

Memorandum to the City of Markham Committee of Adjustment

February 26th, 2020

File: A/86/19
Address: 33 Rowe Court, Markham
Applicant: MD Lutfur Selim
Agent: (none)
Hearing Date: Wednesday March 4th, 2020

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

The applicant is requesting relief from the following requirements of the 'First Density – Street Townhouse Residential' (RST1) zone in By-law 90-81, as amended, as they relate to a proposed basement apartment that is under construction.

- a) **Section 5.2.1:**
to permit a secondary dwelling unit, whereas the By-law permits no more than one single detached dwelling on one lot;
- b) **Parking By-law 28-97, Section 3.0, Table A:**
a minimum of 2 parking spaces, whereas the By-law requires a minimum of 3 parking spaces.

BACKGROUND

Property Description

The 171.13 m² (1,842 ft²) subject property is located on the south side of Rowe Court, which is north of Elson Street and east of McCowan Road. The property is located within a residential neighbourhood comprised of a mix of one and two-storey townhouse and semi-detached dwellings which are attached below grade along the foundation walls, but otherwise appear as detached homes above grade. There is an existing two-storey dwelling on the property, which according to assessment records was constructed in 1988. The existing dwelling has a one-car garage and driveway.

Proposal

The applicant is requesting permission for a secondary suite in the basement of the existing dwelling as shown in Appendix A. The proposed secondary suite would have direct and separate access provided by a proposed side entrance and internal stairs at the west side of the dwelling. The applicant is also proposing a new egress window at the east side of the existing dwelling. No other changes are being proposed to the exterior of the dwelling or the property.

Provincial Policies

Strong Communities through Affordable Housing Act - Province of Ontario

In 2011, the Strong Communities through Affordable Housing Act amended various sections of the Ontario Planning Act to facilitate the creation of second units by:

- Requiring municipalities to establish Official Plan policies and Zoning By-law provisions allowing secondary units in detached, semi-detached and row houses, as well as in ancillary structures
- Providing authority for the Minister of Municipal Affairs and Housing to make regulations authorizing the use of, and prescribing standards for, second units.

Under the *Strong Communities through Affordable Housing Act*, ‘Second Units’ also known as secondary suites are defined as “self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings.”

Official Plan and Zoning

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

The 2014 Official Plan designates the subject property “Residential – Low Rise”, which provides for low rise housing forms including detached and semi-detached dwellings. The definition of a “Secondary Suite” in the 2014 Official Plan is “a second residential unit in a detached house, semi-detached house or row house 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 it is the policy of Council that in considering an application to amend the zoning by-law to permit the establishment of a secondary suite where provided for in the 2014 Official Plan, that 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

As part of the City initiated zoning by-law consolidation project, Council recently considered the issue of second suites within the City. On May 29th, 2018, Council voted not to permit second suites as of right in any single detached, semi-detached, or townhouse dwelling.

Zoning By-Law 90-81

The subject property is zoned ‘First Density – Street Townhouse Residential’ (RST1) under By-law 90-81, as amended, which permits street townhouse dwellings. It should be noted a common form of development in Markham in the mid to late 1980s was townhouse and semi-detached dwellings that were attached via a concrete link along the foundation walls below grade. These building forms appear as single detached dwellings above grade. The RST1 zone also permits single detached dwellings in accordance with the Ninth Density Single Residential (R9) zone requirements. Section 6.5 of the By-law only permits one dwelling on a lot, and the applicant has therefore submitted a variance to permit a secondary suite within the dwelling, which is currently under construction.

Parking Standards By-law 28-97

The proposed secondary suite also does not comply with the standard of the Parking By-law 28-97 for the number of parking spaces provided. Further details of the parking requirement is provided in the comment section below.

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, “some changes had been made in [the] “basement” in order to rent out as [a] second unit of this premises. Therefore, legal permission is now required to receive [the] “building permit” in order to legalize the 2nd unit for renting”.

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. However the applicant has received comments from the building department through their permit process 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;
- d) The general intent and purpose of the Official Plan must be maintained.

Secondary Suites

Engineering staff confirmed that the existing sanitary sewer system has adequate capacity to accommodate the secondary suite and the 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.

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 for the establishment of a secondary suite and therefore have no objections.

Reduced Parking Spaces

The City of Markham Parking Standards By-law 28-97, as amended, requires two parking spaces for the principal dwelling unit, plus one additional space for an accessory dwelling unit or secondary suite. The existing single-car garage and driveway currently provide a total 2 parking spaces. Insufficient space is located on the subject property to provide an additional parking space that conforms to the size requirements of the Parking Standards By-law.

