




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

8.2.1

Marine Drive, Valley and Canal Community Council
May 30, 2007

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

SUBMITTED BY: 
Séan Audas - Development Officer - Community Development

DATE: May 23, 2007

SUBJECT: Variance appeal at 8690 Highway 7, Smith's Settlement

ORIGIN

This report deals with the appeal of the Development Officer's decision to refuse a variance of the front yard setback for an accessory building (garage) at 8690 Highway 7, Smith's Settlement.

RECOMMENDATION

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

BACKGROUND

Zoning:

The property is zoned MU (Mixed Use) Zone under the Land Use By-Law for Eastern Shore West.

Existing Use:

A current use of the property is a single unit dwelling. The house has been existing a number of years. An accessory building (20' x 28') was constructed without the necessary permits. A stop work order was issued for this building. During the permit review it was determined that the accessory building did not meet the required setback of 30 feet. A variance was then requested to reduce the front yard setback from 30 feet to 3.5 feet.

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 for the MU Zone is 30 feet. Information provided by the applicant indicates a setback of 3.5 feet from the front lot line.
- During the Variance application review a site visit was conducted. It was determined during this site inspection that the distances provided are not consistent with the ground measurements. A current plot plan was requested as a result of the site inspection. To date, an updated plot plan has not been received.
- Front setback requirements are implemented for many reasons such as safety concerns, maintenance purposes, future expansion of roads, signage, drainage issues and snow removal.
- A reduction to three and a half (3.5) feet from the required 30 feet is a substantial request. This is not supported by the Development Officer, because the majority of the setback is being requested to be varied which violates *the intent of the land use by-law*.

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

- 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 accessory building was constructed, without a permit.
- Customer Service records indicate that the client discussed the setback requirements and the Variance process on September 11, 2006.
- The initial stop work order was issued September 12, 2006.
- A second stop work order was issued on Oct 12, 2006.
- The building permit application was made October 16, 2006.
- The Development Officer feels that because the accessory building was constructed without the necessary permits, *the difficulty experienced results from an 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

