



**City of Kingston
Report to Committee of Adjustment
Report Number COA-24-029**

To: Chair and Members of the Committee of Adjustment
From: Jacob Slevin, Planner
Date of Meeting: March 18, 2024
Application for: Minor Variance
File Number: D13-004-2024
Address: 11 Fergus Street
District: District 7 – Kingscourt-Rideau
Owner: Jamie Cochrane
Applicant: Jamie Cochrane

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 minor variance for the property located at 11 Fergus Street. The applicant is proposing to legalize a deficient front setback for the recently constructed single detached house at the subject property.

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.

March 18, 2024

Page 2 of 10

Recommendation:

That minor variance application, File Number D13-004-2024, for the property located at 11 Fergus Street to legalize a deficient front setback for a single detached house, be approved, as described below:

Variance Number 1:

By-Law Number 2022-62: Table 11.14.1.4(b)

Requirement: 2.8 metres

Proposed: 1.6 metres

Variance Requested: 1.2 metres; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-24-029.

March 18, 2024

Page 3 of 10

Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER

Jacob Slevin, Planner

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

Tim Park, Director, Planning Services

Meghan Robidoux, Supervisor, Development Approvals

March 18, 2024

Page 4 of 10

Options/Discussion:

In September of 2020, the previously existing detached residential home at 11 Fergus Street caught fire and sustained significant damage. This previous home was demolished in August of 2021, after the owners received the required demolition permit.

A Building Permit application for a new home was submitted by the owner in August 2021, and this permit was subsequently issued in November 2021. At the time this Building Permit was under review this property was subject to the A5 Zone within the former City of Kingston Zoning By-Law 8499. Currently, the property is within the UR13 Zone of Kingston Zoning By-Law Number 2022-62.

The plot plan submitted for this Building Permit application showed the proposed footprint of the new house to be compliant with the 7.5 metre front setback required by the A5 Zone. However, at the time of construction the front wall of this new home was set roughly in line with the front wall of the adjacent home at 15 Fergus Street, resulting in a front setback of 1.6 metres.

Following the completion of this new building, it was discovered that the front setback for the newly constructed house was deficient and did not meet the minimum front setback requirement established in the UR13 Zone. For the UR13 Zone, the required front setback for a property with one adjacent building that has a front lot line on the same street is deemed to be the average of the adjacent building's front setback and 4.5 metres. The adjacent building at 15 Fergus Street is 1.1 metres, and as such the required front setback for 11 Fergus Street under the current zoning provisions is 2.8 metres.

On January 25, 2024, a minor variance application was submitted by Jamie Cochrane, owner of the property located at 11 Fergus Street. The variance is requested in order to retroactively legalize the deficient front setback for the recently constructed home at 11 Fergus Street.

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

- Reference Plan (Exhibit F)
- Cover Letter

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 11 Fergus Street, north of Concession Street and on the eastern side of Fergus Street. A laneway owned by the City of Kingston is located adjacent to the rear lot line of the subject property (Exhibit B – Key Map). The property is developed in a primarily residential area, abutting residential uses to the north, west, and south. The subject

March 18, 2024

Page 5 of 10

lands abut a commercial property to the east, Action Auto Service (Exhibit C – Neighbourhood Context Map).

The subject property is designated Residential in the Official Plan (Exhibit D – Official Plan Map) and zoned UR13 in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map). The property is located approximately 50 metres north of the Kingston Memorial Centre.

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 requested Minor Variance does not contemplate any additional physical development to the home at 11 Fergus Street. No additional residential growth will be facilitated through approval of this minor variance given that it is required to legalize the existing single detached dwelling on the property.

The reduced front setback for the home at 11 Fergus Street is considered to be compatible with the existing built form of the surrounding residential neighbourhood. Adjacent and nearby residential properties are developed with front setbacks which are comparable with the newly constructed home at 11 Fergus Street. The homes at 15 Fergus Street and 17 Fergus Street are each developed with front setbacks of approximately 1.1 metres. On the opposite side of the street, 14 Fergus Street has a front setback of approximately 1.3 metres and 18 Fergus Street has a setback of approximately 1 metre. Given this context, the proposed setback of 1.6 metres on the subject property is not considered to raise any land use compatibility concerns outlined in Section 2.7 of the Official Plan.

