

City of Kingston Report to Committee of Adjustment Report Number COA-21-043

To: Chair and Members of the Committee of Adjustment

From: James Bar, Acting Manager, Development Approvals

Date of Meeting: May 17, 2021

Application for: Permission

File Number: D13-027-2021

Address: 585 Union Street

Owner: Rory Dyke

Applicant: Fotenn Consultants Inc.

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 585 Union Street. The existing building at 585 Union Street is developed with two residential units in a two-storey building that contains a small one storey rear addition. The existing structure is not compliant with the A5 Zones front and interior side yard setbacks. The application for Permission would permit the owner to expand the building through a second storey addition within the existing footprint of the rear addition and a re-configuration of the existing two units.

The application is subject to Zoning By-Law Amendment File Number D14-26-2020 to rezone the property to allow for the increase in the number of units on-site from 2 to 4. Due to the timing of the application and the construction timeline of the applicant, this Permission application has been applied for to permit the expansion of the two-unit non-complying building while the additional units and other built form considerations are being reviewed through the Planning

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Committee. This Permission application only deals with the construction of the two storey addition at the rear of the existing building.

The property is also the subject of an application for Site Plan Control under the *Planning Act* (File Number D11-045-2020) which is currently under review in conjunction with the zoning bylaw amendment application.

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 two storey addition to the rear of the existing building 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 D13-027-2021, for the property located at 585 Union Street to construct a two-story addition at the rear of the existing building, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-043.

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Authorizing Signatures:

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James Bar, Acting Manager of Development Approvals

Consultation with the following Management of the Community Services Group:

Tim Park, Acting Director, Planning Services

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Options/Discussion:

On April 30, 2021, an application for permission was submitted by 0TFotenn Consultants Inc., on behalf of the owner, Rory Dyke, with respect to the property located at 585 Union Street. The application for permission is requested to permit the expansion of the existing non-complying structure with a two-storey addition located at the rear of the building. In review of Exhibit E, this application deals exclusively with the addition to the '2 Storey Vinyl-clad Dwelling, and not the larger 'Proposed Addition.' This is reflected in the detailed plans found in Exhibit D.

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

- Floor Plans, Elevations (Exhibit D)
- Site Plan from the Zoning By-Law Amendment Application (Exhibit E)

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 in Portsmouth District on the north side of Union Street between Yonge Street to the west and Gardiner Street to the east. It has an area of approximately 847 square metres and 16.5 metres of frontage on Union Street. The property is currently developed with a two-storey residential dwelling with a one-storey rear addition and contains two residential dwelling units. The property is in the Portsmouth Village Heritage Character Area, but the subject site and adjacent properties are not designated under the *Ontario Heritage Act*.

The surrounding area contains a mix of residential, institutional, commercial, and open space uses. The subject property is approximately 200 metres from the commercial area along King Street in Portsmouth Village and is located close to a variety of amenities, including: Garrigan Park, Aberdeen Park, Domino Theatre, St. John's Church, Queen's University West Campus, and the Beechgrove Complex Recreation Centre.

Vehicular access is provided via an existing driveway on Union Street. Pedestrian access is also provided from an unobstructed pathway from Union Street. Sidewalks are present on both sides of Union Street and there are bike lanes heading eastwards along Union Street. The site is well served by Kingston Transit, including an express bus route along King Street with stops at Portsmouth Avenue and Sir John A. Macdonald Boulevard.

The following uses are directly adjacent to the subject property:

- North Residential;
- East Residential;
- South Residential; and
- West Residential and Industrial (auto body shop).

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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 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 8499 was passed by Council in July 28, 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 (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 on Schedule 3-A of the Official Plan. The Residential designation permits a variety of residential uses and built forms. The subject property is also identified on Schedule 9 as being within the Portsmouth Village Heritage

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Character Area. The Official Plan contains policies related to the protection of cultural heritage features and areas.

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 construct a second storey addition to the existing two unit dwelling within the footprint of the existing rear addition, 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 subject lands are located within a settlement area as defined in the Provincial Policy Statement, where growth is to be focused on full municipal services. The second storey addition within the same footprint of the existing one storey addition maintains the residential uses onsite and does not have an impact upon matters of provincial interest as outlined in the Provincial Policy Statement including cultural heritage, natural heritage, and servicing.

