

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

November 26, 2018

**File:** B/18/18 & A/161/18  
**Address:** 16 Mill St Markham  
**Applicant:** Jinghui Shen & Xiaoyan Huang  
**Agent:** KLM Planning Partners Inc (Mark Yarranton)  
**Hearing Date:** Wednesday, December 12, 2018

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

## **B/18/18**

The applicant is requesting provisional consent to:

- a) sever and convey a parcel of land with an approximate lot area of 253.3 sq. m (Part 3);
- b) retain a parcel of land with an approximate lot frontage of 20.8 m and an approximate lot area of 459 sq. m (Part 4).

The purpose of this application is to add the rear portion of the existing residential property at 16 Mill Street to the adjacent residential property at 73 Main Street South. This application is accompanied by the Variance application A/161/18 for the retained lot.

## **A/161/18**

The applicant is requesting relief from the following requirements of By-law 1229, as amended, to permit:

- a) **Section 11.1:**  
a minimum paired lot frontage of 20.8 m (68.2 ft), whereas the By-law requires a minimum paired lot frontage of 75 ft;

as it relates to an existing residential property that is the subject of the consent application B/18/18.

## **BACKGROUND**

### **Property Description**

The 712.3 m<sup>2</sup> (7,667.13 ft<sup>2</sup>) subject property is located within the Markham Village Heritage Conservation District on the east side of Main Street South, north of Highway 407, and south of Highway 7. The property is addressed and fronts onto Mill St while the rear yard abuts the lands at 73 Main Street South (See Location Map – Figure 1). Adjacent land uses are entirely residential, comprised of single, and semi-detached dwellings. The property is occupied by the northern half of a semi-detached dwelling constructed in 1959 (See Photograph of the Existing Semi-Detached Dwelling – Figure 2). A manicured lawn and three (3) mature trees exist at the rear of the property.

The owner of the property immediately to the west at 73 Main Street South has submitted Official Plan, and Zoning By-law amendment applications as well as Site Plan Control and Subdivision applications to the City seeking permission for a proposed townhouse development. They have negotiated with the owners of the semi-detached units at 14, 16 and 20 Mill Street to purchase the rear portions of their respective lots, so that the

conveyed parcels of land can be incorporated into their proposed development of 73 Main Street South. Similar consent and minor variance applications have also been submitted to the Committee of Adjustment by the owners of these neighbouring properties (B/17/18, A/160/18 and B/19/18).

The majority of the subject property is within an area regulated by the TRCA under Ontario Regulation 166/06, as amended, as the land is partially within the Rouge River valley corridor.

#### Proposal

The applicant is proposing to sever the existing residential lot into two (2) parcels and convey lands from the rear of the property to the abutting property to the west, municipally known as 73 Main Street South (See Proposed Severance Diagram – Figure 3). The conveyed parcel (Part 3) will have a lot area of approximately 253.3 m<sup>2</sup> (2,726.50 ft<sup>2</sup>). The retained parcel (Part 4) will have a lot area of 459 m<sup>2</sup> (4,940.63 ft<sup>2</sup>) and a lot frontage (paired) of 20.8 m (68.24 ft) where the minimum By-law requirement is 22.86 m (75 ft). The applicant is also applying for a minor variance to obtain relief from the requirements of By-law 1229, as amended, for the existing frontage for the retained land.

#### **Official Plan and Zoning**

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

The subject property is designated 'Residential – Low Rise', which provides for low rise housing forms. In considering applications for development approval in a 'Residential Low Rise' area, which includes severances and infill development, the proposed severance is required to meet the general intent of Section 8.2.3.5 of the 2014 Official Plan with respect to lot frontage and lot area to ensure that the development is appropriate for the site, and generally consistent with the zoning requirements for adjacent properties and properties along the same street. Regard shall also be had for retention of existing trees and vegetation, the width of proposed garages and driveways and the overall orientation and sizing of new lots within a residential neighbourhood.

