

## **Memorandum to the City of Markham Committee of Adjustment**

September 04, 2018

**File:** A/63/18  
**Address:** 2 Peter St Markham  
**Applicant:** Gary Wharton  
**Agent:** David Johnston Architect Ltd. (David Johnston)  
**Hearing Date:** Wednesday September 12, 2018

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

The applicant is requesting relief from the following requirements of By-law R1, as amended:

1. Amending By-law 1229 Section 11.1: a front yard setback of 18 ft 11.5 in, whereas the Bylaw requires a minimum front yard setback of 25 ft;
2. Amending By-law 1229 Section 6.1: a secondary dwelling unit (coach house) within a proposed detached garage, whereas the by-law permits no more than one dwelling unit on one lot;
3. Amending By-law 1229 Section 11.3(a)(i): an accessory building height of 20 ft 6 in, whereas the By-law permits a maximum accessory building height of 12 ft;

as it relates to a proposed detached garage with coach house dwelling unit.

### **BACKGROUND**

#### **Property Description**

The subject property is located on the west side of Peter Street at the intersection of Beech Street in the residential portion of the Markham Village Heritage Conservation District. The 13,611 ft<sup>2</sup> lot is significantly larger than neighbouring lots to the north because it encompasses the former Beech Street road allowance (See Figure 1-Location Map). This former road allowance was historically occupied by a single detached dwelling that has been demolished. Today, the existing lot is occupied by a 1-1/2 storey single detached heritage dwelling constructed in the 1880's and a one storey detached garage constructed in 1992. The properties to the north and west are occupied by single detached dwellings, while the property immediately to the south is occupied by a townhouse development. The subject property is zoned R1 (Residential) under By-law 1229 which only permits single detached dwellings.

#### **Proposal**

The applicant wishes to demolish the existing one storey detached garage and replace it with a new 1-1/2 storey, 104m<sup>2</sup> (1,122 ft<sup>2</sup>) accessory building/garage in approximately the same position. The applicant is also seeking permission to use the floor above the garage as a second residential unit on the property.

#### **Applicant's Stated Reason for Not Complying with Zoning**

According to the information provided by the applicant, relief is requested  
Because:

1. a secondary suite is not permitted in the By-law;
2. the maximum height for an accessory building is 12'-0";
3. the heritage dwelling stands 18'-11.5" from the property line, not complying with the current permitted front yard setback of 25'-0".

#### **Zoning Preliminary Review Not Undertaken**

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. Consequently, it is the owner's responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variances in the application contain errors, or if the need for an additional variance application may be required to address the outstanding matters, there will be a delay in application processing.

#### **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.

#### **Minimum Front Yard Setback**

The requested variance to permit the existing house to have a front yard setback of 18'-11.5" is minor in nature because it reflects an existing site condition established when the house was constructed in the 1880's.

#### **Maximum Accessory Building Height**

The requested variance to permit an accessory building height of 20'-6" can be considered minor in nature, desirable for the appropriate development of the land and to meet the intent and purpose of the both the By-law and Official Plan. It supports an accessory building which complements the existing heritage house, contributes to the historic character of the Heritage District, and has been designed to resemble the historic carriage houses and urban barns of old Markham Village.

### **Second Residential Unit**

In 2011, the *Strong Communities through Affordable Housing Act* amended various sections of the *Ontario Planning Act* to facilitate the creation of second units by:

- Requiring municipalities to establish Official Plan policies and Zoning By-law provisions allowing secondary units in detached, semi-detached and row houses as well as in ancillary structures
- Providing authority for the Minister of Municipal Affairs and Housing to make regulations authorizing the use of, and prescribing standards for second units.

Under the *Strong Communities through Affordable Housing Act*, 'Second Units' also known as secondary suites, are defined as "self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings".

Since that time, the Residential Low Rise policies of the Official Plan 2014, (as partially approved on November 24, 2017 and further updated on April 9, 2018,) have come into effect.

These policies support secondary suites in all 'Residential' designations but define a secondary suite as a "second residential unit in a detached house, semi-detached house or rowhouse" but not an accessory building. The Official Plan 2014 also defines a Coach House as a second residential unit above a private garage either in the main building or an accessory building. However, in the Residential Low Rise designation which is the designation on the subject property, a Coach House is only permitted above a garage on a laneway. The proposed second suite in the second storey of the proposed new accessory building/garage does not meet either definition in the Official Plan 2014, and cannot be said to meet the intent of the Zoning By-law which only permits single detached buildings.

