



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-21-058**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Ashley Anastasio, Planning Intern  
**Date of Meeting:** August 16, 2021  
**Application for:** Permission  
**File Number:** D13-039-2021  
**Address:** 36 Harrison Lane  
**Owner:** Mark Vanderhelm  
**Applicant:** Mark Vanderhelm

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**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 36 Harrison Lane. The applicant is proposing to relocate and enlarge an existing legal non-conforming cottage.

The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Zoning By-Law Number 32-74. The proposed relocation and enlargement 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.

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**Recommendation:**

**That** the application for permission, File Number D13-039-2021, for the property located at 36 Harrison Lane to relocate and enlarge an existing legal non-conforming cottage, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-058.

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**Authorizing Signatures:**



**Ashley Anastasio, Planning Intern**

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

Tim Park, Director, Planning Services

James Bar, Acting Manager, Development Approvals

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**Options/Discussion:**

On June 22, 2021, an application for permission was submitted by Mark Vanderhelm, on behalf of the owner, Mark Vanderhelm, with respect to the property located at 36 Harrison Lane. The application for permission is requested to relocate and enlarge an existing legal non-conforming cottage.

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

- Site Plan (Exhibit G);
- Stage 1 Archaeological Assessment for the River Styx Co-op;
- Floor Plan (Exhibit H);
- Elevations (Exhibit I);
- Engineered Truss Diagrams; and
- Photos of Existing Cottage.

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 36 Harrison Lane in the Isle of Man region north of Highway 15 and Gibraltar Bay. The subject property is in the River Styx Co-op, where there are several legal non-conforming cottages on a large parcel of land. The City of Kingston does not recognize the part lots in the Registered Plan provided by the applicant as having legal status.

The subject property is designated Environmental Protection Area in the Official Plan and zoned A1, Restricted Rural Zone, in Zoning By-Law Number 32-74. The property abuts the Rideau Canal, a UNESCO World Heritage Site.

**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)).

Zoning By-Law Number 32-74 was passed by Council in 1976 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,

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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 Environmental Protection Area.

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 relocate and enlarge an existing cottage, 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 does not conform with the City of Kingston's Official Plan policies for the Environmental Protection Area designation, which prohibits development within these designated lands, however, the structure was constructed before the enactment of the current policy documents and therefore has non-conforming rights. The application is appropriately being considered through a Permission application. Additionally, the applicant is proposing to set the new building back further from the waterfront, increasing conformity to the policies of the 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 recreational use of the subject property is compatible with the adjacent recreational and residential uses within the neighbourhood area. The subject property is within a Riparian Habitat and is in close proximity to two (2) Provincially Significant Wetlands as per Schedule 7 of the City of Kingston's Official Plan. The existing

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recreational use will be maintained on the subject property and setbacks from the shoreline will be improved by relocating the new structure and septic 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 relocation and enlargement of the existing use on the subject property is compatible with the abutting recreational and residential uses as well as the character of the area. The proposed relocation of the existing cottage will improve the current shoreline setback deficiency from 2 to 8 metres.

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 property is zoned A1, Restricted Rural Zone, under By-law Number 8499 and designated Environmental Protection Area in the City's Official Plan. The proposed demolition, relocation and reconstruction of the existing cottage with a slightly larger footprint and increased setback from the shoreline is not anticipated to have any adverse impact on future development or redevelopment. The multiple properties that exist within the subject site do not comply with the current zoning regime, and have legal non-conforming status.

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:

The proposed reconstruction will have adequate parking at a rate of one parking space per dwelling unit. The proposed reconstruction will not significantly affect private amenity areas or open space on the subject property. The continued recreational 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. The proposed recreational dwelling will be on private servicing (shore well and septic system). Harrison Lane is a private road.

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

Environmental Services discourages the continued use of a shore well and encourages the applicant to purchase a new well constructed to current standards in order to ensure safe, long-term drinking water.

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Heritage Services has commented that the replacement of an existing one-storey building with a similarly sized building will have a negligible impact on the cultural heritage value of the Rideau Canal system, and accordingly, a Heritage Impact Statement would not be required. However, the City reserves the right to require a study should the proponents modify their plans to include a more substantial building. A Stage 1 Assessment has been submitted as part of the application, which concludes that a Stage 2 Assessment is required to clear the property. Please provide copies of the assessment report(s) and correspondence from the Ministry of Heritage, Sport, Tourism, and Culture Industries to Heritage Planning staff, prior to any ground disturbance.

Building Services has advised that any demolition, construction or change of use will require Building Permit(s), and that a new septic system will require a permit through the Ministry of the Environment.

The Rideau Waterway Development Review Team have made extensive regulatory comments, which will be provided to the applicant in full. To summarize, the proposed dwelling must be 8 metres from the shoreline and is not permitted to have a basement or crawl space. Proper sediment and erosion controls will be necessary to mitigate construction activity. The use of natural building materials and earth tones is encouraged, in order to minimize any adverse impacts on the cultural heritage of the Rideau Canal system.

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

The proposed reconstruction will not negatively impact the surrounding buildings, as the existing cottage is in disrepair. This proposal represents a significant improvement to the subject property by increasing the setback to the water from 2 metres to 8 metres, providing more room between the building and the shoreline, which is both environmentally and culturally important. The approval of the requested permission will not set a precedent in the immediate area, as a historical land use pattern of cottages on this large parcel has already been set. The owners of these properties have inherent rights to reconstruct these buildings, as they are deemed legal non-conforming.

The subject property is not designated or listed on the City of Kingston's Heritage Property Register, but it is adjacent to the Rideau Canal, which is designated as a UNESCO World Heritage Site.

