

**PLANNING AND BUILDING SERVICES****Town of Newmarket**

395 Mulock Drive

P.O. Box 328, STN Main

Newmarket, ON L3Y 4X7

www.newmarket.ca

planning@newmarket.ca

T: 905.953.5321

F: 905.953.5140

Planning Report

To: Committee of Adjustment

From: Meghan White
Senior Planner

Date: December 4, 2020

Re: Application for Minor Variance D13-A23-2020
209 Main Street South
Town of Newmarket
Made by: Jimsgate Inc.

1. Recommendations:

That Minor Variance Application D13-A23-2020 be approved, subject to the following conditions:

- i. That the variance pertains only to the request as submitted with the application; and
- ii. That the development be substantially in accordance with the information and sketch submitted with the application.

2. Application:

An application for a minor variance has been submitted by the above-noted owner to request relief from Zoning By-law 2010-40 as amended, to permit the rear first-storey deck to have a solid roof and privacy screening up to 3.2 metres in height, whereas the By-law defines a deck as a platform with no solid roof or walls and privacy screening up to 2.0 metres in height.

Relief is also being requested to permit the rear deck on the second-storey with privacy screening up to 3.2 metres in height, whereas the By-law defines a deck as a platform which is constructed on piers or a foundation above finished grade adjacent to a ground floor or walkout basement wall and privacy screening up to 2.0 metres in height. Each relief requested is presented below:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	3 Definition of a Deck	A deck is defined as: a platform, with no solid roof or walls, which is constructed on piers or a foundation above finished grade adjacent to a ground floor or walkout basement wall, is used as an outdoor living area, and shall include stairs and privacy screening up to 2.0 metres in height measured from the deck floor to the	To allow a deck to mean: a rear first-storey deck with a solid roof and privacy screening up to 3.2 metres in height.

Relief	By-law	Section	Requirement	Proposed
			highest part of the privacy screen including any ornamental features.	
2	2010-403	Definition of a Deck	A deck is defined as: a platform, with no solid roof or walls, which is constructed on piers or a foundation above finished grade adjacent to a ground floor or walkout basement wall, is used as an outdoor living area, and shall include stairs and privacy screening up to 2.0 metres in height measured from the deck floor to the highest part of the privacy screen including any ornamental features.	To allow a deck to mean: a rear deck on the second-storey with privacy screening up to 3.2m in height.

Attached as Schedule A is a sketch illustrating the proposal and required variances.

The above-described property (herein referred to as the “subject lands”) is located in the commercial district of downtown Newmarket, which is also a Heritage Conservation District. The area is primarily commercial with ancillary residential uses. The existing building contains a commercial use (restaurant) and an apartment on the second floor.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to construct two decks on the rear of the building. The Zoning By-law describes decks in a very particular manner that fits best with low density residential types of structures. In this case, the owner wishes to construct two decks on the rear of a mixed use (commercial/residential) building, one to be used as outdoor dining space for the restaurant and one for the residential apartment on the top floor, as such a variance is required to redefine what is considered a deck.

In order to authorize a variance, Committee must be satisfied that the requested variance passes the four tests required by the Planning Act. In this regard, staff offer the following comments:

Conformity with the general intent of the Official Plan

The subject lands are designated “Historic Downtown Centre” in the Town’s Official Plan. This designation permits a range of commercial uses and some residential uses. Regarding this designation, the Town’s Official Plan states:

It is the intent of the Official Plan that the Historic Downtown Centre should be the heart of historic Newmarket and the cultural and community focus of the Town. One of the Plan’s primary goals is to revitalize the Historic Downtown. Appropriate developments in the Historic Downtown Centre will help facilitate the achievement of all of the Plan’s strategic directions. The rich history of the area will be protected and enhanced.

This designation permits, among other uses, a variety of commercial uses including restaurants and residential uses.

Permitting the continued enhancement of the building on the subject lands and expanding the commercial and residential uses on the property meets the intent of the Official Plan.

The application is found to conform to the Official Plan and therefore this test is met.

Conformity with the general intent of the Zoning By-law

The subject lands are zoned Historic Downtown Urban Centre Zone (UC-D1) by By-law 2010-40, as amended. Restaurants and residential apartments are permitted uses in this zone.

