

# Memorandum to the City of Markham Committee of Adjustment

June 21<sup>st</sup>, 2019

**File:** A/49/19  
**Address:** 59 George Street, Markham  
**Applicant:** Corina Champion  
**Agent:** Gregory Design Group (Russ Gregory)  
**Hearing Date:** Wednesday June 26, 2019

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

The applicant is requesting relief from the following requirements of By-law 1229, as amended, as it relates to a proposed two-storey single detached dwelling, to permit:

- a) **Infill By-law 99-90, Section 1.2 (vi):**  
a Net Floor Area (NFA) of 51.55 percent, whereas the By-law permits a maximum NFA of 45 percent;
- b) **Infill By-law 99-90, Section 1.2 (iii):**  
a maximum building depth of 18.5m, whereas the By-law permits a maximum building depth of 16.8m; and
- c) **Infill By-law 99-90, Section 1.2 (i):**  
a maximum building height of 10.21m, whereas the By-law permits a maximum building height of 9.8m.

## BACKGROUND

### Property Description

The 963.35 m<sup>2</sup> (10,369.41 ft<sup>2</sup>) subject property is located on the east side of George Street, east of Main Street Markham and north of Parkway Avenue. The property is located within a residential neighbourhood comprised of a mix of one and two-storey detached dwellings. There is an existing one-storey detached 93.64 m<sup>2</sup> (1,008 ft<sup>2</sup>) dwelling on the property, which according to assessment records was constructed in 1950. Mature vegetation exists across the front and rear of the property.

### Proposal

The applicant is proposing to construct a new 379.31 m<sup>2</sup> (4,082.86 ft<sup>2</sup>) single detached dwelling on the subject property. The proposed dwelling is two-storeys in height, includes an attached two-car garage and has front and rear covered porches.

### 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 including single detached dwellings. Section 8.2.3.5 of the 2014 Official Plan outlines infill development criteria for the 'Residential Low Rise' designation with respect to height, massing and setbacks. This criteria is established to ensure that the development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties as well as properties located along the same side of the street. In considering applications for development approval in a 'Residential Low Rise' area, including variances, infill development is required to meet the general intent of this criteria. 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.

#### Zoning By-Law 1229

The subject property is zoned R1 (Residential) under By-law 1229, as amended, which permits one single detached dwelling on a lot.

#### Residential Infill Zoning By-law 99-90

The subject property is also subject to the Residential Infill Zoning By-law 99-90. The intent of this By-law is to ensure the built form of new residential construction will maintain the character of existing neighbourhoods by specifying development standards for building depth, garage projection, garage width, net floor area ratio, height, yard setbacks and number of storeys. The proposed development does not comply with the infill By-law requirements with respect to maximum net floor area ratio, maximum building depth and maximum building height.

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

According to the information provided by the applicant, the reason for not complying with Zoning is, "for the construction of a new house".

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

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. 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 variance request in this application contains 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.

#### **Increase in Maximum Floor Area Ratio**

The applicant is requesting a floor area ratio of 51.55 percent, whereas the By-law permits a maximum floor area ratio of 45 percent. The variance will facilitate the construction of a two-storey detached dwelling with a floor area of 405.50 m<sup>2</sup> (4,364.76 ft<sup>2</sup>), whereas the By-law permits a dwelling with a maximum floor area of 354.70 m<sup>2</sup> (3,817.95 ft<sup>2</sup>). This represents an increase of approximately 50.8 m<sup>2</sup> (546.81 ft<sup>2</sup>).

Floor Area Ratio is a measure of the interior square footage of the dwelling as a percentage of the net lot area. While the proposed dwelling is larger than existing dwellings originally developed in the 1950s, it will maintain all setbacks exceeding the required side and rear yard setbacks. The proposed dwelling will also be under the permitted lot coverage of 33.33 percent with a proposal of approximately 32.03 percent. Staff are of the opinion that the proposed net floor area ratio is

minor in nature and will not result in demonstrable adverse impacts on neighbouring homes or the character of the street.

#### **Increase in Maximum Building Depth**

The applicant is requesting relief to permit a maximum building depth of 18.5 m (60.7 ft), whereas the By-law permits a maximum building depth of 16.8 m (55.12 ft). This represents an increase of approximately 1.7 m (5.6 ft).

Building depth is measured as the shortest distance between two lines, both parallel to the front lot line, one passing through the point on the dwelling which is the nearest and the other through the point on the dwelling which is the farthest from the front lot line. The building depth variance is attributable to a small 3.9 m<sup>2</sup> (42 ft<sup>2</sup>) projection into the rear yard, which adds approximately 1.83 m (6 ft) to the total depth of the proposed dwelling. This projection is applicable to the 1<sup>st</sup> storey and basement only. With the exception of this small projection, the majority of the dwelling has a maximum depth of approximately 16.67 m (54.7 ft) which is within the by-law requirement. Staff are of the opinion that the variance request is appropriate for the development.

#### **Increase in Maximum Building Height**

The applicant is requesting relief to permit a maximum building height of 10.21 m (33.5 ft), whereas the By-law permits a maximum building height of 9.8 m (32.15 ft). This represents an increase of approximately 0.41 m (1.34 ft). Staff have no objections to the proposed building height

### **EXTERNAL AGENCY COMMENTS**

#### **Metrolinx**

Metrolinx provided comments in an email dated June 10<sup>th</sup>, 2019 (Appendix C), indicating that they did not object to the application, subject to the following conditions:

- A warning clause be inserted into any development agreements, offers to purchase and agreements of Purchase and Sale for the subject lands, regarding the potential expansion or alterations to rail facilities within 300 m of the site; and,
- That the owner is required to enter into an environmental easement with Metrolinx for operational emissions, to be registered on title.

