



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

**Item No. 5.2.1**  
**Halifax and West Community Council**  
**July 28, 2020**

**TO:** Chair and Members of Halifax and West Community Council  
Original Signed

**SUBMITTED BY:** \_\_\_\_\_  
Steve Higgins, Manager, Current Planning

**DATE:** July 8, 2020

**SUBJECT:** **Cases 22953, 22954, 22955, 22956, 22957, 22958: Appeal of Variance Refusal – Civics 33-59, Grenoble Court, Halifax**

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**ORIGIN**

Appeal of the Development Officer's decision to refuse a variance.

**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**

In accordance with Administrative Order One, the following motion shall be placed on the floor:

**That the appeal be allowed.**

Community Council approval of the appeal will result in approval of the variance.

Community Council denial of the appeal will result in refusal of the variance.

Staff recommend that Halifax and West Community Council deny the appeal.

## **BACKGROUND**

Variance requests have been submitted for six properties (Lots 512-517) at 33-59 Grenoble Court, Halifax to permit the lots to be developed with six new, semi-detached dwellings (Map 2 and Attachment 1). To facilitate this project, six variances have been requested to reduce the required front yard setback for each building. The buildings are otherwise proposed to meet all other requirements of the Land Use By-law.

### **Site Details:**

#### **Zoning**

The property is located in the R-2P (General Residential) Zone of the Halifax Mainland Land Use By-Law (LUB) and is within the Mainland South Secondary Plan Area. The R-2P Zone permits the use of semi-detached dwellings, provided the applicable requirements are satisfied. The relevant requirements of the LUB and the related variance requests is as identified below:

<b>LUB Regulation</b>	<b>Lot</b>	<b>Requirement</b>	<b>Variance Requested</b>
Minimum Front Yard Setback	512	20 feet	10 feet
Minimum Front Yard Setback	513	20 feet	15 feet
Minimum Front Yard Setback	514	20 feet	15 feet
Minimum Front Yard Setback	515	20 feet	15 feet
Minimum Front Yard Setback	516	20 feet	15 feet
Minimum Front Yard Setback	517	20 feet	15 feet

For the reasons detailed in the Discussion section of this report, the Development Officer denied the requested variances (Attachment B). The applicant has appealed the denial (Attachment C) and the matter is now before Halifax and West Community Council for decision.

#### **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 the motion is in opposition to the staff recommendation. The recommendation section of this report contains the required wording of the appeal motion 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 refuse 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*.

The *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.”*

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?**

Building setback requirements are intended to ensure that structures maintain adequate separation from the streets and property lines for access, safety, and aesthetic purposes. Furthermore, front yard setback requirements also allow for practical amenities on the property such as parking and landscaped open space.

Reduction in the required front yard would make it difficult to satisfy minimum parking area requirements (8 feet by 16 feet) as well as limitations on the area of the front yard that's able to be dedicated to vehicular access, manoeuvring and parking. If attached garages are incorporated into the design of the semi-detached dwellings, these requirements will still apply and be difficult to achieve. Furthermore, accommodating vehicle parking and maneuvering within the reduced front setback area also constrains the capacity to provide typical front yard landscaped space.

The LUB establishes minimum lot dimension and area requirements for the R-2P zone. These lot requirements ensure that it is feasible to develop the lots for a use permitted in the zone while meeting all other requirements such as setbacks. The plan of subdivision for these six lots was evaluated as meeting the minimum lot dimension and area requirements and was approved on March 7, 2018. The lots in question are capable of development in a manner that fully accommodates the minimum setbacks required in the bylaw.

The proposed building locations exceed the minimum rear yard setback requirement of 8 feet on each lot and adequate space exists to the rear of the proposed houses to allow compliance with the minimum 20 foot front yard setback. For example, Lot 517 requests a reduction of the front yard setback from 20 to 15 feet, while proposing a 33-foot distance from the building to the rear property line (Map 2). Staff acknowledge there are some topographical constraints in the rear yard but note that difficulty is not insurmountable and advise a solution should be achieved through building design as opposed to relaxation of the bylaw.

It is the Development Officer's opinion that this proposal violates the intent of the Land Use By-Law.

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

In evaluating variance requests, staff must determine if general application of the by-law creates a specific difficulty or hardship that is not broadly present in the area. If these circumstances exist, then consideration can be given to the requested variance. If the difficulty is general to properties in the area, then the variance should be refused.

The rationale provided with these variance applications noted sloping conditions and the obstruction of a rock wall as reason for requesting the reduction of the front yard setback (Attachment C, page 5). All six of the lots have similar sloping conditions towards the rear of each lot as well as a retaining wall which runs along the rear of the properties. As such, the difficulty experienced is seen to be 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 the variance requests in good faith prior to commencing any work on the property. Intentional disregard of By-law requirements was not a consideration in this variance request.

