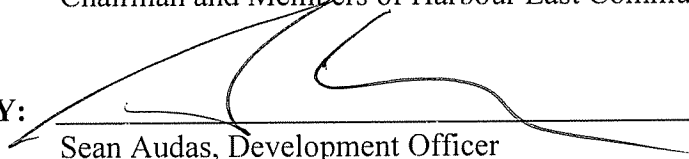

Harbour East Community Council
February 7, 2008

TO: Chairman and Members of Harbour East Community Council

SUBMITTED BY: 
Sean Audas, Development Officer

DATE: January 29, 2008

SUBJECT: Appeal of the Development Officer's decision to refuse a Variance at 30
Montague Road, Dartmouth, NS

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 30 Montague Road, Dartmouth, NS.

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 Unit Dwelling) Zone under the Land Use Bylaw for Cole Harbour / Westphal (*Attachment 1*).
- The property was rezoned R-1 in 2005 by Harbour East Community Council.(Case #00783).
- At the same time a Variance was approved (Case #12349) to reduce the front yard setback from 6.1 metres (20 feet) to 4.3 metres (14.1 feet), this Variance is still in effect.

Existing Use

- The property is currently vacant and approximately 7695 square feet in area which borders Loon Lake to the west. At its narrowest point, the property measures approximately 17 metres (55.8 feet) between the right of way and the lake.

Proposed Use:

- A new application was received to further reduce the front yard setback from 4.3 metres (14.1 feet) to 3.7 metres (12.1 feet).
- The proposal is for a single unit dwelling with a depth of 22 feet between the street and the lake (*Attachment 2*).
- The application was refused because it did not meet the intent of the land use bylaw. The refusal (*Attachment 3*) was appealed by the owner (*Attachment 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 regarding 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 6.1 metres (20 feet); however, this

property has already been granted a variance reducing the required front yard setback to 4.3 metres (14.1 feet) because of its narrow depth. At 4.3 metres (14.1 feet), the proposed dwelling will already be one of the closest buildings to the street in the vicinity.

- The property is also adjacent to Loon Lake which requires a watercourse buffer under section 4.17 of the land use bylaw. Subsection 4.17(3) permits a reduction of the buffer distance when a main building could not otherwise be placed on an existing lot, such as this case, where the shallowest part of the lot is approximately 17 metres (55.7 feet). A reduction of the buffer has also been granted for this property based on plans submitted by a Planning Consultant during the re-zoning process.
- During the previous application and approval it was determined by a Planning Consultant that these setbacks would be sufficient. To further reduce the setback based on modest plans is not supported.
- With consideration of these factors, it is felt that *approving the reduced setback would violate the intent of the land use bylaw.*

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

- Although many properties in the area are adjacent to Loon Lake, and thus subject to the land use bylaw requirements for watercourse buffers and setbacks as well as front yard setbacks, this particular property is particularly narrow between the street and the lake.
- For this reason, the Development Officer feels that *the difficulty experienced is not 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 item was not a consideration and it is felt that *this proposal does not result from intentional disregard for the requirements of the land use bylaw.*

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 Plan.

ALTERNATIVES

1. Council could overturn the decision of the Development Officer and allow the variance.
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

