



**City of Kingston
Report to Council
Report Number 21-070**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Community Services
Resource Staff: Tim Park, Manager, Development Approvals
Date of Meeting: March 2, 2021
Subject: Request for Exemption from Section 45(1.3) of the *Planning Act* as it relates to a Minor Variance application (D13-066-2020) for the lands known municipally as 809 Development Drive

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

This is a report to recommend that the property known municipally as 809 Development Drive be permitted an exemption from the *Planning Act* regarding the inability to seek zoning relief via minor variance (Exhibit A – Key Map).

Bill 73, *Smart Growth for our Communities Act*, implemented changes to the *Planning Act* in 2017 which resulted in restrictions on applying for minor variances after a site-specific zoning amendment for a property was approved.

Section 45(1.3) of the *Planning Act* prohibits an applicant from submitting a minor variance application for a site that received approval through a zoning by-law amendment within two years of the passing of the amending by-law. An application for zoning by-law amendment was submitted in 2018 to permit townhouse units (File Number D14-034-2018). The site-specific 'R4-45' zone was approved by Council on December 17th, 2019. The site-specific zone alters several zoning provisions to accommodate the proposed townhouse development on the property (Exhibit B - Zoning By-Law Number 2020-11).

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The applicant has submitted a minor variance application for two variances to Schedule C of the Zoning By-Law. The first is to reduce the parking aisle width from 6.5 metres to 6.0 metres. The second variance is to reduce the combined aisle width and parking space length 18.5 metres to 16.4 metres. This is to accommodate changes to the proposed parking layout. The variances would permit a total of 29 regular parking spaces and 2 accessible parking spaces. Without the variances the site can support a total of 19 regular parking spaces and 2 accessible parking spaces.

Recommendation:

That Council permit the applicant, pursuant to Section 45(1.4) of the *Planning Act*, to proceed with an application for minor variance to the Committee of Adjustment as it relates to a Minor Variance application (D13-066-2020) for the lands known municipally as 809 Development Drive.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Community Services**

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

Section 45(1.3) of the *Planning Act* prohibits an applicant from submitting a minor variance application for a site that received approval through a zoning by-law amendment within two years of the zoning amendment approval.

Section 45(1.3) of the *Planning Act* states: Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended.

Section 45(1.4) of the *Planning Act* goes on to state: Subsection (1.3) does not apply in respect of an application if Council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally.

An application for zoning by-law amendment was submitted in 2018 to permit townhouse units (File Number D14-034-2018). The site-specific 'R4-45' zone was approved by Council on December 17th, 2019. The site-specific zone alters several zoning provisions to accommodate the proposed 18 unit stacked row-house development on the property. (Exhibit B).

On December 21st, 2020, a minor variance application was submitted with respect to the subject property. Two variances are requested. The first is to reduce the parking aisle width from 6.5 metres to 6.0 metres. The second variance is to reduce the combined aisle width and parking space length from 18.5 metres to 16.4 metres (Exhibit C – Proposed Site Plan). This is to accommodate changes to the proposed parking layout.

A separate minor variance application (File Number D13-030-2020) was applied for on July 14, 2020 to reduce the length of accessible parking spaces from 6 metres to 5.2 metres and to increase the maximum porch height from 1.2 metres to 1.6 metres. This application was permitted by Council at the October 6, 2020 Council Meeting and was approved by the Committee of Adjustment on November 16, 2020. The additional variances requested under this new application were not identified at the time of the first variance application, thus the need for this second separate minor variance application.

It is the intent of Section 45(1.3) of the *Planning Act* to ensure that the implementing site-specific zone resulting from a zoning by-law amendment application be adhered to and not undermined through a subsequent relief requested via minor variance (i.e. Committee of Adjustment).

The proposed variances are to accommodate ten additional parking spaces by slightly reducing the width of the drive aisle in the parking lot. This was not considered as part of the original zoning by-law amendment (D14-034-2018) or the first minor variance application (D13-030-2020). The site will still comply with all site-specific provisions in the R4-45 zone.

As part of the site-specific zoning by-law amendment the size of a regular parking space was reduced from 2.75 metres by 6.0 metres to 2.6 metres by 5.2 metres. The width of a drive aisle and combined parking space length and drive aisle width were not considered as part of the

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zoning by-law amendment. The proposed variances will accommodate 10 additional parking spaces the property.

