



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-20-044**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Jason Partridge, Planner  
**Date of Meeting:** August 24, 2020  
**Application for:** Permission  
**File Number:** D13-026-2020  
**Address:** 66 Bay Street  
**Owner:** Margret Moore  
**Applicant:** Joe Ruffolo

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**Council Strategic Plan Alignment:**

Theme: Policies & by-laws

Goal: See above

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 66 Bay Street. The applicant is proposing to construct a 48 square feet second floor balcony/deck within the rear yard of the property.

The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The proposed second floor balcony/deck is in keeping with the intent of the zoning by-law and represents appropriate and desirable development of the lot. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

**Recommendation:**

**That** the application for permission, File Number D13-026-2020, for the property located at 66 Bay Street to, to expand a legal non-conforming use to permit the construction of a 48 square foot (6 feet x 8 feet) second floor balcony/deck located within the rear yard, be approved.

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**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-20-044.

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**Authorizing Signatures:**

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**Jason Partridge, Planner**

**In Consultation with the following Management of the Community Services Group:**

Paige Agnew, Commissioner, Community Services

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**Options/Discussion:**

On June 4, 2020, an application for permission was submitted by Joe Ruffolo, on behalf of the owner, Margret Moore, with respect to the property located at 66 Bay Street. As it is located in an 'A' zone and legally built prior to the passing of the by-law, the 1 unit residential unit row house is a legal non-conforming use and any expansion of the use requires permission under Section 45(2) of the Planning Act. The application for permission is requesting to construct a 48 square foot second floor balcony/deck in the rear yard on the property.

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

- Site Plan (Exhibit F)

All submission materials are available online through the Development and Services Hub (DASH) at the following link, [DASH](#), using "Look-up a Specific Address". If there are multiple addresses, search one address at a time, or submission materials may also be found by searching the file number.

**Site Characteristics**

The subject property is located along the south side of Bay Street between Bagot Street and Rideau Street, within the Inner Harbour District (Exhibit B). The site is currently developed as a one residential unit row house. The property is approximately 96.25 square metres in area with 5.5 metres of lot frontage along Bay Street. The subject property is adjacent to residential development on both the west, east north sides of the property. The property abuts a commercial use property to the south of the subject property.

The subject property is designated Residential in the Official Plan and zoned 'A' in Zoning By-Law Number 8499.

**Application****Legal Non-conforming**

As stated in Subsection 45(2)(a)(i) of the *Planning Act*; where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, the Committee of Adjustment may permit the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed (Section 45(2)(a)(i)).

Subsection 45(2)(a)(ii) of the *Planning Act* authorizes the Committee of Adjustment to permit the use of such land, building or structure for a purpose that, in the opinion of the Committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the Committee continued until the date of the application to



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the Committee. In determining whether to permit a use under Section 45(2)(a)(ii), the test is not one of reasonableness; rather, the test is established by the statutory criteria of:

- 1) A similarity between the uses; and
- 2) Whether the proposed expansion is desirable for the appropriate development or use of the land.

Zoning By-Law Number 8499 was passed by Council in 1975 and predates the City of Kingston Official Plan which came into effect in 2010. As a general rule, any land use legally existing at the date of approval of the implementing zoning by-law that does not conform to the policies, provisions or schedules of the Official Plan or the zoning by-law is deemed a non-conforming use and should cease to exist in the long run.

### Official Plan

The subject property is designated 'Residential' in the City of Kingston Official Plan. The overarching goal of the 'Residential' designation is to respond to the housing needs of the City's citizens by retaining and augmenting a broad range of housing within a safe, convenient and stable setting, organized primarily into neighbourhoods. The predominant use of the 'Residential' designation is residential dwellings, including detached, semi-detached or duplex dwellings, townhouses, and apartments of various types, tenure, and density that respond to a wide range of housing needs. In addition to the various forms of housing, community facilities such as schools and places of worship are also permitted. Small-scale, convenience commercial uses which support residential neighbourhoods and are compatible with the residential setting may also be permitted in the designation.

