

Memorandum to the City of Markham Committee of Adjustment

October 29, 2020

File: A/018/20
Address: 7 Shorthill Drive, Markham
Applicant: Junhua He & Fang Chen
Agent: Rachel Y.H. Sun Architect (Rachel Sun)
Hearing Date: Wednesday November 4, 2020

The following comments are provided on behalf of the Central Team:

The applicant is requesting relief from the “Seventh Density – Single Family Residential” (R7) zone requirements of By-law 134-79, as amended, as it relates to an existing rear yard shed, accessory dwelling unit in the basement and walkout stairs that were constructed without a permit. The variances requested in this application are identified as follows, to permit:

- a) **Section 6.1:**
one accessory dwelling unit in the basement, whereas the By-law permits a single detached dwelling;
- b) **Section 5.7 (a):**
uncovered stairs to project a distance of 1.01 metres into the required interior side yard; whereas the By-law permits a maximum projection of 0.45 metres;
- c) **Section 7.2 (c):**
a maximum lot coverage of 34.6 percent, whereas the By-law permits a maximum of 33.33 percent; and,
- d) **Section 6.2.1:**
an accessory building located 0.35 metres from the side yard, whereas the By-law permits a minimum of 0.6 metres from the nearest lot line.

Comments

The Committee of Adjustment deferred the application on October 7, 2020 due to concerns expressed by the Committee relating to the tenure of the accessory dwelling unit and the number of residents living in the dwelling. There was also discussion as to whether the proposed application would be considered a rooming house due to the number of bedrooms and the second kitchen (to be removed) in the basement.

The Owner has provided a letter addressing the Committee’s concerns (see Appendix “A”), and has indicated that the accessory dwelling unit is currently being rented by one individual and that one of the rooms is for the Owner’s parents when they visit. Planning Staff advise that under Section 35 of the *Planning Act*, no zoning by-law can contain provisions that distinguishes between persons who are related and persons who are unrelated in respect to occupancy or use of a building or structure. In other words, a decision to approve or deny, in this instance, an accessory dwelling unit, cannot be based on the familial relationship of the owner of the main dwelling unit and that of the tenant or

occupant of the accessory dwelling unit. The Owner has also stated that the accessory dwelling unit is not a rooming house.

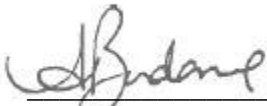
Staff note that our comments dated October 5, 2020 (attached as Appendix "B") remain applicable. The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

PREPARED BY:



Francois Hemon-Morneau, Development Technician, Zoning and Special Projects

REVIEWED BY:



Sabrina Bordone, Senior Planner, Central District

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APPENDICIES

Appendix "A" – Letter from Owner (Junhua He & Fang Chen)

Appendix "B" – October 5, 2020 Staff Report

Appendix "A"

Oct. 30th, 2020

Dear Committee,

The upstairs is where my family are living, including my wife, my son, my daughter and myself. Currently, there is only one person that is renting my basement and it will stay that way. When the current tenant moves out and the legal 2nd basement suite is certified by your city, we plan to rent the basement to a 3-people family including a couple and their child. Regarding the other room as identified as GUEST ROOM on the drawing, it is reserved for my parents when they visit us during the Summer. In addition, my parents are currently living in New York, every year, they come and visit us for a month or two. Therefore, the rooming house situation will not occur here.

Sincerely,

Junhua He and Fang Chen

Memorandum to the City of Markham Committee of Adjustment

October 5, 2020

File: A/018/20
Address: 7 Shorthill Drive, Markham
Applicant: Junhua He & Fang Chen
Agent: Rachel Y.H. Sun Architect (Rachel Sun)
Hearing Date: Wednesday October 7, 2020

The following comments are provided on behalf of the Central Team:

The applicant is requesting relief from the "Seventh Density – Single Family Residential" (R7) zone requirements of By-law 134-79, as amended, as it relates to an existing rear yard shed, accessory dwelling unit in the basement and walkout stairs that were constructed without a permit. The variances requested in this application are identified as follows, to permit:

- a) **Section 6.1:**
one accessory dwelling unit in the basement, whereas the By-law permits a single detached dwelling;
- b) **Section 5.7 (a):**
uncovered stairs to project a distance of 1.01 metres into the required interior side yard; whereas the By-law permits a maximum projection of 0.45 metres;
- c) **Section 7.2 (c):**
a maximum lot coverage of 34.6 percent, whereas the By-law permits a maximum of 33.33 percent; and,
- d) **Section 6.2.1:**
an accessory building located 0.35 metres from the side yard, whereas the By-law permits a minimum of 0.6 metres from the nearest lot line.

