

City of Kingston Report to Committee of Adjustment Report Number COA-21-004

To: Chair and Members of the Committee of Adjustment

From: Niall Oddie, Planner

Date of Meeting: December 14, 2020

Application for: Permission

File Number: D13-054-2020

Address: 98 Clergy Street East

Owner: Nathan Krishan

Applicant: NCP Homes Ltd. (Paul Purves)

Council Strategic Plan Alignment:

Theme: 2. Increase housing affordability

Goal: 2.1 Pursue development of all types of housing city-wide through intensification and land use policies.

Executive Summary:

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 98 Clergy Street East. The applicant is proposing to expand a legal non-conforming use by enlarging the existing third floor dormer by approximately 2.8 metres in width and 0.8 metres in depth, resulting in an additional 10.7 cubic metres of volume and approximately 4 square metres of floor space to the existing structure. The lands are zoned C1-1 by Zoning By-Law Number 96-259, which permits mixed commercial/residential developments, but not exclusive residential uses. The existing structure is occupied by four residential units, which exceeds the maximum permitted residential density within the C1-1 zone. The proposed development would not increase the number of residential units within the structure but would increase the gross floor area and volume associated with the non-conforming use. The modifications to the existing dormer would facilitate a more function layout of the existing unit and increase the height of the living space to better conform to current

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building code requirements. The structure is designated under Part IV of the *Ontario Heritage Act*. The applicant submitted heritage permit P18-082-2020 to authorize the proposed alterations to the structure, which was approved by Council on November 3, 2020. Accordingly, the proposal has been deemed to conform to the *Ontario Heritage Act* and cultural heritage policies of the Official Plan.

The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Zoning By-Law Number 96-259. The proposed dormer expansion is in keeping with the intent of the zoning by-law and represents appropriate and desirable development of the lot. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

Recommendation:

That the application for permission, File Number D13-054-2020, for the property located at 98 Clergy Street East to expand the existing third floor dormer at the rear of the structure, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-004.

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Niall Oddie, Planner

Consultation with the following Management of the Community Services Group:

Paige Agnew, Commissioner, Community Services

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Options/Discussion:

On October 23, 2020, an application for permission was submitted by NCP Homes Ltd. (Paul Purves), on behalf of the owner, 0TNathan Krishan, with respect to the property located at 98 Clergy Street East.

The application for permission requests to expand the residential use at 98 Clergy Street East to permit the enlargement of an existing third floor dormer, which is located on the rear of the structure, by 10.7 cubic metres. The existing structure contains a dwelling unit on each floor, for a total of four (4) residential units within the structure. The proposed development will maintain the existing use of the structure but would provide a modest increase in floor area and improve ceiling height for the existing third-floor unit to better conform to the Ontario Building Code. As shown in Exhibit H, the proposed development would increase the width of the existing dormer by approximately 2.8 metres, for a total width of 4.1 metres, while increasing the depth of the existing dormer by approximately 0.8 metres. The dormer would be approximately 2 metres in height and would tie into the existing roof line of the structure, thereby maintaining the height of the existing structure. The exterior modifications would provide approximately 4 square metres of additional floor area to the structure. The applicant also proposes interior modifications such that the existing fire escape up to the third floor would no longer be required.

In support of the application, the applicant has submitted the following:

- Plot Plan (Exhibit F);
- Building Elevations (Exhibit H);
- Floor Plans (Exhibit I); and
- Dormer Volume Calculations (Exhibit J).

All submission materials are available online through the Development and Services Hub (DASH) at the following link, <u>DASH</u>, using "Look-up a Specific Address". If there are multiple addresses, search one address at a time, or submission materials may also be found by searching the file number.

Site Characteristics

The subject property is located on the west side of Clergy Street East, between Princess and Brock Streets (Exhibit B). The property has an area of approximately 177 square metres with approximately 6.5 metres frontage on Clergy Street East. As shown in Exhibits F and G, the subject lands are developed with an interior rowhouse, which is part of a seven-unit block of rowhouses constructed in the late 19th century; the subject lands are designated under Part IV of the *Ontario Heritage Act*. The structure is three storeys in height and features one dwelling unit per floor including the basement, for a total of four units within the structure.

The subject property is designated Central Business District in the Official Plan and zoned 'Neighbourhood Fringe Commercial C1-1' in Zoning By-Law Number 96-259. The property abuts a fire station to the west, the Chabad Student Centre of Kingston to the east, St James

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Chapel and St Mary's Parish Centre to the south, and a mix of residential and commercial uses to the north.

Legal Non-conforming

As stated in Subsection 45(2)(a)(i) of the *Planning Act*, where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, the Committee of Adjustment may permit the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed (Section 45(2)(a)(i)).

