



**City of Kingston
Report to Council
Report Number 21-191**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Community Services
Resource Staff: Tim Park, Director, Planning Services
Date of Meeting: July 13, 2021
Subject: Request for Exemption from Section 45(1.3) of the Planning Act in relation to Minor Variance Application (File Number D13-026-2021) for the lands known municipally as 233 Colborne Street

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

This is a report to recommend that the property known municipally as 233 Colborne Street be permitted an exemption from the *Planning Act* regarding the inability to seek zoning relief via minor variance (Exhibit A – Key Map).

Bill 73, *Smart Growth for our Communities Act*, implemented changes to the *Planning Act* in 2017 which resulted in restrictions on applying for minor variances after a site-specific zoning amendment for a property was approved.

Section 45(1.3) of the *Planning Act* prohibits an applicant from submitting a minor variance application for a site that received approval through a zoning by-law amendment within two years of the passing of the amending by-law. An application for zoning by-law amendment was submitted in 2015 to permit a Multiple-Family Dwelling (File Number D14-114-2015). The site-specific 'B3.571' zone was approved by Council on September 3, 2019. The site-specific zone

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alters several zoning provisions to accommodate the proposed 16-unit residential townhouse building on the property (Exhibit B - Zoning By-Law Number 2019-134).

The applicant has submitted a minor variance application for one variance. The minor variance being requested is to seek relief from the requirements regarding the minimum setback to the rear yard from 5.7 metres as per By-Law Number 8499: Section 571 (d)(v) to 5.59 metres. The non-conformance with the rear yard setback was discovered through the Building Permit process when an as-built drawing was required. It is important to be able to process the minor variance as the Building Officials cannot issue an Occupancy Permit unless the site is fully zone compliant.

The purpose of the minor variance is to legalize an existing under construction 16-unit residential townhouse building on the property.

Recommendation:

That Council permit the applicant (Peter Sauerbrei), pursuant to Section 45(1.4) of the Planning Act, to proceed with an application (File Number D13-026-2021) for minor variance to the Committee of Adjustment to request a reduction for the rear yard zoning provision, for the lands known municipally as 233 Colborne Street.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Community Services**

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

Section 45(1.3) of the *Planning Act* prohibits an applicant from submitting a minor variance application for a site that received approval through a zoning by-law amendment within two years of the zoning amendment approval.

Section 45(1.3) of the *Planning Act* states: Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended.

Section 45(1.4) of the *Planning Act* goes on to state: Subsection (1.3) does not apply in respect of an application if Council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally.

An application for zoning by-law amendment was submitted in 2015 to permit a Multiple-Family Dwelling (File Number D14-114-2015). The site-specific 'B3.571' zone was approved by Council on September 3, 2019. The site-specific zone alters several zoning provisions to accommodate the proposed 16-unit residential townhouse building on the property. (Exhibit B - Zoning By-Law Number 2019-134).

On April 19, 2021, a minor variance application (D13-26-2021) was submitted with respect to the subject property. The minor variance being requested is to seek relief from the requirements regarding the minimum setback to the rear yard from 5.7 metres as per By-Law Number 8499: Section 571 (d)(v) to 5.59 metres (Exhibit C – Site Plan). The variance would then legalize an existing under construction 16-unit residential townhouse building on the property.

It is the intent of Section 45(1.3) of the *Planning Act* to ensure that the implementing site-specific zone resulting from a zoning by-law amendment application be adhered to and not undermined through a subsequent relief requested via minor variance (i.e. Committee of Adjustment).

The non-conformance with the rear yard setback was discovered through the Building Permit process when an as-built drawing was required. It is important to be able to process the minor variance as the Building Officials cannot issue an Occupancy Permit unless the site is fully zone compliant. The anticipated occupancy date is the beginning of September. The applicant is proposing to reduce the rear yard setback for a building from 5.7 metres to 5.59 metres. This was not considered as part of the original zoning by-law amendment. The building will still comply with the maximum overall height and all other site-specific provisions in the B3.571 zone.

