

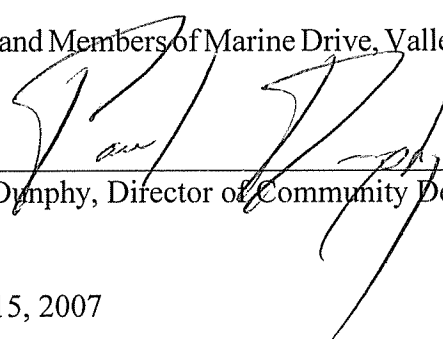


PO Box 1749
Halifax, Nova Scotia
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Marine Drive, Valley, and Canal Community Council
June 27, 2007

TO: Chair and Members of Marine Drive, Valley, and Canal Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: June 15, 2007

SUBJECT: **Case 00957: Amending Development Agreement - 1885 Waverley Road, Waverley**

ORIGIN

Application from Moira and William Cherrett to amend an existing development agreement to allow for the construction of an addition to the single unit dwelling at 1885 Waverley Road, Waverley.

RECOMMENDATION

It is recommended that Marine Drive, Valley, and Canal Community Council:

1. Give First Reading to the proposed amending agreement to permit the construction of an addition to the single unit dwelling at 1885 Waverley Road, as shown in Attachment "A", and schedule a public hearing;
2. Approve the proposed amending agreement to permit the construction of an addition to the single unit dwelling at 1885 Waverley Road, as shown in Attachment "A";
3. Require that the agreement be signed within 120 days, or any extension thereof granted by Council on the request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever approval is later, including applicable appeal periods; otherwise, this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

An application was made by Moira and William Cherrett to amend their existing development agreement to permit a fifteen by twenty (300 ft²/ 27.87 m²), two storey addition to their residence. This would expand the existing dwelling to 1400 ft² (130 m²), an increase of 600 ft² (55.74 m²). The addition is for a living room and den and will not contain additional bedrooms.

The property is currently developed with an 800 ft² (74.3 m²), two storey residence. In 1994, the Cherretts entered into a development agreement to replace an existing 400 ft² (37.2 m²) cottage with a 600 ft² (55.74 m²), two bedroom dwelling in the same location (Attachment "B"). In 1995, the Cherretts amended the development agreement under clause 6.2a of the original agreement, which permitted an additional 200 ft² (18.58 m²) upon approval from the (former) Board of Health of a new disposal system (Attachment "B"). The amendment was not deemed substantial and was approved through a resolution of Council, not a public hearing.

The subject property is located at 1885 Waverley Road and is described as follows:

- zoned R-1C (Waterfront Residential) Zone under the District 14 and 17 Land Use By-law (LUB) which permits existing single unit dwellings and allows for expansion by development agreement (Attachment "E"). The property is designated Residential.
- undersized at 4000 ft² (371.6 m²); the LUB typically requires 40,000 ft² (3716 m²) for new, unserviced lots and 10,000 ft² (929 m²) for new serviced lots.
- a waterfront property located on Lake William.
- serviced with Municipal water and on-site septic.

DISCUSSION

There are a number of waterfront properties in the Waverley area which were developed with cottages and boat houses, prior to more stringent development regulations. Due to concern over conversion of these cottages to residences on relatively small lots, the replacement or enlargement of dwellings is only permitted through the development agreement process. Policy P-82 sets out the conditions under which Council can consider an expansion to a R-1C dwelling (Attachment "C").

The proposal meets the requirements of the policy as:

- there are no additional dwelling units proposed.
- the addition to the single unit dwelling will not be built closer to the road or lake than the existing structure.
- the applicants have submitted an acceptable erosion and sedimentation plan,
- the existing septic system has been deemed adequate by the Department of Environment and Labour as there are no additional bedrooms proposed, and
- the proposal meets the provisions of other applicable policies.

The recently adopted Regional Plan amended the LUBs to include buffers to watercourse, however the buffer requirements do not apply to this property as the District 14 & 17 LUB exempts R-1C zoned lots (Attachment "D").

Issues

To minimize the impact of construction on the adjacent Lake William, controls on debris have been added to the amending agreement. Clause 5.9 requires daily clean-up of litter during construction of the addition (Attachment "A").

Public Information Meeting

A public information meeting was held on November 27, 2006 with four members of the public in attendance. Minutes of the meeting are provided as Attachment "E". There were no concerns expressed about the proposed addition; neighbours inquired about when the applicants were proposing to begin construction.

