



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-22-046**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Annemarie Eusebio, Intermediate Planner  
**Date of Meeting:** November 21, 2022  
**Application for:** Permission  
**File Number:** D13-025-2022  
**Address:** 42 Lower Union Street  
**Owner:** Margaret Elie-Garbutt  
**Applicant:** Sam Miller

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**Council Strategic Plan Alignment:**

Theme: 2. Increase housing affordability

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

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 42 Lower Union Street. 42 Lower Union Street is one of a series of three similar row houses along Lower Union Street that stand two and a half storeys in height with a brick façade and a limestone foundation. The proposal involves the construction of a front dormer shed and a rear dormer shed onto the roof of the existing dwelling.

The subject property is located on lands that are not subject to the new Kingston Zoning By-Law Number 2022-62. Therefore, the application will only be considered through the site-specific 'B.179' zone under Zoning By-Law Number 8499. The provisions of the B.179 Zone deems the existing multiple family dwelling containing seven dwelling units to be a use of land conforming with the provisions of this by-law. However, it also states that "no owner of this multiple family dwelling shall alter the building or permit the alteration of the building unless he applies to

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Council or the Committee of Adjustment and receives consent to make such alteration." As the proposed dormer sheds are considered an alteration to the existing dwelling, a permission application is required.

This property is designated under Part V of the *Ontario Heritage Act* as part of the Old Sydenham Heritage Conservation District under By-Law Number 2015-67. On June 7, 2022, Council approved a Heritage Permit under the *Ontario Heritage Act* for the proposed rear dormer shed. Further information is found in [Report HK-22-0](#). A separate Heritage Permit for the front dormer is currently in review. The Heritage Permit is anticipated to be presented to Council on December 6, 2022. Further information can be found in [Report HK-22-062](#). A condition with respect to Council approval for the proposed front dormer has been included in Exhibit A of this report.

The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The proposed dormer sheds are in keeping with the intent of the zoning by-law and represents appropriate and desirable development of the lot. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

**Recommendation:**

**That** the application for permission, File Number D13-025-2022, for the property located at 42 Lower Union Street to construct a front and rear dormer onto the roof the existing building, be **Approved**; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-046.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

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Annemarie Eusebio, Intermediate  
Planner

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

Tim Park, Director, Planning Services

Meghan, Robidoux, Supervisor, Development Approvals

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**Options/Discussion:**

On April 25, 2022, an application for permission was submitted by Sam Miller, on behalf of the owner, Margaret Elie-Garbutt, with respect to the property located at 42 Lower Union Street. The application for permission is requested for the construction of a front dormer shed and a rear dormer shed onto the roof of the existing dwelling. The front dormer shed will have a length of 1.2 metres and a height of 3.0 metres. The rear dormer shed will have a length of 3.6 metres and a height of 2.1 metres. The proposed dormer sheds will support the expansion of the existing dwelling and will provide additional living space.

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

- Site Plan and Elevations (Exhibit G)

The subject property is located on lands that are not subject to the new Kingston Zoning By-Law Number 2022-62. Therefore, the application will only be considered through the site-specific 'B.179' zone under Zoning By-Law Number 8499. The provisions of the B.179 Zone deem the existing multiple family dwelling containing seven dwelling units to be a use of land conforming with the provisions of this by-law. However, it also states that "no owner of this multiple family dwelling shall alter the building or permit the alteration of the building unless he applies to Council or the Committee of Adjustment and receives consent to make such alteration." As the proposed dormer sheds are considered an alteration to the existing dwelling, a permission application is required.

This property is designated under Part V of the *Ontario Heritage Act* as part of the Old Sydenham Heritage Conservation District under By-Law Number 2015-67. On June 7, 2022, Council approved a Heritage Permit under the *Ontario Heritage Act* for the proposed rear dormer shed. Further information is found in [Report HK-22-0](#). A separate Heritage Permit for the front dormer is currently in review. The Heritage Permit is anticipated to be presented to Council on December 6, 2022. Further information can be found in [Report HK-22-062](#). A condition with respect to Council approval for the proposed front dormer has been included in Exhibit A of this report.

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 42 Lower Union Street within the Old Sydenham Heritage Conservation District (Exhibit B – Key Map). The lot area of the property is approximately 169 square metres with frontage of approximately 8.5 metres along Lower Union Street. The existing dwelling is one of a series of three similar row houses along Lower Union Street that stand two and a half storeys in height. Surrounding residential uses include row houses, apartment buildings and single-family dwellings (Exhibit I – Neighbourhood Context Map 2021). There are

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also several public parks within walking distance, which include City Park, An Gorta Mor Park and Navy Memorial Park. The existing dwelling was constructed in 1875.

The subject property is designated Residential in the Official Plan (Exhibit D – Official Plan) and is located within a site specific Three to Six Family Dwelling ‘B.179’ in Zoning By-Law Number 8499 (Exhibit E – Zoning Map) and are on lands not subject to Kingston Zoning By-Law Number 2022-62 (Exhibit F).

### **Legal Non-conforming**

Pursuant to Subsection 45(2)(a)(i) of the *Planning Act*, the Committee of Adjustment may permit the enlargement or extension of a legal non-conforming building or structure, but no permission may be given to enlarge or extend the building or structure beyond the original limits of the land where the legal non-conforming building or structure is situated. In considering whether to grant a permission pursuant to Subsection 45(2)(a)(i), the relevant test is:

a. Whether the application is desirable for appropriate development of the subject property; and

The proposed front dormer will be 1.2 metres in length and 3 metres in height. The proposed rear dormer shed will be 3.6 metres in length and 2.1 metres in height. Both dormers will be situated on the roof of the existing dwelling. The building materials, which include horizontal cedar siding and white molding, will be sympathetic to the existing building materials and colours. The proposed dormers will create additional living space within the dwelling, specifically within the third floor, which will meet the functional needs for residents. The proposed dormers will result in a development that is compatible and appropriate in terms of location, scale and massing within the surrounding area.

b. Whether the application will result in undue adverse impacts on the surrounding properties and neighbourhood.

The subject property abuts a site to the south that contains an apartment building and a parking lot (32 Ontario Street). The apartment building is located approximately 40 metres from the subject property. The site is also immediately adjacent to 40 Lower Union Street. The existing dwelling at 40 Lower Union Street contains two dormers and a rear dormer shed which includes a balcony. On January 26, 2004, the construction of the two dormers and rear dormer shed with the balcony were approved through the Committee of Adjustment (City File D10-009-2004). The proposed dormer sheds at 42 Lower Union Street will have a similar design as the dormers constructed at 40 Lower Union Street, but will not include a balcony. The subject dwelling is located approximately 9.0 meters away from the residential dwelling on the adjacent property situated at 157 King Street East. The proposed development is not anticipated to result in overlook issues onto this adjacent property. The proposed dormers will not create undue adverse impacts such privacy issues or intrusive overlook with respect to surrounding properties and neighbourhood.

