



# King Consultants Inc.

Land Use Planning and Development Consultants

T: 905-965-1610

Gursewak@kingconsults.ca

August 29<sup>th</sup>, 2024  
Committee of Adjustment  
Planning, Building and Economic Development  
City of Brampton  
City Hall  
2 Wellington St West  
Brampton, Ontario L6Y 4R2

## **Attn: Planning, Building and Development Staff, City of Brampton**

### **RE: A-2024-0279 Request for Variance for 20 Merlin Drive, Brampton**

King Consultants Inc. is the planning consultant representing the registered owners of the above-noted property in the City of Brampton. We have applied under File No. A-2024-0279 to request relief from the Zoning By-law from the required 0.6m permeable landscape strip between a side yard lot line and driveway in our first submission to the Committee of Adjustment. However, Staff noted from our initial submission that the third parking space is considered grandfathered in from the previous iterations of the By-law, which we requested a deferral to understand this new information. The proposal has been amended to request relief from the Zoning By-law to permit a 0.22m permeable strip whereas the By-law requires a 0.6m permeable strip along a driveway.

The driveway design and paving of the permeable landscape strip occurred when both the registered landowner (20 Merlin Driveway) and their abutting neighbour (22 Merlin Drive) agreed to repave both driveways and create a symmetrical design in 2017; albeit the grade was at different levels (*Figure 1*). The driveway construction and design as completed mid to late 2017 according to the original contractor and the work was agreed upon by both parties. Furthermore, the additional paved surface area provided the owners an additional benefit to allow for the safe transfer of their elderly parent from their vehicle to a Mobility Device (*Figure 2*). The owner's parent is a patient at the Burton Manor Long-Term Care and is dropped off by a Type A – Accessibility Van fitted with a ramp for the weekends to spend time with the family. Additional correspondence with videos is provided to demonstrate the pick-up and drop off to this letter.

Later, when the City of Brampton introduced new measures to regulate the installation, construction, paving, resurfacing, expansion and alteration of residential driveways through the enactment of By-laws 105-2019, 147-2019, 291-2019, 3-2021 and new regulations on performance standards. The abutting neighbour proceeded to remove their portion of the paved surface and filed a series of complaints against the registered owners in the fall of 2021.

The subject property is legally described as LOT 10, PLAN 43M1429, BRAMPTON, S/T RT IN FAVOUR OF MATTAMY (CASTLEMORE) LIMITED TO ENTER AT ANY TIME PRIOR TO THE EARLIER OF 10 YRS FROM 01/06/14 OR THE DATE OF COMPLETE ASSUMPTION OF THE SUBDIVISION BY THE CITY OF BRAMPTON AND THE REGIONAL MUNICIPALITY OF PEEL, AS IN PR91788; ARN: 211012000254018 PIN:142200999.

### **Description of Subject Lands**

The subject lands are located on the west side of Merlin Drive and the north side of Braydon Boulevard in the Vales of Castlemore community in Brampton, Ontario. The site measures a total of 555 Square Metres in area (0.137 acres) and is supported by an irregular frontage of 15.71m, a width of 24.01m, a depth of



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28.97m, and driveway access onto Merlin Drive. The lot was created through Castlemore Developments Limited through subdivision application 43M-1429.

The City of Brampton *Official Plan* designates the subject property as “Communities” under *Schedule 1 City Concept* and “Residential” *Schedule A General Land Use*. The subject property is designated “Low Density Two Residential” in the *Vales of Castlemore Secondary Plan 42*. The subject property is designated as “Residential Single Detached A – Special Section 1714” under the *City Zoning By-law Section 12.1*, as amended.

## Description of the Variance

The proposed Variance seeks to amend the *Zoning-By-law* to permit a 0.22m landscape permeable strip along the south lot line, whereas the *By-law* requires 0.6m.

The *Zoning By-law* intends to regulate hardscaping along driveways in the front yard lot lines to prevent a deterioration of the streetscape, decrease in the drainage, the visual orientation of the neighbourhood and an excessive number of vehicles in the front yard. The following factors need to be considered as to why this Variance is appropriate and suitable for this existing situation:

- The existing driveway and expansion of the driveway into the permeable paver did not contravene the maximum width policy based on the existing lot width. The frontage measures 15.71m in length, and the *By-law* requires *driveway widths that are “15.24 metres (50’) to 18.3 metres (60’): driveway may be no wider than 7.32 metres (24’)*. The driveway width is measured at 7.31m, which is consistent with the *By-law*. Staff identified this configuration (except for the 0.6m) as grandfathered despite the contravening *By-law*. However, the area of the permeable strip is in contravention because staff are viewing the paved area as an extension of the use and function of the driveway. The paved area and the existing porch, pillars, and raised steps prevent haphazard parking in the driveway and pavers, as illustrated in *Figure 4* and *Figure 5*. The paved area only provides an extension of the Driveway by 0.65m for other purposes but does not allow for additional vehicles to be parked.
- The landowners use the additional paved area to provide space for a Type A Accessibility Van to safely drop off an elderly parent. *Figure 3* illustrates the travel path of the mobility device from the driveway, through the garage and into the main floor. The existing layout of the porch and additional steps do not allow for safe access to the ground floor access. This correspondence includes a video of the drop off and pick up challenges. Full removal of the permeable strip will further limit the ability of the Type A Van from making a safe and sound drop off.
- Regarding the rights and scope of grandfathered use, staff advised the parking spaces currently used by the owners identified in our site plan was acceptable before the implementation of the *Zoning By-law* that restrict such a configuration. We examined the Legally Nonconforming use as defined by the *Central Jewish Institute* and *Saint-Romuald* decisions that informed and implied a set of criteria for Ontario Lands Use Planning Law. We do note, as the intent of the application has moved from s.45(1) of the *Planning Act* to a situation that should be evaluated under s.42(2) instead. The case of *Saint Romuald (City) v. Olivier [2002] 2 SCR 898* confirmed under common law, property owners have the right to continue a legally nonconforming use and with reasonable flexibility in that use, including the evolution, intensification or, expansion despite the *Zoning By-law* (*Gowling WLG, 2021*). The Justice reviewing the case outlined seven principles to delineate the limitations the owner’s acquired rights:



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1. The nature of the legally nonconforming use is defined as the activities actually carried out at the site prior to the new by-law restrictions.
2. Where the current use is a mere intensification of the pre-existing activity, as opposed to a difference in kind, it will rarely be open to objection.
3. New activities that expand beyond the pre-existing uses may not be protected under the non-conforming use.
4. When activities that are ancillary or closely related to the pre-existing use are added, the Court must balance the landowner's interest against the community interest, taking into account:
  - a) The degree to which the pre-existing use clashes with the surrounding uses;
  - b) The degree of remoteness of the new activity to the pre-existing use; and
  - c) The aggravated neighbourhood effects of the new activity.
5. Neighbourhood effects must be established by evidence.
6. The characterization of the acquired right must be appropriately tailored to as to allow for reasonable evolution of prior activities.
7. The definition of the acquired right will always have a subjective element but should be grounded in the objective analysis outlined above (*Saint Romuald* at para 38)

Number 1 is satisfied as the intent and objective use additional paved area (where the buffer is to be located) of the legally nonconforming driveway does not stray or detract from the parking use of the three vehicles permitted before the passing of the restricting By-law.

Number 2 is satisfied as the "intensification" of the use occurred when the landowners paved the permeable buffer to expand the driveway for purposes to support the existing parking, accommodate their elderly parent's mobility challenges and the visual aesthetics of the property.

Number 3 is satisfied as the additional paved area does not propose new activities beyond the scope, limitations and purview of the driveway functions for parking vehicles.

Number 4a is satisfied as the grandfathered driveway does not clash with the surrounding uses and instead is consistent with the neighbourhood urban design fabric and does not create issues that would affect the use, enjoyment and operations of adjacent lands.

Number 4b is satisfied as the additional paved area of the driveway is not remote of the grandfathered use for parking vehicles.

Number 4c is satisfied as an owner led public engagement process produced a petition (*Figure 11*) to support the initial minor variance application to retain the existing status quo of the driveway and 0.0m landscape permeable area. Save one neighbour, the community has provided genuine support behind the intention to keep the pre-existing activity and what is considered an extension of that use. In regard to the aggrieved neighbour, the function and use of the additional area does not create a negative impact to their full use and enjoyment of the driveway, their drainage or run-off from the landowner's site and does not harm or detract from the visual appeal of their property.

Number 5 is satisfied by the localization of impacts of the extension of the legally non-conforming use. Points described below on the on-site drainage highlight the limited impact of run-off from the landowner's driveway in a contextual sense and based on the features of the materials used. The



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landowner's have made numerable changes to the site to eliminate additional flows from depositing into the driveway area.

Number 6 is satisfied as the acquired rights of the grandfathered driveway specific characteristics in terms of surface area, purpose and function are genuinely kept within the same performance standards and use. The extension of the driveway as viewed by staff, does not add or allow for additional maneuvering for a fourth parking space, nor does it increase the surface run-off or rate of flow from the driveway to the City storm sewer. The characterization of the existing three parking stall driveway remains the same.

Number 7 is satisfied as the subjective purpose of the evolution of the legally nonconforming use serves the landowners purpose for the accessibility challenges of a family member and their mobility device and serves another purpose for contributing to the visual and aesthetic appeal of the space to the home and property as a whole. The nature of the extension contributes to the further evolution of the existing parking spaces without expanding the use and creating adverse impacts on the neighbourhood. The paved area adequately satisfies the tests expanded under s.45(2) as the paved area of the driveway is desirable for the existing structure (driveway) and further proven with evidence provided, does not adversely impact the surrounding properties and neighbourhood objectively.

- The drainage on-site does not primarily occur in the front yard where the driveway is located due to the site topography and the features of the side yard across the subject property. The front yard represents 105.32 SQM (18.9%), and the remaining area (including the existing Single Family Dwelling) represents 449.67 SQM (81.0%). All eaves and troughs except one eave and splash pad facing the north lot line from the porch move stormwater water to the rear yard. The side yard features steep drops in grades towards the rear yard and ensures water drains along the concrete tiles and steps to the swale and rear yard soil. The projection of the garage wall along the south lot (interior side yard with 22 Merlin Drive) and the side path (having a width of 0.6m as per SS-1714) is raised compared to the grade of the driveway. Water infiltrates the ground and flows into the ravine and the Maldives Pond (stormwater management feature). The remaining 18.9% of runoff deposits into the exposed aggregate concrete pavement and cuts in the driveway toward the lawned portion of the front yard. Furthermore, the removed area represents 4.851SQM, which was retrieved by removing the previous owner's concrete on the opposite side of the driveway, representing an area of 4.596 SQM, a difference of 0.110SQM. The removal of hardscaping has appropriately replaced the increased surface area on the driveway and moved it into the lawn from the eave and splash pad. The proposed 0.22m cut to the existing pavers will further support the drainage of stormwater runoff into the ground rather than the surface and City stormwater sewers.
- The neighbourhood features many decorative driveways and pavers to complete the aesthetic look of the existing home. Most driveways feature hand-placed bricks and stones, concrete with cuts, and permeable pavers. The existing driveway does not detract from the neighbourhood's appeal and prevents additional parking spaces. The owners conducted a neighbourhood survey regarding the requested variance and provided the rationale provided above. The neighbours on Merlin Drive and adjacent streets signed and provided an address confirming their proximity to the subject property.