Should Community Council decide to proceed with a public hearing on this application, in addition to published newspaper advertisements, property owners in the immediate area will be individually notified as shown on Map 3. This is the notification area which was also utilized for the Public Information Meeting.

Halifax Watershed Advisory Board

As the subject property is located on Lake William, the Halifax Watershed Advisory Board (HWAB) was consulted. The recommendations of the Board are contained in Attachment "F". HWAB has recommended that Council deny the proposed addition as the structure is built within their recommended 30 Metre watercourse buffer and the lot is undersized. However, the proposed addition does meet the MPS policy criteria for extension of the existing structure, therefore staff are recommending approval, despite the position of the Board.

The Board does recognize that their criteria are different than those of the MPS, consequently the Board made additional recommendations if the application was to be approved:

- enclosure of the oil tank- this is not relevant as the home is heated with electric and there is no oil tank on-site,
- certification of the existing septic system- the applicants provided a letter from the Department of Environment and Labour dated July 4, 2006 citing no objections to the proposed addition. To ensure development has no impact on the current on-site system, the proposed amending agreement (clause 4.6) requires certification that the septic system is working properly prior to approval of an occupancy permit (Attachment "A").
- protection of trees- the applicants have indicated that they are proposing to build on a slab and are intending to retain the existing trees. If any trees are damaged during construction, the proposed amending agreement (clause 5.10) requires trees be replaced with similar species (Attachment "A").

Conclusion

The proposed addition meets the policy criteria as set out in the MPS. Controls have been placed on the addition to minimize the impact on the watercourse, site and adjacent properties. Therefore staff are recommending that Marine Drive, Valley and Canal Community Council approve the proposed Amending Agreement as shown in Attachment "A".

BUDGET IMPLICATIONS

There are no budget implications.

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 choose to approve the proposed amending agreement. This is the staff recommendation for reasons described above.
2. Council may choose to not adopt the proposed amending agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed amending agreement is consistent with the policies and intent of the MPS.
3. Council may choose to propose modifications to the amending agreement. Such modifications may require further negotiations with the developer.

ATTACHMENTS

Map 1:	Generalized Future Land Use Map
Map 2:	Zoning Map
Map 3:	Notification Area
Map 4:	Proposed Addition
Attachment A:	Proposed Amending Agreement
Attachment B:	Relevant Excerpts from original Development Agreement.
Attachment C:	MPS Policies
Attachment D:	LUB Requirements
Attachment E:	Public Information Meeting Minutes- February 15, 2007
Attachment F:	Halifax Watershed Advisory Board Recommendations

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

Report Prepared by: Leticia Smillie, Planner 1- Planning Applications: Community Development 869-4747

