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North West Planning Advisory Committee
September 5, 2007

TO: Chair and Members of North West Planning Advisory Committee

SUBMITTED BY: *Devin Szafeld for*
Paul Dunphy, Director of Community Development

DATE: August 13, 2007

SUBJECT: **Case 00928: Development Agreement - 199 Rocky Lake Drive,
Bedford**

ORIGIN

Application by Ned Kelleher, on behalf of Birch Grove Developments Limited, to enter into a development agreement to permit a flag lot and the construction of a two unit dwelling at 199 Rocky Lake Drive, Bedford.

RECOMMENDATION

It is recommended that North West Community Council:

1. Give Notice of Motion to consider the proposed development agreement, enclosed as Attachment "A" of this report, to enable the creation of a flag lot at 199 Rocky Lake Road (PID 00416073), Bedford, and schedule a public hearing;
2. Approve the proposed development agreement provided as Attachment "A"; and
3. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by North West Community Council on request of the applicant, from the date of final approval of said agreement by North West Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

Location, Designation, Zoning and Surrounding Land Uses:

- The subject property is located on the south side of Rocky Lake Drive just west of Duke St. in Bedford (Map 1). The property backs on to a Canadian National Railway (CNR) rail line.
- The property is situated within the Bedford Municipal Planning Strategy (MPS) and is designated Residential (Map 1).
- The subject property and surrounding properties, with the exception of the CNR lands, are located within the Residential Two Dwelling Unit (RTU) Zone (Map 2) which permits single unit, two unit, semi-detached, duplex and linked dwellings, and special care facilities.
- The subject property is surrounded by a mix of single unit and two unit dwellings and is across the street from the entrance to Charles P. Allen High School.
- The property is approximately 14,700 square feet in area and has 100 feet of road frontage on Rocky Lake Drive.

Synopsis of Proposal:

Birch Grove Developments Ltd. wishes to create one flag lot to be accessed from Rocky Lake Drive. A flag lot, as shown and described in Attachment "C", is an irregular shaped lot with reduced road frontage. The applicant intends to construct a two unit dwelling on the proposed flag lot within the area identified as "Building Envelope" on the attached site plan (Map 3). The proposed pole section of the lot is to be located to the west of the existing structure.

Enabling Policy and Policy Intent:

Policy R-27 (Attachment "B") of the Bedford MPS enables Council to consider applications for flag lots through the development agreement process. The intent of the policy is to allow for infill opportunities in residential neighbourhoods. The impact of the infill lot on adjacent properties is reduced by requiring a defined building envelope and limiting building height and footprint to the average of the surrounding homes. Proposals must meet the minimum front, side and rear yard setbacks found in the applicable zone (RTU zone in this case).

DISCUSSION

The following is an evaluation of the proposed development in relation to applicable policies (Attachment "B") of the Bedford MPS. The proposed development meets the requirements of Policy R-27 as the building envelope is consistent with neighbouring properties; the front, side and rear yard requirements are met, there is adequate separation between the existing and proposed dwelling, the lots exceed the minimum lot area and the property is located in a residential zone. A proposed development agreement is contained in Attachment "A" of this report.

Issues:

Staff have identified the following considerations for more detailed discussion based on the applicable policies of the Bedford MPS:

Neighbourhood Compatibility

Policies R-27 and Z-3 require that the development agreement ensure a future dwelling constructed on the proposed flag lot is compatible with adjacent uses in terms of its use, bulk, scale and height. The proposed lots meet the minimum area, frontage and yard requirements as outlined in the Bedford LUB. The development agreement minimizes the impact on adjacent residential properties through the following controls on the future dwelling:

- construction limited to within the area labelled as 'Building Envelope' on the attached Site Plan which includes an increased side yard requirement of 4.56 Metres (15 feet) to increase separation from adjacent buildings (Map 3).
- the building is limited to two storeys above grade and a maximum height of 6.70 Metres (22 feet) (the estimated average height of surrounding dwellings- Map 4).
- a maximum building footprint of 92.9 square Metres (1000 square feet) (the estimated average footprint of surrounding dwellings- Map 4).

Access and Parking

The land use by-law requires four off-street parking spaces for each two unit dwelling. The existing property currently has two gravel driveways which can be modified to serve the proposal. The development agreement requires the driveways to have a minimum width of 3 metres (10 feet) and the driveways and parking areas must be finished with a stable surface such as asphalt, concrete, paving blocks or an acceptable equivalent. The existing driveways will be extended to serve the proposed parking areas as shown in Map 3. HRM Engineering staff have reviewed the proposal and have identified no concerns with utilizing the existing driveway accesses.

Servicing and Site Construction

The existing dwelling is serviced with both municipal sewer and water services. HRM Engineering staff and the Halifax Regional Water Commission have reviewed the proposal and determined that the proposed two unit dwelling is capable of being serviced. The proposal is not anticipated to significantly impact existing sewer and water systems.

To ensure proper grading and drainage of the site during construction, the proposed development agreement requires that a grade alteration permit be issued prior to the start of construction.

Rail Line Safety

To reduce incompatibility, CNR has established best practice guidelines for developments adjacent to their rail lines. A minimum setback of 30 metres is recommended from the rail line to

all structures. CNR recommends berming and safety and acoustical fencing within the setback to reduce conflict with the line.

The proposed new dwelling and the existing dwelling do not meet the CNR guidelines for setbacks from the rail line. The CNR guidelines would prohibit any dwelling on the proposed flag lot. As the specified setback is only a guideline, staff investigated measures to minimize impacts and to maintain an adequate level of rail line safety. Staff recommend the following mitigating measures:

- access to the rail line be minimized with the fencing required under the development agreement. At the shared property line with the rail line, the fencing is to be chain link with a minimum height of 1.83 Metre (6 feet) as per the CNR recommendations.
- naturalized 6 metre (20 foot) buffer be maintained at the rear of the proposed lot to limit access to the rail line and buffer the noise generated.

Fencing and Landscaping

To clearly define the proposed flag lot, 1.22 M (4 foot) high wooden fencing will be required along the property line dividing the new lot and extending along the developed lot to the east. Further, parking areas will be defined by fencing, landscaping, or curbing.

All areas not occupied by buildings, walkways, driveways and parking areas are to be landscaped or retain natural vegetative cover. The landscaping will soften the appearance of the new dwelling and provide buffering to the adjacent properties.

Public Information Meeting:

A public information meeting was held on October 23, 2006 at Basinview Drive Community Elementary School. Minutes of the meeting are found in Attachment "D". Concern was expressed at the meeting regarding safety of the rail line, inadequate parking, storm drainage, compatibility with neighbouring properties and requirements for landscaping. These issues have been addressed in the preceding discussion.

The notification area is shown on Map 2. If Community Council decides to hold a public hearing regarding this application, ads will be placed in the newspaper and property owners within the notification area identified on Map 2 will be contacted individually.

