



**City of Kingston
Report to Committee of Adjustment
Report Number COA-20-057**

To: Chair and Members of the Committee of Adjustment
From: Phillip Prell, Planner
Date of Meeting: November 16, 2020
Application for: Minor Variance
File Number: D13-042-2020
Address: 783 Portsmouth Avenue
Owner/Applicant: Kassie Sullivan

Council Strategic Plan Alignment:

Theme: Regulatory & compliance

Goal: See above

Executive Summary:

This report provides a recommendation to the Committee of Adjustment regarding an application for minor variance for the property located at 783 Portsmouth Avenue. The applicant is proposing to legalize an existing deck that has an average height between 0.6 and 1.2 metres from finished grade. This requires recognizing the deck's zero-metre setback from the side lot line to the north where a 1.2 metre setback is required.

The requested minor variance is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The requested minor variance is desirable for the appropriate development or use of the land, building or structure and is 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.

Variance Number 1:

By-Law Number 8499:Section 5.8(c)

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Requirement: The property must meet interior side yard setback requirements for individual zones, which is 1.2 metres according to section 8.3(c)(iii)
Proposed: 0.0 metres (to legalize existing structure)
Variance Requested: 1.2 metres

Recommendation:

That minor variance application, File Number TD13-042-2020, to recognize the location of an existing deck, for the property located at 783 Portsmouth Avenue, be approved; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-20-057.

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Authorizing Signatures:



Phillip Prell, Planner

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

Paige Agnew, Commissioner, Community Services

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Options/Discussion:

On September 1, 2020, a minor variance application was submitted by OTKassie Sullivan, with respect to the property located at 783 Portsmouth Avenue. The variance is requested to legalize an existing deck that is between 0.6 and 1.2 metres in height from finished grade by recognizing its zero-metre setback from the side lot line to the north where a 1.2 metre minimum would be required. Land use compatibility concerns are to be addressed by putting a privacy screen in the form of a lattice along the length of the deck that abuts 789 Portsmouth Avenue.

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

- Site Plan (Exhibit G)
- Engineering Certificate (Exhibit I)

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 designated “Residential” in the Official Plan and zoned “A2” in Zoning By-Law Number 8499. The property abuts two residential uses in the “A2” zone to the north and south, and abuts a site-specific “B2” zone for Multiple Family Dwellings (Unified Ownership) to the east.

The subject property is located within the Urban Boundary along Portsmouth Avenue, a designated Collector Road according to the City of Kingston Official Plan. The property is approximately 250 metres from Princess Street, a designated Arterial Road. A bus stop is located approximately 40 metres south of the property. The property is also located on a hill (sloping from high to low ground from both east to west and from south to north) which exaggerates the property’s height in relation to the residential properties to the west and north.

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

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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.

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;

Section 2.1.4 d. & e. notes that development applications should, where possible, employ operational practices that minimize waste and conserve or recycle materials. In this case, the applicant is legalizing an existing deck and is proposing additional mitigation measures (i.e. screening), which alleviates some compatibility issues while still preserving the existing structure. This preserves the existing structure, while also improving the property's land use compatibility with surrounding properties.

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;

Section 2.7.3 discusses land use compatibility matters, such as how structures on one property can affect an abutting property. This application is to legalize a deck that is on the zero lot line, which could raise privacy concerns and potentially impact one's enjoyment of normal outdoor areas (i.e. rear yard). This potential for overlook is further exaggerated by the site's topography (sloping from high to low elevation from both the south to the north and from the east to the west) (Exhibit H – Site Visit Pictures). Despite this, the applicant is proposing to improve the existing situation by adding a privacy screen to the deck to mitigate privacy concerns for both the residents of the property and those on the abutting property to the north (Exhibit H – Site Visit Pictures).

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;

As this application is to legalize an existing deck, which already provides access to the rear yard and is not impacting the zone compliant parking space or the existing ground floor building entrance, site access and functionality should not be a concern.

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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 property is not within a Heritage Conservation District and is not abutting/adjacent to any registered or listed properties with cultural heritage value. The property is not within an area of archaeological potential. As this proposal is limited to an accessory structure for a single-family dwelling, Site Plan Control is not a factor in the deck's urban design.

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 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 property is not designated under the *Ontario Heritage Act*, nor is it adjacent/abutting listed or designed heritage properties or districts.

