



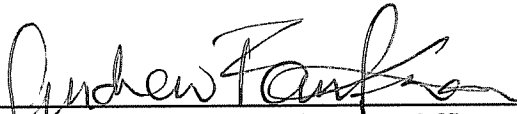
PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

8.2.1

**Western Community Council**  
**August 27, 2007**

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

**SUBMITTED BY:**

  
Andrew Faulkner - Development Officer

**DATE:** August 13, 2007

**SUBJECT:** Appeal of the Development Officer's decision to approve an application for  
a **Variance 13942 - 1594 John Brackett Dr, Herring Cove**

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**ORIGIN**

This report deals with an appeal of the Development Officer's decision to approve a variance for the side yard setback requirements of the Chebucto Peninsula Land Use Bylaw to demolish and construct a single unit dwelling.

**RECOMMENDATION**

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

**BACKGROUND**

The subject property is located at 1594 John Brackett Drive in Herring Cove. The property is zoned HCR (Herring Cove Residential) under the Chebucto Peninsula Plan Area (District 5). The property currently contains a single unit dwelling and the applicant has proposed to demolish this dwelling and construct further back on the lot. The applicant, as of right, could reconstruct in the same footprint of the existing dwelling which has a right side yard setback of 6' 5", front yard setback of 7 ft and a left side yard setback of 2ft 4 in. Applicant is requesting a variance of the right side yard setback from 6ft 5 inches to 4 ft 6 inches, a difference of 1 ft 11 inches.

The applicant's proposal is to demolish the existing dwelling and move the proposed new dwelling further back, therefore increasing the front yard setback to 67 ft. The proposal also increases the left side yard setback from 2ft 4 in to 4ft 6 in.

This lot is a waterfront property but is in the Harbour Designation area therefore the watercourse

setbacks are waived.

A variance application was received June 26, 2007, and was approved July 12, 2007 and subsequently an appeal 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?**

Setbacks from property lines are intended to provide adequate building separation to maintain access, safety and privacy. The existing lot has an average width of 33 feet which makes it difficult to meet the sideyard setbacks of the land use by-law and construct an adequate width dwelling. The proposal increases the front yard setback from 7 feet to 67 feet and left side yard setback from 2 ft 4 inches to 4 ft 6 inches and is proposing constructing a dwelling 24 ft in width. This leaves a right side yard setback of 4 ft 6 inches, however the proposed dwelling has a distance of 12 ft 1 inch between the neighbouring dwelling (Surveyed Plans Dated Nov 22, 1993, Robert Daniels, Surveyor) which under Section 4.13 (vi) is the requirement between any other main building and accessory buildings, therefore, staff do not consider that the proposal represents a level of departure from the intent of the bylaw that justifies refusal.

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

The lot in question is narrower than the average lot in the area. The difficulty experienced is unique to this property, therefore, the variance was approved.

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

There is no intentional disregard.