Staff note that a development or site plan agreement with the City is not required for the proposed development on the subject lands. Staff recommend that any decision to approve the variance be conditional upon the Owner corresponding with Metrolinx with respect to conditions provided in Appendix 'A'.

### **PUBLIC INPUT SUMMARY**

No written submissions were received as of June 13<sup>th</sup>, 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 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. 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:

  
\_\_\_\_\_  
Aqsa Malik, Planner I, East District

REVIEWED BY:

  
\_\_\_\_\_  
Stephen Corr, Senior Planner, East District  
File Path: Amanda\File\19 121305 \Documents\District Team Comments Memo

**APPENDIX "A"**

**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/49/19**

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 received by the City of Markham on *May 23, 2019*, 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. Submission of a Tree Assessment and Preservation Plan, prepared by a qualified arborist in accordance with the City's Streetscape Manual (2009), as amended, to be reviewed and approved by the City, and that the Secretary-Treasurer receive written confirmation from the Tree Preservation Technician or Director of Operations that this condition has been fulfilled to his/her satisfaction, and that any detailed Siting, Lot Grading and Servicing Plan required as a condition of approval reflects the Tree Assessment and Preservation Plan;
4. That prior to the commencement of construction or demolition, tree protection be erected and maintained around all trees on site in accordance with the City's Streetscape Manual, including street trees, in accordance with the City's Streetscape Manual (2009) as amended, and inspected by City Staff to the satisfaction of the Tree Preservation Technician or Director of Operations;
5. That tree replacements be provided and/or tree replacement fees be paid to the City if required in accordance with the Tree Assessment and Preservation Plan, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Tree Preservation Technician or Director of Operations; and
6. \*The following warning clause shall be inserted in all development agreements, offers to purchase and agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the railway right-of-way:

**Warning:** Metrolinx, carrying on business as GO Transit, and its assigns and successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that GO Transit or any railway entering into an agreement with GO Transit to use the right-of-way or their assigns or successors as aforesaid may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). Metrolinx will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way.

The Owner shall contact Metrolinx with regards to an environmental easement for operational emissions, registered on title against the subject residential dwelling in favour of Metrolinx.

CONDITIONS PREPARED BY:

  
\_\_\_\_\_  
Aqsa Malik, Planner I, East District

**SURVEYOR'S REAL PROPERTY REPORT OF**  
**PART 1**  
**PLAN OF LOT 18**  
**REGISTERED PLAN 2485**  
**TOWN OF MARKHAM**  
 (REGIONAL MUNICIPALITY OF YORK)  
 SCALE = 1 : 200  
**A. AZIZ SURVEYORS INC., O.L.S.**  
 METRIC DISTANCES SHOWN HEREON ARE IN METERS AND  
 CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

BY CONVEYANCE FROM:  
 THE PROPERTY IS SHOWN AS BEING IN POSSESSION OF THE  
 SURVEYOR'S OFFICE FOR THE PURPOSES OF THIS REPORT.

**PART 2**  
**REPORT**  
 THIS REPORT WAS PREPARED FOR A SPECIFIC AND THE LANDOWNER  
 ACCEPTS HIS RESPONSIBILITY FOR ITS USE BY OTHER PARTIES

**BOUNDARIES**  
 LOT 18 REGISTERED PLAN 2485

**TITLE SEARCH INDICATES**  
 NO ENCUMBRANCES OR OTHER RIGHTS REGISTERED ON FILE  
 ZONING  
 THE ZONING BY-LAW IN EFFECT AT THE TIME OF THIS SURVEY IS  
 (PLEASE REFER TO THE TOWN OF MARKHAM WEBSITE FOR THE LATEST BY-LAW)  
 ENCUMBRANCES  
 THERE ARE NO ENCUMBRANCES REGISTERED ON FILE IN RELATION TO THE SUBJECT LOT  
 (PLEASE REFER TO THE TOWN OF MARKHAM WEBSITE FOR THE LATEST BY-LAW)  
 EASEMENTS  
 THERE ARE NO EASEMENTS REGISTERED ON FILE IN RELATION TO THE SUBJECT LOT  
 (PLEASE REFER TO THE TOWN OF MARKHAM WEBSITE FOR THE LATEST BY-LAW)

