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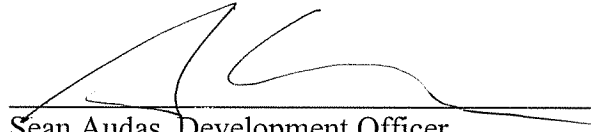


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Harbour East Community Council  
February 1, 2007

**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**

  
Sean Audas, Development Officer

**DATE:** January 22, 2007

**SUBJECT:** Appeal of the Development Officer's decision to refuse a Variance at 18  
Regent Drive, Dartmouth

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**ORIGIN**

This report deals with the appeal of the Development Officer's decision to refuse a variance for lot coverage at 18 Regent Drive, Dartmouth.

**RECOMMENDATION**

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

## **BACKGROUND**

### **Zoning:**

The property is zoned R-3 (Multiple Family Residential (Medium Density)) Zone under the Land Use By-Law for Dartmouth.

### **Existing Use:**

Records indicate that a building permit for the existing apartment building was issued in 1964. The current use of the property is a six (6) unit residential building. The subject property is six thousand five hundred (6500) square feet in area. The existing lot coverage is approximately 36 %.

### **Proposed Use:**

An application was received on July 28, 2006 to construct an accessory building. During the permit review it was noted that the lot coverage already exceeded the maximum lot coverage of 25%. A variance application was then submitted to increase the lot coverage in order to construct the shed. The proposed accessory building is approximately two hundred (200) square feet which would increase the lot coverage area to 39%.

### **Previous Requirements:**

The Dartmouth Land Use By-Law requirements from 1961 to 1964 for this property permitted up to 50% lot coverage. Changes were made to the by-law in 1964 which restricted lot coverage to 35%. In 1966 the permitted lot coverage was further reduced to 25%, which remains to this day.

## **DISCUSSION**

The *Municipal Government Act* sets out criteria in part 235(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria 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 criteria. 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 Land Use Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The maximum lot coverage required for the R-3 Zone is 25%.
- Permitting the accessory building to be constructed would increase the lot coverage to 39% . The existing lot coverage is 36%.
- This type of request is generally not approved unless there are some extenuating circumstances or difficulty with the property.
- The Development Officer feels *that increasing the lot coverage on a lot which already exceeds the requirements of the land use by-law violates the intent of the land use by-law.*

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

- Many of the existing lots have a lot coverage ranging from 15% to 24%.

- The only exception is 16 Regent Drive which is at approximately 38% lot coverage.
- Many of the existing lots either meet the minimum required lot coverage or exceed these requirements.
- *This criteria was not identified in the refusal letter, however, the Development Officer has assessed this criteria and feels that the exceeded lot coverage is not general to properties in the area.*

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

- Construction has not occurred and the applicant is following the permitting process.
- *Intentional disregard for the requirements of the land use by-law was not a consideration in this application.*

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 determined to be contrary to the provisions of the Municipal Government Act.

