


HALIFAX

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

Item No. 10.2.1
North West Community Council
May 16, 2016

TO: Chair and Members of North West Community Council

SUBMITTED BY: Original Signed

Bob Bjerke, Chief Planner & Director, Planning and Development

DATE: April 12, 2016

SUBJECT: Case 18063: Appeal of Variance Approval – 6 Cummings Drive, Fall River

ORIGIN

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

LEGISLATIVE AUTHORITY

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

RECOMMENDATION

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

BACKGROUND

A variance request has been submitted for 6 Cummings Drive, Fall River to rectify a side yard setback for an existing single unit dwelling (Map 1). The single unit dwelling was constructed in 1976 and at that time, a Survey Certificate was prepared showing the distances from the side and front property lines (refer to Attachment A). In 2005, a building permit was issued to construct an attached garage on the right side of the dwelling using the measurements shown on the 1976 Survey Certificate. Due to a survey error, the actual side yard setback for the garage is not in compliance with the applicable land use by-law.

History of the Variance

In regard to the background on the variance application, staff provides the following events and dates relative to the application:

- In 2005, a building permit was issued to construct a 22 foot x 24 foot attached garage on the right side of the dwelling using the distances shown on the 1976 Survey Certificate. The measurements shown on the certificate indicated a 8 foot side yard setback requirement would be provided as per the Planning Districts 14 and 17 Land Use Bylaw (LUB).
- In 2009, staff received a complaint based on a perimeter survey completed by the neighbouring property owner that the single unit dwelling was not in compliance with the LUB.
- In 2009, staff conducted a land use bylaw investigation in response to the survey information which determined that the garage portion of the dwelling was situated only 2 feet from the right property line.
- In 2011, the owner provided a location certificate confirming the position of the attached garage at 6 Cummings Drive, Fall River to be 2 feet from the property line (refer to Attachment B). Map 2 – Site Plan illustrates the discrepancy between the 1976 Survey Certificate, which the owner relied on to position the attached garage, and the location certificate prepared in 2011.
- On September 12, 2012, the applicant made an application for the requested variance to the side yard setback requirements of the LUB.

Site Details:

Zoning: R-1B (Suburban Residential) Zone, Planning Districts 14 and 17 LUB

	Zone Requirement	Variance Requested
Minimum Side Yard Setback	8 feet	2 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer approved the requested variance (Attachment C). A property owner within the 30 metre notification area has filed an appeal (Attachment D) and the matter is now before North West Community Council for decision.

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 *HRM 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 position that the variance does not violate the intent of the land use by-law.

Side yard building setbacks are intended to help to ensure buildings maintain adequate separations from adjacent structures, streets, and property lines for access, safety and aesthetics. In consideration of access, the right side of the building is setback 2 feet from the property line which will provide space for access to the rear of the lot and for maintenance to the side of the garage. Ample space also exists on the left side of the property if machinery or equipment needed to be brought to the rear of the site.

With respect to adequate separation from adjacent structures, the garage is located approximately 600 feet from the dwelling on the abutting property at 1109 Fall River Road. These lands encompass 47 acres and are identified in the River Lakes Secondary Plan as an opportunity site which allows Council to consider, through the development agreement process, the development of low scale multiple-unit dwellings, townhouses, single unit dwellings or two unit dwellings. Plan policy requires a minimum of 60% open space to be retained and the development to be compatible with any adjacent low density residential uses through the use of siting, transition of building scales, architectural elements to promote visual integration and landscaping and buffering.

Given the policy criteria for the development of the abutting lands, allowing the garage to remain situated 2 feet from the right side yard property line maintains the intent of the land use by-law to provide for adequate separation distances.

2. Is the difficulty experienced general to the 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.

As is the case today, all homes developed during this time were required to have location certificates prepared by a licensed land surveyor during construction. For property owners constructing additions to their existing homes, such as the case here, it is reasonable to assume such documents can be used to site proposed additions in relation to property lines with some degree of accuracy. The discrepancy in surveying information (6 feet) makes this property unique and the difficulty experienced is not general to properties in the area.

