



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-21-018**

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<b>To:</b>	<b>Chair and Members of the Committee of Adjustment</b>
<b>From:</b>	<b>Golsa Kheir-Moghadam, Planner</b>
<b>Date of Meeting:</b>	<b>February 22, 2021</b>
<b>Application for:</b>	<b>Permission</b>
<b>File Number:</b>	<b>D13-067-2020</b>
<b>Address:</b>	<b>662 Portsmouth Avenue</b>
<b>Owner:</b>	<b>Susan Corcoran, Jesse Morgan Corcoran-Fowler, Paul Fowler</b>
<b>Applicant:</b>	<b>Jesse Corcoran</b>

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**Council Strategic Plan Alignment:**

Theme: Policies & by-laws

Goal: See above

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for permission for the property located at 662 Portsmouth Avenue. The applicant is proposing to convert an existing legal non-conforming detached garage within the interior side yard of the property, into a second residential unit. The existing accessory building has a 0.6 metre setback from the interior side lot line. No building addition has been proposed to the existing structure.

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

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**Recommendation:**

**That** the application for permission, File Number D13-067-2020, for the property located at 662 Portsmouth Avenue, to permit the conversion of an existing legal non-conforming detached garage within the interior side yard of the property, into a second residential unit, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-018.

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**Authorizing Signatures:**



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**Golsa Kheir-Moghadam, Planner**

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

Paige Agnew, Commissioner, Community Services

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**Options/Discussion:**

On December 21, 2020, an application for permission was submitted by Jesse Corcoran, on behalf of the owners, Susan Corcoran, Jesse Morgan Corcoran-Fowler, Paul Fowler, with respect to the property located at 662 Portsmouth Avenue. The application for permission is requested to convert an existing legal non-conforming detached garage within the interior side yard of the property, into a second residential unit. The existing accessory building currently has a 0.6 metre setback from the interior side lot line which does not conform to the setback requirements of the zoning by-law. No building addition has been proposed to the existing structure.

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

- Site Plan (Exhibit F)

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

**Site Characteristics**

The subject property is located within the Urban Boundary, at 662 Portsmouth Avenue (Exhibit B - Key Map). The subject property is designated Residential in the Official Plan and zoned one-family dwelling ‘A2’ Zone in Zoning By-Law Number 8499. The property is located at the northwest corner of Portsmouth Avenue and Phillips Street and is currently developed with a single-detached dwelling house and a detached, 48.7 square metre accessory structure which was built in 1950s, prior to the passing of the zoning by-law in 1975. The property is surrounded by single-detached dwelling houses.

**Legal Non-conforming**

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

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

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

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

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

### **Provincial Policy Statement**

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 2020 (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.

### **Official Plan**

The subject property is designated Residential. The overarching goal of the 'Residential' designation is to respond to the housing needs of the City's citizens by retaining and augmenting a broad range of housing within a safe, convenient and stable setting, organized primarily into neighbourhoods. The predominant use of the 'Residential' designation is residential dwellings, including detached, semi-detached or duplex dwellings, townhouses, and apartments of various types, tenure, and density that respond to a wide range of housing needs.

The application requesting to convert an existing 48.7 square metre detached garage to a second residential unit, has been reviewed against these policies, provided below.

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

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

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

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The continued residential use of the primary building and the proposed second residential unit within the existing detached accessory building, are compatible with the existing zone requirements and adjacent residential uses. 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.

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

The proposed second residential use will be compatible with the abutting residential uses and the character of the neighbourhood. The floor area, height, and volume of the existing detached building is to remain unchanged and comply with the requirements of the zoning by-law.

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

The subject property is designated 'Residential' in the Official Plan and will remain within the 'A2' zone as per Zoning By-Law Number 8499. The proposed conversion of the existing detached garage to a second residential unit, is not anticipated to have any adverse impact on the future development/redevelopment of the property or the surrounding neighbourhood.

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

There will be adequate parking space for the primary dwelling house and the proposed second residential unit. The proposal will not affect the private amenity areas or open space on the site. The continued residential land use on the property will not create any new noise, odour, traffic conflict or other nuisance.

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

The proposal will not have a negative impact on municipal infrastructure, services and traffic.

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

Utilities Kingston has no issues with the Minor Variance concerning setbacks. The applicant is to confirm how the second unit will be serviced, to the satisfaction of the Utilities Kingston.

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The electric service for the detached build will need to be supplied from the main service. In an additional meter is desired, a service request will need to be submitted.

