IN ACCORDANCE WITH THE U.S.C.C. 2005 AND THE LOCAL BUILDING CODE.

CONTRACTORS TO VERIFY ALL DIMENSIONS BEFORE STARTING ANY WORK.

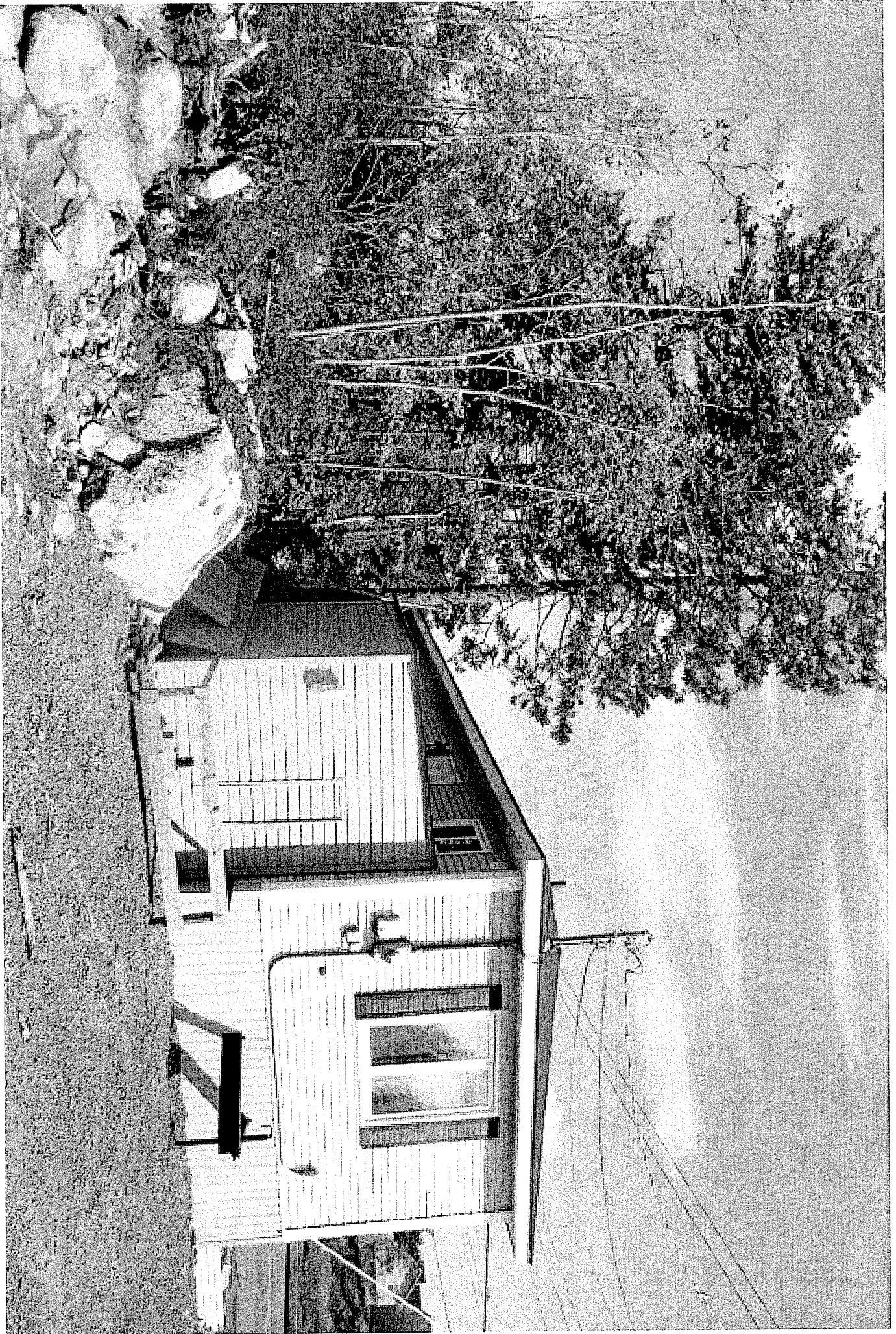
CONTRACTORS ARE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL HEALTH DEPARTMENT AND MAY NOT BE RELEVANT IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT OF GREATER HOMES INC.

