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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Marine Drive, Valley and Canal Community Council
May 30, 2007

TO: Members of Marine Drive, Valley and Canal Community Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Trevor Creaser", written over a horizontal line.

Trevor Creaser, Development Officer

DATE: April 17, 2007

SUBJECT: Appeal of the refusal of a Variance - 19 Spruce Grove Court, Beaver Bank

ORIGIN

This is an appeal of the Development Officer's decision to refuse an application for a variance from the front yard setback requirements of the land use bylaw for an accessory building under construction at 19 Spruce Grove Court.

RECOMMENDATION

It is recommended that Council uphold the decision of the Development Officer to refuse the request for variance.

BACKGROUND

The subject property is located on the south side, near the end of Spruce Grove Court. (refer to Attachment 1).

19 Spruce Grove Court is zone R-1 under the Land Use Bylaw for Hammonds Plains/Beaver Bank/Upper Sackville.

The property currently contains an existing single unit dwelling and the shed which is mostly complete which is not in compliance with the minimum setback from the front property boundary or twenty (20) feet.

On September 13, 2006 and Order to Comply was posted by the Building Official advising that a permit was required for the shed that was under construction.

On September, 28, 2006 Leslie Rice subsequently made a permit application to complete construction the shed. During the review of the application, staff determined that the structure would not comply the minimum 20' front yard setback requirement. On October 5, 2006, staff conducted a site inspection to measure the location of the structure relative to property boundaries and the

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existing dwelling using a copy of a surveyors location certificate on file. The measurements taken revealed the building to be, at most, one (1) foot from the front property boundary (refer to attachment #2). On October, 11, 2006, the permit application was refused by the Development Officer given it did not meet the minimum front setback of 20'.

On January 22, 2007, Mr. Rice was sent a Notice to Comply to either remove the structure or apply for a variance. The variance application was received on February 8, 2007 and was subsequently refused on March 21, 2007 (refer to Attachment #3).

Mr. Rice notified the Development Officer of his appeal of the refusal on March 27, 2007 (refer to Attachment #4)

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

(a) variance violates the intent of the land use bylaw;

The intent of minimum front yard setback requirements is to provide adequate separation of buildings from to street right of ways. This is necessary for any future works or maintenance that may be required within the right of way and this setback ensures there will not be any impact to existing structures.

To permit a variance from 20' to 1' would *violate the intent of the land use bylaw.*

(b) difficulty experienced is general to the properties in the area;

This lot was part of a subdivision approving 5 lots in 2005. All of which where required to meet minimum lot size, frontage and setback requirements. Given these lots where approved under today's standards, it is expected the all the building locations on these lots must meet the siting requirements under the land use bylaw and therefore the *difficulty experienced is general to properties in the area.*

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(c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw.”

Although the shed was constructed without a permit, Mr. Rice has complied with all notices and orders and therefore *intentional disregard* was not a consideration in refusing this variance.

BUDGET IMPLICATIONS

None

ALTERNATIVES

1. Uphold the decision of the Development Officer to refuse to approve the application for variance. This is the recommended alternative.
2. Overturn the decision of the Development Officer, thereby approving the variance.