As this application involves the conversion of an existing structure to a detached secondary unit, Engineering has no concerns. Should any work be proposed within the municipal road allowance proper permits will be required.

The subject property is not protected under the *Ontario Heritage Act*. It is identified as having limited archaeological potential and additionally, the proposal does appear to include any alterations below grade. As such an archaeological assessment is not required. There are no other heritage concerns.

Second residential unit would be eligible for garbage collection, at one bag per week. Other eligible services include recycling and green bin.

There is an open Building Permit file for this property. The Building Department has no objections to the proposal.

A Building Permit is required prior to any further construction activities.

A Minimum 1.8 metre solid privacy fence will be required along the north and west property lines, extended to the front walls of the primary building. The fence must be located entirely within the property limits of 662 Portsmouth Avenue. Maximum height of the building is limited to 4.6 metres. The existing parking surface in front yard should be removed or decommissioned. All parking spaces should be a minimum of 6 metres by 2.7 metres.

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

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

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

The requested permission to convert an existing legal non-conforming detached garage within the interior side yard of the property, into a second residential unit, meets the general intent and purpose of the City of Kingston Official Plan.

### **Zoning By-Law**

The subject property is zoned One-Family Dwelling Zone 'A2 in the City of Kingston Zoning By-Law Number 8499, as amended (Exhibit D - Zoning By-Law Number 8499, Map 21).

The detached accessory structure is deemed a legal non-conforming use since the structure existed prior to the passing of Zoning By-Law Number 8499 in 1975.

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The applicant is proposing to convert an existing 48.7 square metre detached garage to a second residential unit. The 'A2' zone requires a minimum side yard of 1.2 m for an accessory building. However, the current location is 0.6 metres from the interior side lot line. It has been recognized that this is a permitted non-confirming location as the building predated the zoning by-law.

As per section 5.45 of the Zoning By-Law Number 8499, a detached Second Residential Unit may be located within an interior side yard provided that solid privacy fence with a minimum height of 1.8 metres is established along the side yard lot line extending to the nearest part of the primary dwelling unit measured to the front lot line. Since the subject property is a corner lot it is considered to have two interior side yards, and therefore, the privacy fence will be required along north and west property lines, extended to the front walls of the primary building. The fence must be located entirely within the property limits of 662 Portsmouth Avenue.

There is an existing paved area in front of the primary dwelling which shall not be used as parking in the front yard. The proposed site plan shows the removal of the front yard parking to comply with the requirements of the Zoning By-Law.

**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 checked="" type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue     | <input checked="" type="checkbox"/> Kingston Hydro         | <input checked="" type="checkbox"/> City's Environment Division             |
| <input checked="" type="checkbox"/> Solid Waste       | <input checked="" type="checkbox"/> Parks Development      | <input type="checkbox"/> Canadian National Railways                         |
| <input checked="" 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 checked="" 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 correspondence has been received with respect to this application. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment agenda.



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**Previous or Concurrent Applications**

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

**Conclusion**

The requested application for permission is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 8499. The use, lot coverage, and height of the accessory structure is in keeping with the intent of the zoning by-law, and represents appropriate and desirable development of the lot and will be functional for the continued residential use.

Approval of this application will allow for the conversion of a detached garage into a second residential unit.

**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 February 22, 2021. 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 24 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

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**Financial Considerations:**

None

**Contacts:**

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

Golsa Kheir-Moghadam, Planner, 613-546-4291 extension 3183

**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

Exhibit A Recommended Conditions

Exhibit B Key Map

Exhibit C Official Plan Map

Exhibit D Zoning By-Law Number 8499, Map 21

Exhibit E Neighbourhood Context (2019)

Exhibit F Site Plan

Exhibit G Public Notice Notification Map

## Recommended Conditions

### Application for permission, File Number D13-067-2020

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

#### 1. Limitation

That the approved permission applies only to the detached accessory structure 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. Privacy Fencing

The owner/applicant shall install a solid privacy fence with a minimum height of 1.8 metres along the north and west property lines extending to the nearest part of the Primary Dwelling Unit measured to the front lot line. The fencing is to be located entirely within the property limits of 662 Portsmouth.

#### 4. Front Yard Parking

The owner/applicant shall demonstrate to the satisfaction of the City that there is no parking area in the front yard(s) of the property.