March 18, 2024

Page 6 of 10

The single detached home on the subject property is already developed and the property is functional in terms of vehicular access, parking, and accessibility. As no further development is proposed, approval of this minor variance will not inhibit the accessibility or functionality of the property in any way.

The property at 11 Fergus Street is not designated under the *Ontario Heritage Act*, nor is it adjacent to any heritage designated properties. No built heritage resources are to be impacted by this proposal. As no physical development is proposed, no archeological clearance of the property shall be required.

The sole impact of the requested variance is to legalize the existing front setback for the property. As outlined throughout the report, this variance meets the intent and purpose of the Official Plan and the Kingston Zoning By-Law, is considered to be minor, and is considered to be desirable. As such, a minor variance is considered to be more appropriate for this proposal than a Zoning By-Law Amendment.

Conditions of Approval for this application are attached in Exhibit A. Included among these conditions are the requirements for the applicant to move the existing air conditioning unit in the front yard to the side or rear yard in compliance with the zoning by-law, and for the applicant to re-instate the municipal boulevard area with topsoil and sod that was removed during construction of the new house.

Given that many other residential properties in the nearby area are developed with similar front setbacks, as discussed above, approval of the requested variance to legalize a reduced front setback will not set a precedent.

The proposal meets the intent of the Official Plan, as the proposed legalization of the existing reduced front setback 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 UR13 in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map). The UR13 zone permits single detached houses, semi-detached houses, and duplexes. Several non-residential uses are also permitted. The subject property at 11 Fergus Street is developed with a single detached house.

The proposal requires a variance to Table 11.14.1.4(b), which establishes the minimum required front setback for a single detached house. For the subject property, since there is only one adjacent building with a front lot line on the same street, the minimum front setback is deemed to be the average of 4.5 metres and the front setback of the adjacent building. As 15 Fergus Street, the adjacent building, has a front setback of 1.1 metres, the average of this setback and 4.5 metres is 2.8 metres.

The purpose of this provision is to ensure that buildings are adequately setback from the front lot line to prevent encroachment, while also taking into account the context of existing

March 18, 2024

Page 7 of 10

development. Required front setbacks are influenced by the existing front setbacks of adjacent properties so that new development does not feel out of character with adjacent land uses.

Variance Number 1:

By-Law Number 2022-62: Table 11.14.1.4(b)

Requirement: 2.8 metres.

Proposed: 1.6 metres

Variance Requested: 1.2 metres

The existing front setback for 11 Fergus Street of 1.6 metres from the front lot line meets the general intent and purpose of the Zoning By-Law's standards for minimum front setback requirements. The purpose of this provision is to ensure that there is a functional setback for the house so that the development does not interfere with the municipal right-of-way, and to ensure that the development is visually compatible with the surrounding residential neighbourhood.

Through the technical review of this minor variance application, no concerns have been raised about the functionality of the subject property as a result of the reduced front setback. Additionally, as discussed above, other residential properties on Fergus Street are developed with similarly reduced front setbacks. Several properties on Fergus Street have smaller front than the 1.6 metre setback provided on the subject property. Given this neighbourhood context, the proposed front setback is considered to be compatible with this existing built form of the surrounding area.

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 proposed reduced front setback of 1.6 metres represents only a minor change from the required front setback of 2.8 metres, and the proposed reduced front setback is considered to be compatible with the context of other homes within the surrounding neighbourhood. The requested minor variance for the existing deficient front setback is the only variance required in order to bring the house at 11 Fergus Street into full compliance with the Kingston Zoning By-Law.

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

The requested minor variance is considered to be desirable and an appropriate use of land as it will legalize the existing deficient front setback. A reduced front setback of 1.6 metres is considered to be appropriate as this is consistent with the surrounding built form, meets the intent and purpose of the Official Plan and Zoning By-law, and is only a minor deviation from the required front setback of 2.8 metres. However, despite the reduced front setback being considered appropriate for a house in this neighbourhood, the existing reduced front setback is not currently recognized as a legal variation from the Kingston Zoning By-law. Approval of this requested minor variance will recognize the front setback as being fully legal, bringing the property into compliance with the Kingston Zoning By-law.

