

ADMINISTRATIVE REPORT



TO: Board of Variance
FROM: B. Newell, Chief Administrative Officer
DATE: November 7, 2022
RE: Board of Variance Appeal — Electoral Area “D”

Administrative Recommendation:

THAT the Board of Variance deny the requested variance under Section 540(C) of the *Local Government Act*.

Purpose: to allow for internal renovations to an existing non-conforming accessory dwelling.

Civic: 928 Main Street

Legal: Lot 16, Block 17, Plan 4, District Lot 374, SDYD

OCP: Commercial (C)

Zoning: General Commercial (C1) Zone

Proposed Development:

The applicant is seeking approval to undertake renovations to an existing non-conforming accessory dwelling without an established principal use on the property.

Specifically, the applicant is seeking to “renovate to make sure the dwelling [is] safe [update electrical, plumbing, add gas fp. For heat, add more insulation, new roof, etc.]”.

In support of the proposal, the applicants have stated that “the building has always been a dwelling and...we would like for it to continue to be a dwelling.”

Site Context:

The subject property is approximately 581 m² in area and is west side of Main Street/ Highway 97 in Okanagan Falls, approximately 410 metres south of Skaha Lake. The property is currently developed to contain a building (used as residence in the past) and an accessory dwelling.

The surrounding pattern of development is characterised by commercially zoned properties to the north and south, low and medium density residential properties to the east and west.

Statutory Requirements:

Under Section 540(C) of the *Local Government Act*, a person may apply to the Board of Variance (BoV) if the person alleges that compliance with the prohibition of a structural alteration or addition under section 531 (1) would cause the person hardship. In this instance, the applicant is alleging that compliance with section 531(1) causes such a hardship.

Section 531(1) requires that “a structural alteration or addition ... must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.”

In considering this application, the BoV may order that a minor variance be permitted from the requirements of the applicable Bylaw. The BoV must be satisfied that it has heard the applicant and any notified person, undue hardship would be caused to the applicant if the Zoning Bylaw is complied with, and the proposed variances do not:

1. result in inappropriate development of the site;
2. adversely affect the natural environment;
3. substantially affect the use and enjoyment of adjacent land;
4. vary permitted uses and densities under the Zoning Bylaw;
5. defeat the intent of the bylaw; or
6. vary the application of an applicable bylaw in relation to residential rental tenure.

Under the Regional District's Board of Variance Bylaw No. 2494, 2009, written notice of a Board of Variance appeal shall be mailed or otherwise delivered at least 10 days before the date of the meeting. Owners and tenants of adjacent lands will have been notified of this application and will have the opportunity to comment prior to or during the Board of Variance meeting.

In accordance with Section 5 of Bylaw No. 2494, the Decision of the Board "to either grant or deny an order must be made in the presence of the applicant, and any other persons notified in connection with that application [emphasis added], if in attendance at the meeting."

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on August 31, 1993, while available Regional District records indicate that building permits have not previously been issued for this property.

Under the Electoral Area "D" Official Community Plan (OCP) Bylaw No. 2603, 2013, the subject property is currently designated Commercial (C) and is the subject to the OK Falls Commercial Development Permit Area designation.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned General Commercial (C1) which lists accessory dwelling, subject to section 7.2, as a permitted accessory use of the land. However, in the absence of a permitted principal use, an accessory dwelling is not a permitted accessory use of the land.

BC Assessment has classified the property as "Residential" (Class 01).

Public Process:

Adjacent property owners and residents will have received notification of this application in accordance with the requirements of the Regional District's Board of Variance Bylaw No. 2494, 2009.

Analysis:

In considering this proposal, Administration notes that the point in time when a structure that comprises a non-conforming use begins to require structural alterations or additions is when compliance with the applicable bylaw is generally sought.

This is generally by encouraging the property owner(s) to either seek compliance with the applicable bylaw which, in this case, would be by decommissioning one of the dwellings and establishing a principal commercial use or by pursuing a rezoning of the property to allow for the residential use to occur.

To allow for a non-conforming residential building to be structurally altered (e.g. new roof) may potentially extend the useful life of the structure by decades, potentially forestalling the conversion of the lands to the Regional District Board's preferred future use of the property.

