



**City of Kingston
Report to Committee of Adjustment
Report Number COA-22-064**

To: Chair and Members of the Committee of Adjustment
From: Lindsay Sthamann, Intermediate Planner
Date of Meeting: September 19, 2022
Application for: Minor Variance
File Number: D13-046-2022
Address: 744 Riverview Way
Owner: Colin and Christine Youngman
Applicant: Tom Darby

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 744 Riverview Way. The applicant is proposing to construct a deck that is more than 1.2 metres above finished grade with an area that exceeds 30 square metres. The existing single-family home was constructed without a rear deck. The home has a walk-out basement, so a taller deck is required to reach the door on the main floor. The applicant has proposed a deck (and stairs) with 51 square metres of area above 1.2 metres, this is 21 square metres more than what is permitted under the Zoning By-Law. A minor variance is required under Zoning By-Law 32-74 and Zoning By-Law 2022-62 as the proposed deck and steps would exceed the maximum permitted area for a structure above 1.2 metres from finished grade in a residential zone.

The final draft of the City's new Zoning By-Law was approved by Council at its meeting held on April 26, 2022. As this application is scheduled for a Committee of Adjustment meeting

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subsequent to that date, the application has been reviewed against both the current Zoning By-Law Number 8499, as well as Kingston Zoning By-Law Number 2022-62.

The requested minor variance is consistent with the general intent and purpose of both the City of Kingston Official Plan, Zoning By-Law Number 32-74, and Kingston Zoning By-Law 2022-62. 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.

Recommendation:

That minor variance application, File Number D13-046-2022, for the property located at 744 Riverview Way to construct a deck that is more than 1.2 metres above finished grade with an area that exceeds 30 square metres, be Approved; as described below:

Variance Number 1A: Increase Maximum Size of a Deck more than 1.2 Metres Above Grade

By-Law Number 32-74: Section 5(23)(b)

Requirement: Maximum 30 Square Metres

Proposed: 51 Square Metres

Variance Requested: 21 Square Metres

Variance Number 1B: Increase Maximum Size of a Deck more than 1.2 Metres Above Grade

By-Law Number 2022-62: Table 4.20.4.1

Requirement: maximum of 30.0 square metres is permitted at a height of 1.2 metres or greater

Proposed: 51 Square Metres

Variance Requested: 21 Square Metres; and

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-22-064.

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Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER

Lindsay Sthamann, Intermediate
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 August 29, 2022, a minor variance application was submitted by Tom Darby, on behalf of the owners, Colin and Christine Youngman, with respect to the property located at 744 Riverview Way. The variance is requested to increase the maximum size of a deck more than 1.2 metres above finished grade from 30 square metres to 51 square metres.

The proposed deck is approximately 2.5 metres above finished grade. The deck will be set back 1.8 metres from the north side property line, 2.1 metres from the south side property line, and 15 metres from the rear property line. The deck is proposed with an area of approximately 42 square metres and is oversized to provide amenity area and to connect two rear doors on the main floor of the house that are at a higher elevation due to the walk-out basement and slope down towards the rear lot line.

The proposed stairs down from the deck are also included in the total area. The stairs have an area of approximately 9 square metres, half of which would be 1.2 metres above finished grade. For this variance, the total area of the stairs and the full area of the deck are added together to result in 51 square metres, this provides flexibility in the construction of the stairs.

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

- Site Plan (Exhibit H)
- Elevations (Exhibit I)
- Site Photo (Exhibit J)
- Owner's Authorization

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 744 Riverview Way (Exhibit B – Key Map and Exhibit C – Neighbourhood Context Map). The subject lands are approximately 624 square metres and has 15 metres of frontage on Riverview Way. The site is currently developed with a single family detached dwelling and attached garage. The property is located within an established residential subdivision where surrounding properties share a similar built form of single-detached dwellings. The Cataraqui Region Conservation Authority was circulated as a result of the parcels close proximity the Rideau Canal.

The subject property is designated 'Low Density Residential' and 'Environmental Protection Area' in the Rideau Community Secondary Plan of the Official Plan (Exhibit E – Official Plan), zoned 'R12-5' in Zoning By-Law Number 32-74 (Exhibit F – Zoning By-Law 32-74), and will be zoned 'UR3.B' in the new Kingston Zoning By-Law 2022-62 (Exhibit G – Zoning By-Law 2022-

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62). The property abuts other residential uses to the North, East, and South and Environmental Protection Area to the West.

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.

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

The subject property is designated 'Low Density Residential' and 'Environmental Protection Area (EPA)' in the City of Kingston Official Plan.

