

City of Kingston Report to Committee of Adjustment Report Number COA-21-024

To: Chair and Members of the Committee of Adjustment

From: Ryan Leary, Senior Planner

Date of Meeting: March 22, 2021

Application for: Permission

File Number: D13-055-2020

Address: 7 George Street

Owner: Gerhard and Bernadette Pratt

Applicant: Mikaela Hughes

Council Strategic Plan Alignment:

Theme: Corporate business

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 7 George Street. The subject property contains an existing dwelling and detached accessory building. The applicant is proposing to expand a legal non-conforming accessory building by increasing the existing height by 1.8 metres to 5.5 metres; decreasing the existing side yard setback by 0.05 metres to 0 metres; and decreasing the existing rear yard setback by 0.05 metres to 0.6 metres.

The proposed expansion to the existing detached accessory building will increase the volume of the legal non-conforming structure. No additional dwelling units or commercial uses are proposed. The owners wish to stabilize the existing structure and increase the usable space within the existing accessory building for personal use (studio/workshop), without increasing the footprint of the accessory building.

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The property is currently designated 'Residential' in the City of Kingston Official Plan and zoned Special Residential Type 2 "R2-1" Zone in Zoning By-Law Number 32-74. The property is designated as part of the Barriefield Heritage Conservation District pursuant to Part V of the *Ontario Heritage Act. Ontario Heritage Act* approval was granted for the proposal through File - Number P18-083-2020 on November 3, 2020.

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 32-74. The proposed accessory building 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 D13-055-2020, for the property located at 7 George Street to expand an existing detached accessory building, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-024.

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Authorizing Signatures:

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Ryan Leary, Senior Planner

Consultation with the following Management of the Community Services Group:

Paige Agnew, Commissioner, Community Services

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Options/Discussion:

On November 9, 2020, an application for permission was submitted by Mikaela Hughes, on behalf of the owners, Gerhard and Bernadette Pratt, with respect to the property located at 7 George Street.

The application for permission is requested to expand a legal non-conforming accessory building by increasing the existing height by 1.8 metres to 5.5 metres (0.5 metres above the maximum building height for accessory buildings in the Zone); decreasing the existing side yard setback by 0.05 metres to 0 metres; and decreasing the existing rear yard setback by 0.05 metres to 0.6 metres. The proposed expansion to the existing, approximately 50 square metre, detached accessory building will increase the volume of the legal non-conforming structure to improve its functionality for the owners. The owners wish to stabilize the existing structure with a new foundation and to increase the usable space within the existing accessory building for personal use (workshop and studio), without changing the footprint of the accessory building. A decrease to the side and rear yard setbacks are requested in order to allow space for the installation of new board and batten profile siding. No additional dwelling units or commercial uses are proposed.

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

- Plot Plan (Exhibit E); and
- Elevation Plans (Exhibit F).

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 west side of George Street, south of Wellington Street in the Village of Barriefield (Exhibit B - Key, Neighbourhood and Public Notification Maps). The property has an area of approximately 381 square metres with 23.5 metres of frontage onto George Street. The property is developed with a two-storey single detached dwelling and detached one-storey accessory building, approximately 50 square metres in size. The subject lands are designated under Part V of the *Ontario Heritage Act* as part of the Barriefield Heritage Conservation District.

The subject property is designated Residential in the Official Plan and zoned Special Residential Type 2 "R2-1" Zone in Zoning By-Law Number 32-74. The property abuts residential uses to the north, west and south, and vacant lands owned by the Canadian Forces Base Kingston to the east.

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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 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:

- 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 32-74 was passed by the former Township of Pittsburgh in 1976 and predates the City of Kingston Official Plan which came into effect in 2010. As a general rule, any land use or building 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, building or structure 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.

