



**City of Kingston
Report to Committee of Adjustment
Report Number COA-20-034**

To: Chair and Members of the Committee of Adjustment
From: Jason Partridge, Planner
Date of Meeting: September 21, 2020
Application for: Minor Variance
File Number: D13-015-2020
Address: 50 Patrick Street
Owner: Heather Cirella
Applicant: David and Katherine Wieser

Council Strategic Plan Alignment:

Theme: Policies & by-laws

Goal: See above

Executive Summary:

This report provides recommendations to the Committee of Adjustment regarding a minor variance application for the property located at 50 Patrick Street. The applicant is proposing to construct a new larger front porch, new second and third-story balconies/deck within the front yard and a third-floor addition to the existing single-detached dwelling. The total lot coverage of the proposed three-story balcony/deck will be 10.38 square metres and the third story addition will be 62.71 square metres. The resulting new front porch, second and third floor balconies/deck and the third story addition, complies with the minimum rear yard setback, maximum height and minimum landscaped open space requirements.

The requested minor variances are consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The requested minor variances are desirable for the appropriate development or use of the land, building or structure and are minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the *Planning Act* and is recommended for approval.

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Variance Number 1:

By-Law Number 8499:Section 5.8 (c) (Front Porch and Deck/Balconies Front Yard)

Requirement:4.66 Metres

Proposed:1.16 Metres

Variance Requested:3.5 Metres

Variance Number 2:

By-Law Number 8499:Section 5.8 (c) (Steps Front Yard)

Requirement:3.5 Metres

Proposed:0.20 Metres

Variance Requested:3.3 Metres

Variance Number 3:

By-Law Number 8499:Section 5.8 (c) (Front Porch, Deck/Balconies & Steps Interior Side Yard)

Requirement:0.6 Metres

Proposed:0.33 Metres

Variance Requested:0.27 Metres

Variance Number 4:

By-Law Number 8499:Section 6.3 (b) (i) (Front Yard Setback)

Requirement:4.66 Metres

Proposed:2.84 Metres

Variance Requested: 1.82 Metres

Variance Number 5:

By-Law Number 8499:Section 6.3 (c) (i) (Interior Lot Line Setback)

Requirement:0.6 Metres

Proposed:0.33 Metres

Variance Requested:0.27 Metres

Variance Number 6:

By-Law Number 8499:Section 6.3 (f) (ii) (4) (a) (Dormer Window)

Requirement:40.6 Centimetres

Proposed:0.0 Centimetres

Variance Requested:40.6 centimetres

Recommendation:

That minor variance application, File Number D13-015-2020, for the property located at 50 Patrick Street seeking relief from the front yard, interior yard and dormer setbacks, in order to permit the construction of a porch and second and third floor balconies/deck with a lot coverage of 10.38 square metre and a 62.71 square metre third story addition, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-20-034.

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Authorizing Signatures:



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 March 23, 2020, a minor variance application was submitted by Heather Cirella, on behalf of the owner, David and Katherine Wieser, with respect to the property located at 50 Patrick Street.

The purpose of the application is to permit the construction of a new front porch and second and third floor balconies/deck within the front yard near the eastern front property line of the property. The total lot coverage of the proposed three-story deck/balconies is 10.38 square metres. The application is also to permit the construction of third floor addition over top of the existing house. The lot coverage of the third-storey addition is 62.71 square metres.

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

- Site Plan (Exhibit F); and
- Planning Justification Report (Exhibit G).

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 on the east side of Patrick Street and is situated within an established residential area in Inner Harbour neighbourhood (Exhibit B – Key Map and Exhibit D – Neighbourhood Context). The site is currently developed with a one-unit residential building on municipal services. The surrounding area includes single-family dwellings and multi-family buildings.

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

Application

The review of an application for minor variance(s) is not a simple mathematical calculation, but rather a detailed assessment of whether the variance(s) requested, both separately and together, meet the four tests of a minor variance outlined in Subsection 45(1) of the *Planning Act*. The following provides this review:

Provincial Policy Statement

In addition to the four tests of a minor variance detailed above, Subsection 3(5) of the *Planning Act* requires that a decision in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement (the PPS). The PPS provides policy direction on matters of provincial interest related to land use planning and development which are complemented by local policies addressing local interests. The application being considered is site specific to accommodate a specific proposal and does not involve any major policy considerations and as such, the proposal conforms to and is consistent with the PPS.

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1) The general intent and purpose of the Official Plan are maintained

The subject property is designated Residential in the City of Kingston Official Plan.

In considering whether this proposed variance is desirable, the Committee of Adjustment will have regard to the nine requirements included in Section 9.5.19 of the Official Plan. The following provides these nine requirements and an assessment of how the proposal is consistent with each.

1. The proposed development meets the intent of Section 2 Strategic Policy Direction, and all other applicable policies of this Plan;

The proposed porch and upper floor balconies/deck and third story addition will not have any negative impacts on abutting properties or residential and/or uses or structures. The proposal is compatible with the surrounding residential uses and will not result in significant impacts or changes to the surrounding area.

The proposed porch and upper floor balconies/deck and third story addition is for a permitted residential use. Section 2.2.5 (Housing Districts) states that these areas are:

“...planned to remain stable in accordance with Section 2.6 of this Plan but will continue to mature and adapt as the City evolves. Reinvestment and upgrading will be encouraged through minor in-filling and minor development (i.e. that which can integrate compatibility within the prevailing built form standards of height, density and amenity that are generally found in the neighbourhood.”

The proposed porch and upper floor balconies/deck and third story addition represents a reinvestment to the property that will result in a minor development on the subject property. No additional dwelling units are proposed. There is no increase in density or intensity of uses. The proposed three-story balcony/deck and third story addition is consistent with the intent of this policy.

2. The proposed development will be compatible with surrounding uses, buildings or structures and development standards associated with adjacent properties, and if necessary, incorporate means of alleviating adverse effects on abutting land uses as recommended in Section 2.7 of this Plan;

The proposed porch and upper floor balconies/deck and third story addition will result in a development that is consistent with the existing built form of several residential buildings located north, south and east of the subject property along Patrick Street. The overall design and scale of the proposal is not anticipated to cause any adverse impacts on the adjacent residential properties.

3. The ability of the site to function in an appropriate manner in terms of access, parking for vehicles and bicycles or any other matter and means of improving such function including considerations for universal accessibility;

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The proposal involves the construction of a three-story balcony/deck and third story addition in the front yard of the subject property. There will be no concerns with respect to the parking of vehicles and bicycles or issues relating to accessibility. One parking space is required and provided.

4. The conformity of the proposal to any applicable urban design policies endorsed by Council, particularly if the site includes or could impact a built heritage resource or is within a Heritage District;

The Official Plan also contains policies with respect to urban design in Section 8.3 to ensure that new residential development is integrated into the existing built fabric and conducive to active transportation: Protect and preserve stable residential communities (in accordance with Section 2.6 of this Plan);

- a. A well-established land use pattern in terms of density, type of use(s) and activity level;

The form of residential development is long established. Thus, the overall density, type of use and scale of activity as proposed is consistent with the existing built form of residential buildings along Patrick Street.

- b. A common or cohesive architectural and streetscape character, in terms of massing and built form, architectural expression, age of building stock, and street cross-section;

The proposed development will not create intrusive overlook with respect to adjacent residential properties. The proposed porch and upper floor balconies/deck located within the front yard and won't exceed the maximum permitted height in the zoning by-law. The third story addition will be using the original building footprint and won't be expanding towards neighboring side yards. It will also be compatible with the style, colour and massing of other decks or additions in the area. The proposed variances will not alter the character of the neighbourhood or the existing streetscape.

- c. A stable pattern of land ownership or tenure;

The proposal will result in a stable pattern of land ownership.

- d. A consistent standard of property maintenance with relatively little vacancy in land or building occupancy;

All properties are subject to the City's Property Standards By-Law and Yards By-Law. This proposal does not change the enforcement or applicability of the by-laws.

- e. A limited number of applications for development that would alter the established pattern of land assembly and built form;

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The proposed variance will not significantly alter the established pattern of land assembly and built form.

- f. A sufficient base of social and physical infrastructure to support existing and planned development;

No deficiencies in social infrastructure were identified to limit this application. The appropriate level of physical infrastructure is present to support the development permitted by the draft by-law.