For this area, the EPA is meant to be conceptual boundary (as identified in Official Plan Policy 10B.7.1). Though this property appears to be designated EPA as per the City's mapping the EPA boundary was actually placed at the property line through the subdivision application (D12-010-2017). This subdivision application and subsequent re-zoning application (D14-011-2017) considered the environmental impacts of a residential subdivision at this location. The CRCA has reviewed this application and identified no concerns with proximity to the Rideau Canal. As such, the following review is based on the 'Residential' designation of the property.

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 proposal meets the intent of Section 2 of the Official Plan, and the strategic policy direction to focus growth within the City's defined Urban Boundary. The subject property is located within a Housing District, as found in Section 2.2.5, which are planned to remain stable but will continue to mature and adapt as the City evolves. The proposal to

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construct a rear elevated deck and steps to access the rear yard acts as an investment to the existing property through minor development that is compatible with the prevailing built form in the area, as per Section 2.6 and 2.7. The proposed rear yard deck and steps is a minor accessory structure to the permitted principal use and the requested variance will only affect how much area the accessory structure is permitted

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 property is located on a developed lot in an existing residential subdivision. 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 at this height without the need for a minor variance.

The parcel does not abut any residential lots to the West. The location and orientation of the proposed deck and steps does not significantly increase potential overlook for the abutting properties.

The deck will result in development that is consistent with the built form of existing rear yard deck and steps found on nearby residential properties located to the north and south. Properties in this area have walk-out basements as the lots slope down towards the rear lot line. It is common to have tall decks in the rear yard in order to access the main floor level in this neighbourhood.

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 744 Riverview Way is not proposing any changes to the existing driveway, garage, or parking spaces. 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;

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

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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 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 and steps 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 and steps that exceeds the maximum area permitted by the zoning by-law. The proposed development would not alter the primary use of the site. The proposed variance is 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;

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.

The proposal meets the intent of the Official Plan and 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 R12-5 in the City of Kingston Zoning By-Law Number 32-74, entitled "Township of Pittsburgh Zoning By-Law", as amended. The R12-5 zone permits

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single-detached dwellings and accessory structures subject to the requirements of the By-Law. The proposed rear yard deck and steps do not conform to all applicable regulations under Section 5.

The proposal requires a variance to Section 5(23)(b) – Yard Encroachments regulations, as outlined below:

Variance Number 1A: Increase Maximum Size of a Deck more than 1.2 Metres Above Grade

By-Law Number 32-74:	Section 5(23)(b)
Requirement:	Maximum 30 Square Metres
Proposed:	51 Square Metres
Variance Requested:	21 Square Metres

A variance is required from Section 5(23)(b) of Zoning By-Law Number 32-74 to seek relief from the maximum permitted area of 30 square metres for decks and steps above 1.2 metres in height. The proposed rear yard elevated deck and steps will be approximately 2.5 metres in height.

The intent of the maximum area for decks and steps above 1.2 metres in height within residential zones is to protect the surrounding properties from adverse impacts, such as intrusive overlook and privacy concerns, that could result in a reduction of the ability to enjoy one’s property. There are no residential properties to the rear of this property. The two direct neighbours to the north and the south will not be unduly impacted as a deck of a slightly smaller size would be permitted in this location at the same height. The proposed deck exceeds the required side-yard setback on both sides (1.8 metres on north side and 2.1 metres on the south side). The required side yard setback would be 1.2 metres on one side and 0.6 metres on the other. An increased maximum area would maintain the intent of the by-law by preventing overdevelopment and allow for increased functionality of the rear yard amenity space. The general intent and purpose of Zoning By-Law Number 32-74 is maintained.

The subject property will be zoned UR3.B in Zoning By-Law 2022-62. The same variance is required under Section 4.20.4.1 of that By-Law and the same rationale applies. The general intent and purpose of Kingston Zoning By-Law 2022-62 is maintained.

Variance Number 1B: Increase Maximum Size of a Deck more than 1.2 Metres Above Grade

By-Law Number 2022-62:	Section 4.20.4.1
Requirement:	maximum of 30.0 square metres is permitted at a height of 1.2 metres or greater
Proposed:	51 Square Metres
Variance Requested:	21 Square Metres

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3) The variance is minor in nature

The requested variance would not impact the residential character of the neighbourhood or generate adverse effects for abutting properties. The setbacks of the proposed deck and steps conform to the restrictions under the zoning by-law for decks and steps elevated above 1.2 metres in height, however the proposal would exceed the maximum permitted area of 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 proposal is considered as minor 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 property. The proposed variance is minor in nature.