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

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

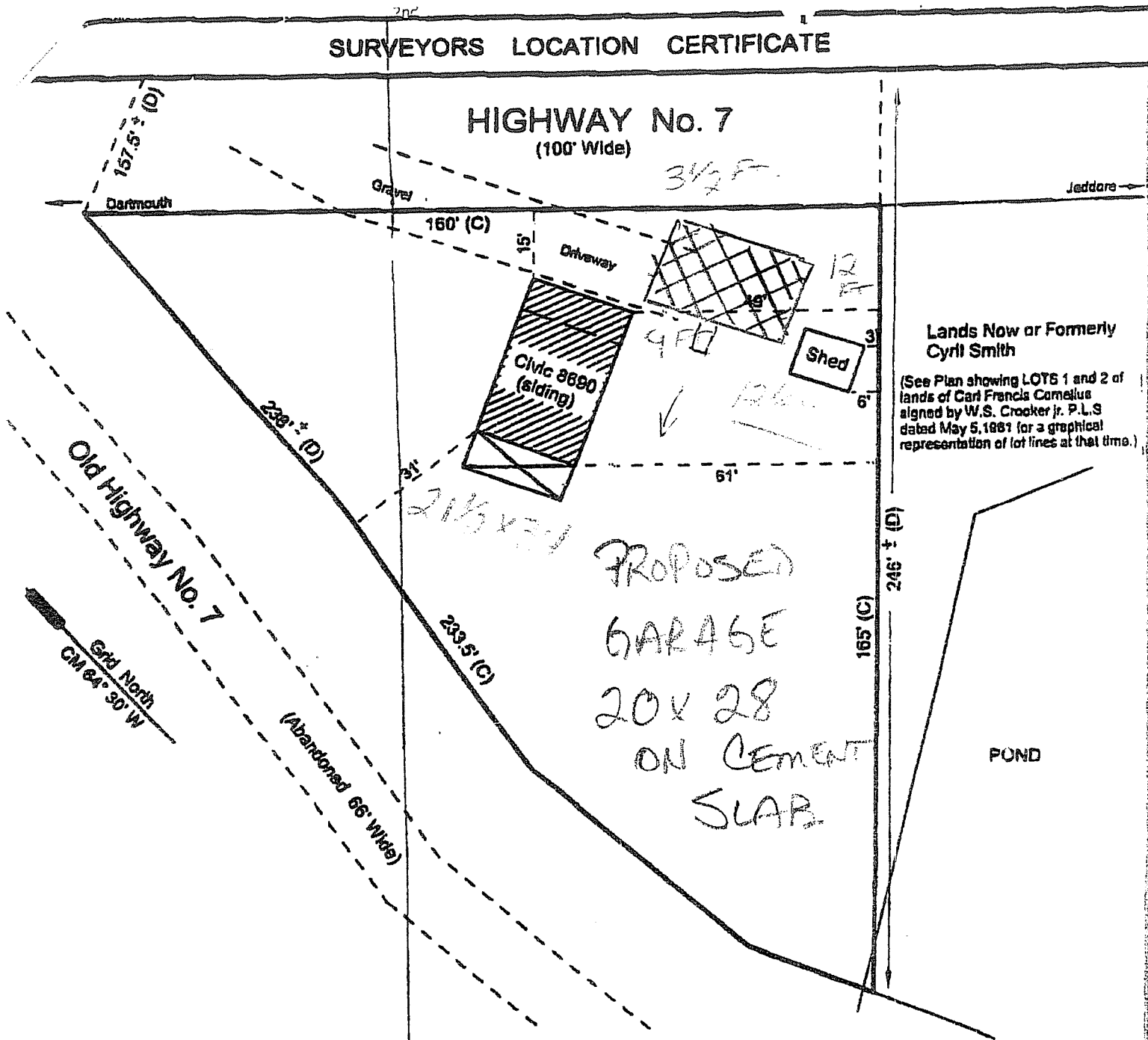
1. Site plan
2. Location Map
3. Refusal letter
4. Appeal Letter
5. Pictures of site

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Paul Boucher, Development Technician, 490-4341

Report Approved by: 
Sean Audas, Development Officer, 490-4341

SURVEYORS LOCATION CERTIFICATE



Lands Now or Formerly
Cyril Smith

(See Plan showing LOTS 1 and 2 of
lands of Carl Francis Cornelius
signed by W.S. Crocker jr. P.L.S
dated May 5, 1881 for a graphical
representation of lot lines at that time.)

NOTE: 1. Clearances shown are perpendicular to the boundary and are to the closest corners of the structure.
2. Clearances are defined to a tolerance of 5.0 Feet. Scale 1 in. = 30 ft. Date of field survey January 29, 2004

