



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

Item No. 10.2.1
North West Community Council
December 11, 2017

TO: Chair and Members of North West Community Council

Original Signed

SUBMITTED BY:

Kelly Denty, Acting Director, Planning and Development

DATE: November 3, 2017

SUBJECT: **Case 21137: Appeal of Variance Approval – PID No. 41074493, Rocky Lake Drive, Bedford**

ORIGIN

Appeal of the Development Officer's decision to approve a request for variances.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality (HRM) Charter; Part VIII, Planning and Development

- s. 250, a development officer may grant variances in specified land use by-law or development agreement requirements but under 250(3) a variance may not be granted if:
 - (a) the variance violates the intent of the development agreement or land use by-law;
 - (b) the difficulty experienced is general to properties in the area;
 - (c) the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law.
- s. 251, regarding variance requirements for notice, appeals and associated timeframes
- s. 252, regarding requirements for appeal decisions and provisions for variance notice cost recovery

RECOMMENDATION

The question before North West Community Council is whether to allow or deny the appeal before them.

It is recommended that North West Community Council deny the appeal, and in so doing, uphold the decision of the Development Officer to approve the request for variances.

BACKGROUND

A variance request has been submitted for an undeveloped property at (PID No. 41074493) Rocky Lake Drive, Bedford to permit the site to be developed with a new semi-detached dwelling (Map 2 and Attachment A). In order to facilitate this project, a variance has been requested to relax the required front yard setback for the proposed building's front porches. A variance has also been requested to relax the required rear yard setback for a portion of the proposed building. The purpose of the variance is to allow for the development of a more aesthetically pleasing building. The remainder of the building is proposed to meet all other requirements of the Land Use By-law.

Site Details:

Zoning: RTU (Residential Two Dwelling Unit) Zone, Bedford Land Use By-Law

	Zone Requirement	Variance Requested
Min. Front Yard:	15 feet	12.1 feet
Min. Rear Yard:	20 feet	10 feet

For the reasons detailed in the Discussion section of this report, the Development Officer approved the requested variance (Attachment B). Four assessed property owners within 100 metres of the proposed development have appealed the Development Officer's decision, and the matter is now before North West Community Council for decision (Attachment C).

Process for Hearing an Appeal

Administrative Order Number One, the Procedures of the Council Administrative Order requires that Council, in hearing any appeal, must place a motion to "allow the appeal" on the floor, even if such motion is in opposition to the recommendation contained in the staff report. As such, this report contains within the Recommendation section, the wording of the appeal motion for consideration as well as a staff recommendation. For the reasons outlined in this report, staff recommend that Community Council deny the appeal and uphold the decision of the Development Officer to approve the request for variances.

DISCUSSION

Development Officer's Assessment of Variance Request:

In hearing a variance appeal, Council may make any decision that the Development Officer could have made, meaning their decision is limited to the criteria provided in the *Halifax Regional Municipality Charter*. As such, the *HRM Charter* sets out the following criteria by which the Development Officer may not grant variances to requirements of the Land Use By-law:

"250(3) A variance may not be granted if:

- (a) *the variance violates the intent of the development agreement or land use by-law;*
- (b) *the difficulty experienced is general to properties in the area;*
- (c) *the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law."*

In order to be approved, any proposed variance must not conflict with any of the criteria. The Development Officer's assessment of the proposal relative to each criterion is as follows:

1. Does the proposed variance violate the intent of the land use by-law?

It is the Development Officer's opinion that this proposal does not violate the intent of the Land Use By-Law as the variance requested is necessary to accommodate the proposed semi-detached dwelling on a narrow lot resulting in a minor reduction of the required 15-foot front yard and 20-foot rear yard.

Building setbacks help to ensure that structures maintain adequate separation from adjacent structures, streets and property lines for access, safety, and aesthetics. The lot is shallow in depth making it difficult to locate a standard dwelling within the required setbacks. The variance requested is to allow the front porches to be closer to the street, and to allow part of the building to be closer to the rear property line, which abuts a railway property.