3. Is the difficulty experienced the result of 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. This is not the case in this variance request.

The applicant received a permit for the garage addition and submitted documentation in good faith based on the information from a 1976 survey certificate prepared by a licensed land surveyor. At the time the garage was constructed the applicant would not have any reason to question the accuracy of the surveyor's certificate. Once the issue was brought to staffs attention the applicant again paid for another certificate to verify the setback of the attached garage. Other, encroachments were determined such as a retaining wall and a concrete walkway which have since been removed.

In addition to the above, the applicant has taken all reasonable steps to remedy the setback and encroachment issues and it is therefore determined that the difficulty experienced is not the result of intentional disregard of the requirements of the Land Use Bylaw.

Appellant's Appeal:

The appellant did not provide any specific comments as to the reason(s) for their appeal.

Conclusion:

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

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance request.

RISK CONSIDERATION

The risks considered rate low. There are no significant risks associated with this report. To reach this conclusion, consideration was given to the location of the proposed development on the property and whether the requested relaxation of the land use by-law requirements would result in a hazard to abutting properties, or present an operational difficulty, such as access for snow removal or maintenance on a public right of way.

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 refused and appealed, a hearing is held by Community Council to provide the opportunity for the applicant, all assessed property owners within 30 metres of the variance request, 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 and approve the variance.
2. North West Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variance.

ATTACHMENTS

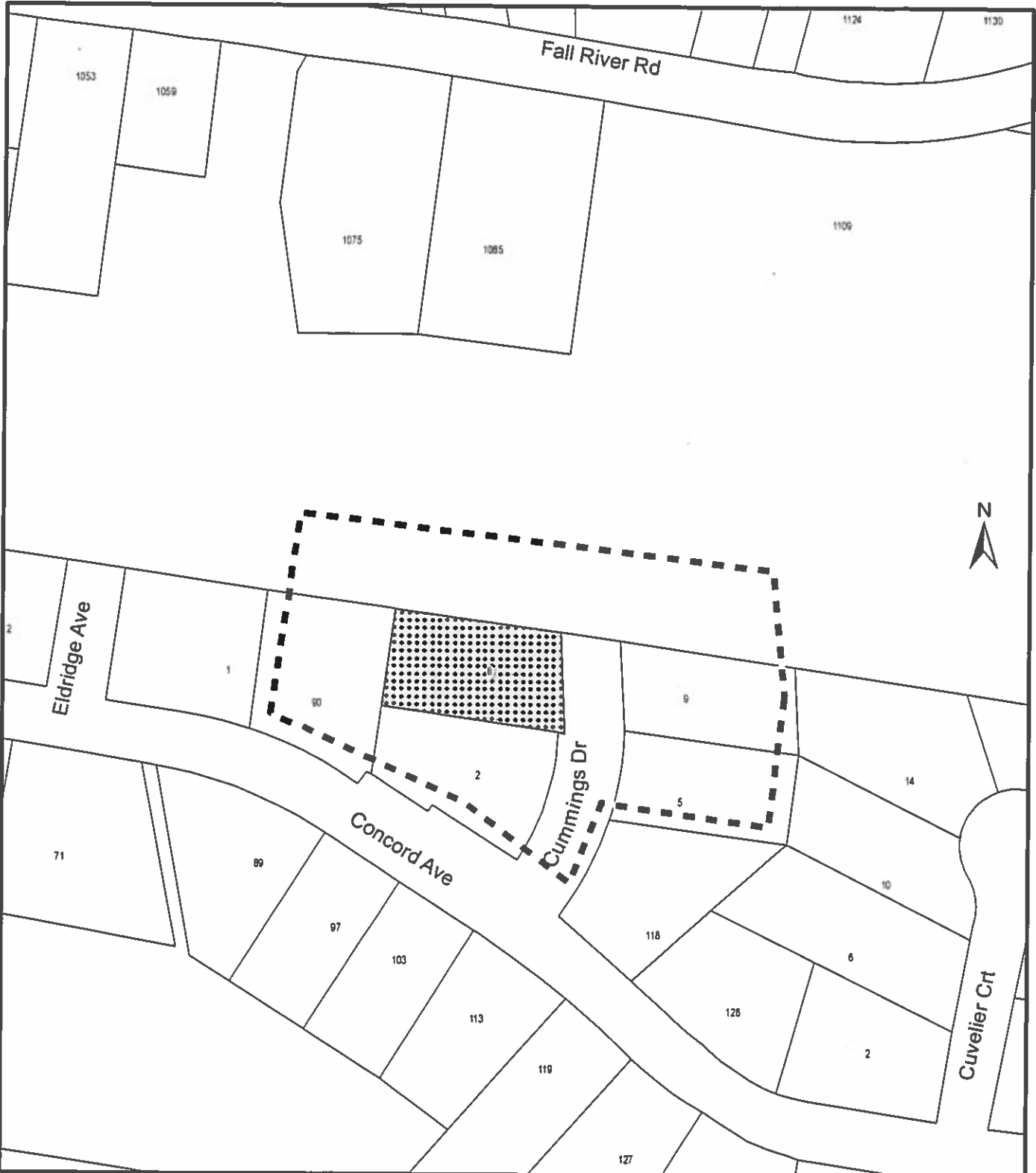
Map 1	Notification Area
Map 2	Site Plan
Attachment A	1976 Surveyor's Certificate
Attachment B	2011 Location Certificate
Attachment C	Variance Approval Letter
Attachment D	Appellant's Letter of Appeal

