

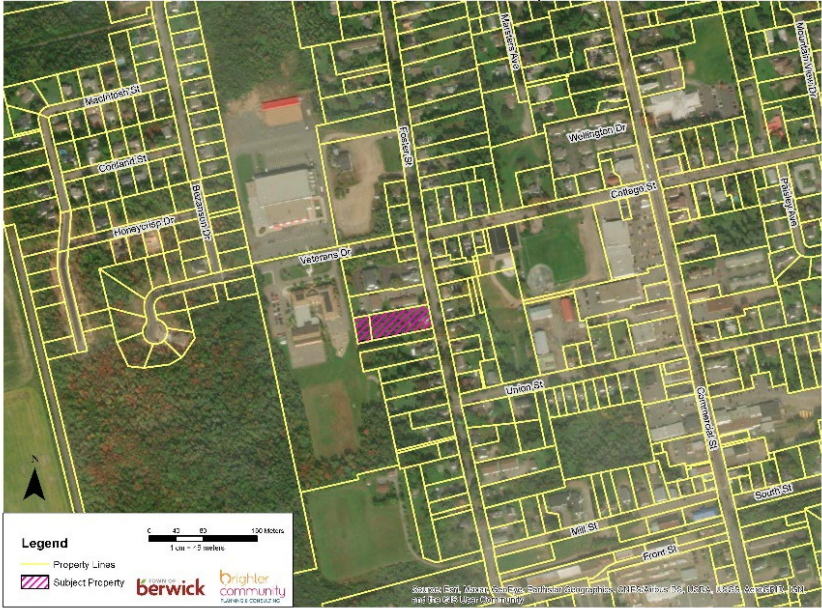
**Planning Advisory Committee Meeting  
December 13, 2022 – 6:30pm  
Town of Berwick Council Chambers  
AGENDA**

1. Call to Order
2. Approval of the Agenda
3. Approval of Previous Minutes
4. John M. Foster – Application for Development Agreement 131 Foster Street, Berwick
5. Hartley MacArthur and Michael MacArthur – Application for Development Agreement, 245 Commercial Street
6. Adjournment

Report to PAC – Development Agreement Application for 131 Foster Street (PID 55237044 & PID 55535173)	
Prepared by:	Chrystal Fuller, MCIP, LPP of Brighter Community Planning
Subject:	Development Agreement Application for 131 Foster Street (PID 55237044 & PID 55535173)
Date:	December 6 <sup>th</sup> , 2022
Purpose:	For Council to consider entering into a Development Agreement to permit the development of 12 units at 131 Foster Street.
Recommendation	<b>That PAC forward the attached development agreement to Council for First Reading with a positive recommendation.</b>

## Part 1: Background

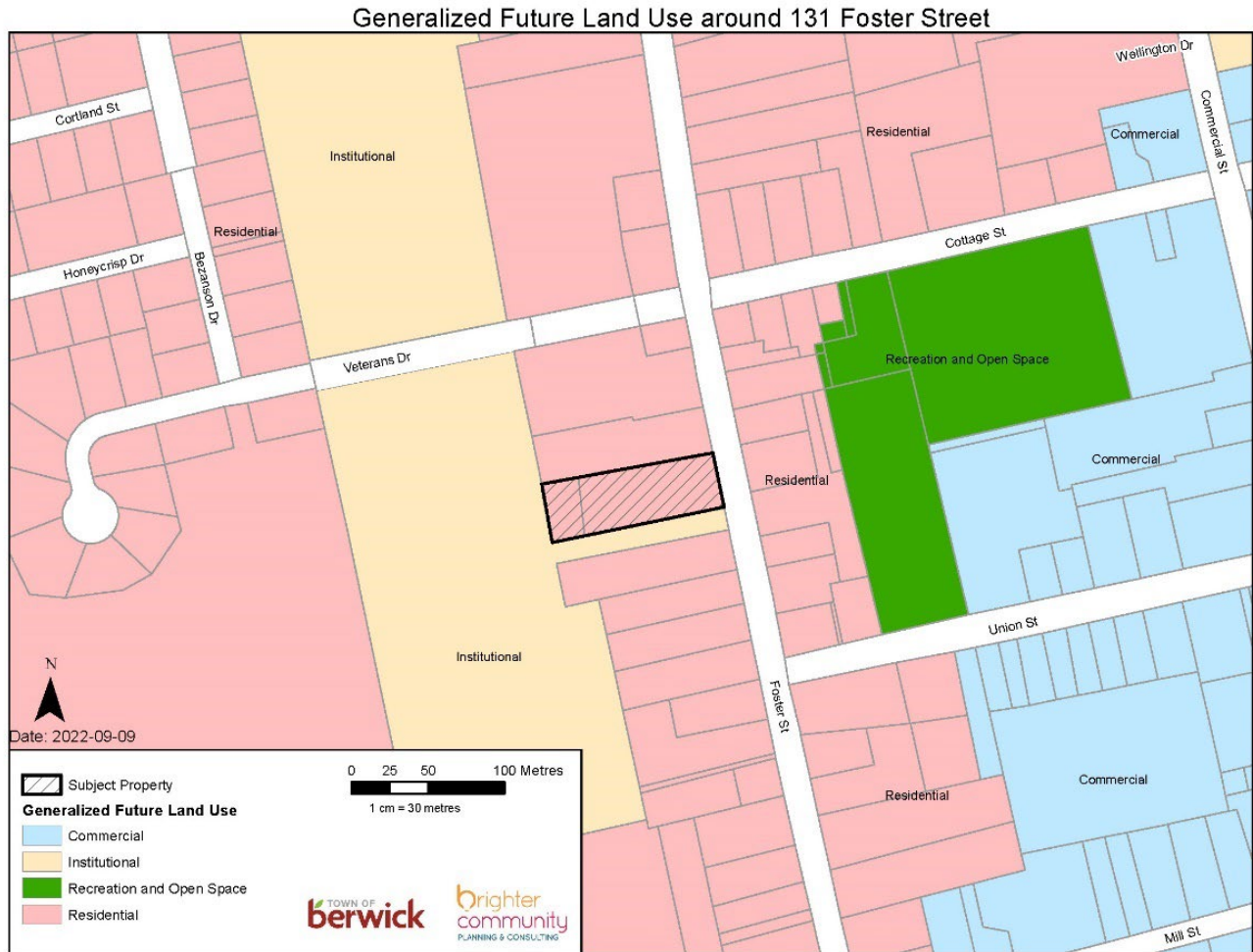
### 1.1: Introduction

Property Owner(s)	John Foster
Applicant	Nick Bentley
Civic Address	131 Foster Street
Designation	Residential
Zone	R-1
Subject Property	<p style="text-align: center;">131 Foster Street Context Map</p> 
Subject Property Area	PID 55237044 – 36,000 Square Feet PID 55535173 – 9,000 Square Feet Combined total of 45,000 Square Feet (approximately 1 acre)
Existing Land Use	Residential
Adjacent Land Use	A low-density residential area with apartment buildings to the north and the Berwick and District School to the west.

1.2: Location

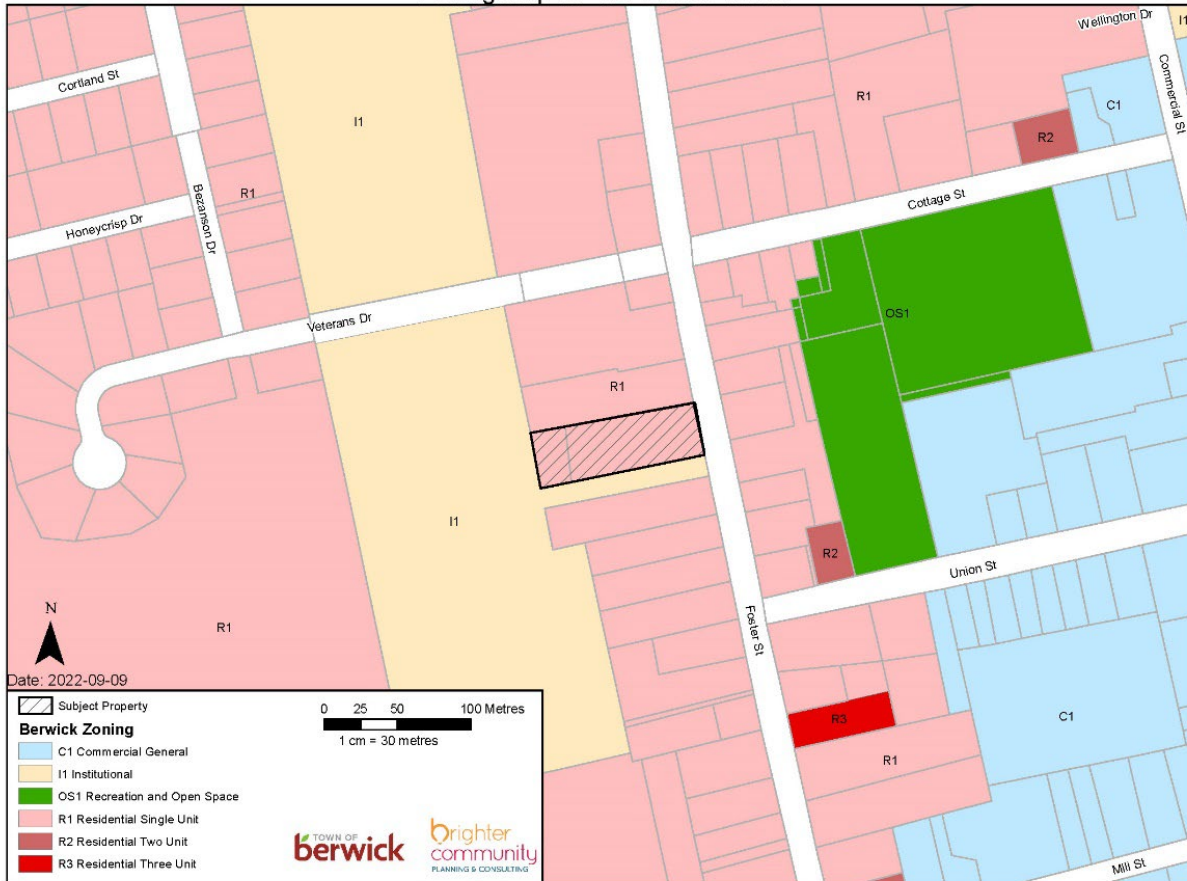
The Subject Property is located on Foster Street between Union Street and Veterans Drive, adjacent to the Berwick and District School. Although primarily in a low-density residential area, there is a variety of land uses including institutional, residential, recreational, and walking distance to commercial. There is currently a single unit dwelling at the front of the property, which will be demolished if the proposed development proceeds.