**Appellant's Submission:**

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 letter of appeal (Attachment C) for Council's consideration. These points are summarized and staff's comments on each are provided in the following table:

<b>Appellant's Appeal Comments</b>	<b>Staff Response</b>
<p><i>We will not gain any density by receiving this variance. Currently the lot meets the requirements for a semi-detached dwelling, through this variance the lots won't be able to be used for anything more than a semi-detached dwelling.</i></p> <p><i>Further, there will be no change in the number of parking spaces. Both with and without granting this variance there will be a minimum of one parking space for in the driveway.</i></p>	<p>The proposed use, and therefor the overall density, is permitted in the zone and was not a concern in considering the variance request.</p> <p>With a proposed varied setback of less than the minimum required depth of a parking space (16 feet), the concern remains that front yard parking will not be compliant with the LUB.</p>
<p><i>This variance was requested to move the home away from rock wall and slope in the backyard and to move the home away from the Legal Non-conforming Commercial property abutting the back property boundary of these lots.</i></p> <p><i>These challenges have significantly impacted our ability to find a home builder to develop these lots in the last three years.</i></p>	<p>Based on the site plan provided which shows the proposed building footprints, the minimum front and rear setback requirements can be satisfied without the need to move the rock wall or alter the grade.</p>
<p><i>The other 14 lots on Grenoble Court don't have a rock wall and step slope therefore the difficulty experienced is not general to the properties in the area.</i></p>	<p>Staff's opinion is that given all six lots have the same sloping conditions, the difficulty experienced is general to the area and therefore cannot be considered for approval as per section 250(3)(b) of the HRM Charter.</p>

**Conclusion:**

Staff have reviewed all the relevant information in this variance proposal. As a result of that review, the variance request was refused as it was determined that the proposal conflicts with the statutory criteria provided by the *Charter*. The matter is now before Council to hear the appeal and render a decision.

### **FINANCIAL IMPLICATIONS**

There are no financial implications related to this variance. The administration of the variance proposal can be carried out within the approved 2020-2021 budget with existing resources.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendation contained within 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 refusal is appealed, a hearing is held by Council to provide the opportunity for the applicant, all assessed owners within 100 metres of the variance and anyone who can demonstrate that they are specifically affected by the matter, to speak.

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications.

### **ALTERNATIVES**

As noted throughout this report, Administrative Order One requires that Community Council consideration of this item must be in contact of a motion to allow the appeal. Council's options are limited to denial or approval of that motion.

1. Denial of the appeal motion would result in the refusal of the variance. This would uphold the Development Officer's decision and this is staff's recommended action.
2. Approval of the appeal motion would result in the approval of the variance. This would overturn the decision of the Development Officer.

### **ATTACHMENTS**

Map 1:	Notification Area
Map 2:	Site Plan
Attachment A:	Building Elevations
Attachment B:	Variance Refusal Notice
Attachment C:	Letter of Appeal from Applicant