- g. Foster developments that are context appropriate;

The proposal does not involve a significant alteration to the existing built form on the site and will not cause any adverse impacts on adjacent properties.

- h. Foster attractive developments which add to the existing sense of place;

The proposal will not alter the existing character of the established surrounding residential neighbourhood.

- i. Provide a variety of housing types;

The existing one family dwelling on the site will provide housing which will assist in meeting the housing demand in the City.

- j. Ensure compact, accessible mixed-use development;

The proposal contributes to the compact nature of the neighbourhood.

- k. Encourage environmentally sustainable development;

The proposal will not create a significant impact on the existing built form along Patrick Street. The subject property is located within a serviced area which supports the sustainable use of lands, infrastructure and resources.

- l. Integrate and highlight cultural heritage resources;

The subject lands are not designated cultural heritage and there are no identified cultural heritage resources in the immediate area.

The existing residential use will be maintained on the subject property. The site is not located within a Heritage District. The site is not identified on the City of Kingston Heritage Register, therefore, there will be no impact on built heritage resources.

5. If the site is designated under the *Ontario Heritage Act*, the application shall be reviewed by Heritage Kingston for approval. If the property is adjacent to a designated property

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under the *Ontario Heritage Act* or shown as a Heritage Area feature, or is affected by the protected views shown on Schedule 9 of this Plan, then a Heritage Impact Statement may be required to assist staff to determine if the resulting development is desirable;

The subject property is not on the City's Heritage Register and as such a Heritage Impact Statement is not required.

6. The resulting development has adequate municipal water and sewage services within the Urban Boundary, or is capable of providing individual on-site water and sewage services outside the Urban Boundary;

The site is located within the Urban Boundary and is developed with sufficient municipal water and sewage services.

7. Whether the application and the cumulative impact of the proposed variances would be more appropriately addressed by a zoning amendment to the applicable zoning by-law;

The proposed variance is considered minor and the development is consistent with the existing built form along Patrick Street. Therefore, a zoning by-law amendment is not required.

8. The Committee of Adjustment may attach such conditions as it deems appropriate to the approval of the application for a minor variance including any reasonable requirements, recommendations of City departments, or the submission of studies as listed in Section 9.12 of this Plan that may be required to properly evaluate the application;

As part of the recommendation, suggested conditions have been listed. The conditions may be added, altered or removed at the Committee's discretion.

9. The degree to which such approval may set an undesirable precedent for the immediate area.

The surrounding residential uses include Single Family Dwellings and Multi-family dwellings. The approval of the requested variance is considered minor and will not set a precedent for the immediate area.

The proposal meets the intent of the Official Plan, as the proposed will not result in any negative impacts to adjacent properties or to the neighbourhood.

2) The general intent and purpose of the zoning by-law are maintained

The subject property is zoned One and Two-Family Dwelling 'A' Zone in the City of Kingston Zoning By-Law Number 8499, entitled "Restricted Area (Zoning) By-Law of the Corporation of the City of Kingston", as amended. The A zone permits a One and Two Family Dwelling. The existing One Family Dwelling house with a new front yard balcony/deck and addition is a permitted use within the 'A' zone (Exhibit E).

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The proposal requires the following variances:

Variance Number 1:

By-Law Number 8499:Section 5.8 (c) (Front Porch and Deck/Balconies Front Yard)

Requirement:4.66 Metres

Proposed:1.16 Metres

Variance Requested:3.5 Metres

Variance Number 2:

By-Law Number 8499:Section 5.8 (c) (Steps Front Yard)

Requirement:3.5 Metres

Proposed:0.20 Metres

Variance Requested:3.3 Metres

Variance Number 3:

By-Law Number 8499:Section 5.8 (c) (Front Porch, Deck/Balconies & Steps Interior Yard)

Requirement:0.6 Metres

Proposed:0.33 Metres

Variance Requested:0.27 Metres

Variance Number 4:

By-Law Number 8499:Section 6.3 (b) (i) (Front Yard Setback)

Requirement:4.66 Metres

Proposed:2.84 Metres

Variance Requested: 1.82 Metres

Variance Number 5:

By-Law Number 8499:Section 6.3 (c) (i) (Interior Lot Line Setback)

Requirement:0.6 Metres

Proposed:0.33 Metres

Variance Requested:0.27 Metres

Variance Number 6:

By-Law Number 8499:Section 6.3 (f) (ii) (4) (a) (Dormer Window)

Requirement:40.6 Centimetres

Proposed:0.0 Centimetres

Variance Requested:40.6 centimetres

A variance is required from Section 5.8 (c) of Zoning By-Law Number 8499 to seek relief from the minimum setback from the front lot line Section 5.8 (c) provision. Within Section 5.8 9 (c) the minimum setback from the front lot line is 4.66 metres. The proposed porch and upper floor balconies/deck will be setback 1.16 metres, which does not comply with the minimum front yard setback of Section 5.8 (c). As such, the applicant is seeking a variance of 3.5 metres.

A second variance is required from Section 5.8 (c) of Zoning By-Law Number 8499 to seek relief from the minimum setback from the front lot line Section 5.8 (c) provision. Within Section 5.8 (c)

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the minimum setback from the front lot line is 3.5 metres for the steps. The proposed steps will be setback 0.20 metres, which does not comply with the minimum front yard setback Section 5.8 (c) for steps. As such, the applicant is seeking a variance of 3.3 metres for the steps.

A third variance is required from Section 5.8 (c) of Zoning By-Law Number 8499 to seek relief from the minimum setback from the interior lot line Section 5.8 (c) provision. Within Section 5.8 (c) the minimum setback from the interior lot line is 0.6 metres. The proposed porch and upper floor balconies/deck will be setback 0.33 metres, which does not comply with the minimum interior yard setback of Section 5.8 (c). As such, the applicant is seeking a variance of 0.27 metres.

A fourth variance is required from Section 6.3 (b) (i) of Zoning By-Law Number 8499 to seek relief from the minimum setback from the front lot line Section 6.3 (b) (i) provision. Within Section 6.3 (b) (i) the minimum setback from the front lot line is 4.66 metres. The proposed third story addition will be setback 2.84 metres, which does not comply with the minimum front yard setback of Section 6.3 (b) (i). As such, the applicant is seeking a variance of 1.82 metres.

A fifth variance is required from Section 6.3 (c) (i) of Zoning By-Law Number 8499 to seek relief from the minimum setback from the interior lot line Section 6.3 (c) (i) provision. Within Section 6.3 (c) (i) the minimum setback from the front lot line is 0.6 metres. The proposed third story addition will be setback 0.33 metres, which does not comply with the minimum interior yard setback of Section 6.3 (b) (c). As such, the applicant is seeking a variance of 0.27 metres.

A sixth variance is required from Section 6.3 (f) (ii) (4) (a) of Zoning By-Law Number 8499 to seek relief for the minimum setback of a dormer window from the main wall Section 6.3 (f) (ii) (4) (a) provision. Within Section (f) (ii) (4) (a) the minimum setback of a dormer window from the main wall is 40.6 centimetres. The proposed third story addition dormer windows will be setback 0.0 centimetres, which does not comply with the minimum setback of a dormer window from the main wall of Section (f) (ii) (4) (a). As such, the applicant is seeking a variance of 40.6 centimetres. The general intent and purpose of the zoning by-law are maintained.

3) The variance is minor in nature

The proposed porch and upper floor balconies/deck and third story addition will result in a development that is consistent with the existing built form of residential development along Patrick Street. The proposed porch and upper floor balconies/deck and third story addition will be located within the front yard and the addition won't be expanding from the original building footprint for the addition. The requested variances will not result in intrusive overlook with respect to adjacent residential properties. The variances will not alter the character of the neighbourhood or the existing streetscape.

The variances are considered minor as there will be no negative impacts on abutting properties or residential and/or uses or structures.

4) The variance is desirable for the appropriate development or use of the land, building or structure

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The proposed development will provide the functional needs for the proposed residential use. The resulting built form satisfies all applicable provisions of the zoning by-law, except for the minimum front and side yard setback for decks/stairs, setback from the front/side lot line for main structure and dormers setbacks.

The proposal is appropriate and compatible with the surrounding residential uses and will not result in significant impacts or changes to the surrounding area.