COMMENTS

The Committee of Adjustment ("the Committee") deferred this application at the initial hearing on July 2, 2020. This was due to Staff's concern with potential inaccuracies depicted on the plans, versus the survey plan on file at the City. The applicant subsequently submitted revised plans on September 3, 2020 (Appendix "B"). The new plans have removed the roofed portion of the staircase, which provides access to the basement area.

BACKGROUND

Property Description

The 556.3 m² (5,987.96 ft²) subject property is located on the east side of Shorthill Drive, which is situated south of 16th Avenue and west of McCowan Road. The property is located within an established residential neighbourhood comprised of two-storey single detached dwellings. The site is developed with an existing two-storey single detached dwelling that was constructed in 1987. Parking for the existing dwelling is provided in an attached two-car garage and two-car driveway with access to Shorthill Drive.

Proposal

The applicant is requesting permission to legalize an existing second dwelling unit in the basement of the existing dwelling. The existing second dwelling unit has a direct and separate access provided by an existing door and walk-out stairs situated in the northerly side yard, both built without permits. The variance application also includes an existing accessory building located in the rear yard, which was also built without a permit. No other changes are being proposed to the exterior of the dwelling or the property.

Provincial Policies

More Homes, More Choice Act, 2019

The *More Homes, More Choice Act, 2019*, S.O. 2019, c. 9 – (Bill 108), received Royal Assent on June 6, 2019 and portions were proclaimed on September 3, 2019. The proclaimed portions of Bill 108 amended the *Planning Act* to require Official Plans to contain policies providing for two residential units in detached, semi-detached and row houses, as well as permitting a residential unit in ancillary structures to a detached house, semi-detached house or rowhouse. Under this legislation, “second suites” are now referred to as “additional residential units”, and the terms are used synonymously in this memorandum.

Provincial Policy Statement, 2020

Section 1.4.3 of the *Provincial Policy Statement, 2020*, requires planning authorities to provide for an appropriate range and mix of housing options and densities to meet the affordable housing needs of current and future residents. Amongst other means, this can be achieved by permitting and facilitating residential intensification, including additional residential units, and redevelopment by accommodating a significant supply and range of housing options through intensification and redevelopment while taking into account existing building stock.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (Growth Plan, 2019)

Section 2.1.4 (c) of the Growth Plan, 2019 requires municipalities to provide a diverse range and mix of housing option including second units to support complete communities.

Official Plan and Zoning

2014 Official Plan (partially approved on November 24/17, and updated on April 9/18)

The City’s 2014 Official Plan (the “Official Plan”) designates the subject property “Residential Low Rise”, which provides for low rise housing forms including single detached dwellings. The Official Plan also contains criteria for the establishment of secondary suites in Section 8.13.8, which states:

“That in considering an application to amend the Zoning By-law to permit the establishment of a secondary suite where provided for in this Plan, Council shall be satisfied that an appropriate set of development standards are provided for in the Zoning By-law including:

- a) the building type in which the secondary suite is contained;*
- b) the percentage of the floor area of the building type devoted to the secondary suite;*

- c) *the number of dwelling units permitted on the same lot;*
- d) *the size of the secondary suite;*
- e) *the applicable parking standards; and*
- f) *the external appearance of the main dwelling.”*

A “Secondary Suite” in the Official Plan is defined as:

“...a second residential unit in a detached house, semi-detached house or rowhouse that consists of one or more rooms designed, occupied or intended for use, including occupancy, by one or more persons as an independent and separate residence in which a facility for cooking, sleeping facilities and sanitary facilities are provided for the exclusive use of such person or persons.”