March 18, 2024

Page 8 of 10

As such, the variance is considered a desirable and appropriate use of the land.

Technical Review: Circulated Departments and Agencies

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

Public Comments

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

Previous or Concurrent Applications

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

Conclusion

The requested variance(s) maintain(s) 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 legalize the existing front setback for 11 Fergus Street which is currently deficient.

March 18, 2024

Page 9 of 10

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 advance of the meeting. In addition, notices were sent by mail to a total number of 45 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

Jacob Slevin, Planner, 613-546-4291 extension 2176

Other City of Kingston Staff Consulted:

None

March 18, 2024

Page 10 of 10

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 Reference Plan
- Exhibit G Site Photos
- Exhibit H Public Notification Map

Recommended Conditions

The approval of minor variance application, File Number D13-004-2024, to legalize an existing front setback of 1.6 metres for 11 Fergus Street, shall be subject to the following recommended conditions:

1. Limitation

That the approved minor variance applies only to the front setback of the single detached dwelling at 11 Fergus 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

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 (1-877-991-9959), 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.

5. Air Conditioning Unit

The owner/applicant shall be required to relocate the existing air conditioning unit in the front yard, as air conditioning units are considered to be accessory structures in accordance with Section 4.1.1.4 and accessory structures are not permitted within the front yards of properties within Urban Residential Zones.

The air conditioning unit shall be relocated to an interior side yard or to the rear yard, in compliance with the Kingston Zoning By-Law, prior to Building Permit issuance.


6. Topsoil on Municipal Boulevard

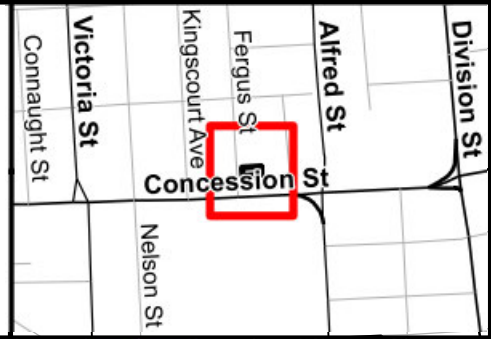
The owner/applicant shall be responsible for re-instating the municipally owned boulevard with topsoil and sod along the frontage of 11 Fergus Street, excluding the location of the driveway, prior to Building Permit issuance.



