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8.2.1

Harbour East Community Council
March 1, 2007

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:


Sean Audas, Development Officer

DATE: February 21, 2007

SUBJECT: Appeal of the Development Officer's decision to refuse a Variance at 88 Shore Road, Dartmouth

ORIGIN

This report deals with the appeal of the Development Officer's decision to refuse a variance for side yard setbacks at 88 Shore Road, Dartmouth.

RECOMMENDATION

It is recommended that Council uphold the Development Officer's decision to refuse the variance.

BACKGROUND

Zoning:

The property is zoned Downtown Neighbourhood (DN) Zone under the Land Use By-Law for Downtown Dartmouth.

Permitted Use:

A permit was issued to construct a four unit townhouse on August 22, 2005. This permit was issued subject to the approved site plan. Site plan approval was granted in accordance with the provisions of the Municipal Government Act. Several letters of support for the project which were received.

Approved Variance:

Along with site plan approval, the project also received a Variance approval. The Variance request was for a reduction in the minimum side yard requirement for end units - 10 feet. The approved Variance was as follows:

Approved right side yard:	3' 8"
Approved left side yard:	6' 3"

Construction:

During the construction stage a location certificate was provided which indicted that the building was constructed in accordance with the approved variance. Also, a revised location certificate was submitted when it was determined that the building was being constructed closer than the required setback. The building was modified and the revised location certificate indicated that the Variance requirements were met.

Requested Variance:

A final subdivision plan was recently submitted for approval. This plan shows a different side yard setback than previous location certificates. Also, an abutting property owner has submitted a survey plan which also indicates a different setback on the left side yard than the approved Variance. As a result of that information the applicant submitted a new Variance request. The numbers provided are based on the review of both survey plans:

Right side yard:	3' 3"
Left side yard:	5' 0"

DISCUSSION

The *Municipal Government Act* sets out criteria in part 235(3) under which the Development Officer may consider variances to Land Use Bylaw requirements. The criteria are as follows:

"A variance may not be granted where the:

- (a) variance violates the intent of the land use bylaw;*
- (b) difficulty experienced is general to the properties in the area;*
- (c) difficulty experienced results from an intentional disregard for the requirements of the land use bylaw."*

In order to be approved, the proposed variance must not conflict with any of the above statutory criteria. An assessment of the proposal relative to these stipulations is set out below.

Does the proposed variance violate the intent of the land use bylaw ?

- The Land Use Bylaw sets out standards relative to required yards, street frontage, lot area and lot coverage for residential, commercial and industrial use.
- The minimum side yard setback for townhouse end units is 10 feet
- This lot is very unique and has frontage on two streets Shore Road and Fairbanks Street.
- Along with separation distance from adjacent properties the intent for a side yard setback is to provide access to the middle units in the rear yard. The middle units have access to the rear of their property from Fairbanks Street.
- Prior to the construction of the building the applicant also received preliminary subdivision and Development Permit approval to construct three, two unit dwellings. Single and Two unit dwellings may be constructed to the property lines in the Downtown Neighbourhood Zone provided you meet the National Building Code.
- There is policy support in the Downtown Dartmouth Municipal Planning Strategy which encourages small scale townhouse development.
- *The Development Officer does not feel that the proposal violates the intent of the land use by-law.*

Is the difficulty experienced general to the properties in the area ?

- Townhouses have been constructed on Windmill Road in the Harbour View neighbourhood.
- These townhouses meet the side yard setback requirement and only have access to one street Windmill Road.
- This property is not a typical lot and the difficulty experienced is not general to properties in the area. It has access to two streets which makes it unique from neighbouring property.
- *The Development Officer has assessed this criteria and feels that this is not a consideration in the Variance application.*

Is the difficulty experienced the result of intentional disregard for the requirements of the land use bylaw?

