

# City of Kingston Report to Committee of Adjustment Report Number COA-21-046

To: Chair and Members of the Committee of Adjustment

From: Lindsay Sthamann, Planner

Date of Meeting: June 21, 2021

Application for: Permission

File Number: D13-025-2021

Address: 73 Gore Street

Owner: Mac Graydon and Stacy Ridi

Applicant: Mac Gervan – Gervan & Associates

#### **Council Strategic Plan Alignment:**

Theme: Regulatory & compliance

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 73 Gore Street. The existing building at 73 Gore Street is developed with a single-family home. The existing structure is not compliant with the zone provisions for interior side yard setbacks, and maximum building depth. The application for Permission would permit the owners to expand the building through a two-storey rear addition. The addition would exceed the existing building depth by 0.74 metres and have a minimum interior side yard setback of 0.53 metres. No additional zoning deficiencies will be created.

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 addition is in keeping with the intent of the zoning by-law and represents appropriate and desirable development of the lot. Therefore, it is

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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 D13-025-2021, for the property located at 73 Gore Street to construct a two-storey rear addition, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-046.

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Α	uth	orizino	Sian	atures:

$\checkmark$	
Lindsay Sthamann, Planner	

### **Consultation with the following Management of the Community Services Group:**

Tim Park, Acting Director, Planning Services James Bar, Acting Manager, Development Approvals

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#### **Options/Discussion:**

On April 28, 2021, an application for permission was submitted by Mac Gervan – Gervan & Associates, on behalf of the owners, Mac Graydon and Stacy Ridi, with respect to the property located at 73 Gore 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 support of the application, the applicant has submitted the following:

- Cover Letter (Exhibit G)
- Site Plan (Exhibit H)
- Elevations and Floor Plans (Exhibit I)

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 at 73 Gore Street, in between Wellington Street and King Street East. It has an area of approximately 405 square metres and approximately 10 metres of frontage on Gore Street. The property is currently developed with a single-family home. The property is in the Old Sydenham Heritage Conservation District and is designated under part 5.

The subject property is designated 'Residential' in the Official Plan and zoned 'B – Three to Six Family Dwelling' in Zoning By-Law Number 8499. The property abuts other residential zones on all sides.

The existing home was constructed prior to the passing of Zoning By-Law 8499, perhaps as early as 1890. As is typical for a home of this age, the existing structure is not compliant with several of the zoning provisions. The existing structure is deemed legal non-conforming and a permission application is being sought to expand the existing non-conforming structure. For full details on the non-complying aspects of the building reference "Zoning By-Law" on pages 7-8 of this report.

#### **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)).

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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 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 – Land Use, 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 Old Sydenham Heritage District. 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-

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conforming use. The subject application, requesting permission to construct a two-storey 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 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 an archaeologically sensitive area, however, given the minimal increase in building depth an archaeological assessment is not required.
- 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 two-storey rear addition 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.
- 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 existing single-family dwelling allows for the re-configuration of the existing two floor plan in an area that is developed with residential uses within the urban area on full municipal services in a zone that permits a single-family dwelling. The addition will not change the intensity of the use 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 an increased depth and reduced interior side yard setbacks. The site is of a sufficient size that the existing dwelling and proposed addition can meet all other provisions of the B Zone.

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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 B Zone aside from the two that are already deficient. 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 construct a two-storey rear addition meets the general intent and purpose of the City of Kingston Official Plan.

#### **Zoning By-Law**

The subject property is zoned 'B – Three to Six Family Dwelling' in the City of Kingston Zoning By-Law Number 8499, as amended. A single-family dwelling is a permitted use in the 'B' zone subject to the provisions of the 'A' Zone.

Two existing non-conforming 'A' zone provisions will be affected by the proposed two-storey addition. These are highlighted in the Zoning Compliance Table below.

Provision	Requirement	Existing	Proposed Addition	Note
Minimum side yard (South-East side)	0.6 metres	0.35 metres (front corner)	0.53 metres (rear corner of addition)	No change to side yard setback proposed as side yard will be measured at front
Minimum Side Yard (North-West side)	0.6metres	2.34 metres (front corner)	2.5 metres (rear corner of addition)	corners which is the shortest distance. (existing non-complying)
Minimum aggregate side yard	3.02 metres	2.69 metres	3.03 metres (rear corners of addition)	No change, aggregate measured at front

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	(3/10 of the width of the lot)			corners (existing non-complying)
Maximum Building Depth	16.06 metres (Average of two neighbouring properties)	18.13 metres	18.87 metres	0.73 metres increase to existing non-conforming element
Minimum Driveway Width	3.0 metres	2.34 metres	2.34 metres	No Change (existing non- conforming)
Minimum Parking Space Size	2.7 metres x 6.0 metres	2.5 metres x 6.0 metres	2.5 metres x 6.0 metres	No Change (existing non- conforming)

The proposed addition complies with all other zoning provisions such as minimum rear yard setback, minimum landscaped open space, maximum FSI, and maximum lot coverage.