Official Plan

Schedule 2 to the City of Kingston Official Plan indicates the lands are located within a Housing District, with Schedule 3A designating the subject lands as 'Residential' (Exhibit C - Official Plan Map). Section 3.3 includes detailed policies regarding the range of possible housing types and

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complementary uses permitted. The goal of this land use designation is to "respond to the housing needs of the City's citizens by retaining and augmenting a broad range of housing...". As the proposed development does not alter the existing use of the structure (accessory building to single detached dwelling unit) and the built form of the proposed expansion would not adversely affect privacy and has been deemed an acceptable modification to a protected heritage property, the proposed development is compatible with the surrounding land uses. The proposed development would not change the existing use of the subject lands but would offer a minor increase in the volume of the accessory building, thereby improving the functionality, stability, and appearance of the existing structure (Exhibit F).

The goal of Section 7 of the Official Plan is to "Conserve and enhance built heritage resources within the city so that they may be accessed, experienced and appreciated by all residents and visitors, and retained in an appropriate manner and setting, as a valued public trust held for future generations." The subject lands are designated under Part V of the *Ontario Heritage Act* as part of the Barriefield Heritage Conservation District (HCD). Section 7.3.C.7 includes policies specifically related to the Barriefield HCD, including direction that any new alterations must comply with the Village of Barriefield HCD Plan in order to conserve the 19th century rural village character of the District. The applicant submitted heritage permit P18-083-2020 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*, the Village of Barriefield HCD Plan and the 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, building or structure 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/building 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, building or structure. The subject application, requesting permission to expand a legal non-conforming building by increasing the existing height by 1.8 metres to 5.5 metres; decreasing the existing side yard setback by 0.05 metres to 0 metres; and decreasing the existing rear yard setback by 0.05 metres to 0.6 metres, 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:

The Provincial Policy Statement, 2020, and the City of Kingston Official Plan both support and encourage the retention and creation of residential uses and promotes the conservation of cultural heritage resources. The property is designated under Part V of the *Ontario Heritage Act* and Heritage Permit P18-083-2020 has been issued, confirming the proposed expansion will not adversely affect the heritage attributes of the property or the district.

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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 accessory building by approximately 1.8 metres in height (0.5 metres above the maximum building height in the Zone), which would provide an increase in building volume to improve functionality and facilitate structural changes. The residential use of the subject lands is compatible with the surrounding residential uses and is not anticipated to impact any future planned uses in the area. As noted above, Heritage Permit P18-083-2020 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 expansion does not further increase the intensity of or change in any way the residential use of the property. The proposed development would improve the functionality of the existing accessory building by allowing the proponents to install a proper foundation, to reduce the risk of rot in the structure and to raise the floor level above the adjacent grade. The Village of Barriefield HCD Plan provides detailed policies and guidelines to manage change and to provide direction for the conservation of the District's heritage attributes. All adjacent/abutting properties are included in the Barriefield HCD. The adjacent properties to the north and south include detached buildings that are located in close proximity to the adjoining lot lines and may be considered nonconforming structures.

No change to the location of the existing accessory building is proposed. The proposed development is compatible and consistent with the development of adjacent sites and has been deemed to not impact the heritage character of the structure or the District through prior *Ontario Heritage Act* approval.

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:

As outlined above, the subject lands are located within the Residential designation. The policies under these sections permit residential uses, including accessory buildings. The subject property is surrounded by low density residential uses, most with detached accessory buildings. The proposed development does not seek to change the existing residential uses of the property, but rather seeks to provide a minor increase, primarily in wall and roof height, to an existing non-complying accessory building. The proposed modification would contribute to a more functional interior space and more structurally sound building.

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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, odor, traffic conflict or other nuisance from the proposal:

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 non-complying accessory structure to an existing residential use. As the proposed development does not seek to increase the number of residential units or to introduce a new use 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 are compatible with the surrounding residential uses. As noted previously, there are several detached accessory buildings in the area. Many appear to be very close, abutting or over lot lines and it is possible that applications could be made for expansion to these structures in the future.