Subsection 45(2)(a)(ii) of the *Planning* Act authorizes the Committee of Adjustment to permit the use of such land, building or structure for a purpose that, in the opinion of the Committee, is similar to the purpose for which it was used on the fay the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the Committee continued until the date of the application to the Committee. In determining whether to permit a use under Section 45(2)(a)(ii), the test is not one of reasonableness; rather, the test is established by the statutory criteria of:

- 1) A similarity between the uses; and
- 2) Whether the proposed expansion is desirable for the appropriate development or use of the land.

Zoning By-Law Number 96-259 was passed by Council in 1996 and predates the City of Kingston Official Plan which came into effect in 2010. As a general rule, any land use legally existing at the date of approval of the implementing zoning by-law that does not conform to the policies, provisions or schedules of the Official Plan or the zoning by-law is deemed a non-conforming use and should cease to exist in the long run.

Provincial Policy Statement

Subsection 3(5) of the *Planning Act* requires that a decision in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement (the PPS). The PPS provides policy direction on matters of provincial interest related to land use planning and development which are complemented by local policies addressing local interests. The application being considered is site specific to accommodate a specific proposal and does not involve any major policy considerations and as such, the proposal conforms to and is consistent with the PPS.

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Official Plan

Schedule 2 to the City of Kingston Official Plan indicates the lands are located within a Centre, with Schedule 3A designating the subject lands as 'Central Business District' (Exhibit D). Schedule 13 indicates that the subject lands are located within the 'Downtown and Harbour' detailed planning area, with Schedules DH-1 clarifying the lands are located within the 'Lower Princess Street Retail Area' and DH-3 confirming the lands do not require mandatory commercial frontage. Section 10A of the Official Plan provides detailed policy for the Downtown and Harbour area. Multi-unit buildings used exclusively for residential uses are permitted in areas without mandatory commercial frontage, but new buildings are directed to be constructed such that the ground floor could be converted to commercial uses in the future. High density residential uses are permitted, subject to the compatibility criteria outlined in Section 2.7 and the locational criteria outlined in Section 3.3.C.3. As the proposed development does not alter the existing use of the structure and the built form of the proposed dormer expansion would not adversely affect shadowing, privacy, and has been deemed an acceptable modification to a protected heritage structure, the proposed development is compatible with the surrounding land uses. As the subject lands are located within a centre, designated central business district, within walking distance to parkland and adjacent to an arterial road, the subject lands are an appropriate location for high density residential uses. The proposed development would not increase the existing density of the subject lands but would offer a minor increase in the floor area and improved ceiling heights for the existing residential unit, thereby improving the functionality of the existing unit (Exhibit I).

Section 10A.4 promotes the conservation of the historic architecture within the Downtown and Harbour area, with Section 10A.4.2 confirming that the City will ensure that any alterations to existing built heritage resources will not detract from the cultural value and character of the area. The subject lands are designated under Part IV of the *Ontario Heritage Act*. The applicant submitted heritage permit P18-082-2020 to authorize the proposed alterations to the structure, which was approved by Council on November 3, 2020. Accordingly, the proposal has been deemed to conform to the *Ontario Heritage Act* and cultural heritage policies of the Official Plan.

In certain circumstances, it may be desirable to grant the extension, enlargement or relocation of a non-conforming use as provided by the *Planning Act*. When reviewing an application for such extension, enlargement or relocation, the Committee of Adjustment must be satisfied that the legal non-conforming use continued to the date of the application to the Committee, and that the application would not extend such use beyond the area and site owned or used on the day of passage of the implementing zoning by-law, and that the application complies with the eight criteria as per Section 9.5.13 of the Official Plan regarding the extension or expansion of a non-conforming use. The subject application, requesting permission to expand an existing third floor dormer to increase the floor area and ceiling heights of the existing third floor residential unit, has been reviewed against these policies, provided below.

1. Consistency with provincial policy in effect at the time of the decision, and general conformity of the proposal with the intent of the policies and schedules of the Plan:

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The Provincial Policy Statement, 2020 and City of Kingston Official Plan both promote intensification within central business districts, within areas supported by full municipal infrastructure. Both documents promote the conservation of cultural heritage resources.

The subject lands are currently used for high density residential uses. The proposed development would not increase the residential density of the subject lands, but rather, would provide a modest increase in floor area and increased ceiling heights for the existing third floor unit by enlarging an existing dormer. The structure is designated under Part IV of the *Ontario Heritage Act* and heritage permit P18-082-2020 has been issued, confirming the proposed dormer expansion will not adversely affect the heritage attributes of the structure.