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

The requested variance would improve the functionality of the rear yard amenity space by permitting a deck that provides sufficient area to allow for outdoor entertainment and steps to allow for access and egress to the rear yard space. The resulting built form satisfies all applicable provisions of the Zoning By-Law, except for the maximum area for decks and steps 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 checked="" type="checkbox"/> Real Estate & Environmental Initiatives |
| <input checked="" type="checkbox"/> Fire & Rescue | <input checked="" type="checkbox"/> Kingston Hydro | <input checked="" type="checkbox"/> City’s Environment Division |
| <input checked="" type="checkbox"/> Solid Waste | <input checked="" type="checkbox"/> Parks Development | <input type="checkbox"/> Canadian National Railways |
| <input type="checkbox"/> Housing | <input checked="" type="checkbox"/> District Councillor | <input type="checkbox"/> Ministry of Transportation |
| <input type="checkbox"/> KEDCO | <input checked="" 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

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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 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 variance(s) maintain(s) the general intent and purpose of both the City of Kingston Official Plan, Zoning By-Law Number 32-74, and Kingston Zoning By-Law 2022-62. The proposal is desirable for the appropriate development or use of the land, building or structure and the requested variance(s) 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 deck that exceeds 30 square metres at a height above 1.2 metres from finished grade.

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 32-74

Kingston Zoning By-Law 2022-62

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on September 19, 2022. Pursuant to the requirements of the *Planning Act*, a notice of Statutory

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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 41 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

Lindsay Sthamann, Intermediate Planner, 613-546-4291 extension 3287

Other City of Kingston Staff Consulted:

None

Exhibits Attached:

- Exhibit A Recommended Conditions
- Exhibit B Key Map
- Exhibit C Neighbourhood Context Map (2021)
- Exhibit D Public Notification Map
- Exhibit E Official Plan Map
- Exhibit F Zoning By-Law 32-74, Map 4
- Exhibit G Zoning By-Law 2022-62
- Exhibit H Site Plan
- Exhibit I Elevations
- Exhibit J Site Photo

Recommended Conditions

Application for minor variance, File Number D13-046-2022

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

1. Limitation

That the approved minor variance applies only to the proposed 42 square metre deck with 9 square metre stairs 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 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.

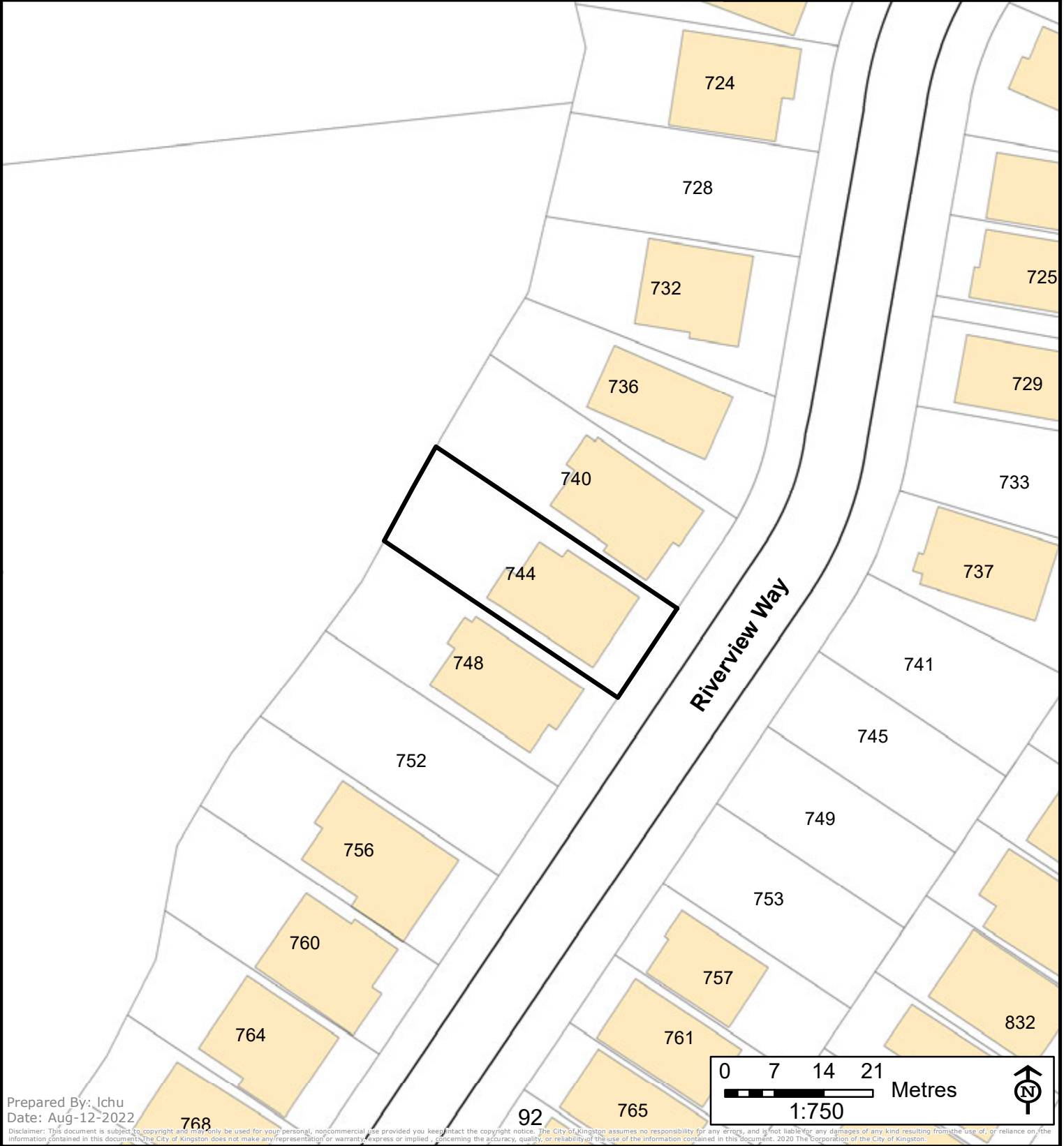
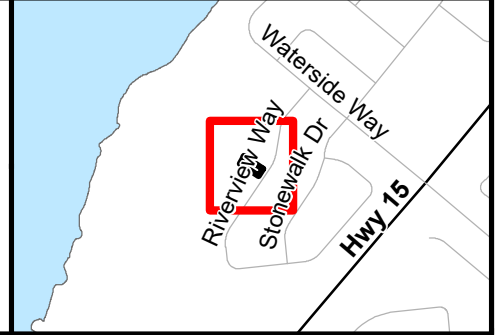
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Registrar of Cemeteries at the Ministry of Government and Consumer Services (416-212-7499), the Program and Services Branch of the Ministry of Heritage, 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: 744 Riverview Way
File Number: D13-046-2022