In summary, the purpose of this report is to recommend that Council allow the applicant to proceed with submitting an application for minor variance to the Committee of Adjustment. Staff recommend support of the proposed *Planning Act* exemption.

Existing Policy/By-Law:

809 Development Drive is designated 'Residential' and 'Environmental Protection Area' in the City of Kingston Official Plan. Section 3.3 of the Official Plan provides that the goal of the Residential land use designation is to "respond to the housing needs of the city's citizens by retaining and augmenting a broad range of housing at all levels of affordability within a safe, convenient and stable setting, organized primarily into neighbourhoods."

Section 2.7 of the Official Plan provides that development within the city shall be guided by principles of land use compatibility in order to respect the quality of existing areas and avoid adverse effects on neighbouring properties. The Plan recognizes shadowing, loss of privacy, visual intrusion and architectural incompatibility, among others, as matters to be considered in assessing land use compatibility. Section 2.7.4 provides that the inclusion of building heights, massing and setback requirements in zoning by-laws is a measure through which the City may ensure compatibility between neighbouring properties. The goal of the Environmental Protection Areas (Section 3.10) is to preserve the ecosystem role that Environmental Protection Areas play in sustaining the natural heritage system of the City and the broader region. The Official Plan policy areas were considered as part of the zoning by-law amendment.

The subject property is currently located in a site-specific Residential Type 4 'R4' Zone in the City of Kingston Zoning By-Law Number 76-26, entitled "Restricted Area (Zoning) By-Law of the Township of Kingston", as amended. The proposed 18 unit stacked row-house dwelling is a permitted use in the 'R4-45' zone.

Notice Provisions:

Subject to Council's decision, a Committee of Adjustment meeting respecting this application is scheduled for April 19, 2021. Pursuant to the requirements of the *Planning Act*, a notice of the Statutory Public Meeting will be provided by advertisement in the form of signs posted on the subject site 10 days in advance of the meeting. In addition, notices will be sent by mail to a total of 15 property owners (according to the latest Assessment Roll) within 60 metres of the subject property and a courtesy notice will be placed in The Kingston Whig-Standard. If the minor variance application is approved, 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 Development Approvals 613 546-4291 extension 3223

Lindsay Sthamann, Planner 613 546-4291 extension 3287

Other City of Kingston Staff Consulted:

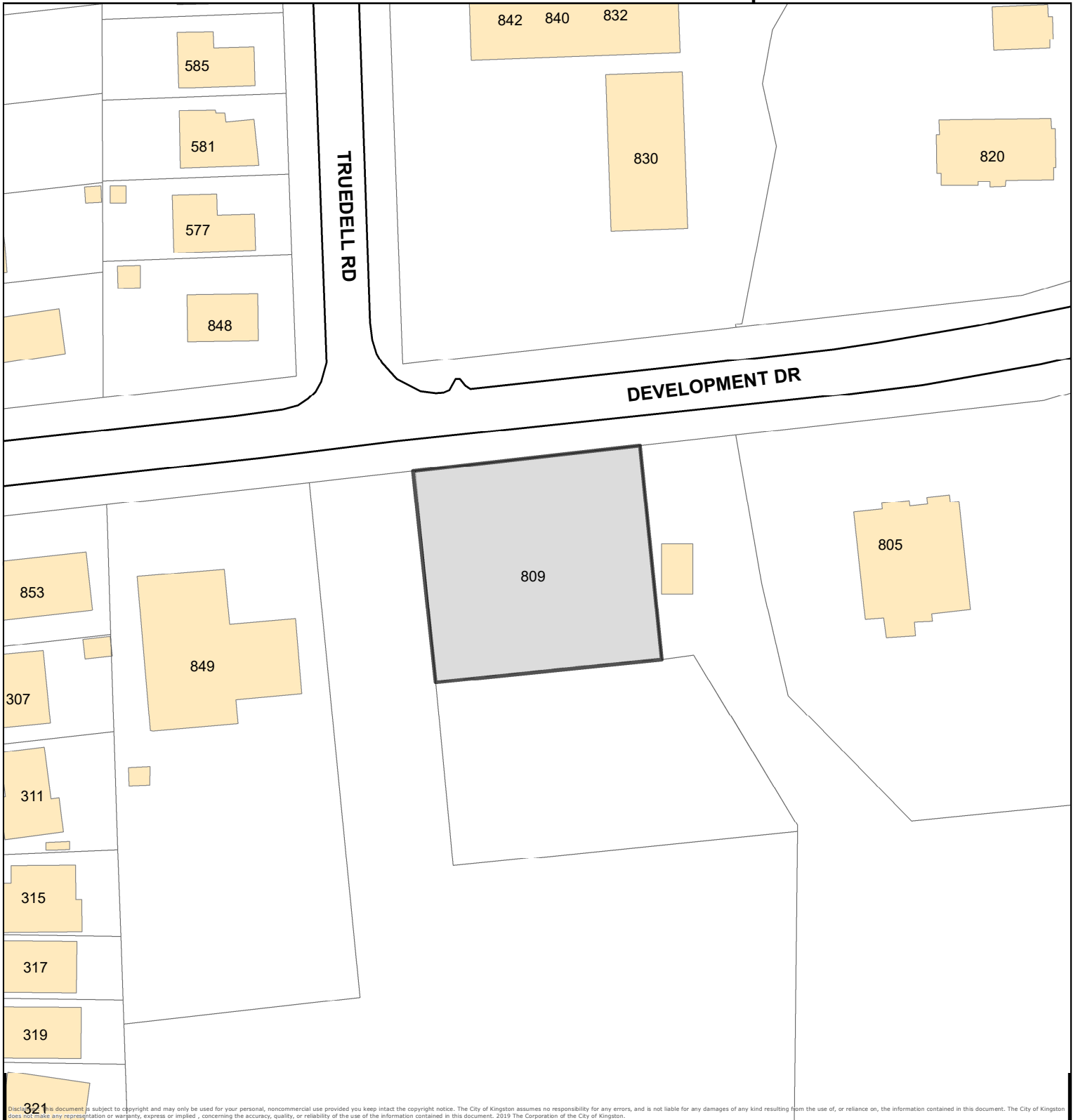
None

Exhibits Attached:

Exhibit A Key Map

Exhibit B Zoning By-Law Number 2020-11

Exhibit C Proposed Site Plan



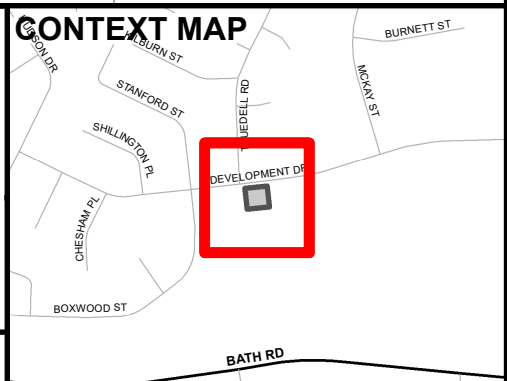
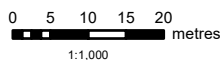
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Planning Services
a department of
Community
Services

COMMITTEE OF ADJUSTMENT
Key Map

File Number: D13-066-2021
Address: 809 Development Drive



 Lands Subject to Minor Variance

DATE: 2021-01-27
PREPARED BY: lchu

By-Law Number 2020-11

A By-Law to Amend By-Law Number 76-26, "A By-Law to Regulate the Use of Lands and the Character, Location and Use of Buildings and Structures in the Township of Kingston" (Zone Change from a Site-Specific Residential Type 4 'R4-38' Zone to a Site-Specific Residential Type 4 'R4-45' Zone, 809 Development Drive and Replacing the Provisions of the Site-Specific Residential Type 4 'R4-38' Zone, 847 Development Drive)

Passed: December 17, 2019

Whereas by Order of the Minister of Municipal Affairs and Housing, The Corporation of the Township of Kingston, The Corporation of the Township of Pittsburgh and The Corporation of the City of Kingston were amalgamated on January 1, 1998 to form The Corporation of the City of Kingston as the successor municipal corporation and pursuant to the Minister's Order, any by-laws of the former municipality passed under the *Planning Act* continue as the by-laws covering the area of the former municipality now forming part of the new City; and