2. Compatibility of the proposal with existing uses and zones, the natural heritage system, cultural heritage resources, and with future planned uses in accordance with the Plan:

The application seeks permission to expand an existing dormer by approximately 4 square metres, which would provide a minor increase in gross floor area and elevated ceilings within an existing third floor dwelling unit. The residential use of the subject lands is compatible with the surrounding residential and institutional uses and is not anticipated to impact any future planned uses in the area. The expanded dormer would be located on the rear portion of the roof, which limits the visual impact to the structure and surrounding streetscape. As noted above, heritage permit P18-082-2020 has been issued to permit the modification to the protected structure.

3. Compatibility of proposed buildings or structures with existing buildings and structures, with zoning standards of adjacent sites, with any future planned standards as provided in the Plan, and with any urban design guidelines adopted by the City for the area or for the type of development:

The proposed rear dormer expansion does not further increase the residential density or intensity of the residential use. The proposed development would improve the functionality of the existing fourth unit by offering a minor increase in floor area and improved ceiling height within the unit. These exterior modifications would take place on the rear of the structure and would only be visible from Brock Street. It is noted that the proposed development seeks to remove an existing fire escape up to the third floor, which will improve the exterior appearance of the heritage structure; the removal of this fire escape is facilitated by interior modifications and does not affect the safety of the structure. The subject lands form an interior unit within an existing seven-unit row house constructed in the late 19th century. Several of the adjacent units have also been altered to include dormers and have been divided internally to include multiple residential units. The proposed development is compatible with the adjacent sites and has been deemed to not impact the heritage character of the structure.

4. The extent to which the proposal is warranted in this location and the extent to which areas zoned for the proposed use are available for development:

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As outlined above, the subject lands are located within the Central Business District and the Downtown and Harbour policy area. The policies under these sections permit high density residential and allow exclusively residential buildings in areas of non-commercial frontage, provided the ground floor remains capable of being converted to commercial uses. The subject lands are located within walking distance of commercial and recreational amenities and transit routes. The proposed development does not seek to establish high-density residential uses, but rather seeks to provide a minor increase in gross floor area and increased ceiling height for the existing third floor residential unit. The proposed modification would contribute to a more functional interior layout for the existing unit.

5. The suitability of the site for the proposal, including its ability to meet all usual standards of parking for vehicles and bicycles, open space or amenity areas as well as the lack of any potential for noise, odour, traffic conflict or other nuisance from the proposal:

The subject lands are currently occupied by four residential units, with one unit being located on each floor of the existing rowhouse. The proposed development would expand the existing third floor dormer to offer a modest increase in floor area and increase in ceiling height for the existing fourth unit. The proposed development does not result in any new parking, open space, amenity area requirements or create any new opportunity for land use compatibility issues related to noise, odour traffic or any other nuisance.

6. The impact on municipal infrastructure, services and traffic:

The proposed development involves the expansion of an existing third floor dormer to offer a modest increase in floor area and ceiling height for an existing residential unit. As the proposed development does not seek to increase the number of residential units within the structure, there are no anticipated impacts on municipal infrastructure, services or traffic as a result of the proposed development. There were no comments or concerns related to municipal infrastructure, services or traffic received through technical circulation.

7. Comments and submissions by staff, agencies and the public:

As of the date of this report, there have not been any comments or submissions received by agencies or the public. The application was circulated for technical review and there are no outstanding comments or concerns.

8. The degree to which the proposal may inhibit conforming uses or creates a precedent:

The proposed development would not inhibit any conforming uses as the residential nature of the subject lands is compatible with the surrounding residential, commercial and institutional uses. The application is not anticipated to create a precedent as approvals have been granted in the past to authorize minor expansions to existing built form. There is already an existing dormer in the third floor of the structure and several of the adjacent dwellings within the same row have existing dormers.

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The subject property is designated under Part IV of the *Ontario Heritage Act* and is adjacent to other designated structures. The applicant submitted Heritage Permit P18-082-2020 to seek permission to alter the heritage structure with the proposed dormer. The application was found not to adversely affect the heritage character of the structure and was approved by Council on November 3, 2020.

Based on the City of Kingston archaeological potential mapping the property is in an area of "composite potential", and therefore an Archaeological Assessment beginning with a Stage One Assessment would be required prior to any ground disturbance. As the current application does not propose any ground disturbance, archaeological impacts are not anticipated as a result of the proposed development.