- A surveyors location certificate was prepared during the permit review after the foundation was poured.
- This location certificate indicated that the Variance requirements were met, which permitted further construction of the project.
- A final subdivision application was filed which now indicates that the Variance requirements are not met.
- An explanation by the surveyor has not been provided which outlines why there has been a change in the measurements.
- *The Development Officer feels that this application resulted in intentional disregard for the requirements of the land use by-law.*

In summary, staff carefully reviewed all the relevant information in this case. As a result of that review, the variance was refused as it was determined to be contrary to the provisions of the Municipal Government Act.

BUDGET IMPLICATIONS

There are no implications on the Capital Budget associated with this report

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 could uphold the decision of the Development Officer to refuse the variance. This is the recommended alternative.
2. Council could overturn the decision of the Development Officer and allow the variance request.

ATTACHMENTS

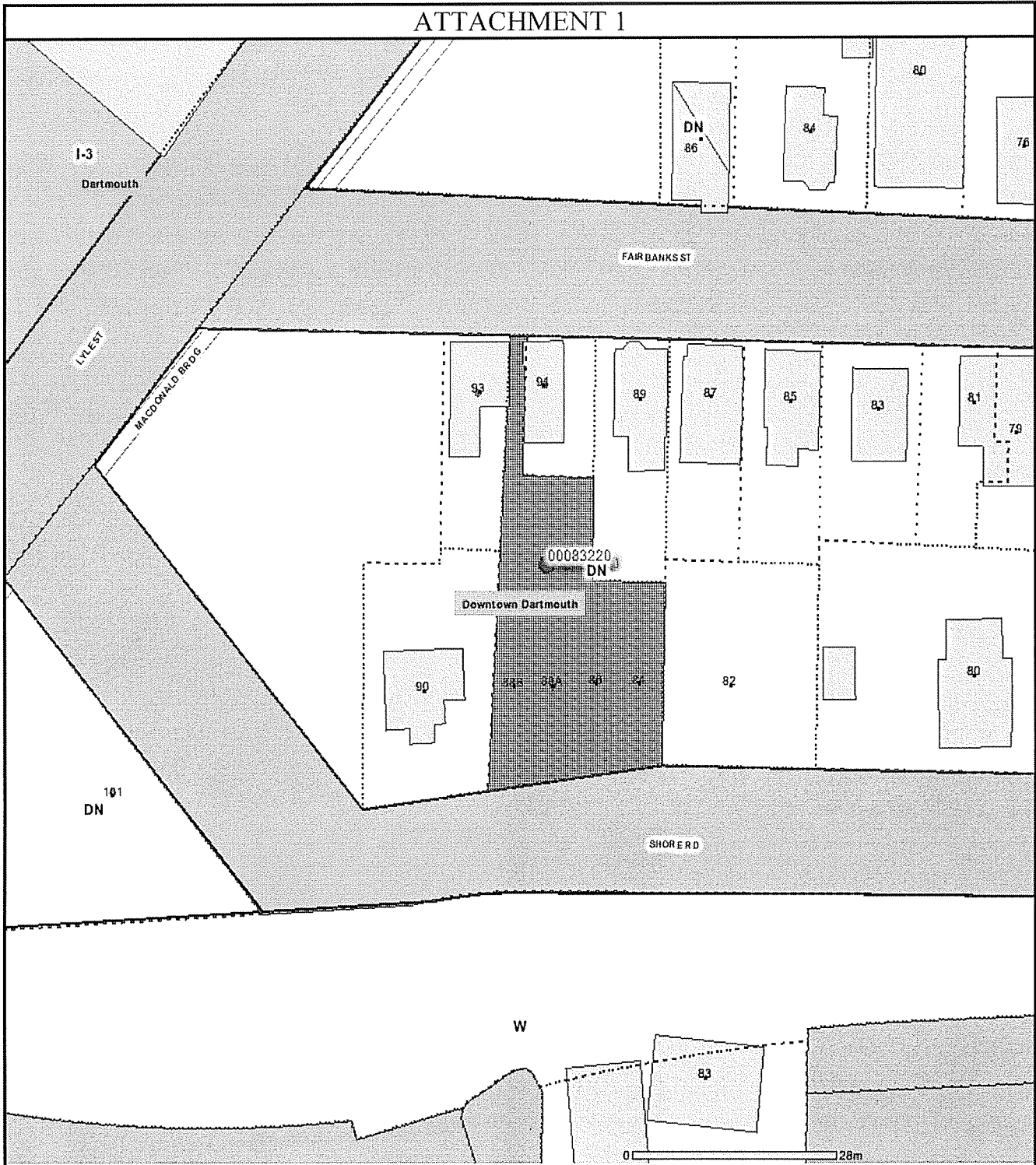
1. Location Map
2. Refusal letter
3. Appeal Letter
4. Location Certificate
5. Survey Plan
6. Survey Plan (90 Shore Road)