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 property utilizes municipal water and sewage services. As this application focuses on legalizing an existing deck no additional service usage is expected.

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 application and cumulative impact of the proposal does not warrant a zoning by-law amendment.

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;

The Committee of Adjustment may require additional conditions as it deems appropriate to the approval of the application. Recommended conditions are listed in "Exhibit A - Recommended Conditions", attached to this document. 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 approval of the requested variances will not set a precedent for the immediate area, as each minor variance is reviewed independently and judged on its own merits and metrics.

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The proposal meets the intent of the Official Plan, as the impacts of the existing deck location (on the zero lot line) will be addressed by the addition of a privacy screen, which should alleviate potential negative overlook impacts on abutting properties.

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

The subject property is zoned “A2” 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 “A2” zone permits one-family dwellings and a variety of community uses such as: libraries, public/private schools, churches, and Community Homes.

The proposal requires a variance to Section 5.8(c) “Projections into Yards”.

Variance Number 1:	
By-Law Number: 8499	5.8(c)
Requirement:	The property must meet interior side yard setback requirements for individual zones, which is 1.2 metres according to section 8.3(c)(iii)
Proposed:	0.0 metres (to legalize existing structure)
Variance Requested:	1.2 metres

The purpose of the yard projection regulations in Zoning Bylaw 8499 is to control for potential neighbouring property privacy/overlook concerns that could result in a reduction of the ability to enjoy one’s property. In this case, the average deck elevation has been determined to be between 0.6 metres to 1.2 metres from finished grade. As a result, the minimum setback from an interior side lot line must meet the setback requirements for the “A2” zone. Section 8.3(c)(iii) for the “A2” zone notes that “each side yard shall not, at any point in its length, be a lesser width than 1.2” metres. The purpose for this 1.2 metre regulation is to provide sufficient side yard access to the rear yard and to provide a minimum distance from other properties to control for overlook and loss of privacy in nearby yards.

The existing deck satisfies the side yard access requirements as it provides access to the rear yard via the stairs and deck itself. However, the loss of privacy and potential impacts to the enjoyment of one’s property of an abutting residential property are considerations that the existing structure, in its current state, could not satisfy (Exhibit H – Site Visit Pictures). A site visit, conducted on September 9, 2020, of the existing deck provided additional information on the overlook potential on the neighbouring property. Exhibit H shows that many of the second storey windows on 789 Portsmouth Avenue (the abutting property to the north) are nearly even with the railing of the existing deck, allowing for direct views into the abutting property’s windows and the rear yard (Exhibit H – Site Visit Pictures). In addition, it appears that this abutting property is at a lower elevation than 783 Portsmouth Avenue and appears to have had had the slope of their driveway and other parts of the property further reduced, which exaggerates the height of the existing deck (Exhibit H – Site Visit Pictures).

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Despite the existing deck being on the zero lot line and having a higher elevation Exhibit F than the abutting property to the north, the applicant has proposed a privacy screen that should alleviate intrusive overlook concerns into the second storey windows, driveway and rear/side yard. This screen is proposed to be a lattice, which would still permit some views into/onto the northern neighbouring property, but this would improve the existing privacy situation. Of note, a privacy screen is not required by the bylaw, but is being proposed by the applicant to maintain the structure in its existing form, while addressing the privacy concerns of future residents of the subject property and those residents of 789 Portsmouth Avenue.

Impacts related to privacy and overlook will be addressed by the addition of a privacy screen. Access to the rear yard will continue to be maintained, therefore the general intent and purpose of Zoning By-Law Number 8499 is maintained.

3) The variance is minor in nature

The variance is considered minor as the focus of this application is related to an accessory structure that is proposing to mitigate an existing land use compatibility concern. The abutting property to the north is situated on a lower grade than the subject property due to the topography of the area and potentially due to site grading on select portions of the property (i.e. the driveway) (Exhibit H – Site Visit Pictures). Despite the location of the existing structure on the zero lot line, a zone compliant deck would still be able to look into the second storey window, driveway and rear yard of the abutting property to the North. This was confirmed during a site visit to the property on September 9, 2020 (Exhibit H – Site Visit Pictures). The height of the deck necessitates a 1.2 metre setback from the lot line, which would assist in reducing this overlook potential, but this issue would likely persist due to the topography of the area.