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

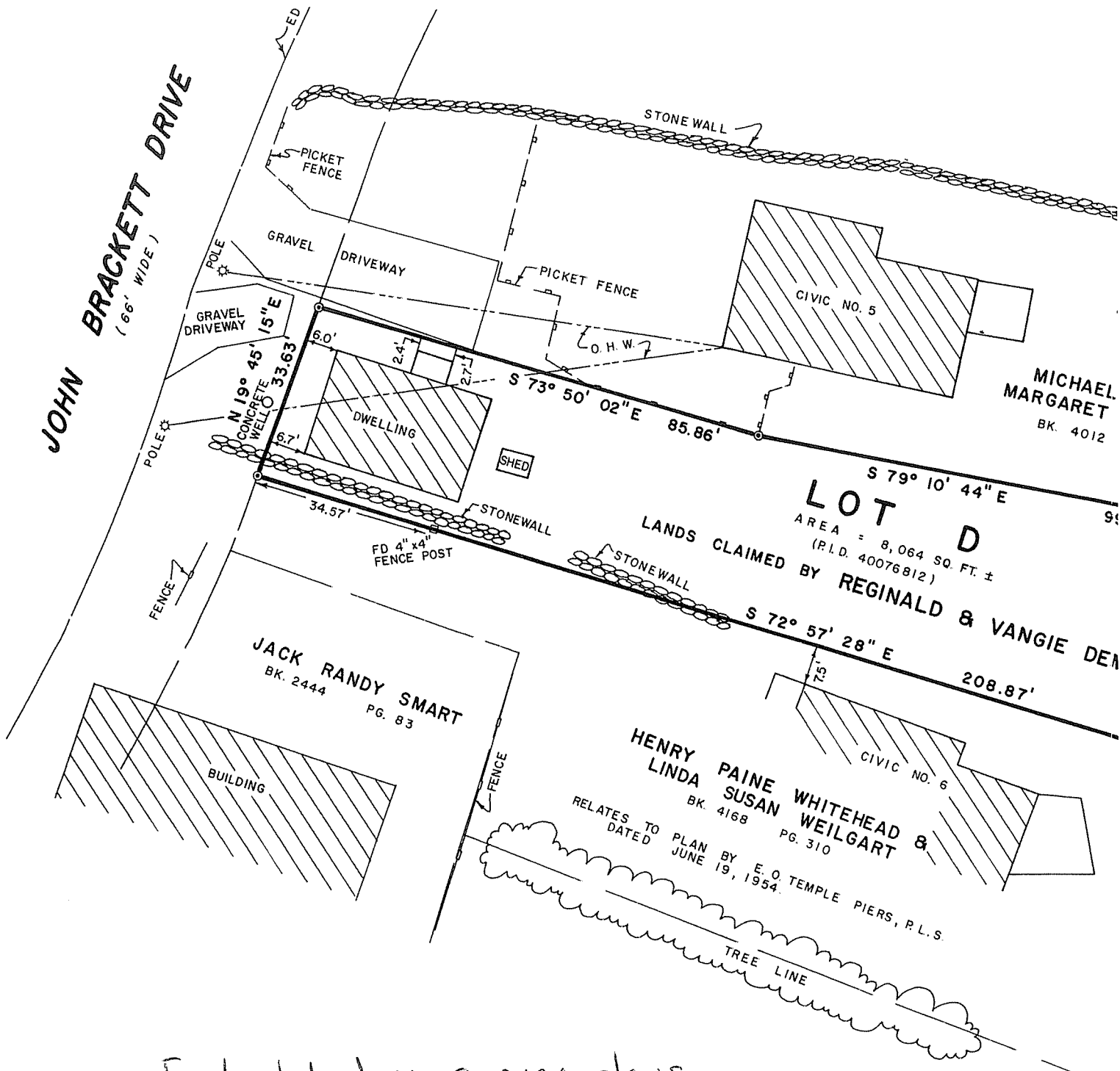
**ATTACHMENTS**

1. Location Plan
2. Notification Letter
3. Site and Elevation Plans.
3. Appeal Letter

**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)



Extracted from survey plans  
dated Nov, 1993

Dunbrack McKenzie & MacDonald Ltd.



COMMUNITY DEVELOPMENT

PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

July 12, 2007

Dear Assessed Owner:

**RE: Application for Variance, File No. 13942, 1594 John Brackett Dr., Herring Cove**

**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.**

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 the Chebucto Peninsula Plan Area (Planning District 5) as follows:

**Property Owners:** Thomas Claire Dempsey  
**Location:** 1594 John Brackett Dr., Herring Cove  
**Project Proposal:** Construct single unit dwelling  
**Variance Requested:** Vary Right Side Yard setback from 6 ft 5 in to 4 ft 6 in

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. August 1, 2007** 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,

A handwritten signature in black ink, appearing to read "Andrew Faulkner".

Andrew Faulkner  
Development Officer

cc. Jan Gibson, Municipal Clerk  
Councillor Stephen Adams (District 18)

1596 John Brackett Dr.  
Herring Cove, NS B3V 1G8

27 July, 2007

Municipal Clerk  
c/o Andrew Faulkner  
Development Officer,  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS B3J 3A5

Re: Appealing Variance, File No. 13942, 1594 John Brackett Dr., Herring Cove

Dear Mr. Faulker:

We appeal the variance of Thomas Dempsey of 1'11", 1594 John Brackett Dr., on the grounds that our buildings would be about 12' apart at their closest point, which is unprecedented for any house around the actual Cove. We are concerned with having a, in part, 3-storey house so close to another house on the water, visible to all around the Cove. Herring Cove has a distinctive, historical character, which we would like to preserve. This view has been expressed to us by many Cove inhabitants as well, who are appalled by some of the recent developments ruining the picturesqueness of the Cove. We, for instance, have bought land around our house for the purposes of safeguarding the property from development. Similarly, we have applied to have an old fishing shed we own declared as having heritage status to preserve it.

Moreover, we have grave reservations about whether the section on "existing structures" in the By-Law allows for building a new house completely separate (25' away) from the foundation of the existing shed. As we read the By-Law, it mentions "re-building, reconstruction" etc., which we understand to mean the old building is incorporated in some way, rather than demolished and an entirely separate building is put up, at great distance from the original one. We thought at least the existing foundation would have to be used, or at least a part of it.

