



BZA CASE NO. 19771 OF MALCOLM HAITH AND LEE WELLS

JUNE 13, 2018

1834 ONTARIO PLACE, NW

Board of Zoning Adjustment
District of Columbia
CASE NO.19771
EXHIBIT NO.45

Background

- Owners are the homeowners
- Submitted building permit March 2017
- Owners and Architect met with the zoning reviewer Mr. Vollin and his supervisor Mr. Ndaw and they determined that the porch could be removed because the regulation regarding porch removal was not put into place until April 2017, which was after we submitted
- We also met on the 3rd floor height adjustment of which they determined needed to be setback and we agreed and revised our plans accordingly, but the porch question was determined to be a non-issue
- We proceeded and received an approved building permit in October 2017 with the approved porch modifications
- In late February 2018, 4 months into construction, DCRA noticed that they “made a mistake”
- Porch needs to come down one way or another because it is in disrepair
- Cost of ~\$30,000 to restore the porch

Overview

- Special Exception Relief pursuant to E § 5201 for an accessory garage
 - Size of Accessory Structure in the Required Rear yard setback 11-E DCMR § 5004.2
 - Lot Occupancy; 66% proposed

- Special Exception Relief from the req. of E § 206 in order to remove a portion of the porch roof
 - “neighborhood character”

Relief for an Accessory Garage

Accessory Garages on this Block









mbia



1842

1840

1838

1834

Google

8



General Special Exception Requirements of X-901.2- Accessory Garage

The granting of a special exception in this case “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps ...” (11-X DCMR § 901.2).

- Will not adversely affect the adjacent properties
- Every other property (except for the subject property and two others) has an accessory garage
- At least 7 garages are taller than 13 ft. 8 in.

Special Exception Relief pursuant to E § 5201

- Rear yard accessory structure requirements of 11-E DCMR § 5004.2
 - Accessory structures in required rear yards must be less than 10 ft. in height and less than 100 sq. ft.
 - Garage is 13.8 ft. in height and 375 sq. ft.
 - Garage size is based on other garages on this side of Ontario
 - Zoning Administrator and OP have confirmed that special exception relief is appropriate
 - If the accessory structure was not located in the req. rear yard setback, the building could be 20 ft. in height and 450 sq. ft. as a MOR; it's because the building is located in the required REAR YARD that an additional height limitation is placed on the accessory structure
 - Regulations specifically allow for special exception relief (E-5007 and E-5201)
- Lot occupancy requirements of E-304.1
 - 66% lot occupancy is proposed

5004 REAR YARD

5004.1 No minimum rear yard is required for an accessory building in an RF zone except when abutting an alley, where it shall be set back at least twelve feet (12 ft.) from the center line of the alley.

5004.2 An accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions:

- (a) The accessory building is less than ten feet (10 ft.) in height; and
- (b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area.

5004.3 If the required rear yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve feet (12 ft.) from the center line of the alley.

Subtitle E § 5007 states that special exception relief from the development standards of Chapter 50 is permitted, subject to E-5201. Subtitle E § 5004 and E § 5007 are in the same chapter.

5007 SPECIAL EXCEPTION

5007.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E §§ 5201.

Height is controlled by E § 5002

The Applicant believes it is clear that Subtitle E-5004 pertains to REAR YARDS, as limitations on the height of an accessory structure is found in a different section E-5002:

5002 HEIGHT

5002.1 The maximum permitted height for an accessory building in an RF zone shall be twenty feet (20 ft.) and two (2) stories, including the penthouse.

Further, the building is within the permitted height limits for accessory structures in the RF-1 Zone, and if it were not in the required rear yard, would be permitted as a matter-of-right.

Effectively, what this means is that a request to go above 20 feet in height would be a height variance. A request between 10 and 20 is a special exception if the structure is in the required Rear Yard. If it's not in the required rear yard, then it's permitted as a matter of right if it is under 20 feet in height.

5201

ADDITION TO A BUILDING OR ACCESSORY STRUCTURE

5201.1

The Board of Zoning Adjustment may approve as a special exception in the RF zones, relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9.

(a) Lot occupancy;

(b) Yards;

(c) Courts;

(d) Minimum lot dimensions;

(e) Pervious surface; and

(f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.

5201.2

Special exception relief under this section is applicable only to the following:

(a) An addition to a residential building;

(b) A new or enlarged accessory structure that is accessory to such a building;
or

(c) A reduction in the minimum setback requirements of an alley lot.

Requirements of E-5201.3

- 5201.3(a): *The light and air available to neighboring properties shall not be unduly affected;*
 - The garage will be the same size as the adjacent properties' accessory garages and will not impact light and air available to the neighboring properties, as demonstrated by the shadow studies
- 5201.3(b): *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
 - The Applicant is not proposing to have any windows on the sides of the accessory building
- 5201.3(c): *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage;*
 - The accessory structure will be the same size as the other accessory garages on this block of Ontario– all other properties except the subject property and one other property have accessory garages of this size

Requirements of D-5201.3

5201.3(d): In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways

5201.3 (e): The Board of Zoning adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%)

The Applicant has provided photographs; the total lot occupancy is limited to 66%

D § 5201.4 - 5201.6

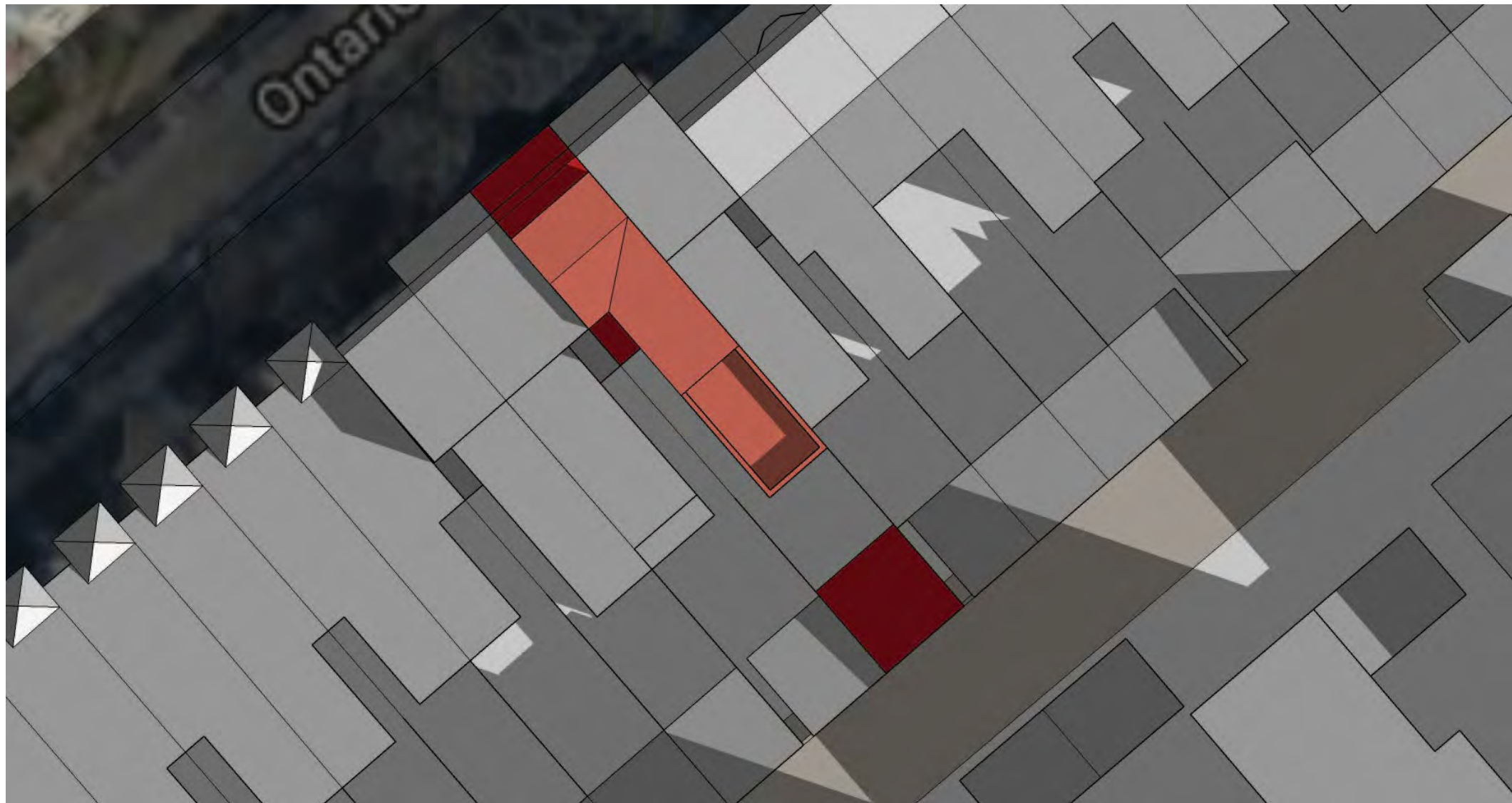
- *Section 5201.4 “The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.”*
- The Applicant will comply with Board directives for protection of adjacent and nearby properties.
- *Section 5201.5 “This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.”*
- The Applicant is not requesting to introduce or expand a nonconforming use.
- *Section 5201.5 “This section may not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.”*
- The Applicant is not requesting to introduce or expand nonconforming height or number of stories.

