



**City of Kingston
Report to Committee of Adjustment
Report Number COA-21-010**

To:	Chair and Members of the Committee of Adjustment
From:	Golsa Kheir-Moghadam, Planner
Date of Meeting:	January 18, 2021
Application for:	Permission
File Number:	D13-060-2020
Address:	17 Gordon Street
Owner:	Donald Hulton and Anna Leigh Hulton
Applicant:	Donald Hulton

Council Strategic Plan Alignment:

Theme: Policies & by-laws

Goal: See above

Executive Summary:

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 17 Gordon Street. The applicant is proposing to reconstruct a 44.6 square metre detached garage within the rear yard of the property. The proposed garage is to be constructed on the footprint of an old accessory building which has a 0.6 metre setback from the interior side lot line. The height of the new garage is proposed to be 4.2 metres which complies with the maximum height requirements of the zoning by-law.

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 76-26. The proposed detached accessory structure 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.

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Recommendation:

That the application for permission, File Number D13-060-2020, for the property located at 17 Gordon Street, to permit the replacement of a 44.6 square metre detached garage within the rear yard of the property, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-010.

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Authorizing Signatures:



Golsa Kheir-Moghadam, Planner

In Consultation with the following Management of the Community Services Group:

Paige Agnew, Commissioner, Community Services

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Options/Discussion:

On November 29, 2020, an application for permission was submitted by Donald Hulton, on behalf of the owner, Donald Hulton and Anna Leigh Hulton, with respect to the property located at 17 Gordon Street. The application for permission is requested to reconstruct a 44.6 square metre detached garage within the rear yard of the subject property. The proposed garage is to be constructed on the footprint of an old accessory building which has a 0.6 metre setback from the interior side lot line. The proposed height of the replacement garage is 4.2 metres which complies with the maximum height requirements of the zoning by-law.

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

- Site Plan (Exhibit F)

All submission materials are available online through the Development and Services Hub (DASH) at the following link, [DASH](#), 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 within the Urban Boundary, at 17 Gordon Street (Exhibit B - Key Map). The subject property is designated Residential in the Official Plan and zoned site-specific Residential Type 1 Zone 'R1-74' in Zoning By-Law Number 76-26. The property is surrounded by single-detached dwelling houses and is in close proximity to Sinclair Public School. The property is currently developed with a single detached dwelling house and a detached accessory structure which was built in early 1970's. The accessory structure was built prior to the passing of the Zoning By-Law Number in 1976.

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.

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 day 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

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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 76-26 was passed by Council in 1976 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 2020 (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.

Official Plan

The subject property is designated Residential. The overarching goal of the 'Residential' designation is to respond to the housing needs of the City's citizens by retaining and augmenting a broad range of housing within a safe, convenient and stable setting, organized primarily into neighbourhoods. The predominant use of the 'Residential' designation is residential dwellings, including detached, semi-detached or duplex dwellings, townhouses, and apartments of various types, tenure, and density that respond to a wide range of housing needs.

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 application requesting to reconstruct a 44.6 square metre detached garage on the footprint of an old accessory building which has a 0.6 metre setback from the interior side lot line, with a proposed height that complies with the height requirements of the zoning by-law, has been reviewed against these policies, provided below.

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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:

The proposal is consistent with the policies of the Provincial Policy Statement and will not hinder future development intended for the Residential designation in the Official Plan.

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 continued residential use and accessory building are compatible with the existing zone requirements and adjacent residential uses. The subject lands are not designated cultural heritage and there are no identified cultural heritage resources in the immediate area. The existing residential use will be maintained on the subject property. The site is not located within a Heritage District. The site is not identified on the City of Kingston Heritage Register, therefore, there will be no impact on built heritage resources.

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 detached accessory building to the existing residential use will be compatible with the abutting residential uses and the character of the neighbourhood. The proposed garage will have similar setbacks to adjacent residential uses. The height of the new garage is proposed to be 4.2 metres which complies with the maximum height requirements of the Zoning By-Law.

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:

The subject property is designated 'Residential' in the Official Plan and will remain within the 'R1-74' zone as per Zoning By-Law Number 76-26. The proposed reconstruction of the existing detached garage on the same footprint as the old accessory building, is not anticipated to have any adverse impact on the future development/redevelopment of the property or the surrounding neighbourhood.

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 floor area and yard setbacks of the proposed accessory building will not exceed the floor area and yard setbacks of the existing accessory building. The garage will continue to provide adequate parking space for the dwelling house and will not affect the private amenity areas or open space on the site. The continued residential land use on the property will not create any new noise, odour, traffic conflict or other nuisance.

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

The proposed detached garage will provide parking space and storage area to a residential use and will maintain adequate amenity area in the rear yard. The proposal will not have a negative impact on municipal infrastructure, services and traffic.

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

The existing residential use and the accessory structure will maintain existing municipal services and will not require the extension of existing services. Utilities Kingston has reviewed the proposal and has no concerns with respect to adequate services.