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 subject lands are designated Residential in the Official Plan and zoned for residential uses. The site is not within a natural heritage area as per the Official Plan. The lands are considered Composite Archaeological Potential. An Archaeological Assessment was submitted in support of the zoning by-law amendment application and the report has been entered into the Ministry of Tourism Culture and Sports Archaeological Register. No further archaeological assessment is required at this time.

The site is within the Portsmouth Village Heritage Character Area. The proposed second storey addition at the rear of the building will not be visible from the street. The scale and character of the area will not be impacted.

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 expansion of the exiting one-storey rear addition with a second storey maintains the scale and character of the surrounding area. The addition faces into the site and is set back from the neighbouring lot lines. No negative offsite impacts are anticipated.

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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 expansion of the one-storey rear addition with a second storey allows for the reconfiguration of the existing two units onsite in an area that is developed with residential uses within the urban area on full municipal services in a zone that permits two residential units. The expansion will not change the intensity of uses onsite.

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:

This application for Permission is only required to consider the expansion of the existing non-complying structure. As the existing dwelling pre-dates the current zone regulations, it was originally constructed with smaller front yard and interior side yard setbacks. The site is of a sufficient size that the existing dwelling and second story addition can meet all provisions of the A5 Zone.

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

There will be no impact to the sites and areas existing service levels.

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

No comments or concerns.

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

The proposed addition conforms with all regulations of the A5 Zone. The application for permission would not create an undesirable precedent as the addition represents a logical and orderly expansion of the existing structure.

The requested permission to expand a one storey existing addition with a second floor meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned One-Family Dwelling and Two-Family Dwelling 'A5' in Zoning By-Law Number 8499. The zoning by-law does not contain provisions under Section 5 – General Provisions, that would allow for the expansion of a non-complying building as-of-right, even where a proposed addition complies with all other regulations of the by-law.

The following table outlines the changes to the A5 Zone (Section 11) and the General Provisions (Section 5) demonstrates that the proposed addition complies with all applicable provisions.

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Provision	Required	Proposed	Amendment Required?
Permitted Uses (Section 11.2)	One-family dwellings Two-family dwellings Various community facilities	Two-family dwellings	No
Maximum Building Height	10.7 metres	9.7 metres	No
Minimum Front Yard	7.5 metres	4.5 metres	Existing Legal non-complying
Minimum Side Yard	1.2 metres	East 0.9 metres West 2.9 metres Addition greater than 1.2 metres	Existing Legal non- complying
Minimum Aggregate Side Yard	3 metres	3.8 metres	No
Minimum Rear Yard	6 metres	35.5 metres	No
Minimum Lot Width	15 metres	16.5 metres	No
Minimum Lot Area	370 square metres per unit	423 square metres per unit	No
Minimum Percentage of Landscaped Open Space	30%	Greater than 30%	No
Parking	1 space per dwelling unit	2 spaces	No
Parking Design Standards	2.7 metres wide by 6 metres long	2.7 metres wide by 6 metres long	No

Technical Review: Circulated Departments and Agencies

Ш	Building Services	□ Engineering Department	
	Finance	☐ Utilities Kingston	☐ Real Estate & Environmental Initiatives
	Fire & Rescue	☐ Kingston Hydro	☐ City's Environment Division
	Solid Waste	□ Parks Development	□ Canadian National Railways
	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		

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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 had been 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

Zoning By-Law Amendment File D14-026-2020

Site Plan Control Application File D11-045-2020

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 8499. The proposed expansion to the existing building maintains the use of a two unit dwelling onsite in a built form that is similar to those found in the area. The rear addition will not be visible from the street. Permitting the expansion makes appropriate and desirable use of the land as the residential uses will continue onsite in a compatible and complementary built form.

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 8499

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Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on May 17, 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 33 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:

James Bar, Acting Manager of Development Approvals, 613-546-4291 extension 3213

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Recommended Conditions

Exhibit B Key Map

Exhibit C Neighbourhood Context Map (2019)

Exhibit D Floor Plans and Elevations

Exhibit E Site Plan

Exhibit F Official Plan Map

Exhibit G Zoning By-Law Number 8499, Map 26

Exhibit H Site Photographs

Exhibit I Public Notification Map

Recommended Conditions for Approval Application for Permission, File Number: D13-027-2021 Approval of the foregoing permission shall be subject to the following conditions:

1. Limitation

That the approved variance applies only to the proposed second storey rear addition at 585 Union Street as shown on the approved plans 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 Division a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings. 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 drawings, including any amendments and conditions approved by the Committee of Adjustment, as stated in the decision. Additional planning applications may be required should further zoning deficiencies be identified through the Building Permit application process.

