



**City of Kingston
Report to Committee of Adjustment
Report Number COA-21-013**

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:	D13-068-2018
Address:	392-394 Division Street
Owner:	Carmela Piccinato and Rodolfo Piccinato
Applicant:	Rudy Piccinato

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 392-394 Division Street. The applicant is proposing to alter a non-conforming use by constructing a roof over an existing front porch and stairs which were built prior to the passing of the zoning by-law in 1975. The minimum front yard setback requirement for the subject porch and stairs is 1.8 metres. The applicant is proposing to construct the roof over a portion of the existing front porch and stairs that currently has 0 metre set back from the front lot line.

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 8499. The proposed roof over the existing porch and stairs 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.

January 18, 2021

Page 2 of 10

Recommendation:

That the application for permission, File Number D13-068-2018, for the property located at 392-394 Division Street, to permit the construction of a roof over an existing front porch and stairs, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-013.

January 18, 2021

Page 3 of 10

Authorizing Signatures:



Golsa Kheir-Moghadam, Planner

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

Paige Agnew, Commissioner, Community Services

January 18, 2021

Page 4 of 10

Options/Discussion:

On December 12, 2018, an application for permission was submitted by Rudy Piccinato, on behalf of the owner, Carmela Piccinato and Rodolfo Piccinato, with respect to the property located at 392-394 Division Street. The application for permission is requested to alter a non-conforming use by constructing a roof over an existing front porch and stairs with reduced front yard setback.

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

- Site Plan (Exhibit F); and
- Elevation Drawings and Floor Plans (Exhibit G).

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 392-394 Division Street (Exhibit B - Key Map). The subject property is designated 'Residential' in the Official Plan and zoned One-Family and Two-Family 'A' Zone in Zoning By-Law Number 8499. The property is surrounded by single-detached and semi-detached dwelling houses. The site is currently developed with a residential building containing four dwelling units, with a front porch which was built prior to the passing of the Zoning By-Law in 1975.

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 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:

January 18, 2021

Page 5 of 10

- 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 8499 was passed by Council in 1975 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 alter a legal non-conforming use by constructing a roof over an existing front porch and stairs, 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:

January 18, 2021

Page 6 of 10

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 is compatible with adjacent residential uses. The subject lands are not designated cultural heritage. 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 proposed covered front porch will be compatible with the character of the neighbourhood and existing covered porches in the surrounding residential properties. The porch will have similar setbacks to adjacent properties.

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 'A' zone as per Zoning By-Law Number 8499. The proposed construction of a roof over an existing front porch and stairs, 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:

Adding a roof to an existing porch and stairs, will not change the existing yard setbacks of the building, and will not affect the parking, 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.

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

The proposal will not have a negative impact on municipal infrastructure, services and traffic.

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

January 18, 2021

Page 7 of 10

The existing residential use 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.

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.

The requested permission to construct a roof over a portion of an existing legal non-conforming front porch and stairs that currently has 0 metre set back from the front lot line, meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned One-Family and Two-Family 'A' Zone in Zoning By-Law Number 8499, as amended (Exhibit D - Zoning By-Law Number 8499, Map 19).

According to Section 5.8(c) of the zoning by-law, porches and steps with more than 1.2 metres in height above finished grade level, are required to meet front yard setback requirements for individual zones.

As per Zone 'A' provision outlined in Section 6.3(b), where the nearest previously erected building fronting on the same street is located less than 30 metres from a building which is to be erected, structurally altered, enlarged or maintained and there is another previously erected building within 30 metres located on the opposite side of the building to be erected, structurally altered, enlarged or maintained the minimum required front yard shall be the average depth of the front yards of the two above mentioned previously erected buildings.

The minimum front yard requirement for the subject porch is 1.8 metres. The existing porch and stairs have a 0 metre setback from the front lot line, which are deemed legal non-conforming use since the structure existed prior to the passing of Zoning By-Law Number 8499 in 1975. The applicant is proposing to construct the roof over a portion of the existing front porch and stairs that currently have a 0 metre set back from the front lot line.

The subject residential building containing four dwelling units, is deemed legal non-conforming, as any multiple-family dwelling within Zone 'A' constructed before the date of the passage of this by-law shall be deemed to be a use of land conforming with the provisions of Zone 'A' of the Zoning By-Law Number 8499 (Section 6.3(j) - Zoning By-Law Number 8499).