Conclusion:

The proposed development agreement meets the policy intent for flag lot development as set out in the MPS, in addition to satisfying the intent of other relevant policies. The development agreement places controls on height, footprint and location of the new dwelling to limit the impact of the flag lot on the neighbouring properties. Parking, fencing and landscaping will clearly define the site and reduce the conflicts between the existing and proposed dwelling and

between the dwellings and the rail line. As the proposal is in keeping with the MPS, staff recommend approval.

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 development agreement. This is the recommended course of action.
2. Council may choose to refuse the proposed development 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 development agreement is consistent with the policies and intent of the MPS.
3. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing to be held.

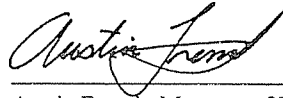
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Area
Map 3	Site Plan
Map 4	Average Footprint and Height of Surrounding Properties
Attachment A	Development Agreement for 199 Rocky Lake Drive
Attachment B	MPS Policies
Attachment C	LUB Requirements for RTU Zone/Bedford LUB ‘Flag Lot’ Definition
Attachment D	Public Information Meeting Minutes - October 23, 2006

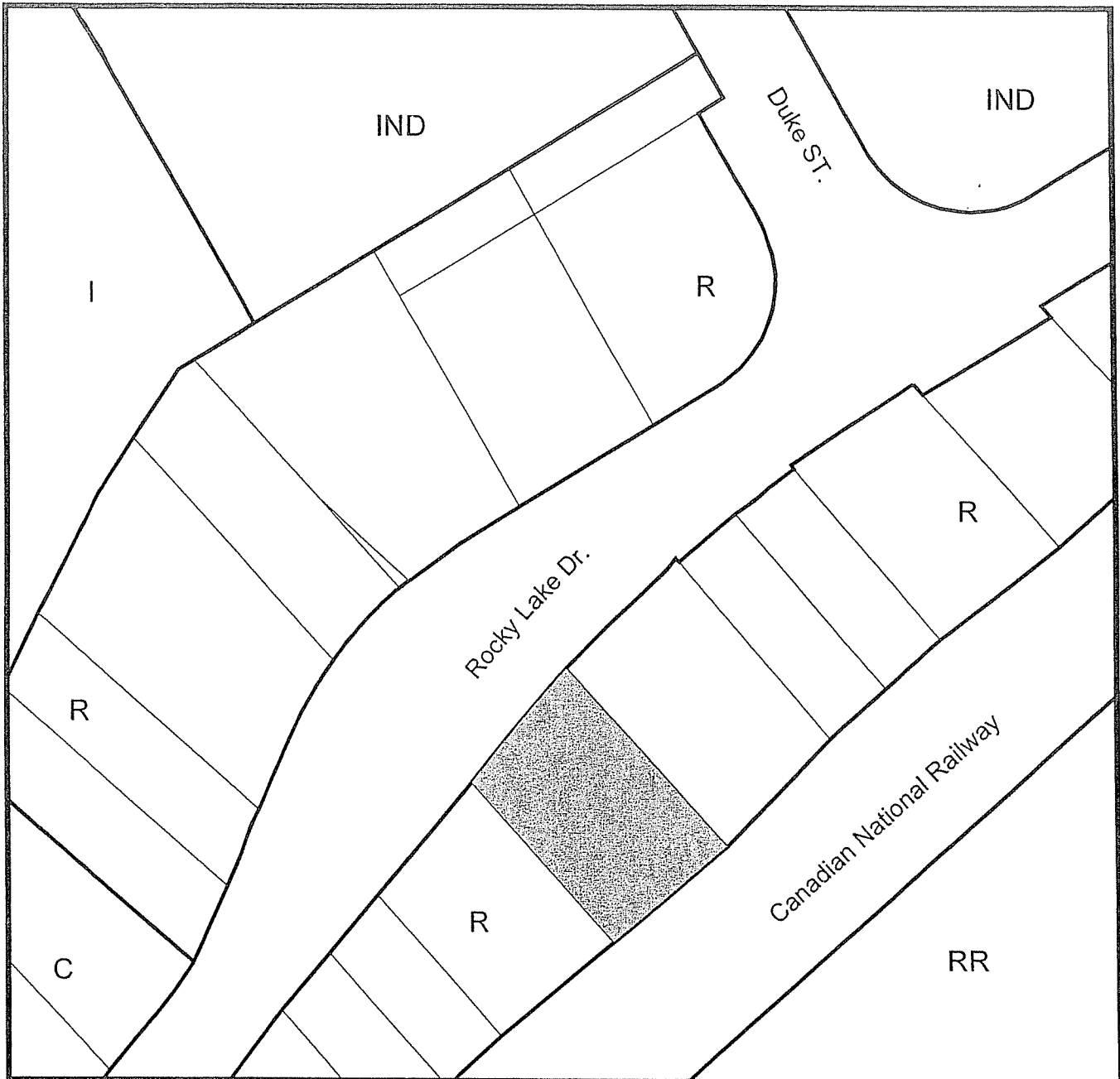
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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

Report Approved by:



Austin French, Manager of Planning Services 490-6717

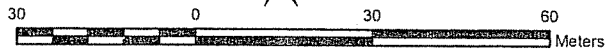


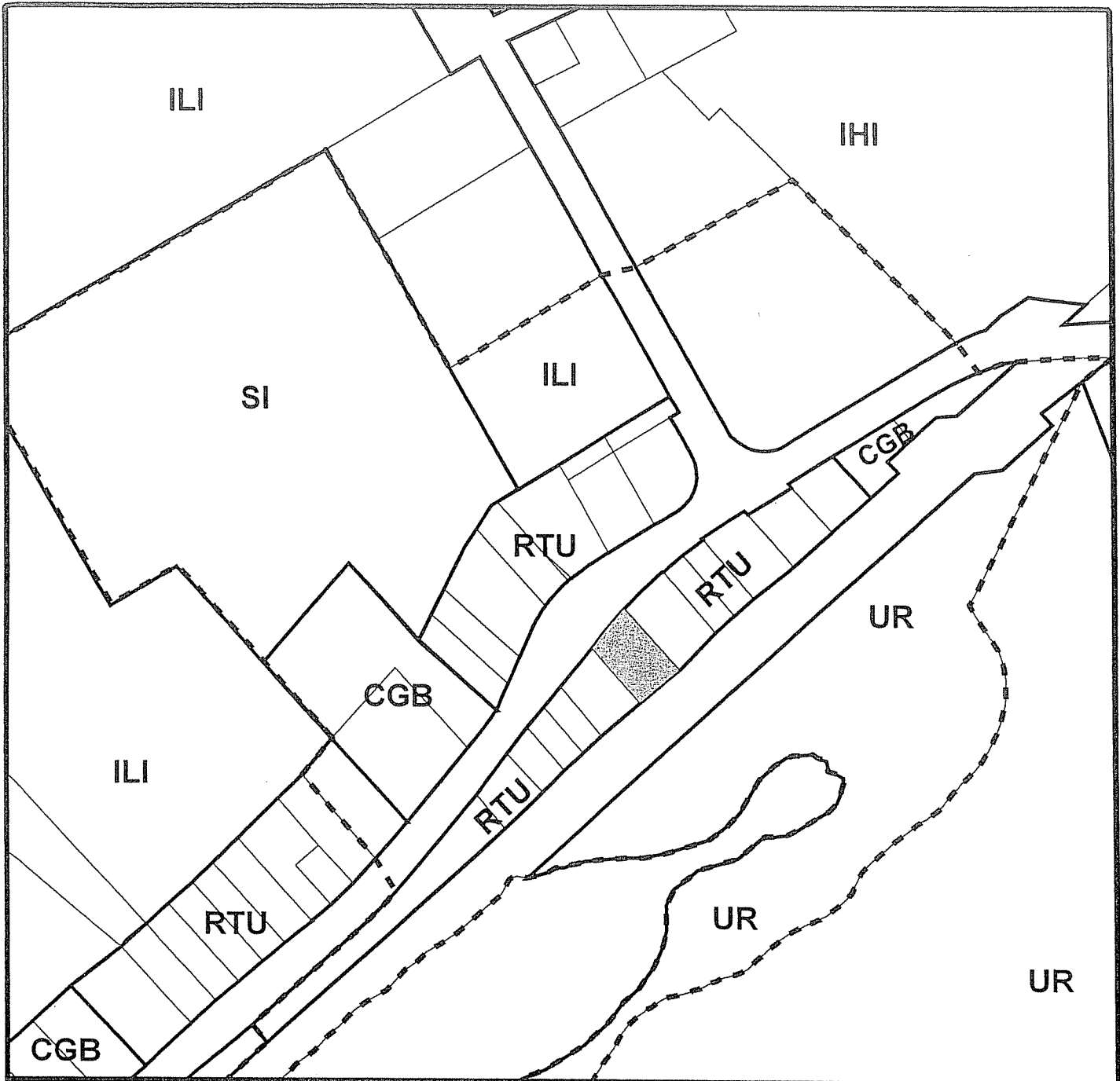
Map 1
Generalized Future Land Use



Subject Property

- | | | | |
|----|---------------------------------|-----|---------------------------|
| R | Residential Designation | I | Institutional Designation |
| RR | Residential Reserve Designation | IND | Industrial Designation |
| C | Commercial Designation | | |





Map 2
Zoning and Notification Area



Subject Property

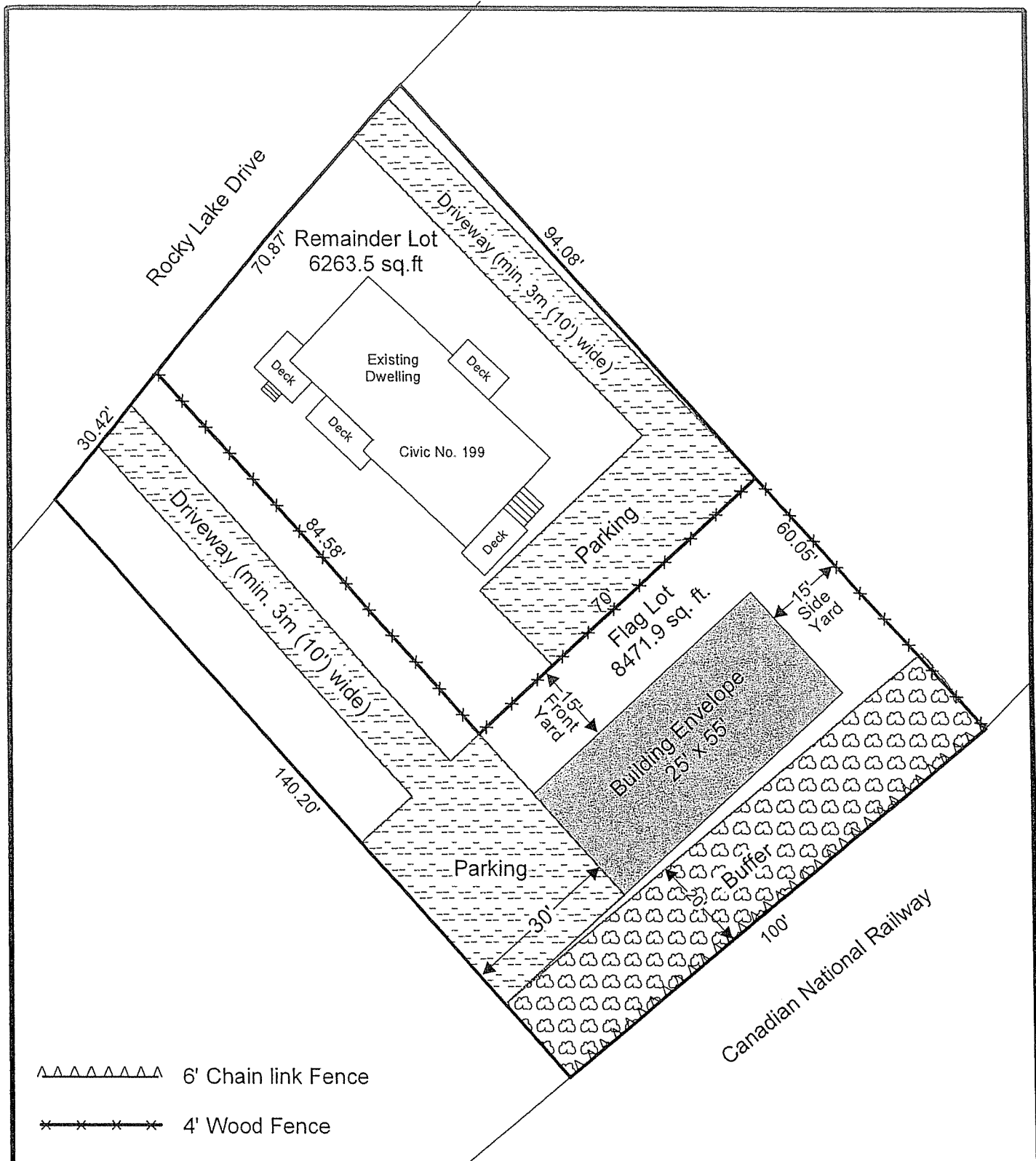
HALIFAX
 REGIONAL MUNICIPALITY
 Planning Services

RTU Two Dwelling Unit Zone
 RR Residential Reserve Zone
 CGB General Business District Zone