The property is designated Residential and zoned R-1.



Service Layer Credits: Town of Berwick, GeoNova.

Zoning Map for 131 Foster Street



Service Layer Credits: Town of Berwick, GeoNova.

### 1.3: Background

The owner of the property is John Foster, but the Development Agreement (DA) has been submitted under the applicant Nick Bentley. The Town of Berwick received the Development Agreement application on July 6<sup>th</sup>, 2022.

The proposed development will require the consolidation of the two lots into one.

### 1.4: The Proposal

The applicant originally applied for 16 units within eight buildings but amended the application to respond to the feedback from neighbours and staff. The amended application is now seeking a Development Agreement to permit 12 dwelling units on the site. The proposed site plan includes six individual buildings surrounding a professionally landscaped outdoor area featuring a community garden, pergola, fire pit, and walking paths. The developer intends to preserve the low-density nature of the neighbourhood while creating a private greenspace to be shared among residents. There will be one landscaped entryway that will lead to the entire development's parking lot containing a total of 24 surface parking spaces. The proposed buildings are two-storeys in height each containing two dwelling units. Depending on the geotechnical conditions, the ground unit may contain a basement allowing for extra storage or a bedroom.

The revised application also reduces the number of driveways into the proposed development to one and includes a fire access lane. The fire access lane was requested by the Fire Chief to allow easier access to fight fires if one occurs in the properties closest to the school.

The main feature of this development is the central garden commons, which results in over 58% of the lot containing a surface that allows water to permeate (or soak into) the ground. This helps manage stormwater impacts to the local area and to provide amenity space to future residents.

## Part 2: Policy Analysis

When considering Development Agreement applications, the policies of the Municipal Planning Strategy (MPS) guide decision making. The property is designated Residential on the Future Land Use Map. Within this designation, Policy R8 allows for the development of multiunit buildings. Policy R8 also helps guide the development of new multiple unit dwellings or grouped dwellings on a single lot only by Development Agreement subject to the general enabling policies of Policy IM7. Policy R9 establishes the specific compatibility criteria for evaluating proposals. The chart in Appendix A addresses each policy separately.

The proposal includes six new two-unit dwellings (duplex) in a cluster around a landscaped garden and a vegetative buffer around the property. The parking lot will be at the front of the Foster Street property. This will result in minimal visibility of the dwellings from the street. Each proposed dwelling unit will be approximately 1,000 sqft., resulting in approximately 2,000 sqft building.



*Picture 1 - View of Foster Street looking North*

On the adjacent property to the north of the subject property (PID 55243380) is an 18-unit residential development within two buildings. To the south is a large two-story dwelling. The development along the east side of Foster Street is a mix between single story and two-storey single unit dwellings.

The main policies for consideration by Council are related to ensuring compatibility of uses. Compatibility does not mean mimicry of a building, but rather considers if the development integrates well with the existing built form in the area. To assess compatibility, the policies of R9 speak to issues such as landscaping, building heights, roof line, window places and other similar issues.

Section 2.3 of the MPS provides direction regarding residential development. The MPS states that Berwick will promote new residential development that provides a variety of housing options, affordability, be respectful of the character of existing neighbourhoods, and to accommodate growth.

## 2.1: Consistency with existing development



*Picture 2 - View of Foster Street Looking South*

The height, form and massing are generally consistent with the adjacent 18-unit development to the north and the surrounding single and two-storey dwellings. To the west is the Berwick and District School, which is a two-storey building with a peaked roof. To the north, across Veteran's Drive is a commercial trucking operation with a large parking area; however, this land is zoned residential indicating that Council anticipates and is encouraging further residential development in this area of Berwick.

As the proposed development will be minimally visible from the street given the large setback of the buildings from the street, the exterior design of the buildings does not present any concerns with the consistency of the neighbourhood. The back of the proposed site abuts the side lot of the school, with the nearest building 6 meters from the rear lot line.

The rear lot line is proposed to contain a vegetative buffer. The buffer will run along the rear and side lot lines with the buildings set back 4 meters from the side yard on one side and a 7 meter from the side yard on the other.

The vegetative buffer will wrap around the parking lot and have a landscaped single lane entryway that will result in softening the impact of the parking lot, reduce the visibility of the proposed dwellings, and improve the pedestrian environment and the visual interest of the property.

## 2.2: Parking

The Land Use Bylaw (LUB) requires a minimum of 1.5 parking spaces per unit. The proposed development will have one parking area with 24 parking stalls resulting in a parking ratio of two per unit, which exceeds the requirements of the LUB.



*Picture 3 - Buildings on adjacent property to the north*

## 2.3: Other

The proposal has been reviewed against the general policies of the MPS. The proposal will provide much needed housing in town and the town infrastructure is capable of supporting the development.

## 2.4: Implementation Policies (IM7)

The implementation policies were reviewed and no issues arose. The property will be serviced by municipal sewer and will require an onsite well.

## 2.5: Public Information Meeting Summary

A Public Information Meeting (PIM) was held on September 28<sup>th</sup>, 2022, to get feedback on this application. The purpose of a PIM is to identify public issues of concern so that these concerns, if possible, can be addressed through the approval process or within the DA itself.

Approximately 18 people attended the PIM. Overall, there were four major concerns that were identified (Traffic, Flooding, Water withdrawal, and Density) and brought to the developer's attention. The following chart provides a summary of the concerns, the staff or developer comments, and if (or how) the draft DA will respond to the issue.

Concern raised by the public	Staff or Developer Comments	Addressed within the DA
The development will cause additional flooding.	All new developments need to manage their own stormwater. The proposed development might not make neighbouring flooding better, but it will not make it worse.	The draft DA will require adherence to the stormwater plans submitted at time of Development Permit (DP) application.
Traffic Impacts – concerns about road safety and capacity. Speed bumps should be implemented to reduce the speed, the roads should be widened for the buses, and a three-way stop should be inserted at the intersection of Foster Street and Union Street.	Traffic Authority did not request a traffic impact statement.	Off-site traffic upgrades are not requested.
Ground water impacts. How will this development impact the ground water supply of Berwick, and wells of the neighbours?	Last assessment of the groundwater was in 2004, which indicated that Berwick has high quality/quantity groundwater supply. No hydrological study was completed for this development. The Town may decide to update the 2004 study that would encompass all of Berwick.	The DA requires water withdrawal permits, if required under legislation, to be provided before a DP can be issued.
Too high of a density on a small lot of land in a single unit residential neighbourhood.	The increased density helps with the current housing shortage and minimizes the ecological footprint. The revised application limits the number of units to 12.	The DA reduces the number of units from 16 to 12 and requires buffering between development and adjacent uses.

### Part 3: Draft Development Agreement

The draft DA is attached and has provisions regarding the use and references the site plan. Key components of the DA:

- Requires a detailed landscaping plan at time of DP application
- Limits number of units to 12 within six buildings
- Permits a maximum of one driveway
- Water withdrawal permit, if required, is needed before a development permit can be provided.
- Buffering requirements
- Phasing is permitted but gardens must be built before last occupancy permit is issued.

### Part 4: Recommendation

The subject lands are in a primarily low-residential area with the two properties to the north containing apartment buildings. The adjacent property to the north contains 18 units, and another nearby property (PID 55243372) is approved for 20 units. From a municipal perspective, maximizing the use of existing infrastructure such as streets and underground pipes is a positive. New development that does not entail the municipality assuming new streets and services is fiscally and environmentally beneficial.

After a review of the applicable policies, the specifics of the site, the receipt of internal departmental comments and the information received from the applicant, planning staff are recommending the following motion for PAC's consideration:

**That PAC forward the attached development agreement to Council for First Reading with a positive recommendation.**

## Schedule A- Policy Summary

Policy R8. It shall be the intention of Council to consider the development of new multiple unit residential dwellings containing four (4) or more units or grouped dwellings on a single lot only by Development Agreement subject to the criteria contained in Policy IM7.	
Policy R9. It shall be the intention of Council to zone all existing residential structures containing four (4) or units and/or existing grouped dwellings located on a single lot as Residential Single Unit (R1). Expansion or redevelopment of existing residential structures containing four (4) or more units and group dwellings on a single lot shall be considered only by Development Agreement. In addition to the criteria contained in Policy IM7, Council shall give consideration to the following when reviewing applications for the development of multiple unit dwellings:	
(a) That the proposed structure is generally compatible with existing dwellings on adjacent properties;	Proposal compatible with adjacent properties and neighbourhood.
(b) That the design of the proposed structure and site reflects and is consistent with adjacent existing dwellings with respect to:	
(1) Building Mass;	Building Mass consists of six two-storey dwellings that follows the surrounding buildings gross floor area and structure type.
(2) Relationship to and setback from the street line	As the proposed development consists of group dwellings with minimal visibility from the street, the relationship to the street line is not a key component.
(3) Roof line heights and orientations;	As the proposed development is bordered by a vegetative buffer with minimal visibility from the street, the orientation and roof line height is compatible.
(4) Building Height:	The proposed development consists of two-storey buildings keeping the building height compatible with the neighbourhood dwellings.
(5) Placement and Proportions of window and door openings along the primary façade;	As the proposed development is bordered by a vegetative buffer and will have minimal visibility from the street, the primary façade details are limited on the street.
(6) Location of on-site parking	The parking lot will be located at the front of the property with one entryway.
(7) Landscaping and landscape treatment	Large amount of landscaping in the center of the garden cluster and the vegetative buffer around the property.
In considering amendments to the Land Use By-law and/or the entering into a Development Agreement, in	

addition to the criteria set out in various policies of this Strategy, Council shall consider:	
(a) That the proposal is in conformance with the intents of this Strategy and with the requirements of all other Town By-laws and regulations:	Proposal is generally consistent with the Municipal Planning Strategy.
(b) That the proposal is not premature or inappropriate by reasons of:	
(1) The financial capability of the Town to absorb any costs relating to the development	No known impact. The end use will be a financial benefit to the Town, increase density on existing infrastructure and contribute to the tax base without increasing infrastructure costs.
(2) The adequacy of sewer and ground water to support the proposed density of development;	No concerns
(3) The adequacy and proximity of school, recreation, and other community facilities;	No concerns.
(4) The adequacy of road networks adjacent to, or leading to the development;	No concerns.
(5) The potential for the contamination of watercourses or the creation of erosion or sedimentation	No concerns.
(6) The potential for damage to or destruction of historical buildings and site;	N/A
(c) That controls are contained in a Land Use By-law or a Development Agreement so as to reduce conflict between the development and any other adjacent or nearby land use by reason of:	
(1) Type of use;	Use is permitted by development agreement, subject to policies.
(2) Emissions including air and water pollutants and noise	No controls required.
(3) Height, bulk and lot coverage of proposed building	
(4) Traffic generation, access to and egress from the site, and parking;	No issues.
(5) Open storage	
(6) signs	
(7) similar matters of planning concern;	
(d) The suitability and development costs of the proposed site in terms of steepness of grades, soil and geological conditions, marshes, swamps, or bogs and proximity of highway ramps, railway rights-of-way and other nuisance factors;	No impact.
(e) That provision is made for buffering, landscaping, screening and access control to reduce potential incompatibility with adjacent land uses and traffic;	Landscaping as proposed on site plan.
(f) That the development is located so as not obstruct any natural drainage channels or watercourses	N/A

