

Memorandum to the City of Markham Committee of Adjustment

December 7, 2022

File: A/043/22
Address: 5990 16th Avenue – Markham, ON
Applicant: Red Banner Developments Ltd. (Keith Lahey)
Agent: ARK Group (Daniel Wong)
Hearing Date: December 14, 2022

The following comments are provided on behalf of the Heritage District team. The applicant is requesting relief from the following “Central Commercial – (C2)” zone requirement under Zoning By-law 1229, as amended (the “Zoning By-law”), as it relates to an increase in restaurant space. The revised variance request is to permit:

a) Section 12.24.4, By-law 1229:

a combined maximum Gross Floor Area (GFA) of 22.0% for all types of restaurants at 5970 and 5990 16th Avenue, whereas the Zoning By-law permits a combined maximum GFA of 15.0% for all types of restaurants at 5970 and 5990 16th Avenue.

BACKGROUND

This minor variance application was deferred sine die by the Committee of Adjustment (the “Committee”) at the initial hearing on November 28, 2022. As noted by members of the public, the applicant’s initial request to increase the maximum GFA for all types of restaurants at 5970 and 5990 16th Avenue to 19.90% would only meet the needs of some proponent’s who seek to legally operate restaurants within the Subject Lands (refer to Minutes Extract attached as Appendix “C”).

At the time of the initial hearing, staff advised that a request for an increase would not meet Notice requirements in accordance with the *Planning Act, R.S.O. 1990, c. P.13, as amended* (the “*Planning Act*”), and respectively, an increase was not considered for decision by the Committee at that time. While the applicant noted that it was not the responsibility of their client to apply for and obtain an increase in restaurant GFA sought by other proponents, the Applicant had agreed to defer the application in order to assess the feasibility of an increased variance request.

COMMENTS

Following the initial hearing, the applicant submitted a revised variance application form, and now proposes a combined maximum GFA of 22.0% for all types of restaurants at 5970 and 5990 16th Avenue (the “Subject Lands”). The revised variance is consistent with the non-compliance of 21.74% identified by the Zoning Preliminary Review (ZPR) completed on February 16, 2022. The estimated peak parking demand of 127 parking spaces provided in the submitted parking study is based on a combined maximum GFA of 22.0% for restaurants at the Subject Lands and applies a rate of one parking space per 9.0 m² (96.88 ft²) for the vacant unit, and staff therefore remain satisfied with the parking study’s conclusion that the existing supply of at least 137 parking spaces can sufficiently accommodate the revised variance request.

On the same date as the initial Committee hearing (November 9, 2022), Heritage Markham Committee reviewed the application and had no comment on the Minor Variance

Application from a heritage perspective, but recommended that obtaining a sign and heritage permit be included as a condition of approval for any increased restaurant GFA at 5990 16th Avenue. As the Subject Lands are designated under Part V of the *Ontario Heritage Act, R.S.O. 1990, c. O18, as amended*, all proposed signage is reviewed by Heritage staff and as necessary by the Heritage Markham Committee to ensure conformance with the Markham Village Heritage Conservation District (MVHCD) Plan through the Building Permit application process. Staff advise that all signage is required to conform to the City's Signage By-law 2002-94 requirements, which provides unique parameters for proposed signage on municipally recognized heritage properties. Staff will confirm if the subject signage has obtained any necessary permits, and if not, ensure enforcement is undertaken.

PUBLIC INPUT SUMMARY

Following the initial hearing date, no new written submissions were received as of December 7, 2022. Additional information may be received after the writing of this report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, and are of the opinion that the revised variance request meets the four tests. Staff recommend that the Committee consider public input and the updated condition of approval 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" – Condition of Approval (Revised)

Appendix "B" – Initial Staff Report: November 4, 2022

Appendix "C" – Minutes Extract: November 9, 2022

Appendix "D" – Heritage Markham Extract: Nov 9, 2022

PREPARED BY:



Aleks Todorovski, MCIP, RPP
Planner II, East District

REVIEWED BY:



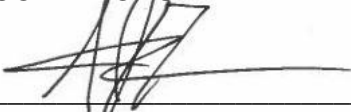
Regan Hutcheson, MCIP, RPP
Development Manager, Heritage District

APPENDIX "A"

CONDITION (REVISED) TO BE ATTACHED TO ANY APPROVAL OF FILE A/043/22

1. That the variance applies only to the proposed development for as long as it remains.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to be 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, MCIP, RPP
Planner II, East District