SI Institutional Zone
 ILI Light Industrial Zone
 IHI Heavy Industrial Zone

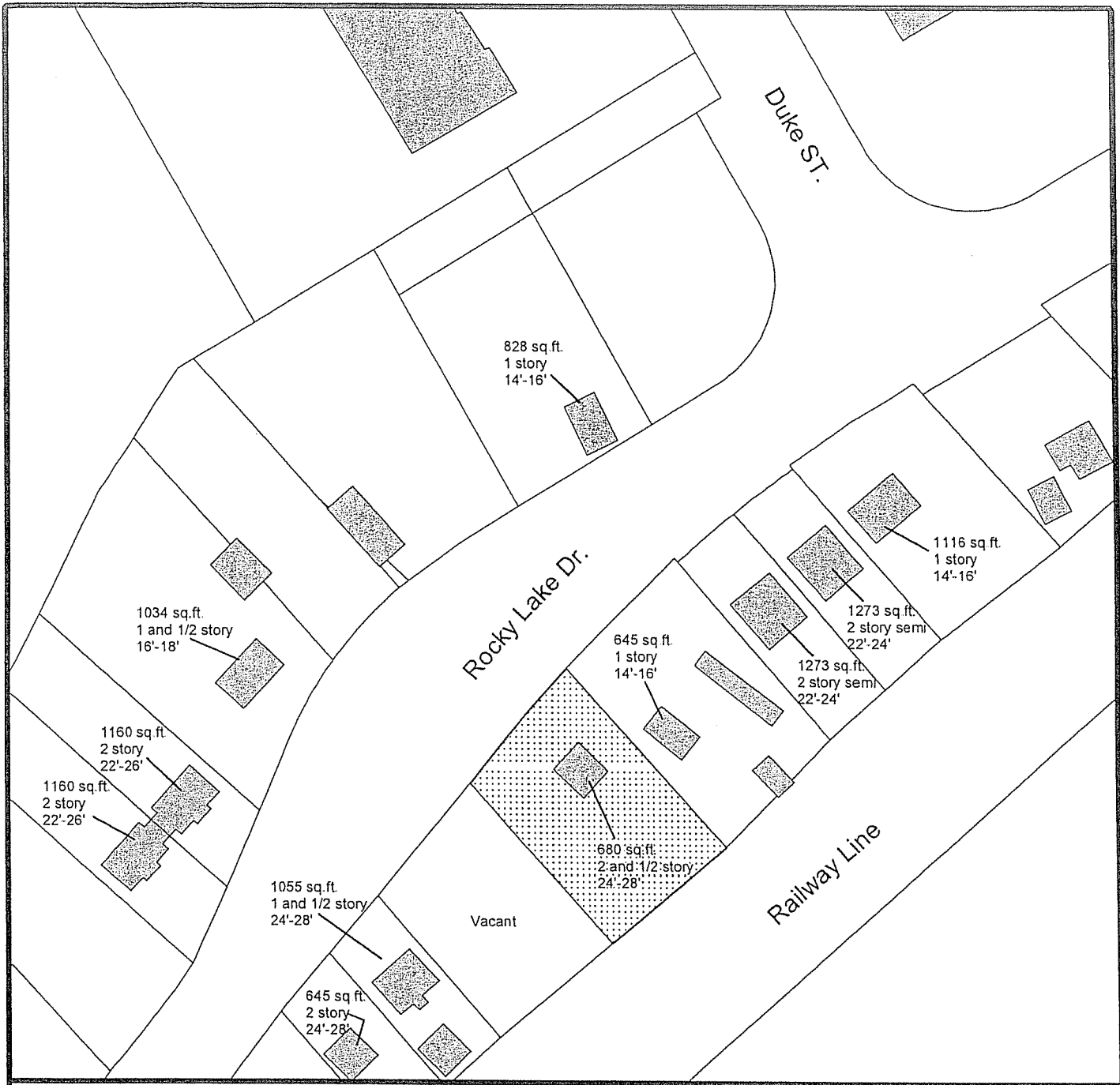
- - - Notification Area





Map 3
Site Plan

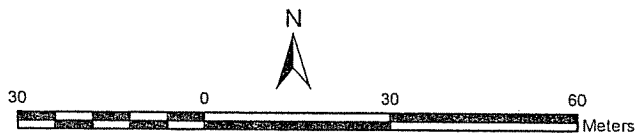




Map 4
Average footprint and height of surrounding buildings



Average Footprint - 1000Sq. ft.
Average number of Storeys - 2
Average Height - 22'



**Attachment "A"
Development Agreement**

THIS AGREEMENT made this day of , 2007,

BETWEEN:

BIRCH GROVE DEVELOPMENTS LTD.
(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 certain lands located at **199 Rocky Lake Drive (PID 00416073), Bedford** 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 development of a two unit residential dwelling on a flag lot on the Lands pursuant to the provisions of the Municipal Government Act and the Bedford Municipal Planning Strategy and the Bedford Land Use By-law;

AND WHEREAS the North West Community Council approved this request at a meeting held on _____ 2007, referenced as Municipal Case Number 00928;

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 subdivided, 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 Bedford 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.

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: DEFINITIONS

- 2.1 All words unless otherwise specifically defined herein shall be as defined in the Bedford Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Subdivision of the Lands

An application for subdivision to create a flag lot and remainder lot shall generally conform with the site plan presented as Schedule B.

3.2 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is in conformance with the Schedules attached to this agreement and the plans filed in the Halifax Regional Municipality as Case Number: 00928.

The schedules are:

SCHEDULE A - Legal Description of the Lands of Birch Grove Developments, identified as Lot 42, 199 Rocky Lake Drive, Bedford. (PID 00416073)

SCHEDULE B - Site Plan

3.3 Requirements Prior to Approval

- 3.3.1 Prior to any clearing, excavation or placement of fill on the Lands, the Developer shall be required to obtain a Grade Alteration Permit as required by the former Town of Bedford Grade Alteration By-law No. 23290.
- 3.3.2 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.
- 3.3.3 Where the written text of this Agreement conflicts with information provided in Schedule B, the written text of this agreement shall prevail.

3.4 General Description of Land Use

The use of the Lands permitted by this Agreement are the following:

3.4.1 Uses permitted in accordance with the provisions of the Residential Two Unit Dwelling (RTU) Zone of the Bedford Land Use By-law, as amended from time to time, except where varied by the terms of this Agreement.

3.4.2 The subdivision of the Lands into two lots such that:

- (a) one of the resulting lots is a “flag lot” (herein after referred to as the Flag Lot) as defined by the Bedford Land Use Bylaw with a minimum of thirty (30) feet of frontage on Rocky Lake Drive and with an approximate area of 8471 square feet (786.9 m²) as illustrated in Schedule B. Notwithstanding Schedule B, the Development Officer may permit the lot to be enlarged provided the remainder lot meets the requirements of the Residential Two Unit Dwelling (RTU) Zone, except where varied by the terms of this Agreement; and
- (b) the remaining lands (herein after referred to as the Remainder Lot) has approximately 70 feet of road frontage and 6263 square feet (581.8 m²) in area and has an existing two unit dwelling. Notwithstanding Schedule B, the Development Officer may permit the lot to be reduced provided the lot meets the requirements of the Two Unit Dwelling (RTU) Zone, except where varied by the terms of this agreement.

