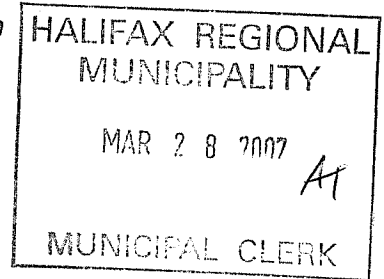




PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

8-2-1



Harbour East Community Council  
April 5, 2007

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

**SUBMITTED BY:**

  
Sean Audas - Development Officer

**DATE:** March 28, 2005

**SUBJECT:** Appeal of the Development Officer's decision to refuse a Variance at 26 Inverary Drive, Dartmouth

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**STAFF REPORT**

**ORIGIN**

This report deals with the appeal of the Development Officer's decision to refuse a variance of the front yard setback at 26 Inverary 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-1 (Single Family Residential) Zone under the Land Use By-Law for Dartmouth

### **Existing Use:**

A current use of the property is a single unit dwelling. The property is almost 16, 000 square feet in area. The existing dwelling is situated 24 feet from Inverary Drive.

### **Proposed Use:**

A variance was requested to construct an addition to the existing dwelling for a vestibule and bedroom. If the addition was constructed it would be located at 12 feet and 8 inches from Inverary Drive. The addition would measure 27' long by 14' deep. The application was refused because it did not meet the setback requirements of the land use by-law. The refusal was subsequently appealed by the owner and the letter is attached in Appendix 4.

## **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 front yard setback in the R-1 zone is the established building line of the block in which the dwellings are located. The established building line setback for this block has been calculated at 20 feet.
- If the addition is approved it would reduce the established street line at 12 feet 8 inches.
- Also, if a new street is constructed in the R-1 Zone the minimum setback range is 15 to 30 feet. A 15 foot setback is generally only considered at the bulb of a cul-de-sac.
- Approving the addition would change the building line setback and potentially alter the street scape.
- *It is felt that approving the addition violates the intent of the land use by-law.*

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

- The setback requirement of 20 feet is indicative of this street setting .
- Additional reasons for a required setback are for maintenance purposes, such as future expansion of roads, sidewalk construction, bus shelters and drainage issues.
- A reduction to 12 feet from the required 20 feet is a substantial request. This is not supported by the Development Officer, because reducing the setback alters the streetline for the entire block, not just this property.
- *For these reasons the Development Officer feels that the difficulty experienced is general to the properties in the area.*

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

- *This criteria was not a consideration and it is not felt that this proposal results in intentional disregard for the requirements of the land use by-law.*