APPENDIX "B"
INITIAL STAFF REPORT: NOVEMBER 4, 2022

Memorandum to the City of Markham Committee of Adjustment

November 4, 2022

File: A/043/22
Address: 5990 16th Avenue (Unit 222) – Markham, ON
Applicant: Keith Lahey
Agent: ARK Group (Daniel Wong)
Hearing Date: November 9, 2022

The following comments are provided on behalf of the Heritage and East District teams. The applicant is requesting relief from the following “Central Commercial – (C2)” zone requirement under Zoning By-law 1229, as amended (the “Zoning By-law”), as it relates to an increase in restaurant space. The variance requested is to permit:

a) Section 12.24.4, By-law 1229:

a combined maximum gross floor area (GFA) of 19.90% for all types of restaurants at 5970 and 5990 16th Avenue, whereas the Zoning By-law permits a combined maximum GFA of 15.0% for all types of restaurants at 5970 and 5990 16th Avenue.

PROPERTY DESCRIPTION

5990 16th Avenue (the “Subject Property”) is located at the northwest corner of 16th Avenue and Markham Road, east of Heritage Corners Lane, and south of Edward Jeffreys Avenue. Vehicular access to the Subject Property is provided at three points; one along Markham Road, one along 16th Avenue, and one via an internal road off of 16th Avenue which also provides shared access to the lands municipally known as 5970 16th Avenue (refer to Appendix “C”). The existing one-storey commercial building located on the Subject Property contains 18 units, and is generally comprised of a mix of retail, restaurant, medical office, and personal service uses (the “Subject Building”). The Subject Building is also designated under Part V of the *Heritage Act, R.S.O. 1990, c. O.18, as amended* (the “*Heritage Act*”) as it is within the Markham Village Heritage Conservation District (“MVHCD”).

Both of the properties (5970 and 5990 16th Avenue) will collectively be referred to herein as the “Subject Lands”. The Subject Lands are developed with separate one-storey commercial buildings, consist of a combined GFA of approximately 3,184.25 m² (34,275.0 ft²), and a total parking supply of at least 137 spaces.

In close proximity to the Subject Property, surrounding uses include:

- Commercial, residential, and institutional uses to the north;
- Commercial uses to the east, across Markham Road;
- Residential uses and a gas station to the south; and
- Residential, institutional, and commercial uses to the west.

PROPOSAL

The applicant is proposing to increase the combined maximum GFA of all types of restaurants at 5970 and 5990 16th Avenue (the “Subject Lands”), and has confirmed that no changes to the Subject Property or exterior of the Subject Building are proposed.

OFFICIAL PLAN AND ZONING

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

The Official Plan designates the Subject Property “Mixed Use Low Rise”, which provides for a mix of low density residential, retail, restaurant and service uses that contribute to the creation of complete communities. The Official Plan also provides direction for staff to review any applications seeking development approval on lands that are a cultural heritage resource, and to provide for the protection and conservation of these buildings to ensure the integrity of these resources are maintained.

Zoning By-Law 1229, as amended

A maximum of 15.0% combined GFA of all types of restaurants is permitted by the Zoning By-law on the Subject Lands which are zoned “Central Commercial – (C2)” under the Zoning By-law; although, in 2016 the Committee of Adjustment (the “Committee”) approved a minor variance application (A/01/16), to permit a combined maximum GFA of 17.0% for all types of restaurants on the Subject Lands. Approval was conditional that Heritage Markham Committee supported the variance, or alternatively had no comments, which was the case. A combined maximum GFA of 17.0% for all types of restaurants is therefore currently permitted. The proposed development does not comply with the combined maximum GFA for all types of restaurants permitted on the Subject Lands.

Staff also advise that a separate provision requires that a maximum of one restaurant of any type may be permitted on the lands municipally addressed 5970 16th Avenue. The Zoning By-law also requires that a minimum of 43 parking spaces are located on the lands known as 5970 16th Avenue (inclusive of one accessible parking space), and a minimum of 94 parking spaces (inclusive of three accessible parking spaces) are provided on the Subject Property (5990 16th Avenue).