As a result, a privacy screen has been proposed to reduce this intrusive overlook and address the existing land use compatibility concern. This screen would likely work better than the required 1.2 metre setback required in the bylaw, as overlook issues would persist without a screen. A setback and privacy screen would have been the preferred option, however the existing structure is being legalized as is and the addition of a privacy screen would likely remedy the impacts related to intrusive overlook into the northern abutting property's yards and windows.

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

The requested variance is desirable for the appropriate development and use of land as the owners of the deck are seeking to legalize their deck through the Minor Variance process and by remedying the main land use compatibility impact related to intrusive overlook into neighbouring windows and yards. This intrusive overlook will be addressed by proposing a privacy screen in the form of a lattice along the entire length of the deck that abuts 789 Portsmouth Avenue (Exhibit G – Site Plan).

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The variance is desirable and appropriate use of the land.

Technical Review: Circulated Departments and Agencies

- Building Services
- Finance
- Fire & Rescue
- Solid Waste
- Housing
- KEDCO
- CRCA
- Parks Canada
- Hydro One
- Kingston Airport
- Engineering Department
- Utilities Kingston
- Kingston Hydro
- Parks Development
- District Councillor
- Municipal Drainage
- KFL&A Health Unit
- Eastern Ontario Power
- Enbridge Pipelines
- Heritage (Planning Services)
- Real Estate & Environmental Initiatives
- City’s Environment Division
- Canadian National Railways
- Ministry of Transportation
- Parks of the St. Lawrence
- Trans Northern Pipelines
- CFB Kingston
- TransCanada Pipelines

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 have been 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 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 variance(s) is 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 November 16, 2020. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting was provided by advertisement in the form of signs posted on the subject site 10 days in advance of the meeting. In addition, notices were sent by mail to a total number of 25 property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice was 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, Development Approvals, 613-546-4291 extension 3223

Phillip Prell, Planner, 613-546-4291 extension 3219

Other City of Kingston Staff Consulted:

None

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Exhibits Attached:

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Public Notification Map
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law Map
- Exhibit F Neighbourhood Context Map
- Exhibit G Site Plan
- Exhibit H Site Visit Pictures
- Exhibit I Engineering Certificate

Recommended Conditions of Approval

Application for Minor Variance, File Number: D13-042-2020

Approval of the foregoing variance shall be subject to the following conditions:

1. Limitation

That the approved variance applies only to the existing deck at 783 Portsmouth Avenue 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.

A Building Permit is required to legalize the existing deck. Complete drawings of the deck, including the additional privacy screening to mitigate privacy concerns for both the residents of the property and those on the abutting property to the north, will be required to be submitted to Building Services for review.

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 Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132) and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

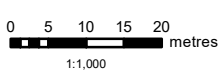
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries at the Ministry of Government and Consumer Services (416-212-7499), the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.




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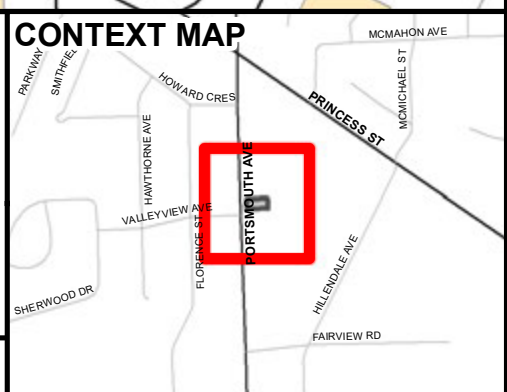


COMMITTEE OF ADJUSTMENT
Key Map
File Number: D13-042-2020
Address: 783 Portsmouth Avenue



