

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS
COMMITTEE OF ADJUSTMENT
AGENDA**

Wednesday, October 10, 2018, at 5:30 P.M.

Council Chambers, Municipal Office, 3131 Old Perth Rd., Almonte

A. CALL TO ORDER

B. APPROVAL OF AGENDA

C. DISCLOSURE OF PECUNIARY INTEREST

D. APPROVAL OF MINUTES

1. Committee of Adjustment – **Pages 1 to 2**
Committee motion to approve the Committee of Adjustment Minutes from the meeting held on September 19th, 2018.

E. NEW BUSINESS

None.

F. HEARINGS

1. Application A-17-18 – Pages 3 to 21

Owner: Dan Cavanaugh
Legal Description: Concession 12, Part Lot 8, Plan 26R-835, Part 1
Address: 3561 Timmins Road
Zoning: Rural (RU) & Agricultural (A)

The applicant is requesting relief from the front yard setback for a rural use within the Rural (RU) Zone, from 15m (49.2ft) to 7m (23.0ft), and the setback from the Agricultural designation, from 150m (492ft) to 14m (46.0ft), to accommodate a legally non-complying existing hunt camp structure.

2. Application A-18-18 – Pages 22 to 32

Owner: Richcon Homes Inc. (Pat Richards)
Legal Description: Plan 6262, Anderson Section, Pt Lt 13,
Plan 27R-9062, Pt 1
Address: Elgin Street
Zoning: Residential Second Density (R2)

The applicant is requesting relief from multiple provisions of the Comprehensive Zoning By-law to legally permit a semi-detached dwelling within the Residential Second Density (R2) Zone, being to: (1) reduce the side yard setback from 1.2m (3.9ft) to 1m (3.3ft); (2) reduce the minimum frontage from 10m (32.8ft) to 9.45m (31.0ft); (3) reduce the required lot area from 320m² (0.8ac) to 298m² (0.7ac); and (4) increase maximum lot coverage from 45% to 46%.

G. OTHER BUSINESS

None.

H. ANNOUNCEMENTS

None.

I. ADJOURNMENT

**THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS
COMMITTEE OF ADJUSTMENT
MINUTES**

Wednesday, September 19, 2018, at 5:30 P.M.

Council Chambers, Municipal Office, 3131 Old Perth Rd., Almonte

PRESENT: Patricia McCann-MacMillan (Chair)
Stacey Blair

ABSENT: Christa Lowry (with regrets)

APPLICANTS/PUBLIC: A-19-18: None

STAFF: Andrew Scanlan Dickie, Junior Planner, Recording Secretary

Planner called the meeting to order at 5:32 p.m.

A. APPROVAL OF AGENDA

Moved by Stacey Blair
Seconded by Patricia Christa Lowry

CARRIED

B. DISCLOSURE OF PECUNIARY INTEREST

None

C. APPROVAL OF MINUTES

1. **August 15th, 2018 PUBLIC MEETING**
Moved by Patricia McCann-MacMillan
Seconded by Stacey Blair
THAT the Minutes be accepted.

CARRIED

D. NEW BUSINESS

None.

E. HEARINGS:

1. Application A-19-18

Owner/Applicant: 1259121 Ontario Inc. (Wilson Bassile)
Address: 9 Houston Drive
Legal Description: Con 10, Pt Lot 15, Plan 27R-5538, Pt 3
Ward: Almonte
Zoning: Highway Commercial Exception 1 (C3-1)

The applicant requested relief from the interior side yard setback within the Highway Commercial Exception 1 (C3-1) Zone from 3m (9.8ft) to 2.2m (7.2ft) to legally permit the expansion of a commercial building on an irregularly shaped lot. The first floor of the expansion would increase floor area for an existing business whereas the second floor would be used as office space.

The Chair asked the Planner if any comments or issues had been received since producing the report. The Planner noted no issues were communicated to the Department, nor did the Department of Roads & Public Works express concern. The applicant would still require Site Plan Control approval, which would reveal any issues regarding specific design details.

Without further discussion, the Committee took to a vote and passed the following motion:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Concession 10, Part Lot 15, Plan 27R-5538, Part 3, Almonte Ward, Municipality of Mississippi Mills, municipally known as 9 Houston Drive, to reduce the side yard setback within the Highway Commercial Exception 1 (C3-1) Zone from 3m (9.8ft) to 2.2m (7.2ft) to legally permit the expansion of a commercial building on an irregularly shaped lot, subject to the following conditions:

- 1. That the Minor Variance is approved based on the plans submitted;**
- 2. That the Owner enter into Site Plan Control as required by the Municipality Mississippi Mills' By-law #15-60; and**
- 3. That the owner obtains all required building permits.**

CARRIED

F. OTHER BUSINESS

None

G. ANNOUNCEMENTS

None.

H. ADJOURNMENT

Moved by Patricia McCann-MacMillan

Seconded by Stacey Blair

THAT the meeting be adjourned at 5:37 p.m. as there is no further business before the Committee.

Andrew Scanlan Dickie, Recording Secretary

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

PLANNING REPORT

MEETING DATE: Wednesday October 10, 2018 @ 5:30pm
TO: Committee of Adjustment
FROM: Andrew Scanlan Dickie – Junior Planner
SUBJECT: **MINOR VARIANCE APPLICATION A-17-18 (D13-CAV-18)**
Concession 12, Part Lot 8, Plan 26R-835, Part 1
Pakenham Ward, Municipality of Mississippi Mills
Municipally known as 3561 Timmins Road
OWNER/APPLICANT: Dan Cavanagh

RECOMMENDATION:

THAT the Municipality of Mississippi Mills Committee of Adjustment APPROVES the Minor Variances for setback relief for the lands legally described as Concession 12, Part Lot 8, Plan 26R-835, Part 1, Pakenham Ward, Municipality of Mississippi Mills, municipally known as 3561 Timmins Road, to (1) reduce the front yard setback from 15m to 7m and the Agricultural designation setback from 150m to 14m to legally recognize the current structure and future location of a detached dwelling use, subject to the following conditions:

- 1. That the Owner provide a scoped Environmental Impact Assessment and apply for Site Plan Control if the dwelling’s footprint is moved or expanded; and**
- 2. That the Owner obtains all required building permits.**

PURPOSE AND EFFECT

The applicant is requesting relief from the front yard setback for a rural use within the Rural (RU) Zone, from 15m (49.2ft) to 7m (23.0ft), and the setback from the Agricultural designation, from 150m (492ft) to 14m (46.0ft), to accommodate a legally non-complying existing hunt camp structure. Please note that the requests are in excess of the actual setback measurements, adding flexibility if the building requires relocating elsewhere on the property. The requested relief is outlined in the table below:

Table 1 – Requested Relief from Zoning By-law #11-83

Section	Zoning Provision	By-law Requirement	Requested
12.2	Front Yard, Minimum	15m	7m

12.2	Minimum Separation between non-farm buildings and the Agricultural designation	150m	14m
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BACKGROUND

As per the applicant, a mobile home and associated private services were installed on the property around 1977, after which it burnt down in the mid 1980s. In 2007, a 6m by 6m ‘dwelling’ was built, connecting to the existing septic, hydro, and well water. A year and a half later, the previous owner of the property moved in and resided there intermittently until Fall 2017.

Prior to purchasing the property, Mr. Cavanagh was made aware that the structure is illegal under the Ontario Building Code; no permits were issued since construction in 2007. Furthermore, there were several property standards issues requiring attention. Since ownership, he has consulted with the Municipality to determine the best route forward in addressing the longstanding property concerns.

To receive a building permit, Mr. Cavanaugh first needed to make the lot compliant with the Municipality’s Zoning By-law. Two setback deficiencies were noted, being the distance from the front property line and the agricultural designation, which is present on the rear half of the property (see the green overlay in Figure 2). In order to ease Building Code requirements and streamline property compliance, Mr. Cavanaugh also requested that we recognize a *Seasonal Dwelling* as a permitted use – the occupancy for a seasonal dwelling within the Building Code does not require elements such as insulation, nor is it his intent to use the building for year round permanent residency.

Staff’s evaluation of the requests, shared with Mr. Cavanaugh prior to the August 15th, 2018 meeting, determined that the Committee of Adjustment did not have the power to recognize a *Seasonal Dwelling* as a permitted use as per Section 45(2)(a)(ii) because to recognize a use it had to be have been lawful at some point in its history. Since its construction in 2007, no zoning on the property permitted a *Seasonal Dwelling*. The applicant chose to defer the application and re-evaluate.

Returning to the Municipality, the applicant proposed removing the request for a *Seasonal Dwelling* and asked the Municipality to evaluate the structure as a *Hunt Camp*. In the Rural (RU) Zone, where the existing structures sits, a *Hunt Camp* is permitted as a use; therefore, it does not require a Minor Variance. Although permitted, the uncertain history of the lot makes it difficult to assess whether/when the on-site structure met the *Hunt Camp* use, and thus whether it must adhere to current or past by-law provisions and definitions. Specifically, a 2015 amendment describes a *Hunt Camp* as having one (1) or less of the following features: an ESA approved power supply, a septic system exceeding Class 1 status, or a primary heating source. The lot presently has at least two (2) of said features.