Whereas the Council of The Corporation of the City of Kingston deems it advisable to amend By-Law Number 76-26, as amended, of the former Township of Kingston;

Therefore be it resolved that the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 76-26 of The Corporation of the City of Kingston, entitled "A By-Law to Regulate the Use of Lands and the Character, Location and Use of Buildings and Structures in the Township of Kingston", as amended, is hereby further amended as follows:
 - 1.1 Map 5 of Schedule "A", as amended, is hereby further amended, by changing the zone symbol of the property municipally known as 809 Development Drive from 'R4-38' to 'R4-45', as shown on Schedule "A" attached to and forming part of By-Law Number 2020-11.
 - 1.2 By **adding** a new subsection 15(3)(rr) hereto as follows:

"(rr) R4-45 (809 Development Drive)

Notwithstanding the provisions of Section 5 and Section 15 hereof to the contrary, the lands designated 'R4-45' on Schedule 'A' hereto, the following regulations shall apply:

- 1) Definition:
 - (a) "Building Height" means the vertical distance measured from the average grade surrounding the building footprint to a point halfway up the pitched roof.

- 2) In the R4-45 Zone, a row dwelling house may be vertically stacked, such that a portion of the dwelling units is located entirely or partially above the other dwelling units, and each dwelling unit has an independent entrance from exterior. Such an access may also be through a shared common vestibule.
- 3) Lot Area (minimum): 94 square metres per row dwelling house
- 4) Lot Frontage (minimum): 6.7 metres per ground floor row dwelling house
- 5) Dwelling Units (maximum): 18
- 6) Front Yard Depth (minimum): 3.5 metres, except that this shall not prevent the erection of a deck (covered or uncovered) and stairs providing access to the building or an upper floor balcony, provided the deck is no taller than 1.2 metres and that the deck and balcony project no closer than 2.0 metres to the front lot line, and that the stairs project no closer than 0.5 metres to the front lot line.
- 7) Group Setback: Not applicable
- 8) Building Height (maximum): 12.5 metres
- 9) Dwelling Houses Per Lot (maximum): There is no maximum number of dwelling houses per lot.
- 10) Guest Room Area (minimum): Not applicable
- 11) Privacy Yard Depth (minimum): Not applicable
- 12) Additional Setback Requirements: Notwithstanding anything to the contrary contained in this By-Law, no building shall be erected within 6 metre horizontal setback from the 1:100 floodplain of the Little Cataraqui Creek.
- 13) Landscaped Open Space (minimum): Not applicable
- 14) Lot Coverage (maximum): 44%
- 15) Amenity Area: Amenity Area: An amenity area shall be provided in accordance with the following provisions:
 - (i) A minimum of 18.5 square metres of amenity area shall be provided for each dwelling unit on a lot;

(ii) Amenity areas, or any part thereof, shall be designed and located so that the length does not exceed four times the width; and

(iii) The area of an amenity area that is located at grade level and provided as an outdoor area exterior to the dwelling house may be included in the calculation of landscaped open space requirements.

16) Parking:

(a) Parking Space Dimensions (minimum): 2.6 metres wide by 5.2 metres long.

1.3 By deleting subsection 15(3)(kk) in its entirety and replacing it with the following:

“(kk) **R4-38 (847 Development Drive)**

Notwithstanding the provisions of Section 5 and Section 15 hereof to the contrary, the lands designated ‘R4-38’ on Schedule ‘A’ hereto, the following regulations shall apply:

1) Definition:

(a) “Building Height” means the vertical distance measured from the average grade surrounding the building footprint to the highest point of the roof surface in case of flat roofs or to a point halfway up the roof in the case of pitched roofs.

2) Lot Lines: For the purposes of the R4-38 Zone, the lot line abutting Development Drive shall be considered the front lot line and all other lot lines shall be considered interior side lot lines.

3) Dwelling Units (maximum): 169 units

4) Lot Area (minimum): 1.6 hectares

5) Lot Frontage (minimum): 20 metres

6) Front Yard Depth (minimum): 45 metres

7) Interior Side Yard Width (minimum): 6 metres; except where an interior side yard abuts an ‘OS’ zone, in which case the required minimum interior side yard width shall be 0 metres.

