

Marine Drive, Valley & Canal Community Council
May 19, 2010

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

SUBMITTED BY:


Trevor Creaser, Development Officer

DATE: May 11, 2010

SUBJECT: Appeal of the approval of Variance # 16001 - 2889 Highway # 2, Fall River

ORIGIN

This is an appeal of the Development Officer's decision to approve an application for a variance from the front yard setback requirement of the Land Use Bylaw for Planning Districts 14 and 17 for the construction of a Single Unit Dwelling at 2889 Highway # 2.

RECOMMENDATION

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

Community Council Report
Appeal of Approval of Variance #15508

BACKGROUND

The subject property is located at 2889 Highway # 2, Fall River abutting Lake Thomas and is zoned R-1B (Suburban Residential) under the Land Use Bylaw for Planning Districts 14 and 17 (refer to Attachment 1).

The lot was created in 1954 and has an area of 10,700 square feet which is considered “under sized” as lots that are created under the current land use bylaw standard require a “minimum” of 40,000 square feet. The land use bylaw does recognize these “existing” lots and they can be developed provided all other applicable requirements are met.

The applicant does have an engineers designed septic system which has been approved by NSDEL.

An application for variance was made on March 23, 2010 to construct a Single Unit Dwelling, **20 feet** from the front property line (refer to Attachment 2). The requirement under the R-1B Zone is **30 feet**.

The Development Officer approved the variance (refer to Attachment 3) on April 1, 2010. The approval was subsequently appealed by two assessed property owners (Attachment 4) within the notification area.

The dwelling could be constructed “as-of-right” with a 30' setback from the front property line and a 5' setback from the Ordinary Highwater Mark of Lake Thomas, however, the applicant would like to increase the setback from the watercourse to 15' which is the reason for the variance request.

DISCUSSION

The *Halifax Regional Municipality Charter* 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 if:

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

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 the minimum front yard setback requirement is to provide adequate separation of buildings to the street for sighting, safety and aesthetics. With a proposed setback of 20 feet from the street right of way the building will actually be 40 feet from the road surface. As indicated by the applicant, this will also move the building further from the lake as intended by the Regional Plan. Given these reasons, the variance would *not violate the intent of the land use bylaw*.

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

As lot is smaller than those in the immediate area and given the challenges with regards to placement of the building due to the proximity of the lake and placement of the septic system, this lot is not considered *general to the properties in the area*.

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

As no construction has occurred at this site *intentional disregard* was not a consideration in approving this variance.

BUDGET IMPLICATIONS

None

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.

ALTERNATIVES

1. Uphold the decision of the Development Officer to approve the application for variance. **This is the recommended alternative.**
2. Overturn the decision of the Development Officer, thereby refusing the variance. **This will require the home to be located closer to lake in order to meet the front yard setback.**

