



**City of Kingston
Report to Committee of Adjustment
Report Number COA-24-017**

To: Chair and Members of the Committee of Adjustment
From: Annemarie Eusebio, Intermediate Planner
Date of Meeting: January 22, 2024
Application for: Permission
File Number: D13-066-2023
Address: 831 Wartman Avenue
District: District 4 - Lakeside
Owner: Gay Booth
Applicant: Rod Stokes

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 permission for the property located at 831 Wartman Avenue. The subject property has an area of 1,065 square metres and a lot frontage of approximately 19.6 metres. The site is currently developed with an existing single detached house and rear deck, which are considered legal non-complying as both structures are located within 30 metres of the high-water mark of Lake Ontario. The applicant is proposing to demolish the existing rear deck and replace it with a larger deck. The existing rear deck is 22.4 square metres in area. The deck is proposed to be expanded to 30 square metres in area and will be at a height greater than 1.2 metres above finished grade. The proposed rear deck will not encroach further into the existing water setback. The property is designated Residential in the Official Plan and is zoned Urban Residential 4 (UR4) in Kingston Zoning By-Law Number 2022-62.

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The requested application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Kingston Zoning By-Law Number 2022-62. The proposed rear deck is desirable for appropriate development of the subject property and will not result in undue adverse impacts on the surrounding properties and neighbourhood. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

Recommendation:

That the application for permission, File Number D13-066-2023, for the property located at 831 Wartman to construct a 30 square metre rear deck on the existing dwelling be **Approved**; and,

That approval of the application be subject to the conditions attached as Exhibit A (Recommended Conditions) to Report Number COA-24-017.

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Authorizing Signatures:

ORIGINAL SIGNED BY PLANNER

Annemarie Eusebio, Intermediate
Planner

**Consultation with the following Management of the Growth & Development Services
Group:**

Tim Park, Director, Planning Services
Meghan Robidoux, Supervisor, Development Approvals

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Options/Discussion:

On November 10, 2023, an application for permission was submitted by Rod Stokes, on behalf of the owner, Gay Booth, with respect to the property located at 831 Wartman Avenue. The site is currently developed with an existing single detached house and rear deck, which are considered legal non-complying as both structures are located within 30 metres of the high-water mark of Lake Ontario. The applicant is proposing to demolish the existing rear deck and replace it with a larger deck. The existing rear deck is 22.4 square metres in area. The proposed rear deck will be expanded to 30 square metres in area and will be at a height greater than 1.2 metres above finished grade. The proposed deck will not further encroach into the existing water setback.

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

- Survey and Existing Deck Plan (Exhibit F)
- Site Plan and Elevations (Exhibit G)
- Cover Letter

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 831 Wartman Avenue (Exhibit B – Key Map). The subject property has an area of 1,065 square metres and a lot frontage of approximately 19.6 metres. The property is a waterfront lot, which directly abuts Lake Ontario. The site is located within the Reddendale neighbourhood, which is an established residential subdivision characterized by single primarily single detached houses. (Exhibit C – Neighbourhood Context Map).

The subject property is designated Residential in the Official Plan (Exhibit D – Official Plan Map) and zoned Urban Residential 4 (UR4) in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map).

Legal Non-complying

Pursuant to Subsection 45(2)(a)(i) of the *Planning Act*, the Committee of Adjustment may permit the enlargement or extension of a legal non-complying building or structure, but no permission may be given to enlarge or extend the building or structure beyond the original limits of the land where the legal non-complying building or structure is situated. In considering whether to grant a permission pursuant to Subsection 45(2)(a)(i), the relevant test is:

- 1) Whether the application is desirable for appropriate development of the subject property;
and,

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- 2) Whether the application will result in undue adverse impacts on the surrounding properties and neighbourhood.

The requested permission is desirable for the appropriate development of the subject property. The proposed rear deck will be 30 square metres in area and will provide additional outdoor amenity space for the residents of the existing home (Exhibit G – Site Plan and Elevations). The proposed increased width of the rear deck will accommodate for the functional needs of the homeowner as sufficient wheelchair access will be provided for the enjoyment of the waterfront view of Lake Ontario.

The proposal will not result in undue adverse impacts on the surrounding properties and neighbourhood. The proposed deck is a modest form of development and will be well separated from the neighbouring properties. The proposed enlarged deck will be located at the rear of the dwelling and will not result in any adverse visual impacts from the street. It is not anticipated that the proposed deck extension will create any loss of privacy, visual intrusion or affect the enjoyment of adjacent residential properties. Elevated decks of similar size can be found on several of the adjacent properties.

In addition, the proposed location of the development is supported by Cataraqui Region Conservation Authority as the proposed deck will not encroach further into the 30 metre water setback than the existing development on the subject property. There are no flooding or erosion issues associated with the proposal.

Provincial Policy Statement

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.

Official Plan

The subject property is designated Residential in the Official Plan (Exhibit D – Official Plan Map).

