

8.2.1

Variance Appeal - 1069 Belmont On The Arm  
Council Report

- 1 -

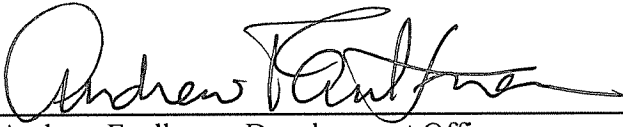
May 29, 2008



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

Peninsula Community Council  
June 9, 2008

**TO:** Chairman and Members of Peninsula Community Council

**SUBMITTED BY:**   
Andrew Faulkner - Development Officer

**DATE:** May 29, 2008

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for a Variance - 1069 Belmont On The Arm, Halifax

**ORIGIN**

This report deals with an appeal of the Development Officer's decision to approve a variance from the Gross Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit an addition to a single family dwelling.

**RECOMMENDATION**

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

**BACKGROUND**

The subject property is located at 1069 Belmont On The Arm in Halifax. The property is zoned R-1 (Single Family Zone) under the South End Secondary Planning Strategy of the Halifax Peninsula Land Use Bylaw. The subject property is a 19,257 ft<sup>2</sup> lot which would permit a maximum Gross Floor Area Ratio of 0.35 (equal to a floor area of 6739.9 ft<sup>2</sup>).

The applicant has proposed demolition and reconstruction of a single family dwelling. The proposed footprint of the new dwelling is at 25% of the lot area. Maximum lot coverage is 35%.

To clarify one point in the appeal letters regarding building height, the maximum height permitted is 35 ft. The proposed building is two stories at street level and three storeys in the back. As measured

from the street level, the proposed height is 25 ft.

“Height South-End” from the Peninsula Land Use ByLaw is defined as the following:  
...”said height being the vertical distance of the highest point of the roof above the mean grade of the finished ground adjoining the building between the building and the fronting street.”

This Variance was approved by the Development Officer on April 15, 2008. Subsequent to the approval notification, four appeals was received.

### **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.

#### **Does the proposed variance violate the intent of the land use bylaw?**

In many cases, the intent of a specific regulation in a land use bylaw can be quite general in nature and determining the intent sometimes requires subjective judgement. However, in this case, due to the recent review and subsequent adoption of the affecting GFAR requirements staff believe the intent is clear.

The GFAR requirements were adopted to achieve two objectives. Firstly, to limit the size of dwellings which could be converted to create an excessive number of bedrooms. That is not an issue with this application. The bedroom count is three bedrooms.

Secondly, to allow Single Unit Dwellings but restrict the potential of rooming houses through Gross Floor Area. Although the required FAR is .35 for this property, more than half the properties in the area have a required FAR between .50 and .60.

One of the goals in planning policies adopted for the established neighbourhoods of the Halifax Peninsula is to maintain the character and stability of these areas through Municipal Planning Strategy (MPS) policies such as Policy 2.4 which states:

*“... the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can*

*control will be compatible with these neighbourhoods."*

The intent is to prevent houses that are out of scale with the neighbourhood. The houses in this neighbourhood vary in size and there are some houses with a higher FAR than this one. See chart in this document. Also see photos attached.

In determining whether the proposed variance violated the intent of the bylaw, an assessment of the GFAR of the surrounding properties was undertaken. As there were few recent permits for adjacent properties; some GFARs were determined using HRM mapping and photos.

The following is a list of properties within the notification buffer detailing estimated floor area and GFAR of the dwellings. The property subject to the variance is in bold. According to our calculations, nine out of twelve properties are over the GFAR.

There is subdivision potential with this lot, which would create two single family dwelling lots with small buildings which would be completely incompatible with this neighbourhood.

Belmont On The Arm	Floor Area (ft <sup>2</sup> )	Lot Area (ft <sup>2</sup> )	GFAR
1043	4165	22600	0.55
1055	2422	20237	0.36
<b>1069 (applicant)</b>	<b>3284</b>	<b>19257</b>	<b>0.51</b>
1079	3143	20800	0.45
1087	3110	19348	0.48
1124	1313	6044	0.43
1132	2476	7370	0.67
1138	2250	5863	1.54
1144	1840	6490	0.57
1150	1430	5995	0.48
1156	1367	5995	0.46
1160	1344	5050	0.8

The applicants are proposing a GFAR of .51, which is lower than some of the properties in the area, but at the high end of GFAR for comparable large lots. Overall the proposed GFAR is in keeping with the proportions of other residences to lot size in the area. The additional floor area is not visible from the street. Based upon this, staff believe that the proposed variance does not represent a violation of the intention of the LUB.

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

The properties in the surrounding area are varied in size ranging from 5,050 sq ft to 22,600 sq ft., as a result, the permitted FAR ratio also varies. The smaller the lot, the higher the FAR ratio. Staff feel the difficulty experienced is not general to the properties in the area..

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

There has been no intentional disregard for the requirements of the Land Use Bylaw. The applicant applied under permit 91934, which was denied as it did not meet the GFAR requirements. The applicant proceeded to apply for a variance.

**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 approve the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and refuse the variance.

**ATTACHMENTS**

1. Location Plan
2. Approval Letters with Site and Elevation Plans.
3. Appeal Letters (4)
4. Photos

**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: Brenda Seymour - Development Technician (490-4046)



COMMUNITY DEVELOPMENT

PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

April 15, 2008

United Gulf Developments  
380 Bedford Hwy  
Halifax, NS B3M 2L3

**RE: Application for Variance, File No. 14406, 1069 Belmont On The Arm, Halifax**

This will advise you that the Development Officer for the Halifax Regional Municipality has approved your request for a variance from the requirements of the Land Use By-law for the Halifax Peninsula Plan Area as follows:

**Location:** 1069 Belmont On The Arm, Halifax  
**Project Proposal:** construct single unit dwelling  
**Required:** Vary Gross Floor Area (GFAR) from .35 to .51

In accordance with Section 236 of the **Municipal Government Act**, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development officer to the Municipal Council. An appeal must be filed on or before **May 5<sup>th</sup>, 2008**.

**No permits will be issued until the appeal period has expired and any appeals disposed of.**

If you have any questions or require additional information, please contact Brenda Seymour at 490-4046.

Sincerely,

A handwritten signature in black ink that reads "Andrew Faulkner". The signature is written in a cursive, flowing style.

Andrew Faulkner  
Development Officer

cc. Julia Horncastle, Acting Municipal Clerk  
Councillor Sue Uteck (District 13)

PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

April 15, 2008

Dear Assessed Owner:

**RE: Application for Variance, File No. 14406, 1069 Belmont On The Arm, Halifax**

**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.**

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

**Location:** 1069 Belmont On The Arm, Halifax  
**Project Proposal:** construct single unit dwelling  
**Required:** Vary Gross Floor Area (GFAR) from .35 to .51

Pursuant to Section 236 of the Municipal Government Act, assessed property owners within 30 meters of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, on or before **4:30 p.m. May 5<sup>th</sup>, 2008** and address your appeal to:

**Municipal Clerk,  
c/o Andrew Faulkner, Development Officer, Halifax Regional Municipality,  
Planning and Development - Western Region,  
P.O. Box 1749, Halifax, N.S.  
B3J 3A5.**

If you have any questions or require clarification of any of the above, please contact Brenda Seymour at 490-4046.

Sincerely,



Andrew Faulkner  
Development Officer

cc.