January 18, 2021

Page 8 of 10

Technical Review: Circulated Departments and Agencies

- Building Services
- Finance
- Fire & Rescue
- Solid Waste
- Housing
- KEDCO
- CRCA
- Parks Canada
- Hydro One
- Kingston Airport
- Engineering Department
- Utilities Kingston
- Kingston Hydro
- Parks Development
- District Councillor
- Municipal Drainage
- KFL&A Health Unit
- Eastern Ontario Power
- Enbridge Pipelines
- Heritage (Planning Services)
- Real Estate & Environmental Initiatives
- City’s Environment Division
- Canadian National Railways
- Ministry of Transportation
- Parks of the St. Lawrence
- Trans Northern Pipelines
- CFB Kingston
- TransCanada Pipelines

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, no public comments were received. 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

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 8499. The use, lot coverage, height, and location of the porch and stairs are 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 construction of a roof over a portion of an existing porch and stairs.

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:

January 18, 2021

Page 9 of 10

Provincial

Provincial Policy Statement, 2020

Municipal

City of Kingston Official Plan

Zoning By-Law Number 8499

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*.

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

January 18, 2021

Page 10 of 10

- Exhibit D Zoning By-Law Number 8499, Map 19
- Exhibit E Neighbourhood Context (2019)
- Exhibit F Site Plan
- Exhibit G Elevation Drawings and Floor Plans
- Exhibit H Public Notice Notification Map

Recommended Conditions

Application for permission, File Number D13-068-2018

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

1. Limitation

That the approved permission applies only to the existing porch and stairs 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 an 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. Encroachment Permit

Prior to the issuance of a building permit, the owner/applicant shall obtain an Encroachment Permit from the City of Kingston for the encroachment of the stairs onto the public right of way.

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 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.

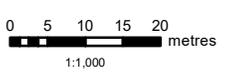


Disclaimer: This document is subject to copyright and may not be used for your personal, non-commercial use without the express written consent of the City of Kingston. The City of Kingston assumes no responsibility for any errors, and is not liable for any damages of any kind resulting from the use of, or reliance on, the information contained in this document. The City of Kingston does not make any representation or warranty, express or implied, concerning the accuracy, quality, or reliability of the use of the information contained in this document. © 2019 The Corporation of the City of Kingston.

