



City of Kingston
Report to Committee of Adjustment
Report Number COA-21-049

To: Chair and Members of the Committee of Adjustment
From: Ashley Anastasio, Planning Intern
Date of Meeting: June 21, 2021
Application for: Permission
File Number: D13-031-2021
Address: 124 Centre Street
Owner: Congregation of Beth Israel
Applicant: Michael Springer

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 124 Centre Street. The applicant is proposing to expand the legally non-conforming use on the property by renovating and reconfiguring the existing three residential dwelling units. The proposed alterations enlarge the existing three residential units on-site, and do not alter or expand the existing building's footprint.

The property is subject to a Heritage Designation through Section IV of the Ontario Heritage Act and a Heritage Easement Agreement with the Ontario Heritage Trust under Section II of the Ontario Heritage Act. A Building Permit, encroachment permit and approval from the Ontario Heritage Trust was recently obtained to demolish a limestone garden wall adjacent to Union Street. A Building Permit and approval from the Ontario Heritage Trust was also obtained by the applicant to make significant alterations to the building, including replicating and replacing the

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existing main front porch, replacing the roofing, repairing existing windows, repairing the stucco cladding, upgrading HVAC, telecommunications and electrical systems as well as installing a fire escape.

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 alteration 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 D13-031-2021, for the property located at 124 Centre Street to reconfigure a legal non-conforming use, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-049.

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Authorizing Signatures:



Ashley Anastasio, Planning Intern

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 May 3, 2021, an application for permission was submitted by Michael Springer, on behalf of the owner, Congregation of Beth Israel, with respect to the property located at 124 Centre Street, otherwise known as the Otterburn House. The application for permission is requested to expand a legal non-conforming use on the property to reconfigure and renovate three existing residential dwelling units. An underutilized common area on the main floor comprised of a living room, sitting room, dining room, kitchen and bathroom will be reconfigured to create a new residential dwelling unit. The existing two residential dwelling units on the second floor will be reconfigured into one dwelling unit and the existing third residential unit will remain as is. There are no proposed changes to the building footprint or the number of residential dwelling units.

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

- Site Plan (Exhibit G);
- Floor Plans and Elevations (Exhibit H and I);
- Affidavit; and
- Planning Justification Letter.

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 at 124 Centre Street, at the southwestern intersection of Union and Centre Streets within the urban boundary of Kingston. The subject property is approximately 75 metres east of a bus stop along Union Street and is well connected to public transportation. Given the subject property's downtown location, it is also well-served by active transportation routes.

The subject property is designated Residential in the Official Plan and zoned A, Residential (One-Family Dwelling and Two-Family Dwelling), in Zoning By-Law Number 8499. The property abuts the Beth Israel Congregation Centre to the south, which is party to the same owner but located at 116 Centre Street. The property is surrounded by residential uses on both Centre and Union Streets, and the Beth Israel Congregation Centre backs onto the parking lot of St. Mary's of the Lake Hospital. The subject property is approximately 230 metres northeast of the St. Mary's of the Lake Hospital.

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

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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 8499 was passed by Council on July 28th, 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 in the City of Kingston's Official Plan. The predominant use of the Residential designation are 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. Residential uses imply structures typical to such uses (i.e. decks and porches) and may change over time to meet the needs of residents (i.e. additions).

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

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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 expand a legal non-conforming use, 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 proposal is consistent with the policies of the Provincial Policy Statement, in particular policies regarding residential intensification and the provision of a mix of housing types and densities, and will not hinder future development intended for the Residential designation in the City of Kingston's 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 of the subject property is compatible with the adjacent residential uses within the neighbourhood area. The property is considered a cultural heritage resource, as it is a Designated Heritage Property under Section IV of the Ontario Heritage Act and is subject to a Heritage Easement Agreement with the Ontario Heritage Trust under Section II of the Ontario Heritage Act. Part IV of the Act does not require interior heritage attributes, however Part II does. The applicant must obtain approvals from the Trust before proceeding with interior works. The applicant has received conditional approval from City Council on April 6th, 2021, for a number of exterior alterations to the subject property. The existing residential use will be maintained on the subject property and will not have any adverse impacts on the natural heritage system.

