



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-21-035**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Jason Partridge, Planner  
**Date of Meeting:** May 17, 2021  
**Application for:** Minor Variance  
**File Number:** D13-021-2021  
**Address:** 1613 Brookedayle Avenue  
**Owner:** Franco DiPietrantonio & Christine Irving  
**Applicant:** Joe DiPietrantonio

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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 minor variance for the property located at 1613 Brookedayle Avenue. The applicant requesting relief from the requirements regarding the Minimum Setback from Rear Lot Line and Maximum Area for decks 1.2 metres above grade to build a 13.8 square metre rear yard deck within the rear yard of the property. The rear yard of the property has an existing 25 square metres deck 1.2 metres above grade. The resulting new rear yard deck will be 38.8 square metres in size and complies with all minimum side yard, height and 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 76-26. 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.

May 17, 2021

Page 2 of 12

**Variance Number 1:**

**By-Law Number** 76-26: Section 5 (25) (b) Minimum Setback from Rear Lot Line Above Grade 1.2 Metres

**Requirement:** 4 Metres

**Proposed:** 3.4 Metres

**Variance Requested:** 0.6 Metres

**Variance Number 2:**

**By-Law Number** 76-26: Section 5 (25) (b) Maximum Area Above Grade 1.2 Metres

**Requirement:** 30 Square Metres

**Proposed:** 38.8 Square Metres

**Variance Requested:** 8.8 Metres

**Recommendation:**

**That** minor variance application, File Number D13-021-2021, for the property located at 1613 Brookedayle Avenue seeking relief from the minimum setback from rear lot line and maximum Area for decks above 1.2 metres above grade, in order to permit the construction of a new 13.8 square metres rear yard deck, 1.2 metres above grade, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-021-035.

May 17, 2021

Page 3 of 12

**Authorizing Signatures:**



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Jason Partridge, Planner

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

Tim Park, Acting Director, Community Services

James Bar, Acting Manager, Development Approvals

May 17, 2021

Page 4 of 12

### Options/Discussion:

On March 26, 2021, a minor variance application was submitted by Joe DiPietrantonio, on behalf of the owners Franco Dipietrantonio & Christine Irving, with respect to the property located at 1613 Brookedayle Avenue.

The purpose of the application is to permit the construction of an expansion to an existing deck within the rear yard near the rear lot line of the property. The total area of the proposed new deck is 13.8 square metres. The total area of the existing and proposed deck will be 38.8 square metres.

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

- Site Plan (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 west side of Brookedayle Avenue and is situated within an established residential area in Cataraqui Westbrook neighbourhood (Exhibit B – Key Map and Exhibit F – Neighbourhood Context). The site is currently developed with a single-family dwelling on municipal services. The surrounding area includes single-family dwellings and municipal owned roads.

The subject property is designated Residential in the Official Plan and zoned R2-44 in Zoning By-Law Number 76-26.

### 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

May 17, 2021

Page 5 of 12

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;

The proposed rear yard deck 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 rear yard deck 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 rear yard deck 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 rear yard deck 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 deck will result in a development that is consistent with the existing rear yard built form of several residential buildings located north and south of the subject property along Brookedayle Avenue. The overall design and scale of the proposal is not anticipated to cause any adverse impacts on the adjacent residential properties.

May 17, 2021

Page 6 of 12

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;

The proposal involves the construction of a deck within the rear 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 spot 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);

#### Section 8.3 – Guiding Principles for Development of Residential Lots

- a. Protect and preserve stable residential communities (in accordance with Section 2.6). As per Section 2.6.2:

- 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 Brookedale Avenue.

- 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 deck within the rear yard and won't exceed the maximum permitted height in the zoning by-law. The deck will also maintain the minimum interior yard setback towards the two adjacent properties. The rear yard of the property also backs on in open space area with no residential homes. It will also be compatible with the style, colour and massing of other decks 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.

May 17, 2021

Page 7 of 12

- 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.

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

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.

- b. 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.

- c. 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.

- d. Provide a variety of housing types;

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

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

The proposal contributes to the compact nature of the neighbourhood.

- f. Encourage environmentally sustainable development;

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

- g. Integrate and highlight cultural heritage resources;

May 17, 2021

Page 8 of 12

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 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 inside of 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 Brookedayle Avenue. 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. The approval of the requested variance is considered minor and will not set a precedent for the immediate area.