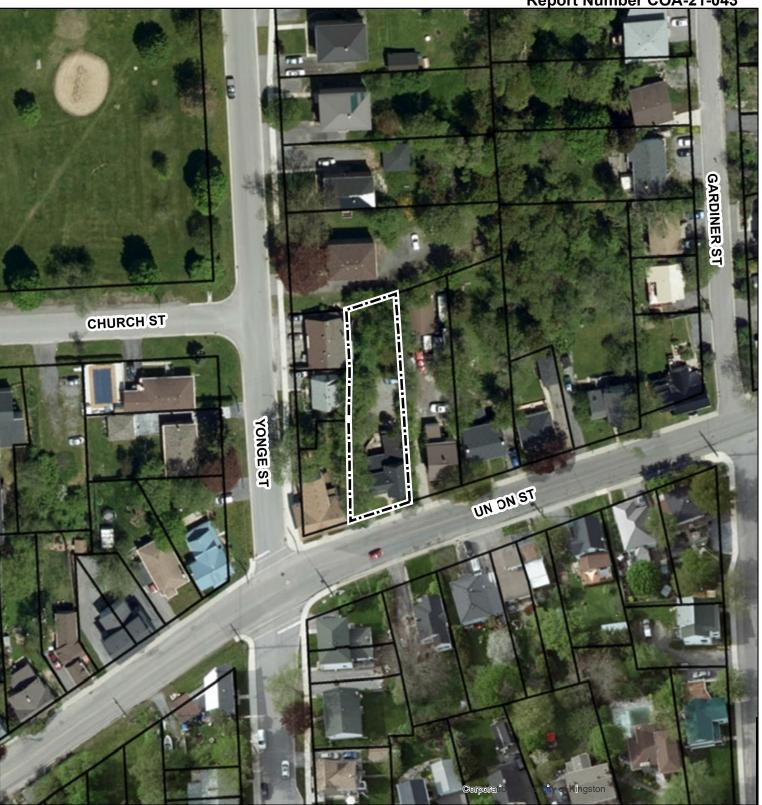
4. Standard Archaeological Condition

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 Division (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 Division (613-546-4291 extension 3180) must be immediately contacted.

Exhibit B Report Number COA-21-043 **GARDINER ST** CHURCH ST YONGE ST UN ON ST **CONTEXT MAP** COMMITTEE OF ADJUSTMENT **Key Map** File Number: D13-027-2021 **Planning Services** Address: 585 Union Street a department of Community BAIDEN ST Services 5 10 15 20 metres DATE: 2020-12-03 PREPARED BY: Ichu 1:1,000 **Subject Lands**

Exhibit C Report Number COA-21-043





Planning Services a department of

a department of Community Services

PREPARED BY: Ichu DATE: 2020-12-03

COMMITTEE OF ADJUSTMENT

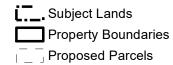
Neighbourhood Context (2019)

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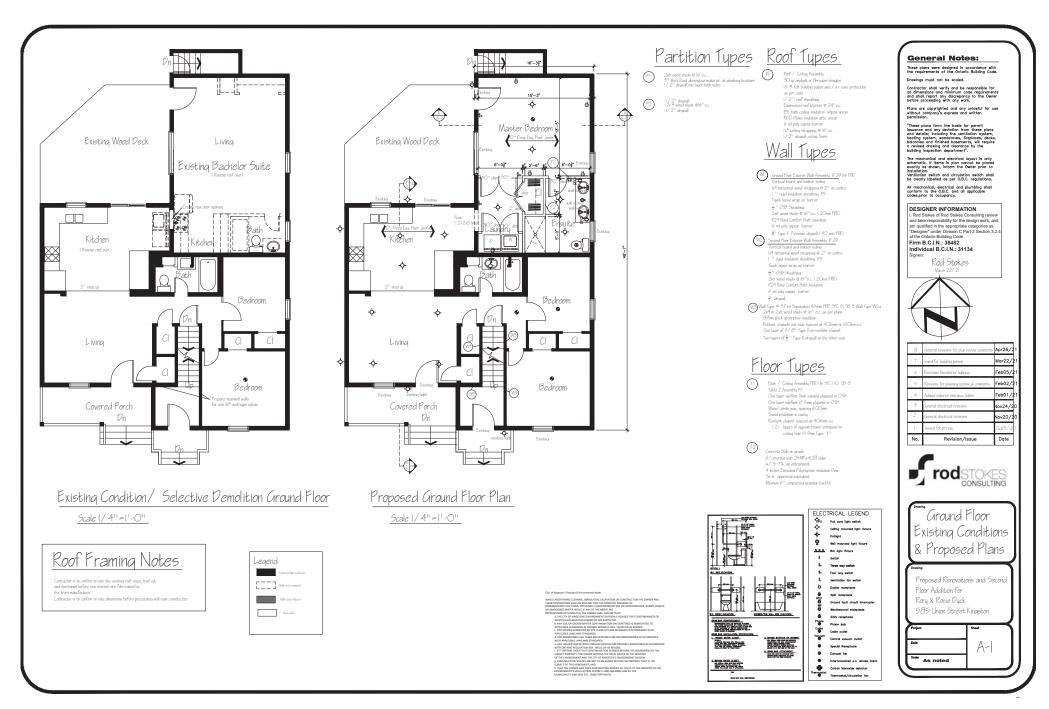
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Legend