#### 5. Building Permit Application Requirements

The owner/applicant shall provide to Building Services a copy of the decision of the Committee of Adjustment, together with a copy of the approved drawings.

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.

#### 6. 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 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 Program and Services Branch of the Ministry of Heritage,

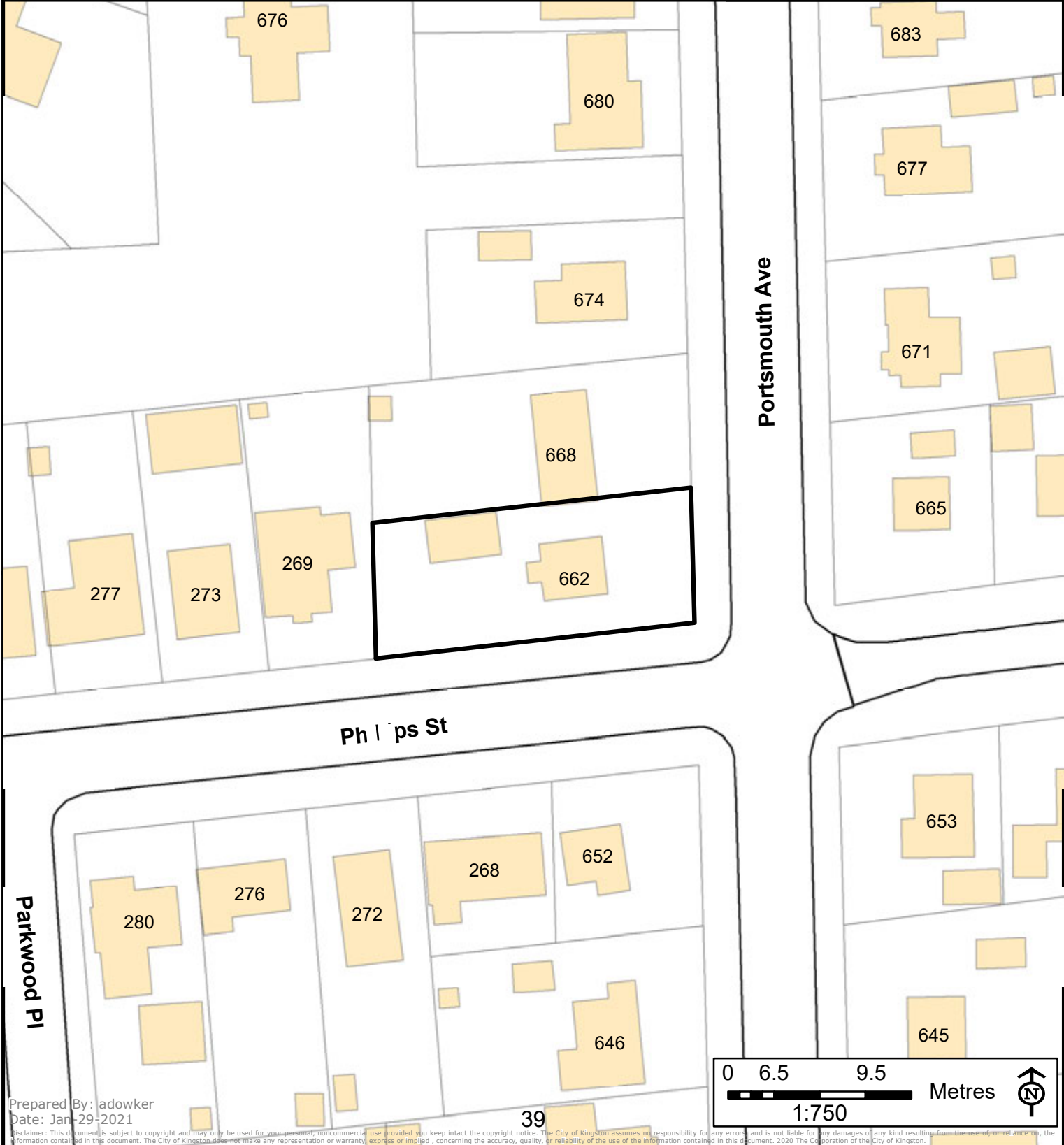
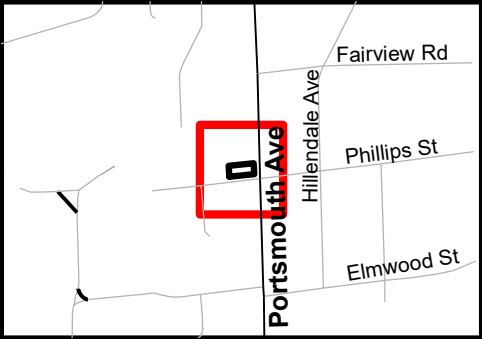
Sport, Tourism and Culture Industries (416-314-7132), and the City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.



