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Halifax, Nova Scotia
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Item No. 8.2.1
Halifax and West Community Council
June 4, 2014

TO: Chair and Members of Halifax and West Community Council

Original Signed

SUBMITTED BY: Brad Anguish, Director, Community and Recreation Services

DATE: May 13, 2014

SUBJECT: **Case 18820: Appeal of Variance Approval – 13 Round Tuit Road,
Whites Lake**

ORIGIN

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

LEGISLATIVE AUTHORITY

HRM Charter: Part VIII, Planning and Development

RECOMMENDATION

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

BACKGROUND

Variance requests have been submitted for the property at 13 Round Tuit Road, Whites Lake, to permit the site to be further developed with a new detached garage (Map 2). In order to facilitate this project, two variances have been requested to relax the minimum required front and left side yard setbacks. The property is currently developed with a single unit dwelling.

Site Details:

Zoning: RA-3 (Residential A-3) Zone, Planning District 4 (Prospect) Land Use By-law

	Zone Requirement	Variance Requested
Minimum Front or Flankage Yard:	30 feet	10 feet
Minimum Side Yard:	8 feet	4 feet

For the reasons detailed in the Discussion Section of this report, the Development Officer approved the requested variances and notified the neighbouring property owners (Attachment A). This decision was appealed by the owners of two (2) properties within the notification area (Map 1). The matter is now before Halifax and West Community Council for decision.

DISCUSSION

Development Officer's Assessment of Variance Request:

In hearing a variance appeal, Community 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 bylaw;*
 - (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 bylaw*

In order to be approved, any proposed variance must not conflict with any 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 bylaw?

It is the Development Officer's opinion that this proposal does not violate the intent of the Land Use By-law. The requested variances are minor in nature.

The lot is irregular in shape and shallow in depth making it difficult to locate an accessory building within the required setbacks. The adjoining lot to the west is undeveloped and contains a dry hydrant which is used by local fire departments. A reduced left side yard of 4 feet is not anticipated to affect the use and development of this adjacent property. The requested front yard setback for the proposed accessory building will place the building in line with the front yard of the existing main building which itself was constructed pursuant to an approved variance reducing the front yard from 30 feet to 15 feet.

Except for the requested variances to the front and left side yards, all other requirements of the Land Use By-law, including height and lot coverage, will be met. The variances for the front and side yard setbacks are required due to the narrow lot depth and do not violate the intent of the Land Use By-law.

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 irregular in shape and area for the neighbourhood. The lot is shallow in depth when considering its proximity to Whites Lake. Other nearby properties have greater depths, making this situation unique. Maintaining the required 30 foot front yard setback would leave a small buildable area making it difficult to accommodate an accessory structure. Additionally, varying both the left side yard requirement and front yard setback maximizes the building's separation distance from the high water mark of Whites Lake.

3. Is the difficulty experienced the result of an intentional disregard for the requirements of the land use bylaw

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 variance prior to commencing any work on the property. Intentional disregard of the By-law requirements was not a consideration in the approval of the variance requests.

Appellants' Appeal:

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

Appellant's Appeal Comments	Staff Response
<p><i>Concern that one set of owners within the notification area did not receive notification from HRM regarding the variance request and subsequently did not have time to make an appeal.</i></p>	<p>Variance notification letters were mailed to all property owners within 30 metres of the subject property, however, some owners did not receive the letters. To address this, staff e-mailed a complete electronic copy of the variance approval notification directly to those owners and they, in turn confirmed receipt. Appeals were then filed within the appeal period.</p>
<p><i>The variance information provided as part to the notification was inadequate and did not contain,</i></p> <ul style="list-style-type: none"> • <i>location of septic,</i> • <i>latitudes and longitudes,</i> • <i>garage access,</i> • <i>design details of the structure,</i> • <i>subject property's survey stakes could not be located by the appellants</i> 	<p>HRM does not regulate septic system placement and it is the owner's responsibility to maintain the existing septic system and meet the requirements of the Department of Environment. HRM does not require that longitudes and latitudes be included in variance site plans. Access to the proposed accessory building will be located in front to the structure between the structure itself and Round Tuit Road. The Land Use By-law for Planning District 4 does not regulate the design of the structure; only the size, height and setback requirements. The structure will have to meet the National Building Code. Maintenance of survey stakes is the property owner's responsibility; HRM does not regulate the placement or visibility of survey stakes.</p>
<p><i>Concern was raised over the enforcement of watercourse setbacks and that the watercourse setback for this property was not upheld for the main building nor for the proposed building.</i></p>	<p>No variance was granted to alter watercourse setbacks. The watercourse setback is not part of this application and the existing dwelling abutting the watercourse is permitted as per the provisions of the Land Use By-law. The By-law contains provisions which allow accessory structures to be located within the 20 meter watercourse buffer provided they are placed no closer to the watercourse than the existing main building. That is the case in this situation.</p>

