



**City of Kingston  
Report to Committee of Adjustment  
Report Number COA-22-010**

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**To:** Chair and Members of the Committee of Adjustment  
**From:** Niki Van Vugt, Planner  
**Date of Meeting:** December 13, 2021  
**Application for:** Minor Variance  
**File Number:** D13-061-2021  
**Address:** 849 Roshan Drive  
**Owner:** John David Robinson & Patricia Robinson  
**Applicant:** John David Robinson

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**Council Strategic Plan Alignment:**

Theme: 2. Increase housing affordability

Goal: 2.1 Pursue development of all types of housing city-wide through intensification and land use policies.

**Executive Summary:**

This report provides a recommendation to the Committee of Adjustment regarding an application for minor variance for the property located at 849 Roshan Drive. The applicant is proposing to construct a 44.74 square metre elevated deck at the rear of the existing residential dwelling that is in excess of the 30 square metre maximum permitted for a structure above 1.2 metres from finished grade in a residential zone.

The requested minor variance is consistent with the general intent and purpose of both the City of Kingston Official Plan and Zoning By-Law Number 76-26. The requested minor variance is desirable for the appropriate development or use of the land, building or structure and is minor in nature. As such, the proposed application meets all four tests under Subsection 45(1) of the *Planning Act* and is recommended for approval.

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**Variance Number 1: Maximum deck size 1.2 metres above finished grade**

By-Law Number 76-26: Section 5(25)(b)

Requirement: 30 square metres

Proposed: 44.74 square metres

Variance Requested: 14.74 square metres

**Recommendation:**

**That** minor variance application, File Number D13-061-2021, for the property located at 849 Roshan Drive seeking relief from the maximum area, in order to permit the construction of a 44.74 square metre elevated rear yard deck, be approved; and

**That** approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-010.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY PLANNER

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Niki Van Vugt, Planner

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

Tim Park, Director, Planning Services

James Bar, Manager, Development Approvals

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**Options/Discussion:**

On October 1, 2021, a minor variance application was submitted by John David Robinson, on behalf of the owners, John David Robinson and Patricia Robinson, with respect to the property located at 849 Roshan Drive.

The purpose of this application is to permit the construction of an elevated deck located at the rear of the existing residential dwelling. The elevated deck is above 1.2 metres in height and exceeds the maximum permitted deck area of 30 square metres under the current Zoning By-Law Number 76-26.

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

- Site Plan (Exhibit F)
- Elevations (Exhibit G)
- Deck Materials (Exhibit H)

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 Roshan Drive and is situated within an established residential area in the Westbrook neighbourhood (Exhibit B – Key Map and Exhibit C – Neighbourhood Map). The subject property is designated ‘Residential’ on Schedule 3-A – Land Use, in the Official Plan (Exhibit D – Official Plan), and zoned ‘Residential Type 1 – Special Exception 58’ in Zoning By-Law Number 76-26 (Exhibit E – Zoning By-law).

The property is located within a residential subdivision and abuts an open space area to the west. The site is currently developed with a single family detached dwelling and attached garage. The subject lands are approximately 533.4 square metres and has a frontage of 15.24 metres onto Roshan Drive.

**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

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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.

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

The subject property is designated 'Residential' (Exhibit D – Official Plan) and is near Glenvale Creek designated 'Environmental Protection Area' 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 subject site is located within the Urban Boundary, shown on Schedule 2 of the Official Plan, where a majority of growth will be directed over the next decade within the City of Kingston. This is as a result of the substantially built-up areas of the City where major sewer, water and transportation infrastructure has been planned. The subject property is located within a Housing District, as found in Section 2.2.5, where they are planned to remain stable but will continue to mature and adapt as the City evolves. Housing Districts encourage re-investment and upgrading through minor infill and minor development which are compatible with the prevailing built form in the area.

The existing residential use and zoning are consistent with the Residential designation. The proposed deck is a minor accessory structure to the permitted use and the minor variance requested only affects how much area the accessory structure is permitted. The proposal will act as a reinvestment and will result in only minor development on the subject property that is compatible with surrounding residential uses. The proposal is similar to the prevailing built form standards of height, density and amenity that are generally found in the existing dwellings along Roshan Drive and will not result in any significant impacts or changes to the local neighbourhood character.

As this application is requesting additional area for a deck that will be approximately 3 metres above finished grade compatibility with surrounding uses and consideration of site characteristics were reviewed. The subject site is located adjacent to an Open Space (OP) and Environmental Protection Area (EPA) under the City of Kingston's Official Plan. As a result of the property's location, and potential concerns of environmental damage or degradation, the proposal was circulated externally to the Cataraqui Region Conservation Authority (CRCA). No concerns or objections were raised regarding this matter of land use compatibility.

