

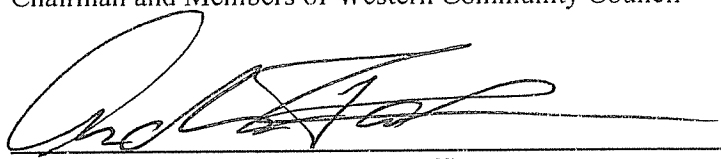
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Community Council
November 26, 2007

TO: Chairman and Members of Western Community Council

SUBMITTED BY: 
Andrew Faulkner - Development Officer

DATE: November 14, 2007

SUBJECT: Appeal of the Development Officer's decision to refuse a variance - 3 Shore Road,
Herring Cove

ORIGIN

This report deals with an appeal of the Development Officer's decision to refuse a variance from the right side yard requirement of the Chebucto Peninsula (Planning District 5) Land Use Bylaw to permit a detached accessory building.

RECOMMENDATION

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

BACKGROUND

In May of this year, a compliance case was initiated to address the construction of a detached accessory building on the property without a permit. A permit application was made in June, which was denied as the building was too close to the right side property line. A professional survey of the property was requested and was submitted on September 20, indicating that the shed is 1 foot from the property line. The land use bylaw requires a four foot side yard setback. The zone permits the use and the application meets all requirements of the zone and the general requirements for detached accessory buildings, with the exception of the right side setback.

Although not grounds for refusal, it should be noted that the survey plan revealed that a right-of-way of unspecified width runs from Shore Road to the rear of the property along the right side property line. There are vague details regarding this right-of-way in Mr. Deveau's deed, but it may be that the location of the shed is within this right-of-way.

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?

The intention of the setback is to provide sufficient room for maintenance of the accessory building without trespassing on the neighbouring property. The reduction of the right side setback violates this intention of the land use bylaw.

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

The difficulty experienced is general to properties in the area. Most dwellings in the neighbourhood have similar setbacks and frontage as this property and the properties are of a similar size. Most detached accessory buildings in the area comply with the side setback requirements.

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

The applicant maintains that he was unaware of the need for a permit, but acknowledges that he understood that there was a need for setback from adjacent properties. When the applicant became aware that a permit was required and there might be a deficient setback, he did willingly commission a location certificate at some cost to himself. However unintentional, this does constitute a 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.