Based on the City of Kingston archaeological potential mapping the property is in an area of Composite *and* Limited Archeological Potential. A Stage One Archaeological Assessment has already been completed for the subject property. This report determined that a Stage Two Assessment would be required for any lands on the subject property that have not been previously disturbed. This will be addressed prior to the issuance of a Building Permit, as described in the recommended conditions.

The requested permission to demolish, relocate and reconstruct an existing cottage does not meet the general intent and purpose of the City of Kingston Official Plan.

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**Zoning By-Law**

The subject property is zoned A1, Restricted Rural Zone, in the City of Kingston Zoning By-Law Number 32-74, as amended. As per Provision 23(2)(i) in Zoning By-law 32-74, only one dwelling house per lot is permitted.

The existing structure is not a permitted use on the subject property nor does it comply with the shoreline setback provisions set out in the Zoning By-law, however, the structure is considered legally non-conforming as it existed prior to the passing of Zoning By-Law Number 32-74 in 1976. Currently, multiple dwellings exist on the subject property under shared corporate ownership. The proposal does not meet the shoreline setback provisions in the Zoning By-Law or the Official Plan, but it improves the existing deficiency and complies with CRCA regulations. The application to move the structure further from the shoreline and enlarge it is being considered through this Permission application and the tests under the Planning Act.

**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 type="checkbox"/> Utilities Kingston                | <input type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue     | <input type="checkbox"/> Kingston Hydro                    | <input checked="" 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 checked="" type="checkbox"/> CRCA              | <input type="checkbox"/> KFL&A Health Unit                 | <input type="checkbox"/> Trans Northern Pipelines                |
| <input checked="" 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.

**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.



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**Conclusion**

The requested application for permission meets all applicable tests under the Planning Act to permit the expansion of a legal non-conforming use. The relocated dwelling is supported by the CRCA and Parks Canada as the new location is set back further from the water and will meet the CRCA's minimum setback from the water. Approval of this application will allow for the reconstruction of a legal non-conforming cottage.

**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 32-74

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on August 16, 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 9 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

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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 Neighbourhood Context Map (2021)
- Exhibit D Official Plan Map
- Exhibit E Public Notice Map
- Exhibit F Zoning By-law 32-74, Map 1
- Exhibit G Site Plan
- Exhibit H Floor Plan
- Exhibit I Elevations

## Recommended Conditions

### Application for permission, File Number D13-039-2021

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

#### 1. Limitation

That the approved minor variance applies only to 36 Harrison Lane 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

Archaeological clearance of the subject property is required, beginning with a Stage One Archaeological Assessment and including any subsequent assessments as required by the Ministry of Heritage, Sport, Tourism, and Culture Industries' Standards and Guidelines for Consultant Archaeologists, as amended from time to time, prior to any soil disturbance.

One digital copy of the assessment report(s) and any acceptance letter(s) from the Ministry of Heritage, Sport, Tourism, and Culture Industries shall be provided to the Secretary-Treasurer of the Committee of Adjustment, prior to the issuance of the Certificate of Official.

The City relies upon the report of the professional archaeologist as filed, but reserves the right to require further reports should further evidence be uncovered. The applicant may be required to further review the state of archaeological

resources on the property depending on the recommendations of the report and subject to input and review from the Ministry of Heritage, Sport, Tourism, and Culture Industries. The City shall not be restricted in its ability to determine requirements related to review, assessment and/or protection should archaeological resources be found on site. Any costs arising from such requirements of the City, or any other duly authorized Government body, shall be borne solely by the applicant.