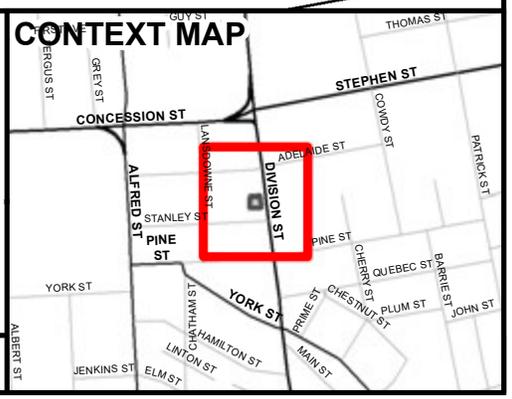


COMMITTEE OF ADJUSTMENT
Key Map

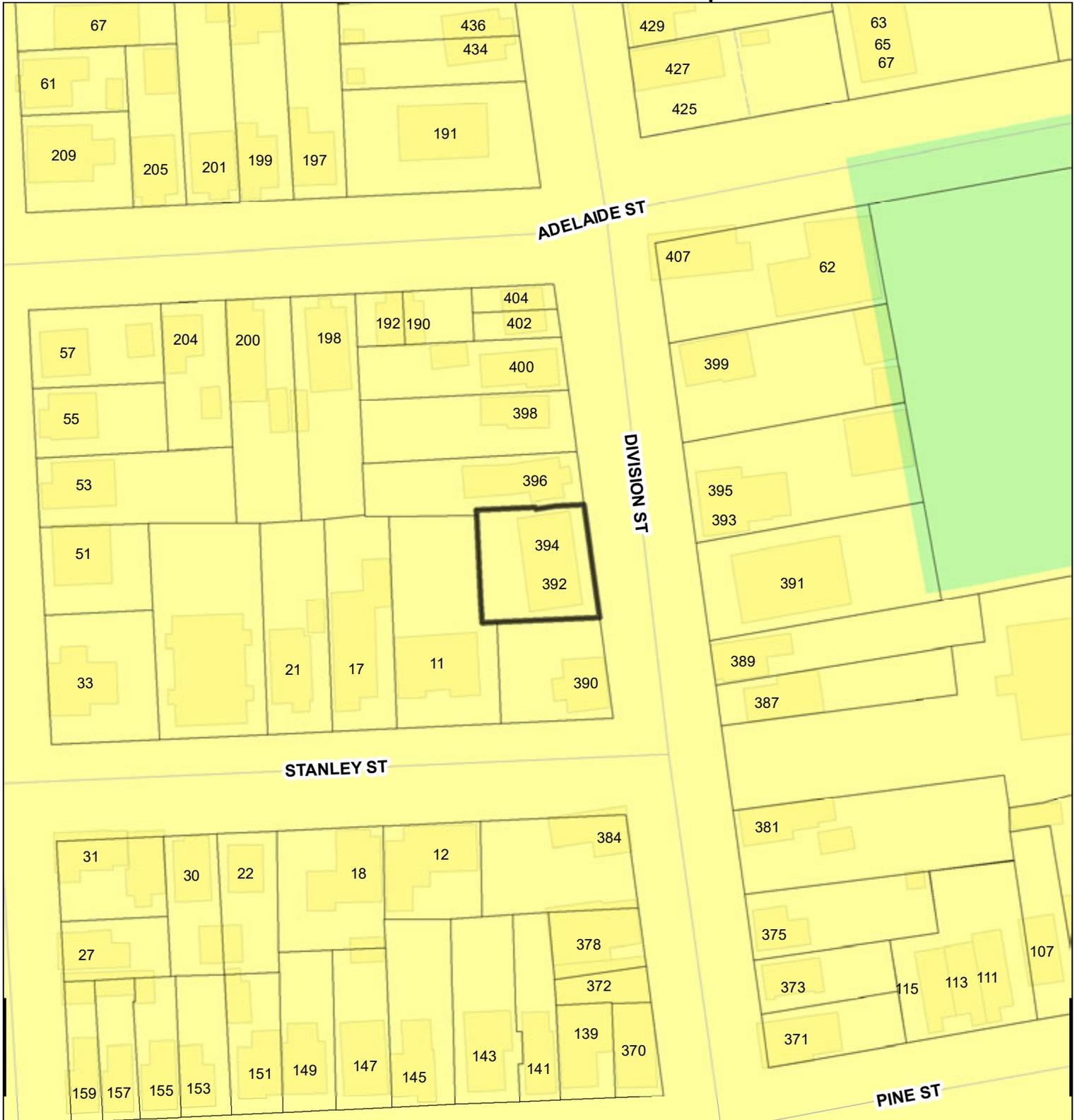
File Number: D13-068-2018
Address: 392-394 Division St



DATE: 2020-12-11
PREPARED BY: akeeping



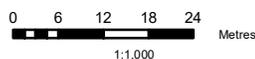
Lands Subject to Minor Variance



Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Official Plan, Existing Land Use

