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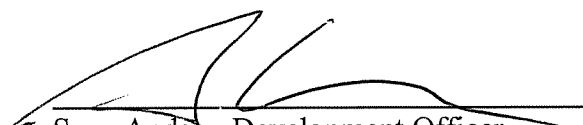


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Harbour East Community Council**  
**December 7, 2006**

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

**SUBMITTED BY:**

  
Sean Audas - Development Officer

**DATE:** November 28, 2006

**SUBJECT:** Appeal of the Development Officer's decision to approve a Variance at 11,  
13 & 15 Provost Street, Dartmouth

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**ORIGIN**

This report deals with the appeal of the Development Officer's decision to approve a variance of the side yard setback requirements for a proposed subdivision at 11, 13 & 15 Provost Street, Dartmouth

**RECOMMENDATION**

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

## **BACKGROUND**

### **Zoning:**

The property is zoned R-2 (Two Family Residential) Zone under the Dartmouth Land Use By-Law.

### **Existing Use:**

There is currently three single unit dwellings on the property. This situation is unique and would not be permitted under today's regulations. Records indicate the dwellings were constructed before the mid 1960's.

### **Proposed Variance:**

A preliminary subdivision was received to subdivide the property to create individual lots for each of the existing single unit dwellings. The land use bylaw requires an eight (8) foot side yard for R-1 and R-2 zoned lots created after October 13, 2001. The location of the existing dwellings within the existing lot prohibits the proposed subdivision from meeting the required side yard setbacks. The requested variances for the proposed lots which is shown on Attachment 1 are as follows:

Lot 13A - 4.3 feet right side yard

Lot 13B - 4.3 feet left side yard and 3.8 feet right side yard

Lot 13C - 4 feet left side yard

## **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 required side yard setback for single unit dwellings in the R-2 zone is eight (8) feet for all new lots created after October 13, 2001.
- This requirement provides adequate separation distance between newly constructed dwellings.
- Lots which contain more than one main building within the former City of Dartmouth may

be subdivided provided they meet the criteria outlined in the Subdivision By-Law. This criteria was assessed during the preliminary subdivision review.

- Where the dwellings are already existing on the lot and the separation distances between the buildings is not changing it was felt that this variance request does not *violate the intent of the land use by-law*.

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

- There does not appear to be any other lots with three individual dwellings located on the same lot within the immediate area.
- *It was felt that this is a unique situation which 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?**

- The developer is attempting to subdivide a property where the dwellings already exist on the lot.
- Where the dwellings currently exist and the distance between the dwellings is not changing *it was not felt that intentional disregard for the requirements of the land use bylaw was a consideration.*

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was approved and notification was sent to all assessed property owners within 30 meters of the subject property in accordance with 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**

There are no implications on the Financial Management Policies/Business.

**ALTERNATIVES**

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

**ATTACHMENTS**

1. Site plan
2. Location Plan
3. Approval Letter
4. Appeal Letter
5. Photos of site

### **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: Laura Walsh, Development Technician (490-4462)

ATTACHMENT 1

13A

Area = 10,593 sq ft

13B

Area = 5,300 sq ft

13C

Area = 6,086 sq ft

165'

140.66'

139.84'

165'