Garage Shadow Studies

1. 10 FT. GARAGE (MOR HEIGHT)
2. 13 FT. 8 IN. GARAGE (PROPOSED)

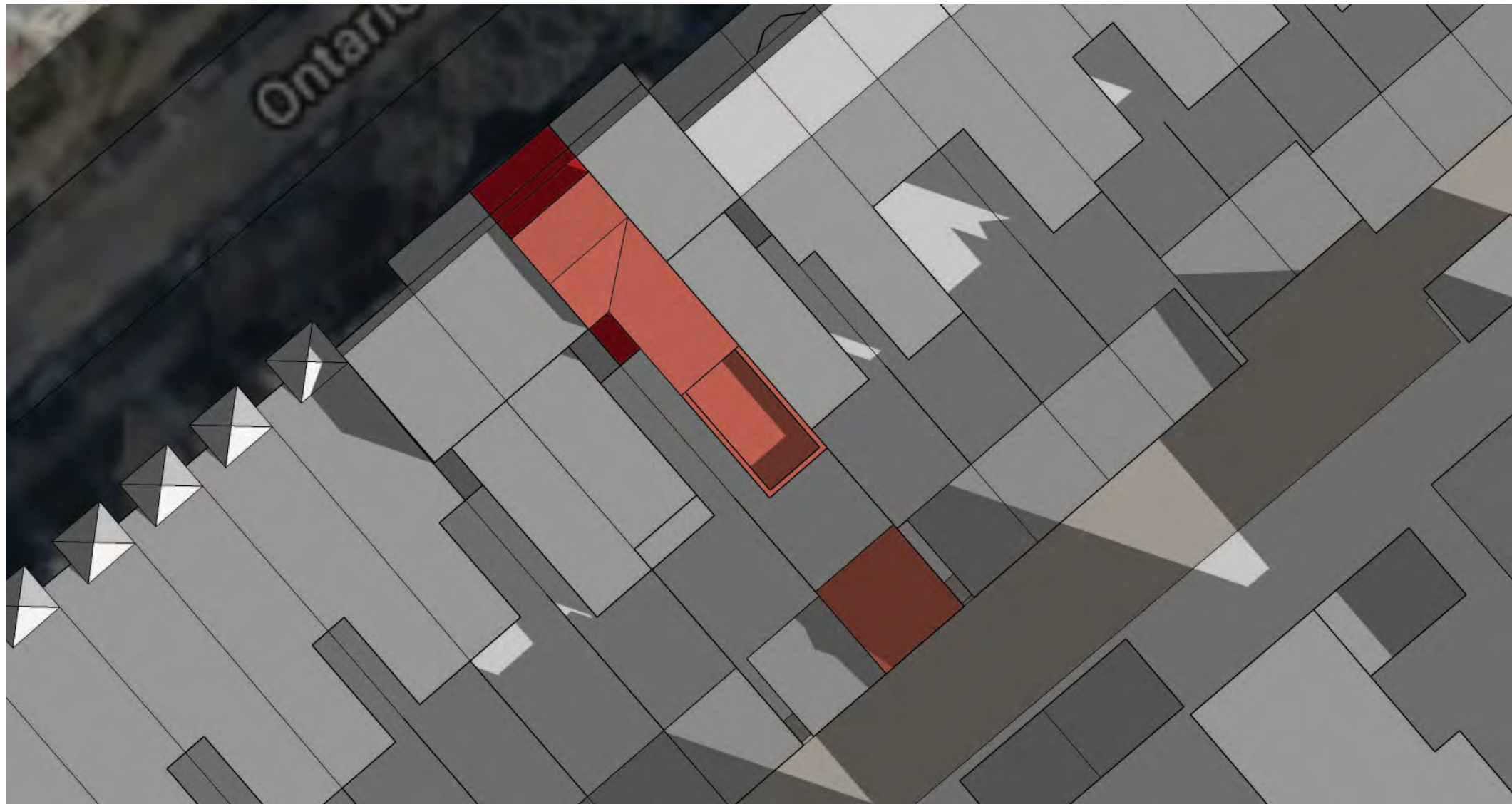


1834 Ontario Pl NW
Shadow Study for Garage



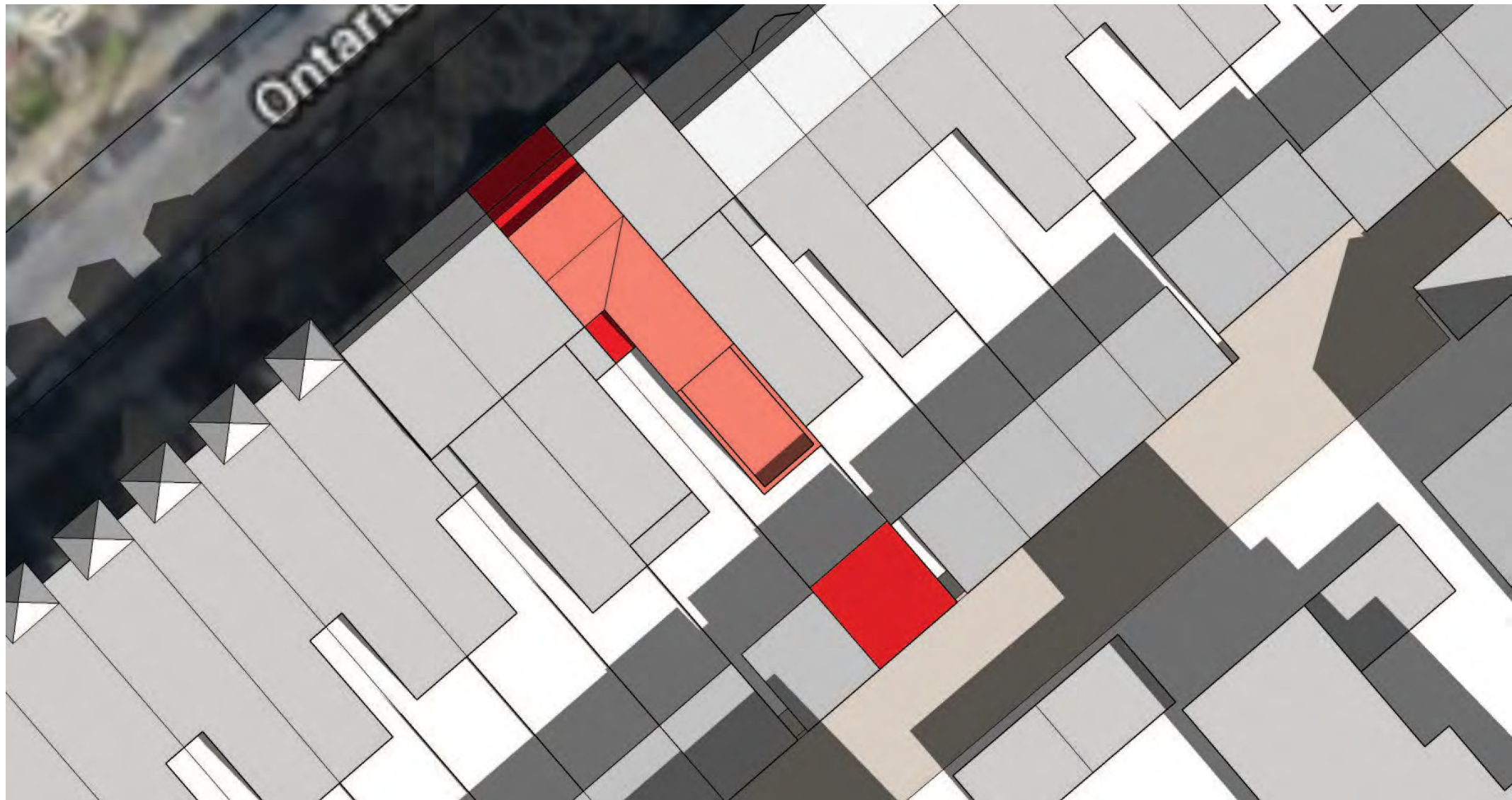
Equinox - 10:00am
Addition and 10'-Tall Garage

N



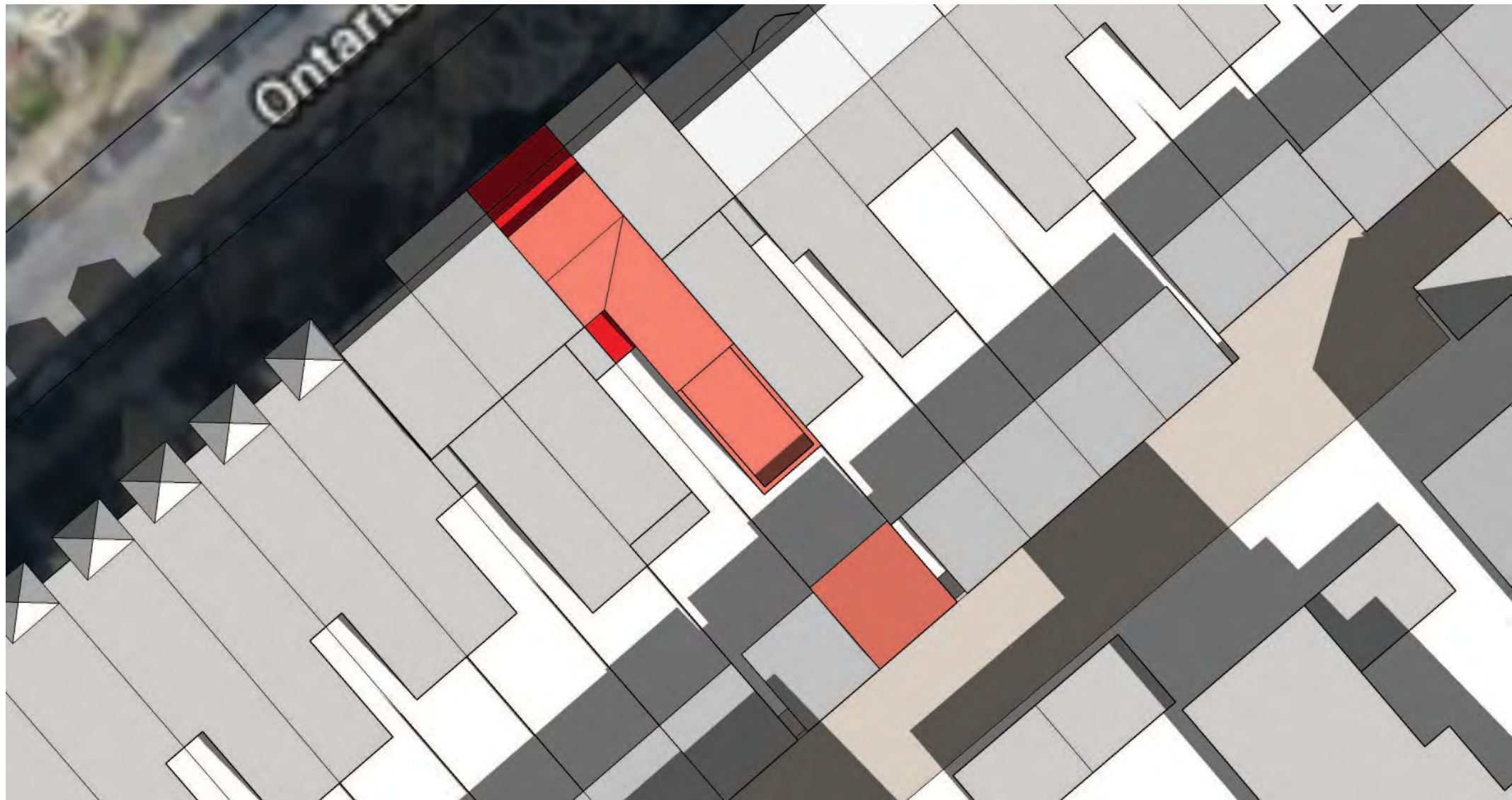
Equinox - 10:00am
Addition and 13'-8"-Tall Garage

