



To: Planning Advisory Committee  
From: Richard Grant, Planner I  
Date: February 8<sup>th</sup>, 2024  
Re: **Application for Minor Variance (MV-24-01)**

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**Recommendation MV-24-01:**

Planning staff recommend the ***conditional approval*** of the application for a minor variance to Section 4.29 (Table 4-10: Permitted Yard, Setback, and Height Encroachments) of the Town's Comprehensive Zoning Bylaw.

1. *The applicant shall obtain approval from the Town for the encroachment of the structure into the municipal road allowance.*

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**Purpose:**

The applicant is applying for a minor variance from Section 4.29 (Table 4-10: Permitted Yard, Setback, and Height Encroachments) of the Town's Comprehensive Zoning Bylaw to accommodate an existing deck measuring 5.08 m<sup>2</sup>. The application seeks a 1.2 m relief from the exterior side lot line. A separate municipal approval would be required to formalize an encroachment of 0.21 m of the deck into the municipal road allowance.

**Background:**

In January 2024, the Town received a completed minor variance application from the applicant Ryan Lackey for a 1.2 m relief from the exterior side lot line for an existing unenclosed deck measuring 5.08 m<sup>2</sup>. The By-Law permits a covered or uncovered deck to encroach as close as 1.2 m from the lot line. It should be noted that two existing encroachment agreements are registered on the title for the subject property. Additionally, through this application, the applicant is retroactively seeking zoning approval for the existing unenclosed deck that was constructed without a building permit. Without seeking prior approval for constructing a deck through a building permit, the applicant was ordered first to obtain zoning compliance via a minor variance application and address concerns over the existing deck's encroachment into the municipal right of way by way of an encroachment agreement with the Town.

**Property Information**

Address: 15 Thomas Street  
Lot Size: 613.20 m<sup>2</sup>  
Zoning: R2  
OP Designation: Residential  
Date of Site Visit: January 29<sup>th</sup>, 2024

***See Appendix 'A' for the Key Reference Map; Appendix 'B' for a Property Survey;  
Appendix 'D' – By-Law No. 4407-78***

The applicant has also provided a planning justification brief in support of this application, which is referenced in this report and can be provided to the Committee or the public as part of the public record.

### **Land Use Context:**

The subject property is a 613.16 m<sup>2</sup> (6600 ft<sup>2</sup>) rectangular-shaped corner lot bordered by a wooden fence with interwoven wooden panelling. On the subject property is a single-detached, 2-storey limestone brick dwelling built in the 1910s, with a rear-yard covered unenclosed wooden deck and a detached gable-pitch roof garage with a separate entrance on the rear yard fronting on Smiths Falls Avenue. The main dwelling has entrances on the exterior side yard and front yard—flowering plants along the porch leading to the main entrance fronting on Thomas Street. The unenclosed deck in question is located on the exterior side yard of the subject property, facing Smiths Falls Avenue.

Situated on the corner of Smiths Falls Avenue and Thomas Street, the subject property is located within a predominately residential neighbourhood zoned Residential Type 2. The Residential Type 2 zone permits a higher range of residential densities from single detached to multiple dwellings (e.g., triplexes). Homes in the neighbourhood tend to be single-detached dwellings, no more than two stories in height, with small flowering plants and shrubbery planted in the front yards, the occasional tree in the rear yard and a detached garage accessed by a paved driveway. Due to several homes along Smiths Falls Avenue and Thomas Street having less than the required 6 m front yard setback from the main dwelling, there is the appearance of a closer, more compact street, which contributes to an overall sense of uniformity. Coupled with the homes being of similar height, the neighbourhood character can be described as “cozy,” with a strong street presence. Immediately behind the subject property, towards the south, at the end of Thomas Street, is a sizeable townhouse complex with several 2-storey townhouses at Parkland Court.

### **Directing Policy:**

#### **Smiths Falls Official Plan 2034**

The subject property is designated Residential (*Section 6.3*) in the Town’s Official Plan, which provides for a wide range and density of residential development in established neighbourhoods, provided that the development is compatible with local characteristics.

