



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-21-037**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Golsa Kheir-Moghadam, Planner  
**Date of Meeting:** May 17, 2021  
**Application for:** Minor Variance  
**File Number:** D13-017-2021  
**Address:** 4016 A Bath Road  
**Owner:** James Somerville and Margaret Somerville  
**Applicant:** James Somerville

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**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 4016 A Bath Road. The applicant is proposing to construct an approximately 60 square meter, two-level attached deck in the rear yard of the property. The deck will be located on the water side of an existing single detached dwelling.

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 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.

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**Variance:**

**By-Law Number** 76-26:Section 5(6)(b)

**Requirement:** No building shall be erected or altered within 25 feet (7.5 metres) of a flood plain.

**Proposed:** 0 metres

**Variance Requested:** 7.5 metres (25 feet)

**Variance Number 2:**

**By-Law Number** 76-26: Section 5 (25) (b) maximum area 1.2 metres above grade

**Requirement:** 30 Square Metres

**Proposed:** 60 Metres

**Variance Requested:** 30 Metres

**Recommendation:**

**That** minor variance application, File Number D13-017-2021, for the property located at 4016 A Bath Road to obtain relief from minimum flood plain setback requirement and maximum permitted area for the construction of an approximately 60 square metre, two-level attached deck in the rear yard of the property, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-21-037.

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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:**

Tim Park, Acting Director, Planning Services  
James Bar, Acting Manager, Development Approvals

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**Options/Discussion:**

On March 22, 2021, a minor variance application was submitted by James Somerville, on behalf of the owners, James Somerville and Margaret Somerville, with respect to the property located at 4016 A Bath Road. The variances are requested to obtain relief from minimum flood plain setback requirement and maximum permitted area for the construction of an approximately 60 square metre, two-level attached deck in the rear yard of the property.

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 at 4016 A Bath Road.

The subject property is designated ‘Residential’ and ‘Environmental Protection Area’ in the Official Plan and zoned Residential Type 1 Zone ‘R1’ in Zoning By-Law Number 76-26. The property abuts low-density residential land uses to the west and east and Collins Bay to the south.

The property has an area of 925.89 square metres and is currently developed with a single-detached dwelling and a detached accessory structure. The subject property is located on the south side of Bath Road with approximately 5.5 metres of road frontage.

**Application**

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

**Provincial Policy Statement**

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

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

The subject property is designated 'Residential' and 'Environmental Protection Area' in the City of Kingston's Official Plan (Exhibit D - Official Plan Map).

Residential uses are primary form of housing in 'Residential' designation, including detached dwellings. The primary use of the subject property is single-family dwelling which is proposed to remain unchanged.

Uses within the 'Environmental Protection Area' are limited to those related to open space, conservation or flood protection, and must be approved in consultation with the Cataraqui Region Conservation Authority (CRCA), the Ministry of Natural Resources and Forestry, and/or Parks Canada as appropriate. The proposed deck has been reviewed by CRCA and the applicant/owner has been informed about the required permit.

Section 3.9 of the Official Plan speaks to the long-term protection of and recognition of the important role that waterfront areas play in the City's sense of place, cultural heritage, recreational, social and spiritual needs, natural heritage system, as well as a valuable source of water.

Section 3.9.2 requires the protection of a 30-metre naturalized buffer along the waterfront, also referred to as the "ribbon of life". It is intended to provide a buffer of undisturbed soil and vegetation along the shoreline, which will help to filter runoff, prevent soil erosion, and provide wildlife habitat. There is currently an existing sunroom that extends towards the water. Proposed deck will extend the same depth as the sunroom and will encroach no closer towards the flood plain than existing development. There is adequate access to the footings between the deck and flood plain. Since the proposed deck is elevated high off the ground, there is little risk to the dwelling and its occupants in the event of flooding beyond the regulatory level.

Section 3.10.2.1 recognizes that where an Environmental Protection Area designation is tied solely to a riparian corridor as per Schedule 7 of the Official Plan, the permitted land uses on lots existing of the date of the adoption of the plan include the permitted use of another land use designation applicable to the lot and legally non-conforming land uses.