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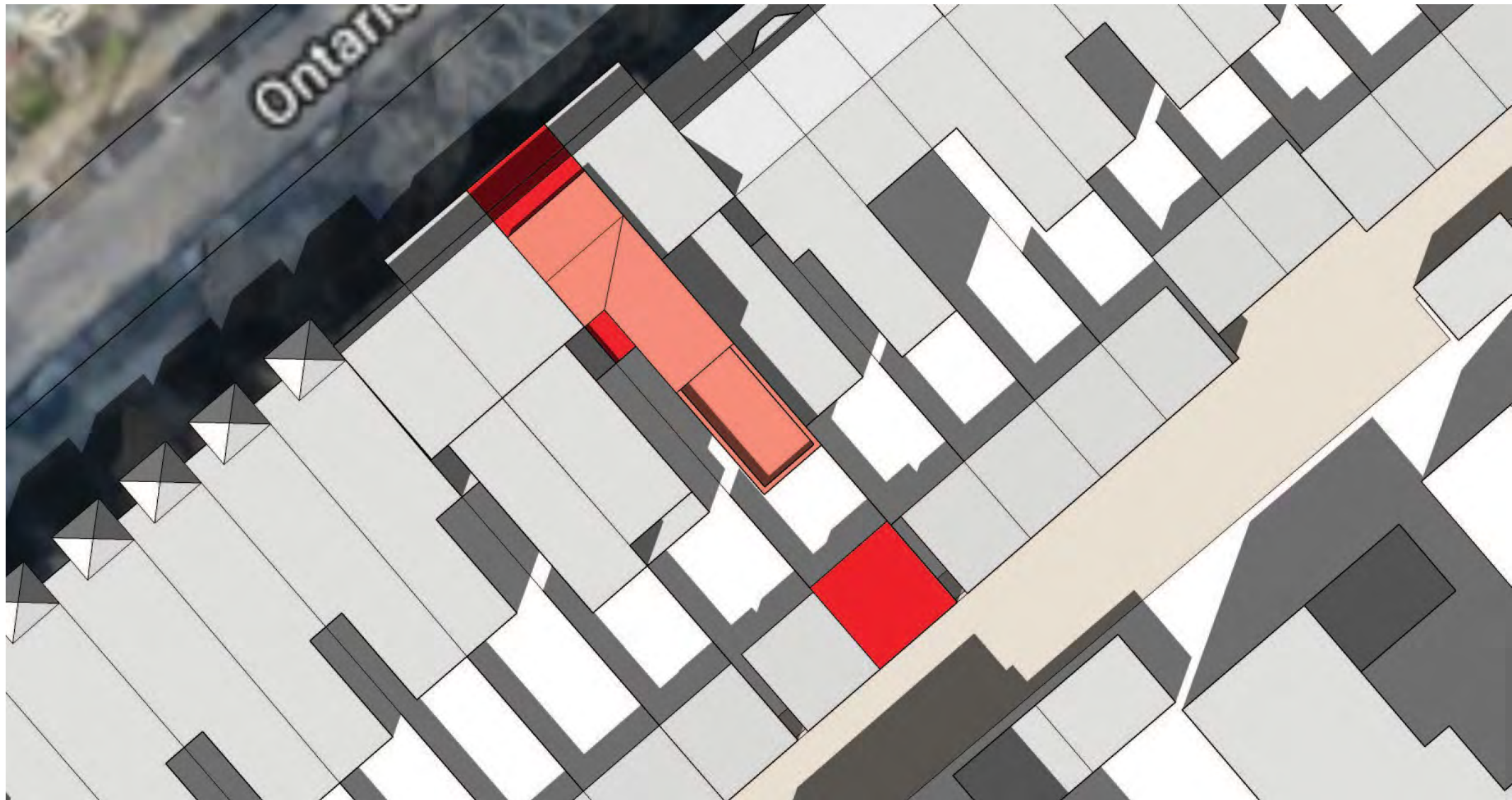
Equinox - 12:00pm
Addition and 10'-Tall Garage

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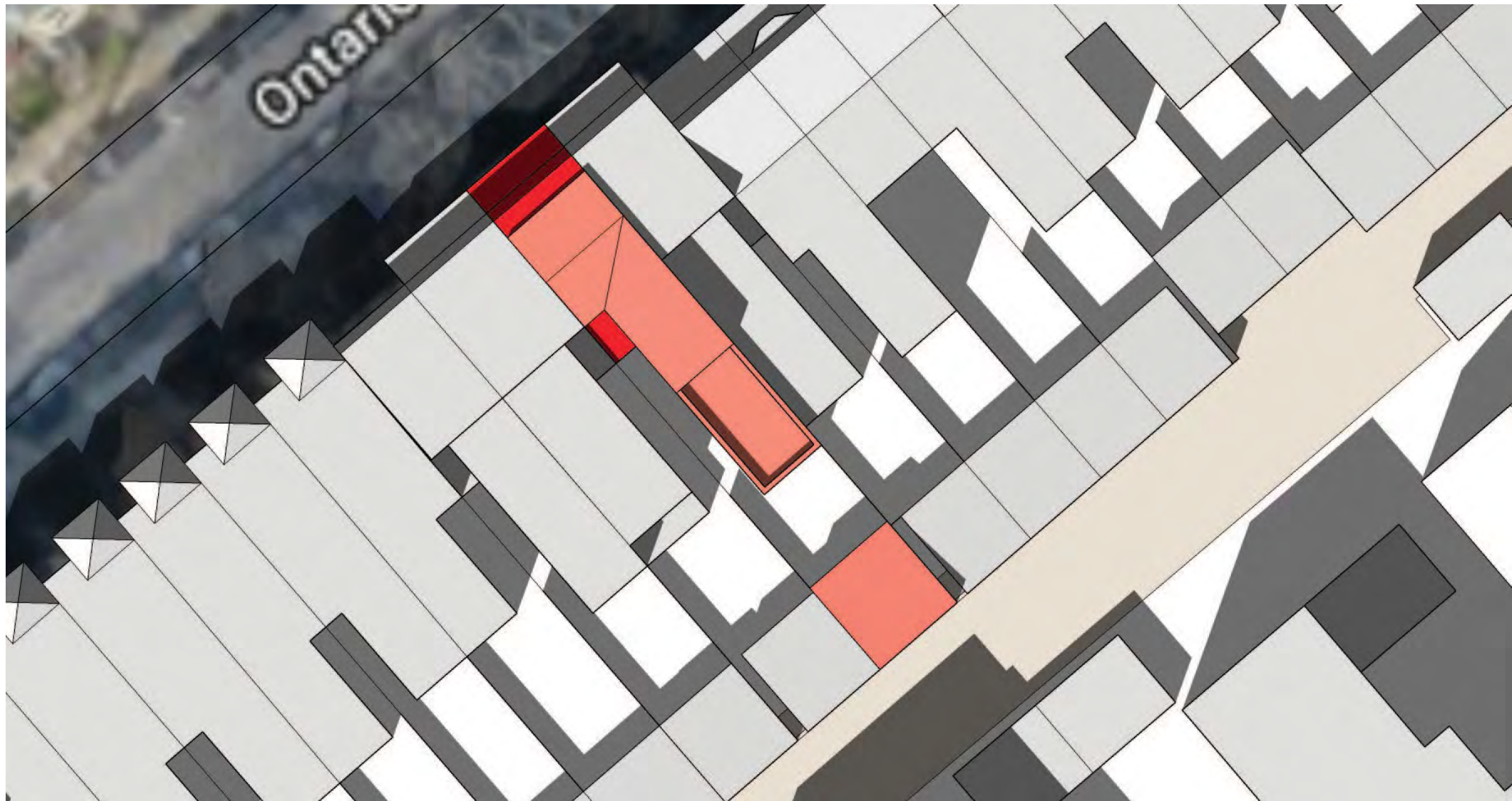
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Addition and 13'-8"-Tall Garage

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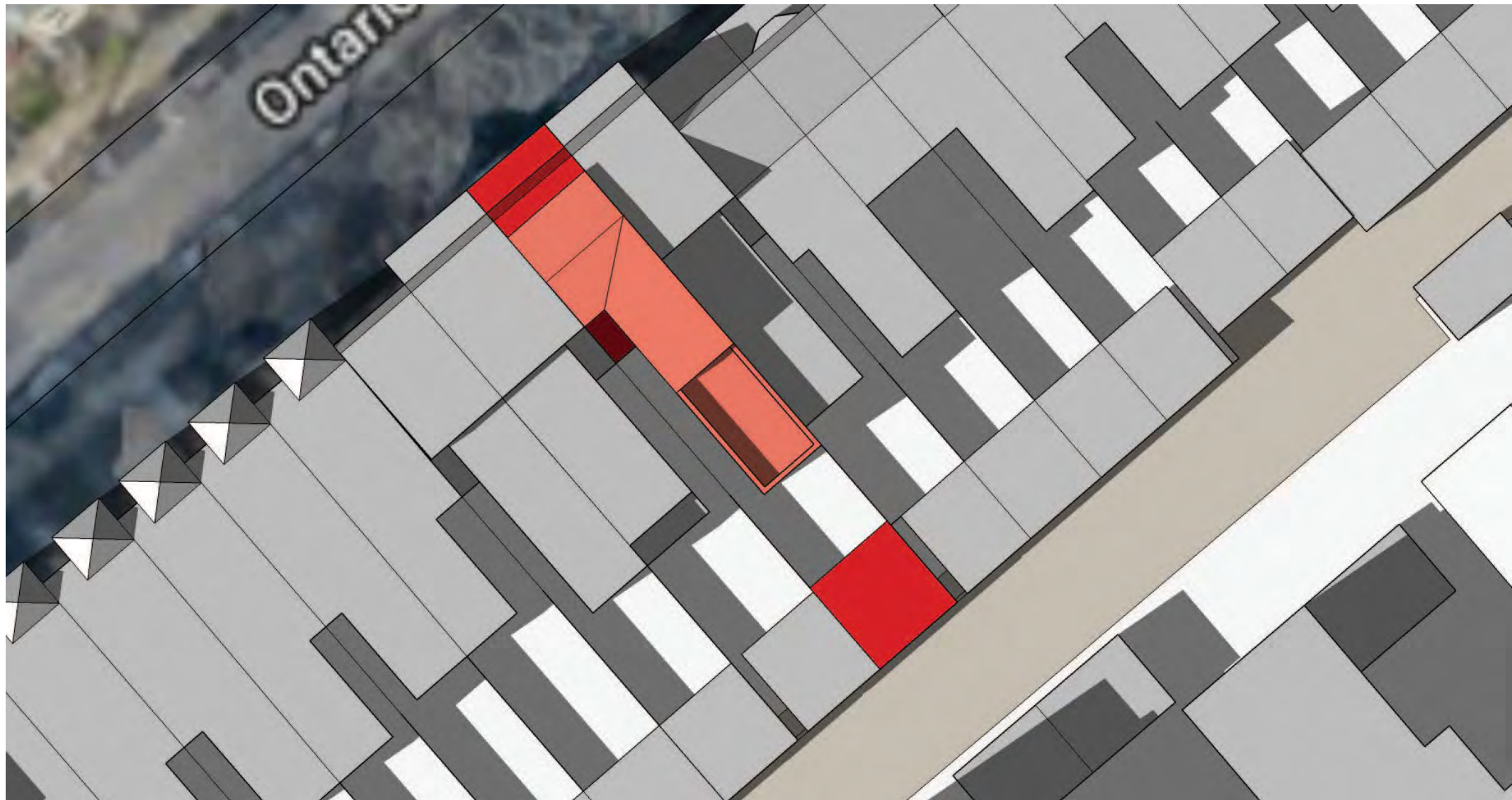
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Addition and 10'-Tall Garage