File Number: D13-068-2018
Address: 392-394 Division St



Legend

-  Subject Lands
-  OPEN SPACE
-  RESIDENTIAL



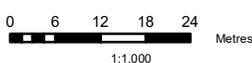


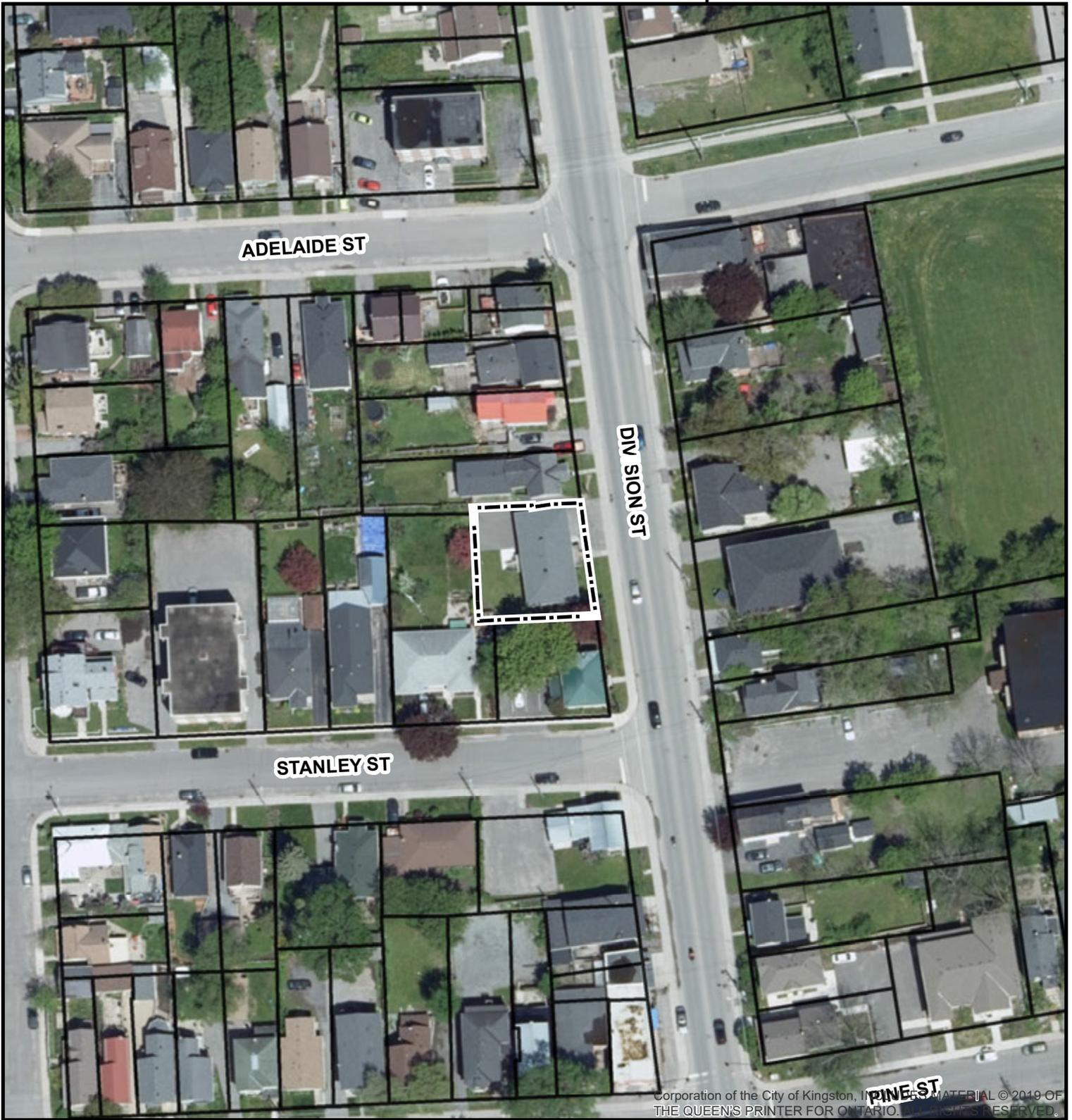
COMMITTEE OF ADJUSTMENT
Existing Zoning - By-law 8499, Map 19

File Number: D13-068-2018
Address: 392-394 Division St

Legend

- Subject Lands
- Consolidated Zoning





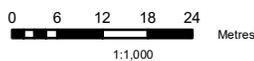
Corporation of the City of Kingston, Information System MATERIAL © 2019 OF THE QUEEN'S PRINTER FOR ONTARIO. ALL RIGHTS RESERVED.



Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Neighbourhood Context (2019)

