

Memorandum to the City of Markham Committee of Adjustment

January 12, 2022

File: A/103/21
Address: 15 Fierheller Court – Markham, ON
Applicant: Hua Sun
Hearing Date: January 19, 2022

The following comments are provided on behalf of the West District team. The applicant is requesting relief from the following “Residential Two Exception (R2*456) Zone” requirements under By-law 177-96, as amended, as they relate to a deck located in the rear yard. The variances requested are to permit:

a) By-law 177-96, Sec. 6.2(b)i:

a rear deck having a height greater than 1.0 m (3.28 ft) to be located 2.52 m (8.27 ft) from the rear lot line, whereas the by-law permits a deck having a height greater than 1.0 m (3.28 ft) to be located no closer than 3.0 m (9.84 ft) to the rear lot line;

b) By-law 177-96, Sec. 6.2.1(b):

a rear deck having a height greater than 1.0 m (3.28 ft) to extend 4.0 m (13.12 ft) from the wall closest to rear lot line, whereas the by-law permits a deck having a height greater than 1.0 m (3.28 ft) to extend a maximum of 3.0 m (9.84 ft) from the wall closest to the rear lot line; and

c) By-law 177-96, Sec. 6.2 (b)(iii):

the floor of a deck to be located above the first storey, whereas the by-law requires that the floor of the deck is not higher than the floor level of the first storey of the main building.

PROPERTY DESCRIPTION

The subject property is located on the south side of Fierheller Court, north of Beckett Avenue, east of Kennedy Road, and west of William Berczy Boulevard. The property is currently developed with a single detached dwelling, which has a first-storey walkout at the rear. City staff conducted a site visit on August 20, 2021, and observed that the property slopes downwards from the front of the property towards the rear of the property.

The property is located within Upper Unionville, which is primarily a low rise residential community containing a mix of detached, semi-detached and townhouse dwellings, some of which are lane based properties.

PROPOSAL

The applicant is requesting the above noted variances to recognize an existing deck located in the rear yard at the second storey with a height of at least 3.07 m (10.07 ft) from above the ground surface in the rear yard (see Drawing A6 in Appendix “A”). Variances pertain to a reduction to the minimum rear yard setback for a deck, an increase in the maximum extension for a deck from the building wall closest to the rear lot line, and an increase to the maximum floor deck height.

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

The subject property is designated “Residential Low Rise”, which provides for low rise housing forms, with building heights of up to three-storeys.

Zoning By-Law 177-96

The subject property is zoned “Residential Two Exception (R2*456) Zone” under By-law 177-96, as amended, which permits various low rise housing forms including single detached dwellings. The proposed development does not comply with the By-law requirements with respect to the minimum setback from a rear lot line, maximum extension from a building wall closest to the rear lot line, and maximum deck height.

ZONING PRELIMINARY REVIEW (ZPR) NOT UNDERTAKEN

The applicant has confirmed that a ZPR has not been conducted. However, the applicant has received zoning comments through their building permit, and variance application processes to confirm the variances required for the proposed development.

COMMENTS

The *Planning Act, R.S.O. 1990, c. P.13, as amended* states that four tests must be met in order for a variance to be granted by the Committee of Adjustment (“the Committee”):

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee, 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.

The applicant is requesting a deck to be setback a minimum of 2.52 m (8.27 ft) to the rear lot line, located at the second-storey, and projecting a maximum distance of 4.0 m (13.12 ft) from the building wall closest to the rear lot line. The By-law requires that a deck is located no closer than 3.0 m (9.84 ft) to a rear lot line, the floor of the deck is not higher than the floor level of the first-storey of the main building, and projects no more than 3.0 m (9.84 ft) from the wall closest to the rear lot line, respectively.

The By-law provides the following definitions:

- a) **basement** which means: *“that portion of a building below the first storey”*;
and
- b) **first-storey** which means: *“the storey with its floor closest to established grade and having its ceiling more than 1.80 m (5.91 ft) above grade.”*

A review of the architectural plans approved by the City in 2012 shows that the first-storey floor level (in the rear yard) provides for a walk-out, and is the lowest floor level of the dwelling that is not below grade, as defined by the By-law. Kitchen and family room areas are shown to be located at the floor above (second-storey in the rear yard), next to the existing deck entrance. Prior to the construction of the deck, a Juliette balcony existed. Approval of the requested variance would provide for alternate access to the rear yard area from the main living and dining area, and direct access to the outdoor amenity space at the second-storey level of the dwelling.