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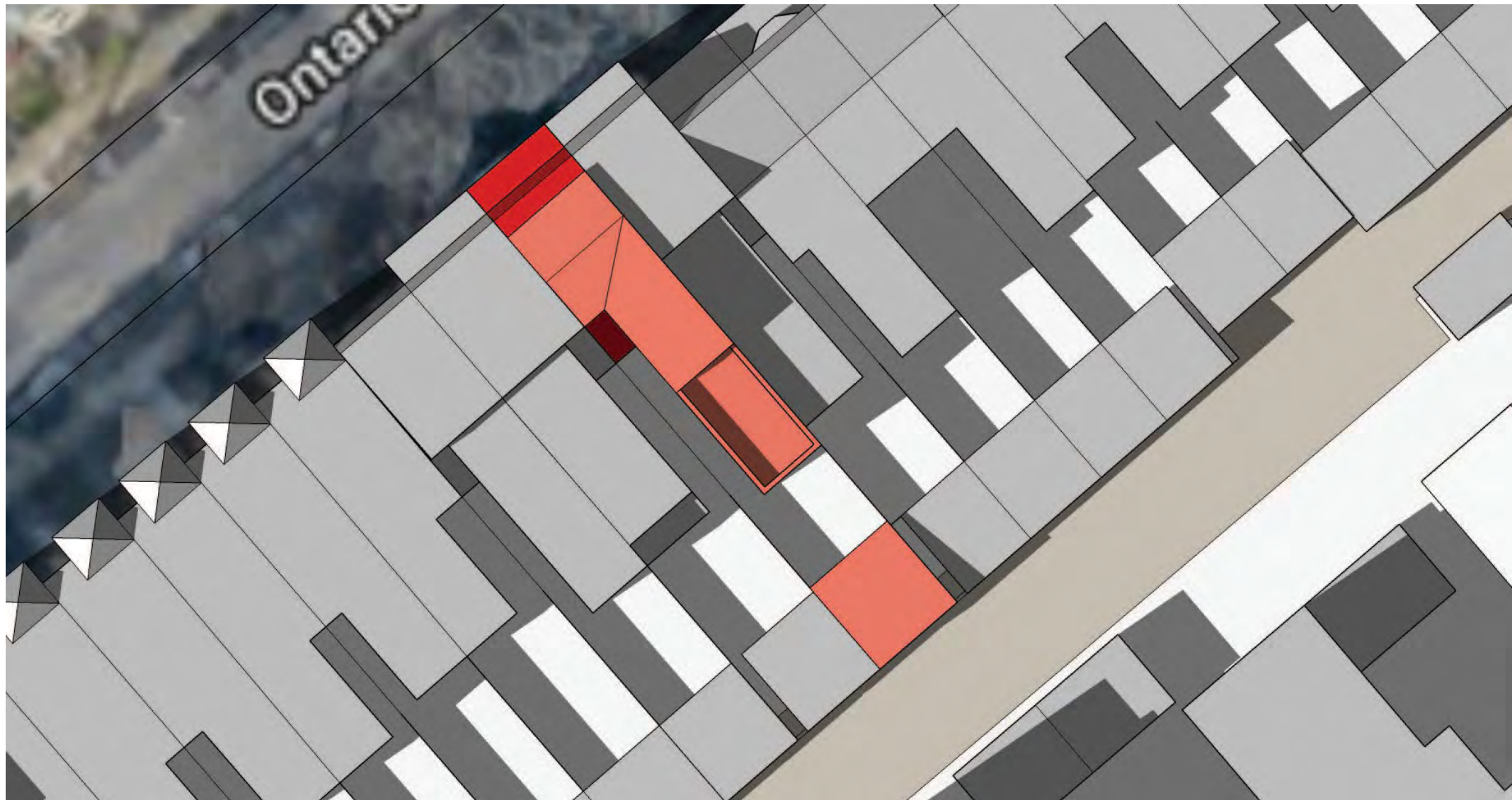
Equinox - 3:00pm
Addition and 13'-8"-Tall Garage

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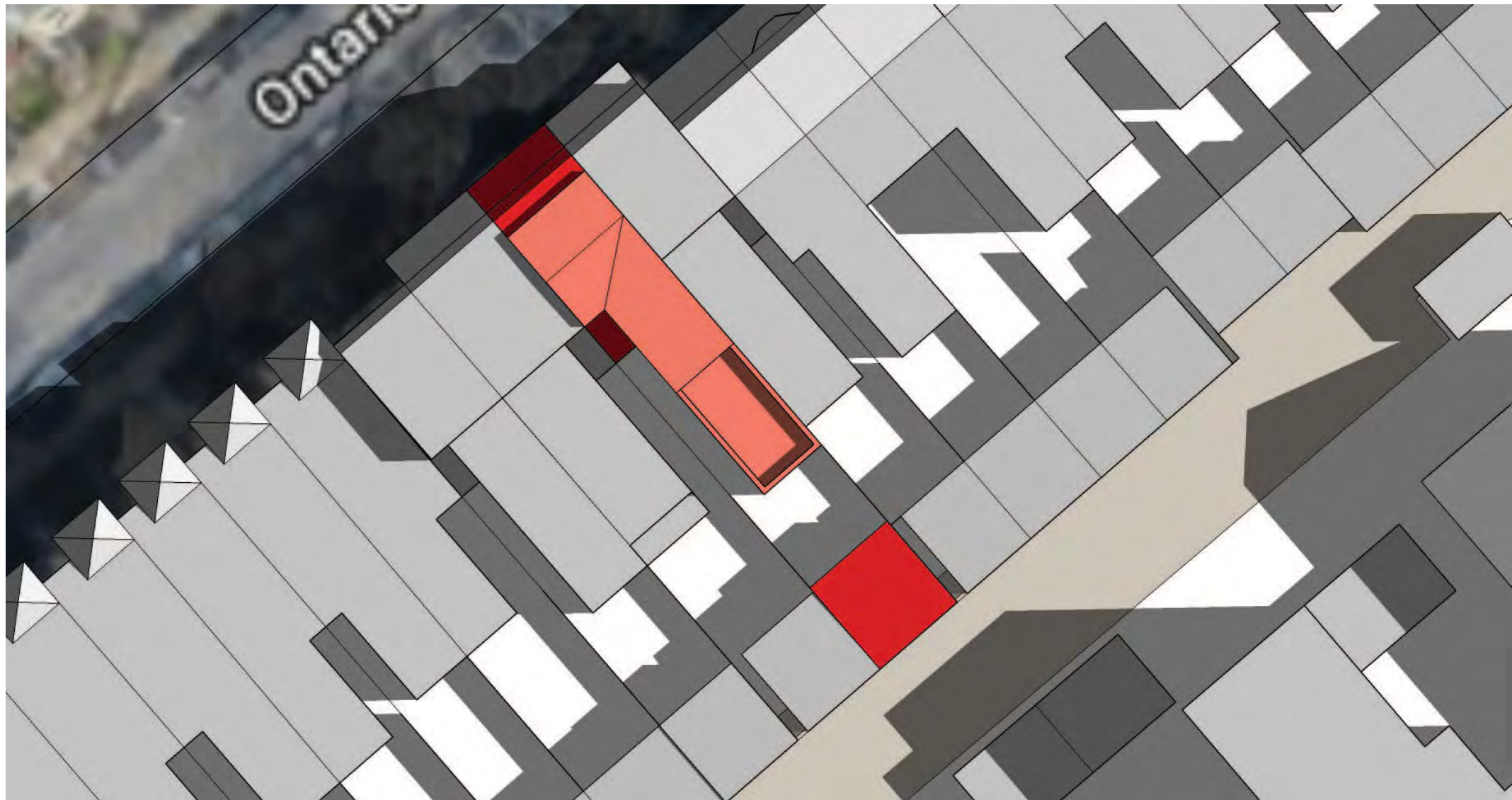
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Addition and 10'-Tall Garage

