



**City of Kingston
Committee of Adjustment
Meeting Number 02-2022
Addendum**

**Monday, January 17, 2022 at 5:30 p.m.
In a virtual, electronic format**

8. Business

Note: The consent of the Committee is requested for the consideration of Report COA-22-027 in advance of Report COA-22-022.

i) Subject: Supplementary Report (to Report Number COA-22-022)

File Number: D10-037-2021, D13-069-2021 and D13-070-2021

Address: 398 Victoria Street

Owner: 423307 Ontario Limited

Applicant: Daniel Welsh, Amber Peak Developments Inc. & Youko Leclerc-Desjardins, FOTENN Consultants Inc.

The Report of the Commissioner of Community Services (COA-22-027) is attached.

Addendum Pages 1 – 7

Recommendation:

That paragraph 2 of the recommendation in Report Number COA-22-022, be replaced with the following:

That minor variance application, File Number D13-069-2021 for the property located at 398 Victoria Street to vary the minimum lot area, and minimum aggregate side yard zoning provisions for the existing dwelling on the retained lot known as 398 Victoria Street containing eleven bedrooms in total, including

five bedrooms in the front unit and six in the rear unit, and to alleviate the requirement to provide both an entry lane and an exit lane to the parking area and to have one single access lane. be approved subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-027.

12. Correspondence

- a) Correspondence received from Joe O'Connor, dated January 13, 2022, regarding Application for Minor Variance – 4336 Bath Road.

Addendum Pages 8 – 9

- b) Correspondence received from Peter Clarke, dated January 11, 2022, regarding Application for Minor Variance & Interpretation of Use – 1025 Innovation Drive.

Addendum Page 10

- c) Correspondence received from Charles & Eleanor Marquardt, dated January 10, 2022, regarding Application for Minor Variance and Consent – 398 Victoria Street.

Addendum Pages 11 – 12

- d) Correspondence received from Brian and Elizabeth Cameron, dated January 12, 2022, regarding Application for Minor Variance – 1660 Sydenham Road.

Addendum Page 13

- e) Correspondence received from Ka-Yu Law, dated January 12, 2022, regarding Application for Minor Variance – 1660 Sydenham Road.

Addendum Page 14

- f) Correspondence received from Bob & Judy Hurtubise, dated January 12, 2022, regarding Application for Minor Variance & Interpretation of Use – 1025 Innovation Drive.

Addendum Pages 15 – 16

- g) Correspondence received from Sohil Tahamtan and Rosita Safavi, dated January 13, 2022, regarding Application for Minor Variance – 4336 Bath Road.

Addendum Pages 17 – 18

- h)** Correspondence received from Bev and Harold Presley, dated January 14, 2022, regarding Application for Minor Variance – 4336 Bath Road.

Addendum Pages 19

- i)** Correspondence received from Sabena Islam, dated January 14, 2022, regarding Application for Minor Variance – 4336 Bath Road.

Addendum Pages 20 – 59

- j)** Correspondence received from Dugald Henderson, dated January 14, 2022, regarding Application for Minor Variance – 4336 Bath Road.

Addendum Page 60

- k)** Correspondence received from Michael O. Drewniak, dated January 12, 2022, regarding Application for Minor Variance – 1660 Sydenham Road.

Addendum Page 61

- l)** Correspondence received from Joan Bowie, dated January 14, 2022, regarding Application for Minor Variance and Consent – 398 Victoria Street.

Addendum Pages 62 – 68

- m)** Correspondence received from John Grenville, dated January 14, 2022, regarding Application for Minor Variance and Consent – 398 Victoria Street.

Addendum Pages 69 – 72

- n)** Correspondence received from Janice Law, dated January 14, 2022, regarding Application for Minor Variance – 1660 Sydenham Road.

Addendum Page 73



**City of Kingston
Report to Committee of Adjustment
Report Number COA-22-027**

To: Chair and Members of the Committee of Adjustment
From: Riccardo Peggi, Planner
Date of Meeting: January 17, 2022
Subject: Supplementary Report (to Report Number COA-22-022)
File Number: D13-069-2021
Address: 398 Victoria Street
Owner: 423307 ONTARIO LIMITED
Applicant: Daniel Welsh, Amber Peak Developments Inc.
Youko Leclerc-Desjardins, FOTENN Consultants Inc.

Council Strategic Plan Alignment:

Theme: 2. Increase housing affordability

Goal: 2.1 Pursue development of all types of housing city-wide through intensification and land use policies.

Executive Summary:

This Supplemental Report provides clarification to the number of bedrooms located within the retained dwelling as described in [Report Number COA-22-022](#). This report also includes a revised Recommended Condition relating to the maximum number of bedrooms. No other changes to the report are proposed at this time. The revised Recommended Conditions is attached to this supplementary report as Exhibit A.

Recommendation:

That paragraph 2 of the recommendation in Report Number COA-22-022, be replaced with the following:

That minor variance application, File Number D13-069-2021 for the property located at 398 Victoria Street to vary the minimum lot area, and minimum aggregate side yard zoning provisions for the existing dwelling on the retained lot known as 398 Victoria Street containing eleven bedrooms in total, including five bedrooms in the front unit and six in the rear unit, and to alleviate the requirement to provide both an entry lane and an exit lane to the parking area and to have one single access lane.be approved subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-027.

Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER

Riccardo Peggi, Planner

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

Tim Park, Director, Planning Services

James Bar, Manager, Development Approvals

Options/Discussion:

This Supplemental Report provides clarification to the number of bedrooms located within the retained dwelling as described in Report Number COA-22-022. The existing two unit dwelling on the property known as 398 Victoria Street contains eleven bedrooms in total, including five bedrooms in the front unit and six in the rear unit.

Given that the Applicant is proposing a second two-unit, eight-bedroom dwelling at the site through Consent Application File Number D10-037-2021 and Minor Variance Application File Number D13-070-2021, there will be nineteen bedrooms in aggregate across the two lots. This additional information does not change the planning opinion contained within Report Number COA-22-022.

This report also includes a revised Recommended Condition relating to the number of bedrooms to be in the existing retained dwelling.

No other changes to the report are proposed at this time. The revised Recommended Conditions is attached to this supplementary report as Exhibit A.

Existing Policy/By-Law:

Please refer to Report Number COA-22-022.

Notice Provisions:

Please refer to Report Number COA-22-022.

Accessibility Considerations:

None

Financial Considerations:

None

Contacts:

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

Riccardo Peggi, Planner, 613-546-4291 extension 3237

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A Recommended Conditions

Recommended Conditions

Application for Minor Variance, File Number D13-069-2021

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

1. Limitation

That the approved minor variance applies only to vary the minimum lot area, and minimum aggregate side yard zoning provisions for the existing dwelling that shall contain a maximum of eleven bedrooms in the aggregate on the retained lot 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.

To: City of Kingston Committee of Adjustment
Re: Minor Variance 4336 Bath Road
File : D13-009-2021

These comments apply specifically to the property of 4336 Bath Road and those neighbouring properties along this stretch of waterfront reaching from Lower Drive to the area directly south of Coronation Blvd which may be under consideration for variances to the Setback From Flood Plain by-law.

I am quite familiar with this reach of shoreline as I have kayaked it several times and concluded that given the dense concentration of smallmouth bass spawning redds along this shoreline in June that it has to be one of the premier spawning habitats for smallmouth in Lake Ontario. This observation can be easily verified by counting the significant number of bass anglers fishing within a few meters of this shoreline on opening day of smallmouth bass season. Many other popular sport species frequent Collins Bay especially during migrations to and from Collins Creek and marshy areas bordering the north-east end of the Bay. The productivity and diversity of the fisheries in this area underlines its importance when prioritizing shorelines and riparian areas requiring extra protection for sensitive, high quality aquatic ecosystems. Fishing is a valued recreational activity in the area with the bass tournaments alone generating a significant amount of tourist revenue to downtown businesses and positive international publicity for Kingston.

This riparian area also provides critical habitat to a surprising variety of wildlife including non-urban species such as mink and fox that somehow eke out a healthy existence within a few meters of what is rapidly becoming one of the busiest roads in the city.

City planners who prepared an excellent discussion paper (PC-21-032) would have had these types of aquatic and terrestrial ecosystems in mind when identifying strategies to protect these areas by pursuing goals to enhance and expand green spaces, protect wetlands and beautify the waterfront. One can easily argue that the current By-Law Number 76-26 Section 5 (6) (b) requiring a 25' setback from the flood plain is deficient given the high-water event just experienced which destroyed the dock constructed at 4336 Bath Road. The fact that this dock material still litters the lake bottom in direct contravention of fish habitat protection provisions of the Fisheries Act of Canada underscores the feebleness of enforcement of city by-laws and Cataraqui Conservation permits which allowed this dock to be constructed in the first place. The City of Kingston has been very progressive in developing plans to address the impact of climate change on weather patterns and I believe most Kingstonians would agree that these recent high water events are expected to become more frequent and severe in the future. This scientific certainty requires an even more cautious approach when identifying floodplain setbacks to assure sustainable and environmentally safe construction in and around all City managed water shorelines, not just Collins Bay.

Given the sheer amount of work and expense the City has put into developing plans to mitigate anticipated impacts from climate change and applying legislative teeth to these plans through by-laws preventing construction on buffer zones, it is time to show the

required leadership on this issue by rejecting applications for construction in these areas and not leave it to other legislative powers, federal or provincial, to protect water quality and our valued aquatic and terrestrial ecosystems. Creeping degradation of shorelines by continual allowance of variances to these setbacks is counterproductive to sustainable planning and undermines the reputation of a city being lauded widely as an example of progressiveness.

Joe O'Connor
4322 Bath Road



From: [REDACTED]
Sent: January 11, 2022 3:36 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Cc: [REDACTED]
Subject: Re: File Number D13-073-2021

To: Secretary Treasurer, Committee of Adjustment:

Re: File number D13-073-2021. Please be advised that as a resident living in close proximity of the proposed recreation facility, I fully support all three of the necessary adjustments needed to approve this project.

There is a city owned parking lot in close proximity to this project which can be used if necessary to address the reduced parking. Public transportation is also available to offset the reduction in onsite parking.

The height of the proposed project will not impact residential buildings as this location is located in an industrial park.

Please approve this project as presented.

Respectfully submitted,

Peter Clarke
218 Pauline Tom Ave
Kingston, ON
K7K 0G1

Charles and Eleanor Marquardt

120 Market St.

Gananoque, Ontario, K7G 2M5

Email: [REDACTED]

January 10, 2022

Secretary Treasurer, Committee of Adjustment,

City of Kingston

216 Ontario Street, Kingston, Ontario

K7L 2Z3

Re: Consent and Minor Variance, 398 Victoria Street

File numbers: D10-037-2021, D13-069-2021, D12-070-2021

Dear Sir or Madam:

We are the owners of 392 Victoria St. adjacent to the proposed severed lot and construction of new dwelling located at 398 Victoria St. (File numbers: D10-037-2021, D13-069-2021 and D13-070-2021). After reading the published report to the Committee of Adjustment (Report Number COA-22-022) we would like to express our concerns.

If the purpose of an official plan is to have policies which limit the extent of expansion, is reducing a required lot area by 40% and an aggregate side yard by 30% not going against the policy and not considered more than a "minor" variance? I mention this in reference to the changes in the retained lot discussed in describing the first minor variance requested (File Number D13-069-2021). Then regarding the proposed lot, the minimum interior yard setback is to be reduced by 50% and the building depth by almost 10%. This supposedly "minor" variance certainly does have an adverse impact on us as neighbours. And to state that "the proposal will not result in any negative impacts to adjacent properties or to the neighbourhood" is just not accurate.


We strongly oppose variance application B: D-13-070-2021 for the proposed severed lot. "Entry to the rear unit of the proposed dwelling is to be located on the south side of the building via a step-up

entrance pad. The relief is for 0.3 metres (which is decreasing the space to half of what it should be) and the entrance pad would enable a clearly defined entrance to the 2nd unit in the proposed building.