DWELLING  
CIVIC 11

DWELLING  
CIVIC 13

DWELLING  
CIVIC 15

50.0

50.0

32.0

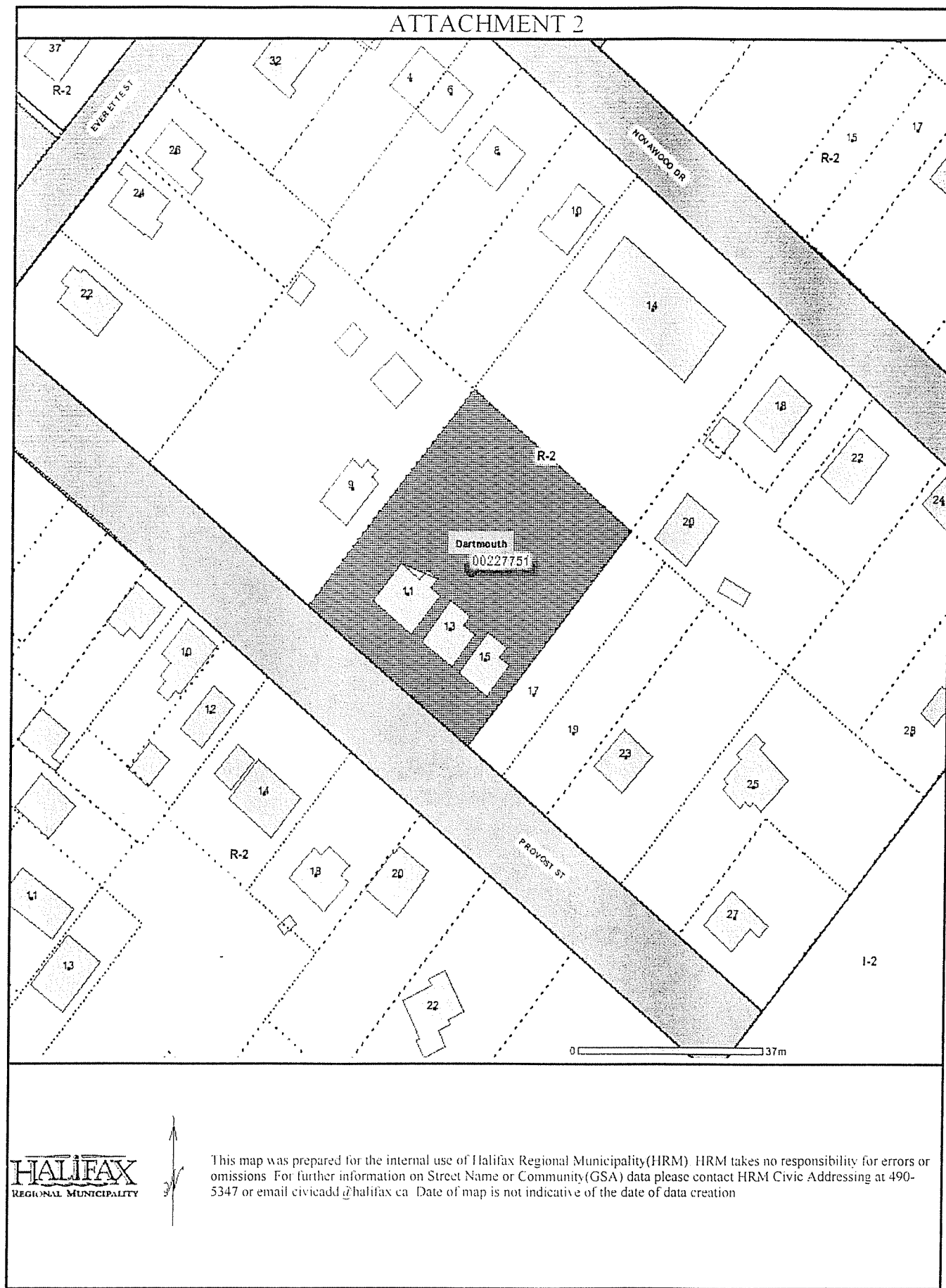
PROVOST

STREET

30' Wide

29.59'

25.52'



November 7, 2006

ATTACHMENT 3

Dear Sir or Madame:

**Re: Case No. 13307- Variance at 11, 13, & 15 Provost Street, Dartmouth, Nova Scotia**

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirement(s) of the land use bylaw as follows:

<b>Location:</b>	11, 13, & 15 Provost Street, Dartmouth, Nova Scotia
<b>Property Owner:</b>	Marjan Enterprises Limited
<b>Project proposal:</b>	Subdivide proposed lot into 3 lots
<b>Required (i.e setback):</b>	Eight feet (8') side yard setbacks
<b>Approved (i.e. setback):</b>	Lot 13A: 4.3 right side Lot 13B: 4.3 left side and 3.8 right side Lot 13C: 4.0 left side

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before November 27, 2006., and address your appeal to:

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

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY, THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require clarification of any of the above, please call Laura Walsh - Development Technician at (902) 490-4462.

Yours truly,



Sean Audas, Development Officer  
Halifax Regional Municipality

copy to: J. Gibson, Municipal Clerk  
Councillor Becky Kent

9 Provost Street  
Dartmouth, NS  
B2W 1B5

ATTACHMENT 4

November 24, 2006

Sean Audas, Municipal Clerk  
Development Officer,  
Halifax Regional Municipality,  
Planning and Development - Eastern Region,  
PO Box 1749, Halifax, NS  
B3J 3A5

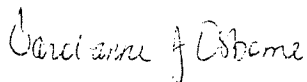
Dear Sir:

**Re: Case No. 13307 – Variance at 11, 13 and 15 Provost Street, Dartmouth, NS**

I wish to dispute the approved request of the variance at 11, 13 and 15 Provost Street. I feel that the required 8 feet side yard setbacks should be maintained as per the R2 Zone requirements.

Should you wish to contact me please feel free to do so at 461-4410 (H) or 470-8249 (W).

Sincerely,



Carol-anne Osborne



ATTACHMENT 5