Section 4.1.2.6 of the Official Plan contains policies to support further diversification of the housing stock and rental housing tenure by permitting secondary suites within existing and new single detached, semi-detached and rowhouse dwellings in accordance with Section 3.5.22 of the Regional Official Plan and subject to appropriate zoning, development criteria, and standards.

Zoning By-Law 134-79, as amended

The subject property is zoned “Seventh Density – Single Family Residential” (R7) under By-law 134-79, as amended, which permits one (1) single family detached dwelling per lot. As the By-law permits only one dwelling on a lot, the applicant has submitted a variance request to permit an accessory unit within the basement of the existing single detached dwelling. Other components of the proposal do not comply with the By-law requirements with respect to maximum permitted lot coverage, maximum permitted projection related to the walkout stairs, and the location of the existing accessory building relative to the nearest lot line.

In addition to the enclosed garage, which includes two full size parking spaces, the subject property has a driveway that would allow for more than one full size parking space. This fulfills the Parking By-law requirement of three full size parking spaces in the event of an approval for the requested second dwelling unit.

Zoning Preliminary Review (ZPR) Undertaken

The applicant completed a Zoning Preliminary Review (ZPR) on November 22, 2019 to confirm the variances required for the proposed development. While the applicant was able to obtain a survey plan from City records, they declined to produce or submit an as-built survey plan. Staff identified discrepancies between the submitted drawings and the survey plan and requested that the applicant submit a revised Site Plan. The revised Site Plan was requested by staff to ensure accurate measurements related to the basement walkout staircase were identified. The applicant has not conducted a new ZPR for the revised drawings. However, variance b) was reviewed by Zoning staff to confirm the proposed wording. As a result, it was identified that the requested variance should be changed from a reduction in to the side yard setback, to an increase in projection into the required interior side yard.

If the variances requested in this application contain errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

COMMENTS

The *Planning Act* states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Secondary Suites

The City's Fire and Emergency Services Department has no objections provided the proposed secondary suite is registered with the City and complies with Building and Fire Codes. Should this application be approved, the applicant will be required to obtain a building permit to ensure the secondary suite is in compliance with Building Code and Fire Code regulations, and will be required to register their second suite with the Fire Department prior to the occupancy of the unit.

The City of Markham is committed to promoting affordable and shared housing opportunities. Secondary suites help the City increase the availability of affordable housing forms and provides support to achieve its affordable housing target required by the Province. Staff are of the opinion that the application meets the criteria under Section 8.13.8 of the 2014 Official Plan for the establishment of a secondary suite and have no objections to the requested variance.

Increase in Maximum Stair Projection

The applicant is requesting that the uncovered basement walkout stairs project a distance of 1.01 metres (3.31 feet) into the required interior side yard, whereas the by-law permits a maximum projection of 0.45 metres (1.47 feet).

The requested variance applies to the uncovered basement walkout stairs situated in the northerly side yard. The existing footprint of the building complies with all other By-law requirements. Engineering staff have reviewed the application and have no concern with the variance with respect to drainage. Staff are of the opinion that the proposed variance will not adversely impact neighbouring properties and have no objection to the requested variance.

It should be noted that the basement walkout stairs, as currently constructed, are enclosed. As per staff's request, the applicant has agreed to remove the enclosure, which has been included as a condition of approval (Appendix "A").

Reduced Side Yard Setback

The applicant is requesting a minimum side yard setback of 0.35 metres (1.14 feet) for an accessory building, whereas the By-law permits a minimum side yard setback of 0.6 metres (1.96 feet) from the nearest lot line.

The requested variance only applies to the accessory building (shed) located in the backyard of the property, which is setback 0.35 metres (1.14 feet) from the easterly side yard. Given the size of the subject property, the location of the shed, and the distance

from the adjacent dwellings, staff are of the opinion that the variance is minor in nature and will not adversely impact neighbouring properties.