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



Map 1
Generalized Future Land Use

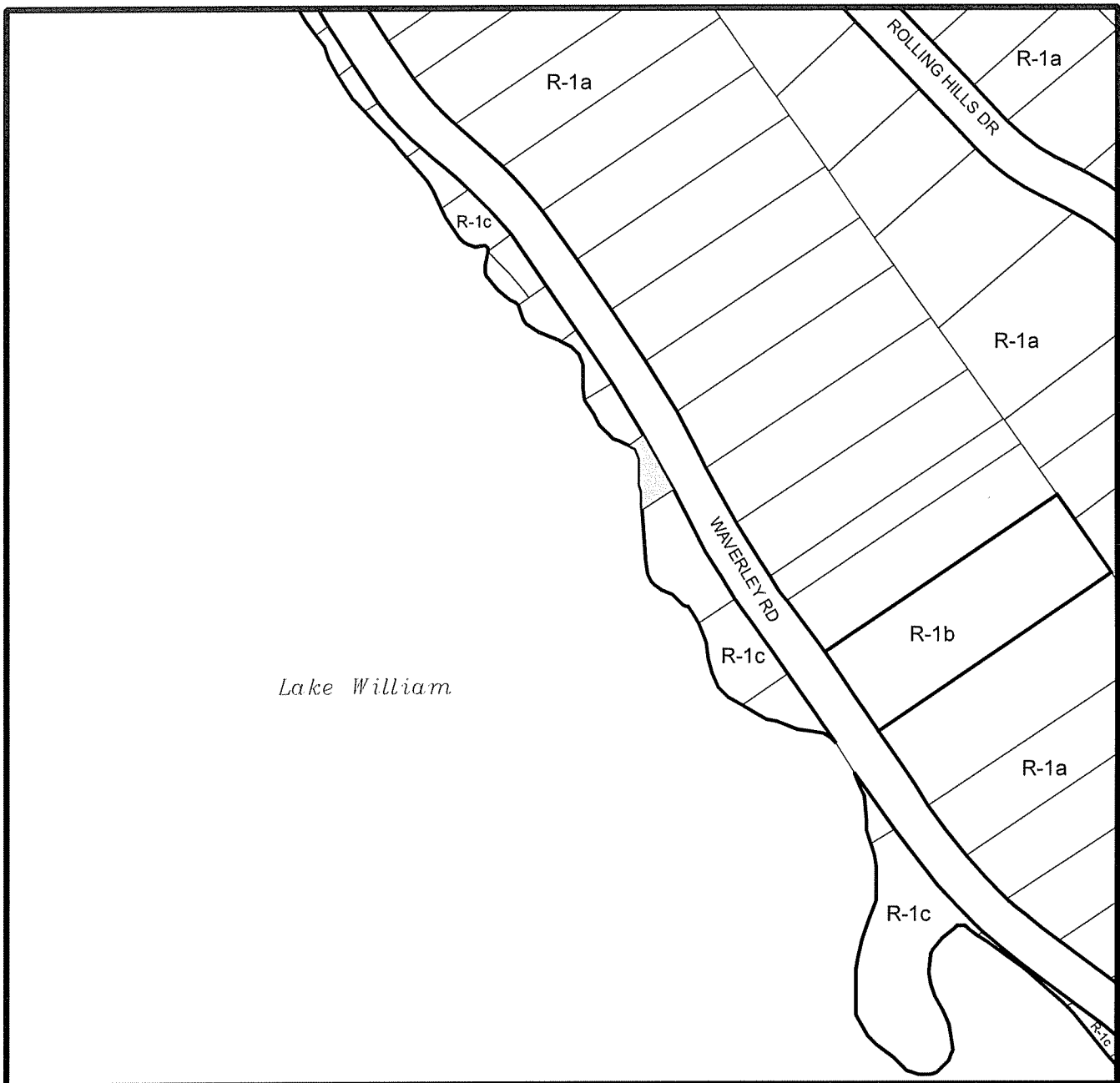


Subject Property

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Planning Services

R Residential Designation





**Map 2
Zoning**



Subject Property

R-1a Single Unit Dwelling Zone
 R-1b Suburban Residential Zone
 R-1c Waterfront Residential Zone

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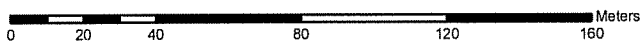