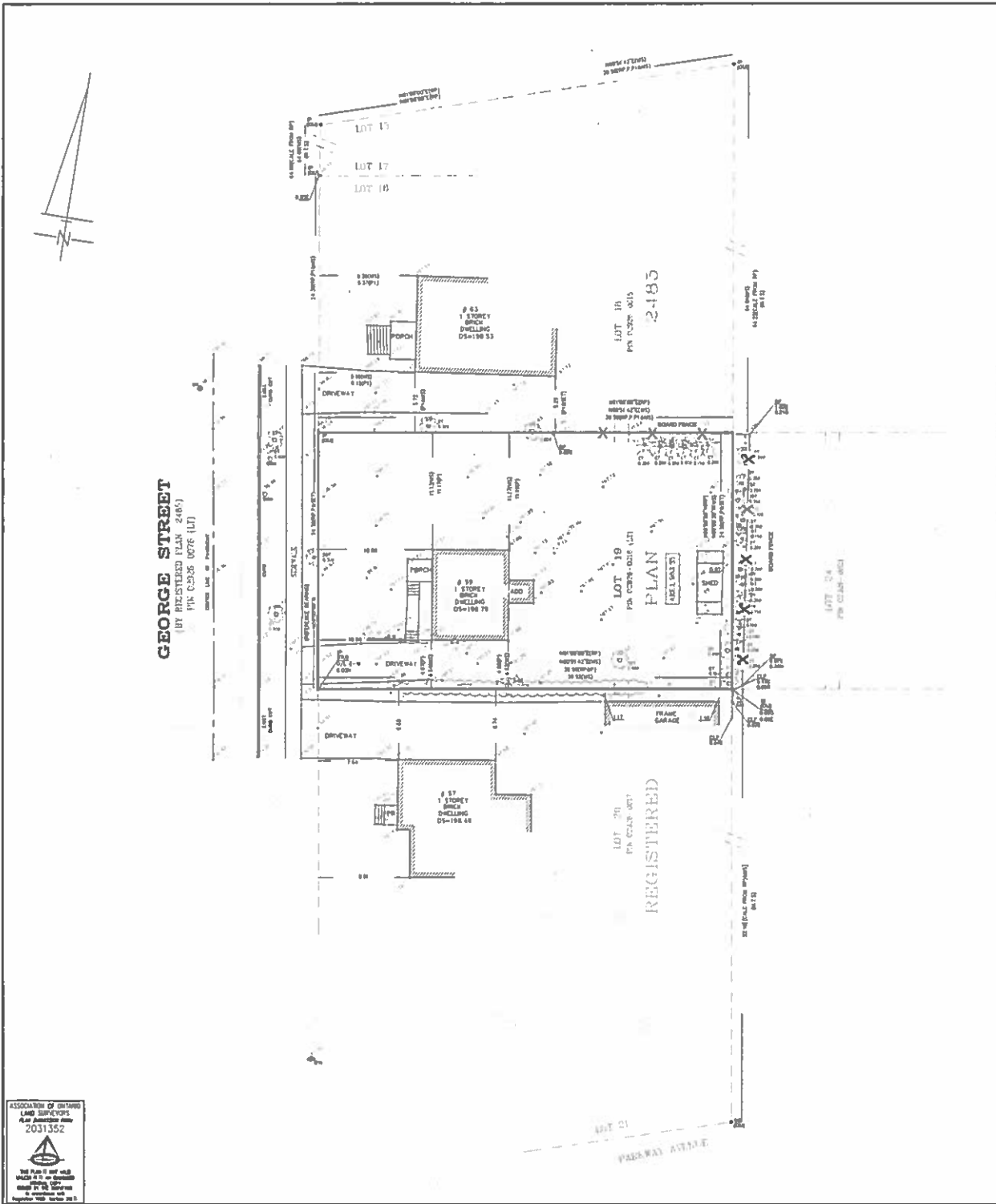
SYMBOL	DESCRIPTION	DATE	BY
1	Survey	01/11/17	A. Aziz
2	As-built	01/11/17	A. Aziz
3	Other	01/11/17	A. Aziz
4	Other	01/11/17	A. Aziz
5	Other	01/11/17	A. Aziz
6	Other	01/11/17	A. Aziz
7	Other	01/11/17	A. Aziz
8	Other	01/11/17	A. Aziz
9	Other	01/11/17	A. Aziz
10	Other	01/11/17	A. Aziz
11	Other	01/11/17	A. Aziz
12	Other	01/11/17	A. Aziz
13	Other	01/11/17	A. Aziz
14	Other	01/11/17	A. Aziz
15	Other	01/11/17	A. Aziz
16	Other	01/11/17	A. Aziz
17	Other	01/11/17	A. Aziz
18	Other	01/11/17	A. Aziz
19	Other	01/11/17	A. Aziz
20	Other	01/11/17	A. Aziz

**SURVEYOR'S CERTIFICATE**  
 I CERTIFY THAT THE SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE  
 WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE  
 ACT AND THE REGULATIONS MADE UNDER THEM  
 I, THE SURVEYOR, HAVE COMPLETED ON THE 23rd DAY OF NOV. 2017

