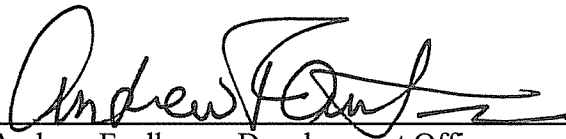




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Community Council
November 27,2006

TO: Chairman and Members of Western Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: November 27th, 2006

SUBJECT: Appeal of the Development Officer's decision to refuse an application for a
Variance - 2405 Prospect Rd, Hatchet Lake.

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the side yard requirements of the District 4, Prospect Road Land Use Bylaw to permit an 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 2405 Prospect Road, Hatchet Lake. It is zoned RB-1 (Residential B-1 Zone) under the *District 5, Prospect Road Land Use Bylaw*. The property is a 14, 000 ft² lot; the *Land Use Bylaw* permits up to a 1000 ft² accessory building on a lot of this size at a minimum setback of 8 ft from the side property line.

The property currently contains a 576 ft² garage at the left of the house built 6 ft from the property line. HRM staff were made aware of the garage through a complaint on November 21, 2005 which resulted in the establishment of a case with Community Standards. On August 29, 2006 an order to comply was issued to the property owners. On September 11, 2006 the property owners applied for this variance to legalize the structure.

This Variance was denied by the Development Officer on October 19, 2006. Upon receipt of the denial, the applicants registered an appeal.

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?

Side yard setbacks are created for aesthetic reasons and to provide emergency access between structures. Access to the rear yard is provided at the right of the residence so this was not a consideration. However, aesthetically, the adjacent properties have consistently met the side yard requirements on parcels of the same size and there is no justification for relaxing that side yard setback to 6 feet on this lot and the variance was refused.

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

The majority of properties within the area are of a similar size and configuration to the subject property. A site visit of the area was conducted; the majority of properties in the area met the required setbacks to property lines. It was determined that the difficulty experienced was general to properties in the area.

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

The applicants did not apply for a permit to construct the garage; this is an intentional disregard of the requirements of the land use bylaw and the variance was refused.

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.
2. Council could overturn the decision of the Development Officer and approve the variance.

ATTACHMENTS

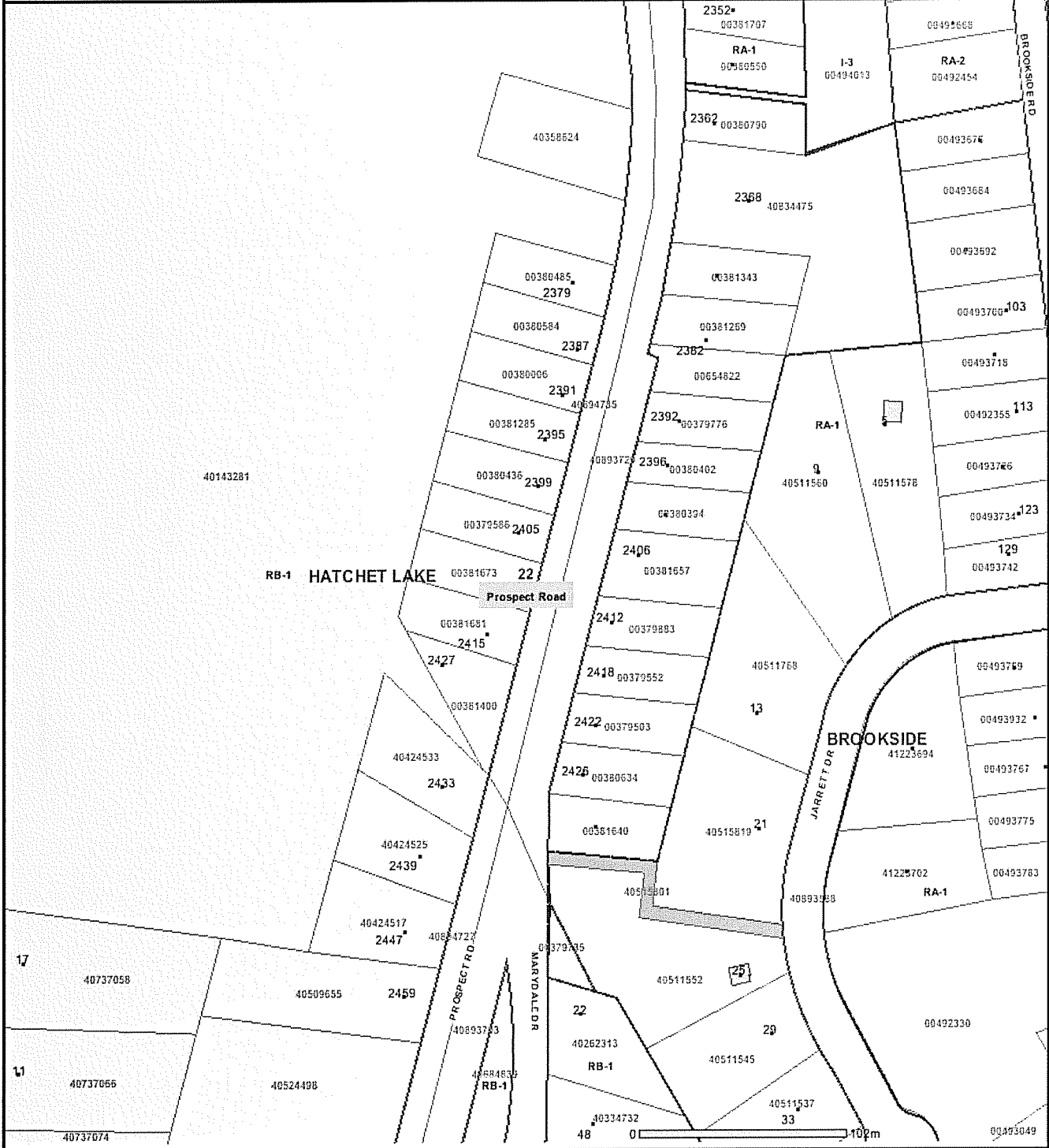
1. Location Plan
2. Notification Letters with Site and Elevation Plans.
3. Appeal Letter