 Lands Subject to Minor Variance





Committee of Adjustment
Neighbourhood Context (2021)

Address: 744 Riverview Way
File Number: D13-046-2022

-  Subject Lands
-  Property Boundaries
-  Proposed Parcels



Prepared By: lchu
Date: Aug-31-2022

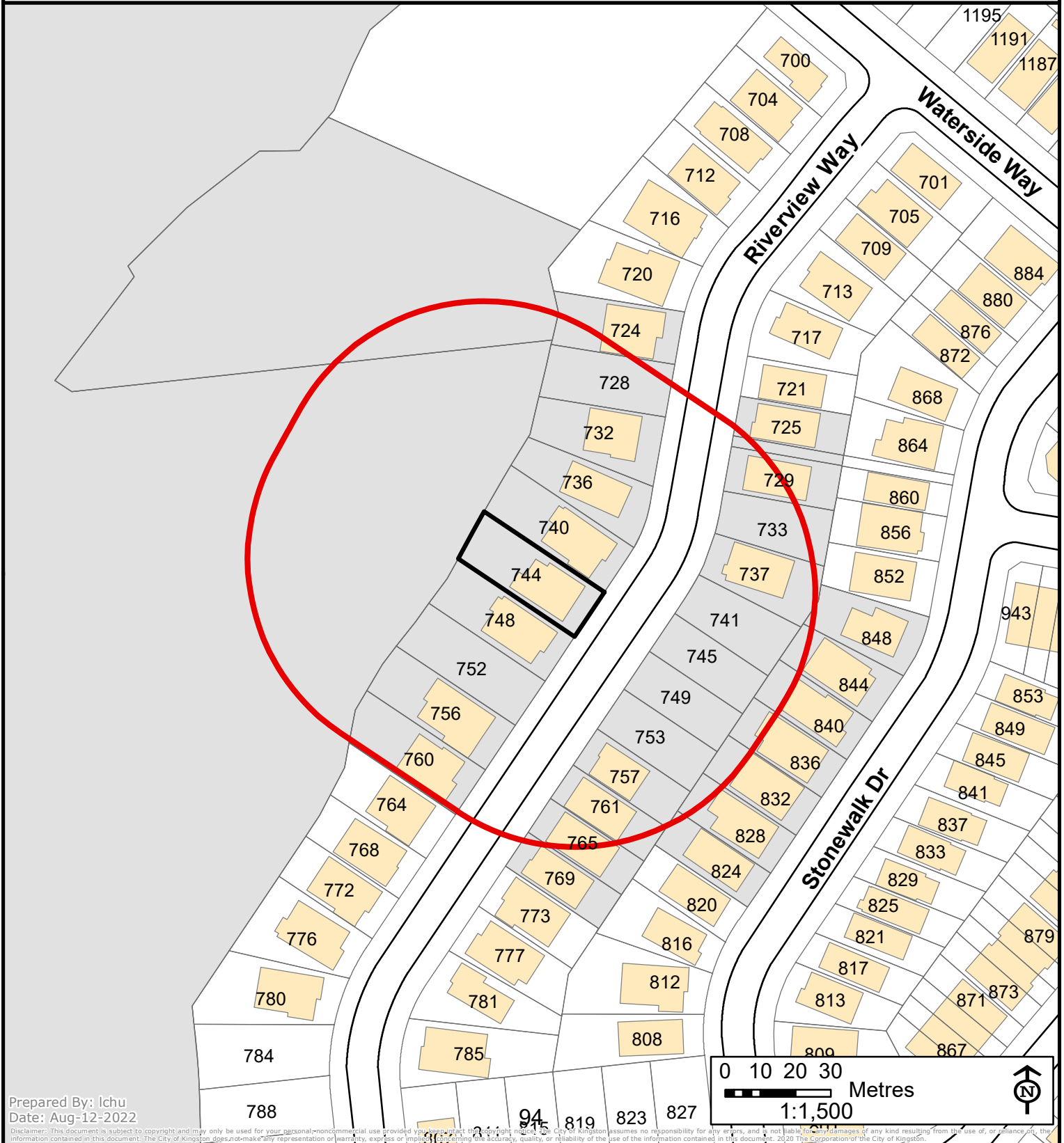
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Committee of Adjustment Public Notice Notification Map