May 17, 2021

Page 9 of 12

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 R2-44 in the City of Kingston Zoning By-Law Number 76-26, entitled "Township of Kingston Restricted Area By-Law", as amended. The R2-44 zone permits a converted dwelling house, a single-family dwelling house, a duplex dwelling house, a semi-detached dwelling house and a triplex dwelling house. The proposed rear yard deck is a permitted use within the 'R2-44' Zone (Exhibit E)

The proposal requires a variance to Section 76-26: Section 5 (25) (b)

**Variance Number 1:**

**By-Law Number 76-26:** Section 5 (25) (b) Minimum Setback from Rear Lot Line Above Grade 1.2 Metres

**Requirement:** 4 Metres

**Proposed:** 3.4 Metres

**Variance Requested:** 0.6 Metres

**Variance Number 2:**

**By-Law Number 76-26:** Section 5 (25) (b) Maximum Area Above Grade 1.2 Metres

**Requirement:** 30 Square Metres

**Proposed:** 38.8 Metres

**Variance Requested:** 8.8 Metres

A variance is required from Section 5 (25) (b) of Zoning By-Law Number 76-26 to seek relief for a deck 1.2 metres above grade from the minimum setback from the rear lot line Section 5 (25) (b). Within Section 5 (25) (b) the minimum setback from the rear lot line is 4 metres. The proposed rear yard deck will be setback 3.4 metres, which does not comply with the minimum rear yard setback of Section 5 (25) (b). As such, the applicant is seeking a variance of 0.6 metres to construct the rear yard deck. A second variance is required from Section 5 (25) (b) of Zoning By-Law Number 76-26 to seek relief for a deck 1.2 metres above grade for the maximum area Section 5 (25) (b). Within Section 5 (25) (b) the maximum area for deck above grade 1.2 metres is 30 square metres. The proposed and existing rear yard deck size will be 38.8 square metres, which does not comply with the maximum area provision of Section 5 (25) (b). As such, the applicant is seeking a variance of 8.8 square metres to construct the rear yard deck.

The intent of the minimum setback from rear lot line and maximum area for a deck above grade 1.2 metres is to reduce concerns about overlook into abutting properties and prevent overdevelopment of a rear yard space with excessive amounts of decking. The proposed deck maintains a 3.4 metres setback to reduce impact on the neighbouring property. It also proposed a pass-through design which will maintain access to the rear of the property and exceed the interior lot line setbacks. The general intent and purpose of the by-law is maintained.

May 17, 2021

Page 10 of 12

**3) The variance is minor in nature**

The proposed rear yard deck will result in a development that is consistent with the existing built form of residential development along Brookedayle Avenue. The proposed deck will be located within the rear yard and will not result in intrusive overlook with respect to adjacent residential properties. The minimum interior yard setbacks will be met between the two adjacent properties and the proposed deck backs onto an open space area towards the rear yard of the property. The variances will not alter the character of the neighbourhood or the existing streetscape. The total area of the proposed and existing deck is 38.8 square metres.

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**

The proposed development will provide the functional needs for the existing residential use. The resulting built form satisfies all applicable provisions of the zoning by-law, except for the rear lot line setback and maximum area.

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 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 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

May 17, 2021

Page 11 of 12

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 76-26. The proposal is desirable for the appropriate development or use of the land, building or structure and the requested variance(s) 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.

Approval of this application will permit the construction of a new 13.8 square metres deck 1.2 metres above grade in the rear yard of the subject property. The proposed rear yard deck will improve the function of the existing residential use on the site and represents good land use planning.

**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 76-26

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on May 17, 2021. Pursuant to the requirements of the *Planning Act*, a notice of Statutory Public Meeting

May 17, 2021

Page 12 of 12

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 17 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:**

James Bar, Acting Manager, Development Approvals, 613-546-4291 extension 3213

Jason Partridge, Planner, 613-546-4291 extension 3216

**Other City of Kingston Staff Consulted:**

None

**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 Number 76-26, Map 2
- Exhibit F Neighbourhood Context Map (2020)
- Exhibit G Site Plan

## Recommended Conditions

### Application for minor variance, File Number D13-021-2021

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

#### 1. Limitation

That the approved minor variance applies only to the subject lands located at 1613 Brookedayle Avenue for the proposed rear yard deck as shown on the approved drawings attached to the notice of decision.