Nonetheless, seeing as the building was built prior to 2008 (earliest aerial imagery available); the use, size, and amenities of the building closely resemble a recreational structure; that the structure itself could be deemed lawful under the Planning Act (see Section B of Schedule C); and that a *Hunt Camp* has been permitted since at least the Pakenham Zoning By-law #95-64,

Staff consider the old definition to be appropriate. As such, the following report is solely a comparison of the setback requests against the four (4) minor variance tests.

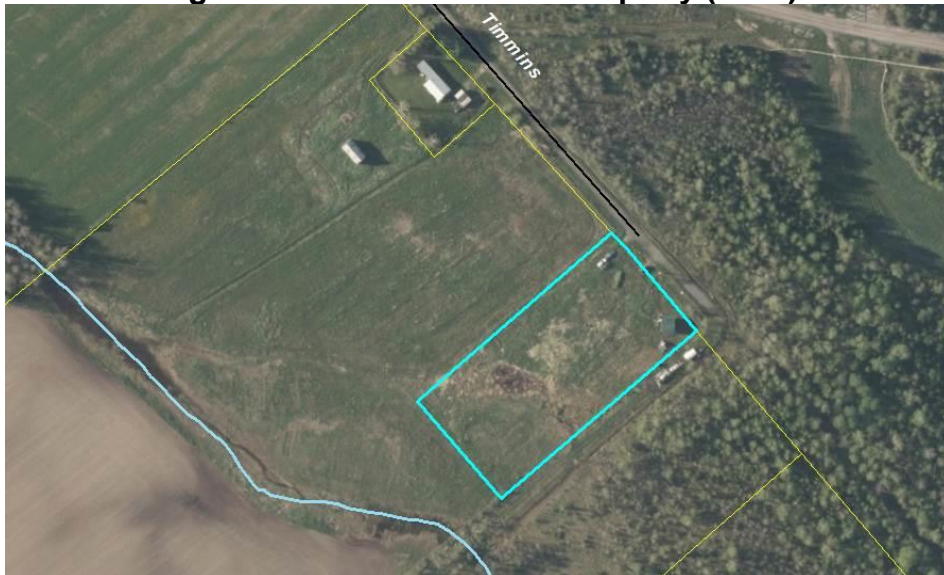
DESCRIPTION OF SUBJECT LANDS

The subject property is located at the very end of Timmins Road, a right-of-way that bisects the Municipality of Mississippi Mills and the City of Ottawa to the south of Kinburn Side Road. The property is ±0.82ha (2.02ac) in size with a frontage of ±65m (213ft). The property is generally surrounded by a combination of agricultural lands and forested rural properties.

SERVICING & INFRASTRUCTURE

The subject property is serviced by private water and septic, and has driveway access from Timmins Road, a municipally owned and maintained road (but is not winter maintained). The municipal servicing and infrastructure demands would not change as a result of the application. The location of the subject property is depicted in the following aerial photo:

Figure 1. – Aerial Photo of Property (2017)



COMMENTS FROM CIRCULATION OF THE APPLICATION

COMMENTS FROM INTERNAL CIRCULATION

Comments received based on the circulation of this application have been summarized below:

CAO: No comments received.

CBO: No comments received.

Fire Chief: No comments received.

Director of Roads and Public Works: This gravel road is not maintained in the winter, so as long as the use is seasonal, Public Works has no issues.

Recreation Coordinator: No concerns or objections.

COMMENTS FROM COUNCIL

Councillor Edwards: The reduction from the Agricultural designation does not meet our agricultural policies.

EXTERNAL AGENCIES

Health Unit: Please be advised that our comments will be provided once an inspection of the site is completed. We have notified the property owner of the need to complete and submit an application for a Maintenance Inspection to our Office.

Mississippi Valley Conservation Authority: The only consideration MVCA would have to this application is the proximity of the existing structure to a wetland that MVCA currently regulates. MVCA regulates all new development within 30 m of a regulated wetland. The existing structure is within that area. However, given that MVCA did not start regulating this wetland until December, 2017, and the structure existed its current location as of 2007, we have determined that our policies would not apply. However, any new development or site alteration within 30 m of the wetland would require permission from MVCA

COMMENTS FROM THE PUBLIC

Adjacent land owners shared their concerns regarding how the applicant proposes to use the property and its current state of condition, noting the nuisances associated to hunting (i.e. noise, proximity to firearms, and trespassing) and potential economic impact to their land.

EVALUATION

Section 45 of the *Planning Act* provides the Committee of Adjustment with the authority to grant relief from the requirements of a municipal zoning by-law. In properly evaluating such requests, the Committee needs to be satisfied that the proposal meets the four (4) tests set out in the *Planning Act*. Staff comments concerning the application of the four (4) tests to this Minor Variance request are as follows:

1. Do the proposed setback reliefs maintain the intent of the Official Plan?

The subject property is designated “Rural” and “Agricultural” in the Municipality’s Community Official Plan (COP). Both designations permit agricultural, commercial, industrial, and low-density residential uses, and associated accessory uses.

Front Yard Setback

The Municipality’s COP does not specifically address or contain policies related to minimum setbacks from a front lot line within the Rural/Agricultural designations. As such, the requested variance conforms to the general intent and purpose of the COP.

Agricultural Designation Setback

Section 3.3.3(2) of the COP indicates that new non-farm buildings and structures on lands adjacent to the Agricultural designation shall maintain a setback of 150m from its boundary. Further, where development is on an existing lot of record and the 150m setback cannot be achieved, development may take place within the setback subject to the approval of the

Committee of Adjustment. As a Minor Variance application being heard by the Committee, the requested variance conforms to the general intent and purpose of the COP.

2. Does the proposal maintain the intent of the Zoning By-law?

The subject property is zoned as both “Rural (RU)” and “Agricultural (A)” by the Municipality’s Comprehensive Zoning By-law #11-83. Both zones permit a detached dwelling, a home-based business, agricultural uses, and associated accessory structures. The owner is applying to reduce the front yard setback for a rural use in the RU Zone – where the structure is located – from 15m (49.2ft) to 7m (22.9ft) and to reduce the required setback from the Agricultural designation from 150m (492.1ft) to 14m (45.9ft) to render the structure compliant with the associated setbacks and to provide flexibility if Building Code requirements were to result in expansion or relocation of the structure.

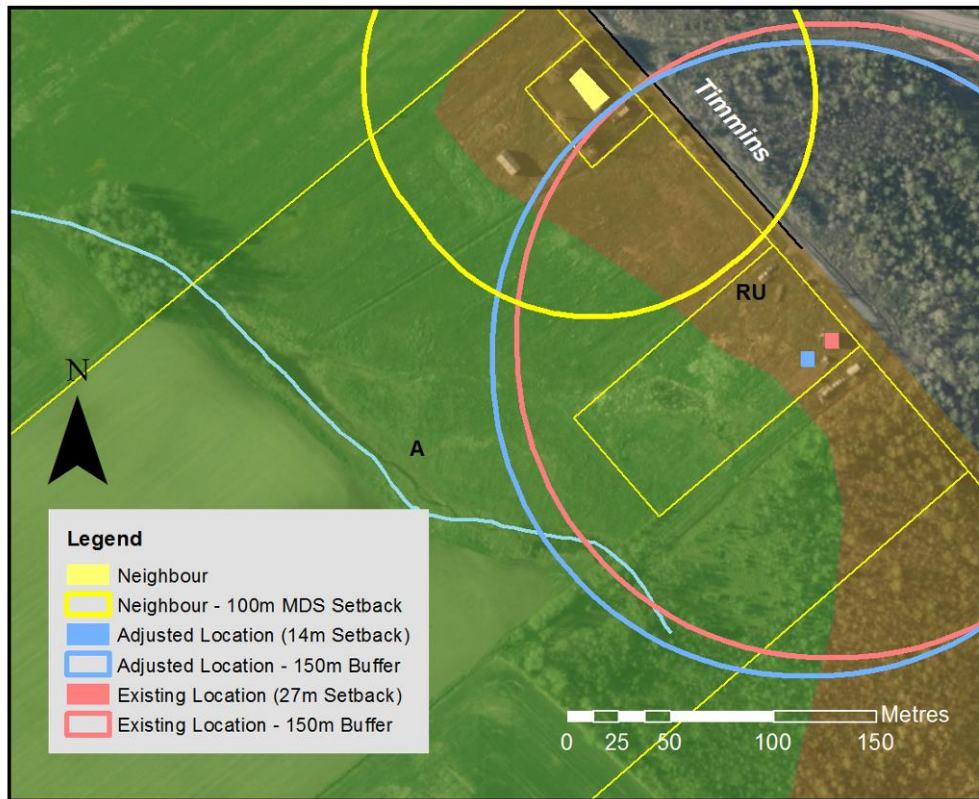
Front Yard Setback

The intent of the front yard setback is to ensure adequate space for parking, conformity with the surrounding neighbourhood, and appropriate buffers between the roadway, its traffic, and a land use. The subject lot’s location – wedged between large agricultural properties and rural forests – is surrounded by few dwellings for which to make a direct comparison. The only comparable dwelling is located on Timmins Road which does appear to meet proper setbacks; however, this is the only home within 600m. Furthermore, the subject lands are located at the end of a municipal roadway, thereby mitigating any impacts that a road allowance and its use may have on the structure. It is important to note that the site plan submitted as part of the application indicated a front yard setback greater than 15m (49.2ft), which meets by-law requirements. After further review, Planning Staff noticed a discrepancy which resulted in an actual setback of approximately 10m. To mitigate issues arising from other possible errors related measurements between the structure and the property stakes, the applicant requested the 7m setback. Regardless, Staff are of the opinion that the request maintains the intent of the Zoning By-law.