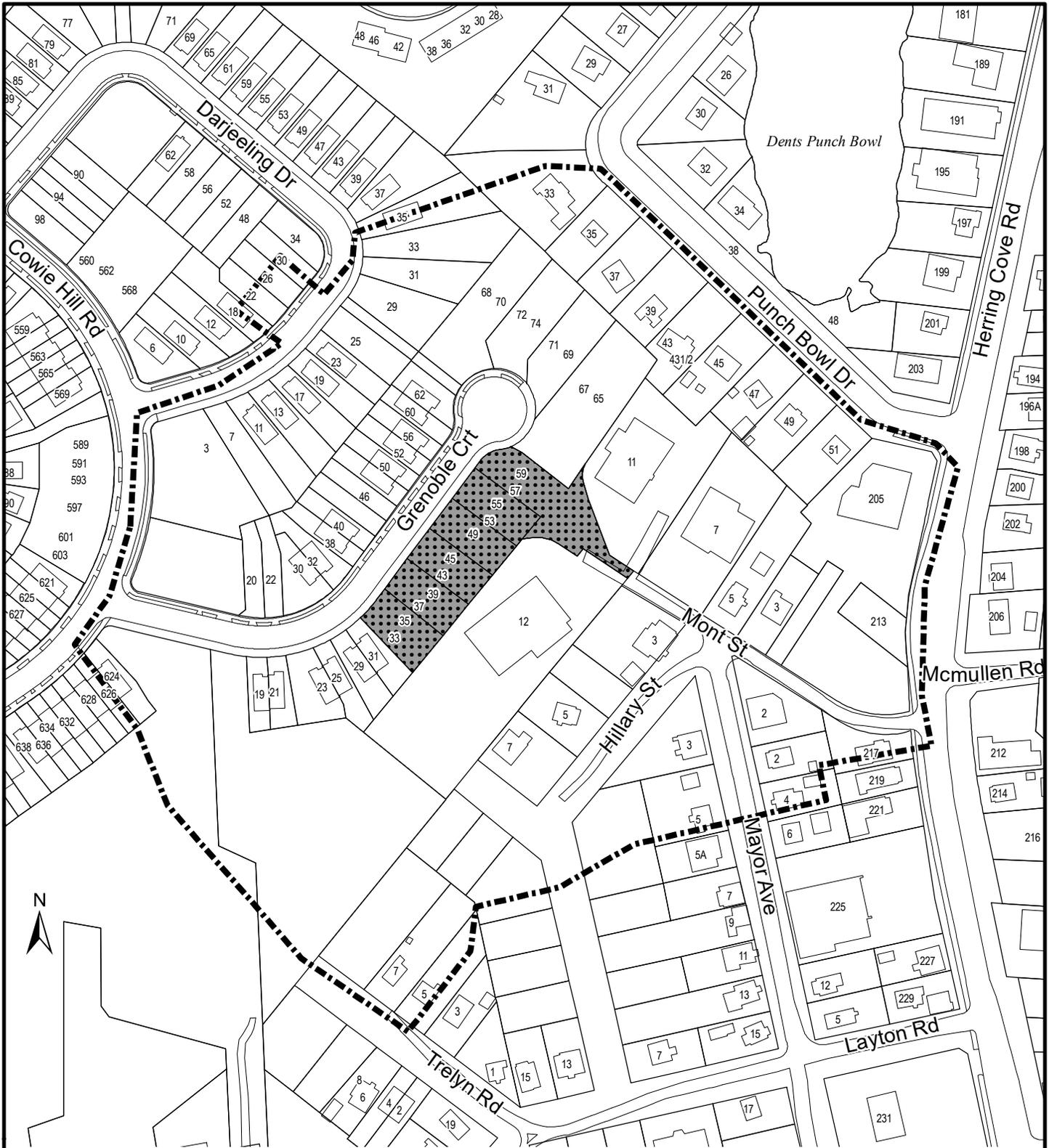
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Kerby MacInnis, Planner I, 902.719.9392  
Janice MacEwen, Principal Planner / Development Officer, 902.717.6911

Report Approved by: Erin MacIntyre, Manager, Land Development & Subdivision, 902.293.7721

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**Map 1 - Notification Area**

33-59 Grenoble Court,  
Halifax