#### **Technical Review: Circulated Departments and Agencies**

$\boxtimes$	Building Services	⊠ En	ngineering Department	$\times$	Heritage (Planning Services)
	Finance	⊠ Uti	tilities Kingston		Real Estate & Environmental Initiatives
$\boxtimes$	Fire & Rescue	⊠ Kir	ingston Hydro	$\boxtimes$	City's Environment Division
$\boxtimes$	Solid Waste	⊠ Pa	arks Development		Canadian National Railways
	Housing	⊠ Dis	istrict Councillor		Ministry of Transportation
	KEDCO	⊠ Mu	lunicipal Drainage		Parks of the St. Lawrence
	CRCA	☐ KF	FL&A Health Unit		Trans Northern Pipelines
	Parks Canada	□ Ea	astern Ontario Power		CFB Kingston
	Hydro One	□ En	nbridge Pipelines		TransCanada Pipelines
	Kingston Airport	⊠ Fo	orestry		

#### **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.

#### Heritage

The subject property is designated under Part V of the Ontario Heritage Act as part of the Old Sydenham Heritage Conservation District. A heritage approval application (File Number P18-014-2021) has been submitted and is awaiting consultation with Heritage Kingston on May 19th and Council approval on June 1 for the proposed rear addition. The property is identified as

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being an "archaeologically sensitive area" on the City's Archaeological Master Plan mapping. However, given the minimal increase in building depth, the ground area has likely been previously disturbed by the excavation for the existing rear addition foundation. An archaeological assessment will not be required. There are no other heritage concerns.

#### **Forestry**

Two comments were provided by the Forestry Department to address preservation of the City owned tree in the front of the home (Ginkgo) and the private tree in the rear yard of 67 Gore Street (Black Walnut). This includes a proposed condition for a Tree Permit to address preservation and protection of the City tree and an arborist report by a certified ISA arborist to assess impacts of the proposed development on the black walnut tree on 67 Gore Street.

Recommended conditions are found in Exhibit A of this report. Preservation of the City Tree through a tree permit has been added as Condition 5. Condition 6 requires compliance with all conditions identified as part of the Heritage Permit (Fil Number P18-014-2021). The arborist's report is required as a condition of the Heritage Permit.

#### **Public Comments**

At the time this report was finalized, no public comments have 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**

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

Heritage Permit File Number P18-014-2021

#### 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 addition to the existing building maintains the use of a single-family dwelling onsite in a built form that is similar to those found in the area. Permitting the addition makes appropriate and desirable use of the land as the residential use will continue onsite in a compatible and complementary built form.

Approval of this application will permit the construction of a two-storey addition on the rear of the existing single-family dwelling as shown on the approved drawings attached to the notice of decision.

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#### **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

#### **Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on June 21, 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 76 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

Planner's Lindsay Sthamann, Planner, 613-546-4291 extension 3287

#### Other City of Kingston Staff Consulted:

None

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#### **Exhibits Attached:**

Exhibit A Recommended Conditions

Exhibit B Key Map

Exhibit C Neighbourhood Context Map (2020)

Exhibit D Public Notification Map

Exhibit E Official Plan Map

Exhibit F Zoning By-Law 8499, Map 31

Exhibit G Cover Letter

Exhibit H Site Plan

Exhibit I Elevations and Floor Plans

#### **Recommended Conditions**

Application for permission, File Number D13-025-2021 Approval of the foregoing application shall be subject to the following recommended conditions:

#### 1. Limitation

That the approved permission applies only to the two-storey rear addition as shown on the approved drawings attached to the notice of decision.

#### 2. No Adverse Impacts

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

#### 3. Building Permit Application Requirements

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

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

#### 4. Standard Archaeological Condition

In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132) and 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 at the Ministry of Government and Consumer Services (416-212-7499), the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

#### 5. Tree Permit

A Tree Permit to address tree preservation requirements for the city owned tree in the front (southwest) yard shall be completed prior to issuance of Building Permit.

#### 6. Heritage Permit

The owner/applicant shall complete all works in accordance with the terms and conditions of the Heritage Permit no. P18-014-2021 for the property, including but not limited to: (a) An ISA Certified Arborist shall be retained to advise on whether any measures are required to protect the adjacent mature tree at 67 Gore Street during and/or after construction of the addition.