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**

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

**ALTERNATIVES**

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

**ATTACHMENTS**

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

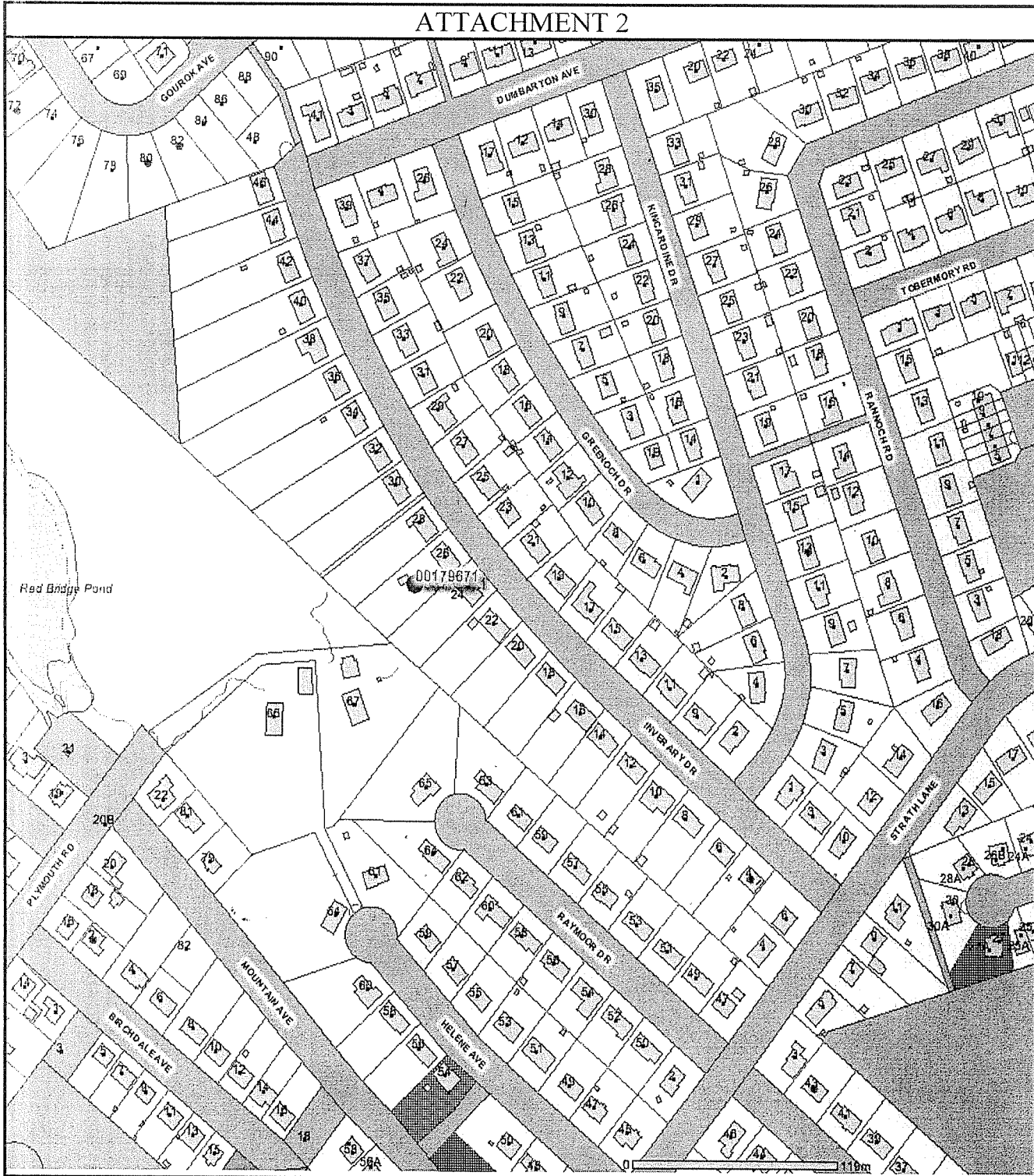
**INFORMATION BLOCK**

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: Sean Audas, Development Officer (490-4341)



ATTACHMENT 2



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.

March 15, 2007

**ATTACHMENT 3**

Anthony Beck  
26 Inverary Drive  
Dartmouth, NS  
B2X 1H2

Dear Mr Beck;

**RE: Application for Variance 13648 - 26 Inverary 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:

**Location:** 26 Inverary Drive, Dartmouth  
**Project Proposal:** Reduced front yard  
**Required (i.e lot coverage):** Building line approx 20' front yard setback  
**Variance Requested:** 12' 8" front yard setback

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 28 (2) of the Dartmouth Land Use By Law states " Where no building line exists on a street where there are existing buildings, the building line shall be taken as the mean distance of the setback of the existing buildings from the street line in the block in which the proposed building is located." Where the existing buildings are set back approximately 20 feet from the street; to reduce the setback to 12 feet is quite substantially. This is felt to violate the intent of the Land Use By-Law.

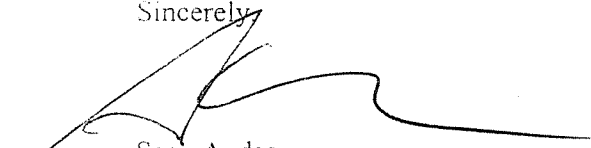
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**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 *March 28, 2007*.

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 Andrew Younger

**ATTACHMENT 4**



Anthony Beck  
26 Inverary Drive  
Dartmouth, NS B2x 1H2  
(h) (902) 435-7506  
(w) (902-457-6676 ext. 25

March 20, 2007

Municipal Clerk  
C/o Sean Audas, Development Officer  
Halifax Regional Municipality  
Development Services – Eastern Region  
P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5

Dear Mr. Audas,

**RE: Application for variance- File No. 13648-26 Inverary Drive, Dartmouth, NS**

Thank you for your letter dated March 15, 2007. Please accept this as our Notice to Appeal the decision of the Development Officer to the Municipal Council.

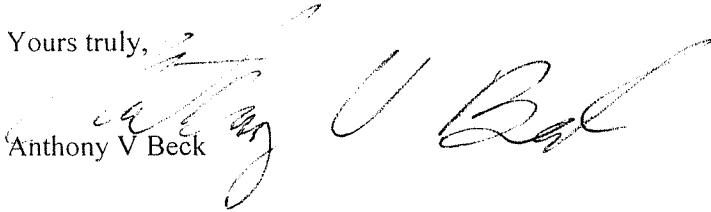
We are disappointed with your decision to refuse our application for a variance of the setback requirements for the proposed addition to our home, however we do understand that the application is based upon the three refusal provisions of the Municipal Government Act. For this reason it is our opinion the primary criteria for assessing our application should be based upon the fact that development of our lot is significantly impacted by the steep slope at the rear of the property. This condition is not general to the area and is confined to approximately 5 nearby properties.

We would also like to draw your attention to the lot coverage; currently our lot coverage is 8.5%, upon completion of the project the lot coverage will increase to 13% which is significantly less than the maximum allowed under the current land use bylaws. Based on the above criteria, we respectfully submit that our application has satisfied the criteria as outlined in the Municipal Government Act.



In addition, we have also had discussions with our neighbours along Inverary Drive concerning our proposed addition. We have received total cooperation from our neighbours and all have indicated they are willing to support our application for variance.

Yours truly,

  
Anthony V Beck

ATTACHMENT 5