Julia Horncastle, Acting Municipal Clerk  
Councillor Sue Uteck (District 13)

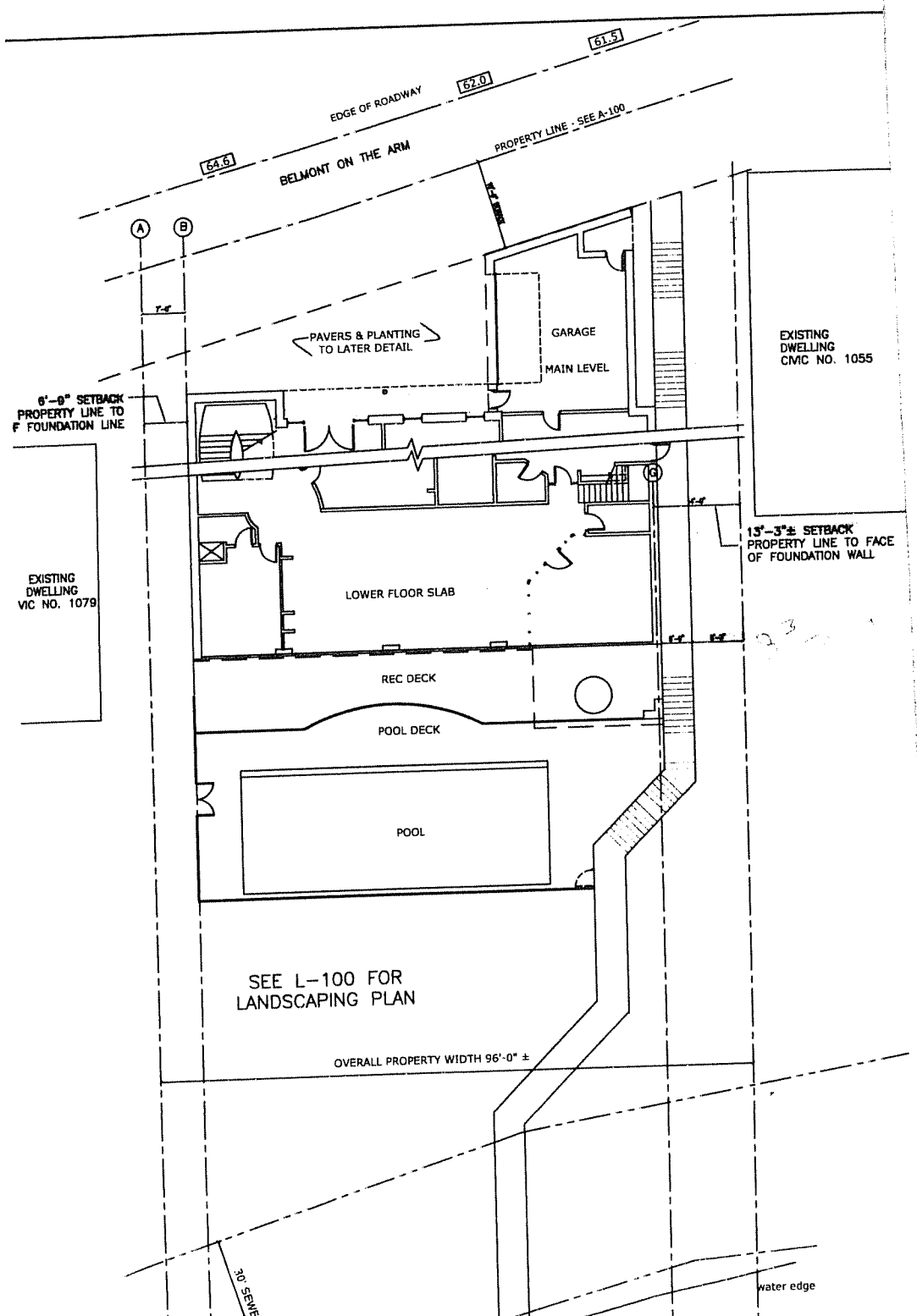


DATE: April 15, 2008

SUBJECT: Variance application for 1069 Belmont On The Arm, Halifax

SITE PLAN, and ELEVATIONS

To vary Gross Floor Area (GFAR) from .35 to .51

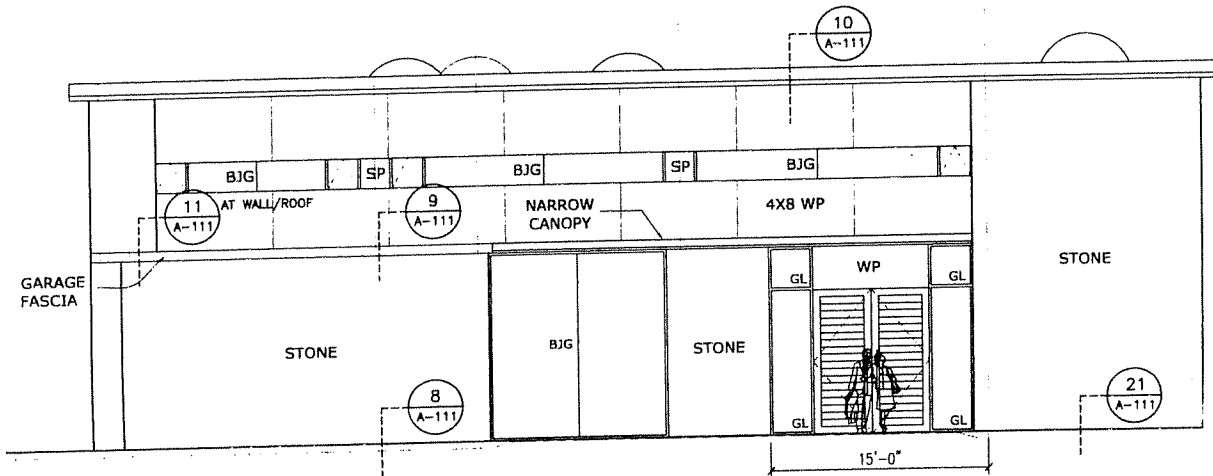


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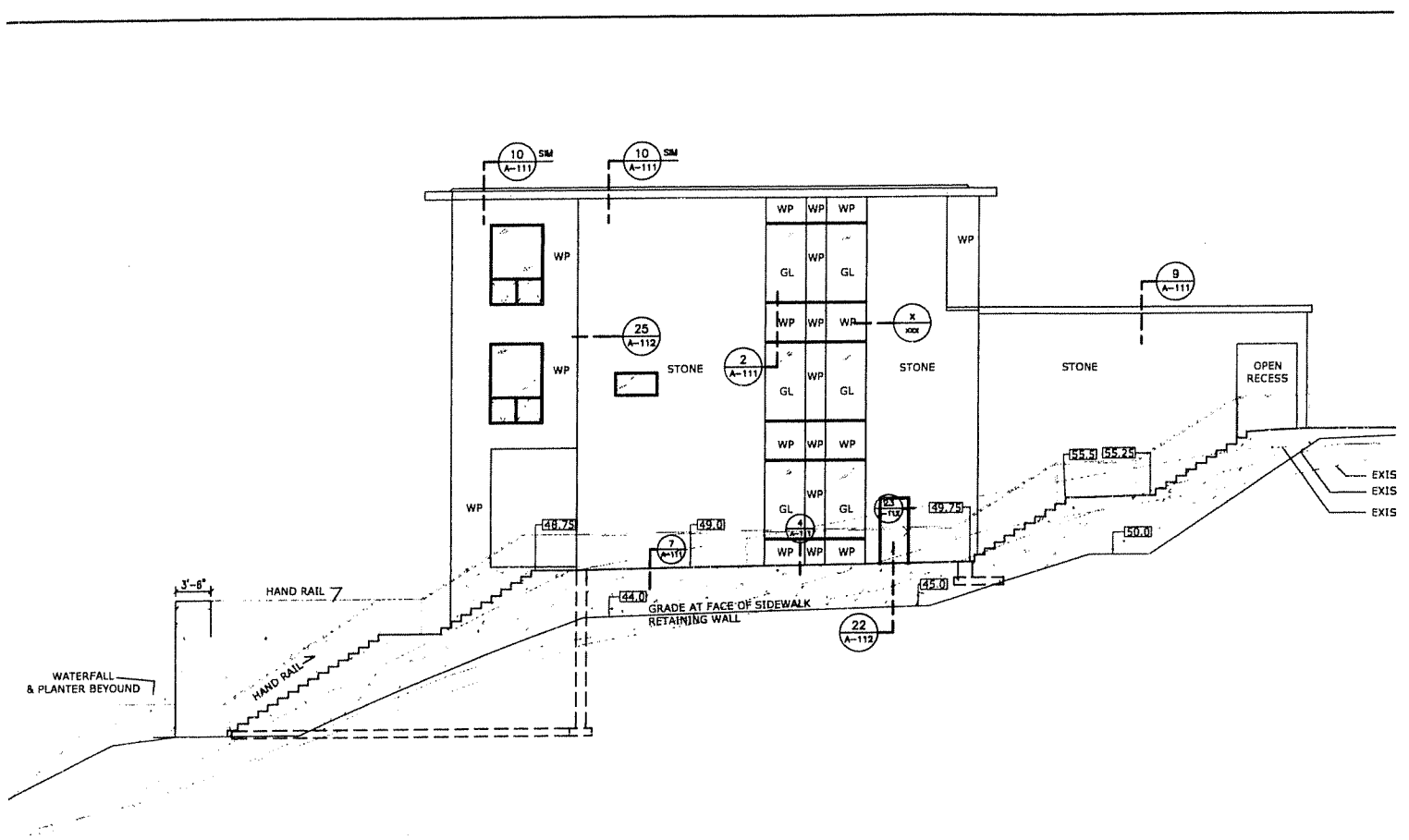


DATE: April 15, 2008

SUBJECT: Variance application for 1069 Belmont On The Arm, Halifax

SITE PLAN, and ELEVATIONS

To vary Gross Floor Area (GFAR) from .35 to .51



**Mark Glazebrook**

MSc, PhD, Dip Sports Med., MD, F.R.C.S. (C)  
Orthopaedic Surgeon and Researcher  
Subspecialty in: Reconstructive Foot & Ankle Surgery  
and Orthopaedic Sports Medicine

April 28, 2008

Andrew Faulkner  
Development Officer  
Halifax Regional Municipality  
PO Box 1749  
Halifax, NS  
B3J 3A5

Queen Elizabeth II Health Sciences Center  
Halifax Infirmary (Room 4867)  
1796 Summer Street  
Halifax, Nova Scotia  
B3H 3A7  
Phone: (902) 473-7137  
Fax: (902) 473-7201

Dear Andrew Faulkner:

RE: Application for Variance, File No. 14404, 1069 Belmont On The Arm, Halifax

✓ This is a response to your letter of April 15, 2008 regarding the dwelling that is scheduled to be constructed directly adjacent to my current dwelling (1055 Belmont on the Arm) that has been scheduled for an increased land mass coverage of 51% as apposed to pre-existing city regulation of 31%.

I have a number of concerns with this and would like to formally appeal this acceptance of variance.

First and foremost, I would suggest that the information and diagram that was provided HRM inadequate. The diagram is neither a blue print nor an accurate diagram that includes legible measurements. It is illegible causing it to be difficult to determine where the borders of the dwelling are going to be and where the borders of the landscaping are going to be placed. To this date there has been no explanation of this other than an inadequate diagram describing the plan that has been approved by the HRM.

Thus, I request an improved plan that will allow me to determine the actual dimensions of the proposed dwelling. I would also request clarification of how and why the application for variance has been approved, i.e. what was the process approved by HRM?

According to my interpretation I am appealing this request of variance on the following grounds:

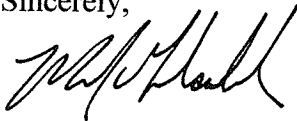
1. The increase in gross floor area will result in a decrease in environmental green space for the neighborhood. Setting such a precedent in our neighborhood will significantly jeopardize the future environmental green space.
2. The increase in gross floor area will result in a significant obstruction of pre-existing views of the Northwest Arm and surrounding green space. Our