In certain circumstances, it may be desirable to grant the extension, enlargement or relocation of a non-conforming use as provided by the *Planning Act*. When reviewing an application for such extension, enlargement or relocation, the Committee of Adjustment must be satisfied that the legal non-conforming use or legal non-complying structure continued to the date of the application to the Committee, and that the application would not extend such use beyond the area and site owned or used on the day of passage of the implementing zoning by-law. In

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addition, the Committee of Adjustment may have regard to the eight criteria included in Section 9.5.13 of the Official Plan.

Section 3.9 of the Official Plan contains policies with respect to waterfront protection that require the protection of a 30 metre naturalized buffer along a waterbody, also referred to as a “ribbon of life”, to help enhance water quality, minimize soil erosion, provide plant and animal habitat, establish connectivity and wildlife corridors, and contribute to the overall health of shoreline ecosystems, particularly fish habitat.

Generally, any new development must be located outside of the 30 metre ribbon of life. However, in this instance, development may be permitted for the enlargement of a building structure or facility which existed on the date of adoption of the Official Plan, provided that the enlargement does not further encroach into the existing water setback (Section 3.9.6). The existing single detached house and rear deck are considered non-complying as they are located within the 30 metres of the high watermark. The existing deck has an area of 22.4 square metres and will be enlarged to an area of 30 square metres (Exhibit F – Survey and Existing Deck Plan and Exhibit G – Site Plan and Elevations). The proposal is considered appropriate and is consistent with the Official Plan as the enlarged rear deck will not encroach further into the existing water setback. The proposal will meet the functional needs of the residents and will be compatible with existing development along Wartman Avenue.

A portion of the rear of the subject property is located within a Natural Hazard Area within Schedule 11A – Constraint Mapping of the Official Plan. This application was circulated to the Cataraqui Region Conservation Authority for review. They have advised that CRCA regulatory policies require new buildings and structures (including decks) to be set back a minimum of 6 metres from the flood plain. The existing deck at its closest point maintains the minimum 6 metre flood plain setback. Since the proposal is to extend the deck laterally, but no closer to the hazard, there are no concerns from a flooding hazard perspective.

The proposed deck will maintain a setback of approximately 13 metres from the toe of slope. As the new deck is not further encroaching into the access allowance portion of the erosion hazard and is outside the stable slope and erosion allowances, CRCA staff have advised that there are no concerns from an erosion hazard perspective.

Lands within 15 metres of the regulatory flood plain and erosion hazard are subject to Ontario Regulation 148/06: Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses. A permit has been issued by CRCA to the owner for the proposed rear deck.

Heritage staff have advised that the subject property is not designated or listed on the City of Kingston's Heritage Property Register, or adjacent to a property which is designated or listed. There are no cultural heritage concerns. The site is not located

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within an area of archaeological potential. Archaeological clearance for the proposed deck is not required.

The proposed deck will have an area of 30 square metres. The proposed rear deck will be similar in style and scale to the rear deck located on the adjacent property at 827 Wartman Avenue. The proposed deck expansion will be well separated from the neighbouring properties as it exceeds the required interior setbacks and will meet the maximum surface area as required for decks and porches in Kingston Zoning By-Law Number 2022-62 (Exhibit G – Site Plan and Elevations). There are several neighbouring waterfront properties also located along the south portion of Wartman Avenue that have dwellings and rear decks with non-complying status. The proposed enlargement of the rear deck on the subject property is compatible within the adjacent residential uses as well as the character of the area.

The proposed deck on the property will not create any new noise, odour, traffic conflict, or other nuisance. The proposed deck represents a modest intensification of an existing serviced lot, there is no undue adverse impacts to existing servicing. At the time of writing, no comments have been received by the public and no issues have been received by internal departments or partner agencies. The proposed development makes efficient use of open space separating the rear of the deck which will not further encroach into 30 metre water-setback.

Zoning By-Law

The subject property is zoned Urban Residential 4 ‘UR4’ in Kingston Zoning By-Law Number 2022-62 (Exhibit E – Zoning By-Law Map). The Urban Residential zone permits a single detached house. As the proposed rear deck exceeds the required minimum interior setbacks and will meet the maximum surface area provisions for porches and decks, it is anticipated that there will be no significant impact on adjacent residential uses with respect to privacy and intrusive overlook.

Section 4.23 of Zoning By-Law 2022-62 requires a minimum 30 metre separation distance from the high-water mark of a waterbody to any use or building. Prior to the enactment of Zoning By-Law 2022-62 on April 26, 2022 and prior to the enactment of Zoning By-Law 76-26 in July 8, 1976, the subject property was zoned ‘Residential’ in Zoning By-Law 749 at the time the single detached house was constructed in 1968. Zoning By-Law 749 did not regulate waterbody separation distances for development. The existing single detached house and rear deck is considered legal non-complying as these structures are located within the required 30 metre separation distance from the high-water mark of Lake Ontario. The existing single detached house and rear deck have been continuous in use since the time of construction.

The proposed deck expansion complies with all other applicable provisions of the Kingston Zoning By-Law.