The variance is desirable and appropriate use of the land.

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 |
| <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 | | |

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 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 variance(s) maintain(s) the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The proposal is desirable for the appropriate development or use of the land, building or structure and the requested variances are minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the *Planning Act* and the application is being recommended for approval, subject to the proposed conditions.

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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

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on September 21, 2020. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was circulated by advertisement in The Kingston Whig-Standard at least 10 days in advance of the meeting. An additional courtesy notice was placed in The Kingston Whig-Standard seven days in advance of the meeting.

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

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- Exhibit C Official Plan
- Exhibit D Neighbourhood Context
- Exhibit E Existing Zoning
- Exhibit F Site Plan
- Exhibit G Planning Justification Report
- Exhibit H Photo

Recommended Conditions

Application for minor variance, File Number D13-015-2020

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

1. Limitation

That the approved permission applies only to the front porch and steps and second and third floor balconies/deck and third story addition 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 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.



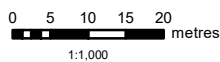
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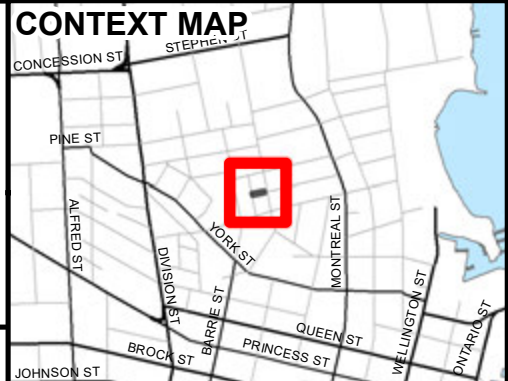
Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Key Map

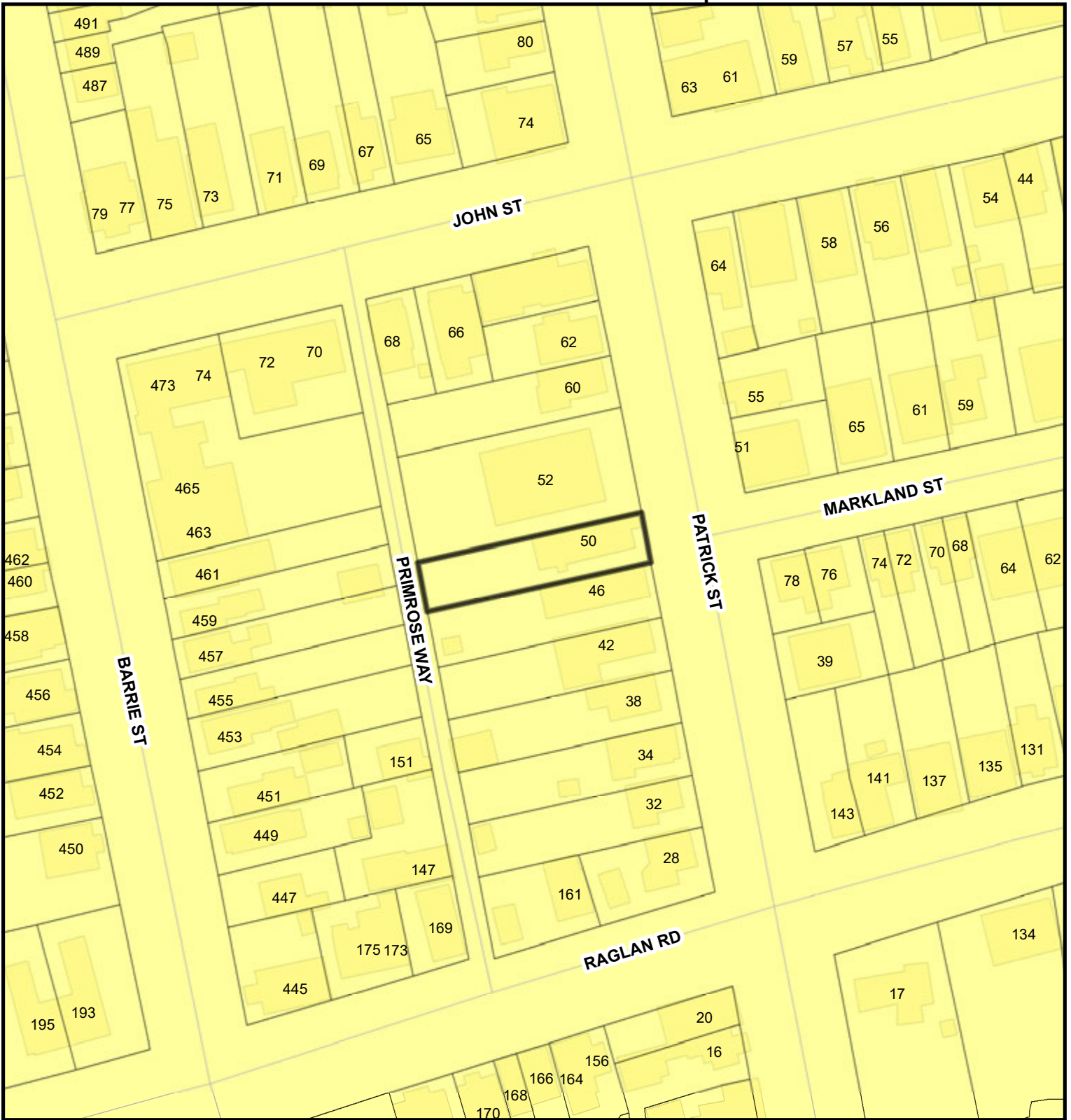
File Number: D13-015-2020
Address: 50 Patrick Street



DATE: 2020-04-07
PREPARED BY: akeeping



Lands Subject to Minor Variance





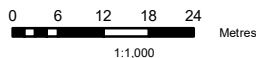
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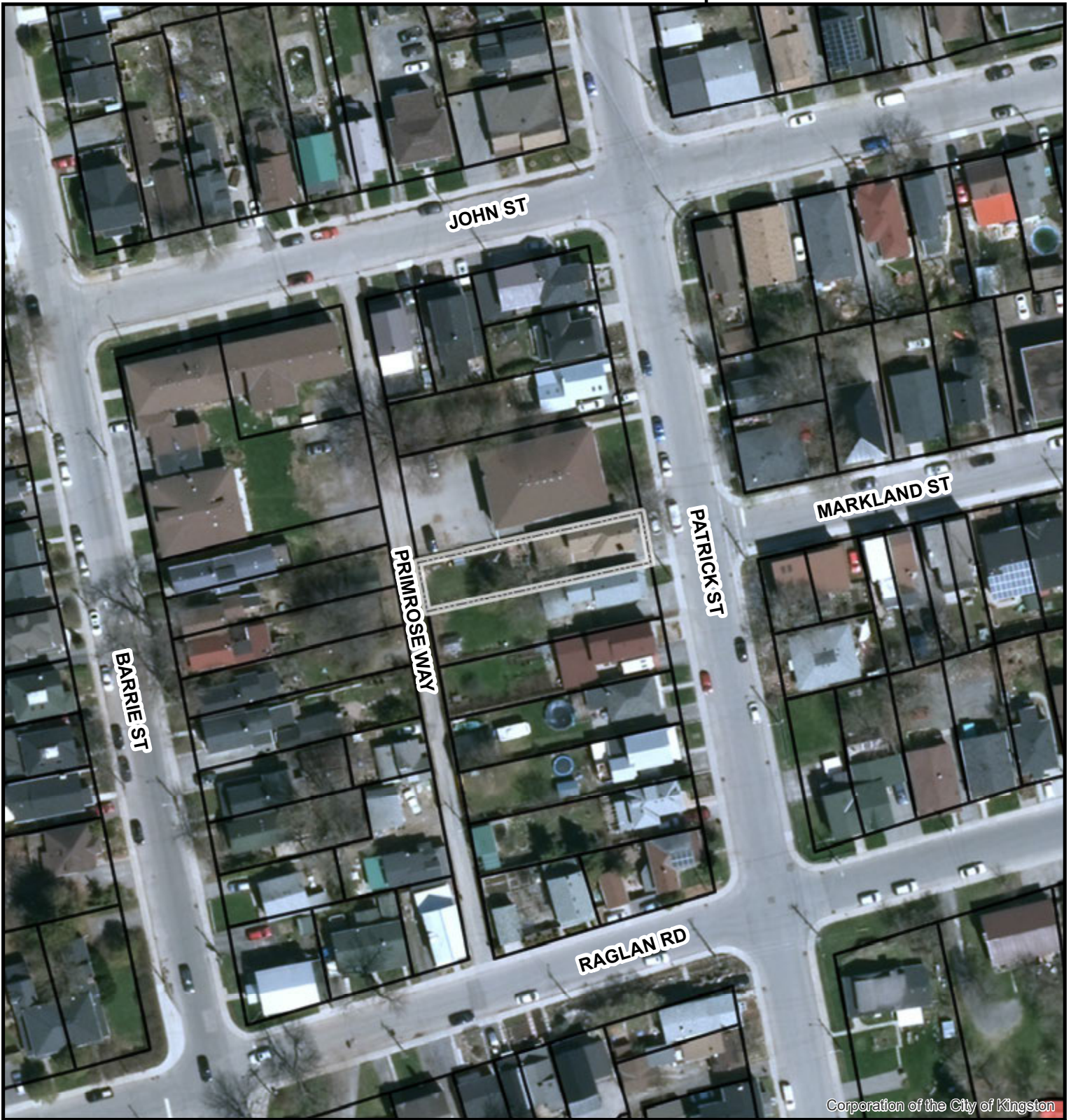
COMMITTEE OF ADJUSTMENT
Official Plan, Existing Land Use