**HALIFAX**

 Subject Properties



Halifax Mainland  
Land Use By-Law Area

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

**Map 2 - Site Plan**

Building Size 50'-0" Wide  
by 48'-0" Deep (Typical)

Future line of  
Subdivision  
(Typical)

5'-0" Side yard  
Setback (Typical)

Curb

Line of Right-of-Way  
(Property Line)

15'-0"

15'-0" (Typical)

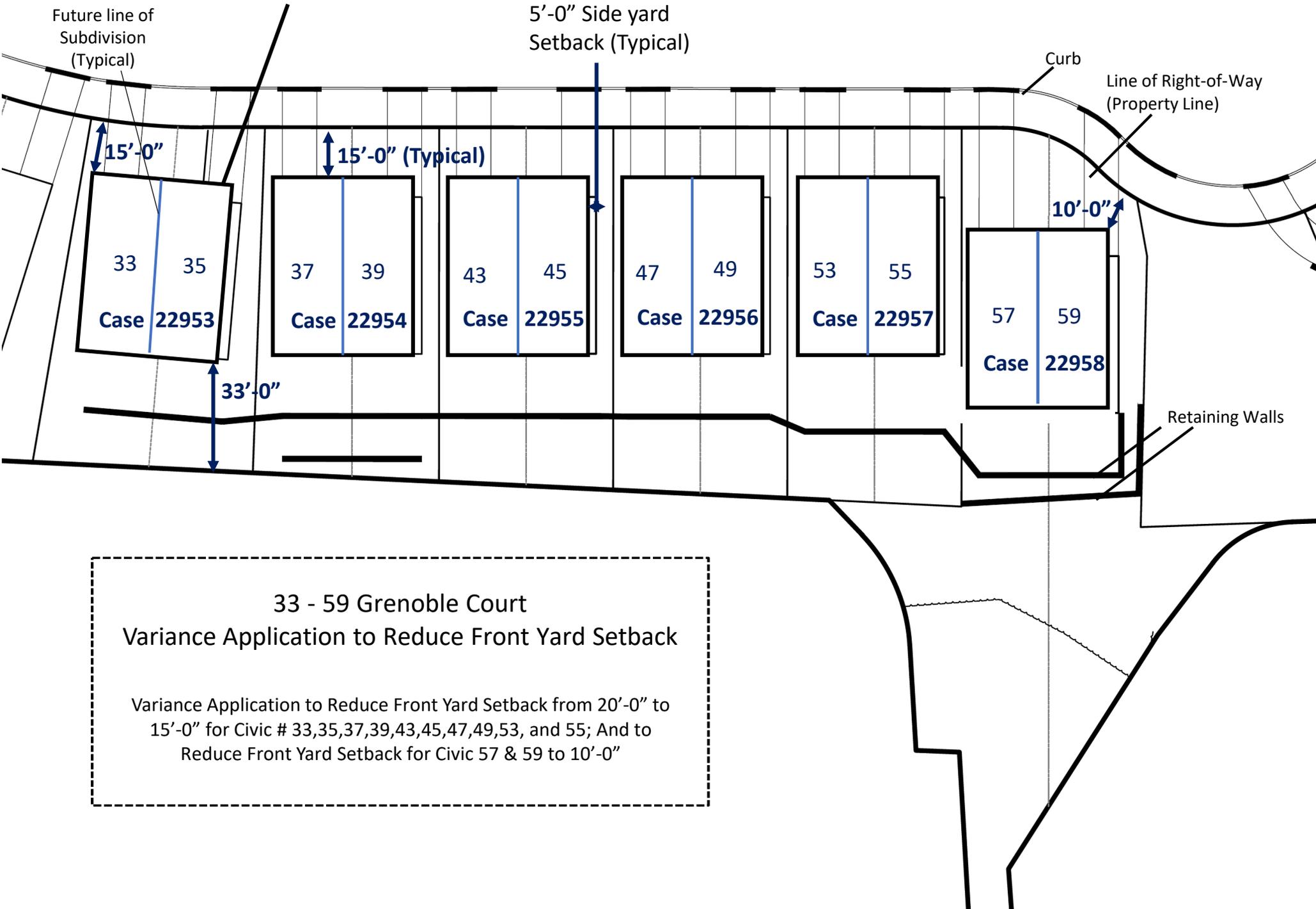
10'-0"