The proposed building meets the side yard setback requirements. The front yard setback reduction is considered to be minor relative to the requirements of the by-law and, therefore, is believed to be in keeping with the general intent of the Land Use By-Law. The rear yard setback reduction is considered to be minor considering the abutting property contains a railway and not another dwelling.

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

In considering variance requests, staff must consider the characteristics of the surrounding neighbourhood to determine whether the subject property is unique in its challenges in meeting the requirements of the land use by-law. If it is unique, then due consideration must be given to the requested variance; if the difficulty is general to properties in the area, then the variance must be denied.

The difficulty experienced is not general to properties in the area. The property is shallow in depth for the neighbourhood and is one of few undeveloped lots in the vicinity. The depth of the lot is approximately 45 feet compared to nearby lots whose depths range from 60 feet to 200 feet.

The RTU Zone requires a minimum lot area of 3,000 square feet and a minimum frontage of 30 feet for each semi-detached unit. The lot has an area of 18,945 square feet and 408 feet of street frontage. The lot may be developed, however, the location of any new building on the site is constrained by its unique configuration and shallow lot depth. As such, the difficulty experienced is not general to the area.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use by-law?

In reviewing a proposal for intentional disregard for the requirements of the Land Use By-law, there must be evidence that the applicant had knowledge of the requirements of the By-law relative to their proposal and then took deliberate action which was contrary to those requirements.

That is not the case in this request. The applicant has applied for a Development Permit in good faith and requested the variance prior to commencing any work on the property.

Appellant's Appeal:

While the criteria of the *HRM Charter*, limits Council to making any decision that the Development Officer could have made, the appellants have raised certain points in their letters of appeal (Attachment C) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

Appellant's Appeal Comments	Staff Response
<p><i>"A simple push can lead to a dramatic 10 feet occurrence to the backyard of a train track. Residents have and will become complacent to the train. This complacency is one of the first steps to become unsafe."</i></p>	<p>The Land Use Bylaw does not specifically regulate setbacks from train tracks other than the required minimum setbacks. The notice of variance approval was sent to Canadian Government Railways as an assessed property owner adjacent to the proposed development, to which no appeal was received.</p>
<p><i>"The land is a natural wetland that houses local wildlife including ducks and muskrats."</i></p> <p><i>"Environmental concerns with construction occurring may inundate active life. Birds, osprey, turtles and beavers have all been around the pond for the location that is proposed."</i></p> <p><i>"I would like to register my concern with use of this land that backs onto a pond containing many species including ducks and turtles."</i></p>	<p>As part of the variance review, the applicant provided a survey plan delineating the wetland on the property in question (Attachment D).</p> <p>The proposed development is 160 feet away from the delineated wetland.</p>
<p><i>"The land that the proposed structure is proposed to be built, has been slowly infilled over the past 20 years, which I'm fairly certain in itself is not permitted according to provincial environmental laws."</i></p>	<p>According to the Department of Environment draining, filling, flooding, or excavating in a wetland is not allowed without approval from Nova Scotia Environment. All approvals to alter wetland require compensation. Although it is possible to infill a wetland with the proper approvals, the area where the building is proposed is not within the delineated wetland.</p>

Conclusion:

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was approved as it was determined that the proposal does not conflict with the statutory criteria provided by the *Charter*. The matter is now before North West Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

RISK CONSIDERATION

There are no significant risks associated with the recommendation expressed in this report.

COMMUNITY ENGAGEMENT

Community Engagement, as described by the Community Engagement Strategy, is not applicable to this process. The procedure for public notification is mandated by the *HRM Charter*. Where a variance approval is appealed, a hearing is held by Council to provide the opportunity for the applicant, appellants and anyone who can demonstrate that they are specifically affected by the matter, to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. North West Community Council may deny the appeal and uphold the decision of the Development Officer to approve the variance.
2. North West Community Council may allow the appeal and overturn the decision of the Development Officer and deny the variance.