ZONING PRELIMINARY REVIEW (ZPR) UNDERTAKEN

The applicant completed a ZPR which confirmed the initial variance of 21.74% combined GFA for all types of Restaurants on the Subject Lands, required for the proposed development. The applicant has reduced this number and only seeks a maximum combined GFA of 19.90% for all types of Restaurants on the Subject Lands.

Staff advise that it is the applicant’s responsibility to ensure that the application has accurately identified all of 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 at the Building Permit stage, further variance application(s) may be required to address any non-compliances.

COMMENTS

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

Increase in Combined Maximum GFA for All Types of Restaurants

The applicant is requesting a combined maximum GFA of 19.90% for all types of restaurants on the Subject Lands, whereas the Zoning By-law permits a combined maximum GFA of 15.0% for all types of restaurants on the Subject Lands. This is an increase of approximately 156.03 m² (1,679.48 ft²).

As part of a parking study dated August 2022, parking surveys were completed over the course of four days, on two Fridays and Saturdays from 7:00 AM to 10:00 PM. It was determined that an observed peak parking demand was 114 parking spaces, on the Subject Lands, while also noting that Unit 236 was vacant at the time of study. The parking study estimated that an additional requirement of 13 parking spaces would be required in a worst case scenario for the vacant unit. Therefore, in the event where all units were occupied, the parking study concludes that a combined observed peak parking demand of 127 parking spaces would be required, and could be accommodated by the existing parking supply.

Based on the foregoing, staff are satisfied that the existing parking supply would accommodate the increase in restaurant GFA, and that the requested variance is minor in nature, and maintains the general intent and purpose of the Zoning By-law and Official Plan.

Heritage Markham Committee

This application will be reviewed by the Heritage Markham Committee on November 9, 2022. Heritage Section staff has recommended that the Committee indicate that it has no comment on the Minor Variance application (A/043/22) for 5990 16th Avenue from a heritage perspective.

PUBLIC INPUT SUMMARY

No written submissions were received as of November 2, 2022. 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 variance request meets the four tests. Staff recommend that the Committee consider public input and the subsequent conditions of approval 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 the minor variance.

APPENDICES

- Appendix "A" – Conditions of Approval
- Appendix "B" – Plans
- Appendix "C" – Aerial Photograph of the Subject Lands

PREPARED BY:



Aleks Todorovski, MCIP, RPP
Planner II, East District

REVIEWED BY:




Regan Hutcheson, MCIP, RPP
Development Manager, Heritage District

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/043/22

1. That the variances apply only to the proposed development for as long as it remains.
2. That the Secretary-Treasurer receive written confirmation that Heritage Markham Committee supports the requested variance, or has no comments.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to read 'Aleks Todorovski', is written over a white rectangular background. The signature is stylized and somewhat abstract.