Planning Services

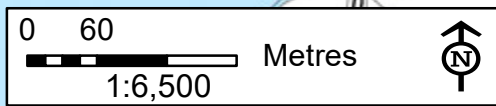
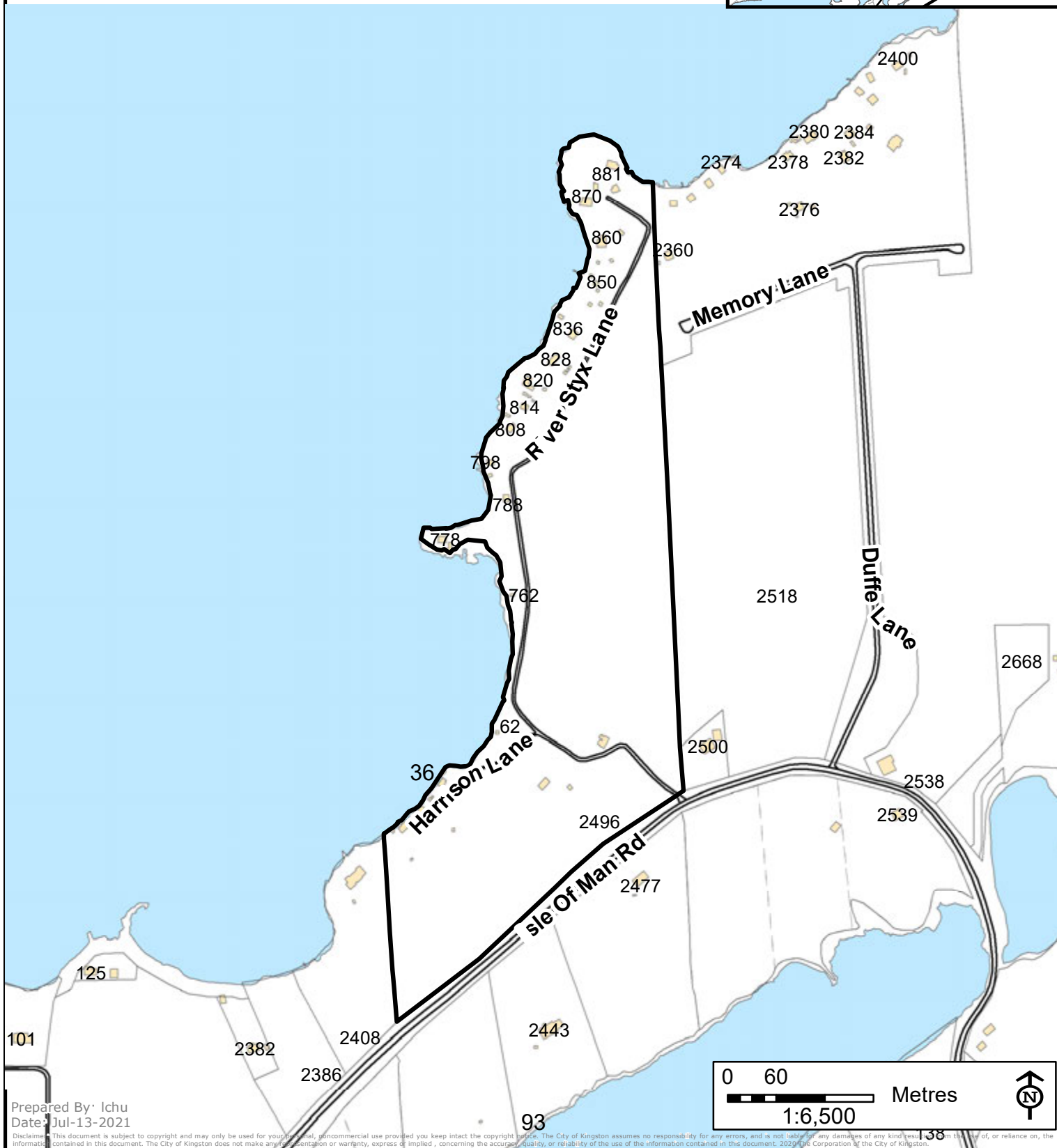
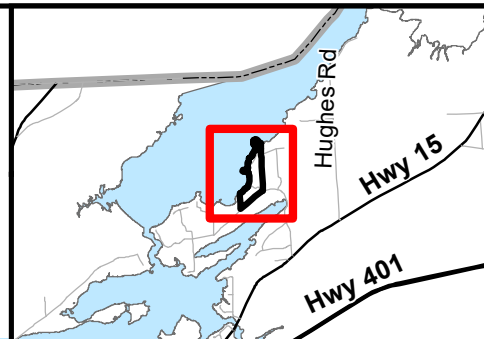
### Committee of Adjustment

### Key Map

Address: 36 Harrison Lane

File Number: D13-039-2021

 Lands Subject to Minor Variance



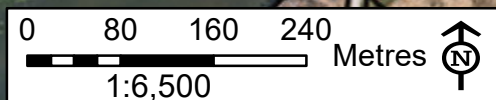


Planning Services

# Committee of Adjustment Neighbourhood Context (2021)

Address: 36 Harrison Lane  
File Number: D13-039-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels









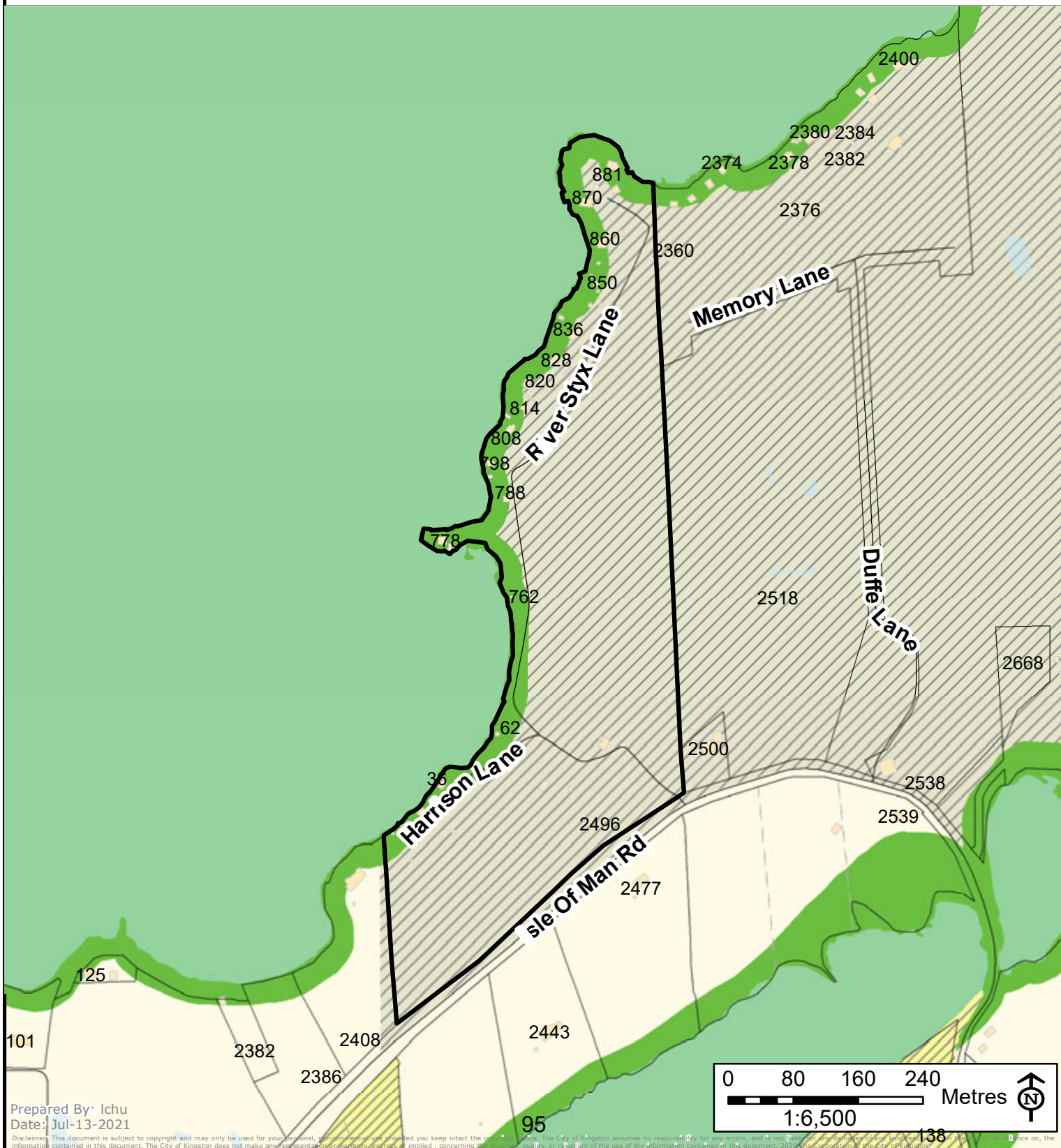


Planning Services

# Committee of Adjustment Official Plan, Existing Land Use

Address: 36 Harrison Lane  
File Number: D13-039-2021

-  Subject Lands
-  PRIME AGRICULTURAL
-  ENVIRONMENTAL PROTECTION AREA