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Trevor Creaser, Development Officer, 902.490.4416

Original Signed

Report Approved by: _____
Kelly Denty, Manager, Development Approvals, 902.490.4800



Map 1 - Notification Area

6 Cummings Drive,
Fall River



Subject Property

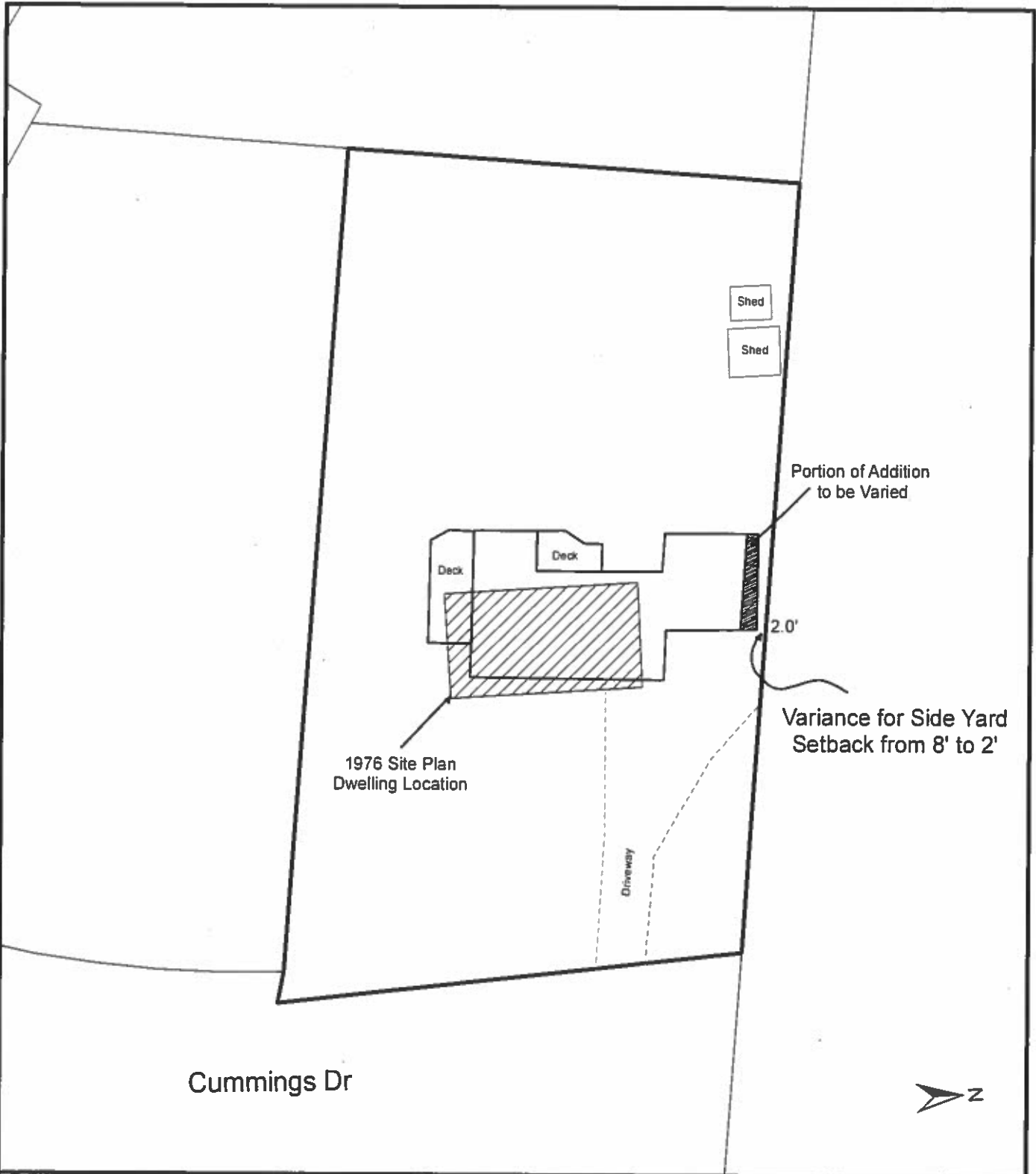


Notification Area

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



Map 2 - Site Plan

6 Cummings Drive,
Fall River



Subject Property



1976 Site Plan Dwelling Location

HALIFAX



The accuracy of any representation on this plan is not guaranteed

NORTH STAR SURVEYING

Certificate

Lot: J-4
 Subdivision: FALL RIVER VILLAGE
 Name: BOB WHITE


 Scale: 1" = 40'



I certify that the foundation of the dwelling being constructed on Lot J-4, Cummings Drive, Fall River Village, Fall River, Halifax County, N. S., said lot owned by Bob White is within the metes and bounds of said lot and is located as shown on the above plan.