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Technical Review: Circulated Departments and Agencies

- Building Services
- Finance
- Fire & Rescue
- Solid Waste
- Housing
- KEDCO
- CRCA
- Parks Canada
- Hydro One
- Kingston Airport
- Engineering
- Utilities Kingston
- Kingston Hydro
- Parks Development
- District Councillor
- Municipal Drainage
- KFL&A Health Unit
- Eastern Ontario Power
- Enbridge Pipelines
- Heritage Services
- Real Estate
- Environment Division
- Canadian National Railways
- Ministry of Transportation
- Parks of the St. Lawrence
- Trans Northern Pipelines
- CFB Kingston
- TransCanada Pipelines

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.

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 application for permission under Section 45(2)(a)(i) of the *Planning Act* is consistent with the general purpose and general intent of both the City of Kingston Official Plan and Kingston Zoning By-Law Number 2022-62. The proposed rear deck expansion is desirable for appropriate development of the subject property and will not result in undue adverse impacts on the surrounding properties and neighbourhood. Therefore, it is recommended that this application for permission under Section 45(2)(a)(i) of the *Planning Act* be approved.

Approval of this application will allow for the expansion of an existing legal non-complying rear deck on the subject property municipally known as 831 Wartman Avenue.

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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

Kingston Zoning By-Law Number 2022-62

Notice Provisions:

A Committee of Adjustment Meeting is going to be held respecting this application on January 22, 2024. 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 15 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 (Exhibit H – Public Notification Map).

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:

Meghan Robidoux, Supervisor, Development Approvals, 613-546-4291 extension 1256

Annemarie Eusebio, Intermediate Planner, 613-546-4291 extension 3183

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 (2022)
- Exhibit D Official Plan Map
- Exhibit E Zoning By-Law Map
- Exhibit F Survey and Existing Deck Plan
- Exhibit G Site Plan and Elevations
- Exhibit H Site Photos
- Exhibit I Public Notification Map

Recommended Conditions

The approval of permission application, File Number D13-066-2023, to construct a 30 square metre uncovered deck at the rear of the property shall be subject to the following recommended conditions:

1. Limitation

That the approved permission applies only to the rear 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 Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism (archaeology@ontario.ca) and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.

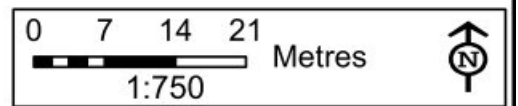
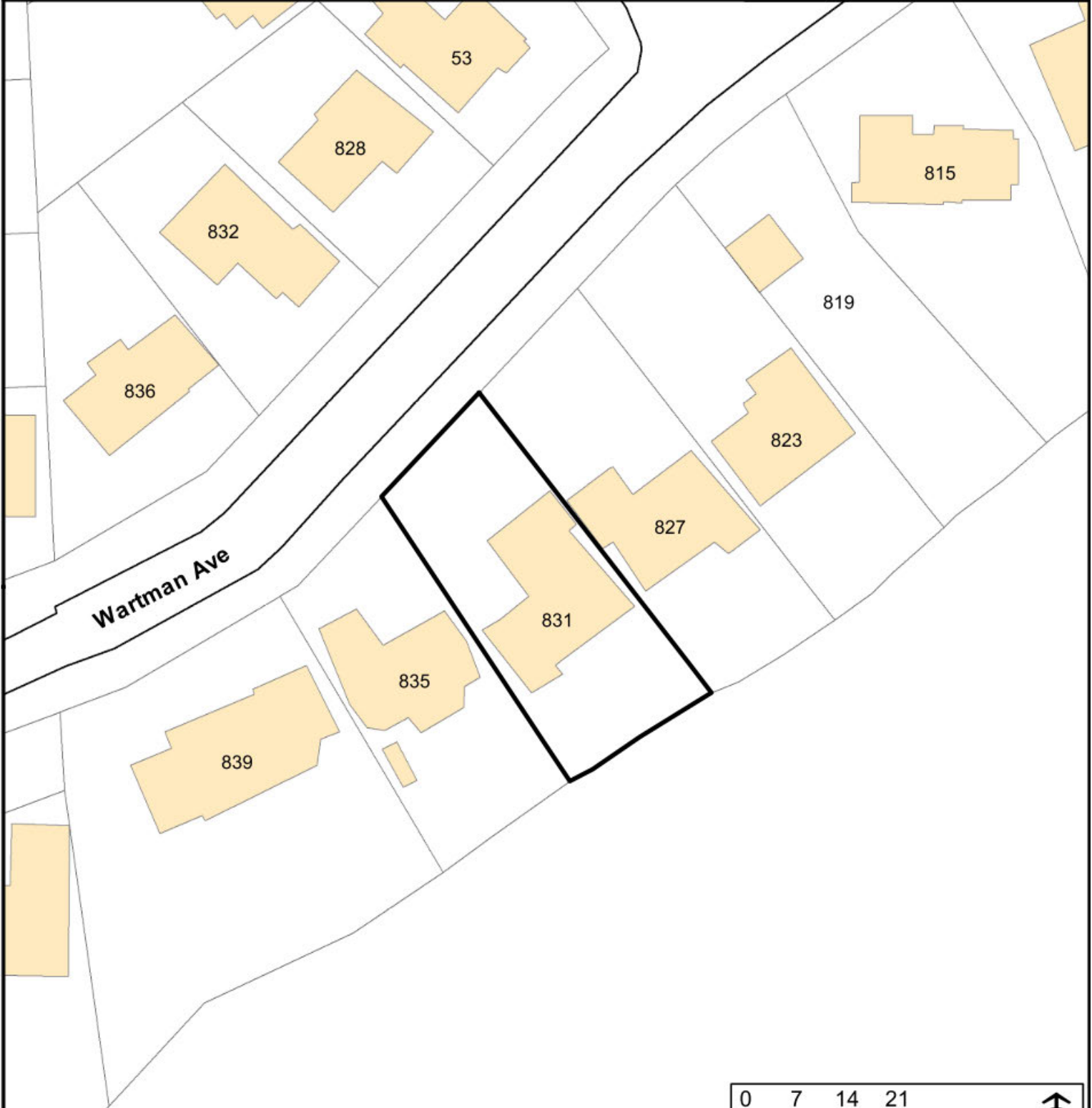
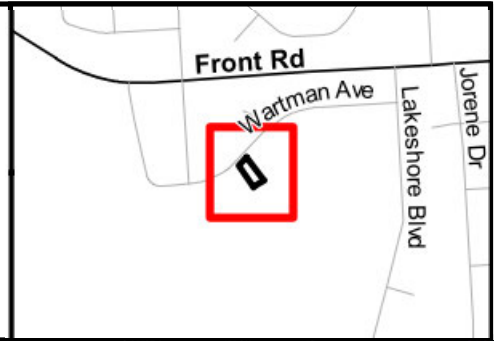
In the event that human remains are encountered, all work must immediately cease and the site must be secured. The Kingston Police (613-549-4660), the Office of the Chief Coroner as a part of the Ontario Ministry of the Solicitor General (1-877-991-9959), the Archaeology Program Unit of the Ministry of Citizenship and Multiculturalism (archaeology@ontario.ca), and City of Kingston's Planning Services (613-546-4291, extension 3180) must be immediately contacted.



