

Item 8.2.1

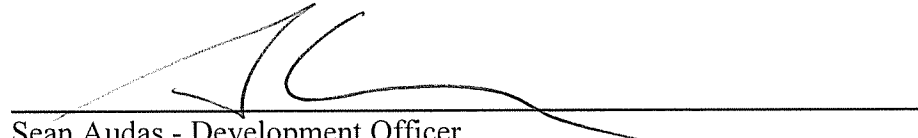


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

**Marine Drive, Valley and Canal Community Council
April 23, 2009**

TO: Chairman and Members of Marine Drive, Valley and Canal Community Council

SUBMITTED BY:


Sean Audas - Development Officer

DATE: April 9, 2009

SUBJECT: 1) Appeal of the Development Officer's decision to refuse a Variance at 71 Keddy Road, Cooks Brook
2) Appeal of the Development Officer's decision to approve a Variance at 71 Keddy Road, Cooks Brook

ORIGIN

This report deals with an appeal of the Development Officer's decision to approve a variance of the front yard setback of a proposed accessory building (garage) and to refuse a variance request to reduce the side yard setback at 71 Keddy Road, Cooks Brook.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to approve the front yard setback and refuse the variance for the side yard setback.

BACKGROUND

Zoning:

The property is zoned MU (Mixed Use) Zone under the Land Use By-Law for Musquodoboit Valley - Dutch Settlement.

Existing Use:

The subject property is located on Keddy Road and abuts Cooks Lake at the rear. The property is currently occupied by a single unit dwelling and a small accessory building near the water. The current zoning MU, provides for a variety of uses which includes accessory uses such as garages.

Application:

The Variance application requested a reduction in the required side yard to 4 feet from the required 8 feet and to reduce the required front yard to 8 feet from the required 20 feet. The Variance application to reduce the required front yard was approved after consulting with the Nova Scotia Department of Transportation and Infrastructure Management. As per the criteria outlined in the Municipal Government Act the approval notification was circulated to property owners within 30 meters of the Variance property. Two appeals were received and are included in Attachment 5.

The Variance request to reduce the required side yard was not approved. The refusal letter was sent to the property owner and this decision was appealed. The appeal letter is included in Attachment 6.

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 ?

Where the Variance request was for two individual setbacks and two different decisions were reached the table below outlines a comparison of the two setbacks in relation to this requirement of the Municipal Government Act.

A) Front yard reduction	B) Side yard reduction
<u>Approved by Development Officer</u>	<u>Refused by the Development Officer</u>
1) The lot restricts the location of an accessory building as the rear of the property borders a lake which requires a riparian buffer (watercourse setback) a minimum of 60 feet.	1) While the lot configuration causes difficulty in the placement of an accessory structure, it is felt that the side yard setback of 8 feet can be maintained.
2) The house is located near the right property line which limits the placement of an accessory structure. The practical placement of the accessory building is near the front left side of the property based on existing lot conditions.	2) It would be more appropriate to consider reducing the 8 feet separation distance between the dwelling to 4 feet in order to meet the 8 foot side yard setback.
3) The applicant initially requested to reduce the front yard setback to 5 feet. In discussions with the owner and Nova Scotia Transportation and Infrastructure Management is was agreed that a 8 foot setback was more appropriate for a dead end road which meets the intent of the Land Use By-Law.	3) There appears to be sufficient area to maintain the sideyard setback and construct the accessory structure.

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

- While many properties on Keddy Road are of similar size, the properties in the immediate area are much larger and do not have the same constraints as this property in relation to locating an accessory structure 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?

- It is not felt that intentional disregard for the requirements of the land use by-law are a consideration for this application as construction has not occurred and the applicant is going through the Variance process.

The decision before Community Council is for two individual Variance requests, one relating to a front yard setback the other for a reduced side yard setback. The front yard setback was appealed by abutting property owners. The side yard setback was refused by the Development Officer and appealed by the applicant. The applicant outlines in their appeal letter that they are firm in the proposed location. They feel to alter the proposal would cause a greater expense, more time involved and unwanted planning and positioning of the garage would be required.