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## Provincial Policy Statement

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

## Official Plan

The subject property is designated Residential in the City of Kingston Official Plan.

In certain circumstances, it may be desirable to grant the extension, enlargement or relocation of a non-conforming use as provided by the *Planning Act*. When reviewing an application for such extension, enlargement or relocation, the Committee of Adjustment must be satisfied that the legal non-conforming use continued to the date of the application to the Committee, and that the application would not extend such use beyond the area and site owned or used on the day of passage of the implementing zoning by-law, and that the application complies with the eight criteria as per Section 9.5.13 of the Official Plan regarding the extension or expansion of a non-conforming use. The subject application, requesting permission to construct a front and rear dormer on the roof of the existing dwelling, has been reviewed against these policies, provided below.

1. Consistency with provincial policy in effect at the time of the decision, and general conformity of the proposal with the intent of the policies and schedules of the Plan:

The application meets the intent of Section 2 of the Official Plan, as the proposal will allow for the ongoing use of this existing residential building, which is located within the urban boundary on full municipal services. The proposed dormer sheds will result in the expansion of the existing dwelling and will not adversely affect this stable neighbourhood.

2. Compatibility of the proposal with existing uses and zones, the natural heritage system, cultural heritage resources, and with future planned uses in accordance with the Plan:

The proposed dormer sheds are in keeping with the existing built form and height along Lower Union Street. There will be no negative impacts with respect the existing uses and zones, the natural heritage system or future planned uses. This property is designated under Part V of the *Ontario Heritage Act* as part of the Old Sydenham Heritage Conservation District via By-Law Number 2015-67. On June 7, 2022, Council approved a Heritage Permit under the *Ontario Heritage Act* for the proposed rear dormer shed. Further information is found in [Report HK-22-0](#). A separate Heritage Permit for the front dormer is currently in review. The Heritage Permit is anticipated to be presented to Council on December 6, 2022. Further information can be found in [Report HK-22-062](#). A condition with respect to Council approval for the proposed front dormer has been included in Exhibit A of this report.

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3. Compatibility of proposed buildings or structures with existing buildings and structures, with zoning standards of adjacent sites, with any future planned standards as provided in the Plan, and with any urban design guidelines adopted by the City for the area or for the type of development:

The proposed development will not result in any loss of privacy due to intrusive outlook. The design of the proposed dormers will not result in any visual intrusion that will disrupt the street scape or buildings. The design and material used is similar to the existing building and architecture in the neighbourhood, including the design of the existing dormers on the abutting dwelling at 40 Lower Union Street. The proposed dormers are compatible with existing development within the surrounding area.

4. The extent to which the proposal is warranted in this location and the extent to which areas zoned for the proposed use are available for development:

The proposed dormer sheds will create additional living space and will contribute to the functional needs of the residents. The proposed development is reasonable form of development that will not create adverse impacts to the immediate area.

5. The suitability of the site for the proposal, including its ability to meet all usual standards of parking for vehicles and bicycles, open space or amenity areas as well as the lack of any potential for noise, odour, traffic conflict or other nuisance from the proposal:

The proposed dormer sheds will not impact the availability of parking for vehicles and bicycles, open space or amenity areas. Through the construction of the proposed dormers, there will be no significant impacts with respect to noise, odour, traffic conflict or other nuisances.

6. The impact on municipal infrastructure, services and traffic.

There will be no impacts on existing municipal infrastructure, services and traffic.

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

At the time of the writing of this report, no objections have been received from staff, agencies or members of the public.

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

The proposed dormer sheds will result in a development that is consistent with the built form of the existing street and neighbourhood. The proposal will not inhibit conforming uses and will not create a precedent.

The requested permission to construct a front and rear dormer shed onto the roof of the existing dwelling meets the general intent and purpose of the City of Kingston Official Plan.

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**Zoning By-Law**

The subject property is located on lands that are not subject to the new Kingston Zoning By-Law Number 2022-62. Therefore, the application will only be considered through the site-specific 'B.179' zone under Zoning By-Law Number 8499. Under Zoning By-Law Number 8499, the subject property is located within a site specific Three to Six Family Dwelling B.179 zone. The provisions of the B.179 Zone deems the existing multiple family dwelling containing seven dwelling units to be a use of land conforming with the provisions of this by-law. However, it also states that "no owner of this multiple family dwelling shall alter the building or permit the alteration of the building unless he applies to Council or the Committee of Adjustment and receives consent to make such alteration." As the proposed dormer shed is considered an alteration to the existing dwelling and a permission application is required. It should be noted that there are no dormer provisions contained within the Three to Six Family Dwelling 'B' zone or the site-specific 'B.179' zone.

The subject property is located on lands that are not subject to the new Kingston Zoning By-Law Number 2022-62.

**Technical Review: Circulated Departments and Agencies**

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <input type="checkbox"/> Finance                      | <input checked="" type="checkbox"/> Utilities Kingston     | <input type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue     | <input checked="" type="checkbox"/> Kingston Hydro         | <input checked="" type="checkbox"/> City's Environment Division  |
| <input checked="" 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 checked="" 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 checked="" type="checkbox"/> Hydro One         | <input type="checkbox"/> Enbridge Pipelines                | <input type="checkbox"/> TransCanada Pipelines                   |
| <input type="checkbox"/> Kingston Airport             |  |  |

**Technical Comments**

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

**Public Comments**

At the time this report was finalized, there were no public comments that were 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 construction of the dormer sheds onto the existing dwelling represents appropriate and desirable development of the subject property. Further, the proposal will not create undue adverse impacts such as privacy issues or intrusive overlook with respect to surrounding properties and neighbourhood.

Approval of this application will provide additional living space to an existing dwelling. It is anticipated there will be no negative impacts on the abutting residential uses or their continued use and function on their lots.

**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

Kingston Zoning By-Law Number 2022-62

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on November 21, 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 18 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*.

