

Item No. 13.1

**Halifax and West Community Council
October 28, 2013**

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

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

DATE: October 23, 2013

SUBJECT: **Case 18229: Development Agreement for a Day Care Center - 60
Scotch Pine Terrace, Halifax**

SUPPLEMENTARY REPORT

ORIGIN

- Application by Linda Liao
- On September 23, 2013, Halifax and West Community Council approved rezoning of 60 Scotch Pine Terrace, Halifax, from Schedule K to the R-1 (Single Family Dwelling) Zone (amendment to Map ZM-1)

LEGISLATIVE AUTHORITY

- *Halifax Regional Municipality Charter*, Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. By resolution, approve the proposed Stage I and Stage II discharging agreements, presented as Attachments A and B of this report, for the lands located at 60 Scotch Pine Terrace, Halifax;
2. Approve the proposed development agreement, as described in Attachment C, to permit for the expansion of the existing day care facility at 60 Scotch Pine Terrace, Halifax, to accommodate a total of 18 children in conjunction with a single unit dwelling on the subject property; and

RECOMMENDATIONS CONTINUED ON PAGE 2

3. Require that the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner(s), from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND/DISCUSSION

On September 23, 2013, Halifax and West Community Council held a Public Hearing to consider a proposal to expand an existing day care located at 60 Scotch Pine Terrace, Halifax. As noted in the July 25, 2013 Staff Report, the applicant has requested that Council give consideration to:

1. rezoning the subject property to the R-1 Zone;
2. discharging the subject property from the existing Stage I and Stage II development agreements for Clayton Park West and Glenbourne Subdivision, once the R-1 Zone is in effect; and
3. entering into a new development agreement to expand the existing day care facility to enable up to 18 children.

Subsequent to the Public Hearing, Community Council gave its approval to the first part of the application, which is rezoning the subject property from Schedule 'K' to the R-1 (Single Family Dwelling) Zone. Following the expiration of the 14-day appeal period, the approved zoning became effective.

As noted in the July 25, 2013 Staff Report, Community Council could not make a decision on the proposed Stage I and Stage II discharging agreements and the proposed development agreement for the expansion of the existing day care until the rezoning became effective. The R-1 Zone came into effect on October 15, 2013, and Council is now in a position to consider the Stage I and Stage II discharging agreements and the proposed development agreement, as contained in Attachments A, B and C of this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved 2013/14 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was consultation, achieved through a Public Information Meeting held on March 21, 2013 and a Public Hearing on September 23, 2013.

Notices of the Public Information Meeting and Public Hearing were posted on the HRM website, in the newspaper and mailed to property owners within the notification area shown on Map 2 of the July 25, 2013 Staff Report.

ENVIRONMENTAL IMPLICATIONS

No implications have been identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed Stage I and Stage II discharging agreements and the proposed development agreement as contained in Attachments A, B and C of this report. This is staff's recommendation. A decision of Council to approve the proposed development agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to approve the proposed discharging agreements and propose modifications to the proposed development agreement. Such modifications may require further negotiations with the Developer, and may require a supplementary report and an additional public hearing. A decision of Council to reject the proposed development agreement, with or without a public hearing, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
3. Halifax and West Community Council may choose to approve the proposed discharging agreements and refuse the proposed development agreement. Pursuant to the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal based on the policies of the MPS.

ATTACHMENTS

Attachment A	Proposed Stage II Discharging Agreement
Attachment B	Proposed Stage I Discharging Agreement
Attachment C	Proposed Development Agreement

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: Dali H. Salih, Planner, Development Approvals, 490-1948
Original Signed

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

ATTACHMENT A:
Proposed Stage II Discharging Agreement

THIS DISCHARGING AGREEMENT made this day of **[Insert Month]**, 20__ ,

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality,
in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 60 Scotch Pine Terrace, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

ANDWHEREAS the former City of Halifax, at its meeting on July 29, 1993, approved an application by Annapolis Basin Pulp & Power Company Limited (Annapolis Group Incorporated) to enter into a Stage I Development Agreement (Municipal Case No. 6511) for the concept approval for a residential development on the lands west of the Rockingham Ridge Subdivision, north and west of the Wedgewood Subdivision and east of the Bicentennial Highway in Halifax, pursuant to the Halifax Municipal Planning Strategy and Sections 68(6) and 68(8) of Land Use By-law for Halifax Mainland, which said agreement was entered into on December 6, 1993, and then registered at the Registry of Deeds in Halifax as Document No. 52141, Book No. 5505, Pages 462-479, and entered into an amending agreement to the Stage I Development Agreement on March 29, 1996, and the said amending agreement was then registered at the Registry of Deeds as Document No. 12550, Book 5856, Page 429-434, collectively called the Stage I Development Agreement (hereinafter called the "Existing Stage I Agreement");

AND WHEREAS, pursuant to the procedures and requirements contained in the Halifax Regional Municipality Charter, the Halifax and West Community Council of the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18229;

