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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive Community Council
March 8, 2006

TO: Chairman and Members of Marine Drive Community Council

SUBMITTED BY: 
Sean Audas - Development Officer

DATE: February 27, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance at 17810 Highway 7, Popes Harbour

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance for a front yard and side yard (right) for a single unit dwelling at 17810 Highway 7, Popes Harbour.

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned RE (Rural Resource) Zone under the Land Use By-Law for Eastern Shore East.

Existing Use:

The property has had a number of uses over the past years. Currently the property is occupied with a mobile dwelling and a store. A permit has been issued to relocate the mobile dwelling to another property (across the road). The store is in the process of being converted to a single unit dwelling.

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 yards, street frontage, and watercourse setbacks.
- The setback for this plan area is 8 feet from the side yards and 30 feet for the front yard.
- To reduce the side yard setback from 8 feet to 0 feet is a substantial reduction in the minimum requirement.
- The required front yard setback is a minimum 30 feet. The request to reduce this setback to 8 feet is also a substantial request in the requirements of the land use by-law.
- It is felt that to reduce the required setback by the amounts presented ***violates the intent of the land use by-law***

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

- The property is near the intersection of two roads.
- There is also a right of way that runs along the right side property line.
- The difficulty experienced for this property is not general to properties in the area.
- This criteria was not a consideration for this application.

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

- The history on how this building arrived on the site is not clear. Permits were applied for after the mobile dwelling and convenience store were moved to the site but the permits were not granted.
- It appears from the applicants appeal letter that some of the confusion occurred during a labour dispute.
- No records of a valid permit can be located and the applicant has not provided a copy of any permits to construct or locate a building on this property.
- The necessary permits do not appear to have been issued for the existing structure.
- Where this building was located on the property without the necessary permit 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 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

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)

Legend

- ⊙ SM Survey Marker
- C Calculated
- A Arc
- R Radius
- Fd Found
- ⊙ Iron Bar
- M Measured
- P Plan
- D Deed
- IT Iron Tube
- IP Iron Pipe

Old No. 7 Highway

Possible Encroachment

7.5'±

Way

100' (Deed)

55'±

5.0'±

Possible Encroachment

Right of Way

77'±

AC/M. BRID NORTH

Lot 2

(Camp Lots)

Deed to
Mortlins Frida Shellfish
Farms Limited dated
December 16, 1939.