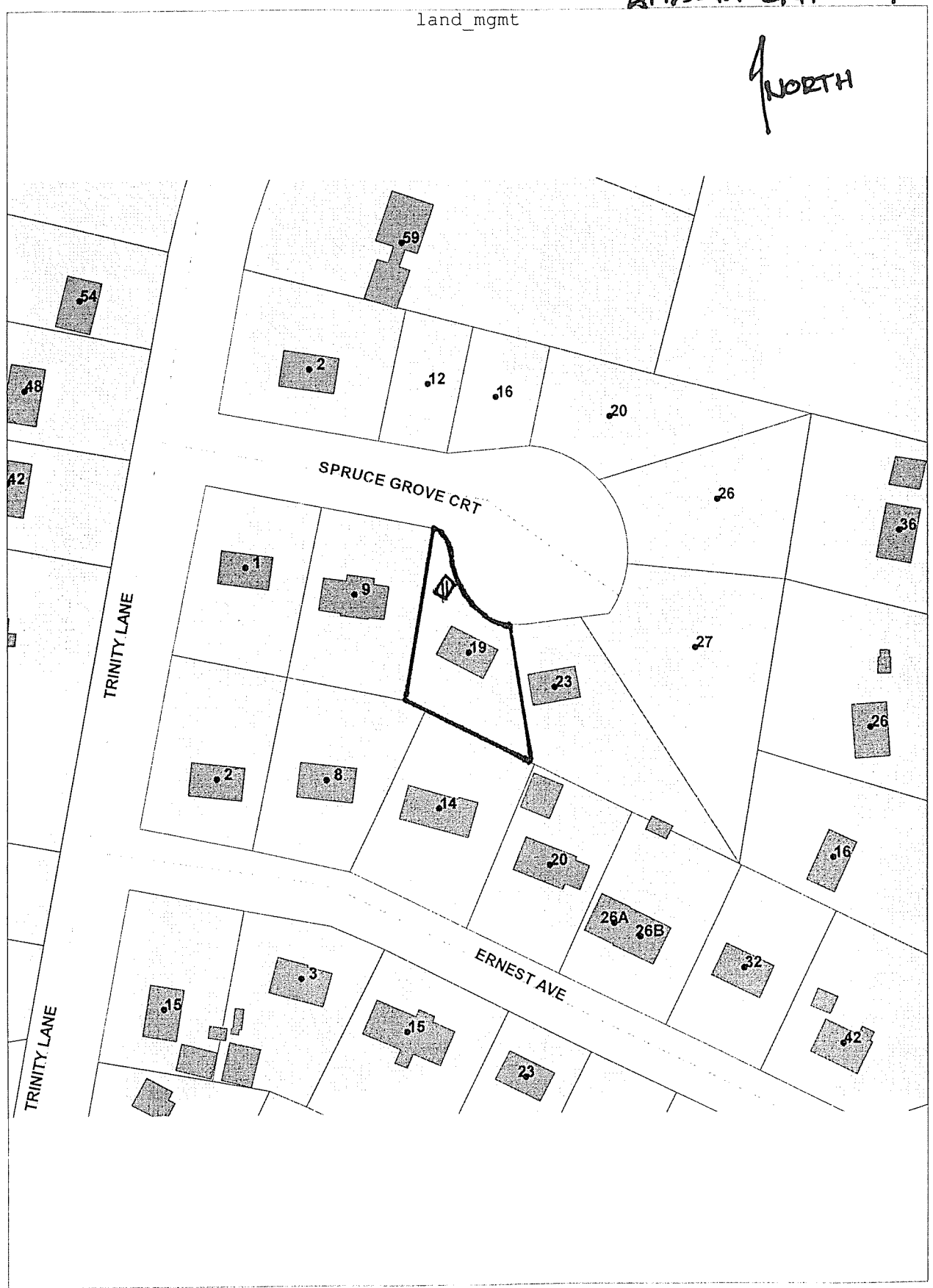
ATTACHMENTS

1. Location map
2. Location Certificate
3. Notice of refusal
4. Notice of appeal

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: Trevor Creaser, 869-4235.