<p><i>Appellants would like additional agencies outside of HRM be consulted regarding the proposed accessory building. These agencies include Nova Scotia Environment, Nova Scotia Department of Natural Resources, Nova Scotia Transportation and Infrastructure Renewal, Environment Canada, Natural Resources Canada, and Department of Fisheries and Oceans.</i></p>	<p>The Development Officer is charged with assessing which agencies are appropriate to consult in matters of granting variances. In this case, the Development Officer consulted NS Transportation and Infrastructure Renewal who did not identify any concerns with the variance request stating that it appears that the proposed accessory building will not present any problems with the maintenance or operation of the highway. Staff are not aware of any request to alter the watercourse but advise that this is separate from the variance process and in any event, would require the approval of NS Environment.</p>
<p><i>The neighbouring property contains a dry hydrant, and the appellants request that the Fire Department be consulted on the variance application.</i></p>	<p>The proposed accessory building is located entirely within the applicant's property, and will not impede the use of the adjacent property.</p>
<p><i>Residents are concerned that the proposed accessory building will impede their access to Whites Lake for recreational activity.</i></p>	<p>The proposed accessory building is located entirely within the privately owned lot of the applicant. No public access will be affected by the granting of this variance.</p>
<p><i>The appellants believe that if an accessory building was to be incorporated into the lot's development, it should have been done during the initial construction of the home.</i></p>	<p>The initial development of a lot does not preclude its future development. HRM allows for accessory structures to be constructed provided the necessary permits are acquired.</p>
<p><i>The appellants request that once their requests as outlined above have been addressed that they have further input into the development of the property at 13 Round Tuit Road.</i></p>	<p>Council's decision to grant or deny the variance will determine if the proposed accessory building will be developed as per the requested variances. There is no opportunity through the development approval process gain input into the development of the property.</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 for refusal provided by the *Charter*. The matter is now before Halifax and West Community Council to hear the appeal and render a decision.

FINANCIAL IMPLICATIONS

There are no financial implications related to this variance.

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 and the appellant(s) to speak.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications.

ALTERNATIVES

1. Community Council may deny the appeal and uphold the decision of the Development Officer to approve the variances.
2. Community Council may allow the appeal and overturn the decision of the Development Officer and refuse the variances.