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: Leticia Smillie - Development Technician (490-4046)

2405 Prospect Road Location Plan



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.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

November 16, 2006

John Bobbitt
2405 Prospect Road
Hatchet Lake NS B3T 1V2

Mr. Bobbitt:

Re: Case No. 13282 - Variance at 2405 Prospect Road, Hatchet Lake

This is to advise that your appeal of the Development Officer's decision to refuse the above application for variance #13282 will be presented to the **Western Community Council on November 27th, 2006 in the Keshen Goodman Library, 330 Lacewood Drive. The Council meeting will commence at 7:00pm.**

Should you require further information, please do not hesitate to contact this office at (902) 490-4046.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Faulkner", with a long horizontal flourish extending to the right.

Andrew Faulkner
Development Officer
Halifax Regional Municipality

cc: Councillor Reg Rankin
Jan Gibson, Municipal Clerk

November 16, 2006

Dear Sir/Madam:

RE: Application for Variance , Case Number 13282- 2405 Prospect Rd, Hatchet Lake.

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

Location: 2405 Prospect Rd, Halifax
Project Proposal: construct garage
Variance Requested: Vary side yard requirements from 8' to 6'.

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.

It is the opinion of the Development Officer that this variance application does not merit approval because:

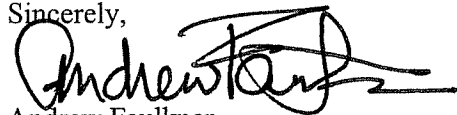
- a) the difficulty experienced is general to properties in the area; and
- b) the difficulty experienced is a result of intentional disregard for the requirements of the Land Use Bylaw.

As provided for in the Municipal Government Act, the applicant has exercised the right to appeal this decision to the Halifax Peninsula 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.

The appeal will be heard by the Western Community Council on November 27th, 2006 in the Keshen Goodman Library, 330 Lacewood Drive. The Council meeting will commence at 7:00pm.

If you have questions or require additional information, please contact me directly at 490-4046.