## Appendix A – Draft Development Agreement

**MINUTES OF THE PUBLIC INFORMATION MEETING FOR NICK  
BENTLEY/JOHN FOSTER DEVELOPMENT AGREEMENT APPLICATION  
131 FOSTER STREET**

September 28, 2022

6.00 PM

Town of Berwick Council Chambers

Chrystal Fuller introduced the proposed Development Agreement application. Both developers, Nick Bentley and John Foster were in attendance and introduced.

Ms. Fuller then gave a power point presentation explaining the project and application that has been brought to the Town.

Ms. Fuller than asked for questions or comments from the gallery.

**1. Gloria Cunningham – Foster Street**

- Lives directly across the street from the proposed development and is not in favor of same
- Buses and other traffic go too fast
- Street is not wide enough and is crumbling on sides
- Well/water concerns
- Too near school

Bentley – Foster Street is on the top of the list for infrastructure repair. We will deal with a Traffic Study if required. This development will bring in tax dollars to help with infrastructure demands such as street repairs.

Boyd – Foster Street is on the 5-year plan and the design has been completed. A water study has been done in 2003 which indicates that Berwick has great amounts of water but Council is discussing having an updated study done.

**2. Ann Cooper – 125 Foster Street**

- Traffic concerns
- Well/water concerns
- Inquired about size of units (Bentley noted there are no firm plans as of yet, but approximately 1000 sq. ft per unit)

**3. Terry Marchant – 127 Foster Street**

- Concerns about drainage at the site
- How many people per unit?

Bentley – There has been survey shots done and work continues regarding the site/drainage plans.

Each unit will most likely be 2-3 bedrooms.

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Fuller – Pre/Post flow evaluations are a criteria for the development.

**4. Glynn Cooper – 125 Foster Street**

- Concerned about the number of buildings on the site
- Concerned property values will go down.
- Concerned that the proposed density is too much for this residential street
- Feels that a 3-Way stop at Foster/Union would be beneficial.

Bentley: The plans were drawn up from an landscape architect and the proposed site plan was the least dense plan he submitted and was felt it fit the Town better. Higher density is the way of the future.

Fuller: We look at compatibility and density are one of the criteria that is considered at that time.

**5. Jim Fredericks – 217 Cottage Street**

- Inquired if there was a water study done on the Balcom development at 135 Foster Street

Fuller – there has not, as there has been no application for permits as of yet. NS Environment controls this through a Water Withdraw Permit.

**6. Bruce Morse – 215 Cottage Street**

- Will the existing school path adjacent to the development still exist?

Bentley: Yes, it will, that right of way belongs to the School Board.

**7. Joan Levack – 258 Commercial Street**

- Will the units be rentals/what is your target for renters?

Bentley: Yes, the units will be rental units.

**8. Marie Gordon – 124 Foster Street**

- Supports this development but agrees that the infrastructure/street needs to be upgraded
- Concerned about speeding traffic
- Water needs to be reviewed

**Length of Meeting:** 6:26pm – 7:22pm

**Total in Attendance:** 18

**Council in Attendance:**

Mayor Clarke  
Ty Walsh  
Rod Reeves  
Adam Lutz  
Chris Goddard

**Planning Advisory Committee  
In Attendance:**

Rod Reeves (Chair)  
Adam Lutz  
Ty Walsh  
Joan Levack

This Development Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, A.D.,2022

Between:

**John Malcolm Foster** in Waterville Nova Scotia and hereinafter called the "Developer",

*OF THE FIRST PART*

-and-

**Town of Berwick** a duly incorporated municipal body incorporated under the laws of the Province of Nova Scotia, hereinafter called the "Town"

*OF THE SECOND PART*

WHEREAS the Developer is the owner of certain lands known as civic number insert civic number in the Town of Berwick (PID55237044 and PID 55535173) and more particularly described in the attached Schedule "A" and hereinafter called the "Property"; and

AND WHEREAS the Developer has submitted a detailed development proposal for to construct six (6) two unit buildings, for a total of twelve units on the Property;

AND WHEREAS Policy R-8 of the Town of Berwick Municipal Planning Strategy requires that new multiple unit dwellings be considered and approved by Development Agreement;

AND WHEREAS the proposed development of the Property has been considered at a Public Hearing held on Insert Date of PH. and approved by a majority vote of the Town Council on Click or tap to enter a date. pursuant to requirements of the Municipal Government Act;

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

**Part 1: General Requirements and Administration**

**1.1 Applicability of Agreement**

1.1.1 The Developer agrees that the Property shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.1.2 Variances to the requirements of the applicable Land Use By-law shall be permitted in accordance with the Municipal Government Act on the whole site as shown on Schedule B.

## **1.2 Applicability of Other By-laws, Statutes and Regulations**

1.2.1 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 Town applicable to the Property (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 Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.

1.2.2 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 the Town 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 or appropriate professional as required by this Agreement or other approval agencies.

## **1.3 Conflict**

1.3.1 Where the provisions of this Agreement conflict with those of any by-law of the Town applicable to the Property (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.

1.3.2 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.

## **1.4 Costs, Expenses, Liabilities and Obligations**

1.4.1 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 laws, by-laws, regulations and codes applicable to the Property.

## **1.5 Provisions Severable**

1.5.1 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.

## **1.6 Property**

1.6.1 The Developer hereby represents and warrants to the Town that the Developer is the owner of the Property and that all owners of the Property have entered into this Agreement.

**Part 2: Definitions**

2.1.1 All words used herein shall be defined as in the Land Use Bylaw and Subdivision Bylaw unless otherwise specifically defined herein. If not defined herein or in these Bylaws, the customary meaning shall apply.

2.2 When interpreting this agreement, the following words are defined as follows:

- a) *Development* means the landscaping, buildings and other associated elements as shown on Schedule “B”
- b) *Land Use Bylaw* means the Town of Berwick Land Use By-law adopted by Council on October 9, 2012, as amended from time to time.
- c) *Municipal Planning Strategy* means the Town of Berwick Municipal Planning Strategy adopted by Town Council on October 9, 2012, as amended from time to time.
- d) *Permeable Area* means the area of a property that allows water to infiltrate the underlying soils. Permeable Surfaces shall include, but not be limited to, vegetative planting beds, porous asphalt, porous concrete, single-sized aggregate, open-jointed blocks, stone, pavers, or brick that are loose-set and without mortar.
- e) *Stormwater Management Plan* a set of drawings and other documents, prepared by and stamped by a Professional Engineer that maintains or restores quality and quantity of stormwater runoff to pre-development levels.

**Part 3: Use of Property, Subdivision and Development Provisions**

**3.1 Schedules**

3.1.1 The Developer shall develop the Property in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement:

- a) Schedule A: Legal Description of the Property(s)
- b) Schedule B: Site Plan

**3.2 Requirements Prior to approval**

3.2.1 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- a) Approval from Nova Scotia Environment and Climate Change (NSECC), if required for the Development, for a water withdrawal permit for the Development. If the Development is phased, the requirement for a Water Withdrawal Permit shall be based on the entire Development.

- b) A detailed Stormwater Management Plan which demonstrates, to the satisfaction of the Development Officer, that pre and post development storm water flows are balanced.
- c) An approved Final plan of subdivision for the Property that consolidates PID PID55237044 and PID 55535173
- d) A detailed landscaping plan for the entire site that generally complies with the Site in Schedule B. The Landscaping Plan shall include the location of shrubs, trees, fences and other landscaping elements which generally comply with the site plan, and also provide buffering between the Property and adjacent uses.
- e) A detailed site plan that complies with each of the following requirements:
  - (i) A minimum side yard requirement of 13.5 feet and rear yard of 22.5 feet. All other yard requirements shall comply with the General Lot Requirements of the R-3 zone except as altered by this Agreement;
  - (ii) Include a minimum of 15 parking spaces;
  - (iii) The maximum building height shall not exceed 35 feet;
  - (iv) Include an acceptable location for waste collection;
  - (v) Include one two-way driveway access to the Property which shall comply with the requirements of the Land Use Bylaw;
  - (vi) Include a fence or a treed buffer along the rear property line that adequately screens the Development from the existing school property;
  - (vii) The Permeable Area is no less than 50% of the gross lot area.
  - (viii) A Fire Lane capable of accommodating a fire truck. The fire lane must be no farther than 50 feet from the buildings located closest to the school property; and
  - (ix) That is generally consistent with the Site Plan shown in Schedule B.

3.2.2 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Property for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Town. No Occupancy Permit shall be issued by the Town 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.

3.2.3 The Development Officer will consider minor changes to the location and configuration of the Fire Access Lane. Any requested change is subject to the requirements of the Berwick Fire Chief and other provincial or municipal legislation or requirements.