Address: 744 Riverview Way
File Number: D13-046-2022

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







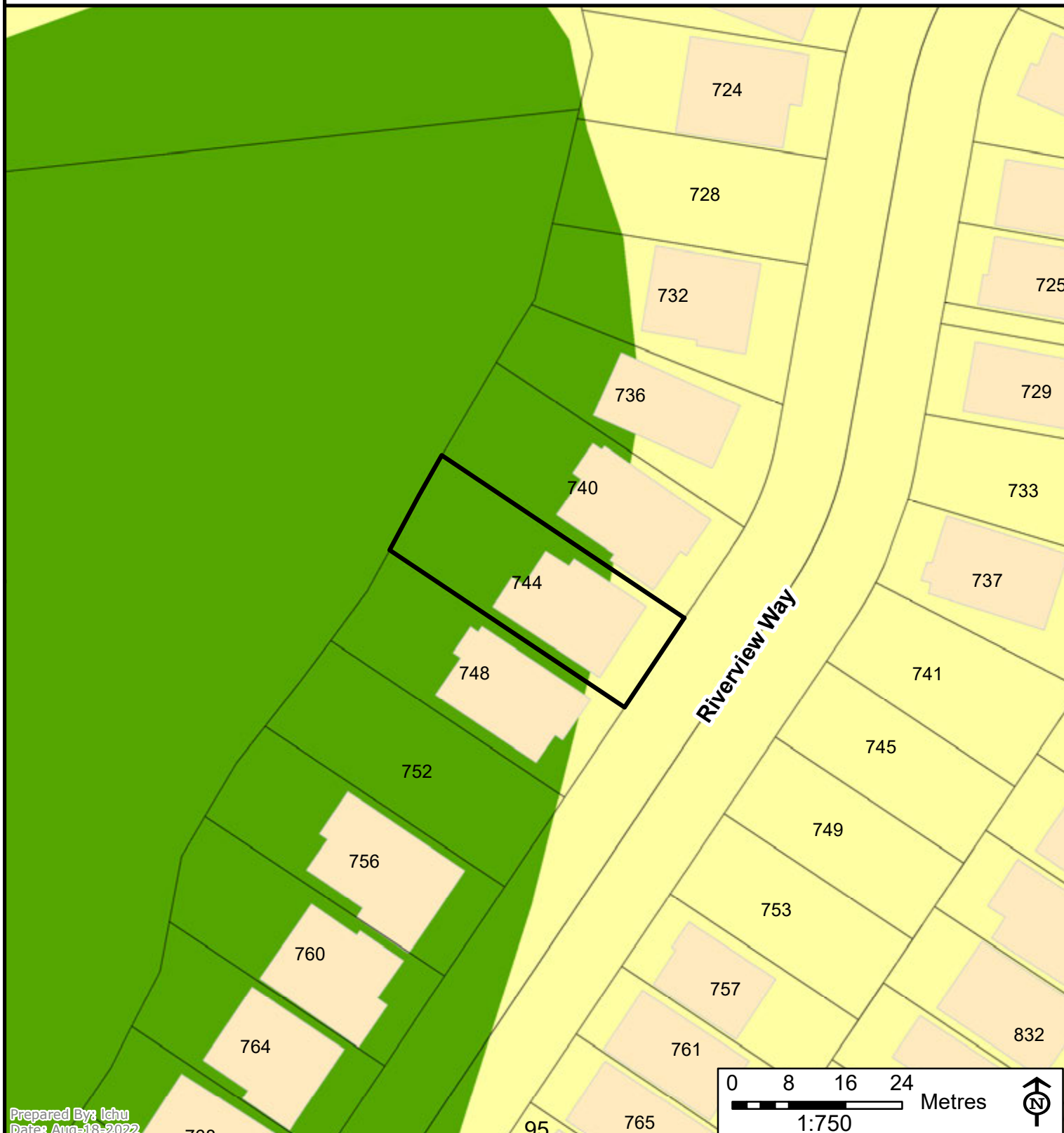


Planning Services

Committee of Adjustment Official Plan, Existing Land Use

Address: 744 Riverview Way
File Number: D13-046-2022