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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 rear yard deck provides new opportunity for growth and investment within Kingston in a manner that would ensure compatible development and land use. The deck will result in development that is consistent with the built form of existing rear yard decks found on nearby residential properties located to the North (861 and 869 Roshan Drive) and South (845 and 817 Roshan Drive) of the subject site along Roshan Drive.

It is acknowledged that elevated residential decks have the potential to generate adverse effects such as overlook and shadowing of abutting properties, however it is important to acknowledge that the applicant would be permitted to construct a smaller deck without the need for a minor variance. The existing property can utilize multiple existing site characteristics to mitigate these concerns: the lands to the west are designated EPA and do not permit any new development; the proposal exceeds the side and rear yard setbacks; and, as the existing property abuts a vacant lot to the north (853 Roshan Drive) and is further setback than the neighbouring property to the south (845 Roshan Drive) therefore there is a decreased potential for overlook into nearby yards. The proposed development will be compatible with the surrounding uses, buildings and structures, in accordance with Section 2.7 of the Official Plan.

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 application at 849 Roshan Drive is not proposing any changes to the existing driveway and parking space. There will be no concerns with respect to the function of the site in terms of access routes, parking, or universal accessibility.

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;

Section 8.3 provides guiding principles for development of residential lots that are used to ensure new residential development is integrated into the existing built fabric and is conducive to active transportation. The proposal follows the principles, as it would foster development that is context appropriate and attractive development which adds to the existing sense of place. This act of reinvestment into the outdoor amenity space would allow for increased ability to enjoy the property and improvements to the residents quality of life.

The subject site is not designated under Part IV or Part V of the *Ontario Heritage Act*, nor is it adjacent to any designated properties. The property is not located within a Heritage Character Area and was identified as being cleared of archaeology under the City of Kingston's Archaeology Master Plan which would exempt the applicant from the

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requirement of an archaeological assessment. The proposed deck and materials is appropriate for the site and supports the Residential designation.

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 lands are not designated under the *Ontario Heritage Act*, nor are the adjacent lands 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 subject lands are located within the Urban Boundary and developed with sufficient municipal water and sewage services. The proposed rear yard deck will not require any services for its intended use.

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 primary use of the minor variance is to permit an elevated rear-yard deck that exceeds the maximum area permitted by the zoning by-law. The proposed development would not alter the primary use of the site and would act as a re-investment into the existing built form. The proposed variance is considered minor, and the development is consistent with the existing built form along Roshan Drive. 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;

The Committee of Adjustment may require additional conditions as it deems appropriate to the approval of the application. Recommended conditions to be applied to the approval of the application are outlined in Exhibit A – Conditions of Approval. 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 proposed development is consistent with the existing built form of the immediate area. It is not anticipated that an undesirable precedent will be set based on the approval of the requested variance to the rear yard deck area.

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The proposal meets the intent of the Official Plan, as the proposed increase in permitted area for unenclosed decks above 1.2 metres from finished grade will not result in any negative impacts to adjacent properties or to the streetscape of the neighbourhood. Additionally, there are multiple existing decks on nearby adjacent residential properties, therefore the addition of a rear yard deck would continue to preserve the existing character for the neighbourhood.

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

The subject property is zoned 'Residential Type 1 – Special Exception 58' in the City of Kingston Zoning By-Law Number 76-26, entitled "Township of Kingston Restricted Area By-Law", as amended. The R1-58 zone permits single-detached dwellings and accessory structures subject to the requirements outlined in Section 12 and Section 5, respectively, the proposed rear yard deck does not conform to all applicable regulations under Section 5.

The proposal requires a variance to Section 5(25)(b) – Yard Encroachment regulations, as outlined below:

### **Variance Number 1: Maximum deck size 1.2 metres above finished grade**

By-Law Number 76-26: Section 5(25)(b)

Requirement: 30 square metres

Proposed: 44.74 square metres

Variance Requested: 14.74 square metres

A variance is required from Section 5(25)(b) of Zoning By-Law 76-26 to seek relief for the rear yard deck from the maximum permitted area of 30 square metres for decks above 1.2 metres in height. The proposed rear yard elevated deck will be approximately 3 metres (10 feet) in height which triggers the 30 square metre deck area maximum provision. The proposal does not comply with the maximum deck area of Section 5 (25)(b). As such, the applicant is seeking a variance of 14.74 square metres to construct the elevated rear yard deck.

The intent of the maximum area for decks above 1.2 metres in height within a 'R1' zone is to protect the surrounding properties from adverse impacts from intrusive overlook and privacy concerns that could result in a reduction of the ability to enjoy one's property. There are multiple existing built form and site-specific characteristics that would assist with mitigating these concerns and the proposal is not expected to adversely impact surrounding property owners or contribute to unnecessary overlook or shadowing into neighbouring properties. An increased maximum deck area would maintain the intent of the by-law by preventing overdevelopment of the rear yard and allowing for increased functionality of the amenity space.