-  ESTATE RESIDENTIAL
-  RURAL








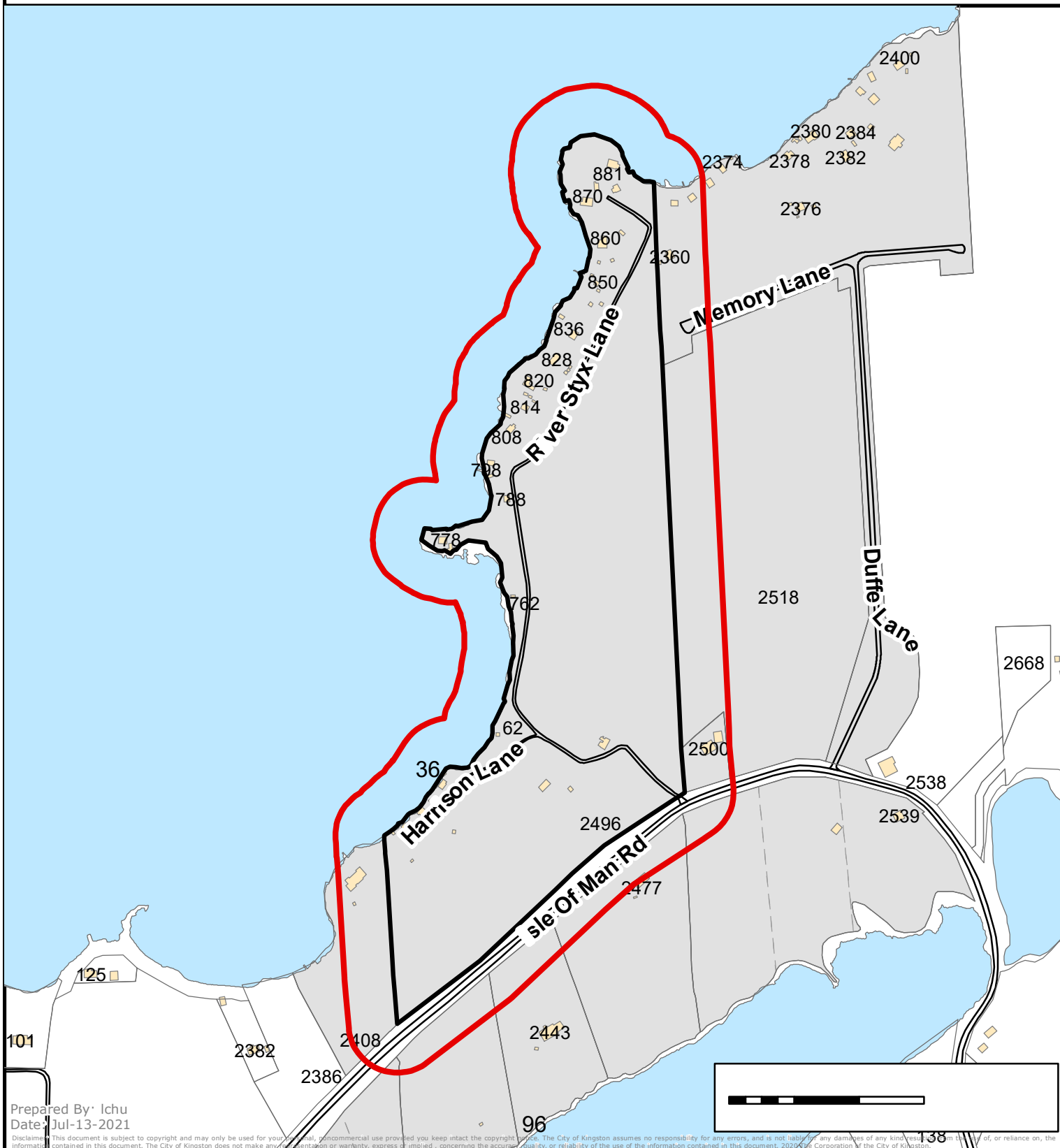


Planning Services

# Committee of Adjustment Public Notice Notification Map

Address: 36 Harrison Lane  
File Number: D13-039-2021