File Number: D13-068-2018
Address: 392-394 Division St



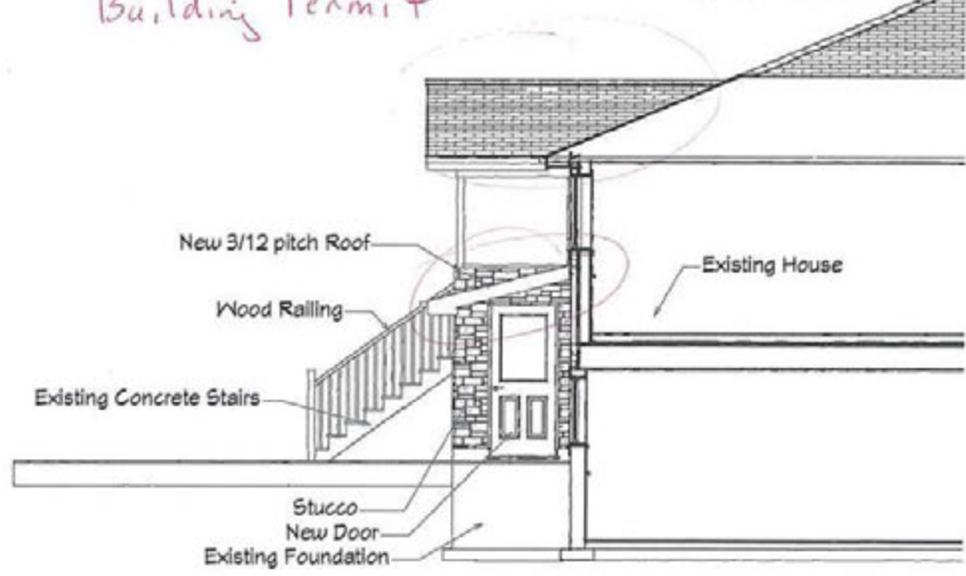
Legend

- Subject Lands
- Property Boundaries
- Proposed Parcels



→ City View
Building Permit

rudy.piccinato@gmail.com
613-888-3231



Right Side Elevation



Left Side Elevation

Notes

I, Rudy A. Piccato have reviewed and take responsibility for the design presented on this page.



This is an unauthorised copy if this note is not read.

The contractor is responsible for checking and verifying all the dimensions & data noted herein with conditions on site and shall report any discrepancy to the designer for adjustments to drawings.

Date: Revisions:

L.A.C. Design reserves the right to re-visit and re-issue any and all parts of this drawing.



2875 Dalmar Street
Kingston, Ontario
Phone/Fax: (613) 394-2661
E-Mail: lacdesign@orange.ca

Project Title:
Covered Porch
394 Division St.
Kingston, Ont.

Drawn For:
Rudy Piccato

Page Title

Drawing No.	0000
Scale	1/8" = 1'-0"
Date	Nov. 2018
Drawn By	L.A.C.
Checked By	22492
Project No.	
Firm No.	31248
Firm Name	

Page No.:

A3



Notes

I, Eric A. Giffin have reviewed and take responsibility for the design presented on this paper.



This is an unannotated copy of this issue in red ink.

The contractor is responsible for checking and verifying all the dimensions & data notes herein with conditions on site and shall report any discrepancy to the designer for adjustments to drawings.

Date: Revisions:

L.A.C. Design reserves the right to reuse and re-issue any and all parts of his drawing.



2575 Denker Street
Kingston, Ontario
Phone/Fax: (613) 206-2661
E-Mail: lachdesign@orange.ca

Project Title:
Covered Porch
314 Division St.
Kingston, Ont.

Drawn For:
Rudy Plocinato

Page Title

Sheet No.	0000
Scale	1/8" = 1'-0"
Date	Nov 2018
Project No.	2242
Contract No.	
Client	
Firm No.	31285
File Name	

Page No.:
A5



Notes

Each A Series has
revised and take
responsibility for the
design provided
on this page



This is an
unrevised copy
if this note is
not met

The contractor is responsible for
checking and verifying all the
dimensions & data notes herein
with conditions on site and shall
report any discrepancy to the designer
for adjustments to drawings

Date: Revisions:

L.A.C. Design reserves the
right
to revise and re-issue any and
all parts of this drawing



3075 Debra Street
Kingston, Ontario
Phone/Fax: 1-3064-2661
E-Mail: laclark@lclark.ca

Project Title:
Covered Porch
344 Division St.
Kingston, Ont.