The general intent and purpose of Zoning By-Law Number 76-26 is maintained.



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

The variance is considered minor as there is an existing setback between the abutting residential property, multiple mitigation measures and site characteristics to buffer adjacent properties from negative effects resulting from the increased deck size and the property abuts an EPA designation which does not include any residential development. The setbacks of the proposed deck conform to the restrictions under the zoning by-law for decks and stairs elevated above 1.2 metres in height, however the proposed deck would exceed the maximum permitted area (30 square metres). It is acknowledged that an increase in deck area does not have the same effect associated with a dwelling, as there are lesser impacts to building massing and shadowing for adjacent properties.

The requested variance will result in a development that is consistent with the existing built form of residential development along Roshan Drive. The proposal is considered as minor infill development which is similar to the massing, style, and character of adjacent residential dwellings. The requested variance will not result in intrusive overlook with respect to adjacent residential properties as a result of the existing built form and setbacks of the dwelling unit. The variance will not alter the existing streetscape or character of the neighbourhood.

The proposed variance is considered minor in nature.

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

The requested variance is desirable for the appropriate development and use of land as the property abuts only one residential property and is in keeping with the existing rear yard deck at 849 Roshan Drive, abuts a non-residential zone (EPA), and provides for greater setbacks than the current zoning by-law requirements. The proposed rear yard deck 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 maximum area for decks in a Residential Zone.

The variance is desirable and an appropriate use of the land as it would enhance the functionality of the rear yard amenity space by permitting a deck with sufficient area to accommodate outdoor activities.

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 type="checkbox"/> Fire & Rescue                | <input type="checkbox"/> Kingston Hydro                    | <input type="checkbox"/> City's Environment Division             |
| <input type="checkbox"/> Solid Waste                  | <input type="checkbox"/> Parks Development                 | <input type="checkbox"/> Canadian National Railways              |

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- |   |  |  |
|---|--|--|
| <input checked="" type="checkbox"/> Building Services | <input checked="" type="checkbox"/> Engineering Department | <input checked="" type="checkbox"/> Heritage (Planning Services) |
| <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 application from moving forward. Utilities Kingston advised that the applicant/contractor should ensure locates are done by contacting Ontario One-Call. 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 were received. Any public comments received after the publishing of this report will be included as an addendum to the Committee of Adjustment Agenda.

**Previous or Concurrent Applications**

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

**Conclusion**

The requested variance maintains 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.

Approval of this application will permit the construction of a 44.74 square metre elevated deck in the rear yard of the subject property. The proposed rear yard deck will act as reinvestment into the existing residential use on-site and the application for a minor variance is appropriate and represent good planning.

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**Existing Policy/By-Law:**

The proposed application was reviewed against the policies of the Province of Ontario and City of Kingston to ensure that the changes would be consistent with the Province's and the City's vision of development. The following documents were assessed:

**Provincial**

Provincial Policy Statement, 2020

**Municipal**

City of Kingston Official Plan

Zoning By-Law Number 76-26

**Notice Provisions:**

A Committee of Adjustment Meeting is going to be held respecting this application on December 13, 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 20 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, Manager, Development Approvals, 613-546-4291 extension 3213

Niki Van Vugt, Planner, 613-546-4291 extension 3253

**Other City of Kingston Staff Consulted:**

None

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**Exhibits Attached:**

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Neighbourhood Context Map (2021)
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law Number 76-26 (Map 2)
- Exhibit F Site Plan
- Exhibit G Elevations
- Exhibit H Deck Materials
- Exhibit I Public Notice Map

## **Recommended Conditions**

### **Application for minor variance, File Number D13-061-2021**

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

#### **1. Limitation**

That the approved minor variance applies only to the elevated rear yard deck as shown on the approved drawings attached to the notice of decision for 849 Roshan Drive.

#### **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 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 Department (613-546-4291, extension 3180) must be immediately contacted.