ATTACHMENTS

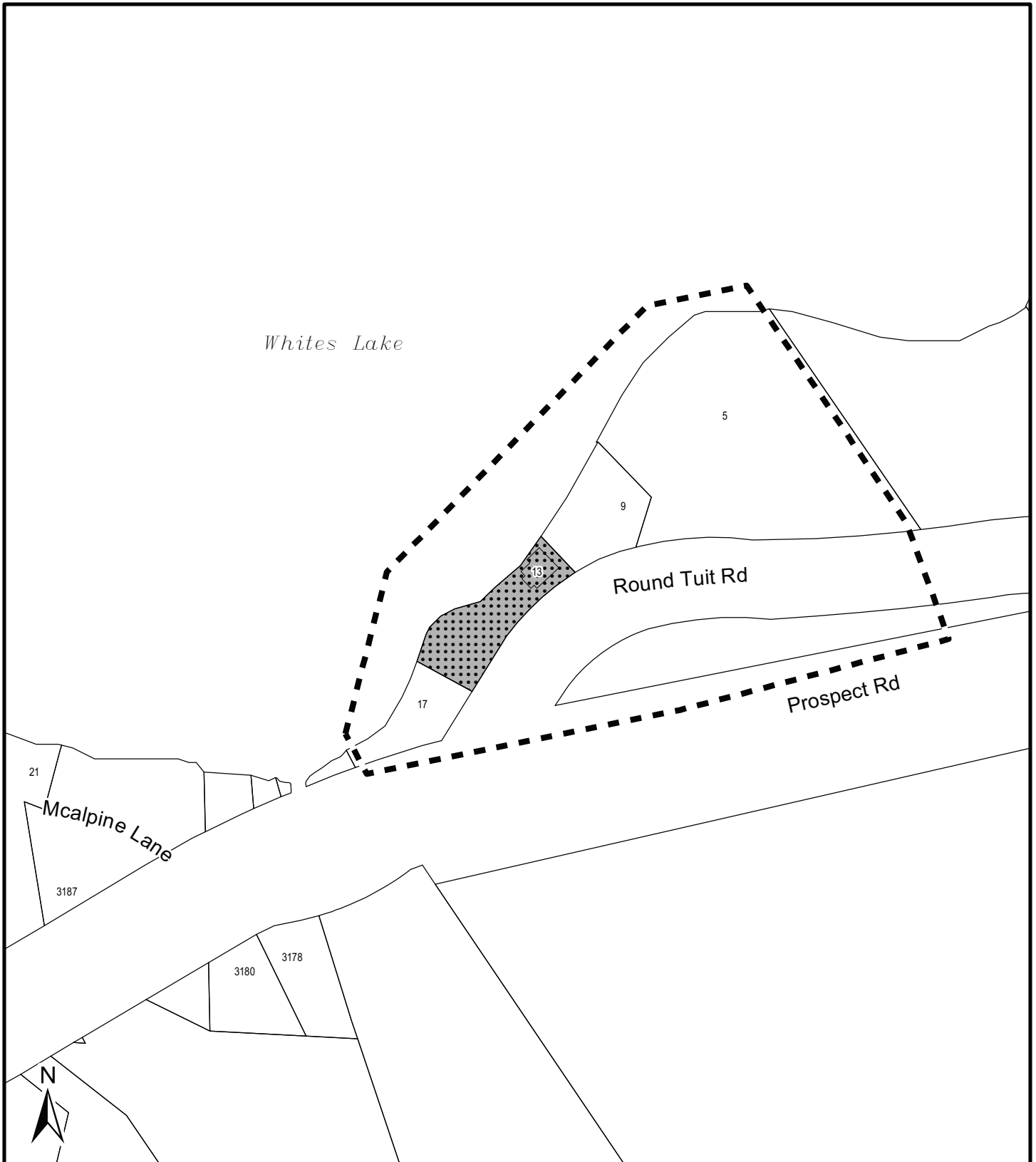
Map 1	Notification Area
Map 2	Site Plan
Attachment A	Variance Approval Notice
Attachment B	Letters of Appeal

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 490-4210, or Fax 490-4208.

Report Prepared by: Sean Audas, Development Officer, Development Approvals, 490-4402

Original Signed

Report Approved by:  Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Notification Area

