

# Memorandum to the City of Markham Committee of Adjustment

March 08, 2018

**File:** A/39/17  
**Address:** 110 Morgan Avenue, Thornhill  
**Applicant:** Ruonan Yang  
**Agent:** Aboutaleb Yazdani  
**Hearing Date:** Wednesday March 14, 2018

The following comments are provided on behalf of the West Team. The applicant is requesting relief from the following requirements of By-law 2237, R4, as amended:

- a) **Section 6.1:**  
a minimum west side yard setback of 0.4 metres; whereas, the By-law requires a 1.22 metre side yard setback for the one storey portion of the dwelling;
- b) **Infill By-law 101-90, Section 1.2 (vii):**  
a maximum floor area ratio of 55.5 percent, whereas the by-law permits a maximum floor area ratio of 50 percent;  
as it relates to an enclosed one-storey attached garage addition.

## Background Information

The 603.23 m<sup>2</sup> (6,493.11 ft<sup>2</sup>) subject property is located on the south side of Morgan Avenue, south of Clark Avenue and west of Henderson Avenue. The surrounding area consists of a mix of one and two-storey detached dwellings originally developed between 1950's and 1960's. The area is experiencing a gradual transition towards larger two-storey detached dwellings being developed as infill developments.

The property was recently developed with a two-storey detached dwelling which did not contain an integrated garage when it was first constructed. Parking was originally proposed to be provided in the west side yard. In December 2015, a minor variance was submitted to facilitate the construction of a double-car tandem carport with a reduced side yard setback of 0 m on the west side of the building (File: A/168/15). The variance request was denied by the Committee of Adjustment on February 10, 2016 due to drainage concern and lack of separation from the adjacent property.

A second minor variance application was filed in March 2016 (File: A/40/16) to allow a west side yard setback of 0.5 m (1.64 ft) for a similar carport structure at the same location. The Committee of Adjustment approved the variance on May 11, 2016, subject to the carport remaining unenclosed (Appendix B). A building permit was issued (HP 16 129635) for the carport based on the approved variances.

The carport was subsequently converted into a fully enclosed garage (see Appendix A and Photo1) without a permit. The enclosed garage does not reflect approved building permit drawings and is in violation of the condition of the minor variance approval. The enclosure of the carport also triggers a new floor area ratio variance that has not been approved by the Committee of Adjustment. The City has filed legal action against the owner for the illegal construction. The case went to the Provincial Court on February 15, 2018 and was adjourned pending the outcome of this minor variance application.

## Proposal

The applicant is seeking permission to legalize the attached double-car tandem garage on the west side of the existing dwelling.

## **Official Plan and Zoning**

2014 Official Plan (partially approved on Oct 30/15, May 26/16, Mar 10/17, April 21/17, Nov 24/17)

The subject property is designated "Residential – Low Rise", which provides for low rise housing forms including single detached dwellings. In considering applications for development approval in a 'Residential Low Rise' area, which includes minor variances, infill development is required to meet the intent of Section 8.2.3.5 of the 2014 Official Plan with respect to, height, massing and setbacks 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. 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

The subject property is zoned R4-Single Detached dwelling under By-law 2237, as amended, which permits single detached dwellings. The subject garage does not comply with the by-law with respect to side yard setback.

### Residential Infill Zoning By-law

The subject property is also subject to the Residential Infill Zoning By-law 101-90. The intent of this By-law is to ensure the built form of new residential construction will maintain the character of existing neighbourhoods. It specifies development standards for Floor Area Ratio, building height and building depth. The subject garage does not comply with the by-law with respect to floor area ratio.

### **Applicant's Stated Reason(s) for Not Complying with Zoning**

According to the information provided by the applicant, "*Minor variance A/40/16 permitted a minimum west side yard setback of 0.5 metres, as it related to an unenclosed roofed carport. The carport was constructed with a west side yard setback of 0.4 metres due to an error in constructing the carport posts on the centre from the west property boundary as opposed to constructing the posts on the outer edge from the west property boundary. Further, the owners of the subject property wish to enclose the carport in order to provide greater security for their property. While it is not a variance from the by-law provision, it is relevant to the existing variance of 0.5 metres from the west side yard setback as it related to an unenclosed attached roofed carport.*"

### **Zoning Preliminary Review Not Undertaken**

A Zoning Preliminary Review (ZPR) has not been formally conducted for the application. Consequently, 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 variances in the application contains errors, or if the need for additional variances are 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 Side Yard Setback

The applicant is requesting relief to permit a minimum west side yard setback of 0.4 m (1.31 ft), whereas the By-law requires a minimum side yard setback of 1.22 m (4 ft). This represents a reduction of 0.8 m (2.62 ft). The variance relates to the double-car tandem garage that was illegally constructed on the west side of the dwelling. Combined with the 1.83 m (6 ft) side yard setback provided by the adjacent new home to the west, there is separation distance of 2.23 m (7.31 ft) between the two buildings (see Appendix C).