Committee of Adjustment Key Map

Address: 11 Fergus Street
File Number: D13-004-2024
Prepared On: Jan-31-2024

 Lands Subject to Minor Variance





Committee of Adjustment Neighbourhood Context

Address: 11 Fergus Street
File Number: D13-004-2024
Prepared On: Jan-31-2024

- Subject Lands
- Property Boundaries
- Proposed Parcels







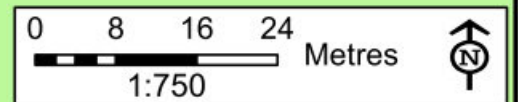
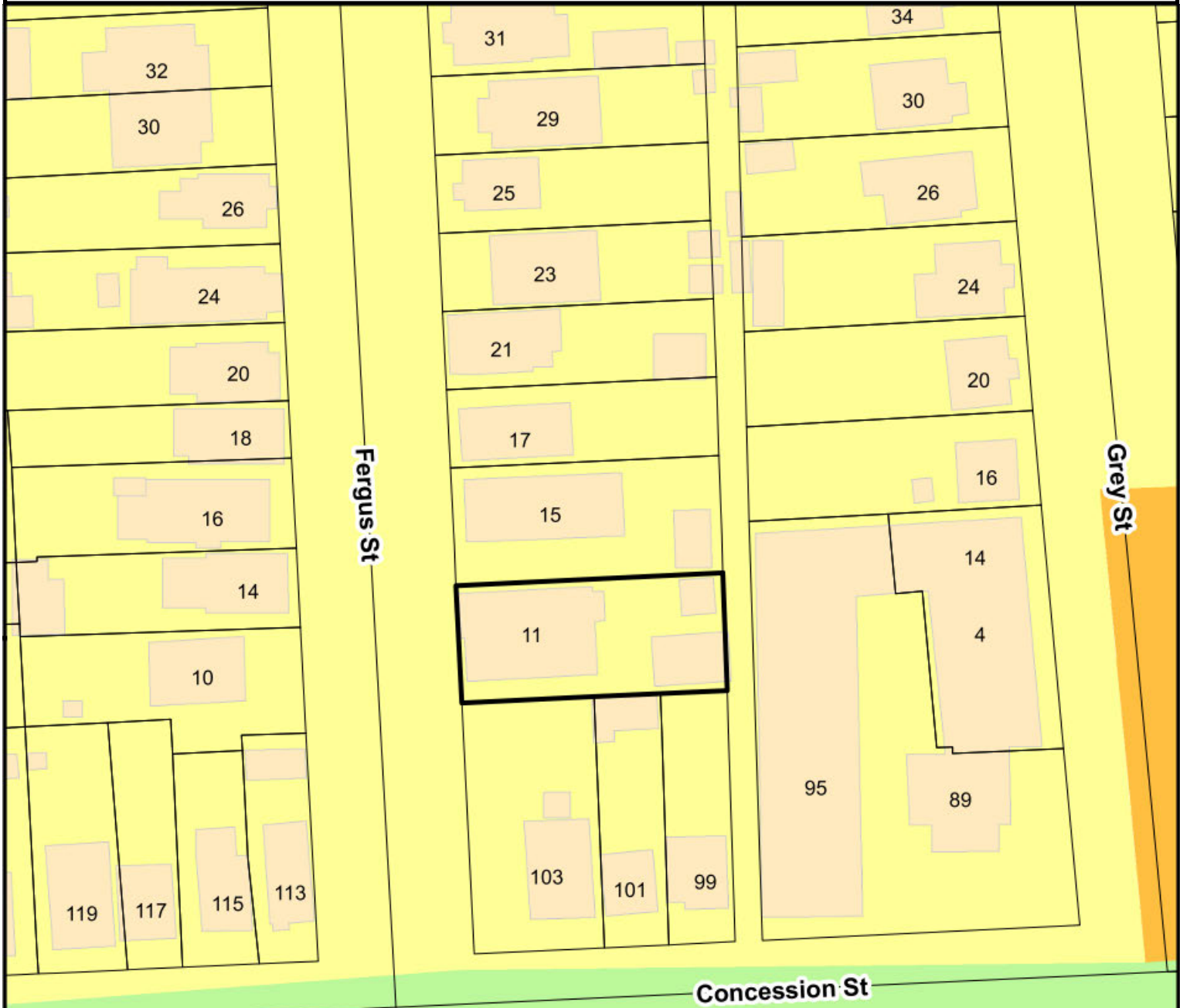
This document is prepared in reliance on the information provided to the City of Kingston. The City of Kingston assumes no responsibility for any errors, omissions, or damages of any kind resulting from the use of, or reliance on, the information contained in this document. The City of Kingston disclaims any representation or warranty, express or implied, concerning the accuracy, quality, or reliability of the information contained in this document. © The Corporation of the City of Kingston.