Site photos of the property provided by the applicant, in combination with a site visit conducted by staff, show that the property is at a higher elevation than properties to the south (rear).

The applicant has chosen to construct a deck into the rear yard area prior to obtaining the necessary approvals. Notwithstanding completion of construction, staff's assessment of this minor variance application is based on whether the development as it is proposed, meets the four tests under the *Planning Act*. In the event that the application is denied, the applicant would be required to address any existing non-compliances with the By-law, which may include full removal of the existing deck.

With respect to the By-law requirements for decks having a height greater than 1.0 m (3.28 ft), staff have considered:

- the proposed projection from the rear building wall;
- the proposed distance to the deck's rear lot line;
- the proposed height of the deck in relation to abutting properties, and those within the immediate vicinity;
- the size of the deck;
- the subject property's site characteristics, and adjacent properties; and
- other development standards of the By-law for similar two-storey unenclosed platforms such as balconies that are permitted and limited to projecting a distance of no more than 2.0 m (6.56 ft) at a second-storey level.

Section 45(1) under the *Planning Act* states that all four tests must be met. The By-law provides criteria for decks having a height greater than 1.0 m (3.28 ft), which have the effect of limiting the height, overlook, and projections from adjacent properties. In considering the above, the existing deck would require relief from three of the four provisions, and it is difficult for staff to advise that the proposed development is an appropriate use of land and/or structure, minor in nature, and maintains the general intent of the By-law.

PUBLIC INPUT SUMMARY

As of the writing of this report (January 12, 2022), the City received two written submissions from area residents objecting to the proposed development, expressing concern with the following:

- the size of the deck;
- privacy;
- blocked sunlight;
- safety;
- noise;
- reduced property values;
- unowned objects ending up in neighbouring rear yards.

It is noted that additional information may be received after the writing of this 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*, and are of the opinion that the requested variances do not meet the four tests. Staff recommend that the Committee consider public input in reaching a decision. The onus is ultimately on the applicant to demonstrate how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

APPENDICES

Appendix "A" – Plans

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



Mary Caputo, Development Manager, West District

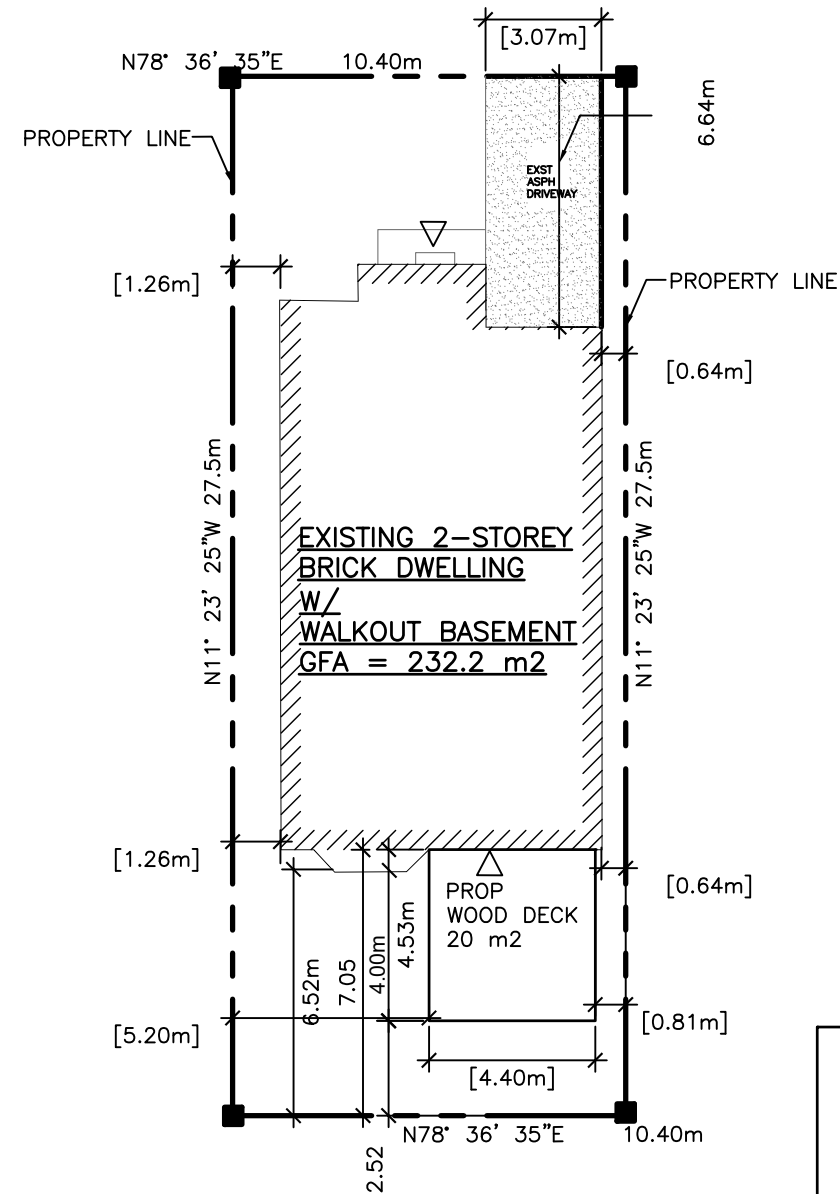
APPENDIX "A"
PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/103/21