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**Accessibility Considerations:**

None

**Financial Considerations:**

None

**Contacts:**

Meghan Robidoux, Supervisor, Development Approvals

Annemarie Eusebio, Intermediate Planner, 613-546-4291 extension 3183

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Public Notification Map
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law 8499, Map 31
- Exhibit F Zoning By-Law 2022-62
- Exhibit G Site Plan and Elevations
- Exhibit H Site Photos
- Exhibit I Neighbourhood Context (2021)

## Recommended Conditions

### Application for permission, File Number D13-025-2022

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

#### 1. Limitation

That the approved permission applies only to the front and rear dormers 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. Heritage Permit Requirement

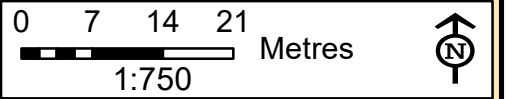
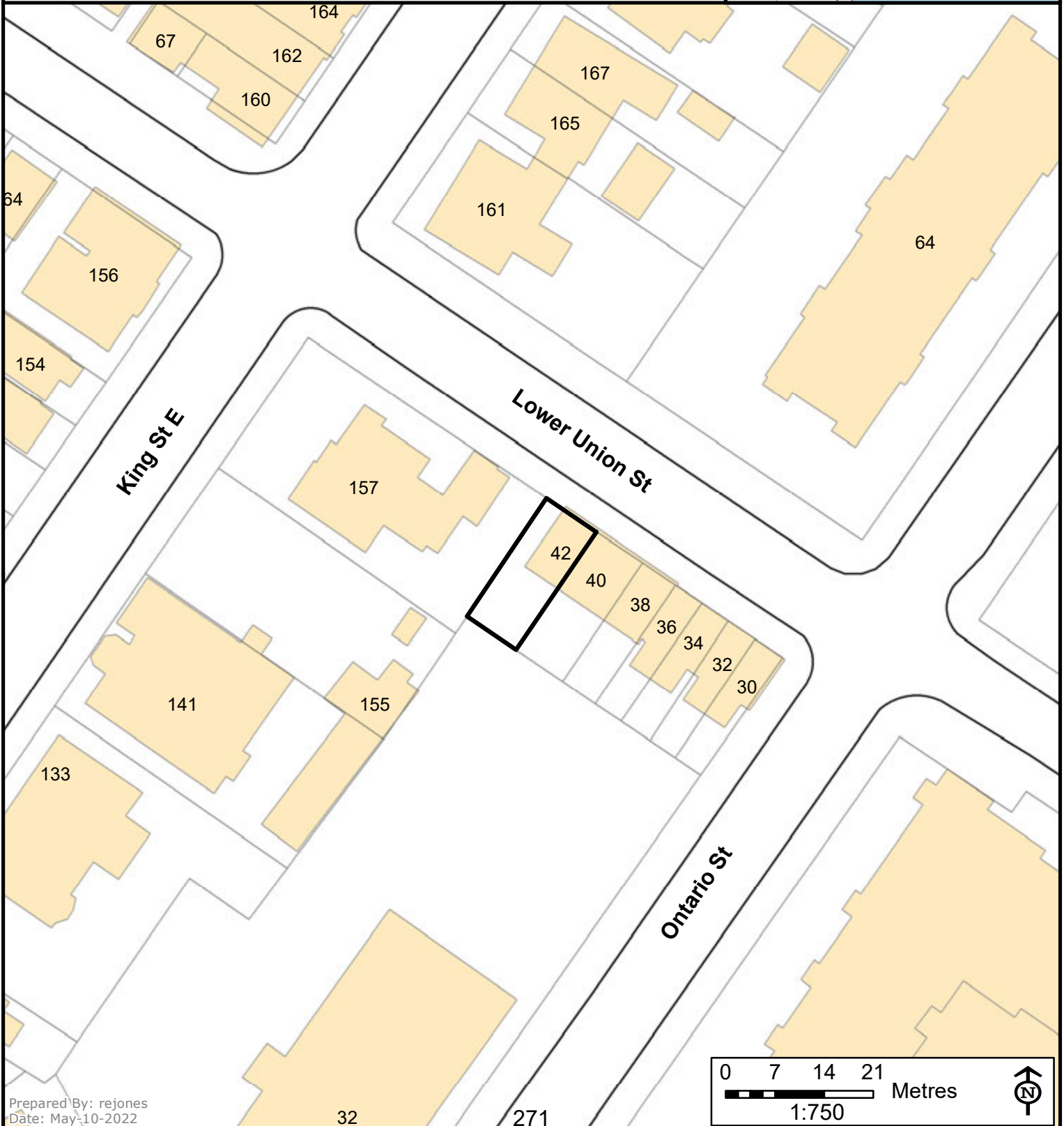
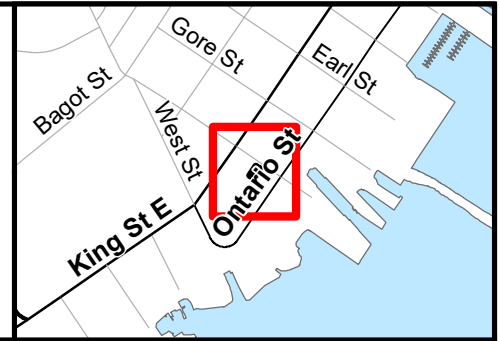
The subject property is designated under Part V of the *Ontario Heritage Act* as it is within the Old Sydenham Heritage Conservation District. As such, heritage approval is necessary prior to altering the property. On June 7, 2022, Council approved a Heritage Permit for the proposed rear dormer shed. A separate Heritage Permit for the front dormer is currently in review and requires Council approval. The Heritage Permit is anticipated to be presented to Council on December 6, 2022. The owner/applicant is required to obtain Council approval for the Heritage Permit for the front dormer.



