

Memorandum to the City of Markham Committee of Adjustment

November 1st, 2019

File: A/108/19
Address: 419 Elson Street, Markham
Applicant: Nasrul Khan
Agent: SHDesign
Hearing Date: Wednesday November 13, 2019

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

The applicant is requesting relief from the following requirements of the 'Ninth Density Single Detached Residential' (R9) zone in By-law 90-81, as amended, as it relates to an existing one-storey side yard addition and rear-covered patio built without a building permit.

a) **Section 6.1.2(b):**

To permit a minimum side yard setback of 0.28 m (0.92 ft) whereas the By-law requires a minimum side yard setback of 1.2 m (4 ft);

b) **Section 4.6(b):**

a roofed porch with unenclosed sides ('covered patio') to project a distance of not more than 1.15 m (3.8 ft) into the required rear yard, whereas the By-law permits a distance of not more than 0.45 m (1.5 ft) into any required yard; and

c) **Section 6.1.2(b):**

a minimum rear yard setback of 6.35 m (20.83 ft) to the covered patio, whereas the By-law requires a minimum setback of 7.5 m (25 ft).

BACKGROUND

Property Description

The 454.26 m² (4,889.7 ft²) subject property is located on the east side of Elson Street, which is north of Steeles Avenue East and east of Markham Road. There is an existing two-storey detached dwelling on the subject property, which according to assessment records was constructed in 2004. The property is located within a residential neighbourhood comprised of two-storey detached dwellings.

Proposal

The applicant is requesting variances for an existing covered patio in the rear yard and an existing one-storey addition that was built on the south side of the existing dwelling in the interior side yard. Both the covered patio and addition have been constructed without a building permit and the Building Standards Department has issued violation orders for failing to obtain a building permit. The requested variances are required to permit these existing structures so that the Owner can address the noted building violations. Appendix 'A' shows the existing site configuration.

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 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 and properties along the same street. In considering applications for development approval in a 'Residential Low Rise' area, which includes variances, infill development is required to meet the general intent of these development 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 90-81

The subject property is zoned 'Ninth Density Single Detached Residential' (R9) under By-law 90-81, as amended, which permits a single detached dwelling. The proposal does not comply with the by-law with respect to minimum side yard setback, minimum rear yard setback and the roofed porch projection into the required rear yard.

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, "*side structure was constructed 10 years ago, and roof patio has been in existence since 2009*".

Zoning Preliminary Review (ZPR) Undertaken

The owner has completed a Zoning Preliminary Review (ZPR) on January 28, 2019, to confirm the variances required for the proposed development.

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; and
- d) The general intent and purpose of the Official Plan must be maintained.

One-Storey Addition

The applicant is requesting a minimum side yard setback of 0.28 m (0.92 ft) for the existing one-storey addition in the south side yard, whereas the by-law requires a minimum side yard setback of 1.2 m (4 ft). This is a difference of 0.92 m (3.01 ft).

The intent of the side yard setback requirement is to provide appropriate separation between dwellings; to provide sufficient space for external access to the rear yard; and to provide adequate space for overland storm water drainage flows.

The addition subject to this requested variance abuts the rear yards of two adjacent properties to the south (2 and 4 Bethany Street), and therefore, there is ample space between the subject dwellings and abutting homes to the south. While the existing south side yard setback provides limited means of access to the rear yard, the north side yard is 1.21 m (4 ft) which provides an appropriate means of external access to the rear yard. The existing structure could however disrupt overland storm water flow patterns by impacting a drainage swale between the subject lands and abutting properties to the south, which has been identified as a concern to the Engineering Department. Staff are of the opinion that the 0.28 m (0.92 ft) side yard setback is not an appropriate form of development and does meet the intent of the zoning by-law.

Staff acknowledge that the one-storey addition is an existing structure, and that refusal of this variance would require it to be demolished or modified to comply with the zoning by-law. If Committee is of the opinion there is merit in approving this variance, it should be conditional that the Owner submit a grading and drainage plan to the satisfaction of the Director of Engineering that there will be no detrimental impacts to the abutting properties by altering overland stormwater flow patterns.

Rear Covered Patio

To permit the existing covered patio in the rear yard, the application is requesting:

- A minimum rear yard setback of 6.35 m (20.83 ft), whereas the By-law requires a minimum rear yard setback of 7.5 m (25 ft), and;
- A roofed porch with unenclosed sides project a distance of not more than 1.15 m (3.8 ft) into the required rear yard, whereas the By-law permits a maximum projection of not more than 0.45 m (1.5 ft) into any required yard.

Staff are of the opinion that this existing structure will not impact abutting properties, and therefore do not object to the approval of these variances.

PUBLIC INPUT SUMMARY

No written submissions were received as of November 4th, 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.

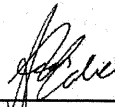
CONCLUSION

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 variances related to the covered patio meet the four test of the Planning Act. Staff have concerns that the reduced side yard setback could disrupt existing drainage swale between the subject property and abutting properties to the south. If Committee sees merit in approving this variance, it is recommended the Applicant be required to submit a grading plan to the satisfaction of the Director of Engineering, or his designate, to demonstrate that the addition does not impact an existing drainage swale within the south side yard. Staff note that structures subject to these variances are existing, and the refusal of the application would require them to be demolished or modified to comply with the zoning by-law. 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 "B" for conditions to be attached to any approval of this application.

PREPARED BY:



Aqsa Malik, Planner, Zoning and Special Projects

REVIEWED BY:



Stephen Corr, Senior Planner, East District

File Path: Amanda\File\ 19 137114 \Documents\District Team Comments Memo

Appendix A - Site Plan



LOT AREA = 45426 sqm (4899.1 sq.ft.)

LOT COVERAGE (CALCS)

- EXIST. DWELLING (incl. garage) = 1454.1 sq.ft.
- FRONT PORCH AREA = 56.25 sq.ft.
- REAR PATIO AREA = 152.0 sq.ft.
- PROP. SIDE ADDITION = 309.0 sq.ft.
- EXIST. DETACHED SHED = 76.0 sq.ft.

TOTAL = 2,097.4 sq.ft.

PROVIDED 42.9%

GFA & AREA (BREAKDOWN)

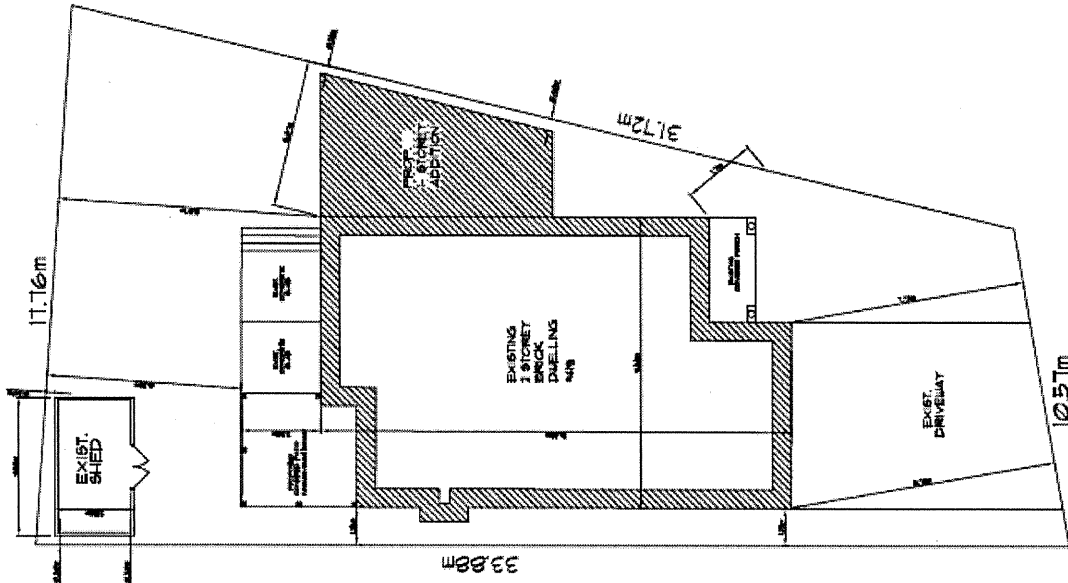
LOT AREA

LOT AREA = 45426 sqm (4899.1 sq.ft.)

GFA & AREA (BREAKDOWN)

- EXIST. FIRST FLOOR (incl. garage) = 1454.1 sq.ft.
- SECOND FLR AREA = 1947.8 sq.ft.
- PROPOSED SIDE ADDITION = 309.0 sq.ft.

TOTAL = 3,110.9 sq.ft.



CITY OF MARKHAM
RECEIVED
OCT 09 2019
COMMITTEE OF ADJUSTMENT

NO.	REVISION	DATE
1	ISSUE FOR PERMIT REVIEW	08.28.2019

SH DESIGN
 1250 SHEPPARD AVENUE EAST, SUITE 100
 SCARBOROUGH, ONTARIO M1B 4Y4
 TEL: (416) 291-2222
 FAX: (416) 291-2223
 WWW.SHDESIGN.COM

PROPOSED LOTTERY SIDE ADDITION & ROOF OVER EXISTING PATIO
 419 ELSON STREET
 MARKHAM, ONTARIO

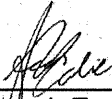
DATE: 08/28/2019	SCALE: 1/8" = 1'-0"
DRAWN BY: []	CHECKED BY: []
PROJECT NO: []	LOT NO: []

ELSON STREET

APPENDIX "B" CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/108/19

1. The variances apply only to the proposed development as long as it remains;
2. That the rear covered patio remain unenclosed;
3. That the applicant provide grading information clearly indicating that the major overland flow route will not be obstructed with the proposed basement entrances and, that there won't be any drainage to the basement and that the Secretary-Treasurer receive written confirmation from the Director of Engineering or their designate that this condition has been fulfilled to his or her satisfaction;
4. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as 'Appendix A' to this Staff Report and received by the City of Markham on October 9, 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;

CONDITIONS PREPARED BY:



Aqsa Malik, Planner I, East District