

Memorandum to the City of Markham Committee of Adjustment

July 12, 2019

File: A/36/19
Address: 284 Main St N Markham
Applicant: Donald Clarke
Agent: Mario Colangelo
Hearing Date: Wednesday August 7, 2019

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

The applicant is requesting relief from the following requirements of By-law 1229, R1 as amended, to permit:

- a) **Section 6.1 (a): an accessory coach house dwelling unit, whereas the By-law only permits a One-Family Detached Dwelling;**
- b) **Parking By-law 28-97, Section 6.2.4.4 a) i): an existing driveway setback of 0.0 ft., whereas the By-law requires a minimum 4 ft. setback;**

as it relates to an existing unauthorized residential unit located in a detached coach house.

BACKGROUND

Property Description

The 989.56 m² (10,651.9 ft²) subject property is located on the west side of Main Street North, in the Mount Joy area of Markham Village. The property is also part of an established residential neighbourhood comprised of a mix of one and two-storey detached dwellings within the Markham Village Heritage Conservation District (See Figure 1- Location Map).

The property is occupied by an approximately 153.5m² (1,652 ft²) one and one half storey brick heritage dwelling constructed in 1883, and a 161.6m² (1,740 ft²), one and one half storey detached garage/accessory building located in the rear yard, constructed in 1997 (See Figure 2- Photograph of the Existing Detached Accessory Building).

Proposal

The applicant is seeking permission to legalize an existing unauthorized secondary suite located in the detached garage/accessory building and for a reduced setback of the existing driveway from the northern property line. The existing secondary suite has direct and separate access provided by a door on the south side of the building, and no changes are proposed for the exterior of the garage/accessory building.

Provincial Policies

Strong Communities through Affordable Housing Act - Province of Ontario

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."

Official Plan and Zoning

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

The 2014 Official Plan designates the subject property "Residential – Low Rise", which provides for low rise housing forms including secondary suites and a coach house located above a garage on a laneway. The definition of a "Secondary Suite" in the 2014 Official Plan is "a second residential unit in a detached house, semi-detached house or row house 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." A coach house is defined as a second residential unit located above a private garage in either the main building or an accessory building on the same lot.

Section 8.13.8 states that it is the policy of Council that in considering an application to amend the zoning by-law to permit the establishment of a secondary suite where provided for in the 2014 Official Plan, that 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

As part of the City initiated zoning by-law consolidation project, Council recently considered the issue of second suites within the City. On May 29th, 2018, Council voted not to permit second suites as of right in any single detached, semi-detached, or townhouse dwelling.

Zoning By-Law 1229

The subject property is zoned R1 under By-law 1229, as amended, which only permits single detached dwellings.

Applicant's Stated Reason for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is, "*Illegal Accessory Dwelling Unit (Above the Garage)*".

Zoning Preliminary Review (ZPR) Undertaken

The owner has completed a Zoning Preliminary Review (ZPR) on July 2, 2019 to confirm the variances required for the proposed development, but the variance to permit the existing setback of the driveway from the property line was not identified until July 16th.

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.

Planning

The proposal is for a second residential unit located above a garage, but not on a laneway (as is permitted in the Official Plan).

There is more than adequate parking provided for the existing second suite both in the garage, driveway and on an expanded portion of asphalt located behind the heritage dwelling. The existing second suite is inconspicuous due to its location in the rear of the property and does not negatively impact the heritage character of the surrounding neighbourhood. The secondary suite also does not appear to compromise the privacy of neighbouring property owners as there are only two small windows on the second storey facing east to Main Street and west to the adjacent property. The rear yard of the subject property is also surrounded by mature trees, cedar hedges and fences located both on the subject and neighbouring properties. To the knowledge of Planning staff, there have been no complaints regarding the existing second suite from neighbouring property owners.

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 provide support to achieve its affordable housing target required by the Province. Planning 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 therefore have no objections.

Engineering and Urban Design

Engineering staff provided no comments on the application and has no objections provided the 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 which ensures the secondary suite will be in compliance with Building Code and Fire Code regulations. The City's Urban Design Section provided no comments on the application.

Reduced Driveway Setback

The existing setback of the driveway is evident in photographs as early as 2011, and may represent a much earlier site condition given that the neighbourhood developed in the late

1800's, several decades before the implementation of the City's Driveway By-law. Given the distance of the existing house from the property line to the north, it would also appear that compliance with the 4 foot setback prescribed by the By-law would reduce the driveway to an impractical width for modern vehicles. Lastly, the existing driveway is separated from the neighbouring property to the north by a mature cedar hedge, so there is little impact resulting from the granting of the variance and staff is satisfied that the requested variance meets the four tests of the Planning Act.

Heritage Markham

The Heritage Markham Committee reviewed the requested variance to permit the existing secondary suite on July 10, 2019 and had no comment as the requested variance does not represent any physical change to the existing structure, and therefore has no impact on the existing heritage character of the Markham Village Heritage Conservation District. The Heritage Committee was not aware of the requested variance to permit the reduced setback of the driveway from the property line as the results of the Zoning Preliminary Review were not available until July 16th, 2019.