### 3.3 **General Description of Land Use**

3.3.1 The use of the Property permitted by this Agreement are the following and as generally shown on Schedule B:

- Twelve (12) two-unit residential units in six (6) buildings
- All uses permitted in the R-1 zone, as amended from time to time

### 3.3.2 Maintenance

The Developer shall be responsible to maintain the property in compliance with all Town By-laws and applicable Provincial regulations and to ensure that the property is maintained in a safe and clean condition.

## **Part 4: Streets and Municipal Services**

### **4.1 Off-Site Disturbance**

4.1.1 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 Town's Engineer or Director of Public Works.

## **Part 5: Amendments**

### **5.1 Non-Substantive Amendments**

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

- a) Date of completion of the Development
- b) Configuration of the parking area
- c) A reduction of Permeable Area to a minimum of 45% of the gross area of the Property.

### **5.2 Substantive Amendments**

5.2.1 Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

## **Part 6: Registration, Effect of Conveyances and Discharge**

### **6.1 Registration**

6.1.1 A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for the County of Kings, Nova Scotia and the Developer shall incur all costs in recording such documents.

### **6.2 Subsequent Owners**

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

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

### **6.3 Commencement of Development**

6.3.1 In the event that Development on the Property has not commenced within **twenty four months** from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Property shall conform with the provisions of the Land Use By-law.

6.3.2 For the purpose of this section, commencement of Development shall mean issuance of a Building Permit.

6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of Development time period through a resolution under Section 6.1, if the Town receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

### **6.4 Completion of Development**

6.4.1 Upon the completion of the whole Development, 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.

6.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

### **6.5 Phasing**

6.5.1 The Development may be constructed in phases.

6.5.2 If the Development is constructed in more than two phases, a minimum of 50% of the Landscaping shall be installed before the Development Officer issued the Development Permit for a fourth building.

6.5.3 All landscaping shall be installed as per the approved landscaping plan before the Occupancy Permit for the final unit is issued.

### **6.6 Discharge of Agreement**

6.6.1 If the Developer fails to complete the Development, including the Landscaping Plan, after 6 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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.

**Part 7: Enforcement and Rights and Remedies on Default**

**7.1 Enforcement**

7.1.1 The Developer agrees that any officer appointed by the Town to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Town to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within seventy two hours of receiving such a request.

**7.2 Failure to Comply**

7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Town has given the Developer 30 days written notice of the failure or default, then in each such case:

- a) The Town 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 defence based upon the allegation that damages would be an adequate remedy;
- b) The Town may enter onto the Property 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 Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the covenants or remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the Assessment Act;
- c) The Town 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; or
- d) In addition to the above remedies, the Town reserves the right to pursue any other remedy under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

**Part 8: Expenses**

8.1.1 In addition to the costs to be paid pursuant to section 6.1.1, any expenses incurred by the Town in exercising its rights under Section 12 shall be paid by the Developer to the Town. Such expenses may include, but are not limited to, costs incurred in returning property owned by the Town, or the Property to their original condition before the beginning of work on the Development, costs incurred for entry on the Properties and performance of the Developer's obligations, and all solicitors' fees and disbursements

incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Town as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the Properties. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest shall be treated as an expense

- 8.1.2 The Developer shall be liable for any damage caused to public or private property by Developer or any contractor or other individual doing work related to the Development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the Development. The Developer shall obtain and maintain in force throughout the course of construction on the Development, liability insurance coverage to ensure the responsibilities which the Developer is assuming in this section.

**Part 9: Notice**

Any notice to be given under this Development Agreement shall be made in writing and either served personally or forwarded by courier or by registered mail, postage prepaid,

if to the Town to:

**Town of Berwick**  
236 Commercial Street  
Berwick, NS  
B0P 1E0  
Attention: Chief Administrative Officer

And if to the Developer to:

John Malcolm Foster  
PO Box 89  
Waterville, NS

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, agents, successors and assigns.

IN WITNESS WHEREOF, this Agreement was properly executed by the respective parties on the day and year first above written

SIGNED, SEALED AND DELIVERED

In the presence of:

**Developer**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Insert Name of Developer

**Town of Berwick**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

Schedule "A", - Property Description

All that certain lot of land and premises situate in Berwick, in the County of Kings and Province of Nova Scotia, on the West side of Foster Street, and bounded and described as follows:

Beginning on the West line of Foster Street at the Southeast corner of land now or formerly owned by Hiram Thomas;

Thence North Eighty-four Degrees West along the South line of said Thomas to lands now or formerly of John N. Chute;

Thence Southeasterly along said Chutes line to an angle in said Chutes lands;

Thence Easterly along said Chutes North line to Foster Street, aforesaid;

Thence Northerly along the West line of said Foster Street to the Place of Beginning, and containing One acre, more or less.

Saving and Excepting lands conveyed from Donald Whittier and Judith Whittier to Malcolm Foster by Warranty Deed recorded at the Kings Registry in Book 424 at Page 328 as Document No. 7470, known as PID 55535173.

Saving and Excepting thereout and therefrom from Lots No. 1 & 2 that certain lot of land described as Parcel "G" on a plan of Survey signed on the 21st day of November, 1989, by Greg Smith, N.S.L.S., as conveyed in a Warranty Deed from John M. Foster, Malcolm Foster and Jean Foster to Her Majesty the Queen in the Right of the Province of Nova Scotia, dated the 14th day of December, 19689, as recorded in the office of the Registrar of Deeds for Kings County, at Kentville, Nova Scotia, on the 18th day of December, 1989, in Book 803, at Pages 544-549, as Document No. 18581.

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Schedule "B", - Site Plan

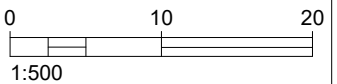
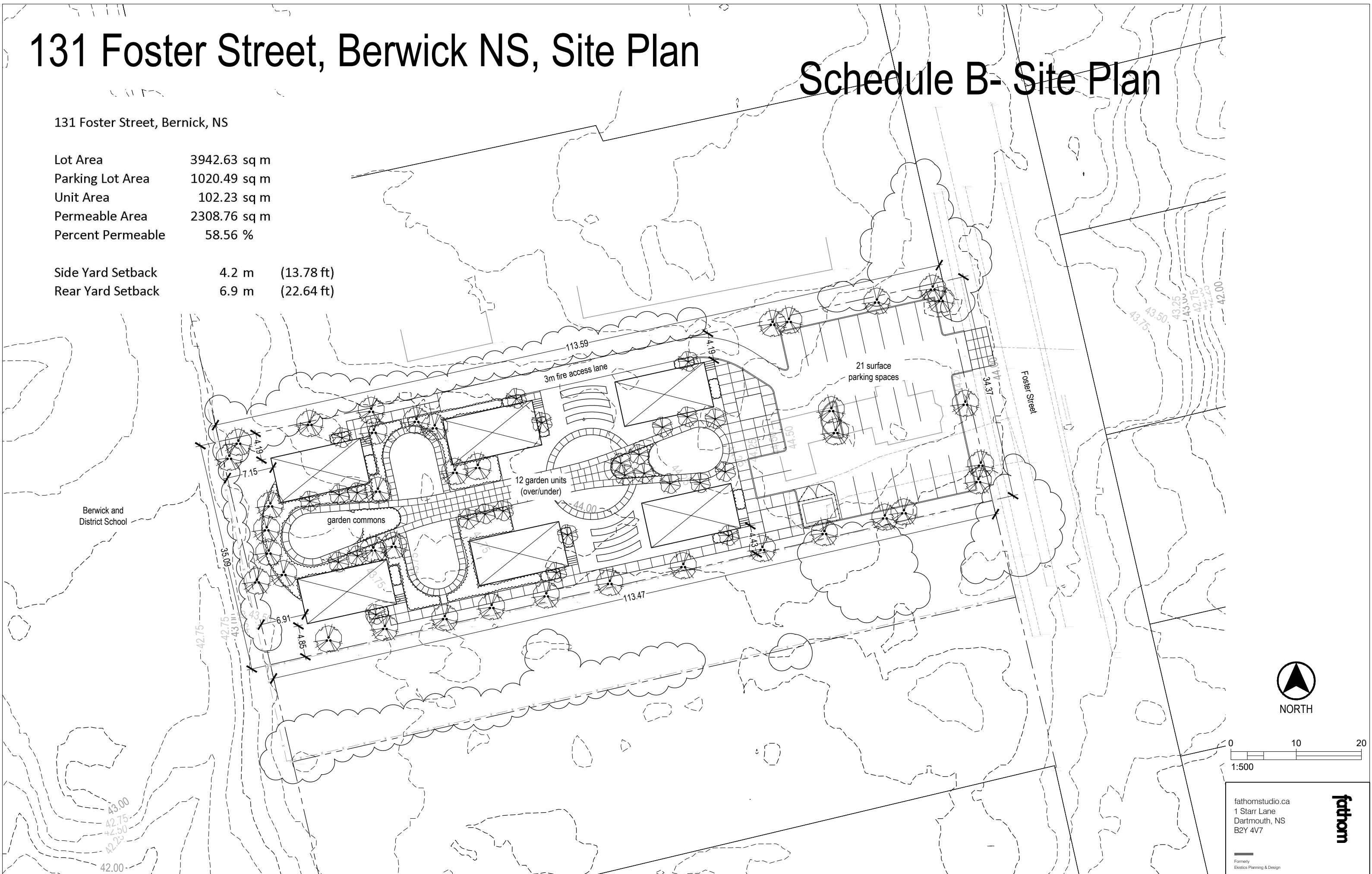
# 131 Foster Street, Berwick NS, Site Plan

# Schedule B- Site Plan

131 Foster Street, Bernick, NS

Lot Area 3942.63 sq m  
Parking Lot Area 1020.49 sq m  
Unit Area 102.23 sq m  
Permeable Area 2308.76 sq m  
Percent Permeable 58.56 %