Committee of Adjustment Official Plan, Existing Land Use

Address: 11 Fergus Street
File Number: D13-004-2024
Prepared On: Jan-31-2024

-  Subject Lands
-  ARTERIAL COMMERCIAL
-  OPEN SPACE
-  RESIDENTIAL



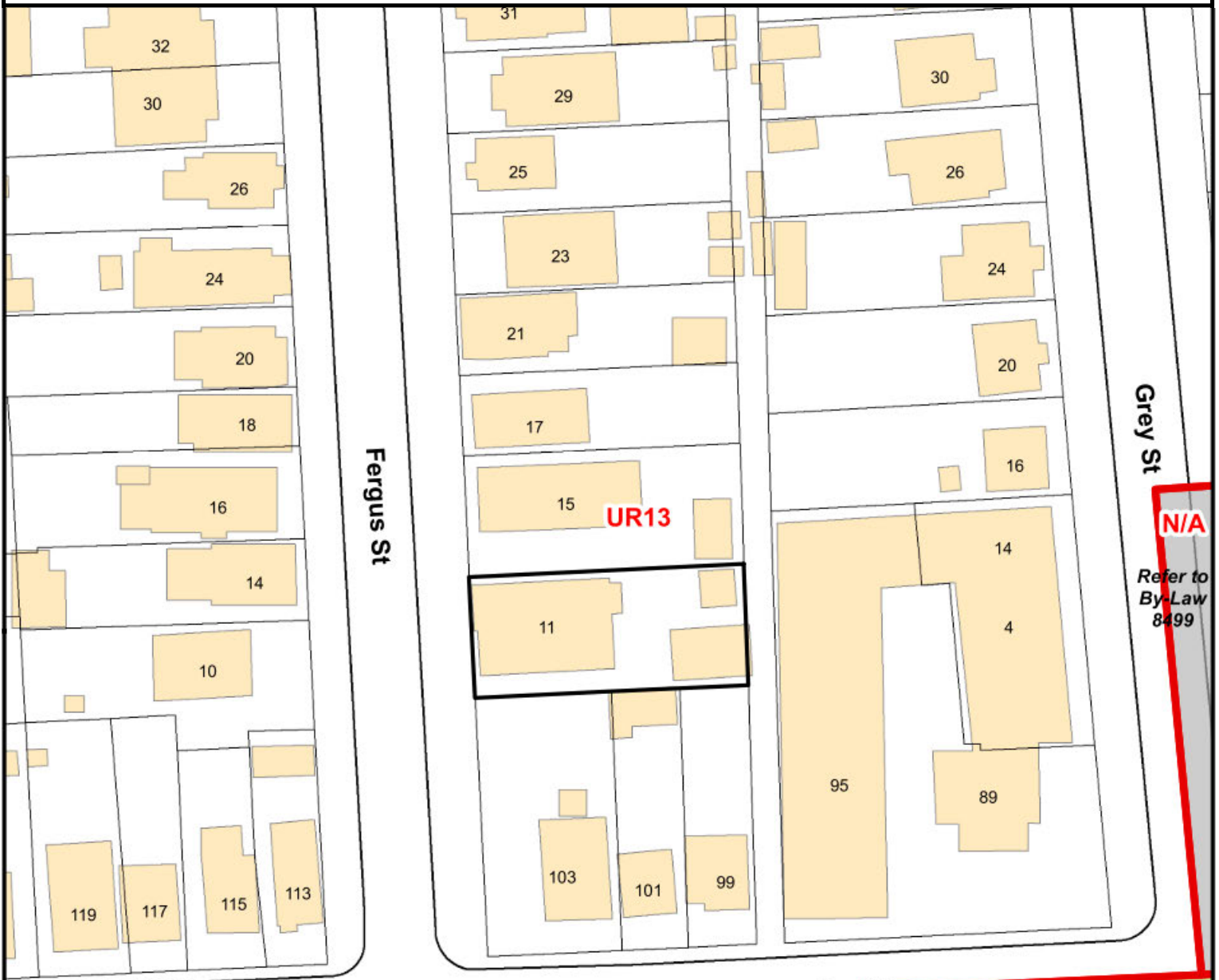


Planning Committee
Existing Zoning
Kingston Zoning By-Law 2022-62

Planning Services

Address: 11 Fergus Street
File Number: D13-004-2024
Prepared On: Jan-31-2024

- 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)