**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 allow the variance request.

**ATTACHMENTS**

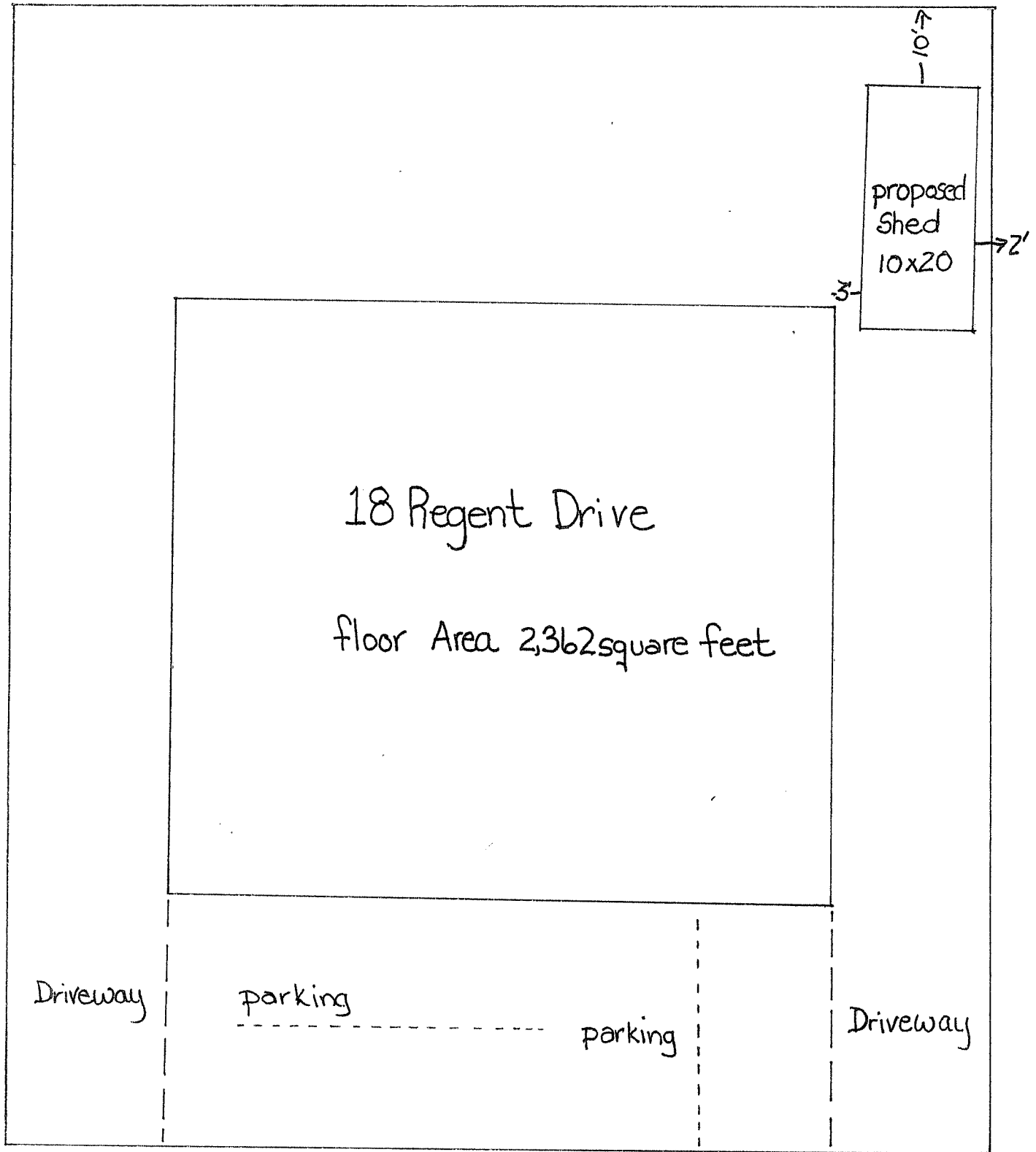
1. Site plan
2. Location Map
3. Refusal letter
4. Appeal Letter
5. Pictures

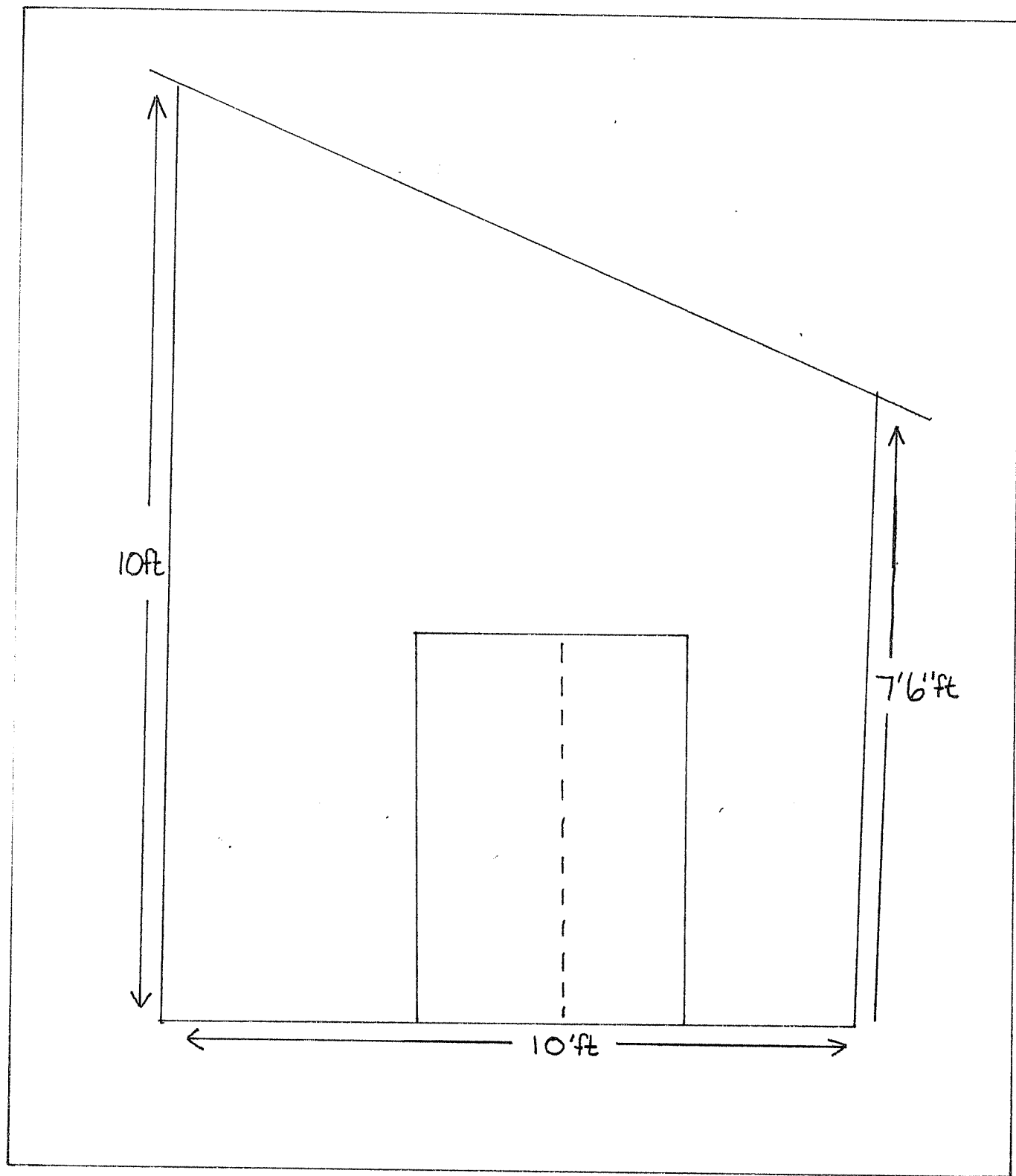
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Laura Walsh, Development Technician, 490-4462