The requested permission to expand the legal non-conforming use by enlarging the existing third-floor dormer meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned Neighbourhood Fringe Commercial 'C1-1' in the City of Kingston Zoning By-Law Number 96-259, as amended (Exhibit E). The C1-1 zone establishes a maximum height at build-to-plane and maximum building height of 3 storeys, not to exceed 12.75 metres. The permitted uses within the C1-1 zone are in accordance with the general C1 zone, which permits a wide range of uses, including mixed commercial/ residential development, but does not permit exclusively residential uses. The C1 zone permits a maximum residential density of 123 residential units per net hectare, which would permit two residential units given the area of the subject lands. As the subject lands are used exclusively for residential uses and the existing structure contains four residential units, translating to a residential density of approximately 226 residential units per net hectare, the subject lands are recognized to be a legal non-conforming use.

Section 5.23.2.3 permits the renovation or alteration of non-conforming uses, provided the renovation or alteration will not increase the height, size or volume of the structure. Similarly, Section 5.23.2.4 indicates that a non-conforming use shall not be enlarged or extended so as to occupy additional gross floor area in excess of the gross floor area of the existing building or structure. As the proposed development would increase the volume of the structure by approximately 10.7 cubic metres and increase the gross floor area of the structure by approximately 4 square metres, permission from the Committee of Adjustment is required to authorize the proposed development.

An expansion of a legal non-conforming use shall have regard to the zoning by-law requirements and is required to comply with Section 9.5.13 of the Official Plan. As previously outlined in this report, the proposed development seeks to expand an existing dormer by approximately 2.8 metres in width, while increasing the depth by approximately 0.8 metres. The existing dormer is located on the rear side of the roof, which limits the visibility of the proposed development. As shown in Exhibit G, there are several existing dormers of varying sizes within the seven-unit rowhouse development. As such, the proposal is in keeping with the built form

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and character of the neighbourhood and will be visibly compatible with the surrounding built form. The proposal will not result in any negative impacts on the abutting lands or their continued use or development.

Technical Review: Circulated Departments and Agencies

\boxtimes	Building Services	∠ Engineering Department	
	Finance	□ Utilities Kingston	□ Real Estate & Environmental Initiatives
\boxtimes	Fire & Rescue	⋈ Kingston Hydro	
\boxtimes	Solid Waste	□ Parks Development	□ Canadian National Railways
\boxtimes	Housing	□ District Councillor	☐ Ministry of Transportation
	KEDCO	☐ Municipal Drainage	□ Parks of the St. Lawrence
	CRCA	☐ KFL&A Health Unit	□ Trans Northern Pipelines
	Parks Canada	☐ Eastern Ontario Power	□ CFB Kingston
	Hydro One	⊠ Enbridge Pipelines	☐ TransCanada Pipelines
	Kingston Airport		

Technical Comments

This application was circulated to external agencies and internal departments for their review and comment and there were no comments or concerns raised that would preclude this application from moving forward. Any technical comments that are received after the publishing of this report will be included as an addendum to the Committee of Adjustment agenda.

Public Comments

At the time this report was finalized, there have not been any public comments received on this application. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment agenda.

Previous or Concurrent Applications

The subject lands are designated under Part IV of the *Ontario Heritage Act*. The applicant submitted heritage permit P18-082-2020 to authorize the proposed alterations to the structure, which was approved by Council on November 3, 2020.

Conclusion

The requested application for permission is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 96-259. The existing residential use and density of the subject lands predates the current zoning by-law. The proposed development would enlarge the volume of the non-conforming use but would not increase the density or intensity of the existing residential use. The subject lands are designated under Part IV of the *Ontario Heritage Act* and it has been determined, through approval of

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heritage permit P18-082-2020, that the proposed development would not adversely impact the heritage character of the structure.

Approval of this application will maintain the existing residential nature of the subject lands, which is consistent with the surrounding land uses, while improving the functionality of the existing third floor residential unit.

Existing Policy/By-Law:

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province's and the City's vision of development. The following documents were assessed:

Provincial

Provincial Policy Statement, 2020

Municipal

City of Kingston Official Plan

Zoning By-Law Number 96-259

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on December 14, 2020. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was provided by advertisement in the form of signs posted on the subject site 10 days in advance of the meeting. In addition, notices were sent by mail to a total number of 29 property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice was placed in The Kingston Whig-Standard.

Once a decision has been rendered by the Committee of Adjustment, a Notice of Decision will be circulated in accordance with the provisions of the *Planning Act*.