According to CRCA technical comments, "the property is an existing, undersized developed lot. It is not feasible for new decking at this location to be greater than 30 metres from the water since there is existing development within the buffer at present. The proposed development will not encroach any closer to the water and will not impact soil mantle and existing vegetation."

In considering whether this proposed variances are 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.

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

The subject site is located within the Urban Boundary, in a Housing District, and is on municipal services. Development within the Urban Boundary and on a site with municipal services is meant to be the focus of growth/development within the City. Housing Districts can be compatible with minor development activities so long as the prevailing built form standards are generally found in the neighbourhood. The proposed rear yard deck is in keeping with the waterfront nature of surrounding residential development, where several properties have attached decks on the water side of the dwellings. The proposed variance from the floodplain setback requirement and maximum area will create minimal land use compatibility impacts on the neighbouring 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;

Subject property is surrounded by low density residential dwellings, most of which contain attached decks in the rear yard. The construction of the new deck is compatible with the surrounding development. The proposed floodplain setback and proposed deck area is not anticipated to create any negative impacts on the adjacent land uses.

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 site layout provides for adequate amenity and landscaped area. The development will meet all requirements of the Ontario Building Code which will ensure the accessibility features. The proposed deck will not result in changes to the existing parking and access to the dwelling.

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

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

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

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- 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 development is limited to an attached deck in the rear yard and will not create negative impact with respect to adjacent residential properties. The proposed variance will not alter the character of the neighbourhood or the existing streetscape.

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

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

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

All properties are subject to the City's Property Standards By-Law. 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 variances will not alter the established pattern of land assembly and built form.

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

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

- g. Foster developments that are context appropriate;

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

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

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

- i. Encourage environmentally sustainable development;

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

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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 a protected heritage property nor is it adjacent to a protected heritage property.

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

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

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

The proposed variances are considered minor and the development is consistent with the existing built form. 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, multi-family dwellings, and commercial land uses. The approval of the requested variances is considered minor and will not set a precedent for the immediate area.

The proposal meets the intent of the Official Plan, as the proposed floodplain setback and deck area to facilitate the construction of a deck 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 Residential Type 1 Zone (R1) in the City of Kingston Zoning By-Law Number 76-26, entitled "Township of Kingston Restricted Area By-Law", as amended. The R1 zone permits a single-family dwelling house, a converted dwelling house, a home occupation, and a public use.



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The proposal requires the following variances:

**Variance:****By-Law Number** 76-26:Section 5(6)(b)**Requirement:** No building shall be erected or altered within 25 feet (7.5 metres) of a flood plain.**Proposed:** 0 metres**Variance Requested:** 7.5 metres (25 feet)**Variance Number 2:****By-Law Number** 76-26: Section 5 (25) (b) maximum area 1.2 metres above grade**Requirement:** 30 Square Metres**Proposed:** 60 Metres**Variance Requested:** 30 Metres

The above variances are requested to permit the construction of a two-level deck. The proposed variances meet the intent of the zoning by-law and flood plain setback to prevent natural hazards (flooding and erosion) associated with Lake Ontario and protection of the water quality and ecological integrity of the Lake and shoreline.

As per CRCA comments, "A Slope and Erosion Assessment was completed by Concord Engineering on May 2, 2020, to assess site-specific conditions and to determine whether the proposed development would be within the erosion hazard limit. The assessment confirmed that the deck would be outside both the stable slope and an acceptable toe erosion allowance. The report recommended, for additional safety, the use of helical piers as the preferred footing design for the deck. Cataraqui Conservation is satisfied with the findings of the Slope and Erosion Assessment and would have no concerns with the proposal from an erosion perspective provided the deck design is in accordance with Concord's report."

The intent of regulating the maximum size of the deck is to ensure that a property is not overdeveloped with raised deck areas that may impact the enjoyment of neighbouring properties. While the application proposes a deck that is larger than the regulated maximum in the zoning by-law, the overall intent of the zoning is maintained. The deck is in keeping with the size and scale of the dwelling. It is well buffered from the neighbouring properties through natural vegetation and there are no anticipated negative offsite impacts.

The proposed variances conform to the general intent of the flood plain setback and maximum deck area. The development meets all other provisions of R1 zones. The requested variances maintain the general intent and purpose of the zoning by-law.