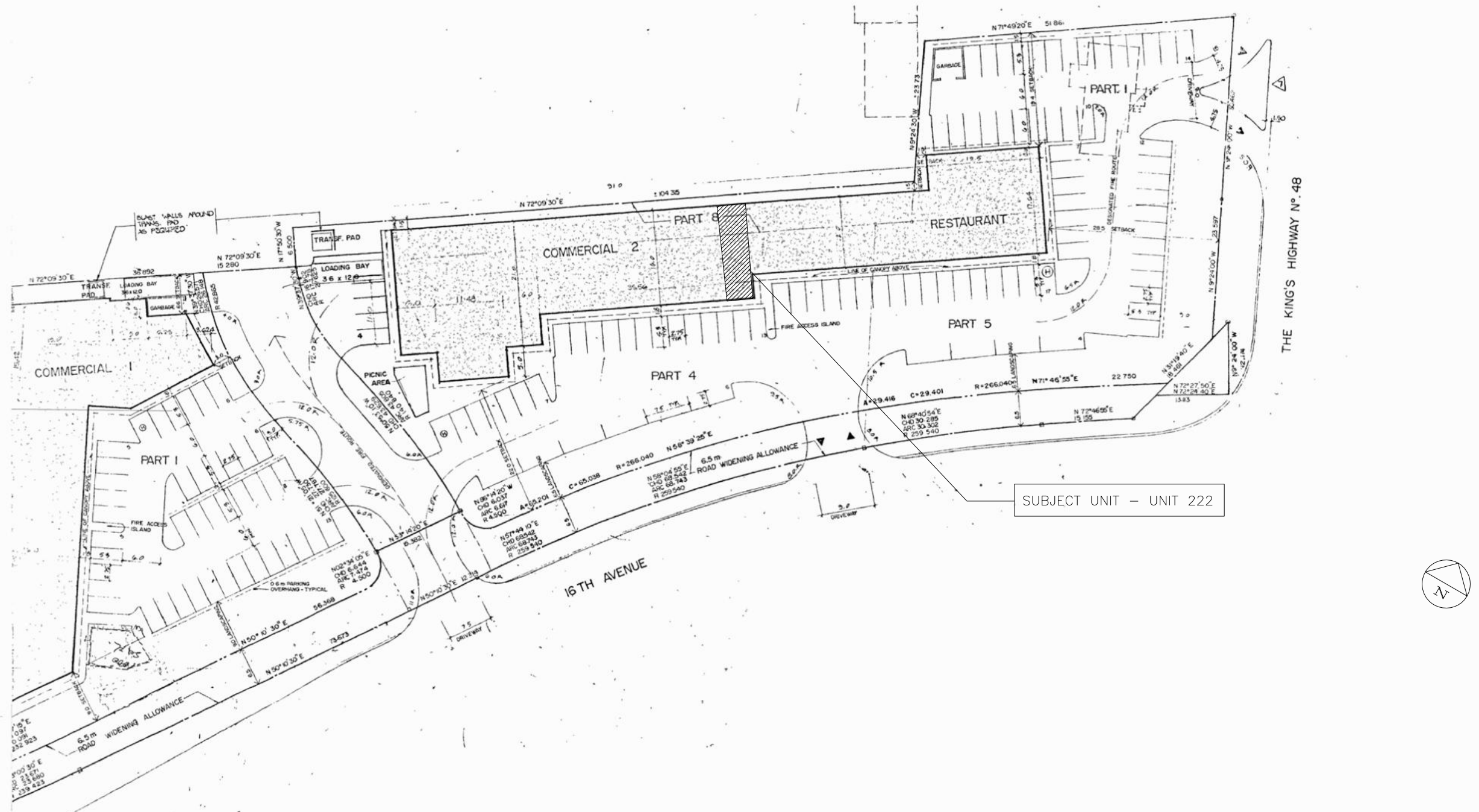
Aleks Todorovski, MCIP, RPP
Planner II, East District

APPENDIX "B"
PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/043/22

Appendix B

File: 22.113479.000.00.MNV

Date: 11/04/22
MM/DD/YY



1
A000

SITE PLAN
3/16" = 1'-0"

BUILDING STATS:

TOTAL LOT AREA:	10969 m ² (118073.2 ft ²)	
BUILDING AREAS:	BLOCK 1, COMMERCIAL BLDG 1	1247.8 m ² (13432 ft ²)
	BLOCK 2, COMMERCIAL BLDG 2	1244.1 m ² (13392 ft ²)
	RESTAURANT	692.2 m ² (7451 ft ²)
	TOTAL AREA OF ALL BUILDINGS	3184.1 m² (34275 ft²)

SITE COVERAGE:

COVERAGE	29.02 %
FLOOR AREA RATIO	.29

PARKING REQUIREMENTS:

TOTAL PARKING PROVIDED (INCLUDING 3 HANDICAPPED SPACES) **137 SPACES**

4

No.	Description	Date	By
1	ISSUE FOR CLIENT REVIEW	01/10/2022	DW
2	ISSUE FOR ZONING REVIEW	01/26/2022	DW
3	ISSUE FOR ZONING NOTICE 1	02/11/2022	DW
4	ISSUE FOR ZONING NOTICE 2	02/16/2022	DW



CY WONG & ASSOCIATES INC.