#### 2. No Adverse Impacts

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

#### 3. Building Permit Application Requirements

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

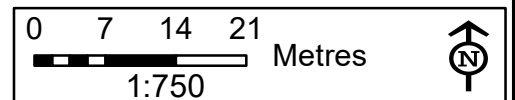
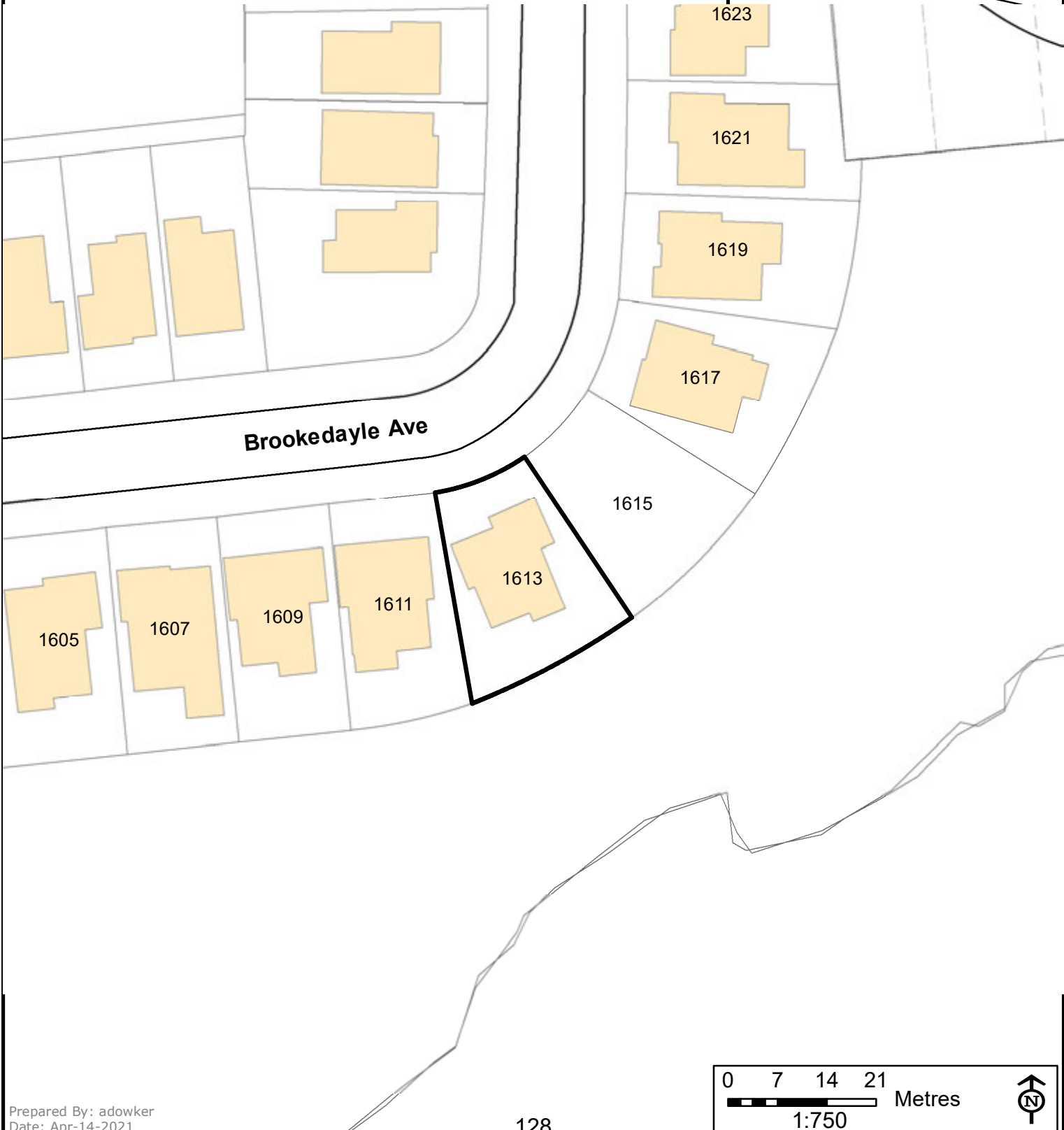
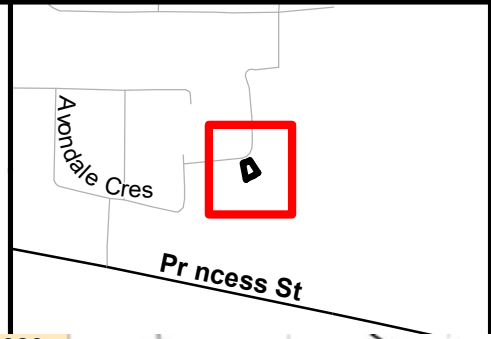
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries Regulation Section of the Ontario Ministry of Consumer Business Services (416-326-8404), the Cultural Program Branch of the Ministry 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.