#### **Comprehensive Zoning By-law 10375-2022**

The broad goals outlined in the Town’s Official Plan are implemented in the regulatory Zoning By-law. The property is zoned Residential Type 2 (R2), which is the zoning category that best fits low to medium-density residential development. The By-law prescribes setback restrictions for the front yard, rear yard, interior side yard and exterior side yard areas of the subject property in residential developments to ensure compatible uses and adequate access to sunlight, separation distance, shadow, and other amenities. The By-Law also permits yard, setback, and height encroachments for building features/ structures such as decks, accessible ramps, parapets and other accessory or ornamental structures or features associated with residential developments.

## **Public and Agency Feedback Received:**

As of the time of the preparation of this report, the following written feedback has been received from the Building Services department:

- **The Chief Building Official** Does not object to this application and has no further comments at this time.
- **The Public Works and Utilities Dept** Does not object to this application and recommends that if the existing encroachment agreement (By-Law No. 4407-78) is to be replaced, it include a "Termination Clause" where works are removed at the owners' expense should the Town require the land.

## **Issues and Discussion:**

Four tests are prescribed by Section 45 of the *Planning Act* to meet for minor variance consideration. It should be noted that despite the existence of the encroaching unenclosed deck, the Committee's assessment of the application should be performed under the assumption that such a structure is "proposed." That is to say, the existence of the "proposed" structure does not guarantee nor penalize its approval by virtue of simply existing.

Staff comments regarding these tests are outlined below:

### 1. Does the application conform to the general intent of the Official Plan?

The applicant seeks approval for a 0.0 m exterior side yard setback to permit the covered porch. Although "proposed" by the applicant, the deck currently exists on the subject property and, as a deck, supports the Residential designation in Section 6.3 of the Town's Official Plan. The deck does not alter the Residential designation and offers to enhance the functionality of the subject property by facilitating access to the main dwelling from the exterior side fronting on Smiths Falls Avenue. By offering to improve the functionality of the subject property, the Residential designation, in Staff's opinion, is enhanced as it improves the overall compatibility and residential character of the main dwelling. In the Comprehensive Zoning Bylaw, more specific regulatory issues are addressed.

The Committee is also advised to consider the provisions of Section 7.1.10 (Committee of Adjustment), which pertain to the evaluation of minor variance applications. This section requires the Committee to be satisfied that the approval of the variance will not result in the site being overbuilt, limiting the ability for snow storage and landscaping or impeding operations. The proposed development does not present any anticipated impacts on the neighbourhood's character or functional use of the site. Therefore, this application is considered to comply as it is largely consistent with policies of Residential designation and further enhances the utility of the subject property.

### 2. Does the application conform to the general intent of the Comprehensive Zoning By-law?

For the requested relief to be met, the intent of the Comprehensive Zoning By-law and the reasoning behind the zoning provisions must be rationalized, and the

outcome must be considered consistent with this intent. The applicant requests relief from Section 4.29 (Table 4-10: Permitted Yard, Setback, and Height Encroachments) of the Comprehensive Zoning By-law. This section prescribes the permitted yard, setback and height encroachments for building features and structures such as unclosed fire escapes, fences, chimneys, and other accessory or ornamental structures. The Primary rationale behind Section 4.29 - Permitted Yard, Setback, and Height Encroachment establishes specific setback requirements for building features, accessory or ornamental in nature to safely guide residential development. Moreover, within the By-Law, Section 4.29 allows for reductions in zoning setback requirements for ancillary or minor parts or add-ons to the main dwelling/structure, recognizing that they can be closer to the lot line because they pose less of an impact to the main dwelling while allowing the overall structure to conform to the general intent of the By-Law.