In certain circumstances, it may be desirable to grant the extension, enlargement or relocation of a non-conforming use as provided by the *Planning Act*. When reviewing an application for such extension, enlargement or relocation, the Committee of Adjustment must be satisfied that the legal non-conforming use continued to the date of the application to the Committee, and that the application would not extend such use beyond the area and site owned or used on the day of passage of the implementing zoning by-law, and that the application complies with the eight criteria as per Section 9.5.13 of the Official Plan regarding the extension or expansion of a non-conforming use. The subject application, requesting permission to construct a 48 square feet second floor balcony/deck has been reviewed against these policies, provided below.

1. Consistency with provincial policy in effect at the time of the decision, and general conformity of the proposal with the intent of the policies and schedules of the Plan:

The proposal is consistent with the policies of the Provincial Policy Statement and will not hinder future development intended for the Residential designation in the Official Plan.

2. Compatibility of the proposal with existing uses and zones, the natural heritage system, cultural heritage resources, and with future planned uses in accordance with the Plan:

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The second floor balcony/deck and the continued residential use are compatible with the adjacent residential uses. The side yard setback proposed for the second floor balcony/deck is less than the setback of the existing structure; therefore, no negative impacts are expected on the adjacent residential uses.

3. Compatibility of proposed buildings or structures with existing buildings and structures, with zoning standards of adjacent sites, with any future planned standards as provided in the Plan, and with any urban design guidelines adopted by the City for the area or for the type of development:

The second floor balcony/deck will be compatible with the abutting residential uses and the character of the neighbourhood the second floor balcony /deck will have similar setbacks to adjacent residential uses.

4. The extent to which the proposal is warranted in this location and the extent to which areas zoned for the proposed use are available for development:

The subject property is designated 'Residential' in the Official Plan and will remain within the 'A' zone as per Zoning By-Law Number 8499. The proposed second floor balcony/deck is not anticipated to have any adverse impact on the future development/redevelopment of the property or the surrounding neighbourhood.

5. The suitability of the site for the proposal, including its ability to meet all usual standards of parking for vehicles and bicycles, open space or amenity areas as well as the lack of any potential for noise, odour, traffic conflict or other nuisance from the proposal:

The second floor will not exceed the height of the existing dwelling and aesthetically complements the existing structure. The existing property does not have a dedicated parking space associated with it. Therefore, the proposed deck does not affect parking requirements. The deck will provide additional private amenity area. The continued residential land use on the property will not create any new noise, odour, traffic conflict or other nuisance.

6. The impact on municipal infrastructure, services and traffic:

The second floor balcony/deck will provide additional amenity area to a residential use and will maintain adequate amenity area in the rear yard. The proposal will not have a negative impact on municipal infrastructure, services and traffic.

7. Comments and submissions by staff, agencies and the public:

The existing residential use and the second floor balcony/deck will maintain existing municipal services and will not require the extension of existing services. Utilities Kingston has reviewed the proposal and has no concerns with respect to adequate services. No other comments were received.

8. The degree to which the proposal may inhibit conforming uses or creates a precedent:

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The proposal will not negatively impact the surrounding lands or buildings or inhibit them from developing for their intended uses.

The subject property is not designated or listed on the City of Kingston's Heritage Property Register, or adjacent to a property which is designated or listed.

Based on the City of Kingston archaeological potential mapping the property is in an area of "Further Study Required", and therefore an Archaeological Assessment beginning with a Stage One Assessment is required prior to any ground disturbance. However, a Heritage Planner from Planning Services has reviewed the application and has noted that due to the type of Development only a Standard Archaeological Condition will be required within the Recommended Conditions (Exhibit A). This will be addressed prior to the issuance of a Building Permit, as described in the recommended conditions.

The requested permission to construct a second floor balcony/deck meets the general intent and purpose of the City of Kingston Official Plan.

**Zoning By-Law**

The subject property is zoned 'A' in the City of Kingston Zoning By-Law Number 8499, as amended. The subject property is currently developed with a one unit residential row house. The second floor balcony/deck that is proposed to be expanded is located in the rear yard and will be used as additional outdoor space for the residential use. Should the applicant propose to use the second floor balcony/deck as another use or different size, a change of use/expansion application would be required through the Planning Department.

The one unit residential row house is located entirely within the 'A' zone and is deemed a legal non-conforming use since the structure existed prior to the passing of Zoning By-Law Number 8499 in 1975.