ATTACHMENTS

Map 1: Notification Area
Map 2: Site Plan

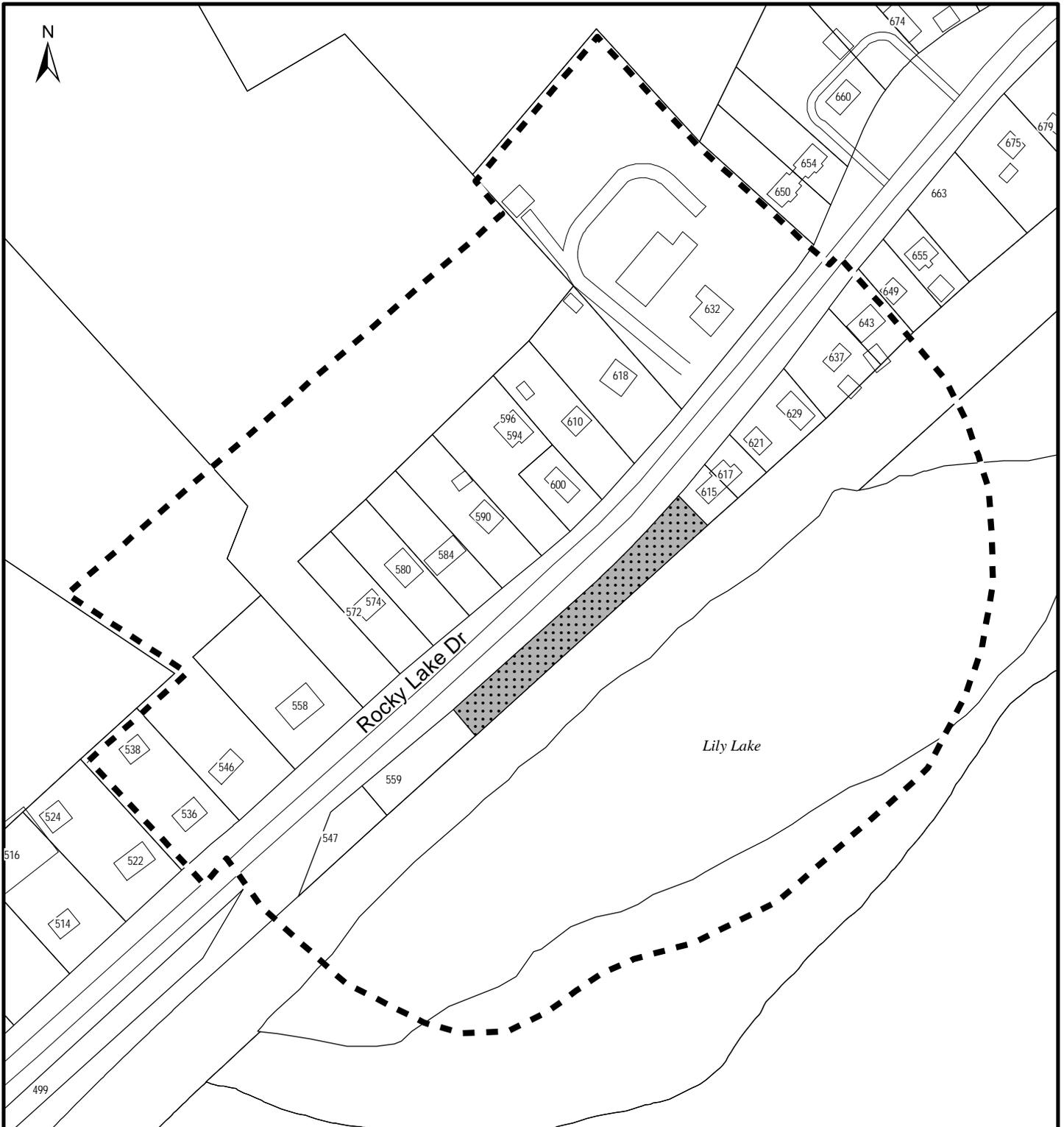
Attachment A: Building Elevations
Attachment B: Variance Approval Notice
Attachment C: Letter of Appeal from Abutters
Attachment D: Siting and Grading Plan showing Wetland

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Audas, Development Officer, 902.490.4402

Original Signed

Report Approved by: Kevin Warner, Land Development & Subdivision Manager, 902.490.1210