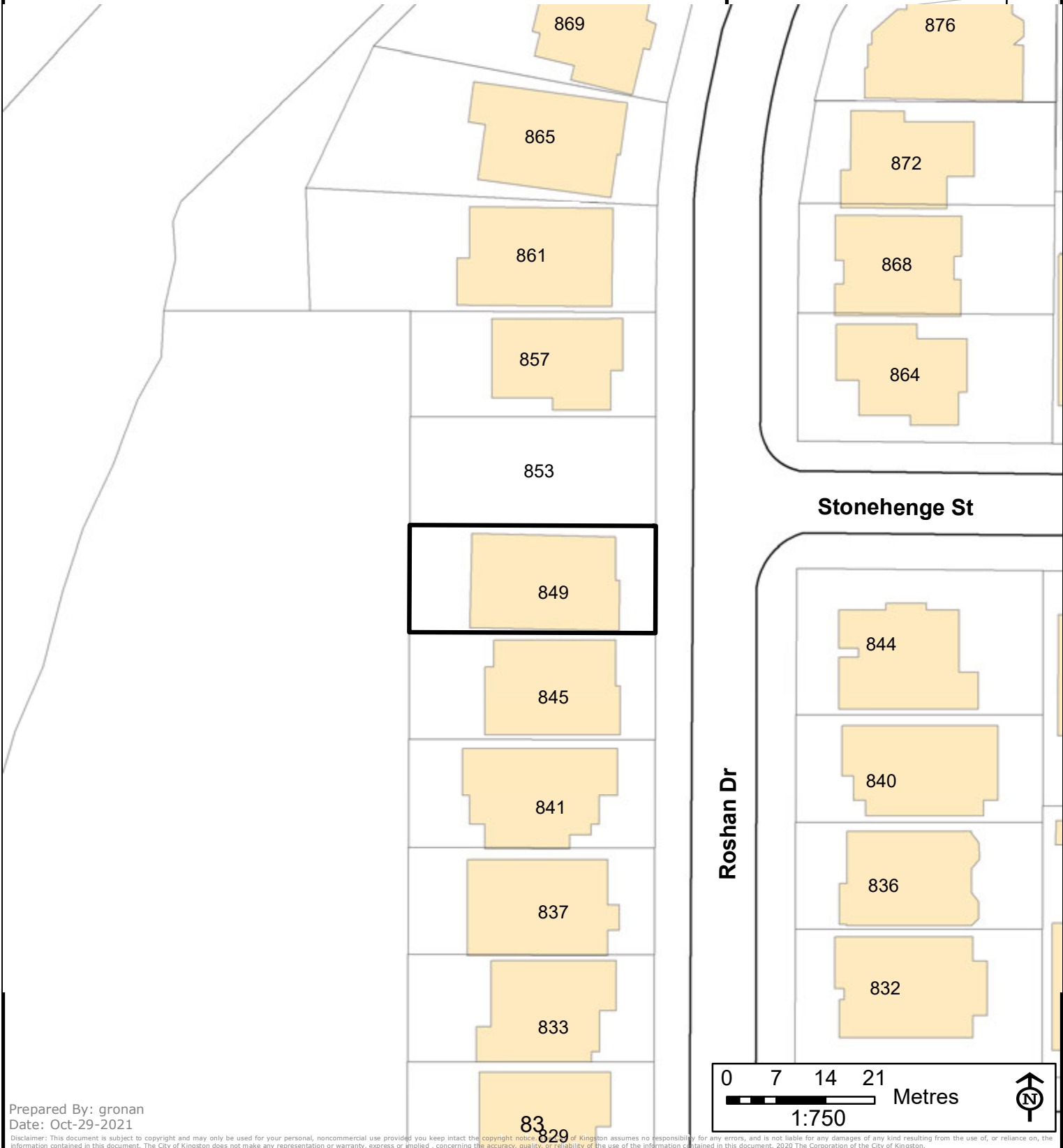
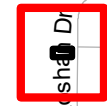
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries at the Ministry of Government and Consumer Services (416-326-8404), the Program and Services Branch of the Ministry of Heritage, Sport, Tourism and Culture Industries (416-314-7132), and the City of Kingston's Planning Services Department (613-546-4291, extension 3180) must be immediately contacted.