Accessibility Considerations:

None

Financial Considerations:

None

Contacts:

Tim Park, Manager of Development Approvals, 613-546-4291 extension 3223

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Niall Oddie, Planner, 613-546-4291 extension 3259

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Recommended Conditions

Exhibit B Key Map

Exhibit C Public Notification Map

Exhibit D Official Plan Map

Exhibit E Zoning By-Law Map

Exhibit F Plot Plan

Exhibit G Site Photographs

Exhibit H Building Elevations

Exhibit I Floor Plans

Exhibit J Dormer Volume Calculations

Exhibit K Neighbourhood Context

Recommended Conditions

Application for permission, File Number D13-054-2020 Approval of the foregoing application shall be subject to the following recommended conditions:

1. Limitation

That the approved permission applies only to the proposed enlargement of the existing rear dormer as shown on the approved drawings attached to the notice of decision.

2. No Adverse Impacts

The owner/applicant shall demonstrate to the satisfaction of the City that there are no adverse impacts on neighbouring properties as a result of any modifications to on-site grading or drainage.

3. Building Permit Application Requirements

The owner/applicant shall provide to the Building Services a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings, when they make application for a Building Permit.

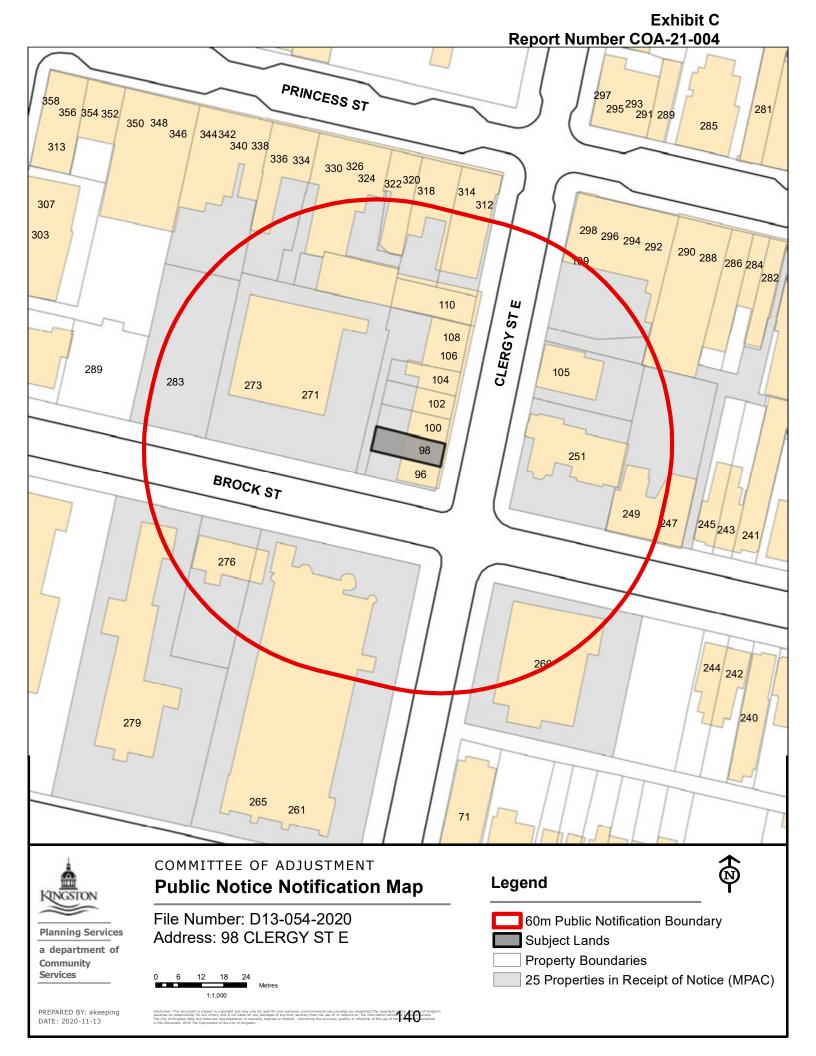
The drawings submitted with the Building Permit application must, in the opinion of the City, conform to the general intent and description of the approved drawing(s), including any amendments and conditions approved by the Committee of Adjustment, as stated in the decision. It must be noted that additional planning approvals may be required should further zoning deficiencies be identified through the Building Permit application process.

