

City of Kingston Report to Committee of Adjustment

Report Number COA-24-027

| To: | Chair and Members of the Committee of Adjustment |
| :--- | :--- |
| From: | Amy Didrikson, Intermediate Planner |
| Date of Meeting: | March 18, 2024 |
| Application for: | Minor Variance |
| File Number: | D13-011-2024 |
| Address: | $386 \& 390$ Johnson Street and 40 Aberdeen Street |
| District: | District 10 - Sydenham |
| Owner: | Amber Peak Developments Inc. |
| Applicant: | Fotenn Consultants Inc. |

## Council Strategic Plan Alignment:

Theme: 1. Support Housing Affordability
Goal: 1.1 Promote increased supply and affordability of housing.

## Executive Summary:

This report provides a recommendation to the Committee of Adjustment regarding an application for a minor variance for the property located at 386 \& 390 Johnson Street and 40 Aberdeen Street. The applicant intends to develop a six-storey residential building containing 45 units at this address. Minor variances required to facilitate this proposed development were previously approved by the Committee of Adjustment on September 18, 2023 (File Number D13-050-2023) and a Site Plan Control application for the proposal is currently undergoing a technical review process (File Number D11-019-2023). The applicant is requesting an additional minor variance for this proposal which is needed to facilitate the addition of a heating and cooling system to be installed on the rooftop of the proposed building.

The Kingston Zoning By-law currently permits certain mechanical and service building components up to 3.5 metres above the maximum permitted height, provided that these building

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components are limited to occupying a maximum of $10 \%$ of the roof area. The applicant is requesting a minor variance which would allow these building components to occupy a maximum of $30 \%$ of the roof area rather than only $10 \%$. This variance is required in order to facilitate the addition of an energy efficient Variable Refrigerant Flow (VRF) heating and cooling system.

The requested minor variance is consistent with the general intent and purpose of both the City of Kingston Official Plan and Kingston Zoning By-Law Number 2022-62. The requested minor variance is desirable for the appropriate development or use of the land, building or structure and is minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the Planning Act and is recommended for approval.

## Recommendation:

That minor variance application, File Number D13-011-2024, for the property located at 386 \& 390 Johnson Street and 40 Aberdeen Street to allow rooftop mechanical and service building components to project above the maximum permitted height for an area occupying 30\% of the roof area, be approved, as described below:

## Variance Number 1:

By-Law Number 2022-62: Section 4.18.2
Requirement: Despite the height provisions of this By-law, mechanical and service equipment is permitted to project a maximum of 3.5 metres above the maximum permitted height, with a maximum area of $10 \%$ of the roof area on which they are located, in the aggregate, and a minimum setback from the edge of the roof equal to the vertical height of such building component.
Proposed: Permit mechanical and service equipment to occupy a maximum total of $30 \%$ of the roof area on which they are located.
Variance Requested: 20\%; and
That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-24-027.

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## Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER
Amy Didrikson, Intermediate
Planner

In 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 September 18, 2023, minor variances were approved by the Committee of Adjustment for a six-storey residential apartment building on the subject property (File Numbers D13-050-2023). A site plan control application to permit the proposal is currently undergoing a technical review by City Staff (File Number D11-019-2023).

Through the refinement of detailed design drawings through the site plan control application process, it was subsequently determined that in order to facilitate the addition of an energy efficient Variable Refrigerant Flow (VRF) heating and cooling system, an additional minor variance would be required. The additional variance is required to increase the permitted rooftop area for mechanical and service equipment from $10 \%$ to $30 \%$ of the rooftop area to accommodate the VRF system.

It should be noted that Planning Services staff are currently proposing a series of housekeeping amendments to the Kingston Zoning By-Law, with the goal of incorporating best practices and lessons learned based on almost two years of experience with the new Kingston Zoning ByLaw. Among the changes proposed in these amendments is the proposal to increase the permitted roof surface coverage for mechanical equipment from the currently permitted $10 \%$ to $30 \%$ of rooftop area. As such, the City is proposing a change to the Kingston Zoning By-Law which is consistent with the requested applicant's requested variance.