In this instance, the Board's preferred future use of the land is for smaller-scale, neighbourhood commercial activities, hence the Commercial (C) designation of the property under the OCP Bylaw.

Alternative:

Conversely, administration recognizes that the proposed renovations to the accessory dwelling are minor and the footprint of the accessory dwelling will remain the same.

Further, the accessory dwelling has been rented out for several years without an established principal use on the property and the applicants area looking to restore it to make it compliant with Building Code and "more comfortable...energy efficient and safe".

Allowing the proposed upgrades will facilitate the improvement of a rental housing unit within the community.

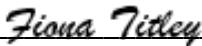
Summary:

Nevertheless, and for these reasons outlined above, Administration does not support the requested variances and is recommending denial.

Alternative:

THAT the Board of Variance approve the requested variance under Section 540(C) of the *Local Government Act*.

Respectfully submitted



Fiona Titley, Planner II

Endorsed by:

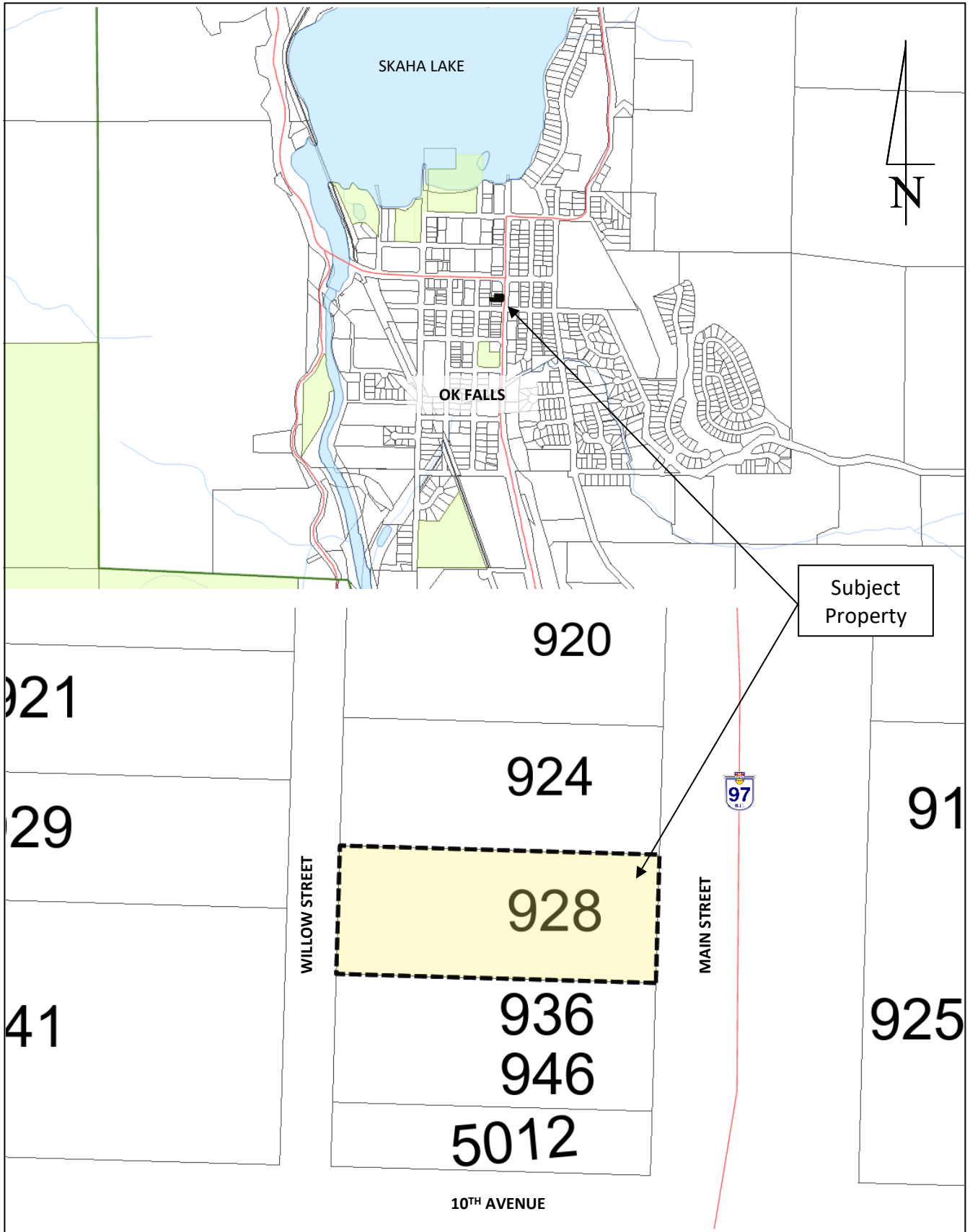


C. Garrish, Planning Manager

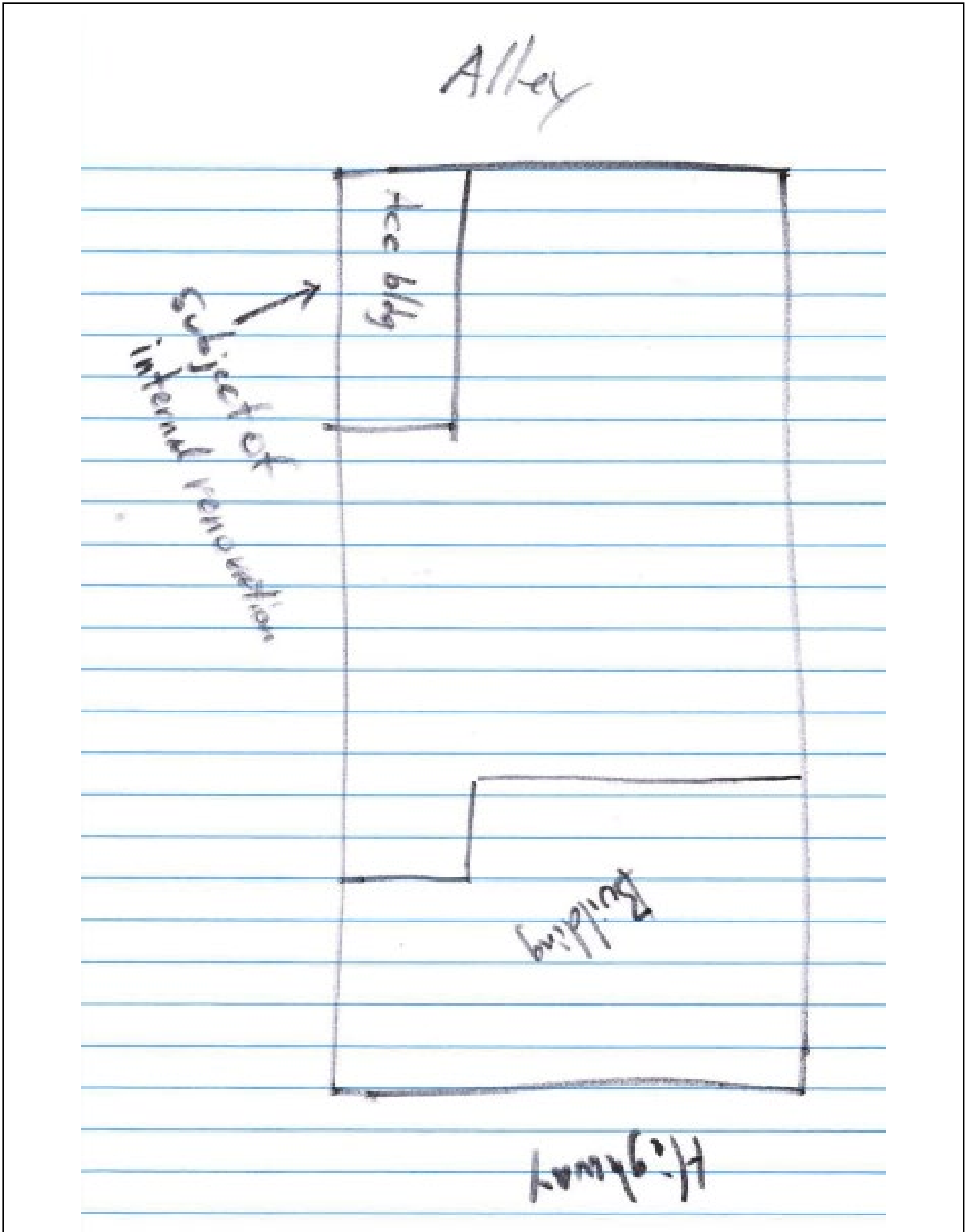
Attachments:

- No. 1 – Context Maps
- No. 2 – Applicant's Site Plan
- No. 3 – Applicant's Proposed Floor Plan
- No. 4 – Applicants Current Floor Plan
- No. 5 – Site Photo

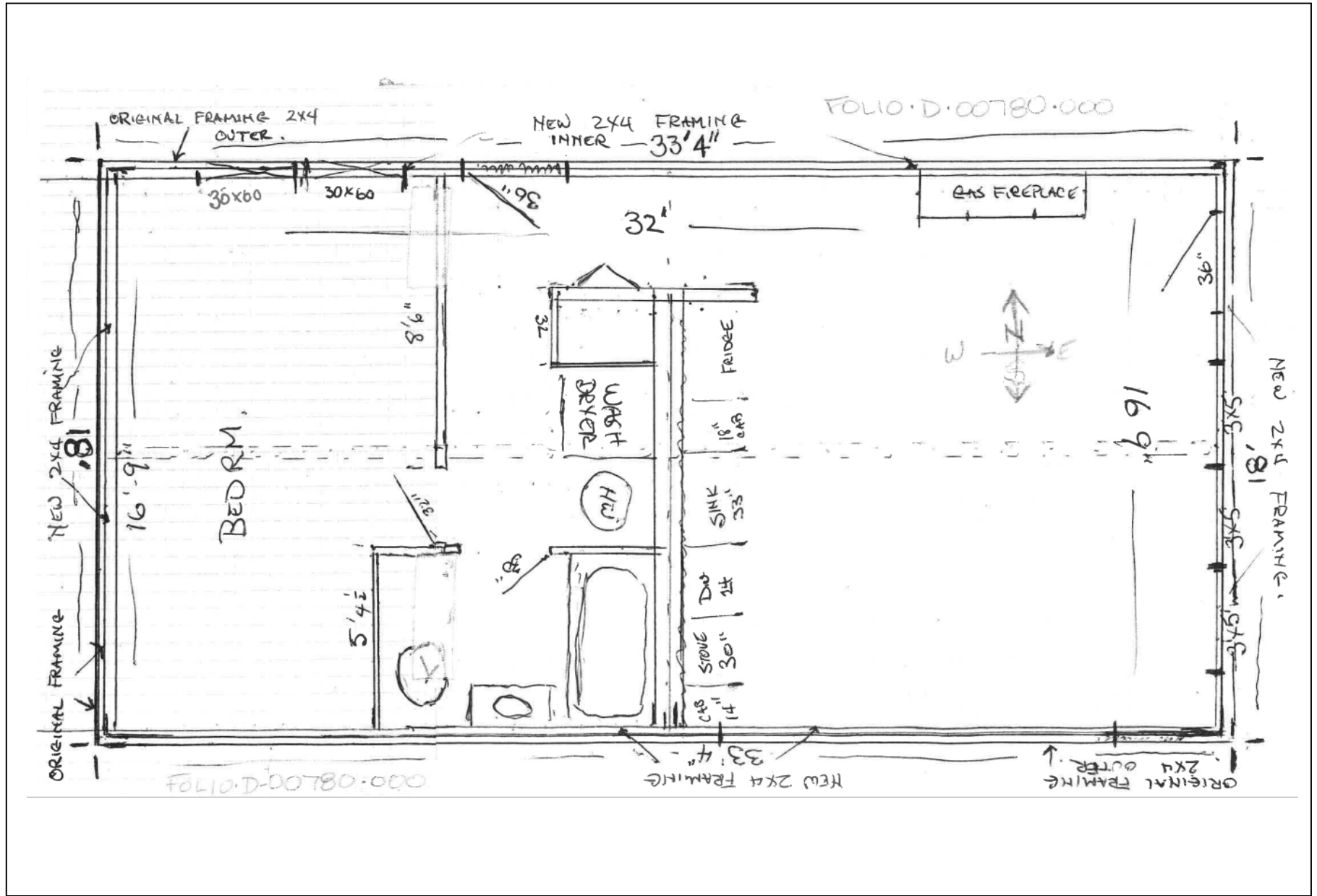
Attachment No. 1 – Context Maps



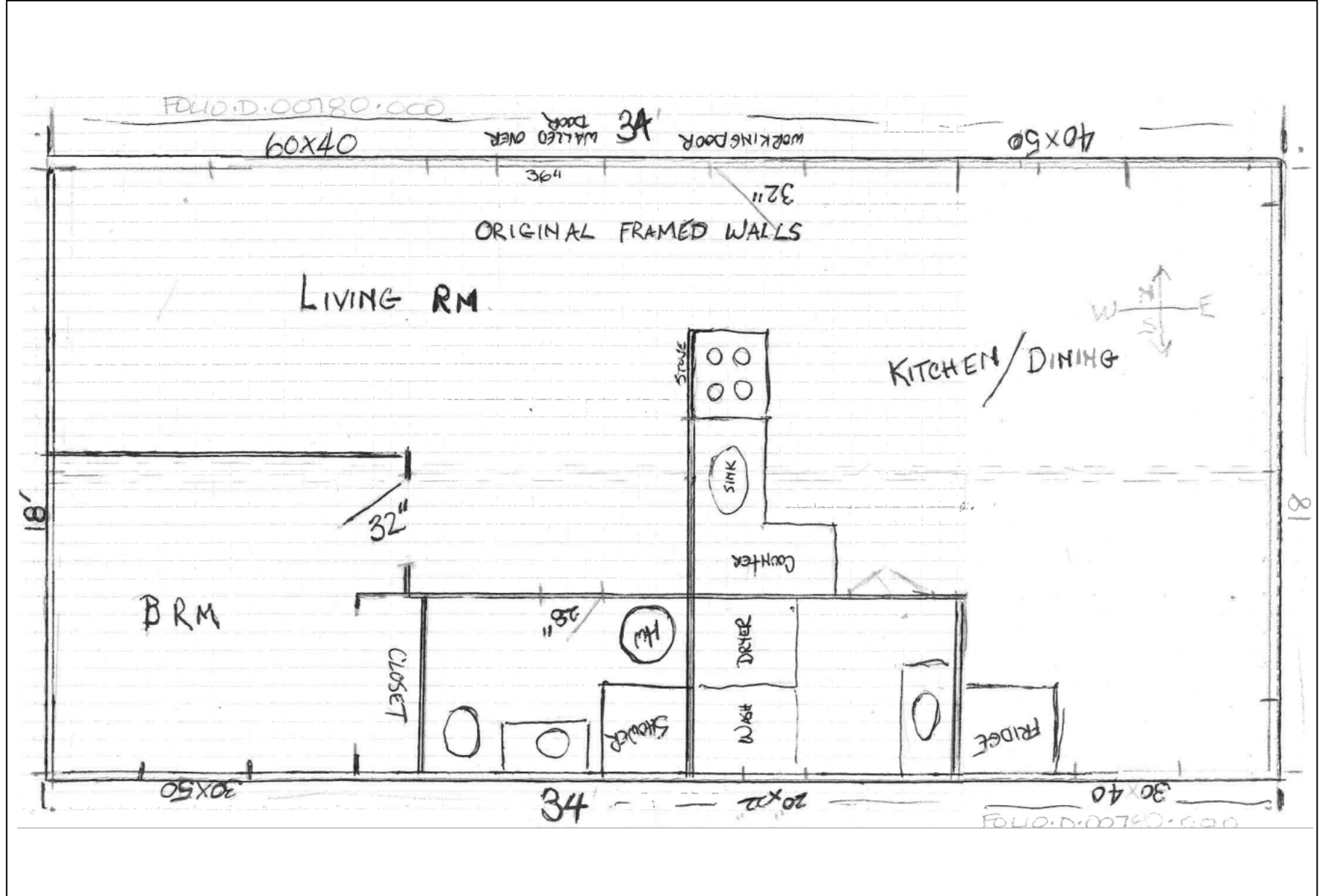
Attachment No. 2 – Applicant's Site Plan