The existing one unit residential row house is located approximately 0 metres from the west side lot line and 0 metres from the east side lot line. The applicant proposes to construct the new second floor balcony/deck behind the current footprint of the building. The new structure is proposed to be expanded by 48 square feet in total within the rear yard and will maintain desirable setbacks from the rear and interior lot lines. The second floor balcony/deck will be located in the rear yard and be attached to the existing one unit residential row house, and not visible from the front lot line Bay Street. Therefore, the location of the proposed second floor balcony/deck will not have any impacts on the character of the streetscape along Bay Street or the adjacent properties.

**Technical Review: Circulated Departments and Agencies**

- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <input type="checkbox"/> Finance                      | <input checked="" type="checkbox"/> Utilities Kingston     | <input type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue     | <input checked="" type="checkbox"/> Kingston Hydro         | <input type="checkbox"/> City's Environment Division             |
| <input type="checkbox"/> Solid Waste                  | <input checked="" type="checkbox"/> Parks Development      | <input type="checkbox"/> Canadian National Railways              |
| <input type="checkbox"/> Housing                      | <input checked="" type="checkbox"/> District Councillor    | <input type="checkbox"/> Ministry of Transportation              |

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- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <input type="checkbox"/> KEDCO                        | <input type="checkbox"/> Municipal Drainage                | <input type="checkbox"/> Parks of the St. Lawrence               |
| <input type="checkbox"/> CRCA                         | <input type="checkbox"/> KFL&A Health Unit                 | <input type="checkbox"/> Trans Northern Pipelines                |
| <input type="checkbox"/> Parks Canada                 | <input type="checkbox"/> Eastern Ontario Power             | <input type="checkbox"/> CFB Kingston                            |
| <input type="checkbox"/> Hydro One                    | <input type="checkbox"/> Enbridge Pipelines                | <input type="checkbox"/> TransCanada Pipelines                   |
| <input type="checkbox"/> Kingston Airport             | Placeholder  | Placeholder  |

**Technical Comments**

This application was circulated to external agencies and internal departments for their review and comment and there were no comments or concerns raised that would preclude this application from moving forward. Any technical comments that are received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

**Public Comments**

At the time this report was finalized, no public comments were received. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

**Previous or Concurrent Applications**

There are no concurrent or relevant historic planning applications on the subject property.

**Conclusion**

The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The location of the proposed second floor balcony/deck is in keeping with the intent of the zoning by-law, represents appropriate and desirable development of the lot and will be functional for the continued residential use.

Approval of this application will allow for the construction of a second floor balcony/deck in the rear yard of the subject property.

**Existing Policy/By-Law:**

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province’s and the City’s vision of development. The following documents were assessed:

**Provincial**

Provincial Policy Statement, 2020

**Municipal**

City of Kingston Official Plan  
Zoning By-Law Number 8499

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**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on August 24, 2020. Pursuant to the requirements of the Planning Act, a notice of the Statutory Public Meeting was provided by advertisement in The Kingston Whig Standard at least 10 days in advance of the Public Meeting. A courtesy notice was also placed in The Kingston Whig-Standard.

Once a decision has been rendered by the Committee of Adjustment, a Notice of Decision will be circulated in accordance with the provisions of the *Planning Act*.

**Accessibility Considerations:**

None

**Financial Considerations:**

None

**Contacts:**

Tim Park, Manager of Development Approvals 613-546-4291 extension 3223

Jason Partridge, Planner 613-564-4291 extension 3216

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Official Plan Map
- Exhibit D Zoning By-Law Map
- Exhibit E Neighbourhood Context Map
- Exhibit F Site Plan
- Exhibit G Photo

## Recommended Conditions

### Application for permission, File Number D13-026-2020

Approval of the foregoing application shall be subject to the following recommended conditions:

#### 1. Limitation

That the approved permission applies only to the balcony/deck as shown on the approved drawings attached to the notice of decision.

#### 2. No Adverse Impacts

The owner/applicant shall demonstrate to the satisfaction of the City that there are no adverse impacts on neighbouring properties as a result of any modifications to on-site grading or drainage.

#### 3. Building Permit Application Requirements

The owner/applicant shall provide to the Building Services a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings, when they make an application for a Building Permit.

The drawings submitted with the Building Permit application must, in the opinion of the City, conform to the general intent and description of the approved drawing(s), including any amendments and conditions approved by the Committee of Adjustment, as stated in the decision. It must be noted that additional planning approvals may be required should further zoning deficiencies be identified through the Building Permit application process.

