



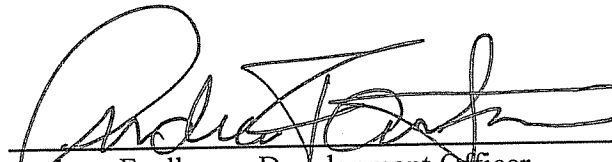
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

8.1.1

Chebucto Community Council
August 14, 2006

TO: Chairman and Members of Chebucto Community Council

SUBMITTED BY:



Andrew Faulkner - Development Officer

DATE: August 8, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application
for a variance - 17 Auburn Avenue, Halifax, Variance 13011

ORIGIN

Pursuant to Section 236(4) of the Municipal Government Act any person served notice of a refusal of a variance may appeal the decision of the Development Officer to the Municipal Council.

This report deals with an appeal of the Development Officer's decision to refuse an application for a variance from the requirements of the land use bylaw for property at 17 Auburn Avenue, Halifax

RECOMMENDATION

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

BACKGROUND

The subject property is zoned R-2 Two Unit Dwelling Zone under the Halifax Mainland Land Use By-law. On April 27, 2006, Kevin Lewell, a Building Official with HRM Building Services issued an "Order to Comply" to stop all construction work until such time as the proper construction permits were obtained.

On May 1, the property owner applied for a permit to construct a front step and side deck. On May 5, the applicant was advised that the side deck did not meet the sideyard setback requirements of 8 feet. They were informed they could apply for a variance which they did on May 17, 2006. This application was denied by the Development Officer and notification in accordance with the Municipal Government Act was sent to the property owners (refusal letter attached). An appeal of the refusal was received on June 9, 2006

DISCUSSION

The *Municipal Government Act* sets out 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 ?

Side yard setbacks provide a visual and spatial barrier between residential uses. As indicated in the attached photographs, that separation is severely encroached upon with construction of the deck. It is the opinion of the Development Officer that the variance violates the intent of the Land Use Bylaw.

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

Review finds that the property dimensions are consistent with the neighbourhood and the siting of the existing residence is similar to all others. There is no difficulty experienced on the subject property that is unique to properties in the area. The difficulty is considered to be general to properties in the area and the variance was refused.

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

There has been an intentional disregard for the requirements of the by-law as the deck was constructed without the necessary permits 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 denied.

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

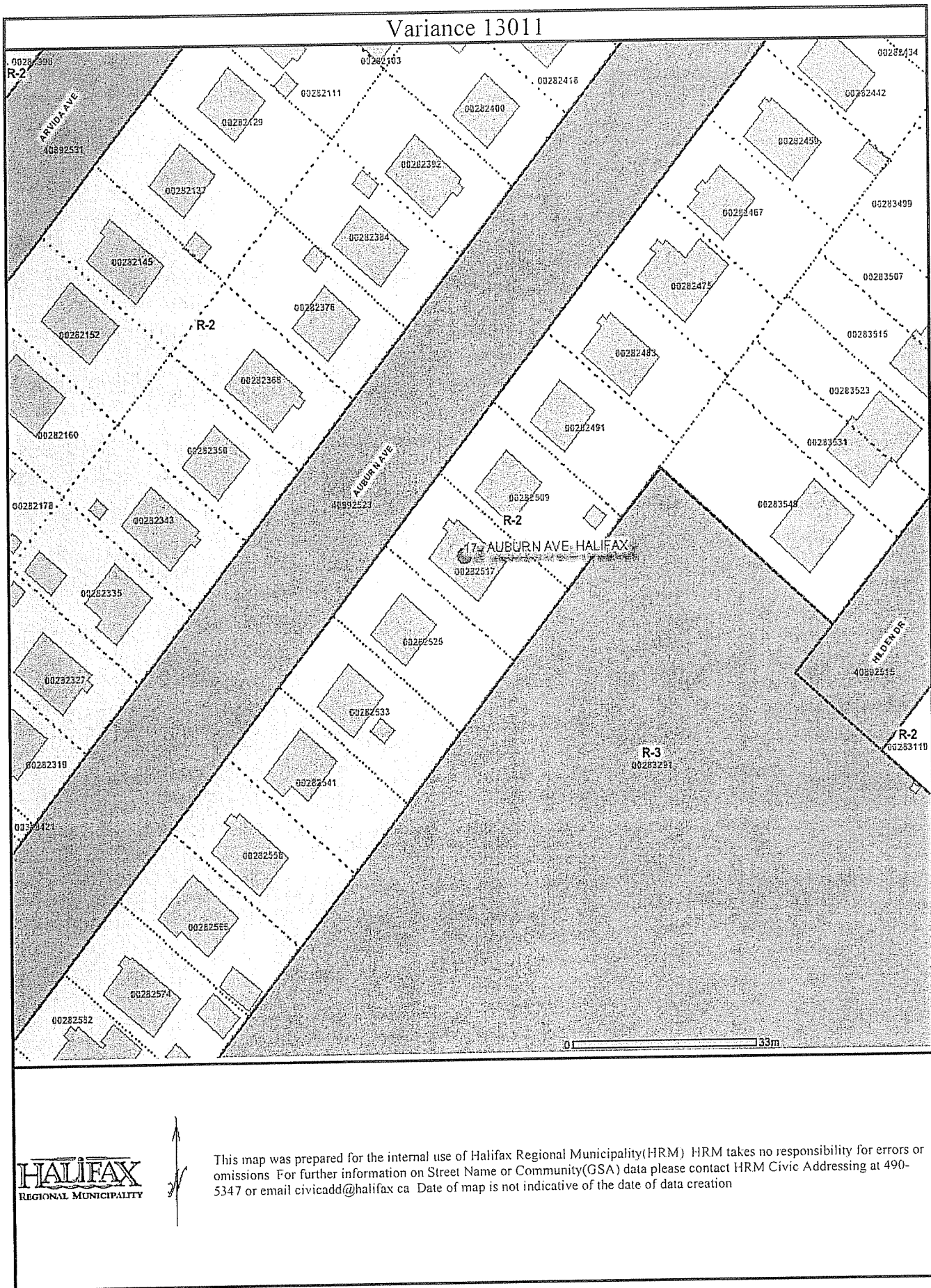
1. Council could uphold the decision of the Development Officer to deny the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

