



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-24-028**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Chris Booth, Senior Planner  
**Date of Meeting:** April 15, 2024  
**Application for:** Minor Variance  
**File Number:** D13-006-2024  
**Address:** 931 Malvern Terrace  
**District:** District 3 – Collins-Bayridge  
**Owner:** Robert Koss  
**Applicant:** Martin Mack

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**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 931 Malvern Terrace. The applicant is proposing to reconstruct a single-detached house that was destroyed by fire in 2022. The proposed rebuild would utilize the former foundation, but the home would be enlarged, necessitating an expanded footprint into the rear and side yards. As the lot is situated adjacent to Dunham Park through which runs High Gate Creek, relief of 7 metres is requested from the 30 metre separation distance from a water body as required by the Kingston Zoning By-Law Number 2022-62.

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

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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 D13-006-2024, for the property located at 931 Malvern Terrace to reconstruct a single-detached house with expanded footprint, be approved, as described below:

**Variance Number 1:**

By-Law Number 2022-62: 4.23.1 Waterbody Separation Distance

Requirement: 30 metre separation from the high-water mark to any use or building.

Proposed: 23 metres

Variance Requested: 7 metres

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-24-028.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

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Chris Booth, Senior 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 January 29, 2024, a minor variance application was submitted by Martin Mack, on behalf of the owner, Robert Koss, with respect to the property located at 931 Malvern Terrace. The home formerly situated on this property was significantly damaged during a fire at the neighbouring property to the south, 927 Malvern Terrace, on January 3, 2022. Both homes were subsequently demolished, and while the neighbouring home is now being rebuilt, a variance is requested to facilitate reconstruction at 931 Malvern Terrace to accommodate a larger footprint. While the enlarged footprint can be easily accommodated within the building envelope established in the UR1.A zone (and would be consistent with the building typology of the surrounding neighbourhood), the subject site is constrained by the 30-metre setback from a waterbody required in the Kingston Zoning By-Law. A variance from this setback is therefore necessary to enable the expanded footprint.

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

- Site Plan (Exhibit I)
- Elevations and Floor Plans (Exhibit J)
- Ecologist's Letter
- 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 931 Malvern Terrace (Exhibit B – Key Map), on a triangular-shaped lot nearly 764 square metres in size. The lot currently contains the foundation of the former home, and the side and rear yards consist of landscaped open space. The north side of the property abuts Dunham Park, through which runs High Gate Creek. Its proximity to the creek results in small portions of the property falling within the flood plain. The Cataraqui Region Conservation Authority (CRCA) has confirmed the extent of the flood plain as being coterminous with the 85.34 metre contour interval (which is measured above sea level). The CRCA typically requires a 6-metre setback from the edge of a flood plain, which serves as an additional buffer between development and a natural hazard. While only two small portions of the subject site are within the flood plain, significant portions of the side and rear yard are within CRCA's required 6-metre setback. The property is even more heavily constrained by the City's required 30-metre setback from water bodies.

In addition to neighbouring Dunham Park, the subject is surrounded by low-rise single-detached homes (Exhibit C – Neighbourhood Context Map). The property is designated Residential in the Official Plan (Exhibit D – Official Plan Map) and zoned Urban Residential Type 1.A (UR1.A) in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map).

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## 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 Plan.

The proposed development meets the Strategic Policy direction of the Official Plan, as it does not seek to alter the existing character of this stable housing area. Housing districts such as the neighbourhood around Dunham Park are envisioned to remain stable in accordance with Section 2.6, and allow minor development that integrates with the prevailing built form in terms of height, density, and amenity. The proposed rebuild would be within the prescribed 10.7 metre height limit of the zone, and is consistent with the surrounding two-storey pitched-roof building forms. While the footprint is proposed to increase, it does not constitute an increase in density, and despite the higher lot coverage, the over-sized property would still afford nearly 70% landscaped open space which functions as outdoor amenity space for the home.

These aspects of the site and building design also ensure that the rebuild meets the compatibility requirements of Section 2.7. However, compatibility pertains not just to the surrounding homes but also to the adjacent natural open space. Where it abuts Dunham Park, the proposal would maintain a generous side yard of at least 4.47 metres and maintain a setback of at least 3 metres from the edge of the flood plain, as required by CRCA. This not only mitigates the potential effects of a natural hazard on private property, but maintains a transition to the nearby open space.

This transition area is broadly defined in the Official Plan as a “ribbon of life” and intended to act as a naturalized buffer between development and natural areas. This buffer generally helps to enhance water quality, minimize soil erosion, provide plant and animal habitat, establish connectivity and wildlife corridors, and contributes to the overall health of shoreline ecosystems,

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particularly fish habitat. The buffer may also be used to screen views of development from the water, and to create natural spaces for passive recreation.

As such, a minor variance seeking to encroach upon this buffer area would need to demonstrate that there would be no adverse impacts and that the integrity of the naturalized lands would be unaffected. Potential impacts were considered by a qualified professional ecologist, who found that while the creek provides fish habitat, no species at risk are present, and the fish are a generally tolerant species. It was noted that the open space surrounding the creek is vegetated but varies in width, and there are already existing buildings and swimming pools within 30 metres of the water channel. The greatest potential for impact on the creek was expected to be siltation during the construction process, and simple mitigation measures were recommended, which have been included as a recommended condition of approval in Exhibit A.