# Committee of Adjustment Key Map

Address: 42 Lower Union Street  
File Number: D13-025-2022

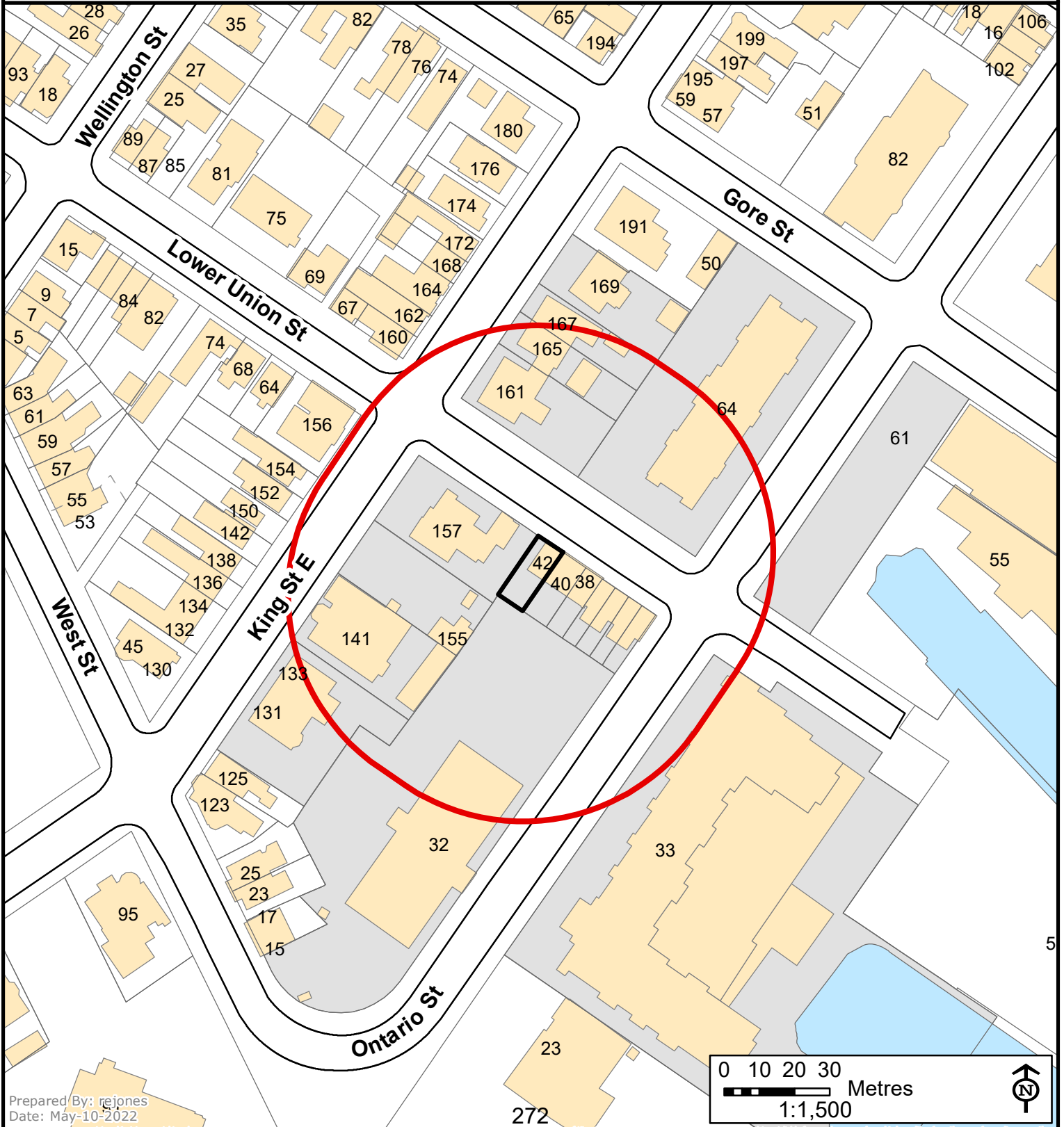
 Lands Subject to Minor Variance





Committee of Adjustment  
**Public Notice Notification Map**  
Address: 42 Lower Union Street  
File Number: D13-025-2022

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

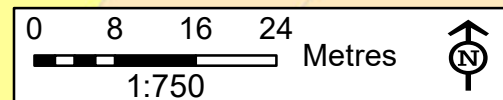
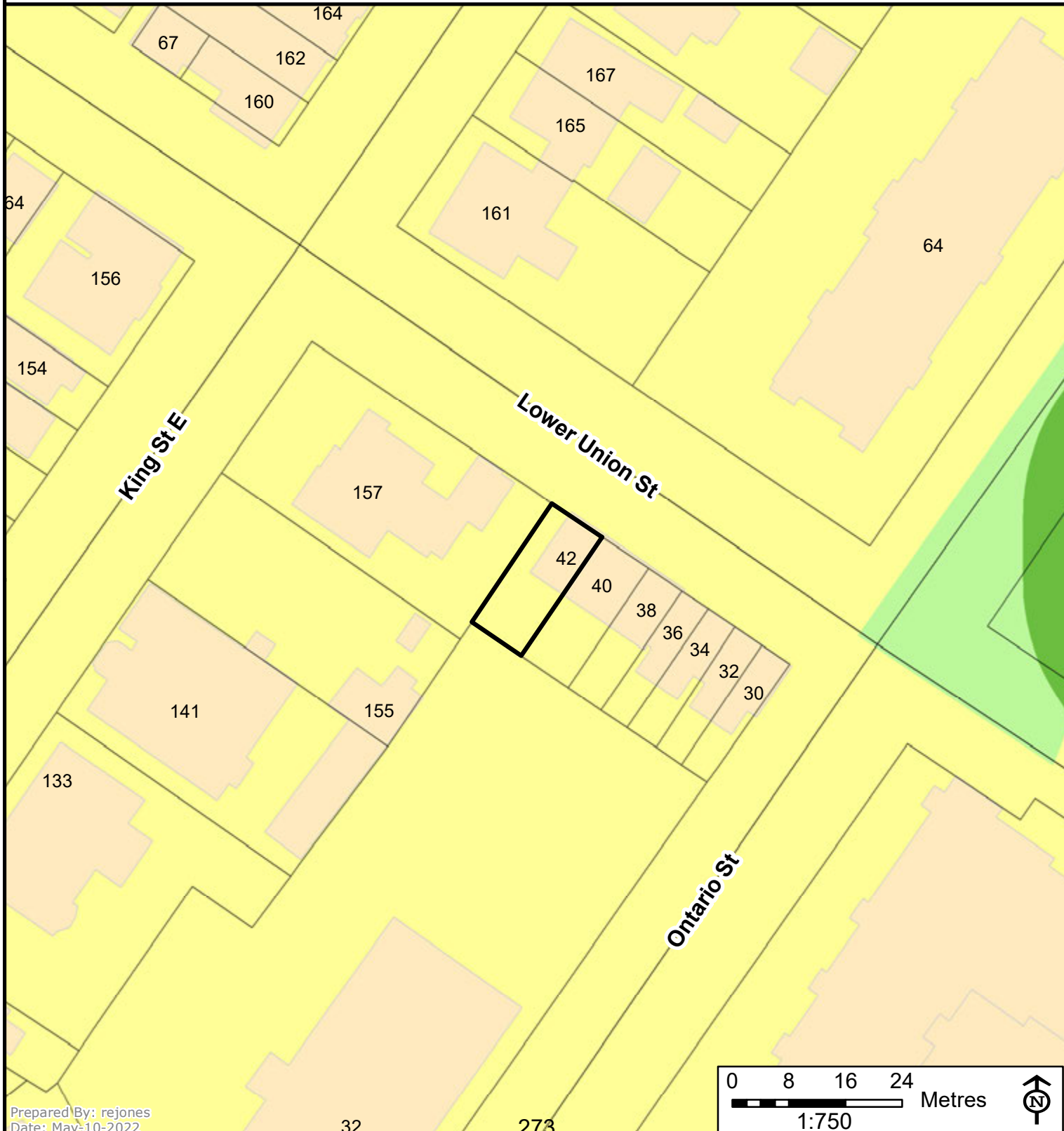