In summary, staff reviewed all the relevant information in this case and conducted a site inspection of the property. This review concluded that one variance request (front yard setback) was approved and the second variance (side yard setback) was refused, which has been outlined in this report.

BUDGET IMPLICATIONS

None.

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 front yard Variance and refuse the side yard variance. This is the recommended alternative.
2. Council could refuse both Variance requests and overturn the decision of the Development Officer.
2. Council could approve both Variance requests and overturn the decision of the Development Officer

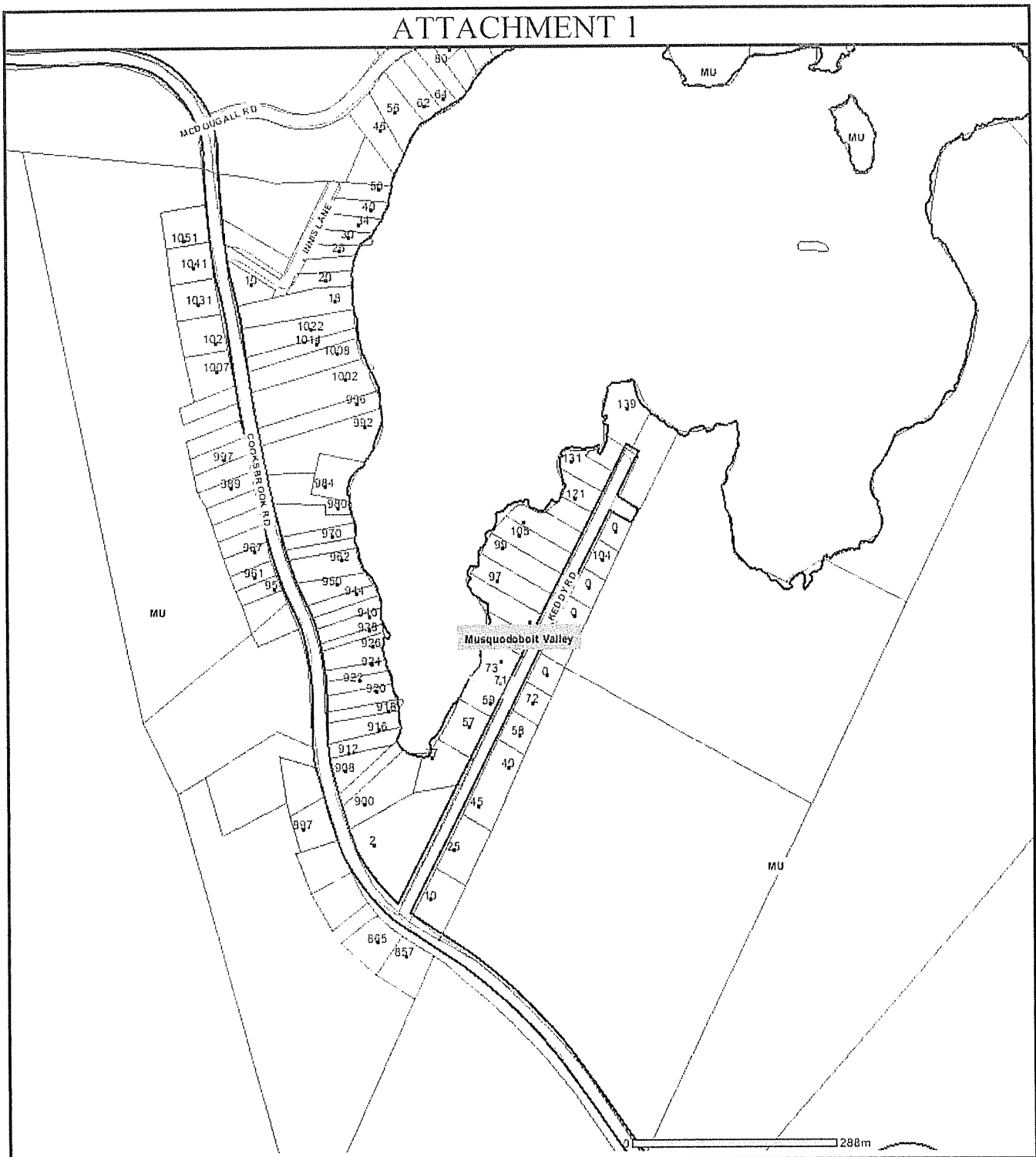
ATTACHMENTS

1. Location Map
2. Site Plan
3. Approval Letter
4. Refusal Letter
5. Appeal Letters (abutting properties)
6. Appeal Letter (applicant)

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)

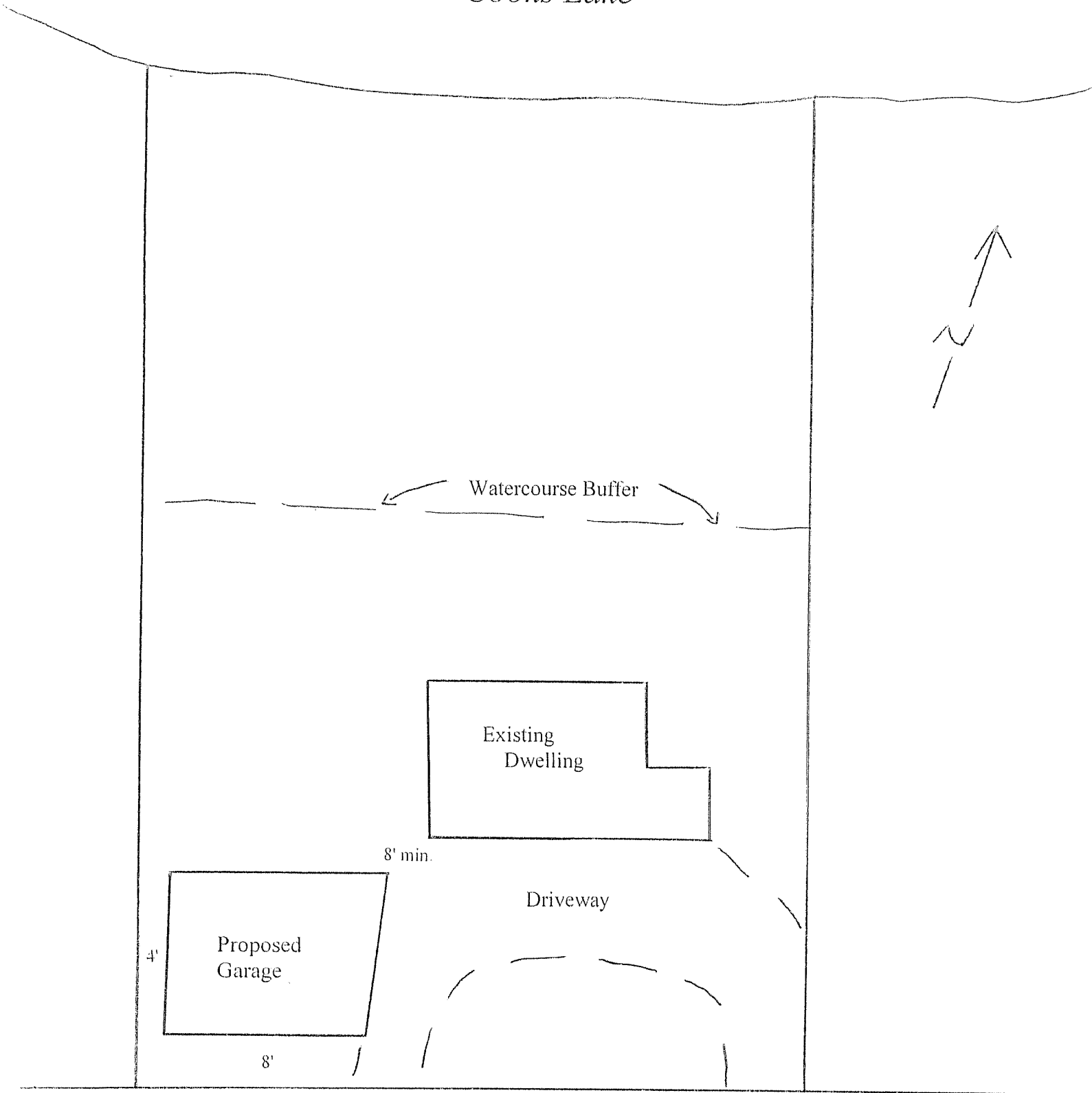
Report Approved by: Sharon Bond, Manager Subdivision and Land Use Compliance (490-4800)