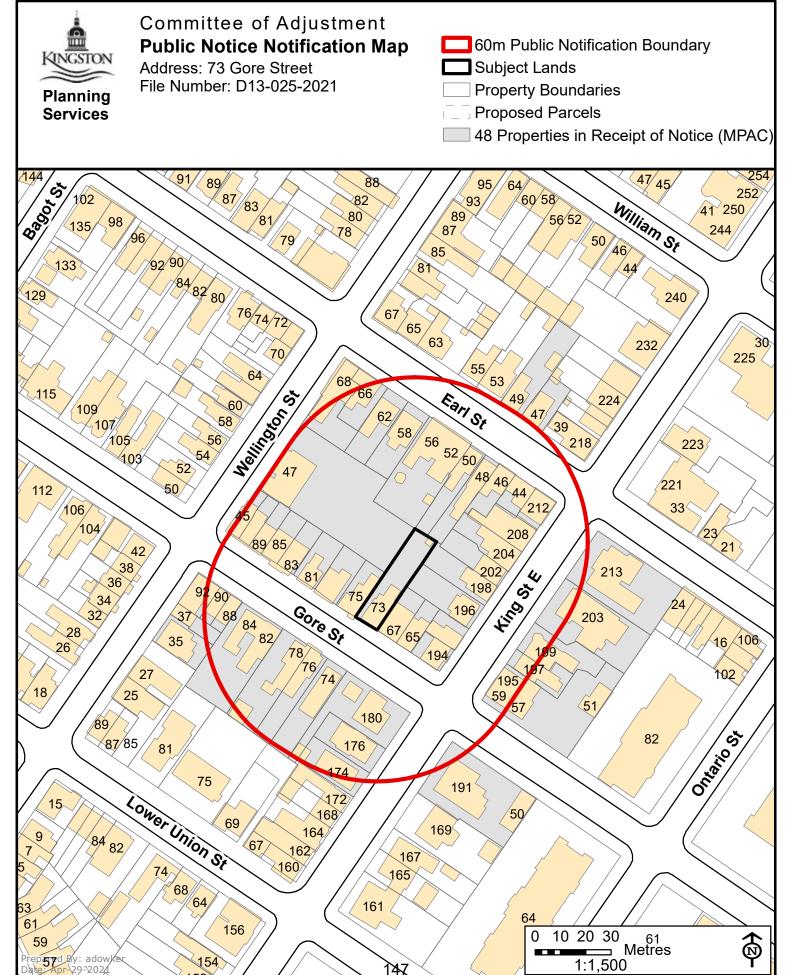
**Exhibit B** Report Number - COA-21-046 Committee of Adjustment Earl St **Key Map** KINGSTON Address: 73 Gore Street Bagot St. File Number: D13-025-2021 **Planning Services** Lands Subject to Minor Variance W SOOD OF THE SECOND OF THE SE Earl St 4 20 St. Gore St Metres Prepared By: adowker Date: Apr-29-2021 1:750 



### Committee of Adjustment Neighbourhood Context (2020)

Address: 73 Gore Street File Number: D13-025-2021 ☐ Property Boundaries
☐ Proposed Parcels





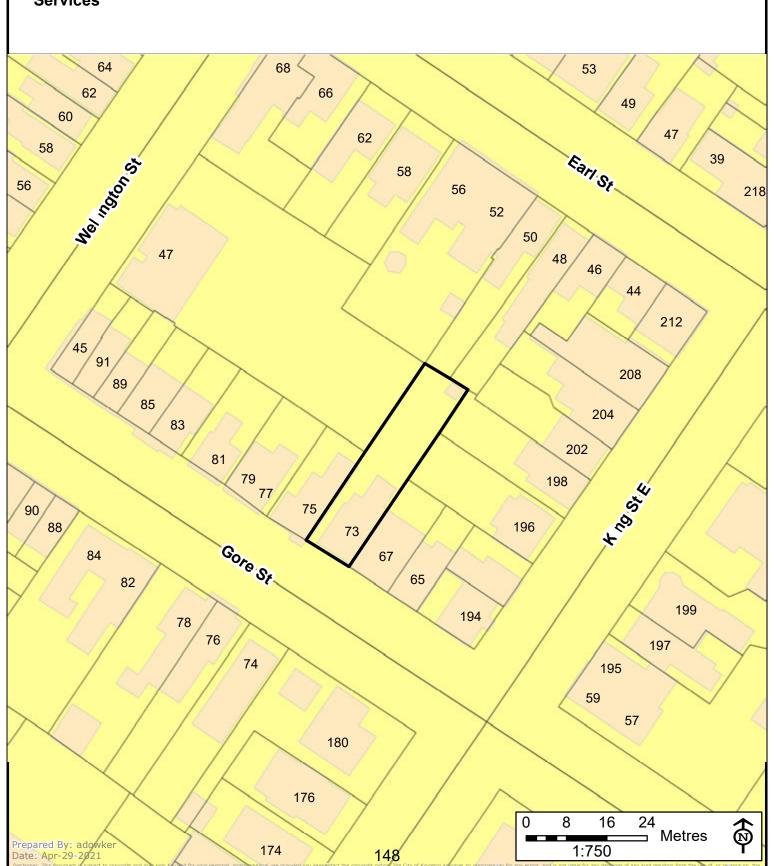
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Exhibit E Report Number - COA-21-046

Flanning Services

## Committee of Adjustment Official Plan, Existing Land Use

Address: 73 Gore Street File Number: D13-025-2021 Subject Lands
RESIDENTIAL





April 27/21

#### COMMITTEE OF ADJUSTMENT - 73 GORE STREET

Lindsay Sthamann City Planner

Following is a letter to accompany our application for permission:

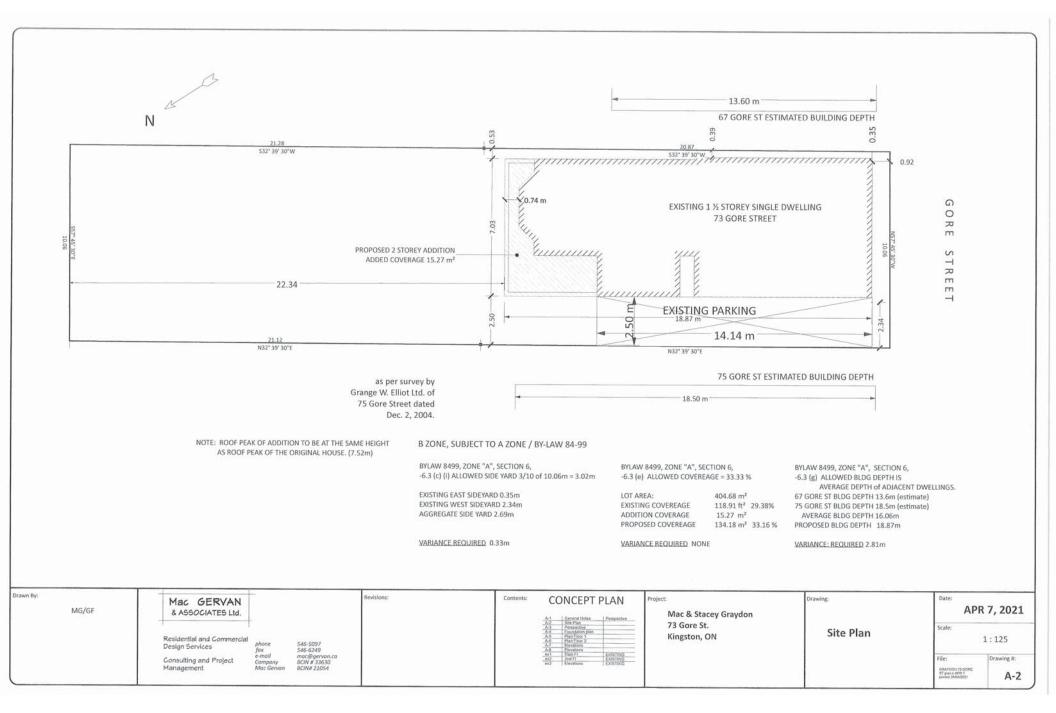
- The original building was probably built about 100 years ago? I built the existing addition, for the then owner, Dr Judy Durrance around 1985. Gary Bean, who worked with Inglis and Downey Architects, designed the addition. So the rear existing addition with it's board and batten siding has no particular heritage value. Also it is difficult to see the back addition from the street. We painted the brick on the original structure at the same time.
- The owners would to make a modest extension to create more living space
  - We would like to repaint the brick a dark grey to charcoal
  - we need to do a small amount of repointing to stop some leakage first
  - Remove all existing siding and make all siding uniform....vertical in steel or hardy board, as the finish needs to be fire resistant....in the same tones as the new brick colour, but lighter, so the original home will still stand out on it's own.
  - On the back of the original there is a two story section and then a one story section.
  - We propose to add a second story to the side entrance and on top of the one story section
  - We propose to add an extension on the living room to the west..one story with an open deck above from new master suite
  - We propose to go 2' 5" beyond the back wall to give us space needed
  - we will remove part of the back deck for construction but ultimately it will be 2'5" shorter
  - We have lowered the pitch of the back addition to keep the peak the same height as the original structure
  - new windows will be Marvin fiberglass with SDL's or equivalent
  - We will removing the window in the back bedroom of the original home as it will now look at a wall a few feet in front...and move the window to the south side of the bedroom..
  - it is very difficult to see any or much of the back addition from the street
- According to 9.5.14 of the Official plan
  - on extension or enlargement of a non-conforming use will be granted by the committee of adjustment if traffic, noise or operating characteristics create or will increase adverse effects or nuisance factors which cannot be suitably mitigated, or if the proposed is within a land use designation that expressly prohibits such use....
    - This proposal is simply a small extension for more living space. There will be no additional traffic or noise issues created. This is a single family home that will remain such and is within zoning regulations. As their children have grown, they need larger bedrooms and more living space...

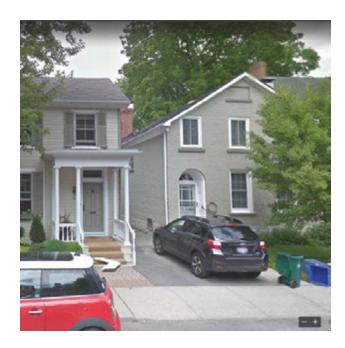
I hope you find this proposal to be acceptable...