Committee of Adjustment Key Map

Address: 831 Wartman Ave
File Number: D13-066-2023

 Lands Subject to Permission

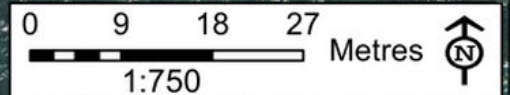




Committee of Adjustment
Neighbourhood Context (2023)

Address: 831 Wartman Ave
File Number: D13-066-2023

- Subject Lands
- Property Boundaries





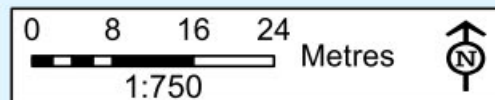
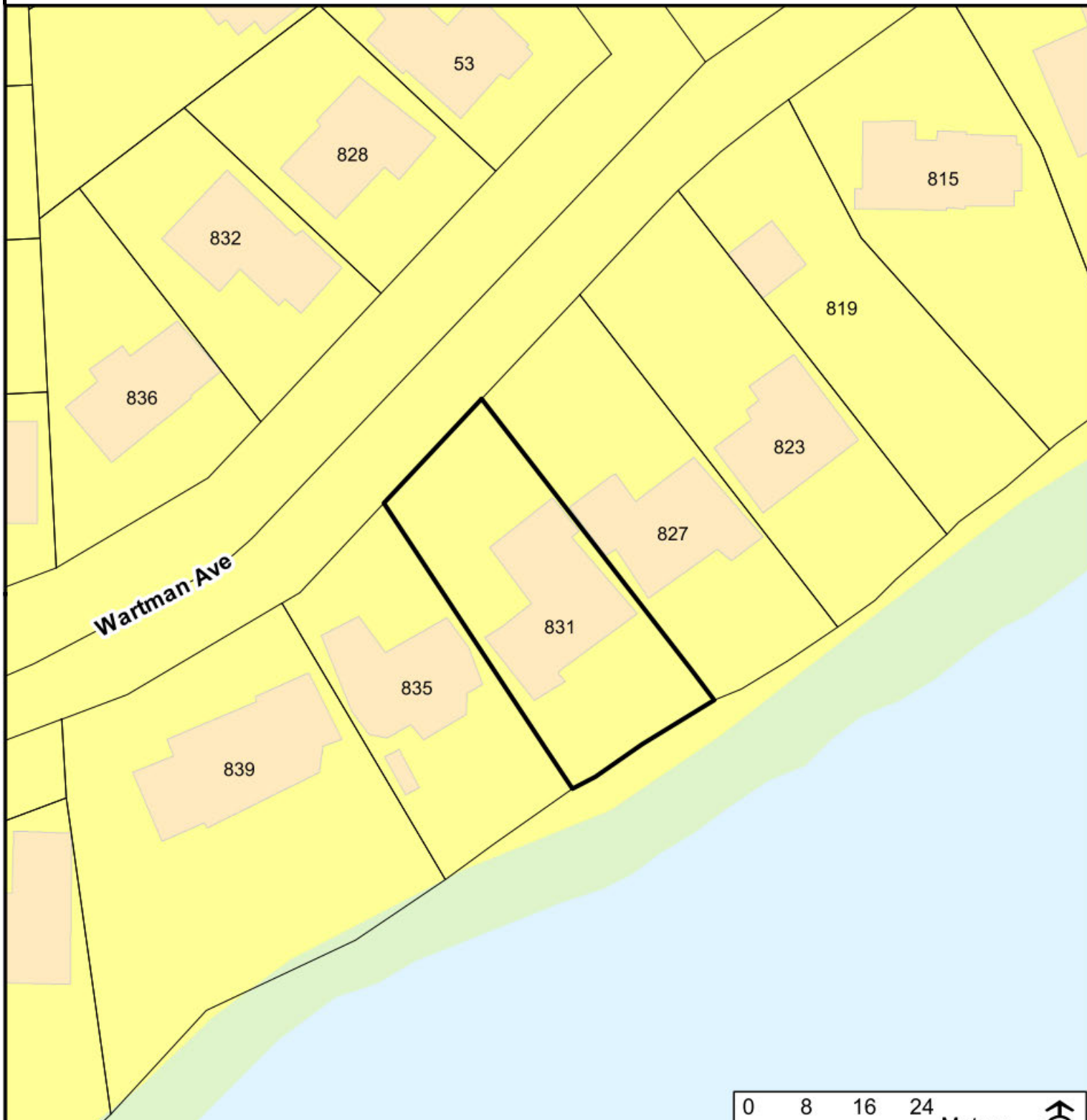