Prepared By: rejones  
Date: May-10-2022



Committee of Adjustment  
**Official Plan, Existing Land Use**  
 Address: 42 Lower Union Street  
 File Number: D13-025-2022

-  Subject Lands
-  ENVIRONMENTAL PROTECTION AREA
-  OPEN SPACE
-  RESIDENTIAL



Prepared By: rejoncs  
 Date: May-10-2022

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Planning Services

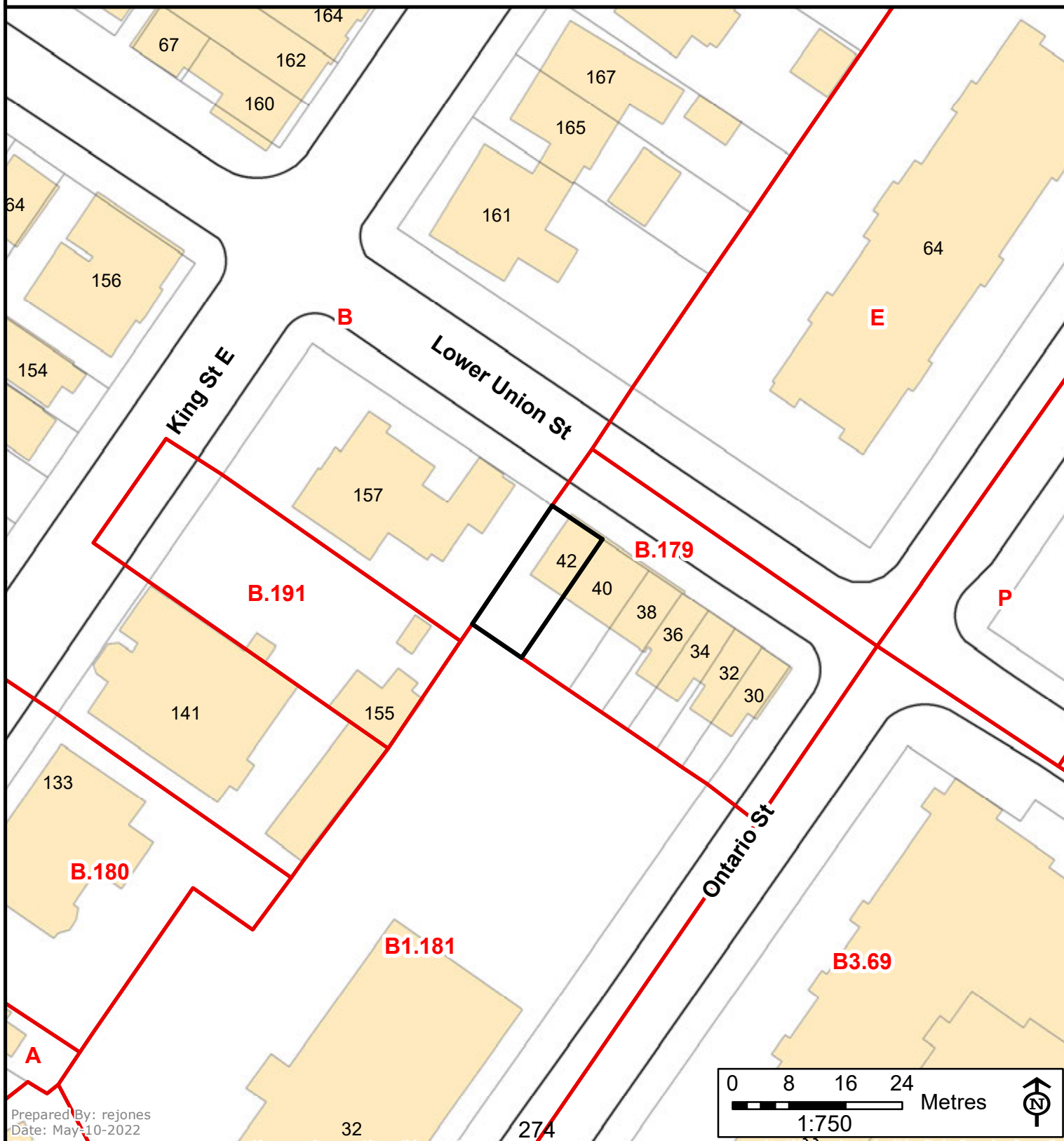
Committee of Adjustment

Existing Zoning - By-law 8499, Map 31

Address: 42 Lower Union Street

File Number: D13-025-2022

-  Subject Lands
-  Consolidated Zoning



Prepared By: rejonas  
Date: May-10-2022

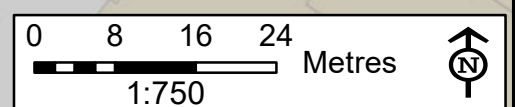
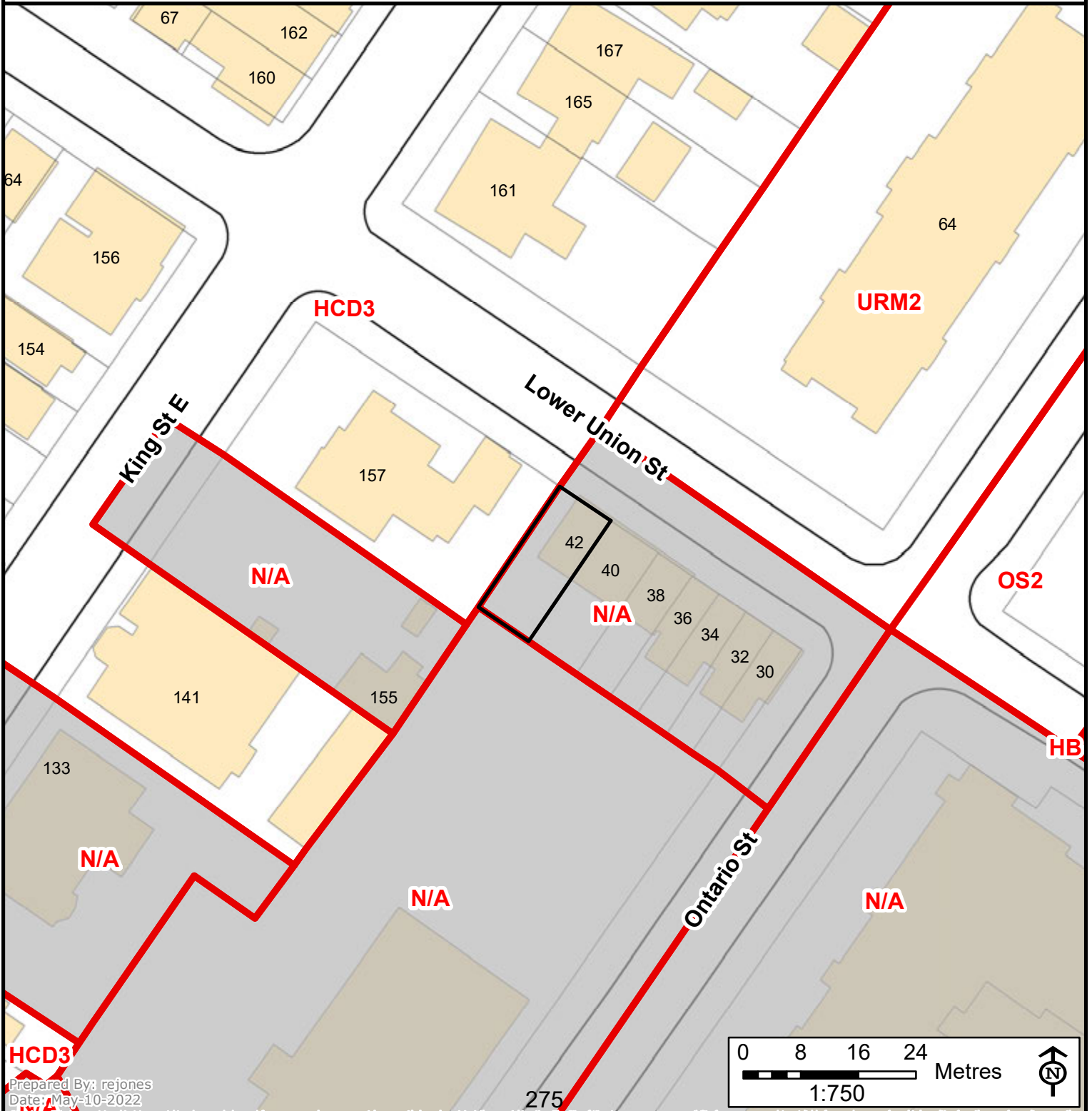
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CITY OF KINGSTON  
Reference Kingston Zoning Bylaw

Address: 42 Lower Union Street  
File Number: D13-025-2022

- Subject Lands
- Schedule 1 Zoning Map
- Zone
- Not Subject to the Kingston Zoning By-law
- Schedule E - Exception Overlay
- Legacy Exceptions (LXXX)
- Exceptions (EXXX)
- Schedule F - Holding Overlay
- Holding Overlay (HXXX)

