



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

North West Community Council  
October 23, 2008

TO: Members of Western Region Community Council

SUBMITTED BY:

  
Trevor Creaser, Development Officer

DATE: October 13, 2008

**SUBJECT: Appeal of the Refusal of Variance #14805 - 56 Neily Drive, Lower Sackville**

**ORIGIN**

This is an appeal of the Development Officer's decision to refuse a variance application for the reduction of the front yard setback requirements of the Land Use Bylaw for Sackville for the construction of a porch to the front of a single unit dwelling at 56 Neily Drive, Lower Sackville.

**RECOMMENDATION**

It is recommended that Council uphold the decision of the Development Officer to refuse the request for a variance.

**BACKGROUND**

The subject property is located at 56 Neily Drive, Lower Sackville (refer to Attachment 1). 56 Neily Drive is zoned R-1 (Single Unit Dwelling) under the Land Use Bylaw for Sackville.

On June 26, 2008 a Development application was submitted for the construction of an addition to a Single Unit Dwelling. The application was denied as it did not meet the minimum required front yard setback of 20 feet. The applicant was notified and was given the option to apply for a variance from the required front yard setback. An application for a variance was subsequently submitted on July 16, 2008 requesting a reduction of the minimum required front yard setback from 20 feet to 11 feet (see Attachment 2).

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The applicant had cited that one of the reasons for applying for the variance was safety concerns of the existing entry to the home. Given its small area, there is little room for maneuvering and storage.

The Building Official reviewed the information submitted by the applicant and advised that the entry would have met the building code requirements that were in place at the time for a split entry style home. Current, standards do require that there be at least 12" from the door swing to the bottom step of the first level.

The Development Officer reviewed the variance application under criteria outline in the MGA and the application was refused on August 11, 2008 (refer to Attachment 3) which was appealed by applicant on August 18, 2008 (refer to Attachment 4).

**DISCUSSION**

The *Municipal Government Act* sets out guidelines under which the Development Officer may consider variances to Land Use Bylaw requirements. Those guidelines 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 guidelines. An assessment of the proposal, relative to these stipulations, is set out below.

*(a) variance violates the intent of the land use bylaw;*

The land use bylaw sets out minimum front yard setbacks from public street rights of way to ensure sufficient spacial separation of an building to the street. It is the opinion of the Development Officer that the construction of the addition only 11' from the street right of way would *violate the intent of the land use bylaw.*

*(b) difficulty experienced is general to the properties in the area:*

There are no unique conditions on the property that would justify approving this variance. The lot configuration and position of the dwelling is consistent with other properties in the area (refer to attachment 1). It is therefore determined that *the difficulty experienced is general to properties in the area.*

*(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

As no construction has occurred at this site *intentional disregard* was not a consideration in refusing this variance.

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**BUDGET IMPLICATIONS**

None

**ALTERNATIVES**

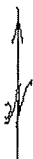
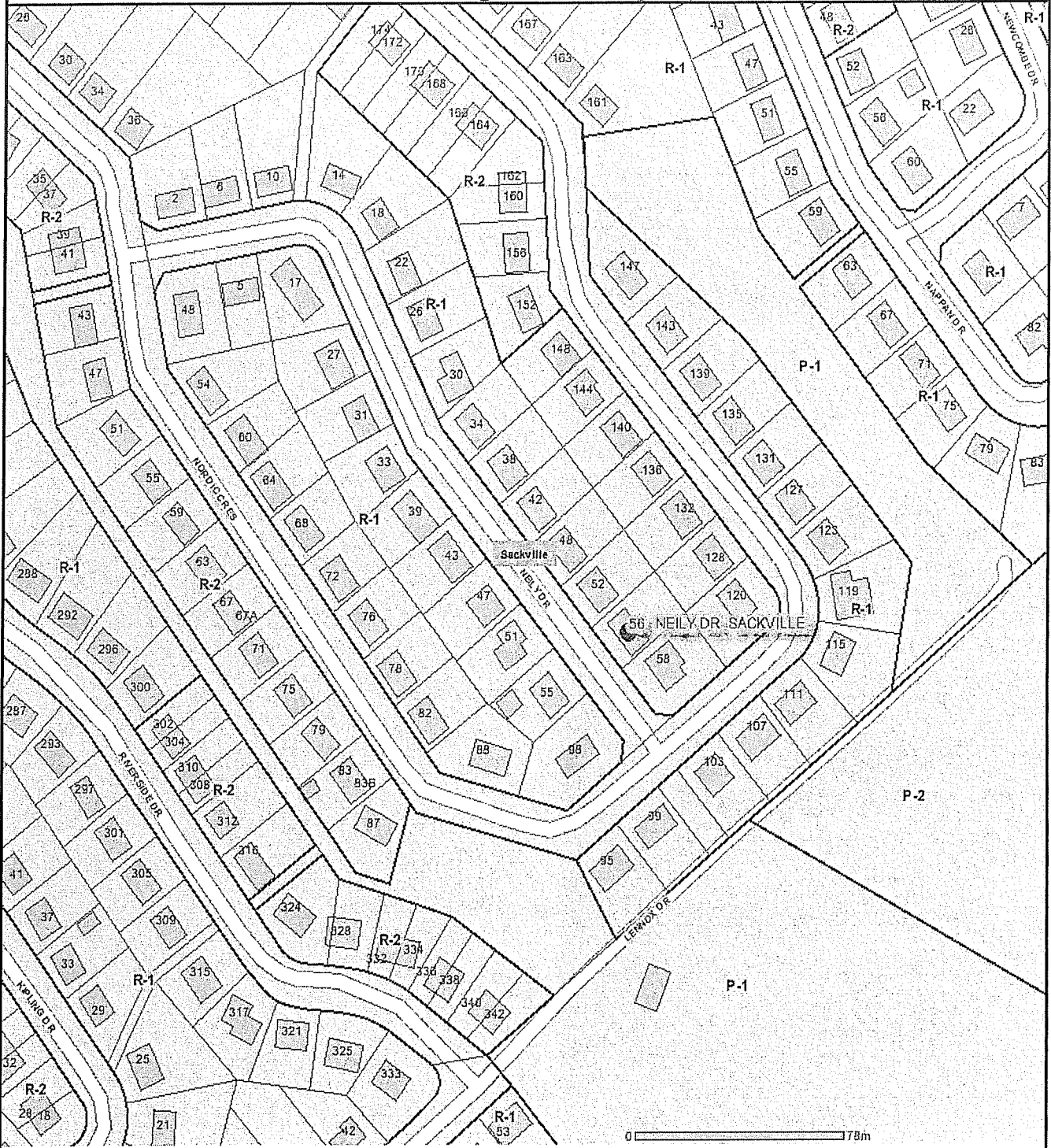
1. Uphold the decision of the Development Officer to refuse the application for variance. This is the recommended alternative.
2. Overturn the decision of the Development Officer, thereby allow the appeal.