File Number: D13-015-2020
Address: 50 Patrick Street

Legend

-  Subject Lands
-  RESIDENTIAL





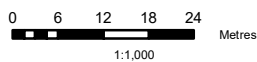
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COMMITTEE OF ADJUSTMENT
Neighbourhood Context (2018)

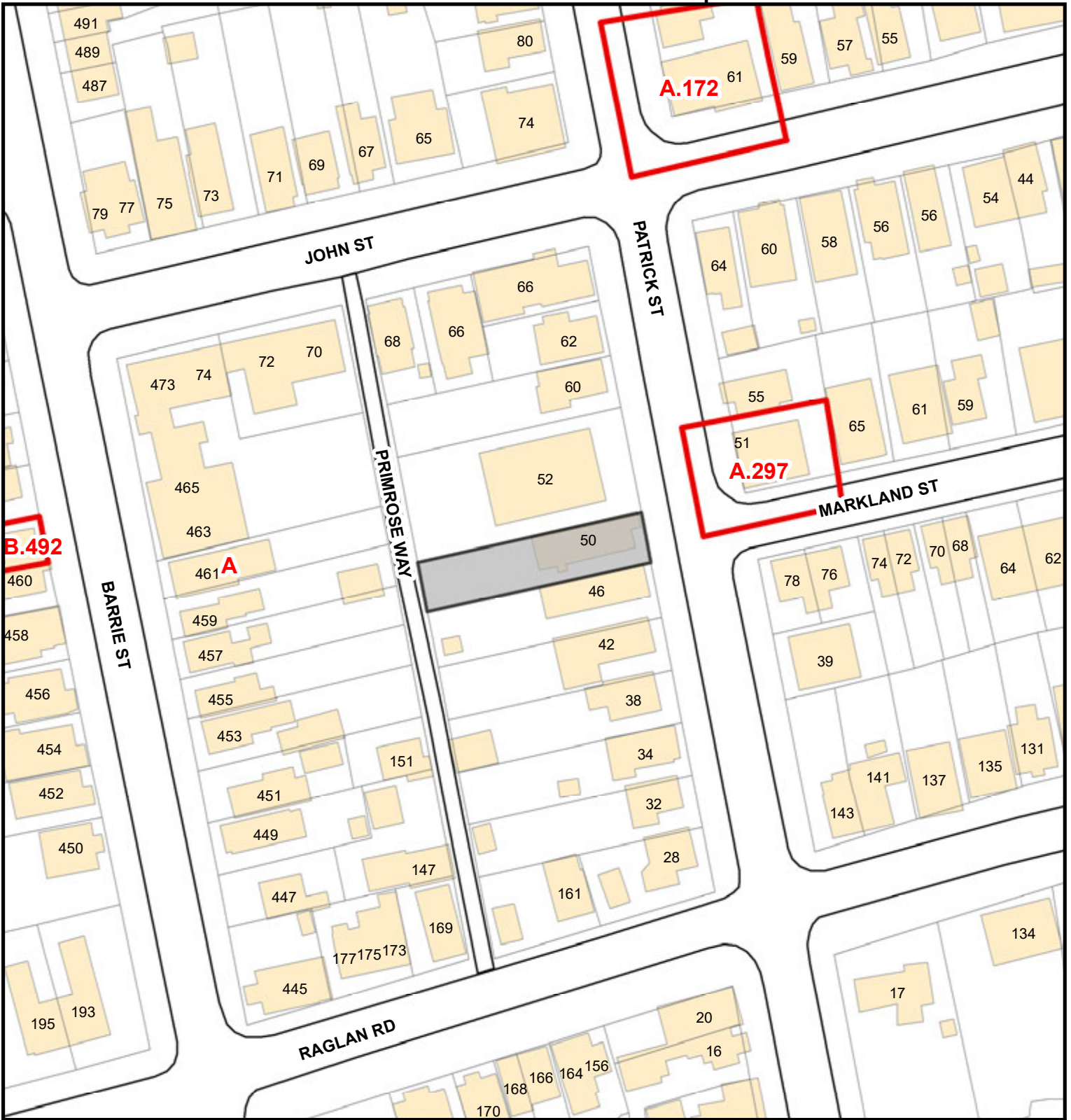
File Number: D13-015-2020
Address: 50 Patrick Street



Legend

-  Subject Lands
-  Property Boundaries







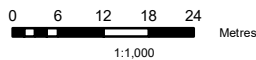
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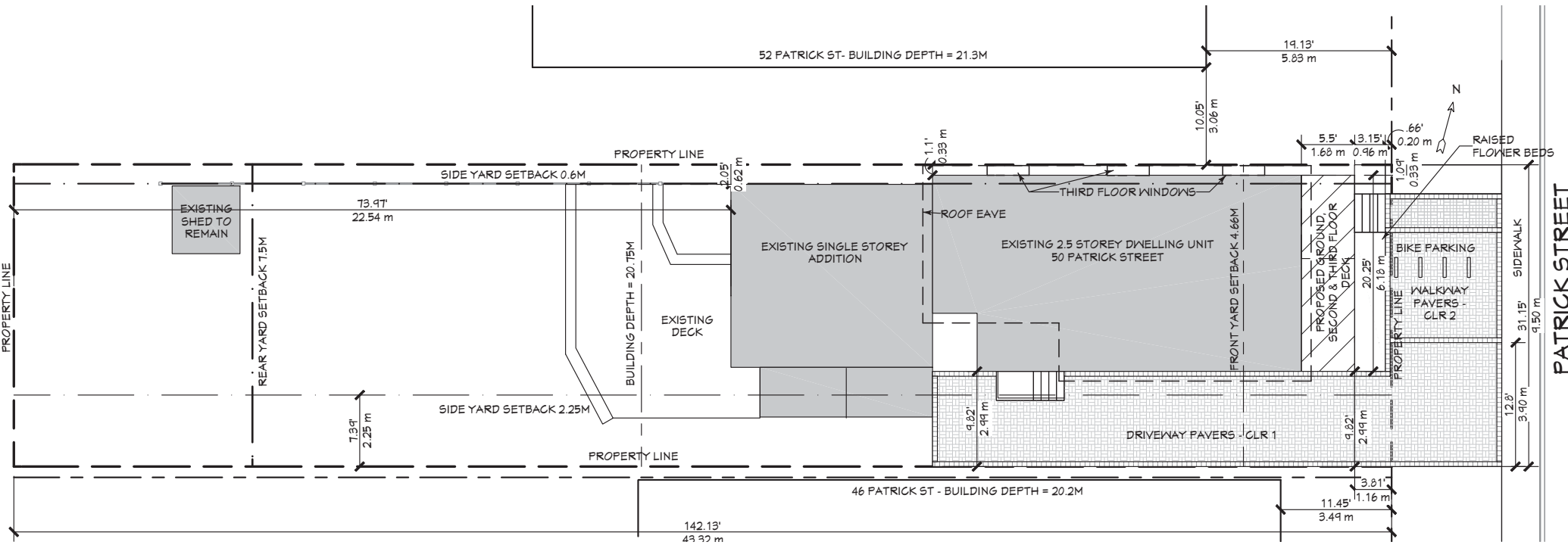
COMMITTEE OF ADJUSTMENT
Existing Zoning - By-law 8499, Map 18