In summary, the purpose of this report is to recommend that Council allow the applicant to proceed with submitting an application for minor variance to the Committee of Adjustment to request a reduction in the minimum rear yard setback. Staff recommend in support of the proposed *Planning Act* exemption.

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Existing Policy/By-Law:

233 Colborne Street is designated ‘Residential’ in the City of Kingston Official Plan. Section 3.3 of the Official Plan provides that the goal of the Residential land use designation is to “respond to the housing needs of the city’s citizens by retaining and augmenting a broad range of housing at all levels of affordability within a safe, convenient and stable setting, organized primarily into neighbourhoods.”

Section 2.7 of the Official Plan provides that development within the city shall be guided by principles of land use compatibility in order to respect the quality of existing areas and avoid adverse effects on neighbouring properties. The Plan recognizes shadowing, loss of privacy, visual intrusion and architectural incompatibility, among others, as matters to be considered in assessing land use compatibility. Section 2.7.4 provides that the inclusion of building heights, massing and setback requirements in zoning by-laws is a measure through which the City may ensure compatibility between neighbouring properties. The Official Plan policy areas were considered as part of the zoning by-law amendment.

The subject property is currently located in a site-specific Multiple Family Dwelling Zone ‘B3.571’ Zone in the City of Kingston Zoning By-Law Number 8499, Restricted Area (Zoning) By-Law of The Corporation of the City of Kingston, as amended. The under construction 16-unit residential townhouse building on the property is a permitted use in the ‘B3.571’ zone.

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on July 19, 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 55 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:

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

Jason Partridge, Planner 613-546-4291 extension 3216

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Key Map


Exhibit B Zoning By-Law Number 2019-134

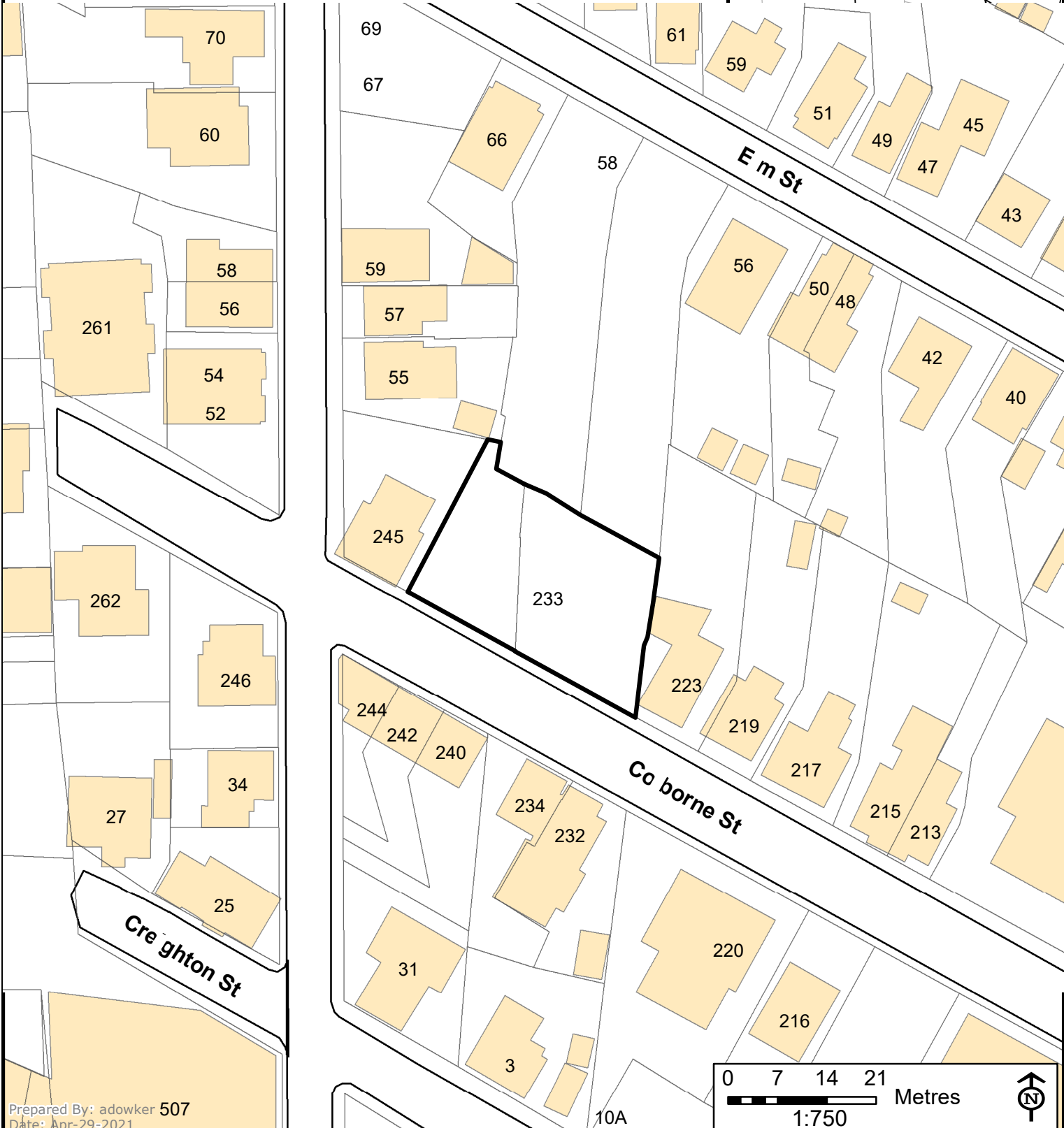
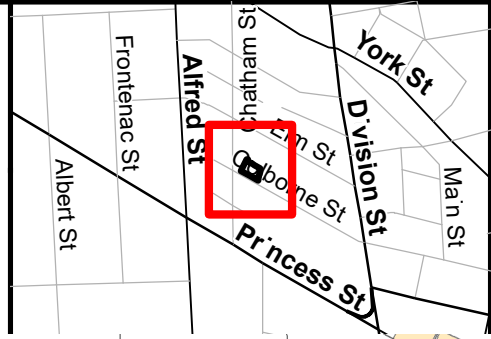
Exhibit C Site Plan