# Committee of Adjustment Key Map

Address: 1613 Brookedayle Avenue  
File Number: D13-021-2021

 Lands Subject to Minor Variance








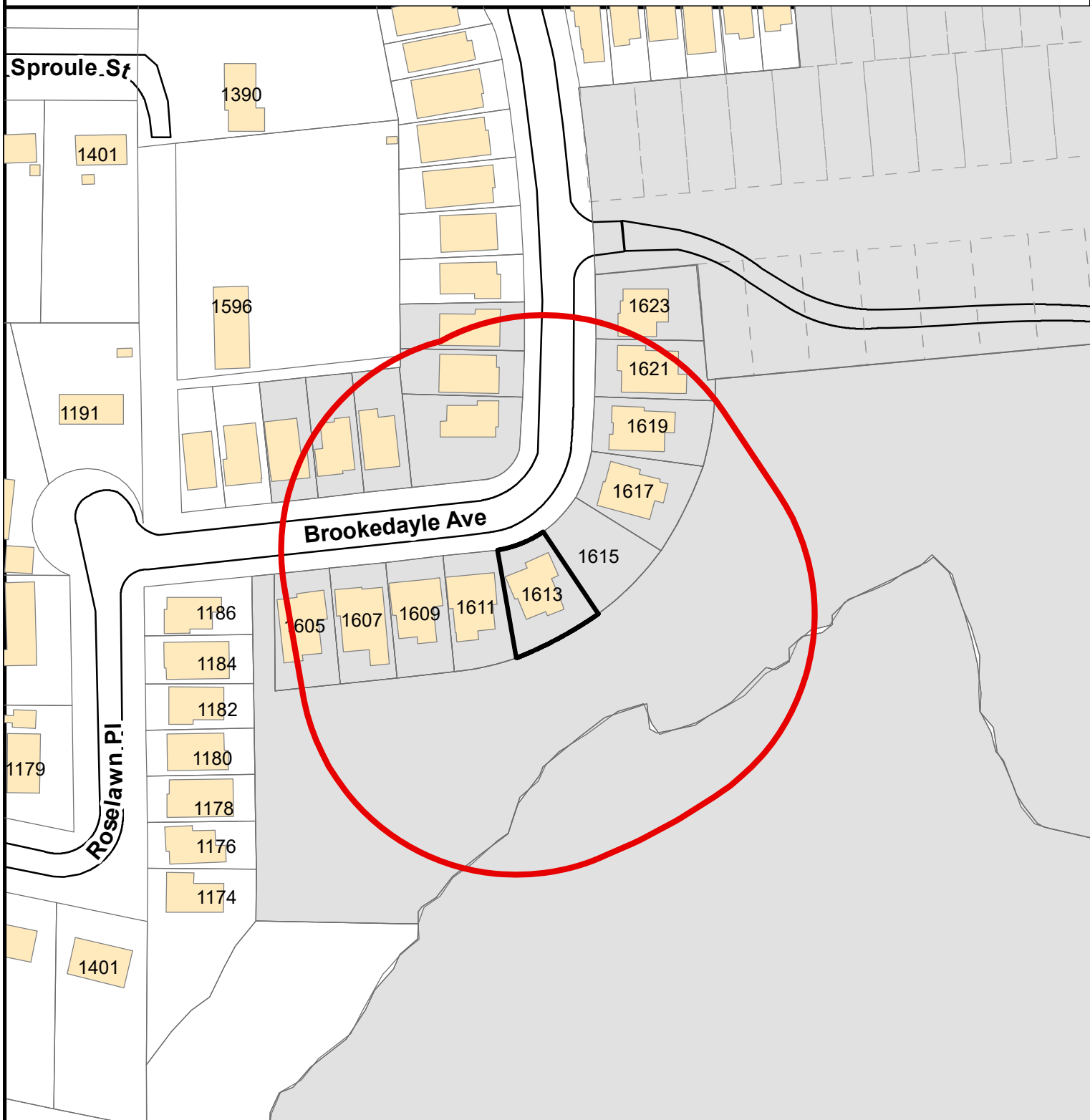


Planning Services

# Committee of Adjustment Public Notice Notification