Every person accessing the 2nd unit of this proposed dwelling will be walking along a narrow walkway between the houses and in doing so will be standing less than 2 feet from the main floor bedroom window of 392 Victoria. The window is not above anyone's head – it will be at eye level of those passing by necessitating the window be always covered night and day, depriving the occupant of light, any view and privacy. Tenants living in this proposed unit will be looking directly into our bedroom window when they pass by at such a close range. The 50% decrease in space between lots also impacts the 2nd floor bedroom on that side of 392 Victoria also eliminating any light and decreasing privacy due to the close proximity of the proposed new dwelling. This bedroom will also need to have a closed blind at all times. At night the proposed new unit will require outside lighting to access their entrance in this dark alley between houses. This outdoor lighting would be on after dark and possibly all night and thereby negatively impact the occupants of those rooms of our house. Having a narrow entranceway so close between buildings will also result in noise affecting our tenants when some tenants of the new unit access their entrance when returning from the bars at 2 a.m. Could tenants of this new proposed unit not access their property via the shared access driveway rather than by infringing on the privacy and comfort of tenants occupying north facing bedrooms at 392 Victoria St? The increase in the depth of the building also impacts our house as it will project beyond our back deck also decreasing privacy.

In conclusion we do not feel these variances are minor in nature due to the significant negative impact they will have on the occupants of 392 Victoria St. And we definitely disagree with the statement "the proposed development is not anticipated to have any adverse impacts with any abutting land uses and will not result in any negative impacts to adjacent properties in the neighbourhood". Are there ways of alleviating these adverse effects on such very "close" neighbours?

Sincerely


Eleanor and Chuck Marquardt

From: BRIAN CAMERON [REDACTED]
Sent: January 12, 2022 4:17 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Cc: Partridge,Jason <JPARTRIDGE@cityofkingston.ca>
Subject: File Number D13-075-2021

Regarding Public Meeting Notice - D13-075-2021 - 1660 Sydenham Road

We support the granting of a minor variance for this subject matter

Brian N Cameron
Elizabeth J Cameron
APT 501-845 Gardiners Rd. Kingston K7M7E6

From: Ka-Yu Law [REDACTED] hco
Sent: January 12, 2022 9:37 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Subject: File Number D13-075-2021

Hello to Whom it may concern.

I support the minor variance as per file thanks.

Kind Regards, Ka-Yu

Ka-Yu Law M.Sc B.Sc. B.Ed.
President
Altitudetech Inc.
TOLL FREE: 1.888.321.ALTITUDE(2584)
Office: +1.613.547.0720
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kl@altitudetech.ca
www.Altitudetech.ca



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From: [Myers, Cheryl](#)
To: [Stamann, Lindsay](#); [Clendening, Ian](#)
Cc: [PLE Attendance](#); [Gregory, Katharine](#)
Subject: FW: 1025 Innovation Drive- Project D13-073-2021
Date: January 12, 2022 3:30:54 PM

Please see email below

Thank you,
Cheryl

From: Robert Hurtubise [REDACTED] >
Sent: January 12, 2022 3:24 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Cc: Judy Hurtubise [REDACTED] >
Subject: 1025 Innovation Drive- Project D13-073-2021

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: Secretary Treasurer, Committee of Adjustment:

Re: File number D13-073-2021.

As residents living in close proximity of the proposed recreational facility, my wife and I fully support the proposed adjustments needed to approve this project. This proposed private recreational facility finally addresses the need for an indoor recreational (tennis and pickleball) facility in the Kingston area. With the completion of the Third Crossing later on this year, this is a perfect location for such a facility.

Based on the fact that the facility will have a total of 18 courts (Tennis & Pickleball), the number of proposed parking spaces will be sufficient to address the requirements for parking at this location. It should be noted that some of the local residents will probably walk or ride their bikes to this facility. Public transportation is also available in the industrial park (Express route 601 & 602). There is also a city owned parking lot (John Machin Soccer Field) in close proximity to this project should a need for additional parking ever arise (i.e. special event) and vice versa should there be a special event at the soccer field.

The height of the proposed project will not have any real impact as the site is located in an industrial park and quite a good distance from any residential building.

We therefore support the approval of this project as presented.

Respectfully submitted,

Bob & Judy Hurtubise
[REDACTED] Cyprus Rd.
Kingston, ON
K7K 7K4

4431 Bath Road
Kingston, Ontario, K7M 4Z1

January 13, 2022

Lindsay Sthamann
Secretary-Treasurer, Committee of Adjustment
216 Ontario Street
Kingston, Ontario, K7L 2Z3

RE: Application Type: Minor Variance
Address: 4336 Bath Road
File Number: D13-009-2021

Dear Ms. Sthamann,

The subject of this letter is for the land across from our property. we (Sohil Tahamtan and Rosita Safavi) have resided at 4331 Bath Road about 5 years now.

Based on the city of Kingston's DASH system, the Applicants uploaded their first set of documents on February 12, 2021. The notification we received in the mail (dated December 31, 2021) is seeking 2 minor variances whereas the report to the committee of Adjustment uploaded sometimes on January 7, 2022 is only seeking one variance. Also a new concept plan also uploaded to the DASH system sometime on January 7, 2022. All these raises concern of inaccuracies.

We only received Notice of a Public Meeting (dated December 31, 2021) on January 7, 2022. Our planning consultants and engineers have not had much time to conduct a review of the documentation for this land.

Base on my opinion and short point evidence below, we believe the Committee of Adjustment should reject the application.

1. **History of the land**

There has been a long history before we purchased our house at 4331 Bath road about this land. For more about this please view the letter from Sabena Islam from 4332 Bath Road.

2. **Septic System**

On summer of 2020 when the owner of the property had his land for sale, he brought the Boulton Septic Service company to see if they can pass somehow putting a septic tank in their property and hopefully attract potential new buyers. The same day I had the same company emptying our tanks and I personally ask the Boulton Septic owner what was his thought about placing a septic tank at 4336 Bath Road was and he said there is no way with the size of the lot that they can install one unless it is holding tank. Please refer to Sabena Islam's letter for more detail in regards this matter.

3. **Minor Variance**

The application fails to meet the four test for Minor Variance.

- a. The application must be minor
- b. The variance must be appropriate for the development
- c. The variance must maintain the intent of the Official plan
- d. The variance must maintain the intent of the Zoning By-Law

This lot by far is the smallest in the neighbourhood. There are few homes with single car garages, even a smaller number, if any, meeting only the minimum requirements for driveway and side yards. Homes in this neighbourhood are quite large and lots of land, while still maintain significant distance between neighbours for privacy. This is one of the unique features of this neighbourhood which will not be met.

This applicant is hoping to pass the plan however he can since 2005 and sell the land for two times the asking as her real sate person indicated to me via email. There is lots of inconsistencies and questions regards this application and we hope you look at all the current submission and ask that the application to be denied by Committee of Adjustment.

Regards

Sohil Tahamtan



4327 Bath Road
Kingston, On K7M 4Z1

January 14, 2022

Lindsay Sthamann
Secretary-Treasurer, Committee of Adjustment
216 Ontario St, Kingston ON

Re: Application Type: Minor Variance for 4336 Bath Road
File Number : D13-009-2021

Dear Ms. Sthamann

We live at 4327 Bath Road and have been there since August 2004.

We have recently received notification that a proposal for a minor variance is being considered for the vacant lot at 4336 Bath Road.

We feel that the extremely undersized lot would not be to able to create a structure that be in line with the character of the neighbourhood. Any building that would be constructed there would require significant changes to the zoning ground rules that were put in place for a reason. We live across the street and we are concerned about the proposed height of the building and how it would impact the enjoyment and beauty for the occupants of the surrounding area.

It appears to us that the variance requested is not the only change that would be necessary for construction There appears to be numerous by-laws and building codes that would have to be adjusted in order for the owners of the property to proceed with any proposals.

As taxpayers, we hope that the committee of adjustment can recognize that some changes do not make sense and have long term consequences for more than one party involved.

Thank you

Sincerely,

Bev and Harold Presley

4332 Bath Road
Kingston, ON K7M 4Y7

January 13, 2022

Lindsay Sthamann
Secretary-Treasurer, Committee of Adjustment
216 Ontario Street
Kingston, ON K7L 2Z3

RE: Application Type: Minor Variance
Address: 4336 Bath Road
File Number: D13-009-2021

Dear Ms. Sthamann:

It would appear that the Applicant, his Consultants, and various government entities have been dealing with this Application for some time. Unfortunately, I only recently received the Notice of the Public Meeting together with access to associated documents in relation to this Minor Variance request on Friday, January 7, 2022. In addition, the variance requests in this notification, dated December 31, 2021, do not align with the Report to the Committee Adjustment by Jason Partridge uploaded to DASH sometime on January 7, 2022. Additionally, after the notification was sent to the neighbouring properties on December 31, 2021, a new Concept Plan was uploaded to the DASH system. The modifications obviously relate to a matter or matters that were missed during the extensive review by the Applicants' Consultants. Even after working on the project for the better part of a year, there were still last-minute changes made. The application and design were changed enough that apparently there is now only one variance being sought when only a week before there were 2. This haste and haphazardness in bringing the application to the Committee of Adjustment raise concerns of additional inaccuracies.

I am not aware when all the neighbouring properties received their notifications, but there is a chance that people may have accessed the DASH documents prior to the new information being uploaded on the 7th. Additionally, had someone needed to make an accessibility request, it is uncertain which package of information they would have received.

Due to the changes made to this application after circulation of the Notice of a Public Meeting and the fact that this application has been effectively processed for approximately a year and is quite complex technically, an adequate period to appropriately assess matters and provide proper submissions to the Committee of Adjustment is required. This letter requests an adjournment of the Committee of Adjustment public meeting now scheduled for January 17, 2022. I do not believe that a modest adjournment is inappropriate. In fact, it is justified, and the Committee needs to provide an adequate opportunity, and appropriate time for the review of this Application which poses several technical components.

The nature of the Application, and the most recent modifications, merit an appropriate review of the materials as submitted, including any requisite recirculation to appropriate agencies and

neighbouring properties of the amended Application. Consequently, under the circumstances, I believe that Committee Members will agree that an adjournment request is merited and needed.

If the Committee of Adjustment should deny the request for adjournment, then I submit the enclosed commentary in opposition to the granting of any variances associated with this undersized lot. My submission includes the full text of two OMB Decisions related to the site, its small size, and development implications. Obviously, the technical review of the proposed sewage system is of importance as there are multiple questions as to how the sewage system will operate on this severely undersized lot, particularly in reference to its proximity to adjacent properties and its violation of the MTO setback requirement. There are also several errors regarding the actual variances that should be requested.

The adjournment period should allow for the inadequacies and inaccuracies of the application to be corrected, requisite answers to my questions, and outstanding documentation to be submitted to me and uploaded to the DASH system for transparency and public review.

Respectfully submitted,

Sabena Islam, P.Eng.

A black rectangular redaction box covering the signature area.

4332 Bath Road
Kingston, ON K7M 4Y7

January 13, 2022

Lindsay Sthamann
Secretary-Treasurer, Committee of Adjustment
216 Ontario Street
Kingston, ON K7L 2Z3

RE: Application Type: Minor Variance
Address: 4336 Bath Road
File Number: D13-009-2021

Dear Ms. Sthamann:

The subject property abuts our home. My husband and I, along with our two sons, have resided at 4332 Bath Road since January 15, 2004.

Based on the City of Kingston's DASH system, the Applicants uploaded their first documents on February 12, 2021. Their planning undoubtedly began much earlier. Having said that, the notification I received in the mail (dated December 31, 2021) is seeking 2 minor variances whereas the Report to the Committee of Adjustment (COA) uploaded sometime on January 7, 2022, is seeking only one variance. A new concept plan was also uploaded to the DASH system sometime on January 7, 2022, after the notification was mailed to neighbouring properties. This haste and haphazardness in bringing the application to the Committee of Adjustment raise concerns of inaccuracies.

Even with the Applicants having about a year to work on this application, there were still last minutes changes made to the application. We only received Notice of a Public Meeting (dated December 31, 2021) on Friday, January 7, 2022. Our planning consultant and engineers have not had time to conduct a thorough review of the documentation for this incredibly detailed, complex, and technical proposal in this short period of time. I will do my best, within the 5 business days I have been provided, to outline my numerous concerns.

It is my opinion, based on the evidence outlined below, that the Committee of Adjustment should reject the application. You will see, based on the evidence presented in this letter, that the report from Mr. Partridge to the COA for the January 17, 2022 meeting and Mr. Keene's planning justification letter dated July 30, 2021, both contain multiple errors and oversights.

1. History of Lot and Assumption of Lot of Record Status

- Much of the piece of land was deeded waterfront access for the home at 4327 Bath Road (measuring approximately 2432 square feet). Due to the provincial highway between 4327 Bath Road and the piece of land, it was naturally severed.