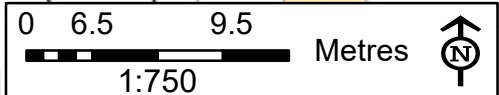
# Committee of Adjustment Key Map

Address: 662 Portsmouth Avenue  
File Number: D13-067-2020

 Lands Subject to Minor Variance



Prepared By: jadowker  
Date: Jan-29-2021





Planning Services

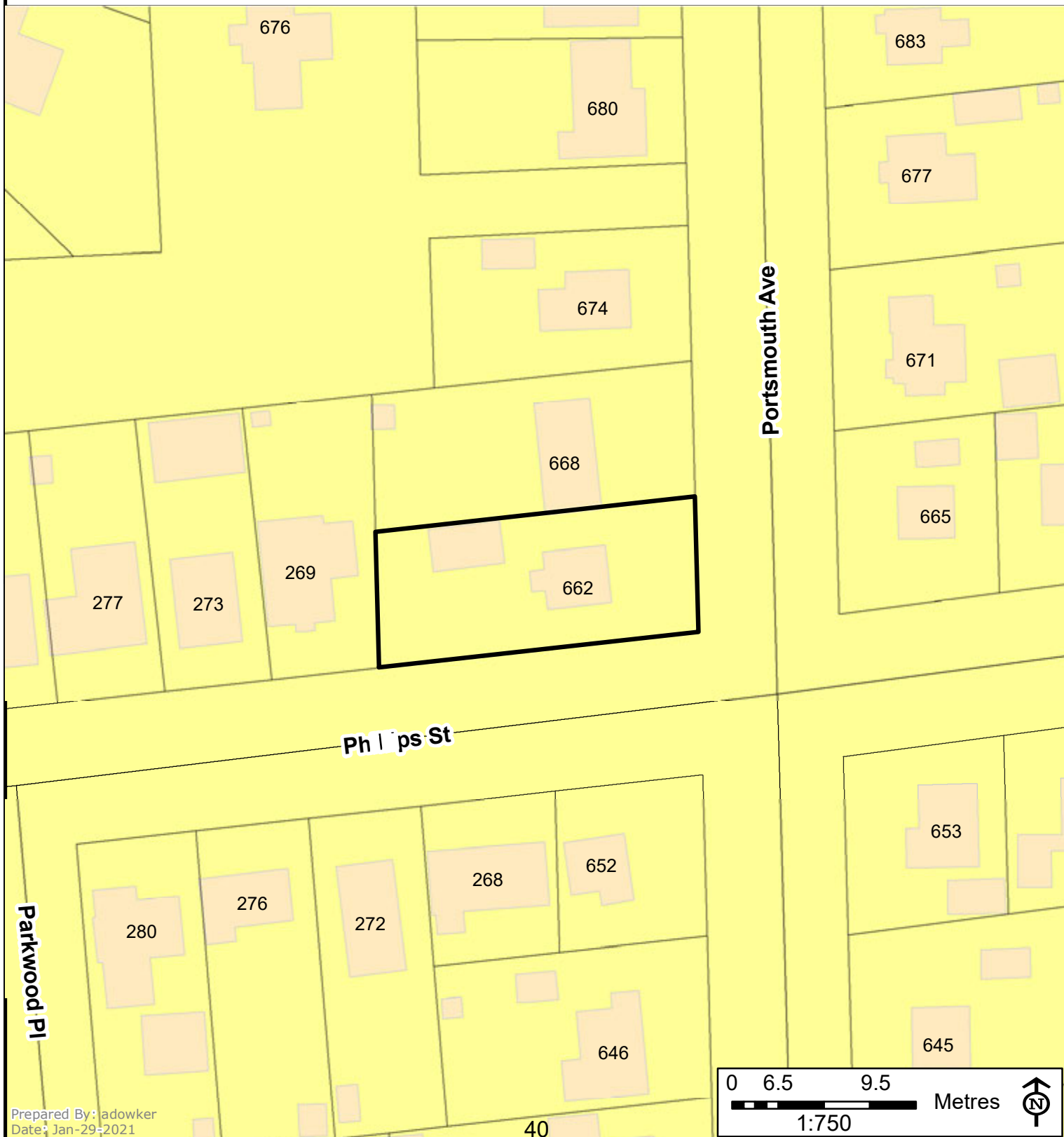
# Committee of Adjustment Official Plan, Existing Land Use

