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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
April 2, 2007

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: February 22, 2007

SUBJECT: **Case 00825: Lot Modification Development Agreement, 198 Herring Cove Road, Halifax**

ORIGIN

Application by Allen and Catherine Bryden to enter into a lot modification development agreement to allow for the subdivision of property and a second dwelling at 198 Herring Cove Road.

RECOMMENDATION:

It is recommended that Chebucto Community Council:

1. Give Notice of Motion to consider an application by Allen and Catherine Bryden to enter into a development agreement for property at 198 Herring Cove Road, Halifax, and schedule a public hearing;
2. Approve the development agreement, included as Attachment A of this report, to allow for the subdivision of the property and a second dwelling; and
3. Require that the development agreement be signed 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

An application for a development agreement has been received from Allen and Catherine Bryden to allow for the subdivision of their property in order to construct a second dwelling to the rear of the property. The proposed subdivision and dwelling is not enabled through the as-of-right development process as the rear portion of the property does not contain the minimum street frontage (50 feet) required by the Land Use By-law.

In October of 2005, as part of the closure of a portion of Circle Drive behind properties fronting on Herring Cove Road and Bryden Avenue, HRM sold "Parcel L" to the applicants, which increased their lot area by approximately 2,330 square feet and provided 28.5 feet of frontage on Circle Drive.

The Proposal

The proposal consists of the following (refer to Schedule "B" of Attachment A):

- Subdivision of the property into lots B-1A and B-1L;
- Construction of a new single family dwelling on lot B-1L, with driveway access and services from Circle Drive.

The draft development agreement is included as Attachment A.

Zoning and Enabling Policy:

The property is located within the R-2 (Two Family Dwelling) zone (see Map 1). The property lies within the Mainland South Secondary Planning Strategy (MSSPS) and is designated for Low Density Residential development on the Generalized Future Land Use Map.

This application is made pursuant to Implementation Policy 4.6 of the Halifax Municipal Planning Strategy (MPS) and Section 71(6) of the Halifax Mainland Land Use By-law, which gives Council the ability to consider the proposal through the development agreement process.

DISCUSSION

Staff conducted an evaluation of the proposed development and agreement for the subject lands in relation to applicable policies of the Halifax Municipal Planning Strategy (refer to Attachment B). The proposal involves a modification of the lot frontage requirement of the Land Use By-law, as the proposed frontage for lot B-1L is deficient by approximately 21.5 feet. As the proposed "front yard" of lot B-1L will be located off Circle Drive, the existing accessory buildings will be "grandfathered" through the agreement. The total lot area is well in excess of that required by the By-law for two lots and the proposed lots are in keeping with lot sizes in the general area. There are no issues with regards to driveway access or servicing. Therefore, staff feel that the proposal

is in keeping with the policies and objectives of the MPS and is both appropriate for and compatible with the surrounding area.

Public Comment:

A public information meeting concerning this proposal was held on September 13, 2006 (see Attachment C). The area of property owner notification (by mail) is shown on Map 1. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 1 will be sent written notification.

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. Council may approve the draft development agreement. This is the recommended course of action.
2. Council may refuse the draft development agreement. This alternative is not recommended for the reasons described above.
3. Council may choose to approve the amending development agreements with modifications which are acceptable to the applicant. Such modifications may require further negotiations with the applicant and/or revisions to the attached amending agreement.