The subject property is located in the Barriefield Heritage Conservation District, designated pursuant to Part V of the *Ontario Heritage Act* and is adjacent to other protected heritage properties. The applicant submitted Heritage Permit P18-083-2020 to seek permission to alter the heritage structure. The application was found to be in conformity to the Village of Barriefield Heritage Conservation District Plan and not to adversely affect the heritage character of the District. It was approved by Council on November 3, 2020.

Based on the City of Kingston archaeological potential mapping the property is in an area noted as "Further Study Required", and therefore an Archaeological Assessment and clearance 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.

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The requested permission to expand the legal non-conforming building by enlarging the existing detached accessory building meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned Special Residential Type 2 "R2-1" Zone in the City of Kingston Zoning By-Law Number 32-74, as amended (Exhibit D - Zoning By-Law Map). As opposed to an attached garage or addition to the main house, which is subject to the same height and setback provision as the main house, a detached accessory building is subject to the provision of Section 5(1) 'Accessory Uses' of the Zoning By-Law. Section 5(1)(d) requires a minimum rear and interior yard setback of 1.2 metres and a maximum building height of 5 metres.

A detached accessory building appears on historic mapping in this location by 1908. While it is unlikely that the current structure is this old, it is clear that an accessory building and use has been continuously in this location before the passing of the current Zoning By-law in 1976. While the use of the subject accessory building (both current and proposed) is permitted in the R2-1 Zone, the location of the existing structure is non-conforming with the existing setback requirements, particularly the minimum rear and side yard setbacks and maximum lot coverage.

No change to the location and footprint of the accessory building is proposed, and the currently encroaching overhang from the eave troughs onto the adjacent property to the north will be removed. In order to improve the functionality of the accessory building and to minimize the risk of rot, the applicants wish to pour a new foundation, increase the roof pitch (from 4:12 to 10:12), install new board and batten profile siding and new windows and doors.

Section 5(12)(c) permits a non-conforming use/structure to be enlarged or extended provided the structure is used for a purpose permitted in the zone and existed on the date of passing of the Zoning By-law and provided such extension does not contravene any of the provisions of this By-law. As the proposed development would increase the height of the structure beyond the 5 metres limit and would further reduce the side and rear yard setbacks by 0.05 metres, to accommodate the new siding, permission from the Committee of Adjustment is required to authorize the proposed development.

An expansion of a legal non-conforming use/structure 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 detached accessory building by 1.8 metres in height (0.5 metres beyond the zoning by-law limit), while decreasing the side and rear yard setbacks by approximately 0.05 metres. The proposal is in keeping with the built form and character of the neighbourhood and will be visibly compatible with the surrounding built form and heritage district. The proposal will not result in any negative impacts on the abutting lands or their continued use, enjoyment, or development.

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Technical Review: Circulated Departments and Agencies

\boxtimes	Building Services		\boxtimes	Heritage (Planning Services)
	Finance	□ Utilities Kingston	\boxtimes	Real Estate & Environmental Initiatives
\boxtimes	Fire & Rescue		\boxtimes	City's Environment Division
\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
\boxtimes	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 V of the *Ontario Heritage Act*. The applicant submitted Heritage Permit File Number - P18-083-2020 to authorize the proposed alterations to the structure, which was approved by Council on November 3, 2020.

Alterations to the subject structure were previously approved by both Council (Heritage Permit File Number - P18-109-2018) and Committee/LPAT (File Number - D13-012-2019) for the previous owners. They included a plan to enlarge and attach the detached accessory building to the main house by way of a link addition. The current owners are not interested in advancing these previous approvals.

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 32-74. The existing accessory building on the subject lands predates the current zoning by-law. The proposed development would enlarge the height and decrease the setback of the non-conforming accessory building but would not increase the intensity or change the nature of the existing

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residential use. The subject lands are designated under Part V of the *Ontario Heritage Act* and it has been determined, through approval of Heritage Permit File Number - fP18-083-2020, that the proposed development would not adversely impact the heritage character of the structure or Heritage Conservation District.