#### 4. Standard Archaeological Condition

In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132) and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted. In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries Regulation Section of the Ontario Ministry of Consumer Business Services (416-326-8404), the Cultural Program Branch of the Ministry of Tourism, Culture and Sport (416-314-7132), and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

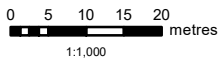


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COMMITTEE OF ADJUSTMENT  
**Key Map**

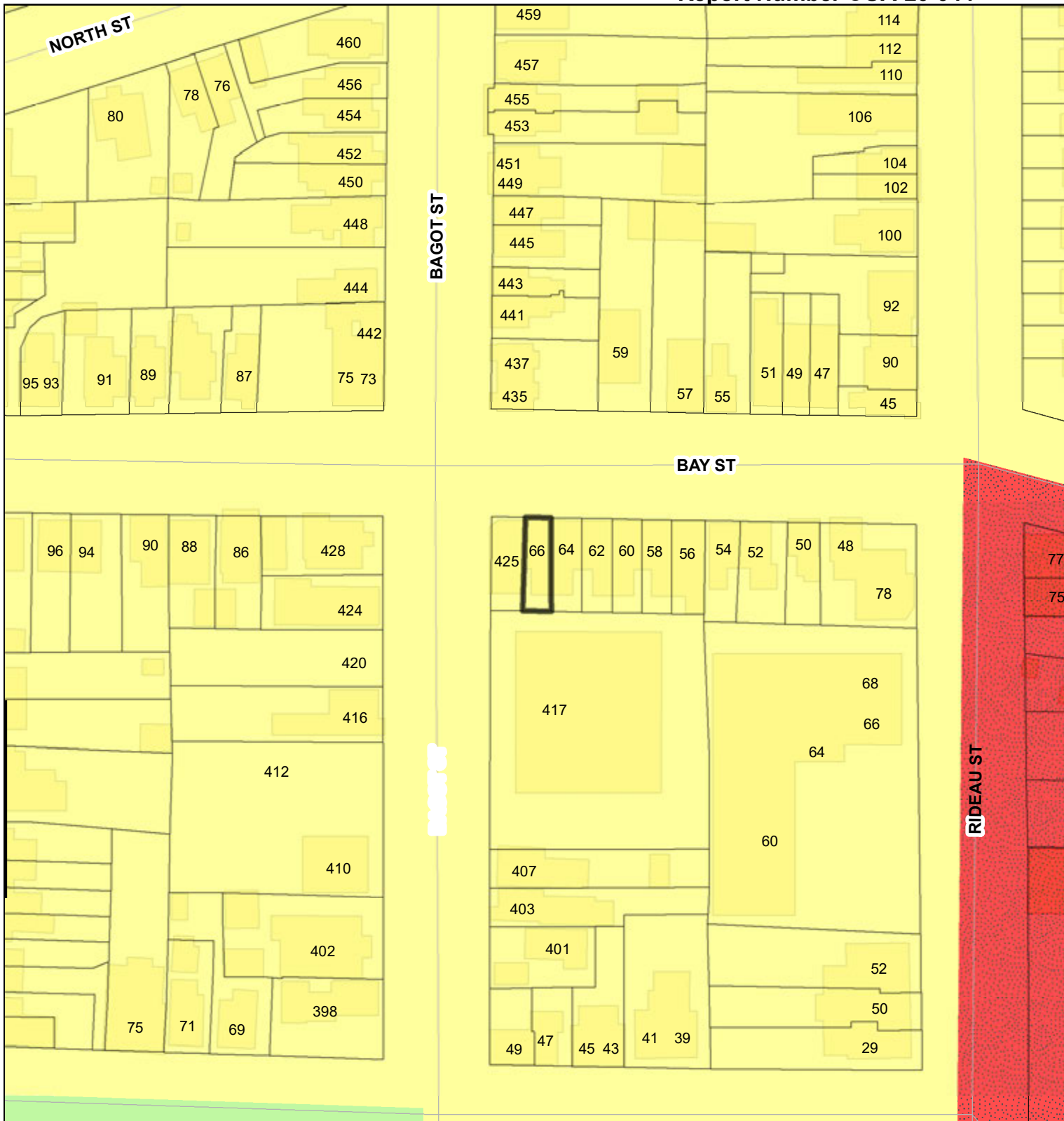
File Number: D13-026-2020  
Address: 66 BAY ST