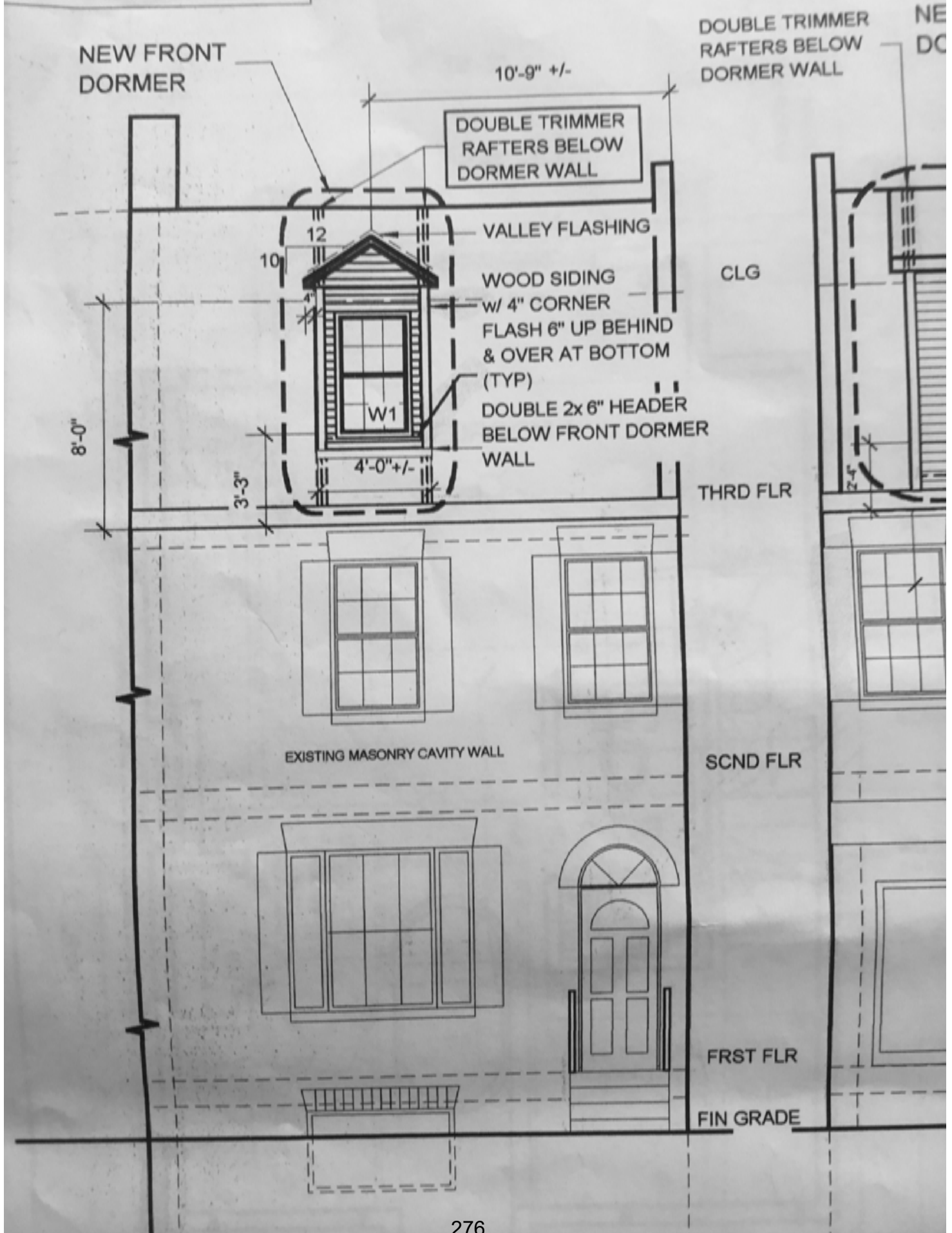


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Date: May-10-2022

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