

Memorandum to the City of Markham Committee of Adjustment

April 23, 2018

File: A/34/18
Address: 18 David Gohn Circle, Markham Heritage Estates
Applicant: Al Na Chung
Agent: Newry Shao
Hearing Date: Wednesday May 09, 2018

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

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

- a) **Section 3.2:**
a dwelling unit (coach house) within the existing detached garage, whereas an accessory building is not permitted to be used for human habitation;
- b) **Amending By-law 260-87,**
Section 1 (c) (i): two dwelling units on the lands, whereas only one detached dwelling is permitted within a relocated building of architectural and/or historic interest on the lands;

as it relates to a proposed a coach house dwelling unit within the existing detached garage.

BACKGROUND

Property Description

The subject property is located within Markham Heritage Estates, which is a unique subdivision comprised of relocated heritage buildings near the intersection of 16th Avenue and Highway 48 (See Location Map-Figure 1). These buildings would have otherwise been lost to demolition if the City of Markham did not provide a suitable location and financial incentives to encourage individuals to relocate these buildings and restore them as private dwellings. As well as providing a refuge for threatened heritage buildings, the subdivision also demonstrates to the public the best possible practices in heritage conservation and restoration.

The subject property is occupied by the Christian Raymer House, a farmhouse that was originally constructed in 1871 and relocated from Highway 48 to Markham Heritage Estates in 1991, and a new, one and one half storey, 87m² (936.5 ft²) detached garage/accessory building constructed in 2011 (See Aerial Photograph taken in 2017-Figure 2, Photograph of the Christian Raymer House- Figure 3 and Photograph of the existing accessory building-Figure 4). In 2007, the owners of the property obtained a variance from the Committee of Adjustment to permit the garage/accessory building to have a gross floor area 20m² larger than what was permitted by the By-law.

The original purchase and sale agreement with the City, signed by the individuals who originally relocated the Christian Raymer House into Heritage Estates contains a covenant in Schedule 'B' which is intended to run with, and be binding to the property, that stipulates that the property should not be used for any other purpose than a private residence for the use of one family only. (See copy of sample purchase and sale agreement Schedule 'B').

Proposal

The current owner proposes to convert the upper floor of the existing garage/accessory building into a second dwelling unit.

Applicant's State Reason for Not Complying with Zoning

The applicant has provided no reason why they cannot comply with the By-law.

Zoning Preliminary Review Has Been Undertaken

The applicant has confirmed that a Zoning Preliminary Review has been undertaken and assigned the number ZPR 17 181046

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.

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".

Since that time, the Residential Low Rise policies of the Official Plan 2014 (partially approved on October 15, May 26, 2016, April 17, 2017 and November 24, 2017) have come into effect along with definitions and policies regulating Secondary Suites.

These policies support Secondary Suites in all 'Residential' designations but define a Secondary Suite as a "second residential unit in a detached house, semi-detached house or rowhouse" but not an accessory building. The Official Plan 2014 also defines a Coach House as a second residential unit above a private garage either in the main building, or an accessory building. However, in the Residential Low Rise designation to which the subject property belongs, a Coach House is only permitted above a garage located on a laneway.

It appears the intent of limiting Second Suites to Coach Houses located on laneways was to avoid the potential loss of privacy which could result by permitting Second Suites in the second storeys of detached garages/accessory building which are often located as close as 2 feet from the lot lines between properties. The overlook of second suites in accessory buildings situated close to property lines could negatively impact the privacy of neighbouring property owners who have come to rely on the minimum rear yard setbacks of 25 feet for dwellings prescribed by the City's Zoning By-laws to protect the privacy of their rear yards.

The existing accessory building at 18 David Gohn is located in the rear yard of the property and is 4 feet away from the west side property line and 6 feet away from the north rear property line. The second storey of the building also has two window dormers on the west side of the building, and two windows on the north gable that overlook the rear yards of neighbouring residential properties to the west and north.

The proposed second storey residential unit in the accessory building does not conform to the Official Plan's definition of a Second Suite because it is not located within the existing detached dwelling on the property, and it also cannot be defined as a Coach House because the accessory building is not located on a lane.