Increase in Maximum Lot Coverage

The applicant is requesting relief for a maximum lot coverage of 34.6 percent, whereas the By-law permits a maximum lot coverage of 33.33 percent. The increase in the lot coverage is attributed to the 6.7 m² (72.11 ft²) shed located in the rear yard of the subject property, as discussed above. Staff are of the opinion that the variance is minor and will not result in a dwelling that is uncharacteristic of the area, as the increase in lot coverage is attributable to a shed in the rear yard.

PUBLIC INPUT SUMMARY

No written submissions were received as of October 5, 2020. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the *Planning Act* and have no objections. Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

Please see Appendix "A" for conditions to be attached to any approval of this application.

APPENDICES

Appendix "A" - Conditions of Approval

Appendix "B" - Plans

PREPARED BY:



Francois Hemon-Morneau, Development Technician, Zoning and Special Projects

REVIEWED BY:



Sabrina Bordone, Senior Planner, Central District

Appendix "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/018/20

1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as 'Appendix B' to this Staff Report, and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction;
3. That the owner submit, if required by the Chief Building Official, a third-party report prepared by an architect or professional engineer licensed in the Province of Ontario, to assess compliance of existing construction with the provisions of the Ontario Building Code, and in particular relating to the change of use from a dwelling containing a single suite to a dwelling containing more than one suite.
4. That the existing walkout stair enclosure be removed and that the walkout stairs in the northerly side yard remain unenclosed.

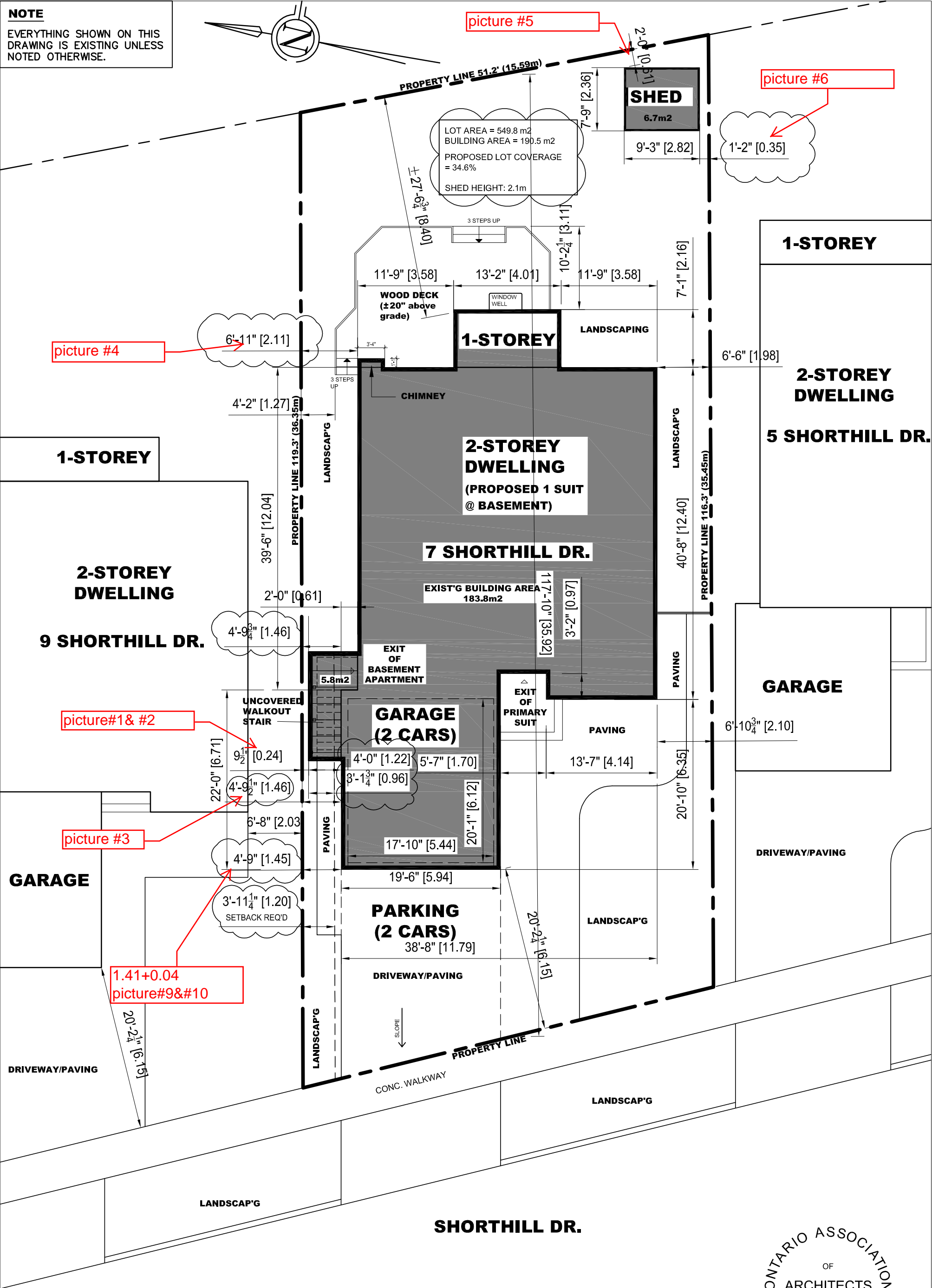
CONDITIONS PREPARED BY:



Francois Hemon-Morneau, Development Technician, Zoning and Special Projects

APPENDIX “B”
Plans

NOTE
EVERYTHING SHOWN ON THIS
DRAWING IS EXISTING UNLESS
NOTED OTHERWISE.



1 SITE PLAN
A0.1 SCALE: 1/8"=1'-0"

Rachel Y.H. Sun
ARCHITECT
112 Crayford Drive
Toronto, Ontario M1W 3B7
Phone: 647-776-8476
Email: rsunarch@gmail.com

REV.	DATE	DESCRIPTION
6	SEP.02.2020	REVISION 3 FOR COA
5	JUL.24.2020	REVISION 2 FOR COA
4	JUL.17.2020	REVISION 1 FOR COA
3	FEB.03.2020	ISSUED FOR COA
2	NOV.21.19	REVISIONS FOR ZPR
1	OCT.15.19	ISSUED FOR ZPR
REVISIONS / ISSUANCE:		

PROJECT: BASEMENT ACCESSORY APARTMENT (1 SUIT)			
LOCATION: 7 SHORTHILL DR., MARKHAM, ON			
DWG. BY: RS	CK'D BY: HG	APP. BY: RS	DATE: SEP. 02, 2020
JOB NO.: 2019003	DWG. NO.: A0.1	CADD-NAME:	



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DRAWING IS EXISTING UNLESS
NOTED OTHERWISE.