### 3) The variance is minor in nature

The proposed variances from the minimum setback from a flood plain and maximum deck area are considered a minor change to the existing development. The proposed variances will have no adverse impact on the functionality of the dwelling and the site. The proposed

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setback from the flood plain is not anticipated to create any natural hazard or negatively impact the safety of the site. The proposed variances are considered minor in nature as they will not have any negative impacts on the character of waterfront development in the surrounding area.

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

The proposed variances are desirable and appropriate use of the land as they will allow for the construction of a in the rear yard and provides for a more desirable use of the amenity areas in the rear yard.

**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 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 checked="" 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.

Following comments have been considered in providing recommended conditions for this application:

CRCA: “In order to protect the shoreline and water quality in the long-term, we recommend maintenance and enhancement of a healthy buffer of native vegetation between all buildings / structures and the water and use of runoff controls to direct stormwater from hardened surfaces (i.e. rooftops) away from the lake where natural infiltration can occur. Proper sediment and erosion controls must be incorporated into construction plans at the CRCA permit review stage, should the variance be granted.”

Heritage: The subject property is identified as being an archaeologically sensitive area on the City’s Archaeological Master Plan. The grounds have already been disturbed through previous

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works and therefore no archaeological assessment is required. Please include the standard archaeological condition.

**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 variances maintain 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 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.

**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 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 13 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.

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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

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 Public Notice Notification Map

Exhibit D Official Plan, Existing Land Use

Exhibit E Existing Zoning - By-Law Number 76-26, Map 4

Exhibit F Site Plan

Exhibit G Neighbourhood Context (2020)

## Recommended Conditions

### Application for minor variance, File Number D13-017-2020

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

#### 1. Limitation

That the approved minor variance applies only to 4016 A Bath Road 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. Cataraqui Conservation Permit

The owner/applicant shall obtain a permit from Cataraqui Region Conservation Authority under Ontario Regulation 148/06 to complete the proposed work including the maintenance and enhancement of a healthy buffer of native vegetation between all buildings and structures and the water and use of runoff controls.