assessments and subsequent high property taxes are based in part on the views of the Northwest Arm and the surrounding green space which will be significantly altered if this variance is granted.

3. The increase in gross floor area will result in decrease privacy for adjacent homes. Again, our assessments and subsequent high property taxes are based in part on the privacy this neighborhood offers.
4. The increase in gross floor area will significantly affect the landscape of the adjacent backyards, especially if there are large rock walls involved.
5. The increase in gross floor area may also adversely affect the wildlife and ecosystem that is unique to our neighborhoods backyards.
6. There is no mention of development at the waterfront and we are concerned with such a large variance that there is also plans for changing the waterfront that will lead to a further land mass use.

I look forward to your response, improved compliance to current building regulations and improved productive communications that will lead to the construction of a new dwelling in our neighborhood that does not affect its current character.

Sincerely,



Mark Glazebrook, PhD, MD, FRCS(C)

1152 Belmonton H.W. Co.  
Halifax B2H 1J3  
Apr 19 4/68

Mr. Andrew Faulkner  
Development Officer  
City of Halifax

Dear Sir;

I write with extreme difficulty  
after an unsuccessful operation (Cataract),

I strongly disagree with what I  
consider a major variance at 1069 Belmonton  
on the assumption it would greatly lower  
property values of nearby properties and  
all properties on the Street.

My house was one of six I designed  
and had built according to rules &  
regulations, which is as it should be

A variance helps only the applicant  
& generally harms those nearby.

The last situation like this was with  
Larry Freeman. I replied that his house  
should be built suitable for the lot. He said he  
would get the variance anyway, which he did.  
I don't know the details but I know the  
neighbours next door had trouble because of it.

I built a house on Ingle, Bellevue,  
one in Lunenburg & one in Bridgewater - all  
nice houses, plus the one I'm in since  
1965, which I designed, had built on a  
difficult lot, but my choice of all lots  
but never asked for a variance

Yours very truly  
Margaret Pickering

25  
70  
131

fax - 770 14 10

BRENDA

Attention: HRM Community Development Variance Department

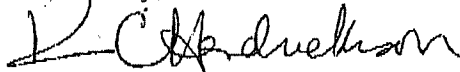
May 2, 2008-05-03

Kim Hendrickson  
1150 Belmont on the Arm  
Halifax, Nova Scotia  
B3H 1J3

RE: Application for Variance, File No. 14406, 1069 Belmont on the Arm, Halifax

I am writing to appeal as I am concerned about the height which will impede the  
waterview for the street. My concern is the elevations which potentially devalue the  
other houses on the street.