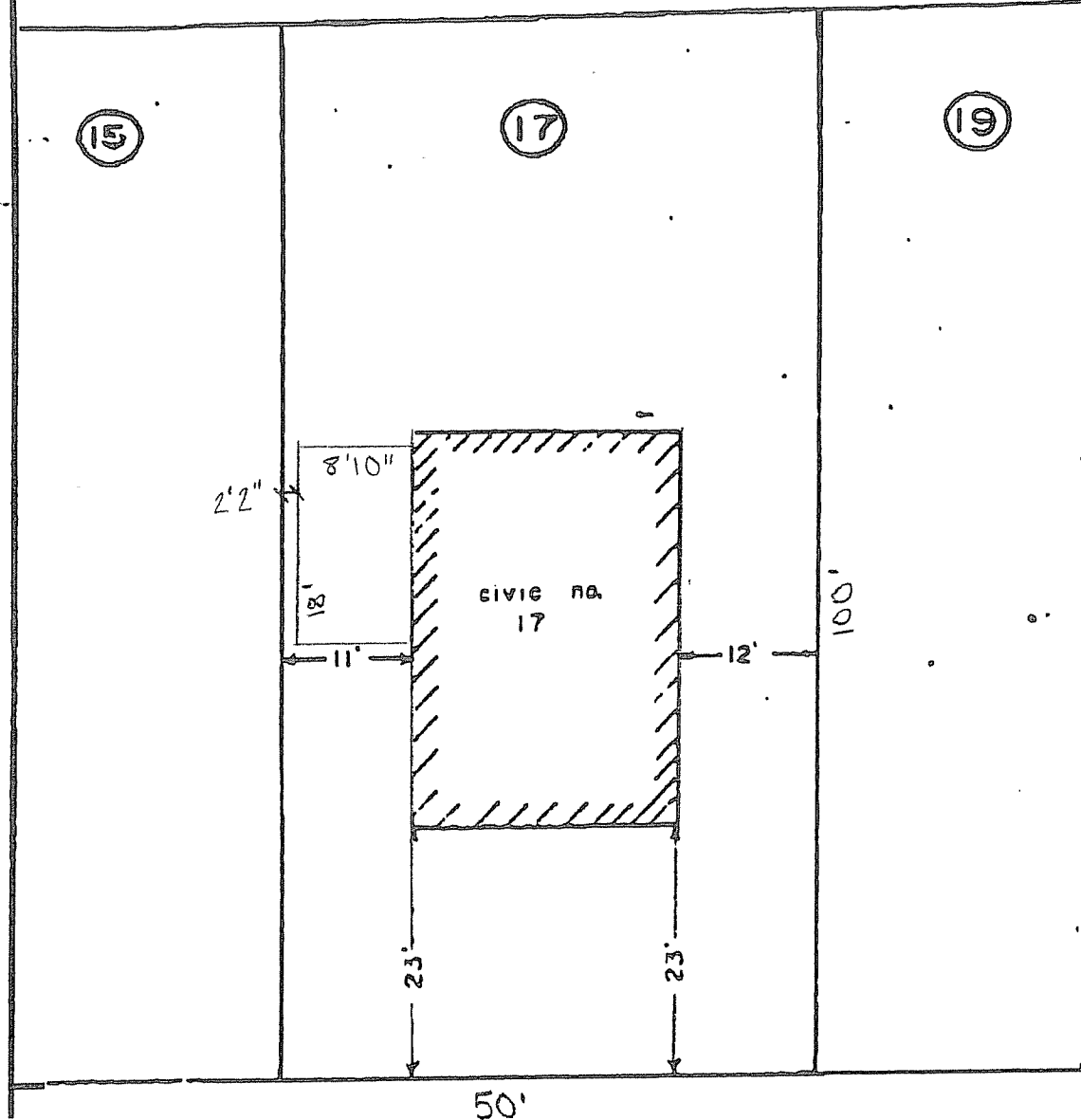
1. Location Map
2. Site Plan
3. Refusal letter
4. Appellant Appeal letter and photographs
5. Letter from Mr and Mrs Clint Townsend, 15 Auburn Avenue