File Number: D13-015-2020
Address: 50 Patrick Street

Legend

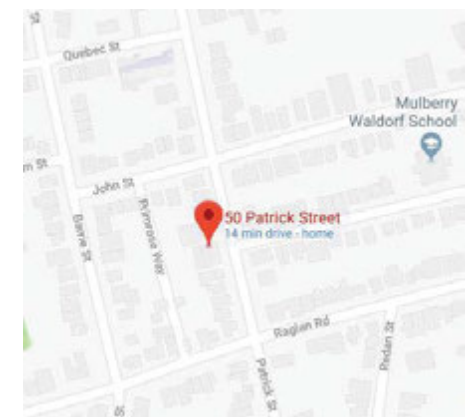
-  Subject Lands
-  Consolidated Zoning





1 SITE PLAN
A1 1/4" = 1'-0"

ZONING INFORMATION			
50 PATRICK ST			
ZONE: A			
LEGAL DESCRIPTION: LOT 6 PLAN B.9			
ZONE PROVISION	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA	370 SQM	343.8 SQM	N/A
MIN. LOT FRONTAGE	N/A	10.995M	N/A
MIN. LOT DEPTH	N/A	53.66M	N/A
MAX. LOT COVERAGE	33 1/3%	25%	39%
MIN. LANDSCAPE OPEN SPACE	30%	61%	60%
MIN. FRONT YARD SETBACK	4.66M	1.16M	1.16M
MIN. REAR YARD SETBACK	7.5M	22.54M	22.54M
MIN. INT. SIDE YARD SETBACK	0.6M	0.33M	0.33M
MIN. AGG. YARD SETBACK	2.85M		
MAX. BUILDING HEIGHT	10.7M	10.3M	10.39M
MAX. WALL HEIGHT	7.0M	6.9M	6.9M
MAX. BUILDING DEPTH	20.75M	17.94M	17.94M
MAX. FSJ	1.0	0.72	0.84
PARKING SPACES	1	1	
GROSS FLOOR AREA	N/A	298 SQM	345 SQM
PROJECTIONS INTO YARDS - STAIRS & EAVES			
MIN. FRONT YARD SETBACK	3.5M	1.16M	0.20M
MIN. INT. SIDE YARD SETBACK	0.5M	0.03M	0.03M
PROJECTIONS INTO YARDS - FRONT DECKS			
MIN. FRONT YARD SETBACK	4.66M	1.16M	1.16M
MIN. INT. SIDE YARD SETBACK	0.6M	0.33M	0.33M
ROOF DORMER SETBACK			
MIN. SETBACK FROM MAIN WALL	0.406M	N/A	0M



SITE LOCATION

March 23, 2020

Chair and Members of Committee of Adjustment
c/o Mr. Phillip Prell, Planner
City of Kingston
1211 John Counter Blvd.
Kingston, Ontario K7L 2Z3

Dear Chair and Members of Committee of Adjustment:

APPLICATION FOR MINOR VARIANCE
50 PATRICK STREET

1.0 Introduction

On behalf of Mr. David Wieser (the “owner”), this letter is provided in support of an Application for Minor Variance for the lands located at 50 Patrick Street in the City of Kingston (the “subject lands”).

The subject lands are located on the western side of Patrick Street between John Street and Raglan Road. The lands are currently developed with a two-storey detached dwelling with a one-storey addition in the rear. The lands have an area of approximately 412 sq.m. and a frontage of approximately 9.5m along Patrick Street. Development of the subject lands must be in accordance with the City of Kingston Official Plan and the former City of Kingston Zoning By-law No. 8499. The subject lands are designated Residential within the Official Plan, which permits the lands to be developed for residential purposes (3.3.1). Within By-law 8499, the subject lands are zoned One-Family Dwelling and Two-Family Dwelling “A” zone, which permits the lands to be developed for residential purposes, specifically one- and two-family dwellings.

The proposed development includes the modification to the roof profile to add living space on the third floor. The existing front porch is also proposed to be removed and replaced with a larger porch and a second and third storey balconies above.

Based on our review of the applicable zoning provisions and Pre-Application document, we have identified that relief is required from former City of Kingston Zoning By-law 8499 to permit the stairs, porch, and balcony structure of the proposed development. The requested variances to permit the above development are outlined in **Table 1** below.

	SECTION	REQUIRED	PROPOSED	VARIANCE
1)	6.3 (c) Minimum Setback from Interior Side Lot Line	Minimum side yard width (one and two-family dwellings) 0.6m. The minimum aggregate side yard width shall be 3.6m or 3/10 of the width of the lot, whichever is the lesser width.	0.3m (existing)	-0.3m

	SECTION	REQUIRED	PROPOSED	VARIANCE
2)	5.8 (c) Regulations for Projections into yards – Minimum Setback from Front Lot Line for projections more than 1.2m above finished grade	Must Meet setback requirements for individual zones (i.e. 4.7m, based on regulation 6.3 (b)(ii) Minimum Front Yard) Note: Legal non-complying front yard setback: 2.8m	1.1m to the porch and 2 nd & 3 rd storey balconies + 0.1m to the stairs	-1.7m for the porch and balconies and an additional 1.0m for the stairs (total - 2.7m) * based on LNC front yard setback

The City of Kingston Official Plan outlines the process and authority for considering minor variances from the provisions of the zoning by-law. Policy 9.4.3 of the Official Plan delegates authority to approve minor variances to a Committee of Adjustment:

9.4.3 *A Committee of Adjustment has been established by Council in accordance with provisions of the Planning Act to make decisions on specific applications. The Planning Act requires that decisions on applications be consistent with provincial policy in effect at the time of the decision, with respect to the following:*

- a.** *applications to allow a minor variance to the zoning by-law or an interim control by-law;*

Policy 9.5.18 provides policy direction on how minor variances will be considered.

9.5.18 *The Committee of Adjustment may grant a minor variance from the provisions of the zoning by-law or any other by-law that implements the Official Plan, if it is satisfied that the application meets the tests of the Planning Act. When reviewing an application for a minor variance the Committee of Adjustment must be satisfied that:*

- a.** *the general intent and purpose of the Official Plan are maintained;*
- b.** *the general intent and purpose of the by-law being varied are maintained*
- c.** *the variance is minor in nature; and,*
- d.** *the variance is desirable for the appropriate development or use of the land, building, or structure.*

Policy 9.5.19 provides further policy direction on the fourth *Planning Act* test described above, that of desirability.

9.5.19 *In considering whether a variance is desirable for the appropriate development or use of the land, building or structure, the Committee of Adjustment will have regard for, but will not necessarily be limited to the following:*

- a.** *the proposed development meets the intent of Section 2 Strategic Policy Direction, and all other applicable policies of this plan;*
- b.** *the proposed development will be compatible with surrounding uses, buildings or structures and development standards associated with adjacent*

- properties, and if necessary incorporate means of alleviating adverse effects on abutting land uses as recommended in Section 2.7 of this Plan;*
- c. the ability of the site to function in an appropriate manner in terms of access, parking for vehicles and bicycles or any other matter and means of improving such function including considerations of universal accessibility;*
 - d. the conformity of the proposal to any applicable urban design policies endorsed by Council, particularly if the site includes or could impact a built heritage resource or is within a Heritage District;*
 - e. if the site is designated under the Ontario Heritage Act, the application shall be reviewed by Heritage Kingston for approval. If the property is adjacent to a designated property under the Ontario Heritage Act or shown as a Heritage Area feature, or is affected by the protected views shown on Schedule 9 of this Plan, then a heritage impact statement may be required to assist staff to determine if the resulting development is desirable;*
 - f. the resulting development has adequate municipal water and sewage services within the Urban Boundary, or is capable of providing individual on-site water and sewage services outside the Urban Boundary;*
 - g. whether the application and the cumulative impact of the proposed variances would be more appropriately addressed by a zoning amendment to the applicable zoning by-law*
 - h. the Committee of Adjustment may attach such conditions as it deems appropriate to the approval of the application for a minor variance including any reasonable requirements, recommendations of City departments, or the submission of studies as listed in Section 9.12 of this Plan that may be required to properly evaluate the application; and,*
 - i. the degree to which such approval may set an undesirable precedent for the immediate area.*

2.0 Justification

In support of this application, the following sections outline how the proposed variances satisfy the four tests prescribed by Section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan policy **9.5.18**. For the first test, whether the purpose and intent of the Official Plan are maintained, we consider both variances together in Section 2.1. For the second and third tests, whether the purpose and intent of the zoning by-law are maintained and whether the variance is minor, we examine the variances separately according to their particular dimensions in Section 2.2. For the fourth test, whether the variances are desirable for the appropriate development of the land, we consider the variances as a whole in Section 2.3, using the nine criteria outlined above in Policy **9.5.19** of the Official Plan. We note that the requested variances pertain only to the proposed stairs, porch and balcony structure and are unrelated to the proposed change to the roofline, which we understand complies with the provisions of the zoning by-law and does not require a variance.