Planning Services

Committee of Adjustment Official Plan, Existing Land Use

Address: 831 Wartman Ave
File Number: D13-066-2023

-  Subject Lands
-  RESIDENTIAL





Committee of Adjustment
Existing Zoning
Kingston Zoning By-Law 2022-62

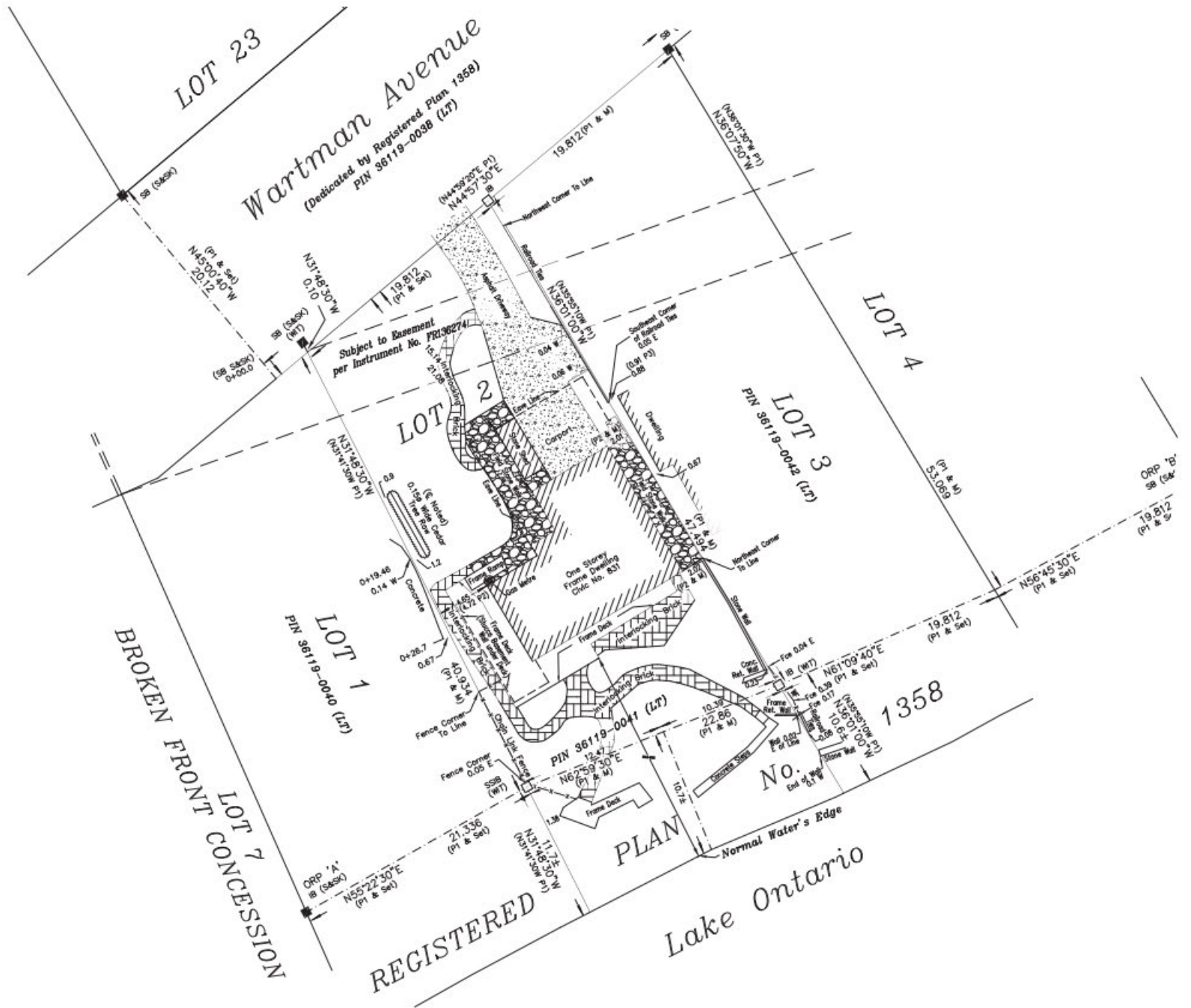
Planning Services

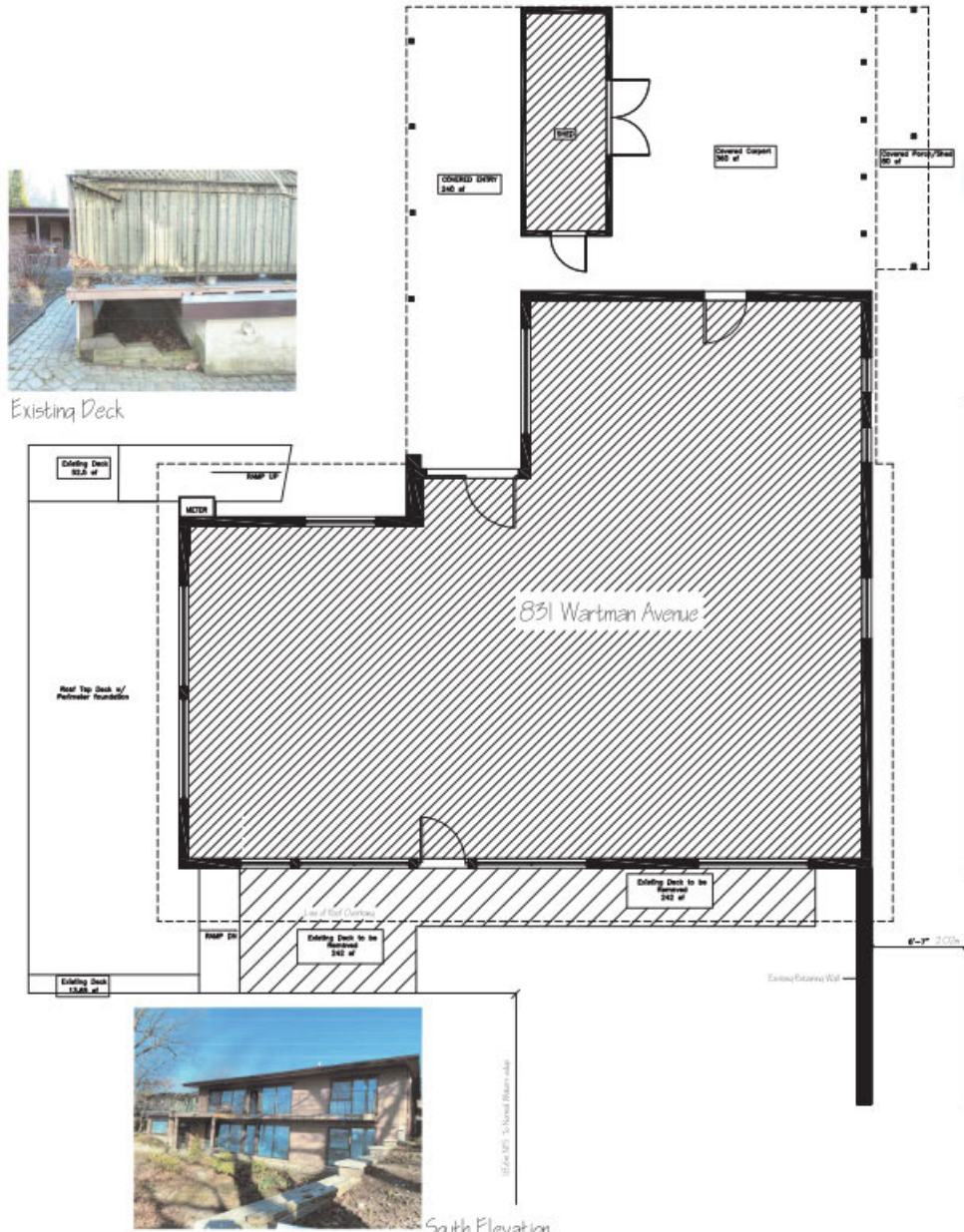
Address: 831 Wartman Ave
File Number: D13-066-2023

- Subject Lands
- Schedule 1 Zoning Map
- Zone

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







Existing Deck



Carport

Covered entry



Roof top Deck with Foundation



West Elevation



South Elevation

General Notes
These plans were designed in accordance with the requirements of the Ontario Building Code. However, we do not warrant.
Client shall verify and/or responsible for all dimensions and material code requirements and shall report any discrepancies to the Client before proceeding with any work.
Plans are copyrighted and any reuse for any other project is strictly prohibited.
These plans form the basis for the permit issuance and any alterations from these plans and details including foundation system, heating system, mechanical, fireplaces, decks, balconies and deck accessories will require a revised drawing and clearance by the Building Department.