8) Building Height (maximum): 25.5 metres

- 9) Privacy Yards (minimum):
- (a) A privacy yard that is clear and unobstructed by any vehicular driveway, other than a private driveway to an enclosed garage or parking space, or by any surface parking area, shall be provided on the lot adjoining each exterior wall containing a habitable room window; and
 - (b) The minimum depth of a privacy yard shall be 4 metres to any private road or parking area, measured at right angles to the wall it adjoins. Such privacy yards shall not overlap so as to reduce the minimum depth requirements.
- 10) Additional Setback Requirements: Notwithstanding anything to the contrary contained in this By-Law, no building shall be erected within:
- (a) a 114 metre horizontal setback from the CN Rail Main Line Corridor; and
 - (b) a 6 metre horizontal setback from the 1:100 floodplain of the Little Cataraqui Creek.
- 11) A planting strip shall be required along the western most interior side lot line that directly abuts the adjacent residentially zoned properties in accordance with the following:
- (a) Width (minimum): 2 metres
 - (b) Contents are as per implementing Site Plan Control Agreement
- 12) Bicycle Parking:
- (a) Bicycle Parking Space Requirements (minimum): 1 bicycle parking space per dwelling unit;
 - (b) A minimum of 12 of the required on-site parking spaces shall be provided exterior to a building and shall be covered and secure; and
 - (c) Bicycle Parking Space Dimensions (minimum):
 - (i) 0.3 metres wide by 1.8 metres long with a minimum overhead clearance of 2.1 metres;

- (ii) Alternate requirement (vertical bicycle parking space): 0.6 metres wide, 1.8 metres tall and 1.0 metres in depth

13) Parking:

- (a) Parking Space Dimensions (minimum): 2.6 metres wide by 5.2 metres long; and
- (b) Parking is permitted in any yard, provided it is no closer than 40 metres to the municipal right-of-way of Development Drive


14) Landscaped Open Space (minimum): 30%"

2. That this By-Law shall come into force in accordance with the provisions of the *Planning Act*.

Given all Three Readings and Passed: December 17, 2019



John Bolognone
City Clerk



Bryan Paterson
Mayor





Planning, Building & Licensing Services


a department of
Community Services

**SCHEDULE 'A'
TO BY-LAW NUMBER 2020-11**

Applicant: IBI Group
Owner: 809 Development Drive Inc.
File Number: D14-034-2018
Address: 809 & 847 Development Drive

LEGEND

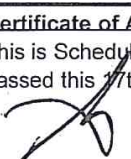
Reference By-Law 76-26 Map 5

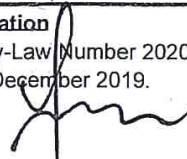
 Rezoned from R4-38 to R4-45

Certificate of Authentication

This is Schedule 'A' to By-Law Number 2020-11,
passed this 17th day of December 2019.