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 of the existing use on the subject property to reconfigure and alter the existing three residential dwelling units is compatible with the abutting residential and non-residential uses as well as the character of the neighbourhood. The heritage attributes of the subject property and the proposed alterations to the façade of the building contribute to the historical vernacular in the neighbourhood area. The proposed reconfiguration of the three existing dwelling units will increase the functionality of the space while contributing to the mix and range of rental housing supply within the City of Kingston.

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.

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The property is zoned A, Residential, under By-Law Number 8499 and designated Residential in the City's Official Plan. The proposed expansion of the legal non-conforming use to permit the reconfiguration of three residential dwelling units is not anticipated to have any adverse impact on the future development or redevelopment of the property or the surrounding neighbourhood. The proposal does not include any net new units, it is simply an internal reconfiguration of residential space that maintains the historical use of the property.

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:

There is existing parking space for the proposed reconfiguration at a rate of one parking space per dwelling unit. The parking area is located in the rear yard (west side) of the subject property. The parking area is accessible via an existing driveway on Union Street. The proposed renovation will not significantly affect private amenity areas or open space on the subject property. The continued residential 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:

Building Services noted that insufficient information had been provided to provide detailed comments, however the applicant is advised that a Building Permit is required for the proposed construction.

Heritage Services noted that the subject property is designated under Part IV of the Ontario Heritage Act and subject to a heritage easement agreement with the Ontario Heritage Trust under Part II of the Act. While the Part IV by-law does not include any interior heritage attributes, the Trust easement does. The owners will need to ensure all approvals from the Trust are received prior to making any changes to the interior. Conditional approval was granted by City Council on April 6, 2021 for a number of exterior alterations, through application File Number P18-008-2021. Heritage Services has no concerns with the subject permission to expand application, provided all conditions of the prior Heritage Act approval are met and any new changes are reviewed by Heritage Services staff.

Utilities Kingston noted that they have no concerns with the application.

Transit, Parking, Parks, Engineering and Fire provided no comments.

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

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The proposed renovation will not negatively impact the surrounding lands or buildings or inhibit them from developing for their intended uses. The approval of the requested permission will not set a precedent for the immediate area, as each permission is reviewed independently and judged on its own merits and metrics.

The subject property is designated on the City of Kingston's Heritage Property Register.

Based on the City of Kingston archaeological potential mapping the property is in an area of "composite potential", and therefore an Archaeological Assessment beginning with a Stage One Assessment is required prior to any ground disturbance. This will be addressed prior to the issuance of a Building Permit, as described in the recommended conditions.

The requested permission to reconfigure and renovate (3) existing residential dwelling units meets the general intent and purpose of the City of Kingston Official Plan.

Zoning By-Law

The subject property is zoned A, Residential (One-Family and Two-Family Dwellings) in the City of Kingston Zoning By-Law Number 8499, as amended. The existing structure does not meet the current rear yard depth or minimum lot coverage provisions in the Zoning By-Law. However, the primary dwelling is considered non-complying as it existed prior to the passing of Zoning By-Law Number 8499 in 1975. No zone provisions are impacted by the internal rearrangement of the existing three units.

Technical Review: Circulated Departments and Agencies

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

Technical Comments

This application was circulated to external agencies and internal departments for their review and comment and there were no comments or concerns raised that would preclude this application from moving forward. Any technical comments that are received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

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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

Heritage Permit File Number P18-008-2021 - The subject property has conditional approval from City Council to proceed with exterior alterations.

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 continuation of the existing use is in keeping with the intent of the zoning by-law and represents appropriate and desirable development of land. Further, the performance standard variances noted above are minor in nature and deemed legally non-compliant.

Approval of this application will allow for the renovation and reconfiguration of three existing residential dwelling units in Kingston's downtown area.

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 27 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.

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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

Ashley Anastasio, Planning Intern 613-546-4291 extension 3183

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Public Notification Map
- Exhibit D Neighbourhood Context Map (2020)
- Exhibit E Official Plan Map
- Exhibit F Zoning By-Law Number 8499, Map 29
- Exhibit G Site Plan
- Exhibit H Floor Plan (First Floor)
- Exhibit I Floor Plan (Second Floor)

Recommended Conditions

Application for permission, File Number D13-031-2021

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

1. Limitation

That the approved permission applies only to 124 Centre 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 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) 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.