3.5 Detailed Provisions for Land Use

3.5.1 The Flag Lot shall contain a maximum of one (1) two unit dwelling in total and shall be subject to the requirements of the RTU Zone, as described in the Bedford Land Use By-law, except where varied by this Agreement.

3.5.2 No structure of any kind shall be permitted to be erected or placed within the ‘pole’ portion of the Flag Lot and the buffer area as per Section 3.10.

3.6 Siting and Scale Requirements

The Developer agrees that any dwelling constructed on the Flag Lot shall comply with the following:

- (a) The requirements of the Bedford Land Use By-law, as amended from time to time, except where varied by this Agreement.
- (b) Further to Clause 3.6 (a), the proposed dwelling shall meet the following requirements:

located entirely within the area identified as 'Building Envelope' as shown on Schedule B;

not exceed a height of 2 storeys plus basement or 22 feet, whichever is less, as required according to the requirements of the Bedford Land Use By-law.

not exceed a total building footprint of 1000 square feet;

setback a minimum of 15 feet from any side property lines (side yard back);

constructed with horizontal wood shingle, brick, stone masonry, cement wood clapboard, vinyl siding or equivalent;

setback a minimum of 40 feet from any existing dwelling on an adjacent property;

decks and other open air structures may encroach into the front and side yards subject to the provisions of the Bedford Land Use By-law;

new accessory buildings or relocations of existing accessory building in the front and side yards subject to the provisions of the Bedford Land Use By-law, as amended from time to time.

Driveway

The Flag Lot shall be from an extension of the existing driveway connecting parking area as shown on Schedule B. Access to the Remainder Lot shall be by extension and realignment of the existing driveway cut connecting along the property to the parking area in the rear as shown on Schedule B.

Parking area shall be located in the side yard of the proposed two unit dwelling or rear yard of the existing two unit dwelling as shown on Schedule B.

Parking areas shall comply with the requirements of the Bedford Land Use By-law as amended from time to time.

Driveways and all parking areas shall have a finished hard surface such as concrete, paving blocks or an acceptable equivalent in the opinion of the Planning Officer.

Driveways shall comply with the requirements of the Land Use By-law, By-law Amending Streets and any other applicable legislation.

3.8 Building and Lighting

The Developer agrees that for any dwelling constructed on the Flag Lot, all lighting shall be directed to driveways, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.9 Landscaping/Fencing

The Developer agrees that landscaping on the Flag Lot shall comply with the following:

- 3.9.1 Landscaping or appropriate vegetative cover shall be required in all areas not occupied by buildings, walkways, driveways and parking areas except for areas where natural vegetative cover is maintained. Landscaped areas shall be grassed or include landscape features such as mulch, stone, water features, perennials, annuals, shrubs or other vegetation and features deemed acceptable by the Development Officer.
- 3.9.2 The limits of the parking areas shall be defined by landscaping and/or curb.
- 3.9.3 No fence exceeding 6 feet shall be erected on the Lands. Solid wood board fencing shall be provided between the Flag Lot and the Remainder Lot and between the Flag Lot and 201 Rocky Lake Drive. The fence shall be a minimum of 4 feet in height and be located on the Flag Lot. Chain link fencing of 6 feet in height shall be erected on the Flag Lot along the common property line with the CNR lands.
- 3.9.4 The Developer shall prepare a detailed landscaping plan for the Lands, which is satisfactory to the Development Officer, prior to the issuing of Development Permit.
- 3.9.5 Prior to issuance of an Occupancy Permit the parking, landscaping, and fencing requirements identified in section 3.7 and sub-sections 3.9.1, 3.9.2 and 3.9.3 shall be deemed complete in the opinion of the Development Officer.
- 3.9.6 Notwithstanding Sub-section 3.9.5, an Occupancy Permit may be issued prior to completion of the required parking, landscaping and fencing, if the Developer provides a security deposit, in favour of the Municipality and in the form of a certified cheque or automatically renewing non-revocable line of credit issued by a chartered bank, in the amount of 110 percent of the estimated cost to complete the landscaping. The security shall be returned to the Developer upon completion of the work described in sub- section 3.9.5.

3.10 Buffering

The Developer agrees that, for purposes of buffering and reduction of access to and noise from the rail line, the Flag Lot shall comply with the following:

- 3.10.1 The existing trees and vegetation within the 20 foot rear yard of the Flag Lot, as identified on Schedule B, shall be retained and maintained to act as a natural buffer and visual screen to adjacent properties. Existing trees within this area shall be identified both on-site and on any plan of subdivision and the Grade Alteration Plan.
- 3.10.2 Notwithstanding Sub-section 3.10.1, where in the opinion of the Development Officer a tree poses a danger to people or property or is in severe decline, the tree may be removed and replaced with a similar species, with a minimum caliper of 60mm measured at 300mm above the ground, at the expense of the Developer. At the discretion of the Development Officer, the Developer may be required to engage a Certified Arborist, Landscape Architect, Landscape Technologist, Urban Forester or other person with an equivalent degree or diploma to certify in writing that a tree poses a danger to people or property or is in severe decline prior to granting approval for removal of the tree.
- 3.11.2 Any tree removed without authorization of the Development Officer shall be replaced with two new trees of a similar species, with a minimum caliper of 60mm measured at 300mm above the ground, at the expense of the Developer.

3.11 Maintenance

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

3.12 Public Open Space Dedication

Prior to subdivision approval the Developer shall provide the Municipality with a cash-in-lieu of park land dedication in an amount determined by the Development Officer according to the applicable provisions of the Regional Subdivision By-law.

3.13 Outdoor Storage

The Developer agrees that any outdoor storage and refuse containers and propane tanks and electrical transformers located on the Flag Lot shall, respectively, comply with the following:

- 3.13.1 Outdoor storage and refuse containers shall be located in the side yards or "Building Envelope" subject to the provisions of the Bedford Land Use By-law and shall be fully screened from adjacent properties and from streets by means of opaque fencing/masonry walls with suitable landscaping.

- 3.13.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact from the adjacent residential properties. These facilities shall be secured in accordance with the applicable approval agencies, shall be located within the side yards or "Building Envelope" subject to the provisions of the Bedford Land Use By-law and shall be screened by means of opaque fencing/masonry walls with suitable landscaping.

4.0 STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All construction shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

4.2 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

5.0 AMENDMENTS

5.1 Substantive Amendments

Amendments to any matters not identified under Section 5.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

5.2 Non-Substantive Amendments

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

- (a) The granting of an extension to the date of commencement of construction as identified in Section 7.3 of this agreement; and
- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 7.4 of this agreement;

In considering the approval of a non-substantive amendment under Section 5.2, adjacent property owners shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

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

6.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer 90 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:

- (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; and/or
- (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 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.
- (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; and/or
- (d) 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; and/or

7.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

7.1 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 or Land Registration Office at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

7.2 Subsequent Owners

7.2.1 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.

7.2.2 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.

7.3 Commencement of Development

7.3.1 In the event that development of the Lands, has not commenced within 8 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office , 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.