Based on the grading plan submitted with the application (Appendix C), Engineering staff are of the opinion that the curb along the driveway will prevent stormwater runoffs onto the adjacent property and therefore have no objection to the application respecting drainage.

However Planning staff note that there is a risk of privacy intrusion as there is inadequate room to access the west side yard without trespassing the adjacent property. Planning staff are also concerned that the garage does not reflect the established setback pattern on the street. The majority of homes on Morgan Avenue comply with the minimum 1.22 m (4 ft) side yard setback, which leaves an even separation of 2.44 m (8 ft) between buildings. In the case of this application, most of the separation is provided by the adjacent property to the west, resulting an uneven distribution of side yard space which will adversely impact the attractiveness and character of the existing streetscape.

Furthermore Building Department indicates the garage may not meet the fire resistance rating requirement under the Building Code that intends to prevent the spreading of fire between buildings. It should be noted that a building permit will not be issued by the City if the proposal doesn't comply with building code requirement, even if the minor variance is approved by the Committee of Adjustment. This information has been provided to the applicant and it was the applicant's decision to continue proceeding with the application as submitted.

### Increase in Maximum Net Floor Area Ratio

The applicant is requesting relief to permit a maximum net floor area ratio of 55.5 %, whereas the By-law permits a maximum net floor area ratio of 50%. The variance is due to the double-car tandem garage on the west side of the building, which increases the total gross floor area to 328.53 m<sup>2</sup> (3,536.26 ft<sup>2</sup>), whereas the by-law permits a maximum gross floor area of 295.96 m<sup>2</sup> (3185.68 ft<sup>2</sup>). This represents an increase of 32.57 m<sup>2</sup> (350.58 ft<sup>2</sup>).

Floor Area Ratio is a measurement of the interior square footage of the dwelling as a percentage of the net lot area. It is not a definitive measurement of the mass of the dwelling, since it does not include "open to below" areas that may exist within the dwelling (e.g. two-storey foyers, atriums and/or stairs). There are no open to below area in the dwelling other than the stairs.

While the proposed floor area ratio is generally consistent with a number of new homes on Morgan Avenue, the additional floor area space leads to a loss of side yard space and landscaping opportunity which will adversely impact the privacy of the adjacent property and the visual appearance of the streetscape. Considering the cumulative impact with the reduced side yard setback variance, staff do not support the approval of the proposed increase in floor area ratio.

Toronto and Region Conservation Authority Comments

The subject property is located within TRCA's Regulated Area of the Don River Watershed. TRCA provided comments on February 12, 2018 (Appendix D) indicating they have no objection to the application subject to the conditions provided in the letter dated February 12, 2018 (Appendix D).

Staff note that the comments in the TRCA letter relate to an unenclosed roofed carport. Staff have followed up with TRCA to clarify that the variance requests apply to a fully enclosed garage. TRCA confirms this is an error in the letter and that the comments in the letter remain applicable for the fully enclosed garage.

**PUBLIC INPUT SUMMARY**

No written submissions were received since the application as of March 8<sup>th</sup>, 2018. 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**

It is the opinion of staff that, the variances if approved will provide for a side yard setback that will compromise the intended function of the zoning provision, which includes providing an appropriate visual separation and opportunity for landscaping between properties and therefore does not meet the general intent of the zoning by-law. It is also the opinion of staff that the garage addition is not in keeping with the character of the street and therefore does not meet the infill development criteria in the Official Plan that seeks to protect the existing character of residential neighbourhoods.

Planning staff have reviewed this 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 proposed variances do not satisfy all four tests of the Planning. Staff recommend the application be denied. 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.

PREPARED BY:

  
\_\_\_\_\_  
Carlson Tsang, Planner, Zoning and Special Projects

REVIEWED BY:

  
\_\_\_\_\_  
David Miller, Development Manager, West District

**Photo 1**



The ADA is a registered professional engineer, architect, and interior designer. The firm is a member of the Ontario Professional Engineers Association (O.P.E.A.) and the Ontario Professional Architects Association (O.P.A.A.). The firm is also a member of the Ontario Professional Interior Designers Association (O.P.I.D.A.). The firm is a member of the Ontario Professional Engineers Association (O.P.E.A.) and the Ontario Professional Architects Association (O.P.A.A.). The firm is also a member of the Ontario Professional Interior Designers Association (O.P.I.D.A.).