33'-0"

Retaining Walls

**33 - 59 Grenoble Court  
Variance Application to Reduce Front Yard Setback**

Variance Application to Reduce Front Yard Setback from 20'-0" to 15'-0" for Civic # 33,35,37,39,43,45,47,49,53, and 55; And to Reduce Front Yard Setback for Civic 57 & 59 to 10'-0"



UNIT 'A'

UNIT 'B'



FRONT ELEVATION

Attachment A -  
Elevation Plans

ITEM	REVISIONS	DATE

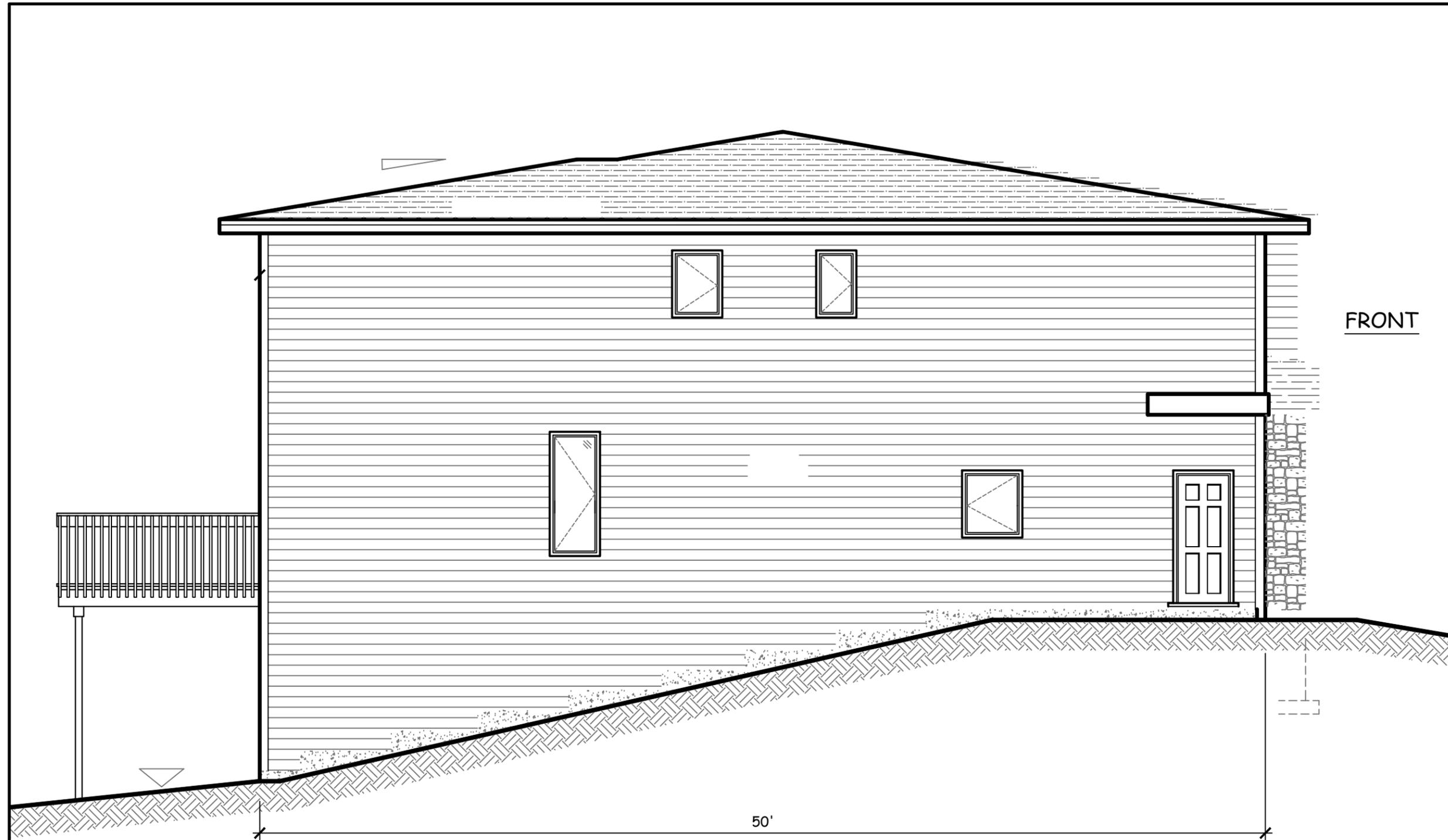
ITEM	REVISIONS	DATE

TITLE : FRONT  
ELEVATION

PROPERTY :  
Lots 512, 513, 514, 515, 516  
and 517 Grenoble Court  
'Typical Elevations'