Environment Division has no concerns with the proposal. The applicant has been advised that in accordance with Section 30 of the Ontario Occupational Health and Safety Act, Designated Substances and other potentially hazardous building materials must be identified prior to renovation, construction or demolition that may disturb such materials.

A building permit application is currently in review for the proposed construction. The applicant is required to ensure that the building structure including foundation footings and roof overhang are maintained on the private property and do not encroach onto the neighboring property. Through the building permit review, it has been determined the garage roof encroaches minimally into the abutting property. In order to address the encroachment of the roof into the neighbouring property, the applicant has been informed that a prior to the issuance of the Building Permit, an easement agreement must be registered on title.

The applicant has been advised by Building Services that the building site is required to be graded so that water will not accumulate at or near the building and will not adversely affect adjacent properties. The applicant will have to ensure that drainage is not directed onto adjacent properties. A drainage plan has been requested, including the installation of eaves troughs, to be submitted to the satisfaction of the Building Services and the Engineering Department. Planning staff are recommending that the Committee of Adjustment, make the installation of eaves troughs a condition of approval and are shown as part of the submitted building permit drawings drainage plan. If work requires any disturbance of the adjacent properties the applicant will have to obtain approval from the affected property owner and reinstatement any disturbed areas to the satisfaction of the property owner.

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

The proposal will not negatively impact the surrounding lands or buildings or inhibit them from developing for their intended uses.

The subject property is not designated or listed on the City of Kingston's Heritage Property Register, or adjacent to a property which is designated or listed.

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The requested permission to reconstruct a 44.6 square metre detached garage on the footprint of an old accessory building which has a 0.6 metre setback from the interior side lot line, with an increase in height which complies with the maximum height requirements of the zoning by-law, meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned Residential Type 1 Zone ‘R1-74’ in the City of Kingston Zoning By-Law Number 76-26, as amended (Exhibit D - Zoning By-Law Number 76-26, Map 5).

The detached accessory structure is deemed a legal non-conforming use since the structure existed prior to the passing of Zoning By-Law Number 876-26 in 1976.

The applicant is proposing to replace an existing detached accessory structure with a 44.6 square metre detached garage on the same footprint. The structure is located in the rear yard and has a 0.6 metre setback from the interior side lot line, which is less than the required setback in the current zoning by-law. The proposed garage is to have an increased height of 4.2 metres which is in compliance with the maximum height requirements of the zoning by-law. The garage is accessed by an existing driveway from Gordon Street.

Technical Review: Circulated Departments and Agencies

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <input type="checkbox"/> Finance | <input checked="" type="checkbox"/> Utilities Kingston | <input checked="" type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue | <input checked="" type="checkbox"/> Kingston Hydro | <input checked="" type="checkbox"/> City’s Environment Division |
| <input checked="" type="checkbox"/> Solid Waste | <input checked="" type="checkbox"/> Parks Development | <input type="checkbox"/> Canadian National Railways |
| <input checked="" type="checkbox"/> Housing | <input checked="" type="checkbox"/> District Councillor | <input type="checkbox"/> Ministry of Transportation |
| <input type="checkbox"/> KEDCO | <input type="checkbox"/> Municipal Drainage | <input type="checkbox"/> Parks of the St. Lawrence |
| <input checked="" type="checkbox"/> CRCA | <input type="checkbox"/> KFL&A Health Unit | <input type="checkbox"/> Trans Northern Pipelines |
| <input type="checkbox"/> Parks Canada | <input type="checkbox"/> Eastern Ontario Power | <input type="checkbox"/> CFB Kingston |
| <input checked="" type="checkbox"/> Hydro One | <input type="checkbox"/> Enbridge Pipelines | <input type="checkbox"/> TransCanada Pipelines |
| <input type="checkbox"/> 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, a support letter has been received from the owner of the adjacent property at 19 Gordon Street (Exhibit H – Letter of Support). Any public comments

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received after the publishing of this report will be included as an addendum to the Committee of Adjustment agenda.

Previous or Concurrent Applications

There are no concurrent or relevant historic planning applications on the subject property.

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 76-26. The use, lot coverage, height, and location of the accessory structure is in keeping with the intent of the zoning by-law, represents appropriate and desirable development of the lot and will be functional for the continued residential use.

Approval of this application will allow for the reconstruction of a detached garage in the rear yard of the subject property.

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 76-26

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on January 18, 2021. 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 19 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*.

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Accessibility Considerations:

None

Financial Considerations:

None

Contacts:

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

Golsa Kheir-Moghadam, Planner, 613-546-4291 extension 3183

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Official Plan Map
- Exhibit D Zoning By-Law Number 76-26, Map 5
- Exhibit E Neighbourhood Context (2019)
- Exhibit F Site Plan
- Exhibit G Public Notice Notification Map
- Exhibit H Letter of Support

Recommended Conditions

Application for permission, File Number D13-060-2020

Approval of the foregoing application shall be subject to the following recommended conditions:

1. Limitation

That the approved permission applies only to the detached accessory structure 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. Concurrently with its building permit application, the owner/applicant shall submit to the City, for its written approval, a drainage plan, which shall identify, without limitation, where the installed eavestroughs will drain to (the "Drainage Plan").