INFORMATION BLOCK

<p>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.</p> <p>Report Prepared by: Andrew Faulkner, Development Officer (490-4402)</p>
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Surveyor's Certificate of Location



Auburn

Avenue



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

May 29, 2006

Doreen Walsh
17 Auburn Avenue
Halifax, NS
B3R 1K3

Dear Ms. Walsh:

RE: Application for Minor Variance 13011 at civic 17 Auburn Avenue, Halifax

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

Location: 17 Auburn Avenue, Halifax
Project Proposal: construct a deck at the side of the building
Variance requested: reduce sideyard setback from 8 feet to 3 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 difficulty experienced is general to the properties in the area. All of the lots on this street were created in 1953 with a minimum frontage of 50 feet to allow for the construction of dwellings with the required setbacks.

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:

...2

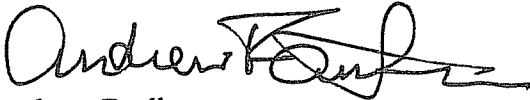
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Municipal Clerk
c/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services - Western Region
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before June 7, 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 stylized flourish at the end.

Andrew Faulkner
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Steve Adams, District 18

17 Auburn Avenue
Halifax, NS
B3R 1K3
June 2, 2006

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

Re: Appeal Decision—Minor Variance 13011 at civic 17 Auburn Avenue, Halifax

Dear Mr. Faulkner:

First let me apologize for being unaware of the laws of the Municipal Government Act Section 235 (3) and having my deck built not to these specifications.

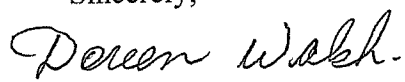
I now understand that this law is intended to ensure that other people's rights and property are not infringed upon by my actions when maintaining my home.

I spoke to my neighbor a few days ago and he said that he has no problem with the deck being where it is. The deck only faces his property. *He has or will write a letter to that effect.

*please see attached photo/sketch as well as letter from aforementioned neighbor, (at the time of writing this I haven't received the letter from my neighbor, but am hoping to have it before bringing this to you, if I don't I am hoping he will write to you separately and you will receive it shortly)

Please reconsider your decision based on these facts.

Sincerely,


Doreen Walsh

Enc (2)

To whom it may concern,

I am writing this letter to advise that my neighbor of 17 Auburn Ave of Halifax has built a deck that is within 3 feet of our property line on 15 Auburn Ave.

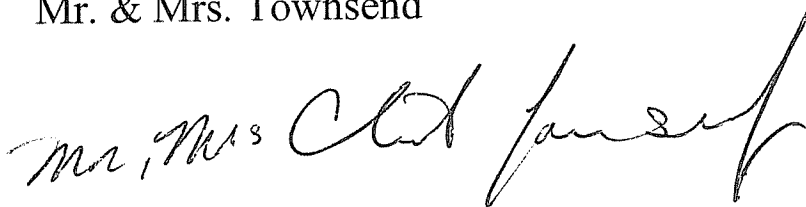
This is not an issue for my husband nor I, although in the future if we decide to do the same on our property or any other type of renovations, we would like a guarantee that this will not be an issue.

Also, possibly in the future my husband and I may wish to sell our property and would hope there will be no unnecessary obstacles to stand in our way regarding the deck placement unless it becomes a concern to a potential buyer.

Presently, at this time we are not concerned, but would like to be reassured there would be no consequence towards our property in the future.

Thank you

Sincerely,
Mr. & Mrs. Townsend

A handwritten signature in cursive script, appearing to read "Mr. & Mrs. Townsend". The signature is written in dark ink and is positioned below the typed name.

17 Auburn Avenue
Halifax, NS
B3R 1K3
June 6, 2006

Mr & Mrs Townsend
15 Auburn Ave

Dear Mrs. Townsend

Thank you for your letter concerning my property in 17 Auburn Avenue and the deck I built within 3 feet of the property line. I appreciate that you indicated this is not currently an issue for you or your husband. I will be submitting this Tuesday Halifax regional municipality support of my application for this deck.

I recognize your potential future concern if you are selling your property and this deck becomes an issue for a potential buyer. I agree that I will at that time have the deck removed to alleviate that concern. I also confirm my agreement that I would not object to you building a similar deck should you wish to come within three feet of my property line at 17 Auburn Avenue.

Thank you for your kind assistance.

Sincerely,

A handwritten signature in cursive script that reads "Doreen Walsh".

Doreen Walsh