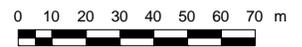
Map 1 - Notification Area

Rocky Lake Drive - PID 41074493
Bedford

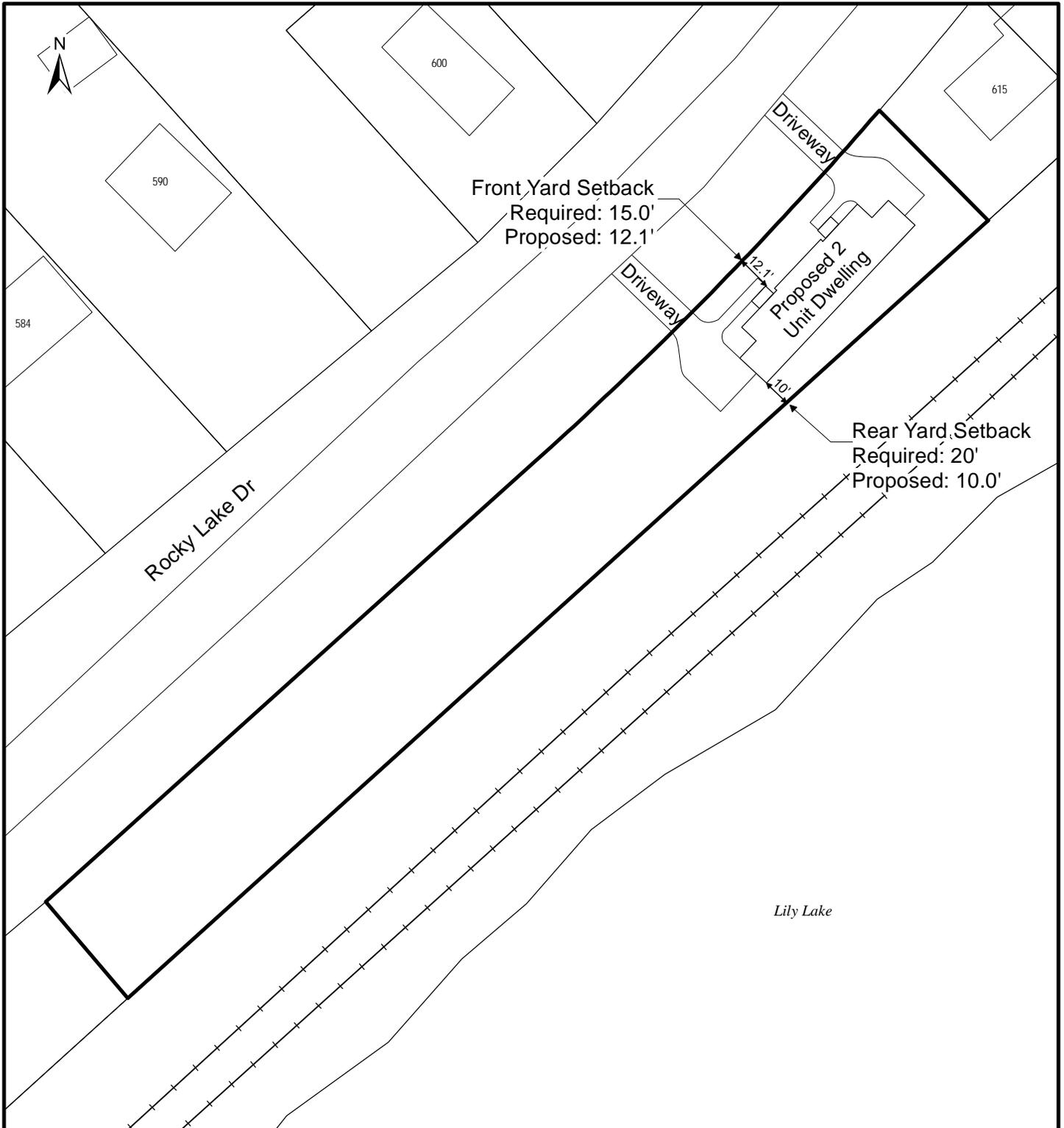
-  Subject Property
-  Notification Area

Bedford
Plan Area

HALIFAX



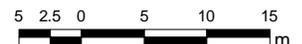
The accuracy of any representation on this plan is not guaranteed.