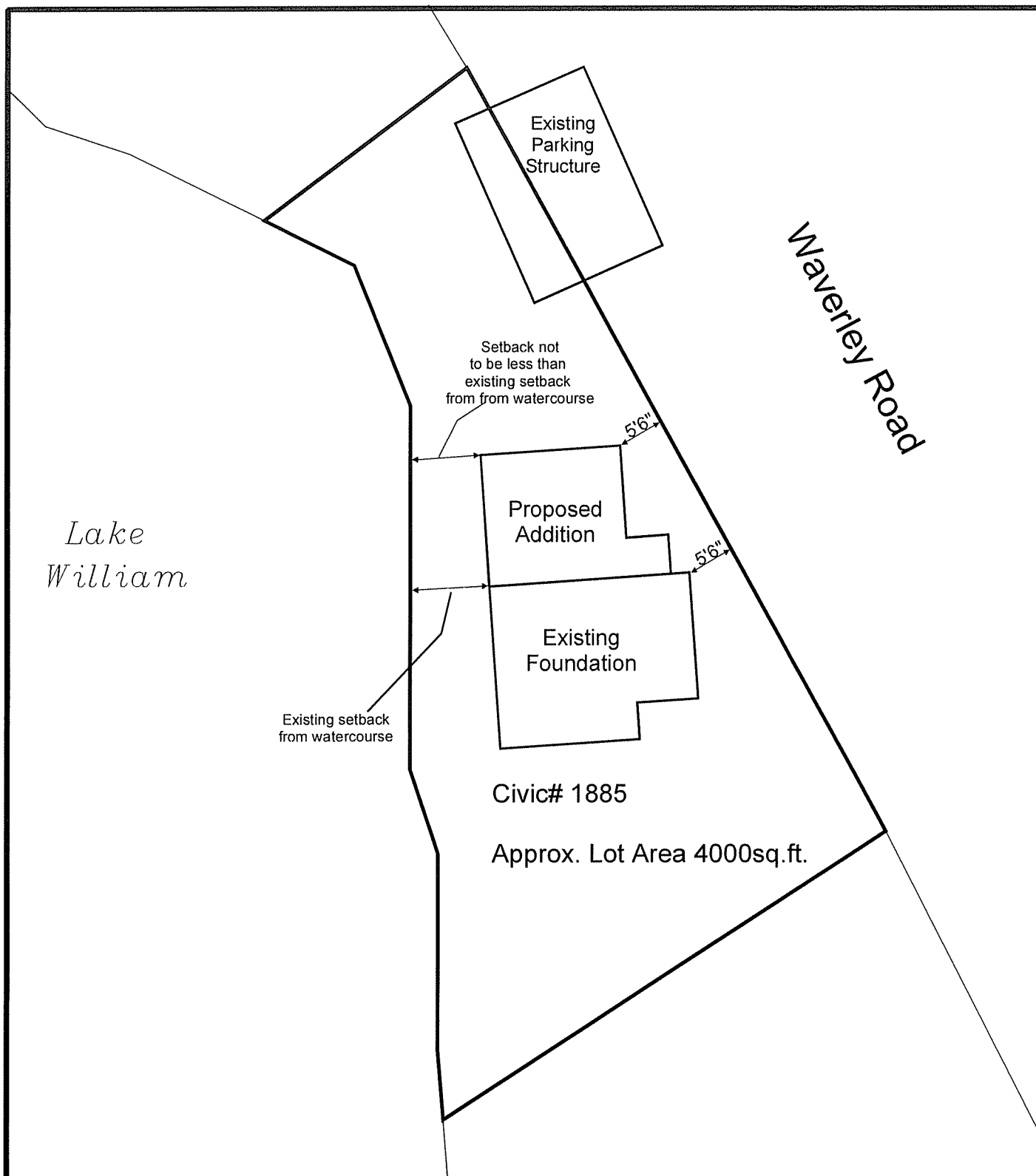
Map 3



Notification Areas



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Map 4
Proposed Addition



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Planning Services

Attachment A
Proposed Amending Agreement

THIS AGREEMENT made this day of , 2007,

BETWEEN:

MOIRA CHERRETT AND WILLIAM CHERRETT
(hereinafter called the "Developer")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain land situated on the east side of Lake William in the community of Waverley which is known as Lot 21 of the Silverside Subdivision and is more particularly described in Schedule "A" to this Agreement (hereinafter called the "Lands");

AND WHEREAS the former Halifax County Municipality approved an application by the Developer to enter into a development agreement to allow for an enlargement to an existing residence on the Property, which said development agreement was registered at the Registry of Deeds in Halifax in Book Number (5673) at Pages (598) (hereinafter called the "Agreement");

AND WHEREAS the former Halifax County Municipality approved an application by the Developer for an amending agreement to permit further enlargement of the existing residence on the Property, which said amending agreement was registered at the Registry of Deeds in Halifax in Book Number (5736) at Pages (1239) (hereinafter called the "Amending Agreement");

AND WHEREAS the Developer has requested an amendment to the provisions of the Agreement to further enlarge the existing residence on the Property;