# Committee of Adjustment Key Map

Address: 849 Roshan Road  
File Number: D13-061-2021

 Lands Subject to Minor Variance





# Committee of Adjustment Neighbourhood Context (2021)

Address: 849 Roshan Road  
File Number: D13-061-2021

- Subject Lands
- Property Boundaries
- Proposed Parcels





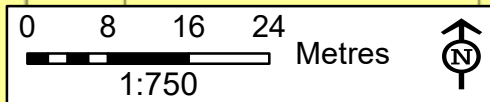
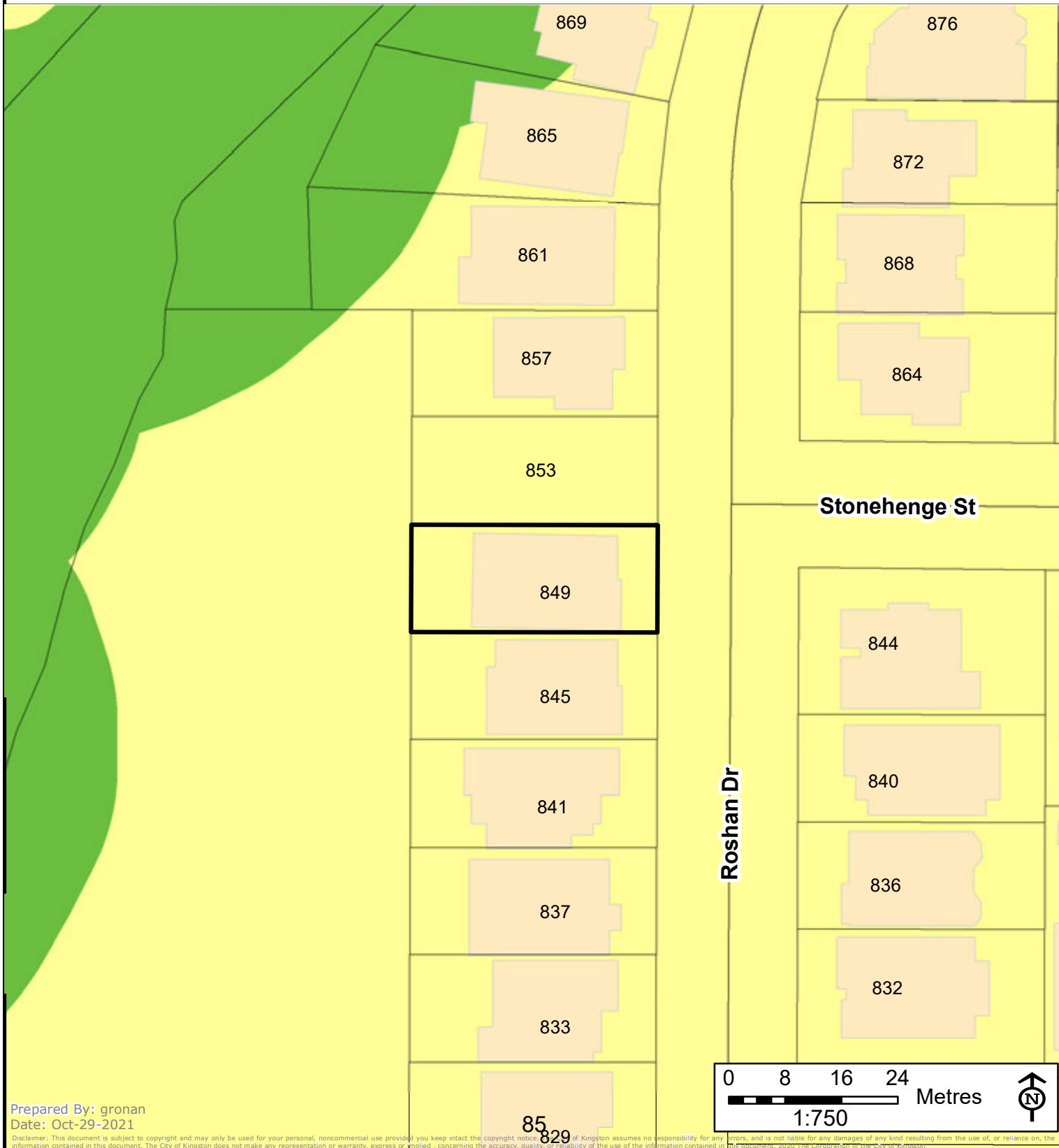
Committee of Adjustment  
Official Plan, Existing Land Use