The requested relief of 1.2 m from the exterior side yard does not comply with Section 4.29 of the By-Law; however, it does conform to the general intent of the By-law by not facilitating or encouraging an incompatible use. Given the location of the proposed deck, the requested relief allows for functional use of the deck, as it is merely encroaching 0.21 m (0.69 ft) into the municipal road allowance on Smiths Falls Avenue. This road terminates at the corner of the subject property. The significance of this observation is that the proposed deck does not interfere with the full functioning of the road despite being 0.21 m into the municipal right-of-way. That is to suggest that any perceived incompatible use or harm that would be mitigated by adhering strictly to the letter of Section 4.29 of the Bylaw would not be further exacerbated by permitting the requested relief, in Staff's opinion. Furthermore, staff believe that the purpose and rationale of the zoning provision are protected and that the requested relief meets the general intent and spirit of the Zoning By-law.

3. Is the application desirable for the appropriate development of the lands in question?

In determining the desirability and appropriateness of this application, planning staff must evaluate the location and configuration of the property, its fit within the existing neighbourhood, and whether this proposal represents good land use planning. This proposal represents an individual opportunity to formalize the existing deck on the subject property. The deck, as proposed, enhances the functional nature of the subject property by facilitating access to the exterior side fronting on Smiths Falls Avenue, creating a more desirable improvement for the main dwelling. As such, this application is deemed to meet this test.

4. Is the application minor in nature and impact?

In evaluating whether an application is "minor," the Committee is reminded that this is more than just a mathematical exercise but rather an assessment of the impact of its intended function. The requested relief of 1.2 m for the exterior side lot line should also be contemplated with the 0.21 m (0.69 ft) encroachment into the municipal road allowance. Relief from the exterior side lot line is required to enable further encroachment; however, it should be noted that the applicant will have to seek separate approval for the encroachment via an encroachment agreement with the

Town. The 1.2 m relief from the exterior side yard setback is considered minor in nature and impact, given the corner lot orientation of the main dwelling and the fact that Smiths Falls Avenue terminates at the end of the subject property. With Smiths Falls Avenue functioning as a "dead end" for vehicular traffic, there is a small degree of likelihood that there would be a great impact on vehicular activity from the requested relief to drivers. Also, on Smiths Falls Avenue, the sidewalk is opposite the subject property, reducing the probability of unavoidable interference from pedestrians. Additionally, in conversation with the Department of Public Works, the proposed deck will likely have a minimal impact on municipal operations such as snow removal. As such, staff are of the view that this application is minor in nature and impact.

### **Summary and Recommendations:**

Based on a review of applicable policies and consideration of the intricacies of the site, planning staff have come to the opinion that the proposal presents a reasonable construction that does not impose negative impacts on neighbours or vehicular traffic near this location, and the proposal can be demonstrated to meet the four tests set out by the Planning Act. As such, staff recommend the Committee **approve** this application as proposed, subject to the following suggested conditions:

1. *The applicant shall obtain approval from the Town for the encroachment of the structure into the municipal road allowance.*