Committee of Adjustment Key Map

Address: 233 Colborne Street
File Number: D13-026-2021

 Lands Subject to Minor Variance



By-Law Number 2019-134

A By-Law to Amend By-Law Number 8499, "Restricted Area (Zoning) By-Law of The Corporation of the City of Kingston" (Zone Change from Multiple Family Dwelling 'B3' Zone to a Site-Specific Multiple Family Dwelling 'B3.571' Zone, 235 and 243 Colborne Street and 60, 62, and 64 Elm Street)

Passed: September 3, 2019

Whereas by Order of the Minister of Municipal Affairs and Housing, The Corporation of the Township of Kingston, The Corporation of the Township of Pittsburgh and The Corporation of the City of Kingston were amalgamated on January 1, 1998 to form The Corporation of the City of Kingston as the successor municipal corporation and pursuant to the Minister's Order, any By-Laws of the former municipality passed under the *Planning Act* continue as the By-Laws covering the area of the former municipality now forming part of the new City; and

Whereas the Council of The Corporation of the City of Kingston deems it advisable to amend By-Law Number 8499, as amended, of the former City of Kingston;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 8499 of The Corporation of the City of Kingston, entitled "Restricted Area (Zoning) By-Law of The Corporation of the City of Kingston", as amended, is hereby further amended as follows:
 - 1.1. Map 19 of Schedule "A", as amended, is hereby further amended by changing the zone symbol of the subject site from Multiple Family Dwelling 'B3' Zone to a Site-Specific Multiple Family Dwelling 'B3.571' Zone, as shown on Schedule "A" attached to and forming part of By-Law Number 2019-134.
 - 1.2. By adding the following section 571 in Part VIII – Exceptions to the Various Zone Classifications, as follows:

"571. 235 and 243 Colborne Street and 60, 62, and 64 Elm Street

Notwithstanding the provisions of Section 5 and Section 16 hereof to the contrary, on the lands designated 'B3.571' on Schedule "A" hereto, the following regulations shall apply:

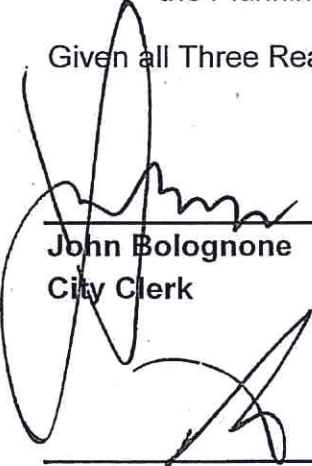
- (a) For the purposes of the 'B3.571' zone, the following definitions shall apply:

- i. "Bedroom" shall mean any room within a dwelling unit that is suitable to be used as a sleeping room under the *Ontario Building Code*, and which for greater clarity does not include:
 - a. Common areas open to all occupants of the unit;
 - b. Areas used for sanitary (such as a washroom) or cooking purposes (such as a kitchen); or
 - c. Areas occupied by mechanical equipment, such as furnaces, hot water heaters and laundry equipment.
 - ii. "Stacked Townhouse" shall mean a dwelling containing four or more principal dwelling units where the units in each pair are divided horizontally, and the pairs are divided vertically, and in which each dwelling unit has an independent entrance from the exterior.
- (b) Additional Permitted Use: Stacked Townhouse
- (c) Density:
 - i. The maximum permitted density shall be 117 dwelling units per net hectare.
 - ii. The maximum aggregate number of bedrooms shall be 72.
- (d) Minimum Yard Setbacks (235 and 243 Colborne Street):
 - i. Minimum Front Yard: 2.1 metres
 - ii. Minimum Side Yard (East): 0.6 metres
 - iii. Minimum Side Yard (West): 1.5 metres
 - iv. Minimum Aggregate Side Yard: 2.1 metres
 - v. Minimum Rear Yard: 5.7 metres
- (e) Minimum Yard Setbacks (60, 62 and 64 Elm Street):
 - i. Minimum Front Yard: 2.5 metres
 - ii. Minimum Side Yard (West): 0.6 metres
 - iii. Minimum Aggregate Side Yard: 10.7 metres
- (f) Yard Projections:
 - i. Stairs and porches are permitted to project into the front yard adjacent to Colborne Street, but shall be no closer than 1.0 metre to the front lot line.
 - ii. Stairs and porches are permitted to project into the front yard adjacent to Elm Street with no minimum setback from the front lot line.
- (g) Maximum Percentage of Lot Occupancy: 113%
- (h) Accessory Buildings: The minimum setback for detached accessory buildings shall be 0.25 metres from side or rear lot lines.
- (i) Off-Street Parking:

- i. A minimum parking ratio of 0.83 parking spaces per dwelling unit is required.
 - ii. Parking spaces shall have minimum dimensions of 2.6 metres wide by 5.2 metres long.
- (j) Off-Street Accessible Parking:
- i. Type A accessible parking spaces shall have minimum dimensions of 3.4 metres wide by 5.2 metres long.
 - ii. Type B accessible parking spaces shall have minimum dimensions of 2.7 metres wide by 5.2 metres long.
 - iii. An access aisle with minimum dimensions of 1.5 metres wide by 5.2 metres long, and marked with high tonal contrast diagonal lines, shall be provided adjacent to Type A and Type B accessible parking spaces. The access aisle may be shared between Type A and Type B accessible parking spaces.
- (k) Bicycle Parking: Bicycle parking spaces shall have minimum dimensions of 1.8 metres long by 0.3 metres wide with a minimum overhead vertical clearance of 2.1 metres.
- (l) One Lot for Zoning Purposes: For the purpose of zoning, all lots within the 'B3.571' Zone shall be considered one lot.