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, 490-4462

Report Approved by: Sean Audas, Development Officer, 490-4341

ATTACHMENT 1



This map was prepared for the internal use of Halifax Regional Municipality (HRM). HRM takes no responsibility for errors or omissions. For further information on Street Name or Community (GSA) data please contact HRM Civic Addressing at 490-5347 or email civicadd@halifax.ca. Date of map is not indicative of the date of data creation.

PLANNING & DEVELOPMENT SERVICES: EASTERN REGION

February 16, 2007

COPI

Adams McA'Nulty Vaneast Developments Limited
PO Box 652
Dartmouth, NS
B2Y 1K9

Dear Mr Hampson

RE: Application for Variance 13614 - 88A Shore Road, Dartmouth, Nova Scotia

This will advise that the Development Officer for the Halifax Regional Municipality has refused your request for a variance from the requirements of the Land Use Bylaw for *Downtown Dartmouth* as follows:

Location: 88A Shore Road, Dartmouth
Project Proposal: Reduced side yard
Required (i.e lot coverage): Six Point Three Feet (6.3') left side;
Three Point Eight Feet (3.8') right side
Variance Requested: Five Feet (5') left side;
Three Point Three (3.3') right side

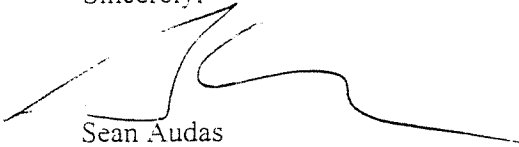
Pursuant to Section 236(4) of the **Municipal Government Act** you have the right to appeal the decision of the Development Officer to the Municipal Council. The appeal must be in writing, stating the grounds of the appeal, and be directed to:

Municipal Clerk
c/o Sean Audas, Development Officer
Halifax Regional Municipality
Development Services - Eastern Region
P.O. Box 1749
Halifax, NS B3J 3A5

Your appeal must be filed on or before *February 28, 2007*.

If you have any questions or require additional information, please contact Laura Walsh at 490- 4462

Sincerely,



Sean Audas
Development Officer

cc.