**ATTACHMENTS**

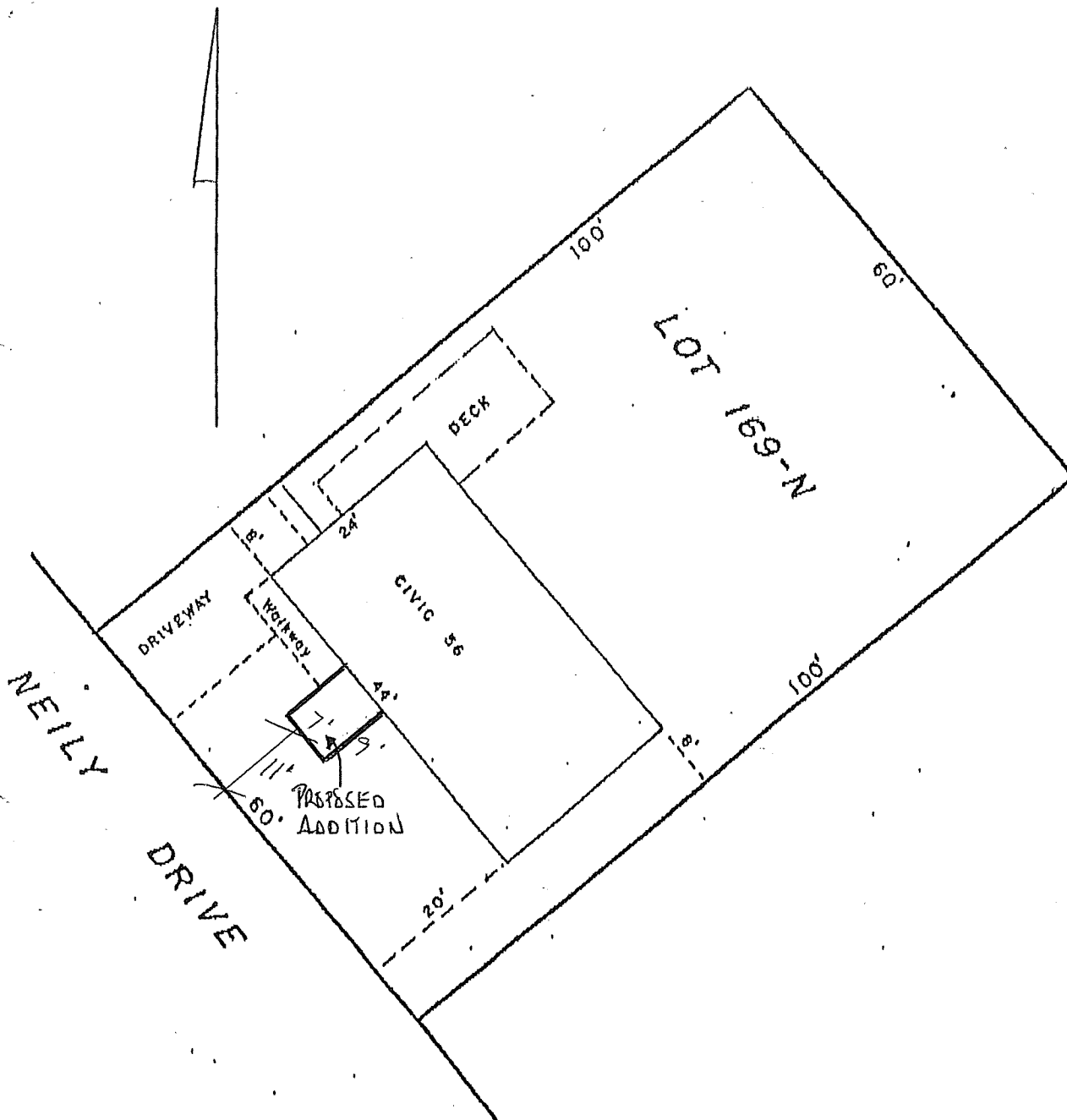
1. Location map
2. Site Plan
3. Variance Refusal Letter
4. Appellant's Letter