Lot 1

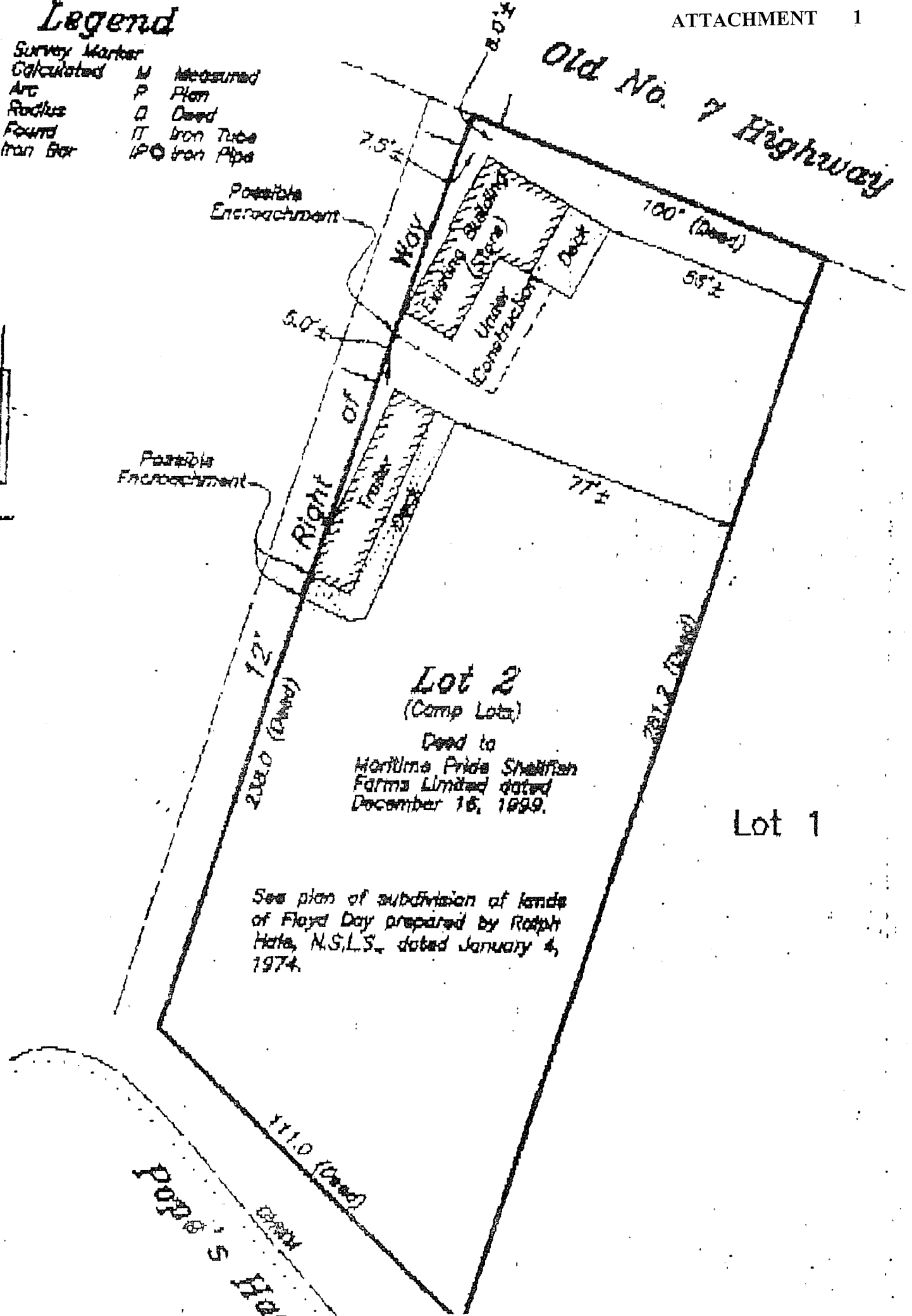
See plan of subdivision of lands
of Floyd Day prepared by Ralph
Hate, N.S.L.S., dated January 4,
1974.