Staff are of the opinion that to ensure the second suite remains inconspicuous from the street, and that the character of the dwelling and neighbourhood does not change, no additional parking should be required. Staff are also of the opinion that the parking issue may be considered "self-regulating", as the unit would only be of interest to a tenant that does not require a parking space in the event that both parking spaces are required for use by the owner of the dwelling. Alternatively, one of the two available spaces can be allocated for use by occupants of the accessory unit, and the other allocated for the use of occupants of the principle dwelling. The applicant should be aware that that overnight parking is not permitted unless a permit from the City's By-law Licensing and Enforcement Department is obtained.

PUBLIC INPUT SUMMARY

No written submissions were received as of February 25th, 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\ 19 132636 \Documents\District Team Comments Memo

APPENDIX “A”
CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/86/19

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 July 30th, 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; and
3. 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:



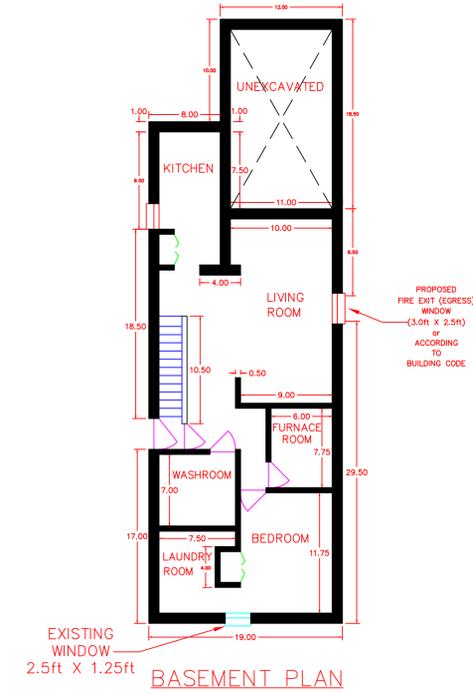
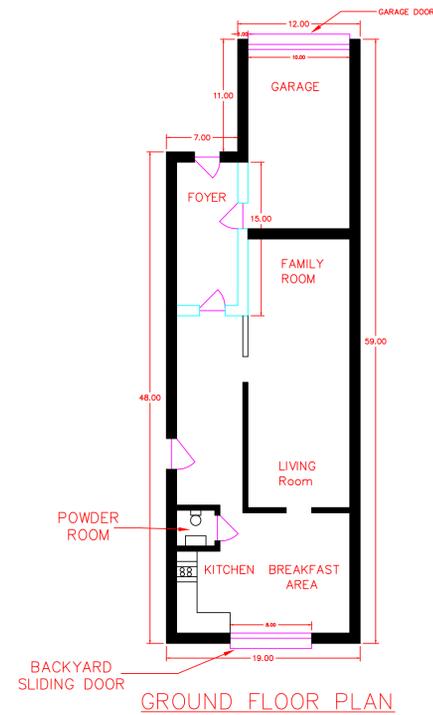
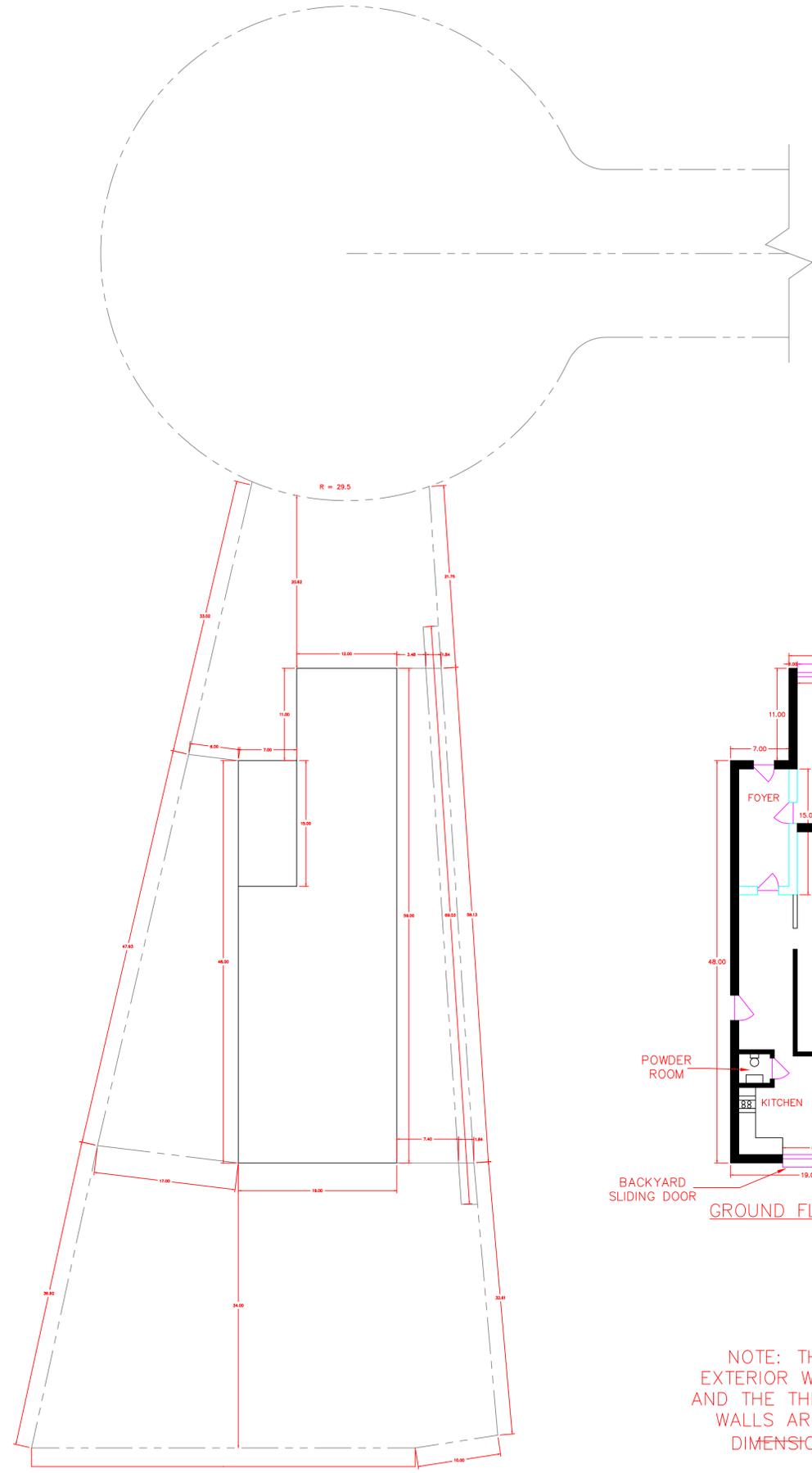
Aqsa Malik, Planner, East District