The Cataraqui Region Conservation Authority (CRCA) did not have any objections to the proposed reduction of the 30 metre setback. Furthermore, the proposal does not impact any heritage resources, nor will it impede site functionality or available servicing. A variance of this nature would not be more appropriately addressed through a zoning amendment, and its approval would not set an undesirable precedent for the immediate area, due to the site-specific environmental analysis that occurred. As noted in the professional ecologist's letter, the characteristics of this naturalized open space (such as width) differ along its course, making it inappropriate to apply site-specific findings equally across all properties backing onto Dunham Park. The varying of environmentally focused regulations is an inherently site-specific exercise.

The proposal therefore meets the intent of the Official Plan, as the proposed reconstruction and expansion 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 UR1.A in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map). The UR1.A zone permits low-rise residential uses subject to certain provisions.

The applicant is seeking a variance to the following zone provision to facilitate the rebuild of the single-detached home on an expanded footprint:

### **Variance Number 1:**

By-Law Number: 2022-62 4.23.1 Waterbody Separation Distances

Requirement: 30 metre separation from the high water mark of a waterbody to any use or building.

Proposed: 23 metres

Variance Requested: 7 metres

The intent of the provisions relating to the 30-metre waterbody setback is primarily to protect the riparian zone from the impacts of development. Separate zoning provisions exist to protect development from natural hazards such as flooding, alongside requirements by the CRCA. The CRCA has confirmed that the flood plain from High Gate Creek does not overlap with the

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proposed addition, thus the intent of the Zoning By-Law is being met. Similarly, the potential for negative impacts to the waterbody and surrounding open space have been studied by a professional ecologist and it has been determined that risks are limited and can be easily mitigated. Furthermore, there is already significant development upstream (including pools, decks, and several houses) that has occurred closer than the 23 metre setback being proposed.

Where it abuts Dunham Park, the proposal would maintain a generous side yard of at least 4.47 metres and maintain a setback of at least 3 metres from the edge of the flood plain, as required by CRCA. This not only mitigates the potential effects of a natural hazard, but maintains a setback to the property line almost four times greater than the typical 1.2 metre interior side yard setback required in the UR1.A zone. An almost 4.5 metre-wide setback would continue to ensure an effective and functional buffer between the structure and the naturalized open space, with sufficient width to accommodate permeable surfaces and additional vegetation.

At 763.9 square metres, the lot is also of sufficient size to retain almost 70% open landscaped area should the new home be constructed as proposed, which greatly exceeds the minimum 30% required in the zone. Building envelopes in the UR1.A zone are not constrained by maximum lot coverage or maximum building depth, which acknowledges the influence of natural features and unique lot shapes on-site design in this neighbourhood. This therefore allows more tailored site and building design with a view to mitigating potential impacts from natural hazards on a case-by-case basis, subject to the submission of studies by qualified professionals.

With all requirements of the UR1.A zone being met, and the results of an ecological assessment indicating that a reduction of the 30 metre setback is appropriate subject to simple mitigation measures, the general intent of the Zoning By-Law is being met.

### **3) The variance is minor in nature**

The variance is considered minor as the 7 metre reduction has been demonstrated through a professional analysis to not create any adverse impacts. Furthermore, the only potential impact that might be created (siltation during construction) can be easily mitigated through a variety of techniques, further reflecting the minor nature of this proposed encroachment. Furthermore, the variance will not result in a building form that exceeds the size of surrounding residential homes, and does not result in overlook or privacy concerns due in large part to its location bordering natural open space. In fact, its location makes it a more viable candidate for an expanded floor plate, as it is not being expanded in the direction of any neighbouring homes, and significant yard space (70% open landscaped area) would remain post-construction.

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

Currently, the lot is vacant (with the exception of the former building foundation) and has been unused since early 2022. The proposed variance would see the lot once again used for its intended purpose, and would result in a single-detached home that is compatible with the character of the neighbourhood. By re-using the existing foundation, the proposal represents an efficient use of resources, and the expansion of the building will allow for greater functionality on

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an irregularly shaped parcel. As such, the variance is a desirable and appropriate use of the land.

**Technical Review: Circulated Departments and Agencies**

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering         | <input checked="" type="checkbox"/> Heritage Services    |
| <input type="checkbox"/> Finance                      | <input checked="" type="checkbox"/> Utilities Kingston  | <input type="checkbox"/> Real Estate                     |
| <input type="checkbox"/> Fire & Rescue                | <input type="checkbox"/> Kingston Hydro                 | <input checked="" type="checkbox"/> Environment Division |
| <input checked="" type="checkbox"/> Solid Waste       | <input checked="" 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 checked="" type="checkbox"/> Hydro One         | <input type="checkbox"/> Enbridge Pipelines             | <input type="checkbox"/> TransCanada Pipelines           |
| <input type="checkbox"/> Kingston Airport             | <input checked="" type="checkbox"/> Public Works        | <input checked="" type="checkbox"/> Forestry             |

**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 comments were received with regard to the application. 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 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 rebuild of a single-detached house on an expanded footprint 23 metres from a waterbody, following the damage and subsequent demolition of the former home due to fire.



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**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 April 15, 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 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 (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

Chris Booth, Senior Planner, 613-546-4291 extension 3215

**Other City of Kingston Staff Consulted:**

None

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**Exhibits Attached:**

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

## Recommended Conditions

The approval of minor variance application, File Number D13-006-2024, to allow the expansion and reconstruction of a single-detached house, shall be subject to the following recommended conditions:

### 1. Limitation

That the approved minor variance applies only to the reconstruction of a single-detached house on the subject property 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 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](mailto: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](mailto:archaeology@ontario.ca)), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

## **5. Forestry Requirements**

Prior to undertaking any works for the reconstruction, the owner shall obtain a Tree Permit under the City's Tree By-Law to ensure that the existing City-owned Ash tree located in the road allowance will be preserved. An Arborist Report and Tree Preservation Plan (TPP) will be required that specifically outlines the tree protection fencing limits with dimensions from the existing tree and includes justifications for the placement of the fencing within the critical root zone of the tree. Financial securities as determined by City staff will be required using the approved appraisal formulae within the Tree By-law. An image detail of the proposed Tree Protection fencing materials will need to be included on the TPP and the Tree Permit application.