Agricultural Designation Setback

The intent of the Agricultural designation setback is to mitigate land use conflicts between agricultural operations and sensitive land uses (i.e. dwellings). From a numerical standpoint, the request is significant; but when regarded in the context of the surrounding environment the impact is negligible. Figure 2 illustrates what a 150m setback would equate to around the existing location and the proposed 14m, as well as a potential MDS II setback of 100m (328.1ft) from the neighbouring dwelling. The 100m was chosen as an example to illustrate a potential location for a larger scale livestock facility.

Figure 2 – Buffers from Dwellings



It is important to note that although the existing structure was not lawfully constructed as per the *Building Code Act*, it is deemed a conforming use under the *Planning Act*. As such, it retains legally non-complying status for its setback from the Agricultural designation since said provision did not exist within Comprehensive Zoning By-law #01-70 and current non-compliance provisions (Section 6.14) do not specifically require that the structure is legal as per the Ontario Building Code. Consequently, the structure is legally permitted to be 27m from said designation.

The requested setback of 14m, a difference of 13m (42.6ft) from its legal non-complying location, adds minimal impact to the abutting agricultural lands. The neighbouring dwelling already restricts the location of a potential livestock facility and the majority of lands adjacent to the subject structure are forested. Furthermore, the lands that are impacted belong to a 127ac farm property that has frontage on both Timmins Road and 12th Concession South Pakenham (see Schedule D). As such, Staff are of the opinion that request maintains the intent of the Zoning By-law.

3. Is the proposal desirable for the appropriate development of the lands in question?

Although the proposal does involve requests for the sake of flexibility or margins of error, the variations between the requests and what has been deemed to be legally non-complying are negligible. The RU Zone has permitted and continues to permit the rural hunt camp use; as such, it is lawful as per the *Planning Act*. Further, the surrounding area is generally vacant rural forested land or large agricultural holdings, and thus allowing for reduced setbacks has minimal impact except for added flexibility for the applicant if they require expanding or moving the structure to meet Ontario Building Code requirements. Staff do note that adjacent property

owners expressed concerns about the application, notably the proposed use and its associated impacts. Unfortunately, regardless of which use occupies the land (i.e. a single-detached home versus a hunt camp), there is no certainty that the concerns would not be the same – hunting/firearm use is not specific to a zone in the rural area and property standards issues can still occur with dwellings.

The property does sit adjacent to an Area of Natural and Scientific Interest (ANSI) and is thus subject to the COP policies of Section 3.1.2.2. As per Section 3.1.2.2.1(2), development (i.e. minor variances) may take place within 50m of an ANSI area only when it has been demonstrated through an Environmental Impact Assessment (EIA) that there shall be no negative effects on the natural features of the ANSI. Unfortunately, any potential impacts of the 2007 structure would have already occurred over the last 11 years, making an EIA at this time moot. Fortunately, the new landowner expresses interest in cleaning up the lands to prepare it for a future dwelling. Nonetheless, any further changes to the lands (i.e. expansions or relocation of the existing structure, or building a new structure) would trigger a scoped EIA and Site Plan Control approval. Furthermore, its location within the 30m buffer of a now regulated wetland (as of 2017) would also trigger an EIA to be reviewed by the MVCA.

4. Is the proposal minor?

Considering that the use conforms to the By-law and the structure has a legally non-complying Agricultural designation setback, the requested reliefs are minor and do not pose further risk or impact to adjoining lands or agricultural operations. Furthermore, the neighbouring dwelling along Timmins Road already restricts the possible location of a livestock facility as per future MDS II calculations – no facility is known to the Municipality as proposed at this time. Future development of the site would require Site Plan Control and a subsequent EIA to assess any potential impacts to the ANSI.

CONCLUSION

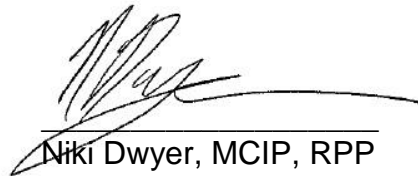
Overall, Staff supports the requested setback reliefs. The supported variances would allow the owner to maximize the use and enjoyment of their property with no foreseeable impacts to any other stakeholders. Staff believes that said variances meet the four (4) tests for evaluating a Minor Variance as established under the *Planning Act*. Planning Staff therefore recommend that the setback relief variances be granted, provided the Committee is satisfied that any issues raised at the public hearing do not require additional Staff evaluation and comment, the submission of additional information, or the application of conditions other than those listed at the beginning of this report.

All of which is respectfully submitted by,



Andrew Scanlan Dickie
Junior Planner

Reviewed by,



Niki Dwyer, MCIP, RPP
Director of Planning

ATTACHMENTS:

SCHEDULE A – Site Plan

SCHEDULE B – Building Plans

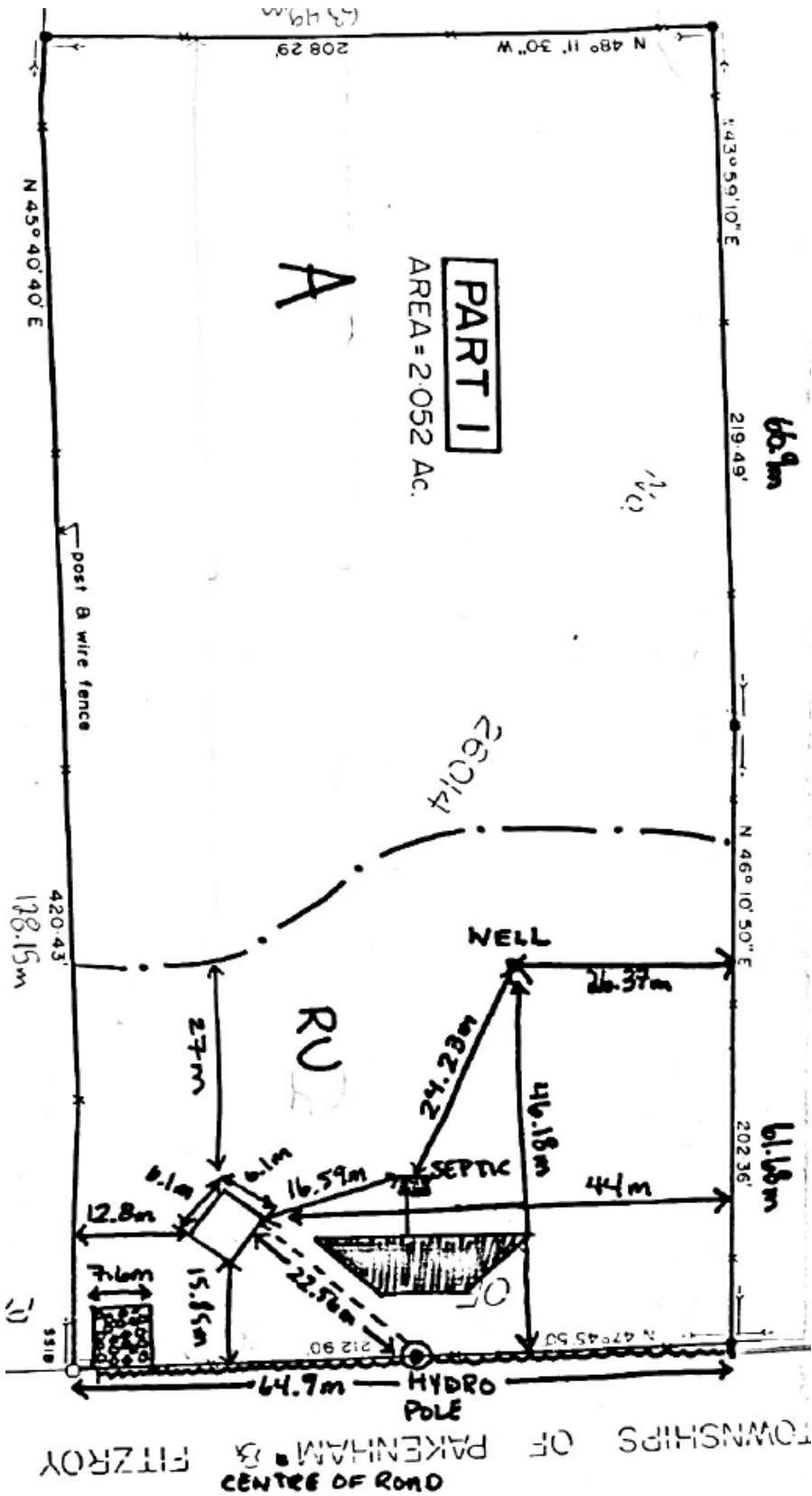
SCHEDULE C – Legal Non-conforming Use Commentary – Wood Bull LLP