It appears that that the Official Plan 2014's intent of limiting second suites to Coach Houses located on laneways was to avoid the potential loss of privacy which could result by permitting second suites in the second storeys of detached garages/accessory building which are often located as close as 2 feet from the lot lines between properties. The overlook of second suites in accessory buildings located close to property lines could negatively impact the privacy of neighbouring property owners who have in the past relied on minimum rear yard setbacks of 25 feet for dwellings prescribed by the City's Zoning By-laws.

The proposed location of the new accessory building/garage at 2 Peter Street, could negatively impact the privacy of rear yards of the single detached dwellings located at 15, 19, and 21 Byer Drive, which share the rear property boundary of 2 Peter Street. The applicant has addressed this issue by designing the accessory building to not have west facing windows that could overlook the backyards of the homes on Byer Drive. By doing so, it would appear that the intent and purpose of the Zoning By-law and Official Plan has been maintained, but it is recommended that no windows be permitted on the west elevation of the building as a condition of approval of the requested variance. The impact of overlook and privacy on the townhouse development to the south is not



considered significant, given the distance from the proposed accessory building/garage, and the fact that the rear yards of townhouses are not expected to provide the same level of privacy of that of a single detached dwelling.

*Engineering and Urban Design*

The City's Engineering Department and Urban Design Section have not provided any comments regarding the application.

*Heritage Markham*

Heritage Markham reviewed the application on September 5, 2018 and had no objections to the requested variances from a heritage perspective.

**PUBLIC INPUT SUMMARY**

No written submissions were received as of September 7, 2018. It is noted that additional comments may be received after the writing of the report and the Secretary-Treasurer will provide comments on this at the meeting.

**CONCLUSION**

It is the opinion of the Planning staff that requested variances to permit a minimum front yard setback of 18'-11.5" and a maximum accessory building height of 20'-6" are supportable.

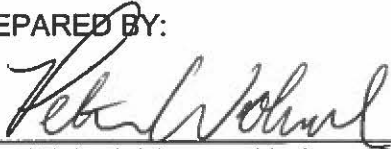
However it is the opinion of Planning staff that the requested variance to permit the creation of a second dwelling unit in the second storey of the proposed accessory building/garage at 14 Peter Street does not comply with the policies regarding second suites contained in the City's Official Plan 2014, as the proposed accessory building/garage does not meet the Official Plan's definition of a Coach House or Second Suite, because it is not located within the main house or on a laneway. Given this, an Official Plan amendment is the more appropriate process for the applicant to obtain approval.

However, it is the opinion of Planning Staff that the proposed second suite maintains the intent of the Official Plan as it applies to second suites which is to protect the interests of neighbouring property owners by maintaining the relative privacy of their rear yards. The intent of the Official Plan as it applies to second suites can only be maintained by prohibiting any windows on the west elevation of the proposed accessory building/garage given its proximity to the rear yards of the adjoining properties on Byer Drive.

Should the Committee see merit in the application, planning staff recommends that approval be conditional on the applicant obtaining site plan approval for an architectural design in substantial compliance with the attached drawings dated July 17, 2018 and having no windows on the west elevation.

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.

PREPARED BY:



Peter Wokral, Planner, Heritage Conservation Planner

REVIEWED BY:



Regan Hutcheson, Manager of Heritage Planning

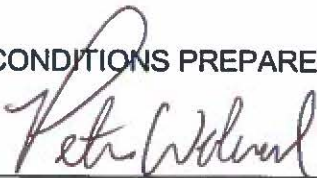
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## **APPENDIX "A"**

### **CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/63/18**

1. That the variances apply 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 dated July 17, 2018, 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 to the Secretary-Treasurer a copy of the Site Plan Endorsement memo for the proposed development;
4. That no windows be permitted on the west elevation of the garage/accessory building;
5. That prior to occupancy of the second residential unit in the garage/accessory building the Owner register the property as having two residential units with the City of Markham Fire & Emergency Services Department, and satisfy any and all conditions for registration, to the satisfaction of the Fire Chief.

CONDITIONS PREPARED BY:



Peter Wokral, Heritage Conservation Planner





Figure 1-Location Map