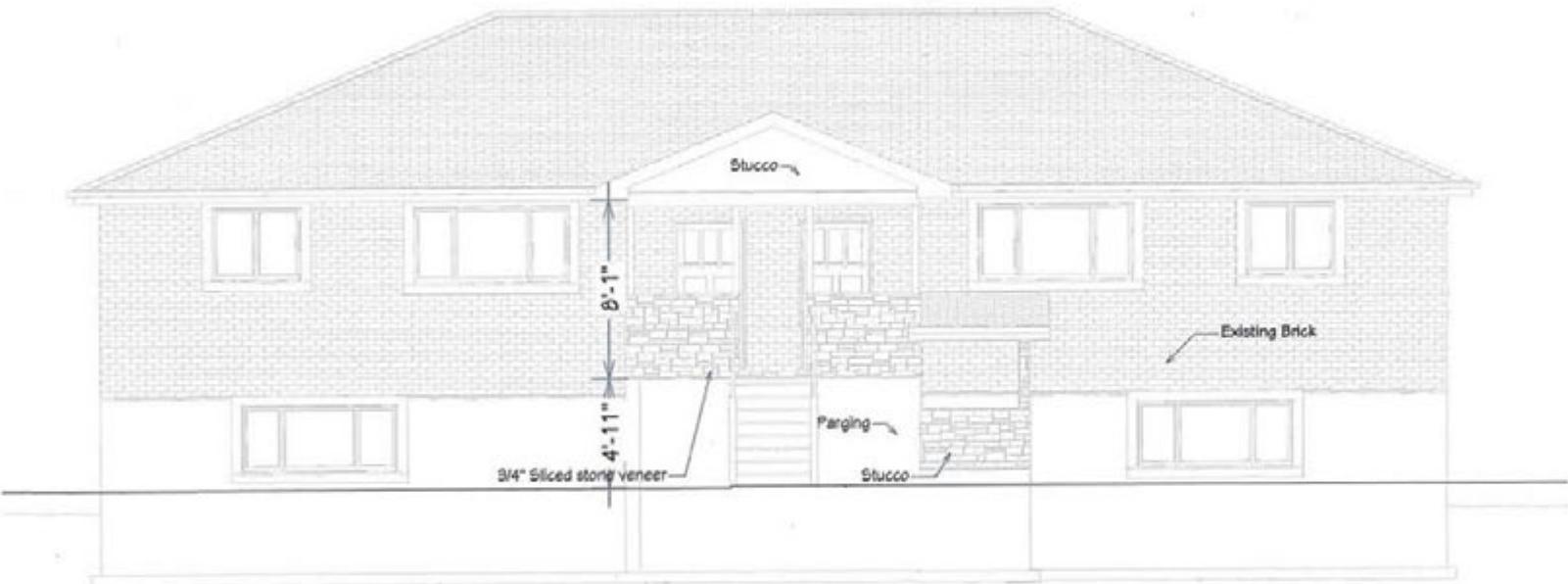
Drawn For:
Rudy Piccinato

Page Title

Sheet No.	0000
Scale	1/8" = 1'-0"
Date	Nov. 2019
Drawn By	L.A.C.
Checked By	2244
Contract No.	
Client	
Plot Scale	31288
File Name	

Page No.:

A6



Front Elevation

Notes

Each A. Gougeon
 and/or his
 agents shall be
 responsible for the
 design provided
 on this page.



This is an
 unannotated copy
 if this note is
 not used.

The contractor is responsible for
 checking and verifying all the
 dimensions & data noted herein
 with conditions on site and shall
 report any discrepancy to the designer
 for adjustments in drawings.

Date: Revisions:

L.A.G. Design reserves the
 right
 to re-use and re-issue any and
 all parts of this drawing.



20-15 Dekker Street
 Kingston, Ontario
 Phone/Fax: (613) 344-2641
 E-Mail: laudesign@ougeco.ca