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 accessory building.

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

Village of Barriefield Heritage Conservation District Plan

Zoning By-Law Number 32-74

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on March 22, 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 25 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

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Contacts:

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

Ryan Leary, Senior Planner, Heritage, 613-546-4291 extension 3233

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Recommended Conditions

Exhibit B Key, Neighbourhood and Public Notification Maps

Exhibit C Official Plan Map

Exhibit D Zoning By-Law Map

Exhibit E Plot Plan

Exhibit F Elevation Plans

Exhibit G Site Photographs

Recommended Conditions of Approval

Application for Minor Variance, File Number: D13-055-2020

Approval of the foregoing variance shall be subject to the following conditions:

1. Limitation

That the approved permission applies only to the accessory building at 7 George Street 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. 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 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 Cultural Program 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.

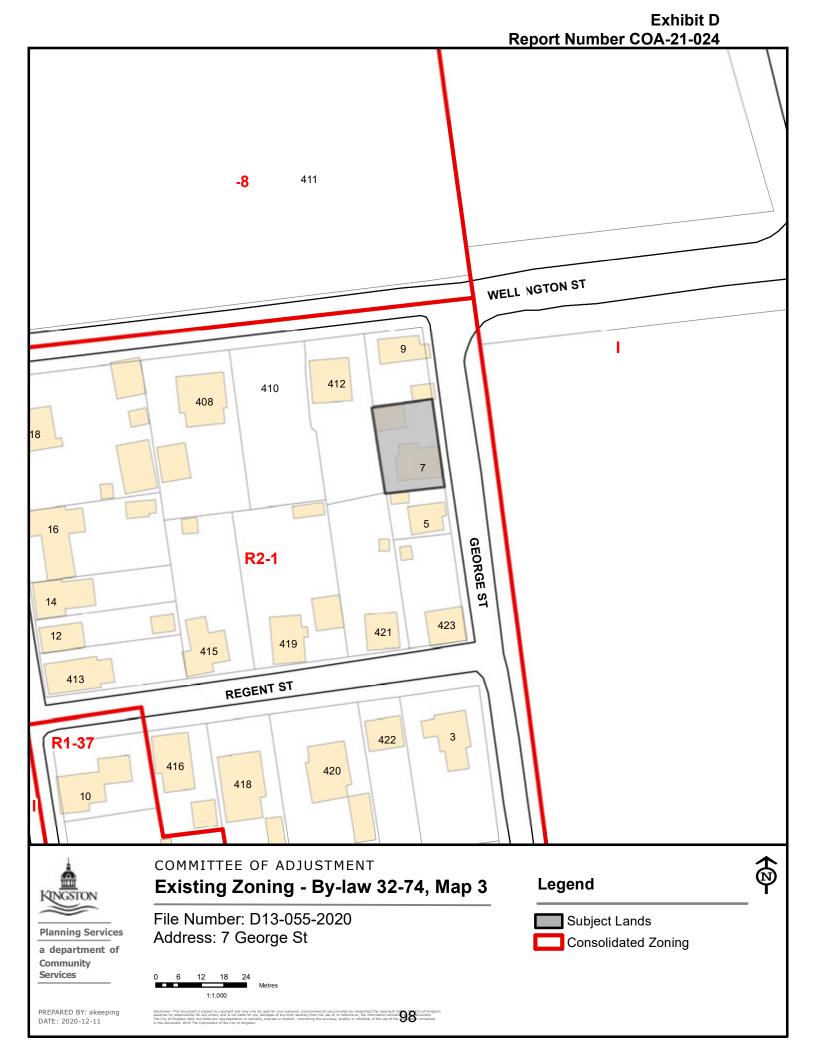
Exhibit B Report Number COA-21-024 411 WELL NGTON ST 412 410 408 GEORGE ST 5 16 14 423 421 12 419 413 REGENT ST 422 416 420 418 10 **CONTEXT MAP** COMMITTEE OF ADJUSTMENT **Key Map** File Number: D13-055-2020 **Planning Services** Address: 7 George St a department of Community 5 10 15 20 metres Services DATE: 2020-12-11 PREPARED BY: akeeping 1:1,000 96 Lands Subject to Minor Variance