#### 4. 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.


#### 5. Standard Archaeological Condition

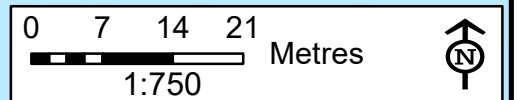
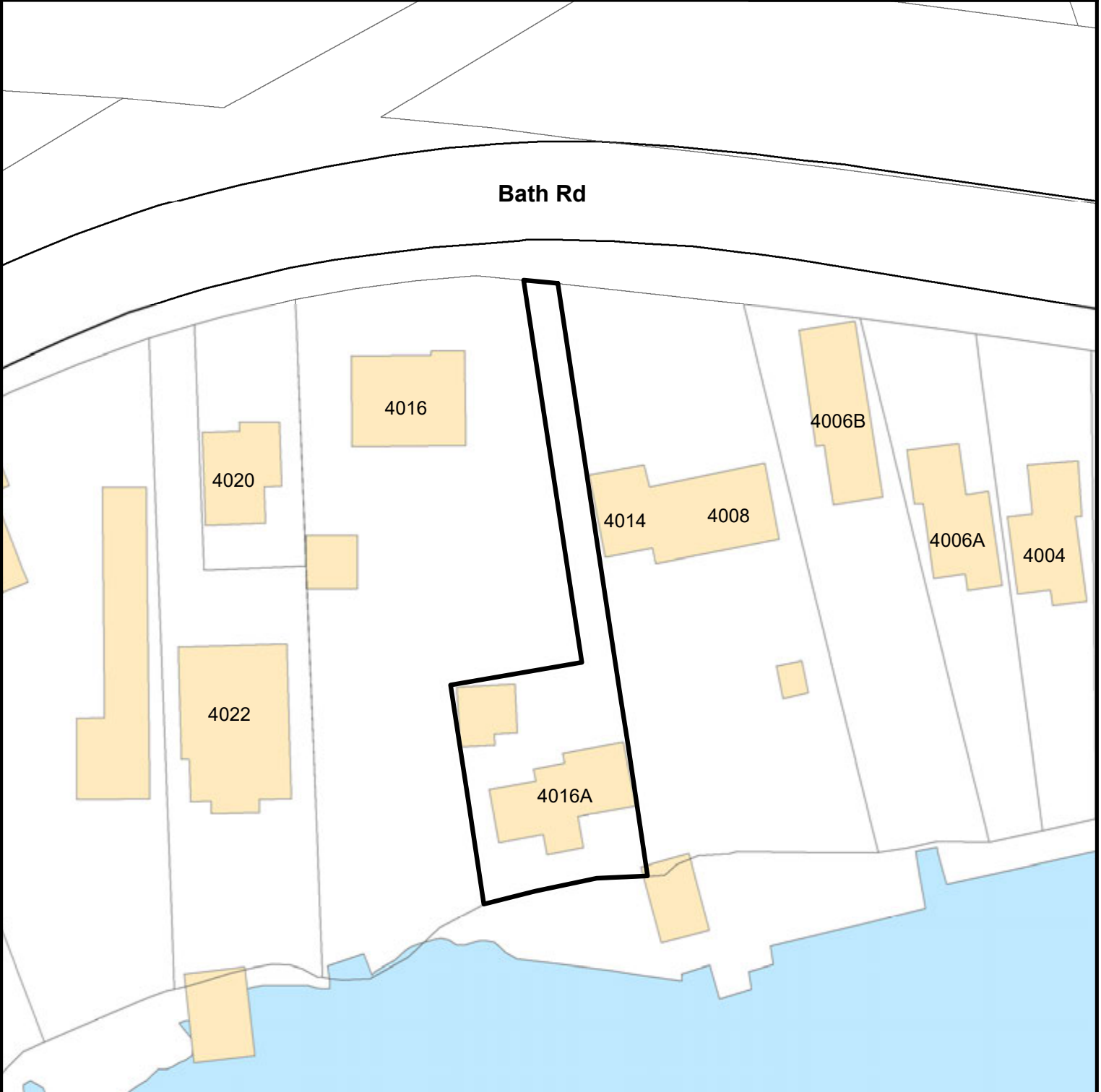
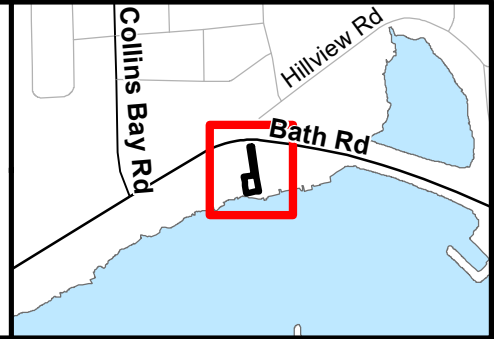
In the event that deeply buried or previously undiscovered archaeological deposits are discovered in the course of development or site alteration, all work must immediately cease and the site must be secured. The Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (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.








Committee of Adjustment  
**Key Map**  
Address: 4016 A Bath Road  
File Number: D13-017-2021

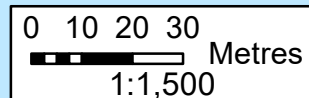
 Lands Subject to Minor Variance





Committee of Adjustment  
**Public Notice Notification Map**  
Address: 4016 A Bath Road  
File Number: D13-017-2021