ATTACHMENTS

1. Location Map
2. Site Plan
3. Variance Approval Letter
4. Appellants' Letters (2)

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

Lake Thomas

HIGHWAY 102

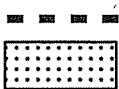
Lake Thomas

HIGHWAY 2

COPPERHEAD RD

ASHWOOD DR

Map 1
Notification Area



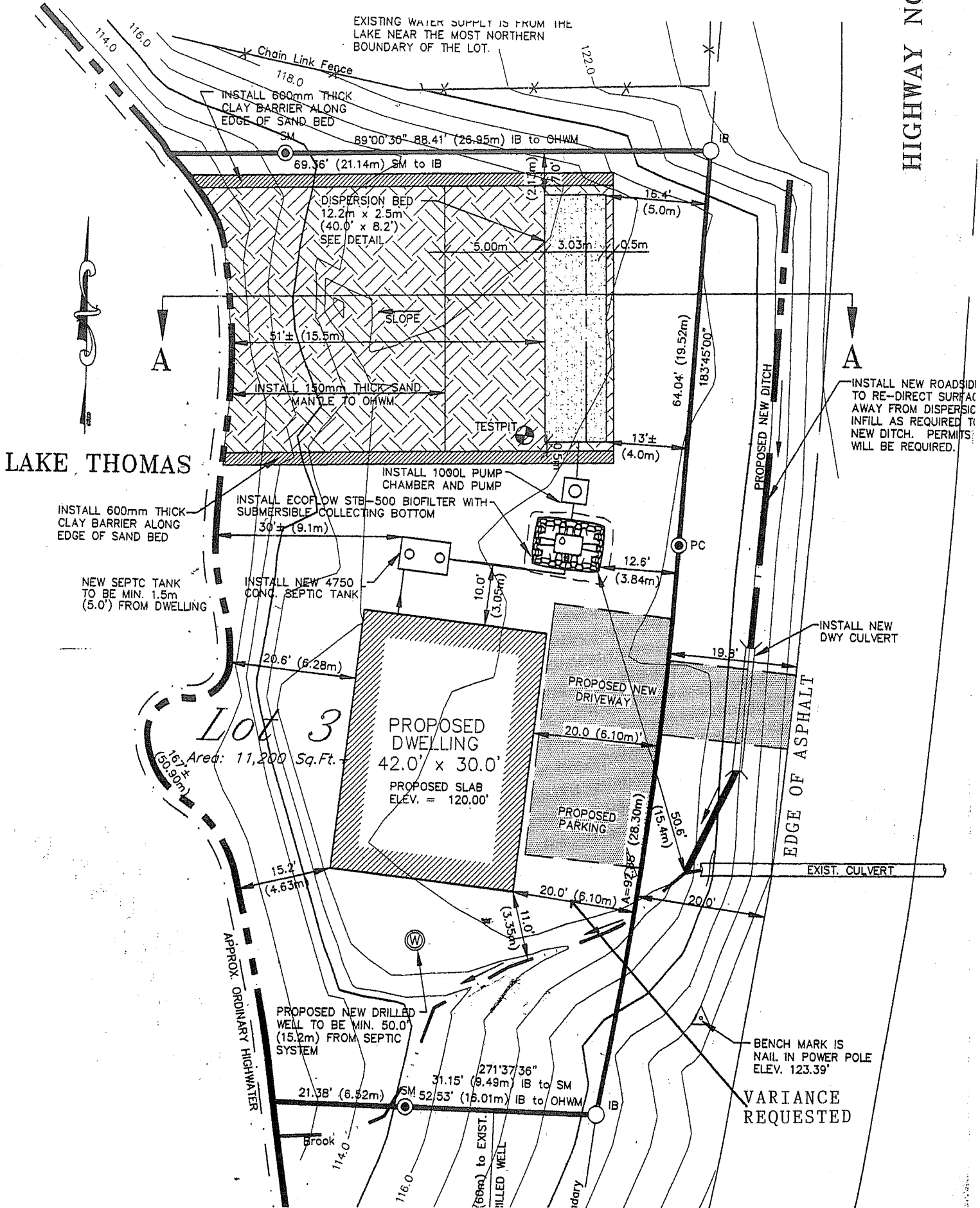
Notification Area
Subject Property - 2889 Highway 2



Lar
New Wave Pc
Bool
P.lk

ATTACHMENT 2

HIGHWAY NO. 2



COMMUNITY DEVELOPMENT

April 1, 2010

ATTACHMENT 3

Ms. Diane Kelly
34 Walkers Service Road
Lower Sackville, NS
B4C 2P7

Dear Mr. Kelly:

RE: Variance # 16001 - 2889 Highway 2, Fall River

This will advise that I have approved your request for a variance from the requirements of the Land Use Bylaw for Planning Districts 14 and 17 as follows:

Location:	2889 Highway 2, Fall River
Project Proposal:	Construct Single Unit Dwelling
Required Setback:	30 feet from the Front Property Line
Approved Variance:	20 feet from the Front Property Line

In accordance with Section 251 of the *Halifax Regional Municipality Charter*, all assessed owners of property within 30 metres of your property have been notified of this variance. Those property owners have the right to appeal the decision of the Development Officer to the Municipal Council. An appeal must be filed on or before **April 19, 2010**.

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 this office at 869-4235.

Sincerely,


Trevor Creaser
Development Officer

cc. Cathy Mellette, Acting Municipal Clerk
Councillor Dalrymple
Supervisor, Permits and Inspections

2897 Highway 2
Fall River, N.S.
B2T 1W4

Trevor Creaser
Development Officer
Halifax Regional Municipality
Development Services – Central Region
636 Sackville Drive
Sackville, NS B4C 2S3

