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**Chebucto Community Council**  
**October 3, 2005**

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

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** September 22, 2005

**SUBJECT:** Appeal of the Development Officer's decision to deny an application for a Variance No. 12159 - 73 Drillio Crescent, Halifax.

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**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 deny a variance for 73 Drillio Crescent, Halifax.

**RECOMMENDATION**

It is recommended that Council uphold the Development Officer's decision to deny 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 vacant and the applicant has proposed to construct a single unit dwelling.

The application for this permit did not show any building projections in the required 8' side yard setback. The applicant then revised the plans to place a fireplace inside the dwelling. This addition would reduce the side yard setback to approximately 6', at a length of 5' on the side of the proposed dwelling. This dwelling was also pre-sold to a customer with the fireplace addition in the proposed building plans. A variance would be required to permit the proposed fireplace addition.

The property owners applied for the required variance and the application was denied by the Development Officer. Notification in accordance with the Municipal Government Act was sent to the surrounding affected property owners. 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 allows for side yards of 8'. The proposed addition of a 5' x 20" deep building projection for the fireplace does violate the intent of the by-law by decreasing this setback to approximately 6' .

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

The subject property has a similar area as the majority of lots in the neighbourhood (most are in the range of 5300-7300 square feet) however it has no unique features that would make it more difficult to develop according to the bylaw requirements. The dwelling is positioned parallel to both side yard lot lines, which only allows an extra 4" to change the location of the proposed dwelling, as the proposed side yard setbacks are 8' and 8' 4". Since this is a new subdivision, there are no special circumstances which would apply to this property that would be considered a difficulty with respect to side yard setbacks.

**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 by-law- the house was pre-sold to the customer without meeting the by-law requirements. Constructing this building projection for the fireplace would be considered intentional disregard of the by-law, and the applicant should have been aware of the requirements before pre-selling the house.

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the Development Officer was obligated to deny the variance as it is contrary to the three refusal provisions of the MGA.

It should be noted that the Halifax Mainland and Peninsula Land Use Bylaws do not have a “permitted encroachment” section. Other bylaws permit uncovered stairs, mobility impaired access ramps, bay windows, eaves and similar structures to encroach several feet into a side yard setback.

This omission has been referred to Planning with a request that an encroachment clause be included in the Halifax bylaws, however, it may be some time before the matter is before the relevant Community Councils for consideration.

**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 deny the variance.
2. Council could overturn the decision of the Development Officer.