2. That this By-Law shall come into force in accordance with the provisions of the *Planning Act*.

Given all Three Readings and Passed: September 3, 2019

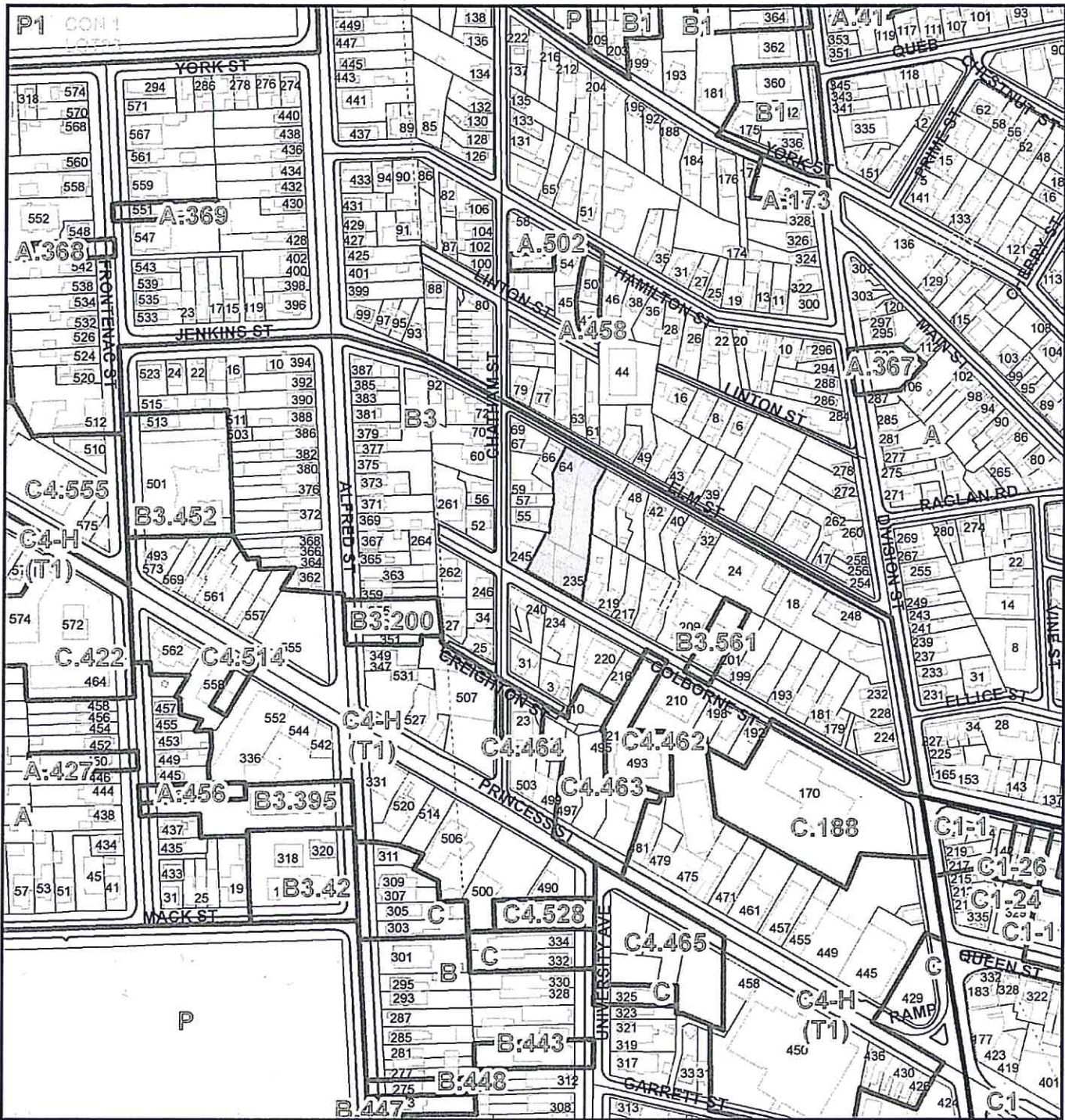


John Bolognone
City Clerk



Bryan Paterson
Mayor





Planning, Building
 & Licensing Services
 a department of
 Community
 Services

SCHEDULE 'A'
TO BY-LAW NUMBER 2019-134

File Number: D14-114-2015
 Address: 235, 243 Colborne Street &
 64, 62, 60 Elm Street