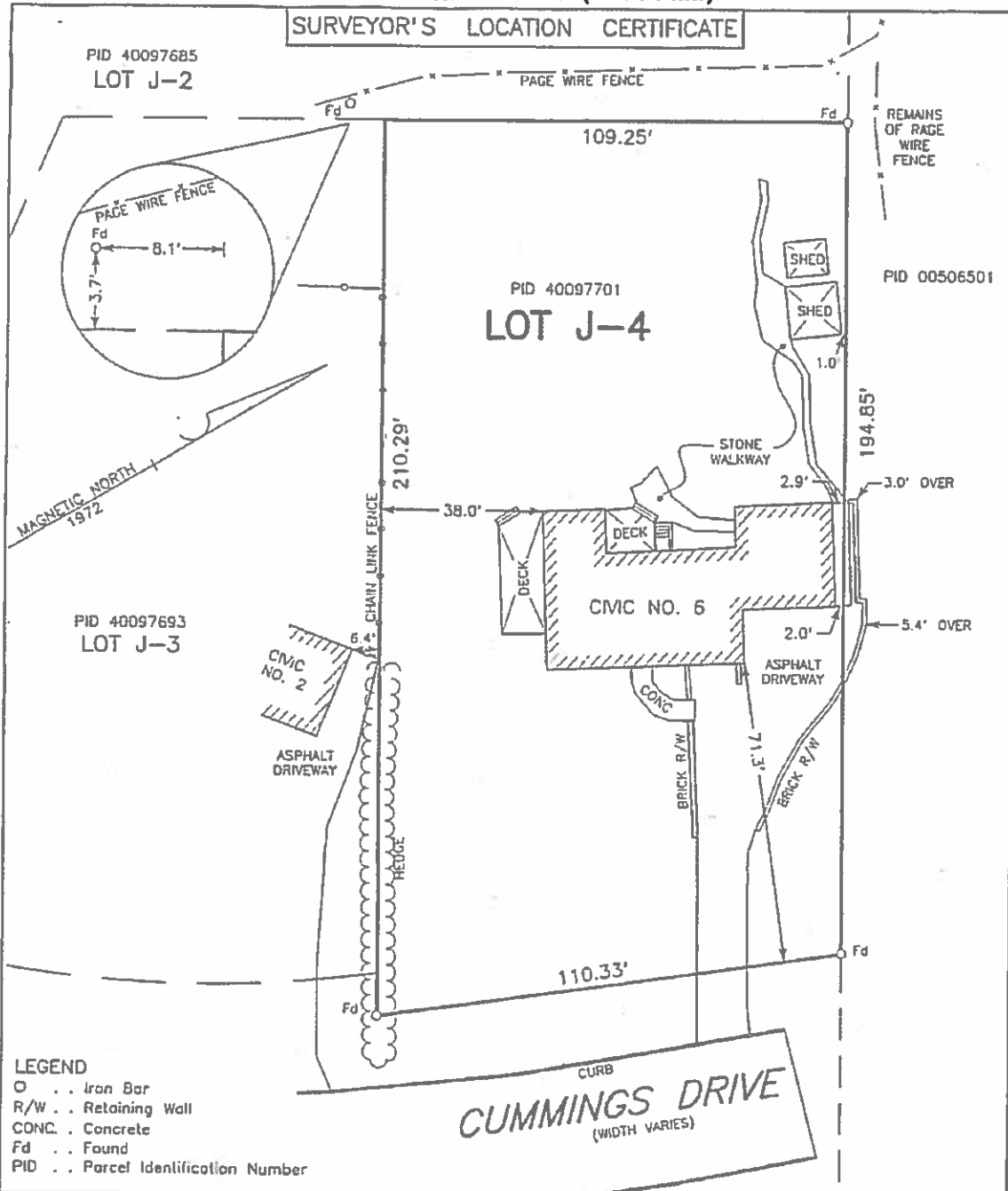
Encroachments or Easements None

Original Signed

Date: September 2, 1976  N. S. L. S.

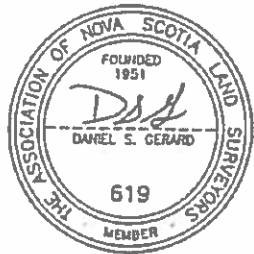
Attachment B (2011 Plan)

SURVEYOR'S LOCATION CERTIFICATE



LEGEND
 O . . . Iron Bar
 R/W . . Retaining Wall
 CONC. . Concrete
 Fd . . Found
 PID . . Parcel Identification Number

Certified to: **ROBERT ALAN WHYTE & DAWN PAMELA WHYTE**
 Re: **6 CUMMINGS DRIVE, LOT J-4, FALL RIVER**
HALIFAX COUNTY, NOVA SCOTIA



I, **DANIEL S. GERARD**, Nova Scotia Land Surveyor, hereby certify that :

- (1) This Surveyor's Location Certificate was prepared under my supervision and in accordance with Part VI of the Nova Scotia Land Surveyors Regulations made pursuant to Section 8 of the Land Surveyors Act.
- (2) The DWELLING shown hereon is located entirely within the boundaries of the subject lands as said boundaries are defined by Halifax County Registry of Deeds Plan No. 14439, dated November 17, 1975; approved January 16, 1976.