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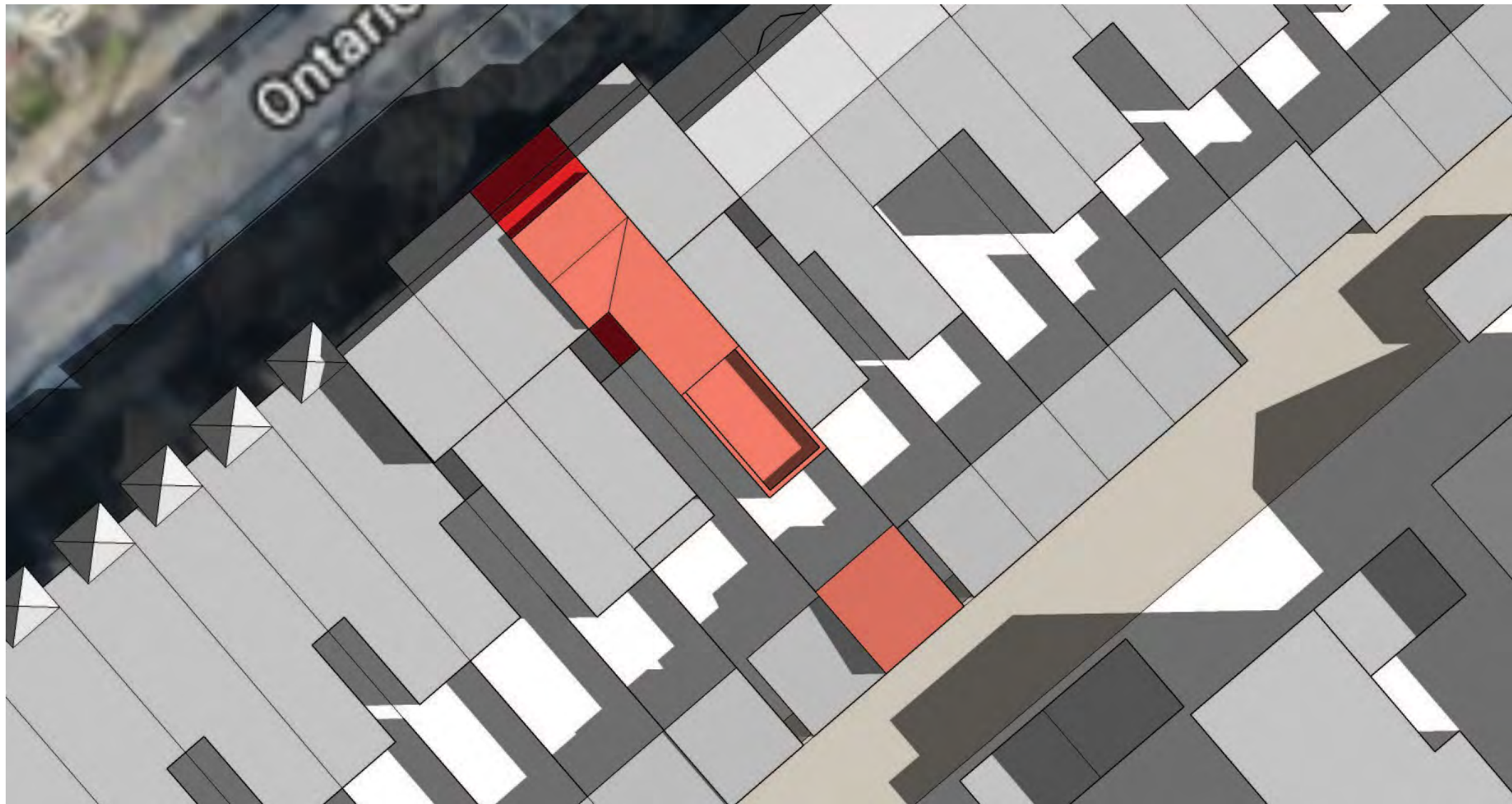
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Addition and 13'-8"-Tall Garage

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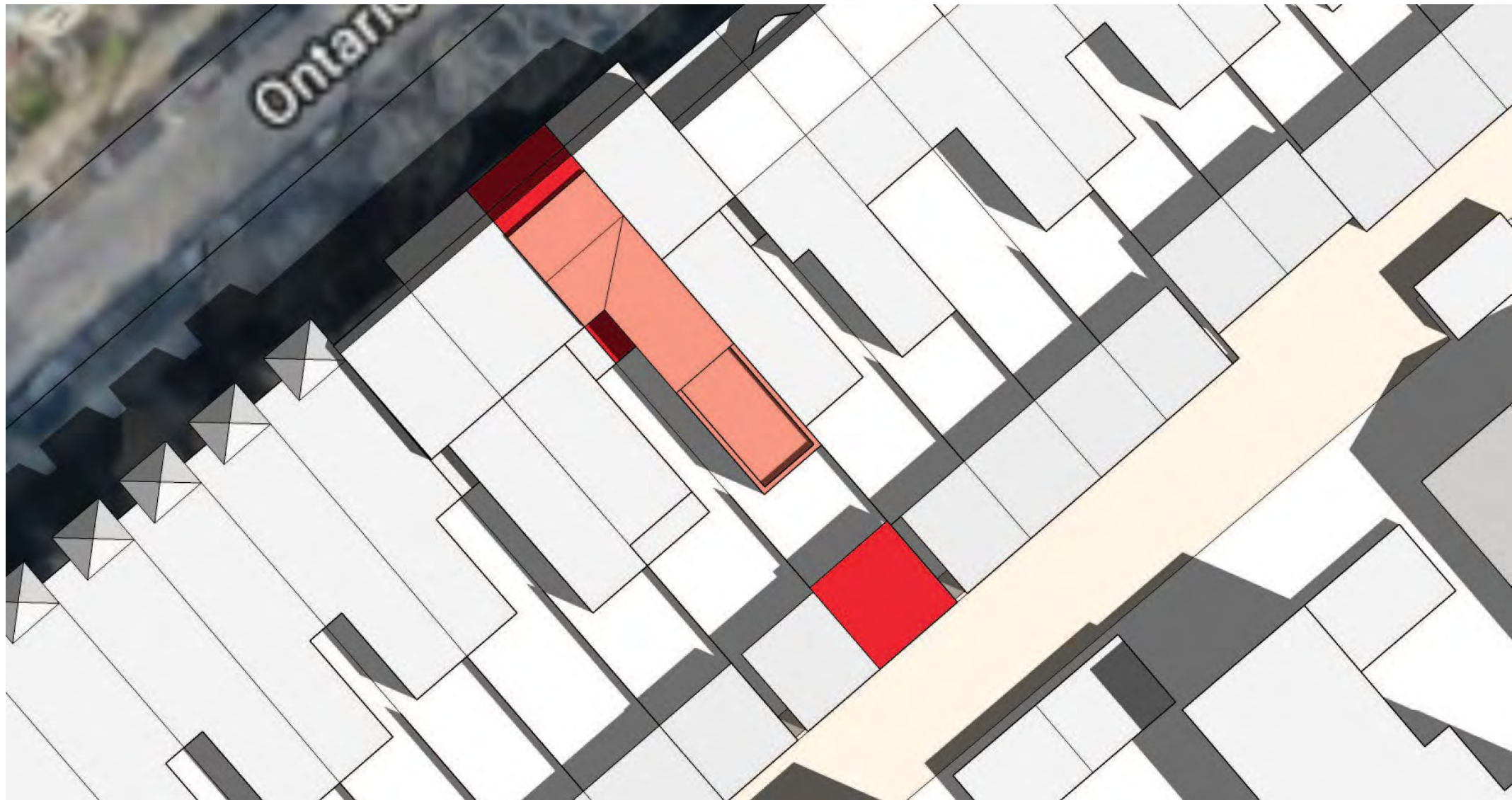
Summer - 10:00am
Addition and 10'-Tall Garage

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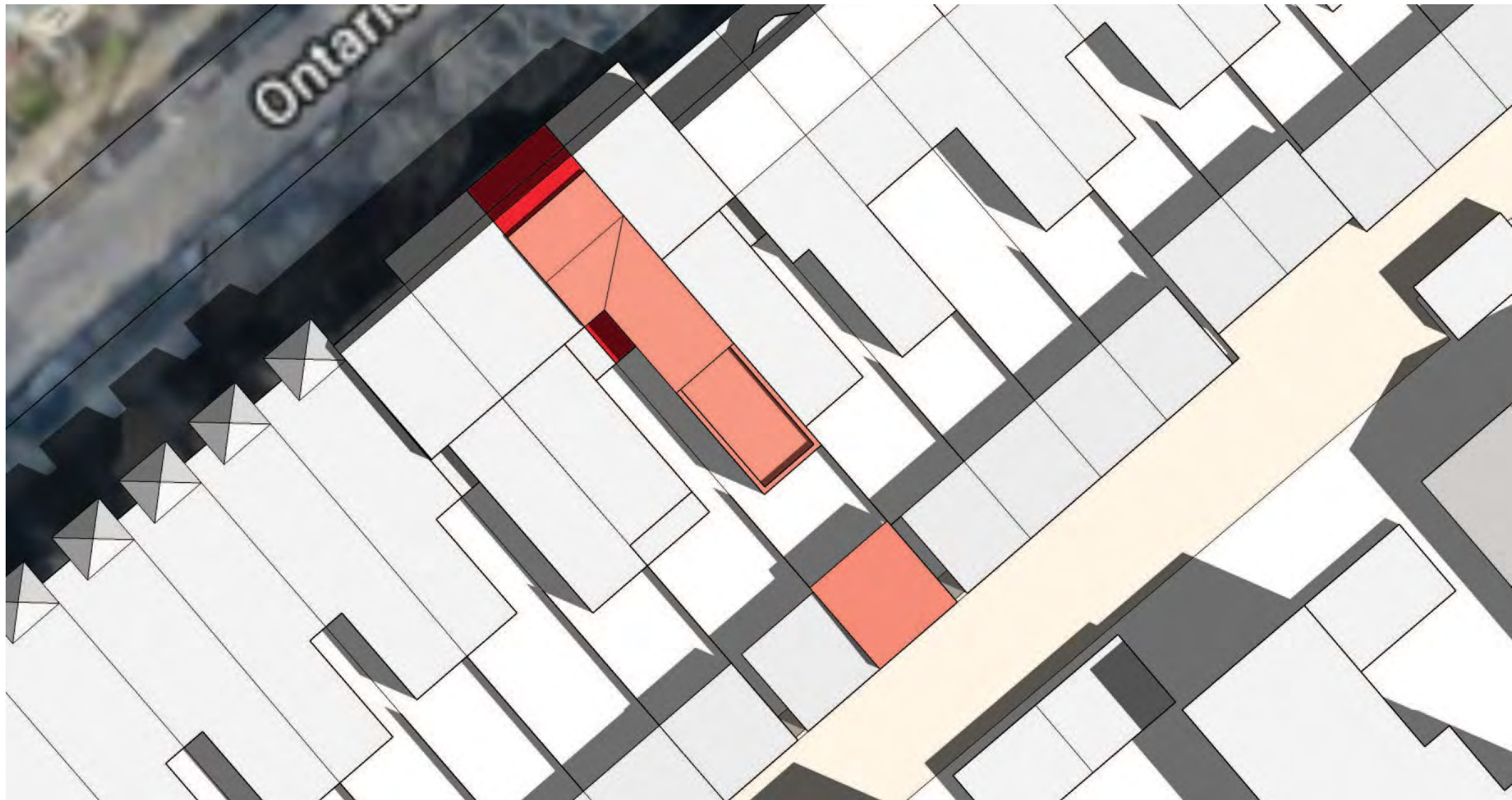
Summer - 10:00am
Addition and 13'-8"-Tall Garage