Respectfully Submitted,

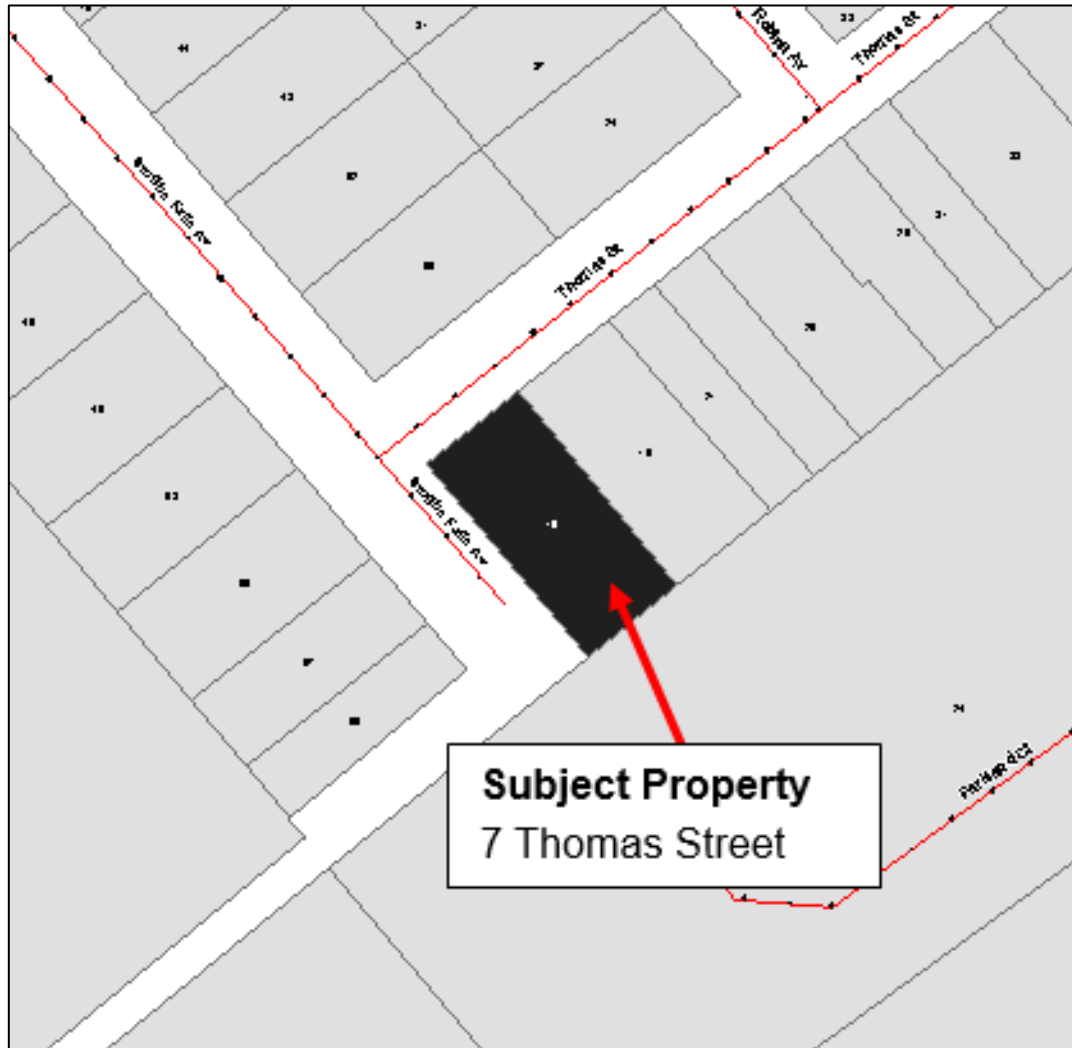
*Original Signed*  
Richard Grant  
Planner I