Address: 849 Roshan Road  
File Number: D13-061-2021

Subject Lands

ENVIRONMENTAL PROTECTION AREA

RESIDENTIAL





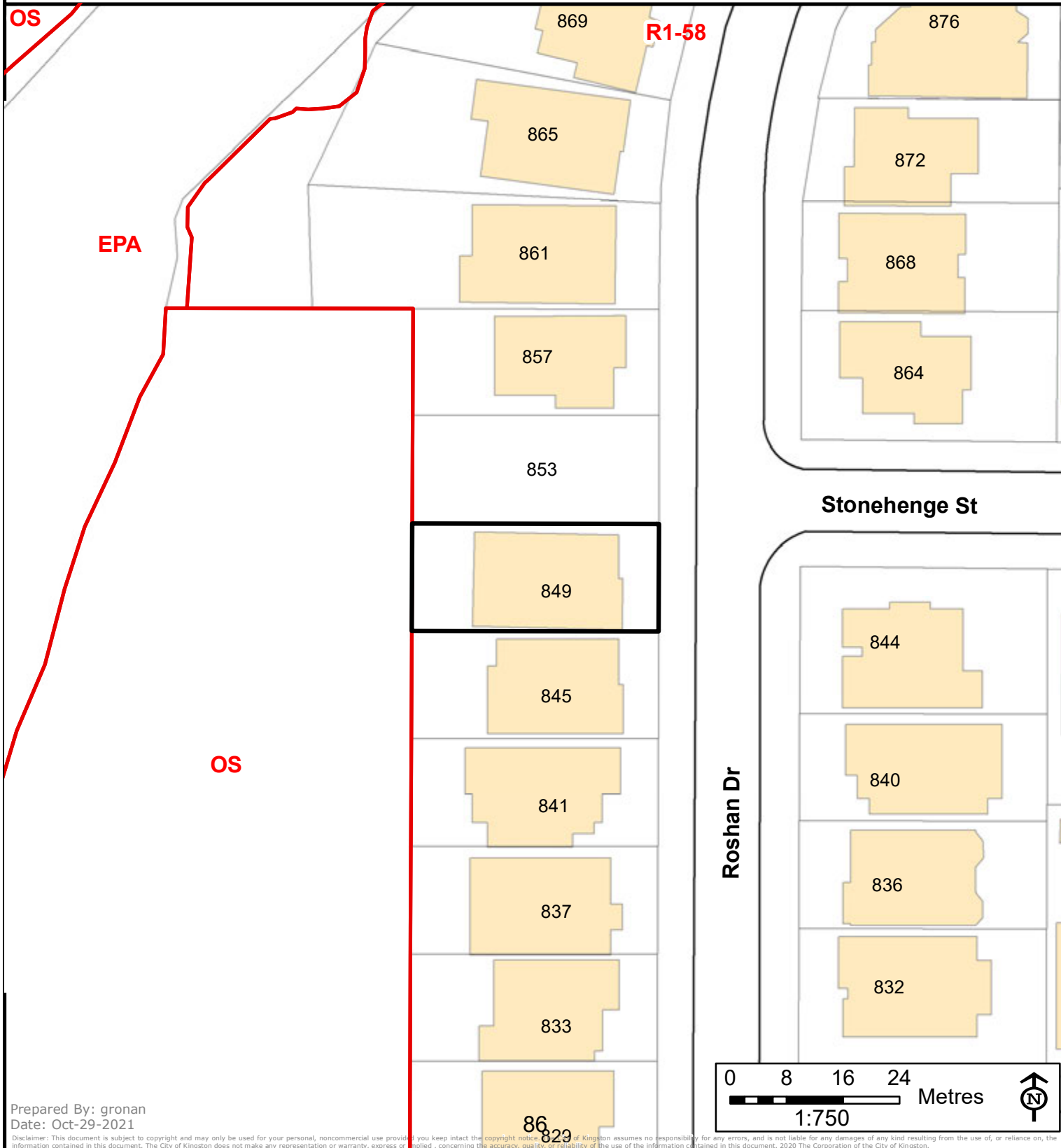


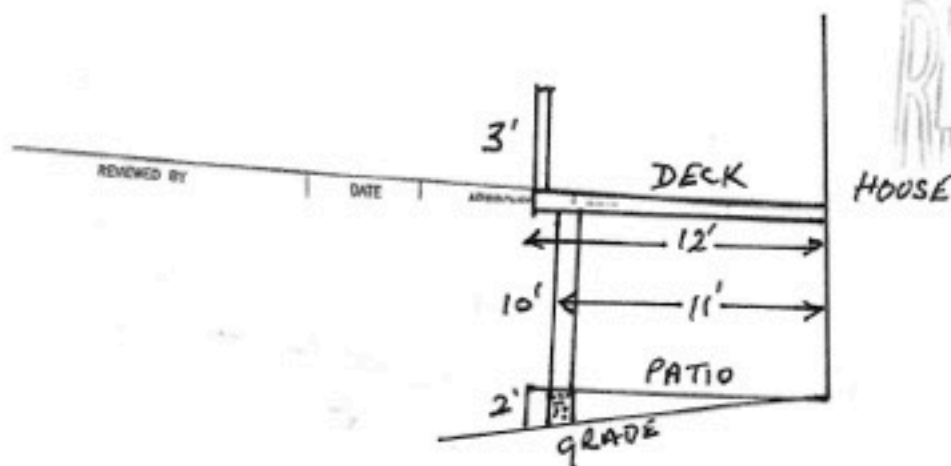
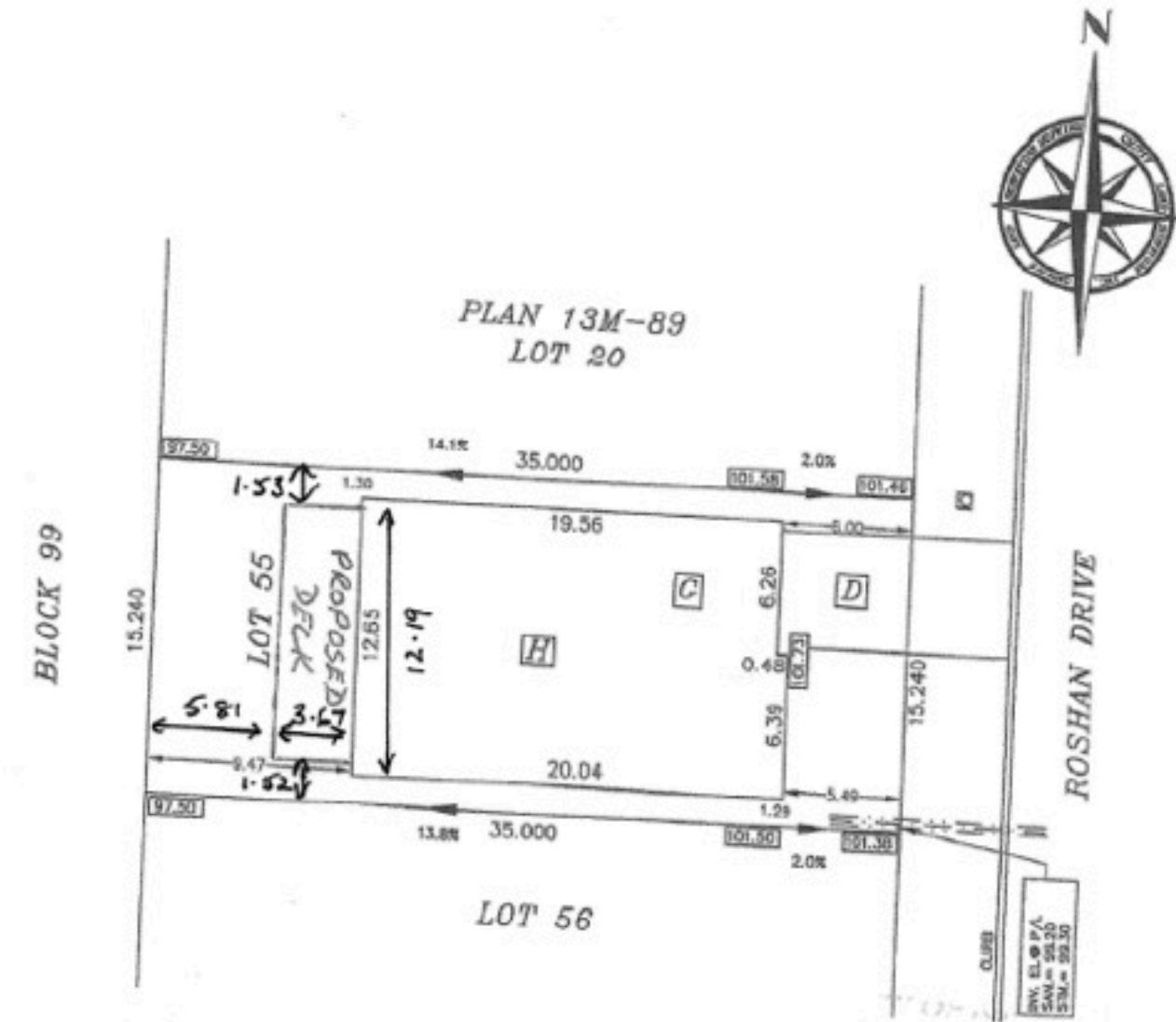
Planning Services