Map

Address: 1613 Brookedayle Avenue  
File Number: D13-021-2021

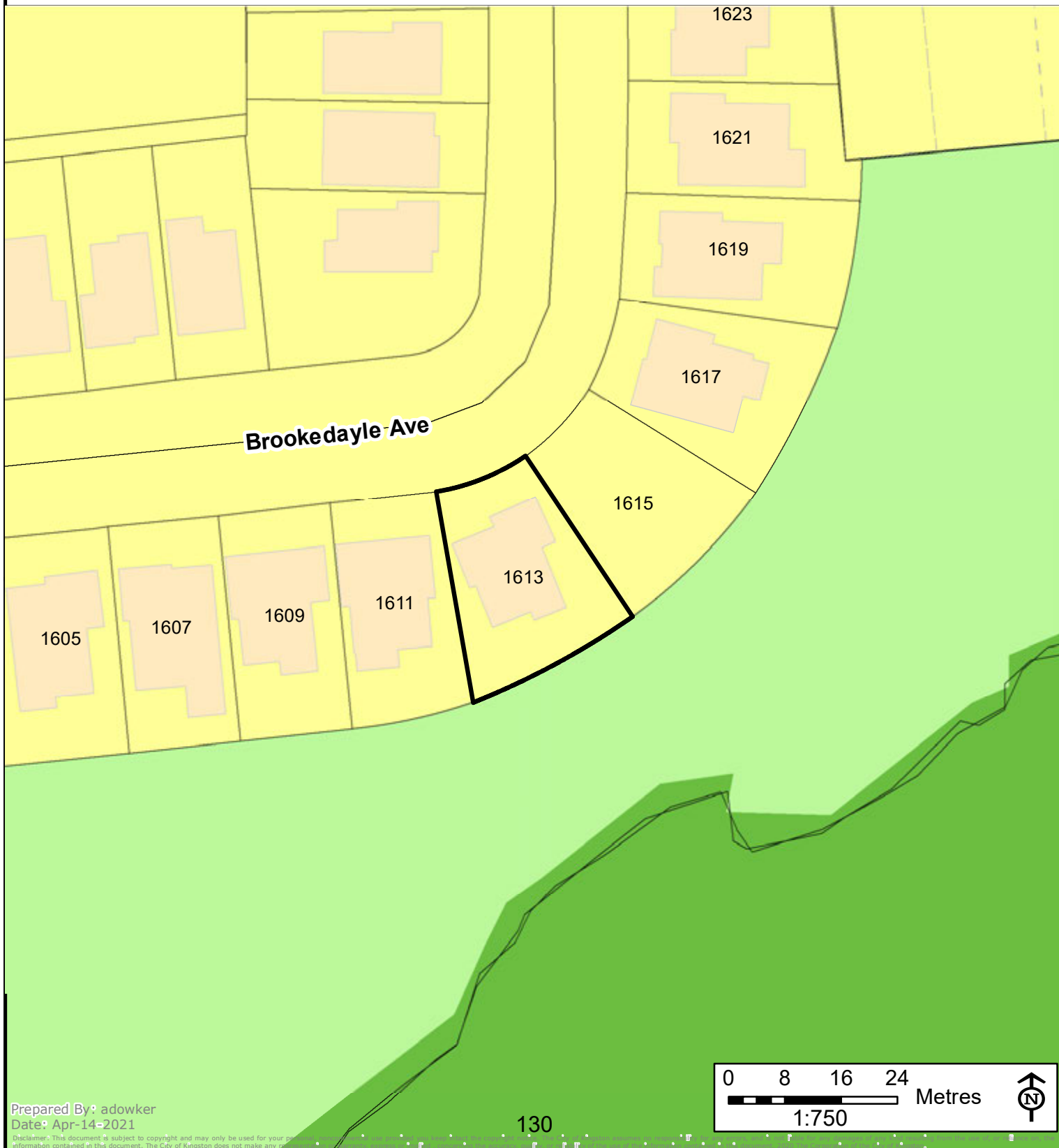
-  60m Public Notification Boundary
-  Subject Lands
-  Property Boundaries
-  Proposed Parcels
-  17 Properties in Receipt of Notice (MPAC)