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## **Current Situation**

### Maintains the General Intent and Purpose of the Official Plan

The property is designated "*Communities*" under *Schedule 1 City Concept* and "*Residential*" under *Schedule A General Land Use*. The nature of the variance and extent do not contravene the policies and objectives of the Official Plan.

### Maintains the General Intent and Purpose of the Zoning By-law

Variance 1 requests relief from the required 0.6m landscape strip between the driveway and interior lot line (south lot line) to permit a 0.22m strip instead. While the By-law measures the required width for the strip, the By-law intends to ensure drainage through infiltration and movement of stormwater into the softscaping and landscaping. Contextually, the site drainage primarily occurs from the side yards to the rear yard through eaves and troughs, and the nature of the site grading represents 81.0% of the total lot area. In contrast, the remaining 18.9% is drained through the exposed aggregate concrete, cuts in the pavement, and the eave and splash pad in the front yard move runoff into the landscaping. Sufficient contextual evidence indicates that the intent of the By-law is respected by providing adequate drainage and not detracting from the subject property's aesthetics.

### Desirable for the Appropriate Development of the Land

The requested Variance is appropriate as the site contextually provides adequate drainage through the site topography, the location and direction of the eaves and troughs and the materials used to control the driveway. The driveway design contributes to the aesthetic appeal and compliments the visual neighbourhood fabric. Furthermore, the additional space provided by the

### Minor in Nature

The Variance pertains to an existing driveway that was repaved in 2017 to feature a centrepiece design. The original driveway was symmetrically aligned with the adjacent neighbour's driveway until a change in the by-law in 2021 necessitated the removal of a 0.6m strip by the neighbour. However, the property owners retained the paved portion of the driveway. The site has adequate drainage and effectively manages water without causing any negative impact on neighbouring properties or the city infrastructure on Merlin Drive. Therefore, the Variance can be considered minor in nature.

We trust that the above materials are in order. Should you require any further information, do not hesitate to contact the undersigned.

Warm regards,

Gursewak Singh  
Director, Planner  
King Consultants Inc.  
Provisional Member MCIP, RPP  
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singhplan@outlook.com



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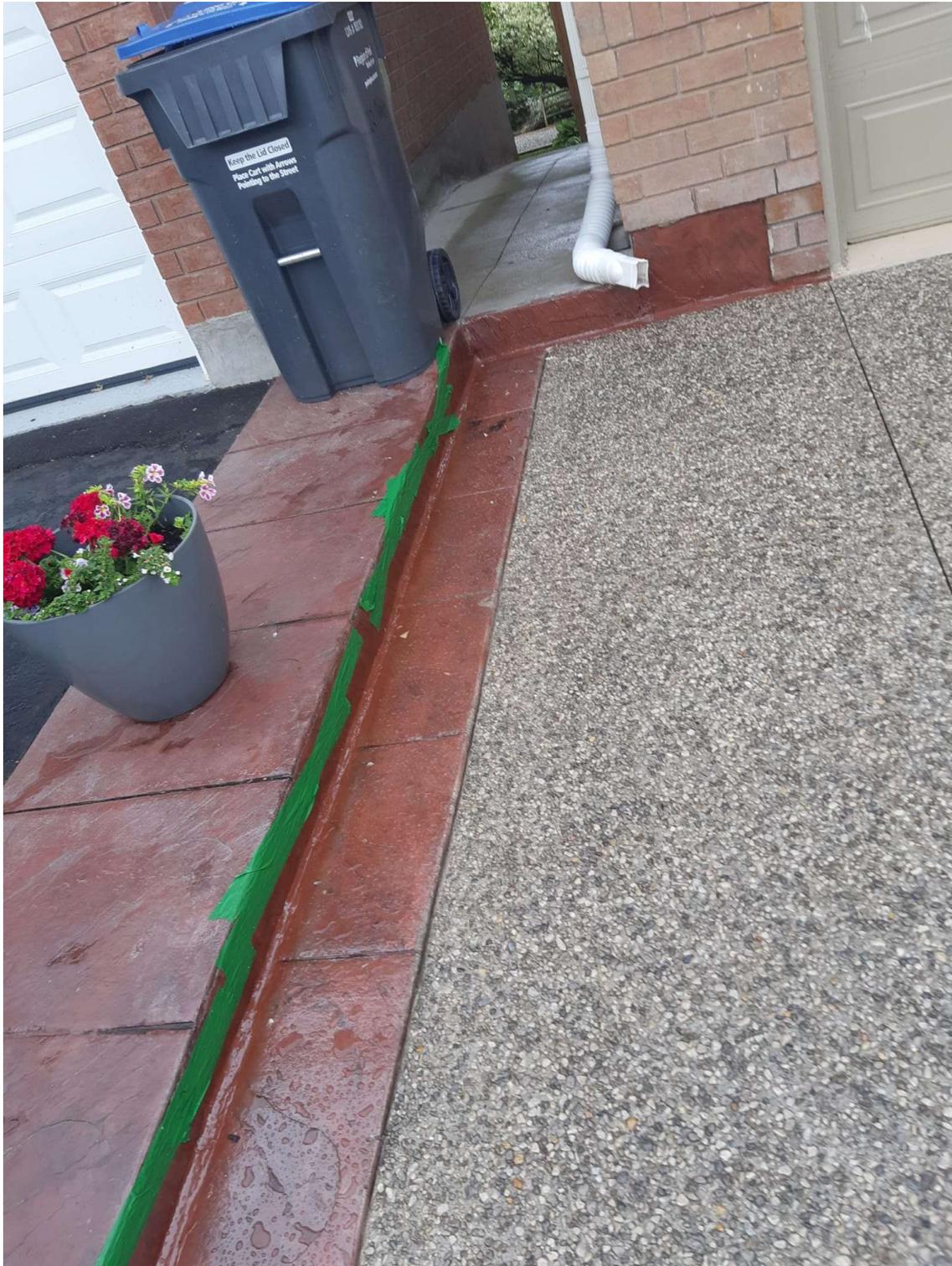
Attachments