- This piece of land was never created with the intention of being developed. Quite the contrary, it and the piece of land to the west (4338) were specifically severed into smaller lots to prevent development in order to maintain the views for the homes across the street.
- When Paul and Karen Rochon sold their home at 4327 Bath Road, they maintained the piece of land across the street and attempted to build on it.
 - The **original piece of land (2432 square feet)** is deemed to have fallen under the status of a **lot of record**.
 - From the City of Kingston Official Plan (Section 9, Page 387)
 - **“Lots of Record - 9.5.3.** The zoning by-law will provide conditions for the potential *development* of lots of record (lots legally existing at the time of passage of the zoning by-law) that do not conform to the size or other requirements of the zoning by-law.”
 - For the Rochon’s to begin their attempt to build on this severely undersized lot, they needed to purchase a second part (measuring approximately 3338 square feet – Part of the Bed of Lake Ontario also referred to as “Fill”). This is reclaimed land within the flood plain of the lake. It was patented and purchased from the Crown in 2004 and added to the original piece of land in 2005. **In Registry Office records, the lot known as 4336 Bath Road was created in 2005.**
 - **Based on the definition in the Official Plan and the Registry Office records, this newly created lot is NOT a lot of record.**
 - In 2006, the matter was before the Committee of Adjustment (COA) and subsequently went to the Ontario Municipal Board (OMB). The 2006 OMB decision is attached as **Appendix A**.
 - The **2006 OMB Decision specifically sheds light on the questionable nature of the lot of record assumption**, “Having found that the project fails the desirability/appropriateness test, as well as the test of compliance with By-law intent, it is unnecessary for the Board to opine at length on the other issues, including neighbourhood character, the status of “lots of record”, etc. except to add that they too raised questions about this application.” [OMB 2006, page 8]
 - The Board also observed the following: “In this case, many features of the project are counterintuitive, notably concerning the size of the lot, and the character of the area.” [OMB 2006, page 7]
- The newly created, still severely undersized lot was subsequently purchased by the Applicant
 - The Applicant added a dock to the property.
 - In 2015 the Applicant purchased a sliver of land from the homeowners to the east. This too resulted in an OMB hearing. The 2015 OMB Decision is attached as **Appendix B**.
 - The Applicant made several assertions during this hearing,
 - “...that the neighbour’s fundamental premise – i.e. that the five-foot widening of 4336 was simply a preliminary step toward a renewed application for homebuilding – was erroneous.” [OMB 2015, page 7 (32)]

- “The lot, he insisted, was not intended for homebuilding – at least under the existing zoning and servicing framework. Instead, “the proposed use is for my dock.”” [OMB 2015, page 7 (33)]
- “After describing his boat, he described two scenarios:
 - In one, there would be eventual construction of municipal sewer lines. A dwelling might be more likely “when sewers go down the road”, and there was no longer a requirement for a septic field. By that point, his lot would have a frontage of 55 feet.
 - In the other, the properties on Bath Road would continue to rely on private services. He denied any intent to propose homebuilding during that time. “We know it’s a difficult property.” The exclusive purpose of the widening, he insisted, was that the extra feet “couldn’t hurt.” “More land is better.”” [OMB 2015, pages 7,8 (34)]
- “The Board was shown no reason to take this testimony otherwise than at face value. Bad faith is not presumed; and there was nothing in the current file to suggest that this application, for a boundary adjustment, was anything else that what it purported to be.” [OMB 2015, page 8 (36)]
- “Finally, the Board notes that the above conclusion is obviously predicated on the veracity of the evidence, notably the absence of an intent to build a dwelling on 4336, until the servicing and relevant land-use controls allow it. It is trite to observe that, if matters proved otherwise, the rationale for this decision would no longer apply.” [OMB 2015, page 9 (47)]
 - It would be interesting to know how the OMB member who made his ruling in 2015 would react to this application. Would he feel that he was misled? That the evidence presented was misleading, if not untrue?
 - It appears that the additional 5’ of land would not have been allowed to be added to the lot in question. Had this 5’ of land not been added to 4336 in 2015, the application before us today would have required even further minor variances or plans for building may not have been achievable.
- Despite the assertions made by the Applicant during the 2015 OMB hearing, here we are. The Board member gave the Applicant the benefit of the doubt. We were skeptical, and rightfully so.
 - The Applicant has a renewed application for homebuilding
 - The Applicant requires significant accommodations for his property
 - This section of Bath Road still doesn’t have sewers
 - The only thing that may be different is today’s hot real estate market. If the Applicant can show approved plans for a house that could be built on the lot, he could fetch much more than the most recent asking price for the lot.
- The dock has since been destroyed by the elements, with remnants of concrete and steel being left littering the lake habitat. There has not been any attempt to clean up the site or repair the beloved dock which was the premise for the 2015 application. **Appendix C** shows pictures of what the dock has looked like for the past few years.

- The “dock” has not been used for over 2 years and since it was constructed, perhaps only a handful of times.
- ***The lot of record, which existed at the time of passage of the 1976 By-law, was now modified for the second time. Again, the lot as it exists today did not legally exist in 1976 and is thus NOT a lot of record.***

City Staff and the Applicants are considering this lot, which has changed twice since inception, to be a lot of record. Based on this consideration, and informing agencies of this assumption, agencies have further made accommodations to allow for building on this lot. This consideration and assumptions are not established fact.

The Applicant acknowledged in the 2015 OMB hearing that “We know it’s a difficult property.” His real estate decisions do not require extraordinary accommodation by the COA, City Staff, or any agencies to allow development on this lot.

2. Minor Variances/Accommodations/Building Code Violations

In the Planning Justification Letter dated July 30, 2021, to Mr. Partridge from Mr. Keene, there are several inaccuracies that are concerning and must be addressed. Many of these inaccuracies are echoed in Mr. Partridge’s report to the COA.

- i) Page 3 indicates “The proposed dwelling has a gross floor area of approximately 92.9 square metres and contains two bedrooms.” 1000 ft² is the minimum required per the by-law so this barely meeting the minimum requirement. But the table on page 18 indicates a proposed 182.0 m². How was this number calculated and which number is accurate? The Report to the Committee of Adjustment from Mr. Partridge also indicates the minimum 92.9 square metres. This may be attributed to footprint area vs dwelling unit area but this should be clarified.
- ii) Page 13 indicates only relief from one provision is being sought – 5 m from the floodplain vs 7.6 m (25 feet). Mr. Partridge’s Report to the COA also indicates relief from one provision is being sought. However, the minor variance application D13-009-2021 is seeking two variances. Which is accurate?
- iii) The table on page 18 indicates that the proposed rear yard depth is 18.3 m and no relief is needed as the required depth is 25 feet (7.6 m). ***This is incorrect.*** “No part of any flood plain shall be used to calculate any of the zone provisions required by this bylaw.” [77-26, 6(c)]. ***Relief must be sought for this provision.***
- iv) The table on page 18 indicates that the proposed height of the building is 7.92 m where the maximum allowed is 35 feet (10.7 m). Based on the drawings provided, this is inaccurate. ***It appears the height of the building is at least 42 feet so relief of 7 feet is required.***
- v) Section 5 of the table on page 18 under the section of Flood Plains asserts that “area within floodplain excluded from calculations”. ***I believe this is incorrect as noted in iii.***
- vi) The table on page 18 indicates that no relief is needed for the road setbacks but as noted in ii, relief for this provision is being sought in the notice of a public meeting.

For the tables below, please note that proposed measurements are based on the application and supporting documentation but have not been independently verified.

a. Minor Variances Requested

| | By-law | Metric (Conversion by Applicant) | Proposed | Variance Requested |
|------------------------------------|---------|----------------------------------|----------|--------------------|
| Variance from Flood Plain | 25 feet | 7.62 m | 5 m | 2.62 m |
| Setback from a Provincial Highway* | 80 feet | 24.38 m | 24.1 m | 0.28 m |

*requested in Notice of a Public Meeting but not in Mr. Partridge’s Report to the COA

b. Minor Variances Needed but Not Requested

Based on the drawings submitted, the following minor variances should be part of the application but are missing.

| | By-law | Metric | What should be Proposed based on drawings | What should be the Variance Requested | Notes |
|------------------------------|---------|--------|---|---------------------------------------|---|
| Rear Yard (minimum) | 25 feet | 7.62 m | 5 m | 2.62 m | *Flood plain cannot be used in calculations |
| Height of Building (maximum) | 35 feet | | 42 feet | 7 feet | |

c. Additional Accommodation Being Received by the MTO

| | Requirement | Proposed | Accommodation |
|--|-------------|----------|---------------|
| MTO Setback for Weeping Bed (from MTO Property Line)*: | 8 m | 3 m | 5 m |

*Even after this accommodation was apparently allowed by the MTO (original documentation not provided), the **current plans show the weeping bed area actually violating this 3 m setback**. The PVC piping in the weeping bed does meet this setback but the entire weeping bed is actually the

138 m² area outlined with a dashed line on the septic plan and noted as specified sand layer and is 9.55 m wide. The weeping bed extends to the MTO property line in violation of the accommodated setback.

d. Accommodation Based on Assumption of Lot of Record Status

| | By-law | Actual | Accommodation |
|--|--------------------|--|-----------------------|
| Lot area (minimum) for a lot served by only a public water system or a sanitary sewer system | 15,000 square feet | 4,215.15 square feet (391.6 m ²) | 10,784.85 square feet |
| Lot frontage (minimum) for a lot served by only a public water system or a sanitary sewer system | 100 feet | 55 feet | 45 feet |

*As a reminder, “no part of any flood plain shall be used to calculate any of the zone provisions required by this bylaw.” [77-26, 6(c)]

e. Design in Violation of Building Code (<https://www.buildingcode.online/1159.html>)

| | Requirement | Proposed |
|--|-------------|------------------------------------|
| Septic System Minimum Clearance from Property line | 3 m | 1.5 m (estimate based on drawings) |
| Weeping Bed Setback from West Property Line | 3 m | 0.30 m |
| Weeping Bed Setback from East Property Line | 3 m | 0.60 m |

The Applicant is going against what he stipulated to the OMB at the hearing in 2015. He is seeking to build while the lot still requires private services. The Applicant’s designs, almost a year in the making, violate agency and building code requirements. Furthermore, had the

Applicant not received the extra land from 4338 Bath Road in the 2015 OMB decision, which appears to have been received under somewhat false pretenses, the current questionable design would not even have been possible. This entire process is “counterintuitive”, to use the OMB member’s term. It is like a student who is supposed to write a 1000-word essay is given accommodation and only needs to write a 500-word essay. The student then goes back to the teacher and asks to write a 400-word essay. It may seem like it is a small accommodation but in essence the student is asking for a 600-word accommodation. To top it off, the premise behind the original accommodation is suspect.

3. Septic System

There are several unanswered questions when it comes to the septic system. Based on the history I outlined above, you can understand my skepticism and need to be thorough.

- The minimum clearance of 3 m from the property line is not being met in the Septic System Plan. This is in violation of the Building Code. The 1000 L pump chamber with high level alarm is approximately 1.5 m from the property line.
- The Eljen septic system has only been given authorization until October 28, 2025. What happens after the authorization by the Ontario Building Materials Evaluation Commission expires? This is obviously a new system with limited real-life applications and installations.
- Section 2.7.4 in the BMEC Authorization states “Provided that the minimum amount of Specified Sand is provided around each module, either imported sand or Specified Sand must be used to fill the area between the rows of Eljen GSF modules and to cover the complete dispersal bed.”
 - The area of 138 m² on the Septic System Plan outlined with a dashed line, noted as Specified Sand layer, and 9.55 m wide is the weeping bed (dispersal bed). This weeping bed is supposed to be 3 m from the MTO property line. It violates this requirement and extends right to the MTO property line.
 - Although I have not done the calculations myself, I would venture that 138 m² is also the bare minimum required for a weeping bed/absorption area/dispersal bed for this septic system. This is why every square centimeter is required, including under the driveway and almost to the limits of the property line of both the east and west neighbours. This is also in violation of the building code as the setback from property lines for the weeping bed should be 3 m. Again, exemplifying how undersized this lot is.
 - The company selling the equipment (letter from Mr. Dominic Mercier, President of Enviro-STEP Technologies) is referring to the driveway area as an absorption area (weeping bed) which makes it quite clear that the entire area marked by the dashed line is an absorption area (weeping bed)
 - If there is any roadway expansion or maintenance to the water mains, the weeping bed and potentially the PVC pipes will be disturbed. This will render the septic system inoperable and thus any development uninhabitable.