2.1 The general intent and purpose of the Official Plan are maintained

In support of this application, the following section outlines how the proposed variances satisfy the first of four tests prescribed by Section 45(1) of the *Planning Act* and reiterated in Official Plan policy **9.5.18.a**), being that the Committee of Adjustment must be satisfied that the general intent and purpose of the Official Plan are maintained.

In this regard, we consider the policies of the Official Plan which pertain to the subject lands, under **Section 3.3 – Residential Policies**.

Policy 3.3.1. states that the predominant use of land in a residential designation will be for various forms of housing. The proposed variance to add a porch/balcony will not impact the ongoing residential use of the building, thereby maintaining the purpose and intent of Policy 3.3.1.

Policy 3.3.6 provides policy direction on Existing Residential Areas Stable, which includes the subject lands according to Schedule 2 to the Official Plan. The policy states that only minor changes in the pattern of housing type, height or density are permitted in accordance with the Official Plan policies in 2.6 – Protecting Stable Areas. The proposed variances will permit minor aesthetic modifications whose impact will be explored in later sections, but will not change the housing type, height or density and thereby maintain the purpose and intent of Policy 3.3.6.

Policy 3.3.A.1. provides policy direction for Low Density residential areas, which includes the subject lands. The policy states that Low Density residential land uses represent low rise, ground oriented types of housing suitable for all households. The proposed variances do not change the intensity or form of the residential use.

For the above reasons, it is our opinion that the proposed variances maintain general intent and purpose of the Residential Policies of the Official Plan. We note that specific provisions of Official Plan policies 2.6 – Protecting Stable Areas and 2.7 – Land Use Compatibility are addressed in section 2.3 of this document in the test of desirability.

2.2 The general intent and purpose of the Zoning By-law are maintained and the variance is minor in nature

In support of this application, the following section outlines how the two separate proposed variances satisfy the second and third tests prescribed by Section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan policy **9.5.18.a**), being that the Committee of Adjustment must be satisfied that the general intent and purpose of the provisions being varied are maintained and that the variances are minor in nature.

Variance 1: Minimum Setback from Interior Side Lot Line

The minimum setback requirements for side yards for the Residential Zone is provided in section 6.3.(c):

Minimum side yard width (one and two-family dwellings) 0.6m. The minimum aggregate side yard width shall be 3.6m or 3/10 of the width of the lot, whichever is the lesser width.

The existing dwelling is 0.3m from the side lot line, which is an existing legal non-complying condition. Further, the existing porch, which is to be removed and replaced, is currently located at this reduced setback, and therefore also enjoys a legal non-complying status. However, due to the increase in height, a variance is required to permit the upper floor balconies at the reduced side yard setback.

- **The general intent and purpose of the by-law being varied are maintained**

Our understanding is that the interior side yard requirement is intended to ensure adequate separation from the neighbouring lands, to minimize privacy and overlook concerns, and establish a degree of consistency within blocks and neighbourhoods. As previously noted, the existing dwelling enjoys legal non-complying status for the 0.3 m

interior side yard to the north property limit. Given this existing condition, the proposed variance is only being sought to maintain this existing setback and match the existing condition of the dwelling and the porch with respect to the north side yard. No negative privacy impacts due to the creation of overlook are anticipated, particularly given that it is facing the street and abutting another front yard, which is typically not a private amenity space like a rear yard.

- **The variance is minor in nature**

The determination of whether or not an application is minor is not based on the degree of the variance requested, but rather on whether the impact of granting the request(s) is minor. This includes how the variance could impact the existing or planned functionality of the subject lands and/or the surrounding lands.

The impact of the proposed reduction to the interior side yard setback is minor in nature, as the existing dwelling is currently situated at the proposed reduced setback. The variance is required as a result of the proposed construction of a new front porch and upper floor balconies. Given its location in the front yard and that it will not further decrease the existing legal non-complying condition of the house and the porch, we are of the opinion that there will be no appreciable negative impact on the use or functionality of the subject or adjacent lands. There remains sufficient room in the front and side yards of the subject and adjacent lots for access, and the variance does not propose to reduce the existing condition. On this basis, it is our opinion that the variance is minor in nature.

Variance 2: Minimum Setback from Front Lot Line for projections more than 1.2m above finished grade

The permissions for projections into yards are provided in section 5.8(c). For projections that are more than 1.2m, the projections must meet requirements for individual zones. Section 6.3.(b) states that:

Where the nearest previously erected building fronting on the same street is located less than 30.0m from a building which is to be erected, structurally altered, enlarged or maintained and there is another previously erected building within 30.0m located on the opposite side of the building to be erected, structurally altered, enlarged or maintained the minimum required front yard shall be the average depth of the front yards of the two above mentioned previously erected buildings.

Based on this, it was determined through the Pre-application process that the minimum front yard setback for the subject lands would be 4.7m. However, the existing dwelling on the subject lands has an existing front yard setback of 2.8m, which is legal non-complying. There is also an existing one-storey front porch on the subject lands which currently projects 1.7m into the front yard from the front wall of the dwelling.

The proposed expanded porch, and second and third storey balconies are proposed to maintain the existing 1.7m projection. However, due to the increase in the width of the porch and addition of upper floor balconies, a variance is required to permit the 1.7m projection.

The proposed stairs project an additional 1.0m into the front yard beyond the proposed porch, for a combined projection of 2.7m from the building face.

- **The general intent and purpose of the by-law being varied are maintained**

Our understanding of the intent of the provision limiting projections is to ensure that such projecting structures do not undermine the limitations placed on the size of the main building such that there are negative impacts imposed on the streetscape and/or yard spaces become unusable. There is also a desire to maintain a certain amount of consistency with respect to setbacks along a street and within the block faces.

As noted, the existing dwelling enjoys a legal non-complying front yard setback of 2.8m, with the existing front porch projecting an additional 1.7m into the front yard. The proposed front porch and balconies will maintain this 1.7m projection from the existing dwelling face, with the proposed stairs projecting an additional 1.0m beyond the porch. The proposed projections are not anticipated to negatively impact the streetscape as they will not encroach any further into the front yard, are consistent with the range of setbacks and projecting porches found in the area, and are not anticipated to result in the overdevelopment of the subject lands. They will also provide additional amenity for the dwelling and increase the usability of the upper floors. As such, it is our opinion that the variance maintains the general intent and purpose of the Zoning By-law.

- **The variance is minor in nature**

The determination of whether or not an application is minor is not based on the degree of the variance requested, but rather on whether the impact of granting the request(s) is minor. This includes how the variance could impact the existing or planned functionality of the subject lands and/or the surrounding lands.

The calculated required front yard setback of 4.7m does not reflect the existing established legal non-complying front yard setback of 2.8m, but rather is derived from the average of the front yard setbacks of the buildings on either side of the subject lands. It should be noted that the front wall of the building to the north is not reflective of the typical front yard setback found along the west side Patrick Street, and therefore resulted in larger than typical front yard setback requirement for the subject lands.