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



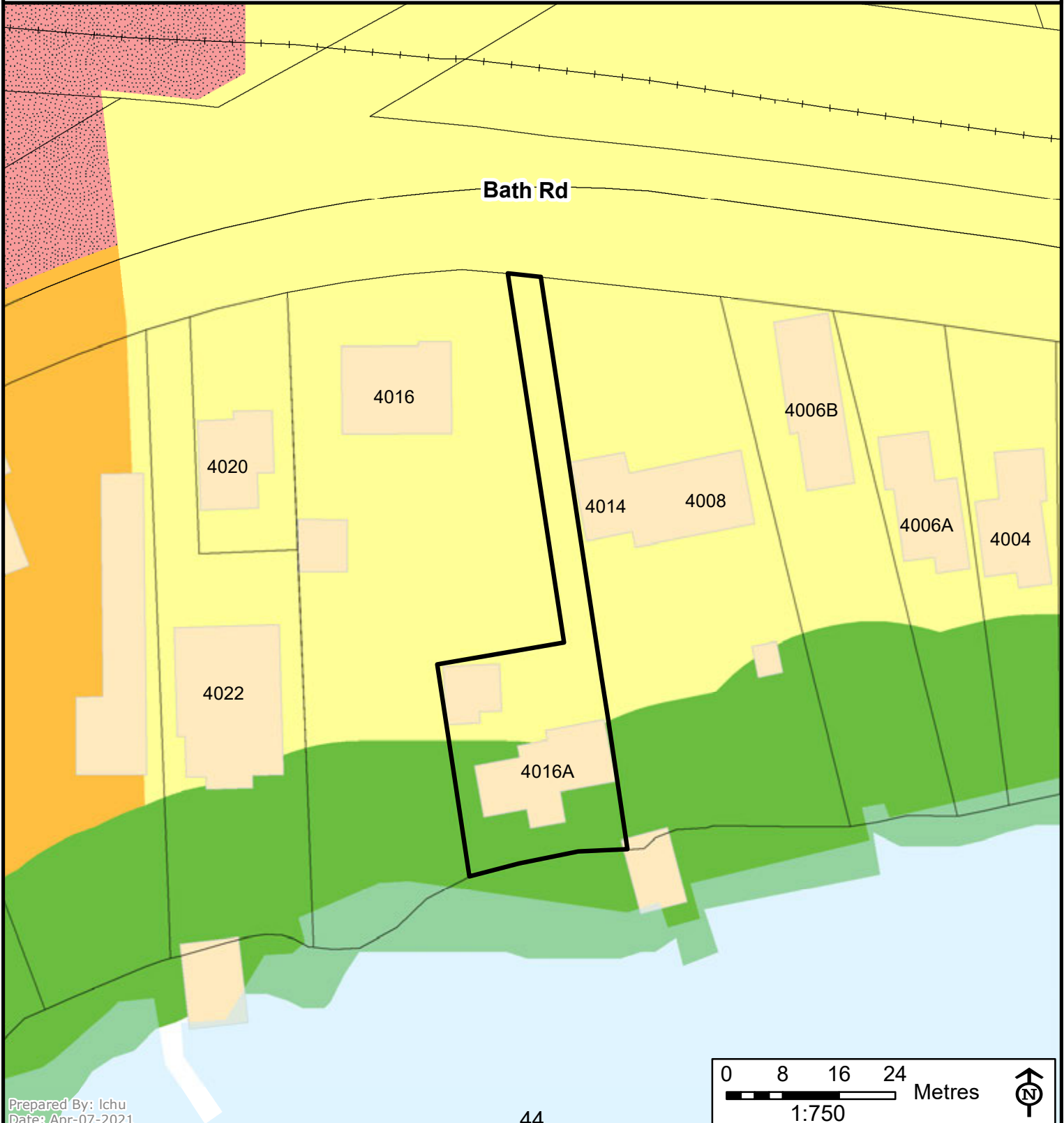




Planning Services

Committee of Adjustment  
**Official Plan, Existing Land Use**  
Address: 4016 A Bath Road  
File Number: D13-017-2021