- Holistic engineering planning and design of a septic system also requires enough land for a “repair area” that can be used if the system needs expansion or replacement in the future. This has definitely not been planned for and is not an option on this severely undersized lot.
- It appears from the drawings that the mechanical equipment for the septic system is under the front walkway/driveway
 - Has there been any application with this particular septic system in this location?
 - Have there been any issues with the application with this configuration?
 - Can a car be driven over or parked on the septic system equipment?
 - Has there been an application of this particular septic system with the weeping bed under a driveway (of any construction and/or of this specific driveway construction)?
 - A letter from the company selling the equipment saying they approve the placement of the absorption area for which a section is located beneath a permeable driveway is not sufficient to ease concerns. Again, what is the science behind this decision? Has there been an application demonstrating this?
 - Is there any data on odours emanating from the usage of this system in real life applications?
- Has soil testing been done in the weeping bed area to ensure it is fit for this type of system?
 - Was all this material provided to the Building Department for them to make an informed decision?
 - The letter from Mr. Keene to Mr. Partridge dated November 4, 2021, says that the Building Department indicated that “insufficient information has been provided at this time to provide detailed comments” but then later that day there is an email from Juanita Evans of the Building Department saying it is approved. On what basis was this approved? No details were given and simply stating she has no further concerns seems insufficient for such a complex project.
 - Was all the relevant information provided to Kington, Frontenac, Lennox, and Addington Public Health for their approval as I do not see any input from that agency? According to Mr. Partridge’s report they were not given the opportunity to review any material.
 - If they were not consulted, why not? This application should not have made it this far without their approval or input.

All the aforementioned questions need to be answered and supporting documentation should be part of the submission in the DASH system. I have strong reservations of the adequacy of staff and agency approvals if they have not reviewed this data.

4. Actual Documentation from Agencies

In the past, the actual letters from the agencies with their comments have been submitted as part of the review process, rather than an interpretation by the Applicant's planner. This documentation should be provided on the DASH system to ensure transparency.

On page 1 of the 2006 OMB decision, the Board member noted "At the hearing, an official of the Ministry of Transportation (MTO) testified that the proposal did not comply with MTO policies; although the City was not formally represented at the hearing, its planner who had originally recommending approval (testifying under summons) said that had he known then what MTO now said, he would not have recommended it." The MTO was not made aware of updated plans regarding the holding tank being placed in their right of way. Had they known, they would not have given approval. This was brought to the attention of the COA and staff during the COA meeting but was ignored. In preparation for the OMB hearing, we were able to speak with the appropriate contact at the MTO to gain this information because his initial approval letter was included in the application package. **There is once again concern that the MTO setback is being violated.**

This exemplifies the importance of obtaining all appropriate information directly from the agencies and it also highlights the concerns I have outlined about possible lack of in-depth review by agencies and/or staff. Furthermore, with the site plan changing on January 7, 2022, shouldn't a recirculation of all final data have been done prior to presenting it at the COA? Again, what is the urgency?

5. Minor Variance Tests

Based on what I have gathered from the information provided, the application fails to meet all the four tests for Minor Variance, which are:

- The application must be minor
- The variance must be appropriate for the development
- The variance must maintain the intent of the Official plan
- The variance must maintain the intent of the Zoning By-law

First and foremost, the entire application and design is predicated on 4336 Bath Road being a lot of record. I have demonstrated why this is a false assumption – 4336 Bath Road was created in 2005 and then again recreated in 2015. This lot did not legally exist in 1976 so cannot be a lot of record. When this assumption is removed from the equation, the lot is severely undersized and requires extensive relief.

Furthermore, the application itself is not complete in the relief that should be sought. The proposed plans also violate the Building Code and the MTO setback.

There are also numerous outstanding questions about the septic system that must be answered.

Even with the false assumption of the lot of record status, the application still requires several accommodations by numerous parties, in addition to relief of by-law provisions, to be viable. This does not appear to be in keeping with the intent of the Official plan or Zoning By-law. Furthermore, **Section 5, 13 (d) of the Zoning By-law indicates that lots with lesser lot area and/or frontage may be used and a building or structure may be erected provided that all other requirements of the by-law are complied with.** Again, this is not the case.

Appropriateness for development must take into consideration the character of the neighbourhood. As a reminder, the OMB member in 2006 specifically called into question if development on this lot would fit the character of the neighbourhood/area:

- “Having found that the project fails the desirability/appropriateness test, as well as the test of compliance with By-law intent, it is unnecessary for the Board to opine at length on the other issues, including neighbourhood character, the status of “lots of record”, etc. except to add that they too raised questions about this application.” [OMB 2006, page 8]
- “In this case, many features of the project are counterintuitive, notably concerning the size of the lot, and the character of the area.” [OMB 2006, page 7]

This lot is, by far, the smallest in the neighbourhood. A summary of immediate neighbouring properties that were notified of this meeting is in the table below. All of these homes have multi-car garages, large driveways, and generous space between homes and from lot lines. The homes themselves are fairly large, while still maintaining significant distance between neighbours for privacy. That is one of the unique features of this neighbourhood which will not be met by the proposed development. **Appendix D** shows additional neighbourhood pictures.

| Address on Bath Road (north side – east to west, followed by south side east to west) | Total Lot Square Footage from MPAC (includes flood plain) | Year Home Built | Other Notes |
|--|--|-----------------|---|
| 4323 | 20,908.80 | 1965 | Double garage, double driveway with turnaround space, generous setback from lot lines |
| 4327 | 14,672 | 1962 | Double garage, circular driveway, generous setback from lot lines |
| 4331 | 23,650 | 1972 | Double garage, extra wide driveway with turnaround space, generous setback from lot lines |
| 4333 | 57,063.60 | n/a | St. Peter’s Church Expansive space, circular driveway, parking lot |
| 4322 | 23,522.40 | 1976 | Double garage, semi-circular driveway, generous setback from lot lines |

| | | | |
|-------------------------|-----------------|----------------------------|---|
| 4332 | 20,037.6 | 1990 | Triple car garage, extra wide driveway with turnaround space, secondary driveway, generous setback from lot lines |
| 4336 (Subject Property) | 6404 | n/a Lot created in 2005 | Sized was increased to this by 2015 OMB Decision Very tight to lot lines, minimum single driveway width with no turnaround space, single car garage, no existing structure, significantly smaller frontage and lot area than all other homes |
| 4338/4340 | Total of 12,383 | 1973 | Size was reduced to this by 2015 OMB Decision Double garage, semi-circular driveway, generous space between neighbours |
| 4344 | 7840.8 | | Vacant lot partially owned (upper half) by St. Lawrence Parks Commission, lower half owned by a neighbour further down on Bath Road. Usage is by 4348 per rental agreement. |
| 4348 | 10,500 | 1948 | Detached double garage, large double driveway with turnaround space, generous space between neighbouring homes |

To further exemplify how this proposed development would not be in keeping with the neighbourhood, the table below indicates the numerous occasions where minimum by-law provisions are not being met or barely being met.

| | Minimum Requirement per By-law | Proposed (not including flood plain) |
|------------------------|---|--|
| Lot Area | 15000 square feet (1393.5 m ²) | 4215.15 square feet (391.6 m ²) |
| Lot Frontage | 100 feet | 55 feet* |
| Interior Side Yard | 4 feet (1.2 m) | 1.2 m |
| Rear Yard | 25 feet (7.6 m) | 5 m |
| Dwelling Unit Area | 1000 square feet (92.9 m ²) | 92.9 m ² ** |
| Standard Parking Space | 2.75 m by 6 m | 2.75 m by 6 m |
| Flood Plain Setback | 25 feet (7.62 m) | 5 m |
| Driveway Width | 3 m | 3 m |
| Road Setback*** | 24.38 m | 24.1 m |

*Application documentation says 17.2 m or 56 feet – not sure if this is accurate
**Application documentation indicates two different measurements – this may be attributed to interchangeably using definitions of dwelling area and footprint area
***Is this still being asked for or not? Conflicting information.

There are many inconsistencies and questions outstanding regarding this application. The application also fails to meet the tests of minor variance. Based on the current submission, I ask that the application be denied by the Committee of Adjustment.

Respectfully submitted,

Sabena Islam, P.Eng.



- Appendix A – 2006 OMB Decision
- Appendix B – 2015 OMB Decision
- Appendix C – “Dock” Pictures
- Appendix D – Homes in the Neighbourhood



ISSUE DATE:

Dec. 20, 2006

DECISION/ORDER NO:

3519



PL060704

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Henry VanZuylen, Sabena Islam, Omar Islam,
David Nolan
Applicant: Paul Rochon & Karen Rochon
Subject: Minor Variance
Property Address/Description: 4336 Bath Road
Municipality: City of Kingston
OMB Case No.: PL060704
OMB File No.: V060371
Municipal File No.: Submission No. A04-05

APPEARANCES:

Parties

Counsel

Henry Vanzuylen, Sabena Islam,
Omar Islam and David Nolan

T. Wilkin

Paul Rochon and Karen Rochon

P. Fay

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
ON NOVEMBER 29, 2006 AND ORDER OF THE BOARD**

Paul Rochon and Karen Rochon (applicants) proposed a house in the City of Kingston (City), on a relatively small lot between Lake Ontario and Provincial Highway 33, involving variances. City planning staff recommended approval of the variances, and the City's Committee of Adjustment (COA) authorized them; but Henry Vanzuylen, Sabena Islam, Omar Islam and David Nolan (neighbours) appealed to the Board. At the hearing, an official of the Ministry of Transportation (MTO) testified that the proposal did not comply with MTO policies; and although the City was not formally represented at the hearing, its planner who had originally recommended approval (testifying under summons) said that had he known then what MTO now said, he would not have recommended it.

The Board has carefully considered all the evidence, as well as the submissions of counsel, presented articulately by both sides. The Board concludes that the proposal does not meet the terms of the Ontario *Planning Act* for a variance, and the appeal is allowed accordingly. The details and reasons are set forth below.

BACKGROUND AND CONTEXT

The subject lot at 4336 Bath Road is a parallelogram, between Lake Ontario and a "Class 4" "King's Highway" (Highway 33, a.k.a. Bath Road), subject to the *Public Transportation and Highway Improvement Act* (PTHIA).

The neighbourhood has municipal water services, but private sewage/septic systems. The lot is described in the Plan of Survey as being in two parts, i.e.

- the original lot facing Highway 33, measuring 226 square metres (2432 square feet),
- plus a second part measuring 310 square metres (3338 square feet) labelled "Part of the Bed of Lake Ontario" (also labelled "Fill"), namely reclaimed land within the flood plain of the lake. The latter part was patented and purchased from the Crown in 2004, and consolidated with the former lot in 2005.

The reclaimed land is bounded by a continuous concrete shorewall, next to the Lake; further inland, it is covered by decking over a "rubble shore", until it reaches the original shoreline, where the land rises abruptly, accessed by stairs. It was common ground that the latter slope represents the edge of the "flood plain".

The lot is relatively small, differing from its neighbours in several respects:

- it has a street frontage of 50 feet, whereas the zoning would normally require 100 feet;
- its total area (including the original lot plus the reclaimed land) measures 5,770 square feet,

- whereas the By-law requires a minimum lot size of 15,000 square feet,
- And even that calculation is charitable: according to By-law Section 5(6)(c), "No part of any flood plain shall be used to calculate any of the zone provisions required by this By-law".
- In other words, the lot is 38.5% of the minimum in terms of actual dimensions, and exclusive of the flood plain (2863 square feet), it is 19% of the minimum according to the By-law calculation.

The applicants apparently assumed that there would be insufficient room for a septic field; instead, they proposed a sewage holding tank, to be pumped out periodically. This concrete tank would be within the front yard setback. This subsurface construction apparently did not concern City authorities in terms of zoning setback requirements – but other authorities thought differently, as will be seen.

The application involved two variances:

- One to reduce the front yard setback, to allow the house's front façade to be seven feet closer to the road than otherwise provided in the By-law, and
- One at the rear, to reduce the setback from the flood plain, from 25 feet to zero.

However, there was no request for variances on frontage or lot size:

- This is due to By-law Section 5(13)(d), on lots of record which, in the vernacular, were said to be "grandfathered":

...A lot having a lesser lot area and/or lot frontage than that required herein..., as shown by a registered conveyance... may be used and a building or structure may be erected....
- Section 5(13)(e) adds a condition, namely that

It is proven that the lot will have adequate capacity for sanitary sewer, stormwater sewer, septic facilities, and potable water.

- Eligible lots of record, according to Official Plan Section 6-6, refer to any parcel of land which was capable of being legally conveyed... on July 8, 1976.

Since the applicants considered this a lot of record, they considered frontage and lot area to be grandfathered, and variances on those accounts were not sought.