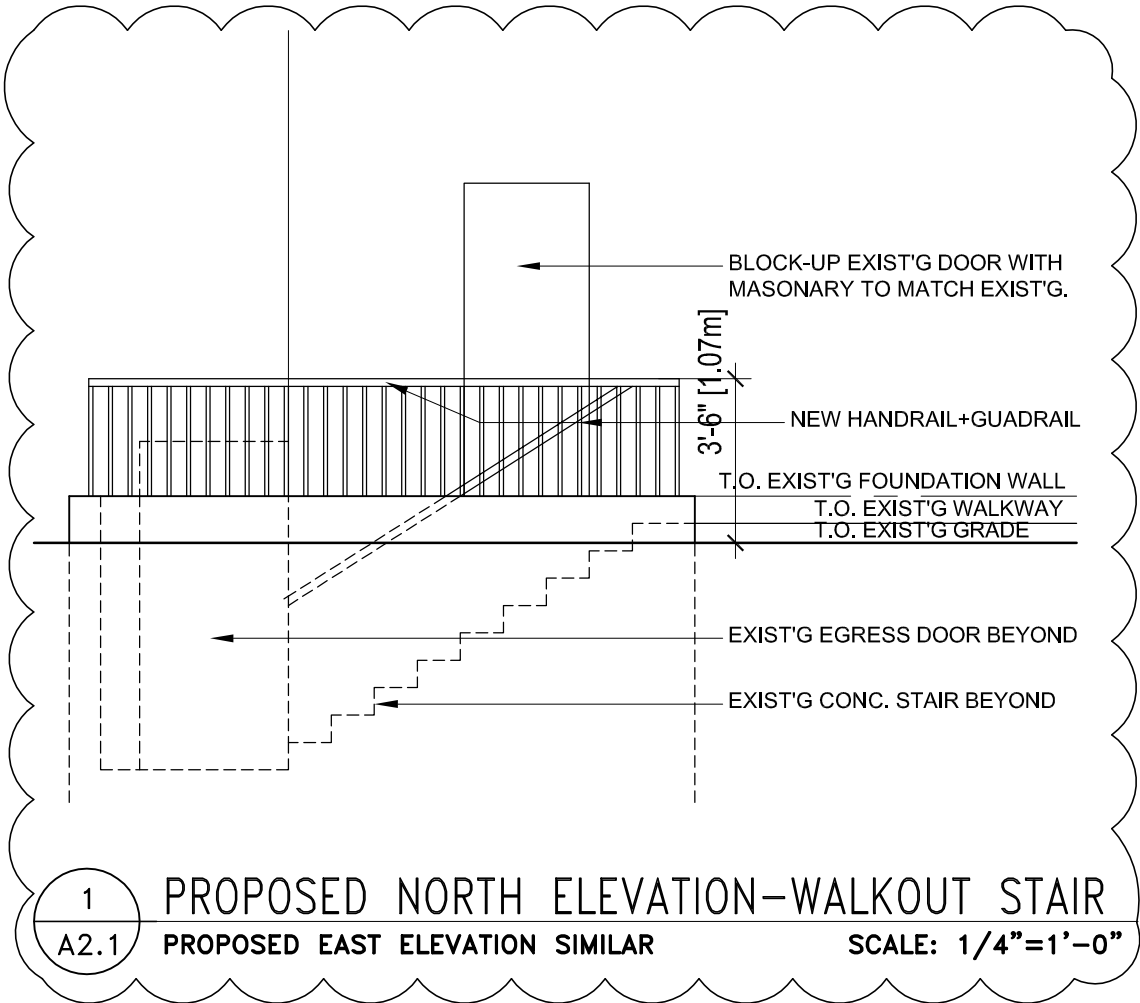


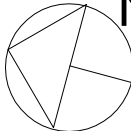
A1.1

SCALE: 3/16"=1'-0"

6	SEP.02.2020	REVISION 3 FOR COA
5	JUL.24.2020	REVISION 2 FOR COA
4	JUL.17.2020	REVISION 1 FOR COA
3	FEB.03.2020	ISSUED FOR COA
2	NOV.21, 19	REVISIONS FOR ZPR
1	OCT.15, 19	ISSUED FOR ZPR
REF.	DATE:	DESCRIPTION:
REVISIONS / ISSUANCE:		

CADD-NAME:



Rachel Y.H. Sun ARCHITECT	112 Crayford Drive Toronto, Ontario M1W 3B7 Phone: 647-776-8476 Email: rsunarch@gmail.com		PROJECT: BASEMENT ACCESSORY APARTMENT (1 SUIT)			 ORIENTATION
			LOCATION: 7 SHORTHILL DR., MARKHAM, ON			
		DWG. BY: RS	CK'D BY: HG	APP. BY: RS	DATE: SEP. 02, 2020	
		JOB NO.: 2019003		DWG. NO.: A2.1	CADD-NAME:	
		6 SEP.02.2020	REVISION 3 FOR COA			
		5 JUL.24.2020	REVISION 2 FOR COA			
		4 JUL.17.2020	REVISION 1 FOR COA			
		3 FEB.03.2020	ISSUED FOR COA			
		2 NOV.21, 19	REVISIONS FOR ZPR			
1 OCT.15, 19	ISSUED FOR ZPR					
REF.	DATE:	DESCRIPTION:				
REVISIONS / ISSUANCE:						