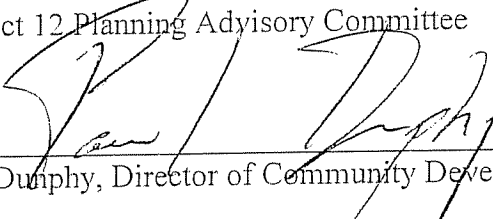


District 12 Planning Advisory Committee  
May 26, 2008

**TO:** District 12 Planning Advisory Committee

**SUBMITTED BY:**   
Paul Dunphy, Director of Community Development

**DATE:** May 14, 2008

**SUBJECT:** Case 01161 - Non-substantive Amendment to Development Agreement  
for 5839 Cunard Street, Halifax (PID 41158304)

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**ORIGIN**

Application by Cunard Street Developments Incorporated

**RECOMMENDATION**

It is recommended that District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. by resolution, approve the non-substantive second amendment to the Development Agreement formerly known as 5837 Cunard Street and 2372 June Street and now known as 2303, 2307, 2311, 2315 and 2319 Princess Place, 2368 June Street and 5839 Cunard Street as required for the approval of a revised landscape plan as detailed in the Amending Agreement appended as Attachment A of this report; and
2. require that the Amending Agreement be signed and returned within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

### **BACKGROUND:**

This development is located between Princess Place and June Street (refer to Map 1). There is an existing approved Development Agreement in effect for these properties which was approved by Peninsula Community Council in September, 2004, (Case 00628).

A first amendment to the existing agreement was approved by Peninsula Community Council on June 10, 2006 (Case 00875). This amendment was to satisfy Sections 2.9.1 and 2.10.2. of the agreement for a landscape plan and a masonry wall to be constructed on the Lands along the rear lot line of the lots fronting on Princess Place which are municipally registered heritage properties.

### **DISCUSSION:**

Prior to the commencement of building construction, a wooden screen fence was located at the property boundary at the rear of the abutting lots which front on to Princess Place. Construction has now progressed to the point where the required masonry wall would need to be constructed in this location as identified in Section 2.10 of the Existing and First Amending Development Agreements. At this point in time, four of the five Princess Place property owners have requested that the masonry wall not be placed in this location but that a wooden fence with decorative lattice on the top be provided instead. The residents are concerned that the excavation necessary to construct the masonry wall would result in damage to existing trees and shrubs on their properties and that a wooden fence would be more aesthetically pleasing to the neighbourhood. A letter signed by these property owners is appended as Attachment C.

Section 2.11 of the existing development agreement enables Council to approve a landscape plan and a masonry wall to be constructed on the lands along the rear lot line of the lots fronting on Princess Place by way of a non-substantive amendment (See Attachment B). A mutually agreed upon change in material to this boundary fence would conform with the original purpose of the masonry fence. Given the nature of the change, a non-substantive amendment is appropriate. Non-substantive amendments are approved by a resolution of Council and do not require a public hearing.

The Revised Fence Plan Layout drawing (Schedule O - 1) is an addition to the approved Landscape Plan and changes only the type of fence/wall proposed. The Proposed Improvements to Existing Fence drawing (Schedule P - 1) shows the proposed changes to the existing wooden screen fence along the rear lot line shared with Princess Place. Wording in the agreements has been modified to allow the revised material for the fence/wall in the draft second amending agreement appended as Attachment A.

Due to the proximity of this project to registered heritage properties, the plans have been evaluated by the Heritage Planner and were found to be sympathetic to the heritage streetscape. The proposal would be considered a Level One Design Review as it meets the Building Conservation Guidelines for Heritage Buildings. Staff have no concerns relative to the proposed amendment.

### **Public Information Meeting**

Given the nature of this application, a Public Information Meeting was not held. A representative for the Applicant held a Meeting on April 30, 2008, to discuss the changes to the existing fence. There were 2 abutting residents in attendance and they were in favour of what was being proposed.

### **BUDGET IMPLICATIONS**

There are no budget 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 budget with existing resources.