September 14, 2011
 Date of Field Survey

Dated September 20, 2011 Original Signed

NOTES

1. CLEARANCES SHOWN ARE TO A TOLERANCE OF 0.2' AND ARE PERPENDICULAR TO THE BOUNDARY.
2. THIS SURVEYOR'S LOCATION CERTIFICATE SHALL NOT BE USED FOR BOUNDARY DEFINITION OR AS A DOCUMENT FOR THE PREPARATION OF LEGAL DESCRIPTIONS.
3. ALL BOUNDARY DIMENSIONS ARE DERIVED FROM THE SUBJECT PLAN UNLESS OTHERWISE NOTED.

38 OLAND CRESCENT
 BAYERS LAKE BUSINESS PARK
 HALIFAX, NOVA SCOTIA
 OFFICE: (902) 455-1537
 FAX: (902) 455-8478
 www.sdmm.ca



Servant, Dunbrack, McKenzie & MacDonald Ltd.
 NOVA SCOTIA LAND SURVEYORS & CONSULTING ENGINEERS
 HALIFAX, NOVA SCOTIA

SCALE 1"= 30'
 FILE NO. 1-14-3 (28672)
 SLC 82738

Attachment C - Letter of Approval



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

February 20, 2013

Dear Sir or Madame:

RE: Application for Variance #18063 - #6 Cummings Drive, Fall River, N.S.

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 Section 251(3) of the Halifax Regional Charter.

As the Development Officer for the Halifax Regional Municipality, I have approved a request for a variance from the requirements of the Land Use Bylaw for Planning Districts 14/17 (Shubenacadie Lakes) as follows:

Location:	#6 Cummings Drive
Project Proposal:	To permit an existing attached garage to remain closer to the right property boundary than permitted under the land use bylaw.
Required Setback:	8 Feet
Approved Variance:	2 Feet

In accordance with Section 251(1) of the *Halifax Regional Charter*, all assessed owners within 30 metres of the above noted property have been notified of this variance. Property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed in writing on or before March 9, 2013 and address your appeal to:

Municipal Clerk
c/o Trevor Creaser, Development Officer
Halifax Regional Municipality
Development Approvals
P.O. Box 1749, Halifax, N.S. B3J 3A5

PLEASE NOTE THAT THIS DOES NOT PRECLUDE FURTHER CONSTRUCTION ON THIS PROPERTY THAT WOULD MEET THE REQUIREMENTS OF THE LAND USE BYLAW.

If you have any questions or require additional information, please contact Karen Godwin, Development Technician at 869-4234.

Original Signed

Trevor Creaser
Development Officer

cc. Cathy Mellett, Municipal Clerk
Councillor B. Dalrymple

COMMUNITY & RECREATION SERVICES - DEVELOPMENT APPROVALS
Acadia Centre Office - 636 Sackville Drive, Sackville, NS

Tel: (902) 869-4235 Fax: (902) 869-4254
E-mail: creaset@halifax.ca Web Site: www.halifax.ca

Attachment D - Letter of Appeal

256 Windsor Junction Road
Windsor Junction, NS
B2T 1G7



March 8, 2013

Ms. Cathy Mellett
Municipal Clerk
Halifax Regional Municipality
1841 Argyle Street
Halifax, NS B3J 3A5

Delivered by Hand

Dear Ms. Mellett :

Re : **Application for Variance #18053**
6 Cummings Drive, Fall River, Nova Scotia
Owners : Robert A. Whyte & Dawn S. Whyte, P.I.D.# 40092201

Thank you for your 'form' letter of February 20, 2013 (as attached) advising of the above noted variance application. I am the owner of the property located adjacent to 6 Cummings Drive, identified as Civic #1109 Fall River Road, being P.I.D. #00506501.

Respectfully, I wish to exercise my right to appeal the decision of the Development Officer, Mr. Treavor Creaser, to the Municipal Council.

Ms. Mellett, please contact me at your earliest convenience in order to schedule a 'formal hearing'.

Yours truly,

Original Signed

Laurie P. Baker

cc : Mr. Trevor Creaser
Councillor, Barry Dalrymple