4. Standard Archaeological Condition

In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132) and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries Regulation Section of the Ontario Ministry of Consumer Business Services (416-326-8404), the Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132), and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

Exhibit B Report Number COA-21-004 PRINCESS ST 295 ²⁹³ 291 289 358 281 356 354 352 350 348 346 285 344342 340 338 313 336 334 26 324 322³²⁰ 318 330 326 307 312 ²⁹⁸ ²⁹⁶ ²⁹⁴ ²⁹² 303 290 288 109 286 284 CLERGY ST E 110 108 106 289 105 104 283 273 271 102 100 98 251 BROCK ST 96 249 245 243 241 247 276 260 244 242 240 279 265 261 71 ORDNANCE ST CONTEXT MAP COMMITTEE OF ADJUSTMENT **Key Map** QUEEN ST File Number: D13-054-2020 **Planning Services** Address: 98 CLERGY ST E a department of Community Services 5 10 15 20 metres DATE: 2020-11-13 PREPARED BY: akeeping EARL ST WILLIAM ST 139 Lands Subject to Minor Variance CLERGY ST W



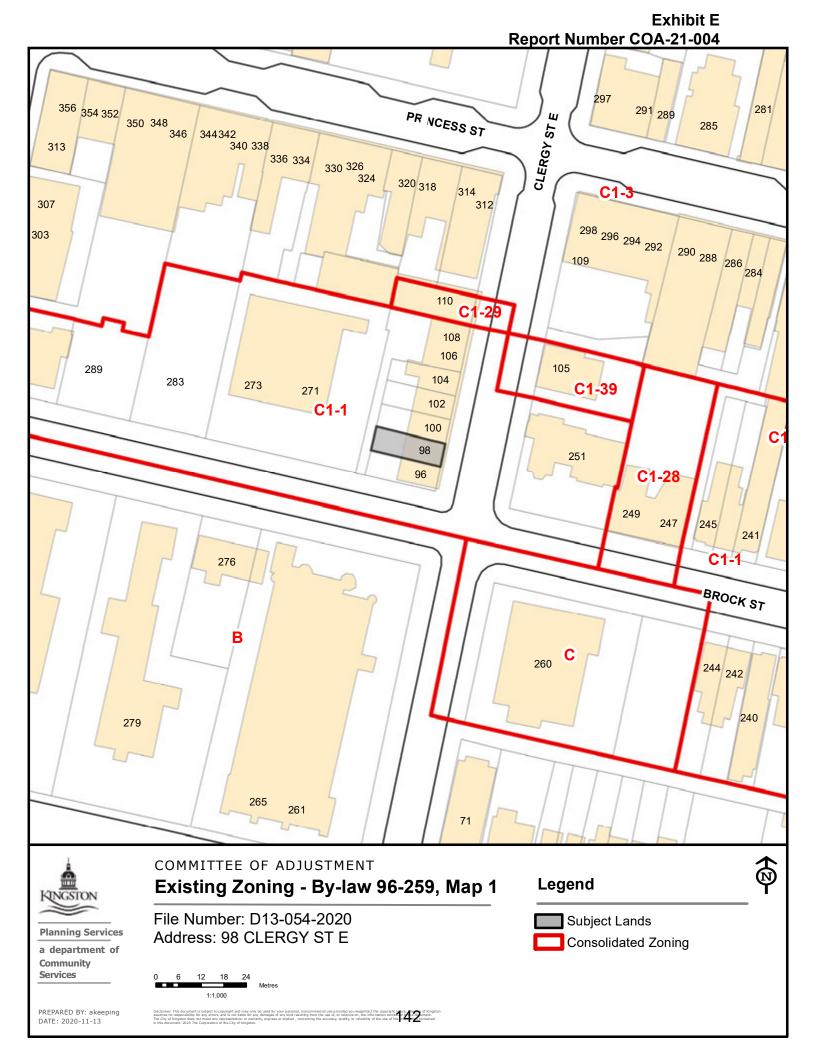
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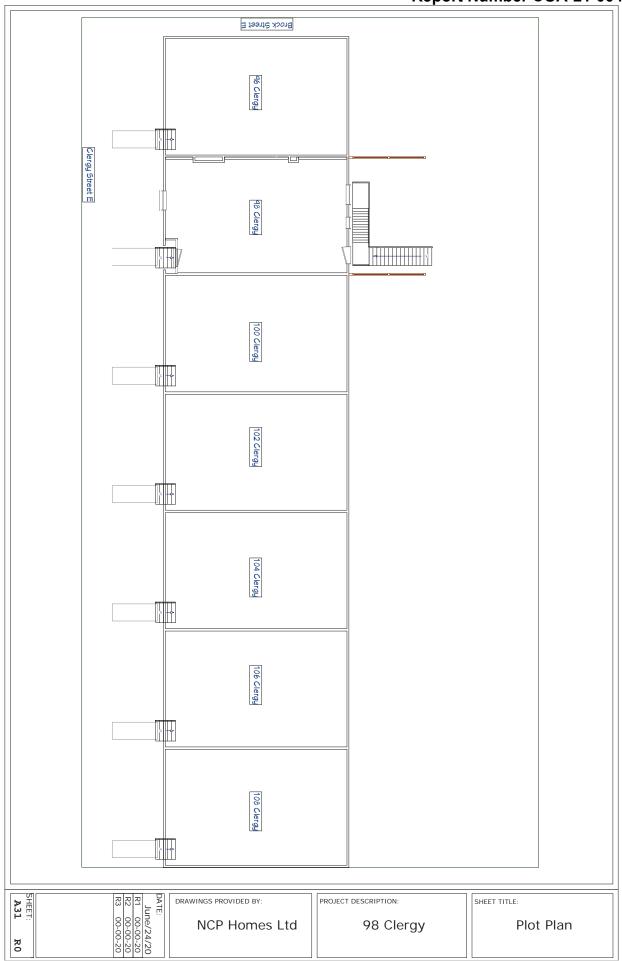
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PREPARED BY: akeeping