## **6. Ecological Requirements**

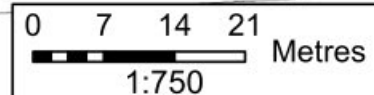
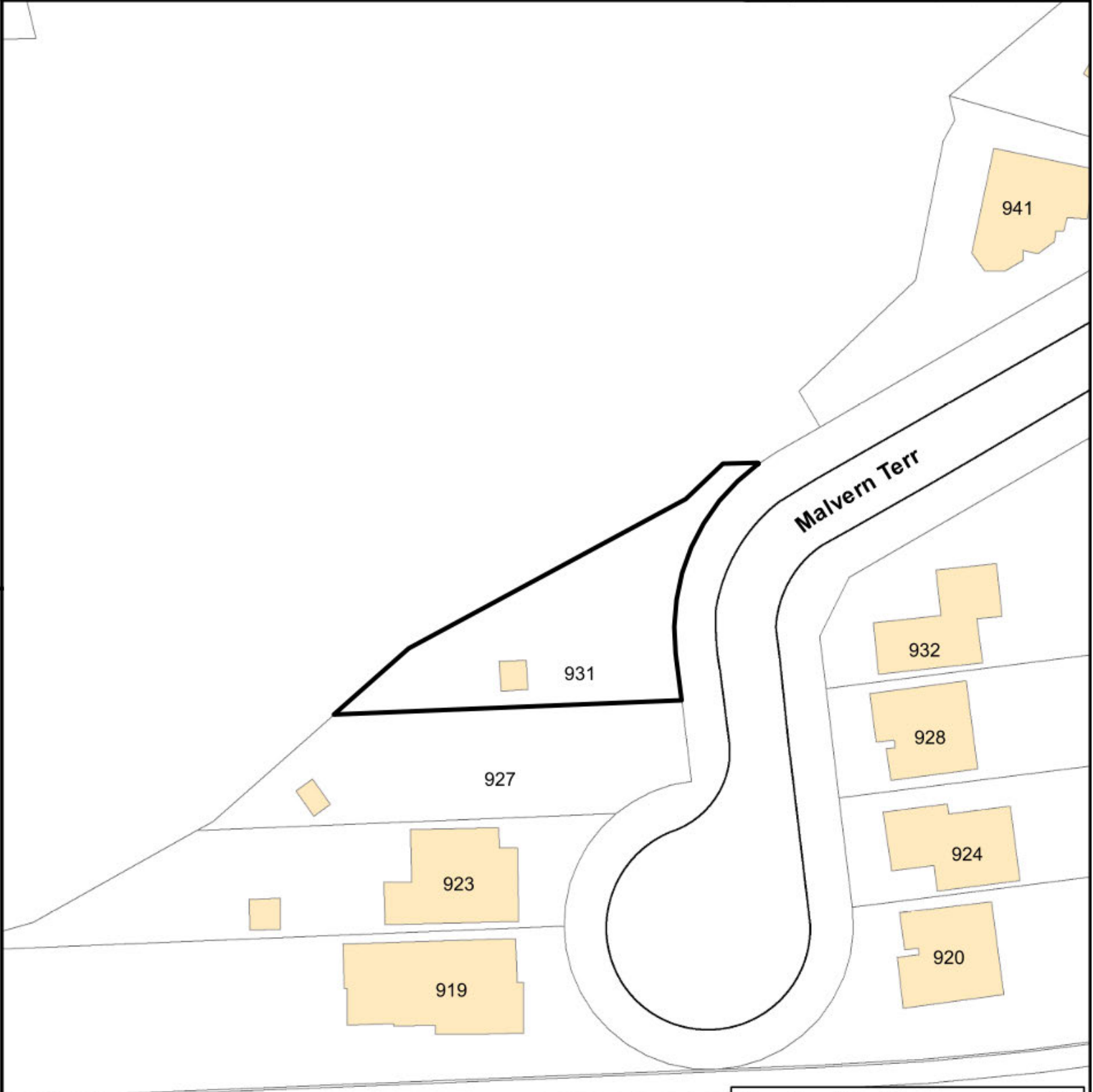
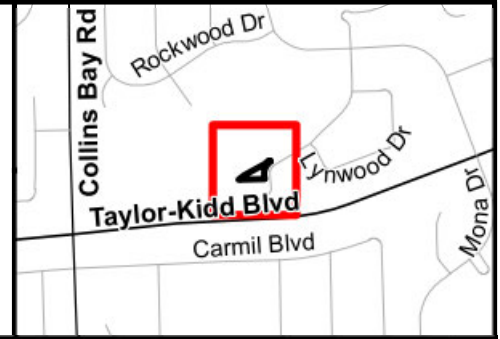
To mitigate any potential impacts during the construction process, siltation control measures are to be installed during construction between the construction area and the area designated as Open Space. These measures may include staked straw bales, staked and toed-in silt fencing, or other similar measure that will have the effect of preventing silt from running off-site into the Open Space area and/or the watercourse.