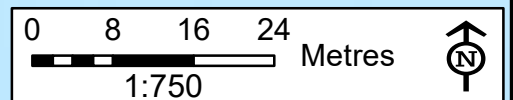
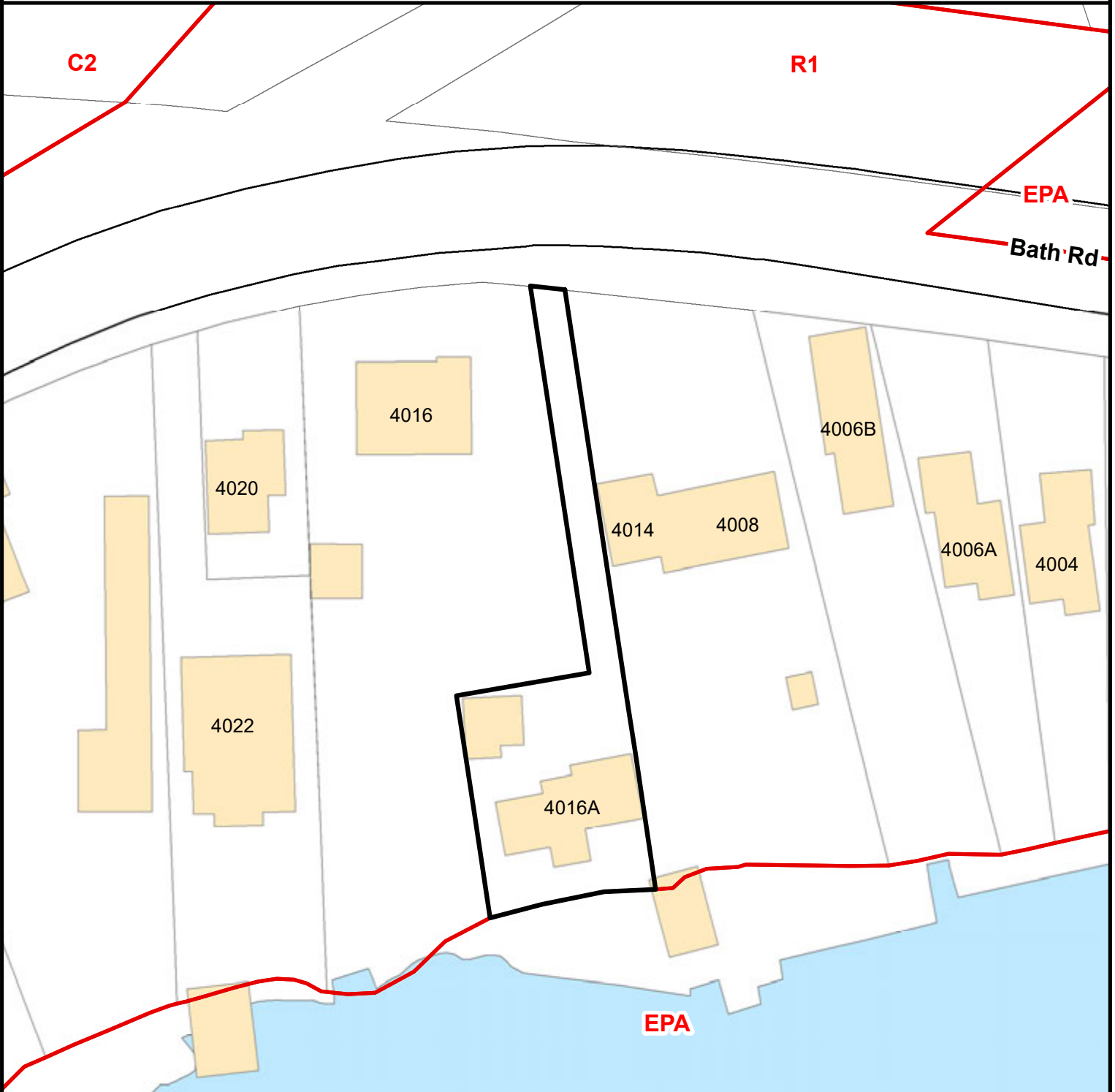
-  Subject Lands
-  ARTERIAL COMMERCIAL
-  DISTRICT COMMERCIAL
-  ENVIRONMENTAL PROTECTION AREA
-  RESIDENTIAL