-  Subject Lands
-  LOW DENSITY RESIDENTIAL
-  ENVIRONMENTAL PROTECTION AREA
-  SECONDARY PLAN AREA



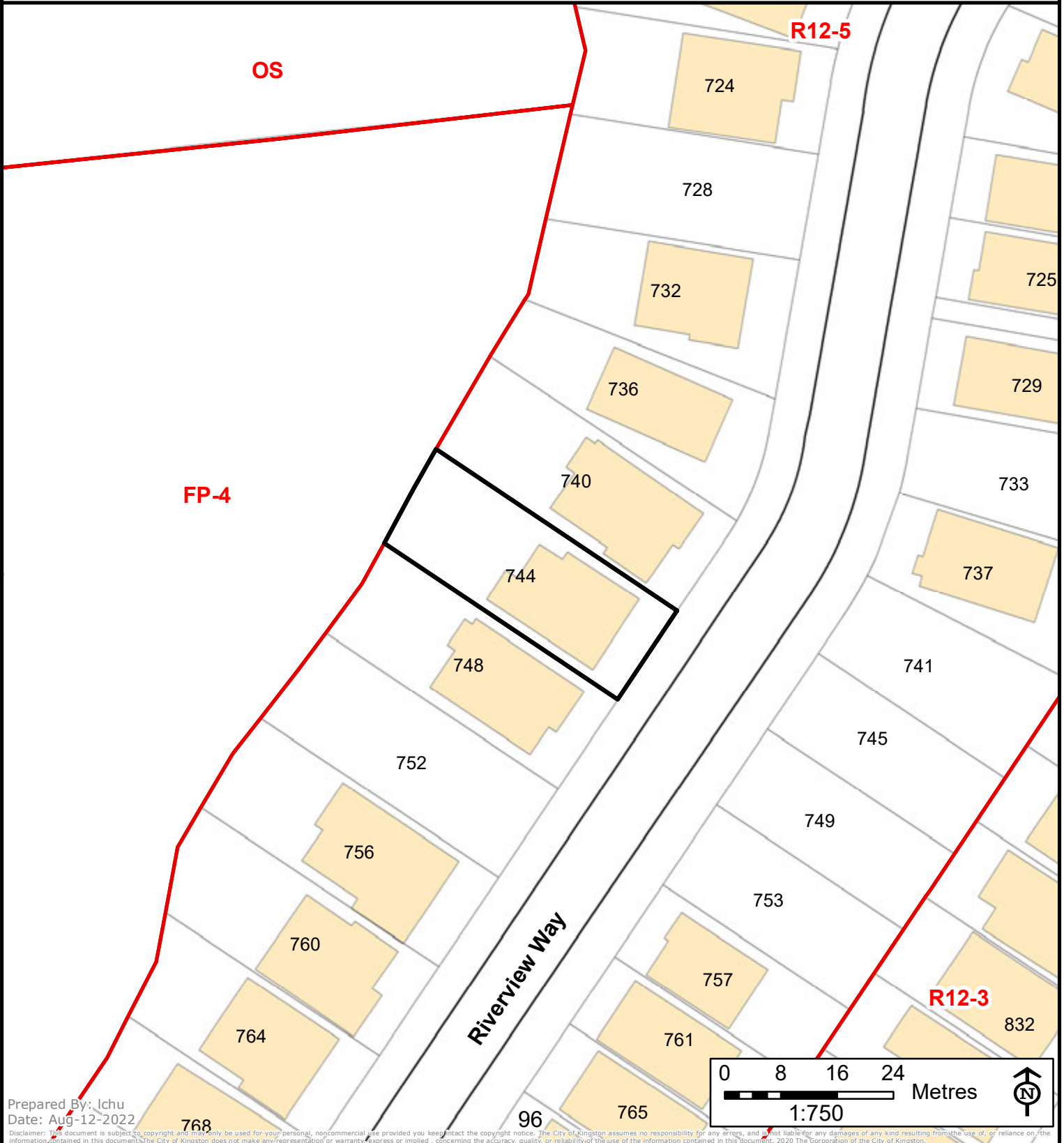
Prepared By: lchu
Date: Aug-18-2022

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Committee of Adjustment