When considering the existing built form character of the neighbourhood, it appears that the front wall of the existing building is in keeping with the range of setbacks found on the street. When considering the degree to which the balcony will extend from the front wall of the existing structure, the visual impact on the streetscape is anticipated be minor in nature as the projection will match the projection of the existing porch, with exception of the stairs and will maintain the character of front yard projections established by existing buildings on the west side of Patrick Street between John Street and Raglan Road.

2.3 – The variance is desirable for the appropriate development or use of the land, building or structure

The following section outlines how the proposed variances, as a whole, satisfy the fourth and final test prescribed by Section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan policy **9.5.18.a**), being that the Committee of Adjustment must be satisfied that the variance is desirable for the appropriate development or use of the land, building, or structure. The proposed variances will be assessed for desirability in the following sections using the criteria provided in the Official Plan policy **9.5.19**.

- a. the proposed development meets the intent of Section 2 Strategic Policy Direction, and all other applicable policies of this plan;*

Our understanding of Section 2 of the Official Plan is that the Strategic Policy Directions outline the City's understanding of change and development, and how and where these processes should occur. The subject lands area subject to the policies of section 2.6 Protecting Stable Areas as the subject lands are shown as within a Housing District on Schedule 2 to the Official Plan. The important portion of the stated goal of section 2.6 is "To maintain or improve the City's quality of life [...] by managing the degree of change that is warranted in stable areas to achieve compatible development and land use." Policy 2.6.3 goes on to say that "Stable areas will be protected from development that is not intended by this Plan and is not compatible with built heritage resources or with the prevailing pattern of development in terms of density, activity level, built form or type of use." The proposed variances will not modify the density, activity level or type of use the existing building. While the proposed variances will enable a modest change to the built form, we identified in the preceding sections that the impacts are anticipated to be minor in nature and will maintain the intent of the zoning by-law, which regulates built form. For this reason, we are of the opinion that the proposed variances meet the intent of Section 2 by maintaining the purpose and intent of the policies in Section 2.6 Protecting Stable Areas.

Remaining applicable policies of the Official Plan are discussed throughout this report, such as the policies for Residential Areas.

- b. the proposed development will be compatible with surrounding uses, buildings or structures and development standards associated with adjacent properties, and if necessary incorporate means of alleviating adverse effects on abutting land uses as recommended in Section 2.7 of this Plan;*

In section 2.2 above, we demonstrate how each of the variances respect and are in keeping with the existing built form character of the neighbourhood. We are of the opinion that no negative impacts to the existing built form character of the neighbourhood will arise as a result of the proposed variances. The use of the existing building will not change as a result of the proposed variances. As such, it is our opinion that the proposed development will be compatible with surrounding uses, buildings, and/or structures and development standards associated with adjacent properties, and that no adverse effects are anticipated.

- c. the ability of the site to function in an appropriate manner in terms of access, parking for vehicles and bicycles or any other matter and means of improving such function including considerations of universal accessibility;*

The proposed variances will not change the ability for the site to function in terms of access and parking. The main access to the front door will be maintained via the new stairs and porch. The minimum parking requirements provided in section 5.3. A. (a) in the City of Kingston Zoning By-law 8499 for Residential areas will continue to be met as parking will be provided within the existing driveway at the side of the dwelling.

- d. the conformity of the proposal to any applicable urban design policies endorsed by Council, particularly if the site includes or could impact a built heritage resource or is within a Heritage District;*
- e. if the site is designated under the Ontario Heritage Act, the application shall be reviewed by Heritage Kingston for approval. If the property is adjacent to*

a designated property under the Ontario Heritage Act or shown as a Heritage Area feature, or is affected by the protected views shown on Schedule 9 of this Plan, then a heritage impact statement may be required to assist staff to determine if the resulting development is desirable;

The subject lands are not designated under Part IV of the OHA and they fall outside of any Heritage Character Areas as shown on Schedule 9 to the Official Plan. Through the pre-application report, heritage planning staff were able to confirm that the site is not adjacent to any protected heritage properties, although staff noted that the property is on the city's internal list of potential heritage properties. Heritage planning staff provided comments recommending against the proposed changes to the roofline; however, the variances discussed in this report are solely concerned with the porch and balcony modifications, which are independent of the roof modifications.

In terms of broad urban design perspectives, the variances can be contemplated in light of the City's Design Guidelines for Residential Lots. Section 4.2 provides policy direction on Front Yard Setbacks:

- 4.2.b** *Ensure a portion of the setback from the front property line is a "no encroachment" zone. The remaining setback may contain non-habitable building elements (e.g. porches, steps, roof elements, etc.)*

The subject variances are not to permit an expansion of the building envelope further into the required front yard. Rather, they are to permit the identified "non-habitable building elements", being porches and balconies. Therefore, the proposal is consistent with this policy.

Section 6.1 provides policy direction on Access and Entrances:

- 6.1.a** *Face main entrances towards public streets and make them well-lit and directly accessible from public sidewalks.*
- 6.1.b** *Design main entrances to provide weather protection including features such as awnings, recessed entries, front porches, porticos and verandas. The front door should be the prominent feature of the front façade (as opposed to the garage being dominant).*

The proposed variances will facilitate the construction of a front porch and balconies which will maintain the use of the front main entrance as directly accessible from the public sidewalk. The structure will provide weather protection and maintain and increase the focus on the front door as being the prominent feature of the front façade.

Section 6.6 provides policy direction on Porches and Building Projections:

- 6.6.a** *Include building projections as transitional elements. Features such as porches, decks, canopies and stairs provide access, amenity area and weather protection.*
- 6.6.b** *Use generously proportioned porch steps with a gentle rise and run to encourage safety and active use.*
- 6.6.c** *Design porches and decks to be large enough to accommodate furnishings and ensure their active use. New porches and decks should*

be designed to complement the building's architecture including the use of appropriate materials.

The proposed variances will facilitate the construction of a front porch and balconies which will serve as an attractive transitional element between the building and the street. Increasing the area and adding a second and third level will increase the amount of weather-protected amenity space as compared to the existing porch. The larger amenity area can better accommodate furnishings and ensure active use.

f. the resulting development has adequate municipal water and sewage services within the Urban Boundary, or is capable of providing individual on-site water and sewage services outside the Urban Boundary;

The proposed variances will not impact the intensity of use of the subject lands, and thus not impact the level of services already required.

g. whether the application and the cumulative impact of the proposed variances would be more appropriately addressed by a zoning amendment to the applicable zoning by-law.

We understand the purpose of 9.5.19.g is to ensure that the cumulative impact of several minor variances is not so substantial as to be more appropriately addressed by a zoning amendment. The variances will permit the expansion of an existing front porch and stairs and addition of upper floor balconies, which is in keeping with the existing built form character of the neighbourhood. No additional impacts to the functionality of the subject lands or the surrounding lands arise from the sum of the variances which are not contemplated in the above sections showing that each variance is minor in nature. As such, we are of the opinion that the proposed variances have a cumulative impact which is minor in nature and that the application is appropriately addressed through the minor variance process.

h. the degree to which such approval may set an undesirable precedent for the immediate area

Firstly, planning applications and decisions are not based on precedent, and each application is based on its merits and not decisions made on other comparable applications. That being said, decisions on applications provide guidance as to how policies may be interpreted in the future. With that in mind, we are of the opinion that the proposed variances will not set an undesirable precedent for the immediate area. The variances permit the construction of a front porch, balconies and stairs which is in keeping with the variety of existing built form character of the neighbourhood, and could conceivably be implemented on other properties without ill-effect. Permitting the requested variances will not set new precedents upon which further departures from the existing built form could be justified in the future.

Based on our analysis of the proposed variances against the criteria provided in the Official Plan policy **9.5.19**, it is our opinion that the proposed variances are desirable for the appropriate development or use of the land, building or structure.

3.0 Closing

It is our professional opinion that the requested variances satisfy the four tests prescribed by Section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan policy **9.5.18.**, constitute good land use planning, and should be approved.

Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,
IBI Group



Tracy Tucker, BAA, CPT
Project Coordinator



Mark Touw, MCIP, RPP
Associate Director



Jake Bastedo
Intern

July 22, 2020

Mr. Tim Park
 Manager, Development Approvals
 City of Kingston
 1211 John Counter Blvd.
 Kingston, Ontario K7L 2Z3

Dear Mr. Park:

**REVISED APPLICATION FOR MINOR VARIANCE
 50 PATRICK STREET, KINGSTON**

Further to our letter dated March 23, 2020, this letter is provided in support of Minor Variance Application D13-015-2020, for the lands located at 50 Patrick Street, Kingston. Upon review of the application by City staff it was noted that an addition variance is required in order to facilitate the proposed building addition.