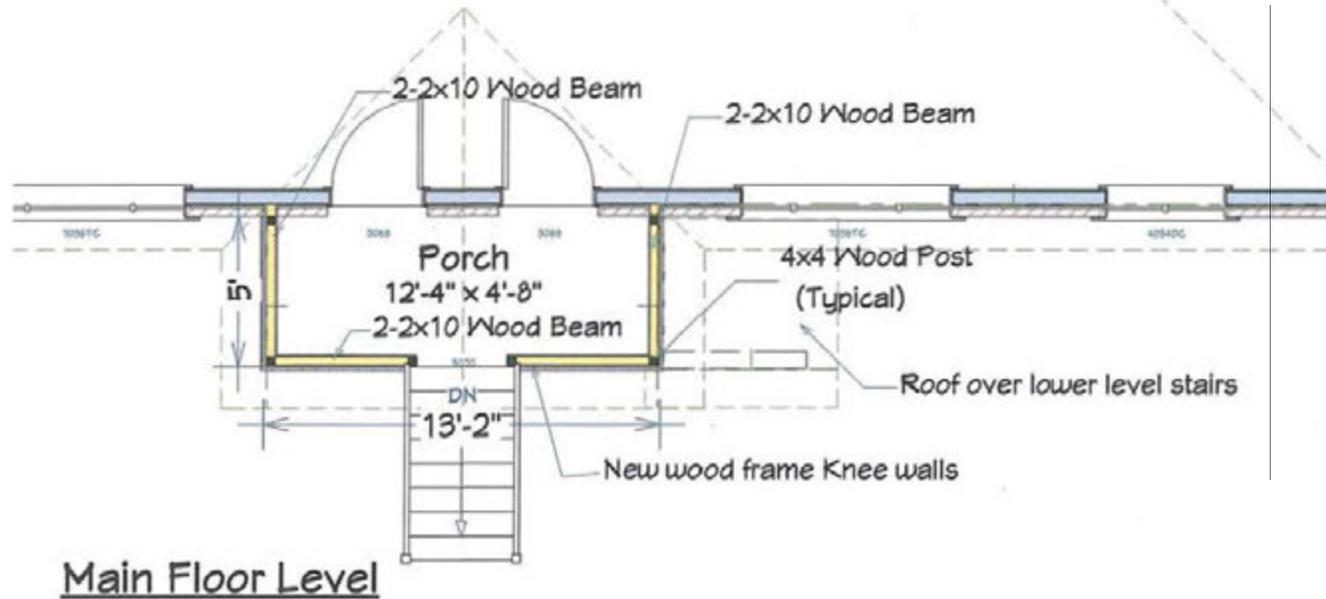
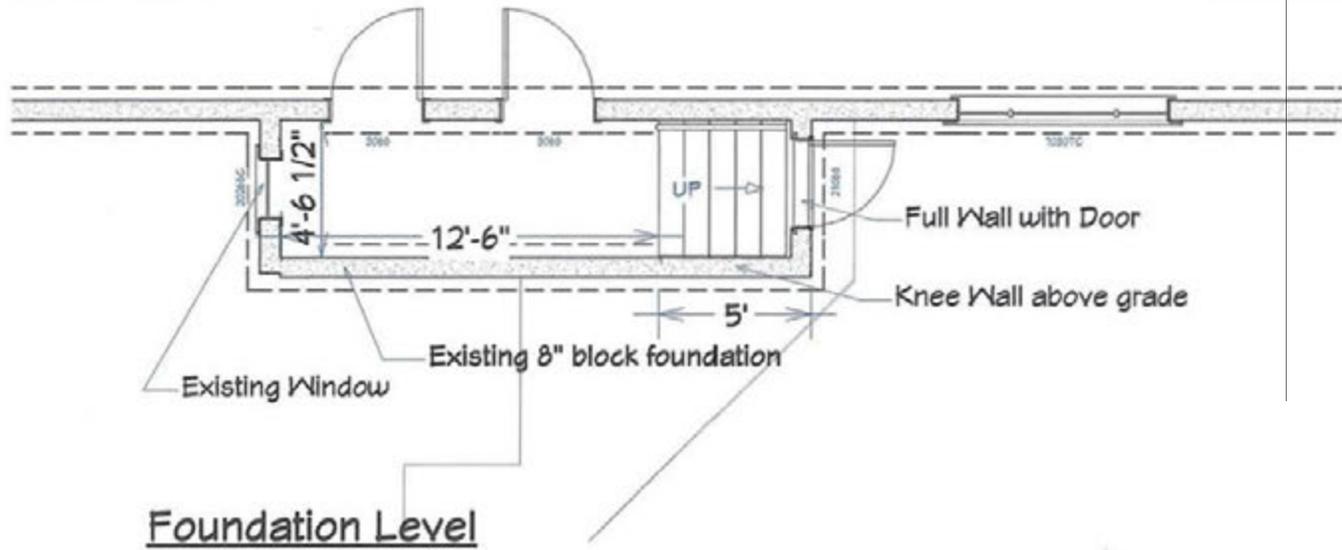
Project Title:
 Covered Porch
 344 Division St.
 Kingston, Ont.

Drawn For:
 Rudy Piccinato

Page Title

Sheet #:	0000
Scale:	1/8" = 1'-0"
Date:	Nov. 2013
Drawn By:	L.A.G.
Checked By:	2240
Contract No.:	
Form No.:	3124
File Name:	

Page No.:
A2



Notes

I, Jack A. Gordon, being duly sworn, depose and say that I am the author of the drawings on this page.



This is an unamended copy of this entry as set out.

The contractor is responsible for checking and verifying all the dimensions & data noted herein with conditions on site and shall report any discrepancy to the designer for adjustments to drawings.

Date: Revisions:

L.A.C. Design reserves the right to re-use and re-issue any and all parts of this drawing.



Jack A. Gordon
L.A.C. Design
2675 Delmar Street
Kingston, Ontario
Phone/Fax: (613) 394-2861
E-mail: jackgord@laco.ca

Project Title:
Covered Porch
394 Division St.
Kingston, Ont.