### **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**

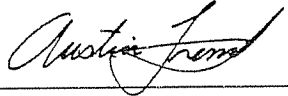
1. Approve the draft Second Amendment to the Existing Development Agreement as proposed. This is the recommended option as the proposed amendments meet the overall intent of the Development Agreement.
2. Approve the draft Second Amendment to the Existing Development Agreement with modifications or conditions. Some modification or conditions may be outside the scope of a Non-Substantive Amendment and may require a Substantive Amendment.
3. Council may refuse to amend the Existing Development Agreement. Pursuant to Section 230(6) of the *Municipal Government Act*, Council is required to provide reasons to the applicant justifying this refusal, based on policies of the MPS. This alternative is not recommended, as the Existing Development Agreement allows for this change.

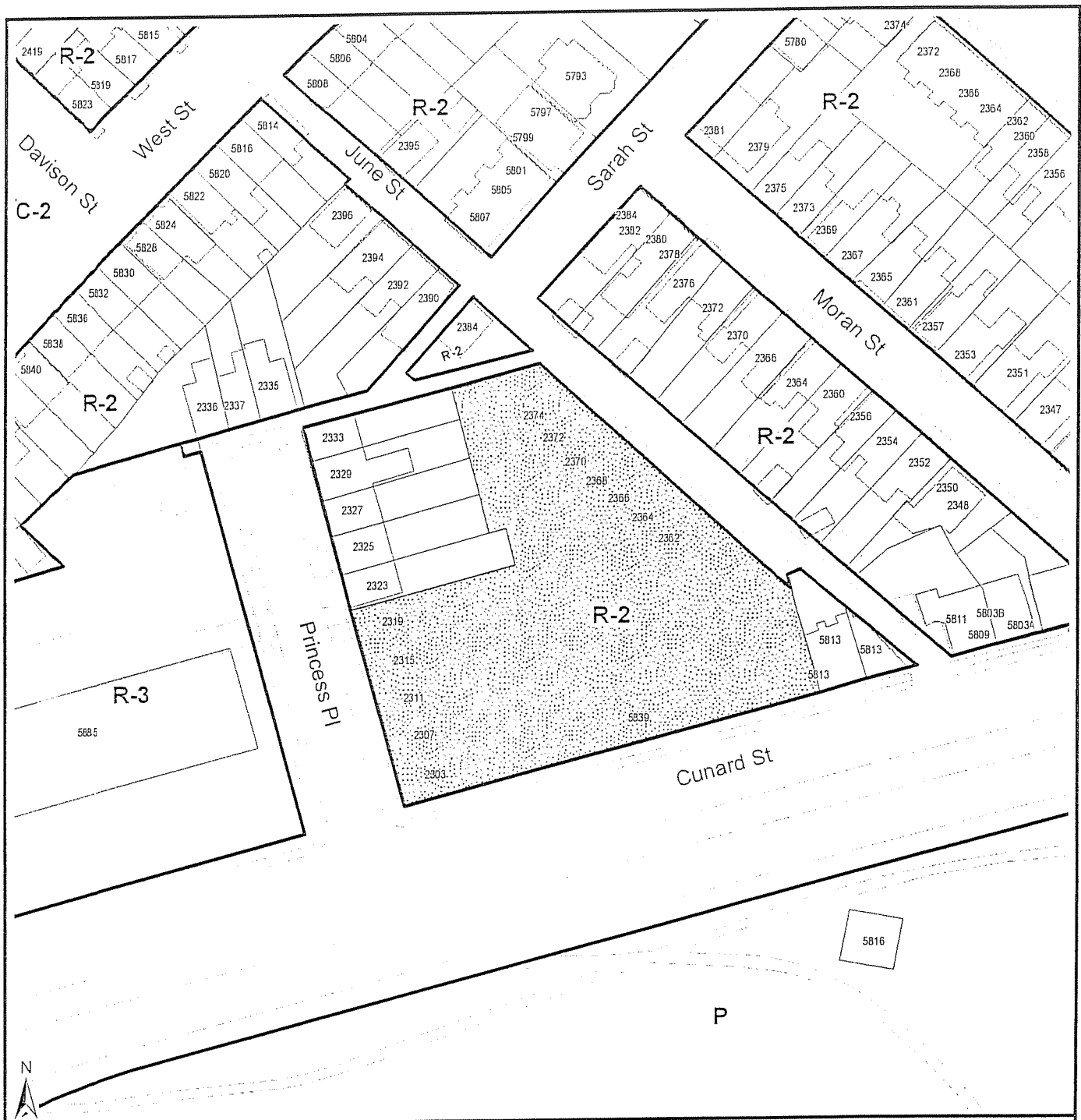
### **ATTACHMENTS**

- Map 1: Location and Zoning Map  
Attachment A: Proposed Non-Substantive Amendment to the Existing Development Agreement  
Attachment B: Excerpts from the Consolidation of the Existing and First Amending Development Agreements  
Attachment C: Letter of Request Signed by Four of the Five Princess Place Owners

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 : Randa Wheaton, Senior Planner, Community Development, 490-4499

Report Approved by:   
Austin French, Manager of Planning Services, 490-6717



**Map 1 - Location and Zoning**

5839 Cunard Street  
Halifax



Subject area

- Zone**
- R-2 General Residential
  - R-3 Multiple Dwelling
  - P Park and Institutional

This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area

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

Halifax Peninsula  
Land Use By-Law Area

ATTACHMENT A

**THIS SECOND AMENDING AGREEMENT** made this        day of        , 2008,

BETWEEN:

**CUNARD STREET DEVELOPMENTS INCORPORATED**

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

OF THE FIRST PART

**HALIFAX REGIONAL MUNICIPALITY**

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

OF THE SECOND PART

**WHEREAS** Amalthea Holdings Limited entered into a Development Agreement with the Municipality, December 15, 2004, as Municipal Case Number 00628 to construct a residential apartment building and said agreement being recorded at the Halifax County Land Registry as Document Number 81130750, (hereinafter called the "Existing Agreement");

**AND WHEREAS** Amalthea Holdings Limited while the registered owner of the lands located at 5837 Cunard Street and 2372 