Appendix A

File: 21.129818.000.00.MNV

Date: 01/14/22
MM/DD/YY

FIERHELLER COURT



LEGAL DESCRIPTION
**BUILDING LOCATION SURVEY ON
 LOT 216 PLAN OF 64R-419**
 (GEOGRAPHIC TOWNSHIP OF MARKHAM)
CITY OF MARKHAM
 REGIONAL MUNICIPALITY OF YORK

GROSS FLOOR AREA CALCULATION:	
EXISTING GROUND FLOOR	116.1M2
EXISTING BASEMENT	116.1M2
TOTAL GFA	232.2 m2
DECK AREA CALCULATION:	
DECK	20M2

PROPOSED SCOPE OF RENOVATION
NEW DECK 20SM

1.0	BLDG PERMIT	21.06.01
TO	ISSUED FOR	DATE

MARKHAM HIGH TECH INC
 Architects
 50 Peter Street
 Markham, Ontario
 L3P 2A6
 (905) 472-5802 - PHONE
 (905) 471-1529 - FAX

PROJECT NAME:
PROPOSED DECK

ADDRESS:
**15 Fierheller Crt
 MARKHAM, ON**

DRAWING:
SITE PLAN

SCALE: **1:200** DRAWN DATE: **MAY 2021**

DESIGN BY: **MHT** CHECKED BY: **MHT**

DRAWN BY: **MHT** REVISIONS BY: **-**

CAD FILE LOCATION:		
PROJECT NO.	SHEET NO.	REVISION NO.
M130113	A-0	-



Appendix A

File: 21.129818.000.00.MNV

Date: 01/14/22
MM/DD/YY



EXISTING 2 STOREY BRICK HOUSE WITH WALKOUT BASEMENT

1.0	BLDG PERMIT	21.01.06
TO	ISSUED FOR	DATE

MARKHAM HIGH TECH INC
Architects
50 Peter Street
Markham, Ontario
L3P 2A6
(905) 472-5802 - PHONE
(905) 471-1529 - FAX

PROJECT NAME:
PROPOSED DECK
RENOVATION

ADDRESS:
15 Fierheller Crt
MARKHAM, ON

DRAWING:
REAR ELEVATION EXIST

SCALE: 1:50	DRAWN DATE: MAY 2021
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DESIGN BY: MHT	CHECKED BY: MHT
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DRAWN BY: MHT	REVISIONS BY: -
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CAD FILE LOCATION:

PROJECT NO. M130113	SHEET NO. A- 6	REVISION NO. -
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