Side Yard Setback 4.2 m (13.78 ft)  
Rear Yard Setback 6.9 m (22.64 ft)



fathomstudio.ca  
1 Starr Lane  
Dartmouth, NS  
B2Y 4V7

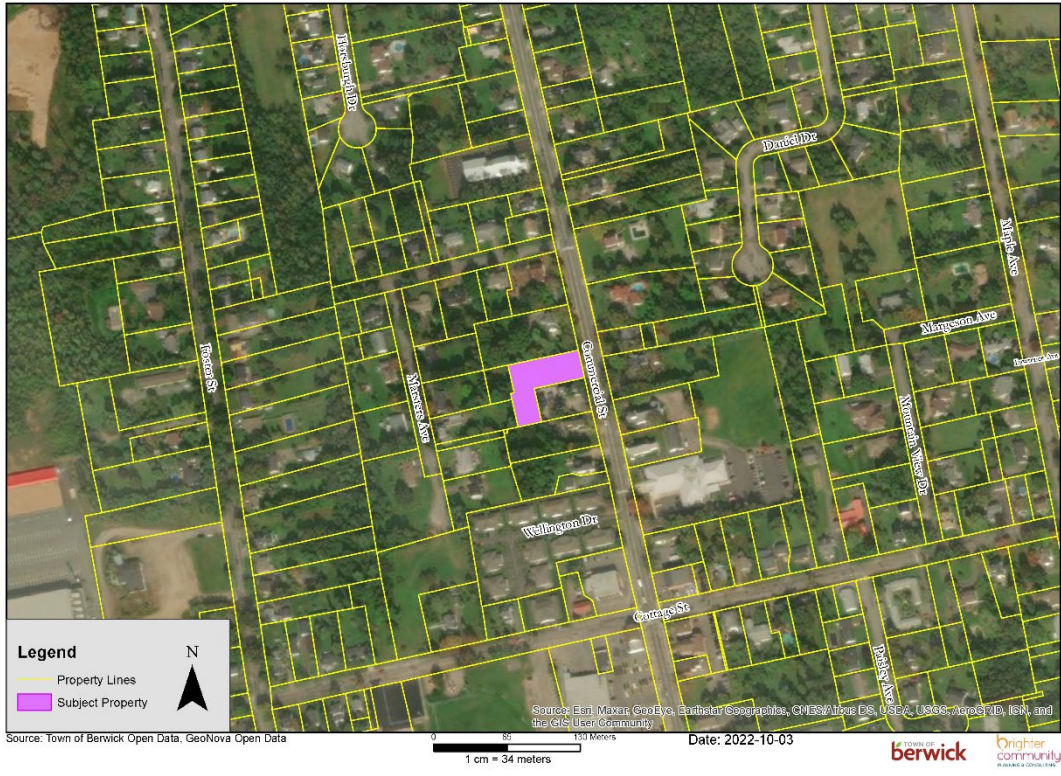
**fathom**

Formerly  
Elixics Planning & Design

Report to PAC – Proposed Boarding House - 245 Commercial Street	
Prepared by:	Chrystal Fuller, MCIP, LPP of Brighter Community Planning
Subject:	Application to allow a boarding house on 245 Commercial Street (PID 55238844) by Development Agreement.
Date:	December 6 <sup>th</sup> , 2022
Purpose:	PAC consideration of planning report and recommendation.

## Part 1: Background

### 1.1: Introduction

Property Owner(s)	Hartley and Michael MacArthur
Applicant	Apple Valley Foods (Contact: Jeff Sarsfield)
Civic Address	245 Commercial Street
Designation	Residential
Zone	R1
Subject Property	<p style="text-align: center;">Context Map for 245 Commercial St.</p> 
Subject Property Area	24,000 ft <sup>2</sup> (approximately 1/2 acre)
Existing Land Use	Single Unit Dwelling
Adjacent Land Use	Mostly single unit dwellings. A grouped dwelling development, small seniors home, open space, and commercial in the vicinity.
Recommendation	To forward the draft Development Agreement allowing to convert the existing single unit dwelling to a Boarding House to house up to 12 people to Council for First Reading and a Public Hearing.

Draft Motion	<i>That PAC recommend to Council that the draft development agreement for 245 Commercial Street (PID 55238844) to allow a nine room board house with a maximum occupancy of 12 people be forwarded to a public hearing.</i>
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1.2: The Request

Avon Valley Foods has applied to the Town of Berwick for a development agreement for a boarding house at 245 Commercial Street (“**Subject Property**”). Avon Valley requires a location to house participants of the Temporary Foreign Worker program who will work at its Coldbrook Plant. The proposed boarding house would house up to 14 workers within 9 bedrooms. The home, according to applicant, has seven bedrooms and plans to add another two. Workers would be picked up in the morning and driven back after their shifts, so no additional parking is proposed at this time.

Boarding houses can only occur by development agreement and therefore, this report will assess the request against the policies of the Municipal Planning Strategy to consider if it is generally consistent with the policy intent.

1.3: Location

The Subject Property is located on the west side of Commercial Street between Marsters Avenue and Cottage Street. It is located at the northern entrance of the downtown, fronting on Main Street. Although the Subject Property is in a primarily R1 zoned area, there are nearby properties that are not single unit dwellings. The adjacent properties to the south contain a day care and a senior care facility. There is also an apartment building and a cluster of duplexes on nearby Wellington Drive. On the opposite side of Commercial Street from the Subject Property, there is another senior care facility, three churches, and Town Hall.

1.4: Background

The applicant submitted a development agreement application to the Town of Berwick on September 26<sup>th</sup>, 2022. The current use of the property is a single dwelling unit with seven bedrooms and three bathrooms. The house has been owned and maintained by the MacArthur family for many years. The family put the house up for sale over 100 days ago, according to Viewpoint.ca.

Apple Valley Foods intends to purchase the property and to convert the residence into a boarding house for 14 of its workers. Apple Valley Foods uses the foreign worker legislation to augment its labour force. These federal programs allow certain industries to bring workers temporarily to Canada to work.



## Part 2: Policy Analysis

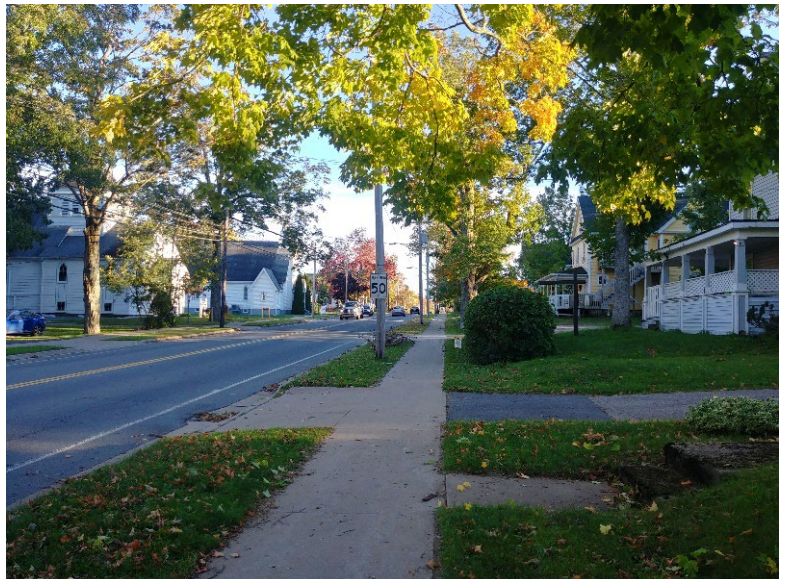
The Municipal Planning Strategy (MPS) is the document that guides planning in Berwick. The MPS sets goals, objectives about land use planning, and adopts specific policies to implement the goals and objectives.

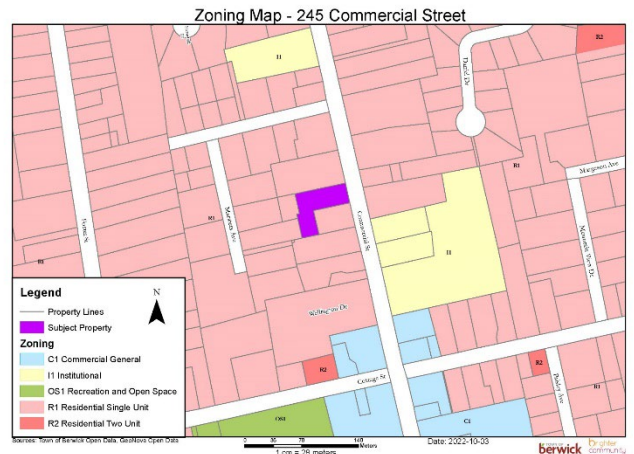
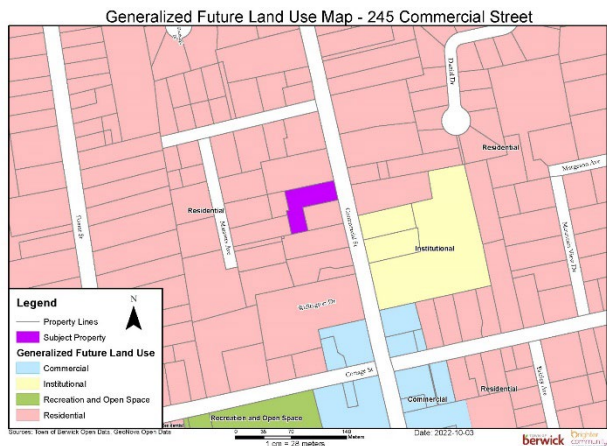
In Section 2.3 of the MPS, the overall objective for residential development is articulated. The MPS states that the Town of Berwick will promote new residential development that provides a variety of housing options, affordability, to be respectful of the character of existing neighbourhoods, and to accommodate the need for growth.

### 2.1: MPS Policies

The property is designated Residential and zoned R1. Within the residential designation, Policy R1 enables Council to create a Residential Generalized Future Land Use Designation on the Generalized Future Land Use Map and encourages the development, maintenance, and enhancement of a wide variety of residential uses and related compatible uses within this Designation.

Policy R18 enables Council to consider the establishment of new boarding houses by development agreement, subject to the implementation policies of IM7.





## 2.2: Land Use Bylaw Regulations

In Berwick, the Land Use Bylaw defines a boarding house as a “dwelling in which the proprietor supplies either room or room and board for monetary gain, to more than two persons exclusive of the lessee or owner thereof or members of his family and which is not open to the general public”. The proposed use meets this definition and therefore, a development agreement is required if the use is to be permitted.

## 2.3: Provincial Statements of Interest

The Provincial Statement of Interest (PSIs) are established in the Municipal Government Act. Municipal Planning Strategies adopted by Council must be “generally consistent” with these five statements. Of the most relevant to this application is the PSI on housing, which encourages a diversity of housing.