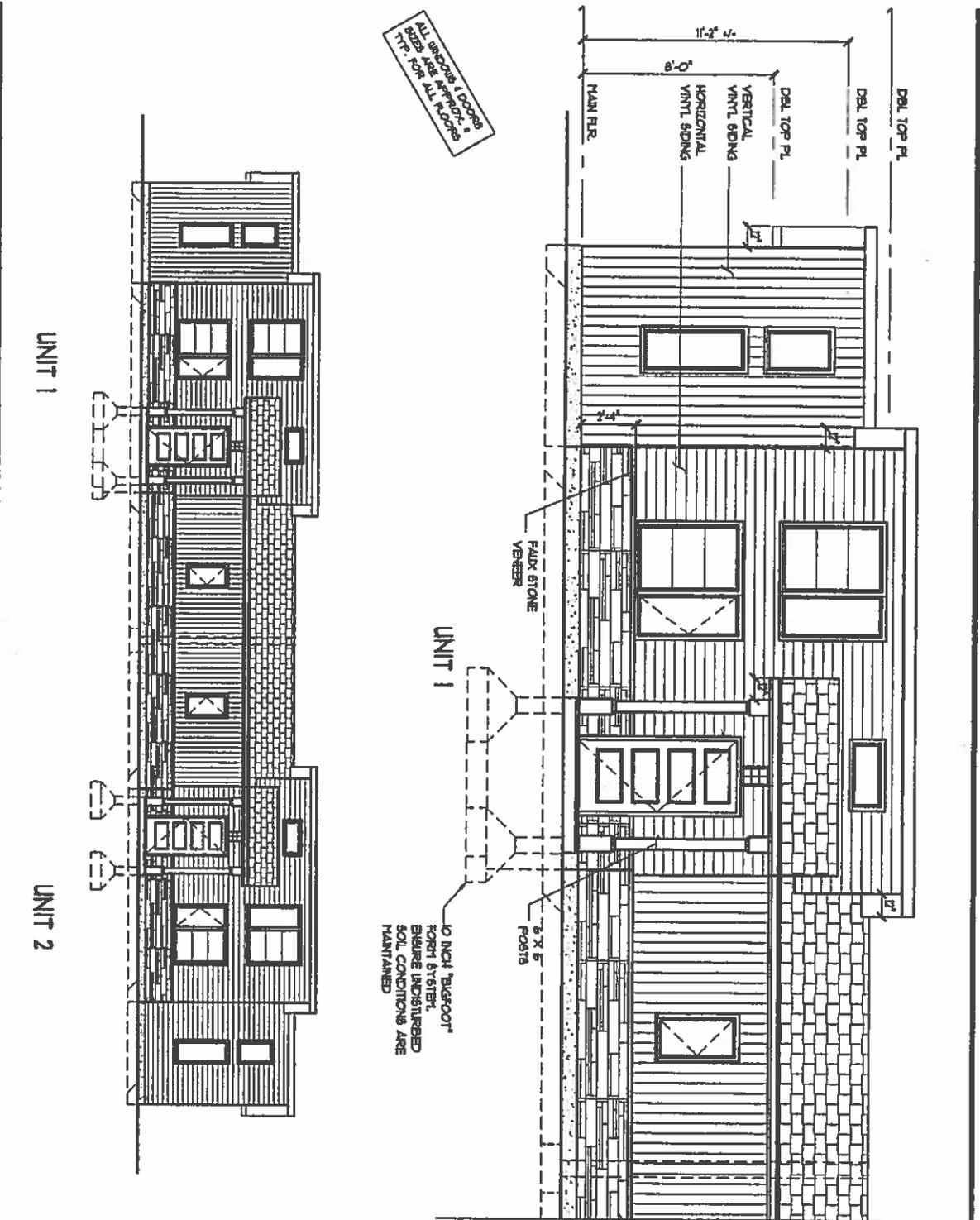
Map 2 - Site Plan

Rocky Lake Drive - PID 41074493
Bedford

HALIFAX



The accuracy of any representation on this plan is not guaranteed.