Exhibit C Report Number COA-21-024 411 WELLINGTON ST 412 410 408 7 GEORGE ST 5 16 14 423 421 12 419 415 413 REGENT ST 3 422 416 420 418 10 COMMITTEE OF ADJUSTMENT Official Plan, Existing Land Use Legend File Number: D13-055-2020 Subject Lands **Planning Services** Address: 7 George St **INSTITUTIONAL** a department of **RESIDENTIAL** Community Services

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PREPARED BY: akeeping

DATE: 2020-12-11

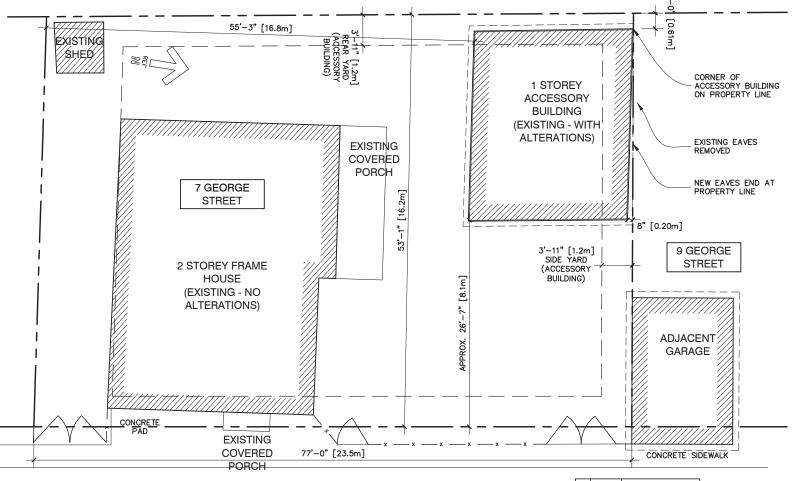


SURVEY NOTES

1. PROPERTY LINES AND LOCATION OF NORTH WALL & EAVES OF ACCESSORY BUILDING ARE PROVIDED FROM A SURVEY BY HOPKINS & CORMIER SURVEYING LTD. DATED DEC. 10, 2002. 2. LOCATION AND DIMENSIONS OF HOUSE ARE APPROXIMATE AND ARE TAKEN FROM DRAWINGS BY OTHERS AND CITY OF KINGSTON ONLINE MAPPING.

ZONING NOTES

ZONE	R2-1 (ACCESSORY BUILDING ONLY)		
	REQUIREMENT	PROPOSED	
HEIGHT	MAX. 5.0m	5.5m	
FRONT YARD (EAST)	MIN. 1.2m	8.1m (EXISTING)	
SIDE YARD (SOUTH)	MIN. 1.2m	16.8m (EXISTING)	
SIDE YARD (NORTH)	MIN. 1.2m	0.05m (EXISTING)	
REAR YARD (WEST)	MIN. 1.2m	0.65m (EXISTING)	
LOT COVERAGE	MAX. 30%	42% (EXISTING)	





GEORGE STREET

Mikaela Hughes Architect Inc.

82 OAK POINT ROAD, WOLFE ISLAND ON K0H 2Y0 613-544-9183

THESE DOCUMENTS ARE THE PROPERTY OF THE ARCHITECT AND ARE NOT TO BE USED WITHOUT REFERING TO THE ARCHITECT. DRAWINGS ARE NOT TO BE SCALED AND ARE TO BE READ IN CONJUNCTION WITH ALL OTHER CONSULTANTS' DOCUMENTS.

