



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-22-025**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** InGi Kim, Planner  
**Date of Meeting:** February 14, 2022  
**Application for:** Permission  
**File Number:** D13-078-2021  
**Address:** 96 Yonge Street  
**Owner:** M Douglas Barr Investments Ltd.  
**Applicant:** Emma Stucke, IBI Group

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**Council Strategic Plan Alignment:**

Theme: 4. Strengthen economic development opportunities

Goal: 4.1 Support new and existing businesses

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 96 Yonge Street. The applicant is proposing to permit an existing accessory bakery use as a stand-alone operation together with an existing legal non-conforming tavern use (Portsmouth Tavern) on-site.

The subject property is designated 'Main Street Commercial' in the Official Plan and zoned One-Family Dwelling and Two-Family Dwelling 'A5' in Zoning By-Law Number 8499. The property abuts low density residential uses to the north, south and to the west. Portsmouth Olympic Harbour is located across the street to the east. The site is developed with an existing legal non-conforming tavern and surface parking area with vehicular access from Grange Street. No modifications to the existing building are proposed as part of this application.

The requested application for permission under Section 45(2)(a)(ii) of the *Planning Act* is consistent with the general purpose and the general intent and purpose of the additional review

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criteria under Section 9.5.13 of the City's Official Plan. The proposed added use for bakery on-site is in keeping with the intent of the zoning by-law and represents appropriate and desirable development of the lot. Therefore, it is recommended that this application for permission under Section 45(2)(a)(ii) of the *Planning Act* be approved.

**Recommendation:**

**That** the application for permission, File Number D13-078-2021, for the property located at 96 Yonge Street to permit a bakery use together with an existing legal non-conforming tavern use on-site, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-025.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

\_\_\_\_\_  
InGi Kim, Planner

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

Tim Park, Director, Planning Services

James Bar, Manager, Development Approvals

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**Options/Discussion:**

On December 23, 2021, an application for permission was submitted by Emma Stucke from IBI Group, on behalf of the owner, M Douglas Barr Investments Ltd., with respect to the property located at 96 Yonge Street. The application for permission is requested to permit the use of the existing kitchen at the rear of the Portsmouth Tavern as a stand-alone bakery operation. No external modifications are proposed as part of the application.

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

- Floor Plan (Exhibit G)
- Planning Justification Letter (Exhibit H)

All submission materials are available online through the Development and Services Hub (DASH) at the following link, [DASH](#), using "Look-up a Specific Address". If there are multiple addresses, search one address at a time, or submission materials may also be found by searching the file number.

**Site Characteristics**

The subject property is located at 96 Yonge Street with road frontages on Grange Street and Yonge Street. The site is developed with an existing legal non-conforming tavern and surface parking area with vehicular access from Grange Street.

The subject property is designated 'Main Street Commercial' in the Official Plan and zoned One-Family Dwelling and Two-Family Dwelling 'A5' in Zoning By-Law Number 8499. The property abuts low density residential uses to the north, south and to the west. Portsmouth Olympic Harbour is located across the street to the east.

**Legal Non-conforming**

Pursuant to Subsection 45(2)(a)(ii) of the *Planning Act*, the Committee of Adjustment may permit the use of any land, building or structure for a purpose that, in the opinion of the Committee, is similar to the purpose for which it was used on the day the zoning by-law was passed or is more compatible with the uses permitted by the zoning by-law than the purpose for which it was used on the day the zoning by-law was passed, so long as the use has continued until the date of the application to the Committee. In determining whether to grant a permission pursuant to Subsection 45(2)(a)(ii), the relevant test is:

- a. Whether the proposed use is similar to the existing legal non-conforming use; or
- b. Whether the proposed use is more compatible with the uses permitted in the zoning by-law than the existing legal non-conforming use.

Similarity and compatibility are assessed according to the impacts, such as physical or social impacts, created by the proposed use as compared to the existing legal non-conforming use.

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The proposed bakery use is similar and compatible to the existing legal non-conforming tavern use. The kitchen in the rear of the building has been used as a bakery since 2017 as an accessory use to the Portsmouth Tavern. The application is seeking for a permission to recognize the bakery use as one of the principle uses on-site to be recognized as a stand-alone operation. The proposed use is located in an area designated for and used as commercial uses. Additionally, since the bakery will be located within the existing building and no modification to the building or the property is proposed, the continued use will not create any new noise, odour, traffic conflict, or other nuisance.

### **Provincial Policy Statement**

Subsection 3(5) of the *Planning Act* requires that a decision in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement (the PPS). The PPS provides policy direction on matters of provincial interest related to land use planning and development which are complemented by local policies addressing local interests. The application being considered is site specific to accommodate a specific proposal and does not involve any major policy considerations and as such, the proposal conforms to and is consistent with the PPS.

