

Memorandum to the City of Markham Committee of Adjustment

June 23rd, 2020

File: A/058/20
Address: Denison Street, Markham
Applicant: Forest Bay Homes
Agent: Land Solutions Ontario
Hearing Date: July 9th, 2020

The following comments are provided on behalf of the East Team. The applicant is requesting relief from the following Second Density – Medium Density Residential (RMD2) zone requirements of By-Law 90-81, as amended. The variance requested is as follows: to permit a minimum rear yard setback of 5.35 metres, whereas the By-law requires a minimum rear yard of 6.0 metres.

BACKGROUND

Property Description

The 3.22 ha (7.96 ac) subject property is located on the west side of Kirkham Drive, north of Denison Street. The site is currently vacant and there is a concurrent site plan application for the development of 131 common element condominium townhouses on the subject site (File SC 18 153808). The subject site is located within a low rise residential subdivision. Fairtree Pond abuts the site to the west; a Canadian National railway corridor is located northeast of the site (across Kirkham Drive); and vacant lands are located to the south (across Denison Street). This site was subject to a rezoning and draft plan of subdivision which have both been approved.

Proposal

The applicant is requesting a variance to permit reduced rear yard setbacks for seven (7) townhouse dwellings on the subject property, as shown on Appendix B. The seven subject dwellings are Lots 11, 12, 13, 14 and 15 on Townhouse Block 2 and Lots 16 and 17 on Townhouse Block 3 within a proposed common element condominium development containing 131 townhouse units.

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 townhouse dwellings. The proposed development conforms with the 2014 Official Plan.

Zoning By-Law 90-81

The subject property is zoned Second Density – Medium Density Residential (RMD2) under By-law 90-81, as amended, which permits the proposed common element condominium townhouse development. The proposal does not comply with the zoning by-law with respect to the minimum rear yard setback requirement of 6.0 metres for the seven subject townhouse dwelling units.

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:

“The site plan was designed with a retaining wall along the western limit of the property to accommodate grading. The City of Markham required the retaining wall be shown as a separate

common element condominium block. Which caused our rear yards to become deficient therefore it was required we seek relief from the By-Law. In total seven units are affected”.

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.

Reduction in Rear Yard Setback

The Zoning by-law requires a minimum rear yard setback of 6.0 m (19.68 ft), whereas the applicant is proposing a minimum rear yard setback of 5.35 m (17.55 ft), which is a reduction 0.65 m (2.13 ft) for the seven subject lots.

Initially, the proposed development provided rear yards for the seven subject lots that complied with the minimum rear yard setback requirement of 6.0 m (19.68 ft). However, through the technical review of the site plan application, the need for a retaining wall along the west lot line was identified, adjacent to Fairtree Pond. For maintenance purposes by the future Condominium Corporation, the retaining wall is identified as a separate block on the site plan. The Zoning Section interprets this to create a rear lot line, which reduces what is considered the rear yard setback. Consequently variance approval is necessary to permit this configuration. Staff consider this to be technical and approval of the variance will not impact abutting properties or set precedents for reduced rear yards. Staff therefore are of the opinion that the requested variance satisfies the criteria established by Section 45(1) of the Planning Act.

Approval should be conditional that the variance only applies to seven subject lots as shown on Appendix A.

Staff note that the onus is on the applicant to confirm through a zoning preliminary review that the requested variances are accurate. If additional non-conformities with the zoning by-law are identified through the building permit review, the applicant will be required to revise their proposal to comply with the by-law or submit future variance applications for consideration.

Application Processing

On June 12, 2020, the Province announced that the emergency regulations relating to *Planning Act* applications will end on June 22, 2020. After June 22, 2020, the procedural requirements (e.g. sending of notices, hearing of applications, eligibility for appeals to LPAT, etc.) of *Planning Act* applications shall proceed as they did prior to the declaration of the emergency. Revisions to the initial memorandum include an update on matters relating to application processing.

PUBLIC INPUT SUMMARY

No written submissions were received as of June 23rd, 2020. 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, East District

REVIEWED BY:



Stephen Corr, Senior Planner, East District

File Path: Amanda\File\ 20 113574 \Documents\District Team Comments Memo

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/058/20

1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the seven lots (Lot 11, 12, 13, 14, 15, 16 and 17), in substantial conformity with the plan(s) attached as 'Appendix B' to this Staff Report and received by the City of Markham 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; and
3. That the applicant satisfies the requirements of the TRCA, financial or otherwise, as indicated in their letter to the Secretary-Treasurer attached as Appendix C to this Staff Report, to the satisfaction of the TRCA, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the TRCA.

CONDITIONS PREPARED BY:



Aqsa Malik, Planner, East District

May 19, 2020

CFN 62567.06
X Ref: 59058.03

By Email Only (email: JLeung@markham.ca)

Mr. Justin Leung
Secretary-Treasurer
Committee of Adjustment
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Dear Mr. Leung:

Re: A/058/20 (Minor Variance Application)
Denison St. and Kirkham Dr., City of Markham (Historic Address: 6350 Steeles Ave. E.)
Owner: Forest Bay Homes Ltd.
Agent: Land Solutions Ontario (Melissa Fasullo)

This letter acknowledges receipt of the above-noted application. Toronto and Region Conservation Authority (TRCA) staff have reviewed this application and our comments are provided herein.

Purpose of the Applications

The applicant is requesting relief from the requirements of City of Markham By-law 90-81, as amended, as it relates to 7 townhouse units in a proposed townhouse development (Block 153).