DATE: 2020-09-10
PREPARED BY: rrochefort

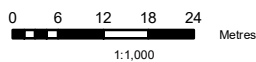
 Lands Subject to Minor Variance





COMMITTEE OF ADJUSTMENT
Public Notice Notification Map

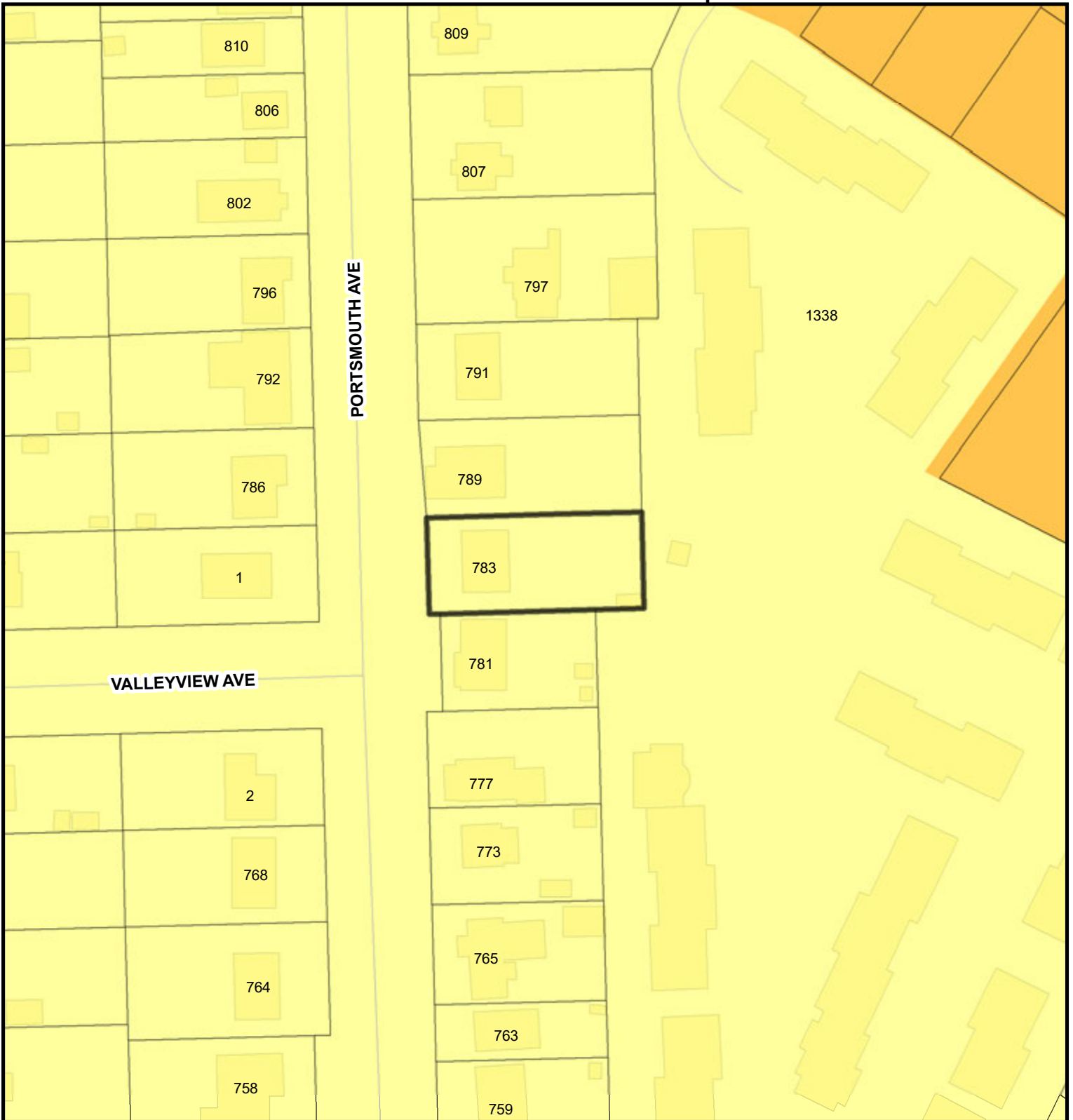
File Number: D13-042-2020
Address: 783 Portsmouth Avenue



Legend

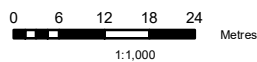
- 60m Public Notification Boundary
- Subject Lands
- Property Boundaries
- 18 Properties in Receipt of Notice (MPAC)