### **Official Plan**

The subject property is designated 'Main Street Commercial' in the Official Plan. The goal of the 'Main Street Commercial' designation is to provide retail and other commercial services for surrounding neighbourhoods in a setting that is street oriented and pedestrian focused, including a mix of compatible residential and small-scale office or community uses and services.

Permitted commercial uses within the 'Main Street Commercial' designation include retail, service and office uses that are suitable for an accessible main street pedestrian format, and are intended to serve the surrounding neighbourhoods. Furthermore, the subject property is located within the Portsmouth Village Main Street Commercial Area subject to Sections 3.4.C.10 and 3.4.C.11 of the Official Plan.

3.4.C.10: The Portsmouth Village Main Street Commercial Area has smaller uses and a more limited neighbourhood service area, but its distinctive, historic, main street character is of interest and significance to the broader City. The area may be assessed for designation as a heritage conservation district, and in this regard, development in the area must meet the policies of Section 7 of this Plan.

3.4.C.11: Within the Portsmouth Village Main Street Commercial Area, the cultural heritage value or interest and heritage designation will take precedence over the site planning or parking policies of the Official Plan if there is a conflict.

Since there are no exterior modifications proposed, the application will not result in impacting the heritage characteristic of the area. Therefore, the application aligns with policies under Sections 3.4.C.10 and 3.4.C.11 and will not be assessed against the policies of Section 7 of the Official Plan. However, the property is on the City's master list as a candidate for designation. If

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the applicant will create new wall openings to support the new bakery use, especially if it will be visible from the roads, Heritage Services will be informed to aid with preserving the visual prominence of this building. Additionally, the adjacent property (102 Yonge Street) is designated under the *Ontario Heritage Act*. If any changes to accommodate this new use impact this resource, further review may be required.

In some circumstances it may be appropriate to grant a change from one non-conforming use to another if the Committee of Adjustment is satisfied that the proposed use complies with the six (6) criteria as per Section 9.5.17 of the Official Plan. The subject application, requesting permission introduce a bakery use together with an existing legal non-conforming tavern use as a permitted use in the One-Family Dwelling and Two-Family Dwelling 'A5' in Zoning By-Law Number 8499, has been reviewed against these policies, provided below.

- a. The proposed use is similar to the existing use or more in conformity with the planned use(s);

The proposed bakery use has been operation out of the kitchen in the rear of the tavern since 2017 as an accessory use to the Portsmouth Tavern. The bakery use and the existing legal non-conforming tavern use are similar in nature as they are both kitchen uses that serves customers. The Permission would allow the bakery to continue to serve the Portsmouth Tavern as well as the general customers. Additionally, the proposed bakery use conforms with the City of Kingston's Official Plan policies for the Main Street Commercial designation as the proposed bakery will be located on the ground floor and is intended to serve the Portsmouth Tavern as well as the surrounding neighbourhoods.

- b. The site or building conditions will be substantially improved by the proposed change of use and can adequately accommodate the proposal;

In 2017, a Building Permit was approved to allow the second kitchen to accommodate a bakery use as an accessory use to the existing tavern. The applicant is proposing to permit the bakery use as a stand-alone permitted use to serve the general public. No modifications to the existing building are proposed as part of this application.

Building Services will require a Building Permit(s) for the change of use and required fire protection.

- c. The proposed use is generally compatible with surrounding uses and can meet parking for vehicles and bicycles and other site standards of the general area with accessibility considerations as well as those standards necessary for the proposed use;

The proposed use is located in an area designated for and used as commercial uses. The bakery will be located within the existing building and no modification to the building or the property is proposed.

- d. The proposed use does not create any noise, traffic or operational nuisance that cannot be mitigated to an acceptable level;

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The kitchen in the rear of the tavern has been used as a bakery since 2017 as an accessory use to the Portsmouth Tavern. The continued use will not create any new noise, odour, traffic conflict, or other nuisance. The proposal does not include any exterior modifications including parking spaces.

- e. Municipal infrastructure, roads and access conditions can accommodate the proposed use; and,

The proposal will not have a negative impact on municipal infrastructure, service, and traffic. Utilities Kingston, Kingston Hydro, and Engineering Services reviewed the application and had no concerns with the application.

- f. The proposed use will not negatively impact surrounding lands or building or inhibit them from developing for their intended use.

The application is not proposing any exterior modifications and therefore does not affect the character of the area. The proposed bakery use is complementary and similar to an existing legal non-conforming use on-site. Additionally, the approval of the requested permission will not set a precedent in the immediate area, as the commercial use on-site was established since approximately 1860 and it conforms to Official Plan's land use policies.