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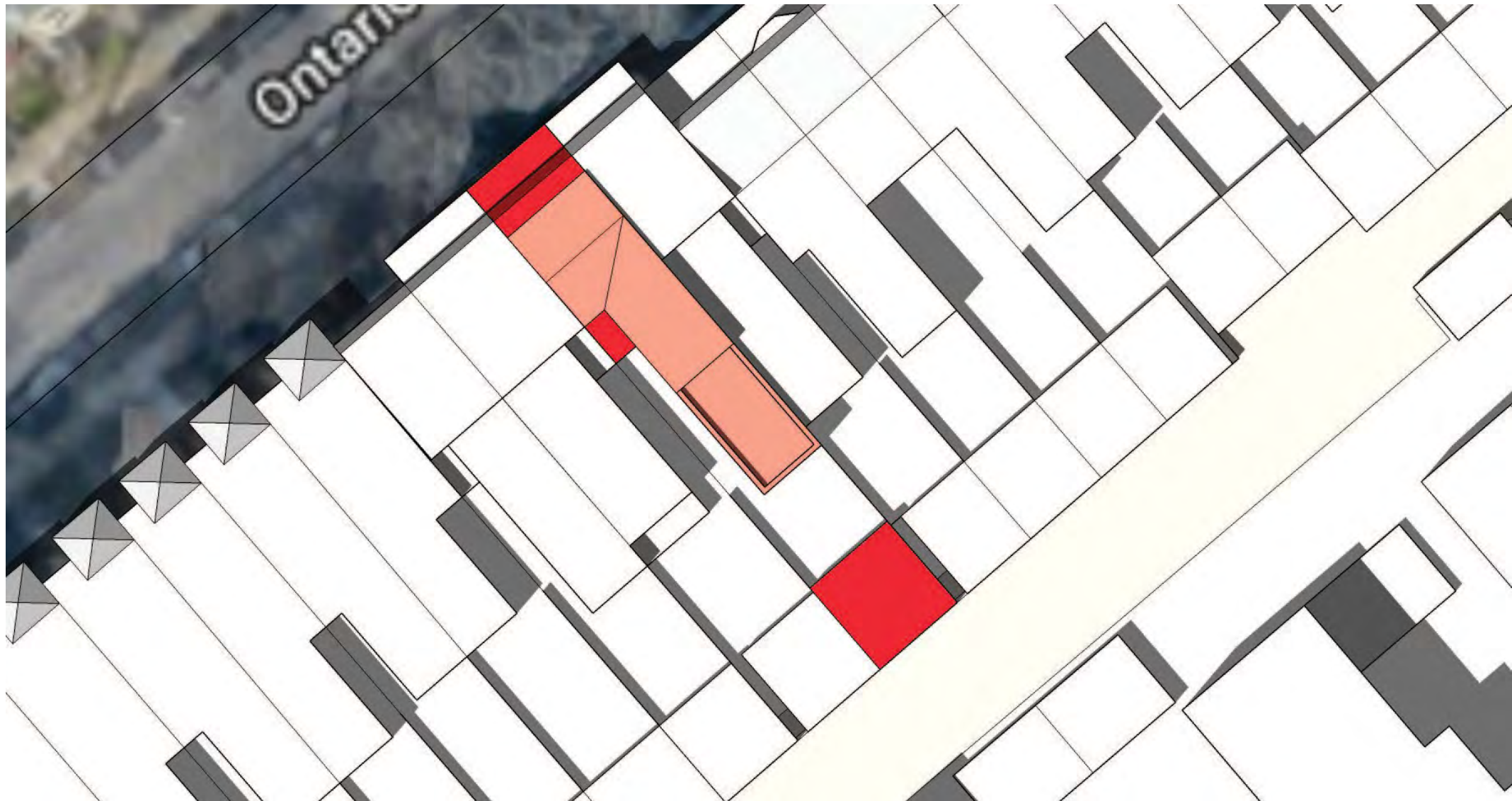
Summer - 12:00pm
Addition and 10'-Tall Garage

N



Summer - 12:00pm
Addition and 13'-8"-Tall Garage

N



Summer - 3:00pm
Addition and 10'-Tall Garage

N



Summer - 3:00pm
Addition and 13'-8"-Tall Garage

N



Summer - 5:00pm
Addition and 10'-Tall Garage

N



Summer - 5:00pm
Addition and 13'-8"-Tall Garage

N



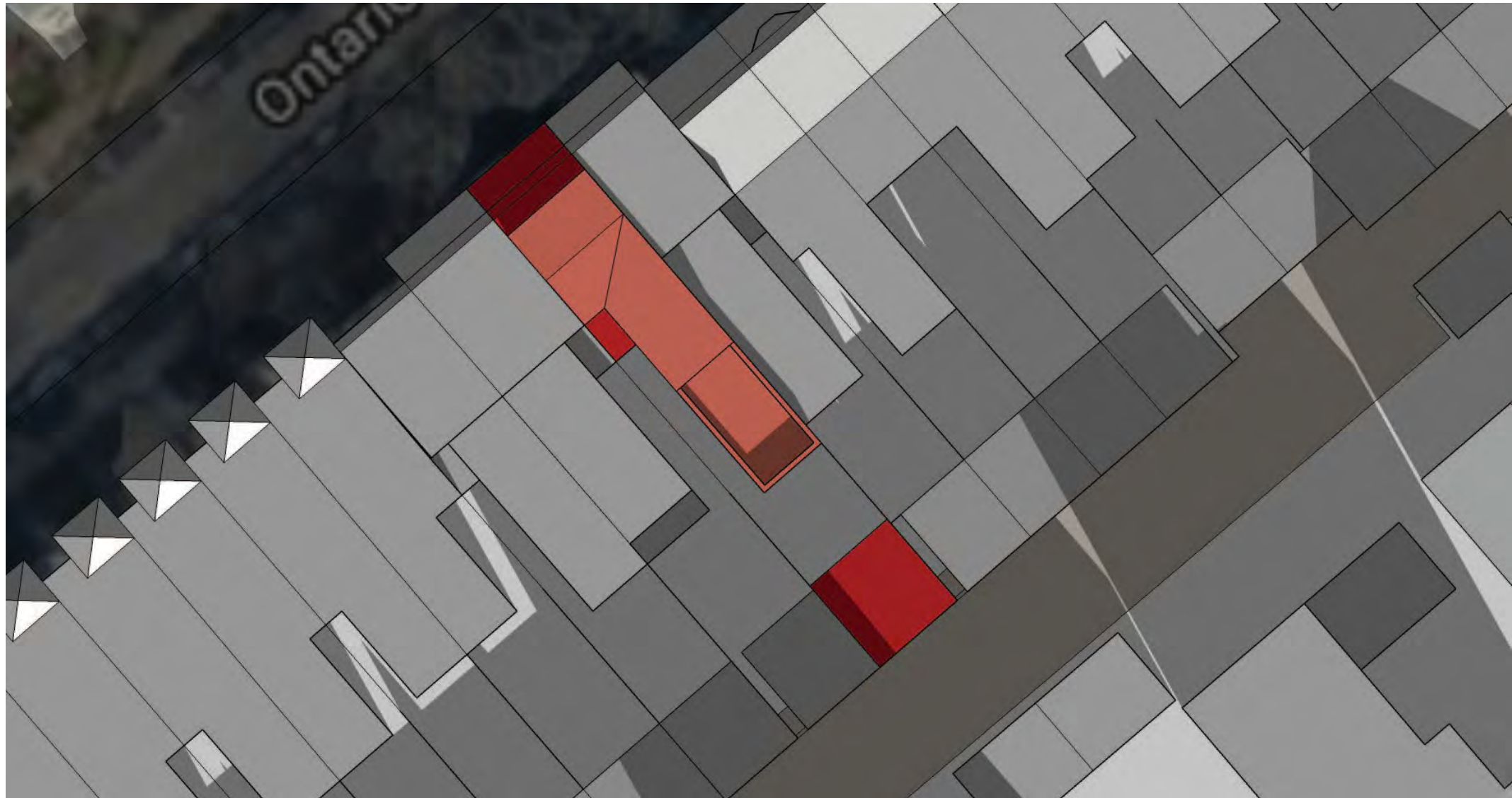
Winter - 10:00am
Addition and 10'-Tall Garage

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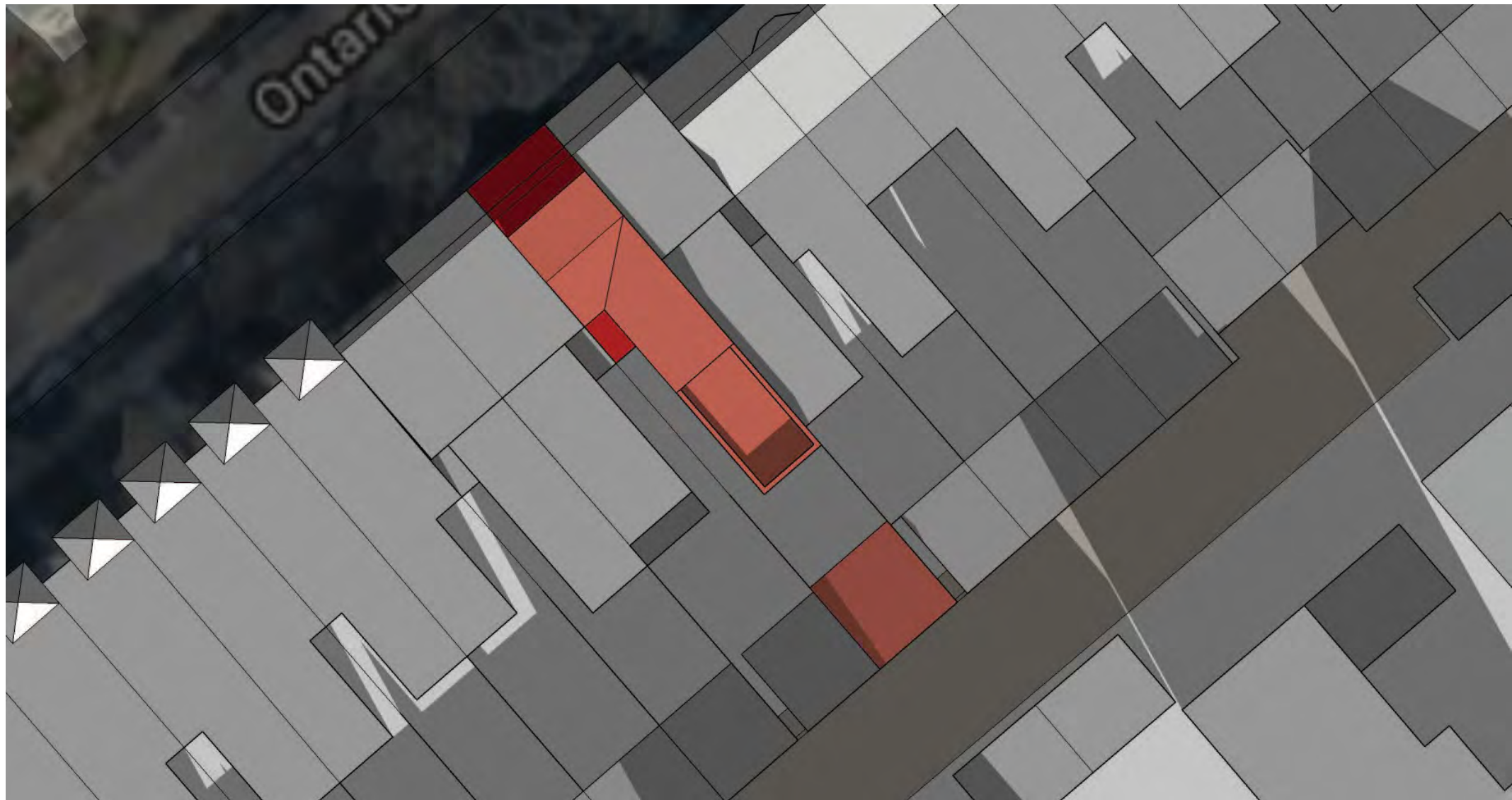
Winter - 10:00am
Addition and 13'-8"-Tall Garage