Section 9.13.4.8. of the Official Plan provides area and site specific policies for 'Residential Low Rise' lands in the Markham Village Heritage Centre which includes this property. Only detached and semi-detached dwellings at a maximum height of two storeys are permitted.

Section 4.5.3.10 of the Official Plan contains Cultural Heritage Policies related to Development Approvals requiring the evaluation of each land severance and variance proposal that directly affects a cultural heritage resource itself and adjacent lands on its own merits and its compatibility with the heritage policies of this Plan and the objectives and policies of any applicable heritage conservation district plan. This shall include the preservation of the existing lot fabric or historical pattern of lot development on the specific street or in the immediate neighbourhood where it contributes to the uniqueness, and forms part of the historical character of the area.

#### Zoning By-law 1229

The property is zoned R2 'Residential' under By-law 1229, as amended. The R2 Zone provisions under By-law 1229, as amended, requires a minimum lot area of 761.80 m<sup>2</sup> (8,200 ft<sup>2</sup>) and lot frontage of 22.86 m (75 ft) for a pair of semi-detached dwellings. The retained lot (Part 4) complies with the minimum lot area but does not comply with the minimum lot frontage.

#### Markham Village Heritage Conservation District Plan

The Markham Village Heritage Conservation District Plan contains no policies or guidelines regarding severances, but does refer to the importance of integrating new development with adjoining natural areas and the existing streetscape. The proposed severance of the rear yard of 16 Mill Street will have no impact on the existing streetscape of Mill Street.

#### **COMMENTS**

Consent applications are evaluated in the context of Section 51 (24) of the *Planning Act*, as well as provincial and local land division policies.

#### **LAND DIVISION**

In order for land division to occur under the *Planning Act*, the process requires both provincial interests and local planning concerns to be satisfied. In Markham, land division is regulated within a policy-led planning system that consists of a number of inter-related types of legislation and policies including:

- The Planning Act and the Provincial Policy Statement (PPS)
- Other Provincial Plans (if applicable)
- Markham Official Plan
- Community Improvement Plans (if applicable)
- Local Zoning By-laws
- Site Plan Control Area By-law

#### **a) The Planning Act**

The *Planning Act* in Ontario provides the framework for the province's policy-led planning system. All decisions regarding consent applications must:

- Have regard to criteria listed in subsection 51(24) which relates to the subdivision of land, and includes, but is not limited to:
  - Effect on matters of provincial interest listed in Section 2 of the Act;
  - Suitability of the land for the purposes for which it is to be subdivided;
  - Lot dimensions and shapes;
  - Restrictions of the land;
  - Interrelationship with site plan control matters

Each of these criteria is explored below:

#### Matters of Provincial Interest

The subject property at 16 Mill Street does involve a matter of provincial interest, that being Section 2(c) "the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest" as the property is located in a designated heritage conservation district. The proposed severance does not affect any existing heritage resources in the Markham Village Heritage Conservation District and the semi-detached homes fronting Mill Street will remain unchanged.

#### Suitability of the Land for its Intended Use

The property is in residential use and both the conveyed and retained lot are proposed to remain in low rise residential use.

### Lot Dimensions and Shapes

Although the depth of the retained lot will change, its width will remain the same, and the retained lot area exceeds the minimum required lot area of the By-law for one half of a semi-detached dwelling. The conveyed lot is to be added to the adjacent lot at 73 Main Street South which already meets the required minimum frontage and lot area of the By-law. The proposed lot dimensions and shapes resulting from the proposed severance are also compatible with the varied lots sizes found in the immediate neighbourhood and are a character defining feature of heritage conservation districts.

### Restrictions on the Land and Interrelationship with Site Plan Control Matters

The restrictions on the subject property relate to the fact that the property is officially designated pursuant to Part V of the *Ontario Heritage Act*. Council has adopted a heritage conservation district plan through a specific by-law. This heritage plan provides policies and design guidelines to guide alterations and development. The owner must obtain a "Heritage Act" permit from the municipality to alter any part of the property, or to erect, demolish or remove any building on the property. Therefore any new development (lot creation and any future buildings) are subject to the restrictions and guidance found in the heritage conservation district plan. There is no proposed change to the existing semi-detached dwelling located on the retained lot and the townhouse development proposed for the conveyed lot will need to comply with the policies and guidelines for new buildings contained in the Markham Village Heritage Conservation District Plan. Any future development on the conveyed lands will also be subject to site plan control.

