
Western Region Community Council
June 27, 2005

TO: Chairman and Members of Western Region Community Council

SUBMITTED BY:


Steven Higgins - Development Officer

DATE: June 21, 2005

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a Variance - 78 Hebridean Drive,

STAFF REPORT

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the watercourse setback requirements of the Planning District 5 Land Use Bylaw to authorize the location of an existing accessory building.

RECOMMENDATION

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

BACKGROUND

The subject property is located at 78 Hebridean Drive in Herring Cove (see location plan - Attachment 1). The property is currently zoned HCR (Herring Cove Residential) under the Planning District 5 Land Use Bylaw.

On October 26, 2000, a permit was issued for the construction of an accessory building on the subject property (see attachment 2). That permit was issued based on plans and specifications provided by the applicant. Those plans indicated a building that was in conformance with the requirements in place at that time but did not show the existence of any watercourses on the property. The minimum setback from a watercourse specified in the bylaw is 25 feet.

Staff received complaints regarding the proximity of the building to the watercourse. In order to accurately confirm the setback distance, a survey was conducted. The survey revealed the building was located 2.8 metres (9.6 feet) from the watercourse at its closest point. A copy of the survey is attached as Attachment 3.

These circumstances resulted in the filing of formal charges against the property owner for violating the requirements of the Land Use Bylaw. A trial was to be held in Provincial Court on May 30th, 2005. During the course of the trial, the owner asked for an adjournment to allow the opportunity for an application for a variance to be considered by the Development Officer and Council. The Judge in the case accepted this request and the trial was adjourned.

Council should also note that the owner has indicated that, subject to the resolution of the issue at hand, the property will be sold and his interest in the land will be concluded.

The owner applied for a variance to relax the watercourse setback from 25 feet to 9.6 feet. The application was denied by the Development Officer and the applicant has exercised the option to appeal that refusal to Community Council.

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 intent sometimes requires subjective judgement. However, in this case, staff believes the intent is quite clear.

The watercourse setbacks are intended to achieve two principal objectives:

- 1) to protect the aquatic environment from alteration or destruction as a result of the development of the property; and
- 2) to protect the developed property from hazards associated with proximity to the watercourse.

With regard to item 1) above staff acknowledge the direct, individual impact of this particular development is limited by its relatively small scale and by the minor nature of the watercourse. However, the broader issue of proximity of development to the aquatic environment is of more substantive concern from a cumulative perspective. In this context, the proposal is seen to be contrary to the intent of the bylaw.

With regard to item 2), staff note there is no question that increased setbacks from the water provide a greater degree of safety. However, in this case the building is accessory in nature and the watercourse is relatively small. There are no substantive concerns related to impact of the watercourse on the structure.

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

The requirement in question is included in the bylaw for the entire plan area and for all uses except fishery related activity and accessory buildings designed and intended to be used for boat storage. In this general context, the difficulty in this case could be seen to be general to property in the area.

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

This application is before Council as a result of legal proceedings associated with the construction of the building contrary to the permits issued in 2000. **Staff note the owner is not considered to be guilty of any offence until the court proceedings are completed.** However, the fundamental basis of the charges is that the construction was completed in a manner that constitutes a disregard for the requirements of the Land Use Bylaw. Under these circumstances, staff would also consider the proposed variance to be related to a difficulty that is the result of intentional disregard for the requirements of the land use bylaw.

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.

REGIONAL PLANNING IMPLICATIONS

There are no implications on the Regional Planning process associated with this application.

ALTERNATIVES

1. Council could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative. This would also result in legal proceedings moving forward.

2. Council could overturn the decision of the Development Officer and allow the applicant to retain the existing building at its current location. This would also result in the dismissal of legal action regarding the location of the building.