7.3.2 For the purposes of this section, commencement shall mean endorsement of final subdivision approval of the proposed lots.

7.4 Completion of development

Upon the completion of the development or portions thereof, or after 9 years from the date of registration of this Agreement with the Registry of Deeds or Land Registration Office , 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; or
- (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 Bedford, 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.

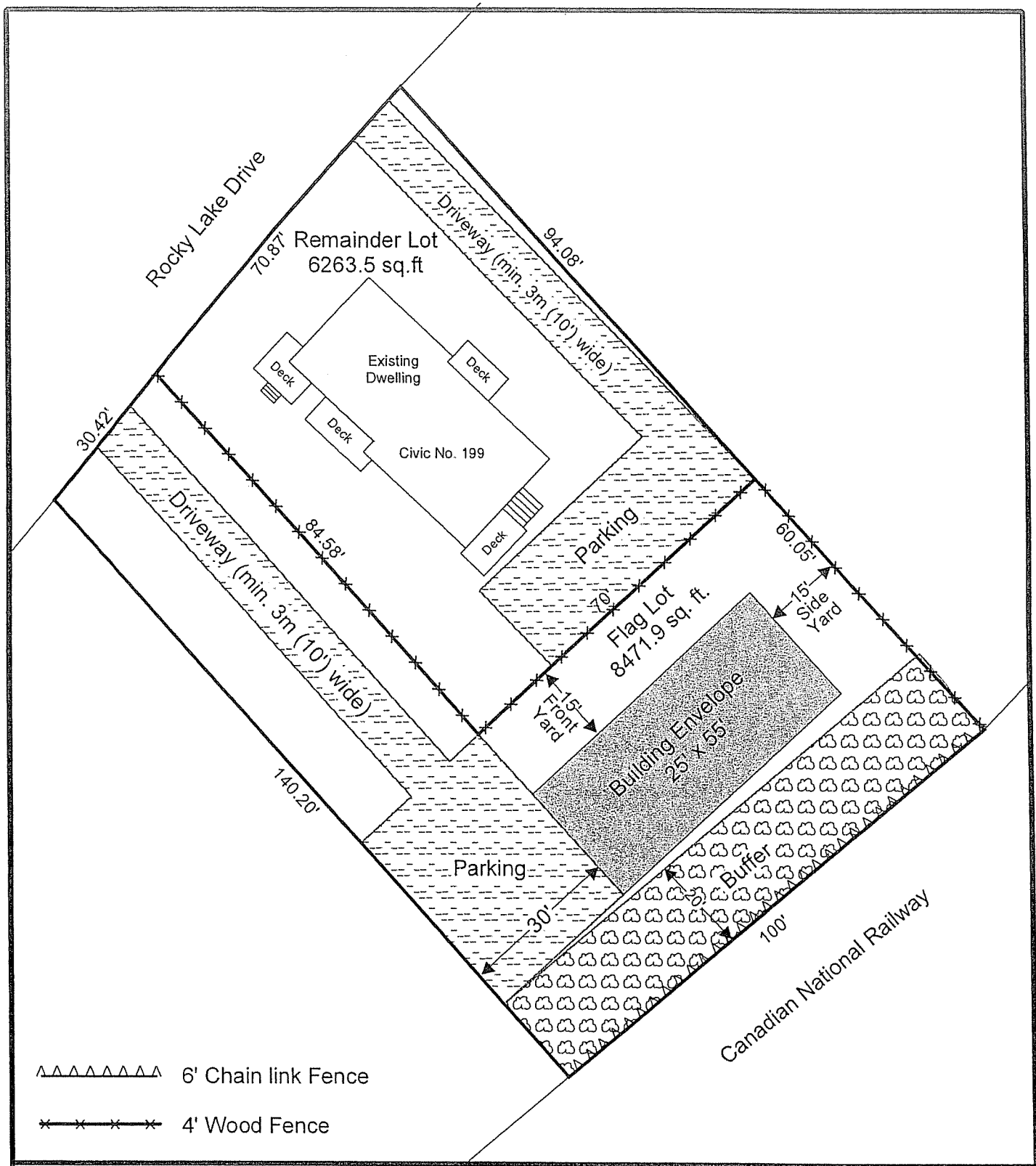
BIRCH GROVE DEVELOPMENTS LTD.

SIGNED, SEALED AND DELIVERED)
in the presence of)
_____)

Per: _____
Morton Kelly

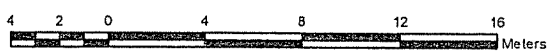
SEALED, DELIVERED AND)
ATTESTED to by the proper)
signing officers of Halifax Regional)
Municipality duly authorized)
in that behalf in the presence)
of)
_____)

Per: _____
HALIFAX REGIONAL MUNICIPALITY
MAYOR
Per: _____
MUNICIPAL CLERK



- △△△△△△△△ 6' Chain link Fence
- ×××××××× 4' Wood Fence

Schedule "B"
Site Plan



Attachment "B"
Relevant MPS Policy

Policy R-27:

It shall be the intention of Town Council to consider applications to infill within existing residential areas. Infilling shall be encouraged to enable efficient use of municipal infrastructure. Town Council shall permit reduction of lot frontage requirements for subdivision of lots which existed prior to the adoption of this strategy, provided the existing land uses are in conformance with the zoning on the property. Infilling activity within existing residential neighbourhoods shall be regulated through provisions in the Land Use By-law. Council shall permit the creation of flag lots by development agreement. Such development agreements will require that:

- the application for a development agreement shall include the specifications for the building envelope for the proposed dwelling such that the new dwelling shall not exceed the average height and building footprint of the existing dwellings which abut the vacant lot;
- the minimum rear yard separation distances between the proposed new dwelling and the existing dwellings shall be 40 feet;
- minimum front, side and rear yards shall be provided in accordance with the zone requirements
- minimum lot area shall be 6,000 sq. ft.; and,
- the lot must be located within an area which is zoned for residential land use

Policy Z-3:

It shall be the policy of Town Council when considering zoning amendments and development agreements [excluding the WFCDD area] with the advice of the Planning Department, to have regard for all other relevant criteria as set out in various policies of this plan as well as the following matters :

1. That the proposal is in conformance with the intent of this Plan and with the requirements of all other Town By-laws and regulations, and where applicable, Policy R-16 is specifically met;
2. That the proposal is compatible with adjacent uses and the existing development form in the neighbourhood in terms of the use, bulk, and scale of the proposal;
3. That provisions are made for buffers and/or separations to reduce the impact of the proposed development where incompatibilities with adjacent uses are anticipated;
4. That provisions are made for safe access to the project with minimal impact on the adjacent street network;
5. That a written analysis of the proposal is provided by staff which addresses whether the proposal is premature or inappropriate by reason of:
 - i) the financial capability of the Town to absorb any capital or operating costs relating to the development;
 - ii) the adequacy of sewer services within the proposed development and the surrounding area, or if services are not provided, the adequacy of physical site conditions for private on-site sewer and water systems;