June Street, Halifax, (LRIS PID numbers 00150631, 40267916, 00150573 and 40267908) subsequently subdivided the lands to become 2303, 2307, 2311, 2315 and 2319 Princess Place, 2368 June Street and 5839 Cunard Street (LRIS PID numbers 41158254, 41158262, 41158270, 41158288, 41158296, 41158304 and 41158312);

**AND WHEREAS** Amalthea Holdings Limited subsequently transferred its interest in the lands to Cunard Street Developments Incorporated;

**AND WHEREAS** Cunard Street Developments Incorporated is now the registered owner of the lands located at 2303, 2307, 2311, 2315 and 2319 Princess Place, 2368 June Street and 5839 Cunard Street, Halifax, and which said lands are more particularly described in Schedule A1 to this Amending Agreement (hereinafter called the "Lands");

**AND WHEREAS** Peninsula Community Council of Halifax Regional Municipality granted approval of an application (Case 00875) to amend the existing agreement to allow non-substantive approval of the landscape plan and masonry wall on the Lands, which said agreement was recorded on December 5, 2006, at the Halifax County Land Registration Office as Document Number 86779098 (hereinafter called "the First Amending Agreement");

AND WHEREAS the Developer wishes to amend the Existing Agreement and the First Amending Agreement to allow for the inclusion of a Revised portion of the Landscape Plan and details of the proposed Wood Screen Fence to be constructed on the Lands along the rear lot line of the lots fronting on Princess Place pursuant to the provisions of the Municipal Government Act, (hereinafter called the "Second Amending Agreement");

AND WHEREAS Peninsula Community Council for the Municipality approved this request at a meeting held on \_\_\_\_\_, 2008, referenced as Municipal Case 01161;

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

1. Add the following Schedule of this Second Amending Agreement to the Existing Agreement:  
Schedule O - 1 Revised Fence Plan Layout
2. Delete Schedule P of the First Amending Agreement and add the following Schedule of this Second Amending Agreement to the Existing Agreement:  
Schedule P - 1 Proposed Improvements to Existing Fence
3. Replace Section 2.9.1 of the Existing and First Amending Agreements with the following:

Landscaping for the Lands shall be substantively in conformance with "Schedule O - Landscape Plan" as attached to the First Amending Agreement and "Schedule O - 1 - Revised Fence Plan Layout" as attached to this Second Amending Agreement. The intent of the landscaping is to provide aesthetic enhancement.