PROJECT RENOVATIONS TO THE PRATT STUDIO 7 GEORGE STREET, BARRIEFIELD

FOR CONSTRUCTION 4 08/01/21 EAVE REMOVED

3 10/11/20 FOR COM. OF ADJ. 2 15/9/20 MINOR REVISIONS 27/8/20 FOR HERITAGE D/M/Y REVISION DETAILS

DRAWN BY MJH DATE 27 AUGUST, 2020 SCALE 1/8" = 1'-0"

PRINT ON 11x17 PAPER

DESIGN ONLY - NOT

JOB NO. DWG. NO.

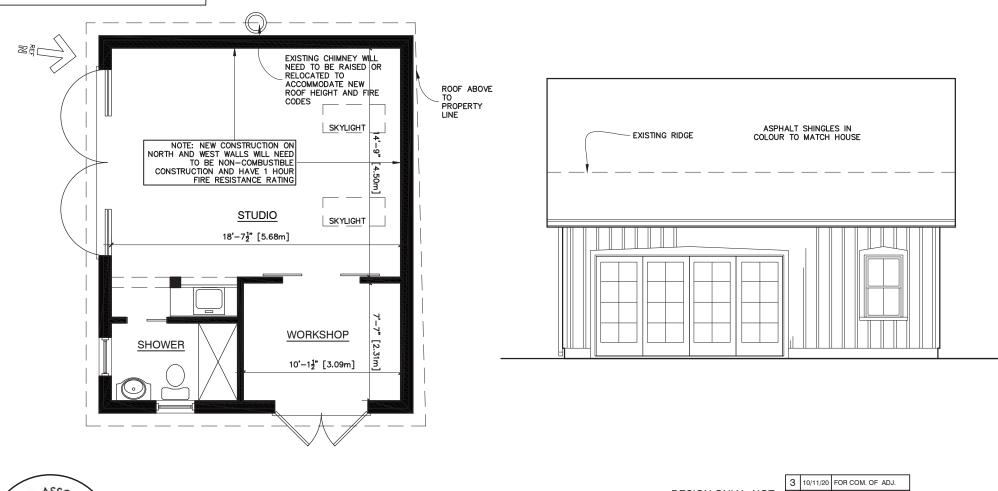
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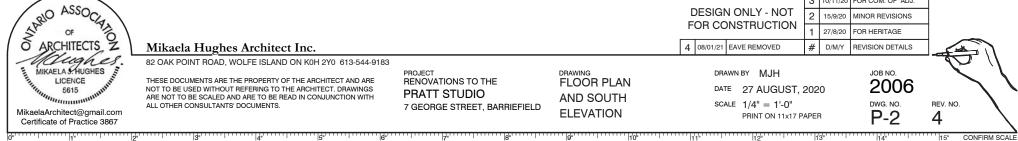
REV. NO. 4 CONFIRM SCALE

DRAWING

SITE PLAN

NOTE: STUDIO DRAWN SQUARE. SURVEY SUGGESTS THAT BUILDING IS SKEWED.