CERTIFIED TO: WILLIAM A. LAWRENCE

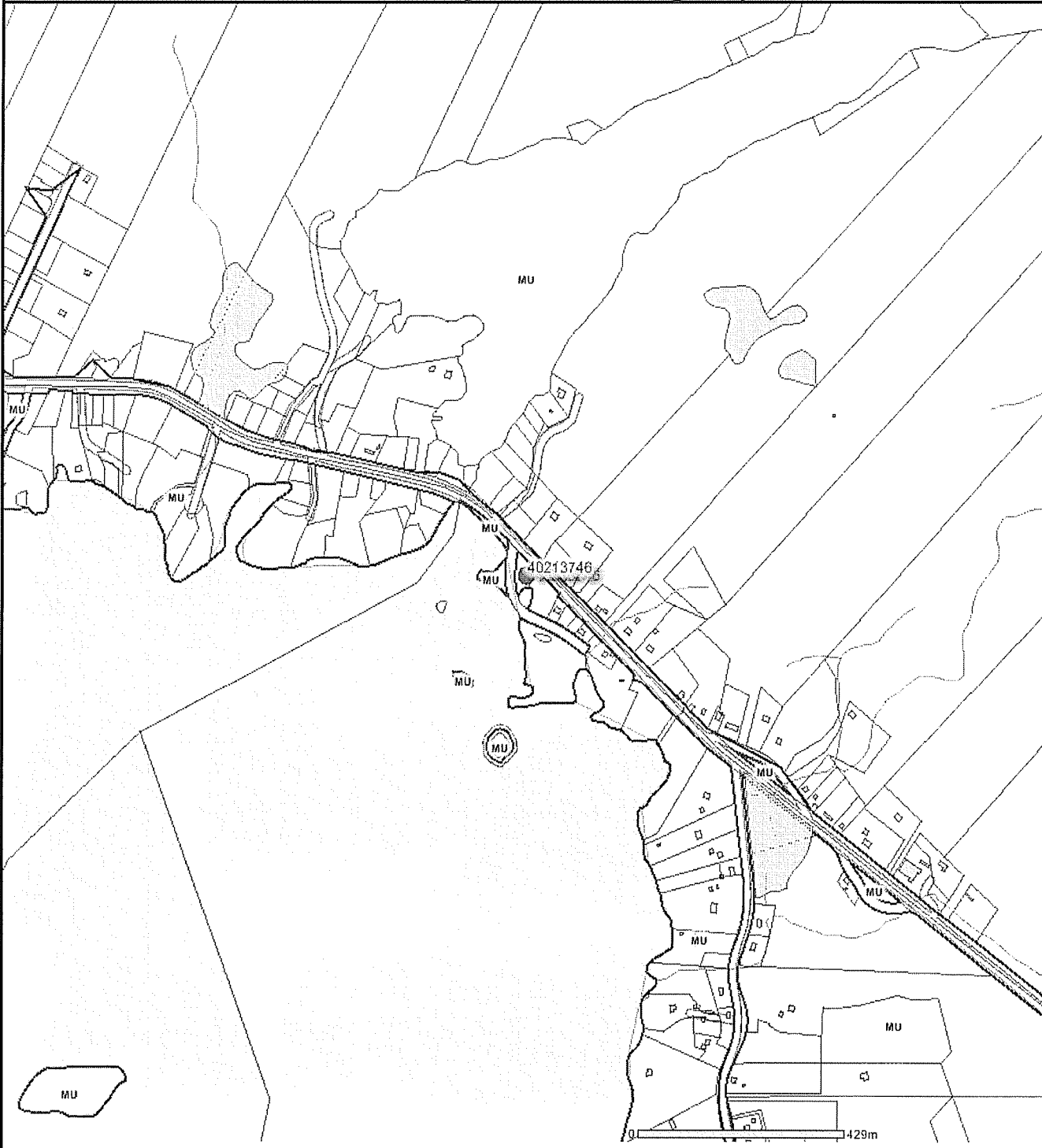
RE: CIVIC 8690
HIGHWAY No. 7
SMITH SETTLEMENT, HALIFAX REGIONAL MUNICIPALITY, NS

I, ALLAN C. MACCULLOUGH, Nova Scotia Land Surveyor, hereby certify that this Surveyors Location Certificate was prepared under my supervision and in accordance with Part VII of the Nova Scotia Land Surveyors Regulations made pursuant to section 8 of the Land Surveyors Act.

Dated January 30, 2004
Allan C. MacCullough N.S.L.S.

The Dwelling showing hereon is located entirely within the boundaries of the subject lands as said boundaries are defined by Book 5481 Page 448. Plan showing Lots 1 and 2 lands of Carl Frances Cornelius signed by W.S. Crocker jr. P.L.S dated May 5, 1881

Halifax Regional Municipality



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.