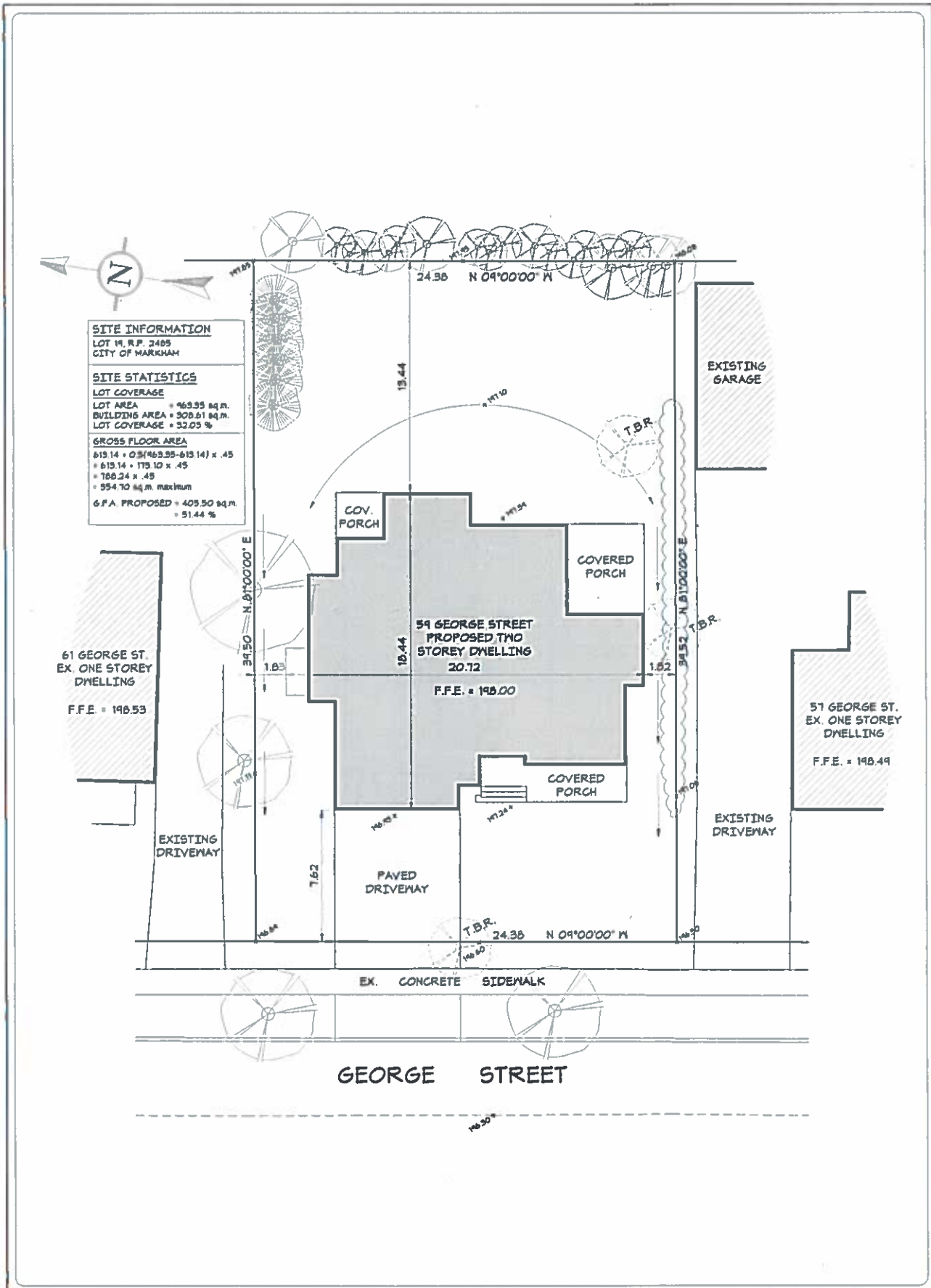
NOVEMBER 9, 2017  
 A. AZIZ SURVEYORS INC.  
 ONTARIO LAND SURVEYORS  
 120 NEWBORN ROAD, UNIT 10, MARKHAM, ONT. L3R 9V7  
 TEL: (905) 221-2224 FAX: (905) 477-0466  
 WWW: www.aazisurveyors.com  
 E-MAIL: info@aazisurveyors.com

PROJECT NUMBER: 17-025 PROJECT: 18 GEORGE STREET (S-01)  
 DRAWN BY: CM CHECKED BY: AA

May 23, 2019



ASSOCIATION OF ONTARIO  
 LAND SURVEYORS  
 PLAN NUMBER: 2031352



SITE INFORMATION	
LOT 11, R.P. 2495 CITY OF MARKHAM	
SITE STATISTICS	
LOT COVERAGE	
LOT AREA	= 963.55 sq.m.
BUILDING AREA	= 308.61 sq.m.
LOT COVERAGE	= 32.03 %
GROSS FLOOR AREA	
613.14	• 03(463.55-613.14) x .45
613.14	• 173.10 x .45
188.24	x .45
954.70	sq.m. maximum
G.F.A. PROPOSED	= 403.50 sq.m.
	= 51.44 %

**GENERAL NOTES:**

- ALL CONSTRUCTION IS TO CONFORM TO SECTION "4" OF THE ONTARIO BUILDING CODE (LATEST EDITION).
- CONTRACTOR SHALL CHECK AND VERIFY ALL NOTES AND DIMENSIONS.
- DO NOT SCALE DRAWINGS.
- OWNER / CONTRACTOR / DESIGNER IS RESPONSIBLE TO RE-CLAIM AND DESTROY ALL PREVIOUS AND UN-REVISED COPIES OF THIS DRAWING.
- THESE DRAWINGS ARE THE PROPERTY OF THE GREGORY DESIGN GROUP AND / OR ITS CLIENTS ONLY.
- BUILDING PERMITS SHOULD BE OBTAINED PRIOR TO COMMENCING CONSTRUCTION.