DATE : June 10th, 2020  
SCALE : 1/8"=1'-0" plans  
3/16"=1'-0" elevations

SHEET : 1 of 4



**LEFT ELEVATION**

Attachment A -  
Elevation Plans

ITEM	REVISIONS	DATE



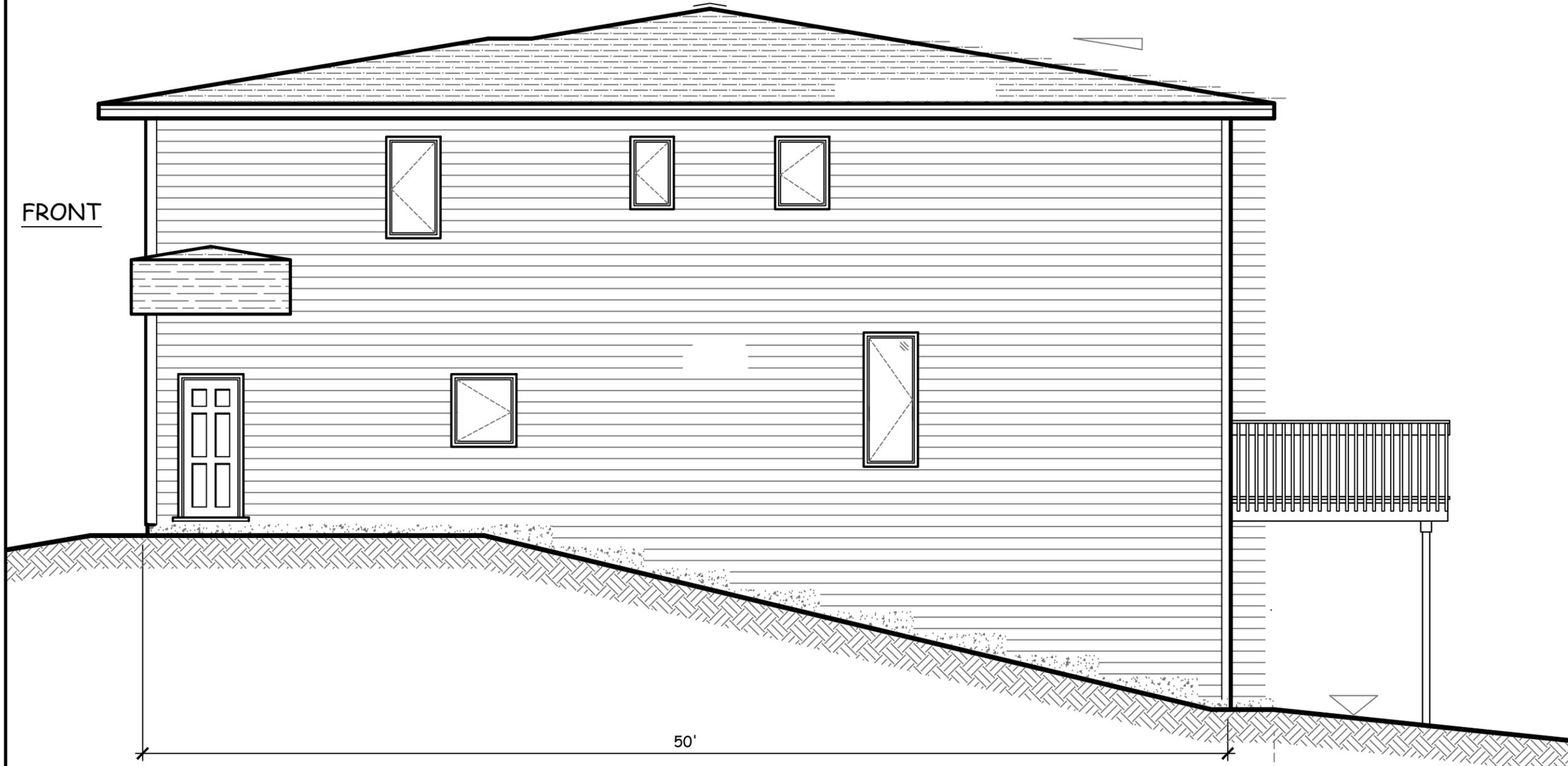
TITLE : LEFT  
ELEVATION

PROPERTY :  
Lots 512, 513, 514, 515, 516  
and 517 Grenoble Court  
'Typical Elevations'

DATE : June 10th, 2020  
SCALE : 1/8"=1'-0" plans  
3/16"=1'-0" elevations

SHEET : 2 of 4

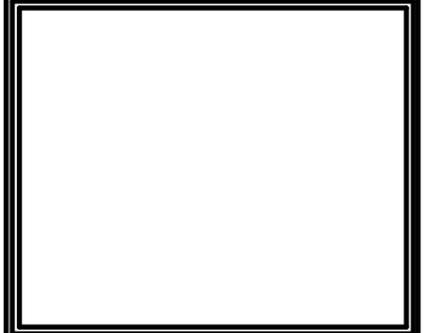
FRONT



# RIGHT ELEVATION

Attachment A -  
Elevation Plans

ITEM	REVISIONS	DATE



TITLE : **RIGHT  
ELEVATION**

PROPERTY :  
Lots 512, 513, 514, 515, 516  
and 517 Grenoble Court  
'Typical Elevations'

DATE : June 10th, 2020  
SCALE : 1/8"=1'-0" plans  
3/16"=1'-0" elevations

SHEET : **3** of **4**



REAR ELEVATION

Attachment A -  
Elevation Plans

ITEM	REVISIONS	DATE



TITLE : REAR  
ELEVATION

PROPERTY :  
Lots 512, 513, 514, 515, 516  
and 517 Grenoble Court  
'Typical Elevations'

DATE : June 10th, 2020  
SCALE : 1/8"=1'-0" plans  
3/16"=1'-0" elevations

SHEET : 4 of 4

## Attachment B - Refusal Letter

June 11, 2020

Patrick White  
2114 Gottingen St.  
Halifax, NS B3L 3W3

Dear Mr. White:

**RE: VARIANCE APPLICATIONS #22953, 22954, 22955, 22956, 22957, 22958 – 33-59 GRENOBLE COURT, HALIFAX, NS – LOTS 512, 513, 514, 515, 516, & 517 – PIDs 41444670, 41411190, 41411182, 41411174, 41411166, 41411158**

This will advise that I have refused your request for variances from the requirements of the Halifax Mainland Land Use Bylaw as follows:

**Location: 33-59 Grenoble Court, Halifax, NS**  
**Project Proposal: Reduction of front yard setback for proposed semi detached dwellings**

LUB Regulation	Lot	Requirement	Proposed
Minimum Front Yard Setback	512	20 feet	10 feet
Minimum Front Yard Setback	513	20 feet	15 feet
Minimum Front Yard Setback	514	20 feet	15 feet
Minimum Front Yard Setback	515	20 feet	15 feet
Minimum Front Yard Setback	516	20 feet	15 feet
Minimum Front Yard Setback	517	20 feet	15 feet

Section 250(3) of the Halifax Regional Municipality Charter states that a variance may not be granted if:

- (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

Pursuant to Section 251 of the Halifax Regional Municipality Charter 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  
Halifax Regional Municipality  
Development Services - Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
clerks@halifax.ca**

Your appeal must be filed on or before **June 22, 2020**.

If filing an appeal, be advised that your submission and appeal documents will form part of the public record, and will be posted on-line at [www.halifax.ca](http://www.halifax.ca). If you feel that information you consider to be personal is necessary for your appeal, please attach that as a separate document, clearly marked "PERSONAL". It will be provided to the committee and/or council members and staff, and will form part of the public record, but it will not be posted on-line. You will be contacted if there are any concerns.