4. Replace Section 2.10 of the Existing and First Amending Agreements with the following:

**2.10 Fence/Wall**

A Wood Screen Fence/Wall shall be constructed by the Developer on the Lands along the rear lot line of the lots fronting along Princess Place substantively in conformance with "Schedule O - 1 - Revised Fence Plan Layout" and "Schedule P - 1 - Proposed Improvements to Existing Fence" attached to this Second Amending Agreement prior to the issuance of an Occupancy Permit and subsequent to the approval and registration of this non-substantive amendment. The purpose of the wall is to provide privacy for the abutting Princess Place properties.

5. Delete Section 2.10.2 of the Existing and First Amending Agreements.
6. Replace Section 2.11 (b) in the Existing Agreement with the following:

(b) approval of the fence/wall to be constructed on the Lands along the rear lot line of the lots fronting on Princess Place.

- 7. All other terms of the Existing Agreement and First Amending Agreement shall remain in full force and effect.
- 8. Time is of the essence of this agreement.
- 9. This Second Amending Agreement and everything contained herein shall be binding upon the Parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set hands and seals to this Amending Agreement on the day and year first above written.

SIGNED, SEALED AND DELIVERED  
in the presence of:

Per \_\_\_\_\_

Sealed, Delivered and Attested by the  
proper signing officers of Halifax  
Regional Municipality duly authorized  
on that behalf in the presence of:

Per \_\_\_\_\_

) **CUNARD STREET DEVELOPMENTS**  
) **INCORPORATED**

)  
) Per \_\_\_\_\_

)  
)  
) HALIFAX REGIONAL MUNICIPALITY

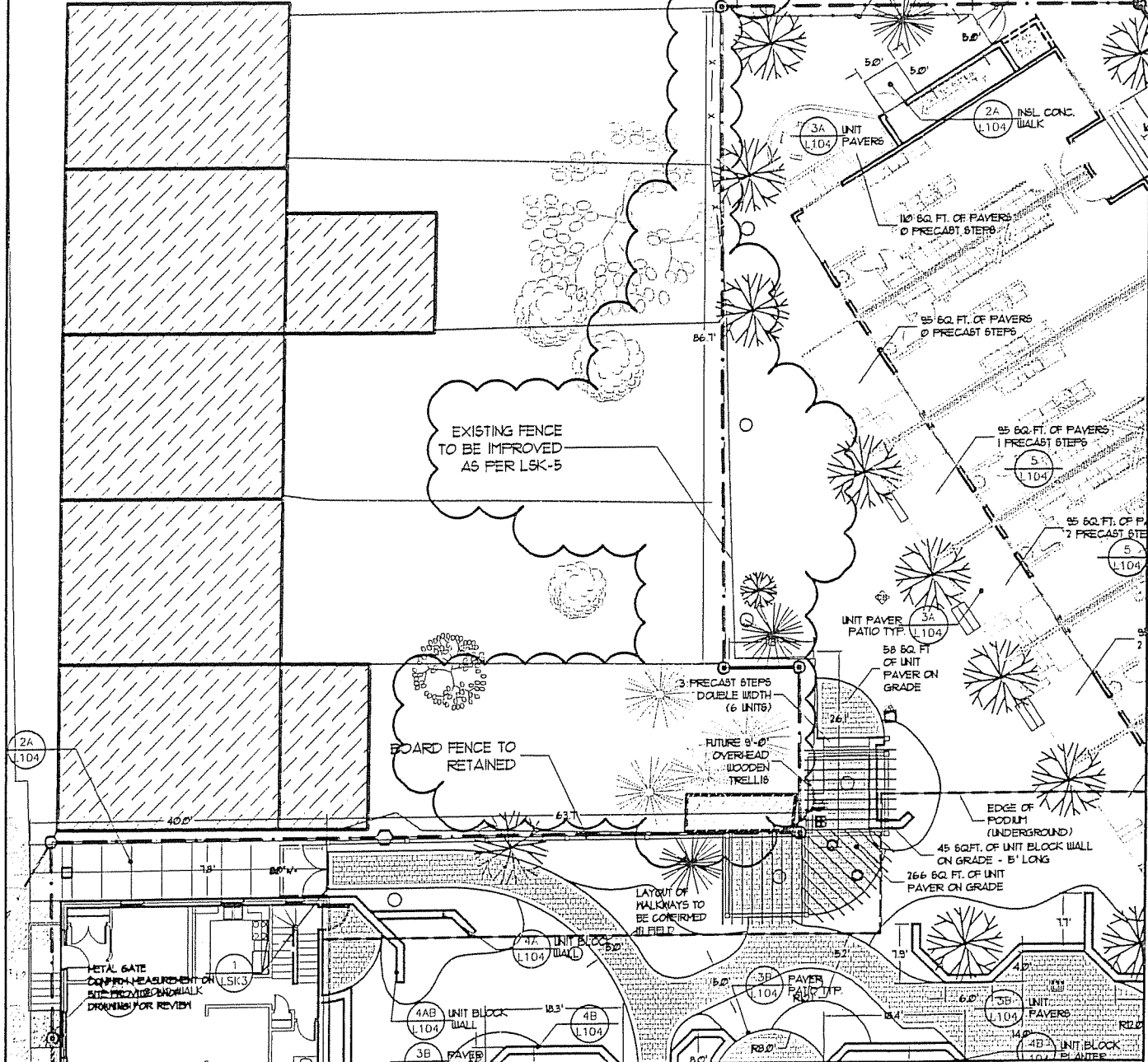
)  
) Per \_\_\_\_\_  
) Mayor

)  
) Per \_\_\_\_\_  
Municipal Clerk





YOUNGS LANE



**Vollick McKee Petersmann**  
ASSOCIATES LIMITED

LANDSCAPE ARCHITECTURE  
SITE PLANNING PROJECT MANAGEMENT

2030 Gollingen Street  
Suite 200  
Halifax Nova Scotia  
Canada B3K 3A9

Tel: 902 422 6514  
Fax: 902 425 0402  
info@vollickmckee.com  
www.vollickmckee.com