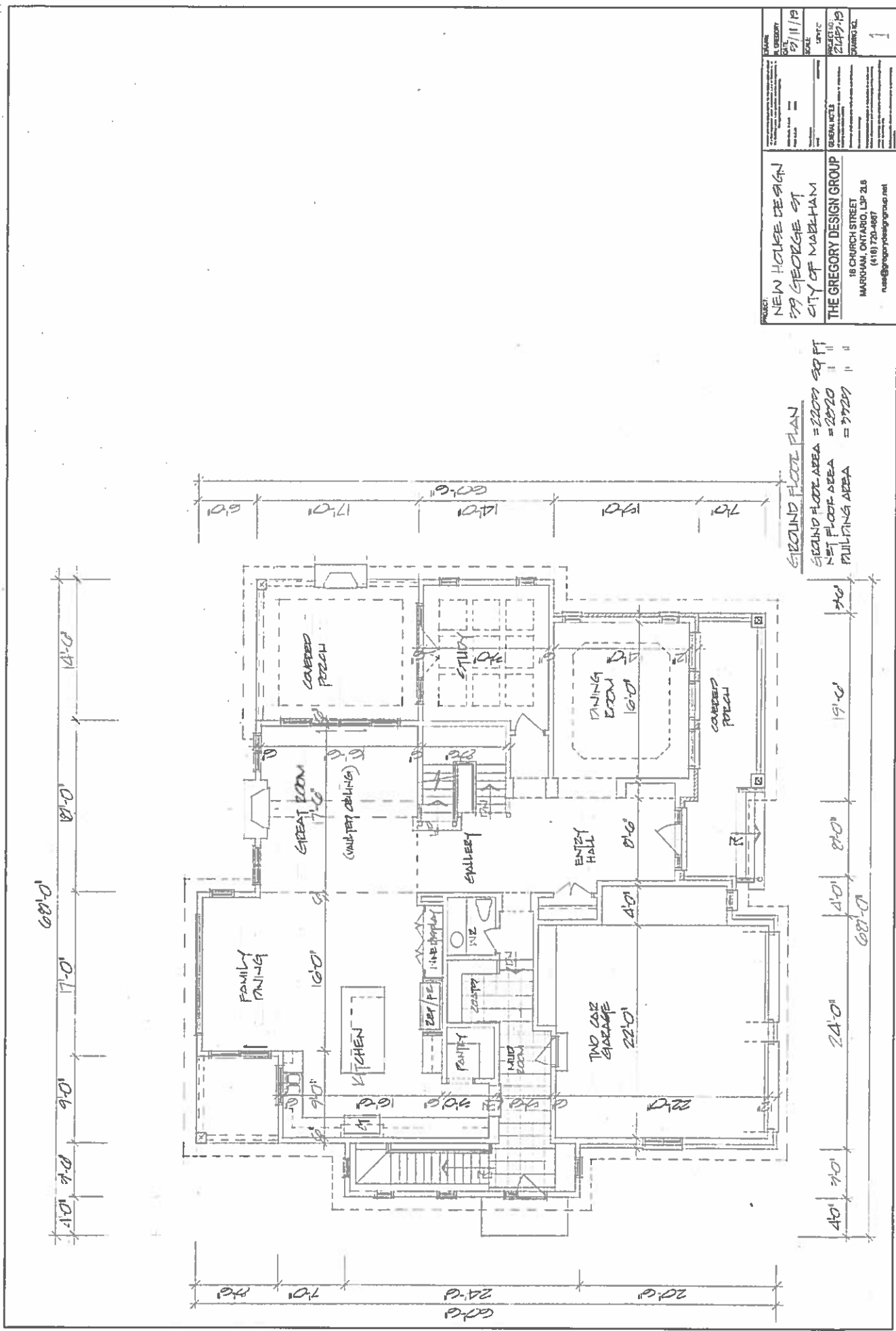
**PROJECT TITLE**

**SITE PLAN  
59 GEORGE STREET  
CITY OF MARKHAM**

**THE GREGORY DESIGN GROUP**

50 MCINTOSH DRIVE, UNIT 140  
MARKHAM, ONTARIO L3R 9T3  
OFFICE (905) 473-4767  
FAX (905) 473-0496  
shane@gregorydesigngroup.com

SCALE	1:250	DATE	05/21/19
PROJECT NUMBER	2120-1B	SHEET NUMBER	
DRAWN BY	S.Gregory	<b>SP-1</b>	
CHECKED BY	R.G.		