The subject property is not designated or listed on the City of Kingston's Heritage Property Register. However, the property is on the City's master list as a candidate for designation. Additionally, the adjacent property at 102 Yonge Street is a designated under the *Ontario Heritage Act*.

Based on the City of Kingston archaeological potential mapping the property is in an area of "Archaeologically Sensitive Area". Since there are no proposed changes to the property that will result in ground disturbance, an Archaeological Assessment is not required.

The requested permission to permit a bakery use together with an existing legal non-conforming tavern use on-site the general intent and purpose of the additional review criteria under Section 9.5.17 of the City's Official Plan.

### **Zoning By-Law**

The subject property is zoned One-Family Dwelling and Two-Family Dwelling 'A5' under Zoning By-Law Number 8499 which does not permit either the tavern or bakery use. However, the existing tavern use was established in 1863 before the enactment of the current Zoning By-Law in 1975 and therefore has legal non-conforming rights. Additionally, the former Village of Portsmouth's Zoning By-Law Number 613 indicates that commercial uses were allowed on the property in 1947. As a result, this application is being considered under Section 45(2)(a)(ii) of the Planning Act to permit a similar legal non-conforming use. Technical Review: Circulated Departments and Agencies

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**Technical Comments**

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

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

**Building Services:**

- Insufficient information has been provided at this time to provide detailed comments, however the applicant is advised of the following:
  - A Building Permit is required for the change of use and required construction to separate the D/E occupancy from the A2 occupancy
  - Building Permit fees are due in full at time of permit issuance in accordance with the Fee Schedule in affect at that time

**Heritage Planning:**

- The subject property is considered an Archaeologically Sensitive Area. As no changes to the building/property are proposed that will result in ground disturbance an assessment is not required at this time. However, the property is on the City's master list as a candidate for designation. If the applicant will create new wall openings to support the new bakery use, especially if it will be visible from the roads, as a curtesy Heritage Services would like to be informed to provide assistance with preserving the visual prominence of this building. As the adjacent property (102 Yonge Street) is designated under the *Ontario Heritage Act*, if any changes to accommodate this new use impact this resource, further review may be required.

**Public Comments**

At the time this report was finalized, no public comments have been received. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.



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**Previous or Concurrent Applications**

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

**Conclusion**

The requested application for permission is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The proposed bakery use is complementary and similar to the existing legal non-conforming use as it is intended to serve Portsmouth Tavern as well as the surrounding neighbourhoods. Additionally, the subject property is located in an area designated for commercial uses and no modification to the building or the property is proposed.

Approval of this application will permit a bakery use together with an existing legal non-conforming tavern use on the subject site.

**Existing Policy/By-Law:**

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province's and the City's vision of development. The following documents were assessed:

**Provincial**

Provincial Policy Statement, 2020

**Municipal**

City of Kingston Official Plan

Zoning By-Law Number 8499

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on February 14, 2022. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was provided by advertisement in the form of signs posted on the subject site 10 days in advance of the meeting. In addition, notices were sent by mail to a total number of 42 property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice was placed in The Kingston Whig-Standard.

Once a decision has been rendered by the Committee of Adjustment, a Notice of Decision will be circulated in accordance with the provisions of the *Planning Act*.

**Accessibility Considerations:**

None

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**Financial Considerations:**

None

**Contacts:**

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

InGi Kim, Planner, 613-546-4291 extension 3277

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Neighbourhood Context Map (2021)
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law Number 8499, Map 29
- Exhibit F Public Notice Notification Map
- Exhibit G Floor Plan

## Recommended Conditions

### Application for permission, File Number D13-078-2021

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

#### 1. Limitation

That the approved permission applies only to the property at 96 Yonge Street as shown on the approved drawings attached to the notice of decision.

#### 2. No Adverse Impacts

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

#### 3. Building Permit Application Requirements

A Building Permit is required for the Change of Use and required fire separation between the two uses at the subject property prior to the issuance of a Business License.