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: Trevor Creaser, 869-4235.

# 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 [civcadd@halifax.ca](mailto:civcadd@halifax.ca). Date of map is not indicative of the date of data creation.



- 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 ..... FT.

SCALE 1" = 20'

Attachment 3

August 11, 2008

William Curtis Moulton  
56 Neily Drive  
Lower Sackville, NS  
B4C 2G7

Dear Mr. Moulton

RE: Variance Application # 14805

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This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for variance from the requirements of the Land Use Bylaw for **Sackville** as follows:

Location: 56 Neily Drive

Project Proposal: Addition to Single Family Dwelling which will bring the house closer to the Right of Way of Neily Road. The front yard setback is 20 feet from the Right of way, the addition will reduce it to 11 feet.

Variance Requested: 11 feet from 20 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 violates the intent of the Sackville Land Use Bylaw and is general to properties in the area.

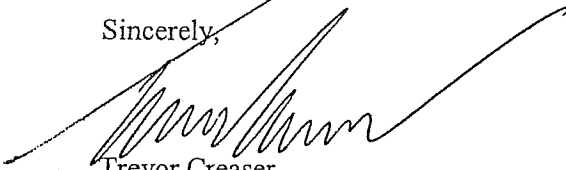
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

**Municipal Clerk**  
*c/o Trevor Creaser, Development Officer*  
**Halifax Regional Municipality**  
**Development Services - Central Region**  
**P.O. Box 1749**  
**Halifax, NS B3J 3A5**

Your appeal must be filed on or before **August 18, 2008**.

If you have any questions or require additional information, please contact this office at 869-4389.

Sincerely,

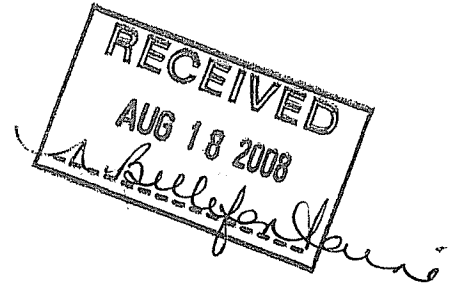


Trevor Creaser  
Development Officer

cc. Vi Carmichael, Municipal Clerk  
Councillor Bob Harvey, District 20

August 18, 2008

Municipal Clerk  
Halifax regional Municipality  
Development Services – Central Region  
P. O. Box 1749  
Halifax, N.S. B3J 3A5



RE: Variance Application # 14805

To Whom It May Concern:

I am appealing the decision of the Development Officer to deny the subject variance application # 14805 to the Municipal Council pursuant to Section 236(4) of the Municipal Government Act.

I do not believe that the proposed structure violates the intent of the Sackville Land Use Bylaw. I also believe that the Officer did not take into consideration the safety of the occupants of the household because of the narrow entrance way in existence in the existing structure. The safety concerns are outlined in the Variance Application.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Bill Moulton".

Bill Moulton



## HRM file no. 93757

The reason that I am applying for a variance is to build a 9 ft x 7 ft porch onto our existing house. Our current structure has an entrance that is 5 ft 8 in x 38 in entrance, and this is very small. In order to exit our house, we have to step back onto the steps in order to open the door. If there are shoes or boots in the entranceway, this impedes our ability to open or close the door, and sometimes the door will catch in the shoes or boots and make entering the house difficult, as you have to try and get the shoes or boots out from under the door. This can also lead to a safety hazard in the case of an emergence. As you can see from the pictures provided, often the shoes are left on the stairs as there is no room in the entranceway for them and this in itself is a safety hazard. The existing structure was built 20 ft from the property line, and bylaw for R-1 structures states that the minimum front or flankage yard must be no less than 20 ft. By building a porch we will be out 9 ft, which will give us a front or flankage yard of 11 ft in the area of the porch only. This will greatly improve our quality of life and also make the entranceway much safer for the residents, and in the case of an emergency situation, make the entrance or exit of emergency personnel much safer.