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.

Attachment 2

Cooks Lake



Keddy Road



COMMUNITY PLANNING - EASTERN REGION

November 28, 2008

Dear Sir or Madame:

Re: Case No. 15002 - Variance at 71 Keddy Road, Cooks Brook, NS

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 for Musquodoboit Valley/Dutch Settlement as follows:

Location:	71 Keddy Road.
Project proposal:	construction of garage.
Required (i.e. setback):	20 feet from the street line.
Approved (i.e. setback):	8 feet from the street line.

As you have been identified as a property owner within 30 metres of the above noted address you are being notified of the following variance as per requirements of the Municipal Government Act, Section 236.

If you wish to appeal, please do so in writing, on or before December 15, 2008, and address your appeal to:

**Municipal Clerk,
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Planning and Development - Eastern Region
Alderney Gate - 40 Alderney Drive
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 Paul Boucher at 490-4321.

Sincerely,



Sean Audas, Development Officer
Halifax Regional Municipality

cc. Julia Horncastle, Acting Municipal Clerk
Councillor Steven Streach



Sean Audas - Development Officer

Community Development - Eastern Region, Alderney Gate 2nd Floor

Phone 490-4341; Fax 490-4661

E-mail: audass@halifax.ca

Web site: www.halifax.ca

December 19, 2008

COPY

Mr. Kenneth J. Doncaster
71 Keddy Road
Cooks Brook, NS B0N 1X0

RE: Variance Application #15002 - 71 Keddy Road, Cooks Brook

Dear Mr. Doncaster:

As a follow up from your application and our site visit of December 8, 2008 I would like to confirm that your Variance application has been appealed by two property owners. This appeal will be heard during the next Marine Drive and Valley Community Council meeting. We will advise you according of the date, time and location of this meeting.

In addition, when your application was processed the approval letters only identified a reduced front yard setback and not a reduced left side yard. Upon review of your application and subsequent discussions it is clear that you are also requesting a reduced side yard setback of four feet (left side yard).

While the reduced setback from the front yard was approved, the request to reduce the side yard setback was not granted. Your request to reduce the side yard setback is being refused. In accordance with the requirements of the Municipal Government Act you may appeal this decision. An appeal must be file on or before January 5, 2009, your appeal may be addressed to:

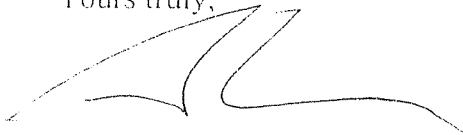
Municipal Clerk, C/O Sean Audas, Development Officer
Halifax Regional Municipality
Community Development - Eastern Region
Alderney Gate - 2nd Floor
PO Box 1749, Halifax, NS B3J 3A5

The request to reduce the left side yard setback is being refused because it is felt to violate the intent of the requirements of the Land Use By-Law. Many of the lots in this area are of similar size and width. A greater side yard setback is indicative of the more rural areas of HRM because the lots are generally larger with greater separation distances. It is felt that it would be more appropriate to either reduce the separation distance from the existing dwelling and/or reduce the size of the proposed accessory building and/or attach the accessory building to the dwelling to meet this minimum side yard setback of eight feet.