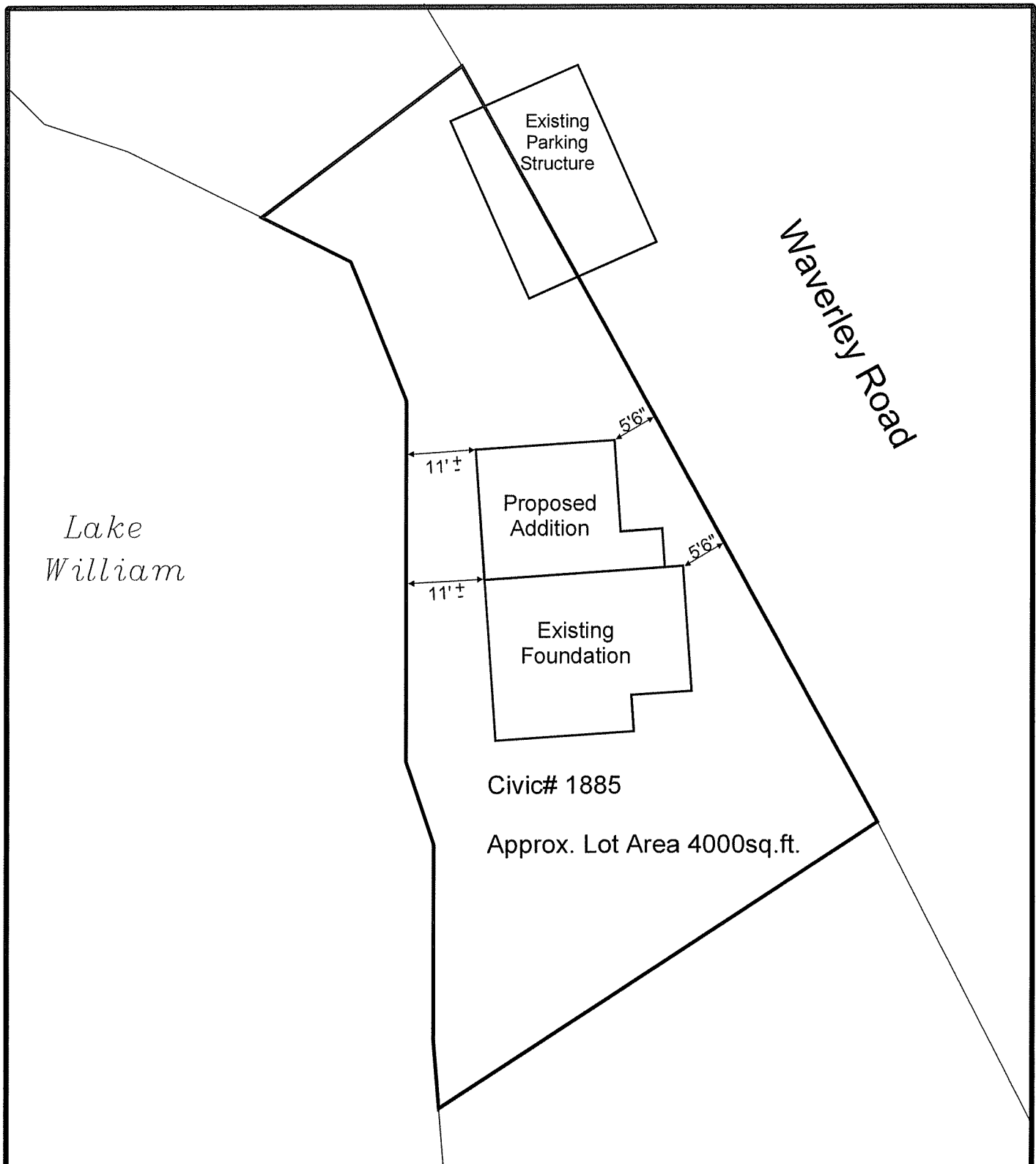
AND WHEREAS the Marine Drive, Valley, and Canal Community Council for the Municipality approved this request at a meeting held on _____, 2007, referenced as Municipal Case Number 00957;

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

1. To amend *Section 3.3*, as shown in bold:
“In the event that construction of the Lands has not commenced within 2 (two) years from the date of registration of this Agreement, **or Amending Agreement where applicable**, at the Registry of Deeds...”
2. To amend *Section 4* to insert the following:
 - 4.6 Prior to granting of the Occupancy Permit for the addition, the Developer shall provide documentation from a Qualified Person certifying that the septic system is functioning properly.
3. To remove *Clauses 5.2 (a) and (b)* of the Agreement and replace with:
 - 5.2 (a) the dwelling shall be located as illustrated on Schedule “B” of this agreement.
 - 5.2 (b) the gross floor area of the dwelling shall not exceed fourteen hundred (1400) square feet
4. To amend *Section 5* to insert the following:
 - 5.9 The Developer shall provide daily clean-up of construction debris during construction of the addition.
 - 5.10 Should construction of the addition damage any existing trees, the Developer shall replace each damaged tree with a similar species tree with a minimum caliper of 60mm measured at 300mm above the ground.
5. To replace Schedule “B” of the Agreement with the revised Schedule “B”, as attached to this report, showing the proposed addition;

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals on the day and year first above written:

Signed, sealed and delivered)	Moira Cherrett and William Cherrett
in the presence of:)	
)	
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: _____
)	MUNICIPAL CLERK