Sincerely,



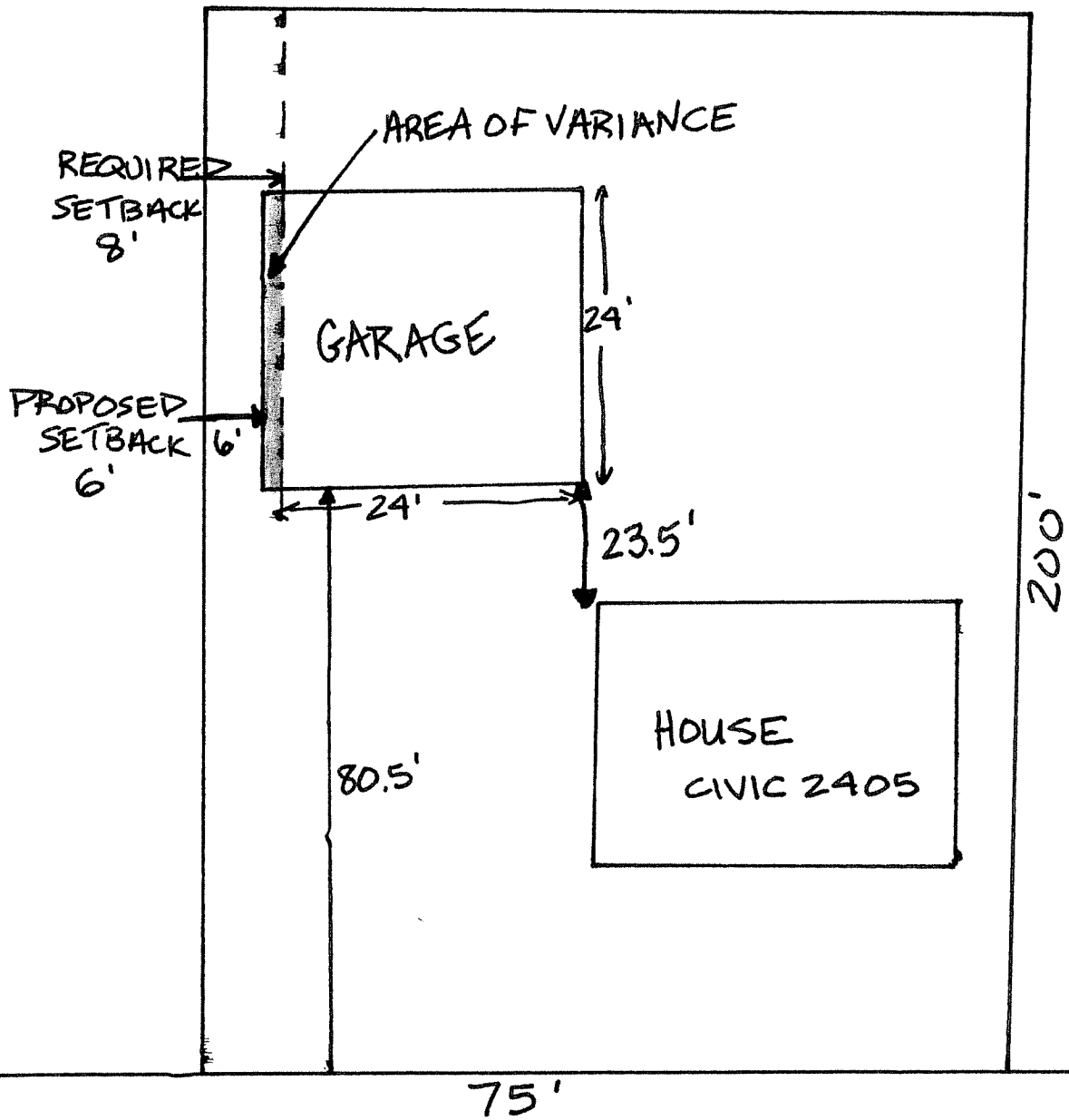
Andrew Faulkner
Development Officer

cc: Jan Gibson, Municipal Clerk
cc: Councillor Reg Rankin

DATE: November 16, 2006

SUBJECT: Case Number 13282- 2405 Prospect Rd, Hatchet Lake.

SITE PLAN



PROSPECT ROAD

October 27, 2006

Re: Case # 13282 Variance at 2405 Prospect Road, Hatchet Lake

I Marilyn Peters wish to appeal the decision of the Development Officer Andrew Faulkner in which he refused my request for a variance to vary yard size requirements from 8ft to 6ft for the existing garage at 2405 Prospect Road, Hatchet Lake. I wish to state that the garage was not built with intentional disregard for the requirements of Land Use Bylaw and we have cooperated fully with Halifax Regional Municipality staff since the matter of not having a permit was brought to our attention.

Regards

Marilyn Peters & John Bobbitt (Property jointly owned)