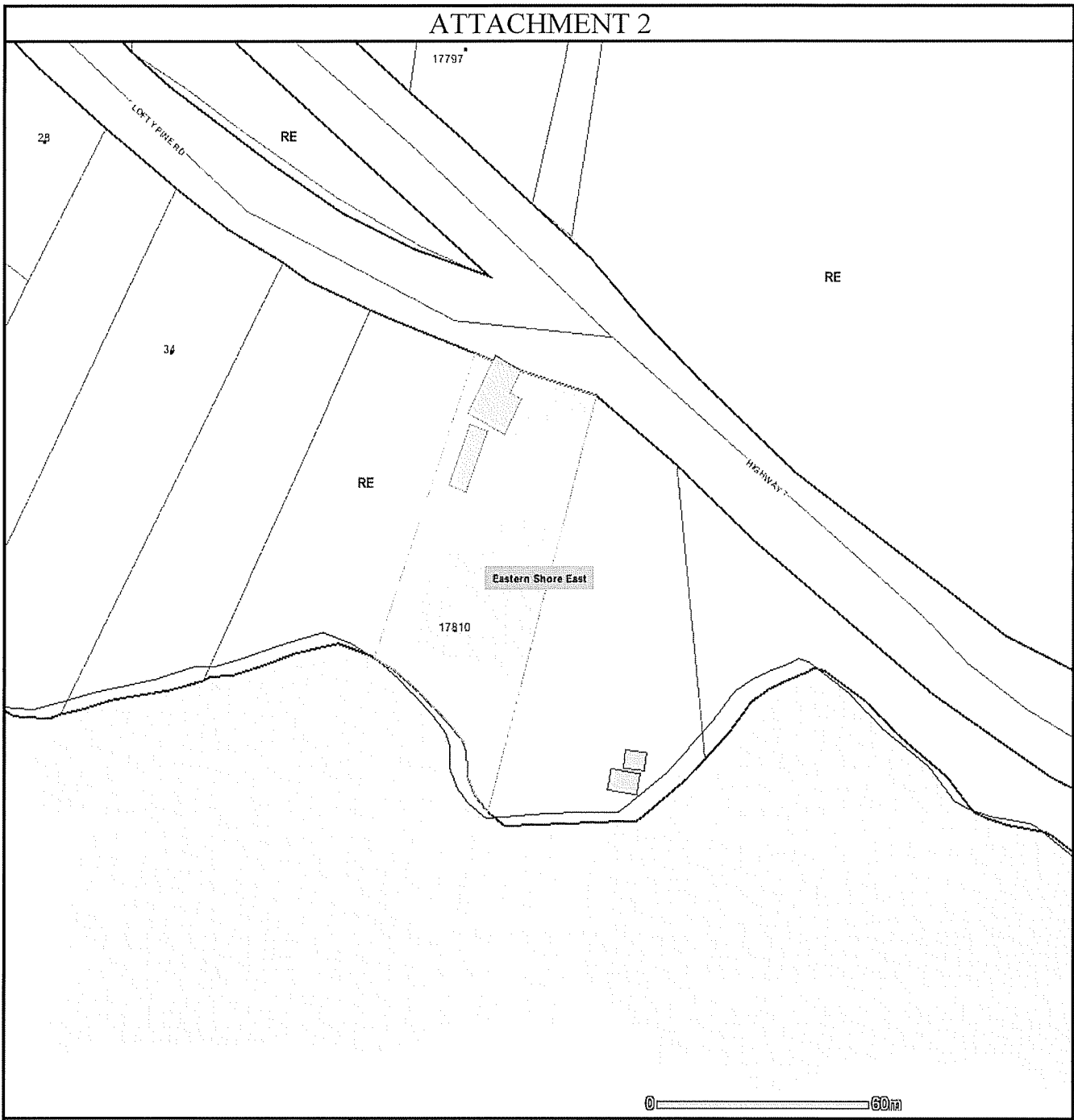
12'±
210.0 (Deed)

211.2 (Deed)

111.0 (Deed)

POPE'S HO...





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. User: geoinfo@halifax.ca

Legend

Selected Features	Parcels	Plan Areas
• Civic Numbers	Building	
Streets	Zoning	
	Development Agreement	

HALIFAX

REGIONAL MUNICIPALITY

Sean Audas - Development Officer
 PLANNING AND DEVELOPMENT SERVICES - Eastern Region, Alderney Gate 2nd Floor
 Phone 490-4341; Fax 490-4661
 E-mail: audass@halifax.ca
 Web site: www.halifax.ca

February 10, 2006

COPY

Mr. Barry Gerard
 Maritime Pride Shellfish
 RR 1
 17809 Highway 7
 Tangier, NS B0J 3H0

Dear Mr. Gerard:

RE: Variance Application No. 12645 - 17810 Highway 7, Popes Harbour, NS

This will advise that as the Development Officer for the Halifax Regional Municipality, I have refused your request for variance from the requirements of the Land Use Bylaw for Eastern Shore (East) as follows:

Location:	17810 Highway 7, Popes Harbour
Project Proposal:	Locate a Single Unit Dwelling
Requirements:	8 feet from the side property line 30 feet from the road right of way
Variance Requested:	0 feet from the side property line (right side) 8 feet from the front property line

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.