ATTACHMENTS

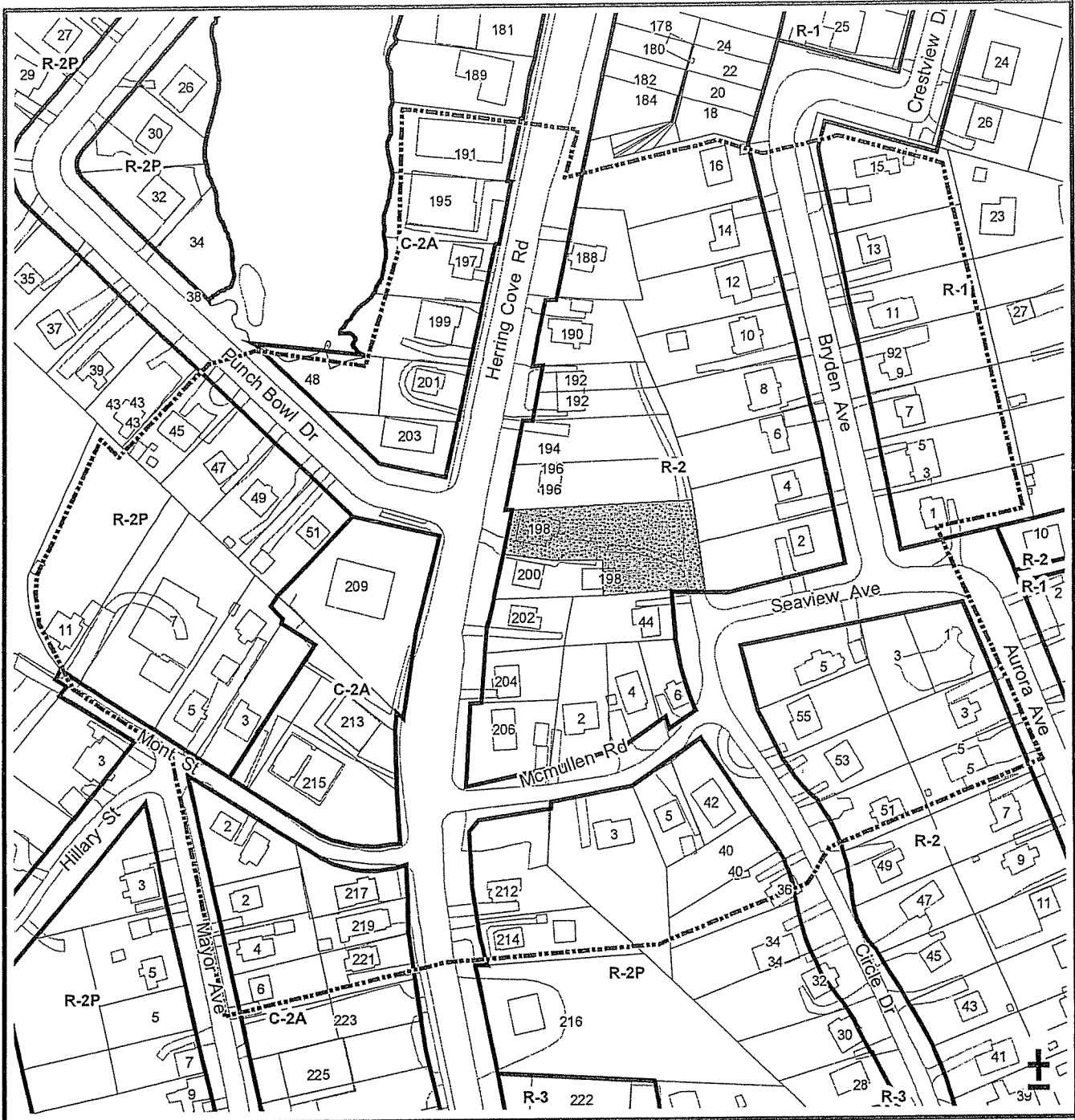
Map 1	Zoning and Area of Notification
Attachment "A"	Draft Development Agreement with:
Schedule "B"	Site Plan
Attachment "B"	Relevant Excerpts from MPS and LUB
Attachment "C"	Minutes of Public Information Meeting

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/ccc/agenda.html> by choosing the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.


Report Prepared by: Paul Sampson, Planner I, Community Development, ph.490-6259


Report Approved by:


Austin French, Manager of Planning Services, ph. 490-6717



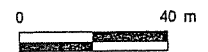
Map 1 - Location and Zoning
 198 Herring Cove Road
 Halifax

 Subject property

 Area of notification

Zone	
R-1	Single Family Dwelling
R-2	Two Family Dwelling
R-2P	General Residential
R-3	Low-Rise Apartment
C-2A	Minor Commercial

HALIFAX
 REGIONAL MUNICIPALITY
 PLANNING AND
 DEVELOPMENT SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Mainland By-Law area.

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

Halifax Mainland By-Law Area

Attachment A

THIS AGREEMENT made this day of , 2007 BETWEEN:

ALLEN AND CATHERINE BRYDEN

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

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,

a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of 198 Herring Cove Road, Halifax (Parcel ID# 00312108) and which said lands are more particularly described in Schedule "A" to this agreement (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for the subdivision of one additional lot and construction of a single family dwelling on the additional lot pursuant to the provisions of the Municipal Government Act, Implementation Policy 4.6 of the Halifax Municipal Planning Strategy and Section 71(6) of the Halifax Mainland Land Use By-law;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the Halifax Regional Municipality;

AND WHEREAS the Chebucto Community Council for the Municipality approved this request at a meeting on the day of , 2007 (referenced as Municipal Case Number 00825);

THEREFORE in consideration of the benefits accrued to each party from 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 and use of the Lands shall comply with the requirements of the Halifax Mainland Land Use By-law and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

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 Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

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 HRM 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.

1.4 Conflict

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.