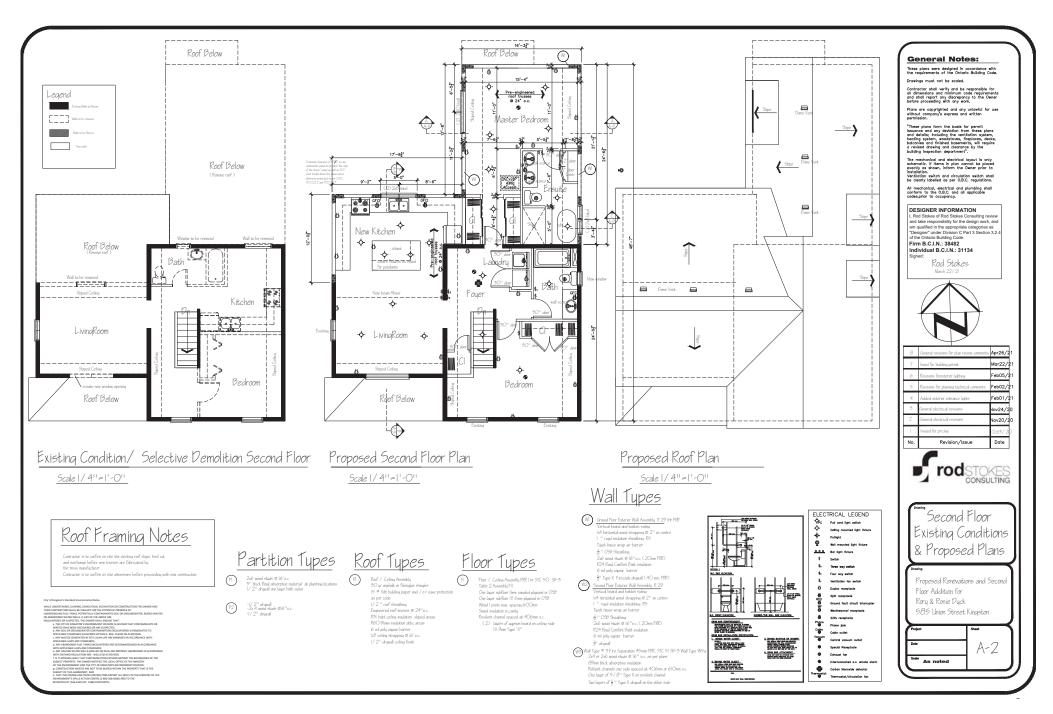


Exhibit D Report Number COA-21-043

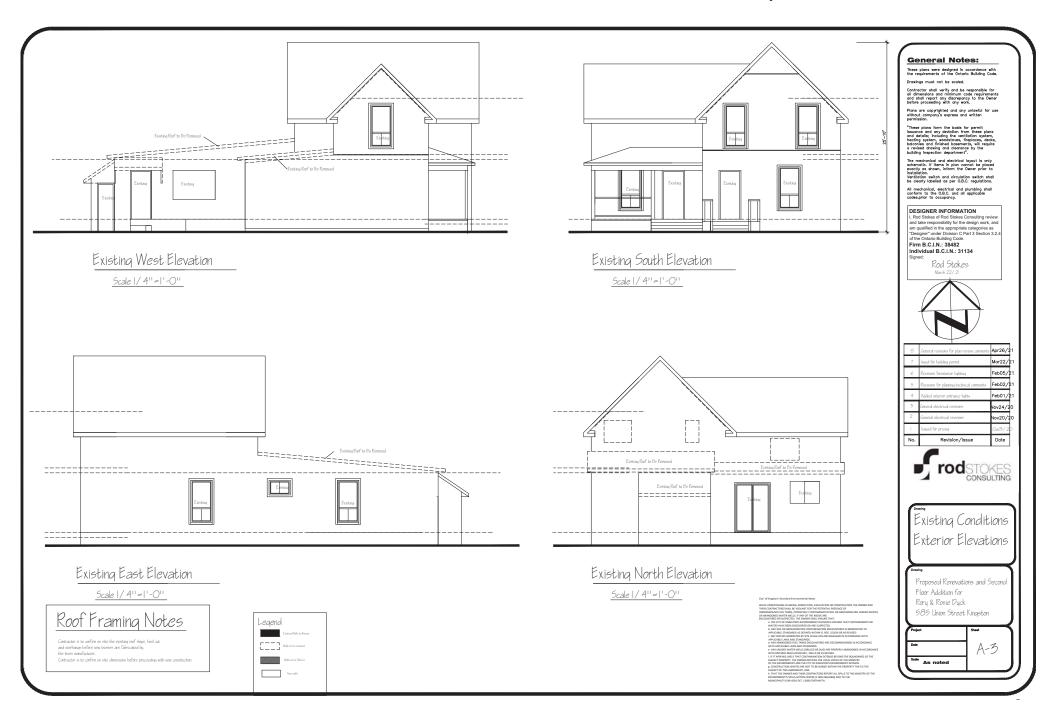