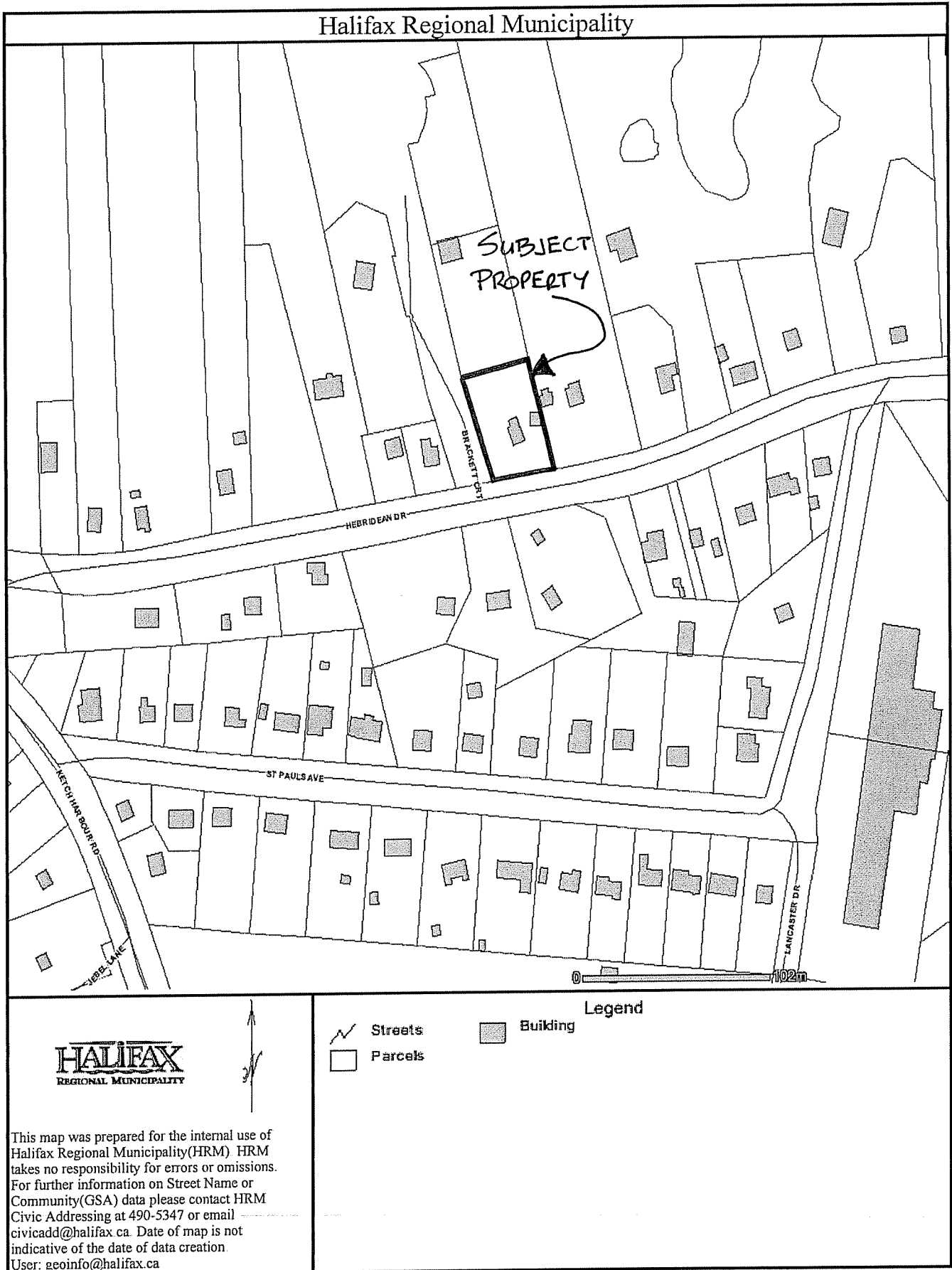
ATTACHMENTS

1. Location Map
2. Existing Permit
3. Site Plan/Survey

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: Steven Higgins - Development Officer (490-4402)



PERMIT TYPE
DEVELOPMENT PERMIT

PERMIT NUMBER
023782DEV

PERMISSION IS HEREBY GRANTED TO

PERMIT APPLICANT NAME AND ADDRESS
HARLES DARRAH 53 SHORE ROAD, HERRING COVE NS CA B3V 1G7 479 0093

DESCRIPTION OF APPLICATION
CONSTRUCT 25' X 30' GARAGE IN REAR YARD

PUBLIC ADDRESS OF JOB 8 HEBRIDEAN DRIVE	COMMUNITY HERRING COVE	LOCATION REMARK
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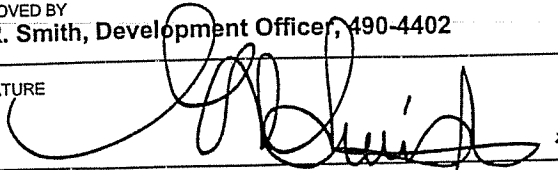
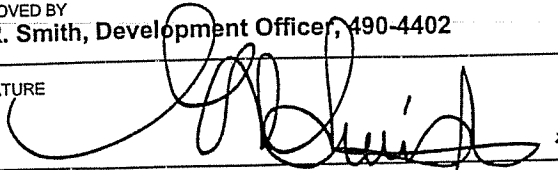
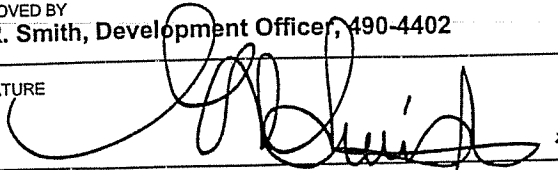
JOB NUMBER B-A-C	PID NUMBER 40077075	AAN NUMBER 00999008	HRM DISTRICT 18	LOT AREA 21576.300000
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NAME AND MAILING ADDRESS OF PROPERTY OWNER
MURCELL RICHARD GEOFFRY 78 HEBRIDEAN DR, HERRING COVE, NS, CA B3V1H3