Existing Zoning - By-law 32-74, Map 4
Address: 744 Riverview Way
File Number: D13-046-2022

- Subject Lands
- Consolidated Zoning



Prepared By: Ichu
Date: Aug-12-2022

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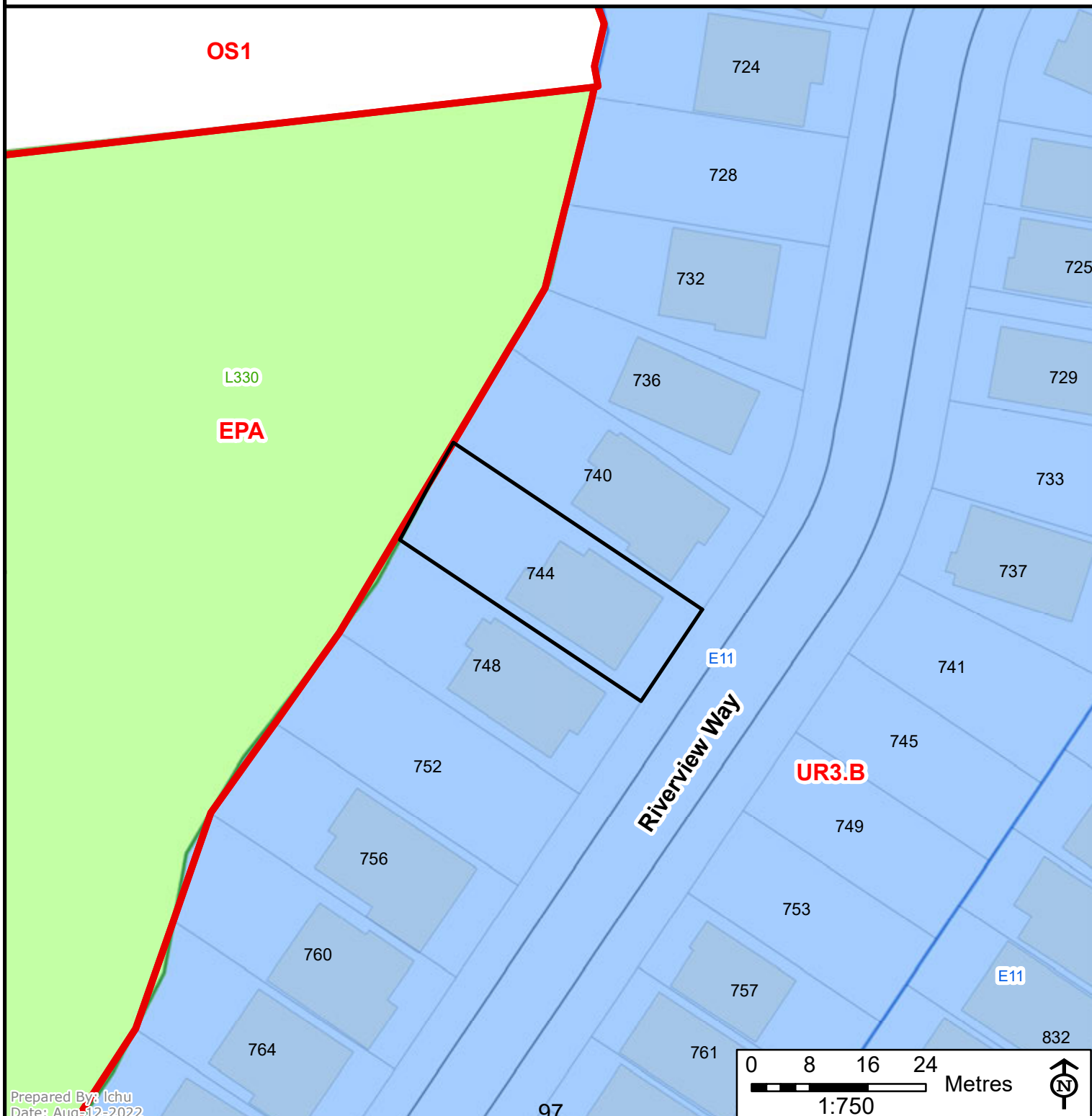
Planning Services