## Part 3: Issues

### 3.1: History

Boarding houses are a historical use that arose during industrialization when people moved to cities. Boarding homes often took the form of people renting out rooms in their homes and providing food. These boarding houses provided housing to people who needed short term housing or could not afford to rent or buy. It was described as a “transitory step between family life and independence.”<sup>1</sup> Post World War 2, the number and quality of boarding houses diminished as people moved toward the private housing market and home ownership. Boarding houses more recently, especially in the inner cities were viewed as, “...markers and producers of neighbourhood decay.” (Jill Grant, 2018)<sup>2</sup> Boarding houses are beginning again to be recognized as an affordable housing choice and are an important part of having a diversity of housing options within a community. They provide housing for low-income individuals, immigrants, students and, for the some industries, to house foreign workers.

Boarding houses are often located in large older homes that can house more people than today’s modern homes need to. Although boarding houses can be purposely built, conversions of existing buildings is

<sup>1</sup> <https://www.bloomberg.com/news/articles/2016-02-22/a-brief-history-of-co-living-spaces-from-19th-century-boarding-houses-to-millennial-compounds>

<sup>2</sup> (Jill Grant, 2018)

common. Larger homes can be difficult to sell due to maintenance and heating costs since families are often not often looking for more bedrooms but rather more living space. The way that people occupy and use homes has shifted over the years. These larger homes are often converted into senior facilities, small option homes or bed and breakfasts. Within the last 5 years or so, there has been a large demand over housing farm workers in the County of Kings. Many farms are buying houses nearby their facilities to be used as worker housing.

### 3.2: Building Code and Fire Code

The Building Code and Fire Code also have specific regulations for boarding houses depending on the number of bedrooms and defines what is needed to be considered a bedroom. Boarding houses are regulated through a specific section of the Fire Safety Regulations made under Section 51 of the Fire Safety Act (SNS 2002, C6, last amended January 14, 2020). In the regulations, rooms are not permitted to have both bathroom and kitchen facilities and defines what is an acceptable means of egress, fire requirements for walls, and fire alarm requirements, just to name a few.

When reviewing how other municipalities regulate boarding houses, some restrict the number of bedrooms, the number of occupants or the number of occupants per bathroom. Some regulations also can stipulate number of people per room, which seem to be typically one or two per room.

The County of Kings is a useful comparator for Berwick and it has been stated that Kings has several boarding homes. Planning staff contacted the County to understand how it regulated these types of uses. The County of Kings does not define nor permit boarding houses. Instead, it regulates them under the Land Use Bylaw as a single dwelling unit. Whether a boarding house be for housing a family, students, or farm workers, the dwelling may used as a single housekeeping unit. From a Land Use Bylaw perspective, if the zoning requirements are met, the use has not changed.

### 3.3: Parking

Parking is also something that can be regulated and should be considered. Although in this case, the occupants of the boarding house would likely not have individual vehicles, parking requirements should be required. This summary of a report from 2017 provides some context on how other municipalities across Canada address parking. Please note that HRM recently removed the requirement for any parking spaces for boarding houses.

**Table 3: Parking requirements for rooming houses, various cities**

City	Parking requirement
Barrie	1 space for every 2 tenants
Edmonton	1 space per 2 sleeping units
Guelph	1 space per building, plus 1 space for every 3 lodgers
Halifax	1 space per room; not allowed in front yard
Hamilton	1 space for every 3 lodgers
London	0.33 spaces per unit
Mississauga	0.5 spaces per lodging unit (rounded up) except where the lodging house is not located within 500m (1,640 ft.) of a bus stop, in which case, 1 space per lodging unit.
Oshawa	0.5 spaces per lodging unit
Ottawa	No parking requirements west of Rideau Canal (central area). East of the canal, 0.5 per rooming unit. Inner City area: 0.25 spaces per rooming unit. Suburb and rural areas: 0.50 spaces per rooming unit. Bike parking: 0.25 spaces per rooming unit, or 0.75 per rooming unit if in a postsecondary educational facility.
Vancouver	1 space for every 2 sleeping units
Waterloo	1 space for every 2 tenants and 1 for owner (if living on site)

### 3.4: Density

The number of people in a boarding house should ultimately relate to the size of the dwelling and the number of bedrooms. HRM allows up to 10 rooms with no restrictions on the number of occupants in rural zones. Other municipalities regulate the number of rooms or the number of people per bathroom.

### 3.5: Temporary Foreign Workers

The government of Canada established a Temporary Foreign Worker (TFW) program to help fill labour shortages in critical sectors, one of which is farm labour. In fact, difficulty securing workers was identified as a problem for the local manufacturing industry by the Regional Enterprise Network (REN)

The TFW program requires employers to provide a Labour Market Impact Assessment demonstrating the positive or neutral impact on the local labour market.<sup>3</sup> The TFW program also has specific requirements for the housing of temporary foreign workers where the employer must also provide the TFW with adequate, suitable, and affordable housing.

This means that TFWs are not permitted to pay more than 30% of their income towards housing and employers must demonstrate that affordable housing can be procured. Before it is occupied, the house must be inspected by professional and licensed inspector following a specific report from the TFW program. The program further requires that health care benefits be provided and that wages must be “similar” to what is paid to Canadian and permanent residents.

One of the concerns expressed by neighbours was about the need to supply housing for workers for a business in the County. Planning policy does not consider the workplace of an individual when considering a

<sup>3</sup> <https://novascotiainmigration.com/help-for-employers/hiring-a-temporary-foreign-worker/>

housing proposal. However, questions about housing to support the broader economy and to meet housing need is important context. Staff contact the Valley REN to get specific information. According to information provided by the REN, housing has become a barrier to recruitment of staff, which is already a significant challenge. In the second quarter of 2022, there were over 100 job postings in the manufacturing sector alone.<sup>4</sup> The Town of Berwick is a member of the REN and is a partner in workforce strategy, which states “Municipalities and Towns, including the Municipality of the County of Kings, West Hants, Town of Berwick, Town of Kentville and Town of Middleton are partners in workforce development and play critical roles in addressing workforce wrap-around supports, including transit, infrastructure, housing, property taxation and quality of life considerations.”

### 3.6: Public Information Meeting Summary

A Public Information Meeting (PIM) was held on October 13<sup>th</sup>, 2022 to get feedback on this application. The purpose of a PIM is to identify public issues of concern so that these concerns, if appropriate or possible, can be addressed through the approval process or within the DA itself.

Eleven people attended the PIM. The following chart provides a summary of the concerns, the staff comments, and if (or how) the draft DA will respond to the issue.

Concern raised by the public	Staff	Addressed within the DA
Too many people in a single house.	There is no maximum of residents for a boarding house in the Town of Berwick. There are requirements under the foreign workers program for the living conditions of the resident.	The number of residents will be capped at 12.
Concerns about noise and garbage.	The amount of garbage produced from a boarding house is unknown, but can be addressed in the DA.	The draft DA will require maintenance standards and for garbage to be dealt with appropriately.
Future use of the property.	The property is zoned R1, and can be used for any of the permitted uses in the zone. If it stays a boarding house, then the requirements of the must be followed.	The use of the property will allow any R1 zone use and a boarding house.
Does the dwelling need to be updated to comply with the Fire and Building Code?	Building and Fire Codes have specific requirements for Boarding Houses.	The DA will require that all Fire and Building Code requirements are met.
Desire to retain housing for families	Housing in Berwick is generally comprised of single unit dwellings and apartments, which are just one part of providing housing choice.	The DA will not address issues of who lives in a home.
Why house workers for a company located in Coldbrook in the Town?	The workplace location is not considered. Many residents of Berwick do not work within the	DA will not address issues related to location of employment.

<sup>4</sup> Personal Communication between C.Fuller and M. Redden with information provided by Valley REN with information pulled from Vicinity Jobs, which provides labour market information to the REN.

Concern raised by the public	Staff	Addressed within the DA
	Town Boundaries.	

### 3.7: Analysis

Boarding will create a wider variety of housing options and help with the current housing demand. As most workers will not have a personal vehicle, being within walking distance to services, such as grocery stores, the library or a drug store, is important. The workers will be walking distance to the commercial district allowing easy access to necessities such as groceries, drug prescriptions, and home hardware equipment. Being located on a main road, the workers will also have easy access to Berwick’s public transportation.

The MPS does not provide any guidance regarding specific requirements for boarding house uses in Berwick, so best practices from other jurisdictions along with considerations of Berwick’s goals and objectives can help inform what specific regulations are included in a development agreement. The enabling policies of IM7 do not provide any additional guidance for boarding houses on this lot.

The MPS is clear in its intent to provide a variety of housing choices to people. In fact, the Town has a housing committee that is seeking solutions to provide additional types of housing within the Town. The words “housing crisis” continues to be used throughout municipalities in Nova Scotia, recognizing that home prices have increased to such an extent that home ownership is beyond the reach of many. Rental accommodations are also difficult to find, forcing employers such as Avon Valley, to seek affordable housing options for its staff, including TFW.

With the increased difficulty of finding rental accommodations, the hard-to-house, students, immigrants, and others need to find other types of housing options to accommodate them. Municipalities no longer can just focus on encouraging single unit dwellings but must take a broader view if all who need housing are able to find it.

Boarding houses are clearly enabled by the MPS, and in many ways are not dissimilar from bed and breakfasts, small option homes or seniors’ homes, all of which are permitted within the residential designation. From a land use perspective, the number of residents, the amount of traffic, sewer and water demands, and noise will be similar. To compare, Orchard Villa has 12 beds available and several staff and visitors, generating more traffic than would likely be anticipated from a boarding house with up to 14 people.<sup>5</sup>

Under a DA, the proposed use will be required to be maintained on a regular basis and continue to appear as a single unit dwelling.

From a municipal perspective, maximizing the use of existing municipal infrastructure such as streets and underground pipes is a positive. New development that does not entail the municipality assuming new streets and services is a benefit.

## Part 4: Draft Development Agreement

The draft DA is attached and has provision regarding the use .

- Maximum of 9 bedrooms for a maximum of 12 people
- No kitchen facilities in individual rooms
- Required to meet the Building and Fire Code regulation for boarding homes

<sup>5</sup> [https://caregiversns.org/images/uploads/all/Private\\_Pay\\_Housing\\_Options\\_Valley\\_Region\\_Updated\\_November\\_2021\\_-\\_Sheet1\\_\(1\).pdf](https://caregiversns.org/images/uploads/all/Private_Pay_Housing_Options_Valley_Region_Updated_November_2021_-_Sheet1_(1).pdf)

- Exterior changes must be consistent with the look of single unit dwellings
- Outdoor amenity spaces shall be provided
- Parking areas must be in the side or rear yards.