Sincerely,



Kim Hendrickson  
422-9262

Dr. Raymond P. LeBlanc  
1144 Belmont on the Arm  
Halifax, NS  
B3H 1J3  
902-473-3639 (w)  
902.423.0800(h)

May 1, 2008

Andrew Faulkner  
Development Officer  
Community Development  
Halifax Regional Municipality  
PO Box 1749  
Halifax, NS B3J 3A5

**Re: Application for Variances, File No.14406, 1069 Belmont on the Arm**

Dear Mr. Faulkner,

I am in receipt of your letter dated April 15<sup>th</sup>, regarding the application for the variance of the property listed above.

I have reviewed the proposed building and the possible consequences of the variance of the gross floor area. Based on the plan that is currently in my hands, I would have no objections to the increase in the GFAR. This agreement however, is conditional upon the building following the plan that has been submitted.

My biggest concern with a development on that site, relates to our recent experience with the development on the site next to it - South-East - where a very large footprint house was built as close to the road as possible with a height of 35 feet, effectively blocking the view of the Arm for several properties, including our own. A repeat of that performance would be less than ideal, and I am assuming a quid pro quo of an increase in the footprint might be offset by making sure that the height is lowered. I note in the plan that the roof would be flat, which is a good thing, and as far as I could tell, the height of the building will be significantly less than the 35 foot ceiling currently dictated by regulations. Unfortunately, the plan does not include any measurements that allow me to be absolutely sure of the height, however in an indirect conversation with the applicant, I understand that it might more be in the order of 25 feet.

Confirmation that these guidelines will indeed be adhered to would make me comfortable and certainly I would be in favor of the variance.

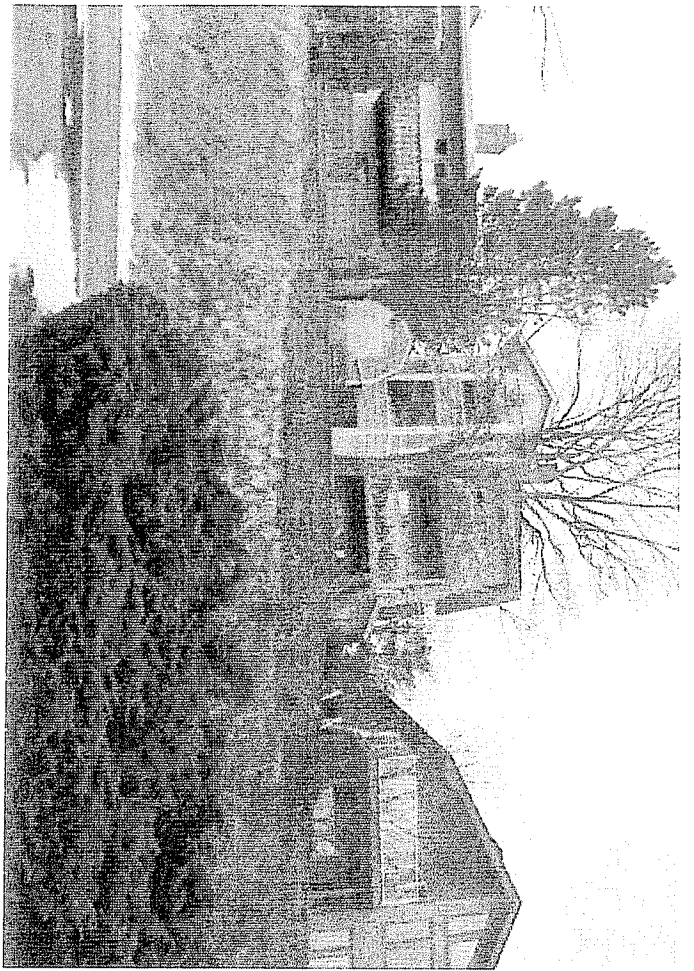
Sincerely,



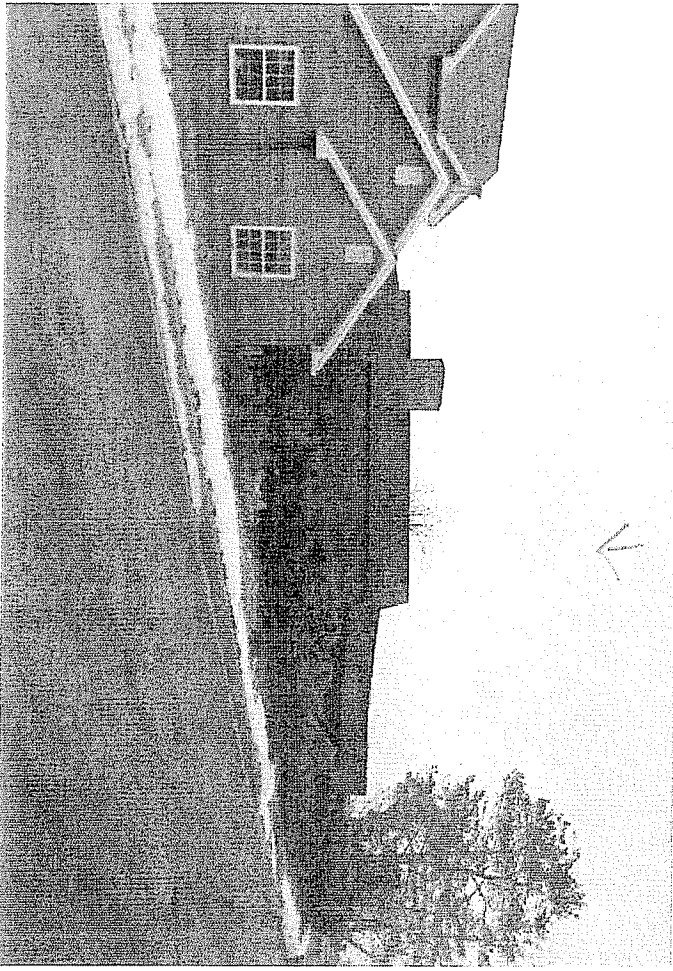
R. P. LeBlanc, CM, MD, FRCSC

c Julia Horncastle, Acting Municipal Clerk  
Councillor Sue Uteck (District 13)