ALL WINDOWS & DOORS TO BE 1 1/2\"/>

10 INCH "BUCKFOOT" FORM SYSTEM. FAILURE INDISTINGUISHED SOIL CONDITIONS ARE MAINTAINED

GENERAL NOTES:

The building is to be constructed in accordance with current building codes and regulations. The contractor shall be responsible for obtaining all necessary permits. The contractor shall be responsible for all utility work. The contractor shall be responsible for all site work. The contractor shall be responsible for all foundation work. The contractor shall be responsible for all exterior finish work. The contractor shall be responsible for all interior finish work. The contractor shall be responsible for all mechanical, electrical, and plumbing work. The contractor shall be responsible for all painting work. The contractor shall be responsible for all landscaping work. The contractor shall be responsible for all other work not specifically mentioned in these notes.

PRECISION CADD SERVICES
 2825 Langley, C.E.T.
 PHONE: (780) 484-4000
 FAX: (780) 484-0000
 E-MAIL: precision@precisioncadd.com

CYRIL TARRANT

REV.	DESCRIPTION:	DATE:
A	1ST ISSUE	APR/02/2011

PRECISION CADD SERVICES

2825 Langley, C.E.T.
 PHONE: (780) 484-4000
 FAX: (780) 484-0000
 E-MAIL: precision@precisioncadd.com

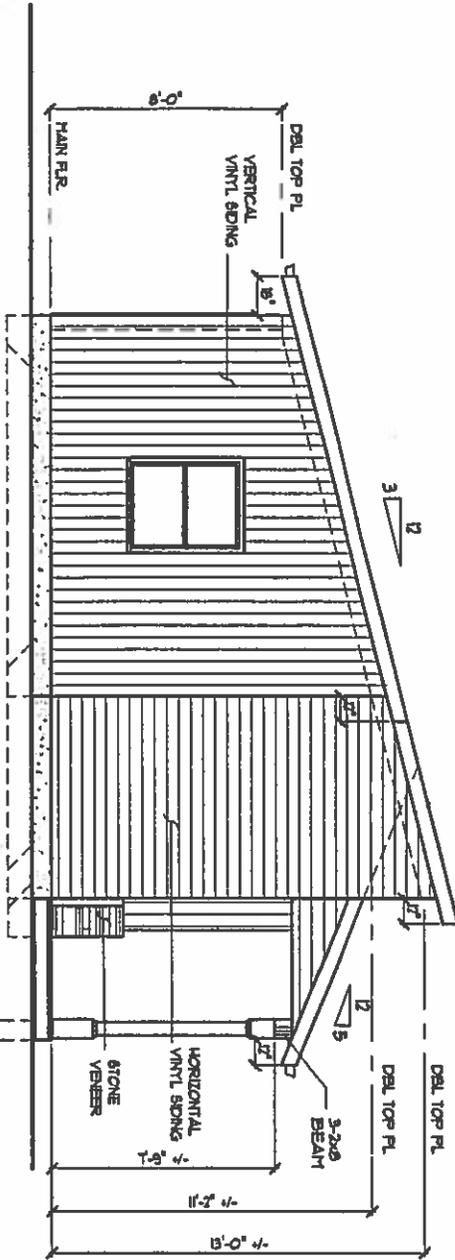
FRONT ELEVATION

SCALE: 1/4"=1'-0" / SCALE: 1/8"=1'-0"

LOT: 38C-2 (RAIN B.T. UNIT)

LOCAL: ROCKY LAKE DRIVE
 BEDFORD
 NOVA SCOTIA

SHT: 1 OF 9 REV: A-1



10 INCH "BIGFOOT"
FORM SYSTEM
ENSURE UNDISTURBED
SOIL CONDITIONS ARE
MAINTAINED



GENERAL NOTES:

- 1. All framing to be constructed in accordance with current building codes.
- 2. All framing to be constructed in accordance with current building codes.
- 3. All framing to be constructed in accordance with current building codes.
- 4. All framing to be constructed in accordance with current building codes.
- 5. All framing to be constructed in accordance with current building codes.
- 6. All framing to be constructed in accordance with current building codes.
- 7. All framing to be constructed in accordance with current building codes.
- 8. All framing to be constructed in accordance with current building codes.
- 9. All framing to be constructed in accordance with current building codes.
- 10. All framing to be constructed in accordance with current building codes.