### Committee of Adjustment Key Map

Address: 931 Malvern Terr  
File Number: D13-006-2024  
Prepared On: Feb-02-2024

 Lands Subject to Minor Variance






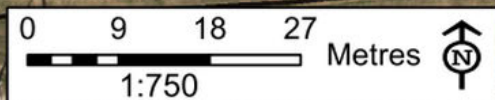


Planning Services

# Committee of Adjustment Neighbourhood Context

Address: 931 Malvern Terr  
File Number: D13-006-2024  
Prepared On: Feb-02-2024

-  Subject Lands
-  Property Boundaries
-  Proposed Parcels



Prepared By: ncameron  
Prepared On: Feb-02-2024

Warranty: This document is prepared in reliance on information provided by the applicant and is not intended to be used for any other purpose. The City of Kingston does not warrant the accuracy of the information provided in this document. The City of Kingston does not accept any liability for any damages or loss of any kind, or for any other reason, arising from the use of this document. The City of Kingston does not accept any liability for any damages or loss of any kind, or for any other reason, arising from the use of this document. © 2024 City of Kingston.

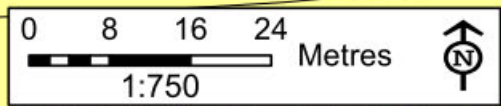
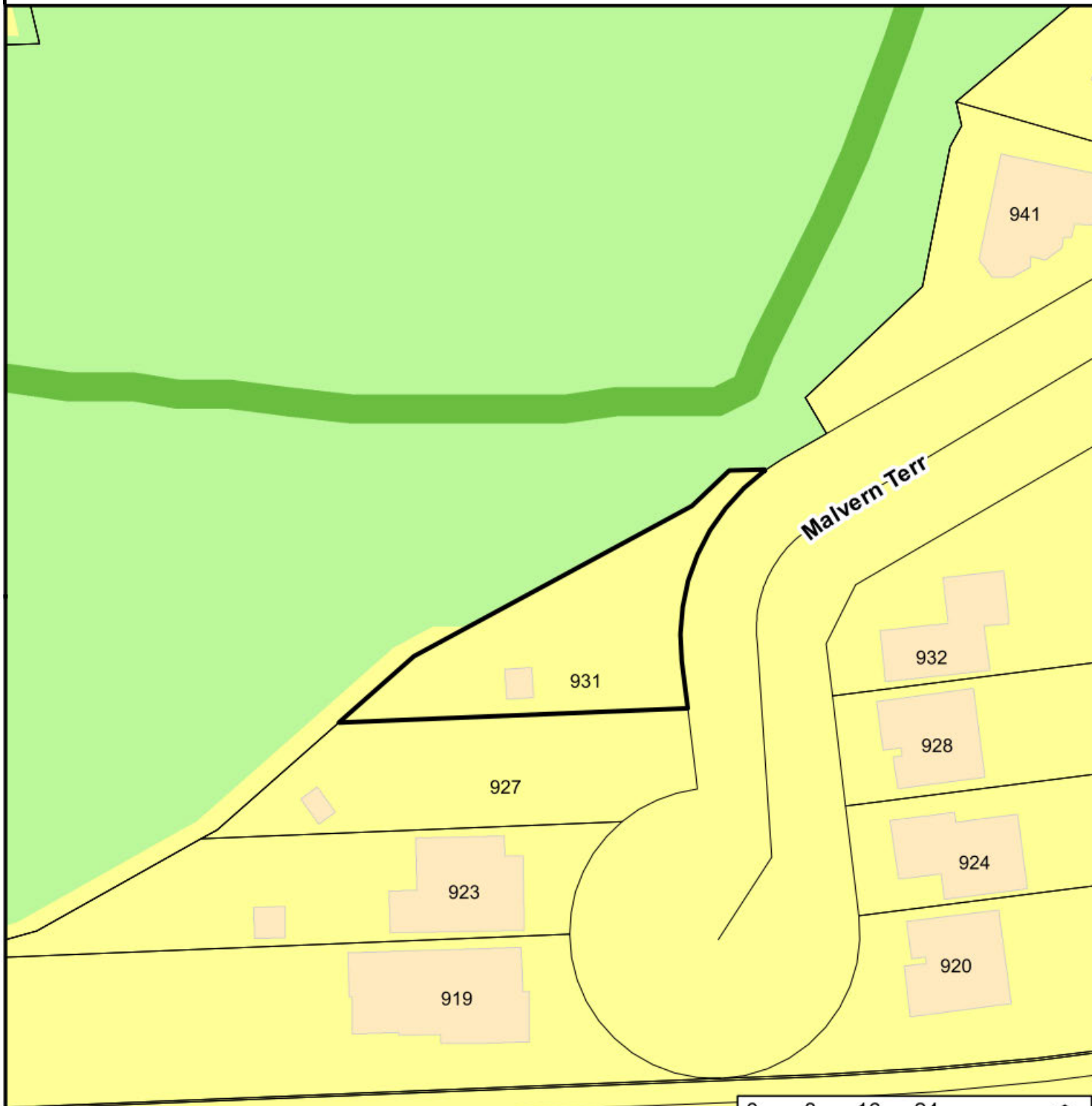