DESIGNER INFORMATION
Rod Stokes Consulting
1 Rod Stokes Consulting review and take responsibility for the design work and are qualified in the appropriate categories as "Designer" under Division C Part 3 Section 3.2.4 of the Ontario Building Code.
Firm B.C.I.N.: 38482
Individual B.C.I.N.: 31134
Signed:
Rod Stokes
October 30, 2024



No.	Revised/Issue	Date
1	Issue	10/30/24
2	Revised	10/30/24
3	Revised	10/30/24
4	Revised	10/30/24
5	Revised	10/30/24

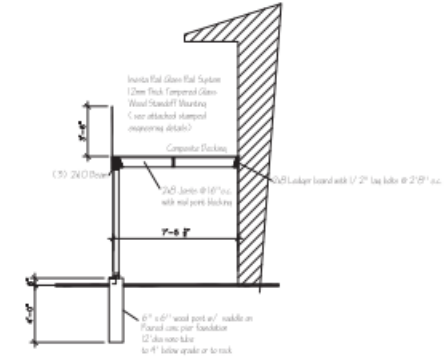
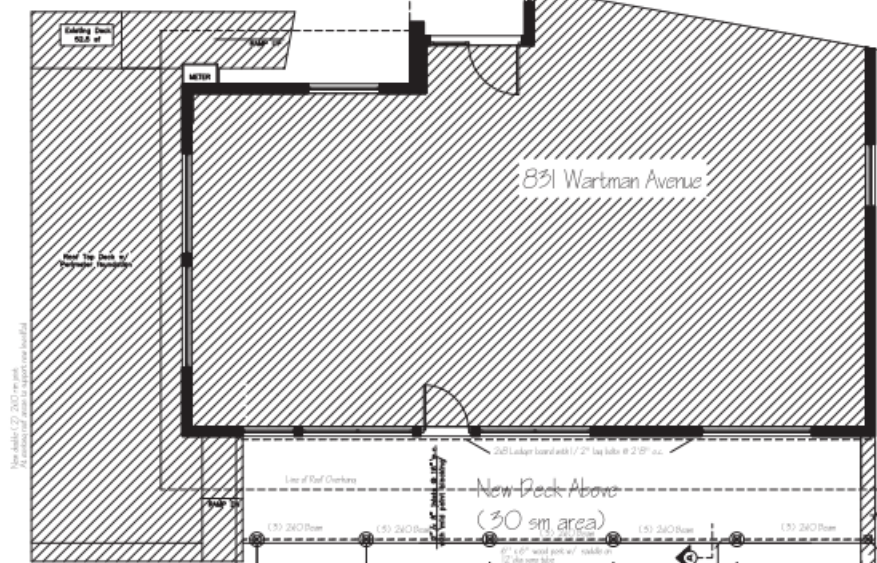


Proposed New Wood Deck
831 Wartman Avenue
Kingston, Ontario

Existing Conditions
Deck Plans

Project	Sheet
Date	A-1
Scale	As noted

New double L 2x2 2x0 tie post
As existing roof areas to support new load(s)



General Notes

These plans were designed in accordance with the requirements of the Ontario Building Code. Drawings not to be scaled.

Contractor shall verify and be responsible for all dimensions and material code requirements and shall report any discrepancies to the Client before proceeding with any work.

Plans are copyright and any attempt for use without written consent is strictly prohibited.

These plans form the basis for the permit application and any alterations from these plans and details including ventilation system, heating system, windows, fireplaces, decks, balconies and deck accessories will require a revised drawing and clearance by the Building Department.

DESIGNER INFORMATION

1. Rod Stokes of Rod Stokes Consulting reviews and takes responsibility for the design work, and am qualified in the appropriate categories as "Designer" under Division C Part 3 Section 3.2.4 of the Ontario Building Code.

Firm B.C.I.N.: 38482
Individual B.C.I.N.: 31134

signed
Rod Stokes
October 30, 2023



1	Minor redesign dimension added	10/26/23
2	Dimension and distance added	10/20/23
3	Issued for Permits Application C of A	10/20/23
4	Revised copy of deck	10/10/23
5	Issued for building permit application	10/17/23
No.	Revision/ Issue	Date