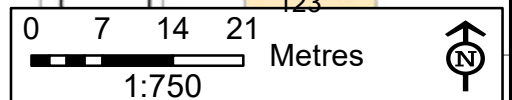
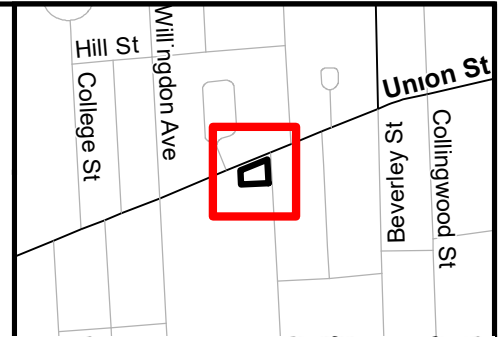
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries at the Ministry of Government and Consumer Services (416-212-7499), the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.



Committee of Adjustment Key Map

Address: 124 Centre Street
File Number: D13-031-2021

 Lands Subject to Minor Variance

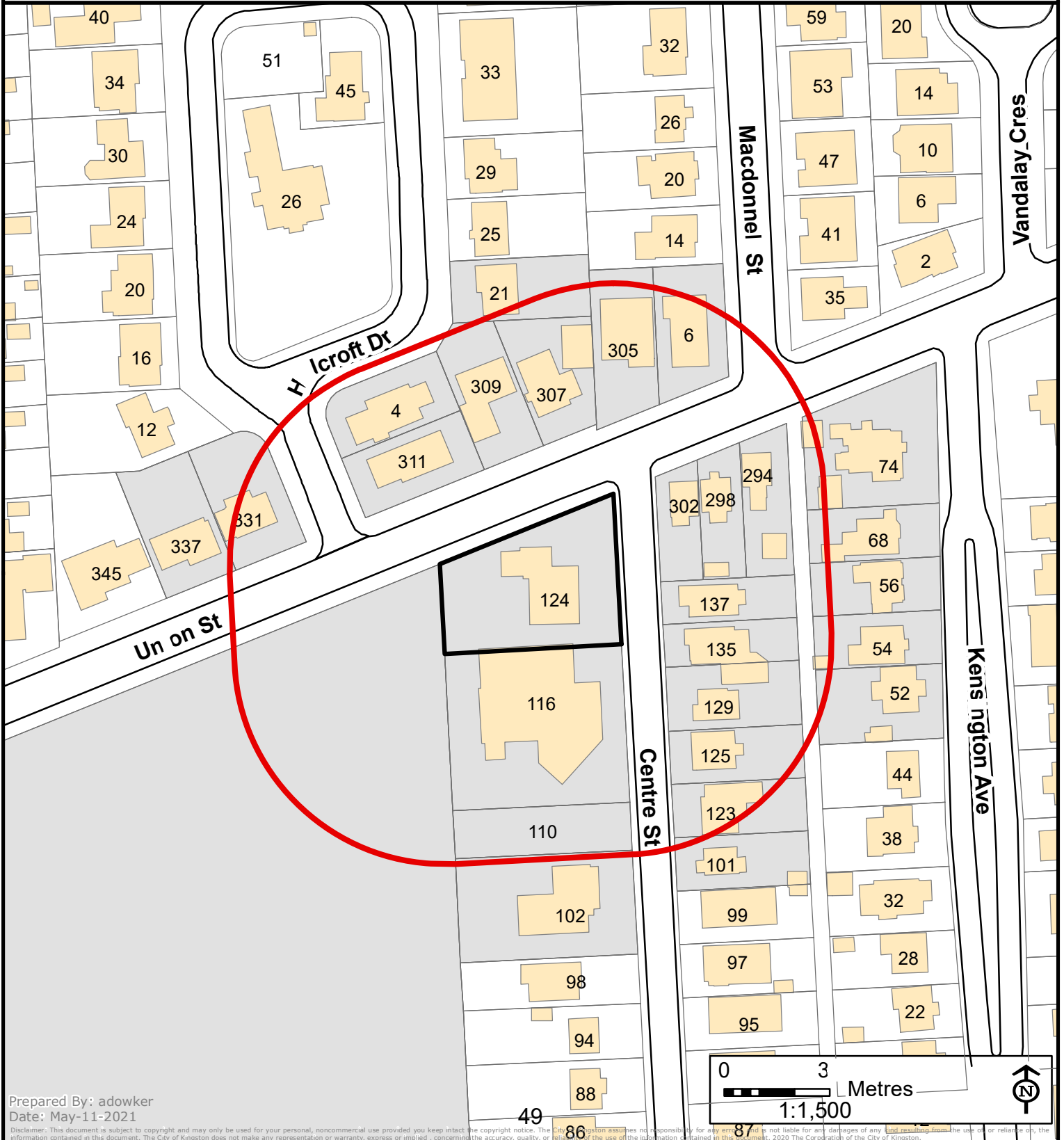