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 regulations, by-laws or codes applicable to any 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: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 SCHEDULES

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this agreement and filed in the Halifax Regional Municipality as Case Number 00825:

Schedule "A"	Legal Description of the Lands
Schedule "B"	Site Plan (Plan # 00825-001)

2.2 Use of Lands and Development Provisions

- a) The Developer shall not develop or use proposed Parcel B-1L for any purpose other than a single family dwelling. Subdivision and development of the Lands shall conform to the R-2 (Two Family Dwelling) zone of the Land Use Bylaw, with the exception of the minimum lot frontage requirement for Parcel B-1L.
- b) Notwithstanding Section 2.2(a) of this agreement, nothing in this agreement shall prevent the developer from using the lands for other uses permitted by the land use bylaw, including but not limited to accessory uses and home occupations, provided that all requirements of the land use by law, other than the minimum lot frontage for Parcel B-1L, are met and that the dwelling on Parcel B-1L contain no more than one residential unit. Additionally, accessory buildings on Parcel B-1L shall not require any setback from any portion of the front lot line which is not an official street line, provided that such accessory building shall not be closer than 15 feet to any street line. The Development Officer may approve the subdivision of the lands, notwithstanding that Parcel B-1L will contain accessory buildings prior to the construction of the dwelling.

3.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

3.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within one day of receiving such a request.

3.2 Failure to Comply

If the Developer fail to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (1) 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; and/or
- (2) 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 development 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 Lands and be shown on any tax certificate issued under the Assessment Act.
- (3) 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; and/or
- (4) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

4.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 Registration

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

4.2 Subsequent Owners

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

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

4.3 Commencement of Development

4.3.1 In the event that endorsement of final approval of Parcel B-1L and construction on said parcel has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

4.3.2 For the purposes of this section, commencement shall mean the issuance of a Construction Permit and completion of the foundation or slab-on-grade for the proposed building.

4.4 Completion of development

Upon the completion of the development or portions thereof, or after 5 years from the date of registration of this Agreement with the Registry of Deeds, whichever time period is less, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2007.

SIGNED, SEALED AND DELIVERED) ALLEN AND CATHERINE BRYDEN
in the presence of:)

)
per: _____) per: _____
)

)
per: _____) per: _____
)

)
per: _____)
)

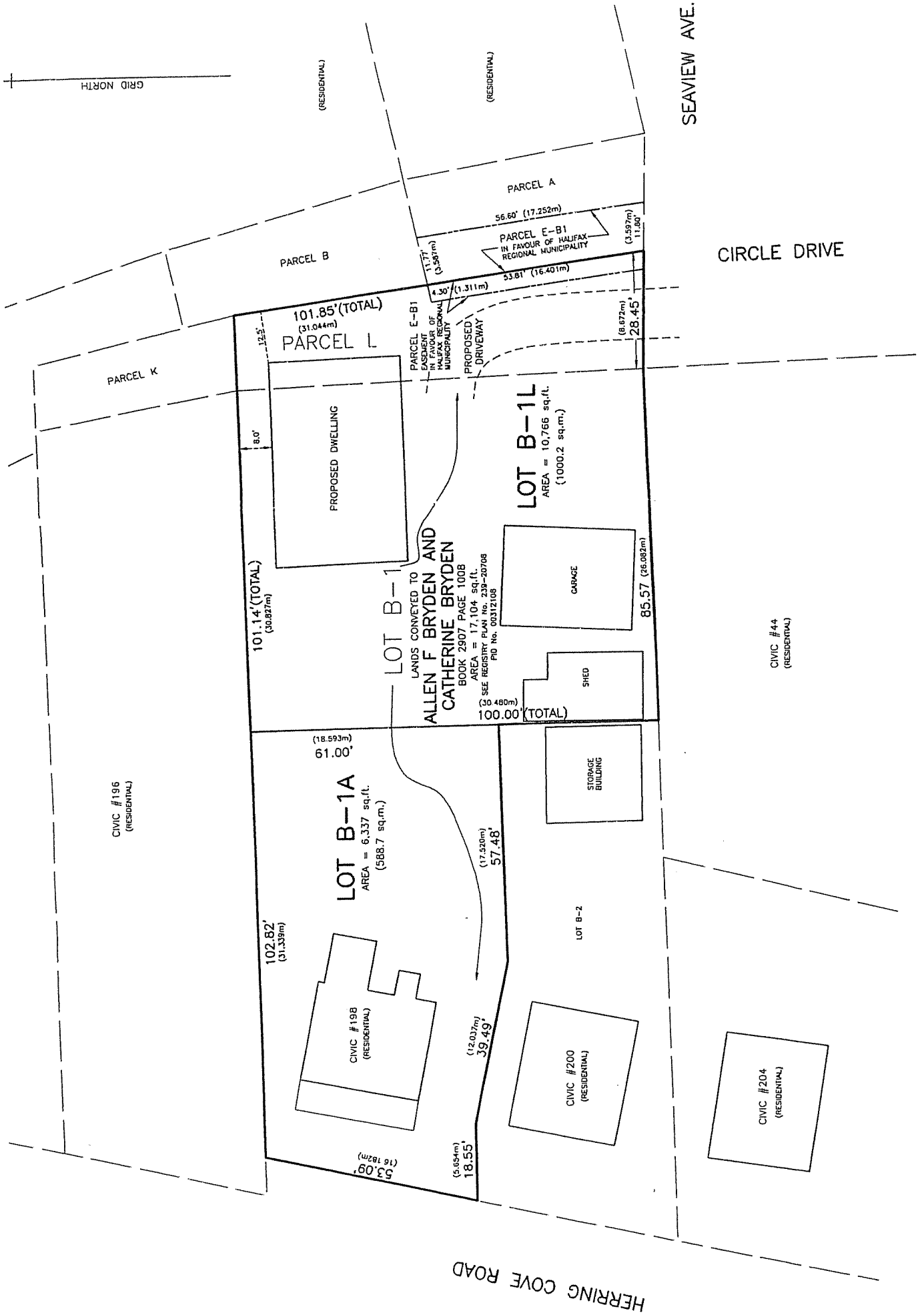
Sealed, Delivered and Attested) HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of)