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),

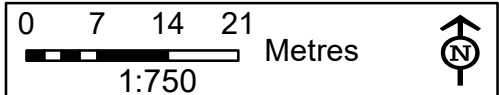
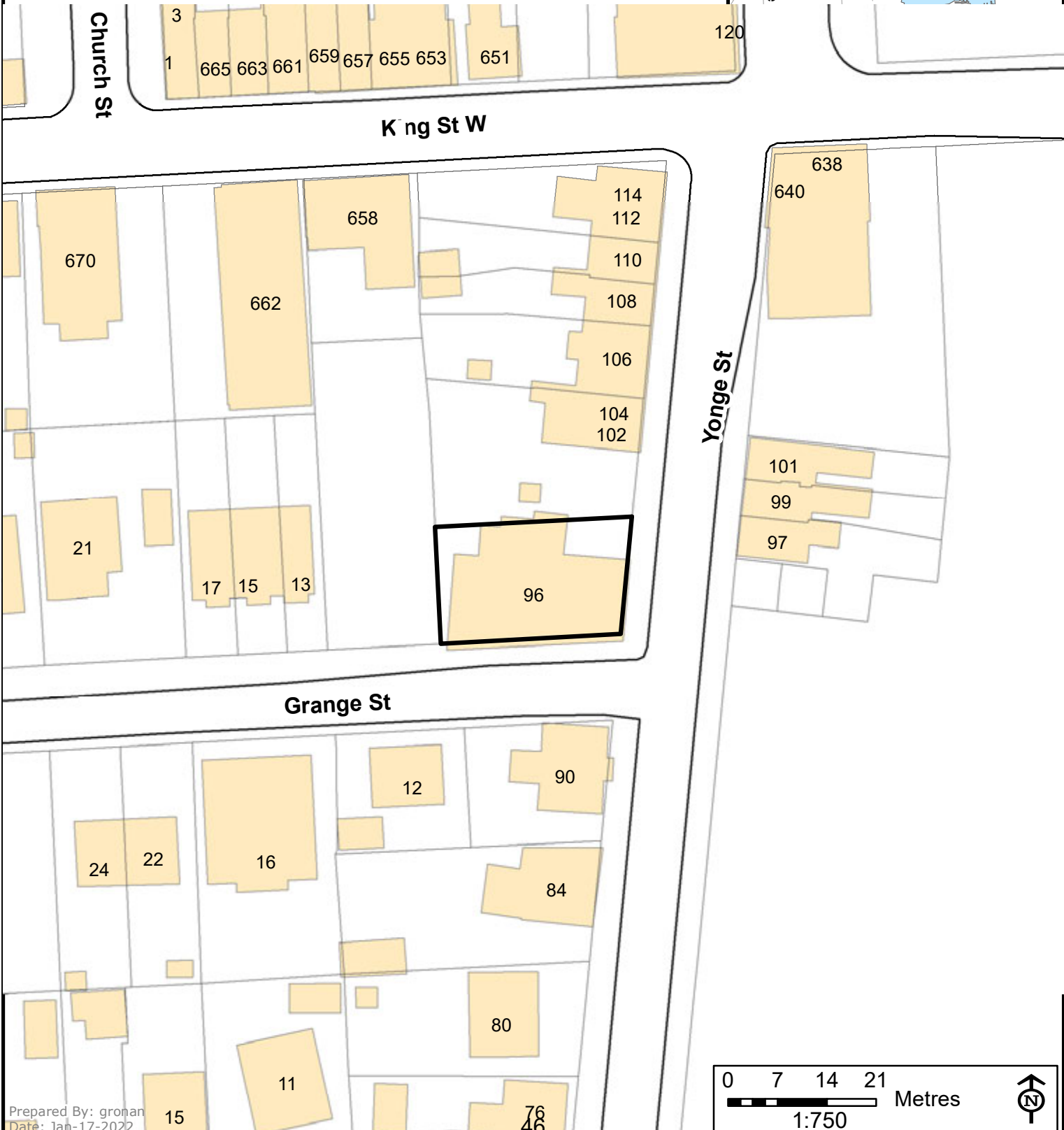
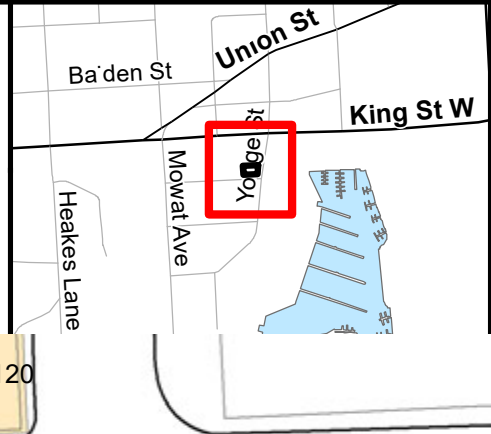
the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.