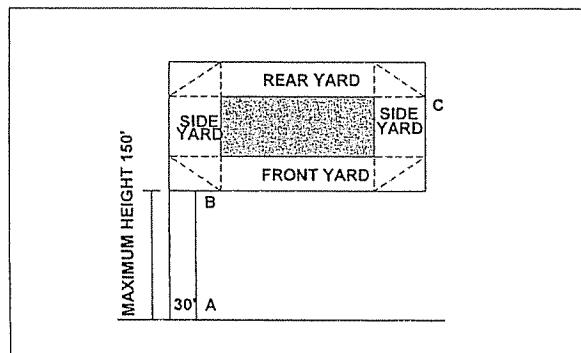
- iii) the adequacy of water services for domestic services and fire flows at Insurers Advisory Organization (I.A.O.) levels; the impact on water services of development on adjacent lands is to be considered;
 - iv) precipitating or contributing to a pollution problem in the area relating to emissions to the air or discharge to the ground or water bodies of chemical pollutants;
 - v) the adequacy of the storm water system with regard to erosion and sedimentation on adjacent and downstream areas (including parklands) and on watercourses;
 - vi) the adequacy of school facilities within the Town of Bedford including, but not limited to, classrooms, gymnasiums, libraries, music rooms, etc.;
 - vii) the adequacy of recreational land and/ or facilities;
 - viii) the adequacy of street networks in, adjacent to, or leading toward the development regarding congestion and traffic hazards and the adequacy of existing and proposed access routes;
 - ix) impact on public access to rivers, lakes, and Bedford Bay shorelines;
 - x) the presence of significant natural features or historical buildings and sites;
 - xi) creating a scattered development pattern which requires extensions to trunk facilities and public services beyond the Primary Development Boundary;
 - xii) impact on environmentally sensitive areas identified on the Environmentally Sensitive Areas Map; and,
 - xiii) suitability of the proposed development's siting plan with regard to the physical characteristics of the site.
6. Where this plan provides for development agreements to ensure compatibility or reduce potential conflicts with adjacent land uses, such agreements may relate to, but are not limited to, the following:
- i) type of use, density, and phasing;
 - ii) traffic generation, access to and egress from the site, and parking;
 - iii) open storage and landscaping;
 - iv) provisions for pedestrian movement and safety;
 - v) provision and development of open space, parks, and walkways;
 - vi) drainage, both natural and subsurface;
 - vii) the compatibility of the structure(s) in terms of external design and external appearance with adjacent uses; and,
 - viii) the implementation of measures during construction to minimize and mitigate adverse impacts on watercourses.
7. Any other matter enabled by Sections 73 and 74 of the Planning Act.
8. In addition to the foregoing, all zoning amendments and development agreements shall be prepared in sufficient details to:
- i) provide Council with a clear indication of the nature of the proposed development; and
 - ii) permit staff to assess and determine the impact such development would have on the proposed site and the surrounding community.

9. To assist in the evaluation of applications to enter into development agreements, Council shall encourage proponents to provide the following information:
- a) a plan to a scale of 1":100' or 1":40' showing such items as:
 - i) an overall concept plan showing the location of all proposed land uses;
 - ii) each residential area indicating the number of dwelling units of each type and an indication of the number of bedrooms;
 - iii) description, area, and location of all proposed commercial, cultural, mixed-use projects proposed;
 - iv) location, area, shape, landscaping and surface treatment of all public and private open spaces and/or park areas;
 - v) plan(s) showing all proposed streets, walkways, sidewalks, bus bays and bike routes;
 - vi) a description of any protected viewplanes; and,
 - vii) an indication of how the phasing and scheduling is to proceed.
 - b) For individual phases of a development more detailed concept plans are to be provided indicating such items as maximum building heights, location and configuration of parking lots, landscaping plans, and any additional information required to be able to assess the proposal in terms of the provisions of the Municipal Planning Strategy.
 - c) Plans to the scale of 1":100' showing schematics of the proposed sanitary and storm sewer systems and, water distribution system.
10. **Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", 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 "C"
LUB: Flag Lot Definition and RTU Zone

PART 2 DEFINITIONS

Flag Lot - means a lot shown on an approved plan of subdivision the configuration of which resembles the figure below where the "Pole" A to B section of the lot cannot exceed one hundred and fifty (150) feet in length and shall be a minimum width of thirty (30) feet and where the "C" portion of the flag lot excluding the "pole" shall contain the required minimum lot area specified in the applicable zone. The "pole" shall also be excluded for the purpose of calculating front, rear, and sideyard setbacks. Minimum yard requirements must be achieved within the "C" portion of the flag lot as illustrated in the diagram.



PART 7 RESIDENTIAL TWO DWELLING UNIT (RTU) ZONE

No development permit shall be issued in a Residential Two Dwelling Unit (RTU) Zone except for one or more of the following uses:

- a) all uses permitted in the RSU Zone subject to the RSU Zone requirements;
- b) a semi-detached dwelling;
- c) a duplex dwelling;
- d) a linked dwelling;
- e) a basement apartment added to a single dwelling unit so that the building contains only two dwelling units;
- f) special care facilities for up to 10 residents
- g) neighbourhood park;
- h) uses accessory to the foregoing uses.

ZONE REQUIREMENTS RTU

In any Residential Two Dwelling Unit (RTU) Zone, no development permit shall be issued except in conformity with the following requirements:

	Duplex Dwellings & Singles with Basement Apartment	Each Semi-Detached Unit or Linked Dwelling Unit
Minimum Lot Area	6,000 Sq.Ft.	3,000 Sq.Ft.
Minimum Lot Frontage	60 Ft.	30 Ft.
Minimum Front Yard	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial
Minimum Rear Yard	20 Ft.	20 Ft.
Minimum Side Yard	8 Ft.	8 Ft.
Minimum Common Side Yard For Link Homes	N/A	2.5 Ft.
Minimum flankage yard	15 Ft. on Local and Collector Streets; 30 Ft. on Arterial	15 Ft. on Local and Collector 30 Ft. on Arterial
Maximum Height of Building	35 Ft.	35 Ft.
Maximum Number of Dwelling Units Per Lot	2	1
Maximum Lot Coverage	35%	35%

Attachment "D"
Public Information Meeting Minutes, October 23, 2006

HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 00928 - 199 Rocky Lake Road

7:00 p.m.
Monday, October 23, 2006
Basinview Drive Community Elementary School

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

ALSO PRESENT: Ned Kelleher, Applicant
Morton Kelly, Birch Grove Developments
Councillor Gary Martin, District 21
Gloria Lowther, NWPAC
Walter Regan, NWPAC

PUBLIC IN ATTENDANCE: Approximately 3

The meeting commenced at approximately 7:01 p.m.

1. Opening remarks/Introductions/Purpose of meeting

Mr. Bone introduced himself as the Planner assigned to the application; Gary Martin, Councillor for District 21; Ned Kelleher, Applicant on behalf of Birch Grove Developments; and Cara McFarlane, Administrative Assistant.