Committee of Adjustment  
**Official Plan, Existing Land Use**  
Address: 1613 Brookedayle Avenue  
File Number: D13-021-2021

-  Subject Lands
-  ENVIRONMENTAL PROTECTION AREA
-  OPEN SPACE
-  RESIDENTIAL







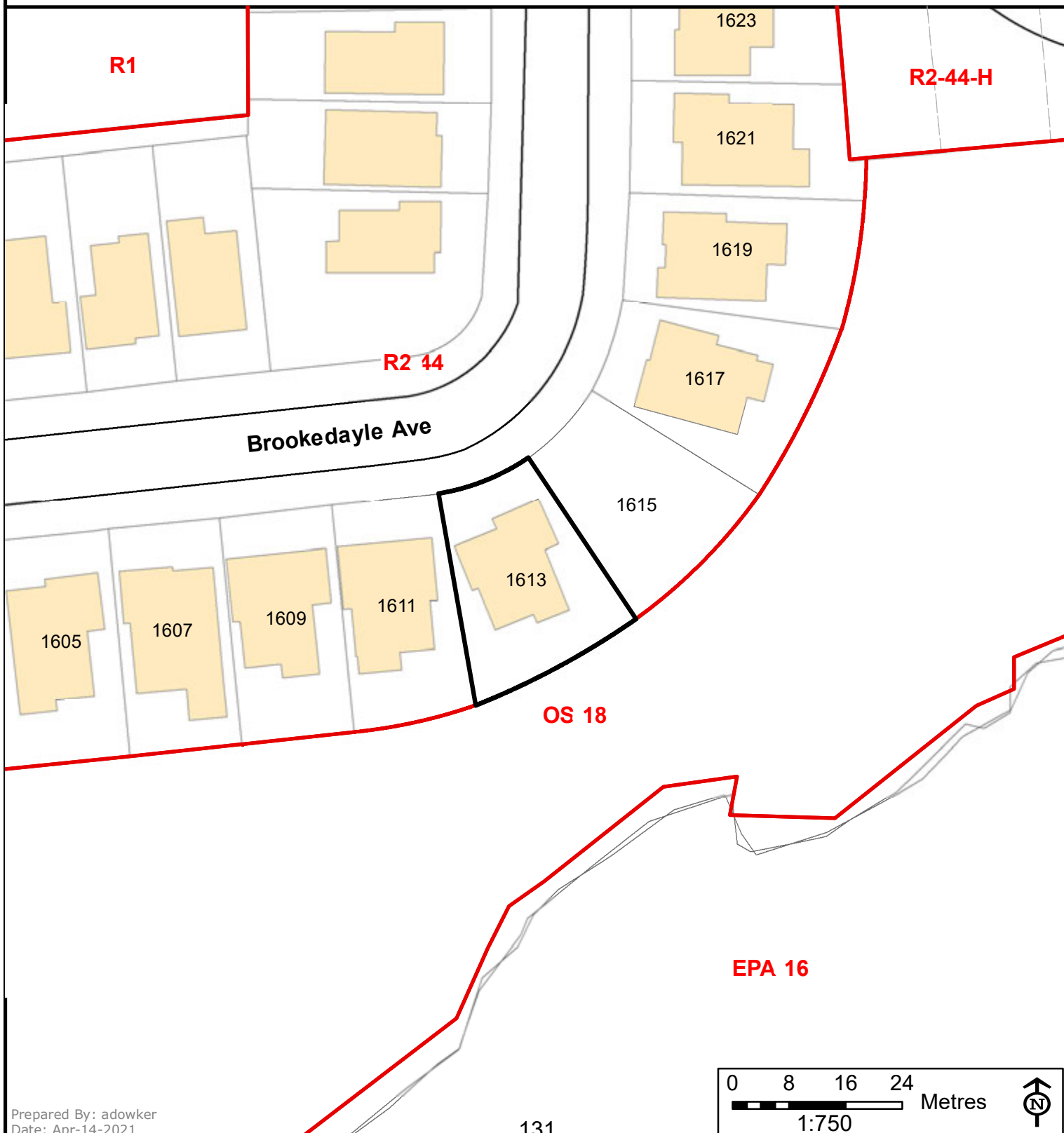


Planning Services

# Committee of Adjustment Existing Zoning - By-law 76-26, Map 2

Address: 1613 Brookedayle Avenue  