The City's planner on the file, Mr. Fisher, agreed. Although he later acknowledged that in this neighbourhood, the subject property was "by far the smallest lot, by width", his report of June 2006 to the COA recommended approval. He also noted that the application had been circulated as usual to various public authorities, and had elicited no objections. One of those agencies was the Ministry of Transportation (MTO), responsible for Highway 33.

DISPUTES

The neighbours objected to the project. At the hearing, they argued, e.g., that:

- The project was out of character with the area, being on a visibly smaller lot than those in the immediate vicinity.
- Lot frontage and area were ineligible to be grandfathered, because this lot was *not* the same as the lot of record that existed as of July 8th, 1976, having been added to. Reclaimed land was certainly not "registered" as of 1976, having been patented only much later.
- A holding tank is characterized as a "Class 5" sewage system by the Ministry of Environment. According to documentation produced in evidence, no Class 5 systems are normally allowed unless they are (a) interim, pending (b) sewers to be installed – and the City had specified in writing that no sewers could be expected at this point.

- If zoning calculations excluded the flood plain, then a variance should have been sought for rear yard setback, to be reduced to zero.
- Even if the house were outside the flood plain (at its edge), it might be vulnerable to wave action ("wave upsurge") in the event of high water.
- The side yards were so narrow that there might be difficulty moving equipment for routine repair of the applicants' share of the common shorewall.

SEWAGE

The largest issue, however, involved sewage. The lot's size and proximity to the flood plain created problems for location of a septic field – leading to the proposal for a tank instead. However, that left the question of location for the proposed concrete tank, under the front yard, three metres from the front property line.

The neighbours called MTO's Development Review Co-ordinator, Mr. Swezey, to testify under summons. The PTHIA, at Section 34(2)(a), specifies that no one may build any structure within 45 metres of a King's Highway without an MTO permit.

He described MTO's *Corridor Control and Permit Procedures Manual*, including the eight-metre setback on which MTO normally insists (construction in setbacks might eventually affect MTO if the latter ever considered widening its Highway). The applicants' proposed concrete sewage tank is within that setback.

Mr. Swezey was unfamiliar with any exception to the above MTO policy, except one. For the sake of "fairness", MTO will agree to a shorter setback for infill projects where a new house is proposed between two existing houses, both of which have shorter setbacks. However, that infill/setback exception did not apply here. Mr. Swezey said that at the time that the application was originally circulated, MTO

- had not seen the plans themselves,
- and was unfamiliar with the proposal to place a holding tank within its setback.

- He said MTO saw them only at the end of August, a month after the COA's Decision.

At the end of August, MTO advised counsel for the neighbours by letter that "MTO will not permit the placement of the septic tank at the proposed 3m setback from property limit"; and at the hearing, Mr. Sweezey testified that "MTO has not received information that would... allow that structure". Mr. Sweezey was followed by Mr. Willing, Chief Building Official for the City, also under summons. He was asked whether the City would issue a building permit, if MTO had not signed off on its own setback. His answer was no: the applicant would have to move the structures.

The neighbours' planner summarized: "The site cannot sustain its own sewage system".

The applicants produced no other planning evidence of their own. They did, however, call Mr. Fisher (the City planner who had originally recommended the variances), under summons; but his testimony was not helpful to the applicants. He said that having heard Mr. Sweezey's testimony, if he had known about MTO's revised opinion at the time, he and the City would have "asked for deferral (of the application) until the applicant can deal with issues of the septic tank". Furthermore, "we would want a letter from MTO saying they're satisfied". Otherwise, planning staff would not have recommended approval.

CRITERIA

This OP is not the easiest for planners in this situation. It does not specifically define how to deal with lots of record that have been added to; nor does it clearly answer the question of which criteria apply to flood plains (e.g., rear yard provisions). City staff had to interpret some provisions in a near-vacuum.

But the criteria applicable to the Board are far clearer. For variances, these criteria (often called "the four tests") are set forth at Section 45(1) of the *Planning Act*, namely that a variance must be minor, desirable for the appropriate development or use of the property, and maintain the general intent and purpose of both the Zoning By-law and of the Official Plan. Parenthetically, however, the Board has no jurisdiction to tell MTO what its setbacks should be, under the PTHIA.

All four tests must be met in order for Section 45(1) to be satisfied: failure of any one is fatal to the application.

Finally, the general rule is that whoever asserts a proposition bears the burden of proving it, and that in a civil or tribunal context, such matters are decided on the balance of probabilities. The Board is also required to exercise its independent judgment on the merits of the case before it, to ensure that proper principles of planning are maintained.

OBSERVATIONS

In this case, many features of the project are counterintuitive, notably concerning the size of the lot, and the character of the area. However, it is the question of MTO approval, and the related issue of eligibility for a building permit, which raise the question of whether this application is, at the very least, seriously premature.

The Board heard nothing to provide it with any comfort that this project is buildable, even if the current variances were authorized. The testimony of the MTO official and of the City's Chief Building Official raised significant doubts as to whether the necessary approvals – which are outside the Board's jurisdiction in this case – were obtainable. The Board is reluctant to engage in speculation on that account, with nothing but conjecture on which to suppose that the necessary preconditions for construction would materialize.

The Board was not persuaded that the applicants had a feasible sewage system. The By-law is specific: Section 5(13)(e) states unambiguously that "adequate capacity for ...septic facilities" must be "proven". It is relatively elementary to discern a manifest By-law intent that properties be demonstrably capable of dealing with their own waste.

And that is not the only one of the four tests that is problematic. Can a project be called "desirable for the appropriate development or use" of a property, if there is nothing to show that it is buildable?

In this case, the Board heard nothing to persuade it that it was. Indeed, the applicants offered no expert planning evidence of their own; and even if they had, there is no indication how they would circumvent the problem of MTO, the PTHIA, and the approvals necessary for a building permit.

Finally, despite eloquent argument, the issue before the Board is not how this project would fare under different circumstances (e.g. if it were connected to the sewer system, or had a different configuration for its disposal of sewage). That conjecture does not correspond to the factual circumstances that are before the Board either.

Having found that the project fails the desirability/appropriateness test, as well as the test of compliance with By-law intent, it is unnecessary for the Board to opine at length on the other issues, including neighbourhood character, the status of "lots of record" etc., except to add that they too raised questions about this application.

CONCLUSION

The appeal of the COA's Decision is allowed, and the variances are not authorized.

It is so Ordered.

"M.C. Denhez"

M. C. DENHEZ
MEMBER

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 26, 2015

CASE NO(S): PL150330

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

| | |
|-------------------------------|--------------------------|
| Appellant: | Sabena Islam |
| Applicant: | Eamonn Flynn |
| Subject: | Consent |
| Property Address/Description: | 4338 Bath Road |
| Municipality: | City of Kingston |
| Municipal File No.: | D10-169-2015 |
| OMB Case No.: | PL150330 |
| OMB File No.: | PL150330 |
| OMB Case Name: | Islam v. Kingston (City) |

Heard: October 28, 2015 in Kingston, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Sabena Islam

R. Taylor*

Eamonn Flynn
Rhonda Goodwin Flynn
Richard Carrière
France LeBlanc Carrière

Eamonn Flynn

DECISION DELIVERED BY M. C. DENHEZ AND ORDER OF THE BOARD

INTRODUCTION

[1] This dispute was about a proposed lot boundary adjustment of approximately five feet.

[2] Richard Carrière and France LeBlanc Carrière own a home on a pair of waterfront lots, referred to as 4338 and 4340 Bath Road, in the City of Kingston ("the City"). Their lots, and those of other parties to these proceedings, face Collins Bay, on Lake Ontario.

[3] The Carrières offered to sell a five-foot wide parcel, to be created along the east side of their property. They proposed to sell to the owners of the abutting vacant waterfront lot to the east, Eamonn Flynn and Rhonda Goodwin Flynn. That transferred parcel, which the Board calls "the sliver", was described as 1.99 metres wide, though actually closer to 5 feet, because of the angles. The total parcel would cover 53.6 square metres.

[4] The Flynns' lot to the east is municipally described as 4336 Bath Road ("4336"). The Flynns wanted to accept that offer of the sliver, in order to widen their lot – which is currently half the width foreseen in the applicable Zoning By-law.

[5] 4336 has a history. There had been an attempt by previous owners, in 2006, to obtain variances there, to allow construction of a dwelling. At that time, the Committee of Adjustment ("COA") had authorized those variances, on the apparent recommendation of City planning staff. However, that decision had been appealed to the Ontario Municipal Board ("the Board"), by neighbour Sabena Islam ("the neighbour") and others. Ms. Islam owns the property east of 4336, at 4332 Bath Road.

[6] In the current case pertaining to the sliver, the transfer would again require the approval of the COA. Mr. Flynn applied on behalf of himself and his wife, as well as the Carrières (the Board refers to the four of them collectively as "the applicants").

[7] At first glance, this current proposal (to transfer the sliver) bore certain similarities to the 2006 case. As before, City planning staff was supportive, and the COA approved the application, subject to seven conditions. The neighbour remained apprehensive that this was part of a larger long-term plan to construct a dwelling on 4336, and she again appealed to the Board.

[8] At the Board hearing, the neighbour was represented by counsel, with the support of a professional planner, Robert Clark. The applicants were self-represented, and called no witnesses other than themselves. The City did not attend (except to advise the Board that it would not be attending).

[9] The Board has carefully considered all the evidence, as well as the submissions of both sides. The Board concludes that, subject to a further condition about straight boundary lines, the proposal meets the terms of the *Planning Act* ("the Act"). This outcome was not due to any lack of eloquence or lucidity on the part of the counsel or the planner, who both made admirable presentations despite difficulties in the paper trail. The Board was simply not persuaded that this proposal was the preface to a housing application. The Board, however, adds specific comments on this matter for future reference. The details and reasons are set out below.

BACKGROUND AND CONTEXT

[10] The neighbourhood has municipal water services, but private sewage/septic systems. It was undisputed that this reliance on septic fields drives the Zoning By-law's provisions for lot sizes and setbacks.

[11] As mentioned, 4336 had been the subject of Board proceedings before. In 2006, the previous owners, Paul and Karen Rochon, had proposed variances to allow home construction on this undersized lot. In Board File No. PL060704, the Board turned down that application, by decision issued on December 20, 2006.

[12] 4336 consists of three portions. Two portions comprise an original lot facing Bath Road (226 square metres):

- The northernmost portion, referred to (Exhibit 2) as "PIN 36128-0768 (Deposited Plan 258)", which the Board calls the "streetfront portion", is subject to special rules by the Ministry of Transportation, pertaining to a

potential six-metre widening of Bath Road, which is also a Provincial highway.

- The main portion of the original lot was referred to as "Part 1 (Plan 13R-17187)."

[13] There is then a third portion (310 square metres) consisting of reclaimed land within the flood plain of Lake Ontario. This reclaimed land was purchased from the Crown in 2004, and consolidated with the original lot.

[14] The reclaimed land is bounded by a continuous concrete shorewall, next to the Lake. Further inland, it is covered by decking, until it reaches the original shoreline, where the land rises abruptly.

[15] Despite this amalgam of lands, 4336 is distinctly undersized as a building lot, in terms of both the Zoning By-law and the realities of septic fields. The lot has a street frontage of 50 feet, whereas the By-law would normally require 100 feet. Its total area (including the original lot plus the reclaimed land) measures 5,770 square feet, whereas the By-law requires a minimum lot size of 15,000 square feet. Even that calculation is overly generous: according to the By-law under s. 5(6)(c), "No part of any flood plain shall be used to calculate any of the zone provisions required by this By-law".

[16] In the 2006 case, the Board calculated that the lot was 38.5% of the minimum in terms of actual dimensions – and if one took account of the floodplain, it would represent only 19% of the zoning minimum.

[17] The Carrières' property is also comprised of several portions. Not only does it consist of two lots; it too has a distinct streetfront portion, similar to the counterpart at 4336. The Carrières' streetfront portion was identified, at Exhibit 2, as "Part 4 (Plan 13R-1540)".

[18] Even the Carrières' double lot was said to be technically "undersized", because so much of it was in the floodplain. According to the neighbour's planner, the Carrières' total property currently measures 1,235.2 square metres; after the severance, it would measure 1,181.6 square metres. Both of those figures, he said, were below the By-law minimum, which calls for 1,393.5 square metres.

[19] From the standpoint of physical realities, it was also unclear where any normal septic field could be located, anywhere on 4336.