Yours Sincerely

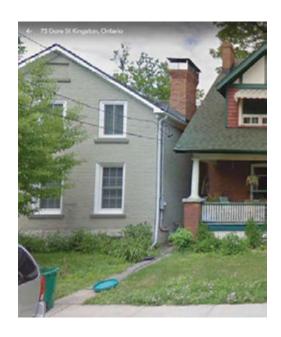
Mac Gervan

Mac GERVAN





Limited view from Gore Street to the Trear addition at west side of house. T



Limited view from Gore Street to the T rear addition at east side of house. T

#### **SCOPE of WORK:**

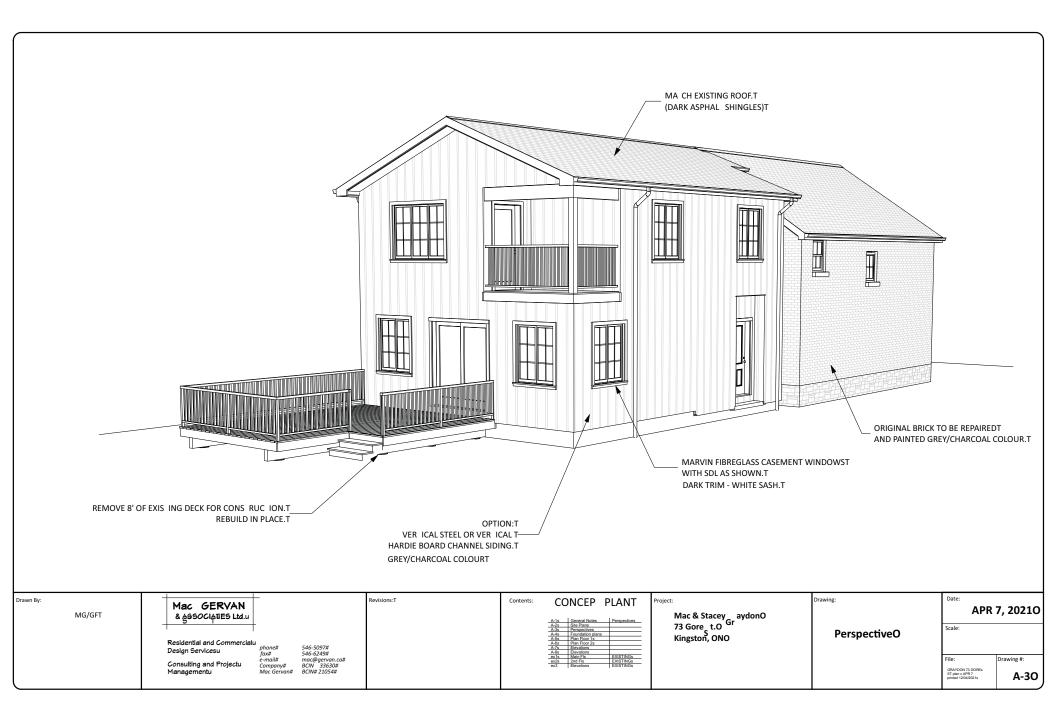
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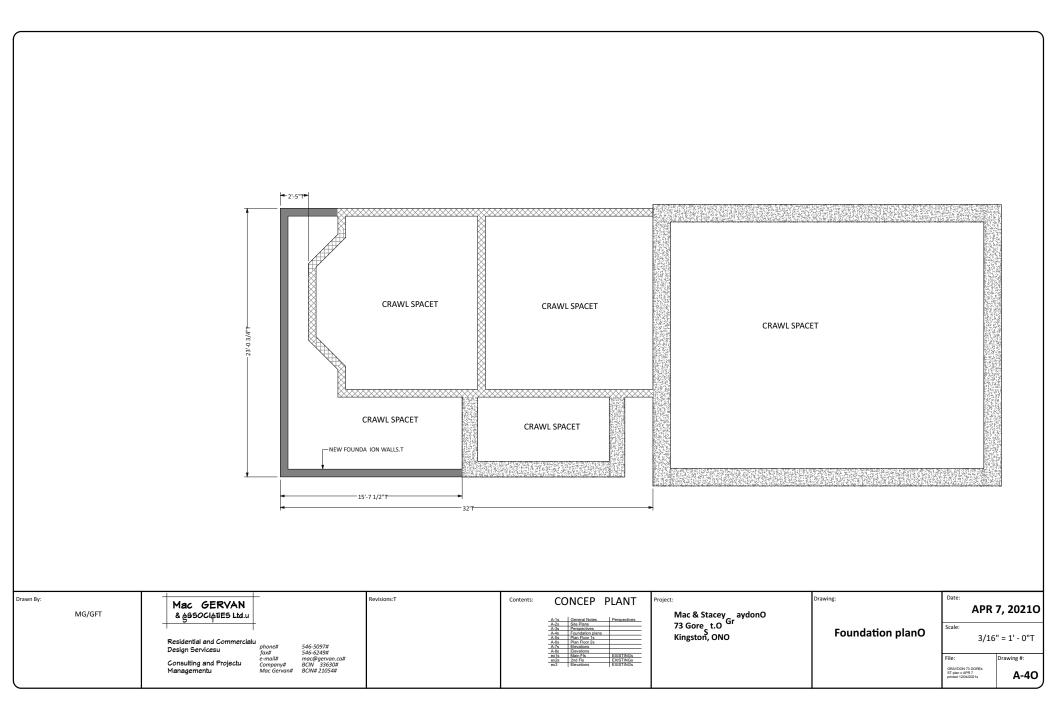