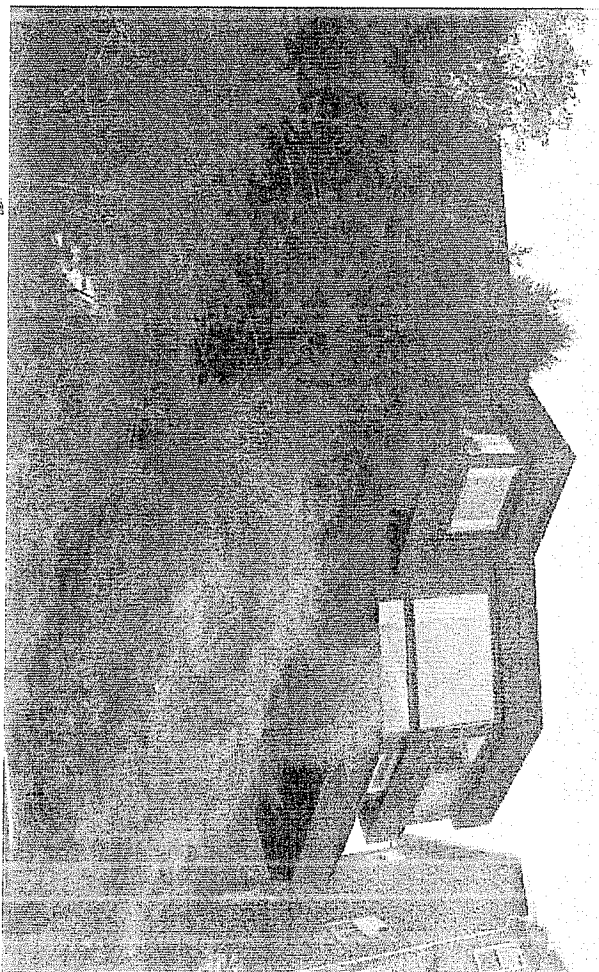




Across the Street at Front



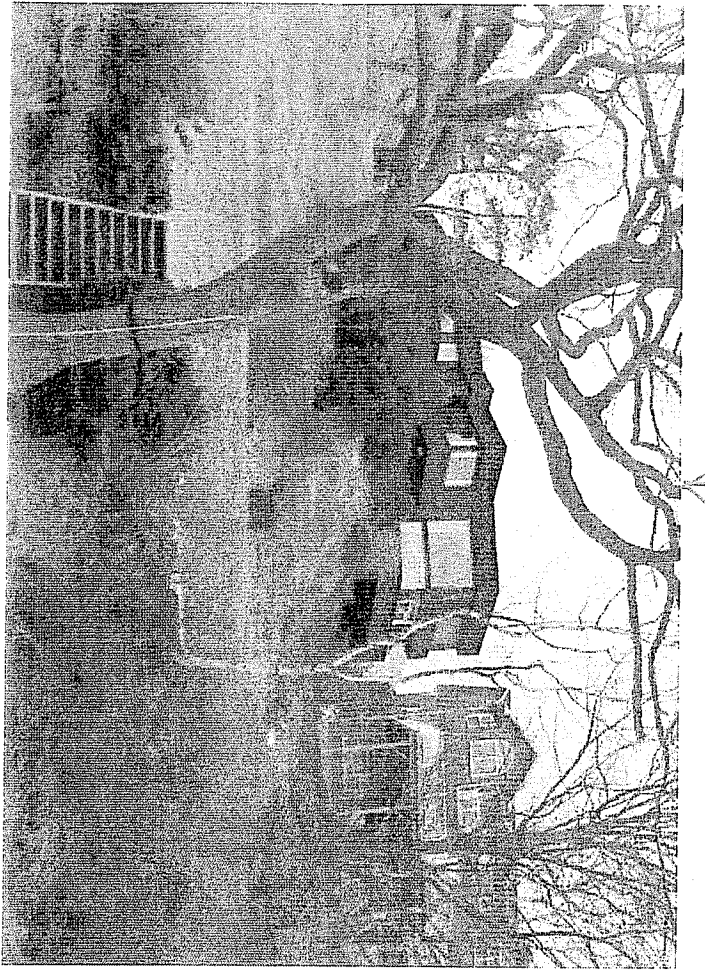
Street Side



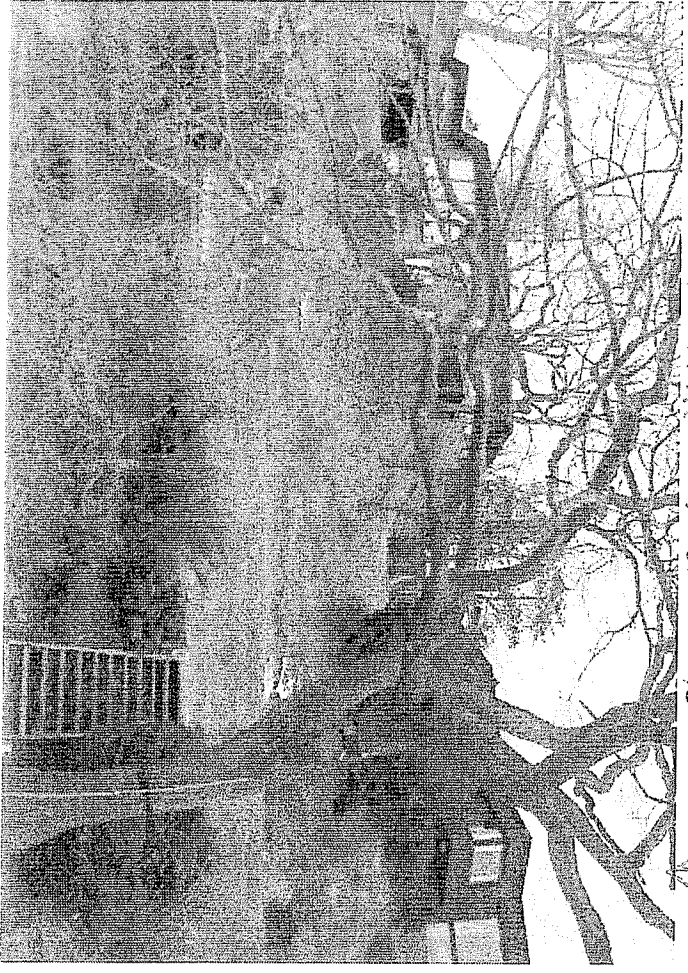
Rear of House to be removed