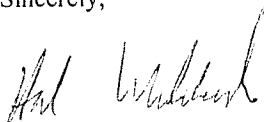
We also don't believe that the proposed building conforms to the By-Law in that it calculated the allowable side yard from a small, 4', door vestibule on the north side, rather than from the main wall, as outlined in the By-Law.

We would have less objection to this house if it was offset between our house and Leif and Leanne Sigurdson's, i.e. further toward the road, so that our houses wouldn't overlap. This would make for a much more tolerable and pleasant building arrangement.

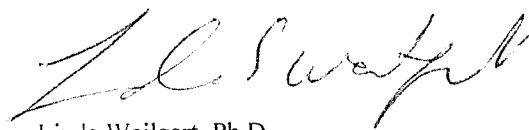
Tommy Dempsey also mentioned to us that he proposes to build a retaining wall (out of concrete perhaps) near the water and level off the land in back of his house (water-side) to make a lawn. We have questions about whether this is allowable under the By-Laws. As we read them, excavation or removal of soil is not permitted within 100' of the water.

There are many questions on our mind, even beyond those mentioned here, such that we strongly feel there should be a substantial delay in a final decision for a building permit. We therefore ask for an extension for this matter to be fully reviewed. We are retaining a lawyer who will also be in touch with you.

Sincerely,



Hal Whitehead, Ph.D.  
Professor,  
Dalhousie University



Linda Weilgart, Ph.D.  
Research Associate  
Dalhousie University

Case Number: 13942

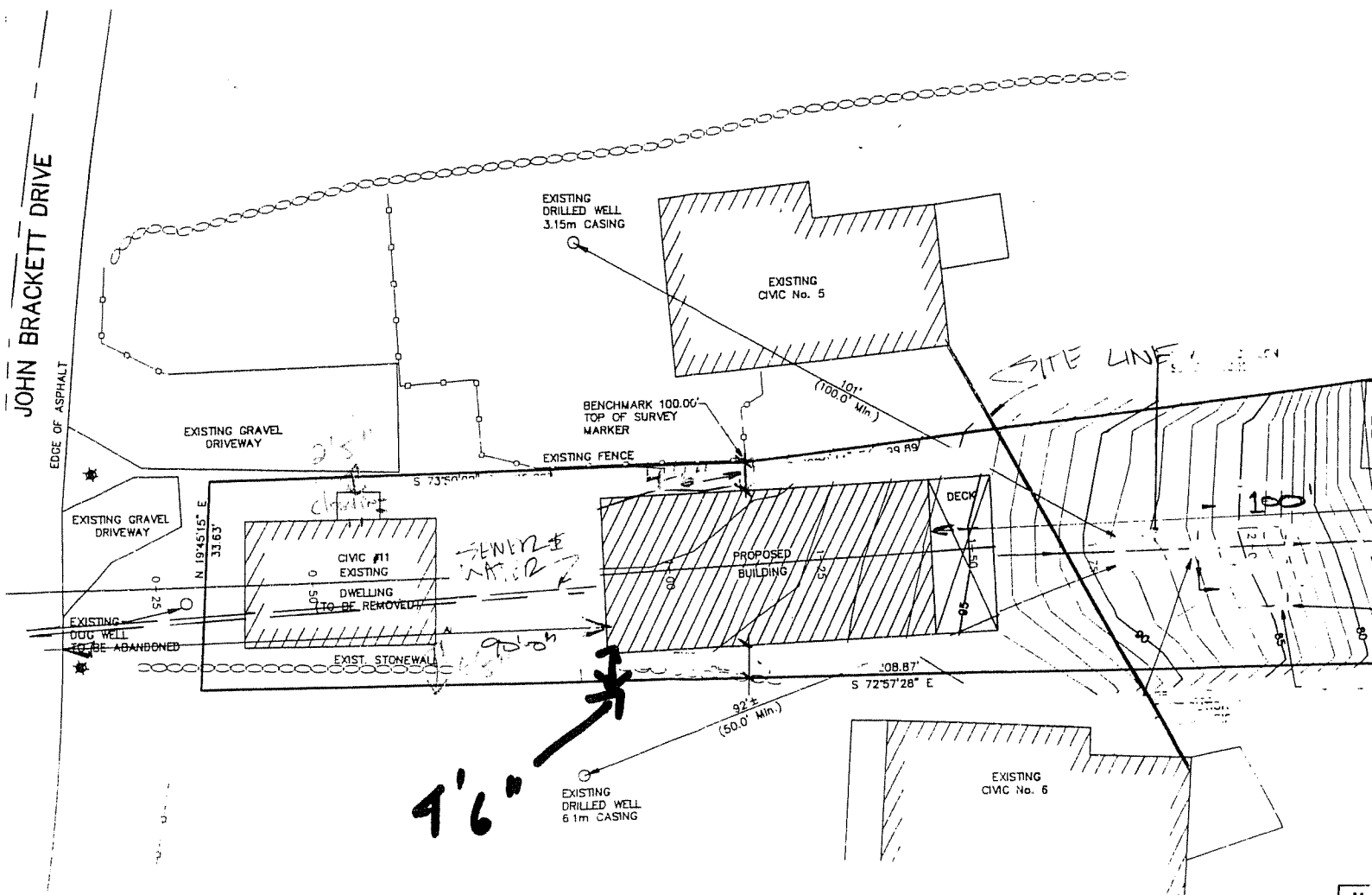
DATE: July 12, 2007

Variance at 1594 John Brackett Dr., Herring Cove

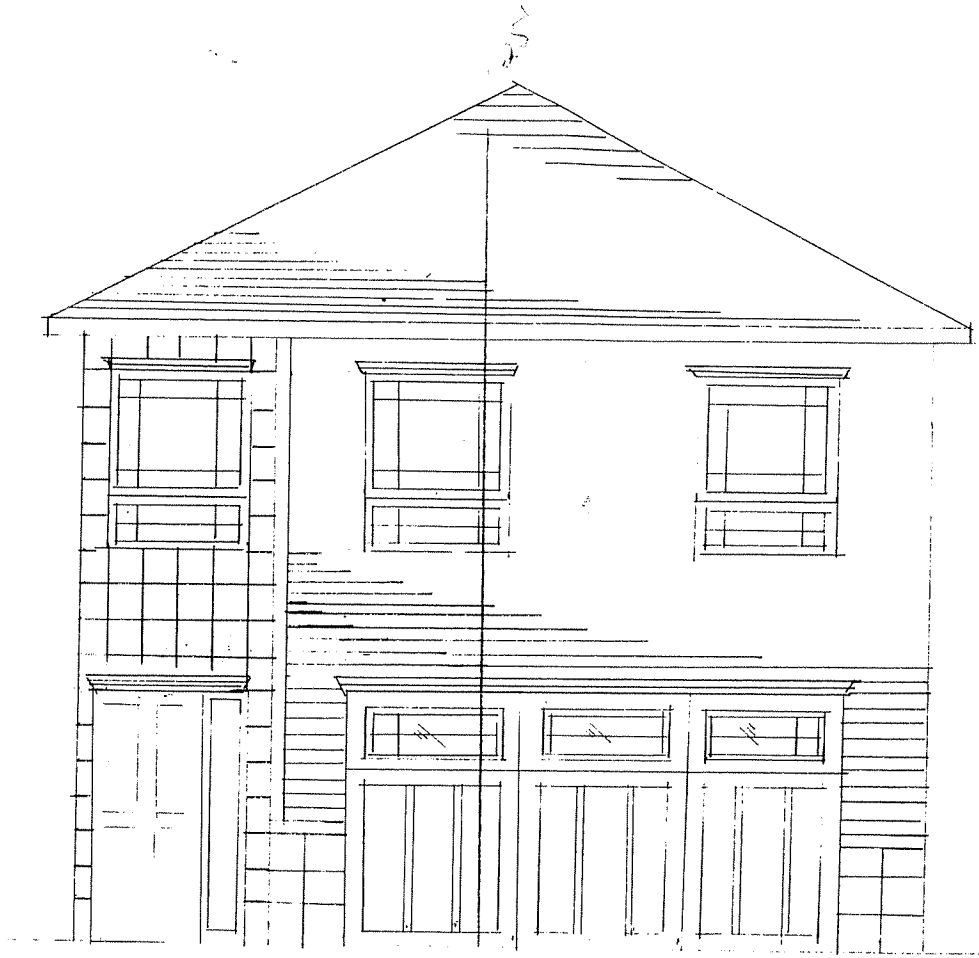
To construct single unit dwelling.

Vary Right Side Yard setback from 6 ft 5 in to 4 ft 6 in

SITE PLAN



Jir  
Title  
Pro  
Sca  
Date



Front elevation  
1594 John Brackett Drive

J  
T  
P  
S  
D





Back elevation  
 1594 John Bradlett Drive