DATE: 11/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT: [Name]

REV.	DESCRIPTION:	DATE:
A	1ST ISSUE	APPROX/2011

**CYRIL
TARRANT**



**PRECISION
CADD
SERVICES**

LEFT ELEVATION

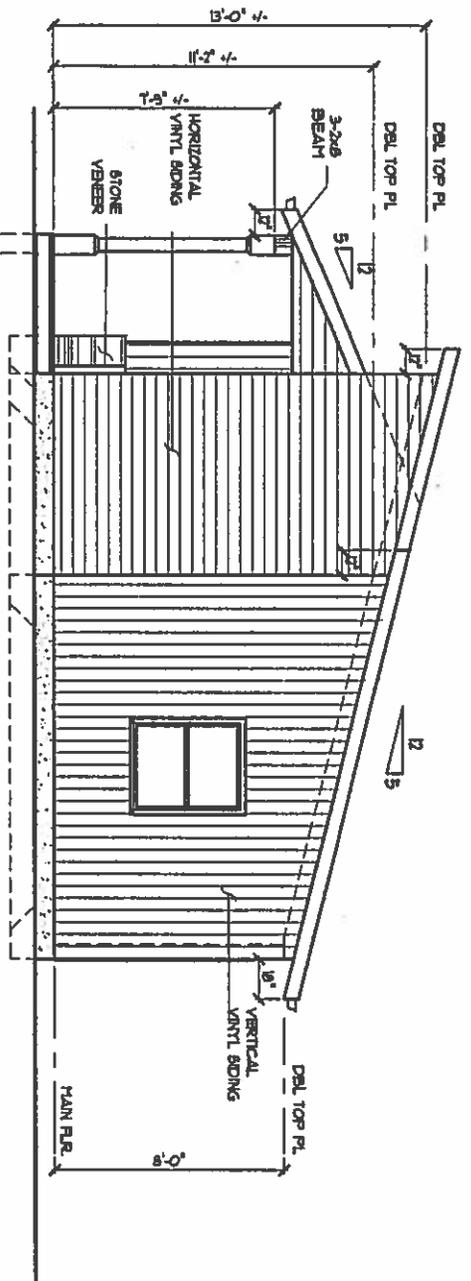
SCALE: 1/4"=1'-0"

LOT 2, 38C-2 (BEARIN BY: UHL)

ROCKY LAKE DRIVE
BEDFORD
NOVA SCOTIA

SHT. 2 OF 9 REV. A-2

ALL WINDOWS & DOORS TO BE SET FOR ALL FLOORS



GENERAL NOTES:

- 1. The building is to be constructed in accordance with current building codes and standards for framing, etc.
- 2. All exterior walls are to be finished with 1/2" thick gypsum board.
- 3. All interior walls are to be finished with 1/2" thick gypsum board.
- 4. All exterior doors and windows are to be set for all floors.
- 5. All exterior doors and windows are to be set for all floors.
- 6. All exterior doors and windows are to be set for all floors.
- 7. All exterior doors and windows are to be set for all floors.
- 8. All exterior doors and windows are to be set for all floors.
- 9. All exterior doors and windows are to be set for all floors.
- 10. All exterior doors and windows are to be set for all floors.

CONTRACTOR TO OBTAIN ALL NECESSARY PERMITS FROM THE CITY OF ROCKY LAKE, ALBERTA. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE CITY OF ROCKY LAKE, ALBERTA.