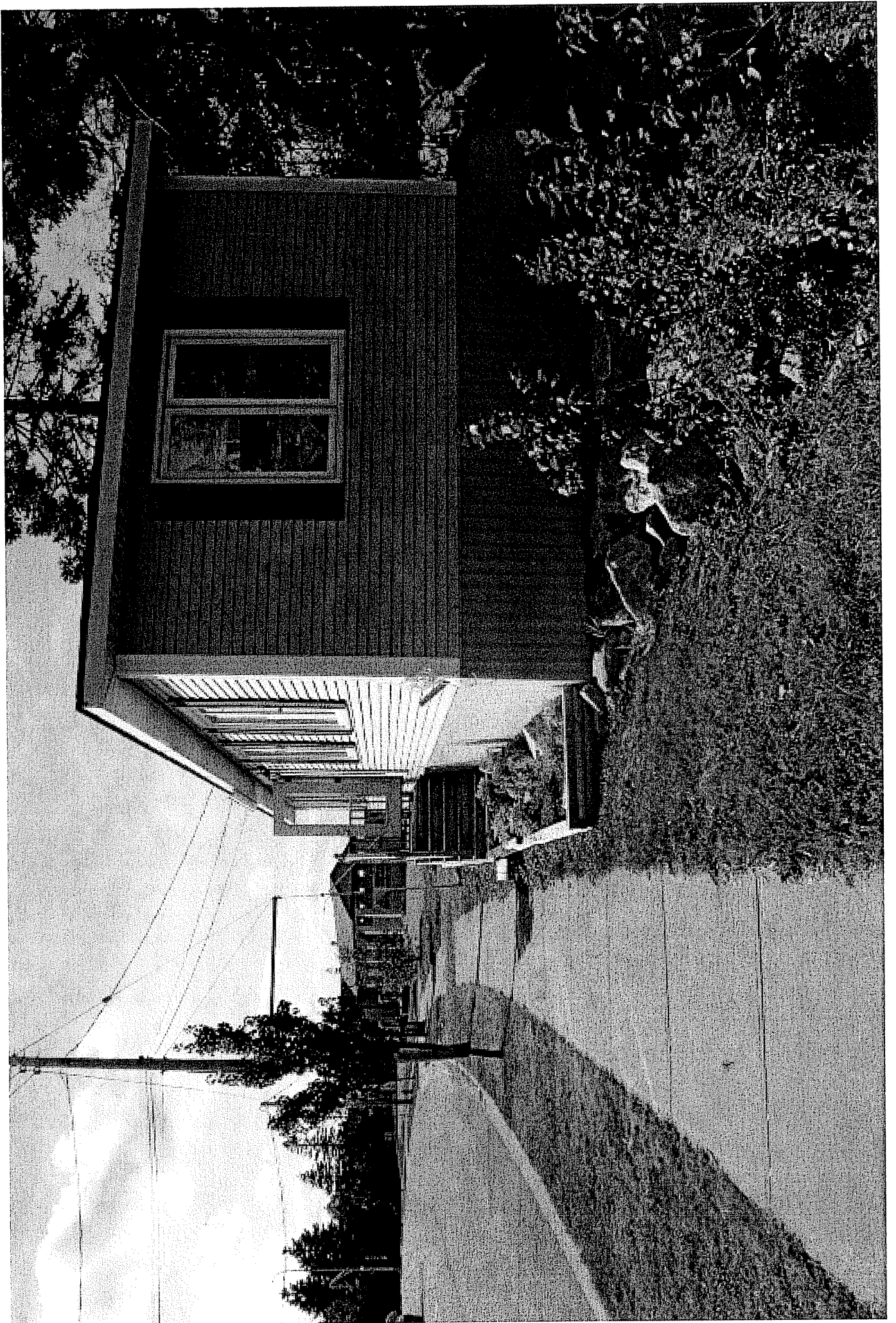
OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL HEALTH DEPARTMENT AND MAY NOT BE RELEVANT IN WHOLE OR IN PART WITHOUT THE WRITTEN CONSENT OF GREATER HOMES INC.