APPENDIX B



LEGEND:

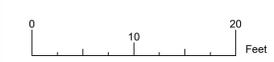
-  DOOR
-  PROPOSED WINDOW
-  EXISTING WINDOW
-  STAIRCASE
-  CLOSET



NOTE: THE THICKNESS OF THE EXTERIOR WALLS ARE TYPICALLY 1ft AND THE THICKNESS OF THE INTERIOR WALLS ARE TYPICALLY 0.5ft. ALL DIMENSIONS ARE IN FEET (ft).

MINOR VARIANCE

Scale: 1:1000



SITE PLAN

ADDRESS:
33 ROWE COURT, MARKHAM, ON
L3S 2J6

DRAWN BY: L.S.	DATE: 08/23/2019
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TITLE: FLOOR PLANS	DWG. NO: A
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MARKHAM	BUILDING STANDARD
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65R-11656

I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT

PLAN 65R-11656

RECEIVED AND DEPOSITED

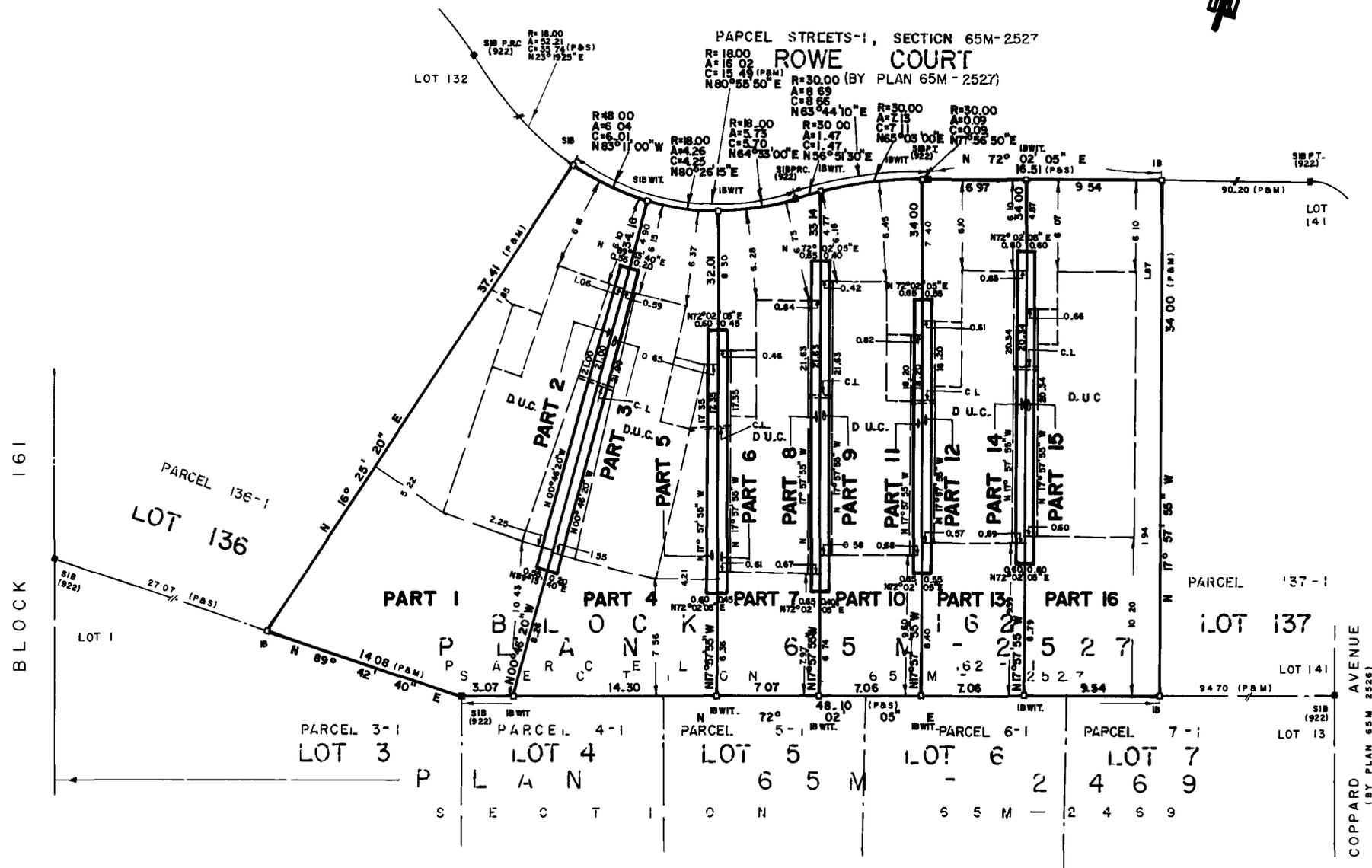
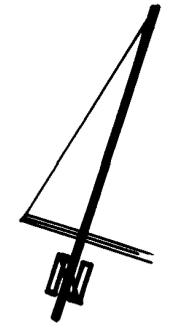
DATE March 1, 1988

DATE 10 MAR., 1988

A. Kikas
ANTON KIKAS OLS

Asst. Reg. J.B.
LAND REGISTRAR FOR THE LAND TITLES DIVISION OF YORK REGION (NR 65)

PARTS 1 TO 16 BOTH INCLUSIVE ALL INCLUSIVE 162-1, SECTION 65M-252Z



PLAN OF SURVEY OF
BLOCK 162
PLAN 65M-2527
TOWN OF MARKHAM
REGIONAL MUNICIPALITY OF YORK
SCALE 1:250



ANTON KIKAS LIMITED