SCHEDULE D – Supplementary Aerial (Neighbouring Lands)

SCHEDULE E – Site Photos

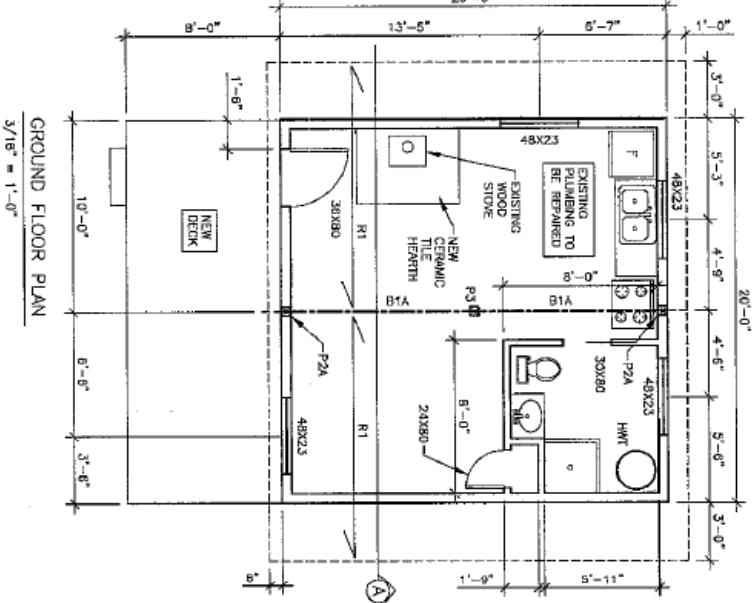
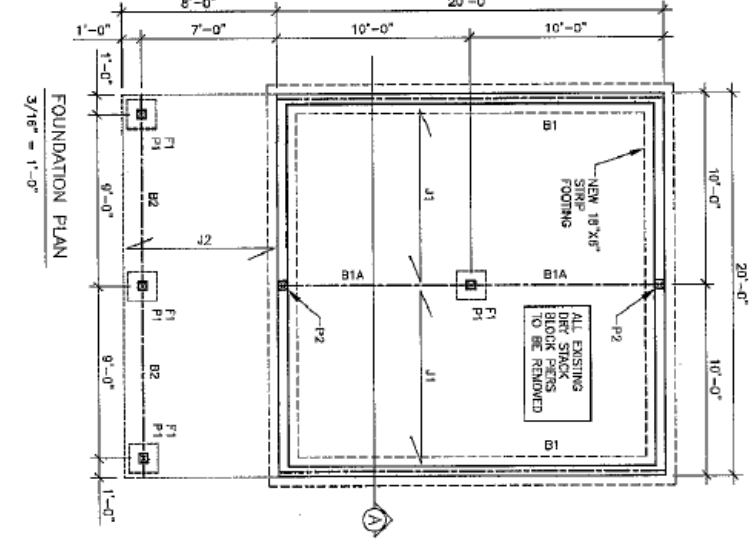
SCHEDULE F – Comprehensive Zoning By-law #11-83 Rural (RU) Excerpt

SCHEDULE A – Site Plan



SCHEDULE B – Building Plans

STRUCTURAL SCHEDULE			
F1	NEW 18"x18"x6" CONCRETE PAD	B1A	EXISTING 6X6 WOOD BEAM TO BE REINFORCED WITH 2-2X6
P1	NEW 6X6 PT POST WITH POST BASE AND POST BRM BRACKETS	B2	NEW 2-2X6 PT DRIPPED BEAM
P2	NEW 2-2X6 PT POST	J1	EXISTING 2X10 JOISTS @ 18" OC
P2A	EXISTING 2-2X6 WOOD POST	J2	NEW 2X6 PT JOISTS @ 16" OC
P3	EXISTING 6X6 WOOD POST	R1	EXISTING 2X4 RAFTERS AND CEILING JOISTS, ALL @ 24" OC
B1	EXISTING 6X6 WOOD BEAM		



- 3/16" = 1'-0"
- GROUND FLOOR PLAN
11. EXISTING ROOF CONSTRUCTION: STEEL ROOFING ON 5/8" PLYWOOD STRAPPING ON R1 RAFTERS WITH R40 INSULATION, 6 MIL POLY VAPOUR BARRIER, 1X3 STRAPPING @ 16" OC AND 1/2" DRYWALL FINISH.

DRAFT COPY

- SPECIFICATIONS:
- ALL DESIGN AND CONSTRUCTION IS TO MEET THE REQUIREMENTS OF THE 2012 EDITION OF THE CANADIAN BUILDING CODE.
 - CONTRACTOR IS TO ENSURE THAT THE STRUCTURE IS PROPERLY BRACED AT ALL TIMES DURING CONSTRUCTION.
 - ALL NEW FOOTINGS ARE TO BEAR ON NATIVE ROCK FOOTINGS HAVE BEEN DESIGNED FOR AN ALLOWABLE SOIL BEARING CAPACITY OF 150 KPa.
 - ALL CONCRETE IS TO HAVE A MINIMUM 28 DAY STRENGTH OF 15 MPa.
 - ALL DIMENSION LUMBER TO BE ALA NO. 2 GRADE S-P-F OR BETTER. ALL PRESSURE TREATED MATERIAL FOR THE NEW FOUNDATION WALLS TO MEET THE REQUIREMENTS OF CAN/CSA 060.15.
 - ALL WOOD UNITS TO BE 2-2X6 ON SINGLE JACK STUDS UNLESS OTHERWISE NOTED.
 - NEW FOUNDATION WALL CONSTRUCTION: 6 MIL POLY MOISTURE BARRIER OVER 1/2" PT STUDS @ 18" OC CORNER POLY ABOVE GRADE WITH 1/2" PT PLYWOOD.
 - EXISTING FLOOR CONSTRUCTION: 5/8" 1&G PLYWOOD SHELFLOOR ON J1 JOISTS.
 - EXISTING EXTERIOR WALL CONSTRUCTION (TO BE REPAIRED): ALL WOOD SINKS ON HOUSEWAP ON 7/16" GSB SHEATHING ON 2X6 STUDS @ 16" OC WITH R20 INSULATION, 6 MIL POLY MOISTURE BARRIER AND 1/2" DRYWALL FINISH.

TSC ENGINEERING INC.
 STRUCTURAL DESIGN AND ASSESSMENT
 1222 McLEAN AVENUE, ARLINGTON, ON
 613-623-9858 [tscinfo@tsceng.com](mailto:info@tsceng.com)

PROJECT NAME:
 EXISTING SEASONAL BUILDING
 3061 TALKING ROAD
 PARKERHAM, ONTARIO

DRAWING TITLE:
 PLANS AND SPECIFICATIONS

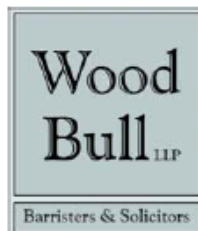
DRAWN: JMAC	DATE: JUNE, 2015
SCALE: AS SHOWN	DRAWING NO.: 1 OF 3

The Planning Act: What's New, What Remains, What You Should Know

Legal Non-Conforming Uses Under the *Planning Act*

by: Dennis H. Wood and Johanna Myers

June 2006



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**Legal Non-Conforming Uses
Under the *Planning Act***

Dennis H. Wood and Johanna Myers, Wood Bull LLP

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B. Was the Land, Building or Structure Lawfully Used on the Day the By-law was Passed?

The first matter to be addressed in considering the application of subsection 34(9) of the *Planning Act* involves the question as to whether the pre-existing “land, building or structure” was “lawfully used for such purpose on the day of the passing of the by-law.”