13 Round Tuit Road
Whites Lake



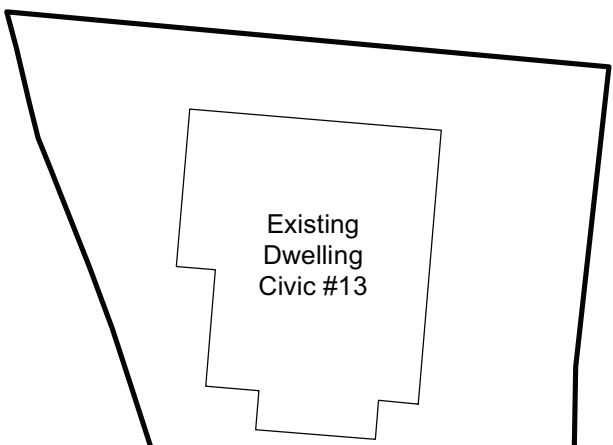
Subject Property



Notification Area

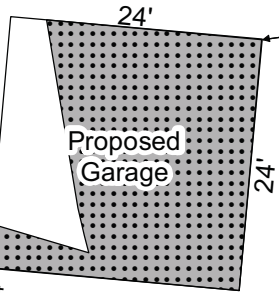


HRM does not guarantee the accuracy of any representation on this plan.



Whites Lake

Round Tuit Rd



Requested Variance 4'

Requested Variance 10'

Map 2 - Site Plan

13 Round Tuit Road
Whites Lake



Area of requested Variance



HRM does not guarantee the accuracy of any representation on this plan.



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

September 18, 2013

Dear Sir or Madam:

RE: Variance Application #18820, 13 Round Tuit Drive, Whites Lake, PID #40702755

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 the Halifax Regional Municipal Charter, Section 251.

This will advise you that 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 District 4 as follows:

Location: 13 Round Tuit Drive, Whites Lake, PID #40702755

Project Proposal: Vary Front Yard Setback and Left Side Yard Setback to allow an Accessory Building

	Requirements	Proposal
Minimum Front or Flankage Yard	30 feet	10 feet
Minimum Side Yard	8 feet	4 feet

Pursuant to Section 251 of the Halifax Regional Municipal Charter, assessed property owners within 30 metres of the above noted address are notified of this variance. If you wish to appeal, please do so in writing, **on or before October 7, 2013**, and address your appeal to:

Sean Audas, Development Officer
c/o Municipal Clerk
Halifax Regional Municipality
Planning and Development - Western Region,
P.O. Box 1749, Halifax, N.S. B3J 3A5
Clerks@halifax.ca

Please note, this does not preclude further construction on this property provided the proposed construction does not require a minor variance. If you have any questions or require clarification of any of the above, please call Graeme Buffett at 490-4653.

Yours truly,

Original Signed

Sean Audas, Development Officer
Halifax Regional Municipality

cc. Cathy Mellett, Municipal Clerk
Councillor Stephen Adams – District 11

COMMUNITY AND RECREATION SERVICES- DEVELOPMENT APPROVALS

Tel: (902) 490-4402 Fax: (902) 490-4645
E-mail: audass@halifax.ca Web Site: www.halifax.ca

RECEIVED OCT 07 2013

Re: Variance Application #18820, 13 Round Tuit Road, Whites Lake, NS, PID#40702755

We are happy to have the opportunity to input to this request for further development.

We have a number of concerns regarding this variance application and want to raise some issues that we've experienced regarding the HRM process in this matter.

Process Problems:

- Home owners within 30 meters of said property have the right to input to all variance decisions pertaining to this property. We the residents of 5 Round Tuit Road have yet to receive formal notification from HRM that there is a variance application relating to 13 Round Tuit Rd. We believe it is critical HRM follow its own guidelines and ensure notification be sent to 5 Round Tuit Rd. We were informed of the variance by 9 Round Tuit Rd and called Greame Buffett at HRM to request the document be sent but only received an email.
- The information provided by HRM Planning to the residents implicated, is inadequate.
 - It does not include location of septic
 - It does not identify latitudes and longitudes of the said property
 - it does not identify where the garage is to be accessed
 - It does not include any design details for the new structure
 - The current residence has a very strong design aesthetic. If a garage is given approval to be built, it should be built in the same strong design style. Otherwise, it will have no visual connection to the residence. Additionally, because the location of the proposed garage is far removed from the residence, it will be the proverbial "sore thumb", a building with no relationship to its location.
 - In addition to the lack of detail on this map, we have looked for the legal survey stakes for that end of the property at 13 Round Tuit Road, and they are not there. So we have no opportunity to adequately review the exact location of this garage and the implications of its being built.
- We were invited to provide input to an earlier variance for this property when the house was built. Based on comments by the owner, and our belief that HRM had setback requirements from watercourses that would be upheld, we did not comment on it. In retrospect, we were obviously wrong to make such assumptions. Everything that the owner told us turned out not to take place. We were informed that it was to be a cottage and only occupied on weekends. As well, HRM did not uphold its setback requirements from Whites Lake. It's interesting to us that the only setbacks where area residents have the opportunity to input is from roadways or property boundaries. Apparently, HRM believes we have little interest in the integrity of the lake on which we live, and have lived for over 25 years! Our experience with Whites Lake tells us that HRM should indeed have maintained a larger setback for this house. (2.2 feet from the shoreline is inadequate.)