April 16, 2010

Attn: Trevor Creaser

RE: Variance #16001 – 2889 Highway 2, Fall River NS

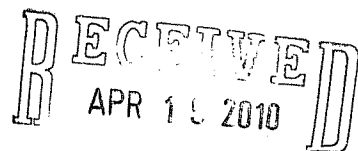
I am appealing the request for variance of 20 feet from the front property line from 30 feet. I would like to know how you came to the conclusion that 1/3 of the required setback for the dwelling would be OK. That is a major difference. If, in the future the road had to be widened, or sidewalks were to be installed etc., would the province take more of my land because the residents at 2889 Highway 2 would be too close to the road? I would also like to know how any dwelling would be permitted to build there. I have access to the original deed and that property is only 10,700. sq. ft. It is bigger now because the present owner took it upon himself to fill in part of the lake with large rocks and gravel. Who approved this? The land is only about 2 ft. above water level; what about the septic?? Is this approved by the environmental dept.? There is a small stream that runs between our property and the property next door (Jack Currie's), under the road and unto the said property in question, would that be disturbed? What about their well? Will they be filling in the lake even more? Why are rules made for situations like this one, if they can so easily be broken? **ONE THIRD OF A VARIANCE IS A VERY BIG DEAL!**

I will be contacting the Dept of Environment, and the Lakes and Rivers assoc. to see if in fact all of the necessary requirements have been met, and if there was a permit to fill in the lake with the gravel and rock in the first place.

Sincerely,



Elaine Coakley (8611495)



8 Dolomite Court
Fall River, NS B2T 1N2
April 12, 2010

Mr. Trevor Creaser
Development Officer
Halifax Regional Municipality
Development Services – Central Region
636 Sackville Drive
Sackville, NS B4C 2S3

ATTACHMENT 4 (2)

Dear Mr Creaser,

I am responding to your letter of notice concerning a request for a variance (#16001) regarding the lot with civic address 2889 Highway 2, Fall River. I am the property owner to the south of the lot in question and I am writing to object to the granting of any variance that would permit construction of a dwelling.

The lot in question was in its original format (and I am including pertinent official lot plans of that property with this letter) 10,700 square feet, more or less, although its current configuration is slightly larger because the previous owner did some infilling of the lake, I'm sure illegally. Regardless, the size of that lot doesn't even approach the required minimum for constructing a dwelling on lake front property. There are of course no central services in that area.

The very fact that the applicant is requesting permission to build the proposed structure 10 feet closer to the highway is in fact an admission by him that the lot is too small.

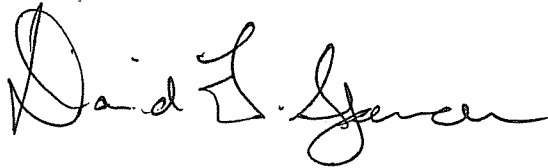
Clearly this lot does not meet any of the environmental standards for any conventional septic system. That is clear. I know the history of that lot very well and there has never been a dwelling on that land since at least the purchase of it in about the early 1920's by my great-grandfather as part of a much larger land purchase. I also know that the current request is not the first time that an owner of that lot made an inquiry about placing some type of structure on it. When my cousin inherited lot 3 from my grandfather (who was the person who subdivided these lots in 1954) he inquired, at that time to the county, whether he could situate a small camper trailer on the lot for brief and rare use when he was vacationing here from P.E.I. He was denied that request, although clearly the issue there couldn't have been septic-system related because the camper trailer had its own self-contained septic. My cousin sold the lot to my father and because we were assured that it was not a building lot my father sold it to the property owners across the street. I recall that they were also informed the lot wasn't an acceptable building lot, and they sold it to the previous owner. He erected a standard electrical pole with a meter and moved a travel trailer onto the site. After complaints from various residents he was ordered by your office to remove it. There again, the issue couldn't have been one of the septic system because the trailer had on-board facilities.

I will also point out that the plot plan sent to the concerned parties within 30 metres of this property rather conveniently omits a relevant feature of the property, namely a stream that originates from a long-standing culvert that goes under the highway. This stream is obvious to anyone who looks at the lot and is clearly noted on the newer of the two plot plans that I am sending with this letter. The approximate outline of the proposed dwelling on the unofficial plot plan you included with your letter, in fact, has a significant corner of the structure (the southeast one) built on top of that stream. Why was not that fact picked up by your department?