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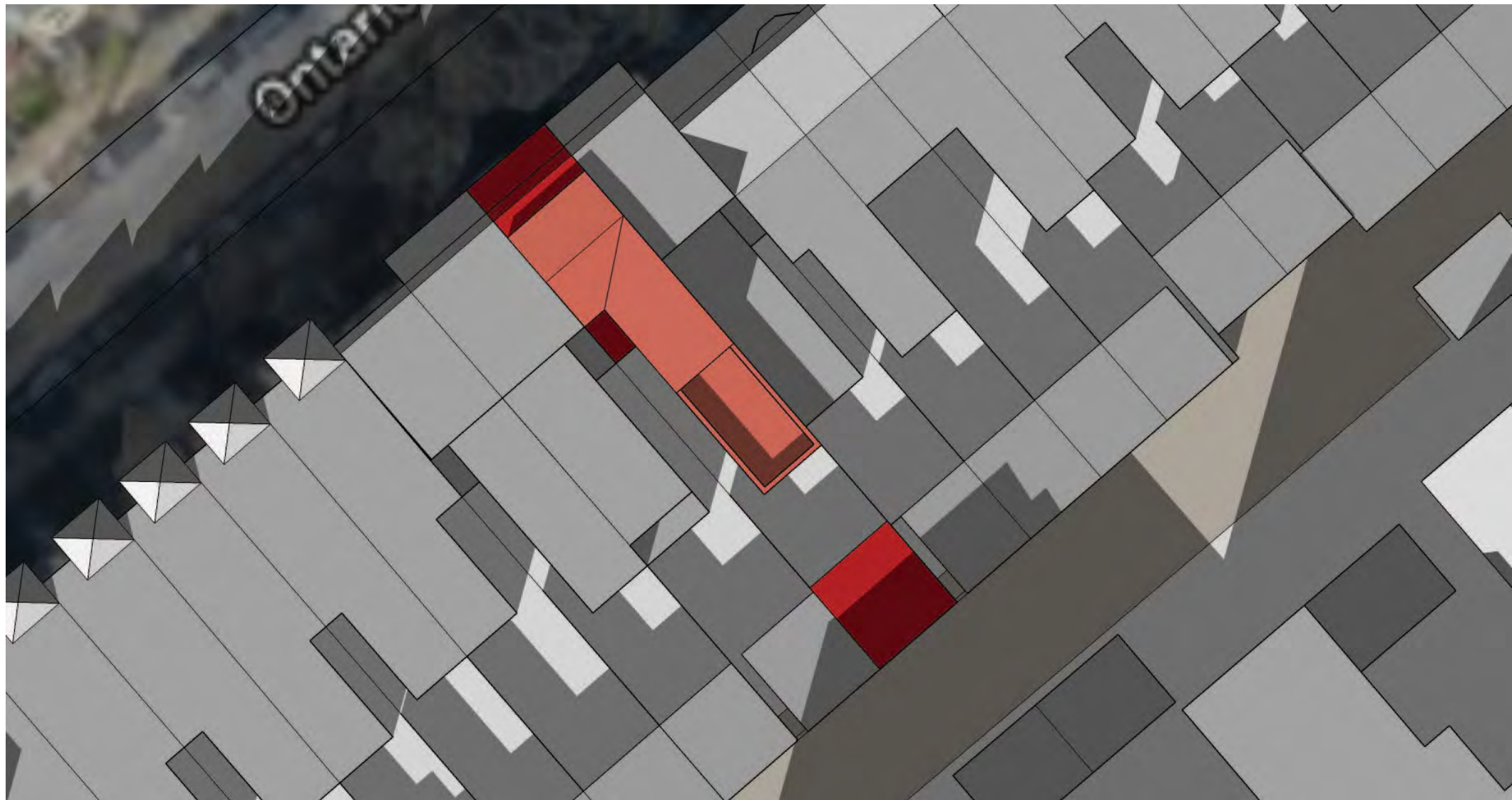
Winter - 12:00pm
Addition and 10'-Tall Garage

N



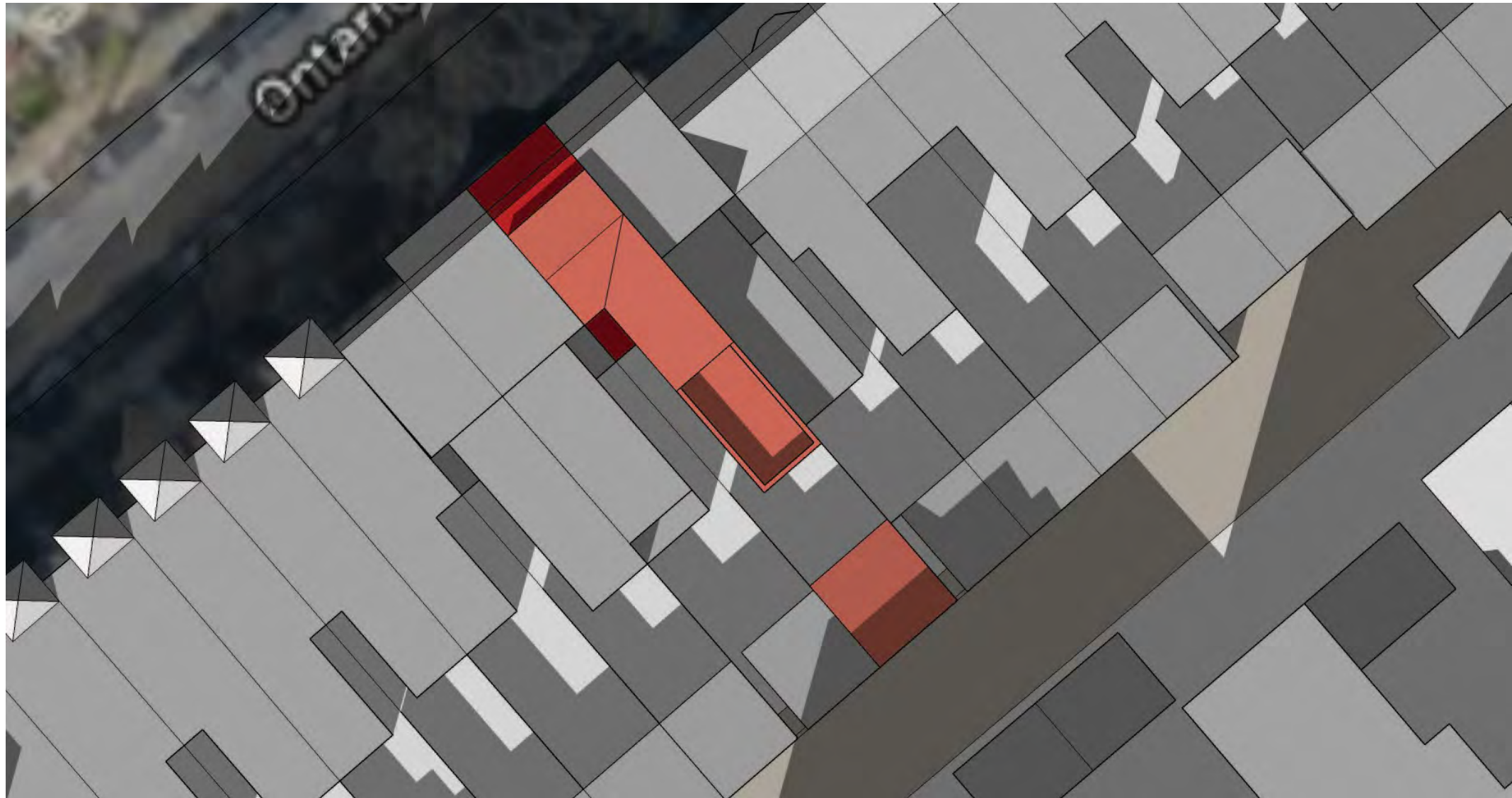
Winter - 12:00pm
Addition and 13'-8"-Tall Garage

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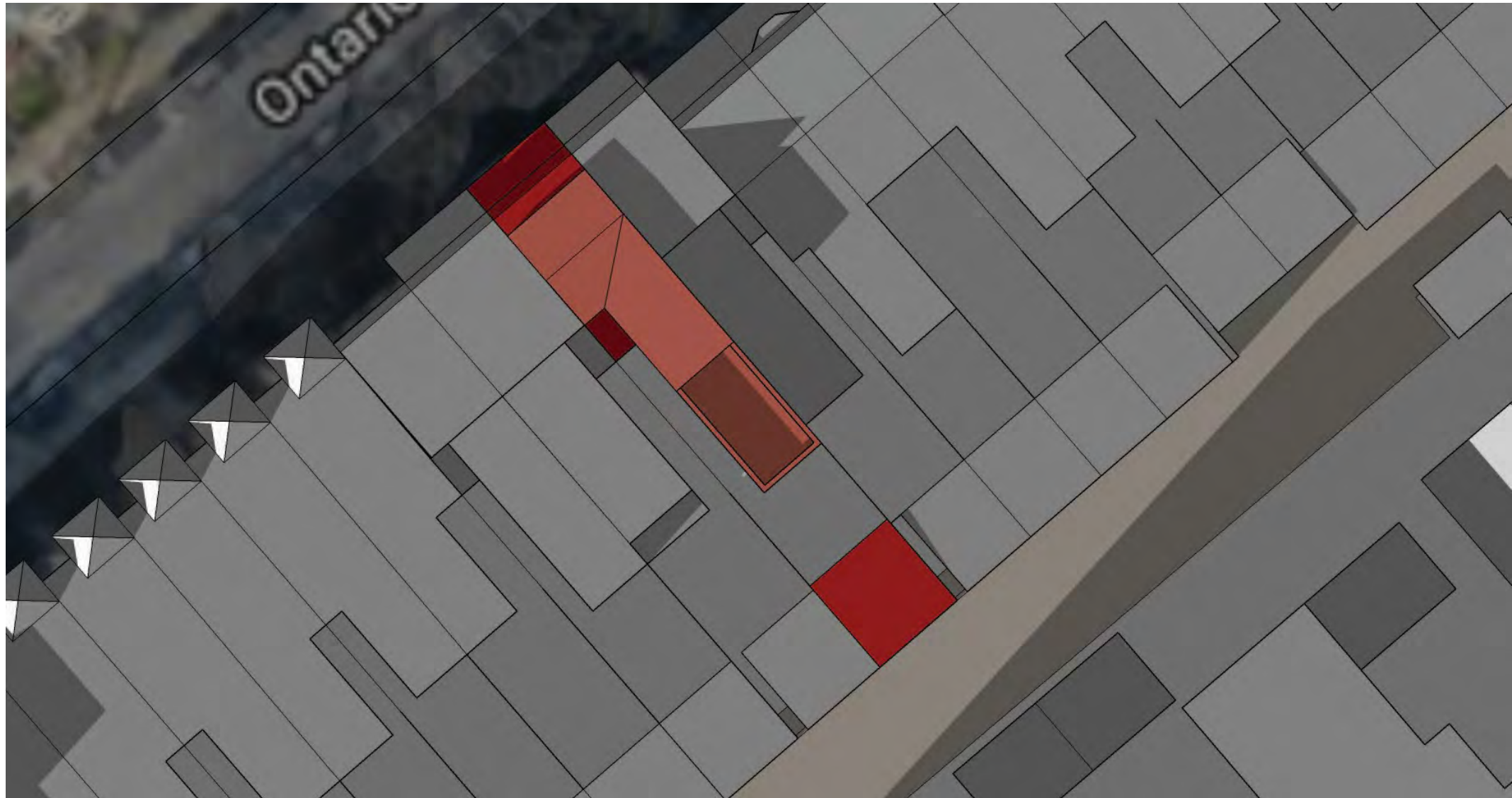
Winter - 3:00pm
Addition and 10'-Tall Garage