Committee of Adjustment Public Notice Notification Map

Address: 124 Centre Street
File Number: D13-031-2021

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





Committee of Adjustment
Neighbourhood Context (2020)

Address: 124 Centre Street
File Number: D13-031-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels






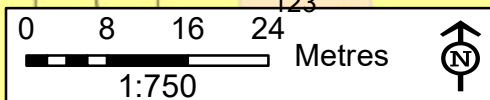
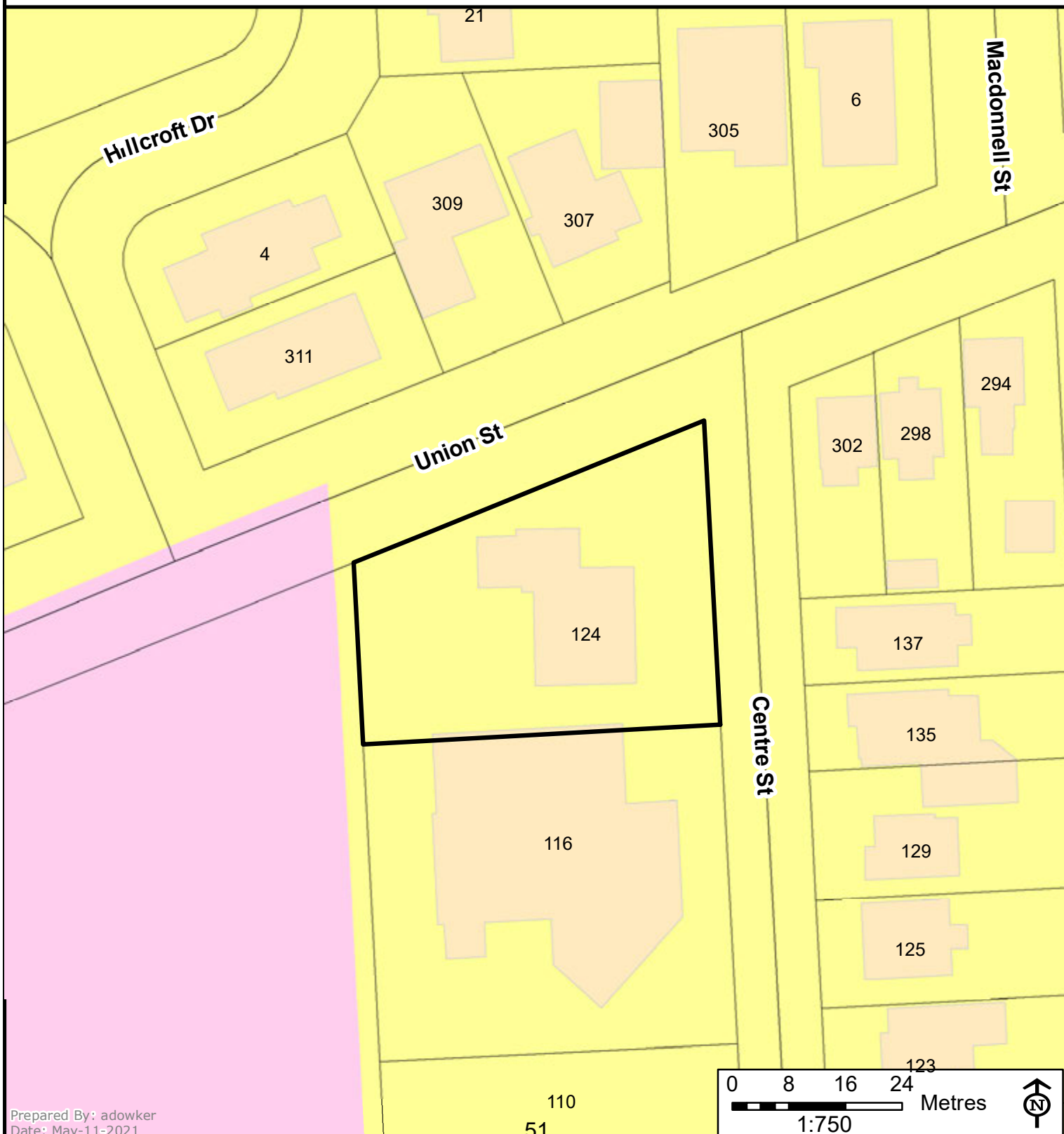