Reviewed, and Approved

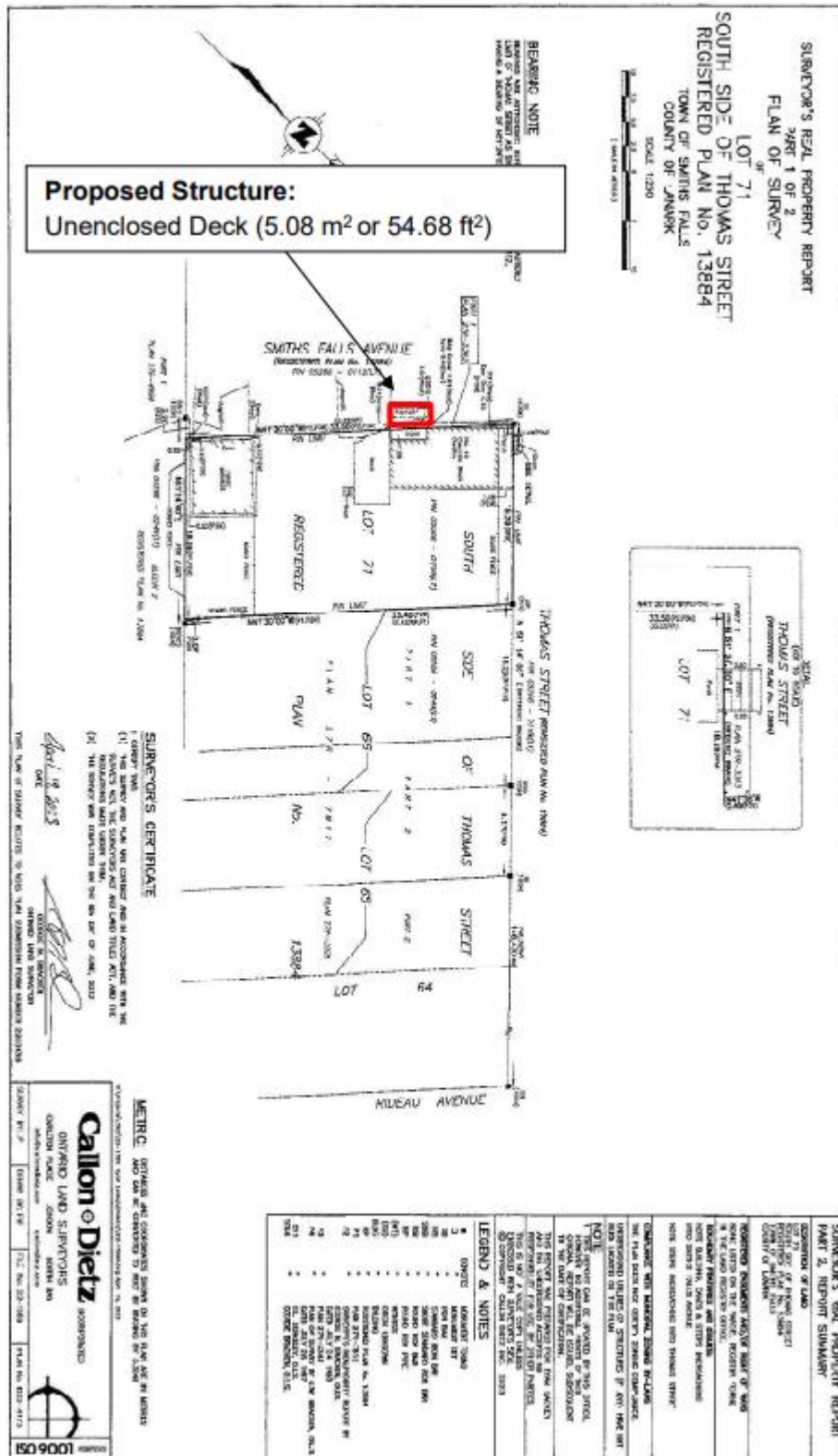
*Original Signed*  
Karl Grenke, MCIP, RPP  
Manager of Development Services

## APPENDIX 'A' – Key Map

15 Thomas Street



# APPENDIX 'B' – Property Survey





## Appendix 'C'- Site Visit Photos





## Appendix 'D'– By-Law No. 4407-78

CORPORATION OF THE TOWN OF SMITHS FALLS

BY-LAW NO. 4407-78

A By-law to authorize an encroachment agreement with Edward Pankow.

WHEREAS it is deemed advisable to authorize an Encroachment Agreement with Edward Pankow under the provision of the Municipal Act, Section 354, Subsection 96, R. S. O. 1970 as amended.

NOW THEREFORE the Council of the Town of Smiths Falls enacts as follows:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement with Edward Pankow to permit the concrete block dwelling known municipally as Number 15 Thomas Street, located on Lot 71, Registered Plan Number 13884, to encroach on Thomas Street by approximately one and one-half feet (1'.5) and on Smiths Falls Avenue by three and eighteen one - hundredths feet (3'.18) until such time as the lands encroached upon are required for public purposes, a copy of which agreement is attached hereto.
2. That this By-law shall come into force and take effect on the passing thereof.

GIVEN under the Seal of the Corporation of the Town of Smiths Falls and PASSED this 5th day of September, A. D. 1978.

  
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Mayor

  
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Clerk Administrator