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

ATTACHMENTS

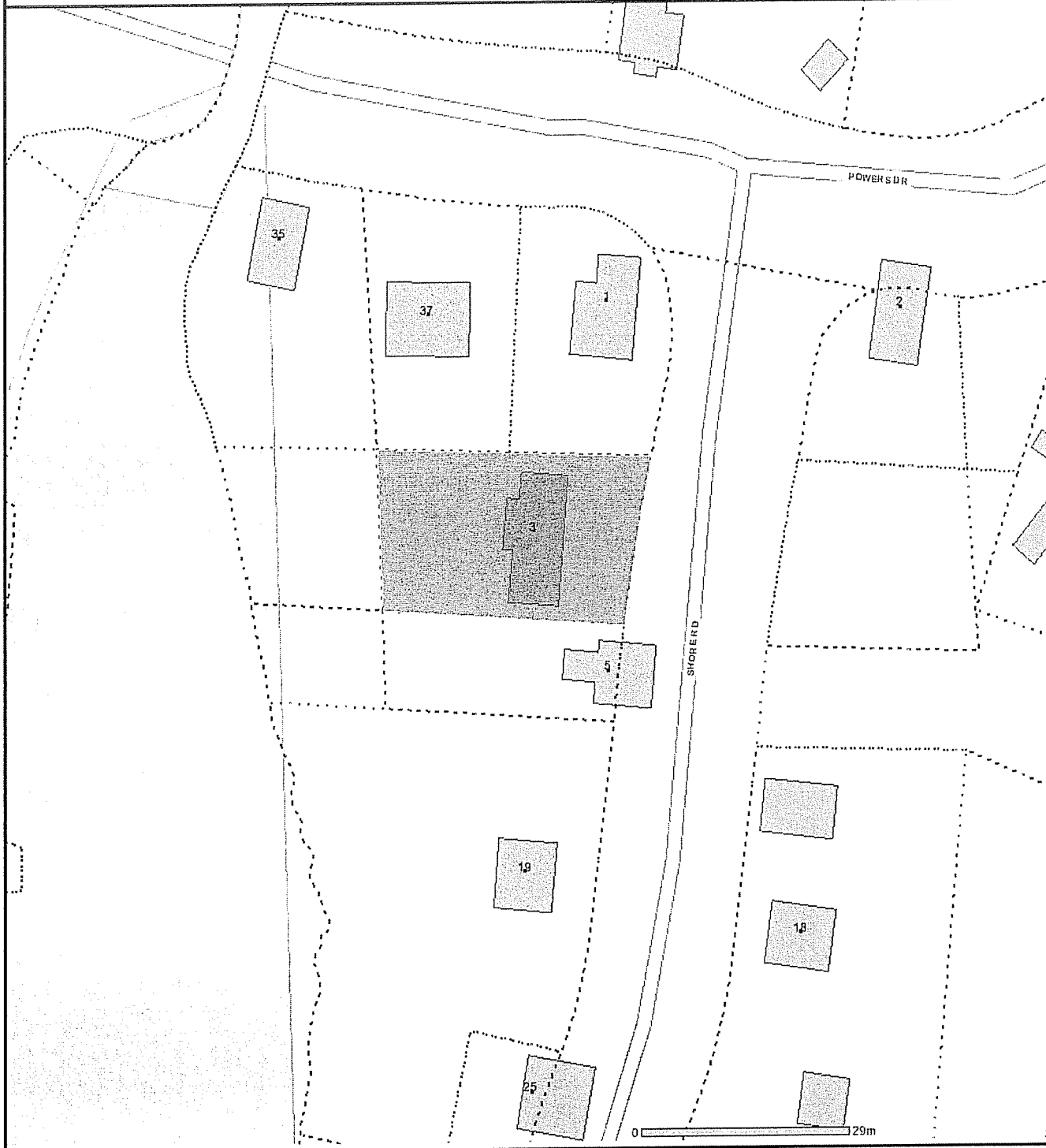
1. Location Map
2. Refusal Letter
3. Appeal letter
4. Location Certificate

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: Andrew Faulkner - Development Officer (490-4402)

Attachment 1- Location Map, 3 Shore Road



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

HALIFAX REGIONAL MUNICIPALITY

Planning & Development Services
Western District, Mumford Road Office

PO Box 1749
Halifax, Nova Scotia
B3J 3A5
Telephone: 902-490-5650
Fax: 902-490-4645

September 27, 2007

Terry Deveau
3 Shore Rd
Herring Cove NS
B3V 1G6

Dear Mr. Deveau:

Re: Case No. 13981- Variance at 3 Shore Road, Herring Cove, NS

This letter is to advise that the Development Officer for the Halifax Regional Municipality has refused your request for variance from the requirements of the *Chebucto Peninsula Land Use Bylaw* as follows:

Location: 3 Shore Road, Herring Cove
Property Owner: Terry & Beatrice Deveau
Project Proposal: detached accessory building
Variance Requested: Right Yard Setback 1 foot (4 feet required)

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 this variance application does not merit approval because:

- (a) the variance violates the intent of the Land Use bylaw; and
- (b) the difficulty experienced is general to properties in the area, and
- (c) the difficulty experienced results from the intentional disregard for the requirements of the Land Use Bylaw.

Pursuant to Section 236 (4) of the 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 Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services- Western Region
P.O. Box 1749
Halifax, NS
B3J 3A5

Your appeal must be filed on or before October 11, 2007.

If you have any questions or require additional information, please contact Erin MacIntyre, Development Technician, at (902) 490- 4409.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Faulkner', with a large, sweeping flourish at the end.