(a) Meaning of “Lawfully Used”

“Lawfully used” in the context of subsection 34(9) of the *Planning Act* means to use lawfully in the context of the *Planning Act* only. Thus, whether or not an owner has complied with other applicable statutes will not be relevant in determining whether the owner is entitled to protection under subsection 34(9) of the *Planning Act*.³

Similarly, on the question of the applicability of regulations to the use of land in the context of a legal non-conforming use, the Court in a case called *City of Toronto v. San Joaquin Invts. Ltd.*,⁴ found that:

“Section 35(7) [now subsection 34(9)] provides that no by-law passed under this section applies to prevent the use of the land for any purpose prohibited by the by-law if the land was lawfully used for such purpose on the day of the passing of the by-law so long as it continues to be used for that purpose. In this subsection no reference is made to regulations that

³ 893472 *Ontario Ltd. v. Whitchurch-Stouffville (Town)* (1991), 7 M.P.L.R. (2d) 296 at 306. See also 1218897 *Ontario Ltd. (c.o.b. Castle Auto Collision and Mechanical Service) v. Toronto (City) Chief Building Official*, [2005] O.J. No. 4607 (the previous owner’s failure to acquire the necessary certificate of approval under the *Environmental Protection Act*, R.S.O. 1990, c. E.19 did not amount to using land unlawfully for the purposes of subsection 34(9)(a) of the *Planning Act*); *Town of Richmond Hill v. Miller Paving Ltd.* (1978), 22 O.R. (2d) 779 (Ont. H.C.) (the Court found that a failure to obtain a building permit was irrelevant to the question of whether the land or building was “lawfully used”)

⁴ (1978), 18 O.R. (2d) 730, affirmed 26 O.R. (2d) 775, leave to appeal to Supreme Court refused [hereinafter referred to as *City of Toronto v. San Joaquin Invts. Ltd.*]

Legal Non-Conforming Uses Under the *Planning Act*

may be applicable to the use of such land. The question of regulation was not dealt with in *Central Jewish Institute v. Toronto* or in *O'Sullivan Funeral Homes Ltd. [v. City of Sault Ste. Marie and Evans, [1961] O.R. 413, 28 D.L.R. (2d) 1]* although it is obvious from the *O'Sullivan Funeral Home* case that there were many by-law requirements with respect to buildings, if not zoning, that were required to properly use the funeral home as such. No reference is made in the *Central Jewish Institute* case as to what requirements there may have been with respect to the use of the building as a school.

I am of the opinion that it is the use and not the regulations that are the operative part relating to the exemptions under ss.(7) and I am therefore of the opinion that notwithstanding the failure of the owners to comply with all the regulatory aspects under the then applicable zoning by-law, they in fact had a use of the lands that was a lawful use."⁵ [underline emphasis added]

(b) Was the Use Established on the Day of the By-law?

The onus will be on the owner to establish that the lands, building or structure were being used for a particular purpose at the time of the by-law amendment.⁶ This can be a more difficult task than it sounds, because the "use for the purpose" must, on an examination of the facts as of the day of the passing of the by-law, be occurring. It is not a question as to whether such a use could theoretically been made under the relevant by-law.

This usually involves extensive historical research in the municipal archives as to when the "interfering by-law" was enacted and as to the nature of the use on that date. One way of establishing the nature of the use is to obtain an affidavit from a previous owner or occupant of the property (or a neighbour of long standing) who can give evidence of the use from personal knowledge.

Whether the property was being "used for the purpose" at the time of enactment of the "interfering by-law" sometimes becomes intertwined with the corollary issue of a prior

⁵ *City of Toronto v. San Joaquin Investments Ltd.*, at pp 741-742.

⁶ *City of Toronto v. San Joaquin Investments Ltd.*, at P. 739.

Legal Non-Conforming Uses Under the *Planning Act*

lawful use that ended (even though it remained lawful) before the new by-law was passed. If the use ended prior to the passing of the by-law, the owner will not be entitled to an exemption under the *Planning Act*. Even where the potential to continue the use remained intact up to the time that the by-law was passed, the owner may be disentitled to the protection of subsection 34(9).⁷

(i) Use of Land on the Day the By-law was Passed

The claimant of a non-conforming use of land need not establish that the use was fully developed at the date that the “interfering by-law” was passed. In a decision called *Township of Emily v. Johnson*,⁸ an Ontario Court dismissed an action brought by a municipality against an owner of lands for an injunction to prohibit the owner from operating a go-cart track on his premises. The owner presented evidence to establish that the go-cart operation had commenced, although not yet been fully developed, as of the date of the by-law. On this point, the Court noted:

“... the conclusion is irresistible that there was an embryo in place in 1977. Mr. Johnson had formulated his plans in 1976. He began to execute them in the early part of the summer of 1977 by purchasing two go-carts for commercial use, by grading the proposed site, removing stones, shaping it, that is, giving it a pattern with the use of a grader, chains and go-carts.”

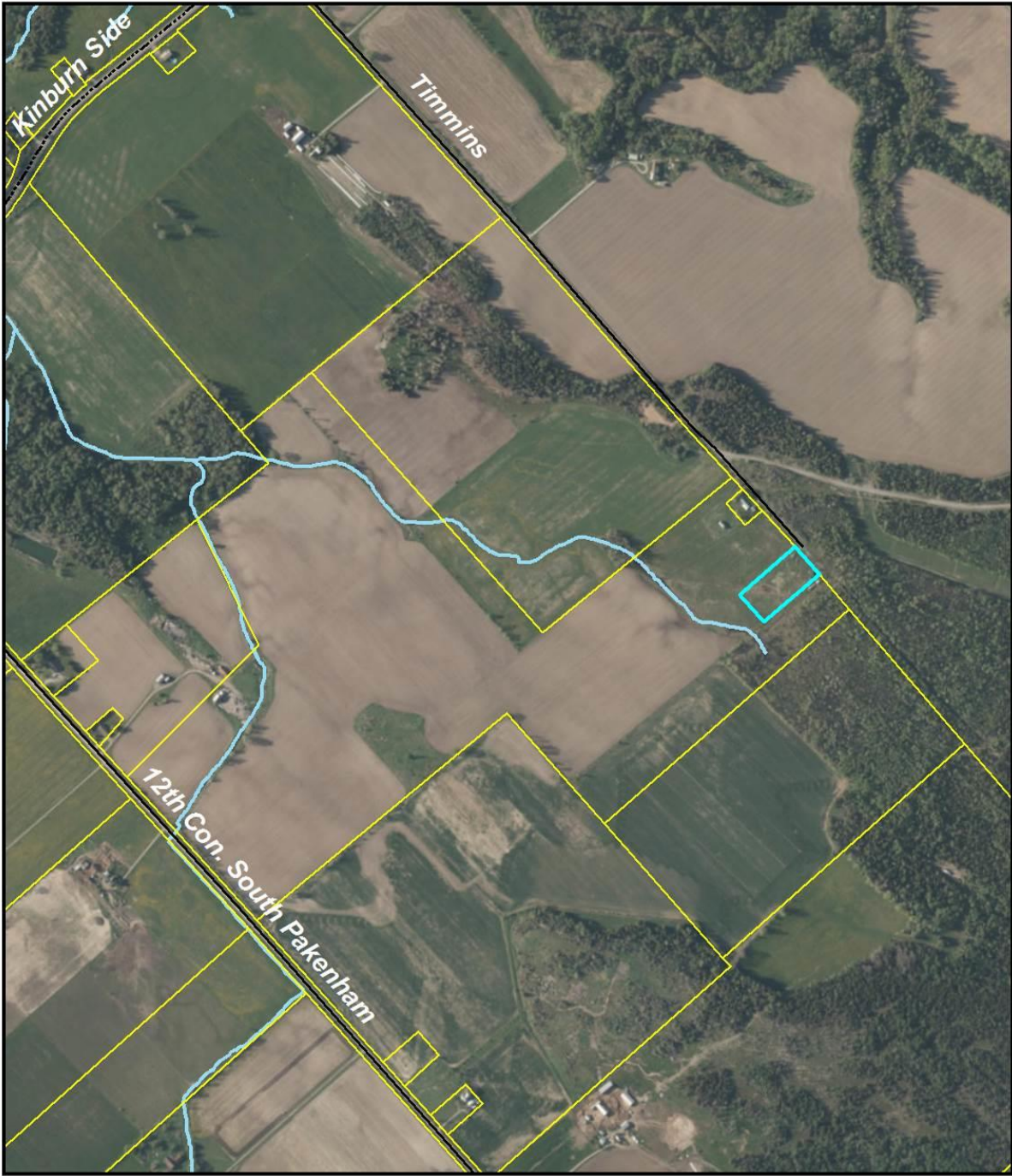
The Court ultimately rejected the municipality’s argument that the use made before the by-law was enacted must be the same, in nature and extent, as the existing use, stating as follows:

“... If the operation was in existence and was a *bona fide* one, even though it was only ancillary in nature, I would be at a loss to set the guidelines that might be called upon to single out certain operations as not being deserving of protection. It is sufficient, in my opinion, that there was an enterprise, probably even better if it was a commercial venture involving

⁷ See *Dennis v. The Township of East Flamboro et. al.*, [1956] O.J. No. 87 (Ont. C.A.) (where a gas station usage terminated prior to the enactment of the by-law, the Court of Appeal found there was no legal conforming use, and even if there had been such a use, the land did not continue to be used for that purpose after the by-law was enacted, even though the infrastructure for the gas station remained substantially in place throughout.)