Committee of Adjustment  
**Key Map**

Address: 96 Yonge Street  
File Number: D13-078-2021

 Lands Subject to Permission



Prepared By: gronan  
Date: Jan-17-2022

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Planning Services

# Committee of Adjustment Neighbourhood Context (2021)

Address: 96 Yonge Street  
File Number: D13-078-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels






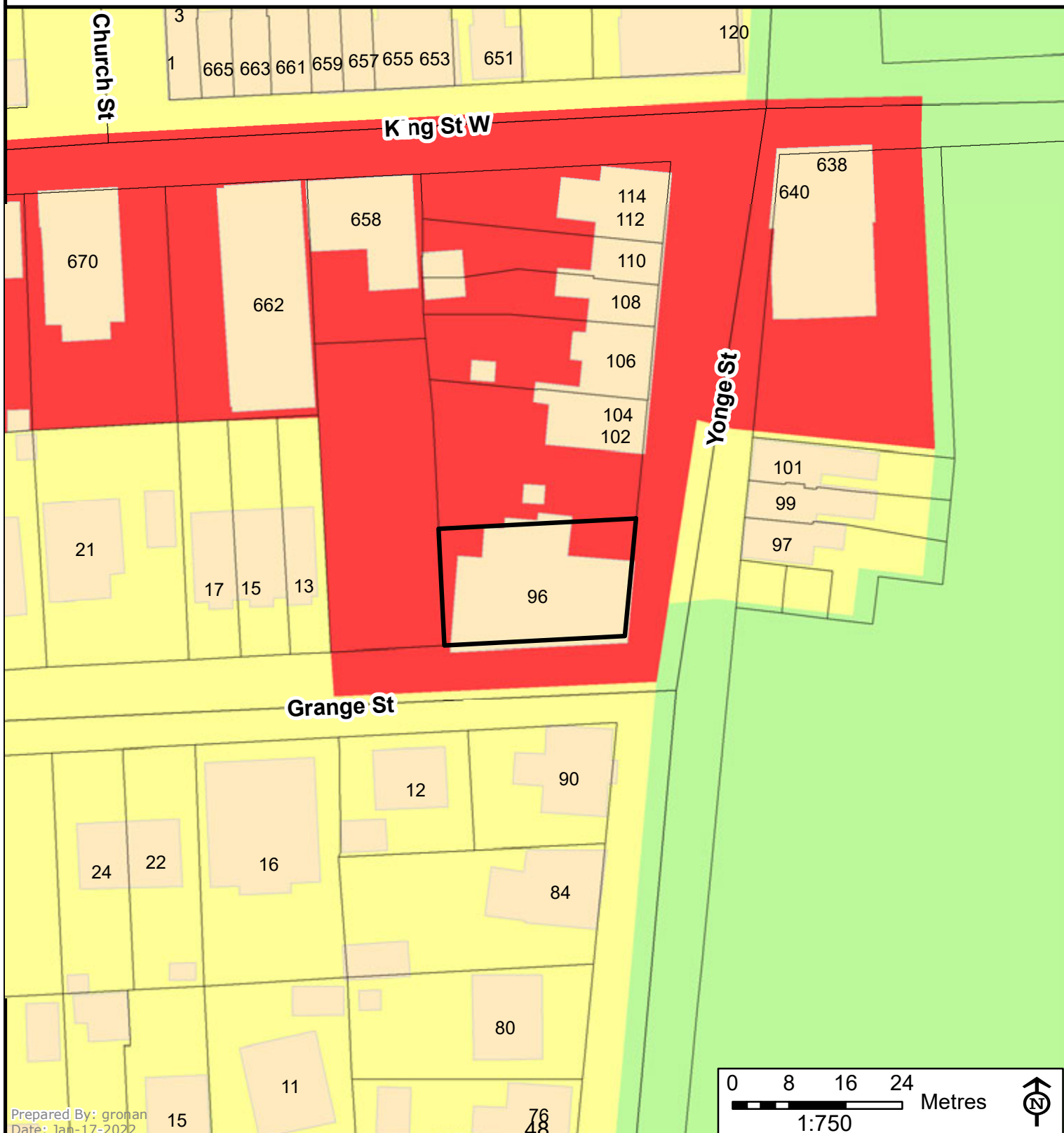


Planning Services

# Committee of Adjustment Official Plan, Existing Land Use

Address: 96 Yonge Street  
File Number: D13-078-2021

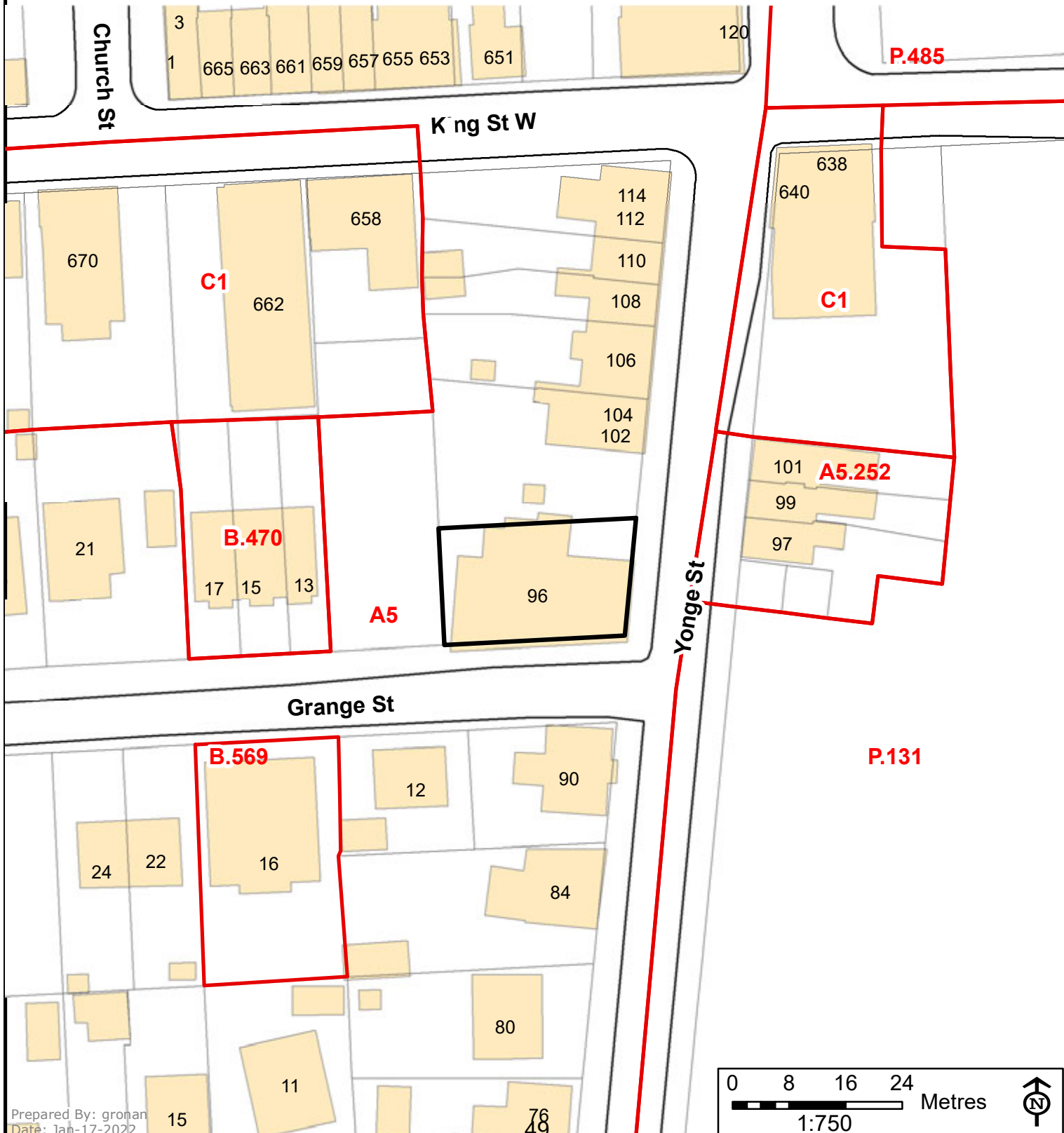
-  Subject Lands
-  MAIN STREET COMMERCIAL
-  OPEN SPACE
-  RESIDENTIAL





Committee of Adjustment  
Existing Zoning - By-law 8499, Map 29  
Address: 96 Yonge Street  
File Number: D13-078-2021