Planning Committee Reference Kingston Zoning Bylaw

Address: 744 Riverview Way
File Number: D13-046-2022

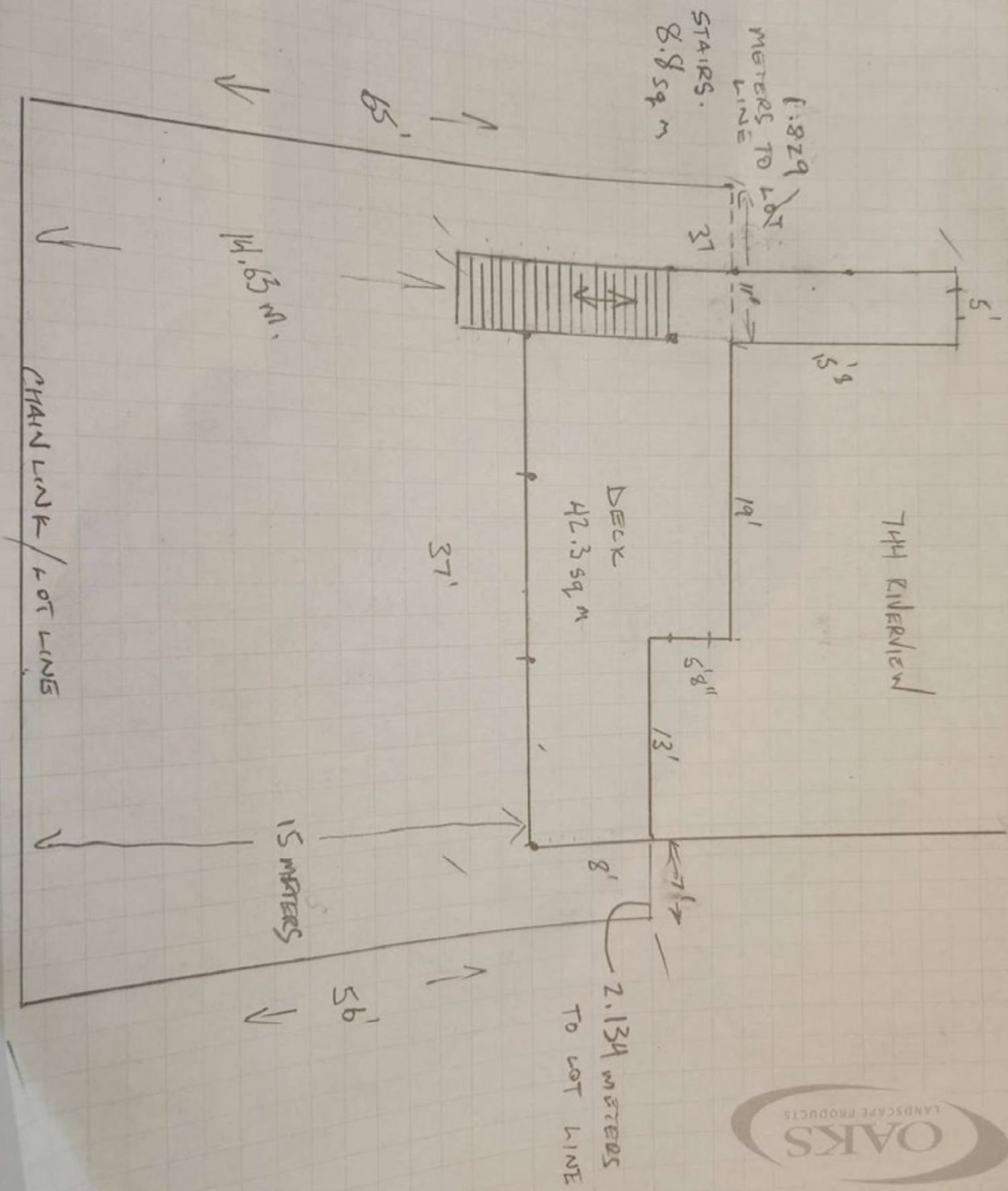
Subject Lands
Schedule 1 Zoning Map
 Zone

Schedule E - Exception Overlay
 Legacy Exceptions (LXXX)
 Exceptions (EXXX)
Schedule F - Holding Overlay
 Holding Overlay (HXXX)



Prepared By: Ichu
Date: Aug-12-2022

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