⁸ (1981), 135 D.L.R. (3d) 465 [hereinafter referred to as *Township of Emily v. Johnson*].

SCHEDULE D – Supplementary Aerial (Neighbouring Lands)



SCHEDULE E – Site Photos

Subject Property



Close-up of Structure



Nearby Outhouse



Surrounding Land



SCHEDULE F – Comprehensive Zoning By-law #11-83 Rural (RU) Excerpt

SECTION 9 – RURAL (RU) ZONE

9.1 USES PERMITTED

No person shall within the “RU” zone use any lot or erect, alter or use any building or structure for any purpose except one or more of the following uses:

(a) Residential Uses

- a single detached dwelling
- single detached dwelling accessory to an agricultural use
- a group home type A within a non-farm single detached dwelling

(b) Non-Residential Uses

- agricultural uses
- specialized agricultural use
- home occupation - domestic and household arts
- home occupation - professional use
- home occupation - rural business
- home occupation - farm vacation
- bed and breakfast
- conservation areas
- forestry
- hunt or fishing camp
- sugarbush
- equestrian school
- private sewage disposal system
- buildings, structures and uses accessory to a permitted use

9.2 ZONE PROVISIONS

No person shall within the “RU” zone use any lot or erect, alter or use any building or structure except in accordance with the following provisions:

<u>Provisions</u>	<u>Rural</u>	<u>Non-Farm Residential</u>
minimum lot area	10 hectares (24.7 acres)	0.4 hectares (1.0 acre)

minimum lot frontage	150 metres (492 feet)	45 metres (147.6 feet)
minimum side yard	15 metres (49.2 feet)	6 metres (19.68 feet)
minimum rear yard	15 metres (49.2 feet)	9 metres (29.5 feet)
minimum front yard	15 metres (49.2 feet)	9 metres (29.5 feet)
minimum exterior side yard	15 metres (49.2 feet)	9 metres (29.5 feet)
maximum height of detached dwelling	11 metres (36.1 feet)	11 metres (36.1 feet)
maximum lot coverage	5 %	15 %
minimum separation from accessory detached dwelling to any structure where animals are housed.	30 metres (98.4 feet)	30 metres (98.4 feet)

9.3 SPECIAL PROVISIONS

- 9.3.1 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-1' on Schedule "A" to this By-law no vegetation shall be materially altered within the 90 metre (295 feet) front yard except for the purpose of a driveway providing access to the lot.
- 9.3.2 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-2' on Schedule "A" to this By-law a gift shop shall be permitted in accordance with the following provisions:
- the gift shop shall be restricted to the area of the garage and basement of the residential dwelling as they existed on May 4, 1993
 - no expansion or extension of the garage or basement for the purpose of enlarging the gift shop shall be permitted without an amendment to this By-law.
- 9.3.3 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-3' on Schedule "A" to this By-law a recording/teaching studio shall be permitted.
- 9.3.4 Notwithstanding their 'RU' Zoning designation, on those lands delineated as 'RU-4' on Schedule "A" to this By-law a septage disposal use shall be permitted in accordance with the

THE CORPORATION OF THE MUNICIPALITY OF MISSISSIPPI MILLS

PLANNING REPORT

MEETING DATE: Wednesday October 10, 2018 @ 5:30 p.m.
TO: Committee of Adjustment
FROM: Andrew Scanlan Dickie – Junior Planner
SUBJECT: **MINOR VARIANCE APPLICATION A-18-18 (D13-RIC-18)**
Plan 6262, Anderson Section, Pt Lt 13, Plan 27R-9062, Pt 1
Almonte Ward, Municipality of Mississippi Mills
Located between 172 & 154 Elgin Street
OWNER/APPLICANT: Richcon Homes Inc. (Pat Richards)

RECOMMENDATION:

THAT the Municipality of Mississippi Mills Committee of Adjustment approves the Minor Variance for the land legally described as Plan 6262, Anderson Section, Part Lot 13, Plan 27R-9062, Part 1, Almonte Ward, Municipality of Mississippi Mills to reduce the minimum lot area from 320m² to 298m², minimum frontage from 10m to 9.45m, minimum side yard setback from 1.2m to 1m, and maximum lot coverage from 45% to 46% to permit the construction of a semi-detached dwelling infill development, subject to the following conditions:

- 1. That the Minor Variance is approved based on the site plan submitted;**
- 2. That the owner resubmits elevations reflective of the removal of windows on the northern façade wall;**
- 3. That the owner enters into Site Plan Control, as per By-law #15-60; and**
- 4. That the owner obtains all required building permits.**

PURPOSE AND EFFECT

The applicant is requesting relief from multiple provisions of the Comprehensive Zoning By-law to legally permit a semi-detached dwelling within the Residential Second Density (R2) Zone, being to: (1) reduce the side yard setback from 1.2m (3.9ft) to 1m (3.3ft); (2) reduce the minimum frontage from 10m (32.8ft) to 9.45m (31.0ft); (3) reduce the required lot area from 320m² (0.8ac) to 298m² (0.7ac); and (4) increase maximum lot coverage from 45% to 46%.

Table 1. – Requested Relief from Zoning By-law #11-83

Section	Zoning Provision	By-law Requirement	Requested
Table 14.2A	Semi-detached Lot Area, minimum (m ²)	320	298
Table 14.2A	Semi-detached Lot Frontage, minimum (m)	10	9.45

Table 14.2A	Semi-detached Side Yard Setback, minimum (m)	1.2	1
Table 14.2A	Semi-detached Lot Coverage, maximum (%)	45	46

The requests stem from the applicant’s desire to retain a row of trees along the southern lot line (see Schedule C). Consequently, the separating wall between the two units (where future Part Lot Control would occur) has shifted towards to the northern lot line, thereby resulting in one unit with the above noted deficiencies.

The proposed development is also subject to Site Plan Control (as required by By-law #15-60) which can only be deemed complete following the Minor Variance application. A Part Lot Control application to subdivide the lands may also be presented in the future.

DESCRIPTION OF SUBJECT LANDS

The subject property is located near the corner of Elgin Street and Country Street, between 154 & 172 Elgin. The lot is ±630m² (0.16ac) in size with a frontage of ±20.2m (66.3ft). It is generally surrounded by low density residential properties and is within walking distance (less than 400m) from Downtown Almonte. The lot is currently vacant and is depicted in Figure 1.

Figure 1. – Aerial Photo of Property (2017)



SERVICING & INFRASTRUCTURE

The subject property would be serviced by municipal water and sewer; however, no laterals exist at this time. Both semi-detached units would have access from Elgin Street, a municipally owned and maintained road. The municipal servicing and infrastructure demands would change negligibly as a result of the application. However, a Site Plan Control application would have to indicate where and how future infrastructure would service the site.

COMMENTS FROM CIRCULATION OF THE APPLICATION

Comments received based on the circulation of this application have been summarized below:

COMMENTS FROM INTERNAL CIRCULATION

CAO: No comments received.

Building Inspector: With a 1m setback on the side yard, there will be no windows or unprotected openings permitted by code. The side elevations show windows, which will need to be revised when it comes time for building permit stage. The committee of adjustment might want the elevations submitted to reflect what will end up being built, if he chooses to build closer than 1.2m to a lot line.

Fire Chief: No comments received.

Director of Roads and Public Works: No concerns or objections.

Recreation Coordinator: No comments received.

COMMENTS FROM EXTERNAL AGENCIES

Department of Planning staff had not received comments from the public at the time this report was finalized and submitted for Committee of Adjustment review.

COMMENTS FROM THE PUBLIC

Gail Colbourne (188 Country Street) provided an oral objection to the proposal, stating that the development is inappropriate for the neighbourhood which is predominantly single-detached homes. Furthermore, she indicated disapproval to a semi-detached home on a smaller lot, which does not match the character of a small town.

EVALUATION

FOUR TESTS

Section 45 of the *Planning Act* provides the Committee of Adjustment with the authority to grant relief from the requirements of a municipal zoning by-law. In properly evaluating such requests, the Committee needs to be satisfied that the proposal meets the four (4) tests set out in the *Planning Act*. Staff comments concerning the application of the four (4) tests to this Minor Variance request are as follows:

1. Does the proposal maintain the intent of the Official Plan?

The subject property is designated "Residential" in the Municipality's Community Official Plan (COP). The Residential designation permits low and medium density residential uses and

accessory uses. The Municipality's COP does not specifically address or contain policies related to minimum lot area, frontage, setbacks, and lot coverage within the Residential designation. As such, the requested variance conforms to the general intent and purpose of the COP.