INFORMATION BLOCK

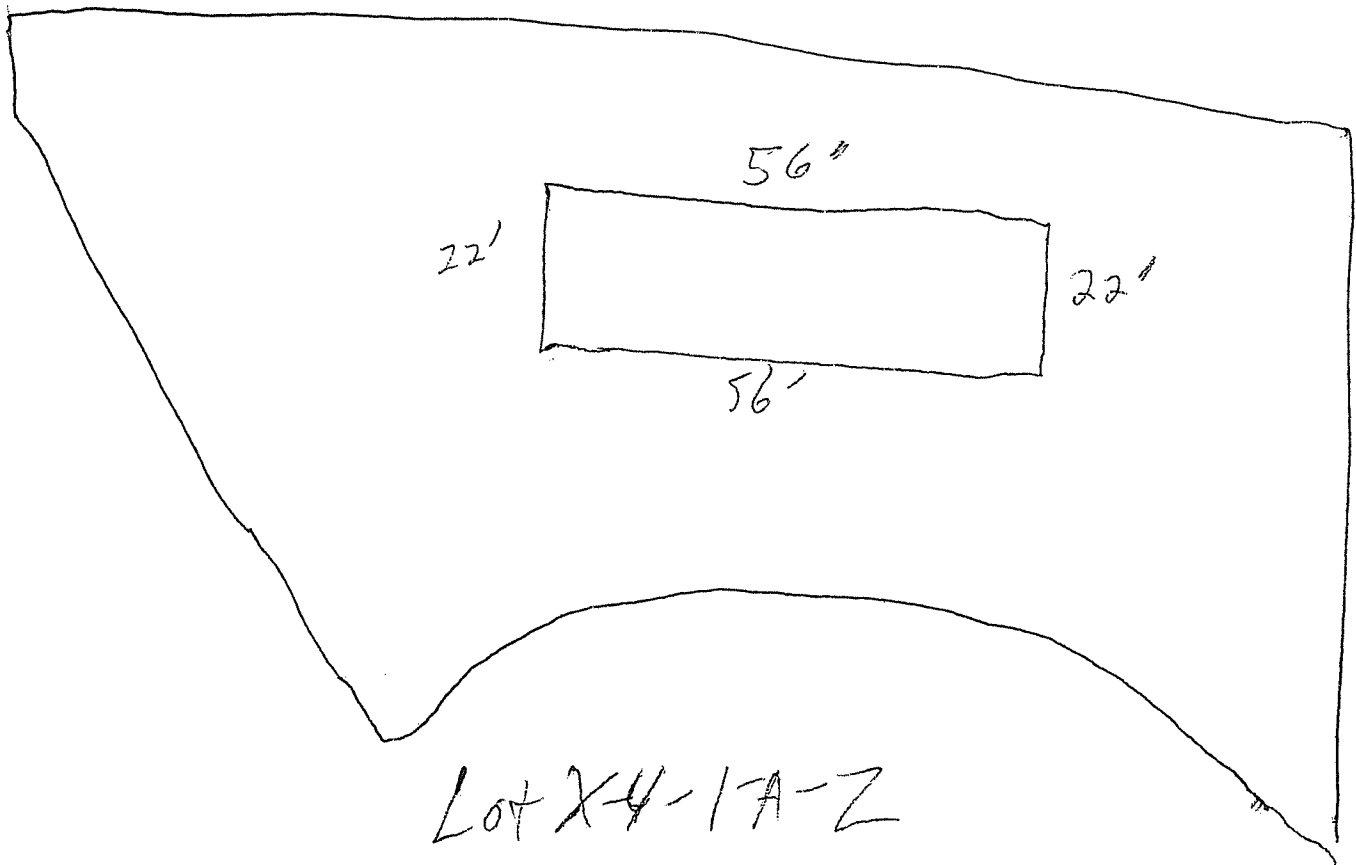
Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Mackenzie Stonehocker, Development Technician (490-6257)