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*Figure 1 Mutual Pavers Installed by both Owners*



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August 27, 2024

To Whom it May Concern:

Please accept this letter as confirmation that Mohinder Kaur Needs Assistance with the mobility

burtonmanor

5 Sterritt Drive  
Brampton, ON  
L6Y 5P3

tel. 905 455 1601  
fax. 905 455 1033

[primacareliving.com](http://primacareliving.com)

If you have any questions or require further information, please don't hesitate to contact me at extension 502.

Sincerely,

Bidarekere Swamy  
Executive Director  
Burton Manor LTC

BS/js

cc: employee file

people focused. quality care.

Figure 2 Letter of Confirmation

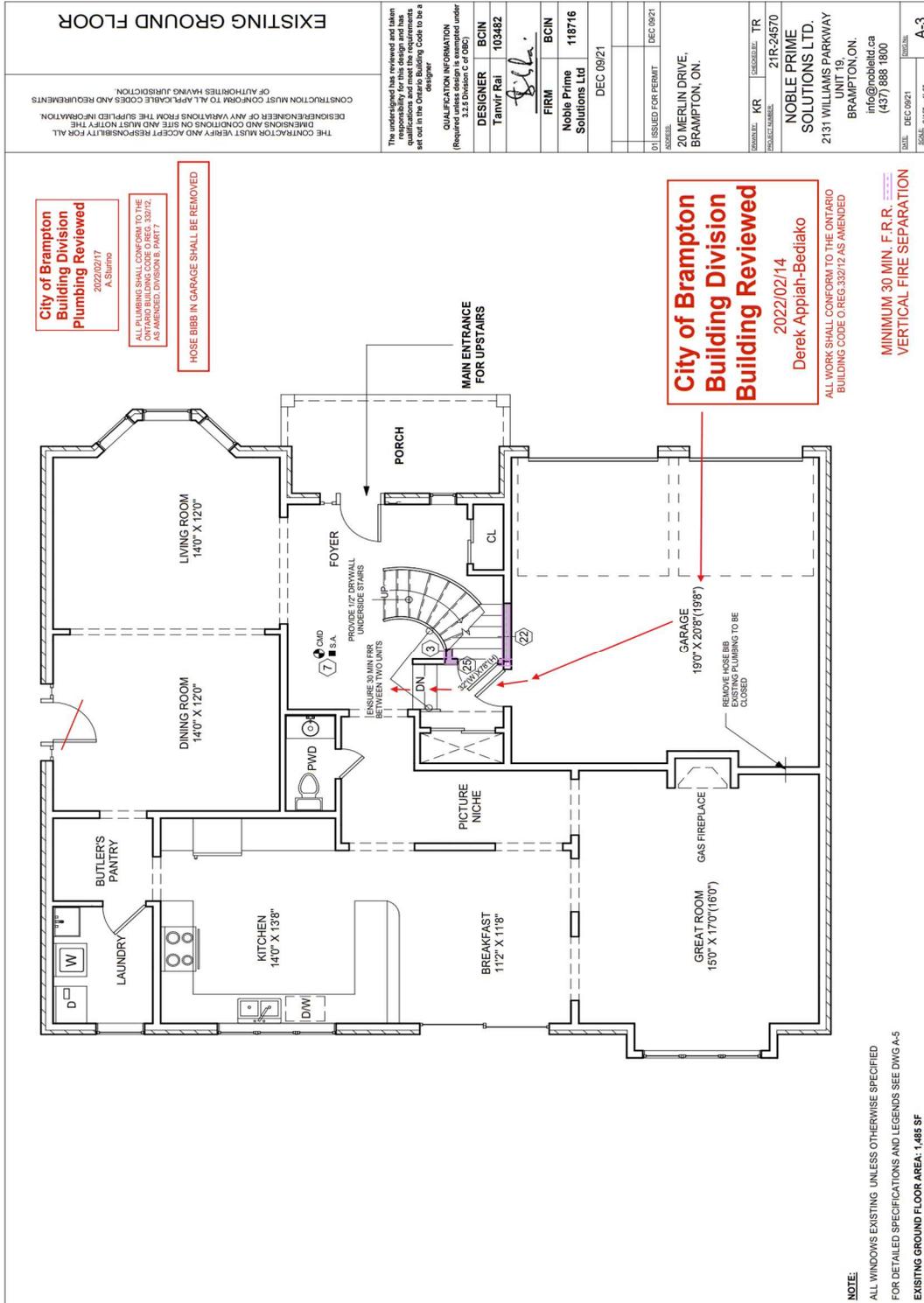
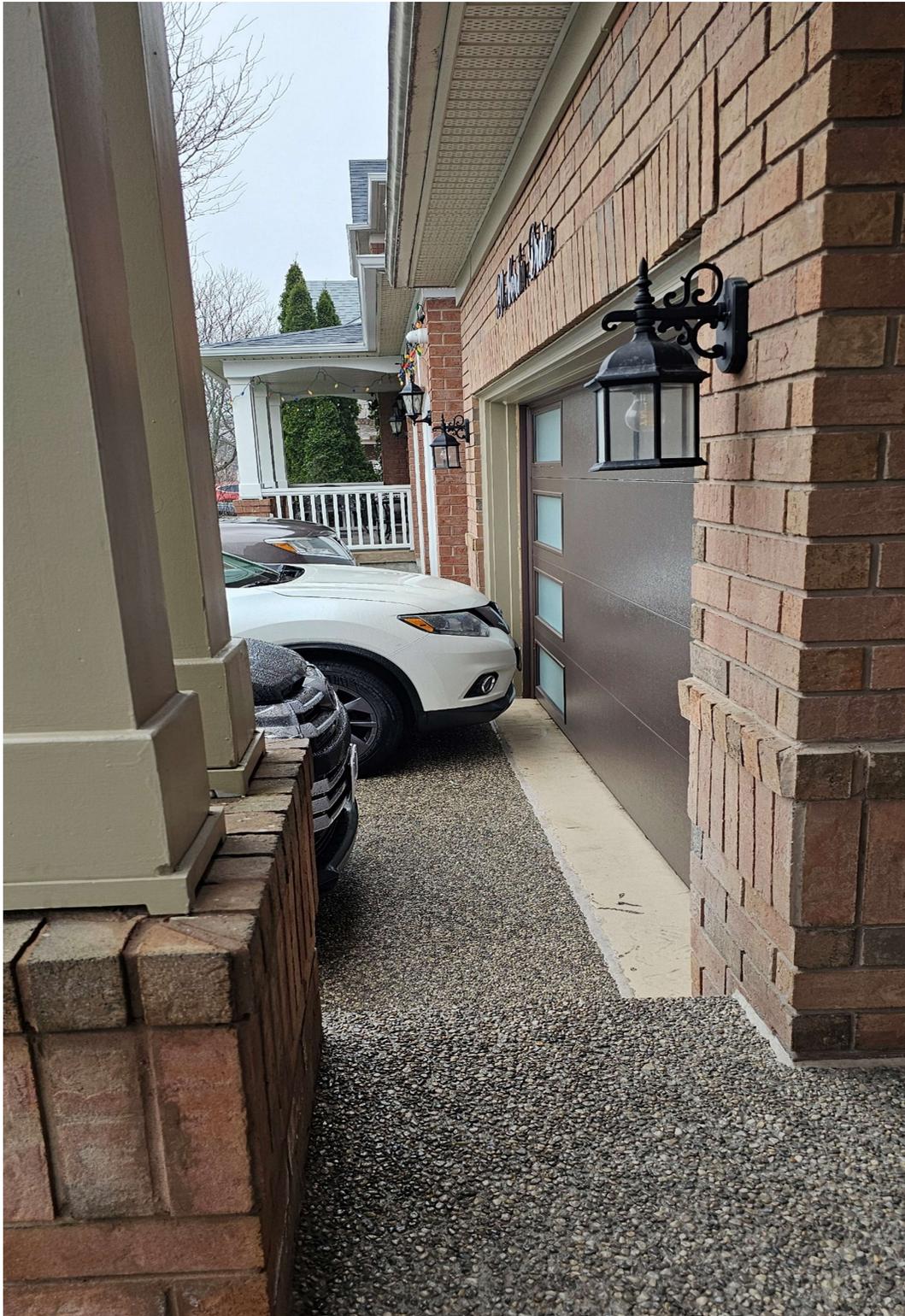