Address: 662 Portsmouth Avenue

File Number: D13-067-2020

 Subject Lands

 RESIDENTIAL



Prepared By: jadowker  
Date: Jan-29-2021



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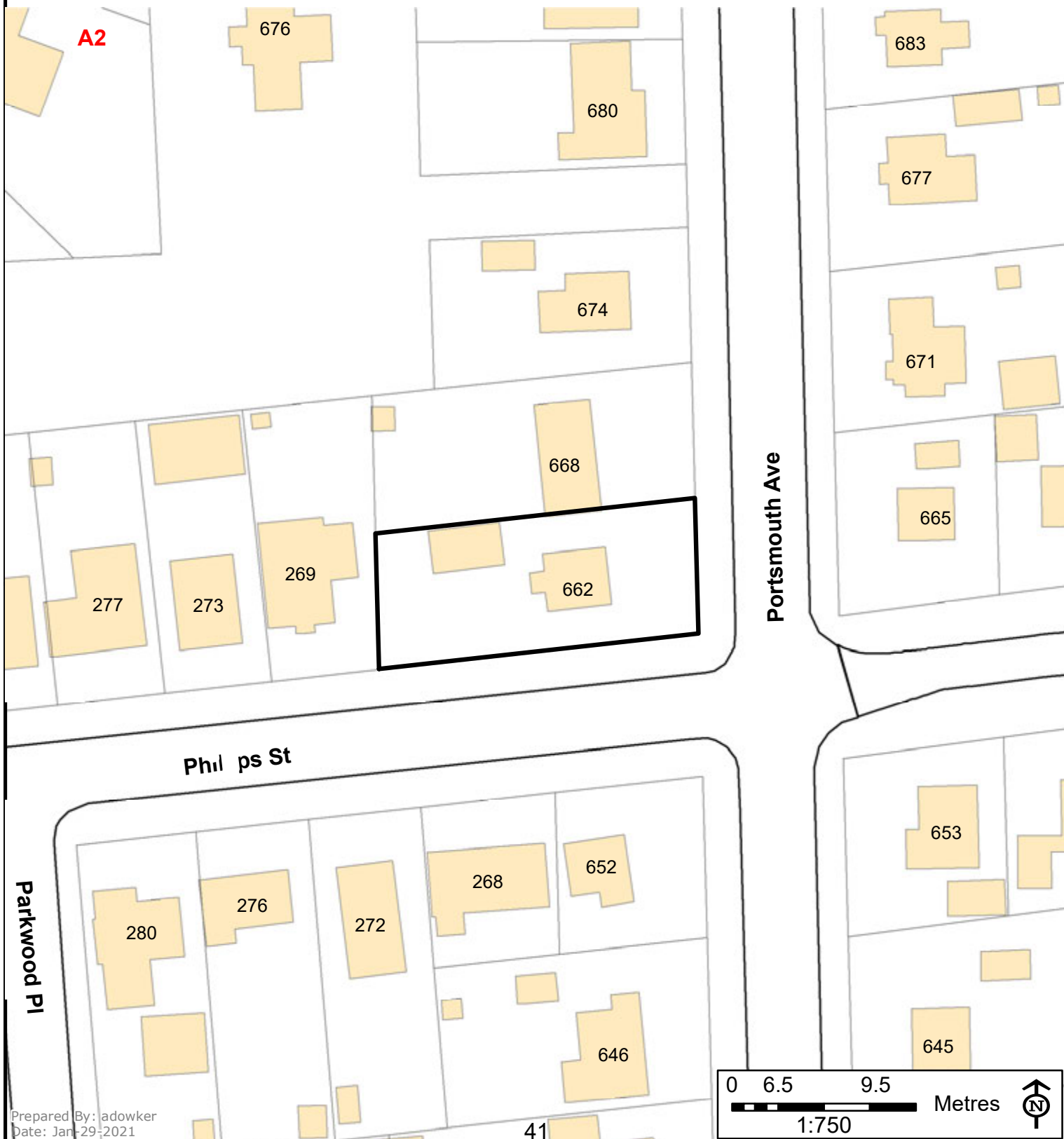