2. Does the proposal maintain the intent of the Zoning By-law?

The subject property is zoned "Residential Second Density (R2)" by the Municipality's Comprehensive Zoning By-law #11-83. The R2 Zone permits single-detached, semi-detached, duplex, and triplex dwellings, along with home-based business, group homes, and accessory uses, buildings and structures. The owner is applying for relief from multiple provisions of the R2 Zone to permit the construction of a semi-detached dwelling on a vacant parcel of land.

Minimum Lot Area

The purpose of the minimum lot area requirement is to provide sufficient space to accommodate the proposed dwelling, landscaping, snow storage, road access, required off-street parking, and outdoor amenity area. For semi-detached dwellings, minimum lot area is determined on a per unit basis. For instance, the Zoning By-law stipulates a minimum of 320m² per unit, which would be equivalent to 640m² for an entire dwelling.

Given the extent of relief requested, Staff is of the opinion that a reduction in the minimum lot area per unit by 22m² (237ft²) – 320m² to 298m² – is minimal and would not prevent the lot from accommodating a semi-detached dwelling, landscaping, required off-street parking and snow storage, and outdoor amenity area.

Typically, two semi-detached units would have similar, if not equal, lot area – which would translate to a 315m² request in this case. However, the applicant wishes to mitigate impacts to the row of mature trees that exists along the southern lot line. By shifting the separating wall between units closer to the northern lot line, the northern unit's lot area reduces to 298m². Staff believe the request has minimal impact and meets the intent of the Zoning By-law.

Minimum Lot Frontage

The purpose of minimum lot frontage is to ensure that there is sufficient room to construct a dwelling and adequate room for a driveway, thus avoiding negative impacts to lot landscaping and building design. Furthermore, minimum lot frontage provides a means for more uniform massing across multiple lots.

The reduction from 10m to 9.45m is directly related to the shifting of the separating wall towards the northern lot line. If the lot were to be divided equally, each unit would have just over 10m of frontage. The proposed lot configuration would provide the southern unit with 10.75m (35.27ft) and the northern unit with 9.45m. The most significant issue resulting from the relief is that the side yard setback also requires reduction to accommodate the proposed building footprint. Granted there are no concerns about the side yard, Staff are of the opinion that the frontage reduction has negligible impact and meets the intent of the Zoning By-law.

Minimum Side Yard Setback

The intent of the minimum side yard setback is to ensure that there is sufficient separation between the building and the side lot line to facilitate maintenance around the building, prevent runoff onto neighbouring properties, and mitigate any potential visual and privacy impacts between neighbouring properties.

Maintenance: The 1.0m (3.3ft) setback would still provide adequate room for maintenance, particularly since access to higher elements (i.e. the roof) could be achieved from the rear yard which would maintain its required 7.5m (24.60ft).

Runoff: As an infill/intensification development, the landowner would be required to submit a Site Plan Control application, which includes the submission of a grading and drainage plan that must be to the satisfaction of the Director of Roads & Public Works.

Privacy Impacts: Locating a building 1.2m (3.9ft) away from the property line limits the allowable window coverage to 7% along the side lot line. According to the Ontario Building Code (as indicated by our Building Department), locating it 1.0m away would eliminate any allowance for a window, thereby eliminating any privacy concerns. Furthermore, the adjacent land's building (154 Elgin Street) is located approximately 14m (46ft) from the shared lot line, minimizing site obstructions for its resident and flexibility for future expansion. Notwithstanding, the applicant's elevations show windows on both side walls – building permit drawings will require revision before allowing construction.

Lot Coverage Maximum

The intent of the maximum lot coverage is to ensure that there is an appropriate balance between landscaped space and building envelope, thereby maintaining a uniform massing profile within a neighbourhood.

With the repositioning of the building comes also the issue of lot coverage, particularly if subdivided for sale at a future date. Once again, this issue pertains to only one of the units. At a requested 298m², 46% lot coverage would equal 137.08m² (1,475.52ft²) of building footprint. Subsequently, the other unit, with 332m² of lot area, would only cover 41.3% of its portion. Furthermore, the entire lot (both units combined) occupy 43.5%, within the 45% allowance of a bungalow. Given that the request is minimal and that only the one unit is not compliant, Staff is of the opinion that the request maintains the intent of the Zoning By-law.

3. Is the proposal desirable for the appropriate development of the lands in question?

The proposal is desirable for the appropriate development and use of the land as it facilitates the construction of a permitted use within the R2 Zone. The R2 Zone permits a wide range of housing types that, although considered to be low-density, contribute to the intensification principles of the Community Official Plan and Provincial Policy Statement, 2014. All requested reliefs are isolated to a single unit – the result of providing a buffer to an existing row of trees along the property. Generally, the lot as a whole (both units combined) remains in compliance with the Zoning By-law and thus the development poses minimal concern to adjacent properties and the general neighbourhood.

The Municipality did receive an objection from the owners of 188 Country Street, who expressed disapproval of the proposed use and the size of the lot, stating that neither meet the character of the area. Staff understand the concern but still believe the proposal to be appropriate. Specifically, the reliefs are not considerable and the semi-detached dwelling use has been long permitted in the area as a means of facilitating intensified growth near Downtown Almonte.

To ensure that the lot provides appropriate landscaping, parking, and architectural features, the lot will be required, as per By-law #15-60, to submit a Site Plan Control application at which time the logistics related to placement of driveways, utilities, buffering, lighting and garbage can be

evaluated and negotiated. Therefore, Staff are of the opinion that the proposal is a desirable and appropriate development of the subject lands.

4. Is the proposal minor?

Quantitatively, each of the requested variances are minimal. The side yard setback relief is most significant, being a requested reduction of 20%. However, this is inflated since it is a change to an already miniscule setback measurement. Lot coverage is next highest with 6.8%. Nonetheless, the impacts remain minor; generally, the whole dwelling is compliant when compared to the entire lot. Concerns related to drainage and design (i.e. allowable window coverage) would be addressed as part of the Site Plan Control and Building Permit processes. Therefore, Staff believe the requested variance is considered to be minor in nature.

CONCLUSION

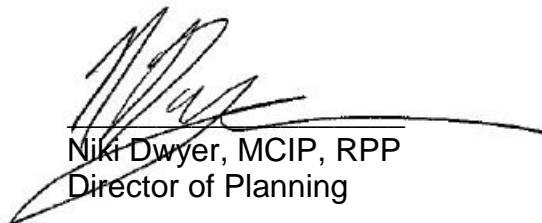
Overall, Staff supports the Minor Variance application. The variances would allow the owner to maximize the use and enjoyment of the property with no foreseeable impacts to other stakeholders. Staff believes that Minor Variance Application A-18-18 meets the four (4) tests for evaluating a Minor Variance as established under the *Planning Act*. It is therefore recommended that the Minor Variances be granted, provided the Committee is satisfied that any issues raised at the public hearing do not require additional Staff evaluation and comment, the submission of additional information, or the application of conditions other than those provided at the beginning of this report.