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

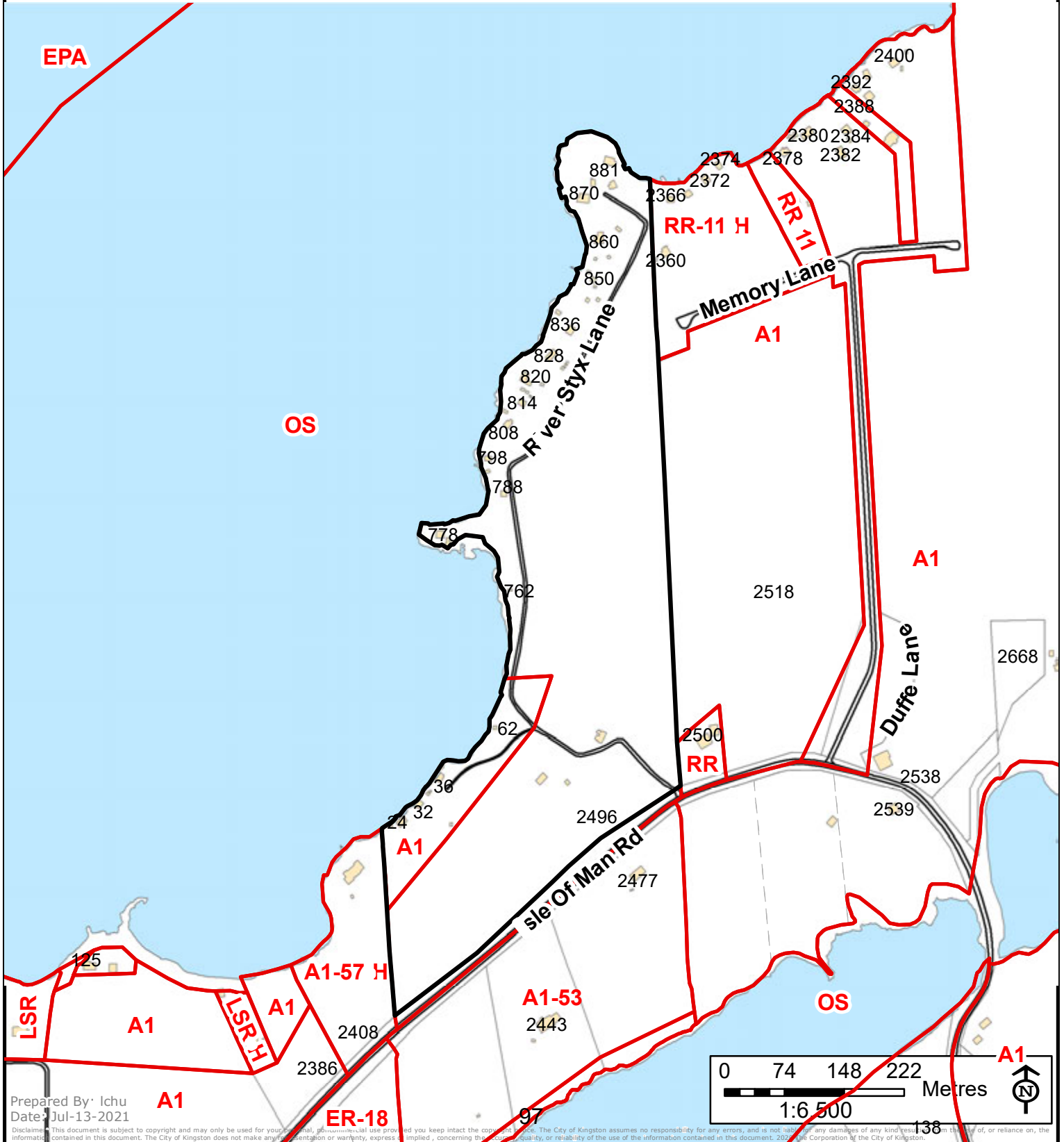






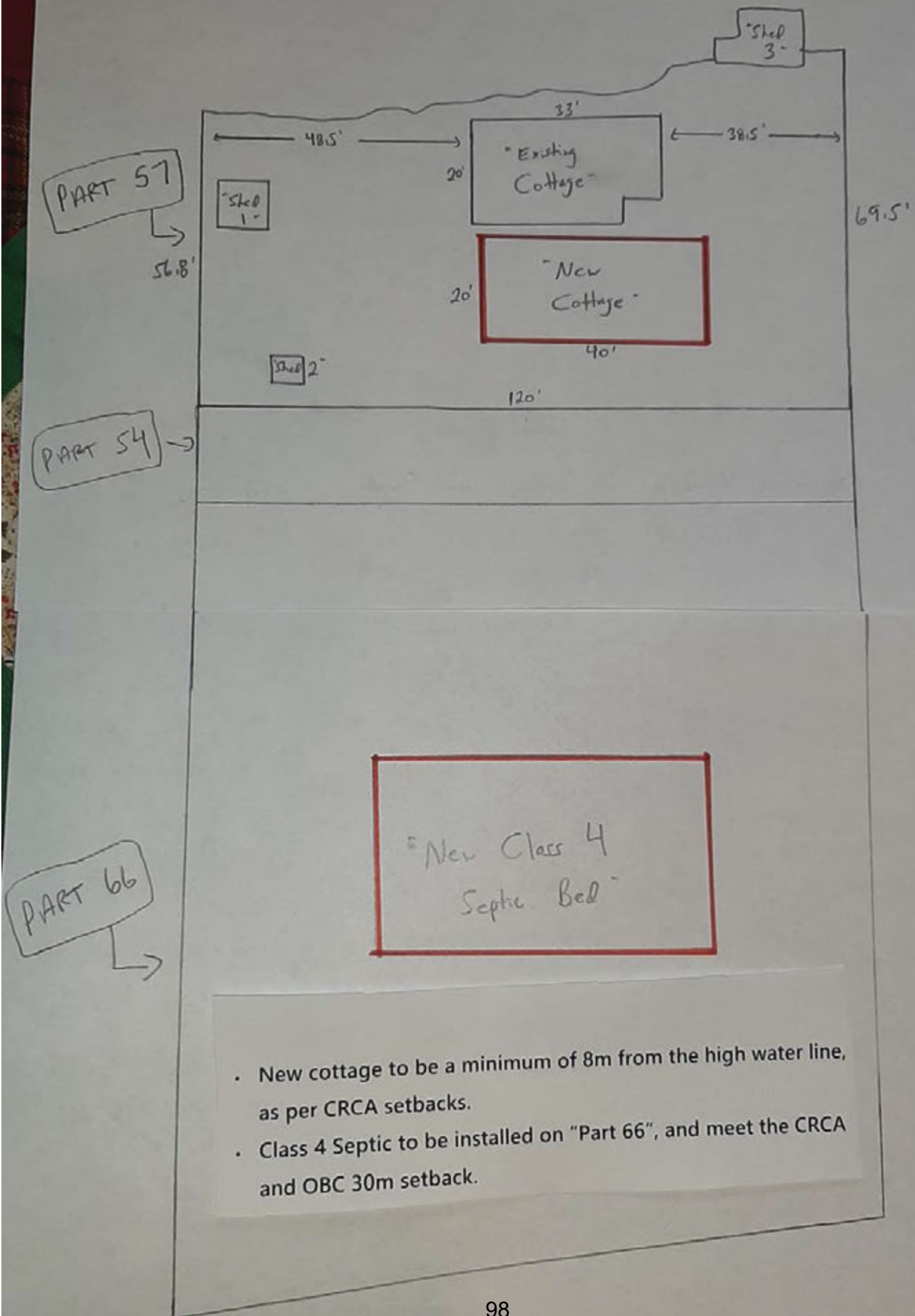
Committee of Adjustment  
**Existing Zoning - By-law 32-74, Map 1**  
Address: 36 Harrison Lane  
File Number: D13-039-2021