3. Easement Agreement

Prior to the issuance of a building permit, the owner/applicant shall obtain a registered easement from the adjacent property owner for the encroachment of the roof onto the adjacent property, and shall provide a copy of the registered easement to the City.

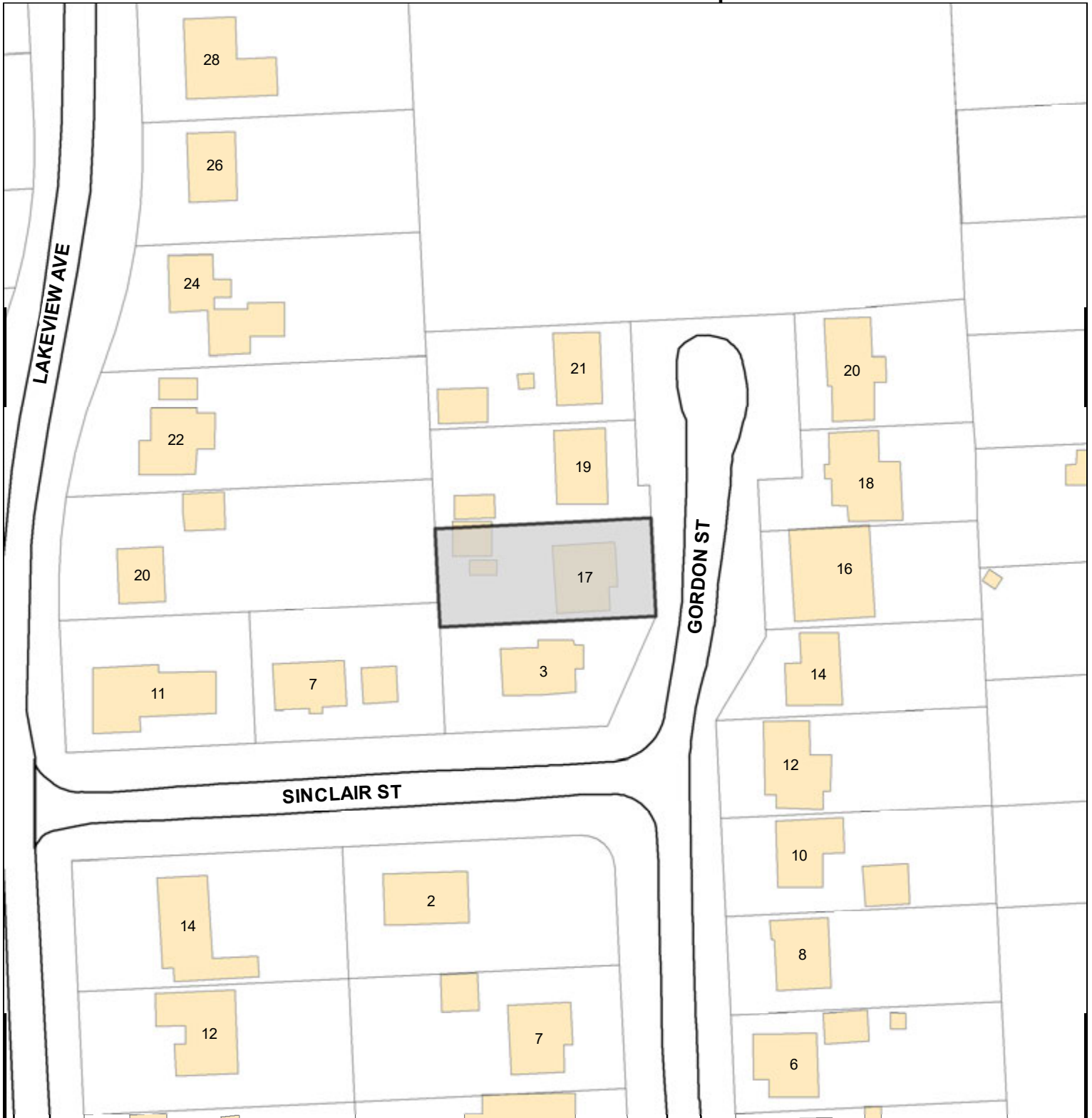
4. Building Permit Application Requirements

The owner/applicant shall provide to Building Services a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings, including, without limitation, the Drainage Plan.

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.