Tim & Charlene Smith 889-3419

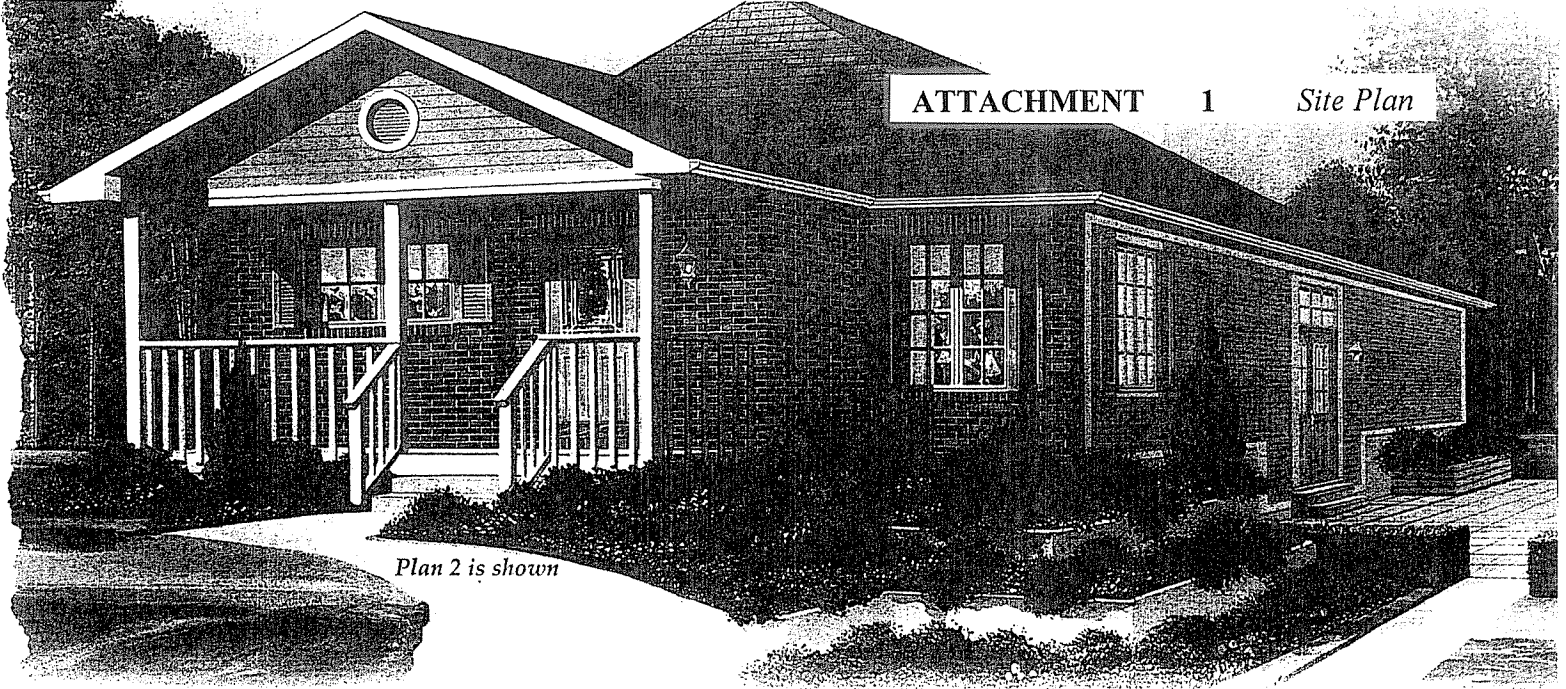
proposed Bldg. 22' x 56'

PTD # 40719510 Area 7,695 sq ft.