Schedule "B"
Site Plan



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Planning Services

Attachment B
Relevant Excerpts from Development Agreement

PART 5: PERMITTED DEVELOPMENT AND CONDITIONS

- 5.1 The use of the property shall be restricted to a single unit dwelling and uses accessory to a single unit dwelling.
- 5.2 The Developer shall be permitted to reconstruct a dwelling on the Property subject to the following conditions:
- (a) the dwelling shall be located at the same location as the existing foundation as illustrated on Schedule "B" of this Agreement;
 - (b) the gross floor area of the dwelling shall not exceed six hundred (600) square feet;
 - (c) the height of the dwelling shall not exceed twenty-eight (28) feet; and
 - (d) no more than two (2) bedrooms shall be permitted within the dwelling;

PART 6: AMENDMENTS

- 6.1 Subject to Section 6.2, no amendment of this Agreement of a substantial nature shall be made except in accordance with the applicable provisions of the Planning Act.
- 6.2 For the purposes of this Agreement, the provisions of this Agreement relating to the following matters are identified and deemed to be not substantial and may, subject to Section 6.3, be amended by resolution of Council:
- (a) an increase in the gross floor area of the dwelling on the Property up to eight hundred (800) square feet provided that written notification of approval has been received from the Board of Health;

Attachment C
Relevant MPS Policies

Within the Village of Waverley there are a large number of small waterfront lots. Many of these lots were created prior to the institution of subdivision regulations and were intended for either cottages or boat houses. Given their small size, there is a grave concern with respect to the potential for these lots to be expanded from seasonal or recreational uses to full-year residences. In this regard, it may be appropriate to establish specific measures which would provide for existing cottages and provisions for a case-by-case review should the property owners wish to expand, construct, or alter specific uses upon their property.

P-81 In recognition of the impacts of waterfront development on the lake system and particularly with respect to the large number of existing relatively small waterfront lots within the Village of Waverley, it shall be the intention of Council to establish a waterfront residential zone on waterfront lands between Highway #318 and the eastern shore of Lake William which will permit existing residential dwellings, as well as boat houses, wharves, and float-plane hangars which do not involve the installation of washroom facilities. Within this zone Council shall permit the alteration or improvement of any existing residential structure where there is to be no increase in habitable space.

P-82 Notwithstanding Policy P-81, Council may consider expansions to existing dwellings subject to the provisions of Sections 55, 66 and 67 of the Planning Act. In considering such development agreements, Council shall have regard for the following:

- (a) that the expansion does not involve the construction of additional dwelling units;
- (b) that any expanded structure shall be set back at least thirty (30) feet from the road right-of-way and twenty-five (25) feet from the lake, or where already closer, involves no further encroachment;
- (c) on-site control of sediments during construction and provisions for the completion of landscaping following construction;
- (d) the means by which solid and liquid waste will be treated;
- (e) the provisions of P-155.

P-155 In considering development agreements and amendments to the land use by-law, in addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;
- (a) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of central or on-site sewerage and water services;
 - (iii) the adequacy or proximity of school, recreation or other community facilities;

- (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility or flooding.
- (e) **Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy P-64F”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-July 2/02; Effective-Aug 17/02)**

Attachment D
LUB Requirements

PART 8: R-1C (WATERFRONT RESIDENTIAL) ZONE

8.1 R-1C USES PERMITTED

No development permit shall be issued in any R-1C (Waterfront Residential) Zone except for the following:

Residential Uses

Existing residential dwellings

Recreational Uses

Boat houses
Float-plane hangars
Wharves
Swimming pools

8.2 R-1C ZONE REQUIREMENTS

In any R-1C Zone, where uses are permitted, no permit shall be Issued except for the following:

Existing Residential Uses

Existing residential dwellings may be altered, improved or renovated provided that any alteration, improvement or renovation does not result in any increase in habitable space.

Recreational Uses

- (a) No boat houses, float-plane hangars, wharves or swimming pools shall be permitted where washroom or toilet facilities are to be included;
- (b) No boat houses, float-plane hangars, or wharves shall be constructed within ten (10) feet of any side or front lot line, nor shall any swimming pool be constructed within twenty (20) feet of any lot line.

4.17 WATERCOURSE SETBACKS AND BUFFERS

- (1) (a) **No development permit shall be issued for any development within 20m of the ordinary highwater mark of any watercourse, except on lots zoned R-1C.**

Attachment E

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 00957 - 1885 Waverley Road**

7:00 p.m.