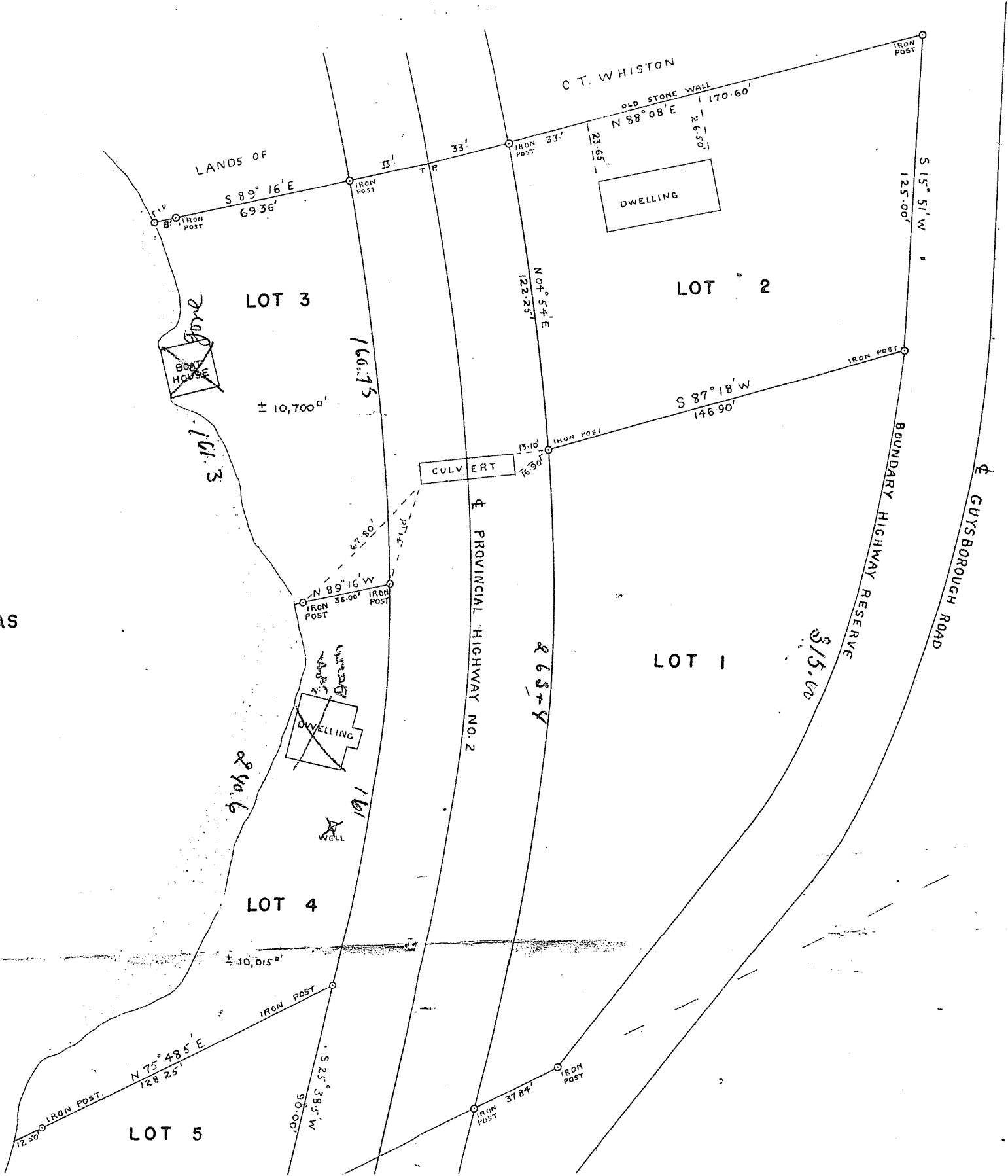
What infuriates me is that this request for variance is another attempt by someone to sneak around well established building restrictions, whereas individuals such as my father or my cousin are in effect penalized for observing and respecting rules such as these. Frankly I have seen far too many examples of these shenanigans even in the Fall River area, the text book example having taken place nearer Waverley on the #2 highway with the Hilchie "boat-house".

I clearly vehemently oppose the granting of variance #16001.

Yours truly,

A handwritten signature in black ink that reads "David F. Spencer". The signature is written in a cursive, flowing style with a large initial 'D'.

David F. Spencer, Ph.D.



C.T. WHISTON

LANDS OF

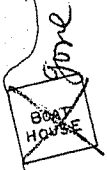
OLD STONE WALL
N 88° 08' E 170.60'

S 89° 16' E
69.36'

DWELLING

LOT 3

LOT 2



± 10,700 sq ft

S 87° 18' W
146.90'

CULVERT

PROVINCIAL HIGHWAY NO. 2

BOUNDARY HIGHWAY RESERVE

GUYSBOROUGH ROAD

LOT 1



WELL

LOT 4

± 10,000 sq ft

N 75° 48.5' E
128.25'

LOT 5

S 25° 38.5' W
90.00'

IRON POST
37.84'

IRON POST

IRON POST

IRON POST
33'

IRON POST
33'

N 04° 54' E
122.25'

IRON POST
13.10'

IRON POST

IRON POST

N 89° 16' W
56.00'