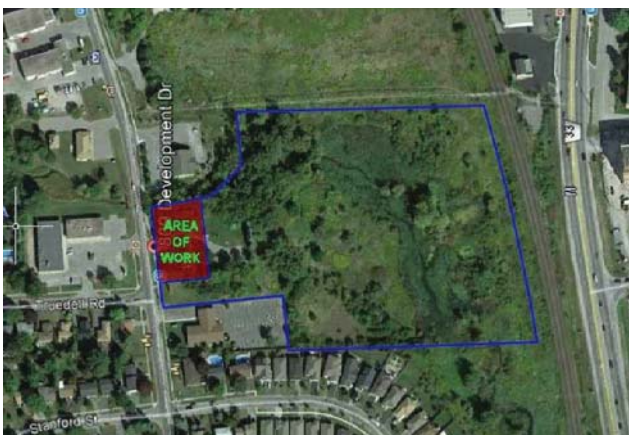



Mayor


City Clerk

PREPARED BY: akeeping
DATE: 2019-11-25

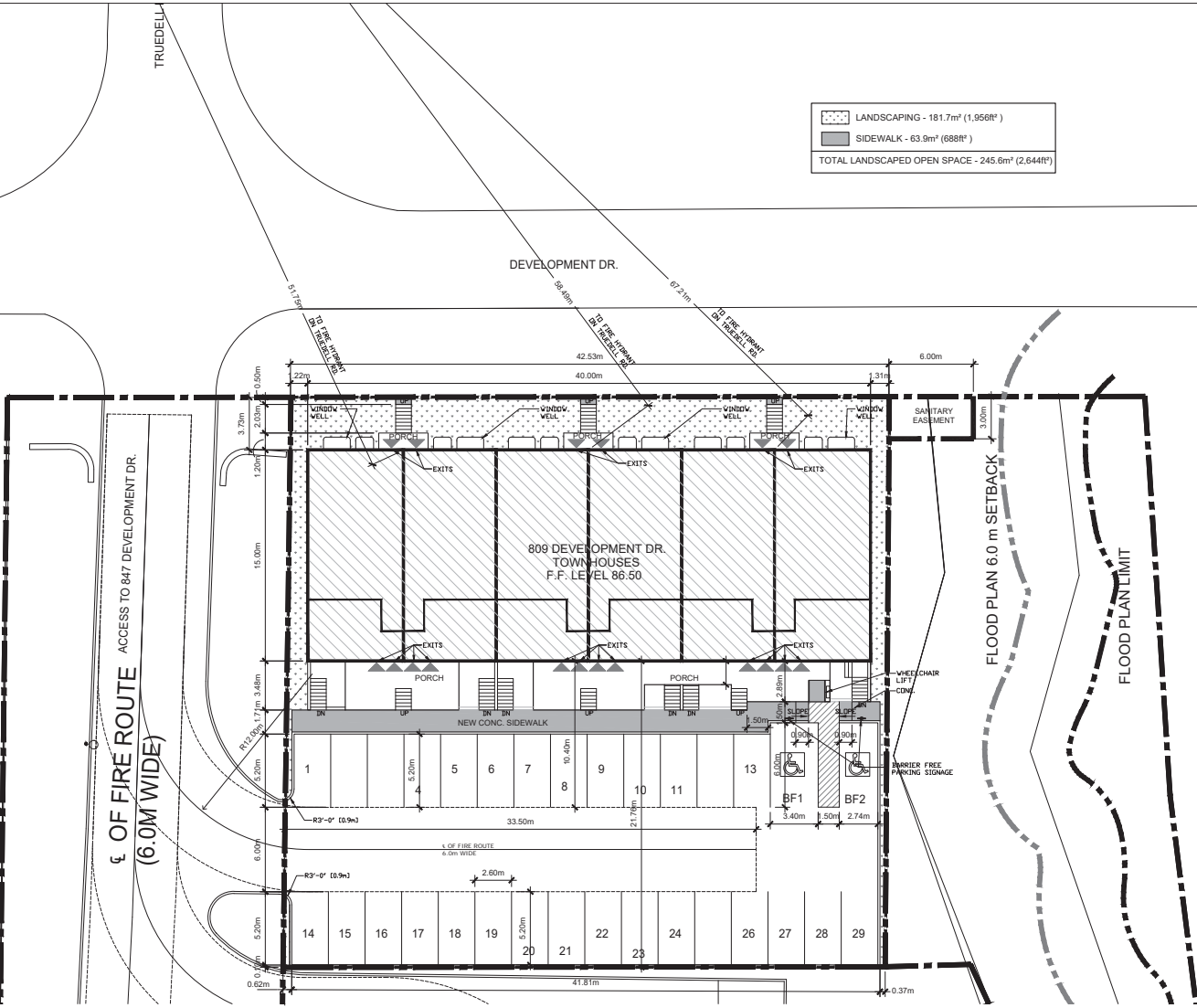
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Metres
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SITE STATISTICS - TOWNHOUSES