If you have any questions or require clarification of any of the above, please call Kerby MacInnis at 902-719-9392.

Sincerely,

Originally signed

Janice MacEwen, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Sherryl Murphy- Acting Municipal Clerk  
Councillor Steve Adams



RV Atlantic Holdings Limited  
c/o Atlantic Developments Inc.

June 22, 2020

HALIFAX REGIONAL  
MUNICIPALITY

JUN 22 2020

MUNICIPAL CLERK

Municipal Clerk  
Halifax Regional Municipality  
Development Services – Western Region  
P.O. Box 1749  
Halifax, NS B3J 3A5  
[clerks@halifax.ca](mailto:clerks@halifax.ca)

**RE: APPEAL OF VARIANCE DENIAL  
FILE NUMBERS 22953, 22954, 22955, 22956, 22957, 22958  
33 - 59 GRENOBLE COURT**

In response to Janice MacEwen's letter dated June 11, 2020, a copy of which is attached (**see Appendix 4**), please accept this letter as filing an appeal for the six variance files listed below.

File #	Lot	LUB – front yard setback	Variance Requested	D.O. Decision	APPEAL
22953	512	20 feet	10 feet	Refused	Yes
22954	513	20 feet	15 feet	Refused	Yes
22955	514	20 feet	15 feet	Refused	Yes
22956	515	20 feet	15 feet	Refused	Yes
22957	516	20 feet	15 feet	Refused	Yes
22958	517	20 feet	15 feet	Refused	Yes

Section 250 (1) (b) of the Halifax Charter says, *A Development Officer may grant a variance in one or more of the following terms in a development agreement, if provided for by the development agreement, or in land-use bylaw requirements:*

*(b) size or other requirements relating to yards*

This provision gives the Development Officer the discretion to approve our variance request.

Further Section 250 (3) says, *A variance may not be granted if:*

- (a) the variance violates the intent of the land-use by law;*
- (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 development agreement or land-use by-law.*

The Development Officer cited both (a) and (b) in refusing our variance request.

In respect to reason *(a) the variance violates the intent of the land-use by-law*. It is our opinion the request does not violate the intent of the land-use by-law. We will not gain any density by receiving this variance. Currently the lot meets the requirements for a semi-detached dwelling, through this variance the lots won't be able to be used for anything more than a semi-detached dwelling. Further, there will be no change in the number of parking spaces. Both with and without granting this variance there will be a minimum of one parking space for in the driveway.

Moving the homes forward five feet will be indiscernible. In addition, the sidewalk is on the opposite side of the street to these lots. The likelihood a sidewalk is built by HRM in front of these lots is almost zero given it is a ~400 foot cul-de-sac. Thus, these homes will still have more 'usable' driveway than homes on the other side of the street that are set back 20 feet from a sidewalk.

This variance was requested (1) to move the home away from rock wall and slope in the backyard (see **Appendix 1**) and (2) to move the home away from the Legal Non-conforming Commercial property (which has received By-law infractions in the last year) abutting the back property boundary of these lots (see **Appendix 2**). The challenges inherent in items 1 and 2 have significantly impacted our ability to find a home builder to develop these lots in the last three years.

The second reason in the Charter the Development Officer cited for refusing the variance was *(b) the difficulty experienced is general to properties in the area*. The Charter does not define 'general' or 'area'.

No two lots in LLV or lots in adjoining areas are the same. These are six unique lots of 20 on Grenoble Court. If you define 'area' as just the street these lots are on, the other 14 lots on Grenoble Court don't have a rock wall and step slope, with a Legal Non-conforming property abutting the back-property line. If you look more broadly at Long Lake Village Subdivision, see schematic 1 in appendix, no other properties have such short backyards, with a slope and a Legal Non-Conforming use abutting the back property.

Further, adjoining neighborhoods don't conform to any recent versions of the Land-use By-law, Subdivision By-law and, or Municipal specifications which would make them unlikely to be similar to our new streets in any "general" way.



Given the information presented above, we believe the Development officer had the latitude to grant these variances and erred in refusing the request.

Given our enduring commitment to 'Good Development' and improving the area, which includes,

- Building out all our parks, for which Parks Department has said is an example of what they'd like to see all Land Developers do.
- Built a parking lot, 5+ kilometer trail and lake access on provincial land at a cost of almost \$1 Million dollars, for which no public money was given and no tax considerations at any level of government
- Buried all secondary electrical services and some primary services which is not general to the area
- Maintained quality home designs
- We have been active in the community, including hosting an annual running race and other events, as well as making donations to the local elementary school

We would kindly ask Halifax and West Community Council members to vote to accept our appeal in favour of granting the requested variances.

Thank you in advance for your consideration.

Best regards,

Original Signed

Patrick White, Project Manager

cc: Stephen Adam, Councilor, Halifax  
Janice MacEwen, Development Officer, Halifax  
David Graham, President, Atlantic Developments Inc.