Subject Lands  
 Consolidated Zoning

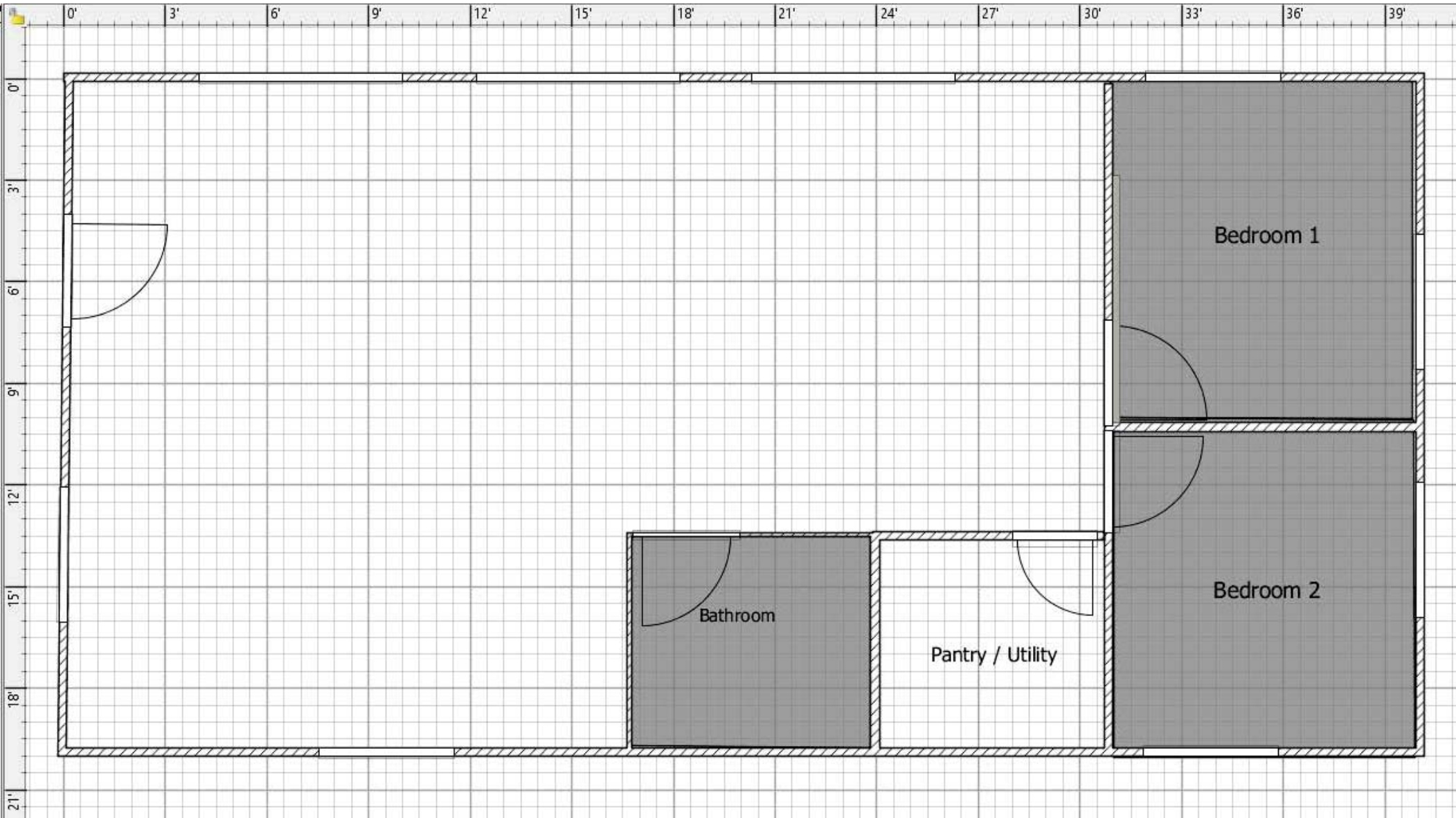


Prepared By: Ichu  
Date: Jul-13-2021

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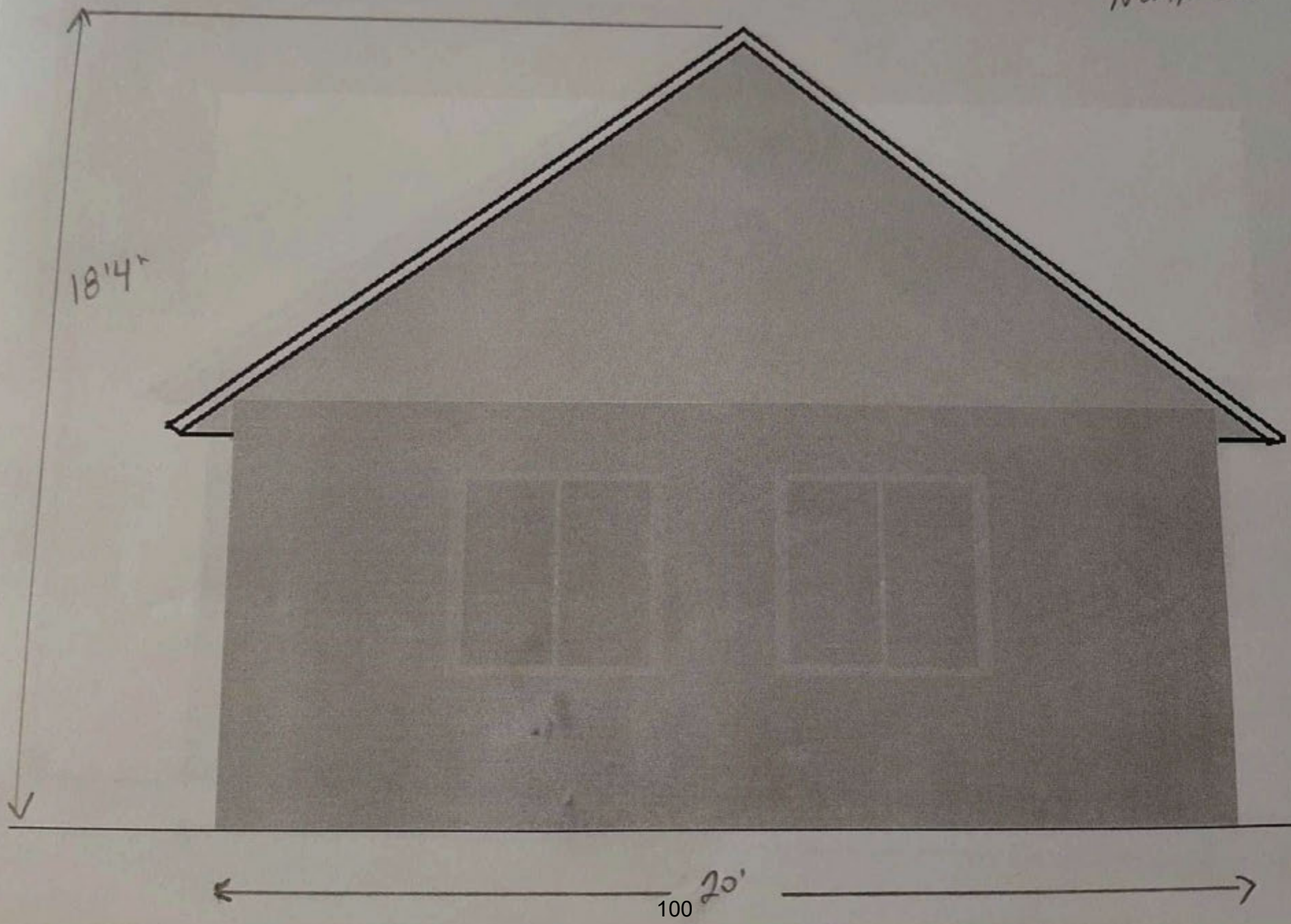


- New cottage to be a minimum of 8m from the high water line, as per CRCA setbacks.
- Class 4 Septic to be installed on "Part 66", and meet the CRCA and OBC 30m setback.