Figure 3 Travel Path of the Elderly Patient and their Mobility Device



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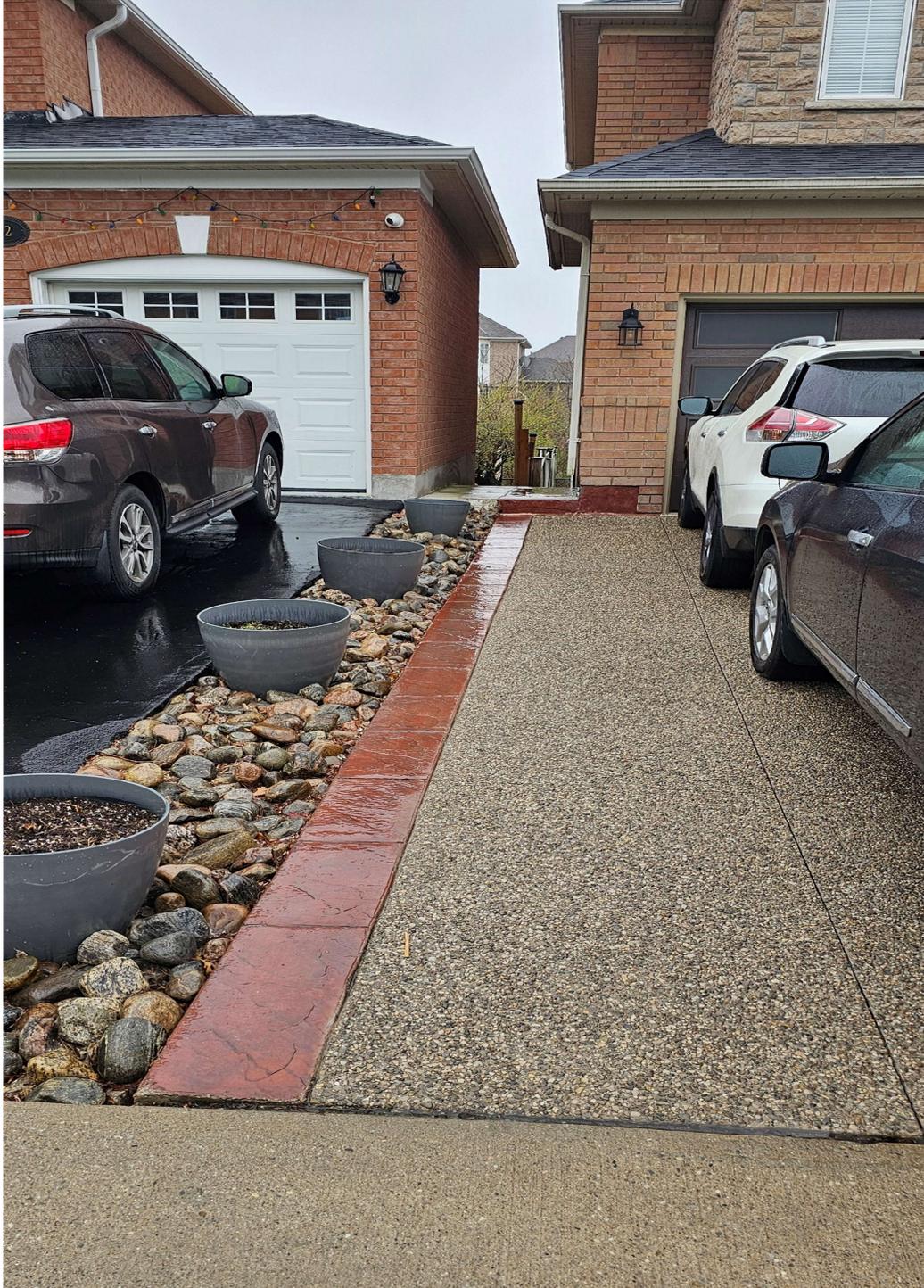


*Figure 4 Image of the Driveway Face and Porch Projection*



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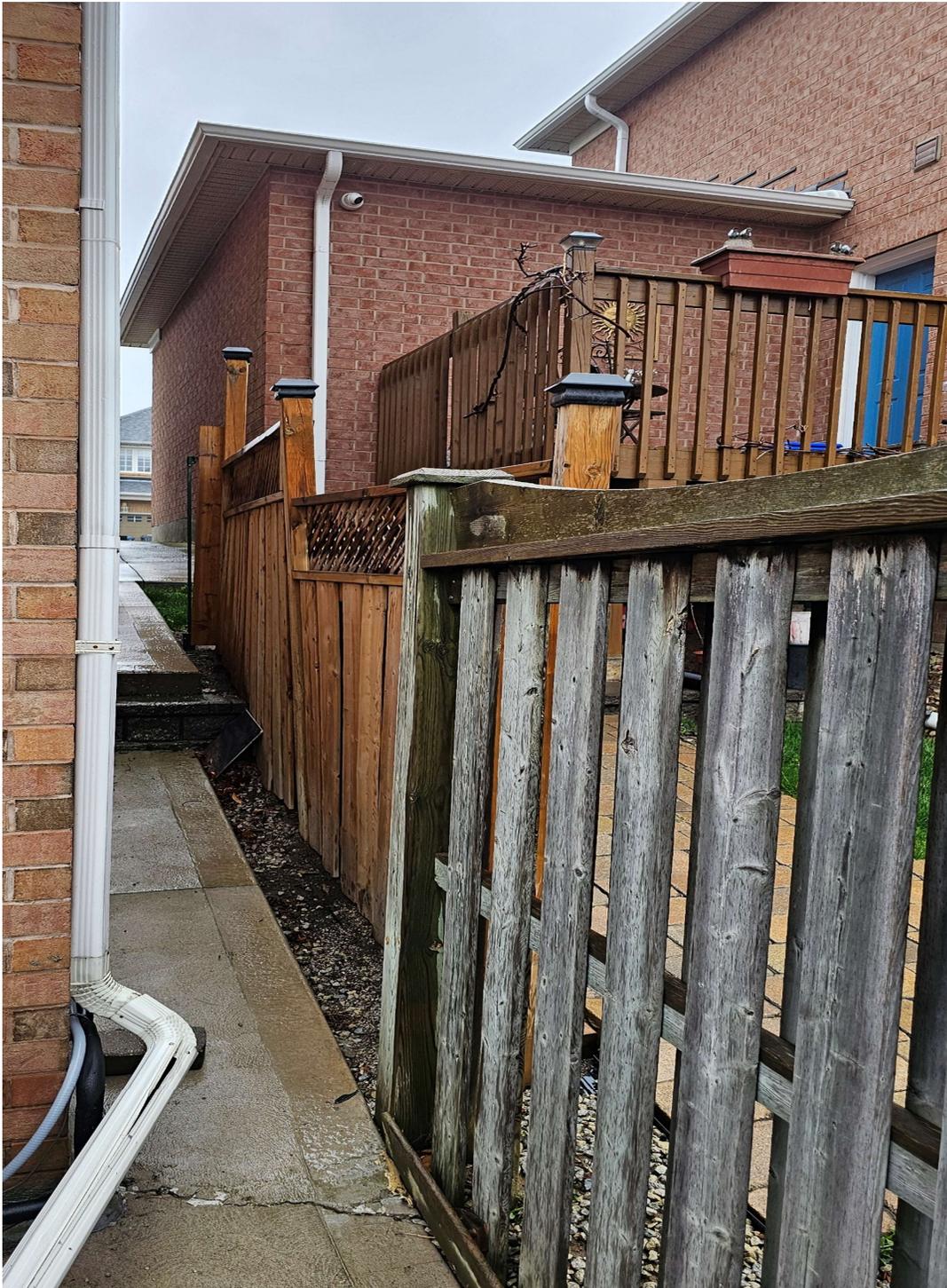