REV.	DESCRIPTION	DATE
A	1ST ISSUE	APR/2021

CYRIL TARRANT

P RECISION CADD SERVICES

Stacy Lupton, C.E.T.
 ARCHITECTURAL DRAFTING
 1000 100th Avenue
 Suite 100, Edmonton, Alberta

RIGHT ELEVATION

SCALE 3/8" = 1'-0"

LOT 4, 38C-2) DEAN B.T. WINTL
 LOCATION: ROCKY LAKE DRIVE
 BEDFORD NOVA SCOTIA
 SHEET: 3 OF 9 REV. A-3

Attachment B: Variance Approval Notice

FILE COPY



June 20, 2017

Teresa Jacqueline Tarrant
282 Connors Rd.
Antigonish, NS B2G 2K9

Dear Madam:

RE: Variance Application #21137 – Rocky Lake Drive, Bedford, PID #41074493

This will advise you as the Development Officer for the Halifax Regional Municipality, I approved your request for a variance from the requirements of the Bedford Land Use Bylaw as follows:

Location: Rocky Lake Drive, Bedford, PID #41074493
Project Proposal: Proposed Two Unit Dwelling

	Requirements	Proposal
Front Yard Setback	15 feet	12.1 feet
Rear Yard Setback	20 feet	10 feet

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 100 meters of the property have been notified of this variance. Those property owners have the right to appeal and must file their notice, in writing, to the Development Officer on or before July 7, 2017.

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 Melinda Francis at 490-1201.

Sincerely,

Original Signed

Sean Audas, Principal Planner / Development Officer
Halifax Regional Municipality

cc. Kevin Arjoon, Municipal Clerk
Councillor Tim Outhit

HALIFAX REGIONAL MUNICIPALITY
JUN 28 2017
 MUNICIPAL CLERK

Dear Sean Avdas,

As a property owner within 100 meters below:

"Re: Variance Application #21137 - Rocky Lake Drive, Bedford, PID #41074493"

noted address I have been notified of the following variance as per requirement of the Halifax Regional Municipal Charter, Section 251.

Location: Rocky Lake, Bedford, PID #41074493

Project Proposal: Proposed Two Unit Dwelling

	Requirements	Proposal
Front Yard Setback	15 Feet	12.1 Feet
Back Yard "	20 Feet	10 Feet

I wish to appeal for a number of reasons.

To name a few safety concerns, environmental and future concerns.

Recent tragic events upon train safety a backyard proposal would not take kindly to the complacent the track has ~~set~~ on the current dwellings. A simple push can lead to a dramatic 10 feet occurrence to the back yard of a train track. Residents have become/will become complacent to the train. This complacency

is one of the first steps to become unsafe.

Environmental concerns with construction occurring may innodate active life. Birds, osprey's, turtle and beavers have all been around the pond for the location that is proposed.

There are concerns and I do appeal this proposal. Half the size of the backyard to a sole 10 feet 2:1 ratio is a concern.

Yours truly,
Robin Boydreau.

R. Boydreau
Rocky Lake Dr.
Bedford

Stewart, April

From: Barbara Jane Wright <[REDACTED]>
Sent: July-04-17 8:35 PM
To: Office, Clerks
Subject: Variance application #21137

HALIFAX REGIONAL
MUNICIPALITY

JUL 05 2017

S. G.

MUNICIPAL CLERK

I wish to appeal this variance. I would like to register my concern with use of this land that backs onto a pond containing many species including ducks and turtles.

Looking forward to being able to discuss this at a community meeting.

Barb wright

[REDACTED] Rocky Lake Drive
[REDACTED]

Rocky Lake Drive
Bedford, Nova Scotia B4A 2T6

RE: Appeal to Variance Application #21137-Rocky Lake Drive, PID #41074493

July 5, 2017

Dear Mr. Arjoon,

Recently we received notice of an approved variance request from your office's Development officer for the land known as PID #41074493 on Rocky Lake Drive.

On behalf of myself and my neighbours at Rocky Lake Drive, we wish to register an appeal.

The land shaded on Map 1 notification area indicated as Subject Property, is actually a natural wetland that houses local wildlife including ducks and muskrats. In fact, the end of the land that the proposed structure is to be built, has been slowly infilled over the past 20 years, which I'm fairly certain in itself is not permitted according to provincial environmental laws.

Allowing this structure to be built, will slowly allow more soil to be filled into the remainder of the natural wetland, encroaching on and eventually displacing all the wildlife that depend upon it for existence, and creating usable land, where none existed in the past.

We look forward to hearing back from your office regarding this matter.

Sincerely,

Margo Riebe-Butt
Rocky Lake Drive

Michael Ryan
Rocky Lake Drive