Halifax Regional Municipality)
duly authorized on that behalf) per: _____
in the presence of) MAYOR
)

)
per: _____)
)

)
per: _____) per: _____
MUNICIPAL CLERK

Site Plan (Plan # 00825-001)



GRID NORTH

(RESIDENTIAL)

(RESIDENTIAL)

SEAVIEW AVE.

PARCEL B

PARCEL A

CIRCLE DRIVE

56.60' (17.252m)

PARCEL E-B1
IN FAVOUR OF HALIFAX
REGIONAL MUNICIPALITY

11.77'

(3.597m)

53.81' (16.401m)

4.30'

(1.311m)

11.26'

(3.597m)

PARCEL K

101.85' (TOTAL)
(31.044m)

PROPOSED DWELLING

12.5'

(3.811m)

8.0'

(2.438m)

11.77'

(3.597m)

4.30'

(1.311m)

PROPOSED DRIVEWAY

PARCEL E-B1
IN FAVOUR OF HALIFAX
REGIONAL MUNICIPALITY

28.45'

(8.672m)

LOT B-1L
AREA = 10,766 sq.ft.
(1,000.2 sq.m.)

GARAGE

85.57' (26.082m)

LOT B-1

LANDS CONVEYED TO
ALLEN F BRYDEN AND
CATHERINE BRYDEN

BOOK 2907 PAGE 1008
AREA = 17,104 sq.ft.
(1,580.2 sq.m.)
(SEE REGISTRY PLAN No. 239-20708
PID No. 00312108)

100.00' (TOTAL)

(30 480m)

SHED

STORAGE BUILDING

CIVIC #196
(RESIDENTIAL)

61.00'

(18.593m)

LOT B-1A
AREA = 6,337 sq.ft.
(588.7 sq.m.)

102.82'
(31.359m)

CIVIC #198
(RESIDENTIAL)

57.48'

(17.520m)

LOT B-2

CIVIC #200
(RESIDENTIAL)

39.49'

(12.017m)

18.55'

(5.694m)

53.09'

(16.182m)

CIVIC #44
(RESIDENTIAL)

CIVIC #204
(RESIDENTIAL)

HERRING COVE ROAD

Attachment B

Relevant Excerpts from the Municipal Planning Strategy and Land Use By-law

HALIFAX MPS - IMPLEMENTATION POLICIES

- 4.6 For any proposed development, the City may permit modification of the yard or lot area or width provisions of the Peninsula and Mainland Zoning Bylaws under the authority of Section 33(2)(b) of the Planning Act. A decision of the Council of the City of Halifax to permit such modification may be preceded by a public hearing if deemed necessary and such modification shall be granted provided that:
- (a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;
 - (b) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;
 - (c) the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;
 - (d) the modification is consistent with Section II of this Plan; and
 - (e) the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.

SECTION X - MAINLAND SOUTH SECONDARY PLANNING STRATEGY

1. RESIDENTIAL ENVIRONMENTS

Objective The development and maintenance of Mainland South as a predominantly residential area with a diverse mixture of family and non-family housing.