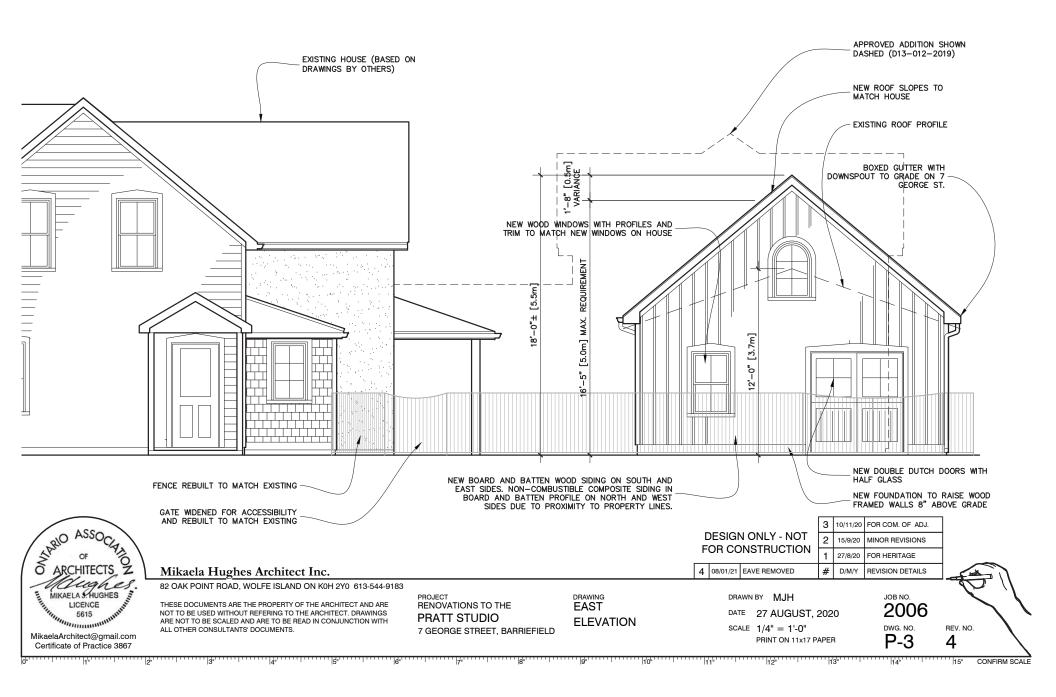
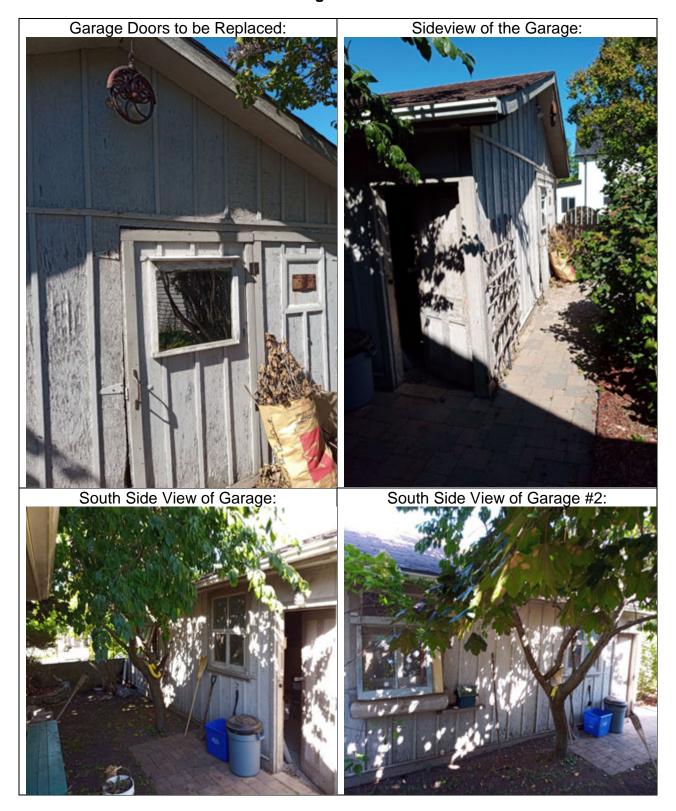
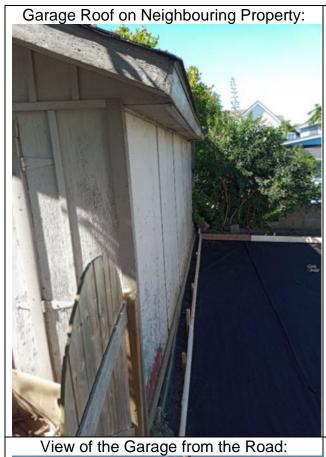


Image from Site Visit (September 18th 2020):

Garage Photos:











View of other Property from Garage:



Fence Photos:







