

Memorandum to the City of Markham Committee of Adjustment

March 17, 2021

File: A/010/21
Address: 38 Milroy Lane Markham
Applicant: Adil Esmail and Fhareen Jamal-Esmail
Agent: EcoVue Consulting Services Inc.
Hearing Date: Wednesday March 24, 2021

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

The applicant is requesting relief from the following Residential Two Exception *5 and *119 (R2*5*119) zone requirements of By-law 177-96, as amended, to permit:

- a) a second accessory dwelling unit within the basement of the dwelling, whereas the By-law only permits one (1) within the coach-house (Section 7.5.3);
- b) three (3) parking spaces (one for each dwelling unit), whereas the By-law requires four (4) parking spaces (Parking By-law 28-97, Section 3.0).

The variances relate to a proposed accessory basement dwelling unit within the existing detached dwelling. The subject property also contains an existing coach house dwelling above a detached private garage.

BACKGROUND

Property Description

The 378.2 m² (4070.9 ft²) subject property fronts the east side of 9th line, south of Cornell Park Avenue and west of Country Glen Road in the Cornell community. The property is developed with an existing single detached dwelling, and detached two-car private garage in the rear yard. An existing “coach house” accessory dwelling unit is situated above the detached private garage. Vehicular access and parking to the site is provided via a public lane known as Milroy Lane. The rear yard is predominantly paved with interlocking brick, including a parking pad located on the south side of the detached garage to provide a required third onsite parking space for the accessory dwelling unit.

Surrounding land uses include single detached, semi-detached and townhouse dwellings to the north, east and west, which are all lane-based units within the Cornell Community. Single detached dwellings are located to the west, across 9th Line, within an older established residential subdivision.

Proposal

The applicant is proposing a secondary suite within the basement of the existing dwelling. Access to the proposed unit will be from an existing rear door within internal stairs to the basement. No other changes are proposed to the site or dwelling at this time, however the applicant has indicated that some modifications will be required through the building permit stage to provide larger windows and plumbing shut offs where required by the Ontario Building Code.

As noted, the subject site already has one accessory unit within a coach house above the detached garage. Approval of this variance would permit a second accessory unit (three units on the subject site, including the principle dwelling unit). To facilitate this proposal, the applicant is also requesting a variance to permit the reduction of one required parking

space for the proposed accessory unit. Additional details are provided in the Comment subsection of this memorandum.

Provincial Policies

More Homes, More Choice Act, 2019

The *More Homes, More Choice Act, 2019*, S.O. 2019, c. 9 – (Bill 108), received Royal Assent on June 6, 2019 and portions were proclaimed on September 3, 2019. The proclaimed portions of Bill 108 amended the *Planning Act* to require Official Plans to contain policies providing for two residential units in detached, semi-detached and row houses, as well as permitting a residential unit in ancillary structures to a detached house, semi-detached house or rowhouse. Under this legislation, “second suites” are now referred to as “additional residential units”, and the terms are used synonymously in this memorandum.

Provincial Policy Statement, 2020

Section 1.4.3 of the *Provincial Policy Statement, 2020*, requires planning authorities to provide for an appropriate range and mix of housing options and densities to meet the affordable housing needs of current and future residents. Amongst other means, this can be achieved by permitting and facilitating residential intensification, including additional residential units, and redevelopment by accommodating a significant supply and range of housing options through intensification and redevelopment while taking into account existing building stock.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 (Growth Plan, 2019)

Section 2.1.4 (c) of the Growth Plan, 2019, requires municipalities to provide a diverse range and mix of housing options including second units to support complete communities.

Official Plan and Zoning

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

The 2014 Official Plan (Section 4.1.2.6) contains policies to support further diversification of the housing stock and rental housing by permitting secondary suites within existing and new permitted single-detached, semi-detached and rowhouse [townhouse] dwellings, in accordance with Section 3.5.22 of the Regional Official Plan and subject to appropriate zoning, development criteria and standards.

The 2014 Official Plan designates the subject property “Residential – Low Rise”, which provides for low rise housing forms including single detached dwellings, and secondary suites in accordance with Section 8.13.8. A “Secondary Suite” in the 2014 Official Plan is defined as:

“...a second residential unit in a detached house, semi-detached house or rowhouse 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.”

Section 8.13.8 states:

“That in considering an application to amend the zoning by-law to permit the establishment of a secondary suite where provided for in this Plan, 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.”*

Zoning By-Law 177-96

The subject property is zoned Residential Two Exception *5 and *119 (R2*5*119) which permits single detached and semi-detached dwellings. Exception*5 (Section 7.5.3) permits an accessory dwelling unit, subject to the following criteria:

- a) The maximum number of accessory dwelling units – 1
- b) An accessory dwelling unit shall only be associated with a single detached, semi-detached unit on the same lot; and,
- c) The accessory dwelling unit shall not be located in the main building on the lot.

Consequently, the applicant has applied for a variance to permit the additional secondary unit within the main building.

Parking Standards By-law 28-97

The proposed accessory unit also does not comply with City of Markham Parking Standards By-law 28-97, as amended, which requires two parking spaces for the principle unit and one parking space for an accessory unit. As noted, the subject site is developed with an existing two-car garage and contains a parking pad. This is sufficient to accommodate the requirements for the exiting dwelling and coach house unit. The applicant has therefore, submitted a variance requesting a reduction of one require space for the second accessory unit.

Zoning Preliminary Review (ZPR) Not Undertaken

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 revisions to the proposal or variance applications may be required to address any 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.

Fire Department and Building Permit Considerations

Fire and Emergency Services Department 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, and will be required to register their second suite with the Fire Department prior to the occupancy of the unit.

Second Accessory Unit and Reduced Parking

While the zoning by-law specifically permits one accessory unit with the locational requirement of not being within the main dwelling, the variance request to permit a basement unit provides an opportunity to include additional affordable, shared and rental housing on the subject property. This is in addition to the existing coach house which is permitted as-of-right by the zoning by-law. 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, the Provincial Policy Statement, the Growth Plan and, the Planning Act. Staff also note that with the exception of enlarged windows to be added through the building permit process, there are no anticipated external changes to the existing dwelling or subject property that would impact abutting properties, and the appearance of a detached dwelling will be maintained.

As noted, a variance is proposed to reduce the number of required parking spaces by one, to permit three parking spaces, whereas four are required for the principle dwelling, existing coach house unit and proposed basement unit. Staff are of the opinion that the reduction of parking for an accessory unit could be self-regulating as one parking space could be allocated for each of the units as proposed by the applicant; or, if two are maintained for the principle unit, either the coach house unit or basement unit will likely only be of interest (or available) to a tenant without a car. Additionally, the site has frontage and pedestrian access to 9th Line, which is a Region of York arterial road that is served by public transit. Two bus stops are within vicinity of the site at the 9th Line and Cornell Park Avenue intersection to the north, and directly across the street on the west side of 9th Line. Transit Options on 9th Line include:

- Route 9 which provides connection along 9th Line between the Town of Whitchurch-Stouffville to the north and Box Grove to the south;
- Route 16 which provides connection to the west along 16th Avenue into Richmond Hill; and
- Route 52, which provides connection to the west along Highway 7 to Markville Mall, and further south to Milliken along Kennedy Road.

Based on the above, staff do not object to the requested variances to permit an additional basement accessory unit within the main dwelling, and to permit a reduction of one required parking space. Should the variance to reduce parking be approved, the owner should be aware that:

- parking is not permitted on the paved rear yard between the main dwelling and detached garage;
- parking is not permitted on Millroy Lane;
- onstreet parking on surrounding local roads is prohibited overnight unless an exemption or a permit is issued by the City's By-law Licensing and Enforcement Department, and that
- onstreet parking where or when allowed is on a first-come, first-serve basis.

PUBLIC INPUT SUMMARY

One written submission from an area resident citing concerns with the proposed development was received at the time of finalizing this report on March 17, 2021. The concerns are as follows:

- 1) *They are not part of the community (i.e they do not live in the house)*
- 2) *They have had an illegal basement apartment for years*
- 3) *There is inadequate parking for 3 apartments at that location*
- 4) *They do not maintain the outside of the property, trash is often piled up for weeks before it gets taken away*
- 5) *The cops have been called to this property on multiple occasions*
- 6) *Tenants are often out on the street in the middle of the night drinking and arguing."*

Out of the above concerns, the planning related matters pertinent to the requested variances relate to the existing 'illegal' basement (2) unit and inadequacy of parking (3). Approval of this variance and any necessary building permits will legalize the basement unit, which is the purpose of this variance application. Staff have addressed the proposed parking reduction in the comment section above.

While not disputing the significance of the other concerns, residential properties should be maintained in good order in accordance with applicable City of Markham Property Standards By-laws. York Region Police Services are responsible to investigate complaints regarding noise, public drinking or any other domestic matters.

CONCLUSION

Planning Staff have reviewed the application and are of the opinion that requested variances satisfy Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended. 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:



Stephen Corr, Planner, Senior Planer, East District

REVIEWED BY:



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Stacia Muradali, Development Manager, East District

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APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/010/21

1. The variances apply only to the proposed basement accessory suite 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 a dwelling containing a single suite to a dwelling containing more than one suite.

CONDITIONS PREPARED BY:

A handwritten signature in blue ink, appearing to read 'Stephen Corr', written over a horizontal line.

Stephen Corr, Planner, Zoning and Special Projects