5. 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 Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (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 Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

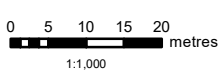


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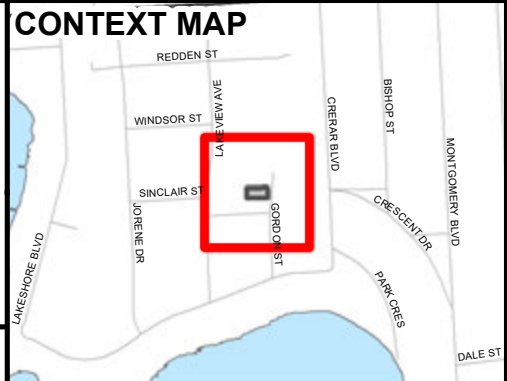
COMMITTEE OF ADJUSTMENT
Key Map

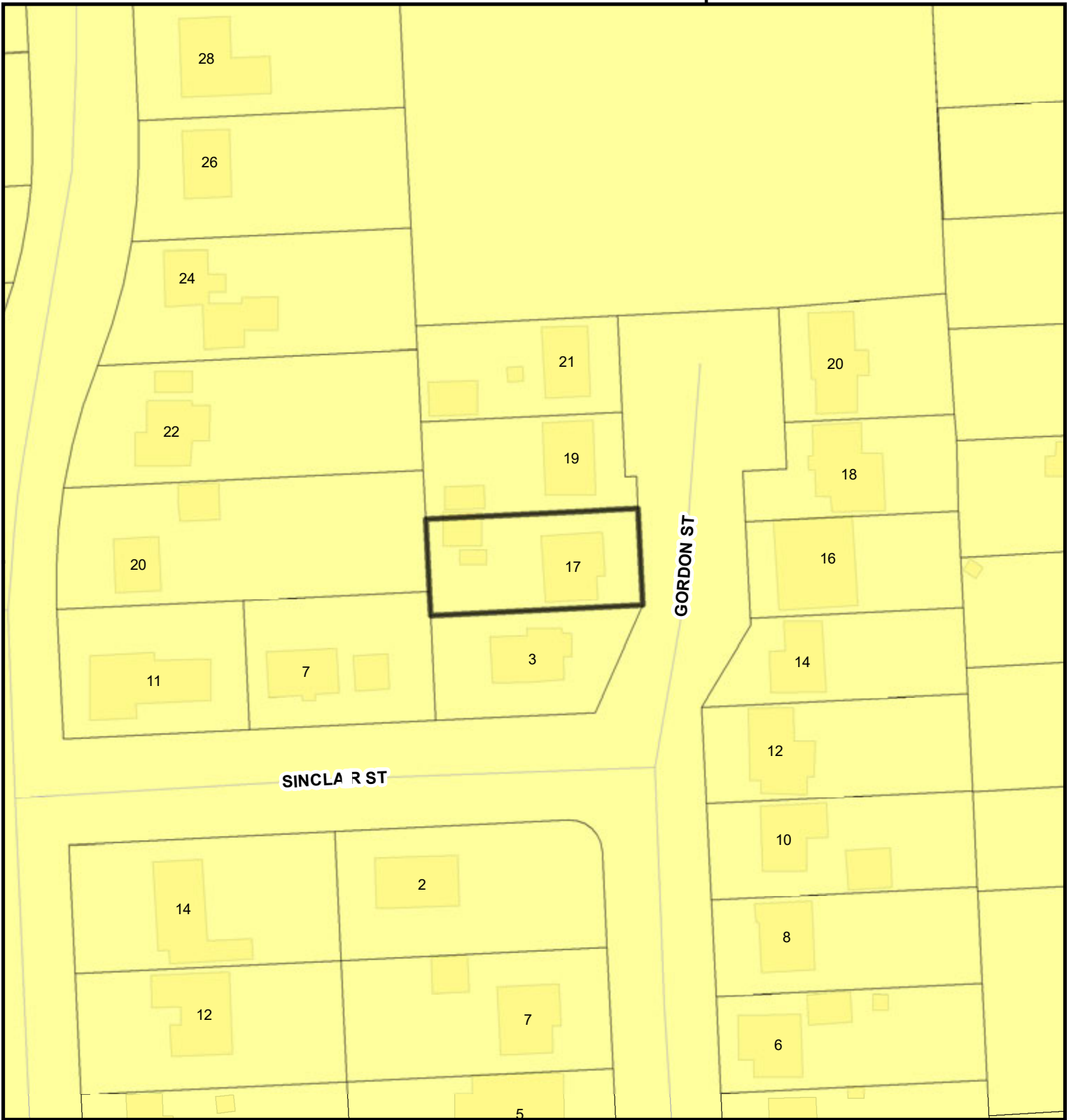
File Number: D13-060-2020
Address: 17 Gordon St