Andrew Faulkner, Development Officer
Halifax Regional Municipality

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

3 Shore Road
Herring Cove, NS, B3V 1G6

2007-10-11

Re. Variance Case No. 13981
Devel. Permit Application #83585

Municipal Clerk
C/o Andrew Faulkner, Development Officer
Halifax Regional Municipality
Development Services – Western Region
P.O. Box 1749
Halifax, NS, B3J 3A5

Dear Mr. Faulkner:

I recently made a request for a variance from the *Chebucto Peninsula Land Use Bylaw* to obtain a developers permit for a shed I am building in my back yard. The requested variance is in respect to the minimum offset of the shed from the property boundary, which is required in the bylaw to be a minimum of 4 feet, but is between 1 and 2 feet in my case. I was told in a letter from your department that my initial request for a variance has been denied.

With this letter, I would like to respectfully appeal this decision. I respectfully submit that my variance request does not violate the intent of the bylaw, as the shed as situated does not cause any damages or infringements of access or use to the adjoining properties. Nor is the difficulty experienced here general to the properties in the area, as the difficulty is simply that I made an error in originally situating the shed, which was my error and my error alone, not general to anything else or anyone else. Nor is the difficulty as a result of intentional disregard for the bylaw, as when I originally situated the shed my understanding was that the property line was several feet further away than it actually turned-out to be; there was no intention on my part to situate the shed so close to the boundary, and no need to do so, and no advantage to me to do so; it was a simple error.

When I first started this shed project in August of 2004, I was under the impression that the north boundary of my lot was marked by the wire fence on the north side of the drainage ditch that lies near the north boundary of my lot. I was under the impression that this drainage ditch, which also contains pieces of concrete sewer pipe, was on my side of the boundary. I did not know that there was specific requirement that my shed needed to be at least four feet from the property boundary, but of course I did intend to leave an appropriate space between my shed and my neighbour's property. As far as I knew, I had done so, and that the drainage ditch was effectively the suitable margin between my building and my neighbour's lot.

If you refer to the photographs that I filed along with my variance application, you will see the situation of the shed relative to the drainage ditch and the wire fence. I have used some meter sticks and a four-foot carpenter's level to show where the four-foot offset to the north of my shed would run, which is basically in the centre of the drainage ditch and well to the south of the wire fence.

When your office requested that I submit an application for a developer's permit, and that it must include a site plan showing the shed, I retrieved an old lot survey that had been made in 1988, and for the first time located my shed on the plan. I was very surprised to see that the surveyed lot boundary ran somewhat to the south of the wire fence, as I had always assumed that it ran along the wire fence. As requested by your office, I have subsequently hired a surveyor to measure the actual offset and to site my shed on a revised location certificate and plan, which I have already submitted to your office. It shows that my shed offset is actually between 1 and 2 feet to the south of my northern property boundary.

If I am required by your office to move my shed four feet to the south, this will be a very expensive proposition. My nine foundation pylons are concrete cylinders 12 inches in diameter and up to six feet tall (mostly buried). These would have to be dug-up and moved to the new location while the shed is held up by a system of jacks and rails. It seems to me that this would be a lot of work and expense, which would not really be justified, as the drainage ditch seems to serve as an appropriate buffer between the two lots already.

I am the third owner of this property, and I was not privy to the arrangements that were made when my lot was created in 1974 by taking two pieces out of the neighbouring lots to the north and south, and creating a new lot (mine) sandwiched between them. However, I have always understood that the drainage ditch was important and contained pipes which were not to be disturbed. I thought that by building my shed to the south of the drainage ditch, and well to the south of the wire fence, that I was well within what my neighbours would expect of me in maintaining appropriate spacing between my building and their property.

In hindsight, I clearly should have been more careful to learn about the municipal regulations in such matters, and to learn the true surveyed line of my property boundary, instead of just going with what I had assumed to be the case. I will certainly be more diligent in such matters in the future.