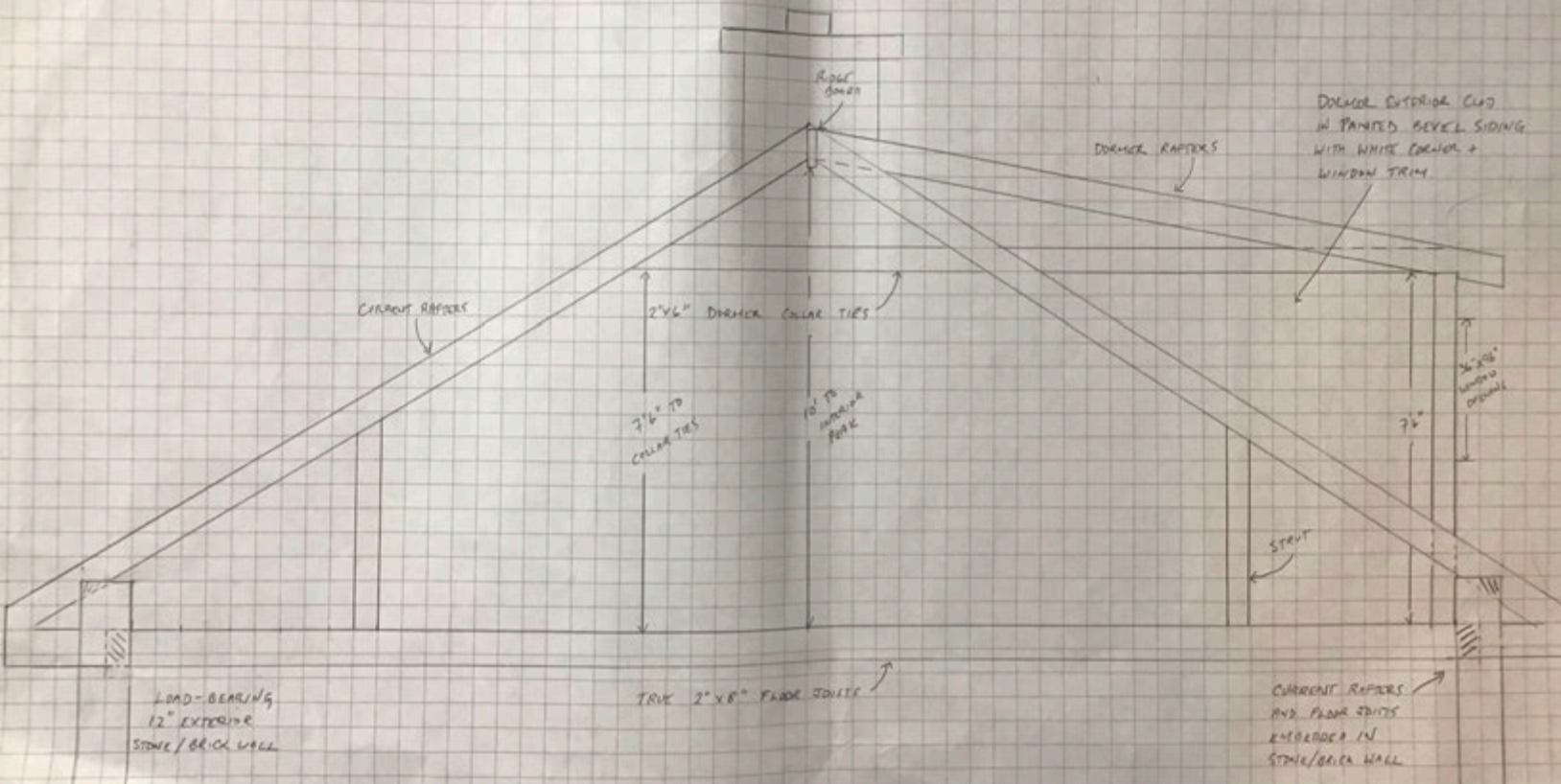
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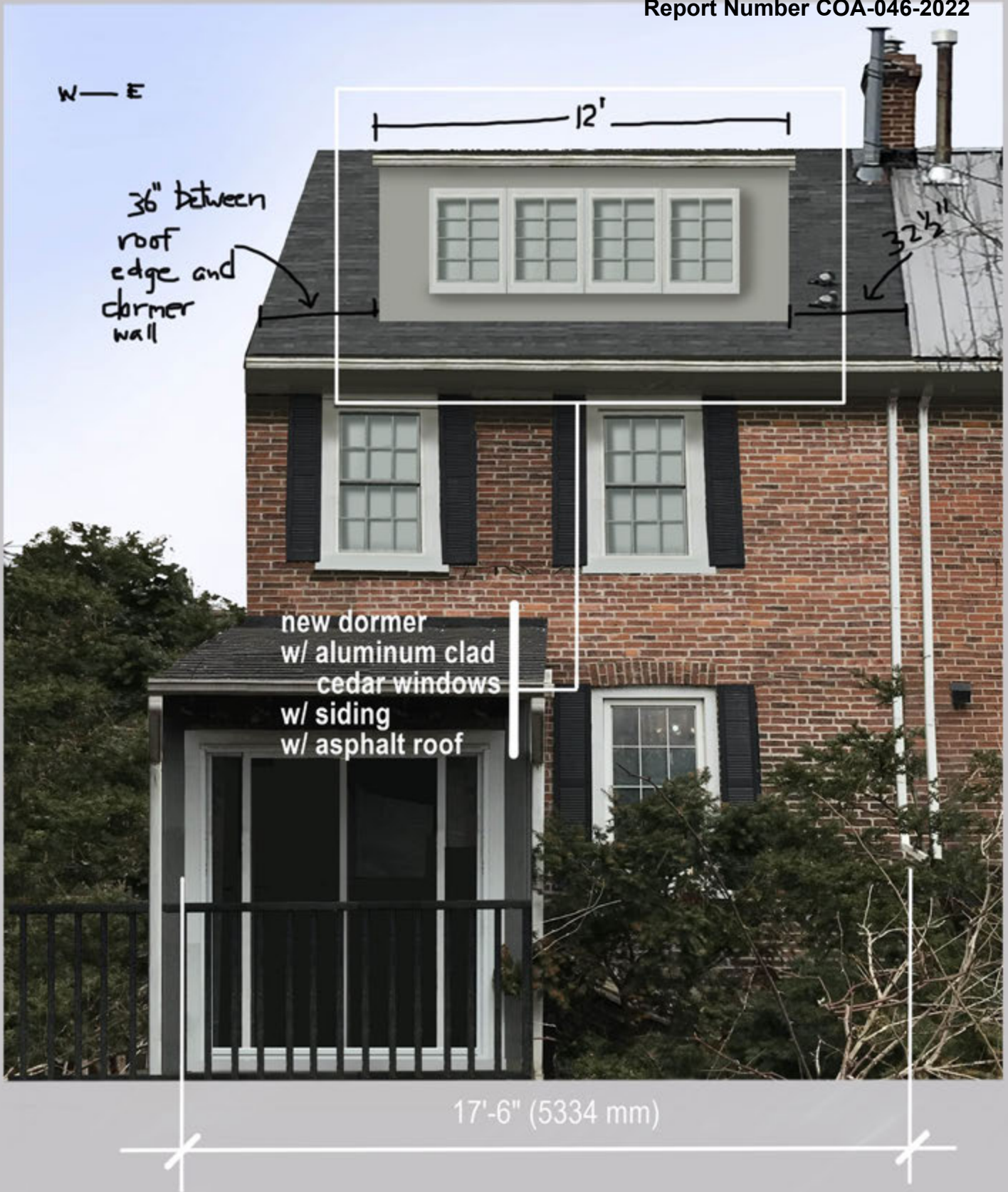