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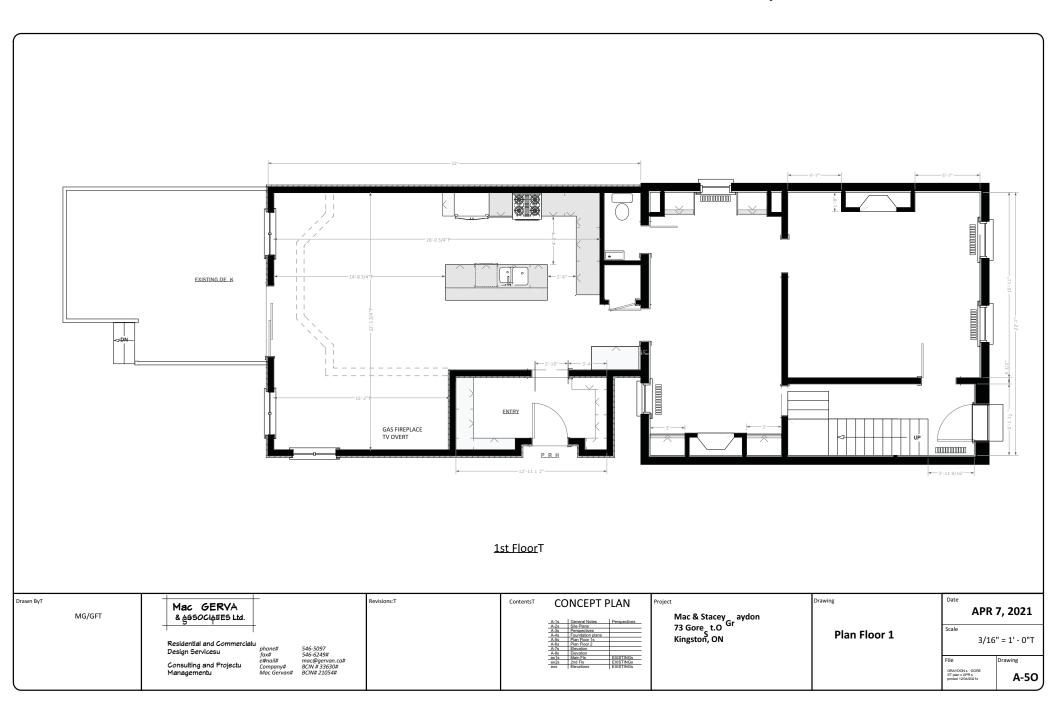
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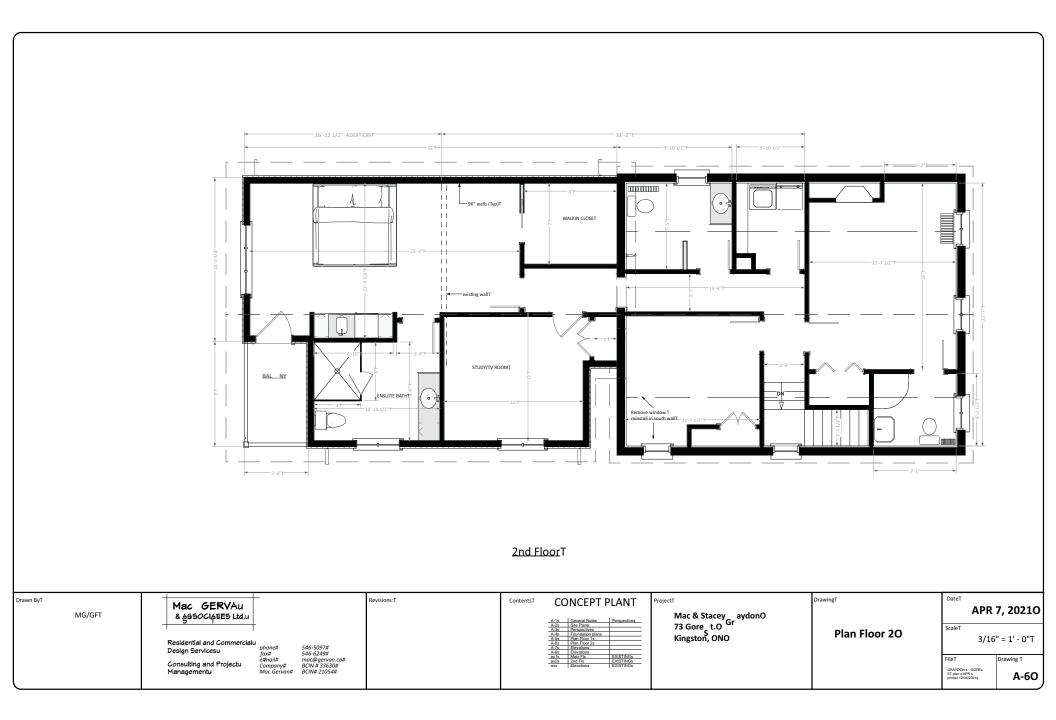
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	e#mail# Consulting and Projectu Company#	74-05-2-76 mmc@gervan.ca# BCIN # 33630# BCIN# 210540#	exts         Main