Planning Services

### Committee of Adjustment Official Plan, Existing Land Use

Address: 931 Malvern Terr  
File Number: D13-006-2024  
Prepared On: Feb-02-2024

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





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

Planning Services

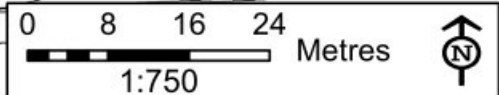
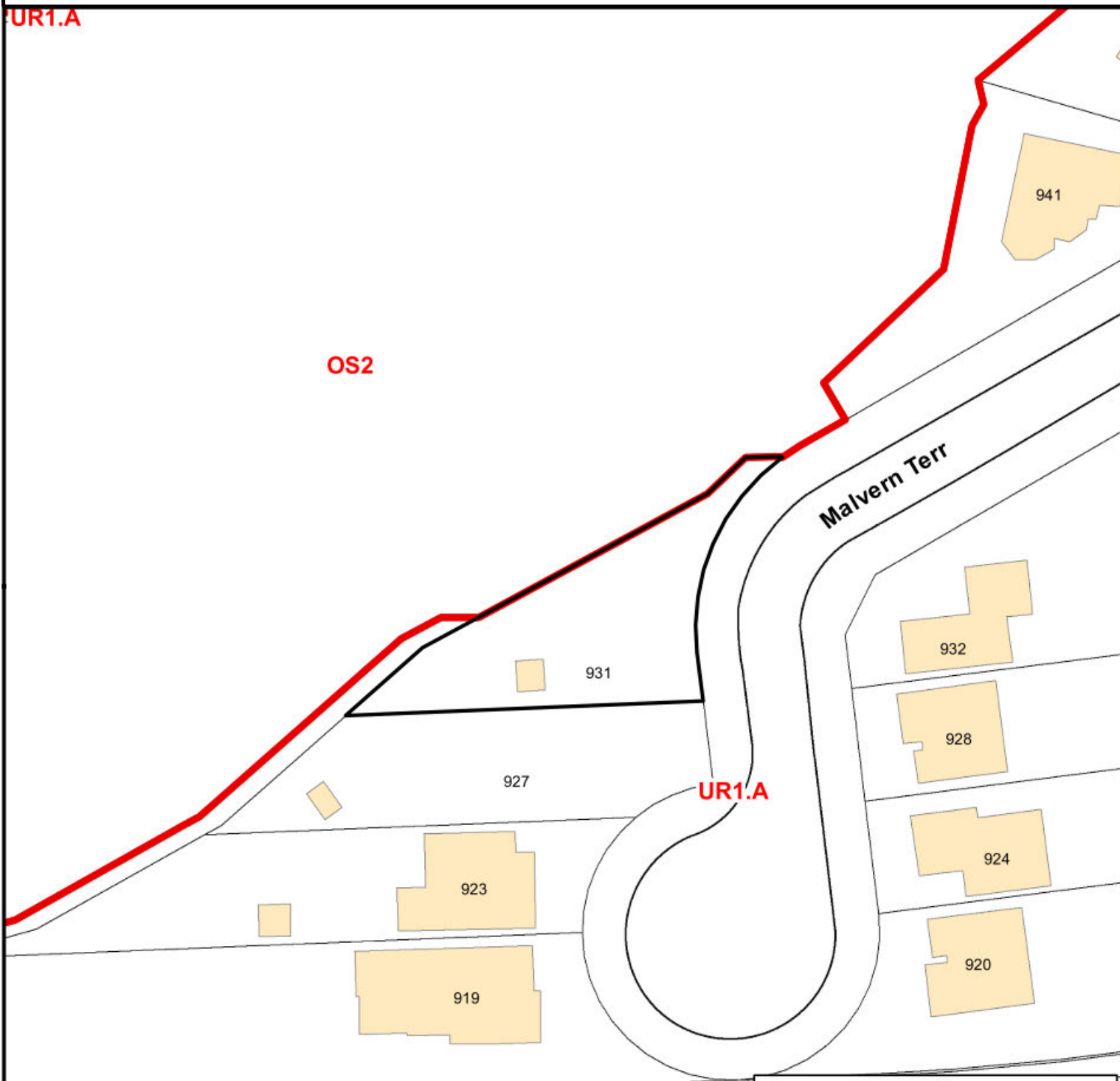
Address: 931 Malvern Terr  
File Number: D13-006-2024  
Prepared On: Feb-02-2024