PROJECT:  
ARMOURY SQUARE

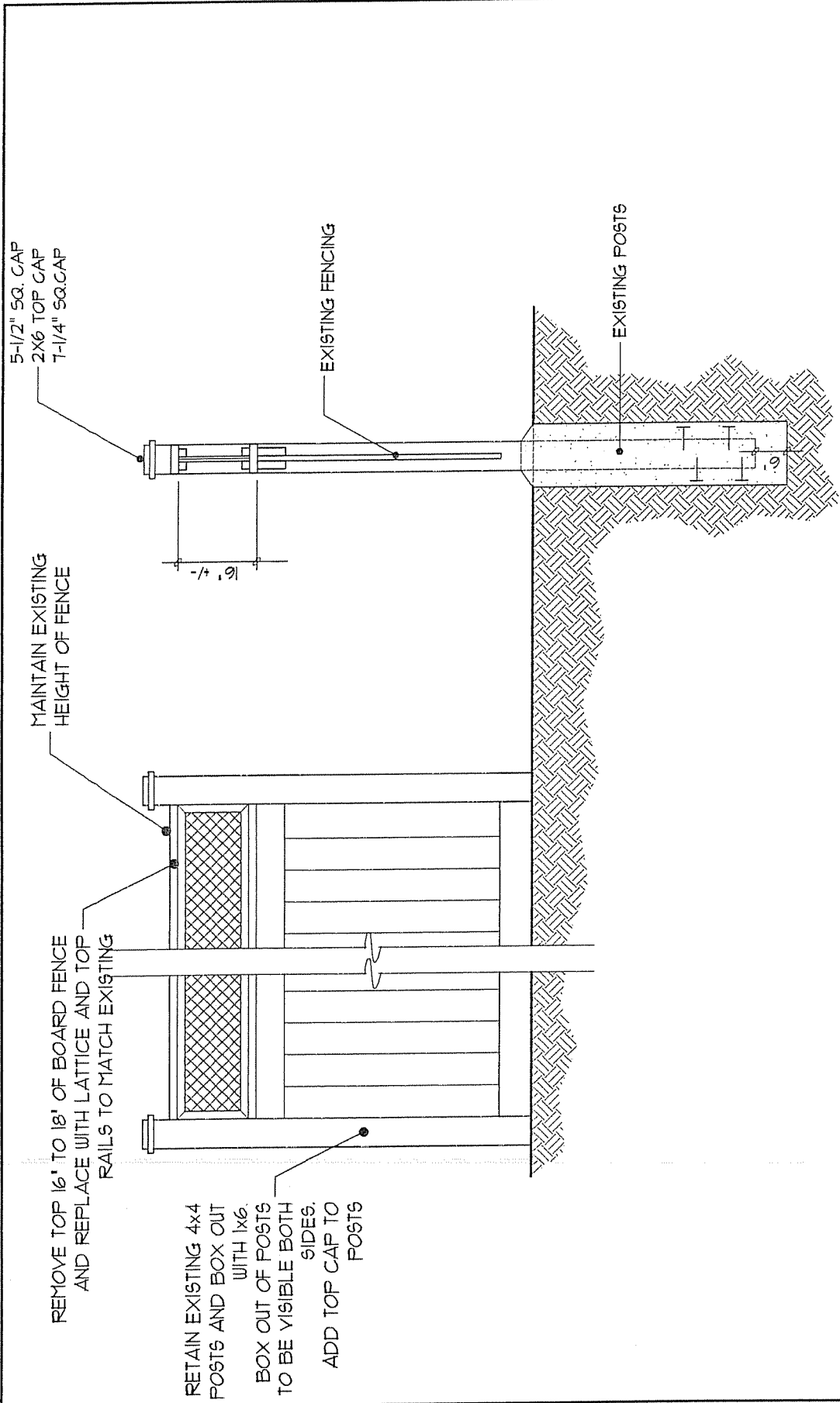
TITLE:  
REVISED FENCE PLAN  
LAYOUT

DATE: 08-MAY 14

SCALE: 1"=20'-0"

DRAWN: JMK

DWG. NO.: LSK-4



DATE:	08-MAY 14
SCALE:	NTS
DRAWN:	JMK
CHK:	
DWG. NO.:	L&K-5

PROJECT:	ARMOURY SQUARE
TITLE:	PROPOSED IMPROVEMENTS TO EXISTING FENCE

**Vollick McKee Petersmann**  
 & ASSOCIATES LIMITED

LANDSCAPE ARCHITECTURE  
 SITE PLANNING PROJECT MANAGEMENT

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ATTACHMENT B

Excerpts from the Consolidation of the Existing and First Amending  
Development Agreements