Section 3 of the Zoning By-law defines the terms and uses of the Zoning By-law. This Section sets out a definition of a deck as outlined in the chart above. Definitions are provided in the Zoning By-law to set consistent interpretations. In order to use the Zoning By-law and apply the standards and rules contained therein, a structure must fit a defined term in order to know if it is permitted and which standards to apply. Occasionally a structure does not fit within the strict limits of a defined term and in such instances a variance is required to permit the structure. In this case, the By-law generally considers decks as structures that are close to the ground in a purely residential setting, however it is also possible that a commercial structure requires an accessory outdoor space that would generally be considered a deck in the common term. The proposed stacked decks (one being covered deck and the other adjacent to a second level) do not meet the By-law's definition of a deck.

The general intent of the definitions of the Zoning By-law is to understand how to interpret the By-law and know which standards to apply. In this case, the structures meet the standards of the UC-D1 zone, therefore altering the definition slightly on a site-specific basis in this instance will not cause confusion regarding which standards to apply.

The general intent of the Zoning By-law is to permit decks as accessory to permitted uses such that property owners (and tenants) can have outdoor amenity spaces without negatively impacting neighbours. The proposed structures are outdoor amenity spaces for a restaurant and an apartment on a second storey. They are located within a commercial area of town and comply with the setbacks of the UC-D1 Zone. Therefore they meet the general intent of the Zoning By-law. This test is met.

Desirable for the appropriate development of the land

It is generally desirable to allow a property owner to invest in their property and arrange it in a manner that suits their needs, subject to the limits of the Zoning By-law and impacts on neighbouring properties. This deference is balanced against the desirability of development in the public interest when permission beyond that of the Zoning By-law is sought by way of a minor variance.

As the requested relief would allow the owner to arrange the property to suit their needs, enjoy outdoor amenity space without significant impact to neighbours or the community, and contributes to the further revitalization of the Historic Downtown, the variance is desirable for the appropriate development of the lot. This test is met.

Minor nature of the variance

The test of whether a variance is minor in nature is not simply an evaluation of the numerical value, nor is impact the sole determining factor. As the proposed variances seek to establish a recognized and accepted structure (deck, albeit with varied elements), in an area where similar uses exist (patios), negative impacts to others are not anticipated. This test is met.

In consideration of the above, the proposed variances are deemed to meet the four tests under the Planning Act and are recommended to be approved subject to conditions.

4. Other comments:

Cultural Heritage

The property is located within the Lower Main Street Heritage Conservation District. The applicants submitted a Heritage Memorandum prepared by Mr. Wayne Morgan, Heritage Planner. Mr. Morgan advises that the proposed structures do not adversely affect either the heritage features of the adjacent heritage buildings or the Cedar Street character of the District. Planning Staff concur there is no adverse heritage impact to this building or the overall character of the District.

Commenting agencies and departments

The Chief Building Official has no objection to this application subject to compliance with Building Code.

Lower Main Street South Heritage Conservation District Advisory Group has issued a heritage permit for the proposed changes.

Engineering Services has no objection to this application.

Regional Municipality of York has no comments on this application.

Effect of Public Input

No public input was received as of the date of writing this report.

5. Conclusions:

The relief as requested:

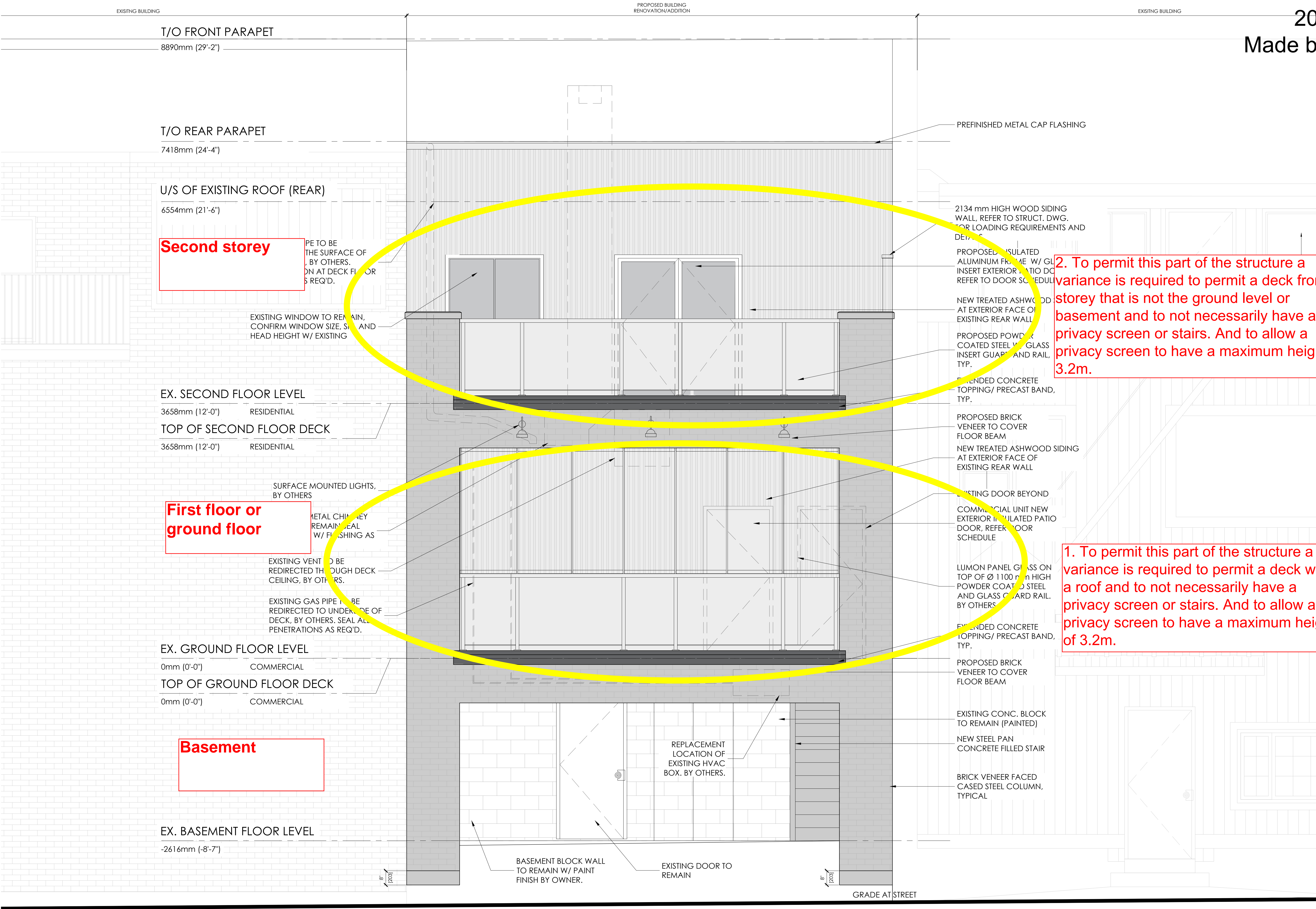
- 1) is minor in nature;
- 2) conforms to the general intent and purpose of the Official Plan and Zoning By-law; and
- 3) is considered desirable for the appropriate development of the lot.

Respectfully submitted,


Meghan White, MCIP RPP
Senior Planner, Development

Schedule A

Staff Report for Application Minor
Variance D13-A23-20
209 Main Street S
Made by: Jimsgate Inc.



7.	20.09.23	FOR PERMIT
6.	20.09.08	FOR REVIEW
5.	20.07.27	FOR HERITAGE PERMIT
4.	20.07.07	FOR COORDINATION
3.	20.06.29	FOR REVIEW
2.	20.06.24	SCHEMATIC DWG.
1.	20.06.23	SCHEMATIC DWG.
NO.	DATE	REVISION

IT IS THE RESPONSIBILITY OF THE
APPROPRIATE CONTRACTOR TO CHECK AND
VERIFY ALL DIMENSIONS ON SITE AND REPORT
ALL ERRORS AND OR OMISSIONS TO THE
ARCHITECT.

ALL CONTRACTORS MUST COMPLY WITH ALL
PERTINENT CODES AND BY-LAWS.

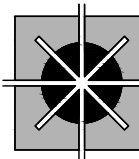
DO NOT SCALE DRAWINGS.

THIS DRAWING MAY NOT BE USED FOR
CONSTRUCTION UNTIL SIGNED.

COPYRIGHT RESERVED.

CLIENT
JIMSGATE INC.

CSPACE
ARCHITECTURE



5B-8841 GEORGE BOLTON PKWY
BOLTON, ONT. L7E 2X8
647.588.1784
info@cspace.ca

PROJECT
PROPOSED RENOVATION AND REAR
YARD DECK ADDITION

209 MAIN STREET SOUTH,
NEWMARKET, ON

DRAWING TITLE
EAST ELEVATION

SCALE
AS NOTED

PROJECT NO.
20.162

DRAWN BY
MAH

APPROVED
CCP

DATE
20.06.04

DRAWING NO.

A302