[20] The neighbour's undisputed apprehension was that the applicants would use the transfer of the sliver – and the resulting increase in the size of the Flynns' lot at 4336 – to set the stage for yet another homebuilding proposal on this undersized lot. The neighbour's planner put the central issue as follows:

Although not stated in the application or the supporting documentation, if the proposed consent is made in contemplation of the development of a single detached dwelling on the resulting lot 4336... partially serviced by a municipal water system and a private sewage system, the resultant lot is too small to accommodate development in accordance with required setbacks....

There was no indication of future use or purpose in the material provided for any of the land subject to consent. The implication was that the vacant lot 4336 would be developed for a single family dwelling.

[21] The neighbour's counsel and expert both explained that 4336 was "grossly undersized for private servicing."

[22] Furthermore, they said, the proposed transfer of the sliver would produce an irregularly shaped lot, because it did not take full account of the distinct streetfront portion near Bath Road. The resulting property line would not be in a straight line from Bath Road to the water, but rather in a zigzag.

[23] They added that the transfer of the sliver might produce difficulties concerning maintenance of a retaining wall on the Carrières' property.

[24] Finally, they said it would be intrinsically bad planning to take land away from the Carrières' property, since it was already undersized.

APPLICABLE CRITERIA

[25] The applicable criteria for approving consents for severances are outlined in separate sections of the Act. The relevant provision for consents, s. 53(12), refers to the criteria in s. 51(24):

...Regard shall be had, among other matters, to the health, safety, convenience and welfare of the present and future inhabitants of the municipality and to,

- (a) The effect of development... on matters of provincial interest...;
- (b) Whether the (proposal) is premature or in the public interest;
- (c) Whether the plan conforms to the Official Plan...;
- (d) The suitability of the land for the purposes for which it is to be subdivided;
- (e) (Highways)
- (f) The dimensions and shapes of the proposed lots;
- (g) The restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on the adjoining land....
- (h) (Natural resources, floods, services, schools, land dedications, energy)

ANALYSIS

[26] Counsel for the neighbour took particular issue with whether the site was "suitable" for this transaction, as required by s. 51(24)(d) of the Act.

[27] There was also substantial debate about the City's planning report:

- Planning staff had apparently assumed that 4336 Bath Road was a "lot of record", which the neighbour's planner disputed, notably because the lot was reconfigured after acquisition of the reclaimed land.
- The report also said the lots currently complied with the Zoning By-law, which the planner also disputed.
- Most importantly, said the planner, "the implication is that there can be development on the property, and that's what I disagree with."

[28] Counsel for the neighbour added that the COA relied on information that was "factually incorrect." "This just does not represent good planning."

[29] The Board notes, without deciding, that the first two propositions above (about a "lot of record", and the zoning compliance) may have been controversial – but they did not figure in the Board's reasoning, in any event.

[30] The third question, about whether 4336 is buildable, is another matter.

[31] Counsel for the neighbour expressed frustration at the paucity of "disclosure" concerning the Flynn's ultimate intentions for 4336. The paper trail for the current application disclosed essentially nothing on that account. One could theorize that the appeal might have unfolded differently, if the parties had engaged in more discussion in anticipation of the Board hearing; but each side blamed the other for the fact that this did not happen.

[32] As it was, Mr. Flynn testified that the neighbour's fundamental premise – i.e. that the five-foot widening of 4336 was simply a preliminary step toward a renewed application for homebuilding – was erroneous.

[33] The lot, he insisted, was not intended for homebuilding – at least under the existing zoning and servicing framework. Instead, "the proposed use is for my dock."

[34] After describing his boat, he described two scenarios:

- In one, there would be eventual construction of municipal sewer lines. A dwelling might be more likely "when sewers go down the road", and there was no longer a requirement for a septic field. By that point, his lot would have a frontage of 55 feet.
- In the other, the properties on Bath Road would continue to rely on private services. He denied any intent to propose homebuilding during that time. "We

know it's a difficult property." The exclusive purpose of the widening, he insisted, was that the extra feet "couldn't hurt." "More land is better."

[35] He also denied any intent of seeking significant changes to the zoning ground rules for his property. He summarized his long-term approach in these words: "If and when it's buildable, we probably will." There was no suggestion of applying any earlier.

[36] The Board was shown no reason to take this testimony otherwise than at face value. Bad faith is not presumed; and there was nothing in the current file to suggest that this application, for a boundary adjustment, was anything else than what it purported to be.

[37] The Board finds no evidence that the land was not "suitable" for the purposes of this transaction, or for the purpose for which the property was intended. The Board also finds no evidence that the latter purpose was other than to provide access to a dock – today, and at least for as long (in the future) as other development is not permitted.

[38] By that reasoning, the Board finds nothing "unsuitable" about the current proposal, in terms of s. 51(24)(d) of the Act.

[39] The other stated concerns raised by the neighbour were understandable, but manageable. First, on the question of maintenance of the retaining wall, the normal practice among owners is to arrange for a working easement and/or an encroachment agreement. Indeed, it is in the owners' self-interest to make such arrangements, and the Board has no reason to suppose that they would refuse or neglect to do so. The Board was not persuaded that its intervention was necessary on that account.

[40] The second question was the irregular boundary line. The applicants' sketch depicted a five-foot transfer on "Part 1" – but not on the "streetfront portion", closest to Bath Road. The result would be a zigzag boundary line – the kind of contortion that the Act alluded to, when it warned about "the shapes of the proposed lots" at s. 51(24)(f).

[41] Mr. Flynn replied that, if this was a concern, the applicants could easily adjust the proposal to include transfer of a five-foot sliver on the "streetfront portion" as well, thereby restoring a straight boundary line. The Board supports that idea, and inserts a condition to that effect, at the end of this decision.

[42] That leaves a final question. Counsel for the neighbour said that if the Carrières' lot was already undersized, then it would be wrong (and contrary to good planning) to decrease it further.

[43] The Board does not wish to minimize that question. However, the Board is confronted with two undersized lots. The proposed transaction makes one slightly less so, and the other slightly more; but in legal terms, their overall status under the By-law remains unchanged.

[44] Furthermore, in terms of longer-term planning (notably in the event of a future municipal sewer), the Board was shown no evidence that this proposal would affect their status then, any more than it changes their status now.

[45] The Board was therefore not persuaded to intervene. Although one may argue that the COA reached its conclusion on controversial grounds, the Board was not convinced that the actual physical outcome was incorrect, subject to the proper conditions.

[46] Those conditions, in the Board's view, are the seven enumerated by the COA, plus one condition pertaining to the "streetfront portion" and a straight boundary line, as described later.

[47] Finally, the Board notes that the above conclusion is obviously predicated on the veracity of the evidence, notably the absence of an intent to build a dwelling on 4336, until the servicing and relevant land-use controls allow it. It is trite to observe that, if matters proved otherwise, the rationale for this decision would no longer apply.

ORDER

[48] The Board disposes of this matter as follows:

1. The appeal is allowed in part, only to the extent of inserting the supplementary condition below.
2. The provisional consent is to be given, subject to the seven conditions enumerated by the Committee of Adjustment. In addition, the consent shall also be subject to the following condition:
 8. The parcel to be severed shall include not only the area depicted as such at Exhibit 2, with 1.99 m of road frontage on Bath Road, but also a corresponding area of equal width on Part 4 (Plan 13R-1540) as depicted on that Exhibit, such that the new property boundary shall extend in a straight line from the southwestern limit of the severed parcel to Bath Road. The area of the severed parcel, of 53.6 m², shall be increased accordingly.
3. The appeal is otherwise dismissed.

"M. C. Denhez"