Jan Gibson, Municipal Clerk
Councillor Gloria McClușkey, District 5

MR. SEAN AULIS
HFM DEVELOPMENT
ALDERNEY LANDINGS

FEB. 19, 2007

DEAR SEAN

RE: APPLICATION FOR VARIANCE AT 88 STAKE RD. DORCHMOUTH

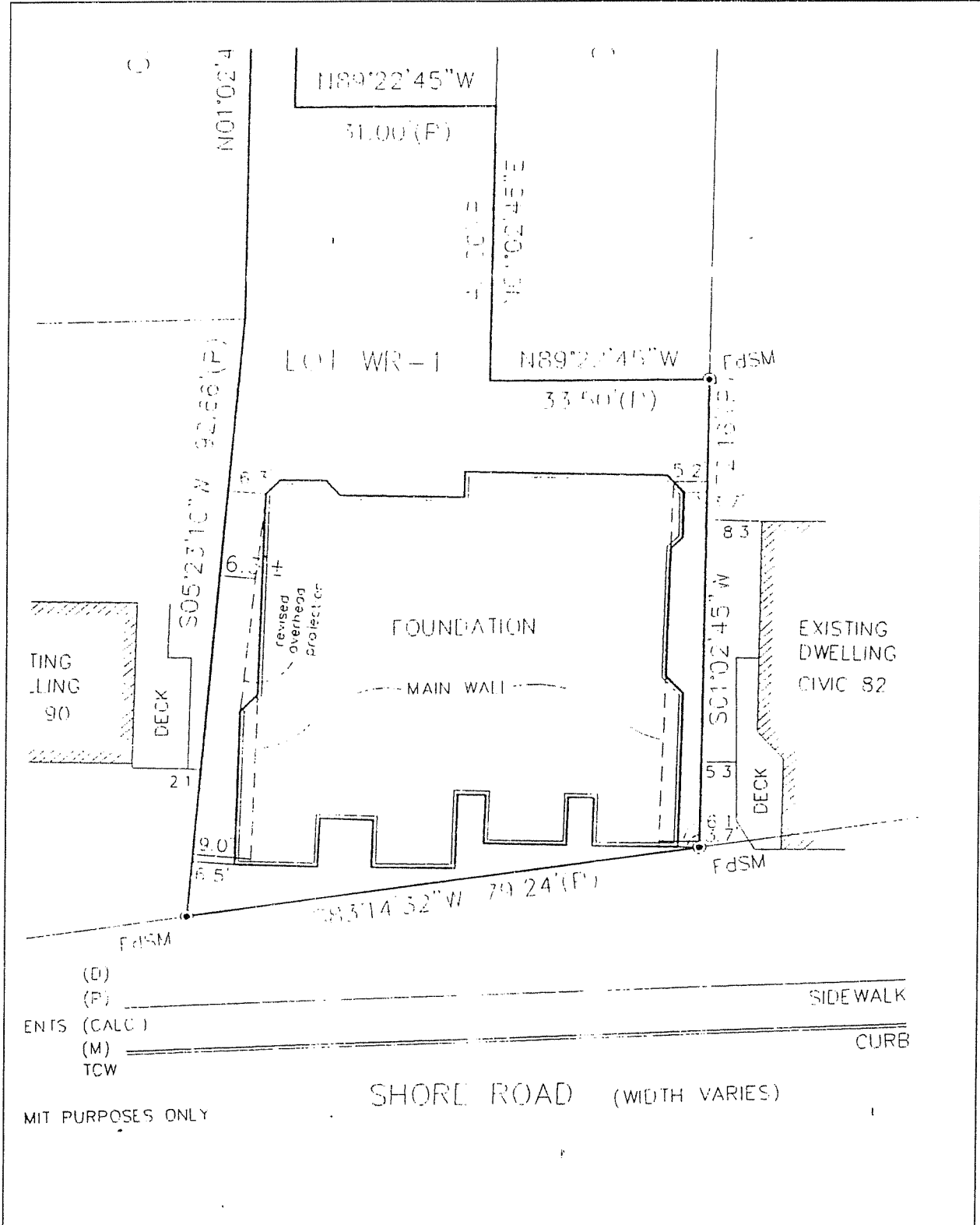
AS THE REQUESTED AMENDMENT TO THE VARIANCE AT THE ABOVE
NOTED ADDRESS HAS BEEN REJECTED WE HEREBY WISH TO APPEAL
THE DECISION AND PRESENT TO HARBOURVIEW EAST COUNCIL AS
SOON AS POSSIBLE