The applicant is applying for these changes now rather than waiting for the City-initiated amendments so that the subject development may proceed in a timely manner. It is important to note that these City-initiated amendments have yet to be approved by City Council. However, it is worth mentioning these amendments insofar as the applicant is requesting a variance which is consistent with what Planning Staff is already recommending to Council.

On January 29, 2024, the additional minor variance application was submitted by Fotenn Consultants Inc., on behalf of the owner, Amber Peak Developments Inc., with respect to the property located at 386 \& 390 Johnson Street and 40 Aberdeen Street.

The variance is requested to increase the permitted rooftop area for mechanical and service equipment to project above the maximum height limit from $10 \%$ of the rooftop area to $30 \%$ of the area.

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

- Architectural Plans (Exhibit I)
- Roof Landscape Plan
- Planning Justification Brief

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

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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 on the southwest quadrant of the intersection of Johnson Street and Aberdeen Street within walking distance of Princess Street and the Central Business District (Exhibit B - Key Map). The property is approximately 1,327 square metres in area ( 0.3 acres) with approximately 30 metres of frontage on the south side of Johnson Street and approximately 42 metres of frontage on the west side of Aberdeen Street. The property abuts a mix of residential land uses in all directions, including single detached dwellings and semidetached dwellings, townhouses, duplexes, triplexes, and apartment buildings (Exhibit C Neighbourhood Context Map).

The site includes three properties owned by the applicant, which will be consolidated to enable the proposed development. The properties known municipally as 390 Johnson Street, 386 Johnson Street and 40 Aberdeen Street each currently contain ground-oriented buildings resembling single-detached houses, which each contain two dwelling units. There are 30 bedrooms in total in the existing dwellings on the site. The subject property is designated Residential in the Official Plan (Exhibit D - Official Plan Map) and is located in the Central Kingston Specific Policy Area in the Johnson Street /Brock Street intensification area as shown on Schedule CK-1. The subject property is also located within the Queen's University Campus Expansion Specific Policy Area, identified in Schedule 13 of the Official Plan.

The property is zoned URM8 (Urban Multi-Residential Zone 8) in Kingston Zoning By-Law Number 2022-62 (Exhibit E - Zoning By-Law Map) and is in Parking Area 2 (PA2). The property is subject to a Holding Overlay (H186) according to Schedule F of the Kingston Zoning By-Law. Prior to the removal of the Holding Overlay, and before a Building Permit can be issued for any new residential development, the following conditions must be satisfied: (a) The City is satisfied that there is adequate servicing capacity (i.e., water, wastewater, natural gas, and electrical) for the proposed development; and (b) A Transportation Impact Study is completed that includes micro-simulation scoped to the satisfaction of the City.

The subject property is supported by existing active transportation and transit infrastructure and is well connected to services and amenities to support the everyday needs of residents. Stops for Express bus routes are located in close proximity on Johnson Street and on Brock Street, and numerous bus routes are within walking distance. There is a dedicated bike lane on Johnson Street for eastbound traffic, and a dedicated bike lane one block north on Brock Street for westbound traffic. Sidewalks are present on both sides of Johnson Street and Aberdeen Street, and the property is within walking distance of both the Queens University campus and the Central Business District.

There are eight trees along the street frontages of the subject properties that will require protection or replanting as part of the required Site Plan Control approval process. These

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include three silver maples, a Norway maple, an autumn blaze maple, a white spruce, a balsam fir and a locust tree.

## Provincial Policy Statement

In addition to the four tests of a minor variance detailed below, 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.

## Minor Variance Application

The review of an application for minor variance(s) is not a simple mathematical calculation, but rather a detailed assessment of whether the variance(s) requested, both separately and together, meet the four tests of a minor variance outlined in Subsection 45(1) of the Planning Act. The following provides this review:

## 1) The general intent and purpose of the Official Plan are maintained

The subject property is designated Residential in the City of Kingston Official Plan (Exhibit D Official Plan Map).