DATE: 2020-12-11
PREPARED BY: akeeping

Lands Subject to Minor Variance







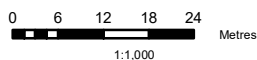
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a department of
Community
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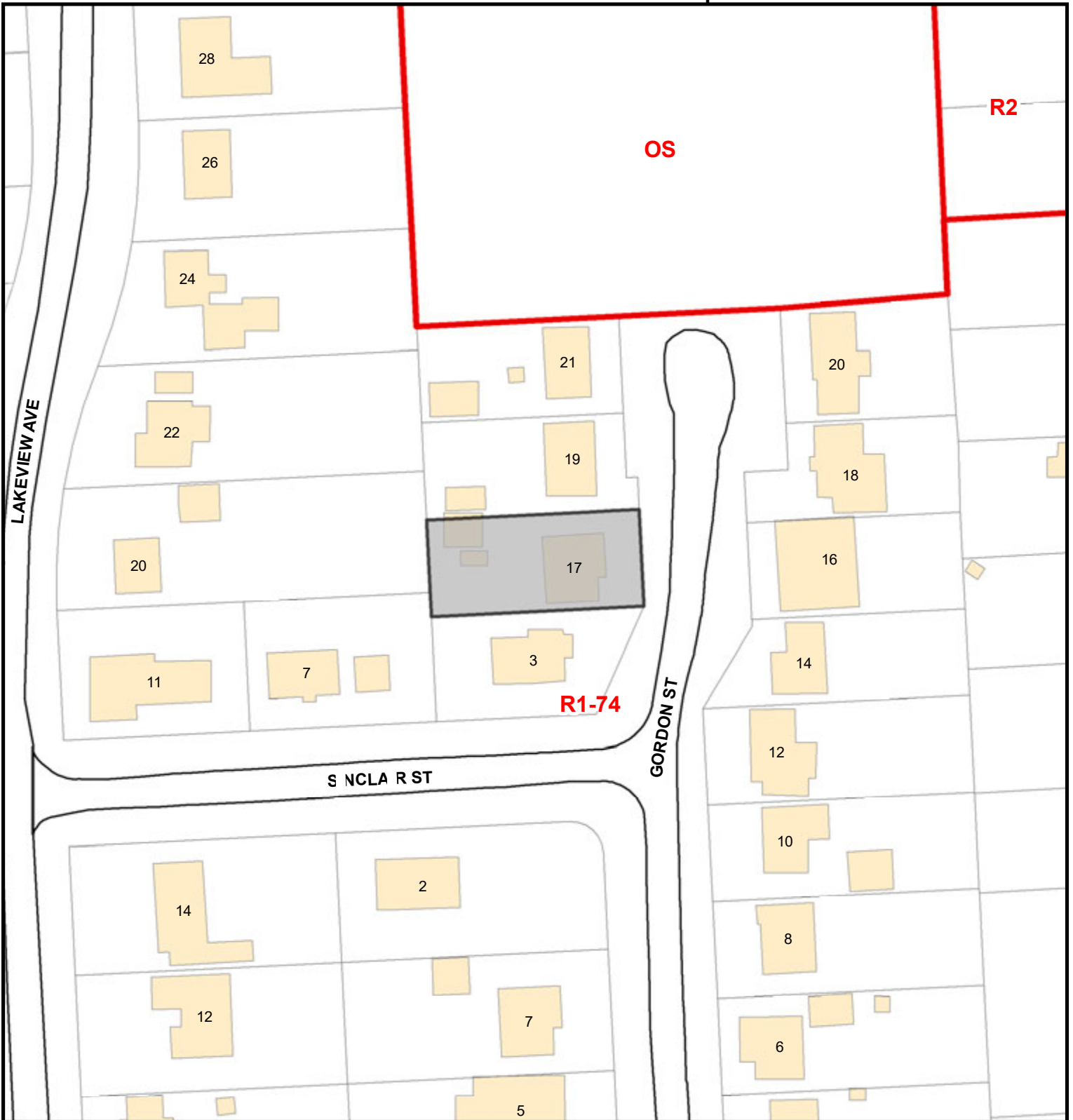
COMMITTEE OF ADJUSTMENT
Official Plan, Existing Land Use