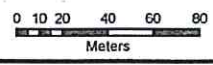
Legend:
 Reference By-Law 8499, Map 19
 [Shaded Box] Rezoned from B3 to B3.571

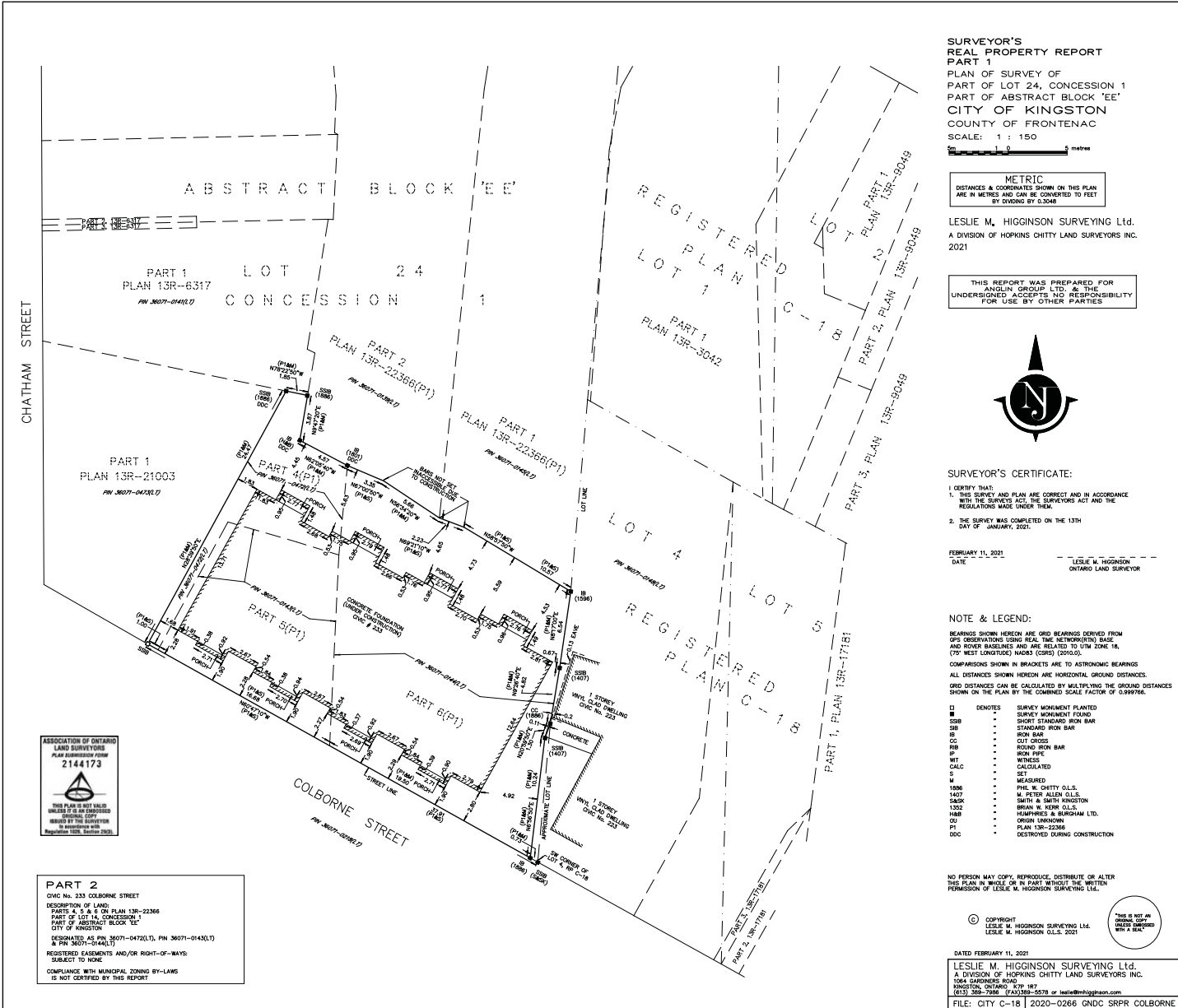
Certificate of Authentication
 This is Schedule 'A' to By-Law Number 2019-134,
 passed this 3rd day of September 2019.