- Subject Lands
- Consolidated Zoning



Prepared By: gronan  
Date: Jan-17-2022

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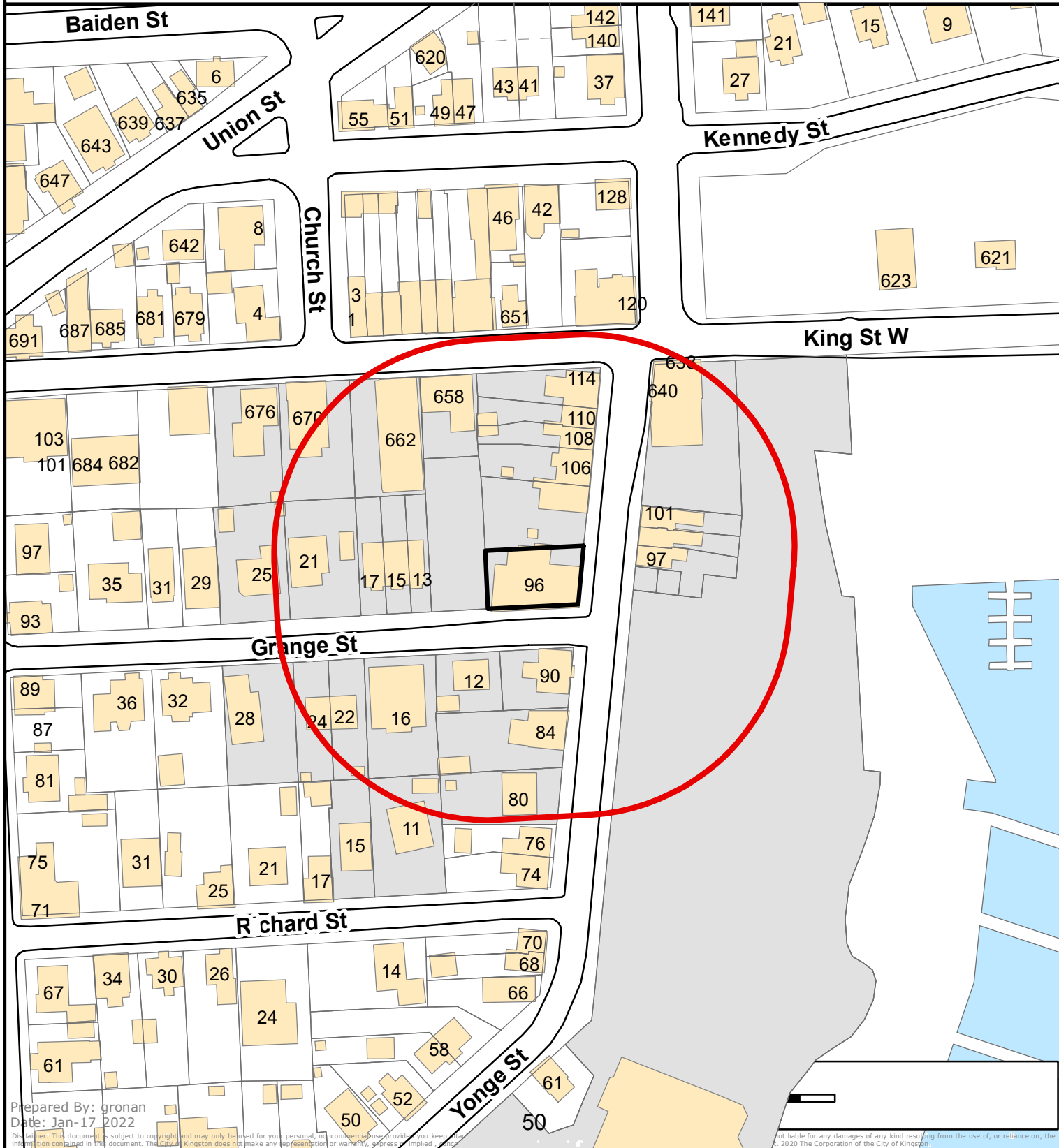


Planning Services

# Committee of Adjustment Public Notice Notification Map

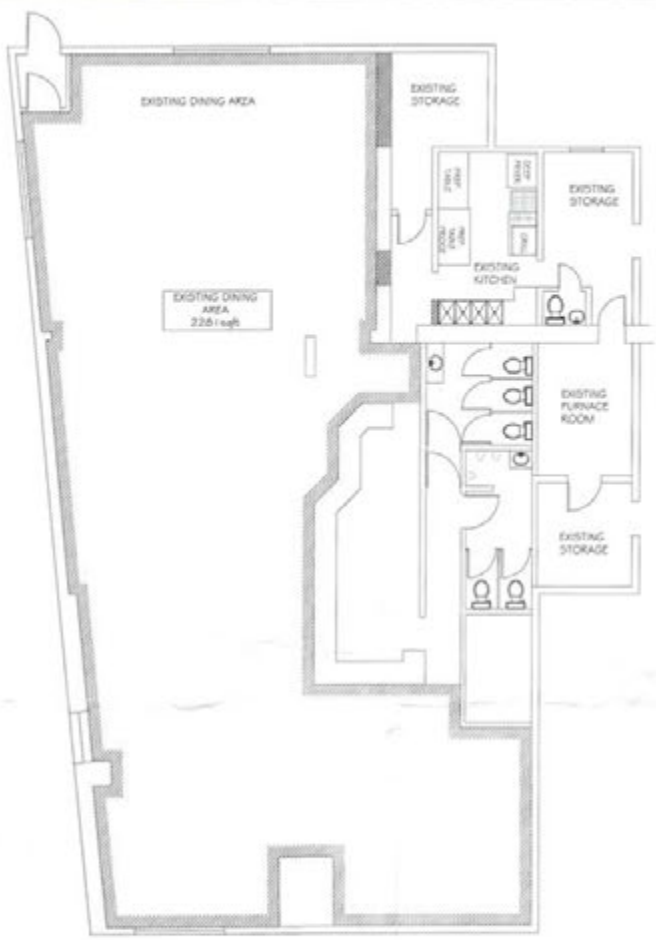
Address: 96 Yonge Street  
File Number: D13-078-2021