ANDWHEREAS the former City of Halifax, previously approved an application by Annapolis Basin Pulp & Power Company Limited (Annapolis Group Incorporated) to enter into a Stage II Development Agreement (Municipal Case No. 6819) for the development of Phase 1A of the Glenbourne Subdivision, which said agreement was entered into on February 2, 1994, pursuant to the provisions of the Halifax Municipal Planning Strategy and Subsections 68(7) and 68(8) of the Land Use By-law for Halifax Mainland, and the said agreement was filed in the Registry of Deeds as Document No. 5687 in Book 5527, at Pages 93-100 (hereinafter called the “Existing Stage II Agreement”);

AND WHEREAS the Developer has requested that the Existing Stage II Agreement be discharged from the Lands;

AND WHEREAS, pursuant to the procedures and requirements contained in the Halifax Regional Municipality Charter, the Halifax and West Community Council of the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18229;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

1. The Lands are hereby discharged from the Existing Stage II Agreement, which shall no longer have any force or effect on the Lands.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Land Use By-law for Halifax Mainland, as amended from time to time.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in
the presence of:

Witness

SIGNED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality, duly authorized in that
behalf, in the presence of:

Witness

Witness

(Insert Registered Owner Name)

Per: _____

HALIFAX REGIONAL MUNICIPALITY

Per: _____
MAYOR

Per: _____
MUNICIPAL CLERK

ATTACHMENT B:
Proposed Stage I Discharging Agreement

THIS DISCHARGING AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[Insert Individual's name]

an individual, in the Halifax Regional Municipality,
in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 60 Scotch Pine Terrace, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

ANDWHEREAS the former City of Halifax, at its meeting on July 29, 1993, approved an application by Annapolis Basin Pulp & Power Company Limited (Annapolis Group Incorporated) to enter into a Stage I Development Agreement (Municipal Case No. 6511) for the concept approval for a residential development on the lands west of the Rockingham Ridge Subdivision, north and west of the Wedgewood Subdivision and east of the Bicentennial Highway in Halifax, pursuant to the Halifax Municipal Planning Strategy and Sections 68(6) and 68(8) of Land Use By-law for Halifax Mainland, which said agreement was entered into on December 6, 1993, and then registered at the Registry of Deeds in Halifax as Document No. 52141, Book No. 5505, Pages 462-479, and entered into an amending agreement to the Stage I Development Agreement on March 29, 1996, and the said amending agreement was then registered at the Registry of Deeds as Document No. 12550, Book 5856, Page 429-434, collectively called the Stage I Development Agreement (hereinafter called the "Existing Stage I Agreement");

AND WHEREAS the Developer has requested that the Existing Stage I Agreement be discharged from the Lands;

AND WHEREAS, pursuant to the procedures and requirements contained in the Halifax Regional Municipality Charter, the Halifax and West Community Council of the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18229;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

1. The Lands are hereby discharged from the Existing Stage I Agreement, which shall no longer have any force or effect on the Lands.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Land Use By-law for Halifax Mainland, as amended from time to time.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in
the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality, duly authorized in that
behalf, in the presence of:

Witness

Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

ATTACHMENT C:
Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__,

BETWEEN:

[Insert Name of Corporation/Business LTD.]
a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY
a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 60 Scotch Pine Terrace, Halifax, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a day care facility for up to 18 children in conjunction with a single unit dwelling on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies 3.20 and 3.20.1 of the Municipal Planning Strategy for Halifax and Section 71(8) of the Land Use By-law for Halifax Mainland;

AND WHEREAS the Halifax and West Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 18229;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By-law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Halifax Mainland and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement **and filed in the Halifax Regional Municipality as Case Number 18229:**

Schedule A Legal Description of the Lands(s)
Schedule B Site Plan

3.2 Requirements Prior to Approval

3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The uses of the Lands permitted by this Agreement are the following:

- (a) a day care facility for not more than 18 children in conjunction with a single unit dwelling, subject to the provisions of this Agreement; and
- (b) Accessory uses permitted in the R-1 (Single Family Dwelling) Zone, subject to the provisions contained within the Land Use By-law for Halifax Mainland.

3.4 Siting and Architectural Requirements

3.4.1 The day care centre shall be located in the basement level of the existing building.

3.4.2 Any alterations to the exterior of the building shall retain the residential character of the building and shall be subject to the requirements of the R-1 (Single Family Dwelling) Zone.

3.5 Parking, Circulation and Access

3.5.1 Two parking spaces shall be provided, as shown on Schedule B. One (1) parking space for the dwelling and One (1) parking space for the day care facility shall be provided.

3.6 Outdoor Play Area

3.6.1 The outdoor play area shall:

- (a) be located in the area identified as Play Area Back Yard, as shown on Schedule B;
- (b) be screened with view-obstructing materials, such as but not limited to a stone wall or wood fence; and
- (c) not be connected through gateways or pathways to any adjacent property, as shown on Schedule B.

3.6.2 Materials used by children in the outdoor play area shall be limited to the Lands.

3.7 Signage

Signage for the day care facility shall be accordance with the R-1 (Single Family Dwelling) Zone of the Land Use By-law for Halifax Mainland, as amended from time to time.