40 FERRIER STREET, 2ND FLOOR
MARKHAM, ON L3R 2Z5

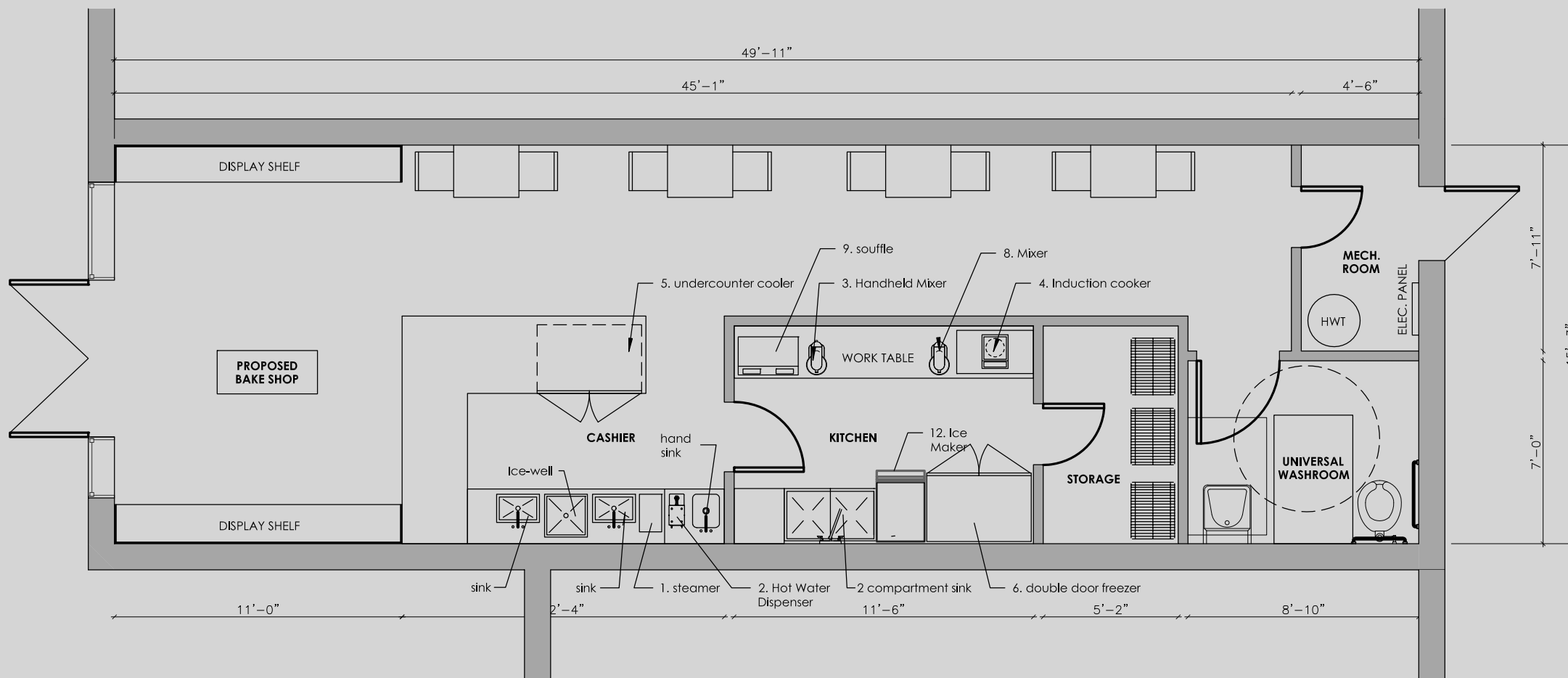
T: 416-841-3978 | EMAIL: CYWONG181@GMAIL.COM

DRAWING NAME Site Plan		Project Location: 5990 16th Ave., Unit 222, Markham, ON
Date Jan. 10/22	Scale As Noted	SHEET NUMBER A000
Project Number 22103	Drawn by DW	

Appendix B

File: 22.113479.000.00.MNV

Date: 11/04/22
MM/DD/YY



No.	Description	Date	By
1	ISSUE FOR CLIENT REVIEW	01/10/2022	DW
2	ISSUE FOR ZONING REVIEW	01/26/2022	DW



CY WONG & ASSOCIATES INC.

40 FERRIER STREET, 2ND FLOOR
MARKHAM, ON L3R 2Z5

T: 416-841-3978 | EMAIL: CYWONG181@GMAIL.COM

DRAWING NAME Floor Plan		Project Location: 5990 16th Ave., Unit 222, Markham, ON
Date Jan. 10/22	Scale As Noted	SHEET NUMBER A100
Project Number 22103	Drawn by DW	

1
A100

FLOOR PLAN
3/16" = 1'-0"

APPENDIX "C"
AERIAL PHOTOGRAPH OF THE SUBJECT LANDS



Legend

- Parcel Overlay
- Parcel
- Park Facility
- Parks**
- Under Development
- <all other values>

1: 2,257



114.7 0 57.33 114.7 Meters

DISCLAIMER: The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments. If you have questions or comments regarding the data displayed on this map, please email cgis@markham.ca and you will be directed to the appropriate department.