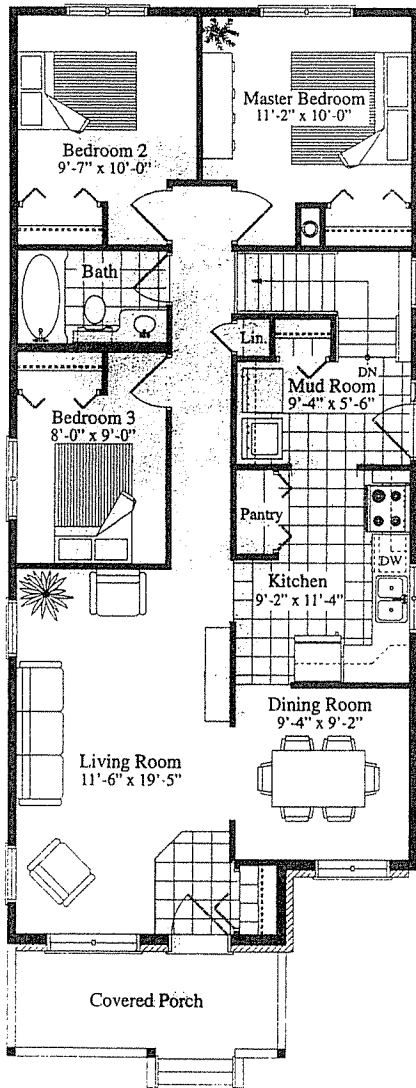
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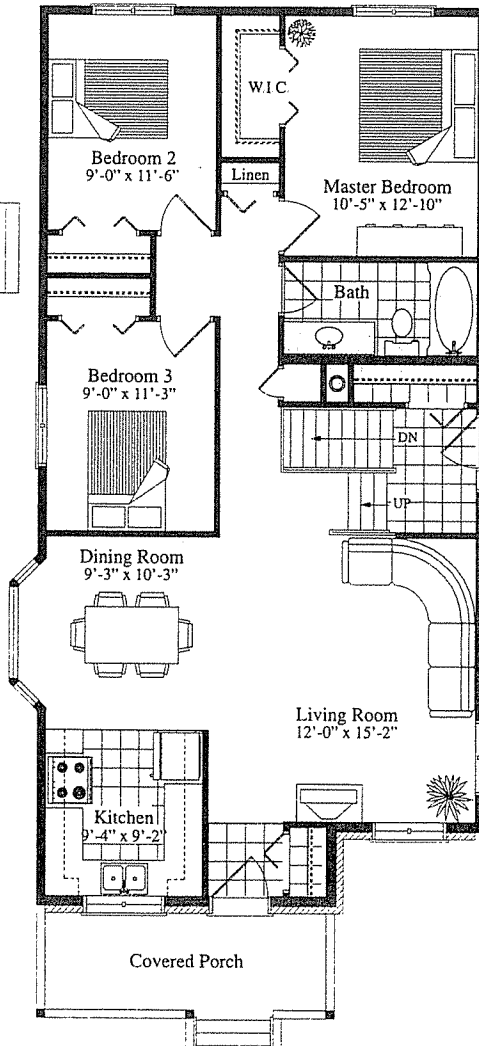
Plan 2 is shown