CONDITIONS OF ISSUANCE

MINIMUMS AND MAXIMUMS			MINIMUM FRONT YARD SETBACK	20	feet
			MINIMUM REAR YARD SETBACK	4	feet
MINIMUM LEFT SIDE YARD	4	feet	MAXIMUM HEIGHT OF MAIN BUILDING		feet
MINIMUM RIGHT SIDE YARD	4	feet	MINIMUM DISTANCE FROM MAIN BUILDING	8	feet
DISTANCE FROM ACCESSORY BUILDING		feet	HEIGHT OF ACCESSORY BUILDING	15	feet
SETBACK FROM WATERCOURSE	25	feet	MINIMUM DISABLED PARKING SPACES		
BUILDING OR LOT COVERAGE %	35.0		REGULAR PARKING SPACES		
MAXIMUM FLOOR AREA	750	sq. feet	TOTAL PARKING SPACES		

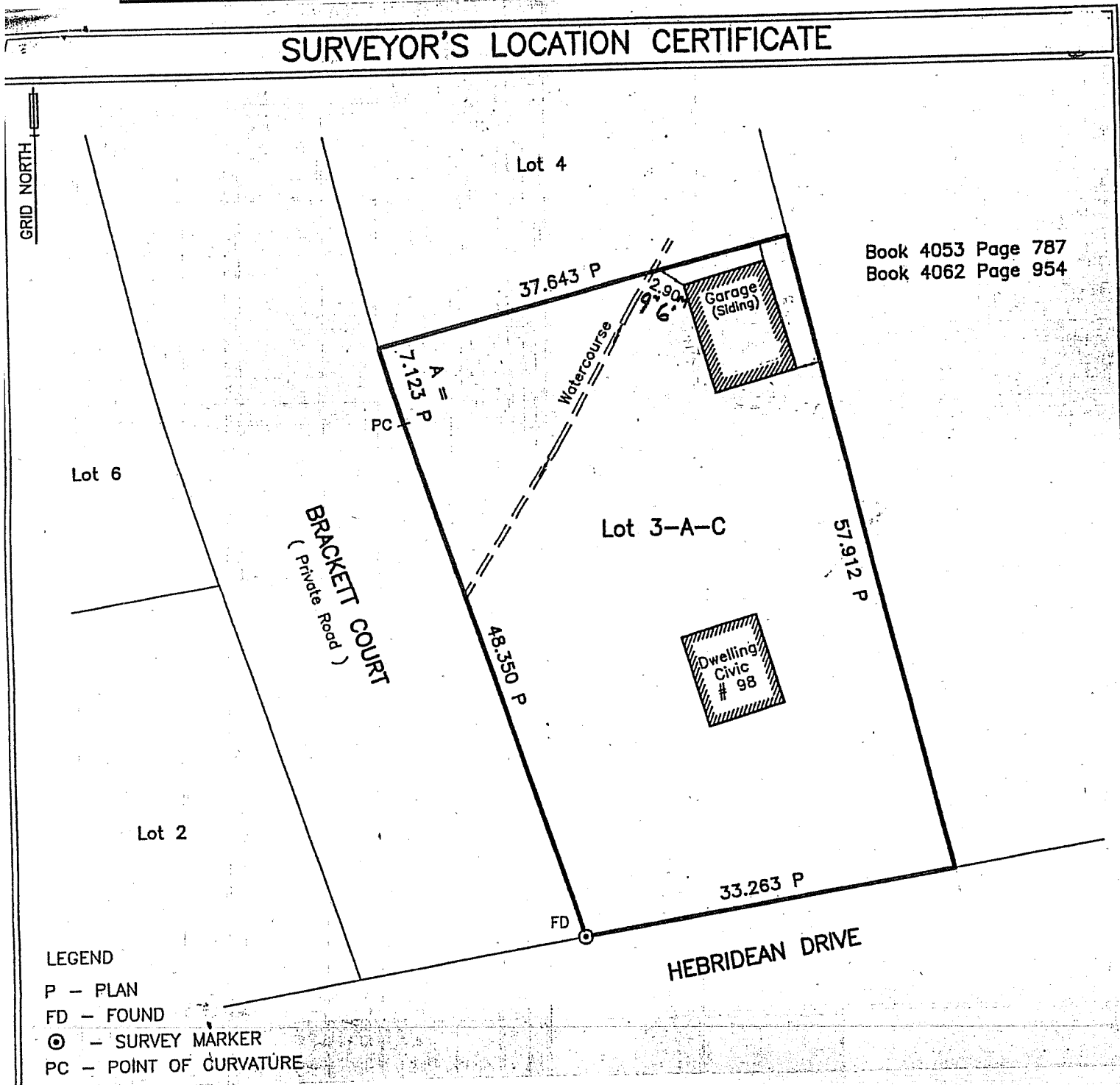
This permit is valid for the purpose indicated above and does not, in any way, exempt the applicant from complying with any By-law or regulation made by the Municipality nor does it grant or imply other permission or licences that may be required from other authorities. Any changes or deviations from the information and/or specifications on which this approval is granted shall cause the permit to become invalid unless such changes are first approved by the Municipality. Separate building and development permits are required for any signage intended