### **b) Consistency with the Provincial Policy Statement**

The Provincial Policy Statement (PPS) 2014 sets the policy foundation for regulating the development and use of land in Ontario. Decisions that affect a planning matter are to be consistent with the Provincial Policy Statement. Section 2.6 of the PPS addresses cultural heritage resources. The policy requires that significant built heritage resources and **significant cultural heritage landscapes (a heritage conservation district) shall be conserved**. As per the current proposal, no built heritage resources are affected and the conveyed lot is to be incorporated into the lot immediately to the west, which is the subject of a proposed townhouse development that has not been approved by the City. The effects of this proposed development on the overall character and integrity of the heritage conservation district will be determined through the associated Official Plan, Zoning By-law, Subdivision and Site Plan Control applications.

### **c) Conformity with the Official Plan**

The Official Plan represents the municipality's chief planning tool to provide direction to approval authorities and the public on local planning matters. The 2014 Official Plan includes applicable policies respecting **infill development** (Section 8.2.3.5) and **heritage conservation** (Section 9.13.4.1 and Sections 4.5.3.9 and 4.5.3.10).

### Infill Development

Section 8.2.3.5 which describes development criteria or infill development in areas designated as "Residential Low Rise" states that Council shall ensure infill development respects and reflects the existing pattern and character of adjacent development by ensuring that the lot frontages and lot areas of the proposed new lots shall be consistent with the sizes of existing lots on both sides of the street on which the property is located. The existing frontage of the retained lot will not be changed and the lot areas resulting from the proposed severance meet the standards of the By-law and are consistent with

the varied lots sizes found in the Markham Village Heritage Conservation District. The severed parcel will be added to an existing lot.

#### Heritage Conservation

The Land Use Objectives described in Section 9.13.4.1 of the 2014 Official Plan regarding the Markham Village Heritage Conservation District are to provide a variety of residential forms while ensuring compatible new development that recognizes the distinct character of the existing heritage buildings and landscape of the district. The proposed severance is in support of a planned townhouse development which is yet to obtain approval and maintains the current semi-detached dwelling on the retained lot. Implementation of the Markham Village Heritage Conservation District Plan in the design of the proposed townhouse development will ensure that the distinct character and landscape of the district is recognized and maintained.

The proposed severance and requested variances are not associated with any proposed development, maintain the existing lot frontages and fabric of Mill Street, and do not conflict with any policies or guidelines contained in the Markham Village Heritage Conservation District Plan.

Heritage Markham will review the proposed severance on December 12, 2018 and is expected to have no objection to its approval as it is not associated with any immediate development, and does not alter the existing lot frontage or lot fabric of Mill Street.

#### **d) Compliance with the Zoning By-law**

The zoning by-law enables the municipality to implement the vision set out in the Official Plan. It identifies the permitted land uses and the required development standards. The existing semi-detached dwelling is a permitted use of the retained lot while the proposed townhouse development intended for the conveyed lot is not. The appropriateness of the proposed townhouse development will be determined through the associated Official Plan, Zoning Amendment, Subdivision and Site Plan Control applications being reviewed and considered by the City. A variances is being considered to address zoning By-law compliance on the retained lot.

#### **CONCLUSION**

Planning staff has considered the criteria pertaining to severances contained in Section 51 (24) of the Planning Act and is of the opinion that the proposed severance is supportable as the land is being conveyed to an existing lot.