- 1.2.1 In areas designated "Low-Density Residential" on the Generalized Future Land Use Map, which are predominantly two-family dwellings in character, residential development consisting of detached (single-family) dwellings, semi-detached dwellings and duplex dwellings shall be permitted, and neighbourhood commercial uses may be permitted pursuant to Policies 2.1 and 2.1.2 of this Plan.
- 1.6 The City shall maintain zoning regulations which encourage stability and maintenance of the prevalent character and integrity of residential neighbourhoods.

HALIFAX MAINLAND LAND USE BY-LAW:

71(6) Lot Modification

Council may, by development agreement, pursuant to the Implementation Policies of the Municipal Planning Strategy, permit any use permitted by the zoning designation, which would not otherwise be permitted by the minimum lot frontage, lot area and yard requirements of this by-law, in accordance with Policies 4.4. and 4.6

Attachment C

Public Information Meeting (Case 00825) - September 13, 2006

In attendance: Allen and Catherine Bryden, Applicants
Councillor Mosher
Paul Sampson, Planner, Planning Applications
Gail Harnish, Planning Services

Mr. Paul Sampson called the public information meeting to order at approximately 7:05 p.m. at the Captain William Spry Centre.

Mr. Sampson advised the application is by Allen and Catherine Bryden to enter into a development agreement to allow the subdivision of the property to create an extra property and the construction of a house on that property. The development agreement process requires Community Council approval.

Mr. Sampson noted the site in question is 198 Herring Cove Road. The site has frontage on Herring Cove Road and Circle Drive. The parcel being subdivided off and sold is at the back of the lot and is part of Circle Drive which was closed off. At the time, the parcels were sold to the abutting properties.

Mr. Sampson advised the size of the property in question is 17,100 sq.ft. The by-law requires a minimum lot size of 5000 sq.ft. He displayed a map showing the parcels that were consolidated with the other lots. We like to allow a little flexibility for proposals proceeding by development agreement. It is basically for the construction of a new dwelling in this location (pointed out). There is an existing garage and shed on the property. The Bryden's live at 198 Herring Cove Road and they also run a bed and breakfast from their property.

Mr. Sampson pointed out the location of the new property line, which would give the front lot 6300 sq.ft. and 10,800 sq.ft. for the back lot. He pointed out the driveway access which already exists. Staff will review the proposal. As far as we know everything is fine in terms of sewer, water and laterals. There is 28.5' of frontage. Under our Streets By-law, we may require a fixed driveway location to be put in.

Mr. Sampson displayed copies of plans that were submitted by the applicants. We build into the development agreement the ability to make some minor changes at the permit stage which can be approved by the Development Officer. If it is a major change, then we usually allow Community Council to consider it. There is a determination of how major the changes are.

Mr. Sampson indicated the proposal is for a one storey two-bedroom bungalow. He displayed the proposed floor plan. It is proposed to be a prefabricated building on a new foundation and slab.

The meeting was opened to public participation.

Ms. Georgina Lundrigan asked for confirmation that the house would face Circle Drive. It was responded yes.

Councillor Mosher questioned whether the civic address would be on Circle Drive.

Mr. Sampson responded he thought so as the driveway access would be on Circle Drive. The Civic Addressing group would determine that at the subdivision stage.

Ms. Lundrigan questioned how far down they would cut out the land.

Mr. Sampson advised the land use by-law requires a minimum 8' setback for the house from a side or rear property line. The house has to be 20' from any street property line. The garage and shed have been there for many years. The by-law requires a 4' setback for them but anything built closer prior to the time of the by-law is okay.

Mr. Doug Hutchinson commented he felt Bryden Avenue should be paved with full curb and gutter.

Mr. Hutchinson stated they are all in favour of the proposal.

Ms. Lundrigan commented she had no problem with it.

Councillor Mosher questioned the area of notification for the meeting. Mr. Sampson pointed out the notification area on the map.

It was questioned why such a large area. Mr. Sampson responded in the past we used a distance of roughly 250'. We wanted an area at least that wide so that at least the neighbours knew.

Councillor Mosher questioned whether any phone calls were received by staff about the proposal. Mr. Sampson responded no.

Mr. Sampson advised the next step was to prepare a development agreement, which the Bryden's would review in advance of it being tabled with Community Council. If the development agreement is approved, the Bryden's and HRM will sign it and it is registered at the Registry of Deeds. If the property is sold, the new owners would have to abide by the terms of the development agreement. Members of the public would be notified of the public hearing, which he suspected would be in December.

Councillor Mosher suggested that this item be placed early on the agenda when it comes forward for public hearing.

The meeting adjourned at approximately 7:25 p.m.