DATE: 2020-07-08  
PREPARED BY: akeeping

Lands Subject to Minor Variance

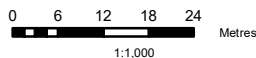




Planning Services  
a department of  
Community  
Services

COMMITTEE OF ADJUSTMENT  
**Official Plan, Existing Land Use**

File Number: D13-026-2020  
Address: 66 BAY ST



**Legend**

- Subject Lands
- CENTRAL BUSINESS DISTRICT
- OPEN SPACE
- RESIDENTIAL









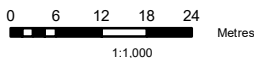
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COMMITTEE OF ADJUSTMENT  
**Existing Zoning - By-law 8499, Map 18**

File Number: D13-026-2020  
Address: 66 BAY ST

**Legend**

-  Subject Lands
-  Consolidated Zoning





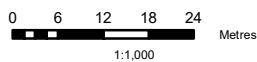
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COMMITTEE OF ADJUSTMENT  
**Neighbourhood Context (2019)**

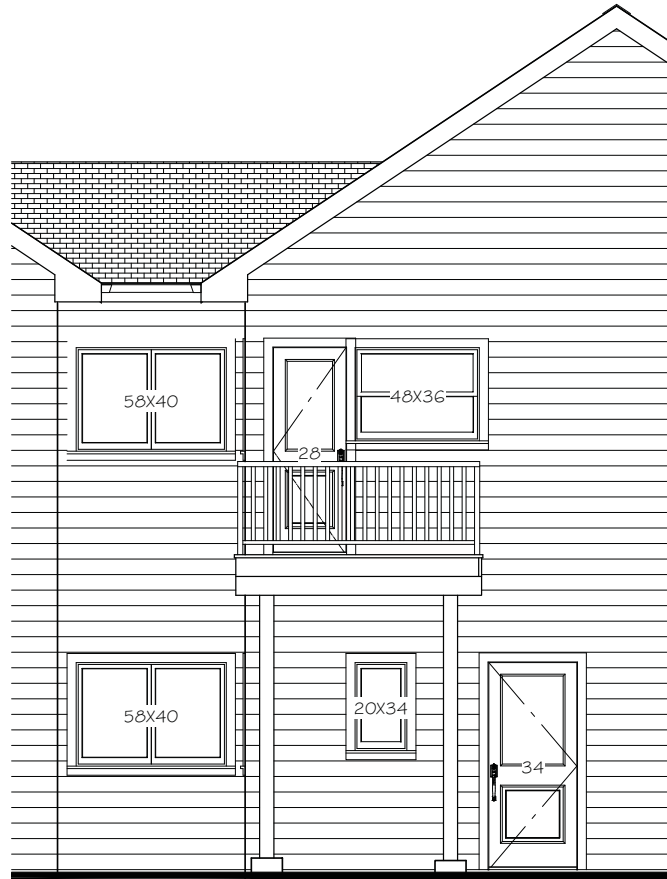
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Address: 66 BAY ST