Planning Services

# Committee of Adjustment Existing Zoning - By-law 8499, Map 21

Address: 662 Portsmouth Avenue  
File Number: D13-067-2020

-  Subject Lands
-  Consolidated Zoning



Prepared By: jadowker  
Date: Jan-29-2021








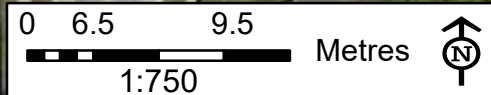
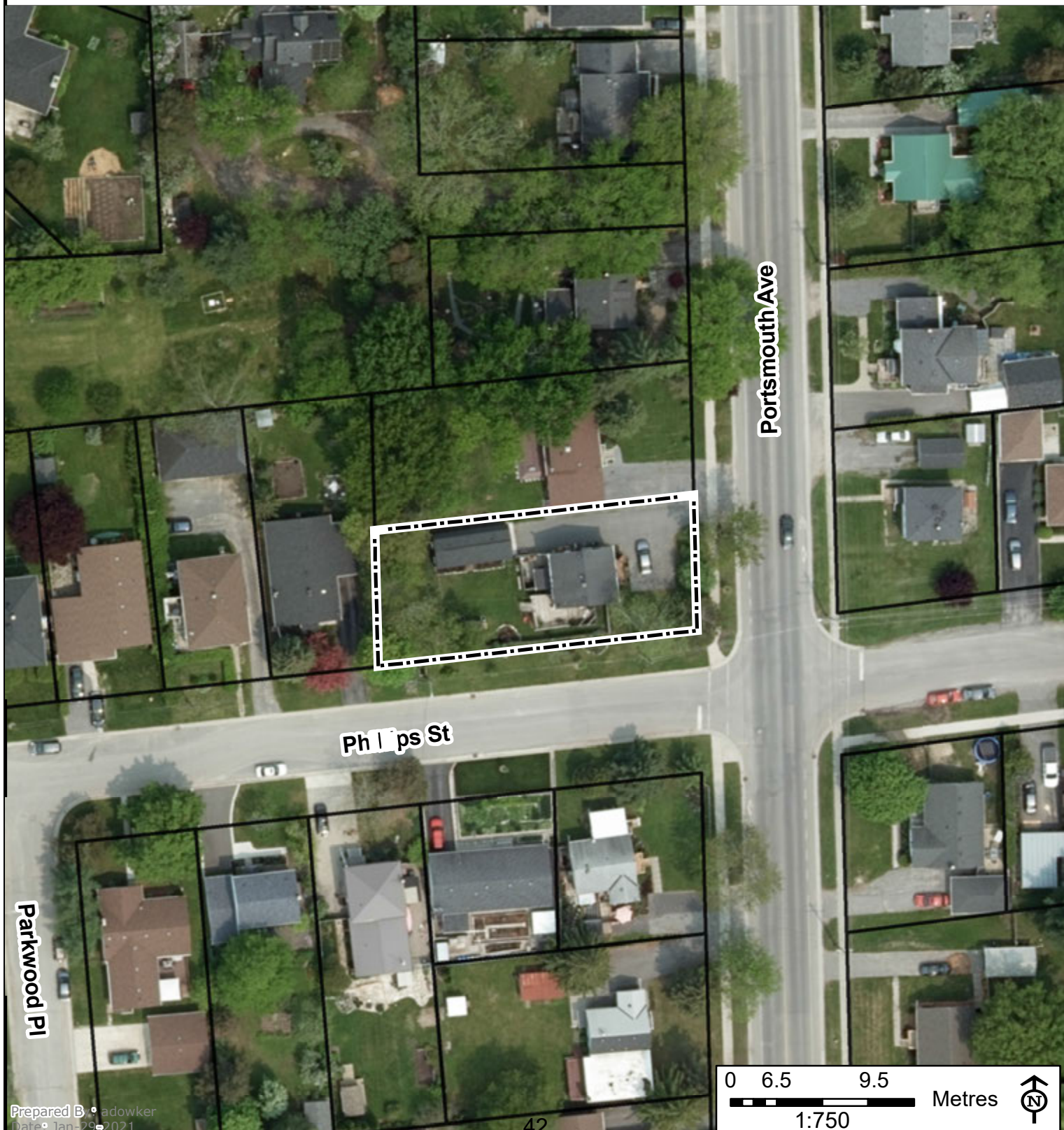
Planning Services