Fergus St

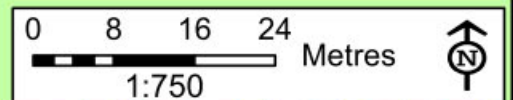
Grey St

N/A

Refer to By-Law 8499

Concession St

OS2 L22

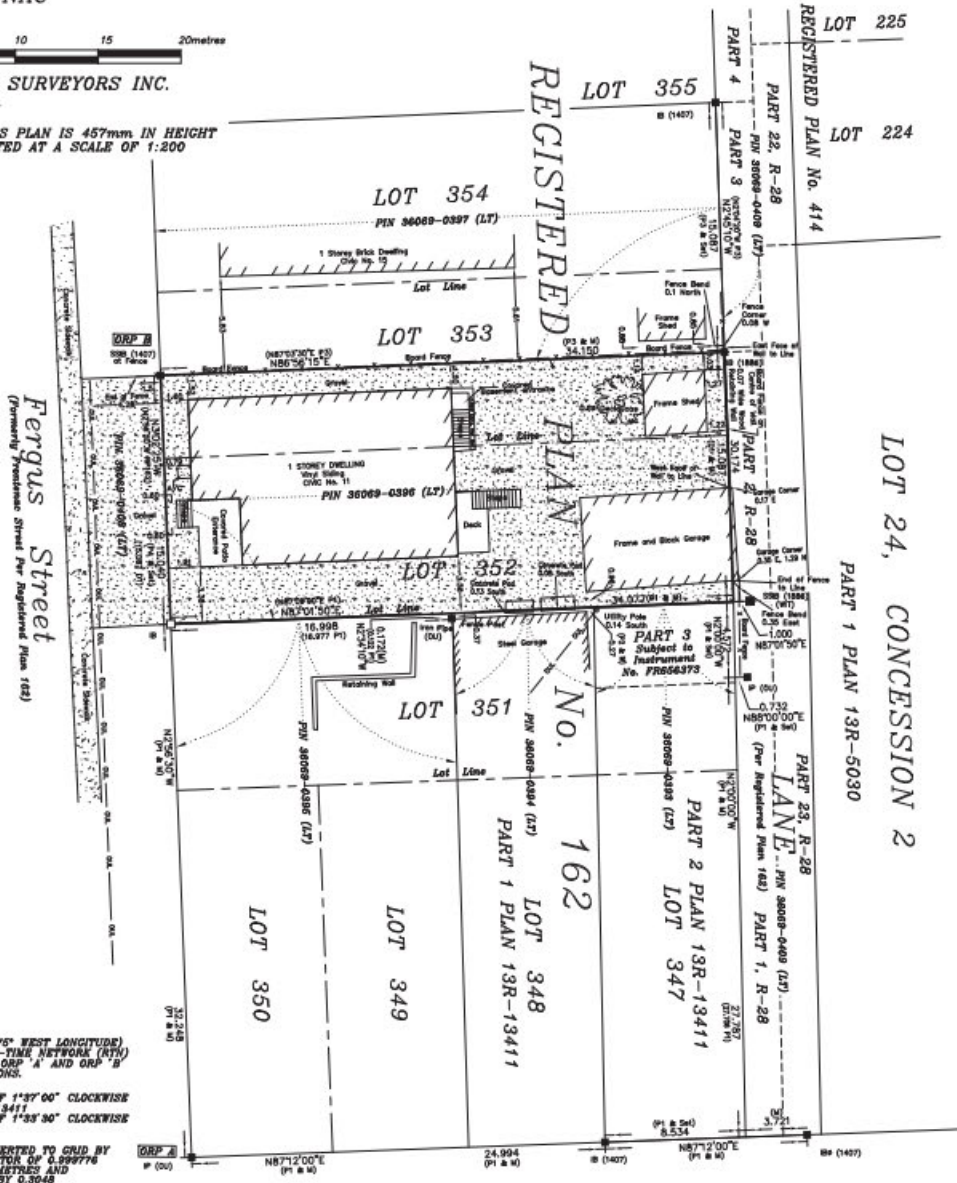


Surveyor's Real Property Report (PART 1)
PLAN of ALL of LOT 352 & PART of LOT 353
REGISTERED PLAN No. 162
CITY OF KINGSTON
COUNTY of FRONTENAC
SCALE=1:200



HOPKINS, CHITTY LAND SURVEYORS INC.
- 2023 -

THE INTENDED PLOT SIZE OF THIS PLAN IS 457mm IN HEIGHT
BY 610mm IN WIDTH WHEN PLOTTED AT A SCALE OF 1:200



PART 2 : REPORT SUMMARY	
Description of Land	11 Fergus Street
Being all of Lot 352 a part of Lot 353, Registered Plan No. 162, City of Kingston, and being All of PIN 30069-0396 (L7).	
Registered Easements and/or Right-of-Way	None
Compliance with Municipal Zoning By-Laws	Not certified by this Report.
Additional Information	4. Fence and block garage to a maximum of 0.91 metres over the ends PART 2 R-28 as shown on the plan. Two concrete pads are a maximum of 0.13 metres and 0.68 metres over this as shown on the plan.