*Figure 5 Image of the Int. Side Yard (Southerly Lot Line) and Area Affected by the Removed Permeable Landscaping Strip*



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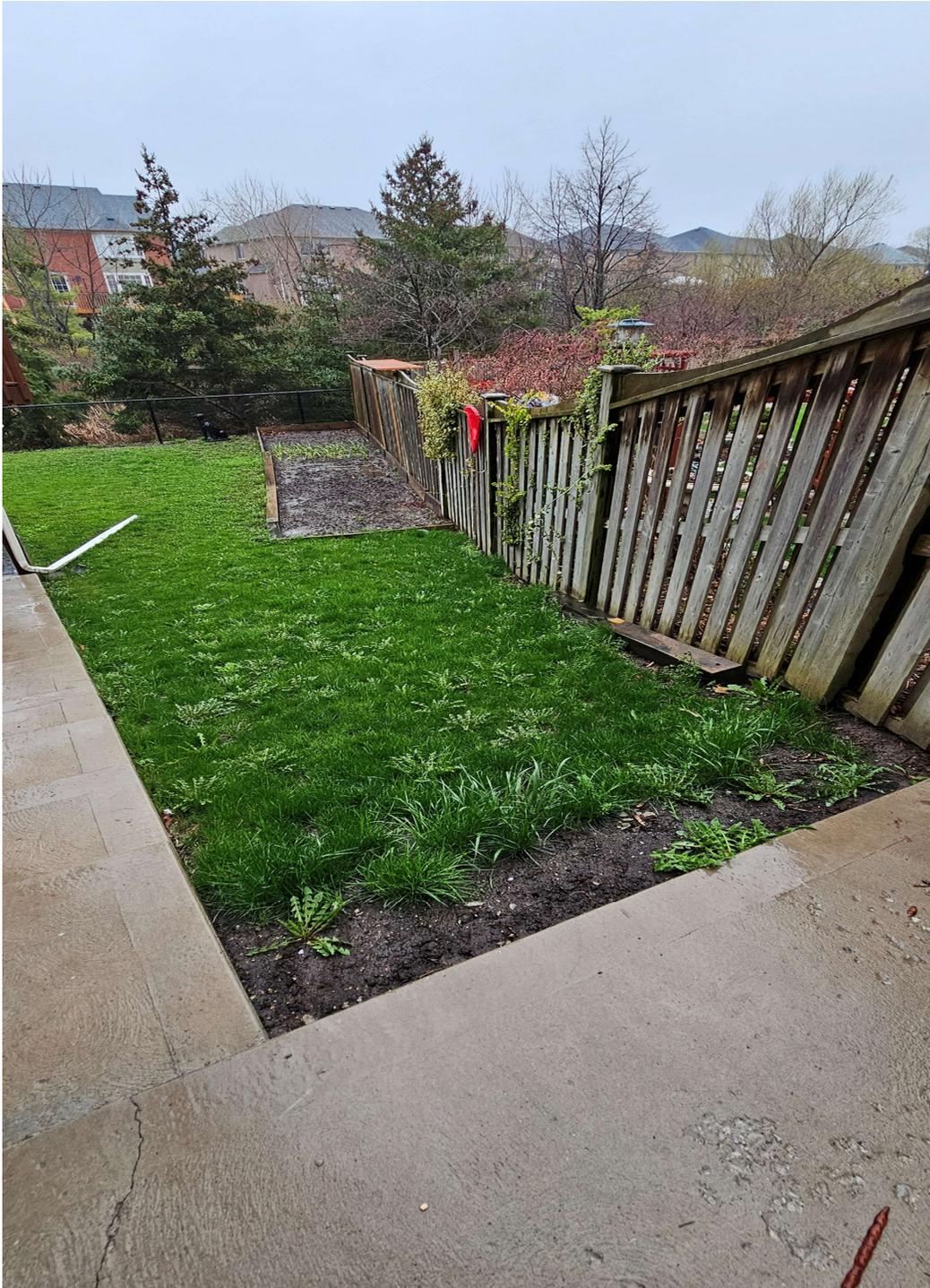


*Figure 6 Image of the Int. Side Yard (Southerly Lot Line) Illustrating the Steep Grade from the Front Yard to the Rear Yard*



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*Figure 7 Image of the Int. Side Yard (Northernly Lot Line) Grade Towards the Rear Yard*