ONTARIO LAND SURVEYORS
1988

CAUTION: THIS PLAN IS NOT A PLAN OF SUBDIVISION WITHIN THE MEANING OF THE PLANNING ACT

METRIC DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

NOTES

BEARINGS ARE ASTRONOMIC AND ARE REFERRED TO THE SOUTHERLY LIMIT OF ROWE COURT AS SHOWN ON PLAN 65M-2527 HAVING A BEARING OF N 72° 02' 05" E

- DENOTES SURVEY MONUMENT PLANTED
- DENOTES SURVEY MONUMENT FOUND
- SIB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- WIT DENOTES WITNESS
- D.U.C. DENOTES DWELLING UNDER CONSTRUCTION
- C.L. DENOTES CONCRETE LINK
- (922) DENOTES SCHAEFFER & REINTHALER O.L.S
- (P&S) DENOTES PLAN 65M-2527 AND SET
- (P&M) DENOTES PLAN 65M-2527 AND MEASURED

TIES ARE TAKEN TO CONCRETE FOUNDATION UNLESS NOTED OTHERWISE

SURVEYOR'S CERTIFICATE

I CERTIFY THAT
1 THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE THEREUNDER,
2 THE SURVEY WAS COMPLETED ON THE 16th DAY OF Feb, 1988
DATE March 1, 1988 A. Kikas
ANTON KIKAS-ONTARIO LAND SURVEYOR

AK Anton Kikas Limited
Consulting Engineers
Ontario Land Surveyors - Planners
168 Bridgeland Avenue Toronto M6A 1Z4 Tel 787 0303

DRAWN BY J.J.	JOB N° 87-40-46
CHECKED BY J.B.	