Given this, and the way the overlook from the second storey of the existing accessory building would negatively impact the privacy of the rear yards of the neighbouring properties to the north and west, the proposed second suite does not maintain the intent of the Official Plan to ensure that the location of second suites does not negatively impact neighbouring property owners.

Engineering and Urban Design

The City's Engineering Department and Urban Design Section have not provided any comments regarding the application.

Heritage Markham

Heritage Markham reviewed the application on April 11, 2018 and had no comment on the requested variances from a heritage perspective, as the requested variances would not affect the outward appearance of the existing accessory building.

PUBLIC INPUT SUMMARY

No written submissions were received as of April 25, 2018. It is noted that additional comments may be received after the writing of the report and the Secretary-Treasurer will provide comments on this at the meeting.

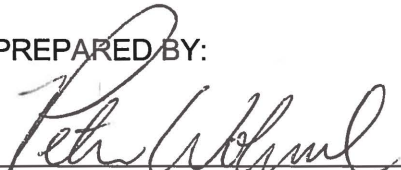
CONCLUSION

It is the opinion of the Planning staff that the proposed residential unit in the existing accessory building at 18 David Gohn Circle does not comply with the policies contained in the City's Official Plan 2014 regarding Secondary Suites, and does not maintain the intent and purpose of the Official Plan and Zoning By-law. Therefore the requested variances cannot be said to meet the four tests of the Planning Act.

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.

Should the Committee see merit in the application, Staff recommends that the conditions attached as Appendix "A" be attached to any approval of this application.

PREPARED BY:



Peter Wokral, Heritage Conservation Planner

REVIEWED BY:



Regan Hutcheson, Manager of Heritage Planning

File Path: Amanda\File\ 18 227482 \Documents\District Team Comments Memo

FIGURE 1- LOCATION MAP

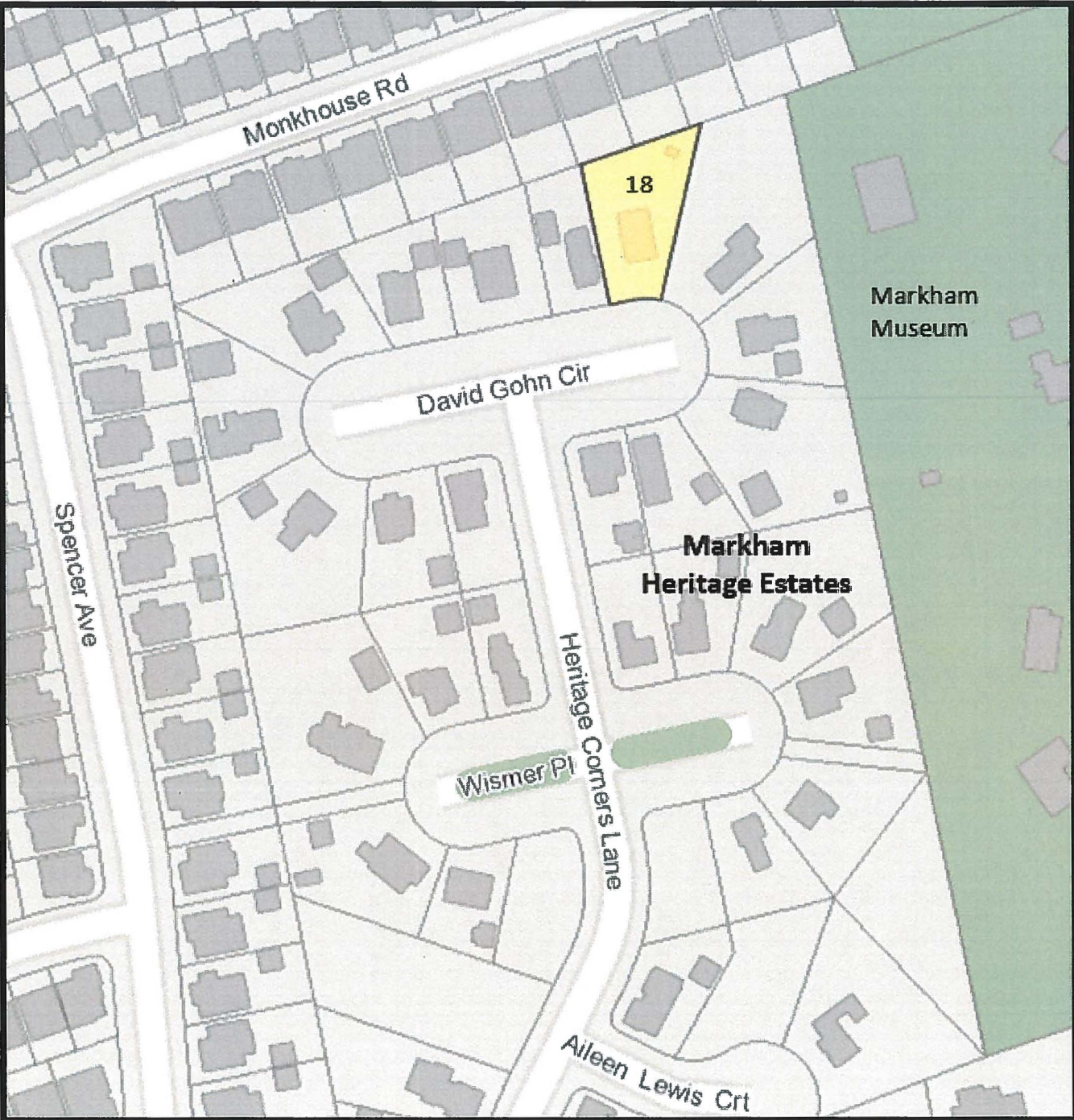


FIGURE 2- AERIAL PHOTOGRAPH TAKEN 2017

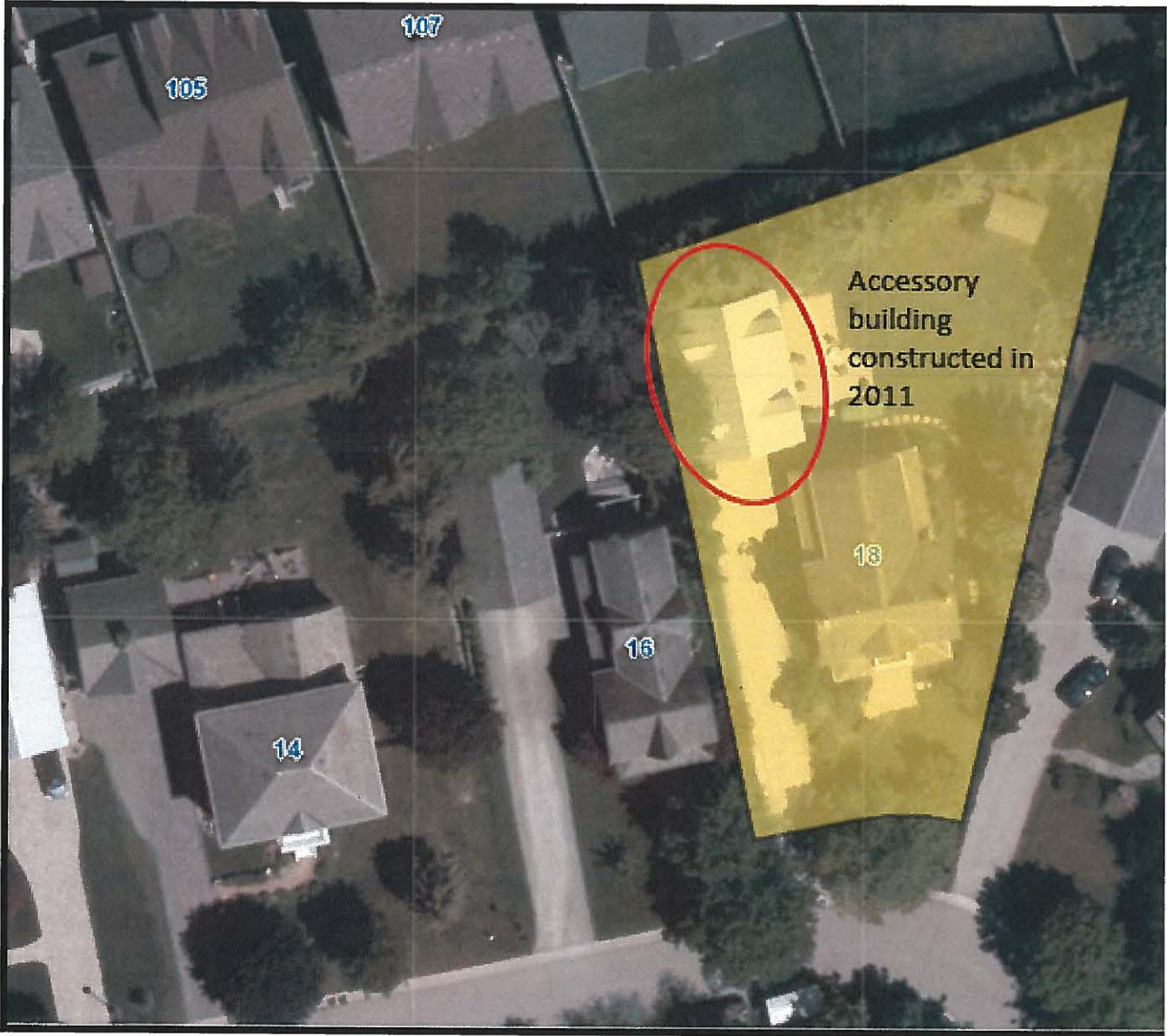


FIGURE 3- PHOTOGRAPH OF THE CHRISTIAN RAYMER HOUSE



FIGURE 4- PHOTOGRAPH OF THE EXISTING ACCESSORY BUILDING



**APPENDIX 'B' - SAMPLE SCHEDULE 'B' ATTACHED TO HERITAGE
ESTATES AGREEMENT OF PURCHASE AND SALE**

SCHEDULE "B"

THE CORPORATION OF THE CITY OF MARKHAM

To the intent that the burden of the covenants hereinafter set out may run with and be binding upon the lands described as Lot ●, Plan 65M-2761.

1. No external alterations or changes shall be made to the heritage dwelling structure's appearance (including colours) without the written approval of The Corporation of the City of Markham.
2. No signs, billboards, notices or other advertising matter of any kind (except the ordinary signs offering the said lands or building thereon for sale or rent) shall be placed on any part of the said lands or upon or in any buildings or on any fence, tree or other structure on the said lands without the written approval of The Corporation of the City of Markham.
3. No building, accessory building, wall, fence (including hedges), gate, post or other structure shall be commenced, constructed or maintained on the said lands, nor shall any addition to, or alteration thereof be made until the plans, specifications and siting plan showing the nature, location, colour, materials, height and approximate cost of any such building, accessory building, wall, fence, (including hedges), gate, post or other structure and any additions or alterations thereto shall have been submitted to and approved in writing by The Corporation of the City of Markham who may in its discretion refuse to approve of any such plans, specifications or siting plan, which, in its opinion are unsuitable or undesirable. In approving such plans, specifications and siting plan, the City may take into consideration, the material and colour of all roofs, exterior walls, woodwork, windows, hardware and lighting fixtures, fencing, paving and landscape details proposed and the harmony thereof with the surroundings and the effect of the structures as planned on the outlook from adjacent or neighbouring properties.
4. No living tree of more than two inches in diameter shall be cut down, destroyed or removed at any time, and if nevertheless any such tree be cut down, destroyed or removed the same will be forthwith replaced.
5. No part of the lands hereby conveyed shall be used for the purpose of any profession, trade, employments, service, manufacture, storage or business of any description, nor as a school, hospital or other charitable institution nor as a hotel, rooming house or place of public resort nor for any sport (other than such games as are usually played in connection with the occupation of a private residence), nor for any other purpose than a private residence for the use of one family only; nor shall anything be done or permitted upon any of the said lands or buildings erected or to be erected thereon which shall be a nuisance to the occupants of any neighbouring lands or buildings.