Rendered image of proposed front dormer shed

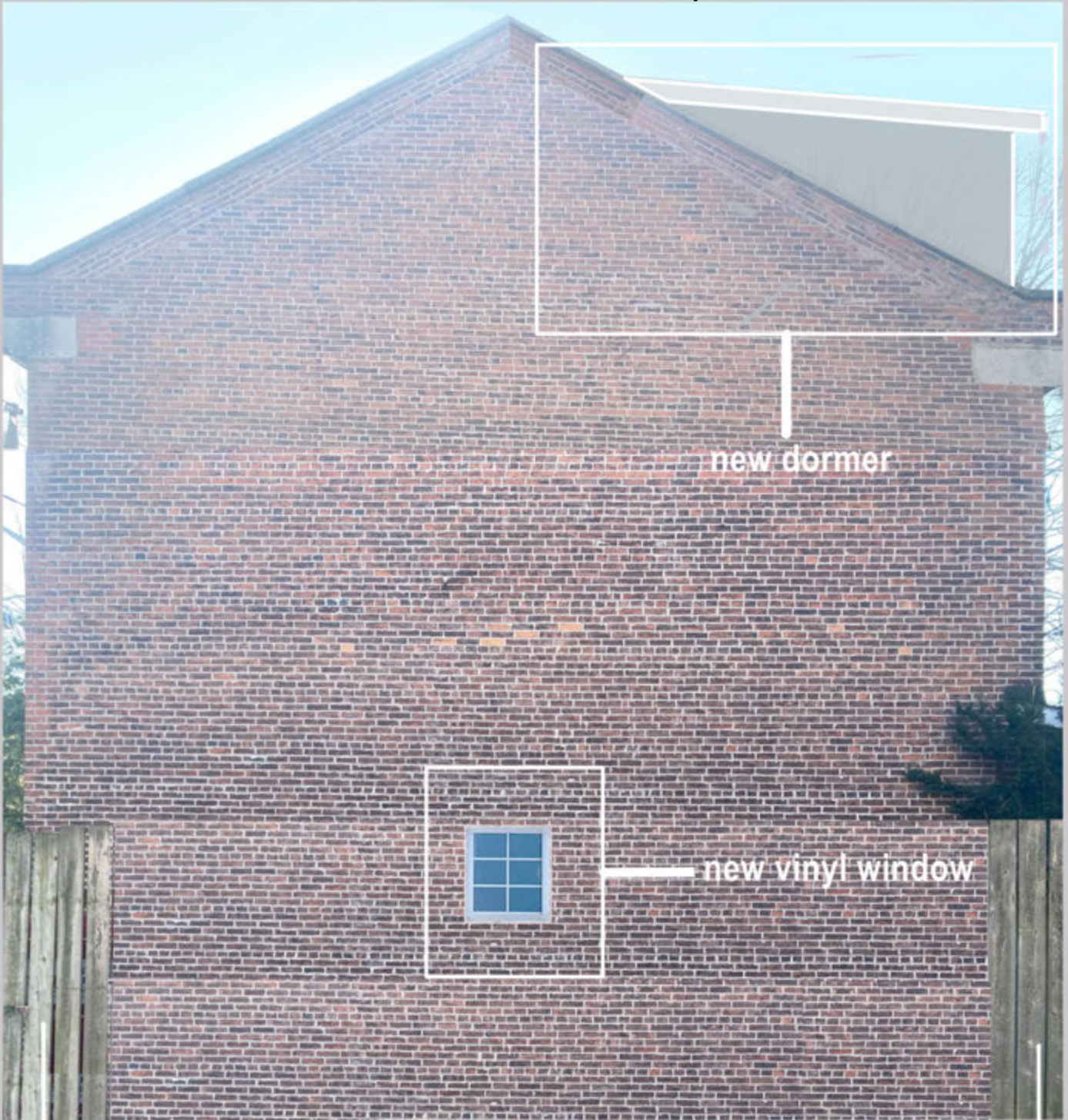


SIDE ELEVATION 42 LOWER UNION





REAR ELEVATION (south east)  
(rev #5, April 8 2022)



new dormer

new vinyl window

30'-0" (9144mm)

**SIDE ELEVATION** (north east)

42 Lower Union Street





Committee of Adjustment  
**Neighbourhood Context (2021)**  
Address: 42 Lower Union Street  
File Number: D13-025-2022

- Subject Lands
- Property Boundaries
- Proposed Parcels



Prepared By: rejonas  
Date: May-10-2022

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