# **APPENDIX 1**

## **Rockwall and Slope**





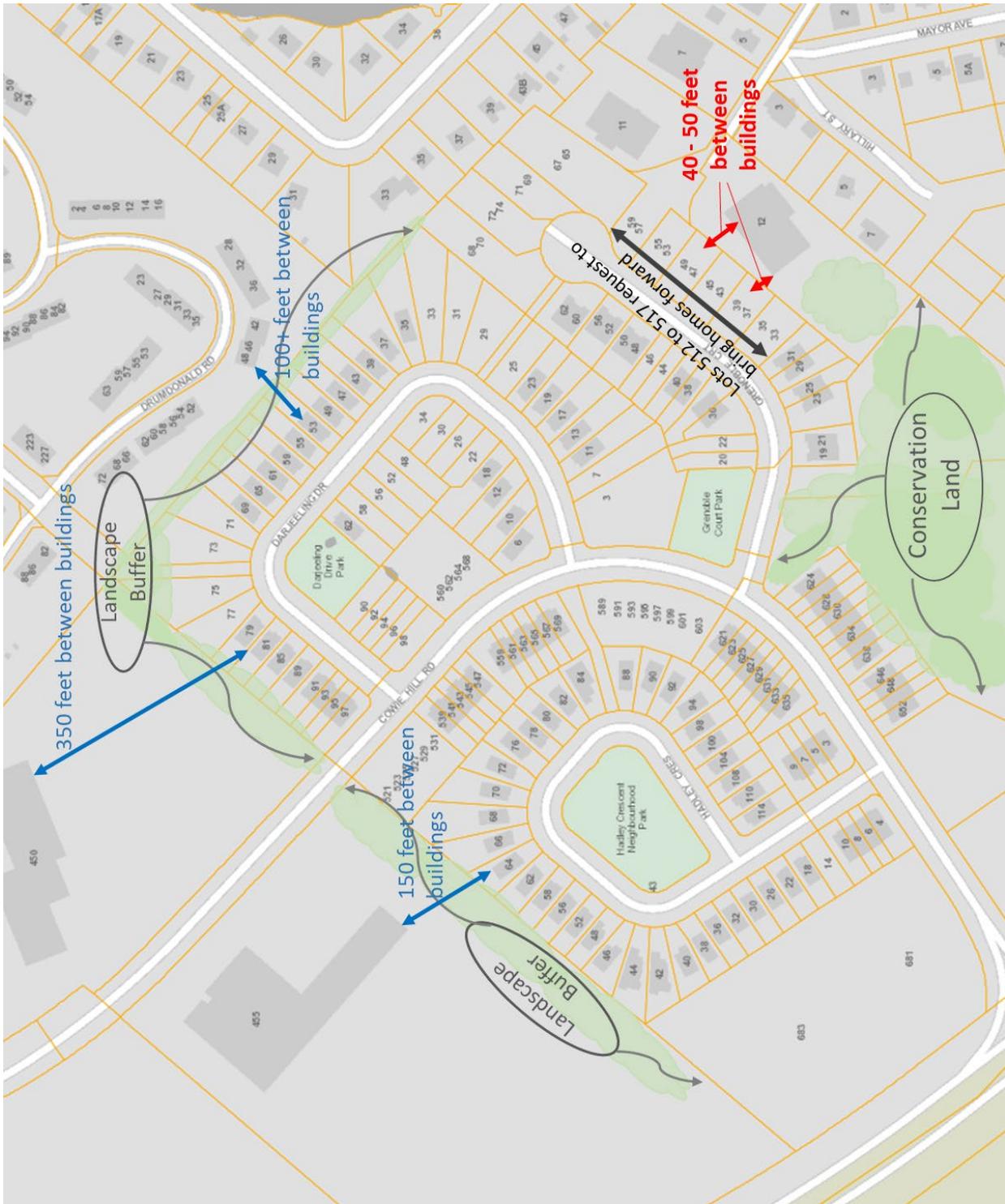
**APPENDIX 2**  
**Legal Non-Conforming  
Commercial Property Abutting  
Back Property Line**





# **APPENDIX 3**

## **Surrounding Properties**





## **APPENDIX 4**

Janice MacEwen's letter dated  
June 11, 2020

June 11, 2020

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2114 Gottingen St.  
Halifax, NS B3L 3W3

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Pursuant to Section 251 of the Halifax Regional Municipality Charter 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:

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If you have any questions or require clarification of any of the above, please call Kerby MacInnis at 902-719-9392.

Sincerely,

Original Signed

Janice MacEwen, Principal Planner / Development Officer  
Halifax Regional Municipality

cc. Sherryl Murphy- Acting Municipal Clerk  
Councillor Steve Adams