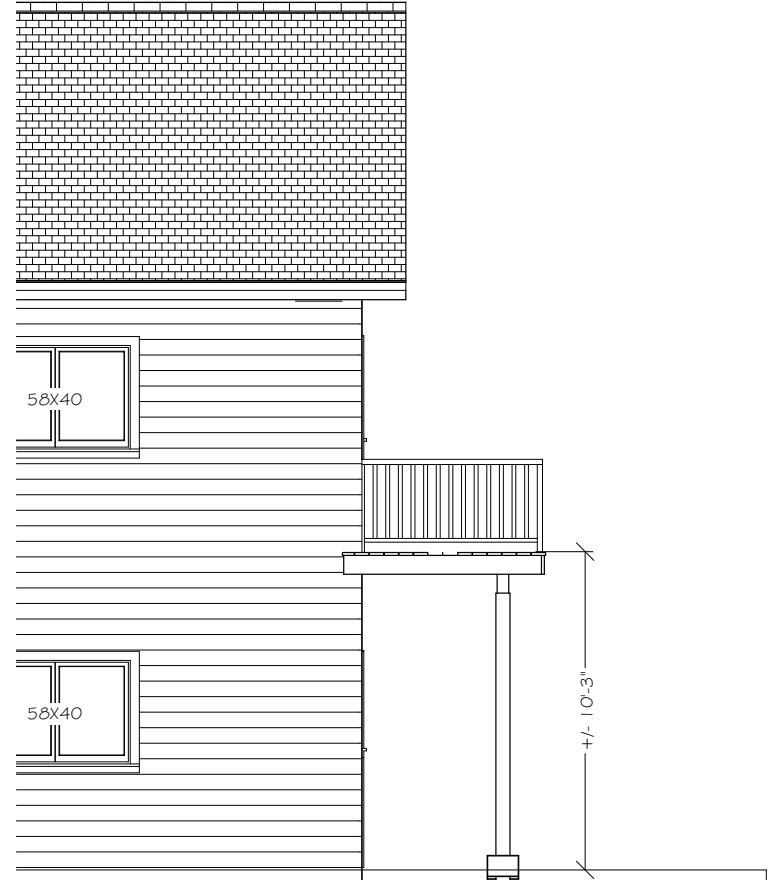
**Legend**

-  Subject Lands
-  Property Boundaries





1 SOUTH ELEVATIONK  
A1 SCALE: 1/4" = 1'-0"K



2 WEST ELEVATIONK  
A1 SCALE: 1/4" = 1'-0"K

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136 WESTMORELAND RD.5  
KINGSTON, ONTARIO  
K7M 1J75