Subject Lands  
Schedule 1 Zoning Map  
Zone

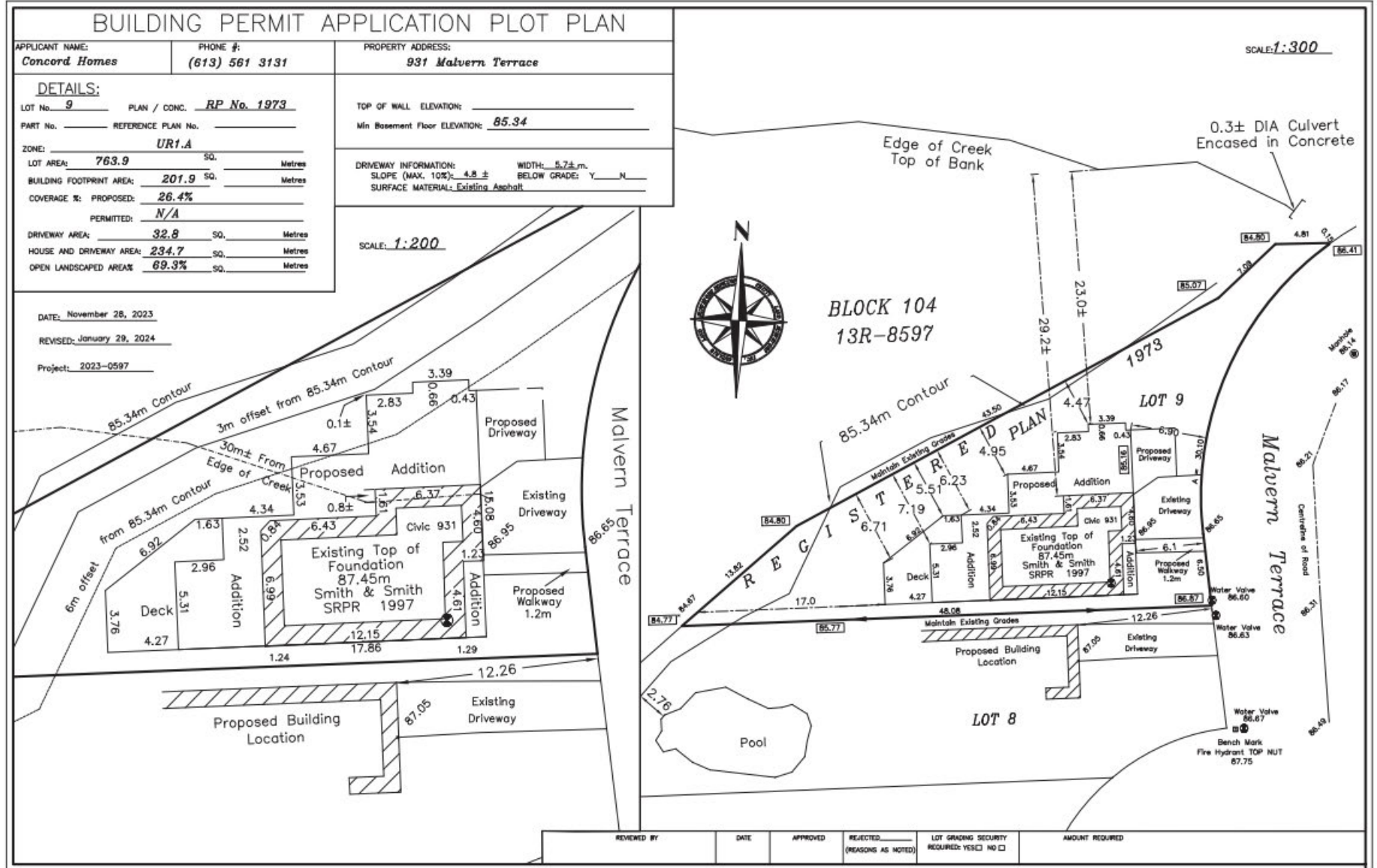
Schedule E - Exception Overlay  
Legacy Exceptions (LXXX)  
Exceptions (EXXX)  
Schedule F - Holding Overlay  
Holding Overlay (HXXX)

UR1.A

OS2







The subject site is depicted through the following photographs, taken February 21, 2024.



**Figure 1:** The subject site, viewed from Malvern Terrace looking west. The site is currently occupied only by the driveway and foundation of the former home, which was damaged beyond repair and subsequently demolished following a January 2022 fire at the neighbouring property. The neighbouring property is now being rebuilt and is visible on the left side of the image.



**Figure 2:** The neighbouring property, 927 Malvern Terrace, was destroyed by fire in January 2022, and is now being re-built. For contextual purposes, it is a two-storey home of a similar size to what is proposed at 931 Malvern Terrace, which would be situated on the right side of the image.



**Figure 3:** The Open Space area containing High Gate Creek, viewed from the northernmost edge of the subject site looking northwest.



**Figure 4:** High Gate Creek, viewed from within the Open Space area.



**Figure 5:** The subject site, viewed from the edge of the Open Space area, looking south. The foundation of the former home is visible towards the centre of the image, with the new home currently under construction at the neighbouring property visible beyond.



**Figure 6:** The rear yard of the subject property, looking west towards the Open Space area, which curves around the site.



**Figure 7:** The subject site, viewed from the rear yard looking east towards Malvern Terrace. The foundation of the former home is visible in the centre of the image. The neighbouring home at 927 Malvern Terrace is visible to the right, and the Open Space area is situated behind the line of trees to the left.







