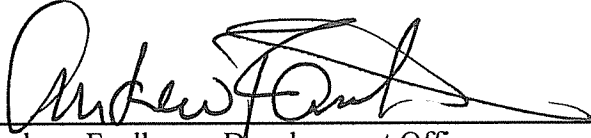




Chebucto Community Council
November 6, 2006

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 - 29 Dickson Avenue, 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 29 Dickson Avenue, Halifax.

RECOMMENDATION

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

BACKGROUND

The subject property is zoned R-1 (Single Family Dwelling Zone) under the Halifax Mainland Land-Use Bylaw. The property is currently occupied with a single unit dwelling and has been under the same owner, Ms Holly Robinson since construction of the dwelling.

This application for variance proposes to reduce the left side yard setback to 4 feet for the proposed habitable addition to the single unit dwelling. The required left yard setback in the R-1 zone is 8 feet for habitable floor area and 4 feet for a garage or carport.

The residence was constructed in 1994. The original plans submitted for a permit indicated habitable floor area in the location subject to this variance. Those plans were refused and the plans were revised to comply with the Land Use Bylaw, i.e. habitable floor area 8 feet from the property line.

In September of 2005, the property owner of 29 Dickson Avenue had applied for a similar variance for this property, but did propose the 4 foot addition extend an additional 13 feet to the rear of the property. This variance application was refused by the Development Officer and there were no subsequent appeals from the property owner.

The property owner then applied for this variance on October 23, 2006 and the application was once again refused by the Development Officer. Notification in accordance with the Municipal Government Act was sent to the surrounding affected property owners. The owner of 29 Dickson Avenue did appeal this variance. A copy of the appeal letter is attached.

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?

The subject property is zoned R-1 under the Halifax Mainland Land Use Bylaw. This zone requires lot sizes of 5,000 square feet with 50 feet of frontage. The subject lot is typical for the zone - it has 50.5 feet of frontage and is approximately 5,300 square feet in area. The zone requires side yards of 8 feet for habitable floor area, but an attached garage or carport may be located not less than 4 feet to the property line.

Setbacks are generally prescribed to provide emergency access to rear yards and for aesthetic

reasons. As access is still guaranteed by the 8 foot right side yard setback that is not at issue. Aesthetically, relaxation of the left side yard and constructing at a minimum of 4 feet may impose aesthetically on the neighbouring property. However the residence located adjacent to the construction is approximately 30 feet from the proposed addition.

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

The properties along Dickson Avenue, including civic number 29, all have similar lot frontage, lot area, setbacks and building type. Setbacks for existing housing stock in the area are consistent with the Land Use Bylaw.

The original construction plans submitted by Ms Robinson in 1994 for the residence indicate a desire to construct an addition to the residence behind the garage. When that addition was refused there was an opportunity during the permit process to redesign and relocate the residence to enable that addition, but Ms Robinson built to the minimum setback requirement on both sides of the building.

All owners building to minimum setbacks on suitably sized lots for the zone have the same difficulty when they wish to construct an addition and the difficulty experienced is general to the properties in the area. Therefore, the variance was refused.

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

There has not been an intentional disregard for the requirements of the Land Use By-law. It should be noted that the revised plans submitted for the original residence construction indicate that the addition to the rear of the garage was removed, however there is currently a four foot wide covered walkway behind the garage. That roof is not shown on any of the approved plans, but may have been added during construction. In either event it could have been considered a “carport” if it was considered at all.