OFFICE PERMIT ISSUED BY Development Services - Western Region 2750 Dutch Village Road Halifax, N.S. B3L 4E5 Phone: (902) 490-5650 Fax: (902) 490-4645	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">ISSUE DATE Oct 26, 2000</td> <td style="width: 50%;">EXPIRY DATE Oct 26, 2001</td> </tr> <tr> <td colspan="2">APPROVED BY G. R. Smith, Development Officer, 490-4402</td> </tr> <tr> <td colspan="2">SIGNATURE </td> </tr> </table>	ISSUE DATE Oct 26, 2000	EXPIRY DATE Oct 26, 2001	APPROVED BY G. R. Smith, Development Officer, 490-4402		SIGNATURE 	
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APPROVED BY G. R. Smith, Development Officer, 490-4402							
SIGNATURE 							

SUBJECT: Case No. 12018 - Variance at 78 Hebridean Drive, Herring Cove

SITE PLAN

SURVEYOR'S LOCATION CERTIFICATE





P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

HALIFAX REGIONAL
MUNICIPALITY
JUN 21 2005
Ken
MUNICIPAL CLERK

CC: Chris Newson.

PLANNING AND DEVELOPMENT SERVICES - WESTERN REGION

June 16th, 2005

Dear Sir/Madam:

RE: Application for Variance No. 12018 - 78 Hebridean Dr, Herring Cove, NS

As the Development Officer for the Halifax Regional Municipality, I have refused a request for a variance from the requirements of the Planning District 5 Land Use Bylaw. Specific details of the proposal are as follows:

- Location:** 78 Hebridean Drive, Herring Cove (see location plan attached)
- Project Proposal:** Vary setback from watercourse for an existing detached garage (accessory building)
- Variance Requested:** Reduce the setback from a watercourse from 25 feet to 9.5 feet.

Section 235(3) of the Municipal Government Act states that:

No variance shall be granted by the Development Officer where:

- 1) the variance violates the intent of the Land Use Bylaw;
- 2) the difficulty experienced is general to properties in the area; or
- 3) the difficulty experienced is a result of intentional disregard for the requirements of the Land Use Bylaw.

The proposed variance is seen to be contrary to the intent of the bylaw and the difficulty is the result of intentional disregard for the requirements of the land use bylaw.

As provided for in the Municipal Government Act, the applicant has exercised the right to appeal this decision to the Western Region Community Council. As a property owner within 30 m of the subject property, you have the right to speak or make written submissions with respect to this proposal.



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

The appeal will be heard by the Western Region Community Council on June 27th, 2005 in the Thomas Raddall Room at the Keshen Goodman Library, 330 Lacewood Drive in Halifax. The Council meeting will commence at 7:00pm.

If you have questions or require additional information, please contact me directly at 490-4402.

Sincerely,

A handwritten signature in black ink, appearing to read "Sd Higgins".

Steven Higgins
Development Officer

cc: Jan Gibson, Municipal Clerk
cc: Councillor Steve Adams, District 18

Hand Delivered June 18th, 2005

DATE: July 16, 2005

SUBJECT: Case No. 12018 - Variance at 78 Hebridean Drive, Herring Cove

SITE PLAN

SURVEYOR'S LOCATION CERTIFICATE