Planning Services

Committee of Adjustment Official Plan, Existing Land Use

Address: 124 Centre Street
File Number: D13-031-2021

-  Subject Lands
-  INSTITUTIONAL
-  RESIDENTIAL

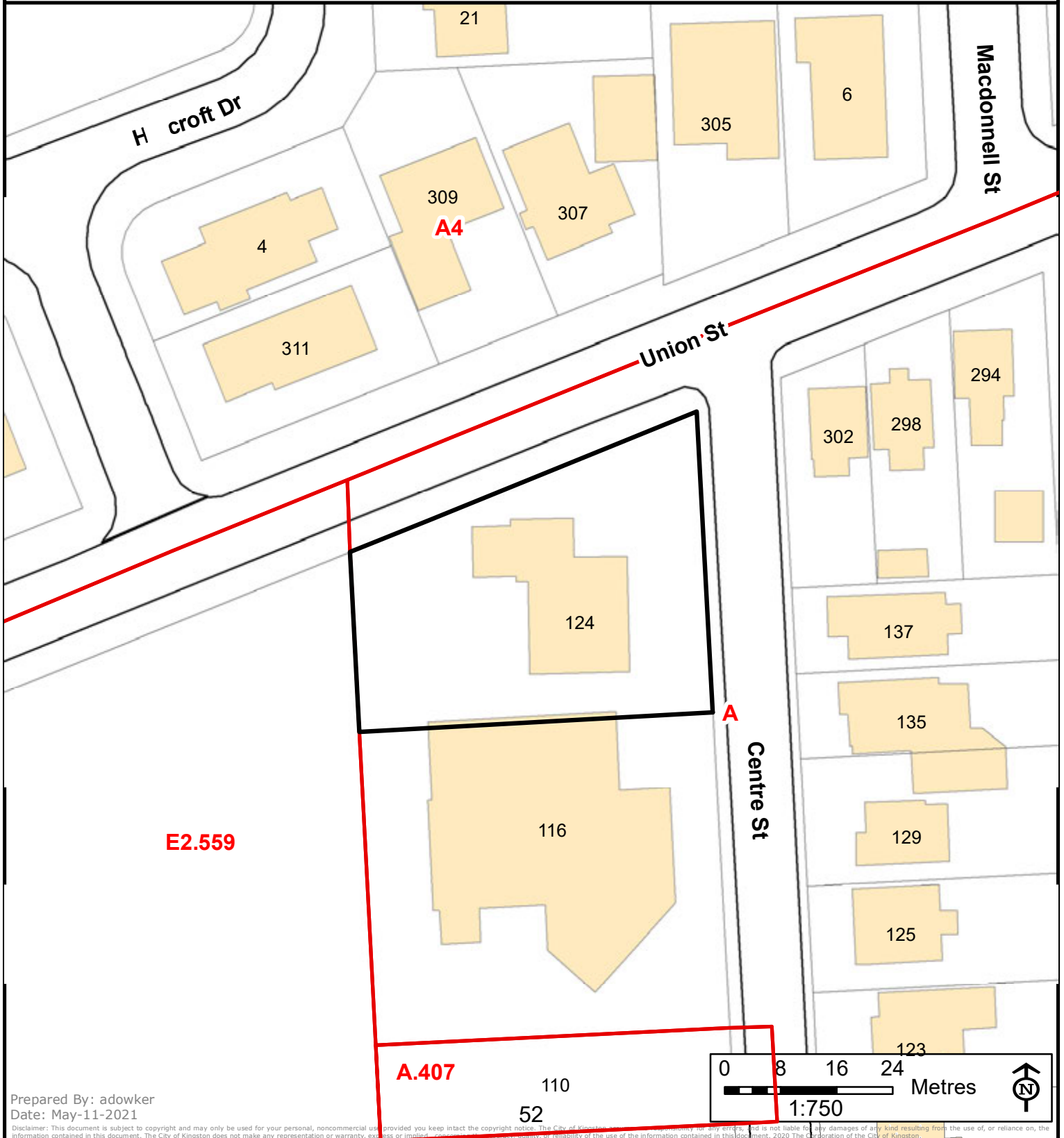