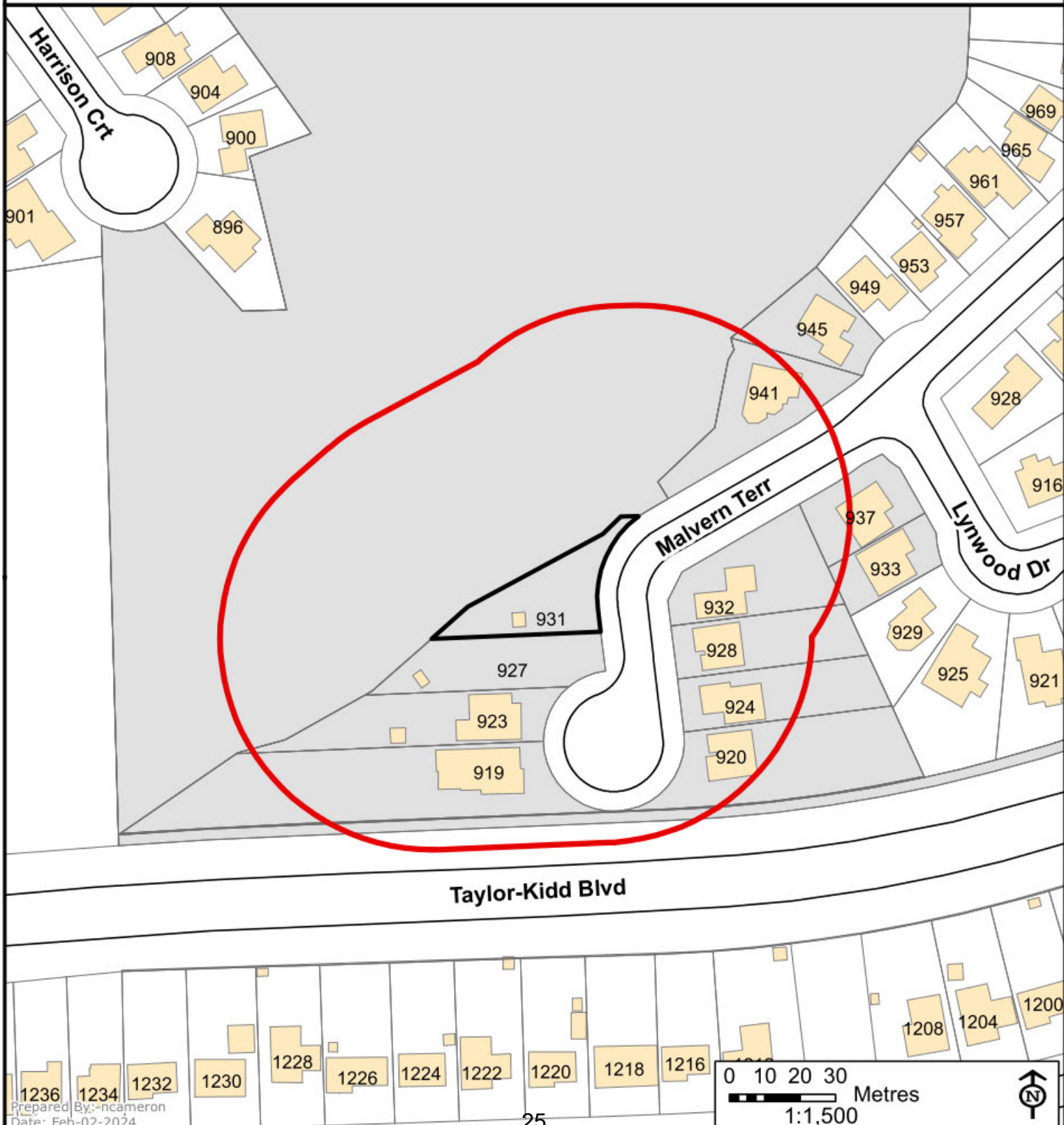


Planning Services

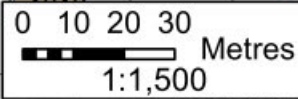
# Committee of Adjustment Public Notice Notification Map