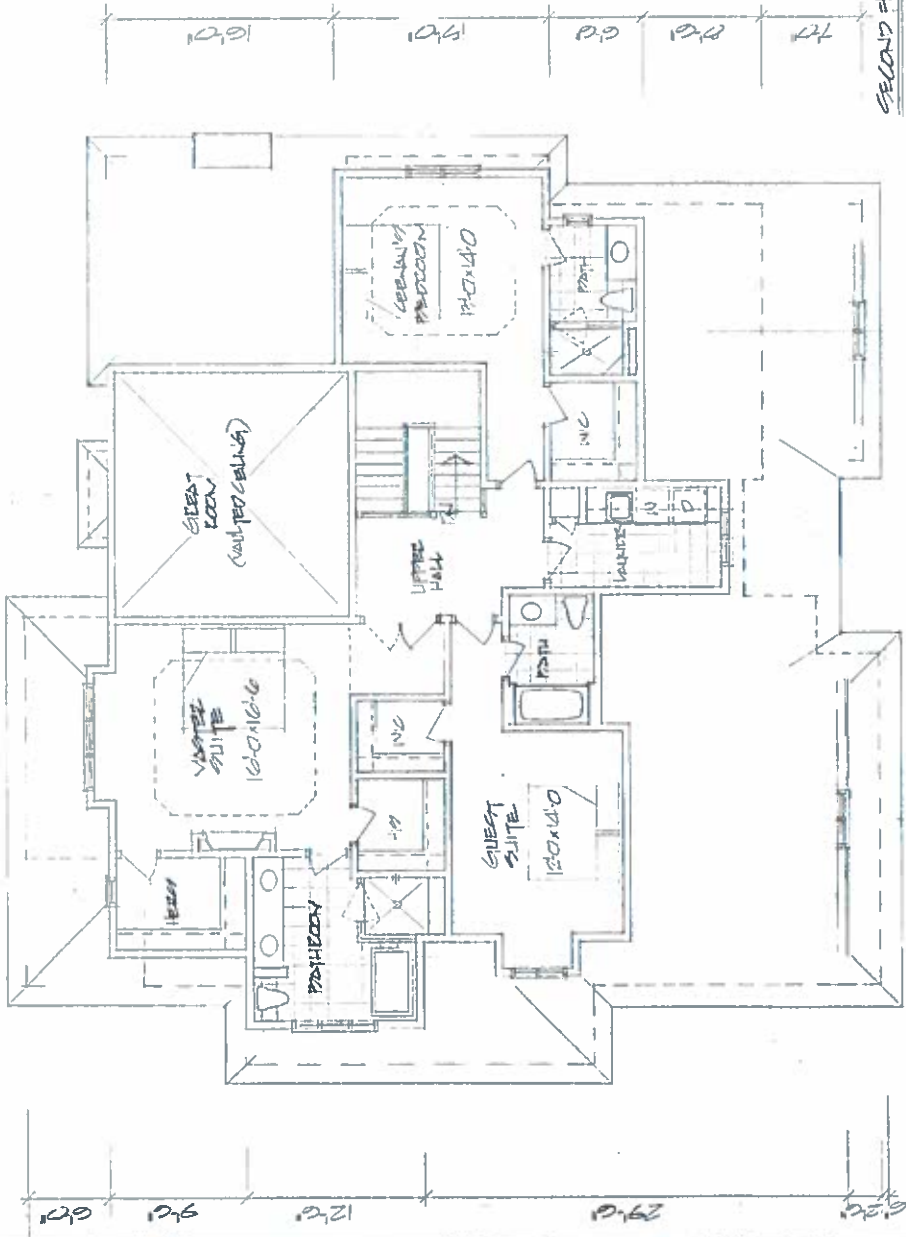


**GROUND FLOOR PLAN**  
 SECOND FLOOR AREA = 2200 SQ FT  
 NET FLOOR AREA = 2070 " "  
 BUILDING AREA = 3720 " "

PROJECT: NEW HOUSE DESIGN 29 GEORGE ST CITY OF MARKHAM	DATE: 9/11/19	DRAWN BY: LPT/C	SCALE: 1/8" = 1'-0"
THE GREGORY DESIGN GROUP 18 CHURCH STREET MARKHAM, ONTARIO, L3P 2L6 (416) 720-4887 nusa@gregorydesigngroup.net	SHEET NO.: ZLAP-19	SHEET TITLE: GROUND FL	1

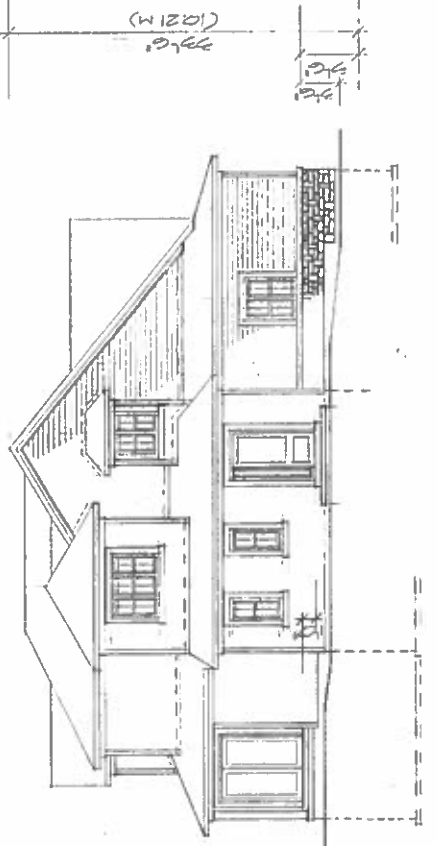


36'-0" 42'-0" 64'-0"

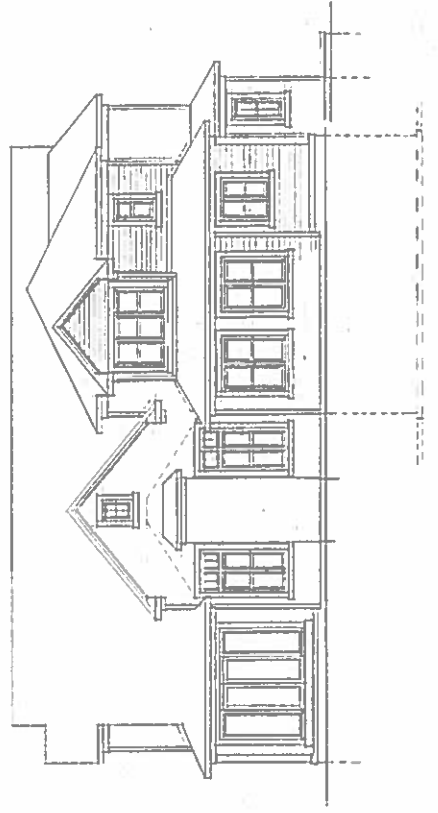


SECOND FLOOR PLAN  
 SECOND FLOOR AREA = 1600 SQ FT  
 OPEN SPACE = 879 " "  
 NET FLOOR AREA = 1520 " "