Specific Requests / Issues re This Variance Request:

1. **We request that HRM require the owner to have the survey stakes be reinstalled and to stake out the exact location of this proposed garage.** We believe this is a fair and reasonable request. How can anyone make a decision on a variance application without knowing where the building will be located?
2. When we look at the property, it is obvious to us that this garage cannot be constructed without slope stabilization, backfilling and/or infilling. We have concerns about the possible impacts that this may have on the Lake, as well as on the use of Round Tuit Road. This is a public road used largely by the local community; based on our experience with the house building process, there were many times when this road was unavailable to area residents. We believe that watercourse protection should be paramount in any application before the HRM Planning Department, and that the current setback requirement set out in the bylaw should be strictly adhered to. HRM is a regulator, not a developer's facilitator! As well, Whites Lake is home to many species of migratory birds, including loons, kingfishers and mergansers, other marine bird species, eagles, many fish species, and mammals. All regulatory agencies having an interest in watercourses and marine habitat need to have the opportunity to input to any activities related to their jurisdiction; these agencies include NSDOE, NSDNR, NSDOT, Environment Canada, NRCan, DFO, and others. **Our request is to be informed about the plans to mitigate any environmental impacts on the watercourse and the habitat of these species, and plans to mitigate impacts on the use of Round Tuit Rd during construction.**
3. The property adjacent to this proposed garage is the location of a dry hydrant that serves both the Hatchet Lake and the Shad Bay Fire Departments. We believe that this garage may impair the ability of the fire departments to access this hydrant in emergency situations. Design standards for siting of dry hydrants suggest an access clearance of a minimum of 50 feet surrounding the hydrant. **OUR REQUEST is that the local fire departments who use the dry hydrant be asked to comment on the construction of this garage with all the information detail we have outlined above. To us, this is a critically important step prior to a decision on this variance application. We further request that input received from the fire departments be shared with us.**

General Comments:

- Round Tuit Road is used by the local community as the access point for the small beach on Whites Lake. As a matter of fact, when we moved here, that beach had a lifeguard, and offered swimming lessons to youngsters through HRM Parks and Rec. So historically, Round Tuit Road has been an important conduit to Whites Lake for both summer and winter sports. The proposed garage at the end of this Road will further impede local residents from using the lake, as it has traditionally been used. (It was impeded some years ago by the construction of the dry hydrant, i.e. HRM.)
- In order to create a residence that would be permitted on this lot, the owner spent over a year in the design process. This was the appropriate time to incorporate a garage structure in the design.

A FINAL REQUEST IS THAT WE HAVE THE OPPORTUNITY FOR FURTHER INPUT ONCE THE REQUESTS OUTLINED ABOVE ARE MET. FOR EXAMPLE, SIMPLY STAKING OUT THE LOCATION FOR THE PROPOSED GARAGE IS INADEQUATE IF WE ARE NOT ABLE THEN TO RAISE CONCERNS BASED ON NOW HAVING THE FACTS. THE SAME OF COURSE IS TRUE FOR FIRE DEPARTMENT INPUT AND MEASURES TO PROTECT THE ENVIRONMENT.

We hope that our comments will be given your fullest attention. Again, thank you for the opportunity to input.

Regards,

John & Debra Campbell