Address: 931 Malvern Terr  
File Number: D13-006-2024  
Prepared On: Feb-02-2024

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



Prepared By: ncameron  
Date: Feb-02-2024

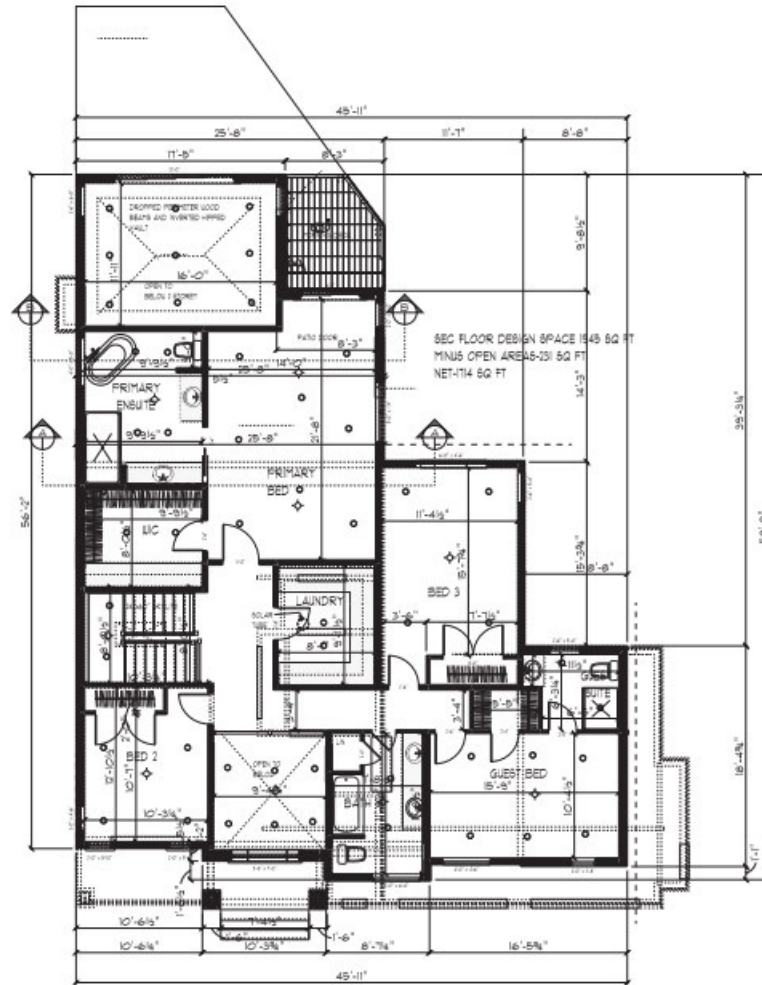


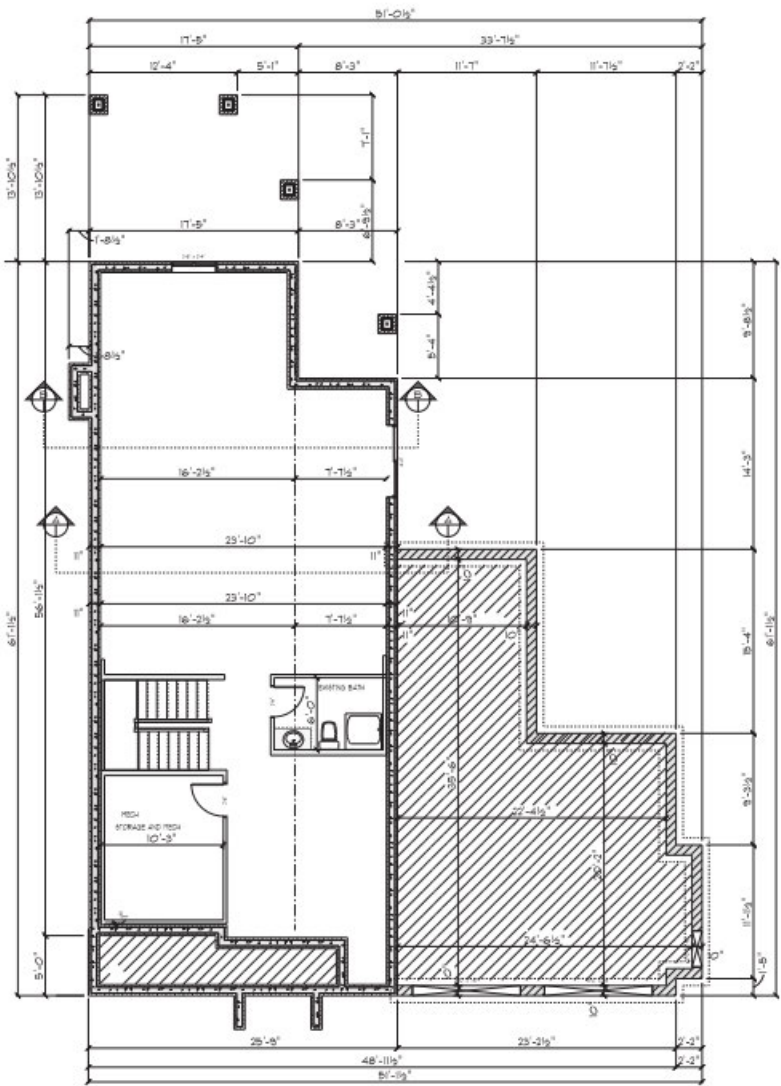


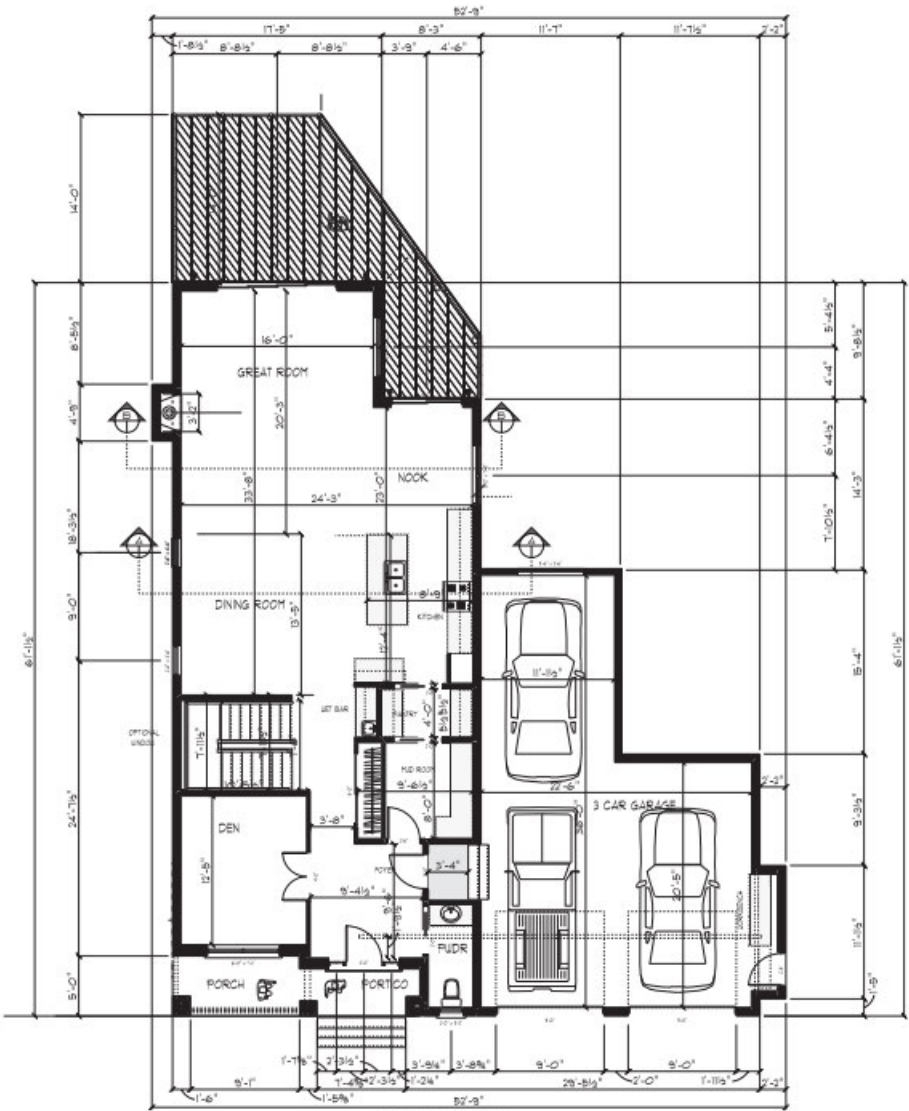












FIRST FLOOR 1330 SQ FT  
 SEC FLOOR NET -1663. SQ FT  
 TOTAL 2993. SQ FT LIV SPACE