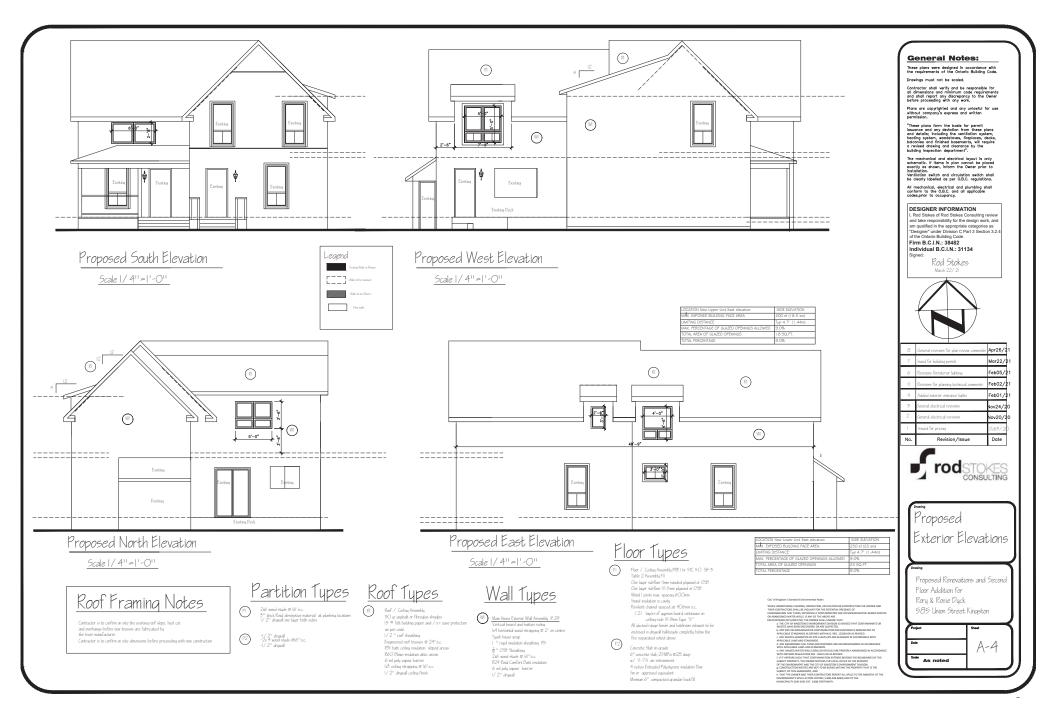
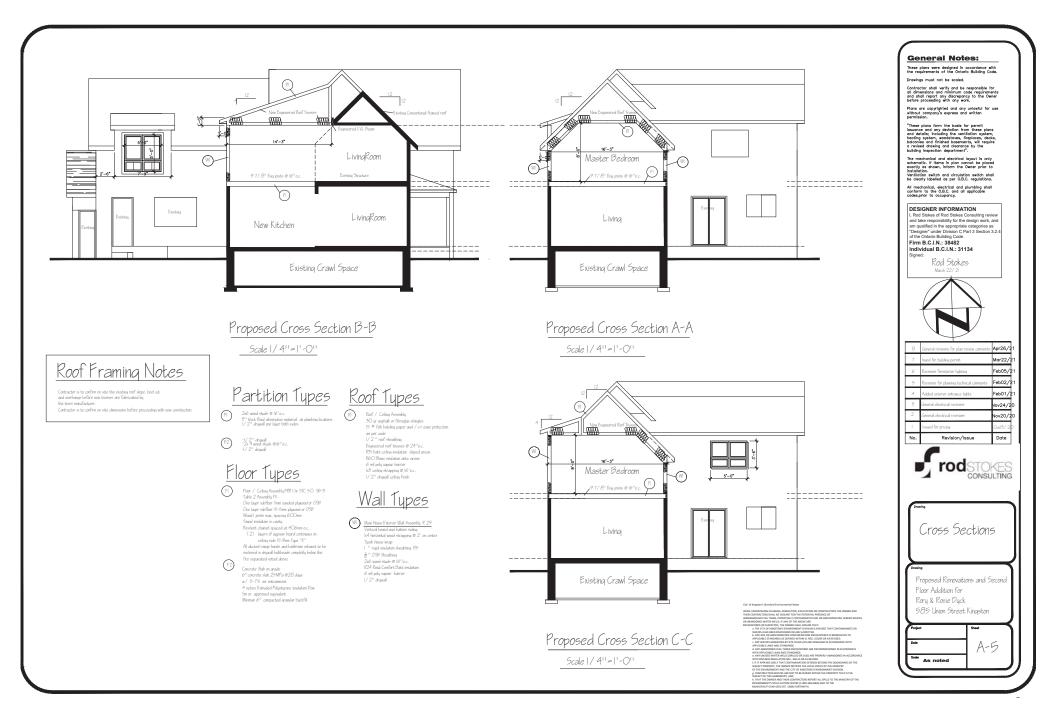