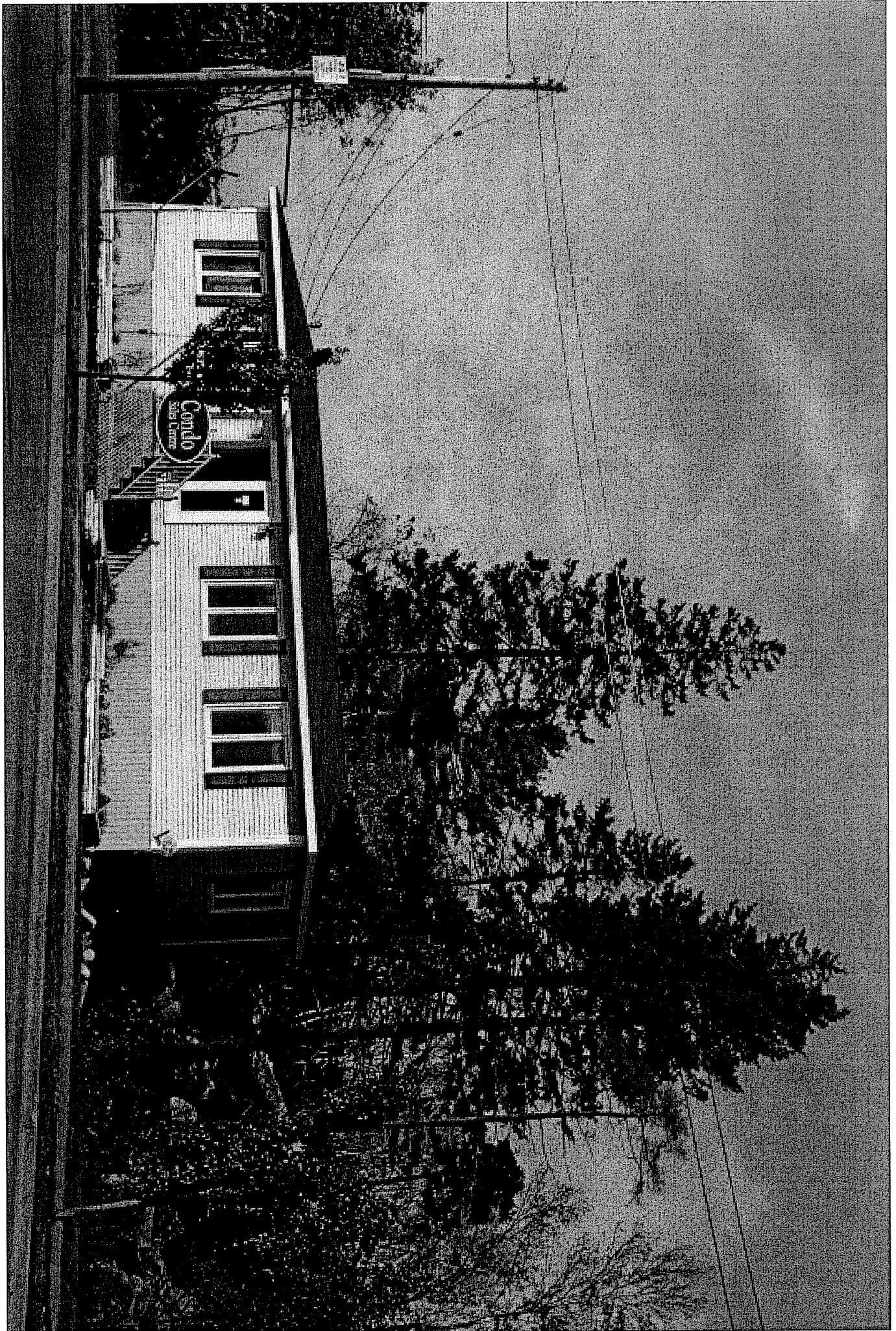
GREATER HOMES

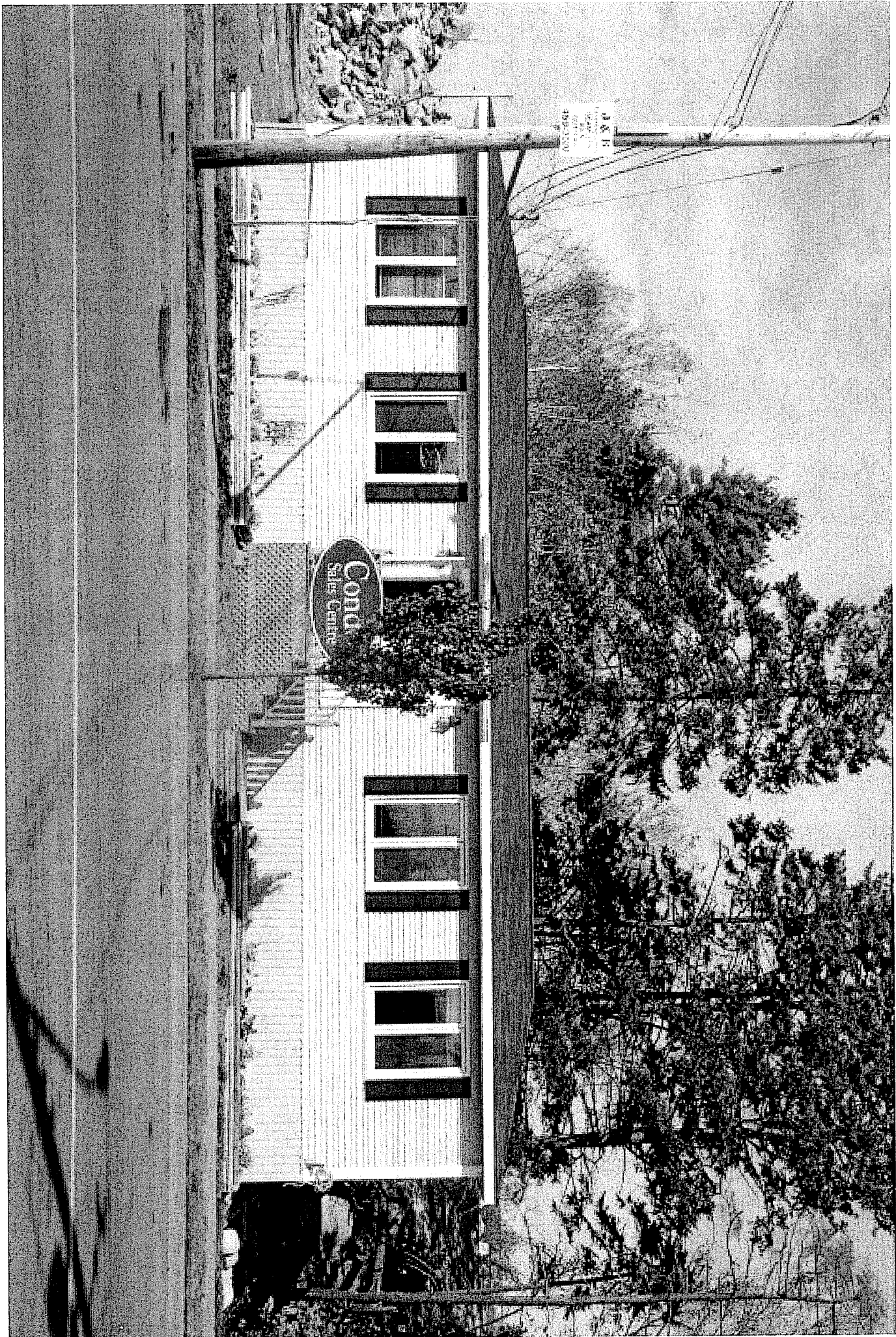
3300 Bedford Highway
Chaska, MN 55124
Tel: 907 835-7400
Fax: 907 835-5312
www.greathomes.ca

Project name:	THE WATERTON SALES OFFICE	Drawing name:	FRONT ELEVATION
Civic address:	STONERIDGE	Date:	OCTOBER 12, 2006
Style:	TRAILER	Issued for permit:	NOT ISSUED
Drawn by:	AMC	Scale:	3/16" = 1'-0"
		Permit no.:	00000
		Drawing no.:	A1









A&H
COND
Sales Center

COND
Sales Center



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

October 20, 2006

Mr. Louis Montbrun
United Gulf Developments Limited
380 Bedford Highway
Halifax, NS
B3M 2L3

Dear Mr. Montbrun:

RE: Application for Variance, File No. 13366 - 60 Walter Havill Drive, Halifax

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 Land Use Bylaw* as follows:

Location: 60 Walter Havill Drive, Halifax
Project Proposal: Locate a temporary sales trailer 0 feet from front property line and 0 feet from right property line
Variance Requested: Vary front yard setback requirement from 20 feet to 0 feet and right side yard setback from 8 feet to 0 feet

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.**

It is the opinion of the Development Officer that the variance (a) violates the intent of the Land Use Bylaw, (b) the difficulty experienced is general to properties in the area, and (c) the difficulty results from the intentional disregard of the requirements of the Land Use By-law, therefore your request for a variance has been refused.

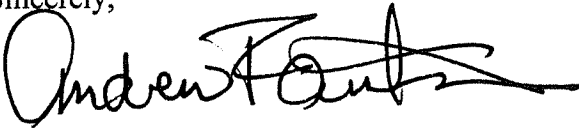
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**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 *October 30, 2006*.

If you have any questions or require additional information, please contact Steven Croft at 490-4338

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner", written over a white background.

Andrew Faulkner
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Linda Mosher

UNITED GULF DEVELOPMENTS LIMITED

October 24, 2006

www.unitedgulf.ca

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

Dear Mr. Faulkner:

Re: Application for Variance – File No. 13366 – 60 Walter Havil Drive

We are in receipt of your letter dated October 20, 2006 and we are disappointed to see that you have refused our request for a variance from the setback requirements for our Temporary Sales Trailer.

As you are aware, United Gulf Developments Limited is constructing a 12-storey condo building at 60 Walter Havil Drive. The building will have its main entrance off of Walter Havil Drive and an access to the underground parking garage off Osborne Street.

Our plan is to bring the construction traffic off Osborne Street rather than Walter Havil Drive. Walter Havil is a much more residential street where as Osborne, between the Northwest Arm Drive and our site, contains only a Tim Horton's and a car wash. We believe that this is the best approach for the community.

As part of this development, we are actively selling the units in the building and require a sales trailer on the site. The best location for the sales trailer is on the busy Osborne Street rather than Walter Havil Drive. This location is better from a sales perspective and also keeps additional cars off Walter Havil Drive.

A location on Osborne is limited by the entrance for the construction traffic and a steep tree covered hill area. This treed area is designated as a tree retention area. Cutting the trees and blasting a new location in this area is not a viable alternative.

With all these items considered, we were left with only one spot for the Temporary Trailer to go. We realize the location is within the set back and we believe a variance should have been approved. As such, please consider this letter as our Appeal of your decision not to grant the variance we requested.

Yours truly,



Louis de Montbrun