**2.9 Landscaping**

- 2.9.1 Landscaping for the Lands shall be substantively in conformance with Schedule O as attached to this Amending Agreement. The Developer shall submit the landscape plan to the Development Officer for approval as part of the first development permit application and subsequent to the approval of this non-substantive amendment before any development permit may be issued. The intent of the landscaping is to provide aesthetic enhancement.
- 2.9.2 Landscaping shall be provided consisting of a minimum of upright shrubs with a minimum height of 60 cm. (2 ft.) in continuous planting beds and groundcover. The developer shall ensure that all soft landscape areas not planted with shrubs are to be sodded and the sod is to conform to the Canadian Nursery Sod Growers' Specifications. The developer shall ensure that all plant material is to conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards.
- 2.9.3 Landscaping shall be provided on the podium in order to provide some screening for the users. The shrub material shall be a minimum of 50% coniferous for year round cover. The podium may include sufficient and appropriate decorative seating.
- 2.9.4 It is the responsibility of the developer to ensure that the underground parking structure is to be capable of supporting loads for drainage gravel or an appropriate drainage system over the extent of the landscape podium plus topsoil for sod, shrubs and flowers, all of which is in addition to the anticipated mature weight of the plant material.
- 2.9.5 Landscaping may include containers planted with ornamental trees, shrubs and perennials/annuals.
- 2.9.6 All landscaping shall be completed prior to the issuance of the occupancy permit. Proof of completion shall be in the form of certification by a Landscape Architect in good standing with the Atlantic Provinces Association of Landscape Architects indicating that the landscaping has been done in accordance with the landscape plan approved as a non-substantial amendment to this agreement. An occupancy permit may be issued where the Developer supplies a security deposit in the amount of 120 per cent of the estimated cost to complete the landscaping. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable letter of credit, with an automatic renewal clause, issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work and receipt of certification by a Landscape Architect in good standing with the Atlantic Provinces Association of Landscape Architects indicating that the landscaping has been done in accordance with the landscape plan approved as a non-substantial amendment to this agreement.

## **2.10 Masonry Wall**

2.10.1 A masonry wall shall be constructed on the Lands along the rear lot line of the lots fronting along Princess Place substantively in conformance with Schedule P.

2.10.2 The Developer shall submit the Sitework Details plan (Schedule P) to the Development Officer for approval as part of the first development permit application and subsequent to the approval of this non-substantive amendment before any development permit may be issued. The purpose of the wall is to provide privacy for the abutting Princess Place properties.

## **2.11 Non-Substantial Amendments**

The following items are considered by both parties to be non-substantial matters and may be amended by resolution of the Peninsula Community Council:

- (a) approval of a landscape plan
- (b) approval of the masonry wall to be constructed on the Lands along the rear lot line of the lots fronting on Princess Place.

## **2.12 Substantial Amendments**

Amendments to any matters not identified under section 2.11 shall be deemed substantial and may only be amended in accordance with the approval requirements of the Municipal Government Act.

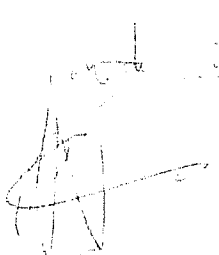
2327 Princess Place  
Halifax  
Nova Scotia B3K 4K5

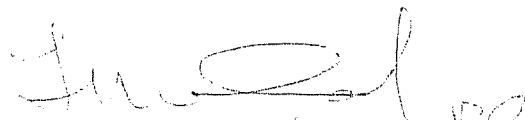
Re: Armoury Square development

We, the undersigned residents of Princess Place, are requesting a modification to the proposed fence between our properties and the Armoury Square development.