All of which is respectfully submitted by,

Reviewed by,



Andrew Scanlan Dickie
Junior Planner

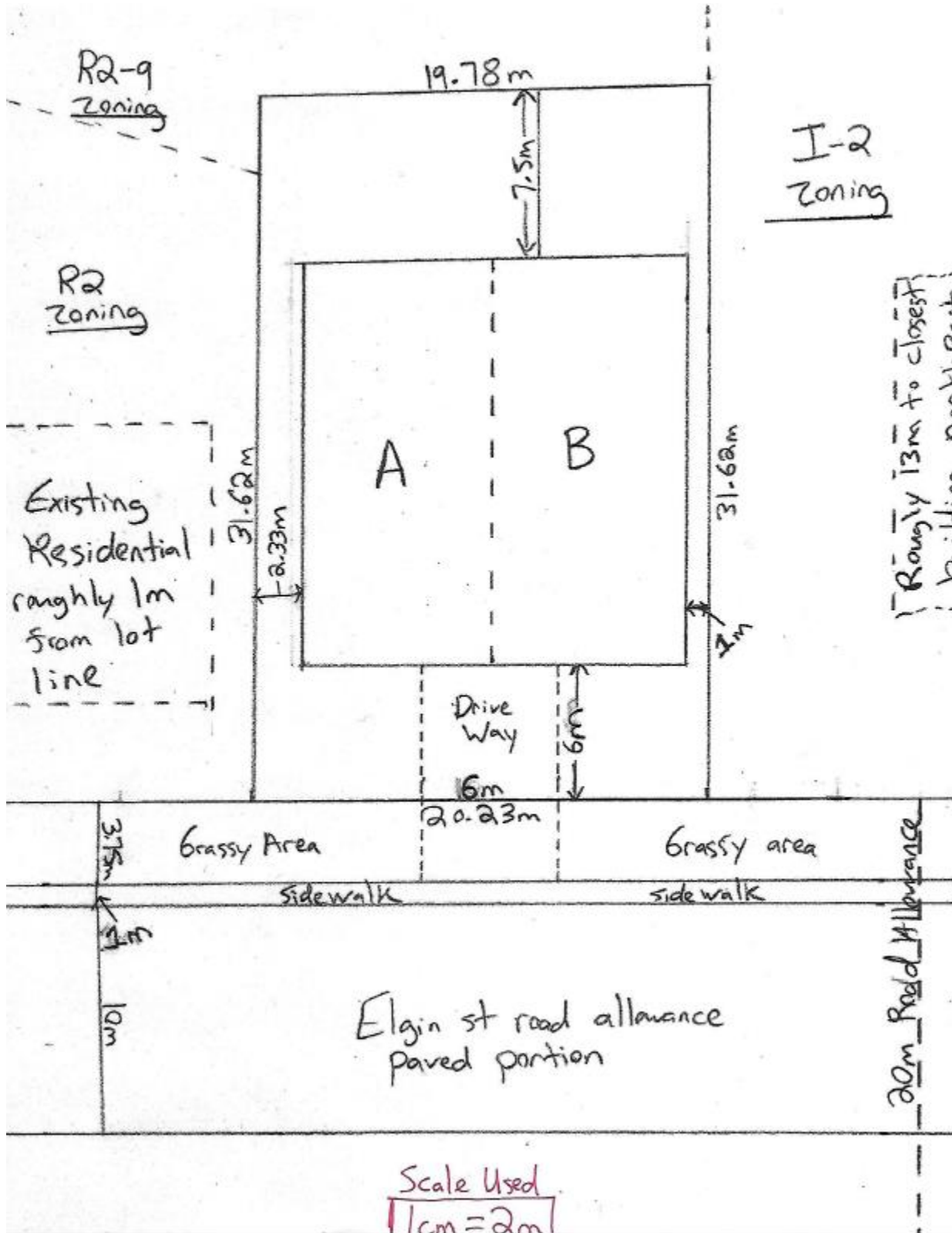


Niki Dwyer, MCIP, RPP
Director of Planning

ATTACHMENTS:

- Schedule A – Site Plan Sketch
- Schedule B – Proposed Elevations
- Schedule C – Site Photos
- Schedule D – Example Front Façade

SCHEDULE A – Site Plan Sketch



SCHEDULE B – Proposed Elevations
FRONT & REAR ELEVATIONS



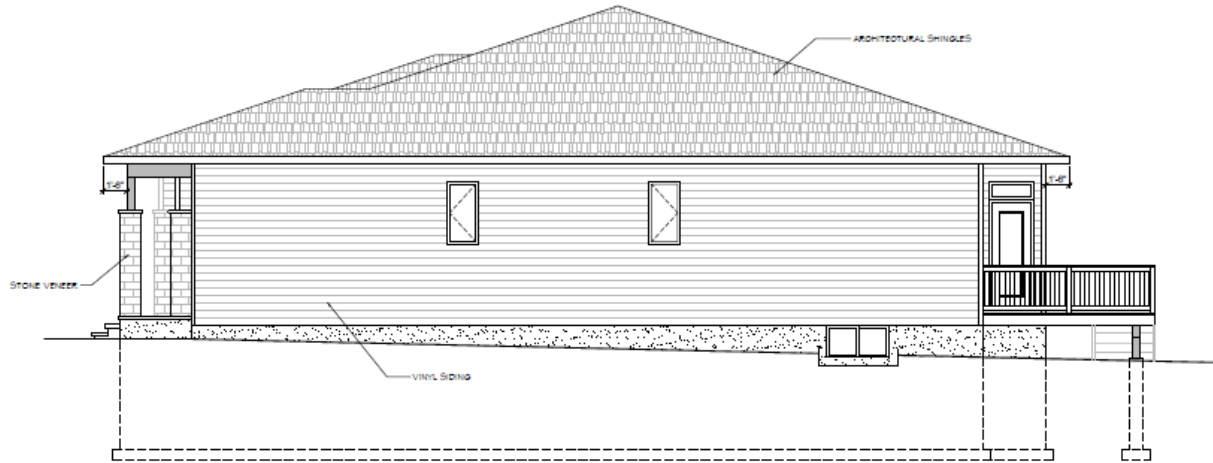
1
A3 FRONT ELEVATION



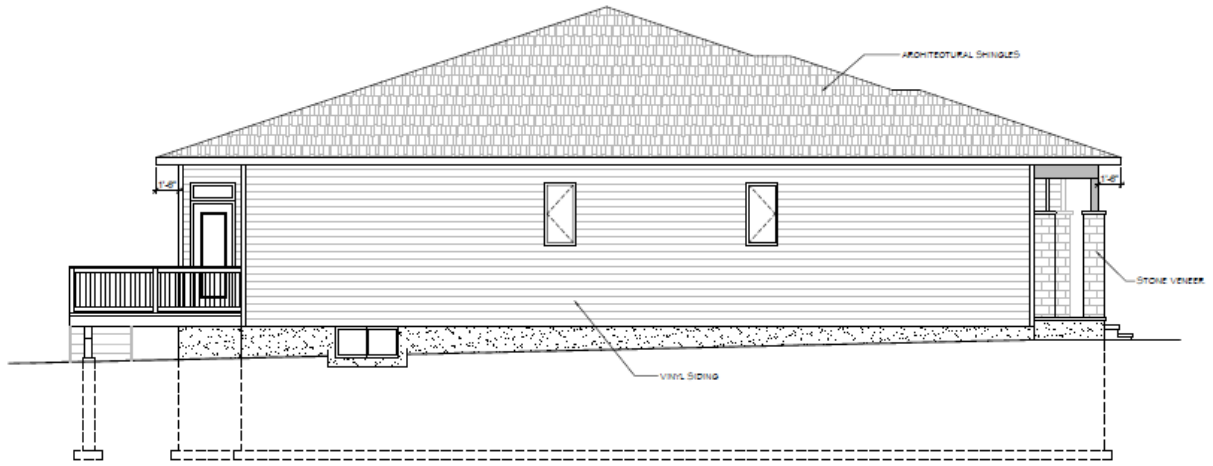
2
A3 REAR ELEVATION

GUARDS ARE REQUIRED WHERE THERE IS A DIFFERENCE IN ELEVATION OF 100
 BETWEEN THE WALKING SURFACE AND THE ADJACENT SURFACE (9.8.3.1). GUA

SIDE ELEVATIONS



1
A4 RIGHT ELEVATION



1
A4 LEFT ELEVATION

GUARDS ARE REQUIRED WHERE THERE IS A DIFFERENCE IN ELEVATION OF MORE THAN 23-5/8" BETWEEN THE WALKING SURFACE AND THE ADJACENT SURFACE (9.8.8.1). GUARDS SHALL CONFORM TO THE LOADING CRITERIA IN PART 4 OF THE OBC OR BE CONSTRUCTED AS SET OUT IN THE OBC AND SUPPLEMENTARY STANDARD S8-7. FOR METAL GUARDS SUPPLIERS SHOP DRAWINGS MUST BE CERTIFIED FOR DESIGN INSTALLATION CONFORMING TO OBC 4.1.5.15 AND 9.8.8.

SCHEDULE C – Site Photos

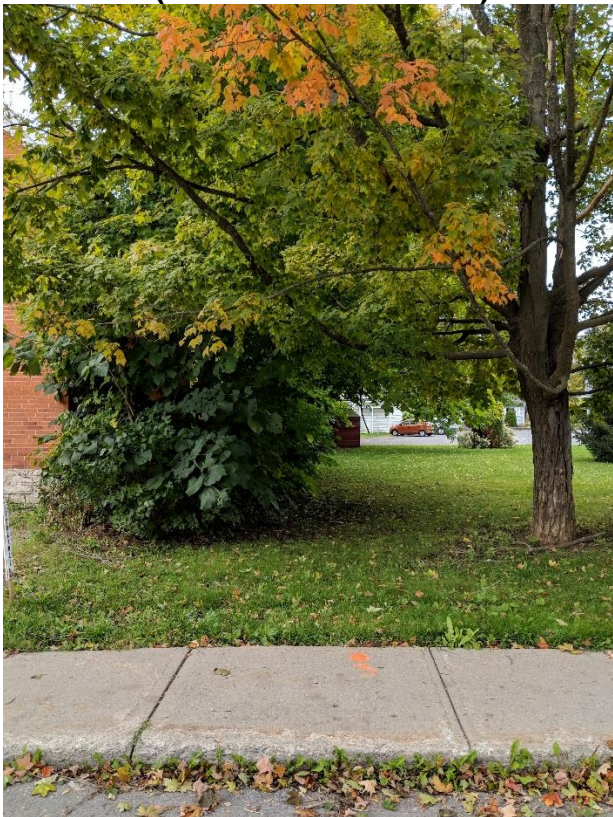
Vacant Lot



Right/North Side Yard



Tree Line (Left/South Side Yard)



SCHEDULE D – Example Front Façade