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

#### **VARIANCES**

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

According to the information provided by the applicant, the reason for not complying with the applicable zoning by-law provisions is:

- *"the deficient lot frontage has been an existing condition since the lot was created."*

##### **Zoning Preliminary Review (ZPR) not Undertaken**

A Zoning Preliminary Review (ZPR) has not been formally undertaken for the proposal. 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 additional variances are identified during the Building Permit review process, further variance application(s) may be required to address the outstanding matters and there may be a delay in application processing.

#### Planning 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

#### Lot Frontage

The proposed severance creates a retained lot that meets the minimum lot area requirement of the zoning by-law without changing the existing lot frontage. Given that the requested variance represents a condition that was created in 1959 when the existing semi-detached dwelling was constructed, the variance is minor in nature, and desirable for the appropriate use of the land.

#### Urban Design and Engineering

The City's Urban Design Section and Engineering Department have provided no comments on the proposed severance and variance applications as there is no proposed development on the retained or conveyed parcel at this time.

#### Heritage Markham

Heritage Markham will review the requested variance on December 12, 2018 and is expected to have no objection to its approval as it reflects the existing site conditions of the property.

### **EXTERNAL AGENCIES**

#### TRCA Comments

The Toronto and Region Conservation Authority has indicated that they also have no objections to the proposed severance and variances, subject to the applicant remitting the outstanding TRCA Planning services fee of \$4,200.00 with 60 days of November 19, 2018, as there are no new buildings or structures proposed on either the retained or conveyed lot. The TRCA will provide separate comments for the conveyed parcel once it has been incorporated into the adjacent property at 73 Main Street South as part of the proposed townhouse development on that site.

### **PUBLIC INPUT SUMMARY**

No written submissions were received as of December 6, 2018. 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 proposal within the context of the criteria in Sections 51 (24) and 45 (1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and recommend that the proposed severance (B/18/18) and related minor variance (A/161/18) be approved

subject to the conditions in Appendix 'A' and Appendix 'B' Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why the proposed consent and conveyance and variances should be granted

PREPARED BY:

  
for Peter Wokral, Senior Heritage Planner

REVIEWED BY:

  
Regan Hutcheson, Development Manager

**APPENDIX 'A'**

**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF B/18/18**

1. Payment of all outstanding realty taxes and local improvements charges owing to date against both the subject and retained parcels, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled.
2. Submission to the Secretary-Treasurer of the required transfers to effect the severances applied for under Files B/18/18, in duplicate, conveying the subject lands, and issuance by the Secretary Treasurer of the certificate required under subsection 53(42) of the Planning Act.
3. Confirmation from Heritage Markham that the requested severance is supported.
4. Remittance of the outstanding \$4,200.00 TRCA Planning services fee within 60 days of November 19, 2018.
5. Submission to the Secretary-Treasurer of seven white prints of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted.
6. Subsection 50(3) or 50(5) of the Planning Act shall apply to any subsequent conveyance of or transaction involving the parcel of land that is the subject of this consent.
7. Submission of a Solicitor's Certificate certifying that upon registration of the required transfers to effect the severance applied for under Files B/18/18, title to Part 3 of PART LOT 5 & 6 on the Draft Reference Plan submitted with File B/18/18 will merge with title to the lands to the west municipally known as 73 Main Street South, and legally described as Lots 4, 5 and 7 on Plan 18, all to the satisfaction of the Director of Planning and Urban Design or designate.
8. Provide confirmation from an Ontario Land Surveyor that the severed and retained parcels, in their final configuration, meets all the requirements of the applicable Zoning By-law, including any development standards for building and structures, and that the Secretary-Treasurer receive written confirmation that this condition has been satisfied to the satisfaction of the Zoning Supervisor or designate.

**APPENDIX 'B'**

**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF A/161/18**

1. The variances apply only to the proposed development as long as it remains;
2. That the Secretary-Treasurer receive written confirmation from Heritage Markham that the requested variance is supported;

CONDITONS PREPARED BY:


  
*for* Peter Wokral, Senior Heritage Planner

Figure 1 – Location Map



**Figure 2 – Photograph of the Existing Semi-Detached Dwelling**



**Figure 3 – Proposed Severance Diagram**