Notes

Subject Property is denoted by Yellow Circle.

APPENDIX "C"
MINUTES EXTRACT: NOVEMBER 9, 2022

a) Section 6.2.2:

a minimum rear yard setback of 5.64 metres, whereas the By-law requires a minimum rear yard setback of 7.50 metres;

as it related to a proposed rear sunroom addition.

The Acting Chair introduced the application.

The agent, Syed Amut, appeared on behalf of the application and indicated they agreed with the staff report.

Member Yan noted that the proposed one-storey sunroom would have minor impacts on the rear yards of adjacent properties. However, no concerns had been raised by neighbouring residents. Member Yan requested clarification regarding the structure's foundation and how the unit would be heated and cooled.

Syed indicated that the sunroom and a concrete foundation would be attached to the house and heated or cooled by units chosen by the homeowner.

Member Yan indicated that the application met the four tests of the *Planning Act* and recommended approval with conditions.

Member Sampson agreed with Member Yan and supported the application.

Moved By: Sally Yan
Seconded By: Patrick Sampson

The Committee unanimously approved the application.

THAT Application No. **A/160/22** be **approved** subject to conditions contained in the staff report.

Resolution Carried

4. A/043/22

Owner Name: Red Banner Developments Ltd (Keith Lahey)
Agent Name: ARK Group (Daniel Wong)
5990 16th Avenue, Markham
PLAN 65M3551 LOT 65

The applicant was requesting relief from the requirements of By-law 1229, as amended, to permit:

a) Section 12.24.4:

a combined maximum gross floor area of 19.90 percent for all types of restaurants at 5970 and 5990 16th Avenue, whereas the By-law permits a combined maximum gross floor area of 15.0 percent for all types of restaurants at 5970 and 5990 16th Avenue;

as it related to a proposed restaurant use.

The Acting Chair introduced the application.

The agent, Ken Tai, appeared on behalf of the application.

Mohammad Baritz, a tenant in the plaza, had taken over a business that had been an existing restaurant for 30 years. Unfortunately, they had been unable to open their business as they had been waiting on a building permit for over a year. He shared information regarding the percentage of GFA used by each restaurant use. In addition, they wanted to understand how the minor variance application would impact their building permit.

Ken Tai had submitted the minor variance application for Sun Tea. The application for 19.9 percent GFA included Sun Tea and all other legally conforming restaurant uses in the plaza. Ken indicated that an operating restaurant that was non-compliant in the plaza was not part of the percentage requested in the application. The parking study showed all existing proposed restaurants and demonstrated sufficient parking for a GFA of 22 percent. Ken indicated that his client was not responsible for applying for the required increase in GFA for the non-compliant unit.

Elizabeth Brown, 65 Lincoln Green Drive, the Committee of Adjustment representative for the Markham Village Sherwood Conservation Residents Association, raised concerns of Councillor Rea, who was attending the Heritage Markham meeting that ran concurrently with the Committee of Adjustment meeting. Concerns had been expressed that the proposed GFA request would only meet the needs of some of the operating and proposed businesses in the plaza. Elizabeth suggested that a deferral might be appropriate to allow for the resolution of the concerns.

Ken Tai presented the GFA required for the proposed Tea Room and non-operational/vacant restaurant and the parking justification study conducted for their client. Ken indicated that the study justified the 22 percent, and the Committee could approve the GFA based on the parking study. The application had only been submitted for their needs, as no other tenants had paid for the justification studies or variance application. They had submitted for a GFA required for the Tea Room.

The Acting Chair asked Greg Whitfield to respond to the comments.

Greg Whitfield noted that the Committee could not approve a variance for 22 percent GFA since the public notice would not meet the requirements of the *Planning Act*. Greg

clarified that the issue arose as the variance would be for the property as a whole. The increased GFA could not be assigned to specific units. The Building Department would determine the permits that could be issued. At 19.9 percent GFA, only two of the three units, the Tea Room, the vacant unit and the non-compliant unit, would be permitted. Approval of 19.9 percent GFA could leave the applicant, or the other party at the meeting outside the GFA allocated for restaurant uses. Greg indicated that a Zoning Preliminary Review had identified 22 percent as the required GFA for all operating and proposed restaurant uses in the plaza. However, staff cannot require the applicant to apply for other businesses which may require the additional GFA and the applicant, at their discretion, had applied for the 19.9 percent. Greg advised that the Committee could defer the application to allow the tenants to work with the property owner and Councillor to bring forward a proposal to resolve the concerns or proceed with the application before them.