IRON POST

IRON POST

IRON POST

IRON POST

TIP
IRON POST

15

Handwritten: 161.3

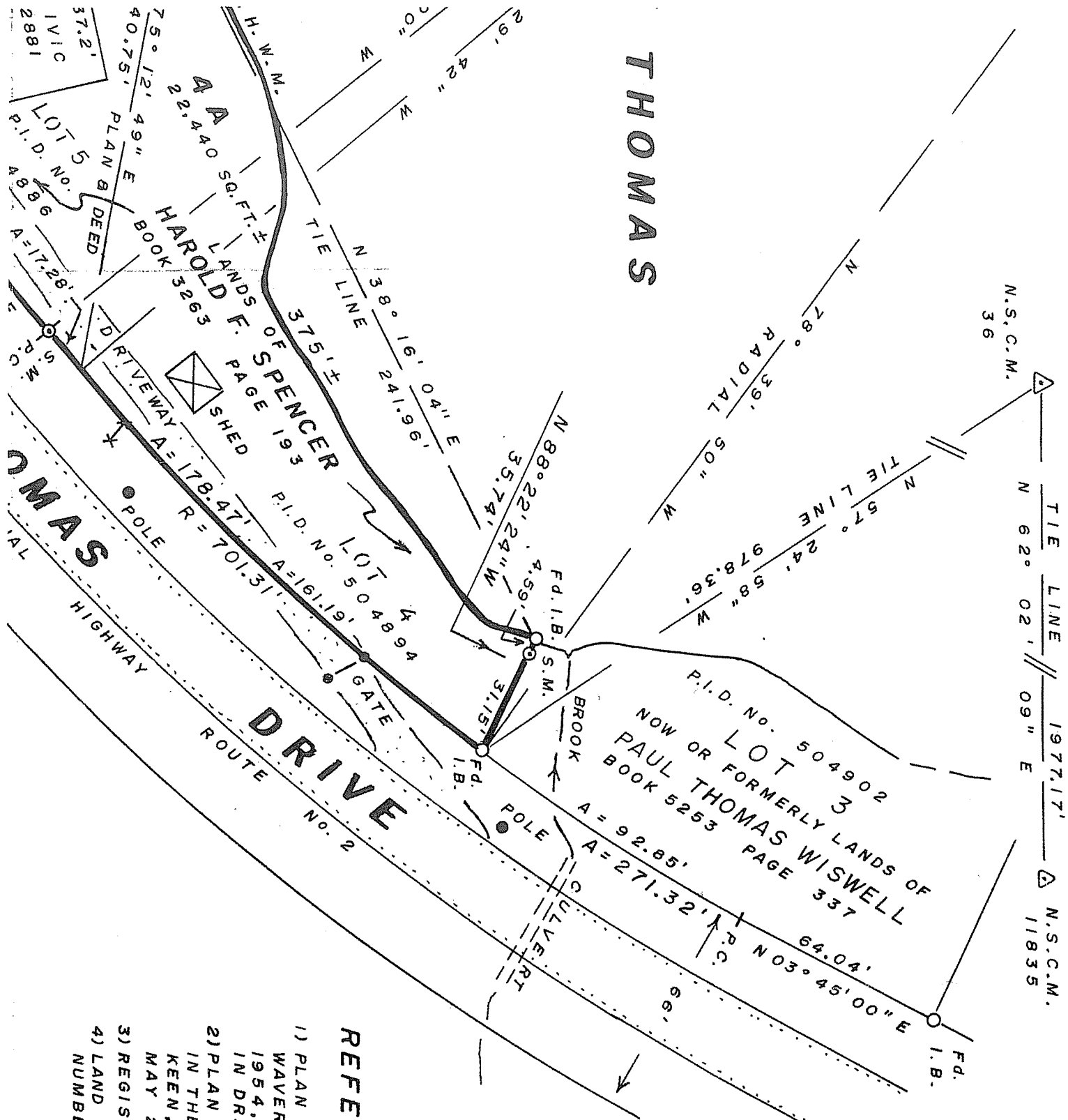
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THOMAS

REFERENCES

- 1) PLAN OF SUBDIVISION OF LANDS OF WAVERLEY, PREPARED BY J.L. 1954, APPROVED MAY 17, 1954 IN DRAWER 11.
- 2) PLAN OF SUBDIVISION OF LAND IN THE DISTRICT OF WAVERLEY KEEN, N.S.L.S., DATED APRIL MAY 27, 1974 AND FILED AS PLAN # 2.
- 3) REGISTRY OF DEEDS OFFICE FILE NUMBER 05N10-86SE
- 4) LAND INFORMATION MANAGEMENT SYSTEM FILE NUMBER 05N10-86SE