The applicant has reviewed the draft DA and has agreed to reduce the maximum number of occupants from 14 to 12.

#### Part 5: Recommendation

After a review of the applicable policies, the specifics of the site, the input received from the public and the submissions from the applicant, the development as proposed is generally consistent with the policies of the Municipal Planning Strategy. Staff recommend the following motion for PAC's consideration.

Draft Motion for consideration:

***That PAC recommend to Council that the draft development agreement for 245 Commercial Street (PID 55238844) to allow a nine room board house with a maximum occupancy of 12 people be forwarded to a public hearing.***

## Appendix A- Policy Summary

Policy R1. It shall be the intention of Council to create a Residential Generalized Future Land Use Designation on the Generalized Future Land Use Map and encourage the development, maintenance and enhancement of a wide variety of residential uses and related compatible uses within this Designation.	Boarding houses are a residential uses.
Policy R18. Notwithstanding the policies contained in this Part it shall be the intention of Council to consider the following developments within the Residential Designation only by Development Agreement:	
(k) New Rooming and Boarding Houses.	Use is permitted by Development Agreement
Policy IM7. In considering amendments to the Land Use By-law and/or the entering into a Development Agreement, in addition to the criteria set out in various policies of this Strategy, Council shall consider:	
(a) That the proposal is in conformance with the intents of this Strategy and with the requirements of all other Town By-laws and regulations:	Proposal is generally consistent with the Municipal Planning Strategy.
(b) That the proposal is not premature or inappropriate by reasons of:	
(1) The financial capability of the Town to absorb any costs relating to the development	No known impact.
(2) The adequacy of sewer and ground water to support the proposed density of development;	The property can connect to municipal sewer.
(3) The adequacy and proximity of school, recreation, and other community facilities;	No concerns.
(4) The adequacy of road networks adjacent to, or leading to the development;	No concerns.
(5) The potential for the contamination of watercourses or the creation of erosion or sedimentation	No expansion to building footprint will occur.
(6) The potential for damage to or destruction of historical buildings and site;	N/A
(c) That controls are contained in a Land Use By-law or a Development Agreement so as to reduce conflict between the development and any other adjacent or nearby land use by reason of:	
(1) Type of use;	Upon the Development Agreement, the conversion to a Boarding House homing up to 14 workers.
(2) Emissions including air and water pollutants and noise	Regulated by LUB.
(3) Height, bulk and lot coverage of	No change in building form.

proposed building	
(4) Traffic generation, access to and egress from the site, and parking;	Not significant
(5) Open storage	No open storage will be occurring
(6) Signs	N/A
(7) Similar matters of planning concern;	
(d) The suitability and development costs of the proposed site in terms of steepness of grades, soil and geological conditions, marshes, swamps, or bogs and proximity of highway ramps, railway rights-of-way and other nuisance factors;	No impact.
(e) That provision is made for buffering, landscaping, screening and access control to reduce potential incompatibility with adjacent land uses and traffic;	Requirement in the DA that parking not occur in the side yards. There is no planned expansion of the building.
(f) That the development is located so as not obstruct any natural drainage channels or watercourses	N/A

**MINUTES OF THE PUBLIC INFORMATION MEETING FOR APPLE  
VALLEY FOODS DEVELOPMENT AGREEMENT APPLICATION  
245 COMMERCIAL STREET**

October 13, 2022

6.30 PM

Town of Berwick Council Chambers

Chrystal Fuller introduced the proposed Development Agreement application. The Developer, Jeff Sarsfield, was in attendance and introduced. Ms. Fuller then gave a power point presentation explaining the project and application that has been brought to the Town.

Ms. Fuller than asked for questions or comments from the gallery.

**1. Sylvie – 14 Wellington Drive**

- Asked whether the developer will hire local residents.

*Sarsfield – They will be foreign workers mostly from the Philippines and Mexico.*

**2. Kara Levy and John Colbourne – 244 Commercial Street**

- Concerns about the maximum capacity of boarding houses.

*Fuller – Read the definition of a boarding house from the Land Use Bylaw and explained that there is no maximum of residents while the minimum is to board more than two persons.*

- Concerned that 14 people in one house is too many.

*Sarsfield - All these workers are adults and can choose where they reside. There is no contract saying they need to stay in the boarding house. They can find housing themselves elsewhere. There is a small fee they need to pay monthly.*

- Why create a boarding house in Berwick and not closer to Kentville?

*Sarsfield – We already have homes in Kentville, but housing options in the Valley are very limited. When a house this size becomes available, we take the opportunity. The house will be constantly updated and maintained.*

- Will the workers be on shiftwork? Will they all arrive and leave the house together?

*Sarsfield* – Does not know what the scheduling will be like yet. If they do fall all under the same shift, then they will not arrive in the middle of the night. The shift will happen early in the morning around 6 or 7 am.

- How will bringing 14 workers benefit the town?

*Sarsfield* – The workers will bring some of their earnings back in town when they buy groceries and engage in local activities.

- Are they permanent or seasonal workers?

*Sarsfield* – They are hired through a federal program where they are on a 12-month contract. They can reapply and stay if they wish to do so.

- Will this result in too much garbage to be picked up on a bi-weekly basis?

*Fuller* – Do not know the answer, but that can be addressed in the Development Agreement.

### **3. Jim Fredericks – 217 Cottage Street**

- Concerned that if another big house in Town goes up for sale, will another boarding house be created?

*Sarsfield* – Being a successful business, there is a constant rise in workers. If we do convert another house into a boarding house, the workers bring a lot to the community. If you look at all our other houses, you would never know that they are boarding houses as they blend and fit in extremely well.

### **4. Kelly Fisher – 231 Main Street**

- What is the future use of the house? Will it remain a boarding house or will an apartment eventually be put up for all the workers?

*Fuller* - That process would require to go through a completely different Development Agreement. This Development Agreement requires to follow the policy requirements of the Town and must be approved by Council.

### **5. Megan White – Commercial Street**

- She is the real estate agent for the property and states that the house has been on the market for several months. Many potential

purchasers have provided feedback that the house was simply too large for them.

## **6. Trevor Connell – Marsters Ave**

- Are the fire regulations different?

*Fuller – The Fire Code does have specific fire requirements for boarding houses.*

- In 10 years, and if there is no more federal funding, what will occur to the property?

*Fuller - The property is still an R1 zone. The use can go back to a single dwelling unit. If it remains a boarding house, then it must continue to comply with the Development Agreement.*

## **7. Fuller reads the letter sent from Sheila and Robert Stewart (see attached)**

*Fuller – The R1 zone still allows for this development through a Development Agreement. Boarding houses have evolved over the years.*

*Sarsfield – The house will fit in quite well with the surrounding neighbourhood. The workers will be walking around Town, but there is no intention for loitering or loud noises. All requirements must follow the building code and the immigrant worker program.*

**Length of Meeting:** 6:30pm – 7:15pm

**Total in Attendance:** 11

**Council in Attendance:**

Mayor Clarke  
Rod Reeves  
Adam Lutz

**Planning Advisory Committee  
In Attendance:**

Rod Reeves (Chair)  
Adam Lutz  
Kelly Fisher

**Representatives of the Town:**

Chrystal Fuller, Development  
Officer/Planner for the Town of  
Berwick  
Ben Croll, Brighter Community  
Planning

**Attachment 1**

Dear Ms. Boyd

Please have this letter read at the public meeting in our absence.

We are sorry that we are unable to attend the public meeting due to other obligations. I did explain this to town staff that both the Smellie's and ourselves would be away but there was no offer to reschedule and unfortunately the town does not offer a zoom component. I have to say that I was so hopeful that we would be meeting a new family in Doris McArthur's house to add to our neighbourhood and I still hope that will be the case.

I would like to express my concern that a company wants to warehouse people to work in their plant in Coldbrook. The first question I would ask is why would the company not house their employees in the community where they will be working. There are currently several homes available in that community which offers all the services that Berwick has. The county allows farmers to provide accommodation so the company could easily put their accommodation in that area. The town of Kentville does not allow rooming/boarding houses at all. Berwick appears not to have any of these facilities but there are no records to prove this either way. It is a small town and I think people would know if it were the case.

If the owners of this company live outside of Berwick it would make sense that they build or buy housing that would be near where they live so they will be responsible for their employees.

Many companies have changed the way the company works to encourage new workers and retain their current work force through higher wages, improved working conditions and making processing lines easier on their workers. Unfortunate business practices should not impact on our R1 zone. People coming and going all the time does not lend itself to building community. We are not the only R 1 zone in the town and I would like to know why the town feels it is quite all right to erode the R 1 zone. If this development agreement is passed the rooming house status will stay with the property forever.

From what staff has relayed to me this is not a rooming house with the owner providing meals and a home to residents but a facility to house workers with little responsibility for them. Perhaps I am incorrect in this assumption and live in staff will provide meals, cleaning and outside care of the house and enforcing any house rules. I would hope a business would set

a good example as an employer but this proposal does not give me any confidence.

The street has two nursing homes and a day care which offer many benefits both to the town and our neighbourhood. The people who live in the nursing homes are part of the community taking in community events, attending religious services and enjoying walks. The day care provides a much needed service and it is nice to see the children's curiosity as they walk by the gardens.

This is a matter of the town not breaking their contract with the residents of the town. If this change is granted then what happens if this business decides it needs more space where will this end. Council should be looking at what is good for the residents and what is a good fit.