File Number: D13-060-2020
Address: 17 Gordon St

Legend

-  Subject Lands
-  RESIDENTIAL







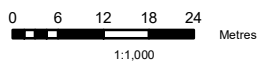
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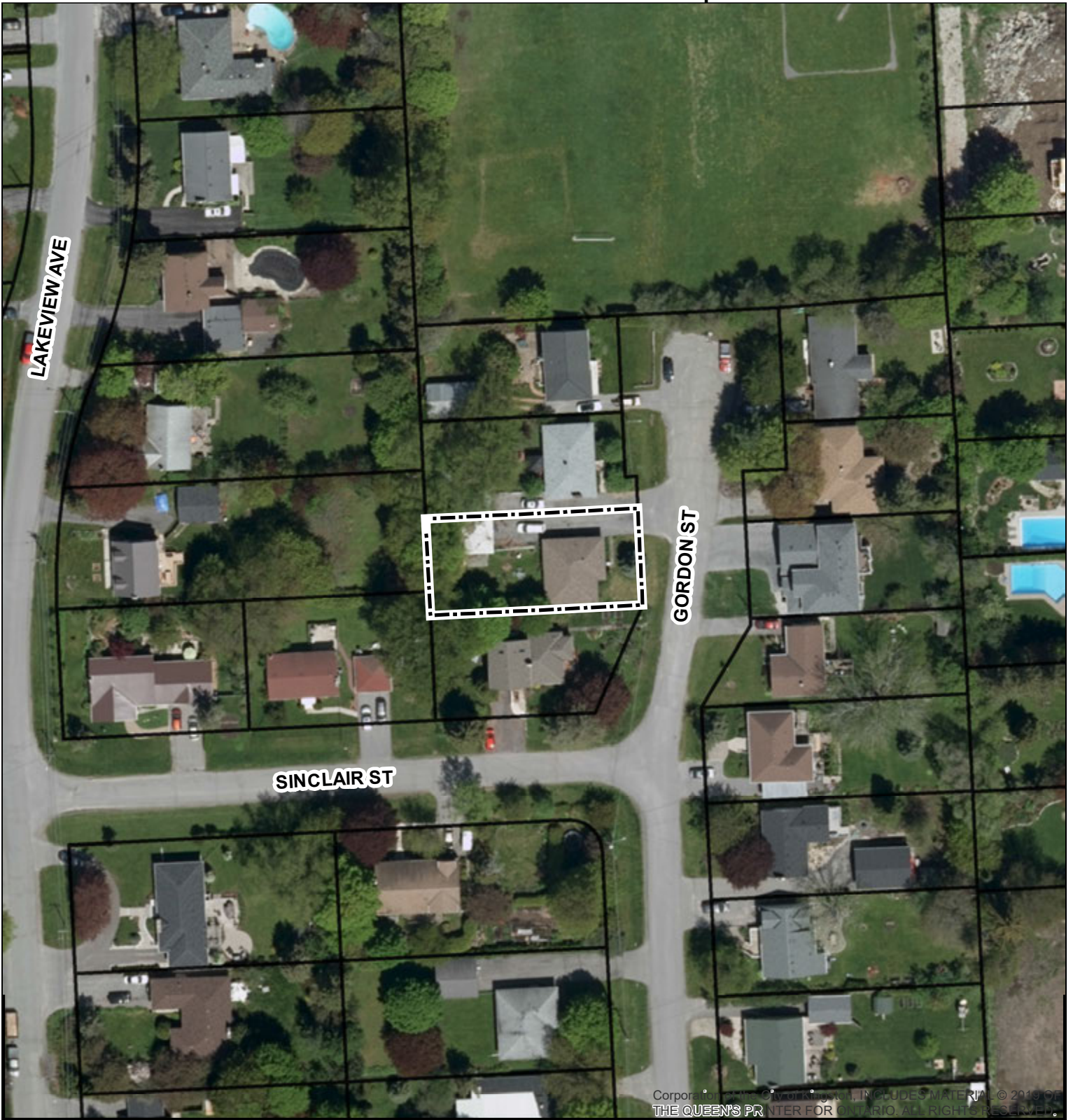
COMMITTEE OF ADJUSTMENT
Existing Zoning - By-law 76-26, Map 5

File Number: D13-060-2020
Address: 17 Gordon St

Legend

-  Subject Lands
-  Consolidated Zoning





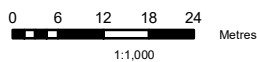
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Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Neighbourhood Context (2019)