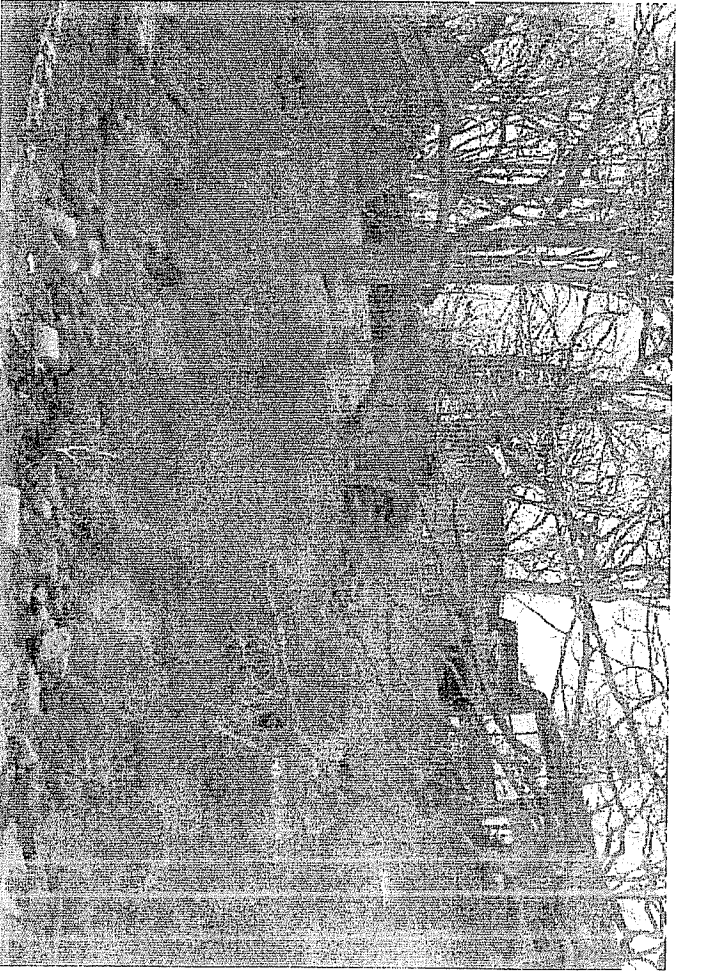
Across Street at Front



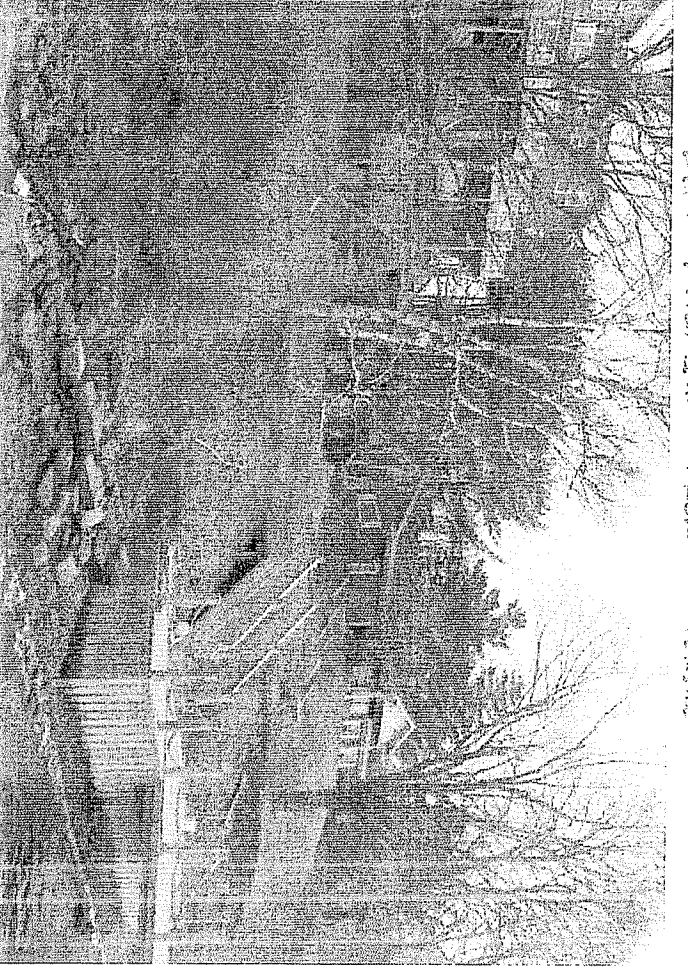
Left side of house



Right side of house

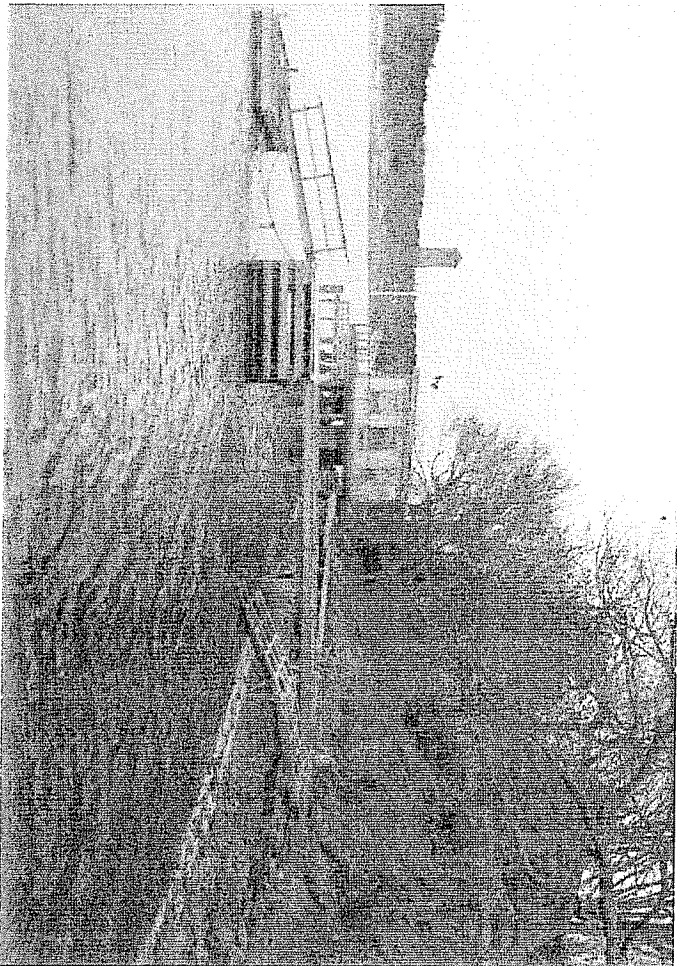


Left side of house