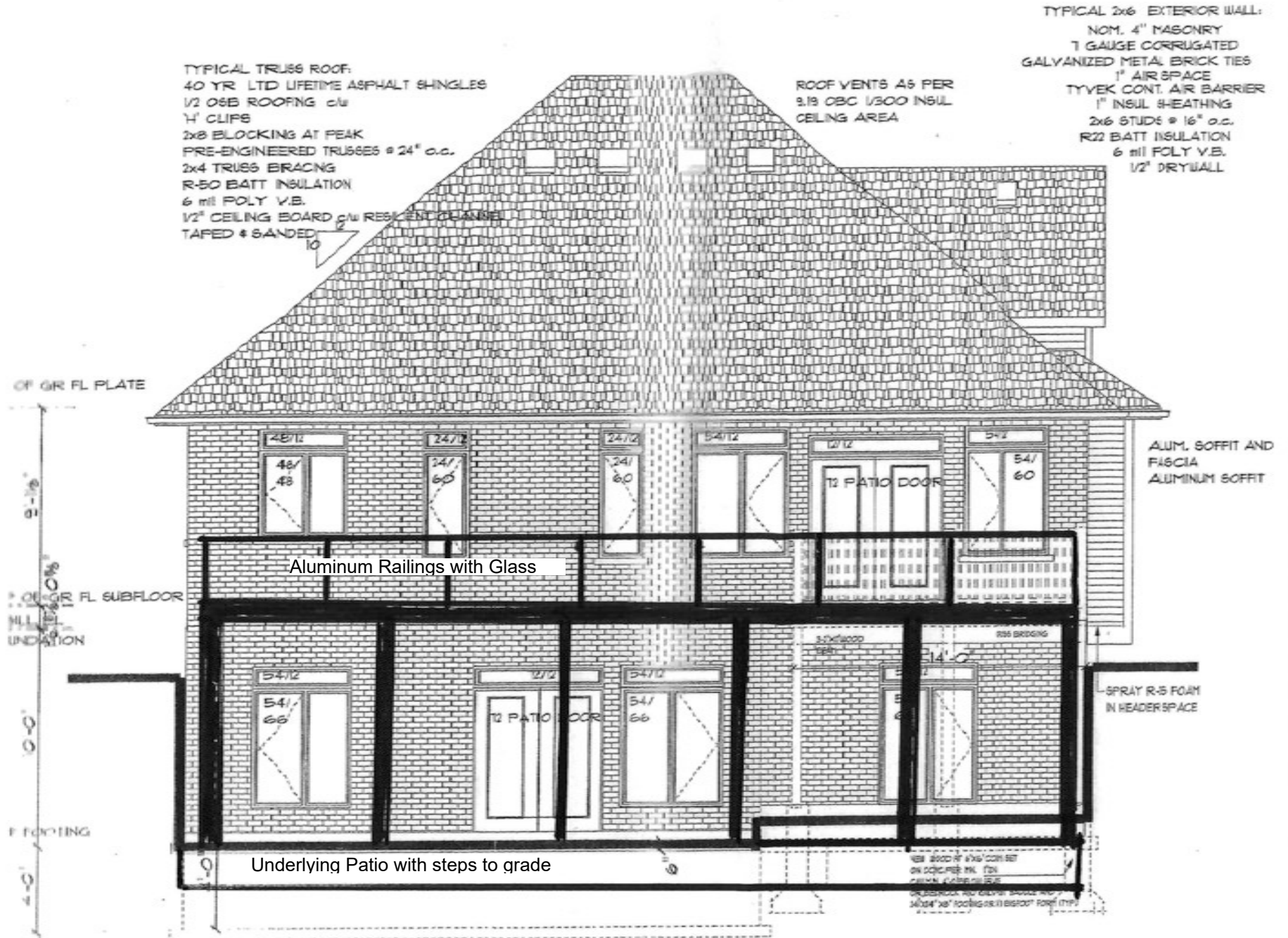
Committee of Adjustment  
Existing Zoning - By-law 76-26, Map 2

Address: 849 Roshan Road  
File Number: D13-061-2021

- Subject Lands
- Consolidated Zoning

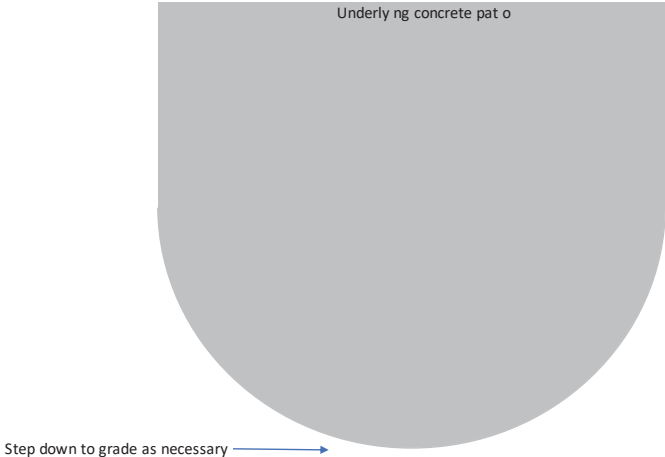








Rear Deck - 849 Roshan Drive0



- Ledge Board
40'1½" of 2"x12" vT Lumber mounted to house through brick veneer into rim joist according to code.v
- Beam
3 x 40'1½" of 2"x12" vT Lumber mounted on posts according to code.v
- Joists
12' of 2" x 8" vT Lumber 16" ØC with central support for perpendicular centre board.v
  
- Posts
6 x 6" x 6" PVL Lumber (8' OLC). Basement is 10' high from basement walkout grade to bottom of main floor deck. Installed with saddle brackets sunk into concrete with 12" sonotubes supported by 24" v bigfoots to a depth of 4' according to code.v
  
- Deck Boards
1" x 6" grey composite deck boards installed with invisible clips.v  
 20' composite parallel boards separated by a central perpendicular board.v
  
- House
Deck centred on rear of house leaving approximately 9" on each side.v



# Committee of Adjustment Public Notice Notification Map

Address: 849 Roshan Road  
File Number: D13-061-2021

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