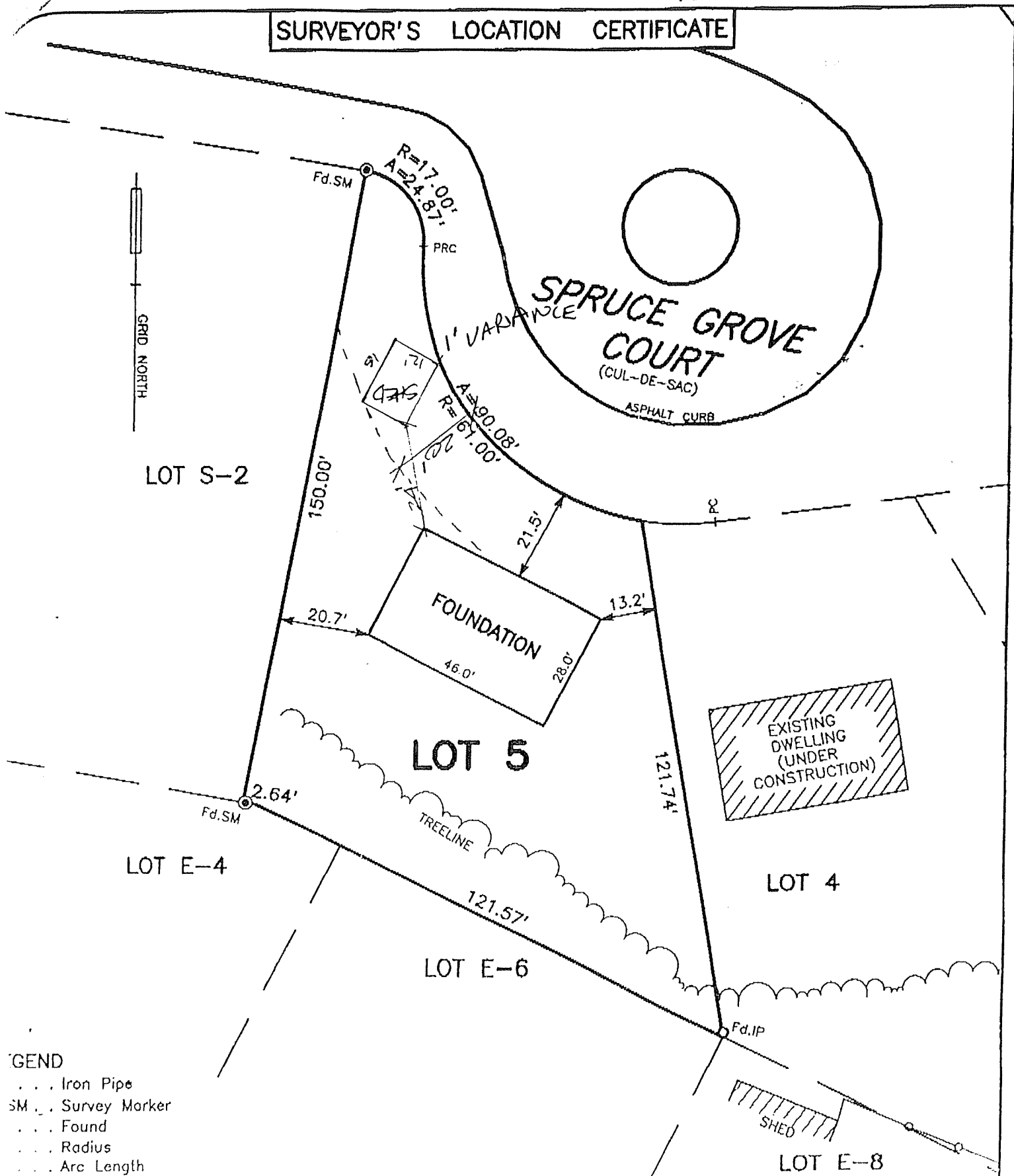
ATTACHMENT # 1

land_mgmt



ATTACHMENT #2

SURVEYOR'S LOCATION CERTIFICATE



- LEGEND
- ... Iron Pipe
 - SM ... Survey Marker
 - ... Found
 - ... Radius
 - ... Arc Length

ATTACHMENT #3

FILE COPY

March 21, 2007

Mr. Leslie Rice
19 Spruce Grove Court
Beaver Bank, NS B4G 1C1

Dear Mr. Rice:

RE: Application for Variance - 19 Spruce Grove Court, Beaver Bank

This will advise that I have refused your request for variance from the requirements of the Land Use Bylaw for Planning District 15, 18 and 19 as follows:

Location: 19 Spruce Grove Court, Beaver Bank
Project Proposal: Accessory Building (constructed)
Variance Requested: 1 foot from the Front Property Line (Spruce Grove Court Right of Way)

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.

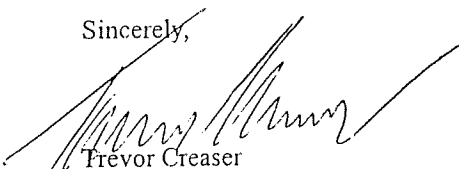
It is the opinion of the Development Officer that this variance would *violate the intent of the Land Use By-Law* given the close proximity of the structure to the street right of way. Further, there does not appear to be any unique circumstance that would have prevented the location of the structure to meet the setback requirement of 20 feet and therefore the *difficulty experienced is general to properties in the area*.

Pursuant to Section 236(4) 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: **Trevor Creaser, Development Officer - Halifax Regional Municipality Development Services - Central Region 636 Sackville Drive Sackville, NS B4C 2S3**

Your appeal must be filed on or before **March 30, 2007**.

If you have any questions or require additional information, please contact this office at 869-4235.

Sincerely,


Trevor Creaser
Development Officer

cc. Jan Gibson, Municipal Clerk
Councillor Krista Snow

ATTACHMENT #4

This letter is to inform you that I, Leslie Rice am appealing the rejection for application for a variance in the front setback on my property, 19 spruce grove court. My intent was not to disregard the intent of the land use bylaws. The location of the structure is due to a grave lack of direction from the personnel at the development office at the time when I inquired about land bylaws.

Leslie Rice
19 spruce grove court
Beaverbank, N.S
B4G-1C1

RECEIVED

MAR 27 2007

DEPARTMENT OF PLANNING
AND DEVELOPMENT