The agenda for the meeting was shown on overhead.

The purpose of the meeting is to give the public some background on the application and to receive feedback on any issues and concerns which would help staff guide them through the review of this proposal.

The application is by Ned Kelleher, on behalf of Birch Grove Developments, to enter into a development agreement to create a flag lot and permit the construction of a two unit dwelling at 199 Rocky Lake Road.

The property is zoned RTU (Residential Two Unit) which permits a two unit building which is currently constructed on the site.

Policy R-27 of the Bedford Municipal Planning Strategy (MPS) allows Council to consider the creation of a flag lot at this site and the construction of a two unit dwelling. Mr. Bone showed Policy R-27 on overhead and explained what it allows.

2. Overview of planning process

Mr. Bone explained what a development agreement is to the public and went over the development agreement process.

The current property owner and any future owners are bound by the terms of the agreement. The agreement is registered with the Registry of Deeds which is the Provincial body that deals with ownership of properties.

A flag lot is typically a lot with reduced frontage. In Bedford it has to be a minimum of 30 feet and creates a long, narrow strip (30 feet wide) to the back of the property. There is a full 6000 square foot lot at the back of the property.

3. Presentation of Proposal

Mr. Bone showed the concept plan on overhead. Currently, there is a two unit residential building located on the site. The proposal is a two unit building in the back of the lot. The policy within the Bedford MPS requires that the building maintain an average height and size in relation to the surrounding properties. This would be stated in the development agreement. Some initial calculations have been done on the surrounding buildings and as a result the proposed building would have a footprint of approximately 1200 square feet and a maximum height of approximately 22 feet which is less than what is permitted in the RTU Zone. Typically, there is a limited lot coverage in a residential zone plus there would be a maximum height of 35 feet.

At this point, there is not a design of the building available. Typically, discussions from a public information meeting can affect the design if there are particular issues.

Staff will provide advice to Council. Council makes the final decision on whether to approve or reject the application.

4. Questions and Comments

Nino Fabrizi, Fall River, asked if staff is reviewing the policy. Mr. Bone said is reviewing the policy to determine if any changes are required. Approximately eight or nine months ago, North West Community Council (NWCC) requested staff to review the policy. The policy has been in the Bedford MPS for some time. There was some reluctance by Council with this policy. There were some concerns as to how these flag lots were integrated into existing communities. There were also some challenges made for the policy through the Utility and Review Board. Staff will provide a report to Council outlining what the issues are and how many properties are actually eligible for the flag lots and if there are any improvements that can be made to the policy that would allow these to be better integrated into the community. Staff is not sure where it is headed yet.

Councillor Martin feels that each community has to be weighed independently. The decision has to be based on the surrounding community. Mr. Bone said the policy covers all of Bedford, but each portion of Bedford has its own concerns. This policy only applies to lots that existed prior to the implementation of the Bedford MPS which was in 1996. In this case, the lot predated the policy. Once a lot is subdivided, it is not eligible under the policy. Some lots have enough frontage to subdivide the lot, which is preferred because it is done as of right. A lot would have to be at least 108 feet in order to subdivide.

Wayne Rogers, Halifax, is curious as to what kind of building is being proposed for the site given the parameters that were given. Mr. Bone said he has yet to receive any concerns from surrounding properties as to the location of the proposed dwelling. An example of what the developer has built before (semi-detached building) was shown to the residents. This type of building could be built on the site without too much difficulty and still meet the height requirements. The dwelling is intended to be two units.

Don Lowther, Bedford, feels this is unique because it backs onto a railway; therefore, there should be less concerns than if the property backed onto another street.

Morton Kelly, Birch Grove Developments, Bedford, feels there is a need for affordable housing which has prompted the consideration of this proposed flag lot and two unit dwelling. Birch Grove Developments has been in construction for 35 years and originally opened Nottingham Subdivision in Bedford.

Mr. Rogers wondered if the issue of density is taken into account when planning for Bedford. Mr. Bone explained that in this case the policy talks about residential land uses. In the past, staff has been uncomfortable with possibly doing higher densities. The development agreement policy requires that it meets the minimum requirements of the zone.

Mr. Rogers supports the application. Although, when there are lots large enough to be subdivided, he would much rather see the developer and HRM enter into a development agreement to put a four unit building on a piece of property rather than a flag lot with one building hidden behind the other especially when the density will be the same.

Walter Regan, NWPAC, Sackville River Association, Sackville, asked if the property could ever be commercial. Mr. Bone said the policy in Bedford does not allow for commercial options on this site.

Mr. Regan asked if there will be a fence built between the two lots. Mr. Bone mentioned that there has been no discussion as of yet about fencing. It could be part of the development agreement if it is in the long term interest of creating privacy on each of the sites. Mr. Regan wondered about the safety of children and if fencing would be placed between the property and the tracks. Mr. Bone is concerned about the tracks as well. There have been discussions with CN Rail who have made some recommendations. Councillor Martin mentioned that there are a lot of residents along that stretch of tracks and all the properties would have to be looked at not just one. Mr. Bone said because there is no general requirements in the Bedford Land Use By-law (LUB) for fencing, there is no way to retroactively apply it to the whole stretch. It would have to be done piece meal and maybe

eventually have a fence along the entire length of the rail line. CN Rail makes a number of recommendations that are not currently required in the Bedford LUB as far as setbacks from the rail line.

Mr. Regan asked if the four properties could be sold to four different owners. Mr. Bone explained that the four units will always be on two separate properties, two units on each property. There is no way to further subdivide the two proposed units even though it is a duplex because there is not enough road frontage. If the flag lot is created, the other lot could potentially be subdivided; however, the orientation and design of the building is such that it doesn't easily allow for that subdivision. If the building was torn down and a new one built, there is potential for subdivision. In the end, the development agreement typically covers both properties.

Mr. Regan asked if there is ample parking. Mr. Bone said the requirement in Bedford is for two parking spaces per unit; therefore, there would be adequate space on the property for that.

Mr. Regan asked if the storm drainage would be surface to which Mr. Bone agreed. The rail line is typically raised and provides a barrier. The property is fairly flat.

Mr. Fabrizi assumes that the property values will increase in the area and maybe some of the older surrounding buildings will be torn down and new built. He is concerned that the proposed building may look congested on the property when any new buildings that meet the requirements are built. The building should be compatible with what exists in the area and what will be there in the future. Mr. Bone said the flag lot policy does place a residence in behind an existing residence. There may be things that can be done to help improve the look of the building and site through architectural controls in the development agreement.

Mr. Regan asked if there would be a problem with fire truck access to the property. Mr. Bone said there wouldn't be but he would have Fire Services provide a comment.

Mr. Regan asked about landscaping and tree planting for the site. Mr. Bone said some landscaping can be required through the development agreement.

Mr. Bone thanked everyone for coming and sharing their comments and concerns regarding the application.

5. Adjournment

The meeting adjourned at approximately 7:45.