Requested variances to the Zoning By Law:

- a) Amending By-law 2015-6, Section 7.64.2(f) – Rear Yard Setback:
To permit a minimum setback of 5.35 metres, whereas the By-law requires 6.0 metres
- b) Section 4.6(b):
Balconies, terraces, and other similar uncovered platforms may project no more than 1.5 metres into the rear yard. Should the minimum required rear yard setback be changed, the projection begins from the new minimum requirement.

Applicable TRCA Regulations and Policies

The TRCA provides our technical review comments through a number of roles. This includes TRCA's commenting role under the *Planning Act*, the Conservation Authority's delegated responsibility of representing the provincial interest of natural hazards encompassed by Section 3.1 of the Provincial Policy Statement (2020); TRCA's Regulatory Authority under Ontario Regulation 166/06, as amended (Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses); and our Memorandum of Understanding (MOU) with the Region of York where we advise our municipal partners on matters related to Provincial Policies relevant to TRCA's jurisdiction.

Provincial Policy Statement (2020):

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. According to subsections 3 (5) and (6) of the Planning Act, as amended, all planning decisions made by a municipality and all comments provided by the TRCA shall be consistent with the PPS.

TRCA's delegated role under the *Planning Act* to represent the provincial interest in natural hazards. As outlined in the Conservation Ontario / Ministry of Natural Resources and Forestry / Ministry of Municipal Affairs and Housing MOU on Conservation Authorities Delegated Responsibilities, Conservation Authorities have been delegated the responsibility of representing the provincial interest on natural hazards encompassed by Section 3.1 of the PPS 2014.

Ontario Regulation 166/06, as amended:

The *Conservation Authorities Act* provides the legal basis for TRCA's mandate to undertake watershed planning and management programs that prevent, eliminate, or reduce the risk to life and property from flood hazards and erosion hazards, as well as encourage the conservation and restoration of natural resources. Under the provisions of Section 28 of the *Conservation Authorities Act*, TRCA administers Ontario Regulation 166/06 (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), as amended.

The subject property is partially located within TRCA's Regulated Area, as it is adjacent to a stream and/or valley corridor and Regulatory Storm floodplain associated with the Rouge River Watershed. In accordance with Ontario Regulation 166/06, as amended, (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), a permit may be required from the TRCA prior to any of the following works taking place:

- a. straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b. development, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Development is defined as:

- i. the construction, reconstruction, erection or placing of a building or structure of any kind;
- ii. any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;
- iii. site grading; or,
- iv. the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Living City Policies for Planning and Development in the Watersheds of the TRCA:

The Living City Policies for Planning and Development in the Watersheds of the TRCA (LCP) is a TRCA policy document that guides the implementation of TRCA's legislated and delegated roles and responsibilities in the planning and development approvals process. The LCP describes a "Natural System" of water resources, natural features and areas, natural hazards, potential natural cover and/or buffers. TRCA policies generally require that natural features within the "Natural System" be protected from development, site alteration and infrastructure. Notwithstanding additional setbacks prescribed by federal, provincial or municipal requirements, TRCA defines the limit of the "Natural System" as the greater of, but not limited to the following:

- Valley and Stream Corridors: 10 metre buffer from the greater of the long-term stable top of slope (LTSTOS), stable toe of slope, Regulatory Floodplain, meander belt and any contiguous natural features or areas;
- Woodlands: 10 metre buffer from the dripline and any contiguous natural features or areas;
- Wetlands: 30 metre buffer from Provincially Significant Wetlands (PSWs) and wetlands on the Oak Ridges Moraine, and a 10 metre buffer from all other wetlands and any contiguous natural features or areas.

Application Specific Comments

TRCA staff have been involved in the review of the related Site Plan application (City File No. SC 18 153808) for the proposed townhouse development. TRCA’s Conditions of Site Plan Approval were originally provided in a letter dated December 13th, 2018 and updated in an email dated June 3rd, 2019. It is our understanding that the site plan submitted with this Minor Variance application is generally consistent with the latest Site Plan application submission provided to TRCA. On this basis, TRCA staff have no major concerns with this Minor Variance application.

We kindly remind the applicant that there are outstanding TRCA Conditions of Site Plan Approval that have not been fully addressed and cleared by our office. For the status of our conditions, the applicant may refer to our email to the City dated December 3, 2019 responding to the third submission or may contact our office. Furthermore, please be advised that a permit from the TRCA under Ontario Regulation 166/06 will be required prior to the commencement of the proposed works.

Application Review Fee

As per TRCA’s role as a commenting agency for *Planning Act* applications circulated by member municipalities to assess whether a proposed development may be impacted by TRCA, the applicant is advised that the TRCA has implemented a fee schedule for our planning application review services.

This application is subject to a \$1100 review fee (2018 TRCA Planning Fees Schedule – Variance – Subdivision – Minor). The applicant is responsible for fee payment and should forward the fee to our head office within 60 days of the issuance of this letter.

TRCA staff also advise that our clearance fee for the associated Site Plan application (\$1,775) remains outstanding at this time.

Recommendation

Based on the information submitted to date, we have no objections to Minor Variance application A/058/20, subject to the following conditions:

1. That the applicant remits all outstanding TRCA Planning Services review fees.
2. That a permit from the TRCA under Ontario Regulation 166/06, as amended be obtained for the proposed development.

I trust these comments are of assistance. Should you have any questions, please do not hesitate to contact me at the undersigned.

Sincerely,



Andrea Lam
 Planner I
 Development Planning and Permits

Extension 5306

AL/mb

j:\dss\york region\markham\cfn 62567.06_a.058.20_mv_denison street and kirkham drive, markham_20200519.docx