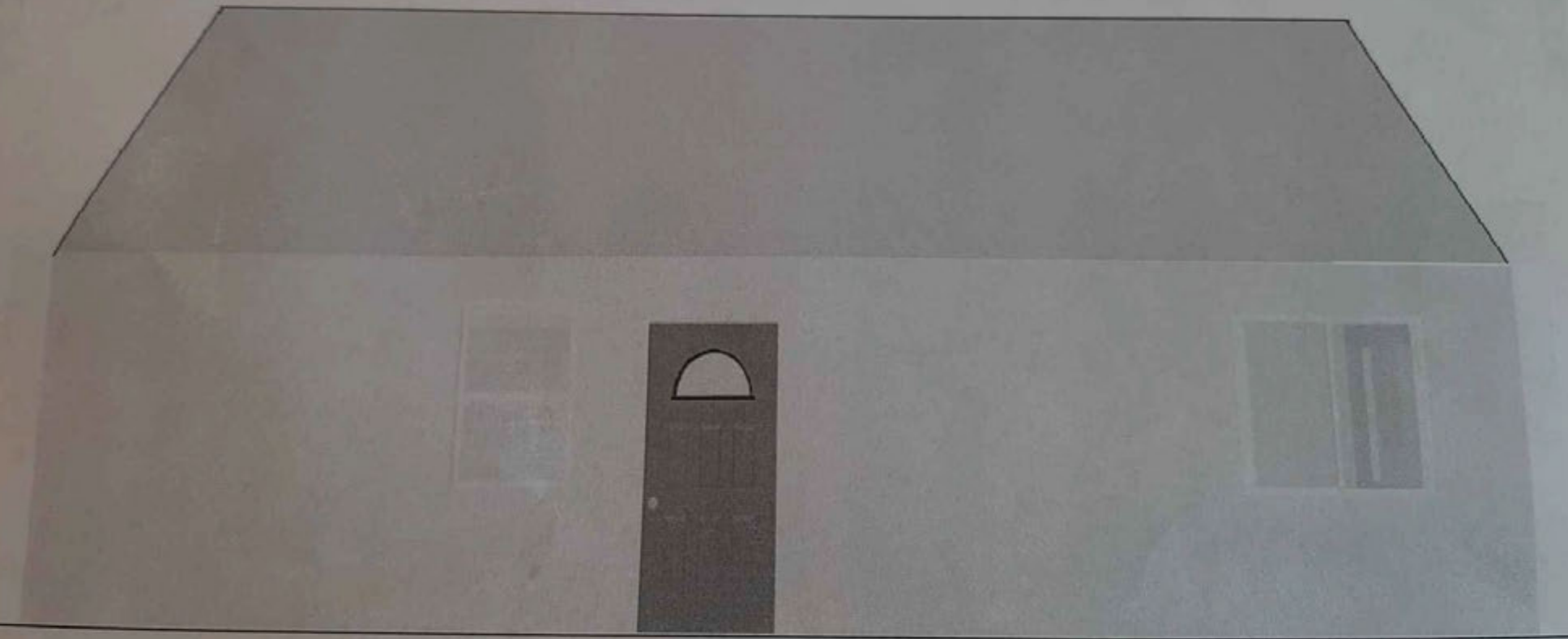


"North side"



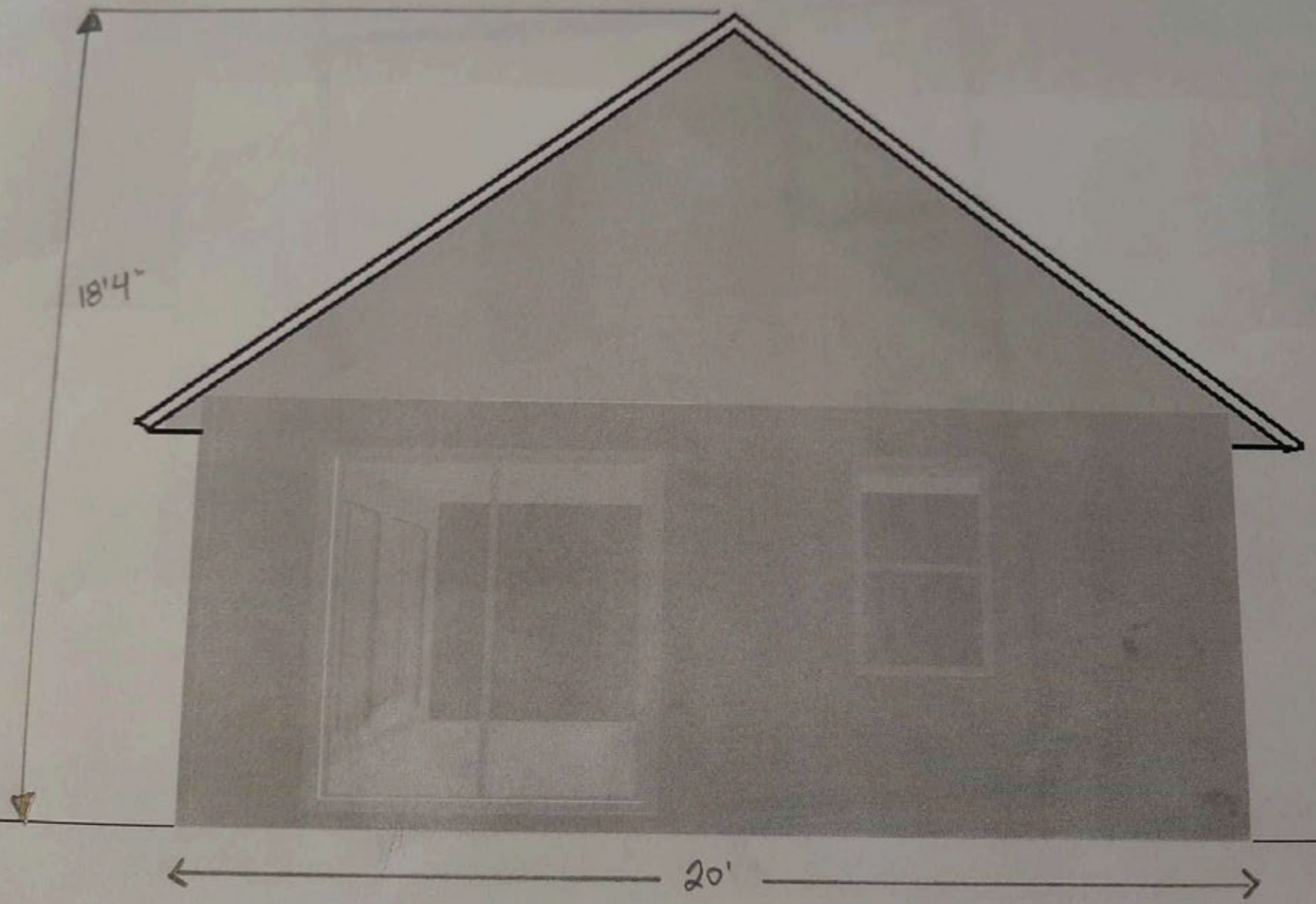
20'  
100

"But side"



← 40' →

"South side"





~ West side ~