File Number: D13-060-2020
Address: 17 Gordon St



Legend

- Subject Lands
- Property Boundaries
- Proposed Parcels

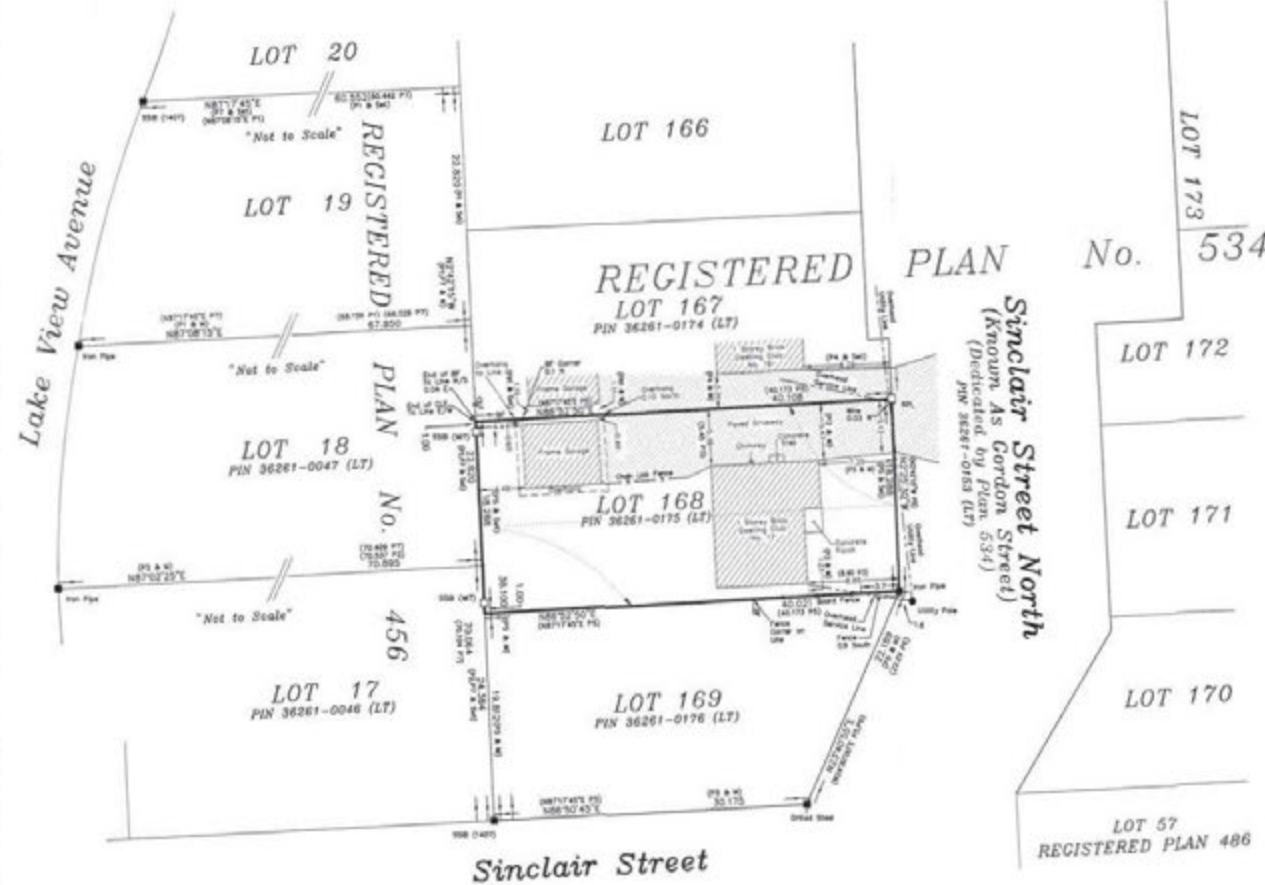


Surveyor's Real Property Report (PART 1)
PLAN of LOT 168, REGISTERED PLAN No. 534
Geographic Township of Kingston
CITY of KINGSTON
COUNTY of FRONTENAC
SCALE = 1:300

HOPKINS CHITTY LAND SURVEYORS INC.
- 2020 -



PART 2
This Plan must be Read in Conjunction with the Survey Report.
Date: OCTOBER 9, 2020
This Report was Prepared for
MR. DON HULTON
and the Undersigned Accepts no Responsibility for use by Other Parties.



BEARING NOTE:

BEARINGS ARE UTM GRID, DERIVED FROM REAL TIME NETWORK (RTN) GPS OBSERVATIONS, UTM ZONE 18, NAD83 (CSRS) (2010)
FOR BEARING COMPARISONS, A ROTATION OF 1°11'45" CLOCKWISE WAS APPLIED TO BEARINGS ON (P1), (P2), (P3), & (P7)
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.9997932
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

LEGEND:

- 331W S PLANTED DUE TO INSUFFICIENT OVERBURDEN
- C- denotes Planted Survey Monument
 - SB - Found Survey Monument
 - SIB - Standard Iron Bar
 - S2SB - Short Standard Iron Bar
 - IB - Iron Bar
 - IRB - Iron Bar (round)
 - AB - Rock Bar
 - SP - Rock Plug
 - (WT) - Witness
 - (O) - Origin Monument
 - (SAGE) - Smith & Smith Kingston Ltd
 - (1407) - Orange W. Elliott Ltd.-O.L.S.
 - (P1) - Plan by (1407) dated October 29, 1988
 - (P2) - Plan by (1407) dated August 4, 1987
 - (P3) - Plan by (SAGE) dated September 24, 1984
 - (P4) - Plan by (SAGE) dated June 4, 1985
 - (P5) - Registered Plan No. 524
 - (P6) - Plan by (1407) dated September 24, 1986
 - (P7) - Registered Plan No. 456
 - (P8) - Field Notes by (SAGE) dated August 17, 1982
 - (1886) - Hopkins Chitty Land Surveyors Inc.-O.L.S.
 - BP - Bound Fence
 - CLF - Chain Link Fence

SURVEYOR'S CERTIFICATE:

- I CERTIFY THAT:
- This Survey and Plan are correct and in accordance with the SURVEY ACT, the SURVEYORS ACT and the REGULATIONS made under them.
 - This Survey was completed on the 9th day of October, 2020.

HOPKINS CHITTY LAND SURVEYORS INC.

DATE: OCTOBER 9, 2020

[Signature]
MEL E. CHITTY - O.L.S.