YOURS TRULY,

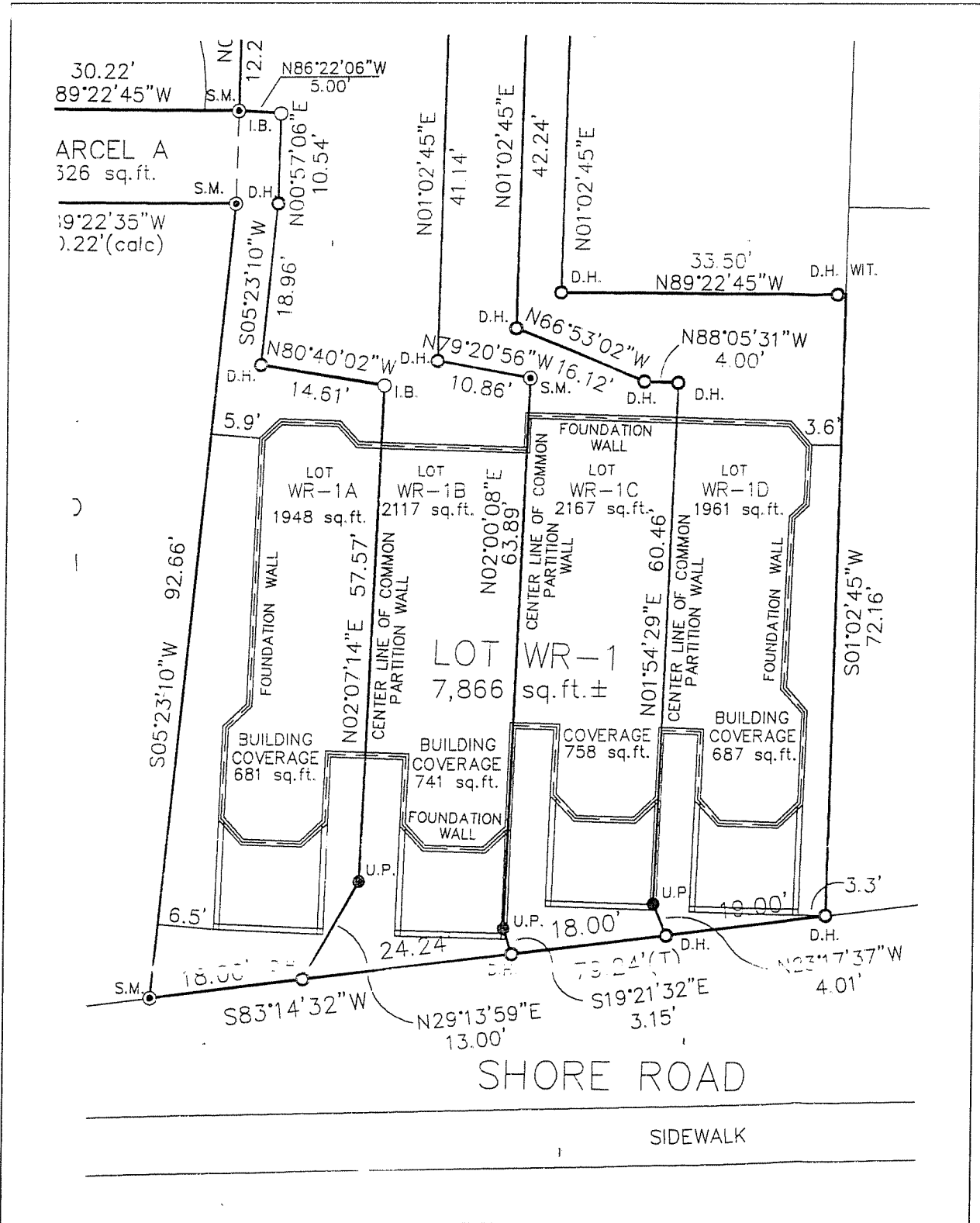


DAVID THOMPSON
Pm. Adams McAnulty Kincaid Developments Ltd.

ATTACHMENT 4



ATTACHMENT 5



ATTACHMENT 6