Fis         EXISTINGs           ex2 2         2nd Fis         EXISTINGs           exs         Elevations         EXISTINGs			File  GRAYDON'S GORES ST plan c APR'S printed 12/04/2021s	Drawing A-10
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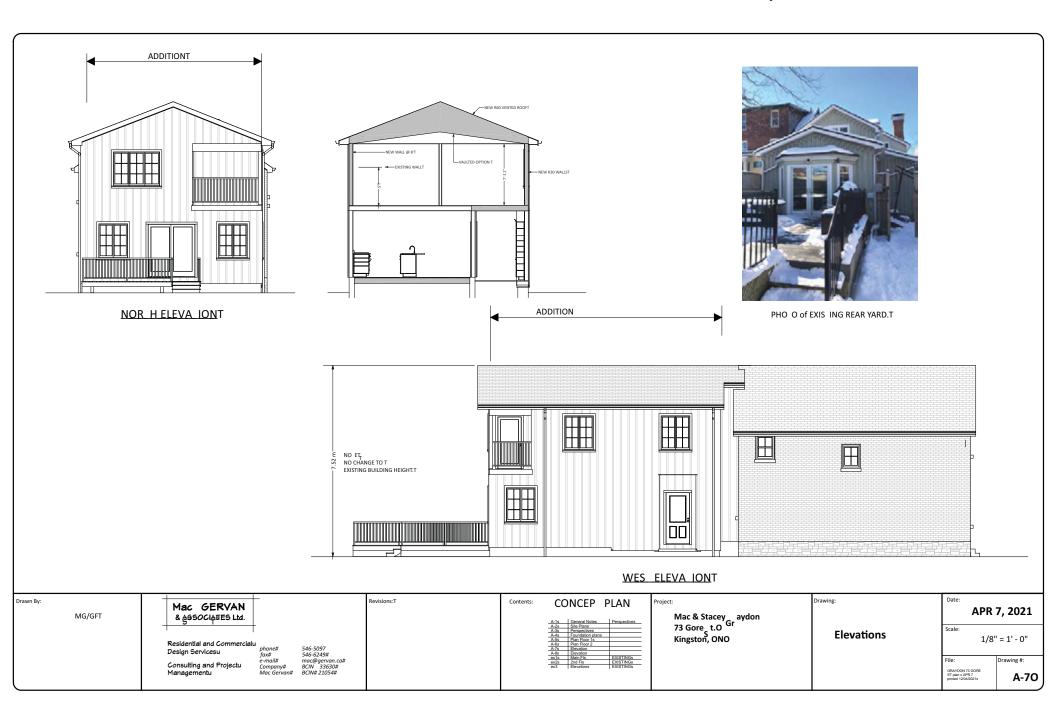
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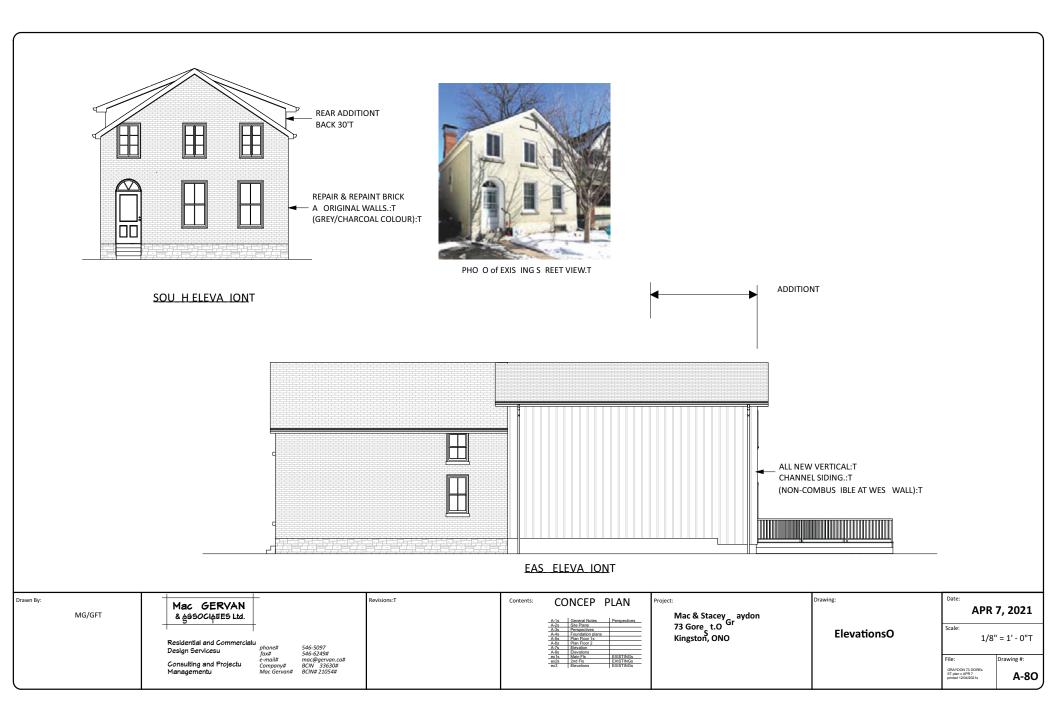