Liz Brown also noted a request by the Councillor for a condition requiring that all proposed businesses obtain heritage permits for their signs.

Member Sampson asked if the staff knew the issues when preparing the report.

Greg Whitfield stated that planning doesn't review building permits submitted for a property. Mohammed Baritz had received a zoning review as part of their Building Permit application. He was advised at that time that a minor variance was required. Greg reiterated that staff had advised the applicant of the overall GFA required for all restaurant uses on the property. The agent applied at their discretion for the number they sought.

Ken Tai indicated that they had followed the prescribed process and that other tenants had not taken the initiative nor paid for the application or studies.

Member Sampson was concerned that the process had not served the needs of Mohammed Baritz.

Mohammed Baritz indicated that their lawyer had proceeded to apply for a minor variance and had been advised that unit 222 had already made an application and was for the entire property. Therefore, they did not submit a duplicate application. Mohammed indicated they had been in touch with the tenant of 222 and said they would assist with the application costs to ensure that it was done right for both units.

Member Yan suggested deferring the application to ensure all parties' needs would be addressed. Coordination between the landlord and tenants would ensure that all business needs were met and suggested that the Councillor could assist the parties to resolve the outstanding issues.

The Acting Chair agreed that deferral was necessary to ensure that no parties were left out of the process and that a subsequent application would not be required. However,

additional information was required for the Committee for a fair adjudication of the application.

Member Prasad agreed with their colleagues that a deferral allowed for an opportunity for all parties requiring the additional GFA for restaurant uses to come together with the landlord and resolve the issues.

Member Yan motioned for deferral. The Chair confirmed with the applicant they understood the Committee position.

Moved By: Sally Yan
Seconded By: Arun Prasad

The Committee unanimously deferred the application.

THAT Application No. **A/043/22** be **deferred** sine die.

Resolution Carried

5. A/163/22

Owner Name: Vince Wong and Fiona Choy
Agent Name: Vince Wong
14 Wales Avenue, Markham
PLAN 1318 LOT 20

The applicant was requesting relief from the requirements of By-law 1229, as amended, to permit:

- a) **Amending By-law 99-90, Section 1.2 (vi):**
a maximum floor area ratio of ~~53.70~~ **50.0 percent**, whereas the By-law permits a maximum floor area ratio of 45.0 percent; **Amended**

as it related to proposed two-storey single detached dwelling.

The Acting Chair introduced the application.

The agent, Vince Wong, appeared on behalf of the application. Vince presented renderings of the home and indicated that the proposed two-storey home complied with all setback, height and lot coverage requirements. The proposed rooms were of standard size with an open-concept kitchen and family room. In addition, there were open-to-below spaces in the foyer and great room for visual interest.

Elizabeth Brown, 65 Lincoln Green Drive, the Committee of Adjustment representative for the Markham Village Sherwood Conservation Residents Association, appeared to speak to the application. Elizabeth expressed concerns regarding the massing and

APPENDIX "D"
HERITAGE MARKHAM EXTRACT

Date: November 24, 2022

To: R. Hutcheson, Manager of Heritage Planning
E. Manning, Senior Heritage Planner

**EXTRACT CONTAINING ITEM # 5.4 OF THE ELEVENTH HERITAGE
MARKHAM COMMITTEE MEETING HELD ON NOVEMBER 9, 2022**

5.4 COMMITTEE OF ADJUSTMENT VARIANCE APPLICATION

**COMMITTEE OF ADJUSTMENT APPLICATION FOR
INCREASED RESTAURANT GFA
5990 16th AVENUE (16.11)**

FILE NUMBER:

A/043/22

Extracts:

R. Hutcheson, Manager, Heritage Planning
E. Manning, Senior Heritage Planner

A Member requested that the Applicant be required to obtain both a sign and heritage permit as a condition of the approval of the application for increased restaurant GFA at 5990 16th Avenue.

Recommendation:

THAT Heritage Markham has no comment on the Minor Variance application (A/043/22) for 5990 16th Avenue from a heritage perspective; and,

THAT Heritage Markham recommends that obtaining a sign/heritage permit be included as condition of the application's approval for increased restaurant GFA at 5990 16th Avenue.

Carried