Exhibit D Report Number COA-21-043





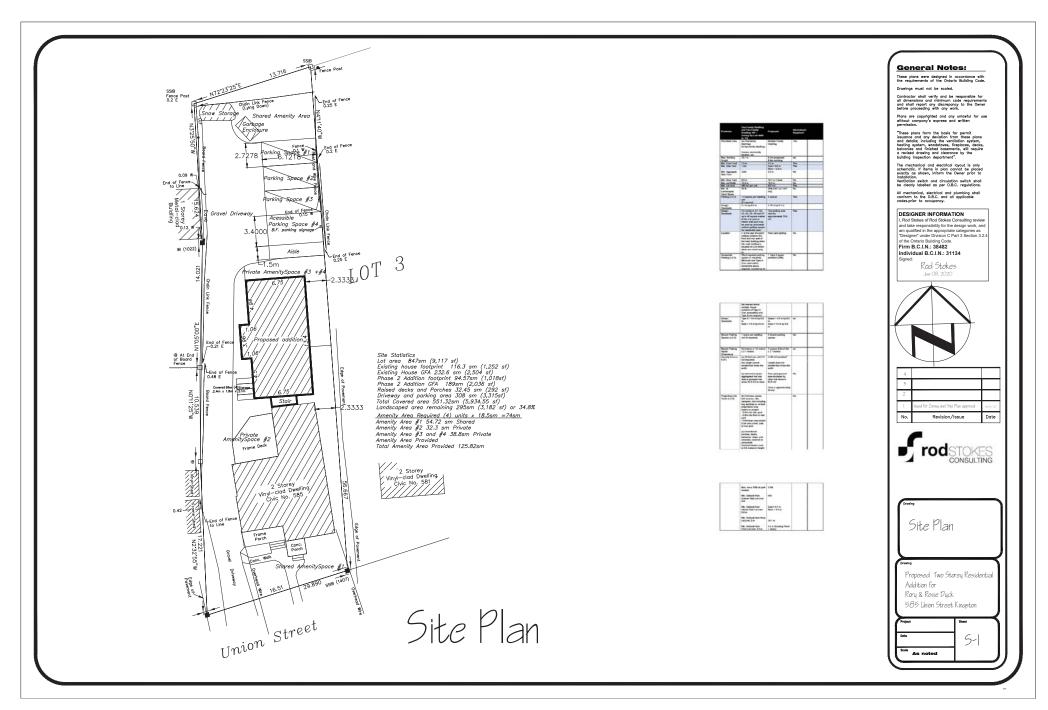
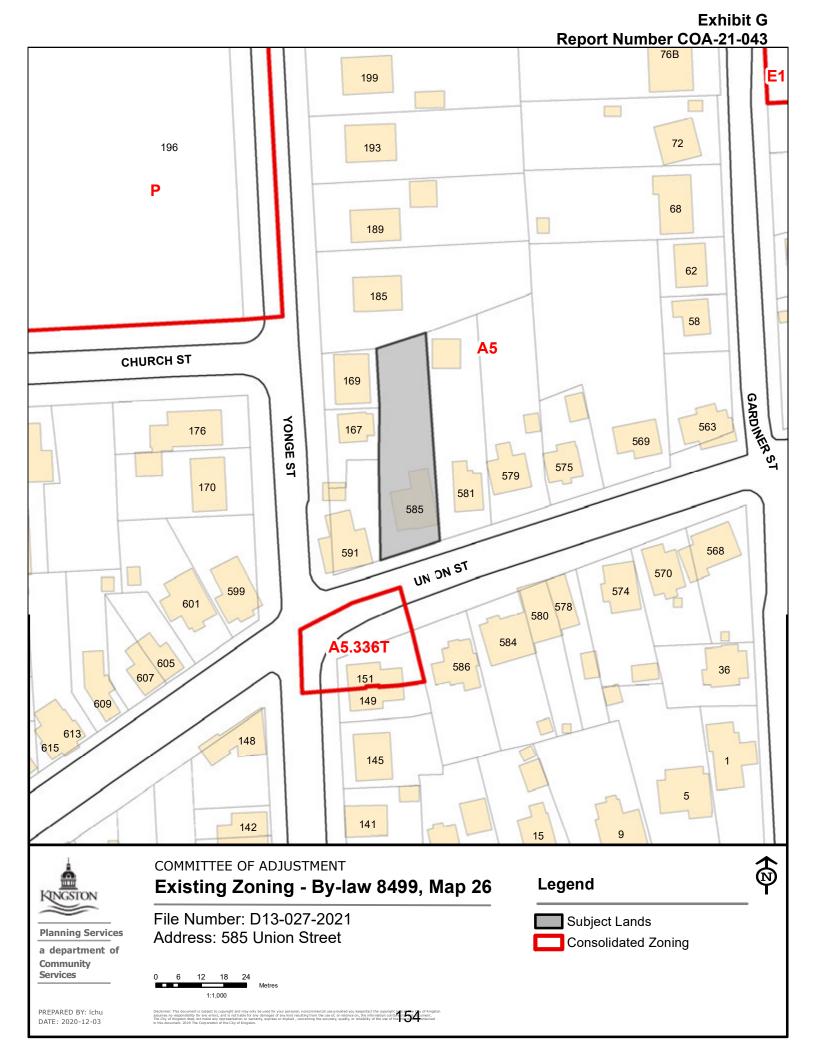


Exhibit F Report Number COA-21-043 GARDINER ST **CHURCH ST** YONGE ST UN ON ST COMMITTEE OF ADJUSTMENT Official Plan, Existing Land Use Legend Subject Lands File Number: D13-027-2021 **Planning Services** Address: 585 Union Street INSTITUTIONAL a department of **OPEN SPACE** Community Services RESIDENTIAL

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PREPARED BY: Ichu

DATE: 2020-12-03



Site Photographs: 585 Union Street



Front of the existing house at 585 Union Street.



Rear of existing house at 585 Union Street, including the existing one-storey addition.



Existing parking area in the rear yard along the eastern lot line and location of proposed addition.



Western lot line in the rear yard showing the rear of the property at 167 Yonge Street and Ron's Auto Body Shop.



Rear yard of 585 Union Street and northern property line; location of proposed amenity area and parking.



Existing driveway and western lot line adjacent to 591 Union Street and 167 Yonge Street.