- LEGEND:**
SSIF'S PLANTED DUE TO INSUFFICIENT OVERBURDEN
- denotes Planted Survey Monument
 - Found Survey Monument
 - SIB Standard Iron Bar
 - SSIB Short Standard Iron Bar
 - IB Iron Bar
 - IBa Iron Bar (round)
 - RB Reck Bar
 - RPL Reck Plug
 - (WT) Witness
 - (M) Measured
 - CC Cut Cross
 - (OU) Origin Unknown
 - (HP) Hydro Pole
 - (1407) Orange W. Elliott Ltd.-O.L.S.
 - (1886) Phil W. Chitty-O.L.S.
 - (P1) Reference Plan 13R-13411
 - (P2) Plan by (1407) dated September 3, 1990
 - (P3) Plan by (1407) dated August 24, 1990
 - (P4) Plan by (1886) dated July 23rd, 2021
 - (D1) Instrument No. PR556196

SURVEYOR'S CERTIFICATE:
I CERTIFY THAT:
1. This Survey and Plan are correct and in accordance with the SURVEYS ACT, the SURVEYORS ACT and the REGULATIONS made under them.
2. This Survey was completed on the 30th day of August, 2023.

HOPKINS CHITTY LAND SURVEYORS INC.
DATE: December 15th, 2023
Thomas MacDonald - O.L.S.

No person may copy, reproduce, distribute or alter this plan in whole or in part without the written permission of Hopkins Chitty Land Surveyors Inc.
"This is Not an Original Copy Unless Embossed with Seal"

BEARING NOTE:
BEARINGS ARE UTM GRID, UTM ZONE 18 (75° WEST LONGITUDE) NAD83 (CSRS) (2010) DERIVED FROM REAL-TIME NETWORK (RTN) GPS OBSERVATIONS AND TRANSFERRED TO ORP 'A' AND ORP 'B' BY CONVENTIONAL TOTAL STATION OPERATIONS.
FOR BEARING COMPARISONS, A ROTATION OF 1°37'00" CLOCKWISE WAS APPLIED TO BEARINGS ON PLAN 13R-13411.
FOR BEARING COMPARISONS, A ROTATION OF 1°33'30" CLOCKWISE WAS APPLIED TO BEARINGS ON (P3).
DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.999776.
DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048.

THIS PLAN OF SURVEY RELATES TO AGLS PLAN SUBMISSION FORM NUMBER 1-61680 (C) Copyright 2023

Party Chg# 20	Instrument 20	Checked By: TCM	Plan By: DM
---------------	---------------	-----------------	-------------

HOPKINS CHITTY LAND SURVEYORS INC.
Ontario Land Surveyors
www.hopkinschitty.com

1824 GARDINERS ROAD, SUITE 102
KINGSTON, ONTARIO K7P-0G2
Tel: (613) 364-8266
Fax: (613) 364-3513

PROJECT No. 2023-0455
All of Lot 352 & Part of Lot 353
Registered Plan No. 162
City of Kingston

Concession Street

This plan was prepared for James Cochrane



Figure 1: Frontal view of the subject property at 11 Fergus Street. As conditions of approval, the air conditioning unit shall be required to be relocated to the rear or side yard, and the municipally owned boulevard area along the frontage of the property shall be re-instated with topsoil and sod.



Figure 2: View of the subject property and the adjacent property at 15 Fergus Street. The reduced front setback for the subject property is visually consistent with the character of the other homes in the surrounding neighbourhood.



Planning Services

Committee of Adjustment Public Notice Notification Map

Address: 11 Fergus Street
File Number: D13-004-2024
Prepared On: Jan-31-2024

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