PUBLIC INPUT SUMMARY

No written submissions were received as of August 1, 2019. 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 has 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 objection. 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.

PREPARED BY:



Peter Wokral, Senior Heritage Planner

REVIEWED BY:




Regan Hutcheson, Manager of Heritage Planning

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/36/19

1. The variances apply only to the proposed development as long as it remains;
2. 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 an accessory building to an accessory building containing a residential unit on the second floor.
3. That the Owner register the home as a two-unit property with the City of Markham Fire & Emergency Services Department, and satisfy any and all conditions for registration, to the satisfaction of the Fire Chief.
4. That the variance to permit the existing setback of the driveway from the property line is supported by Heritage Markham.

CONDITIONS PREPARED BY:



Peter Wokral, Senior Heritage Planner

Figure 1- Location Map

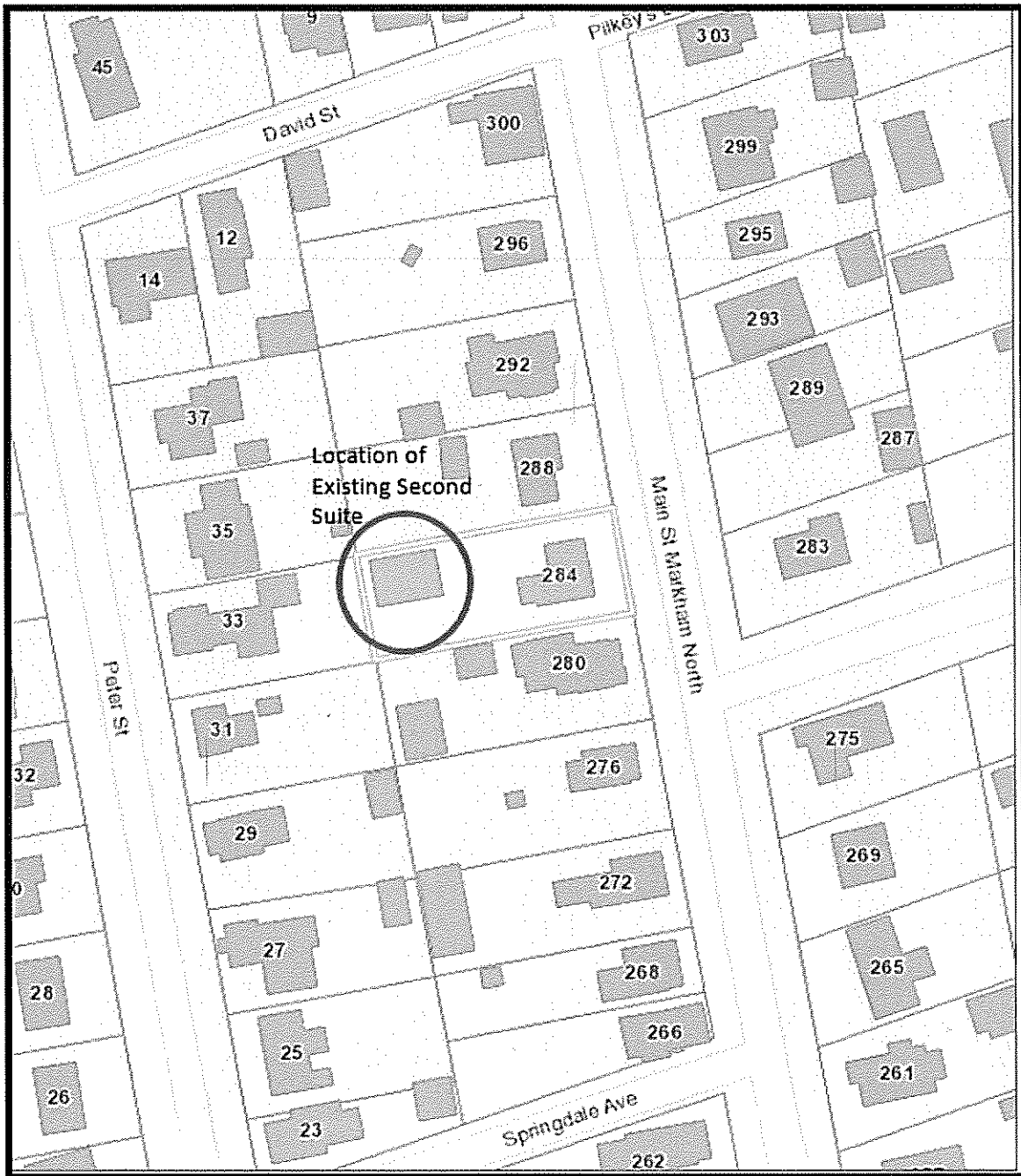


Figure 2- Photograph of the Existing Detached Accessory Building with Existing Secondary Residential Unit.