 Mayor

 City Clerk





SURVEYOR'S REAL PROPERTY REPORT PART 1
 PLAN OF SURVEY OF
 PART OF LOT 24, CONCESSION 1
 PART OF ABSTRACT BLOCK 'EE'
 CITY OF KINGSTON
 COUNTY OF FRONTENAC
 SCALE: 1 : 150

METRIC
 DISTANCES & COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

LESLIE M. HIGGINSON SURVEYING LTD.
 A DIVISION OF HOPKINS CHITTY LAND SURVEYORS INC.
 2021

THIS REPORT WAS PREPARED FOR ANGLIN GROUP LTD. & THE UNDERSIGNED ACCEPTS NO RESPONSIBILITY FOR USE BY OTHER PARTIES



SURVEYOR'S CERTIFICATE:

- I CERTIFY THAT:
 - THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.
 - THE SURVEY WAS COMPLETED ON THE 13TH DAY OF JANUARY, 2021.

FEBRUARY 11, 2021
 DATE

LESLIE M. HIGGINSON
 ONTARIO LAND SURVEYOR

NOTE & LEGEND:

BEARINGS SHOWN HEREON ARE GRID BEARINGS DERIVED FROM GPS OBSERVATIONS USING REAL TIME NETWORKING BASE AND ROVER BASELINES AND ARE RELATED TO UTM ZONE 18, (7° WEST LONGITUDE) MGRS (COORD. DATUM).

COMPARISONS SHOWN IN BRACKETS ARE TO ASTRONOMIC BEARINGS.

ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES.

GRID DISTANCES CAN BE CALCULATED BY MULTIPLYING THE GROUND DISTANCES SHOWN ON THE PLAN BY THE CORRECTED SCALE FACTOR OF SURVEY.

□	DENOTES	SURVEY MONUMENT PLANTED
■		SURVEY MONUMENT FOUND
CSB		SHORT STANDARD IRON BAR
SB		STANDARD IRON BAR
SB		IRON BAR
CC		CUT CROSS
SB		ROCKING IRON BAR
IP		IRON PIPE
WT		WITNESS
CALC		CALCULATED
SET		SET
M		MEASURED
1886		FINE W. CHITTY O.L.S.
1407		M. PETER ALLEN O.L.S.
1349		SMITH & SMITH KINGSTON
1332		BRIAN W. HEAR O.L.S.
HAB		HARRISON & BURGESS LTD.
CU		ORIGIN UNKNOW
PI		PLAN 13R-22366
DDC		DESTROYED DURING CONSTRUCTION

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 LESLIE M. HIGGINSON O.L.S. 2021

DATED FEBRUARY 11, 2021
LESLIE M. HIGGINSON SURVEYING LTD.
 A DIVISION OF HOPKINS CHITTY LAND SURVEYORS INC.
 1064 SANDWICH ROAD
 WESTON, ONTARIO L9P 4P7
 (613) 569-7888 (FAX) 568-5678 or leslie@higginson.com
 FILE: CITY C-18 | 2020-0266 GNDP SRPR COLBORNE



PART 2
 GVIC No. 233 COLBORNE STREET
 DESCRIPTION OF LAND:
 PARTS 4, 5 & 6 ON PLAN 13R-22366
 PART OF LOT 14, CONCESSION 1
 PART OF ABSTRACT BLOCK 'EE'
 CITY OF KINGSTON
 DESIGNATED AS PIN 36071-0470(1), PIN 36071-0143(1,7) & PIN 36071-0144(1,7)
 REGISTERED EASEMENTS AND/OR RIGHT-OF-WAYS:
 SUBJECT TO NONE
 COMPLIANCE WITH MUNICIPAL ZONING BY-LAWS
 IS NOT CERTIFIED BY THIS REPORT