N



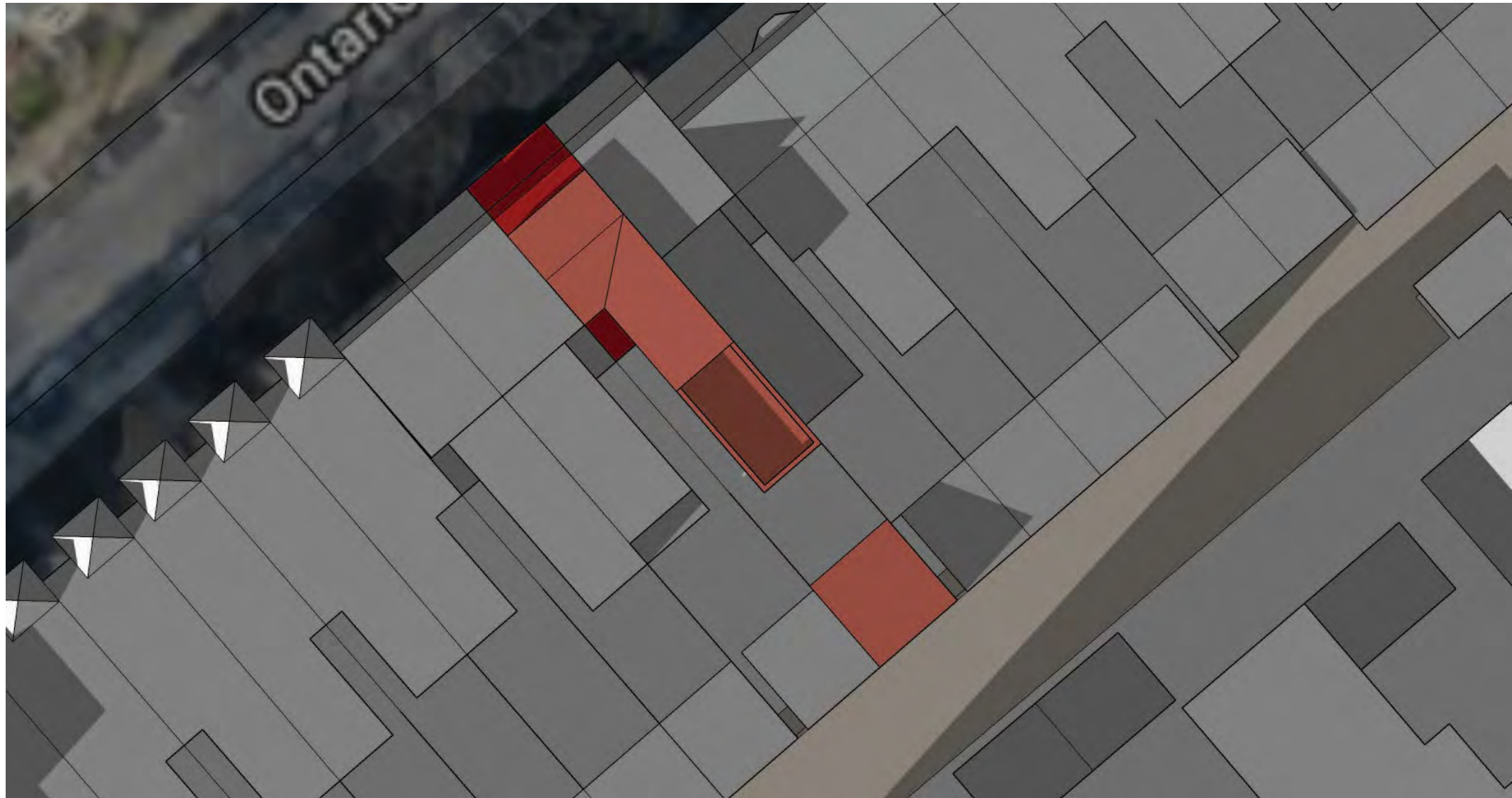
Winter - 3:00pm
Addition and 13'-8"-Tall Garage

N



Winter - 5:00pm
Addition and 10'-Tall Garage

N



Winter - 5:00pm
Addition and 13'-8"-Tall Garage

N

What is the Standard?

General Purpose of the Zoning Regulations

The proposed porch removal is in line with the **general purpose** and intent of the RF Zones:

E § 100.3

- (a) Recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city
- (b) Allow for limited compatible non-residential uses;
- (c) Allow for the matter-of-right development of existing lots of record;
- (d) Establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones;
- (e) Allow for the limited conversion of rowhouse and other structures for flats; and
- (f) Prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone.

Existing Porch





What is the standard?- Neighborhood Character?

- Proving that you meet the threshold for BZA relief is often a subjective thing. We would all agree that there are some obvious examples where a porch alteration should not be permitted; where an entire block is comprised of identical rowhouses with the same porch. Such examples can be found in Capitol Hill or Mount Pleasant, which are also protected by their historic district. As such, I provided non-historic examples in Edgewood and Columbia Heights as well. The zoning code is meant to protect these blocks, because the removal of 1 or 2 porches in a block, clearly stands out visually. Where the same rowhouse is repeated 15, 20, or even 30 times on a block, altering a porch should indeed be restricted; and making a case for BZA relief would be much harder to prove, because any change impacts the character. While subjective, most would agree.
- On the other end of the subjective spectrum, we believe that a block with 15 different building types (9 on the same side of the street, some with porches and some without), is not impacted by a subtle porch alteration; especially when a porch was already completely removed 2 doors away, and clearly has not impacted the integrity or character of the block.
- Some houses have bay windows and turrets, some houses with porches are pulled forward and others are pushed back, and a couple apartment buildings also add to a character marked by variety and differentiation. In such an environment, one porch reduction does not stand out visually.



Capitol Hill HD

West side of 11th St SE

Row of 13 identical houses where only 2 have their porch removed; one is an end-unit (not pictured), while the other is in the middle, and clearly stands out. (RF-1)



Mt Pleasant HD

North side of Kenyon St NW

Row of 17 identical houses where only 2 have their porch removed; both are in the middle of the row, and they clearly stand out. (RF-1)



Mt Pleasant HD

South side of Kenyon St NW

Row of 30 identical houses where only 1 has its porch removed; and it stands out.

Please note that the first 11 houses on each end had a clay tile roof, while the 8 in the middle did not. The same house with the porch removed also replaced the red clay tile with asphalt shingles, and domed skylights replaced the dormer windows. (RF-1)





Edgewood (No HD)

North side of Girard St NE

Row of 15 identical houses where only 1 in the middle has its porch removed; and clearly stands out. (R-3)



Columbia Hts (No HD)

North side of Kenyon St NW

Row of 25 identical houses where only 2 have their porch removed; both are in the middle of the row, and they clearly stand out. Others have slightly reduced porches and do not stand out. (RF-1)



Columbia Hts (No HD)

South side of Keefer PI NW

Row of 25 identical houses where only 3 have their porch removed; all 3 are grouped in the middle of the row, and they clearly stand out.

Please note that several houses have slightly different fascias, some lacking detail and others being wider or more narrow than the majority. These differences blend into the overall cadence and do not negatively impact the character. (RF-1)





Discontinuity of Street



Transition from condition 1 to 2



Transition from 2 to 3



Transition from 3 to 4 (previous porch removal between)



Transition from 4 to 5



Transition from condition 5 to 6



Transition from 6 to 7



Transition from 7 to 8, alley, and 9



Overview of Block

Porch Sequence

1. Existing porch
2. Proposed porch



a



Google



ia



Google

Response to OP report

- Porches providing shade for the “parking zone”
 - streets or neighborhoods where projections occur beyond BRL
 - Porch is on the property, not public space
 - As we’ve already shown, almost 50% of the buildings on this block do not have porches
 - Erroneous to say that those houses without porches have a lower quality of life
- Integrity and Character
 - Hard to find an instance of a single porch removal that has impacted integrity of a block
 - The report uses these terms and other interchangeably
 - There is so much going on this block with regard to rhythm, style, and different character
 - Altering one porch, partially, doesn't have an impact on the greater composition
- Window Treatments
 - Not an architectural element
 - Windows are being replaced by windows acceptable in a historic district
 - Brick is being repointed, primed, and painted so that there is virtually no differentiation

Response to ANC and Petition

- **Claim**: Removal of front porch and roof would convert the 3-story row house to a 4-story façade
- **Response**: Removal of a porch will have no effect on this pre-existing condition; applicant has self-certified as to the number of stories and DCRA approved this in September 2017
- **Claim**: Variance is required for the accessory structure
- **Response**: Both the ZA and OP are in agreement that these two provisions are rear yard provisions and special exception relief is available for “yards”
- **Claim**: Pervious surface is less than 20%
- **Response**: Pervious surface is self-certified and is greater than 20%
- **Claim**: Proposed garage may have a substantially adverse effect on the use or enjoyment of the abutting properties
- **Response**: The report does not explain how this could be possible, but the Applicant has taken the extraordinary step of doing shadow studies to show the impact of the garage