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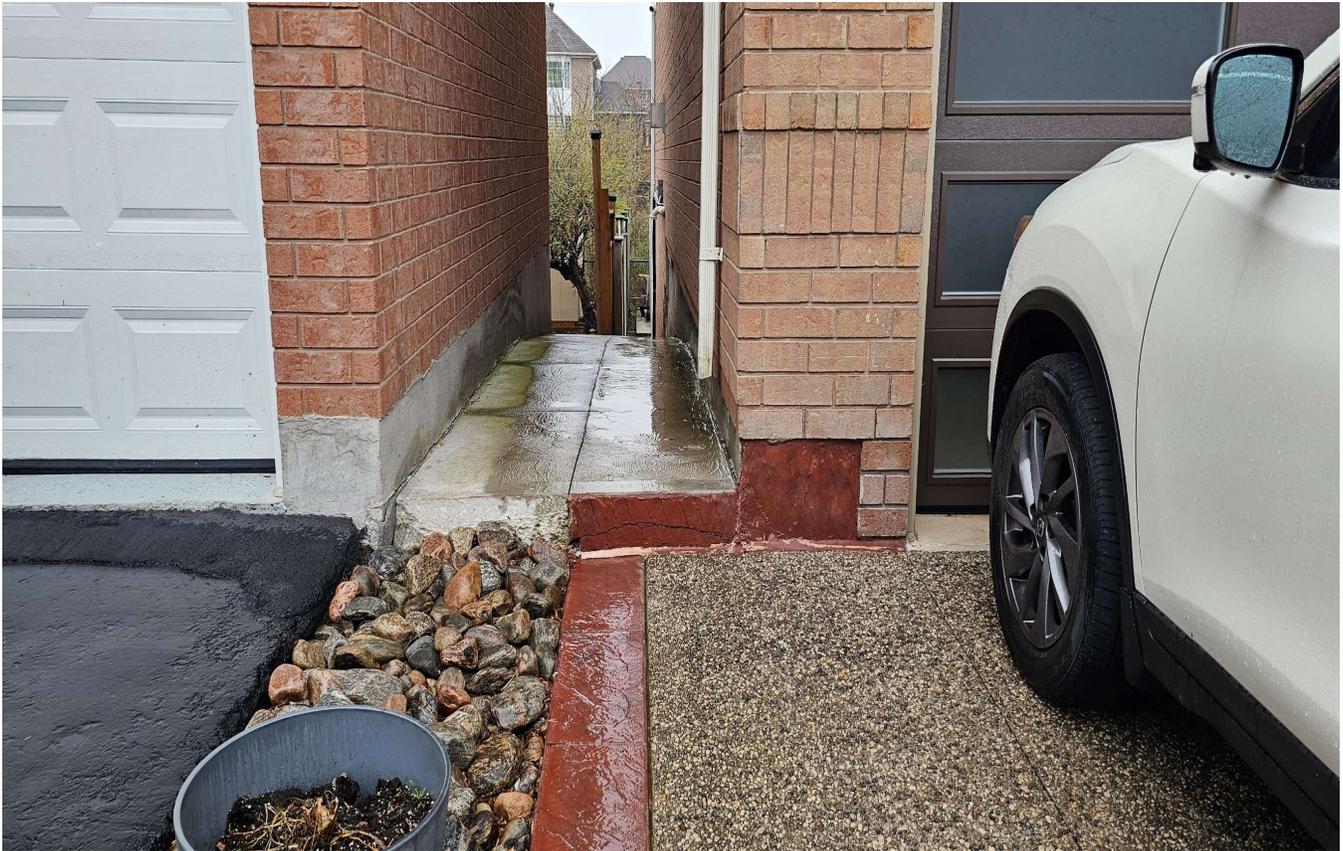


*Figure 8 Rear Yard Abutting the Ravine and Stormwater Management Area*



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*Figure 9 Int. Side Yard (Southerly Lot Line) Difference in Grade Between 22 Merlin Drive and 20 Merlin Drive*



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*Figure 10 Front Yard Eave and Concrete Splash Pad Adjacent to the Landscaped Area*



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*Figure 11 Landscaped Area in the Front Yard*



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We are seeking to maintain our existing driveway and have provided compelling evidence to the City Staff demonstrating that we have made necessary adjustments to our landscaping to compensate for the lack of a 0.6m landscape buffer against our neighbor's driveway. Our driveway surface area and width has remained relatively the same since the construction of the home and the previous owner's tenure. There are no additional variances requested.

No.	Address	Signature
1	14 Merlin Drive, BRAMPTON, ON-L6M1E9	Sandeep Singh
2	15 Merlin drive, brampton	P. Singh
3	16 Merlin Drive	P. Bhandari
4	18 Merlin Drive	[Signature]
5	10 MERLIN DR.	H. Dandani
6	3 wonder way	K. Kaur
7	26 Merlin DR.	P. Singh
8	24 Merlin DR	Singh
9	28 Merlin Drive	C. Subhawa
10	19 MERLIN DR	MANJIT S. SINGH
11	1 wonder way	[Signature]
12	8 Merlin Dr.	Kaur
13	17 JED MERLIN DR	Jaspreet Kaur
14	21 MERLIN DRIVE	[Signature]
15	25 MERLIN DRIVE	[Signature]

16) 11 Merlin Dr.

Please consider supporting our cause and add your signature to our petition! Your support can truly make a difference.

17) 13 Merlin drive

18) 32 Merlin drive

19) 12 Merlin Drive

[Signatures for rows 16-19]

Figure 12 Property Owner led Public Engagement and Neighbourhood Survey



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Type A Van Accessible Drop off and Pick-up:

[https://drive.google.com/file/d/1cY6yaNoogmnnUuPk7-qQPpNI8BcxypJj/view?usp=drive\\_link](https://drive.google.com/file/d/1cY6yaNoogmnnUuPk7-qQPpNI8BcxypJj/view?usp=drive_link)