M. C. DENHEZ
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Appendix C

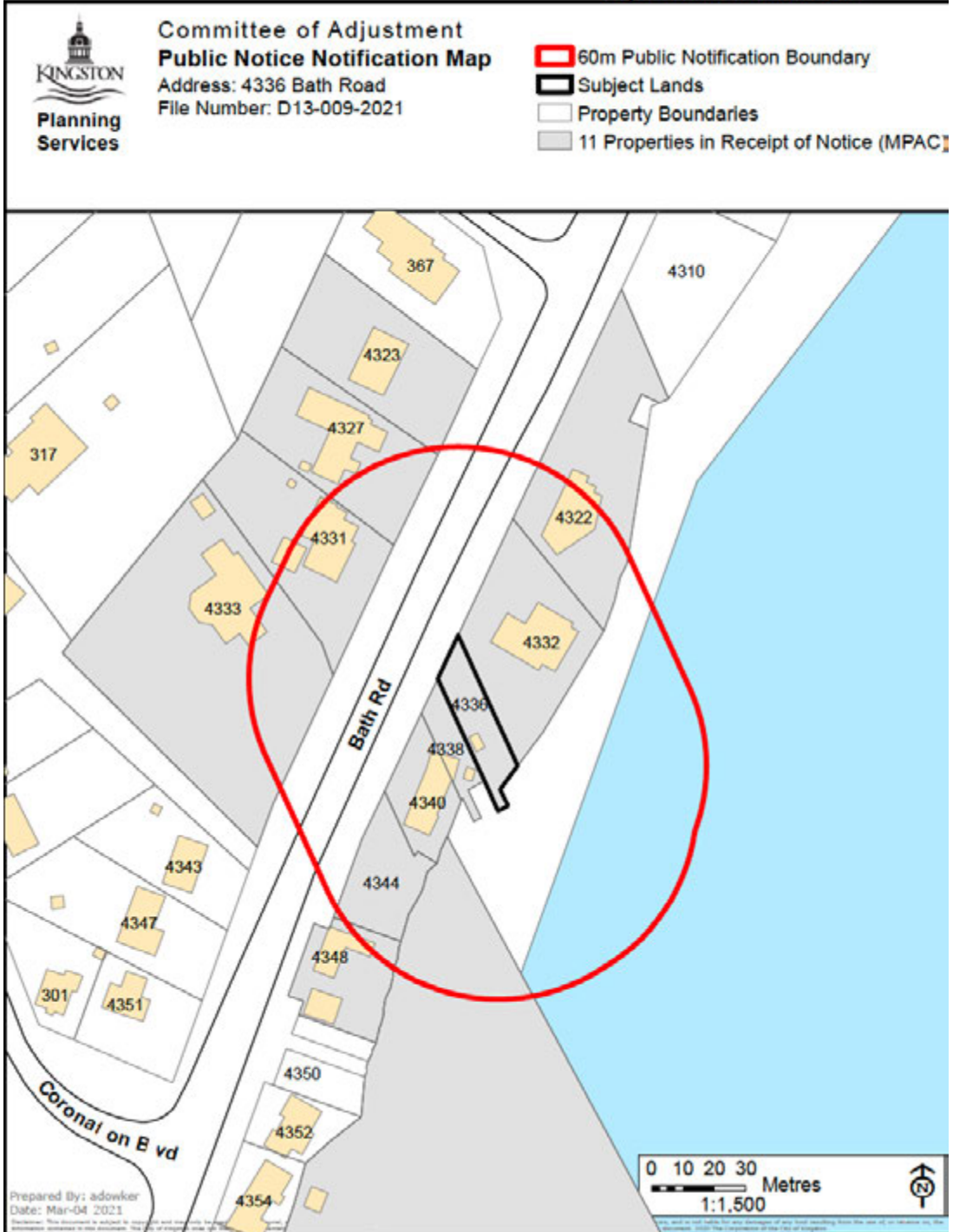
Current State of Dock at 4336 Bath Road



Appendix D – Homes in the Neighbourhood

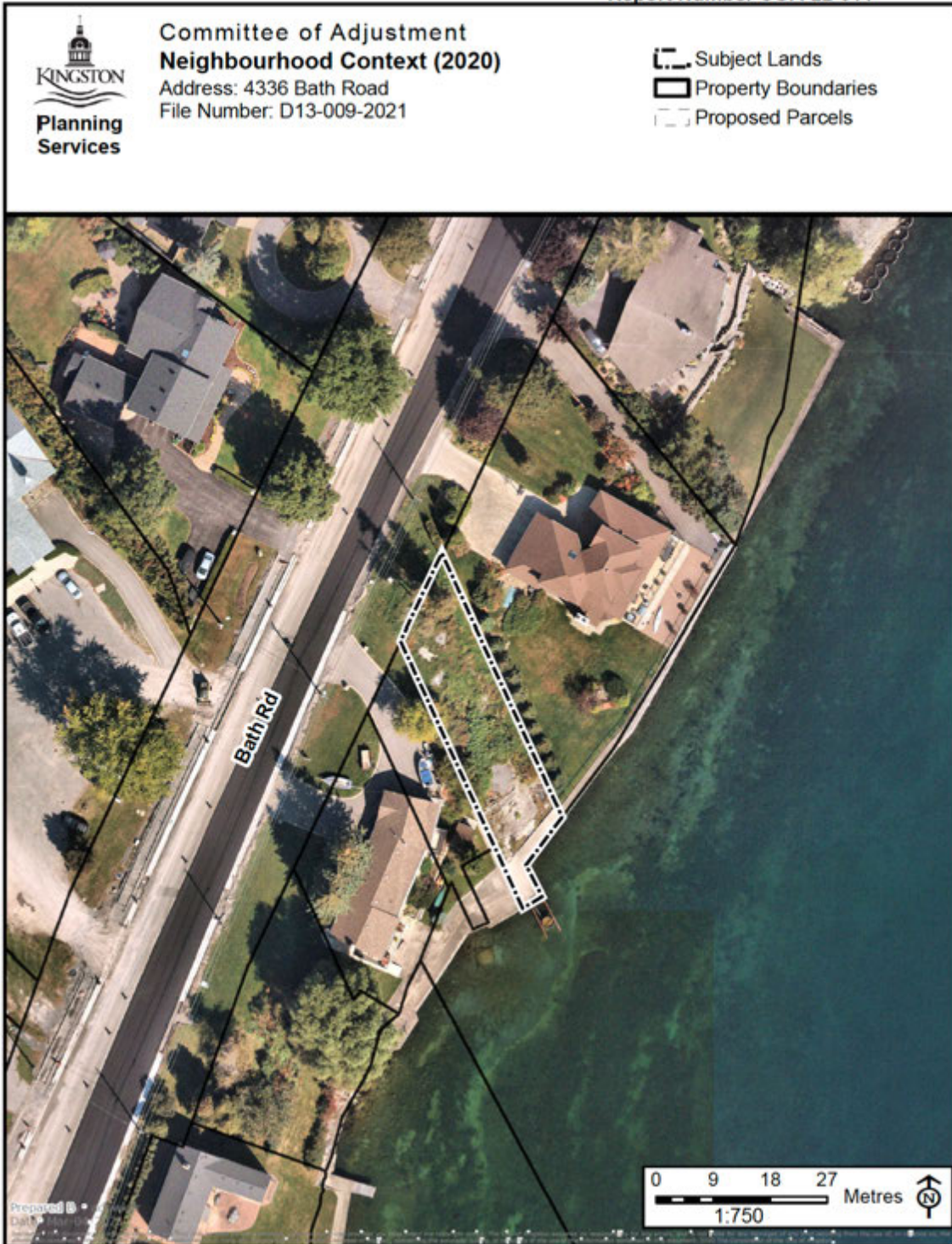
11 Properties Notified (Lot Square footage data and year of house construction from MPAC)

Exhibit C
Report Number COA-22-011



This picture beautifully depicts just how small the subject property is compared to other properties in the neighbourhood.

Exhibit F
Report Number COA-22-011



North Side of Bath Road (from East to West)

1. **4323** - double garage, generous setback from lot lines, double driveway with turn around space



2. **4327** – double garage, generous setback from lot lines, circular driveway



3. **4331** – double garage, generous setback from lot lines, wide driveway with turn around space



4. **4333** – St. Peter's Church – expansive space, circular driveway and parking lot



South Side of Bath Road (from East to West)

5. **4322** - double garage, generous setback from lot lines, semicircular driveway



6. **4332** - triple garage, generous setback from lot lines, wide driveway with turnaround space, secondary driveway (seen in picture for 4322 above)



7. **4336 – Subject Property** – from hedge on East (lot line stake visible and highlighted) to stake on West (highlighted)
- Will be very tight to lot lines, significantly smaller frontage and area than all other homes, single car garage, single driveway without a turnaround space
 - No existing structure (shed depicted in the City’s drawings has not existed in approximately 15 years)



8. **4338/4340** – lots are combined to form the lot for one home. Size of lot was reduced by 2015 OMB Decision. Double garage, semi-circular driveway, generous spacing between neighbours



9. **4344** – Vacant lot partially owned (upper half) by St. Lawrence Parks Commission, lower half owned by a neighbour further down on Bath Road. Usage is by 4348 per rental agreement.



10. **4348** – detached double garage, large double driveway with turnaround space, generous space between neighbouring homes.



4340 & 4338 Bath Road
Kingston K7M 4Y7

Jan 14, 2021

Lindsay Sthamann Committee of Adjustment
216 Ontario St.
Kingston

Application Type: Minor Variance
Address: 4336 Bath Road
File Number: D13-009-2021

Dear Ms Sthamann

I am writing to express my reservations with and opposition to the proposed minor variances that are being considered for 4336 Bath Rd.

My wife and I own both 4340 and 4338 Bath Rd, used as a single property, and enjoy the space afforded with the non-densified neighbourhood. The variances that have been requested for building a dwelling on the property do not fit with the community. Exceeding the required setbacks by way of a variance would permit a dwelling to be built that would encroach on all neighbouring properties by way of being out of character with the neighbourhood. While I understand the city's desire to increase the number of residential units within the city, this is not the place to accommodate a building that is oversized for the property to squeeze another dwelling unit into the city.

The encroachment on the Great lakes by means of a setback variation for residential development does not fit with the city's recently published aim to be a green and sustainable city.

I ask that the proposed minor variances be denied, or at minimum be further investigated.

Dugald Henderson


From: Mike Drewniak [REDACTED]
Sent: Wednesday, January 12, 2022 9:29 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Cc: Partridge, Jason <JPARTRIDGE@cityofkingston.ca>
Subject: File # D13-075-2021

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

ATTN: PLANNING DEPARTMENT OF KINGSTON

RE: FILE # D13-075-2021

This is to confirm that I, Michael O. Drewniak, am in support of this minor variance with respect to the above referenced File #.

Yours truly,

Michael O. Drewniak

From: [REDACTED]
To: [Park, Tim](#)
Cc: [Neill, Jim](#); [REDACTED]; [Bar, James](#); [Peggi, Riccardo](#)
Subject: Re: Variance and Consent: D10-037-2021 D13-069-2021 and D13-070-2021 398 Victoria Street
Date: January 15, 2022 8:29:23 AM
Attachments: [Screen Shot 2022-01-14 at 6.24.57 PM.png](#)
[Screen Shot 2022-01-14 at 6.24.09 PM.png](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Tim ,

The application states: "There will be a total of four units and 16 bedrooms across the two lots. Two parking spaces will be provided for each lot in the rear yards that will be accessed by a shared driveway."

As you point out, the number of bedrooms in the new dwelling will be limited to 8. I am not able to find any limitation on the number of bedrooms at 398 Victoria St. The application implies there are 8 . The attached rental ads implies there are 11 there now. What is to stop the developer from adding more bedrooms to 398 Victoria?

Are the members of the CoA being asked to make their decisions about parking, the right of way, severance, amenities and more based on "16 bedrooms total across the two lots " or on some unknown number of bedrooms?

Thank you , Joan

On Jan 14, 2022, at 5:51 PM, Park, Tim <tpark@cityofkingston.ca> wrote:

Good evening Councillor Neill, Joan and John, thank you for your comments. City staff did address this matter within the subject staff report.

If you refer to report COA-22-022, Exhibit C, Recommended Conditions, 1. Limitation, you will note the following:

"That the approved minor variance applies only to vary the minimum interior yard setback and exterior wall height zoning provisions for the proposed dwelling **containing a maximum of eight bedrooms in the aggregate on the severed lot as shown on the approved drawings attached to the notice of decision**".

Regards,

Tim.

From: Neill,Jim <jneill@cityofkingston.ca>

Sent: January 14, 2022 3:31 PM

To: Joan Bowie <[REDACTED].ca>

Cc: priccardo@cityofkingston.ca; Park, Tim <tpark@cityofkingston.ca>; Bar, James <jbar@cityofkingston.ca>; John Grenville <[REDACTED]>; Joan Bowie <[REDACTED]>

Subject: Re: Variance and Consent: D10-037-2021 D13-069-2021 and D13-070-2021 398 Victoria Street

Thanks Joan.

I know this has been a problem in past developments. This should be a routine practice, as it now is with Zoning Applications.

Tim & James; can you make number of bedrooms an automatic aspect of Committee of Adjustment applications. Should I bring a Motion to Council or could you "make it so"?

Thanks;

Jim

Sent from my iPhone

On Jan 14, 2022, at 2:07 PM, Joan Bowie <[REDACTED]> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello Planning Staff and Members of the Committee of Adjustment,

Re: Variance and Consent: 398 Victoria Street

I have reviewed this application and have many concerns with the size of this development. I am writing to ask the CoA to make the "total number of bedrooms in each unit " a condition of any agreement you may make with the developer and the City. In the past I have seen the CoA approve a project, believing that they are allowing a given number of bedrooms, and additional

bedrooms appear once the building permit is issued. My attached letter to the province's Ministry of Municipal Affairs and Housing addresses this concern.

A recent real estate ad described the property:

"Great opportunity to own a centrally located Kingston duplex. This recently renovated property consists of 2 totally separate but attached buildings on one large lot. Both units are leased separately. 398A consists of 5 bedrooms and 398B has 6 bedrooms. Both properties have potential to have an additional bedroom and tenants pay utilities. With a detached two car garage and ample parking at the rear, this property is a no brainer. (42363293)"<https://housepricehub.com/properties/property/5f5fc80f05295104425ed918>"

From the current application:

"The intention of the applications is to sever a lot from the subject property, retain the existing two-family, eight-bedroom dwelling on the retained lot, demolish the existing garage, and construct a new one-family dwelling with a secondary unit on the new lot. There will be a total of four units and 16 bedrooms across the two lots. Two parking spaces will be provided for each lot in the rear yards that will be accessed by a shared driveway.

Which is the current correct number of bedrooms at 398 Victoria St? If 11 is correct, in order to have 16 bedrooms across two lots, only 5 more bedrooms are necessary.

The City does not have a true count of the number of beds rented as student housing. As you know, Kingston secondary rental market covering developments like this, is not measured by CMHC. In the near future, rental housing like this will be licensed and the true count of "student bedrooms" will be known. This will be helpful in making decision like you are required to make.

If you decide to approve this application, please make the maximum number of bedrooms in each unit a condition of approval.

Thank you, Joan Bowie
414 Albert St.

From: "Ingraldi, Aldo (MMAH)"
<Aldo.Ingraldi@ontario.ca>
Subject: RE: Reply: Yes, Page:
<https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws>
Date: March 25, 2021 at 6:13:08 PM EDT

To: [REDACTED]
Cc: "MinInfo (MMAH)" <MinInfo@ontario.ca>

Hi Joan,

I'm following up on our conversation yesterday about your questions about whether the City of Kingston's committee of adjustment has the ability to add condition to restrict the number of bedrooms on their approval of minor variance applications. This is related to a concern of yours regarding landowners applying for minor variances to facilitate expansions to existing dwellings accommodate more bedrooms that are primarily geared to housing post-secondary students.

As you know, section 45 of the Planning Act sets out the powers of the committee of adjustment. I note in exercising granting any authority or permission as set out in this section of the Planning Act, the committee may specify terms and conditions as the committee considers advisable and as are set out in the decision. I respect the jurisdiction of the city's committee of adjustment to exercise their decision-making authority as set out in this section of the legislation and am not in a position to comment further as it relates to their ability to the specifics of your question/concern.

I know you mentioned you have already spoken to city planning staff about your concerns. I encourage you continue to work with them as they are in the best suited position to interpret the city's zoning by-laws, and, as appropriate, provide recommendations to the committee of adjustment on variance applications. They are also responsible to regularly update their zoning by-laws and official plan to address local needs and priorities.

As mentioned in our conversation, municipalities have the (discretionary) authority to establish additional minor variance criteria through a municipal by-law that would better respond to the local context. This means that committees of adjustment and the LPAT would assess applications based on any local criteria established through a municipal by-law (once it is in-effect) in addition to the colloquial "4 tests" set out subsection 45(1) of Planning Act (i.e., the application is minor, is desirable for the appropriate development of

the land/building/structure, and meets the general intent and purpose of the official plan and zoning by-law)

If municipal criteria were introduced, the associated by-law would be subject to most of the procedural requirements associated with a zoning by-law, including public meeting and related notice, notice of decision, potential appeal, etc. (please refer to subsections 45(1.0.1)-(1.0.4) of the Planning Act).

I hope you find this information helpful.