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 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

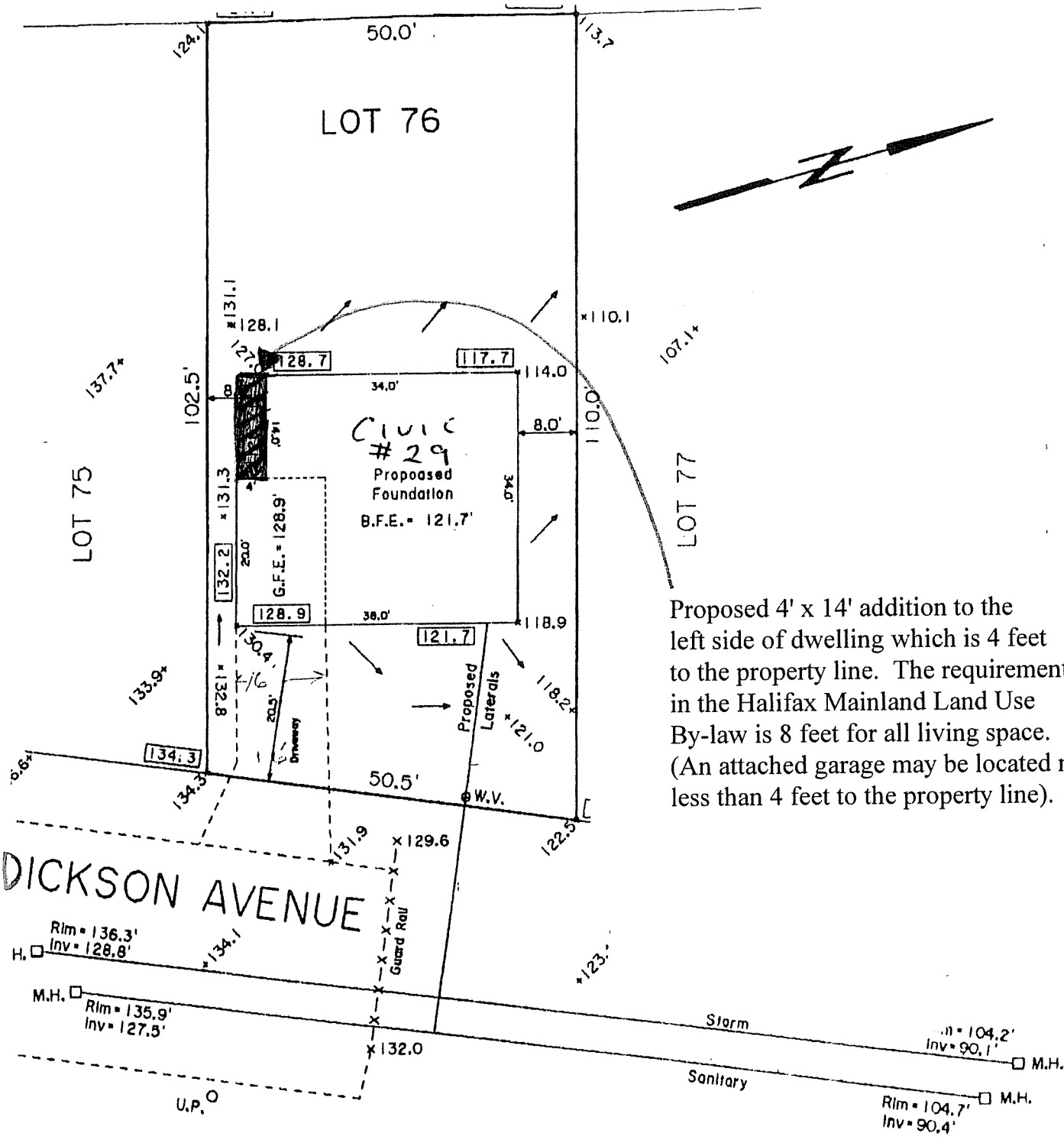
1. Site Plan
2. Location Plan
3. Refusal letter
4. Appeal letter

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.