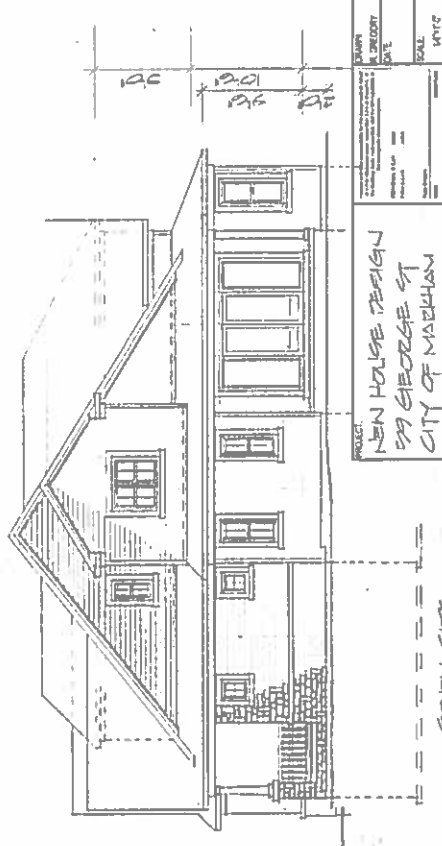
PROJECT NAME	NEW HOUSE DESIGN
PROJECT ADDRESS	79 GEORGE ST CITY OF MARIHAM
CLIENT	THE GREGORY DESIGN GROUP
DATE	18 CHURCH STREET MARIHAM ONTARIO L3P 2L6 (416) 720-4887 usa@gregorydesigngroup.net
SCALE	1/8" = 1'-0"
NO. OF SHEETS	2
SHEET NO.	2



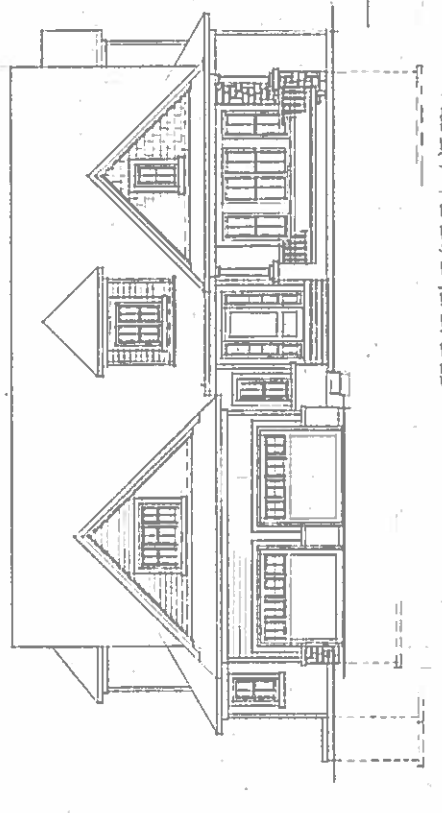
NORTH SIDE



EAST ELEVATION - EAST



SOUTH SIDE



FRONT ELEVATION - WEST

PROJECT	NEW HOUSE DESIGN
LOCATION	59 GEORGE ST CITY OF MARIETTA
CLIENT	THE GREGORY DESIGN GROUP
ARCHITECT	16 CHURCH STREET MARIETTA, GEORGIA 30060 L.P. 215 (478) 770-4807 info@ggregorydesigngroup.net
DATE	
SCALE	1/4" = 1'-0"
PROJECT NO.	214219
DRAWING NO.	7

**Leung, Melissa**

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**From:** Brandon Gaffoor <Brandon.Gaffoor@metrolinx.com>  
**Sent:** Monday, June 10, 2019 9:42 AM  
**To:** Leung, Melissa  
**Cc:** Malik, Aqsa; Ivan Cheung  
**Subject:** RE: A/49/19 - 59 George Street - Minor Variance  
**Attachments:** Metrolinx Environmental Easement 2019.pdf

Hi Melissa – apologies for the delay.

Further to the circulation for 59 George Street dated May 24<sup>th</sup>, 2019, I note the subject site is located within 300 metres of Metrolinx's Uxbridge Subdivision which carries Stouffville GO Train service. I further note that the subject minor variance application is to assist in the facilitation of the new residential dwelling. We have no objections to the application, however, ask that the following be included in any conditions of approvals related to the minor variance and/or subsequent site plan application;

\*The following warning clause shall be inserted in all development agreements, offers to purchase and agreements of Purchase and Sale or Lease of each dwelling unit within 300 metres of the railway right-of-way:

**Warning:** Metrolinx, carrying on business as GO Transit, and its assigns and successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that GO Transit or any railway entering into an agreement with GO Transit to use the right-of-way or their assigns or successors as aforesaid may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). Metrolinx will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way.

\*The Owner shall grant Metrolinx an environmental easement for operational emissions, registered on title against the subject residential dwelling in favour of Metrolinx. I have attached our Environmental Easement language as reference.

Should you have any questions or concerns, please feel free to contact myself.