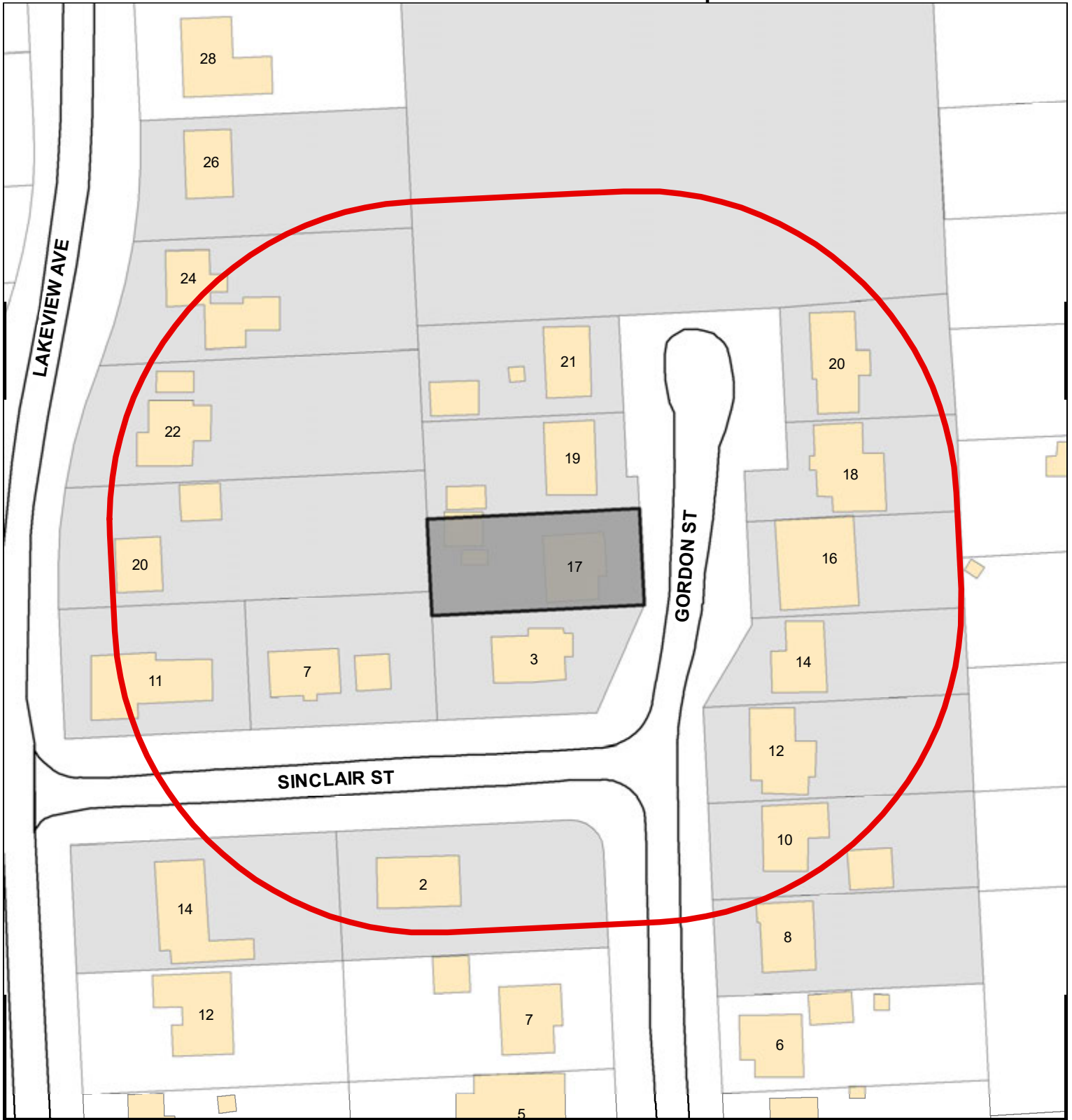
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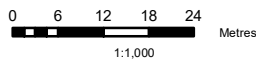
Party Name	Instrument #	Checked By	Plan No.
HOPKINS CHITTY LAND SURVEYORS INC. Ontario Land Surveyors www.hopkinschitty.com			
684-638 MURRAY COURT KINGSTON, ONTARIO K7P-2R9 Tel (613) 384-3268 Fax (613) 384-3513	PROJECT No. 2020-468 LOT 168, REG'D PLAN No. 534 TOWNSHIP OF KINGSTON		





COMMITTEE OF ADJUSTMENT
Public Notice Notification Map

File Number: D13-060-2020
Address: 17 Gordon St



Legend

- 60m Public Notification Boundary
- Subject Lands
- Property Boundaries
- Proposed Parcels
- 19 Properties in Receipt of Notice (MPAC)



LETTER OF CONSENT

November 28, 2020

Re: Minor Variance Application
17 Gordon St.
Kingston Ont.

I, Paulette Lewis, owner of 19 Gordon St in Kingston Ontario, give my consent for the eave of the detached garage at 17 Gordon St. in Kingston Ontario to overhang onto my property by 0.1 metres as shown on the survey for said property.

I also give permission to Don Hulton to act as my Agent of record during the Minor Variance application process.

Paulette Lewis

X 