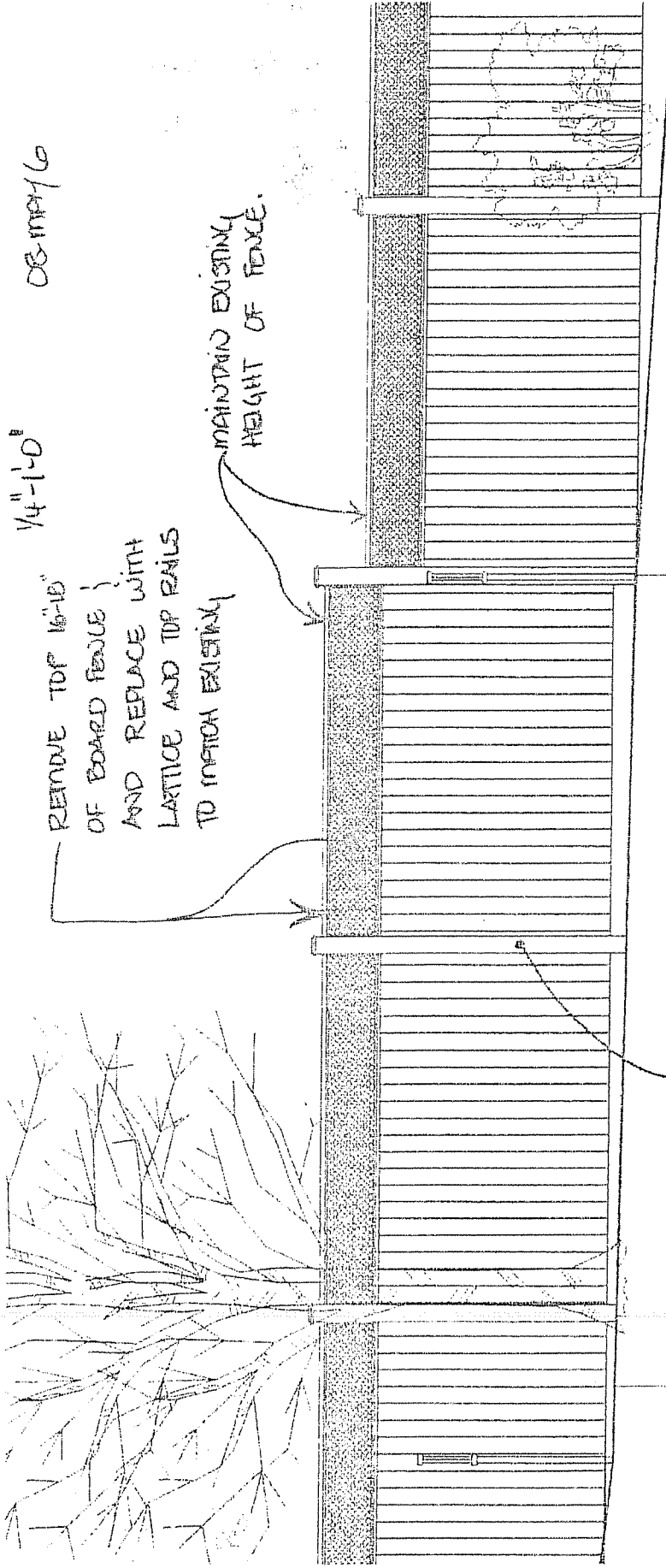
Our concerns are twofold. First, when the plan for a masonry wall was discussed at the hearings, it was not made clear to us that this would involve a substantial excavation along the property line prior to the laying of a foundation — an excavation which has the potential to cause significant damage to the trees and shrubs on our property that are adjacent to the property line. Given the extensive damage to several gardens that occurred during the demolition of the Canvas Factory prior to the development, coming after the loss of a number of mature trees during Hurricane Juan, we are concerned that any further destruction be avoided at all costs. Second, having seen the plans for the proposed masonry wall, we do not believe it to be in keeping with the existing fences separating our properties.

After consultations, the developer has proposed as an alternative an upgrade to the existing fence, which would be far less invasive in terms of the work required. It would also, in our view, be more aesthetically pleasing in terms of preserving the integrity of the neighbourhood. We would therefore urge that the Planning Committee approve the modification of the plans accordingly.

  
Kristina } 2327 Princess Place  
Cristina }  
GK Kennedy } 2323 Princess Place  
C Busby }  
Daniel Nordoff } 2329 Princess Place  
Cristina Raffles }


  
TF McDonald  
2333 Princess Pl

ARMOURY SQUARE  
REVISED FENCE PLAN  
1/4"-1"=1'0"  
08-MPH/6



RETAIN EXISTING 4x4  
POSTS AND BOX OUT WITH  
1x6. POSTS TO BE  
VISIBLE BOTH SIDES.  
ADD TOP CAP TO  
POSTS.

PROPOSED FENCE  
IMPROVEMENTS.

  
Vollick McKee Petersmann  
ARCHITECTS  