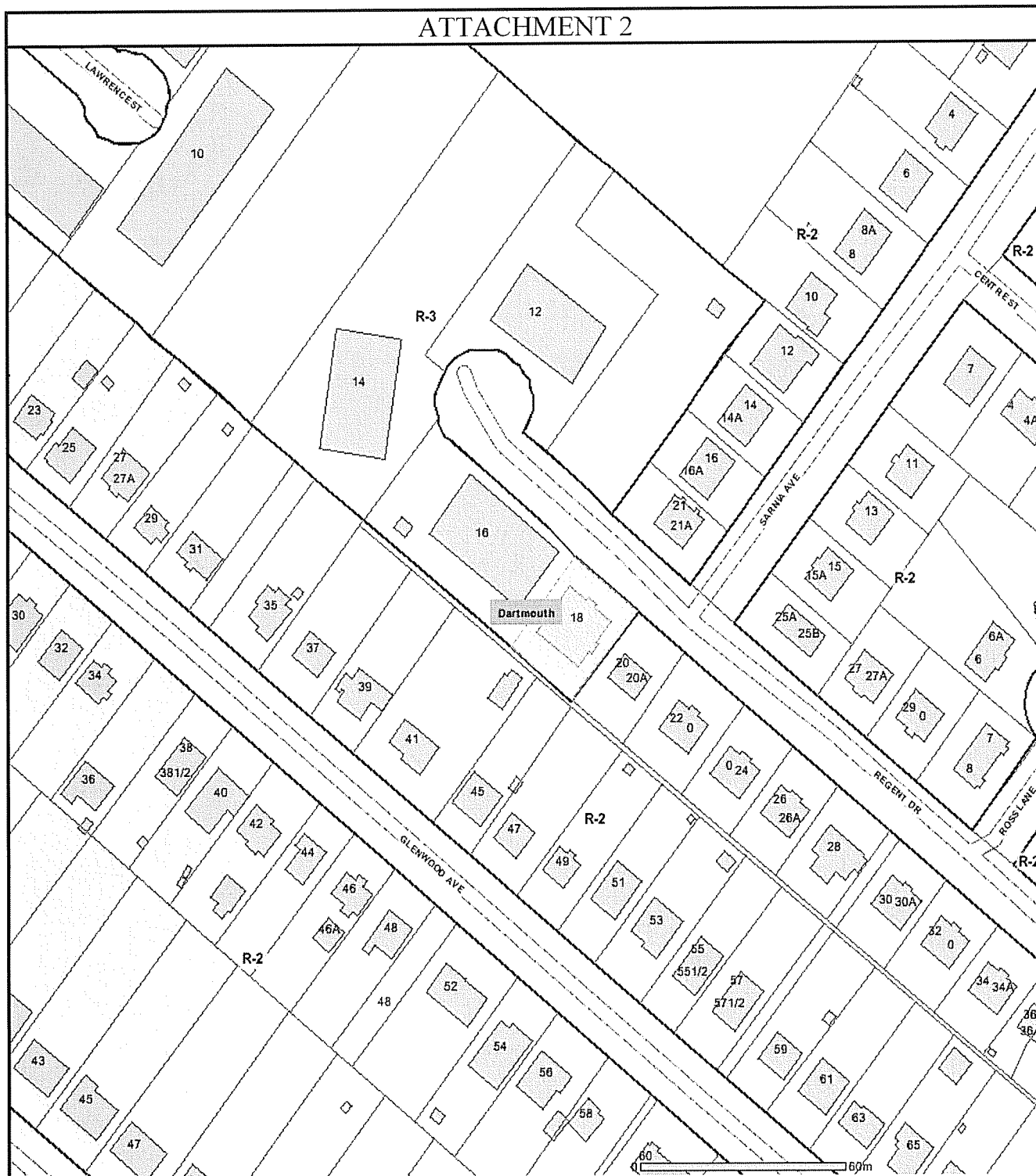
Report Approved by: Sean Audas, Development Officer, 490-4341