Thanks,  
 Brandon

**BRANDON GAFFOOR**

Third Party Projects Officer  
 Utilities & Third Party Projects Review  
 Metrolinx | 20 Bay Street | Suite 600 | Toronto | Ontario | M5J 2W3  
 T: 416.202.7294 C: 647.289.1958




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**From:** Leung, Melissa [mailto:MelissaLeung@markham.ca]  
**Sent:** June-05-19 8:24 AM  
**To:** development.coordinator; Brandon Gaffoor  
**Cc:** Malik, Aqsa  
**Subject:** RE: A/49/19 - 59 George Street - Minor Variance

Hi Brandon,

I believe you called last week in regards to 59 George Street? I'm just following up to see if Metrolinx still had any comments related to this application.

I've also copied the planner on file to this email.

Thank you,

**Melissa Leung, BES**  
Committee of Adjustment Technician

Planning & Urban Design, Development Services Commission  
City of Markham | 101 Town Centre Boulevard, Markham, Ontario, L3R 9W3  
T: 905.477.7000 ext. 2392 E: [melissaleung@markham.ca](mailto:melissaleung@markham.ca)

**Notice of Service Disruption: There will be limited services at the Development Client Services counter on June 25, 2019. Development staff will not be available for unscheduled meetings on that day.**

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**From:** Leung, Melissa  
**Sent:** Friday, May 24, 2019 2:42 PM  
**To:** Corr, Stephen <[SCorr@markham.ca](mailto:SCorr@markham.ca)>; Malik, Aqsa <[AMalik@markham.ca](mailto:AMalik@markham.ca)>; Aryan, Shahab <[SAryan@markham.ca](mailto:SAryan@markham.ca)>; Farias, Audrey <[AFarias@markham.ca](mailto:AFarias@markham.ca)>; Lanni, Joe <[jlanni@markham.ca](mailto:jlanni@markham.ca)>; Councillor, Karen Rea - Markham <[KRea@markham.ca](mailto:KRea@markham.ca)>; Saini, Harvinder <[hsaini@markham.ca](mailto:hsaini@markham.ca)>  
**Cc:** Lee, John <[JohnLee@markham.ca](mailto:JohnLee@markham.ca)>; 'Development Services' <[developmentsservices@york.ca](mailto:developmentsservices@york.ca)>; 'Engineering Admin' <[engineeringadmin@powerstream.ca](mailto:engineeringadmin@powerstream.ca)>; 'rowcentre@bell.ca' <[rowcentre@bell.ca](mailto:rowcentre@bell.ca)>; 'Development.Coordinator@Metrolinx.com' <[Development.Coordinator@Metrolinx.com](mailto:Development.Coordinator@Metrolinx.com)>; 'Proximity' <[proximity@cn.ca](mailto:proximity@cn.ca)>; Bezerra, Mylene <[MBezerra@markham.ca](mailto:MBezerra@markham.ca)>; Leung, Justin <[JLeung@markham.ca](mailto:JLeung@markham.ca)>; Roberts, Bradley <[BRoberts@markham.ca](mailto:BRoberts@markham.ca)>; Samara, Amanda <[ASamara@markham.ca](mailto:ASamara@markham.ca)>; Building Special Investigations <[BuildingSpecialInvestigations@markham.ca](mailto:BuildingSpecialInvestigations@markham.ca)>; Prasad, Arvin <[APrasad@markham.ca](mailto:APrasad@markham.ca)>; Taylor, Andy <[ataylor@markham.ca](mailto:ataylor@markham.ca)>  
**Subject:** A/49/19 - 59 George Street - Minor Variance

Good Afternoon,

Please review the attached plans and documents for 59 George Street (A/49/19) Minor Variance application.

Thank you,

**Melissa Leung, BES**  
Committee of Adjustment Technician

Planning & Urban Design, Development Services Commission  
City of Markham | 101 Town Centre Boulevard, Markham, Ontario, L3R 9W3  
T: 905.477.7000 ext. 2392 E: [melissaleung@markham.ca](mailto:melissaleung@markham.ca)



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### Form of Easement

WHEREAS the Transferor is the owner of those lands legally described [insert legal description] (the "**Easement Lands**");

IN CONSIDERATION OF the sum of TWO DOLLARS (\$2.00) and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Transferor, the Transferor transfers to the Transferee, and its successors and assigns, a permanent and perpetual easement or right and interest in the nature of a permanent and perpetual non-exclusive easement over, under, along and upon the whole of the Easement Lands and every part thereof for the purposes of discharging, emitting or releasing thereon or otherwise affecting the Easement Lands at any time during the day or night with noise, vibration and other sounds and emissions of every nature and kind whatsoever, including fumes, odours, dust, smoke, particulate matter, electromagnetic interference and stray current but excluding spills, arising from or out of, or in connection with, any and all present and future railway facilities and operations upon the lands of the Transferee and including, without limitation, all such facilities and operations presently existing and all future renovations, additions, expansions and other changes to such facilities and all future expansions, extensions, increases, enlargement and other changes to such operations (herein collectively called the "**Operational Emissions**").

THIS Easement and all rights and obligations arising from same shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective officers, directors, shareholders, agents, employees, servants, tenants, sub-tenants, customers, licensees and other operators, occupants and invitees and each of its or their respective heirs, executors, legal personal representatives, successors and assigns. The covenants and obligations of each party hereto, if more than one person, shall be joint and several.

Easement in gross.