**ATTACHMENTS**

1. Site plan/Location Plan
2. Approval letter
3. Appeal letters

**INFORMATION BLOCK**

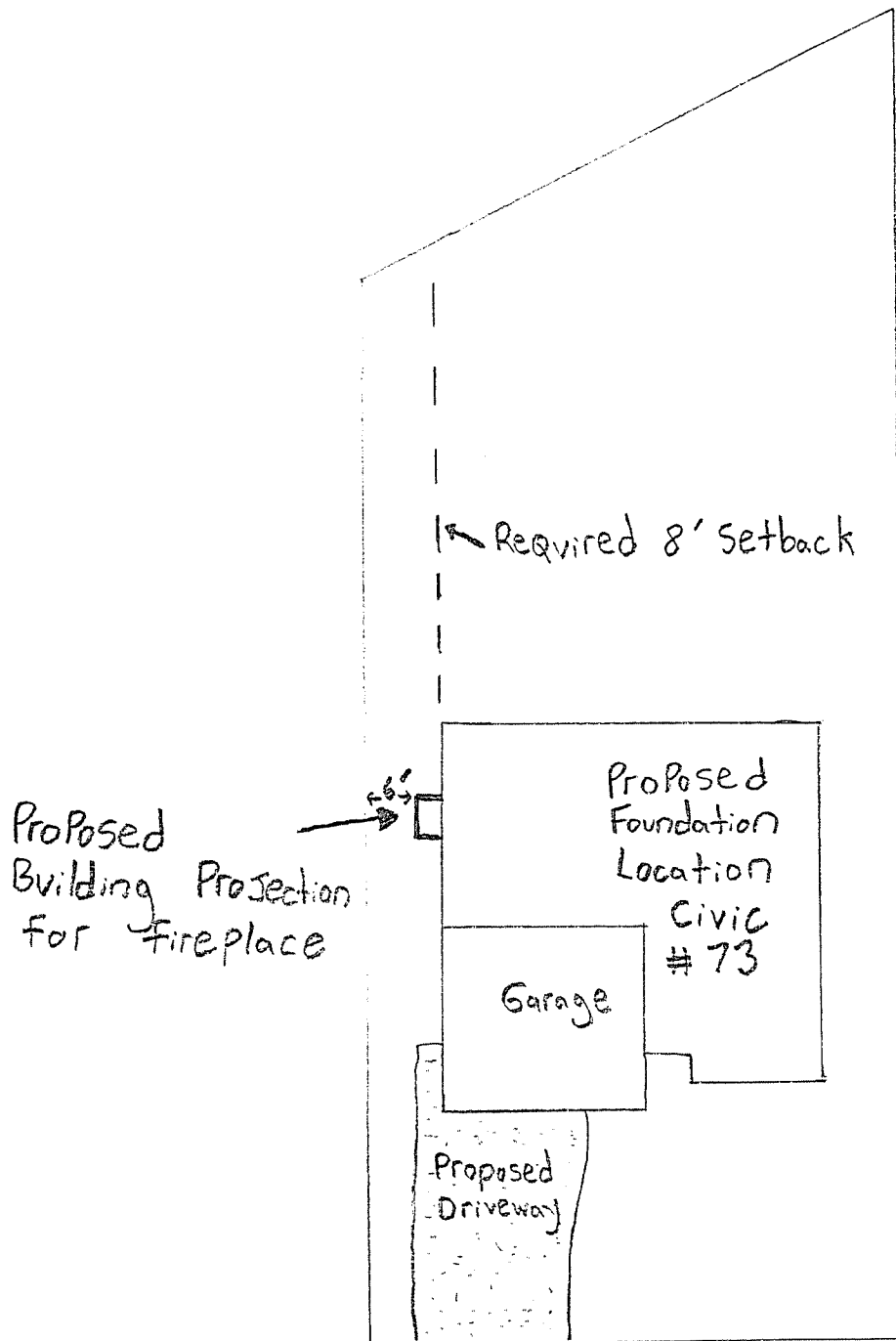
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Steven Croft - Development Technician (490-4338)

DATE: September 14, 2005

SUBJECT: Appeal of the Development Officer's decision to deny an application for a variance - 73 Drillio Crescent

SITE PLAN



DRILLIO CRESCENT

**GENERAL NO**

- This building is to be constructed in accordance with local and national building codes and by Building Contractor is responsible for all structural component sizes.
- Great care has been taken in the production of these drawings and omissions may occur however errors or omissions may occur will not be held responsible for any such.
- Special Drawings and approvals to suit remain the responsibility of the owner and architect.
- Construction site conditions may cause elevations, window sizing and placement and placement of mechanical appliances.
- These plans are the exclusive property of Superior Crail and may not be reproduced or used in any written consent of Precursor, C.A.D.D. Release of these plans is strictly prohibited.

C	3RD REVISION
B	2ND REVISION
A	FIRST ISSUE
REV:	DESCRIPTION:

**GRANDE CC HOMES LII**  
**Superior Crail**  
 Office: (902) 444-4444  
 Fax: (902) 444-4444  
 Website: grandcc.com

DESIGNING FINE HOMES FOR SINCE 1933

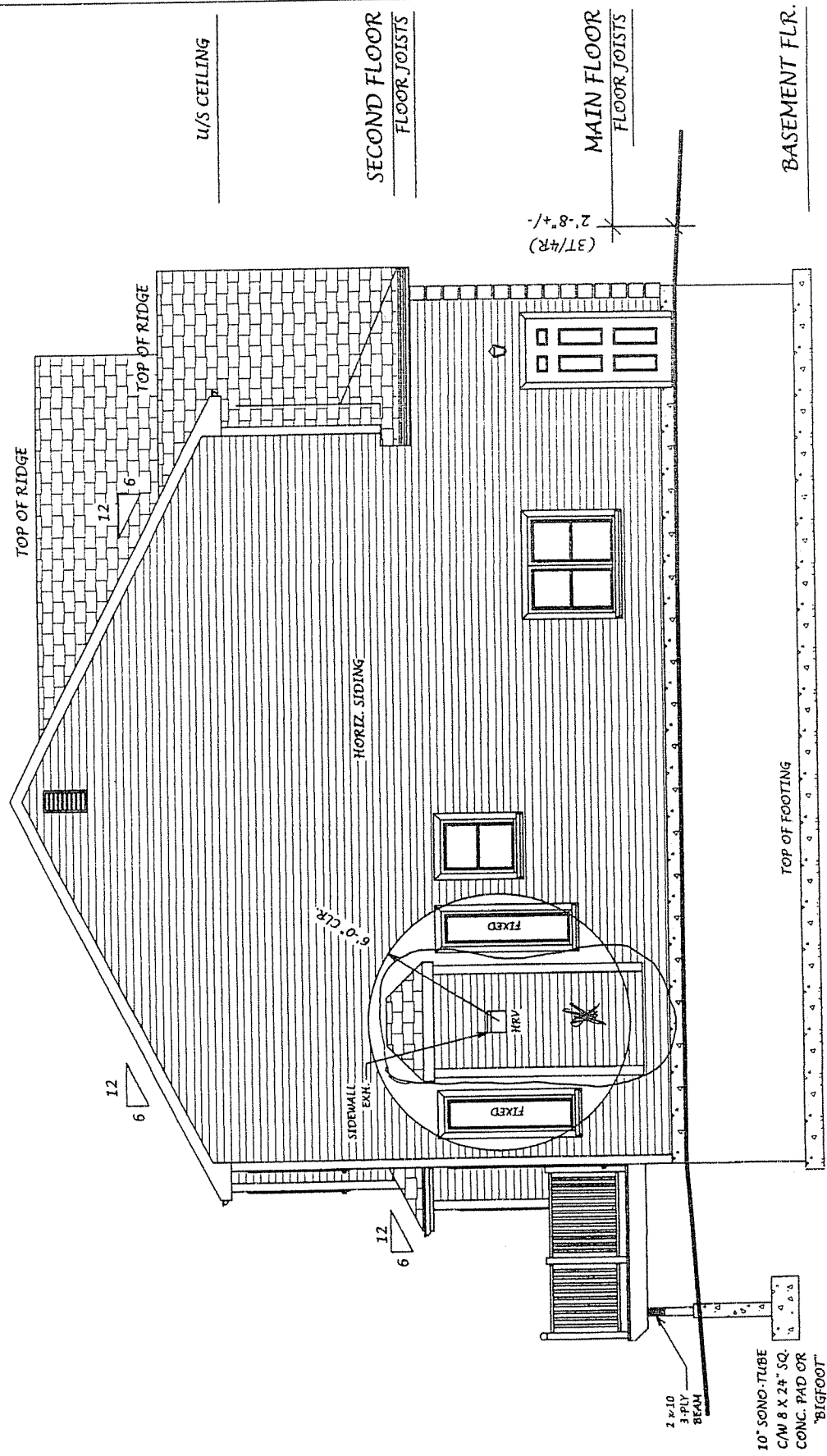


Phone: (902) 444-4444  
 Fax: (902) 444-4444  
 Wayne Larrigan

LOT #: 267 DIS

LOCATION: Nilsson St Fairmount

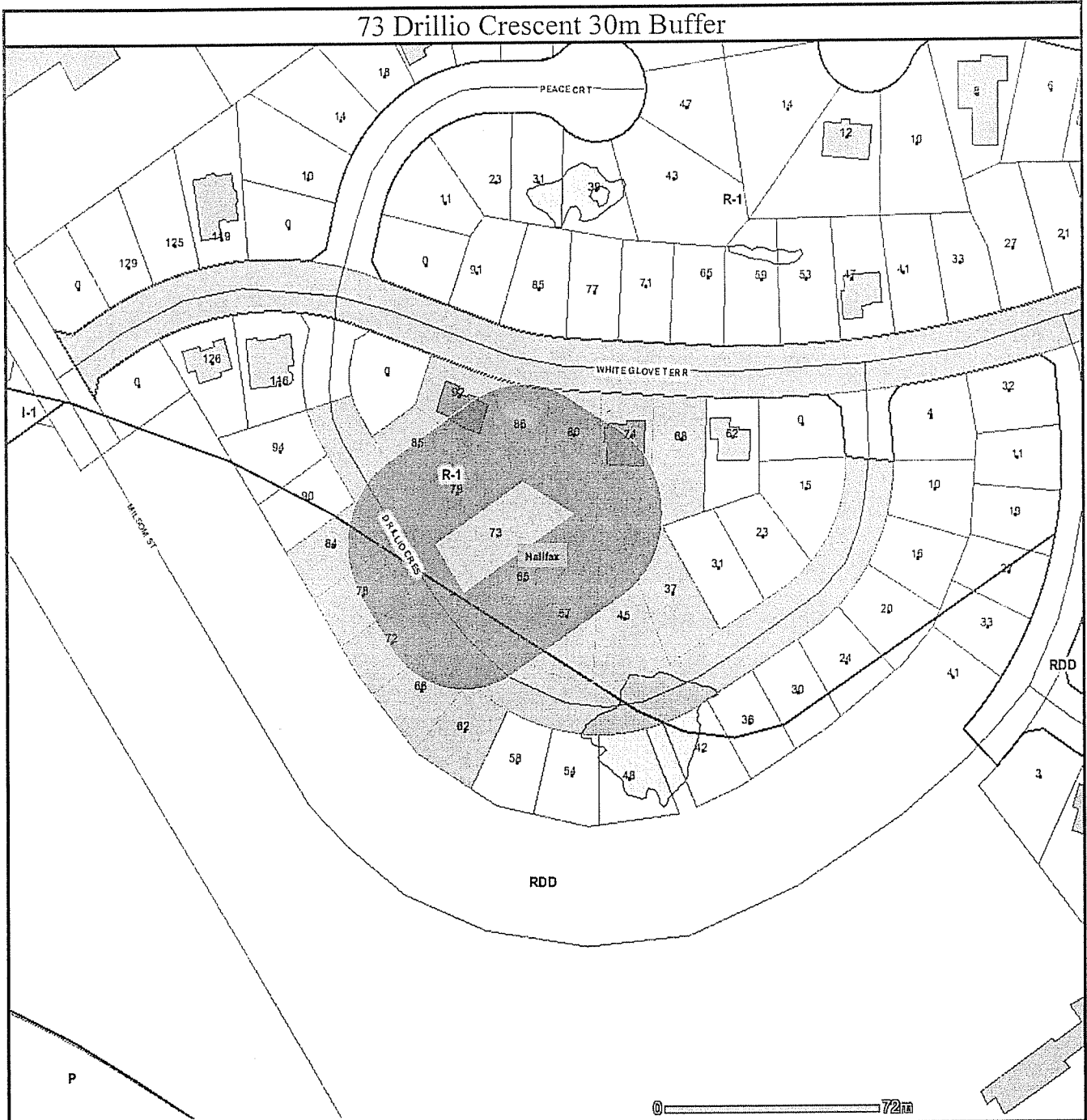
SHEET: 3 OF 10 REV



STEPPED FOUNDATION  
 (2'-0" MAX. RISE)  
 STEPPED FOOTINGS  
 TO BE 2'-0" MAX. RISE  
 AND CONTINUED ON SITE

**RIGHT ELEVATION**

SCALE: 3/16"=1'-0"



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](mailto:civicadd@halifax.ca). Date of map is not indicative of the date of creation. User: [geoinfo@halifax.ca](mailto:geoinfo@halifax.ca)

- Legend**
- Selected Features
  - theBuffer
  - theBufferTarget
  - Civic Numbers
  - Streets
  - Parcels
  - Building
  - Zoning
  - Plan Areas
  - Lakes

RECEIVED SEP 06 2005

September 6, 2005

~~RECEIVED SEP 06 2005~~

Municipal Clerk  
c/o Andrew Faulkner, Development Officer

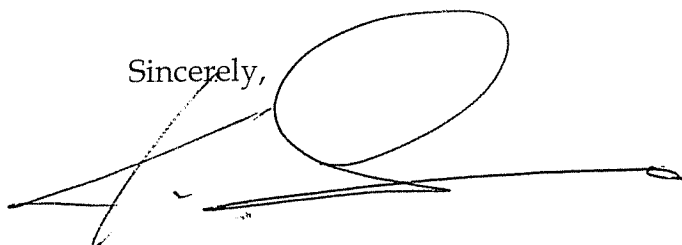
Lot 267 Drillio Court

Dear Andrew:

I would like to appeal the decision for Minor Variance File No. 12159.

Our fireplace box is not part of the foundation; it is 12" wood frame only.

Sincerely,



Karel Solnicka