November 20, 2006

William Lawrence
8690 Highway 7
Smith's Settlement, NS
B0J 2L0

Dear Mr. Lawrence

RE: File 13397, Application for Variance - 8690 Highway 7, Smith's Settlement, 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 *Eastern Shore West* as follows:

Location: 8690 Highway 7, Smith's Settlement
Project Proposal: Construction of accessory building
Required Setback: 20 feet from street line
Variance Requested: 3.5' setback from street 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.

It is the opinion of the Development Officer that the variance violates the intent of the Land Use By-law and therefore is an 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 *November 30, 2006*.

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If you have any questions or require additional information, please contact this office at 490-4341.

Sincerely,



Sean Audas
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Streach , District 1

40 Alderney Drive, PO Box 1749, Halifax, NS B3J 3A5 Tel: 490-4490, Fax: 490-4661
E-Mail: bouche@region.halifax.ns.ca Web Site: www.region.halifax.ns.ca

William Lawrence
8690 Highway # 7
Smith Settlement,
NS B0J 2L0

RECEIVED

NOV 23 2006

Planning & Development Services
Halifax Regional Municipality

November 27, 2006

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

Dear Mr. Audas:

RE: File 13397, 8690 Highway 7, Smith Settlement, NS -Request to Appeal

Please accept this letter as confirmation of my wish to appeal the decision denying a variance from the requirements of the Land Use Bylaw.

My position in this matter is that intentional disregard was not a factor. During the original visit to your office to complete the application for a building permit, I had been directed by a representative of your department that it may be necessary to prepare a letter to send to all neighbours owning properties bordering mine for their approval.

That same day, when I returned home, I found that the contractor had already poured the cement pad for the garage. I informed him of the direction I received and expressed my concern of the progress he had made. He assured me that I had only cause to worry if I was “feuding” with any of my neighbours and advised me that he would continue to build until such time as the building inspectors showed up and asked him to stop. He also went further to explain that orders of variance such as the one I needed are granted all the time and because of commitments to other projects, if he didn’t finish this one, I would have to wait for several months.

Due to the fact that the garage was completed within days, and the project was clearly visible to any passing inspector I assumed that he his recommendations were accurate. His experience working in this area is well known to me and I had no reason to mistrust his judgment or his decision on the placement of the garage in respect to not meeting bylaw requirements. It was my assumption that a contractor would not knowingly proceed with a project without a permit if it were not conceivable.

Only after I happened across a bagged "Second Notice" from your department, did I realize that there was an issue. This notice was found stuck in the mud on the north side of my house.

It was my sincere intent to proceed with the application prior to completing the construction (no electrical or dry walling has been started) and upon visiting your office for a second time to obtain clearer direction on the process, I was again informed that the only object of concern would be the opposition expressed by neighbours.

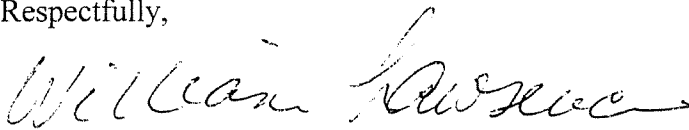
Having received nothing but admirable comments from members of this community in respect to the garage and how it "cleaned up" the appearance of the property, I fully expected to have received approval by your department.

Issues resulting with the drilling of a new well to replace the existing original well, located on the opposite side of the highway (due to the expropriation of land by the government to build the very highway that is now hindering further improvement to this property) were very time consuming and resulted in my failure to immediately proceed with the application process. The completion of the well actually took longer than the construction of the garage.

I have been attempting to renovate this 100 + years home for several years and have previously been granted a permit to reconstruct the front portion of the residence. I am a law abiding, tax paying citizen who unfortunately this time did not react in a timely fashion and I respectfully ask the departments cooperation in assisting me to increase the value of my property and make it more appealing to drive past in this community.

I would appreciate an opportunity to meet with you to clarify the boundaries and objections of the department.

Respectfully,

A handwritten signature in cursive script that reads "William Lawrence".

William (Bill) Lawrence

/cs

ATTACHMENT 5 - Pictures of site