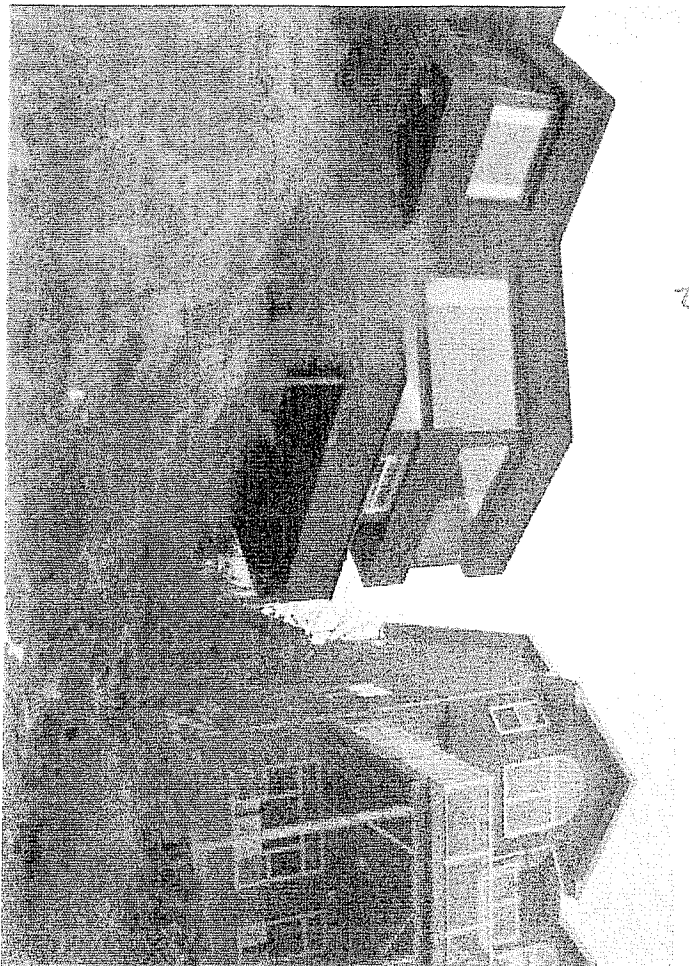


Right side of house

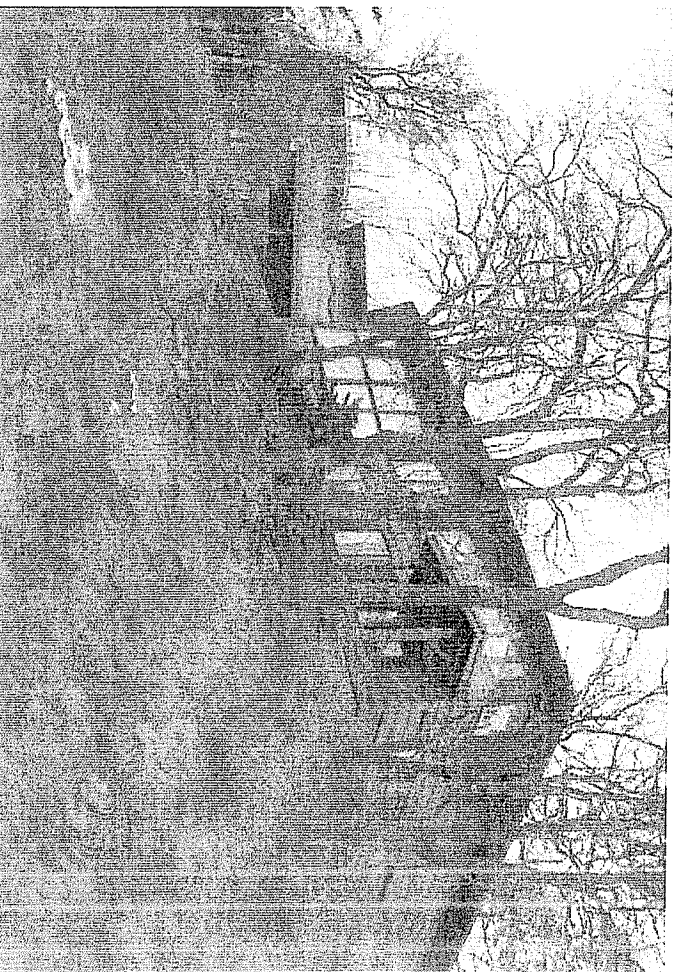
Left Film Water



Film Bear.

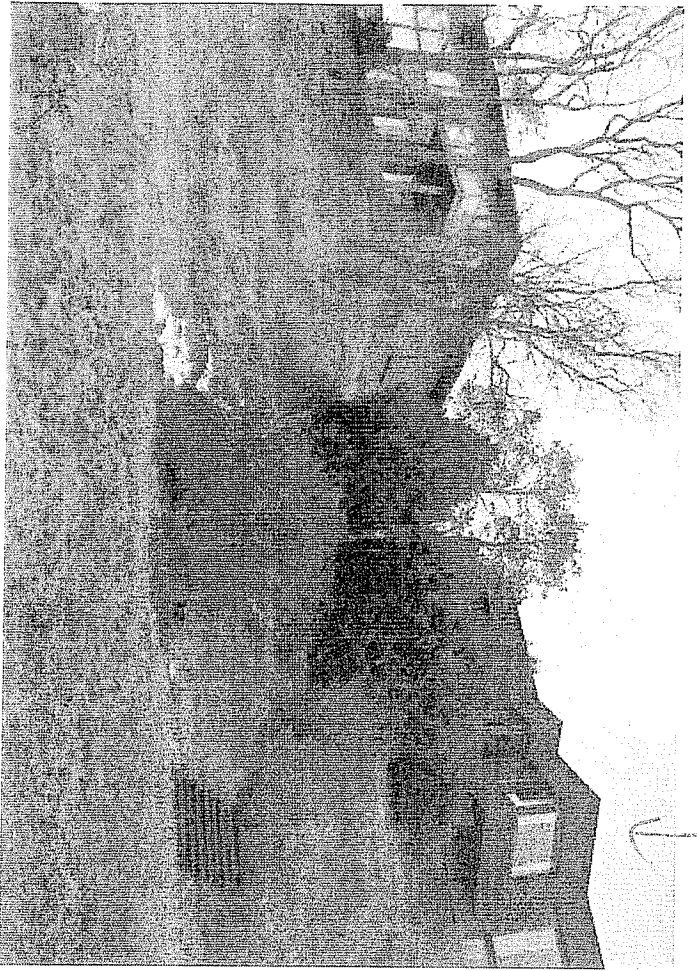


Left House Film Water



Film Pine.