COMMITTEE OF ADJUSTMENT
Official Plan, Existing Land Use

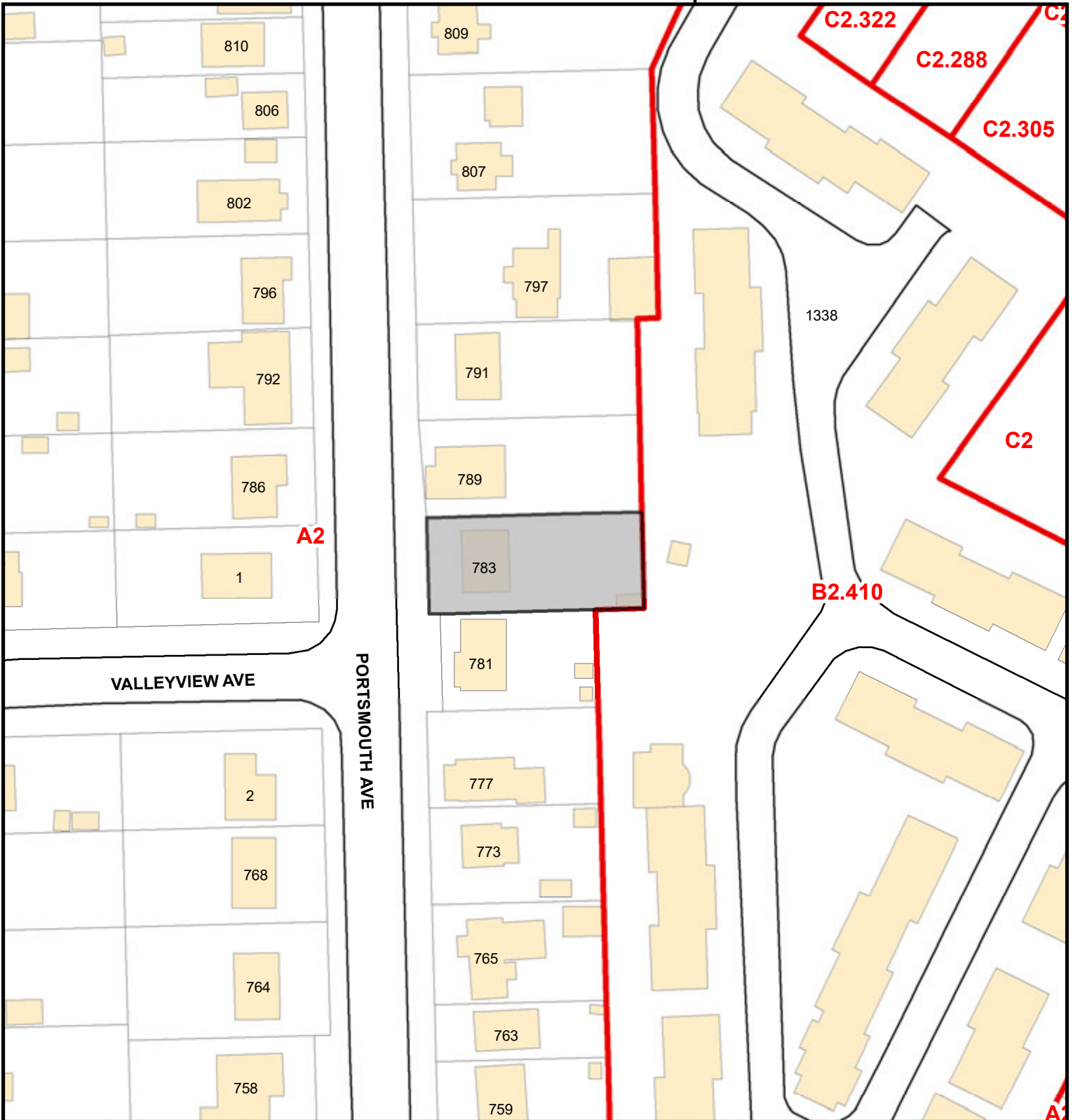
File Number: D13-042-2020
Address: 783 Portsmouth Avenue



Legend

-  Subject Lands
-  ARTERIAL COMMERCIAL
-  RESIDENTIAL







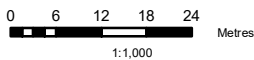
Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Existing Zoning - By-law 8499, Map 12

File Number: D13-042-2020
Address: 783 Portsmouth Avenue

Legend

-  Subject Lands
-  Consolidated Zoning





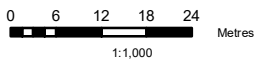
Corporation of the City of Kingston



Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Neighbourhood Context (2019)