File Number: D13-021-2021

-  Subject Lands
-  Consolidated Zoning

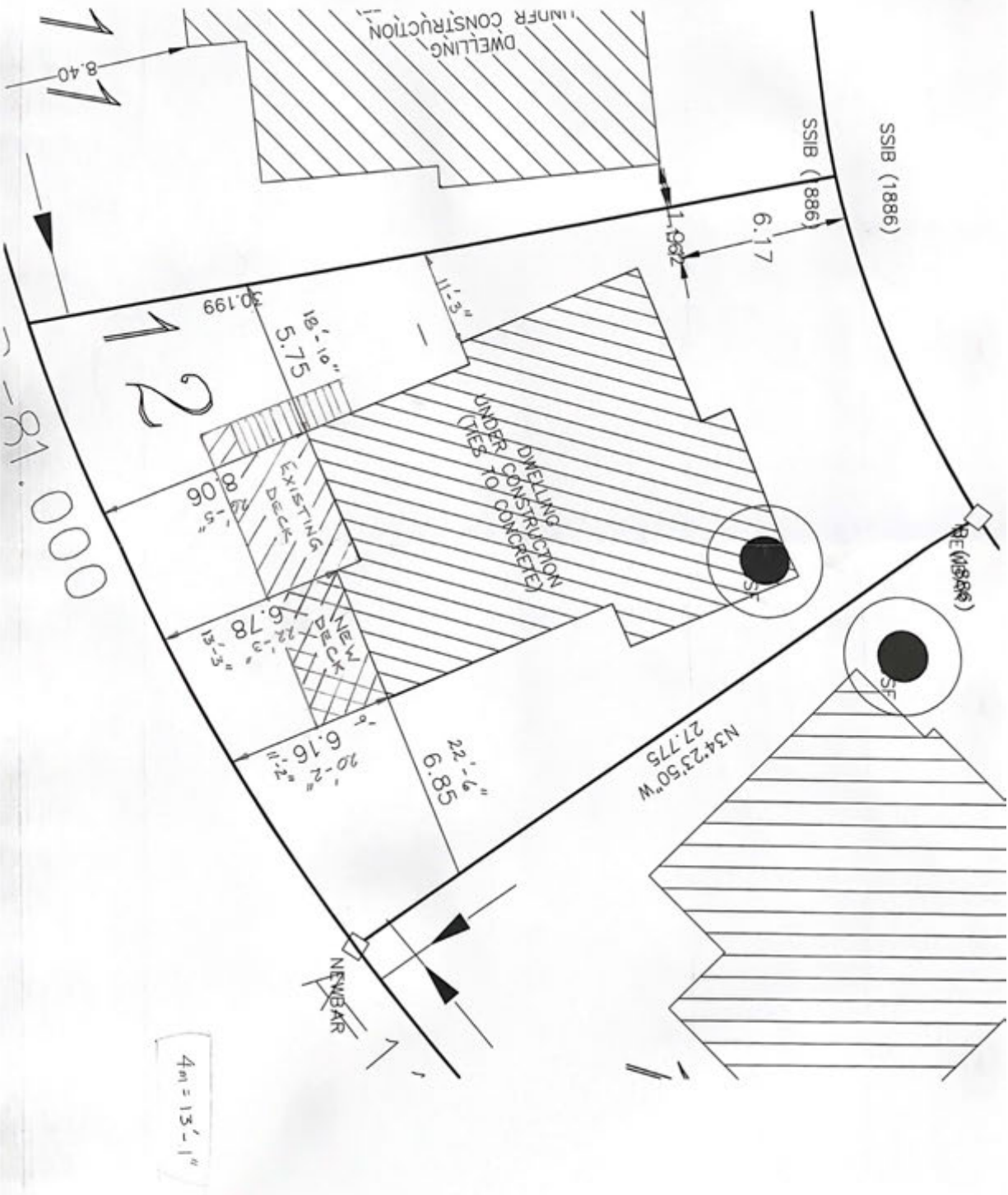




Committee of Adjustment  
**Neighbourhood Context (2020)**  
Address: 1613 Brookedayle Avenue  
File Number: D13-021-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels





4m = 13'-11"