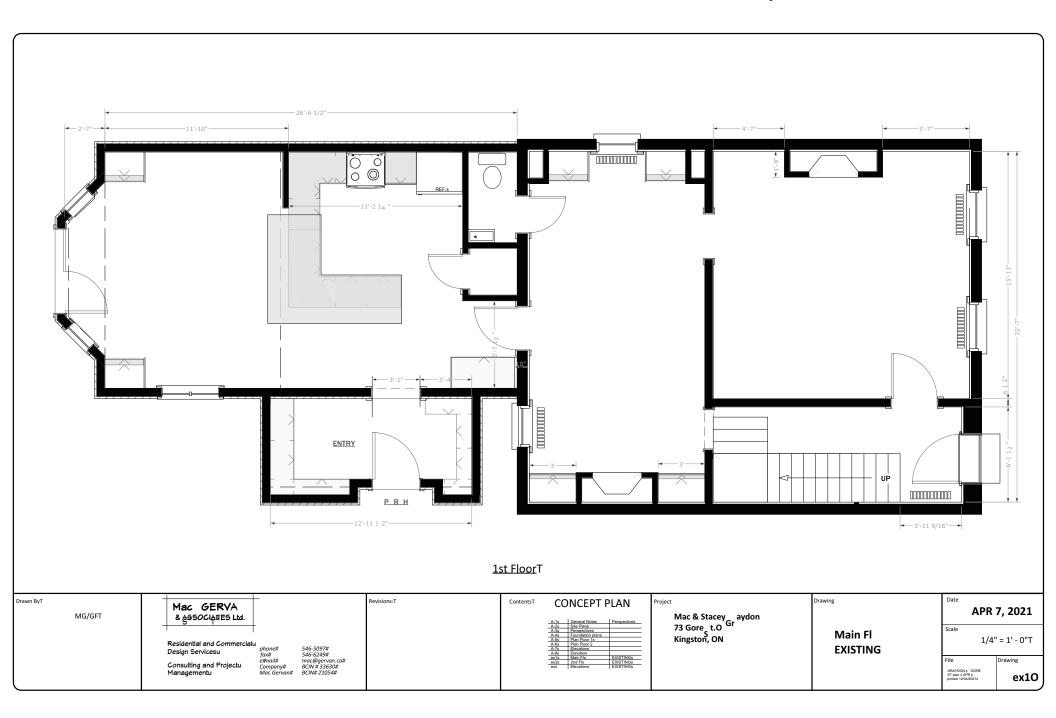












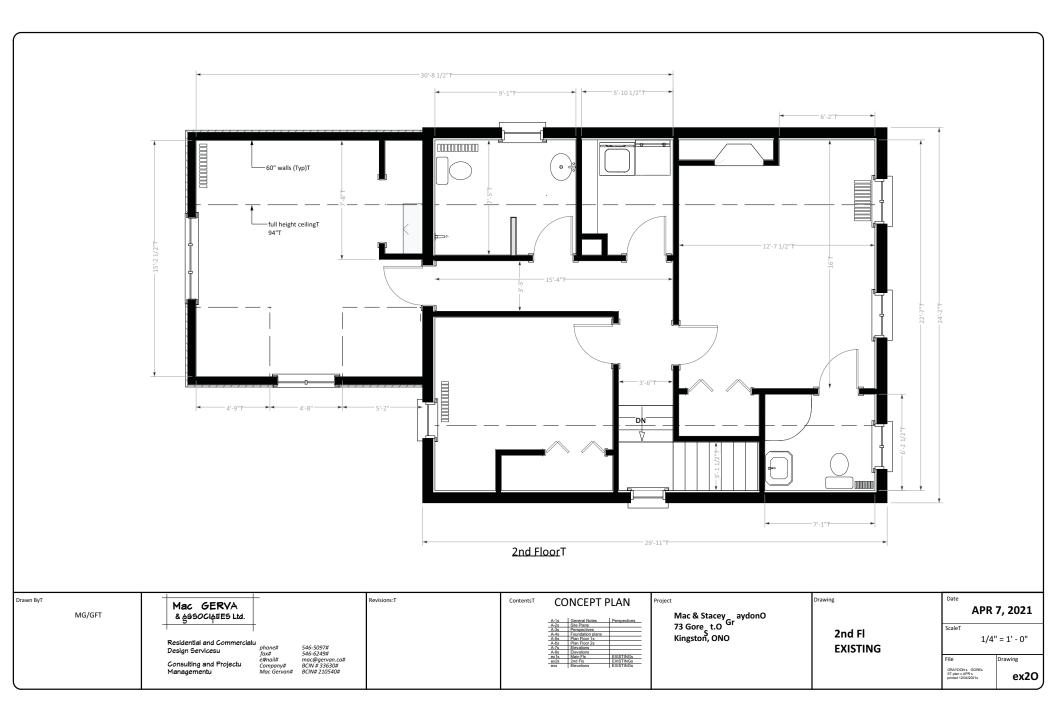


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