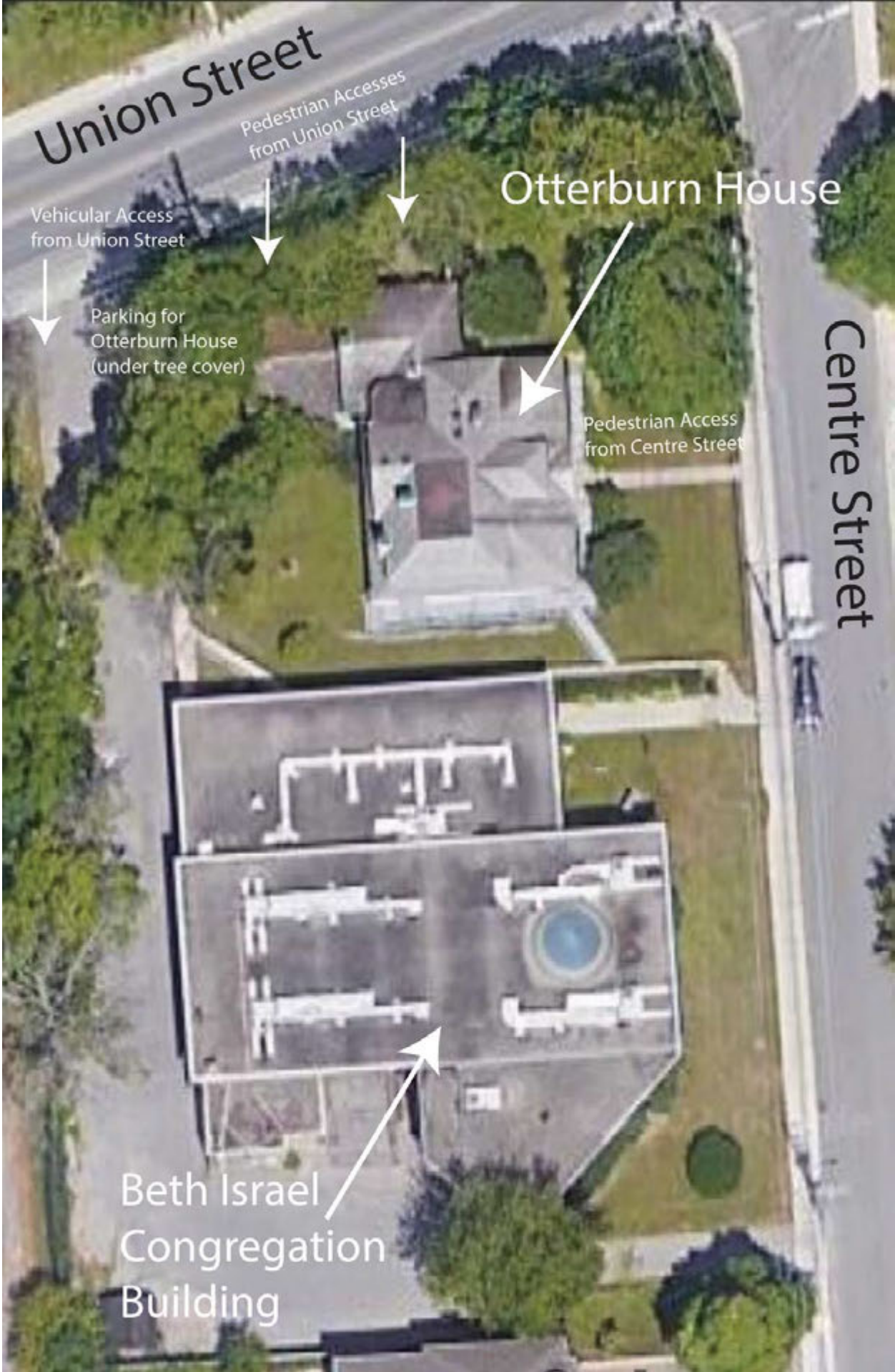
Prepared By: adowker
Date: May-11-2021



Committee of Adjustment
Existing Zoning - By-law 8499, Map 29
Address: 124 Centre Street
File Number: D13-031-2021