Your application was assessed based on the above noted criteria. It was found that your application did not meet two of the three criteria, which has been outlined below:

(a) The Land Use Bylaw sets out standards relative to yards, street frontage, and watercourse setbacks. The setback for this plan area is 8 feet from the side yards and 20 feet from the front yard. A reduction of the total amount of the side yard setback is a substantial reduction in the minimum requirements. Also, the front yard setback is a minimum 20 feet. The request to reduce this setback to 8 feet is also a substantial request in the requirements of the land use by-law. **It is felt that to reduce the required setback by the amounts presented violates the intent of the land use by-law**

(b) The history on how this building arrived on the site is not clear. Permits were applied for but were not granted. No records of a valid permit can be located and the applicant has not provided a copy of any permits to construct or locate a building on this property. Where the necessary permits do not appear to have been issued for this structure I am also refusing your application based on **intentional disregard for the requirements of the Land Use By-Law.**

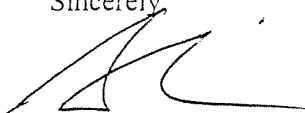
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**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 February 21, 2006.

If you have any questions or require additional information, I may be reached at 490-4341.

Sincerely,



Sean Audas
Development Officer

c: J. Gibson, Municipal Clerk
S. Streach, Councillor District 1

Maritime Pride Shellfish
17809 Highway 7
Tangier, NS B0J 3H0

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

February 18, 2006

To Whom it May Concern,

Re: Variance Application No. 12654-17810, Highway 7, Popes Harbour, NS

This letter is to appeal the decision made on this application for variance and to explain the history of this undertaking.

In 1995 I received a permit to build a utility shed approximately 20' x 24' on the land which I own in Popes Harbour. Approximately one year later I bought the adjacent land.

In 1997 I made arrangements for the building to be moved to the second piece of property. Once the completion of the move was made, The Nova Scotia Power connected the power lines and I intended to open a small store. The store was run for three years with no problems until April 2000. I decided to build a foundation for the small structure for further storage space, etc. While the installation of the basement was taking place, a building inspector told me to apply for a building permit. My response was that I have applied for a permit to build the foundation. He explained to me that I had to see Kathy Spencer from HRM Planning & Development to apply. I needed a permit for both the store and the mini store which sat behind the main structure. When I went to see Ms. Spencer I paid for two permits but then I was told to stop the work immediately. Doug Riley from HRM Planning & Development stopped by, inspected the walls and footings and told us we could back fill it.

Ms. Spencer told me to get an inspection from the Department of Environment. They quoted a septic system at \$2,000. Ms. Spencer also asked for a lot plan and was told that I had to apply for a minor variance permit. At this time there was a strike at HRM and I did not hear from them anymore. In 2005 I applied for a mortgage and was told I needed an occupancy permit before the mortgage could be approved. I went for this permit and was told by Ms. Spencer that I was denied the permit. I was then told to have a contractor look at the building. Jim Holt from HRM Planning & Development told Berkshire Homes, Mike Young and myself to do all the necessary repairs to complete the building for inspection. An engineer came to the lot twice, once for inspection of structural stability and once for inspection of the plumbing covering the complete building.

I received a letter asking for the reinspection of everything once again. I asked for an appointment with HRM Planning & Development staff and after a meeting with my engineer in attendance, was told to apply for a Minor Variance Permit.

I feel I was mistreated through this whole deal from the start because I had done the basement without a permit. When we put the building there, there was an old rusty iron pipe approximately 12-14 feet from the side of the building so the excavator owner (Bryce Kennedy) and myself thought this to be my boundary line. We could not find any survey markers at this time. Later on, after having a survey done we realized this pipe marked the far side of a right-of-way that was unknown to us at this time.

I do not deny making this **honest mistake** as all parties concerned can see it was no advantage for me to locate my building to the extreme corner of my property, when I have lots of space to the South and East. I humbly ask for a favorable decision on this matter so my wife and I can move ahead in peace and happiness.

Yours truly,

Barry Gerard

Barry Gerard
Feb 18 2006