KINGSTON TOWNSHIP BY-LAW 76-26
R4-45 ZONE

ZONING PROVISIONS	SECTION	REQUIRED	PROVIDED
PERMITTED USE	SECTION 15 (3)(r)(2)	DWELLING HOUSE	18-UNIT DWELLING HOUSE
LOT AREA (MINIMUM)	SECTION 15 (3)(r)(3)	232.26m ² (2,500 ft ²)	1,729m ² (18,607ft ²)
LOT FRONTAGE (MINIMUM)	SECTION 15 (3)(r)(4)	5.49m (18'-0")	42.5m (139'-6")
FRONT YARD DEPTH (MINIMUM)	SECTION 15 (3)(r)(6)	3.5m (11'-6")	3.73m (12'-3")
FRONT YARD DEPTH PROJECTIONS	DECK	1.6m MAX ABOVE GRADE *PER MINOR VARIANCE*	1.6m
	BALCONY	2.0m MIN TO THE FRONT LINE	2.96m
	STAIRS	0.5m MIN. TO THE FRONT LINE	0.5m
EXTERIOR SIDE YARD DEPTH (MIN.)	SECTION 15 (3)(r)	8.0m (26'-0")	N/A
INTERIOR SIDE YARD DEPTH (MIN.)	SECTION 15 (3)(r)	1.22m (4'-0") PROVIDED THAT AN END WALL CONTAINS NO HABITABLE ROOM WINDOWS	1.22m (4'-0") *END WALL CONTAIN NO HABITABLE ROOM WINDOWS
REAR YARD DEPTH (MINIMUM)	SECTION 15 (3)(r)	7.62m (25'-0")	21.76m (71'-5")
DWELLING UNIT AREAS (MINIMUM)	SECTION 15 (3)(r)	83.61m ² (900ft ²)	99.24 m ² (1,068ft ²)
LANDSCAPE OPEN SPACE (MIN. %)	SECTION 15 (3)(r)(13)	NOT APPLICABLE	245.66m ² (2,644ft ²) = 14.21%
LOT COVERAGE (MAX. %)	SECTION 15 (3)(r)(14)	44% OF 1,729m ² = 760.7 m ²	600.00m ² (6,458 ft ²) = 34.7 %
HEIGHT OF BUILDING (MAX.)	SECTION 15 (3)(r)(8)	12.5m (41'-0") TO ROOF MIDPOINT	11.4m (37'-5") TO ROOF MIDPOINT
AMENITY AREAS (MINIMUM)	SECTION 15 (3)(r)(15)	18.5m ² x 18 UNITS = 333m ² (3,584ft ²)	334.3 m ² (3,598 ft ²)
		TOTAL	334.3 m ² (3,598 ft ²)
PARKING REQUIRED (MIN.)	SEC. 15 (3)(r)(16)(a)	18 (1 PER TOWNHOUSE)	31 SPACES PROVIDED
PARKING SPACE	SEC. 15 (3)(r)(16)(a)	2.6 m X 5.2 m STANDARD SPACE	2.6 m X 5.2 m
ACCESSIBLE PARKING	SECTION 5 (16)(a)	4% OF PARKING 4% OF 31 = 1.24 = 2 B.F. SPACES 1 TYPE 'A' REQ'D (3.4m x 5.2m) 1 TYPE 'B' REQ'D (2.7m x 5.2m) TOTAL = 2 REQ'D ACCESS AISLE REQ'D (1.5m x 5.2m) *PER MINOR VARIANCE*	1 TYPE 'A' PROVD (3.4m x 6.0m) 1 TYPE 'A' PROVD (2.74m x 6.0m) TOTAL = 2 PROVD ACCESS AISLE PROVD (1.5m x 6.0m)
PARKING AISLE WIDTH	SECTION 5 (16)(d)(i)	6.5 m	6.0 m
ADDITIONAL SETBACK	SEC. 15 (3)(r)(12)	6.0 m FROM 1:100 FLOODPLAIN OF LITTLE CATARAQUI CREEK	16.15 m



	LANDSCAPING - 181.7m ² (1,956ft ²)
	SIDEWALK - 63.9m ² (688ft ²)
TOTAL LANDSCAPED OPEN SPACE - 245.6m ² (2,644ft ²)	

1 SITE PLAN
1:150



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DEC. 18.20

CLIFFSIDE HOLDINGS

rev.	date	issued for	rev.	date	issued for
8	OCT. 02.20	PERMITS	16		
7	SEPT 23.20	PERMITS	15		
6	AUG. 07.20	PERMITS	14		
5	JUL. 24.20	SPA	13		
4	JUL. 19.20	SPA	12		
3	JUL. 03.20	SPA	11		
2	MAY 19.20	SPA	10	DEC. 18.20	PERMITS
1	APR. 26.20	PERMITS	9	NOV. 05.20	PERMITS

project:
CLIFFSIDE PROPERTIES
address: 809 DEVELOPMENT DR., KINGSTON, ON
sheet name:
SITE PLAN

project no.:
20-0002
sheet no.:
A002