Proposed New Wood Deck
831 Wartman Avenue
Kingston, Ontario

Proposed Deck Framing Plan
Expansion

Sheet	Sheet
Date	A-2
Scale	As noted

Site Statistics Zone UR41 By-law 2022-62

Zone	Description	By-law Required Single Detached	Proposed	Remarks
Section 11.5.1 Zoning provision				
1.	Lot Area	8974	Existing	
2.	Min. Lot Frontage	10.7m	Existing	Variance required
3.	Maximum height	10.7m	Existing	
4.	Min. Front Setback	8.0m	Existing	
5.	Min. Rear Setback	7.6m	Existing	
6.	Minimum Exterior Setback	6.3m	N/A Applicable	
7.	Minimum Interior Setback	n/a - against 1.25m	Existing	
8.	Min. Accessible Setback	N/A	N/A	
9.	Minimum Landscape Open Space	50%	Existing	
10.	Maximum Lot Coverage	50%	Existing	
11.	Maximum Number Principal Buildings	10	1.0 existing	
12.	Maximum Building Depth	N/A	N/A	
Table 4.20.4	Maximum Deck Surface	50cm	50 cm	
4.20.1	Waterproof, Separation Plate(s)	50cm	150cm	Permitted Required

Site Visit Photos

View of the front of the existing dwelling at 831 Wartman Avenue



View of rear of the dwelling and location of new deck



View of Lake Ontario at the rear of the property

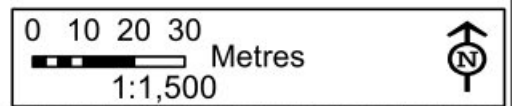
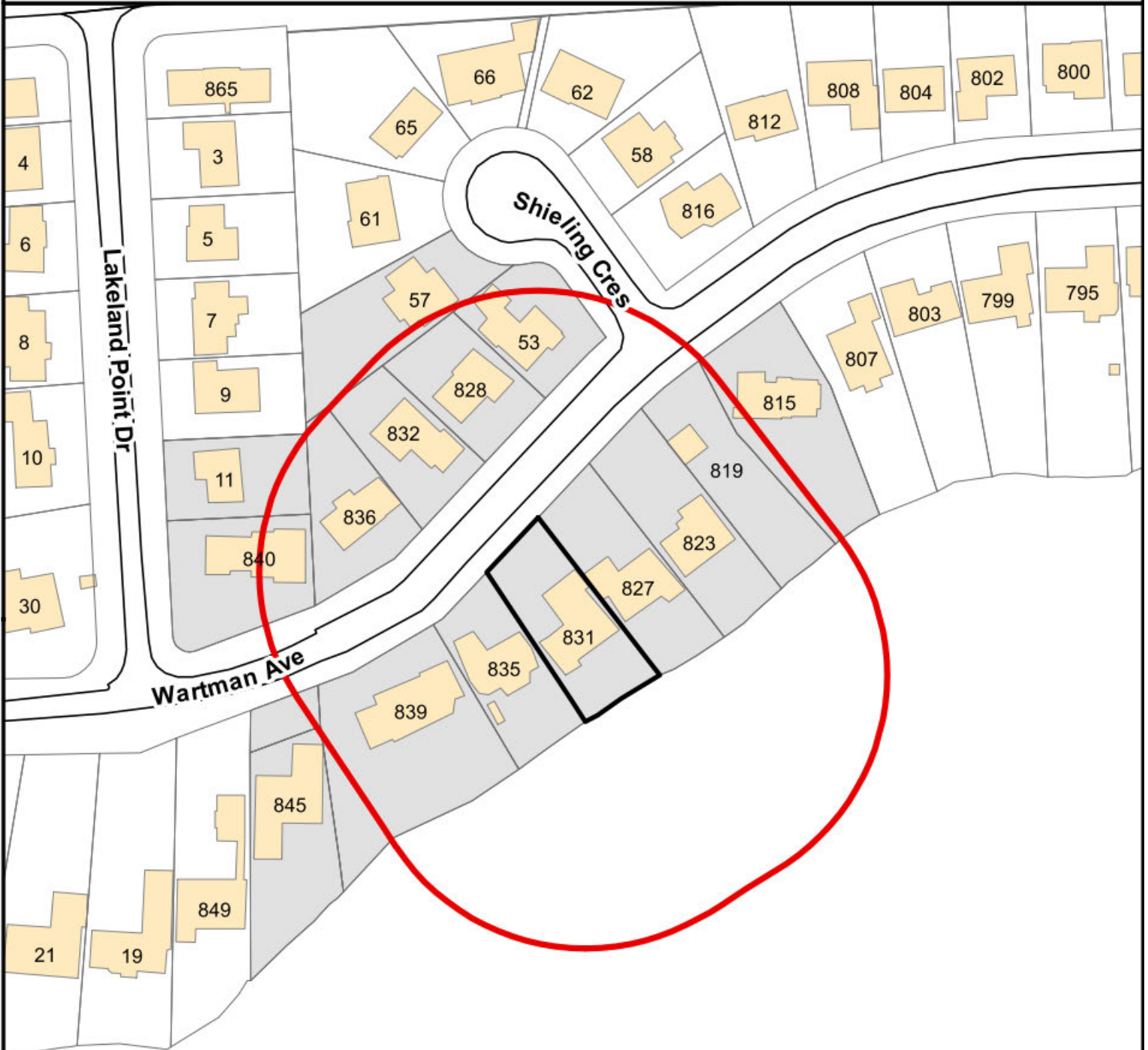




Committee of Adjustment Public Notice Notification Map

Address: 831 Wartman Ave
File Number: D13-066-2023

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



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