In considering whether this proposed variance is desirable, the Committee of Adjustment will have regard to the nine requirements included in Section 9.5.19 of the Official Plan.

The site is designated Housing District on Schedule 2 - City Structure of the Official Plan. The applicant is proposing VRF rooftop mechanical equipment to support the residential development, which is a more sustainable alternative to conventional fossil fuel-based heating and cooling systems. The Official Plan promotes the incorporation of green building features utilizing high performance, energy efficient building design in Sections 2.1.4 and 3.4.17. The Official Plan also encourages the reduction of greenhouse gas emissions, per Sections 2.4.1.b. and 6.2. The development is in keeping with the Official Plan's intensification policies and goals to encourage energy efficiency.

The proposed rooftop mechanical equipment will be screened by a 2.3 metre high structure to mitigate any potential visual impacts, in accordance with the zoning by-law and the intent of Section 2.7 of the Official Plan. The mechanical equipment will also be setback from the roof edge in accordance with the requirements of the zoning by-law, which will mitigate potential shadow impacts.

The increase in rooftop mechanical equipment coverage along the roof will not generate indirect negative impacts. The configuration of the outdoor amenity on the rooftop will be similar to the previously proposed configuration, with the addition of green roof landscaping mostly located on

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the perimeter of the roof, with furnished, programmed areas interior to the roof. No loss of privacy due to overlook associated with the revisions to the roof area is anticipated.

The Noise Impact Study prepared by J.E. Coulter in June 2023 confirmed that the impact of noise generated by the development will be in accordance with MECP guidelines. VRF units operate within the acceptable noise parameters outlined in the study. No other changes to the proposed development's built form, setbacks, massing, density, scale, or landscaping are contemplated relative to what was approved through the previous Minor Variance application (File Number D13-050-2023). As such, the subject proposal is considered to be consistent with all applicable land use compatibility policies established in Section 2.7.

Modifications to the roof design enabled by the requested variance will not affect matters pertaining to access, parking, or accessibility. Numerous considerations for universal accessibility have already been incorporated into the design, including two barrier free parking spaces, barrier free paths of travel, and seven barrier free units.

The subject property is not listed or designated under the Ontario Heritage Act and is not adjacent to any listed or designated heritage properties. As a result, a Heritage Impact Statement was not required as part of the subject application or the previous Minor Variance application. A Stage 1 Archaeological Assessment was submitted with the previous Minor Variance application given the archaeological potential of the subject property in the City's Archaeological Master Plan. The Stage 1 assessment report concludes that the property should be cleared of archaeological potential.

This proposal is not anticipated to set an undesirable precedent, and is not anticipated to have cumulative effects that would be more appropriately addressed by a zoning by-law amendment. As mentioned above, Planning Staff are currently supporting a City-initiated amendment to the zoning by-law to permit up to $30 \%$ of rooftop area to contain mechanical building components which project above maximum height limits, exactly as the applicant is proposing in the subject application. This proposal will allow for the addition of building components that will make the development energy efficient, and as such are considered to be desirable.

The proposal meets the intent of the Official Plan, as the request to expand mechanical building components which project above the maximum height to $30 \%$ of the rooftop area will facilitate good land use planning and will not result in any negative impacts to adjacent properties or to the neighbourhood.

## 2) The general intent and purpose of the Zoning By-Law are maintained

The subject property is zoned URM8 in Kingston Zoning By-Law Number 2022-62 (Exhibit E Zoning By-Law Map). The URM8 zone permits a residential apartment building, which is the proposed use for the property at 386 \& 390 Johnson Street and 40 Aberdeen Street.