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

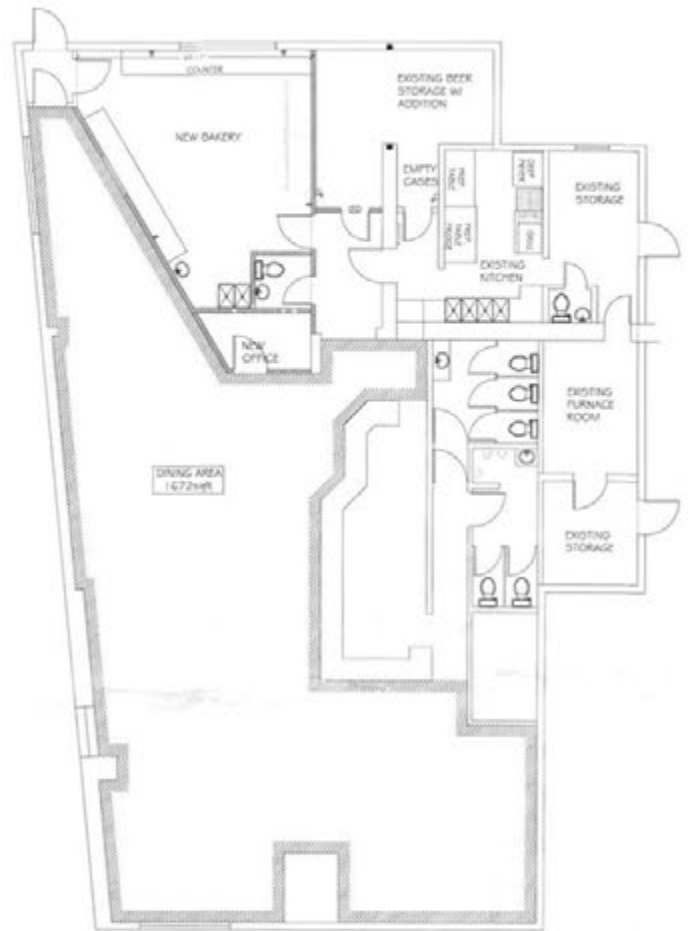




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1 EXISTING FLOOR LAYOUT  
8/14/17



2 PROPOSED FLOOR LAYOUT  
8/14/17

CAPACITY CALCULATIONS						
TYPING OF SPACE	SECTION	ADDITION OR DEDUCTION	TOTAL AREA	ESTIMATED CAPACITY	SEAT	SEAT OCCUPANCY
F	DINING AREA	ADDED	226.14'²	181		82
F	DINING AREA	DEDUCTED	155.87'²	140		82

NO.	DATE	DESCRIPTION	BY
		REVISIONS	



DRAWINGS MUST NOT BE REPRODUCED OR COPIED WITHOUT THE WRITTEN CONSENT OF THE DESIGNER. THE DESIGNER SHALL BE RESPONSIBLE FOR ALL ENGINEERING AND SHALL REPORT ANY VIOLATIONS TO THE ENGINEERING PROFESSION.

THESE PLANS WERE DESIGNED IN ACCORDANCE WITH THE ONTARIO BUILDING CODE. THESE PLANS FORM THE BASIS FOR PERMIT SUBMISSION AND ANY DEVIATIONS FROM THESE PLANS AND DETAILS INCLUDING THE MECHANICAL SYSTEM, HEATING SYSTEM, SUGGESTIVE FINISHES, DECKS, BALCONY AND FINISHED BASEMENTS, WILL REQUIRE A REVISED DRAWING AND CLEARANCE BY THE BUILDING DEPARTMENT.

PROPOSED ALTERATION TO THE PORTSMOUTH TAVERN

LOCATION  
96 YONGE STREET KINGSTON, ON

FOR  
DOUG BARR

DRAWING  
EXISTING FLOOR PLAN AND PROPOSED FLOOR PLAN

REVISION NO.	DATE	SCALE	DRAWING NO.
AS SHOWN			L1
NOV 28 2017			
NOV 28 2017			
NOV 28 2017			