# Committee of Adjustment Neighbourhood Context (2019)

Address: 662 Portsmouth Avenue

File Number: D13-067-2020

-  Subject Lands
-  Property Boundaries
-  Proposed Parcels



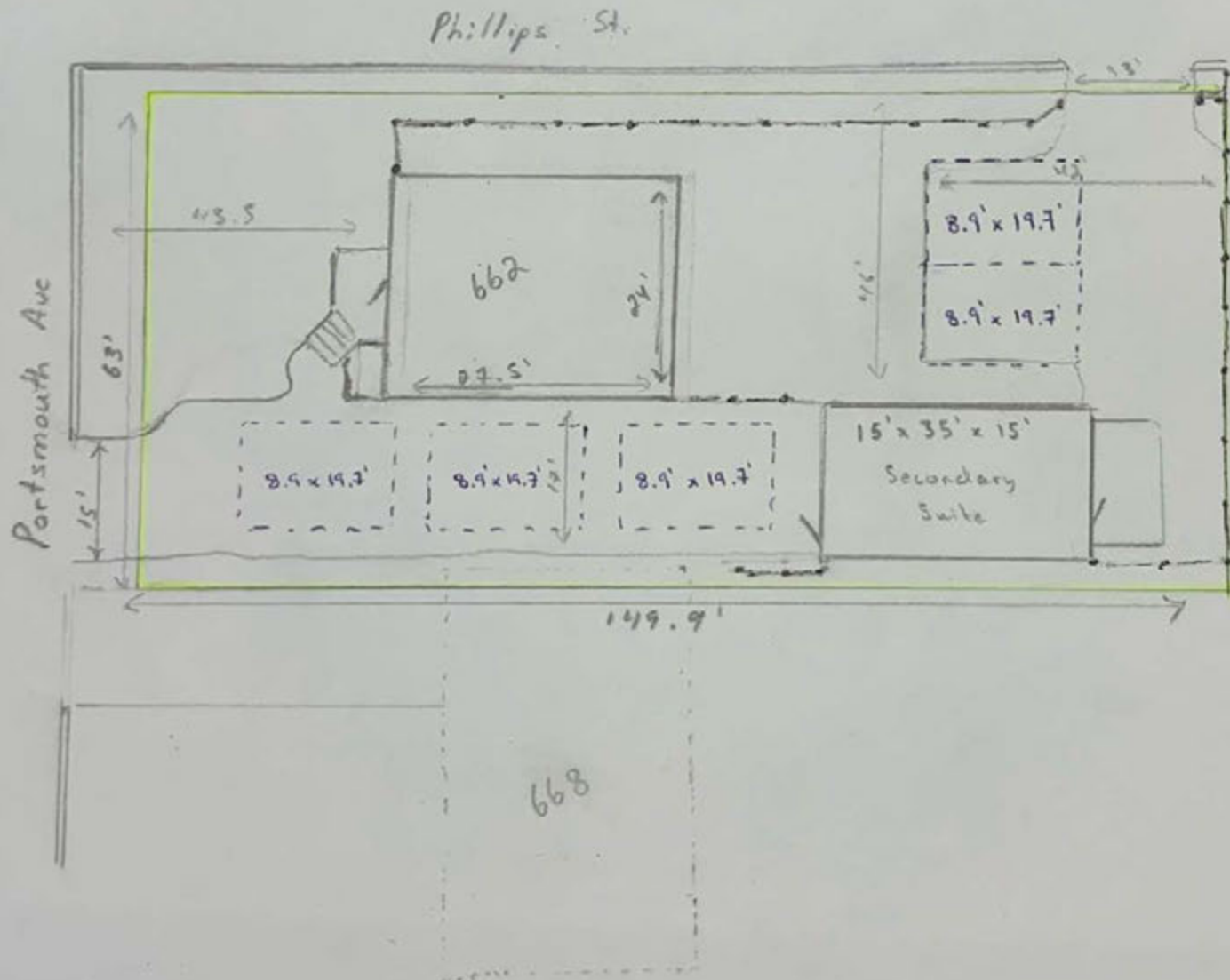


Fire Hydrant

Fence

2.7 x 6M Parking Spot

Property line





# Committee of Adjustment Public Notice Notification Map

Address: 662 Portsmouth Avenue  
File Number: D13-067-2020

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



Prepared By: adowker  
Date: Jan-29-2021