Yours,
Aldo

Aldo Ingraldi, MCIP, RPP (he/him)
Team Lead - Planning
Municipal Services Office – Eastern Region
Ministry of Municipal Affairs and Housing
8 Estate Lane
Rockwood House
Kingston ON K7M 9A8
Telephone: 613-545-2199
Email: Aldo.Ingraldi@ontario.ca

From: do.not.reply@ontario.ca <do.not.reply@ontario.ca>

Sent: March 23, 2021 8:58 AM

To: MinInfo (MMAH) <MinInfo@ontario.ca>

Subject: Reply: Yes, Page:

<https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws>

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Referring page: [document/citizens-guide-land-use-planning/zoning-bylaws](https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws)

Message:

Hello, Is a Committee of Adjustment able to put a "condition " on an approval that would limit the number of bedrooms to those proposed at the public meeting? For example, the proposal is to add a secondary suite to a 6 bedroom house as a

minor variance. At the public meeting the drawings presented show an addition with 5 bedrooms but there is space for more bedrooms. The application is [approved as](#) a minor variance. A building permit is issued and then two more bedrooms that meet the building code are added.. Is there any way to limit the number of bedrooms in a situation like this? Thank you for answering my questions. Joan

Reply Request: Yes

Name: Joan Bowie

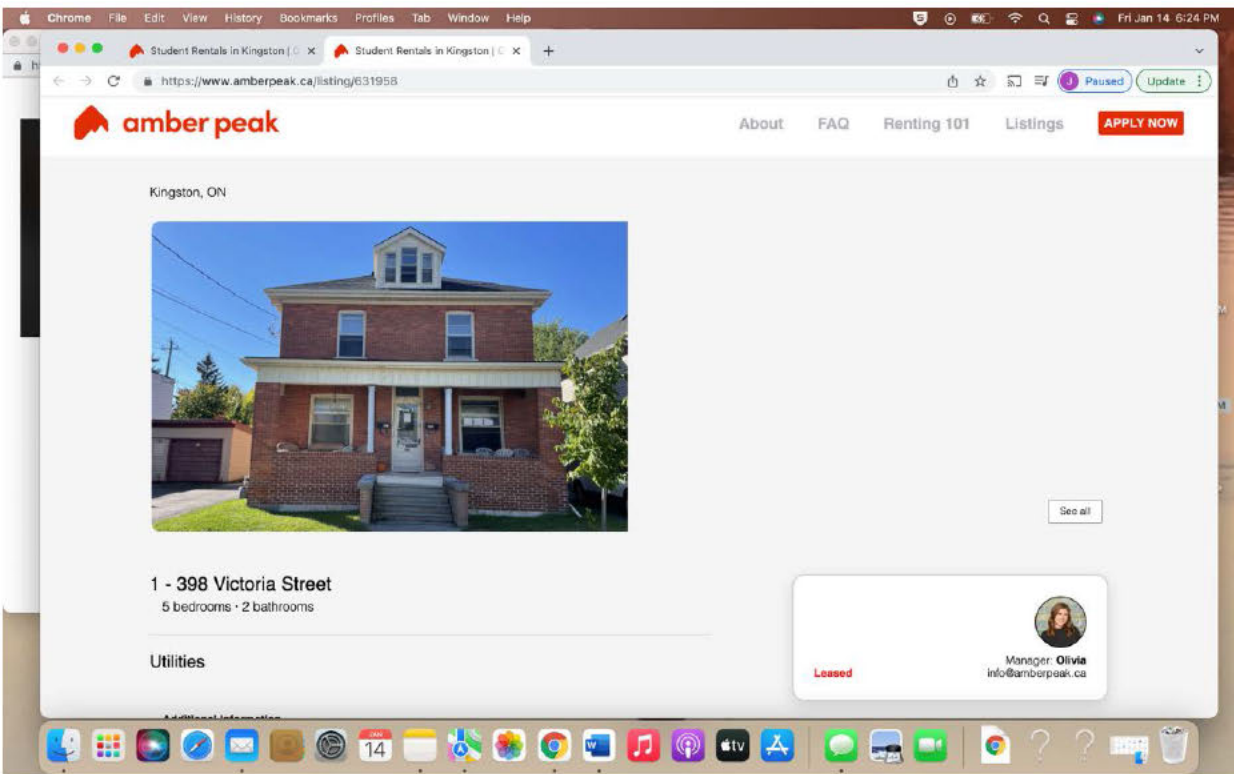
E-mail: [REDACTED]

Phone number: [REDACTED]

Address:

414 Albert St ,Kingston ,On K7L3W3

User agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 11_2_3) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/89.0.4389.90 Safari/537.36




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Student Rentals in Kingston | X

https://www.amberpeak.ca/listing/631959

Kingston, ON



2 - 398 Victoria Street
6 bedrooms · 3 bathrooms

Utilities

Additional information

Amenities

Leased

Manager: Olivia
info@amberpeak.ca

Mac OS dock with various application icons including Safari, Photos, Mail, Calendar, and others.

From: [REDACTED]
To: [Park, Tim](#); [Bar, James](#); [Peggi, Riccardo](#)
Cc: [REDACTED]
Subject: RE: Variance and Consent: D10-037-2021 D13-069-2021 and D13-070-2021 398 Victoria Street
Date: January 14, 2022 5:19:29 PM

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Hello Planning Department – I agree with Joan Bowie’s recommendation. Certainly, the number of bedrooms has been a stated condition in the past beginning in 2010 when developers “hid” the unit configuration and understated the number of bedrooms. For some unknown reason, specifying the number of bedrooms in the ZBA or CoA approval has become inconsistent. It should be part of any variance approval especially for infill development.

In this instance an “unfinished basement” shows on the plans. When this has appeared for other developments, the “unfinished basement” (or party room, amenity space, exercise space, etc.) invariably gets completed with bedrooms. My question - what happens if the number of bedrooms are defined in the CoA approval and during the building inspection, it becomes apparent that the space is being (or has been) built as a bedroom? Or at some later date, the developer or subsequent owner converts the "unfinished basement" to bedrooms and it is brought to the City’s attention? Is there any penalty or is the owner allowed to continue with the increased number of bedrooms?

I look forward to your response and a better understanding of this issue.

John Grenville, [REDACTED]
24 Jenkins Street, Kingston, ON K7K 1N3
[REDACTED]

From: Joan Bowie [REDACTED]
Sent: January-14-22 2:06 PM
To: priccardo@cityofkingston.ca
Cc: [Park, Tim](mailto:Park,Tim) <tpark@cityofkingston.ca>; [Bar, James](mailto:Bar,James) <jbar@cityofkingston.ca>; Jlm Neill <jneill@cityofkingston.ca>; [REDACTED]
Subject: Variance and Consent: D10-037-2021 D13-069-2021 and D13-070-2021 398 Victoria Street

Hello Planning Staff and Members of the Committee of Adjustment,

Re: Variance and Consent: 398 Victoria Street

I have reviewed this application and have many concerns with the size of this development. I am writing to ask the CoA to make the "total number of bedrooms in each unit " a condition of any agreement you may make with the developer and the City. In the past I have seen the CoA approve a project, believing that they are

allowing a given number of bedrooms, and additional bedrooms appear once the building permit is issued. My attached letter to the province's Ministry of Municipal Affairs and Housing addresses this concern.

A recent real estate ad described the property:

"Great opportunity to own a centrally located Kingston duplex. This recently renovated property consists of 2 totally separate but attached buildings on one large lot. Both units are leased separately. 398A consists of 5 bedrooms and 398B has 6 bedrooms. Both properties have potential to have an additional bedroom and tenants pay utilities. With a detached two car garage and ample parking at the rear, this property is a no brainer. (42363293)"<https://housepricehub.com/properties/property/5f5fc80f05295104425ed918>"

From the current application:

"The intention of the applications is to sever a lot from the subject property, retain the existing two-family, eight-bedroom dwelling on the retained lot, demolish the existing garage, and construct a new one-family dwelling with a secondary unit on the new lot. There will be a total of four units and 16 bedrooms across the two lots. Two parking spaces will be provided for each lot in the rear yards that will be accessed by a shared driveway.

Which is the current correct number of bedrooms at 398 Victoria St? If 11 is correct, in order to have 16 bedrooms across two lots, only 5 more bedrooms are necessary.

The City does not have a true count of the number of beds rented as student housing.

As you know, Kingston secondary rental market covering developments like this, is not measured by CMHC. In the near future, rental housing like this will be licensed and the true count of "student bedrooms" will be known. This will be helpful in making decision like you are required to make.

If you decide to approve this application, please make the maximum number of bedrooms in each unit a condition of approval.

Thank you, Joan Bowie
414 Albert St.

From: "Ingraldi, Aldo (MMAH)" <Aldo.Ingraldi@ontario.ca>
Subject: RE: Reply: Yes, Page:
<https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws>
Date: March 25, 2021 at 6:13:08 PM EDT
To: [REDACTED]
Cc: "MinInfo (MMAH)" <MinInfo@ontario.ca>

Hi Joan,

I'm following up on our conversation yesterday about your questions about whether the City of Kingston's committee of adjustment has the ability to

add condition to restrict the number of bedrooms on their approval of minor variance applications. This is related to a concern of yours regarding landowners applying for minor variances to facilitate expansions to existing dwellings accommodate more bedrooms that are primarily geared to housing post-secondary students.

As you know, section 45 of the Planning Act sets out the powers of the committee of adjustment. I note in exercising granting any authority or permission as set out in this section of the Planning Act, the committee may specify terms and conditions as the committee considers advisable and as are set out in the decision. I respect the jurisdiction of the city's committee of adjustment to exercise their decision-making authority as set out in this section of the legislation and am not in a position to comment further as it relates to their ability to the specifics of your question/concern.

I know you mentioned you have already spoken to city planning staff about your concerns. I encourage you continue to work with them as they are in the best suited position to interpret the city's zoning by-laws, and, as appropriate, provide recommendations to the committee of adjustment on variance applications. They are also responsible to regularly update their zoning by-laws and official plan to address local needs and priorities.

As mentioned in our conversation, municipalities have the (discretionary) authority to establish additional minor variance criteria through a municipal by-law that would better respond to the local context. This means that committees of adjustment and the LPAT would assess applications based on any local criteria established through a municipal by-law (once it is in-effect) in addition to the colloquial "4 tests" set out subsection 45(1) of Planning Act (i.e., the application is minor, is desirable for the appropriate development of the land/building/structure, and meets the general intent and purpose of the official plan and zoning by-law)

If municipal criteria were introduced, the associated by-law would be subject to most of the procedural requirements associated with a zoning by-law, including public meeting and related notice, notice of decision, potential appeal, etc. (please refer to subsections 45(1.0.1)-(1.0.4) of the Planning Act).

I hope you find this information helpful.

Yours,
Aldo

Aldo Ingraldi, MCIP, RPP (he/him)
Team Lead - Planning
Municipal Services Office – Eastern Region
Ministry of Municipal Affairs and Housing

8 Estate Lane
Rockwood House
Kingston ON K7M 9A8
Telephone: 613-545-2199
Email: Aldo.Ingraldi@ontario.ca

From: do.not.reply@ontario.ca <do.not.reply@ontario.ca>

Sent: March 23, 2021 8:58 AM

To: MinInfo (MMAH) <MinInfo@ontario.ca>

Subject: Reply: Yes, Page: <https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws>

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Referring page: [document/citizens-guide-land-use-planning/zoning-bylaws](https://www.ontario.ca/document/citizens-guide-land-use-planning/zoning-bylaws)

Message:

Hello, Is a Committee of Adjustment able to put a "condition " on an approval that would limit the number of bedrooms to those proposed at the public meeting? For example, the proposal is to add a secondary suite to a 6 bedroom house as a minor variance. At the public meeting the drawings presented show an addition with 5 bedrooms but there is space for more bedrooms. The application is approved as a minor variance. A building permit is issued and then two more bedrooms that meet the building code are added.. Is there any way to limit the number of bedrooms in a situation like this? Thank you for answering my questions. Joan

Reply Request: Yes

Name: Joan Bowie

E-mail: [REDACTED]

Phone number: [REDACTED]

Address:

414 Albert St ,Kingston ,On K7L3W3

User agent: Mozilla/5.0 (Macintosh; Intel Mac OS X 11_2_3)

AppleWebKit/537.36 (KHTML, like Gecko) Chrome/89.0.4389.90

Safari/537.36

From: Janice Law <[REDACTED]>
Sent: January 13, 2022 7:53 PM
To: Planning Outside Email <Planning@cityofkingston.ca>
Subject: Planning variance

Hello

Re : D13-075-2021

I support the minor variance.
Thank you
All the best,
Janice Law