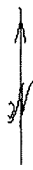
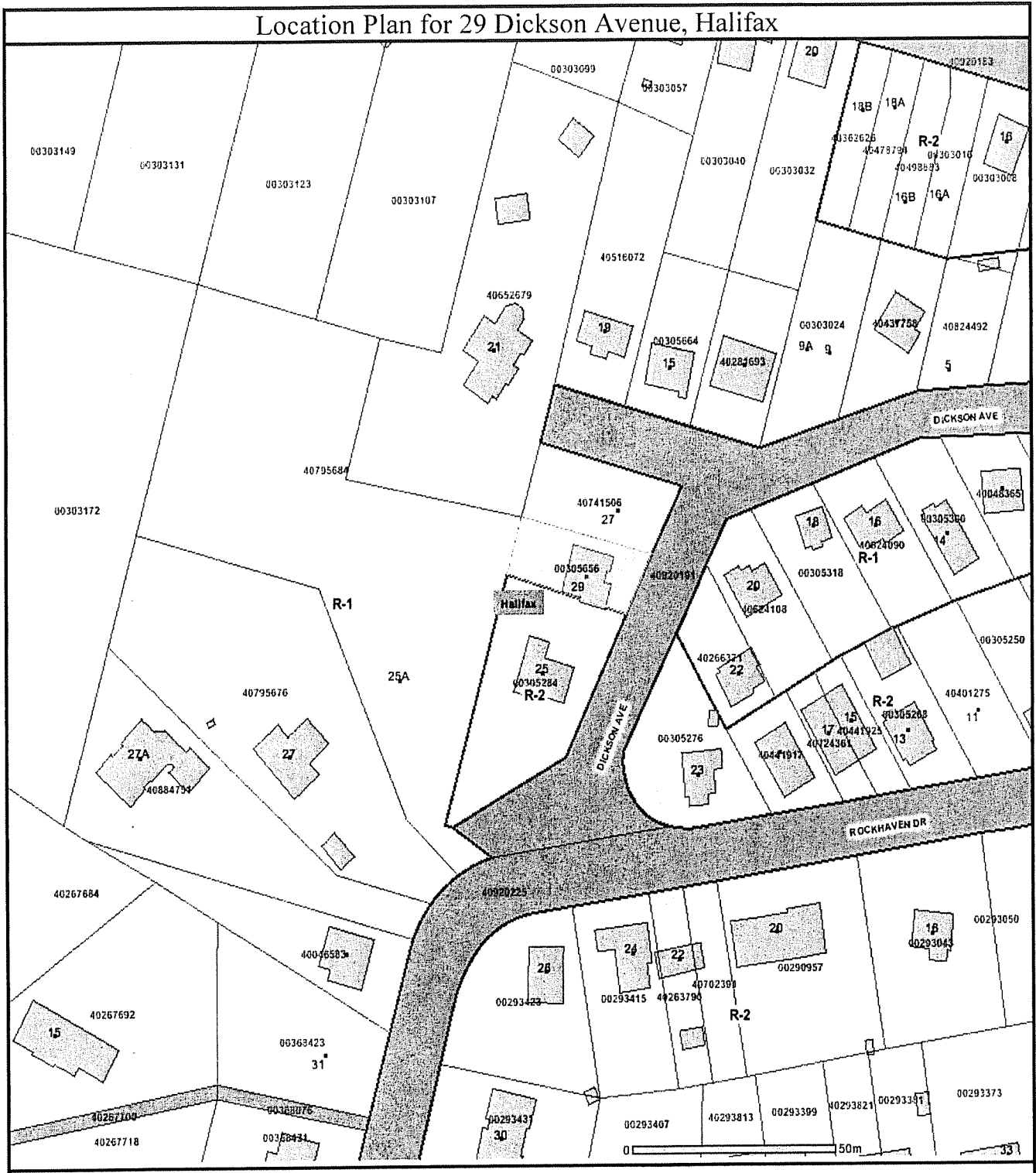
Report Prepared by: Andrew Faulkner - Development Officer (490-4402)

Site Plan



Proposed 4' x 14' addition to the left side of dwelling which is 4 feet to the property line. The requirement in the Halifax Mainland Land Use By-law is 8 feet for all living space. (An attached garage may be located not less than 4 feet to the property line).

Location Plan for 29 Dickson Avenue, Halifax



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.