3.8 Hours of Operation

3.8.1 The hours of operation shall be Monday through Friday, from 7:30 am to 5:30 pm.

3.9 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways.

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council:

- (a) The granting of an extension to the date of commencement of construction as identified in Section **5.3.1** of this Agreement;
- (b) The length of time for the completion of the development as identified in Section **5.5.1** of this Agreement;

4.2 Substantive Amendments

Amendments to any matters not identified under Section 4.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

5.2 Subsequent Owners

5.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.

5.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

5.3 Commencement of Development

5.3.1 In the event that development on the Lands has not commenced within three (3) year from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

5.3.2 For the purpose of this section, commencement of development shall mean issuance of an Occupancy Permit for a day care facility for not more than 18 children in conjunction with a single unit dwelling.

5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 3.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

5.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Mainland, as may be amended from time to time.

5.5 Discharge of Agreement

5.5.1 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer [**Insert-number**] days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Registered Owner Name)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

Witness

Per: _____

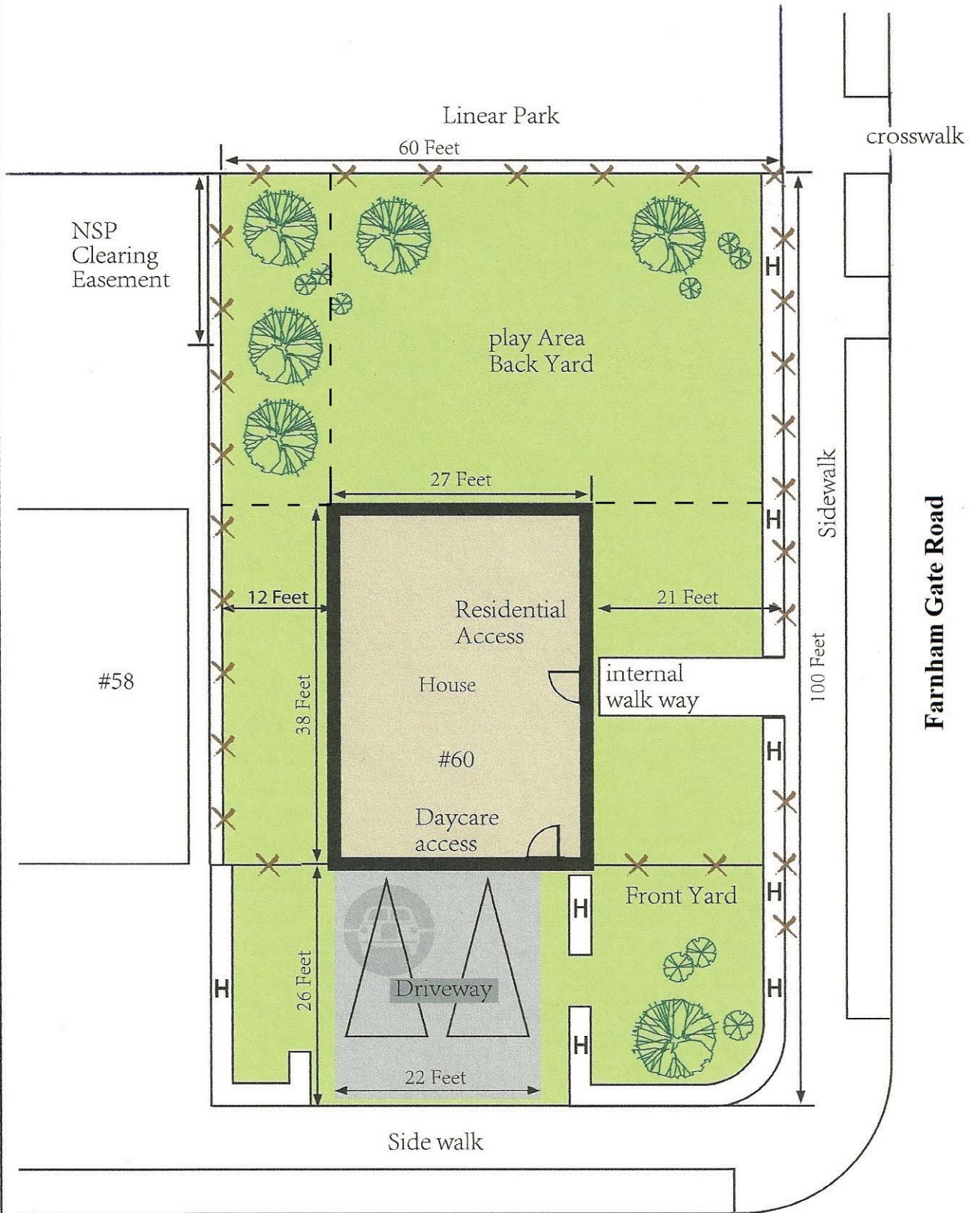
MAYOR

Witness

Per: _____

MUNICIPAL CLERK

Case 18229 - Schedule B
Site Plan - 60 Scotch Pine Terrace, Halifax



Scotch Pine Terrace