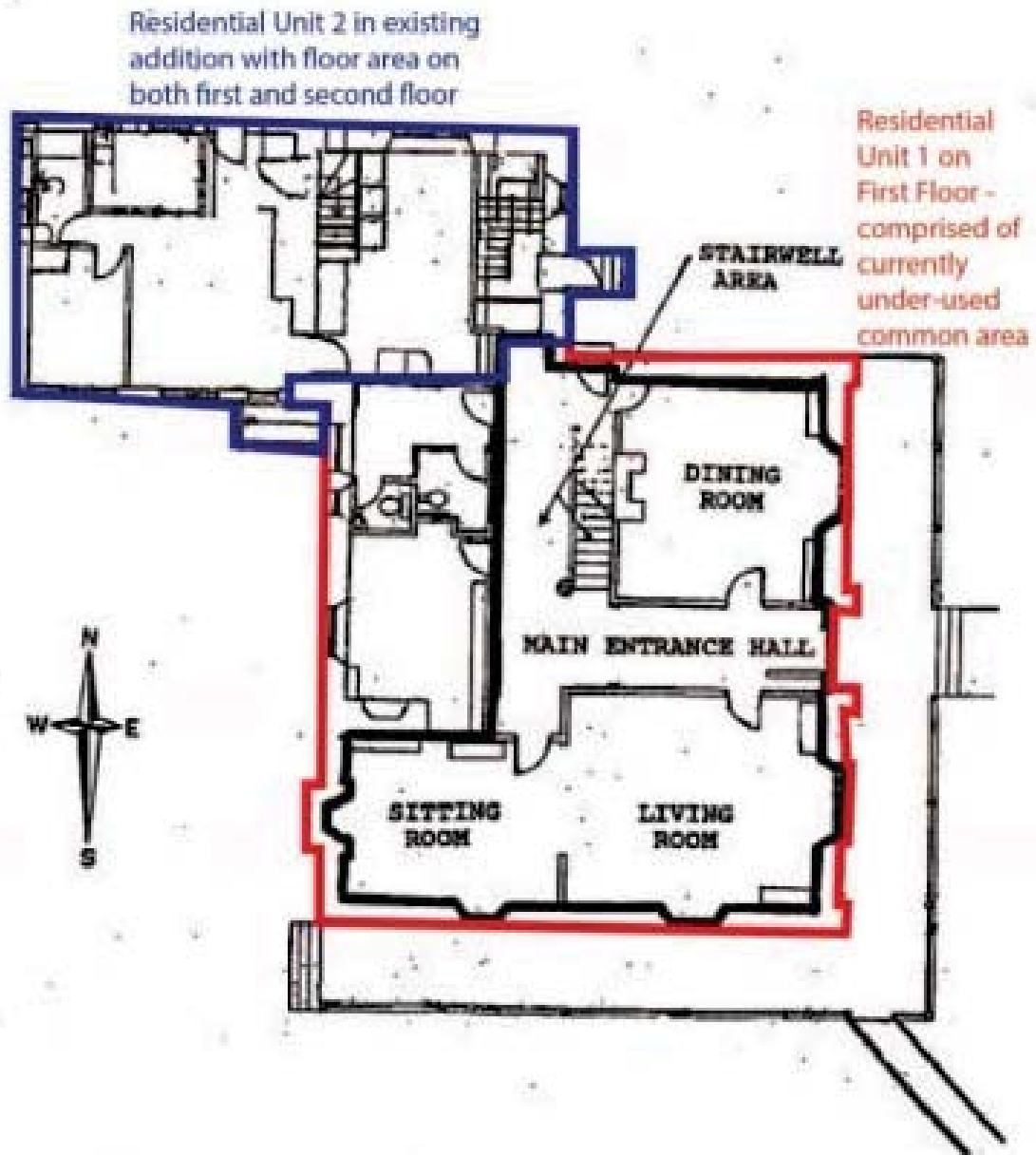
Subject Lands
 Consolidated Zoning



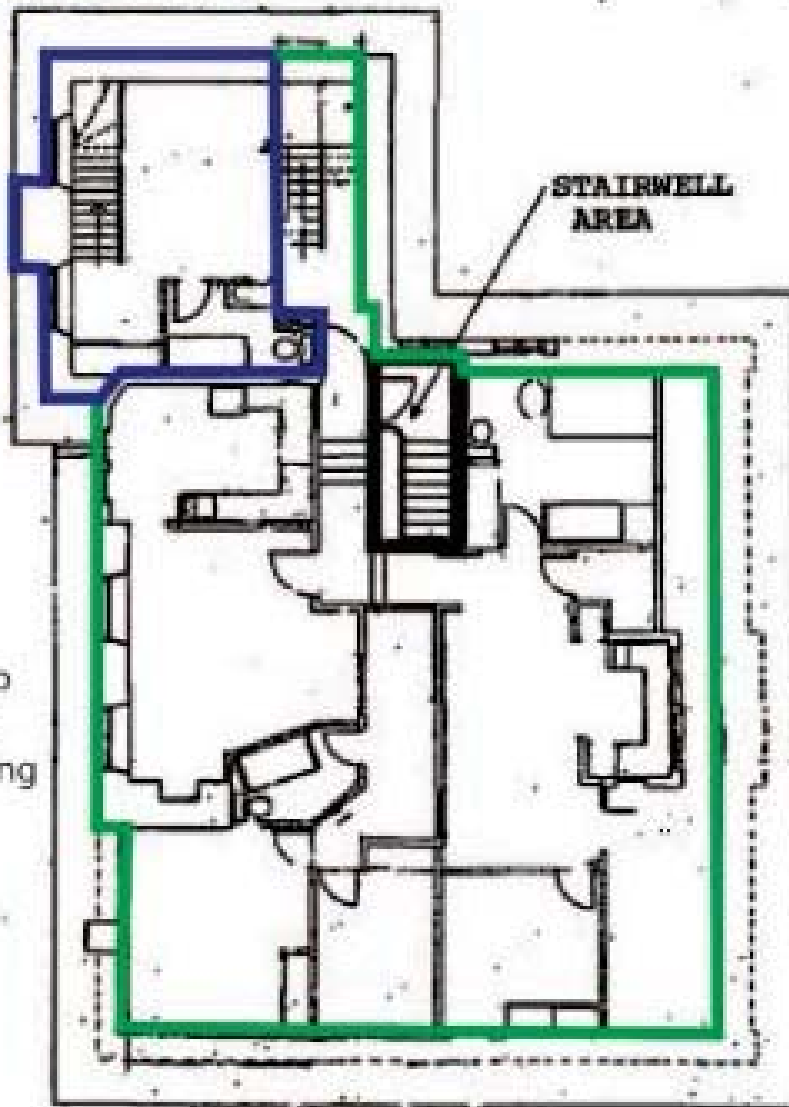


PLAN OF THE FIRST FLOOR OF OTTERBURN

(NOT TO SCALE)



Residential Unit 2 in existing addition with floor area on both first and second floor



Residential Unit 3, which will be comprised of existing two units on the second floor

Fire escape to be located at rear of building