A hearing is already required because of previous appeals filed from the front yard setback request. An appeal of this decision must be filed in order for Marine Drive and Valley Community Council to consider both of the reduced setback requests.

I will be out of the office until January 5, 2009. You can either fax the request to 490-4661 or email the appeal at audass@halifax.ca. I will review the information upon my return.

Yours truly,



Sean Audas
Development Officer
HRM - Eastern Region

cc. S. Streach, Councillor District 1
J. Horncastle, Municipal Clerk

Attachment 5

9 Dec 08

To whom it may concern.

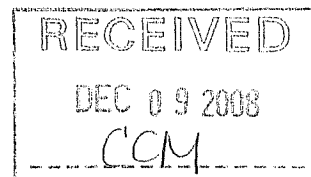
Re: Case # 15002 - Variances at 71 Keddy Road, Cooks Brook, NS.

Please be advise that I (Bonnie Jean Church) and my husband (David P. Church) will be contesting the approved request for a variance as per requirements as noted by the Municipal Government Act, Section 236.

Singed : Mr & Mrs D.P. Church

Mrs. Bonnie Jean Church
D.P. Church

81 Keddy Rd.
RR3 Middle Musq.
Nova Scotia.
B0N 1X0

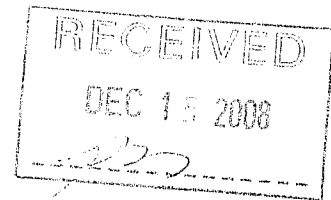


CHRISTOPHER COOTE

■ 59 Keddy Road
■ RR # 3
■ Middle Musquodoboit
B0N 1X0
■ cdjcoote@ns.simpatico.
ca

December 15, 2008

Municipal Clerk,
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Planning and Development - Eastern Region
Alderney Gate - 40 Alderney Drive
P.O. Box 1749, Halifax, N.S. B3J 3A5



Re: Case # 15002 - Variance at 71 Keddy Road, Cooks Brook, N.S.

Dear Sean,

Per our telephone conversation of last week this letter is to confirm that I wish to appeal approval of the variance granted to my neighbor at 71 Keddy Road, Cooks Brook. I understand that another of my neighbors also wishes to appeal, we await further information on how we are to proceed.

Sincerely,

Christopher Coote



Attachment 6

January 2, 2009

Sean Audus – Development Officer,
Community Development – Eastern Region,
Alderney Gate 2nd floor,
PO Box 1749,
Halifax NS,
B3J 3A5.

Re: Variance Application # 15002 – 71 Keddy Road, Cooks Brook

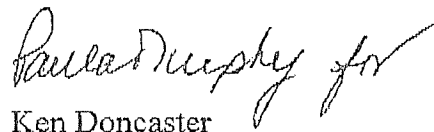
Dear Mr. Audus,

I have received your letter dated December 19, 2008 on December 31, 2008. In response to your letter of denial for the reduced side yard setback of four feet (left side yard), I am appealing this decision.

I believe that there is no intent to violate the requirements of the land use by-law as set forth in the Land Use By-Law for Musquodobit Valley and Dutch Settlement. I have read section 4.12 Accessory Buildings, subsection (a), (iv), and in turn have applied for the required variance, requesting a four foot side yard set back. I do not believe that an addition of a garage to my property will adversely affect the value, visibility or enjoyment of the neighboring and surrounding properties due to its proposed positioning. I also believe that areas that were once rural and have been reclassified to HRM should be reviewed individually regardless of the lot size. For these reasons, I believe that an appeal of this decision is appropriate.

In reviewing the recommendations made in your letter, I am firm on the location of the garage on my property and believe that any deviation from the proposed plan would translate into more expense, time, and unwanted planning and positioning of the garage on my behalf.

Thanking you in advance for your consideration in this matter.
Regards,



Ken Doncaster