DATE: 2020-11-13

Exhibit D





Site Photographs

November 12, 2020

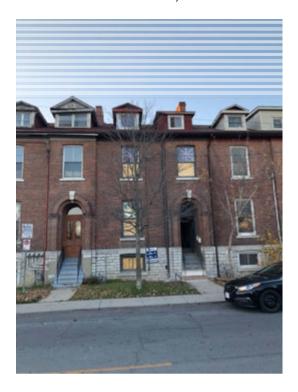
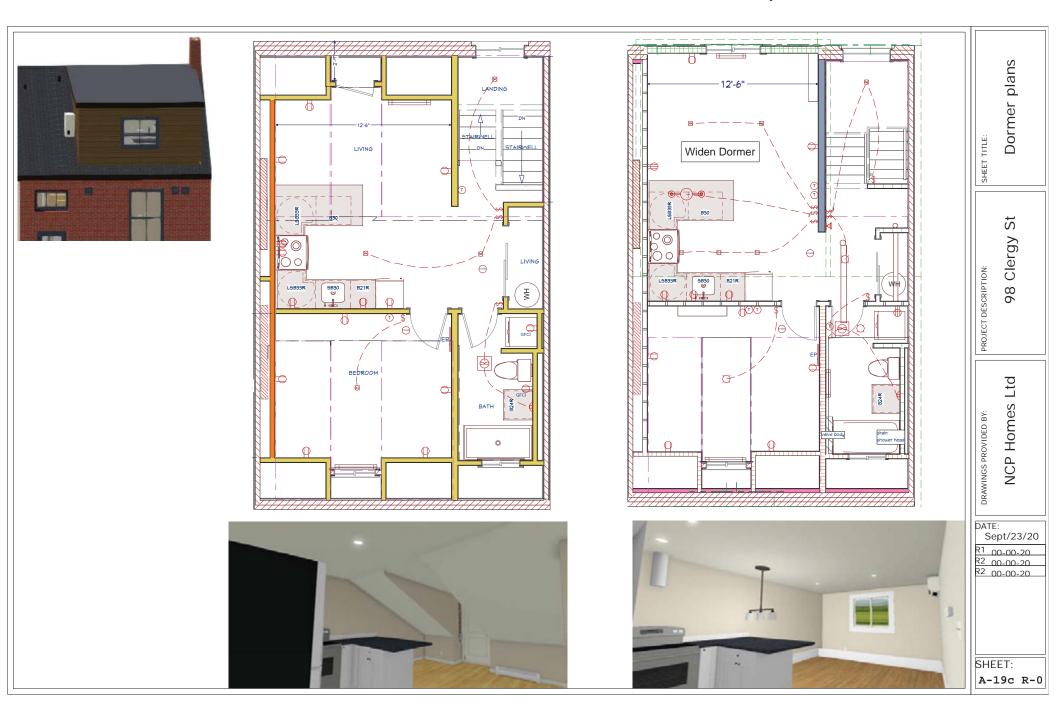