Regards,

Sheila and Robert Stewart

This Development Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, A.D.,2021

Between:

**Hartley MacArthur and Michael MacArthur**, hereinafter called the "Developer",

*OF THE FIRST PART*

-and-

**Town of Berwick** a duly incorporated municipal body incorporated under the laws of the Province of Nova Scotia, hereinafter called the "Town"

*OF THE SECOND PART*

WHEREAS the Developer is the owner of certain lands known as civic number insert civic number in the Town of Berwick (PID 55238844) and more particularly described in the attached Schedule "A" and hereinafter called the "Property"; and

AND WHEREAS the Developer has submitted a detailed development proposal for Insert brief description of the proposed development;

AND WHEREAS Policy R18 of the Town of Berwick Municipal Planning Strategy requires that boarding houses be considered and approved by Development Agreement;

AND WHEREAS the proposed development of the Property has been considered at a Public Hearing held on Insert Date of PH. and approved by a majority vote of the Town Council on Click or tap to enter a date. pursuant to requirements of the Municipal Government Act;

NOW THEREFORE in consideration of the various covenants and benefits hereinafter set out in this Agreement, the parties hereto agree as follows:

**Part 1: General Requirements and Administration**

**1.1 Applicability of Agreement**

1.1.1 The Developer agrees that the Property shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.1.2 Variances to the requirements of the applicable Land Use By-law shall be permitted in accordance with the Municipal Government Act on the whole site as shown on Schedule B.

## **1.2 Applicability of Other By-laws, Statutes and Regulations**

- 1.2.1 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 Town applicable to the Property (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 Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Property.
- 1.2.2 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 the Town 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 or appropriate professional as required by this Agreement or other approval agencies.

## **1.3 Conflict**

- 1.3.1 Where the provisions of this Agreement conflict with those of any by-law of the Town applicable to the Property (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.
- 1.3.2 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.

## **1.4 Costs, Expenses, Liabilities and Obligations**

- 1.4.1 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 laws, by-laws, regulations and codes applicable to the Property.

## **1.5 Provisions Severable**

- 1.5.1 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.

## **1.6 Property**

- 1.6.1 The Developer hereby represents and warrants to the Town that the Developer is the owner of the Property and that all owners of the Property have entered into this Agreement.

**Part 2: Definitions**

**2.1.1** All words used herein shall be defined as in the Land Use Bylaw and Subdivision Bylaw unless otherwise specifically defined herein. If not defined herein or in these Bylaws, the customary meaning shall apply.

**2.2** When interpreting this agreement, the following words are defined as follows:

- a) *Garbage container* means a bin, with or without a lid, greater than one cubic metre in volume used to store garbage and refuse temporarily. This definition excludes a container used for a construction or demolition project for which a valid building or demolition permit has been issued.
- b) *Land Use Bylaw* means the Town of Berwick Land Use By-law adopted by Council on October 9, 2012, as amended from time to time.
- c) *Municipal Planning Strategy* means the Town of Berwick Municipal Planning Strategy adopted by Town Council on October 9, 2012, as amended from time to time.

**Part 3: Use of Property, Subdivision and Development Provisions**

**3.1 Schedules**

**3.1.1** The Developer shall develop the Property in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement:

- a) Schedule A: Legal Description of the Property
- b) Schedule B: Site Plan

**3.2 Requirements Prior to approval**

**3.2.1** Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- a) Submission of a floor plan that
  - (i) limits the number of habitable bedrooms to a maximum of nine (9)
  - (ii) confirms that no bedroom includes a kitchen facility
  - (iii) confirms that there are no more than two (2) beds per bedroom
- b) Confirmation that the exterior of the building maintains the appearance of a single unit dwelling
- c) A site plan showing adequate outdoor amenity space and shall include places for sitting and gathering.
- d) The site plan shall include landscape buffering or privacy fencing along and property lines with existing single unit dwellings.

- e) Drawings that demonstrate compliance with all applicable Building and Fire Code regulations.
- f) Show the location of a minimum of four parking spaces in the rear yard of the property. Parking spaces dimensions shall comply with the requirements of the LUB.
- g) The location of Garbage Containers.

3.2.2 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Property for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Town. No Occupancy Permit shall be issued by the Town 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 General Description of Land Use**

3.3.1 The use of the Property permitted by this Agreement are the following and as generally shown on Schedule B:

- Boarding House up to a maximum of 12 persons
- All uses provided for in the Land Use Bylaw, as amended from time to time.

3.3.2 Maintenance

The Developer shall be responsible to maintain the property in compliance with all Town By-laws and applicable Provincial regulations and to ensure that the property is maintained in a safe and clean condition.

All household waste must be contained with a Garbage Container or stored indoors.

## **Part 4: Streets and Municipal Services**

### **4.1 Off-Site Disturbance**

4.1.1 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 Town's Engineer or Director of Public Works.

## **Part 5: Amendments**

### **5.1 Non-Substantive Amendments**

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

a) Changes to landscaping and buffering requirements

## **5.2 Substantive Amendments**

5.2.1 Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

## **Part 6: Registration, Effect of Conveyances and Discharge**

### **6.1 Registration**

6.1.1 A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office for the County of Kings, Nova Scotia and the Developer shall incur all costs in recording such documents.

### **6.2 Subsequent Owners**

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

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

### **6.3 Commencement of Development**

6.3.1 In the event that development on the Property has not commenced within six months from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Property shall conform with the provisions of the Land Use By-law.

6.3.2 For the purpose of this section, commencement of development shall mean issuance of a Building Permit.

6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Town receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

### **6.4 Completion of Development**

6.4.1 Upon the completion of the whole development, 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.

6.4.2 For the purpose of this section, completion of development shall mean issuance of an Occupancy Permit.

## **6.5 Discharge of Agreement**

6.5.1 If the Developer fails to complete the Development after 2 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office 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.

## **Part 7: Enforcement and Rights and Remedies on Default**

### **7.1 Enforcement**

7.1.1 The Developer agrees that any officer appointed by the Town to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Town to inspect the interior of any building located on the Property, the Developer agrees to allow for such an inspection during any reasonable hour within seventy two hours of receiving such a request.

### **7.2 Failure to Comply**

7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Town has given the Developer 30 days written notice of the failure or default, then in each such case:

- a) The Town 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 defence based upon the allegation that damages would be an adequate remedy;
- b) The Town may enter onto the Property 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 Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Property or from the performance of the covenants or remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the Assessment Act;
- c) The Town 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; or

d) In addition to the above remedies, the Town reserves the right to pursue any other remedy under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

**Part 8: Expenses**

8.1.1 In addition to the costs to be paid pursuant to section 6.1.1, any expenses incurred by the Town in exercising its rights under Section 12 shall be paid by the Developer to the Town. Such expenses may include, but are not limited to, costs incurred in returning property owned by the Town, or the Property to their original condition before the beginning of work on the development, costs incurred for entry on the Properties and performance of the Developer's obligations, and all solicitors' fees and disbursements incurred in terminating or discharging this Development Agreement. Such expenses shall be payable by the Developer to the Town as a debt and may be recovered from the Developer by direct suit. They shall form a charge upon the Properties. The Developer shall pay interest on any sum so expended by the Town at the same monthly rate charged by the Town for tax arrears on the outstanding balance from time to time. Such interest shall be treated as an expense

8.1.2 The Developer shall be liable for any damage caused to public or private property by Developer or any contractor or other individual doing work related to the development. The Developer shall indemnify the Town and save it harmless from any claim, cause of action, or liability in any way relating to the development. The Developer shall obtain and maintain in force throughout the course of construction on the development, liability insurance coverage to ensure the responsibilities which the Developer is assuming in this section.

**Part 9: Notice**

Any notice to be given under this Development Agreement shall be made in writing and either served personally or forwarded by courier or by registered mail, postage prepaid,

if to the Town to:

**Town of Berwick**  
236 Commercial Street  
Berwick, NS  
B0P 1E0  
Attention: Chief Administrative Officer

And if to the Developer to:

Insert Name of Company  
Insert Mailing Address.  
Insert Town and Province.  
Attention: Insert name.  
Insert Email contact.

THIS AGREEMENT shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, agents, successors and assigns.

IN WITNESS WHEREOF, this Agreement was properly executed by the respective parties on the day and year first above written

SIGNED, SEALED AND DELIVERED

In the presence of:

**Developer**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Hartley MacArthur

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Michael MacArthur

**Town of Berwick**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Municipal Clerk

Schedule "A", - Property Description

All that certain lot of land and premises situate and being on the West side of Commercial Street in the Town of Berwick, in the County of Kings, Province of Nova Scotia, bounded and described as follows:

BEGINNING on the West limit of Commercial Street at the Northeast corner of a lot of land deeded by Dr. H.C. Marsters to Stephen Illsley and later owned by Mr. J.H. Frizzle, and then by The United Church of Canada;

THENCE Northerly along the West limit of Commercial Street a distance of 82.50 feet to the Southeast corner of lands formerly owned by the late Dr. H.C. Marsters and now or formerly owned by W.C. Stewart;

THENCE Westerly along the South side line of lands now or formerly of W.C. Stewart a distance of 209.00 feet to lands formerly owned by the late Dr. H.C. Marsters and now or formerly owned by Emelyne M. Simpson and Mary Pattillo;

THENCE Southerly along the East side line of lands now or formerly of Emelyne M. Simpson and Mary Pattillo a distance of 82.50 feet;

THENCE Westerly to an angle iron found at the Northwest corner of lands now or formerly of Doris J. MacArthur conveyed to her by deed recorded in Book 257 at Page 49 as Document No. 75295;

THENCE South 13 degrees 34 minutes 30 seconds East a distance of 17.37 feet to an iron pipe found at the Northeast corner of lands now or formerly of Dallas Frederick Simpson;

THENCE continuing South 13 degrees 34 minutes 30 seconds East along the East side line of lands now or formerly of Dallas Frederick Simpson a distance of 82.20 feet to an iron pipe found at the Southeast corner of lands now or formerly of Dallas Frederick Simpson;

THENCE North 76 degrees 51 minutes 40 seconds East along the North limit of lands now or formerly of the Baptist Church (Manse) a distance of 69.97 feet to a survey marker placed at the Southwest corner of Lot 1 depicted on a plan of survey filed as Plan P6996;

THENCE North 13 degrees 32 minutes 20 seconds West along the West side line of Lot 1 a distance of 99.39 feet to a survey marker placed at the Northwest corner of Lot 1;

THENCE North 77 degrees 00 minutes 40 seconds East along the north side line of Lot 1 a distance of 149.87 feet to the place of BEGINNING.

CONTAINING an area in excess of 24,000 square feet.

BEING AND INTENDED TO BE a consolidation of Parcel A depicted on a plan of survey filed as Plan P6996 and lands formerly of Edward D. MacArthur conveyed to him by deed recorded in Book 181 at Page 152.

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

Registration District: KINGS COUNTY  
Registration Year: 1987  
Plan or Document Number: P6996