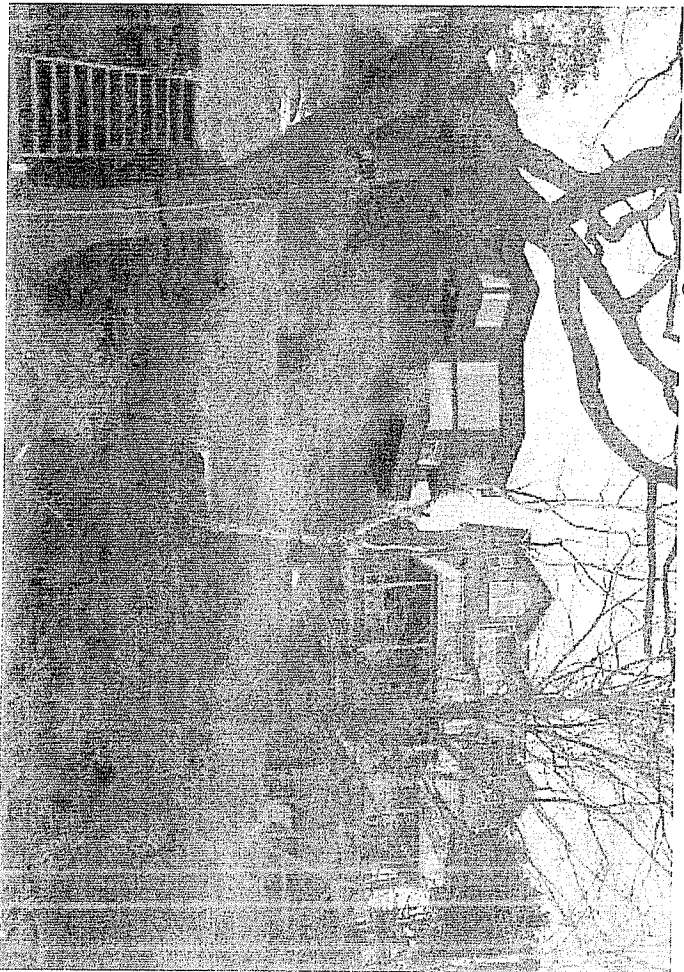




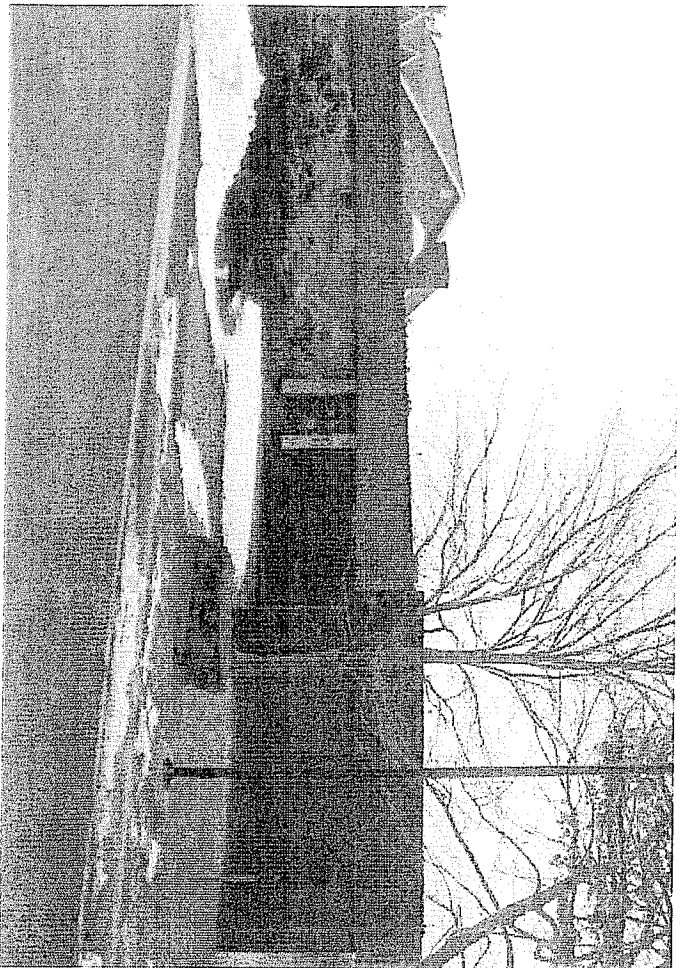
REAR of House



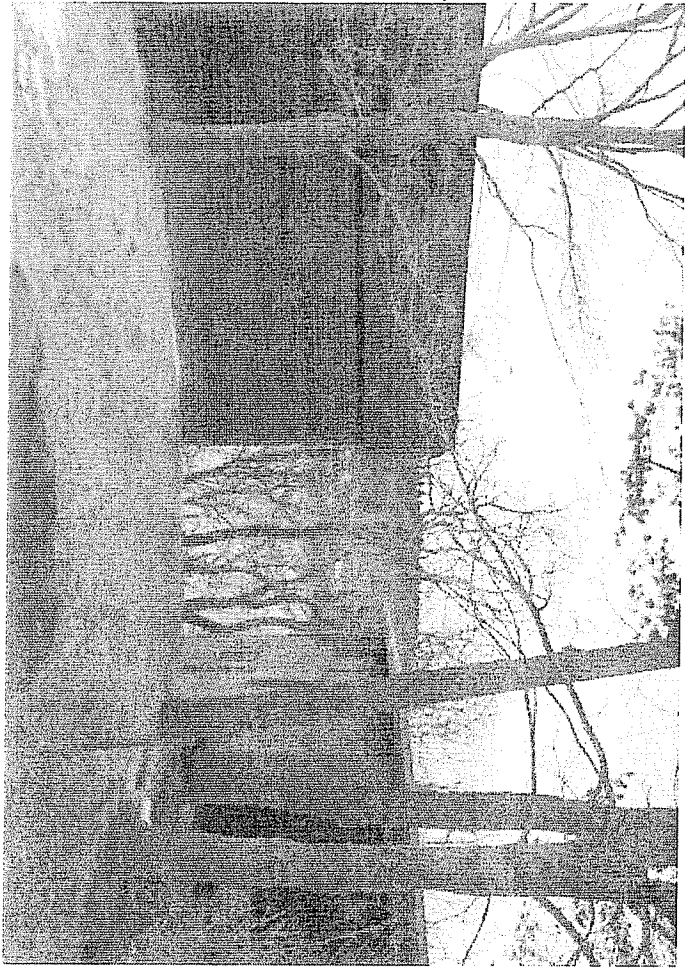
REAR



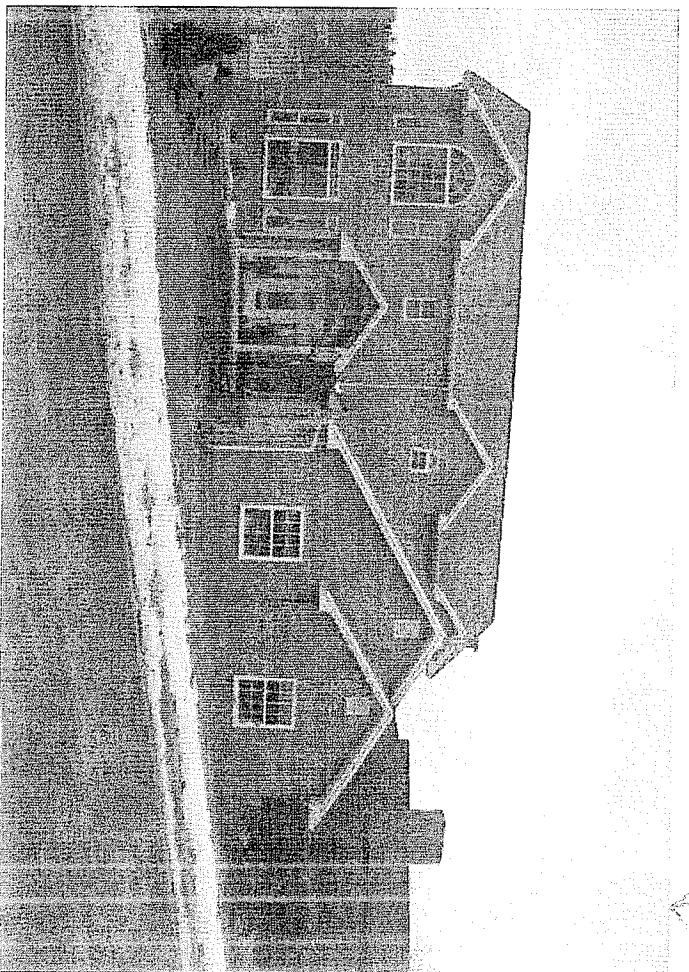
REAR



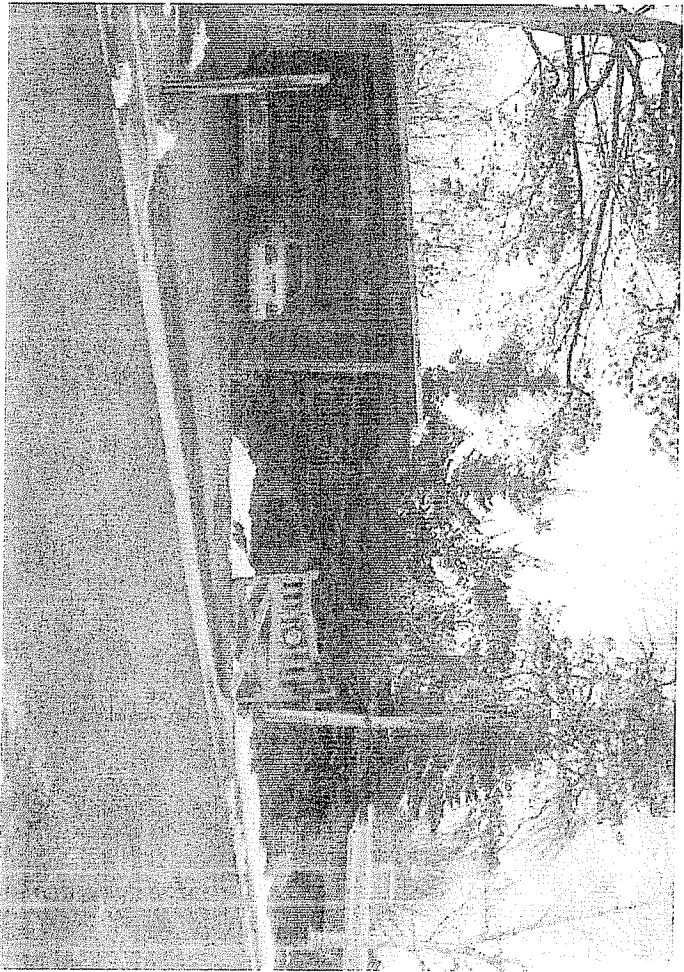
House 70 326  
Rear view



Street side



Left view  
Street side



Right view  
House on street side