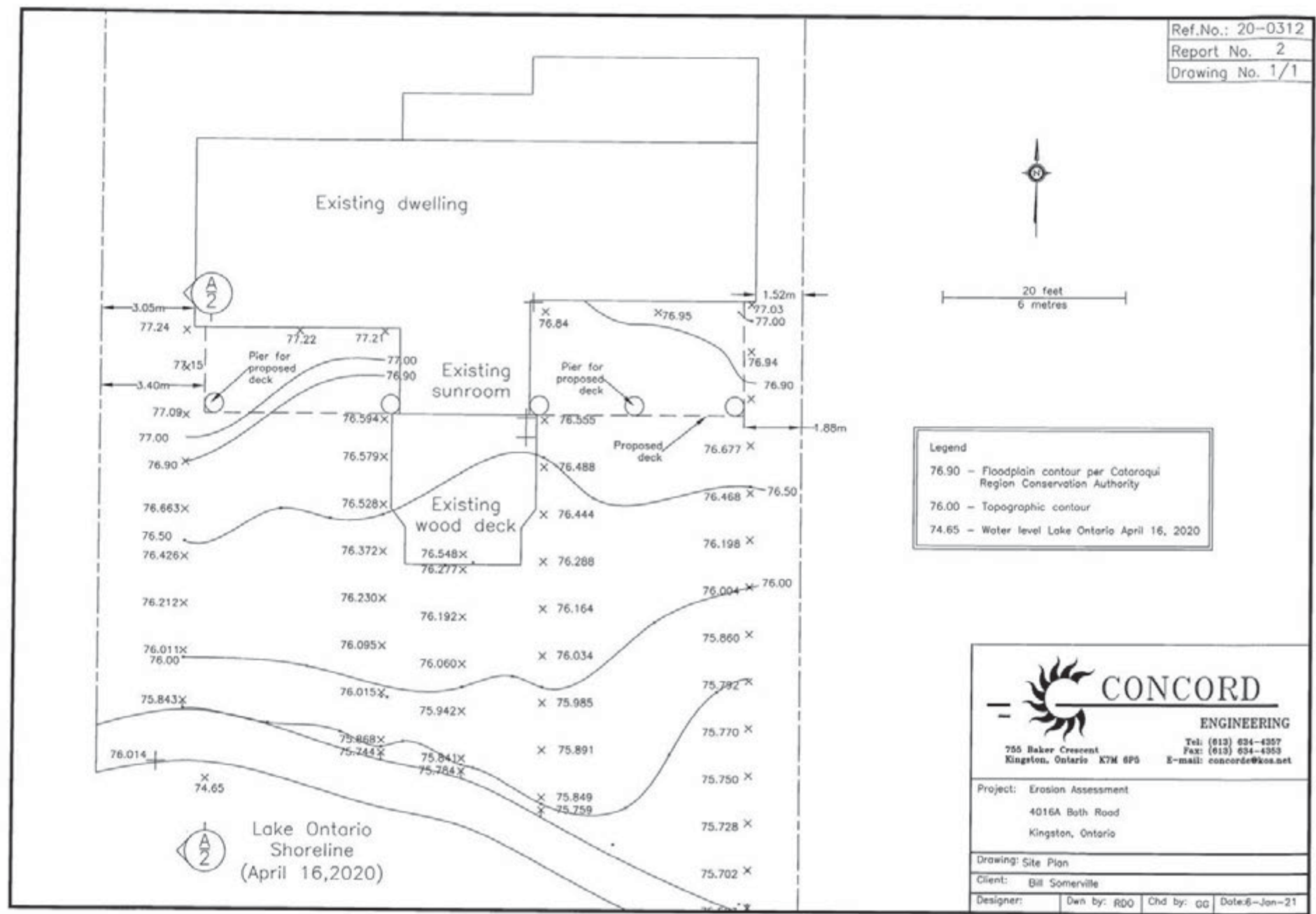


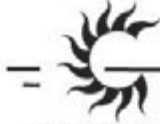
Committee of Adjustment  
**Existing Zoning - By-law 76-26, Map 4**  
Address: 4016 A Bath Road  
File Number: D13-017-2021

- Subject Lands
- Consolidated Zoning



Ref.No.: 20-0312  
Report No. 2  
Drawing No. 1/1





**CONCORD**  
ENGINEERING

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Kingston, Ontario K7M 6P6

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Fax: (613) 634-4353  
E-mail: concord@kos.net

Project: Erosion Assessment			
4016A Both Road Kingston, Ontario			
Drawing: Site Plan			
Client: Bill Somerville			
Designer:	Drawn by: RDO	Chd by: GG	Date: 6-Jan-21

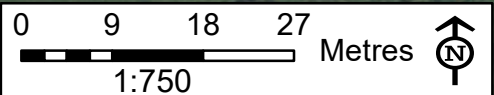


Committee of Adjustment  
**Neighbourhood Context (2020)**  
Address: 4016 A Bath Road  
File Number: D13-017-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels



Bath Rd



Prepared By: lchu  
Date: Apr-07-2021

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