Plan 1 - 1074 Sq. Ft. / 22'10" x 56'4"

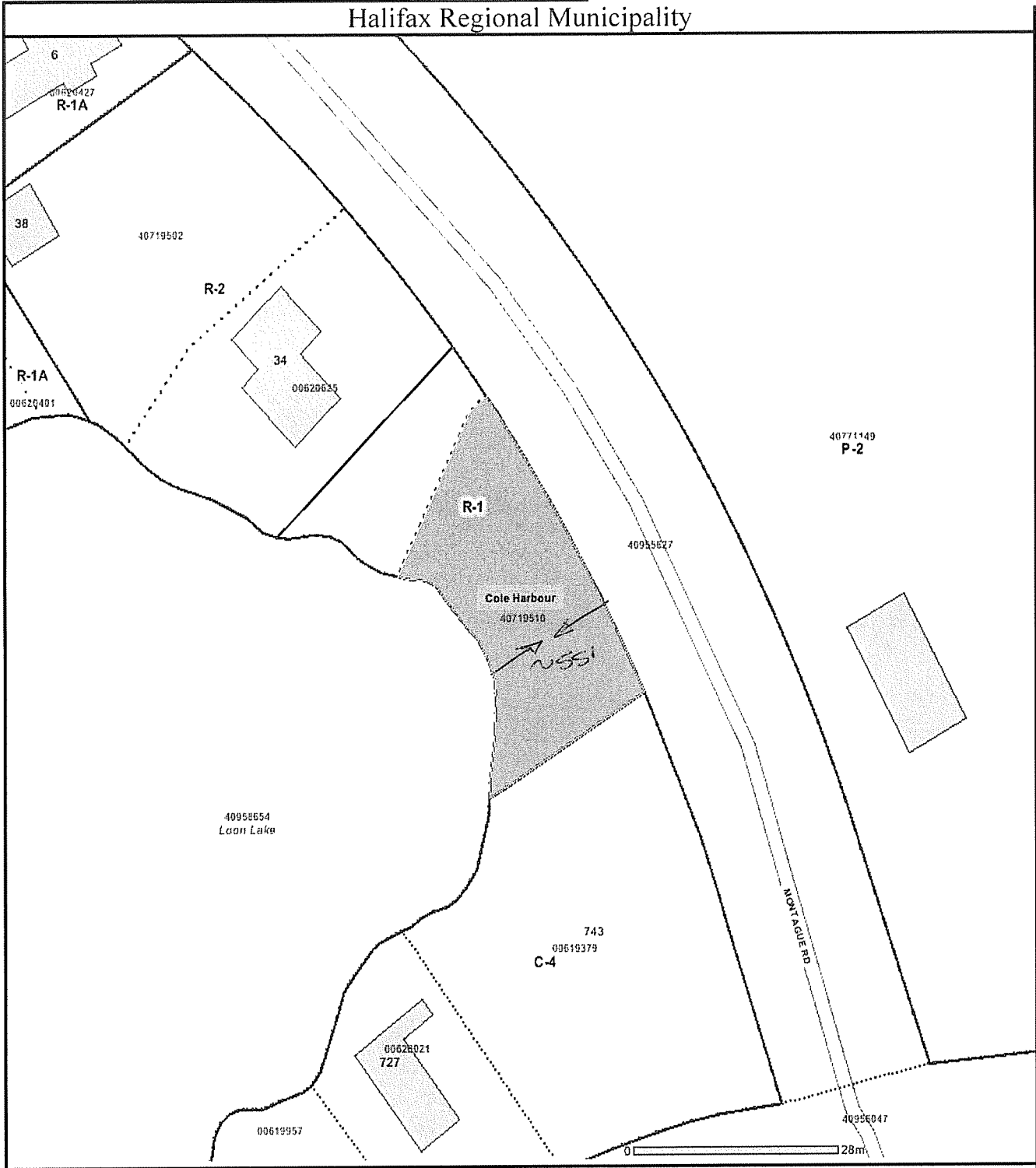


Charming with its covered front porch, this narrow lot design bungalow features two plan options. Plan one offers a main floor mud room and separate dining room while plan two is slightly larger offering a bi-level side entry and living/dining room combination.

~~Plan 2 - 1120 Sq. Ft. 24'10" x 54'4"~~



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 Date of map is not indicative of the date of data creation

December 21, 2007

Timothy and Charlene Smith
7646 Highway 7
Musquodoboit Harbour, NS B0J 2L0

Dear Mr. and Mrs. Smith:

RE: HRM File # 14347
Application for variance at 30 Montague Road, Dartmouth, NS

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 Cole Harbour / Westphal* as follows:

Location: 30 Montague Road, Dartmouth, NS
Project Proposal: To construct single unit dwelling with 22 x 56' footprint
Variance Requested: Vary front yard setback a further 2 feet from 14.1 feet
(Variance #12349) to 12.1 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 variance (a) violates the intent of the Land Use Bylaw, therefore your request for a variance has been refused.

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:

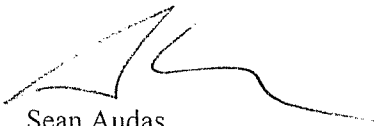
Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
PO Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before January 9, 2008.

Page 2
HRM File # 14347
December 19, 2007

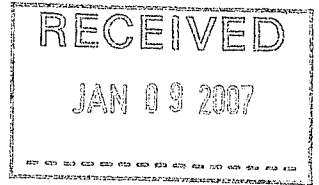
If you have any questions or require additional information, please contact Mackenzie Stonehocker at (902) 490-6257.

Sincerely,



Sean Audas
Development Officer

cc. J. Horncastle, Municipal Clerk's Office
Councillor Harry McInroy



To: Municipal Clerk,

RE: Variance on #30 Montague Rd. H&M File #14347

We would like to appeal the decision of the development officer because we don't understand how our proposal violates the Land use bylaw.

We would like to construct a 22' x 56' single family dwelling on this property, it is already zoned residential and has been pre-approved for a bldg. 20' x 80'. The reason we are requesting a variance of 2' in the front or back is because the ~~only~~ ^{narrowest} set of plans we can find

is 22' Feet. We had originally requested a 2 foot variance in the front or back or 1 foot on front and 1 foot in back.

* What if we had 20' x 56' on the basement and 22' x 56' on top floor which would be 8' above ground. We could build the extra 2 feet ^{over} on the back side toward the lake, but it would be 8' above the ground, the walkout basement would still be 20' x 56' and still 25' from the lake. Please see attached drawing.

Thanks,

Tim & Charlene Smith
7646 Hwy 7 Musquodoboit Hb. N
BOJ 240
889-3419.