# ATTACHMENT 1





## ATTACHMENT 2



**HALIFAX**  
REGIONAL MUNICIPALITY

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 data creation.

November 9, 2006

**ATTACHMENT 3**

Ivano Andriaini  
8 Bayswater Road  
Dartmouth, NS  
B2W 4E1

Dear Mr Andriaini

**RE: Application for Variance 13361- 18 Regent Drive, Dartmouth, Nova Scotia**

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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 **Dartmouth** as follows:

<b>Location:</b>	<b>18 Regent Drive, Dartmouth</b>
<b>Project Proposal:</b>	<b>Increase lot coverage</b>
<b>Required (i.e lot coverage):</b>	<b>Twenty five percent (25%)</b>
<b>Variance Requested:</b>	<b>Thirty nine percent (39%)</b>

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; and**

Section 34 (3) of the Dartmouth Land Use By Law states buildings used for R-3 uses in an R-3 Zone shall comply with the following requirements (a) Lot coverage, maximum 25%. **At present time the lot coverage without the proposed accessory building included is at 36.3% ; with the proposed accessory building included in the calculation, the lot coverage would be 39%.**

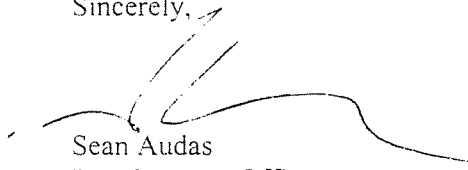
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

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

**Your appeal must be filed on or before *November 21, 2006*.**

If you have any questions or require additional information, please contact Laura Walsh at 490- 4462

Sincerely,



Sean Audas  
Development Officer

cc.

Jan Gibson, Municipal Clerk  
Councillor Gloria McCluskey, District 5



**ATTACHMENT 4**

Municipal Clerk  
c/o Sean Audas, Development Officer  
Halifax Regional Municipality  
Development Services- Eastern Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
*Jan. 8, 2007*  
Dear Mr. Audas

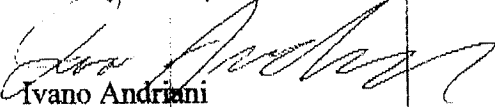
**Re: Appeal for Variance 13361- 18 Regent Drive, Dartmouth NS**

As you are aware since I received the original letter from you re: the above subject I have had several discussions and conversations with Laura Walsh who I understand has also consulted with yourself, legal and Mr. Paul Boucher as well. Further to my conversation with Laura on January 4, 2007 I am formally appealing your decision not to grant the above variance.

My reasons for the appeal are two fold. First because of the elevations of the back corner of the property a storage unit in this area will provide an additional safety net for the children that play in this area. As you may know this street has a high percentage of young families on the street and it is not unusual to see many children playing in the area and I fear that this area could pose a real safety hazard to these children. As my live in superintendent works a full time position it is not reasonable to expect that we can police this situation. The storage unit will aid greatly in this regard. Secondly I believe that a storage unit in this area will only aid to the appearance of this property. Instead of children's toys and tenants exterior items being strewn about the yard they will have a place to stow these things in an orderly manner and out of site.

Recognizing the new land use by law does not allow for this I would ask that consideration be given based on all the improvements that HRM has made to the street and the improvements that I have already made to the property. It is my intent to make 18 Regent a great location to live. The above variance request is designed to improve the physical appearance of this property in a manner that will complement the property and the adjacent properties.

Thank you for your consideration.

  
Ivano Andriani  
c/o 8 Bayswater Road  
HRM, NS  
B2W 4E1  
Tel- 435-2929

## ATTACHMENT 5