**Monday, November 27, 2006
Royal Canadian Legion (Waverley Branch)**

IN ATTENDANCE: Andrew Bone, Planner I, HRM Planning Services
Cara McFarlane, Administrative Support, HRM Planning Services

ALSO PRESENT: William and Moira Cherrett, Applicants
Councillor Krista Snow, District 2

**PUBLIC IN
ATTENDANCE:** Approximately 4

The meeting commenced at approximately 7:00 p.m.

1. Opening remarks/Introductions/Purpose of meeting

Mr. Bone introduced himself as the Planner taking the application through the planning process; Krista Snow, Councillor for District 2; Moira and William Cherrett, Applicants; and Cara McFarlane, Administrative Assistant.

The purpose of a public information meeting is to identify that HRM has received the application, to identify the scope of the application and receive any feedback from the public.

2. Overview of planning process

Mr. Bone showed the agenda for the public information meeting and went through the development agreement planning process. A development agreement is a legal contract between the property owner and HRM that is attached to the property; therefore, any future owners would have to abide by the conditions within the development agreement until it is amended or discharged by Council.

3. Presentation of Proposal

The application is a request by the Cherretts to expand the existing dwelling at 1885 Waverley Road. The Municipal Planning Strategy for Districts 14/17 has a policy which does not allow property owners to apply for permits to expand a dwelling without a development agreement. This includes going through a public process and in the end Marine Drive, Valley and Canal Community Council would decide whether to approve or refuse the application.

The property is located on Lake William and between the two entrances to Silverside Estates, is zoned R-1C (Waterfront Residential) and is 4,000 square feet in size.

Currently, there is a small two storey dwelling and septic field on the property. There is also a building with parking on top and storage underneath. The proposal is to add a 15 x 20 foot, two storey addition to the existing dwelling. The additional space is intended for living purposes not bedrooms; therefore, Department of Environment is not concerned as the number of occupants in the dwelling would not increase. At this time, there are no architectural plans available for the addition. The proposal will not further encroach on the water or the road.

Staff's review has not turned up any major issues with this proposal.

4. Questions and Comments

One resident asked when the construction would begin. Mr. Cherrett said probably within the next couple of years. There will be some living space and an office. The roof line will match the existing one.

Mr. Bone mentioned that the development agreement usually includes a sunset clause. This allows the applicant a set amount of time to develop and if not completed in that time frame, the development agreement is voided.

Mr. Bone thanked everyone for coming to the meeting.

5. Adjournment

The meeting adjourned at approximately 7:15.

Attachment F
Halifax Watershed Advisory Board Recommendations

TO: Marine Drive, Valley and Canal Community Council

SUBMITTED BY: _____
Dr. Wayne Stobo, Chair, Halifax Watershed Advisory Board

DATE: 20th June, 2007

SUBJECT: **Case 00957: Application to consider a development agreement to permit an addition to single unit dwelling at 1885 Waverley Road, PID 40315566.**

ORIGIN:

On 18th April, 2007, an application to amend an existing development agreement to allow for the extension of a residence at 1885 Waverley Road was presented to the Board by Leticia Smillie, Planner.

RECOMMENDATIONS:

The primary concerns of the Watershed Advisory Board are to protect the watershed and the natural environment. The Board appreciates the opportunity to comment on this application.

1. Because of the proximity of the existing building to William Lake, and due to the size of the lot, the Board recommends that **no further extension** of the building be approved. This is consistent with the Board's Guidelines which recommend a buffer of 30 metres around all watercourses (including lakes).
2. If it is decided that this application be approved, the Board recommends the following:
 - a. if the building is heated with oil, the oil tank should be fully contained to protect the Lake from any possible spills.
 - b. the present septic system should be inspected to ensure that it is functioning properly and also that it possesses reserve capacity . A larger house is likely to accommodate more people, if only from time to time. Hence this recommendation - to ensure that the lake is not being contaminated now, nor will be in the future.
 - c. that every effort should be made to conserve the existing trees on the lot.

BACKGROUND:

The application concerns the addition of a 15' by 20' two storey addition to an existing, two-storey house on the shores of Lake William. The existing building is built closer to the road, and to the ordinary high water mark of Lake William, than allowed under today's regulations but, as the building predates the current regulations, it's set-backs are considered to be grand-fathered.