The proposal requires a variance to Section 4.18 .2 of the Kingston Zoning By-Law, as outlined below:

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## Variance Number 1:

By-Law Number 2022-62: Section 4.18.2
Requirement: Despite the height provisions of this By-law, mechanical and service equipment is permitted to project a maximum of 3.5 metres above the maximum permitted height, with a maximum area of $10 \%$ of the roof area on which they are located, in the aggregate, and a minimum setback from the edge of the roof equal to the vertical height of such building component.
Proposed: Permit mechanical and service equipment to occupy a maximum total of $30 \%$ of the roof area on which they are located.
Variance Requested: 20\%
The intent and purpose of Section 4.18 .2 is to allow certain building components to project above the maximum permitted height of buildings. Components which are permitted to project above the maximum height include mechanical and service equipment, enclosed areas providing residents with access to rooftop amenity space, and skylights. These components are permitted to project above the maximum height, as these components must project upwards in order to provide functional benefits to the residential apartment building. As such, this provision of the Zoning By-Law provides a certain degree of flexibility regarding the maximum permitted height for such building components.

To prevent adverse shadow and visual impacts resulting from these building components permitted to project above the maximum height, Section 4.18.2 limits the maximum rooftop coverage of these building components to $10 \%$ of the rooftop area and establishes setback requirements from the edge of the roof.

The requested variance meets the intent and purpose of Section 4.18.2. The rooftop VRF heating and cooling system will be appropriately setback from the edge of the roof and screened with a 2.3 metre tall visual screening barrier. As such, visibility of these mechanical components from the pedestrian level will be minimized and the addition of the VRF heating and cooling system will not appear to alter the proposed massing of the apartment building. Allowing up to $30 \%$ of the rooftop area to be occupied by the proposed mechanical equipment will provide maximum flexibility for the provision of modern energy efficient features without causing significant impacts in terms of shadowing or increased massing of the proposed building. The proposed addition of the VRF system will not impact the size or functionality of the proposed green roof amenity space.

As such, the requested variance maintains the general intent and purpose of the zoning by-law.

## 3) The variance is minor in nature

The variance is considered minor as the proposal to allow a greater amount of rooftop area to be occupied by mechanical building components will not increase the perceived massing of the proposed residential apartment building. Additionally, visual screening will be provided around these mechanical components to ensure that visibility of these components shall be minimized

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for pedestrians and residents using the rooftop amenity space．The mechanical equipment enabled by the variance will be within the maximum height projections established by Section 4．18．2 and will be appropriately setback from the edge of the rooftop．

## 4）The variance is desirable for the appropriate development or use of the land，building or structure

The proposed variance is desirable，as the variance is necessary to facilitate the addition of an energy efficient heating and cooling system on the rooftop area，to support the residential development of the lands．The provision of energy efficient building components and infrastructure is a goal established in the Official Plan．VRF systems are considered to be more efficient than conventional fossil fuel based heating and cooling systems，as VRF systems are designed to deliver the exact amounts of heating and cooling as required which allows for lower overall energy consumption．VRF systems also incorporate a heat recovery process by redirecting excess heat to cooler area，repurposing heat which would otherwise be wasted． Conventional systems utilize a variety of boilers，dry coolers and chillers with the majority of this equipment being located within an enclosed mechanical penthouse rather than on the roof of a building．The VRF does not need the same amount of penthouse coverage as conventional systems do，resulting in more of the exterior roof being covered by equipment．

Given the advantages of the VRF heating and cooling system relative to conventional fossil fuel based systems，the requested variance to facilitate the addition of this system for the proposed apartment building is desirable and considered to be an appropriate use of the land．

## Technical Review：Circulated Departments and Agencies

| 区 | Building Services | 区 | Engineering | 区 | Heritage Services |
| :---: | :---: | :---: | :---: | :---: | :---: |
| $\square$ | Finance | 区 | Utilities Kingston | 区 | Real Estate |
| 区 | Fire \＆Rescue | 区 | Kingston Hydro | 区 | Environment Division |
| 区 | Solid Waste | 区 | Parks Development |  | Canadian National Railways |
| $\square$ | Housing | 区 | District Councillor | $\square$ | Ministry of Transportation |
| $\square$ | KEDCO | 区 | Municipal Drainage | $\square$ | Parks of the St．Lawrence |
| $\square$ | CRCA | $\square$ | KFL\＆A Health Unit | $\square$ | Trans Northern Pipelines |
| $\square$ | Parks Canada | $\square$ | Eastern Ontario Power | $\square$ | CFB Kingston |
| $\square$ | Hydro One | $\square$ | Enbridge Pipelines | $\square$ | TransCanada Pipelines |