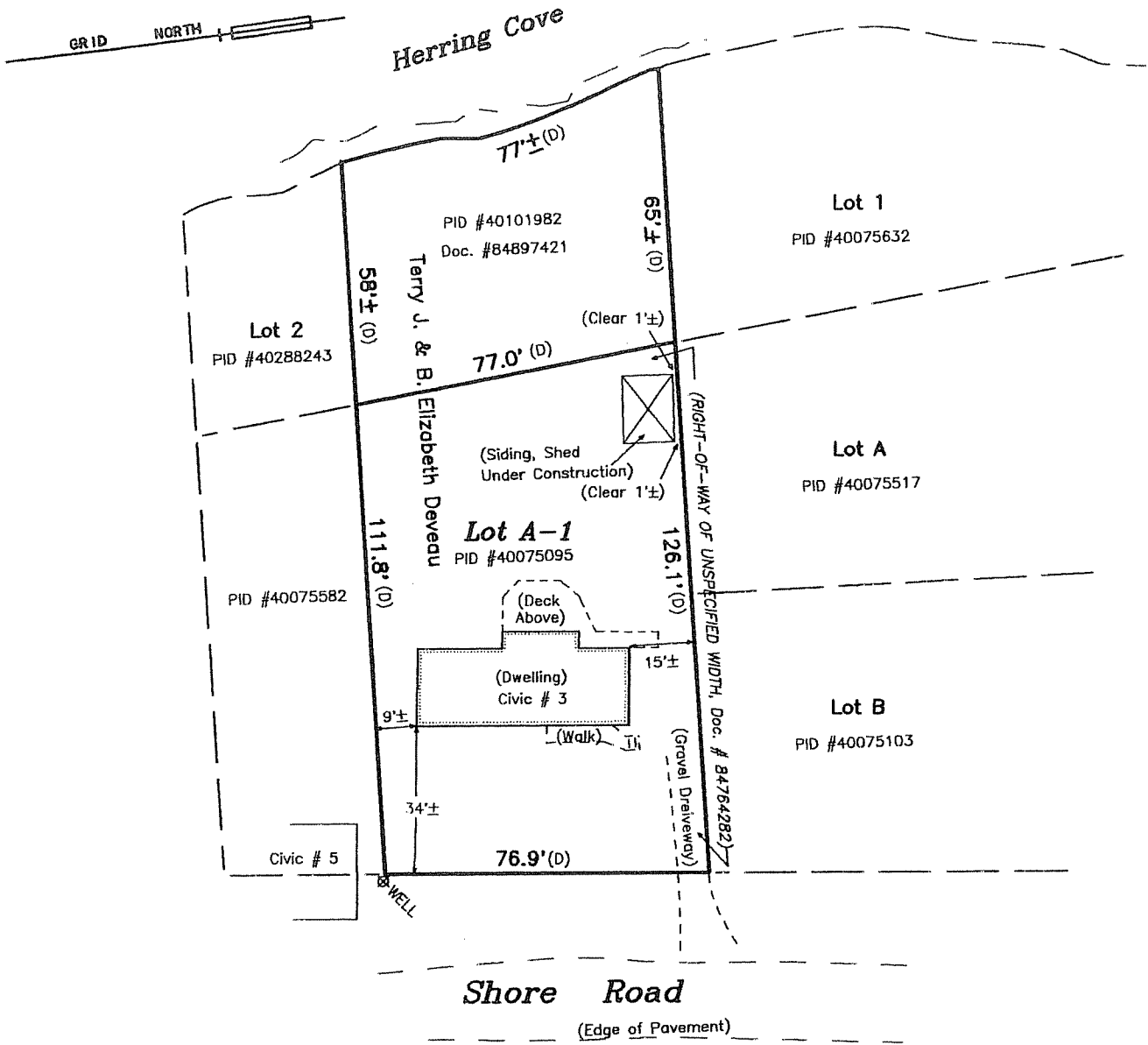
To prevent excessive hardship in my case by the large expense of moving the shed, I respectfully appeal and request your consideration in the granting of a variance and the approval of my request for a developers permit.

Sincerely,



Terry J. Deveau

SURVEYOR'S LOCATION CERTIFICATE



NOTE:

Clearances shown are to a tolerance of 0.5 feet more or less and are perpendicular to the boundary.

Scale: 1" = 40'