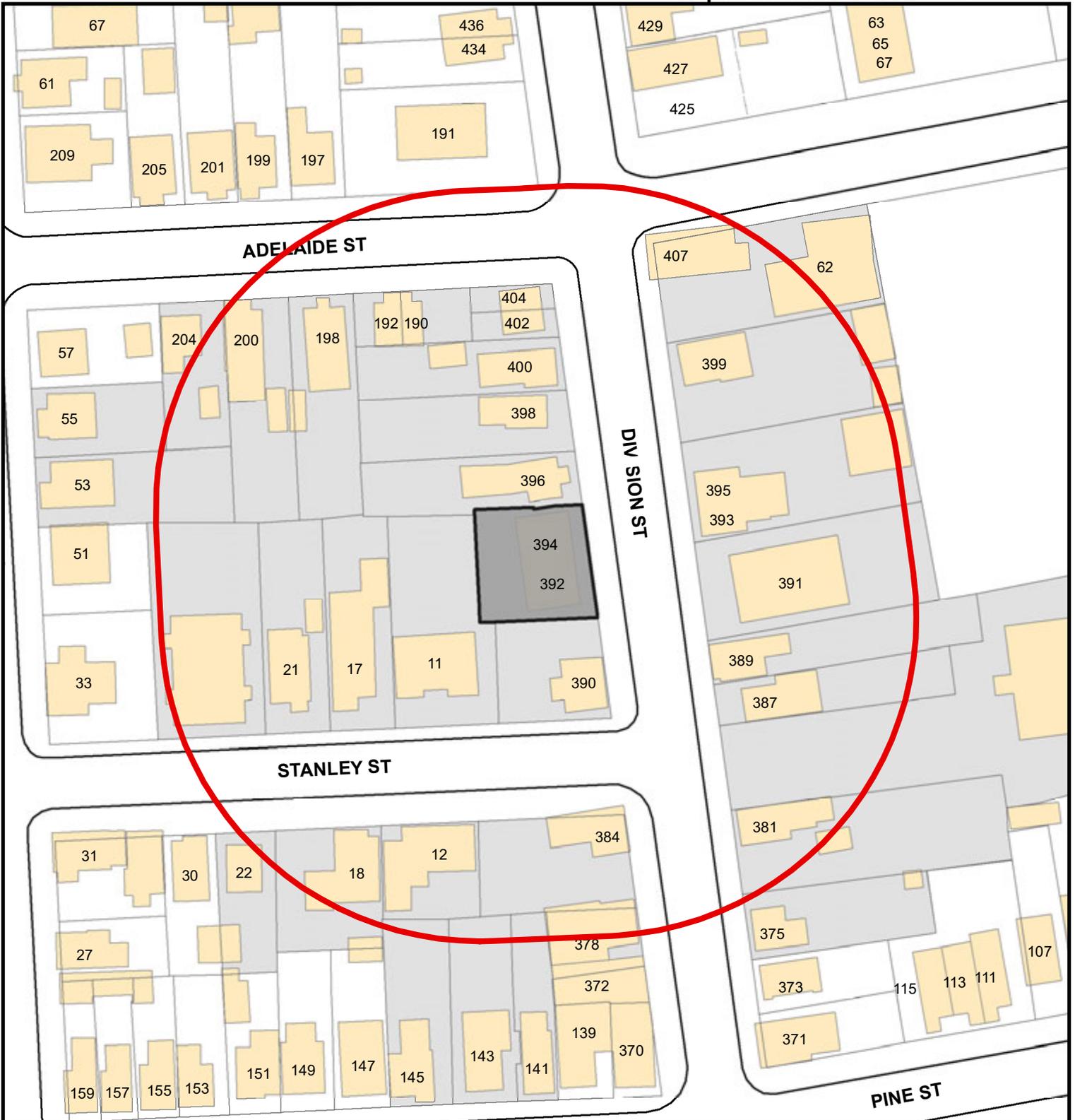
Drawn For:
Rudy Piccinato

Page Title

Sheet No.	0000
Scale	1/8" = 1'-0"
Date	Nov. 2019
Drawn By	J.A.G.
Checked By	J.A.G.
Print Scale	3/16" = 1'-0"
File Name	

Page No.:

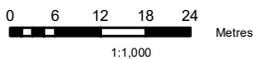
A1



Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Public Notice Notification Map

File Number: D13-068-2018
Address: 392-394 Division St



Legend

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