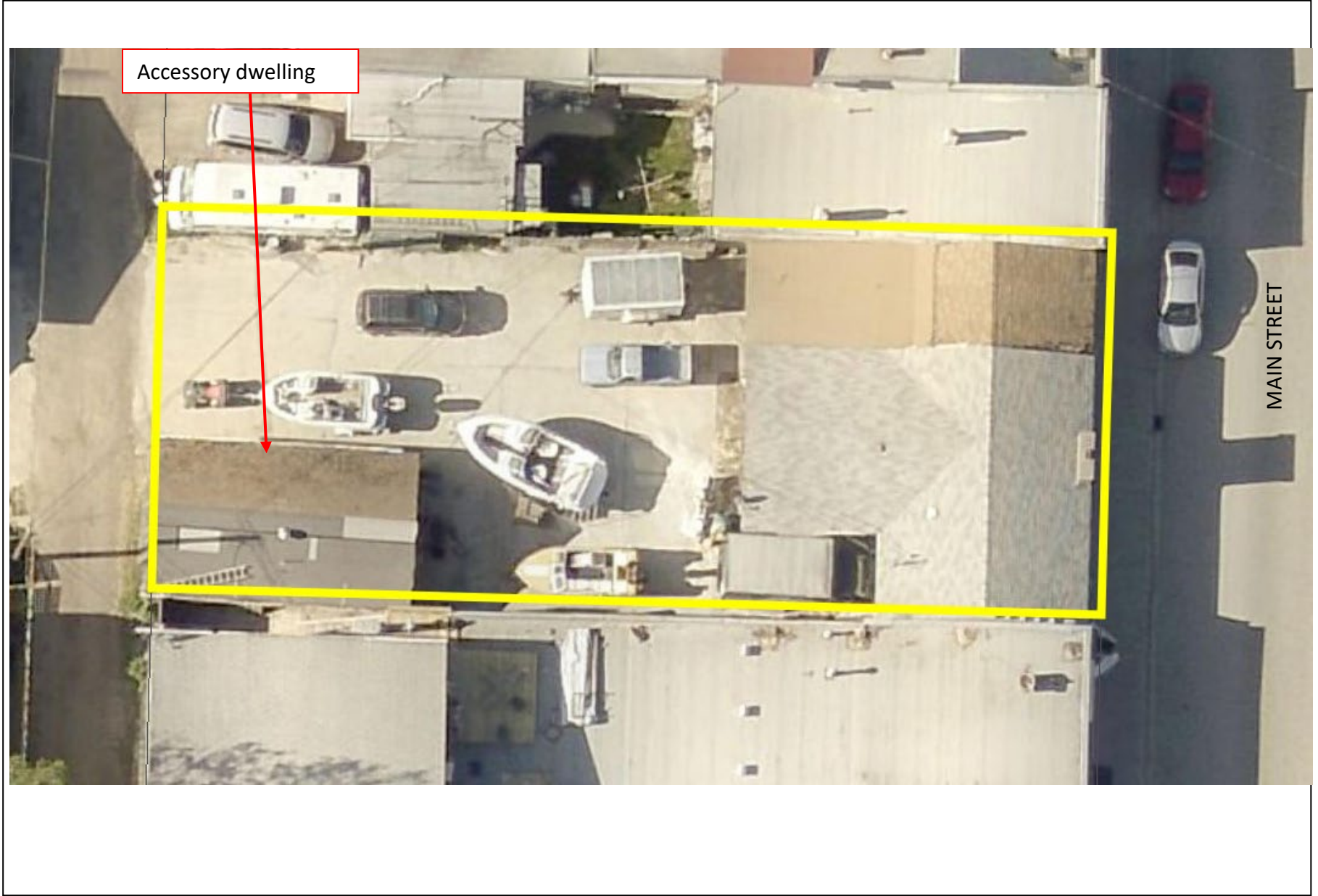
Attachment No. 3 – Applicant's Proposed Floor Plan



Attachment No. 4 – Applicant's Current Floor Plan



Attachment No. 5 – Aerial Photo



Attachment No. 6 – Site Photo (Google Streetview 2018)

View of structure labelled
"Building" on the site plan
looking west from Main Street