File Number: D13-042-2020
Address: 783 Portsmouth Avenue

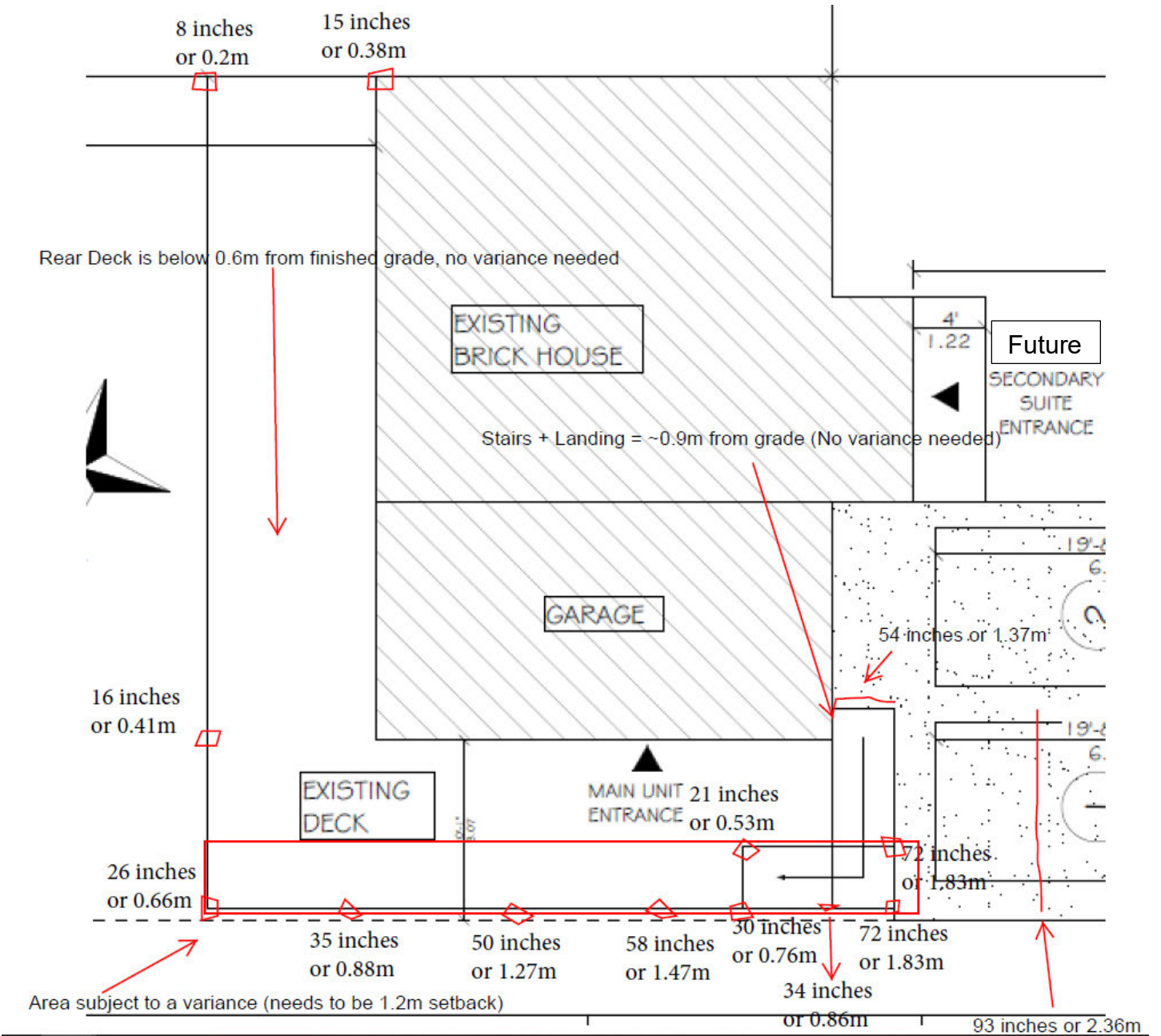


Legend

-  Subject Lands
-  Property Boundaries



Site Plan & Deck Elevations



Site Visit Pictures:

Elevations (No Deck) – Google Streetview



Elevations (With Deck) – Google Streetview



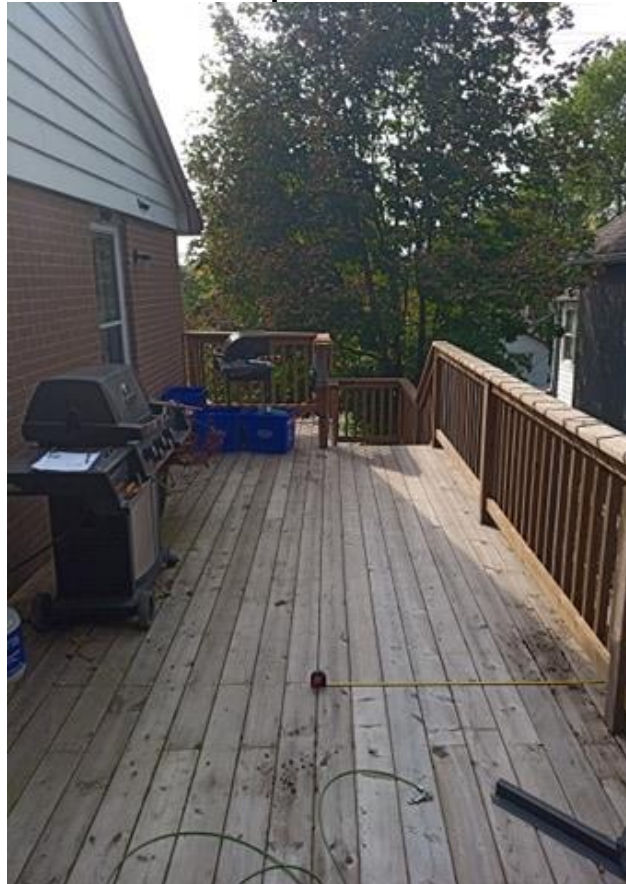
Driveway View for 789 Portsmouth Ave (1)



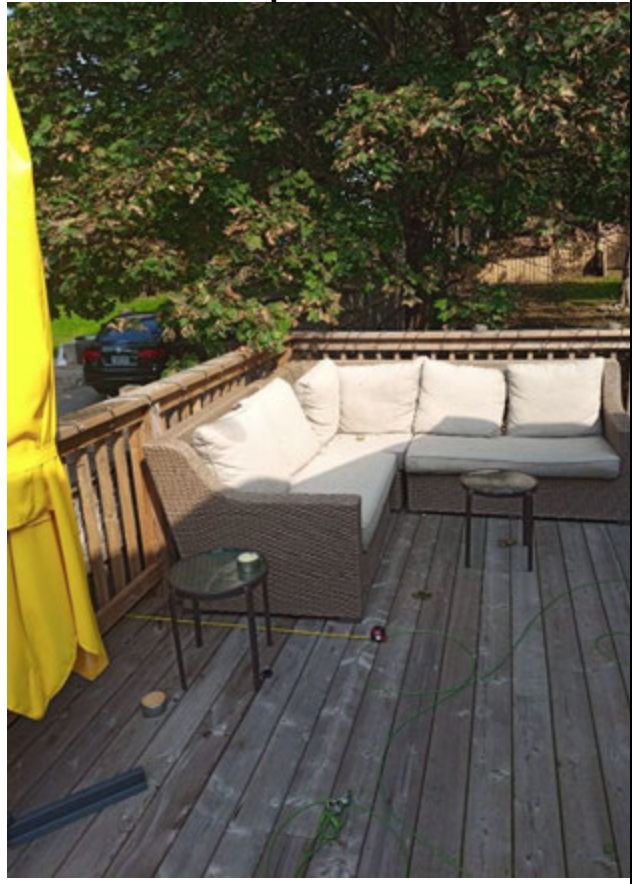
Driveway View for 789 Portsmouth Ave (2)



Non-Compliant Deck Portions (1)
See tape measure



Non-Compliant Deck Portions (2)
See tape measure



Views onto Neighbour Property (standing behind the 1.2m required setback) (1)



Views onto Neighbour Property (standing behind the 1.2m required setback) (2)



Deck Area in Context (1)



Deck Area in Context (2)





FINAL INSPECTION REPORT

Name of Project: Wood framed deck
Date: October 6, 2020
Location: 783 Portsmouth, Kingston, ON
Inspection Date: October 2, 2020
Report by: Eric Trought, P.Eng.

1.0 INSPECTION RESULTS

The deck is structurally adequate to support the loads imposed. No deficiencies found.



Eric Trought
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