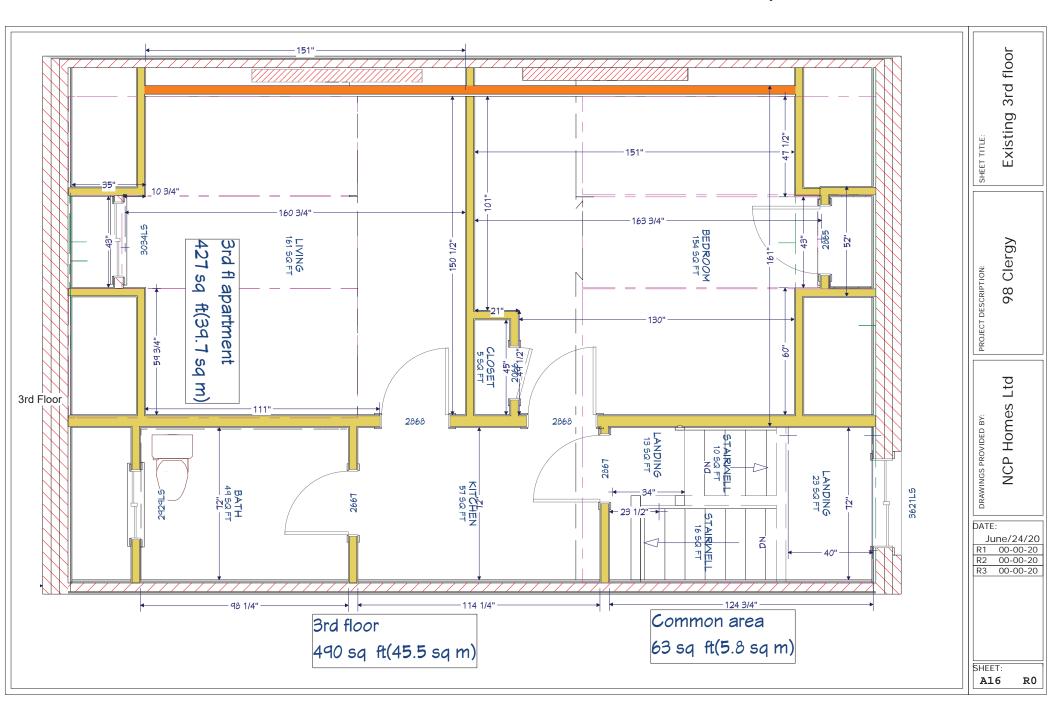
Figure 1 Front Elevation of 98 Clergy Street



Figure 2 Rear Elevation of 98 Clergy Street







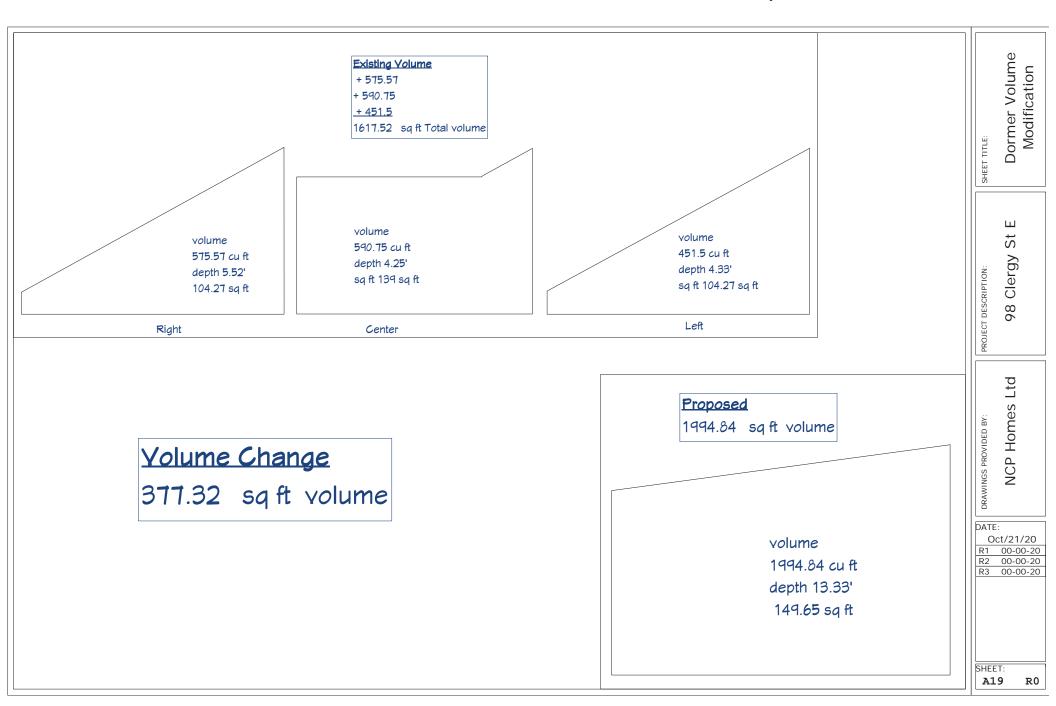


Exhibit K Report Number COA-21-004





Planning Services a department of Community Services

PREPARED BY: akeeping DATE: 2020-11-13

COMMITTEE OF ADJUSTMENT

Neighbourhood Context (2019)

File Number: D13-054-2020 Address: 98 CLERGY ST E



Legend