(TEL) 613 583-44445  
EMAIL: dawd0006@gmail.com5

PROPOSED DECK

CLIENT: KB HOMESK  
LOCATION: K 66 BAY ST., KINGSTON, ONK

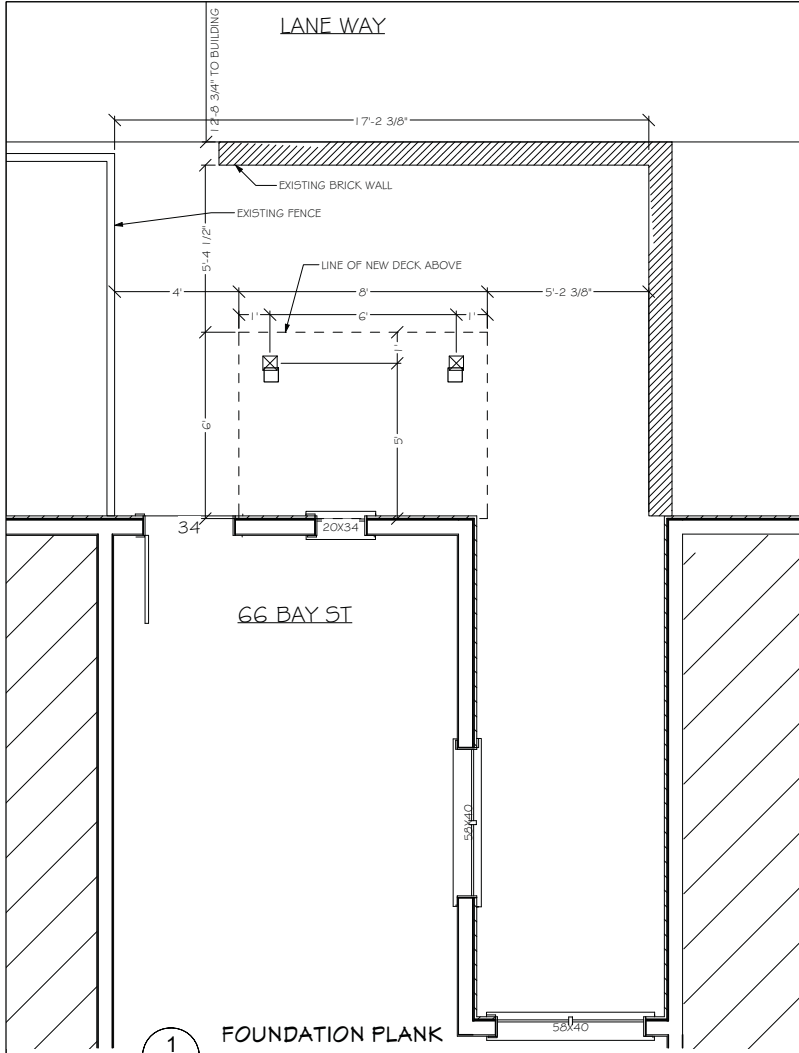
PROPOSED ELEVATIONSK

SCALE: K  
NTSK Monday, June 1, 2020K

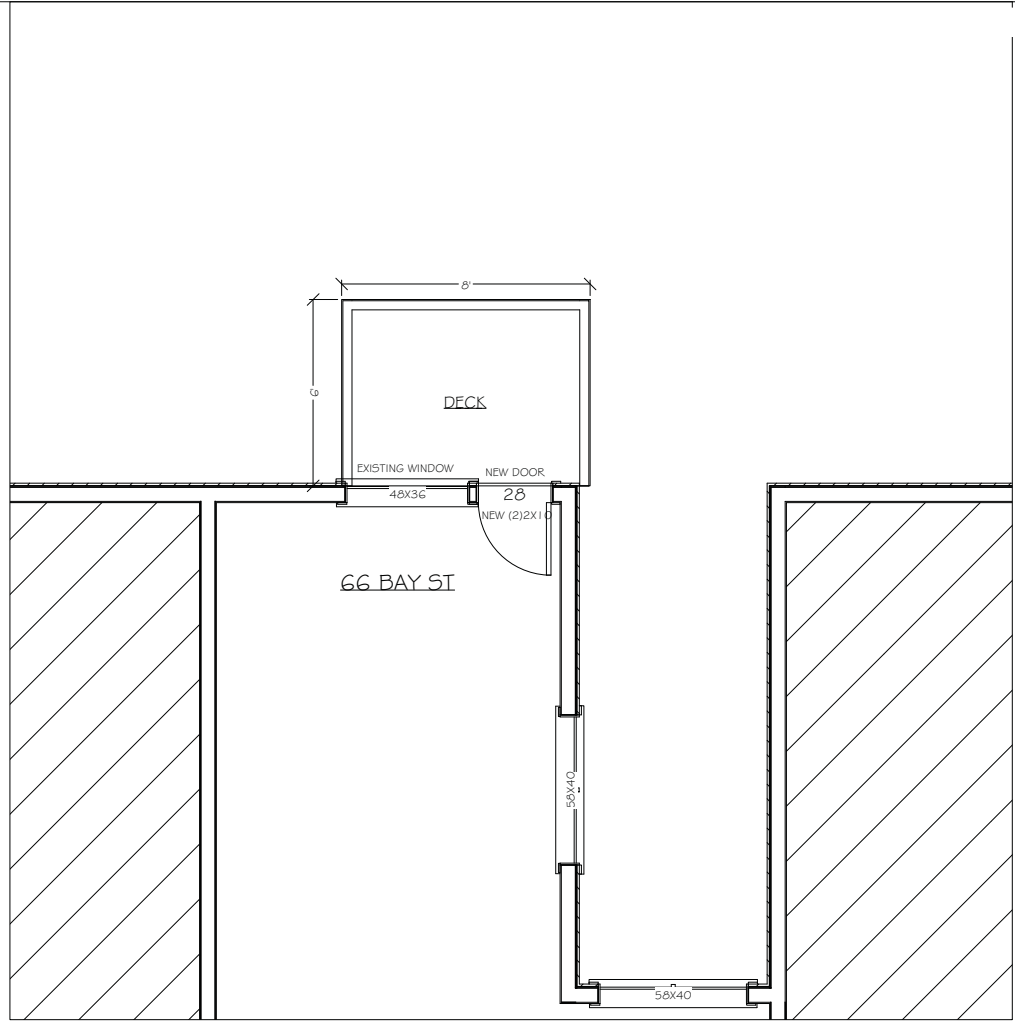
DWG NO.

A1

SIGNATURE BCIN: 41077, 43326



1  
A2 FOUNDATION PLANK  
SCALE: 1/4" = 1'-0"K



1  
A2 DECK PLANK  
SCALE: 1/4" = 1'-0"K

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PROPOSED DECK

CLIENT: KB HOMESK  
LOCATION: K 66 BAY ST., KINGSTON, ONK

DECK PLANSK

SCALE: K  
K  
K Monday, June 1, 2020K

DWG NO.

A2

SIGNATURE BCIN: 41077, 43326