In addition to the previously requested variances for a reduction to the interior side yard setback and projections into the front yard the following variance is required:

	SECTION	REQUIRED	PROPOSED	VARIANCE
1)	6.3 (f) (ii)(4)(a) Minimum Front Wall of the Dormer(s) Setback	40.6cm (16 inches) from the buildings main wall	0.0 cm from the buildings main wall	-40.6cm

Justification

In support of the additional variance to application D13-015-2020, the follow section reviews the variance against the four tests prescribed in section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan.

1. Is the Variance Minor in Nature?

The determination of whether or not a variance is minor is not based on the degree of the variance requested, but rather on whether the impact of granting the request is minor. This includes how the variance could impact the existing or planned functionality of the subject lands and/or the surrounding lands.

It is proposed that the roof on the dwelling will be mansard, with the dormers being located above the main building wall, rather than being set back from the main wall of the dwelling. Our understanding is that the required setback from the main wall is intended for gabled roofs, where the pitch is greater and as such the dormer would need to be set-in from the building wall. In the case of a mansard roof, the pitch of the roof does not allow for the dormers to be set back from the main wall. The proposed reduction to allow for dormers to be located within the gabled roof is not anticipated to result in privacy or overlook concerns and will add architectural interest to the building design. As such it is our opinion that the proposed

reduction is minor in nature and does not impact the existing or planned function of the subject or neighbouring lands.

2. Is the Variance Desirable and Appropriate?

The proposed variance to reduce the minimum setback to the front wall of a dormer will allow for the proposed mansard roof to have dormers. As previously noted, it is our understanding that the required setback is meant for gabled roofs and did not contemplate dormers within a mansard roof, where is it not possible to set the windows back from the main building wall due to the nature of the roof design. The proposed mansard roof and overall building height and form is consistent with the range found in the area, and the variance effectively allows a mansard roof to be created rather than a pitched or flat roof. As such, it is our opinion that the proposed reduction to the minimum setback of a dormer window from the main building wall is desirable and appropriate.

3. Does the Variance Maintain the General Intent and Purpose of the Official Plan?

In support of this application, the following section outlines how the proposed variance satisfies maintaining the general intent and purpose of the Official Plan test, as prescribed by Section 45(1) of the *Planning Act* and reiterated in Official Plan policy **9.5.18.a**), being that the Committee of Adjustment must be satisfied that the general intent and purpose of the Official Plan are maintained.

In this regard, we consider the policies of the Official Plan which pertain to the subject lands, under **Section 3.3 – Residential Policies**.

Policy 3.3.1. states that the predominant use of land in a residential designation will be for various forms of housing. The proposed variance to allow for dormers within the roof will not impact the ongoing residential use of the building, thereby maintaining the purpose and intent of Policy 3.3.1.

Policy 3.3.6 provides policy direction on Existing Residential Areas Stable, which includes the subject lands according to Schedule 2 to the Official Plan. The policy states that only minor changes in the pattern of housing type, height or density are permitted in accordance with the Official Plan policies in 2.6 – Protecting Stable Areas. The proposed variance will permit minor aesthetic modifications whose impact will be explored in later sections, but will not change the housing type, or density and thereby maintain the purpose and intent of Policy 3.3.6.

Policy 3.3.A.1. provides policy direction for Low Density residential areas, which includes the subject lands. The policy states that Low Density residential land uses represent low rise, ground oriented types of housing suitable for all households. The proposed variance does not change the intensity or form of the residential use.

With respect to compatibility matters, Policy 2.7.2 identifies:

The demonstration of compatible development and land use change must consider the potential for adverse effects and matters that have the potential to negatively impact the character, planned function and/or ecological integrity of an area, and the health and safety of humans. Where there exists a potential for negative impacts, a land use compatibility study, focused specifically on the identified land use compatibility matters, will be required.

The OP identifies that applications must demonstrate that they are compatible, considering the “potential for adverse effects” (emphasis added, see definition below) and “potential to negatively impact the...planned function”.

2.7.3. The land use compatibility matters to be considered under Section 2.7.2 include, but are not limited to:

b. loss of privacy due to intrusive overlook;

The relevant land use compatibility matter in this case is concern about privacy due to overlook caused by the upper floor windows . Note that the policy speaks to “intrusive” overlook, not simply “overlook”. There is no definition for “intrusive”.

OP definition of “Adverse Effects” referenced in 2.7.2:

This means one or more of the following:

- a. impairment of the quality of the natural environment for any use that can be made of it;*
- b. injury or damage to property or plant or animal life;*
- c. harm or material discomfort to any person;*
- d. an adverse effect on the health of any person;*
- e. impairment of the safety of any person;*
- f. rendering any property or plant or animal life unfit for human use;*
- g. loss of enjoyment of normal use of property; and*
- h. interference with the normal conduct of business.*

Note that the seemingly applicable portion of the definition of “adverse effect” is the “loss of enjoyment of the normal use of the property” (emphasis added).

The overall theme of the OP with respect to privacy impacts in this situation is that new development must not result in:

1. “adverse effects” (defined term), being the loss of enjoyment of the normal use of property;
2. negative impacts to the “planned function” of an area;
3. loss of privacy due to intrusive overlook (not simply overlook);

Based on the above, our opinion is that the Official Plan intent with respect to compatibility is satisfied, even with the reduction to the setback from the wall for the upper floor dormer windows. The windows as proposed will not result in the loss of enjoyment of the expected “normal” use of the adjacent properties. Given that side yard setbacks are permitted to be minimal (0.6 m) and that windows could be placed as-of-right facing into shared side yards, it seems that the proposed windows do not interfere with the expected and “normal” use of the property. Owners should have an expectation that it is “normal” to have one or multiple windows on the sides of dwellings and that these could look into the side yard of respective properties and even into windows.

“Intrusive overlook” is not a defined term, but it is notable that the OP specifically qualifies that for a loss of privacy due to “overlook” to exist it has to be “intrusive”. Based on our review of the context and the proposed development, we are of the opinion that the proposed upper floor windows to the north façade would not constitute an intrusion of privacy when facing the adjacent properties, most notably the apartment to the north, which itself has 8 windows looking into the side and rear yard of 50 Patrick Street. Rather than “intrusive”, this seems to

be the expected or “normal” use of properties in this area and consistent with the “planned function” of the area.

For the above reasons, it is our opinion that the proposed variances maintain general intent and purpose of the Residential Policies of the Official Plan.

4. Does the Variance Maintain the General Intent and Purpose of the Zoning By-law?

The Zoning By-law does not specifically define or identify mansard roofs, only “flat” or “sloped” roofs. Dormer windows are typically associated with windows in a traditional pitched roof, not windows in a mansard roof. This is seen in the performance provisions for dormer windows in Zoning By-law No. 8499 in that the provisions work well to regulate dormer windows in, for example, a gable roof, but not for a mansard roof. By their design, mansard roofs have windows in line with the wall below or even projecting beyond the main building wall. On this basis, and interpreting mansard roofs to be “sloped” roofs under the Zoning By-law, windows in mansard roofs are effectively not permitted. However, it is our opinion that this is not what is intended by the Zoning By-law, but rather than windows on upper floors need to be sized and located such that they do not create negative impacts on adjacent properties due to intrusive overlook and that the overall built form is not incompatible with the context.

As noted above in the discussion regarding compatibility with the Official Plan intent, and within our original planning justification, we are of the opinion that the proposed variance to allow the upper floor dormer windows in the locations proposed is consistent with the intent of the Zoning By-law. The built form is compatible with the character of the neighbourhood and the windows are not anticipated to result in negative impacts due to intrusive overlook on adjacent properties.

Closing

It is our professional opinion that the requested additional variance satisfies the four tests prescribed by Section 45(1) of the *Planning Act* and reiterated in the City of Kingston Official Plan policy **9.5.18.**, constitutes good land use planning, and should be approved.

Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,
IBI Group



Tracy Tucker, BAA, CPT
Project Coordinator



Mark Touw, MCIP, RPP
Associate Director