## 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．

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## Public Comments

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

## Previous or Concurrent Applications

The proposal was subject to a previous minor variance application approved by the Committee of Adjustment on September 18, 2023. A Site Plan Control application for the proposal is currently undergoing a technical review process (File Number D11-019-2023).

## Conclusion

The requested variance maintains the general intent and purpose of both the City of Kingston Official Plan and Kingston Zoning By-Law Number 2022-62. The proposal is desirable for the appropriate development or use of the land, building or structure and the requested variance is minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the Planning Act and the application is being recommended for approval, subject to the proposed conditions.

Approval of this application will facilitate the addition of an energy efficient Variable Refrigerant Flow (VRF) heating and cooling system to the proposed six-storey apartment building by increasing the maximum permitted area for which mechanical rooftop building components may project above the maximum permitted building height by 3.5 metres from $10 \%$ to $30 \%$.

## 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
Kingston Zoning By-Law Number 2022-62

## Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on March 18, 2024. 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

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advance of the meeting. In addition, notices were sent by mail to a total number of 64 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 (Exhibit H - Public Notification Map).

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

## Accessibility Considerations:

None
Financial Considerations:
None

## Contacts:

Meghan Robidoux, Supervisor, Development Approvals, 613-546-4291 extension 1256
Amy Didrikson, Intermediate Planner, 613-546-4291 extension 3296

## Other City of Kingston Staff Consulted:

None

## Exhibits Attached:

Exhibit A Recommended Conditions

## Exhibit B Key Map

Exhibit C Neighbourhood Context Map
Exhibit D Official Plan Map
Exhibit E Zoning By-Law Map
Exhibit F Site Photos
Exhibit G Public Notification Map
Exhibit H Architectural Plans

## Recommended Conditions

The approval of minor variance application, File Number D13-011-2024, to permit the proposed mechanical building components to project above the maximum permitted height within a maximum area of $30 \%$ of the rooftop area where they are located, shall be subject to the following recommended conditions:

## 1. Limitation

That the approved minor variance applies only to permit the proposed mechanical building components to project above the maximum permitted height within a maximum area of $30 \%$ of the rooftop area where they are located 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 Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism (archaeology@ontario.ca) 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 Office of the Chief Coroner as a part of the Ontario Ministry of the Solicitor General (1-877-9919959), the Archaeology Program Unit of the Ministry of Citizenship and

Multiculturalism (archaeology@ontario.ca), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

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Figure 1: Streetview of Johnson Street Frontage


Figure 2: Streetview of Aberdeen Street Frontage (North East Corner)


Figure 3: Streetview of Aberdeen Street Frontage


Figure 4: Streetview of Aberdeen Street Frontage

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$386+390$ JOHNSON ST 40 ABERDEEN ST KINGSTON, ON

PROPOSED 45-UNIT RESIDENTIAL DEVELOPMENT

AMBER PEAK
Project: 22074
Date: JANUARY 282024
Issued for: SPC RESUBMISSION


STREET PERSPECTIVE
PROJECT CONSULTANTS

ARCHITECTURAL
RAW DESIGN

K7K
T. $148-599-9729$
SITE SERVICING
forerront engineering inc 1329 GAADINERS ROAA, SUITE 210
KNGGTON, ONTARIO


PLANNING / LANDSCAPE
FOTENN PLANNING + DESIGN
CATARAQUI STREET, SUITE 315
KNGOSTTM, ONTARIO
KTKI
${ }_{\mathrm{T} .613 \text {-542-5454 }}^{\mathrm{KTK}}$


CONTEXT MAD NTS


PROJECT STATS S ZONING TABLE



Exhibit H
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Exhibit H


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