Project: 110 MORGAN AVE TORONTO CLIENT: ALI YAKDAN

Designed by: EHSAN ZAREGAN  
Checked by: FALREZA SAIED  
Scale: 3/32" = 1'-0"  
Project No: 201511010A-16  
Date: 01-06-2015

Address: 110 Morgan Ave Toronto, Ontario M5S 1A5  
Phone: (416) 593-1111  
Fax: (416) 593-1112  
Website: www.ada-engineering.com

Site Plan  
Drawing Title

A01

APPENDIX A

RECEIVED  
OCT 14 2016  
PLANNING & DEVELOPMENT  
TRCA

(BY REGISTERED PLAN 2426, P.I.N. 03022-0364 (LT))

MORGAN AVENUE

161.99 161.74 161.20 161.14 161.10 161.00 162.92 162.85 162.86 162.85 162.74

CENTER LINE OF ROAD

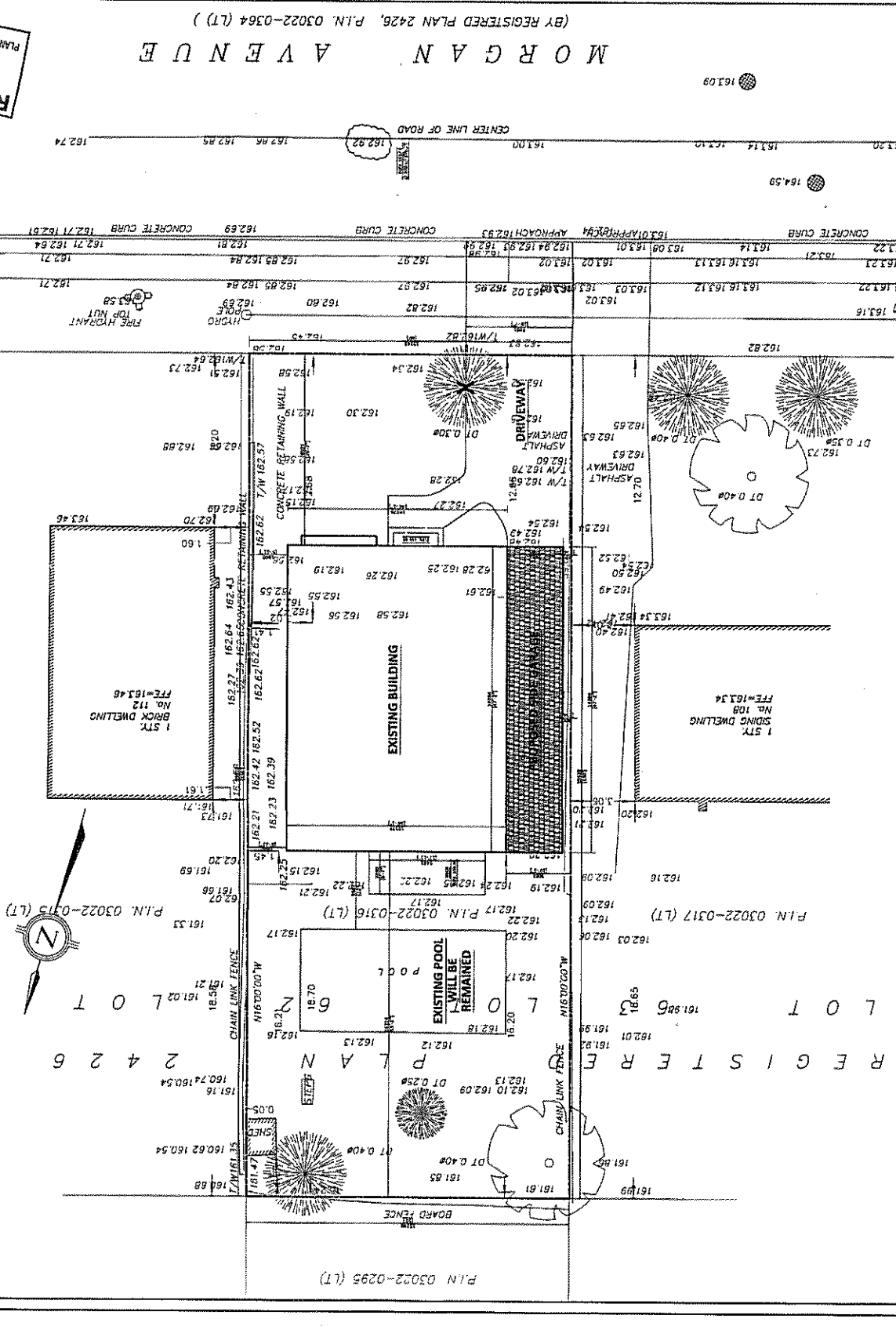
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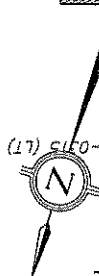
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This document forms part of a permit application for the registration 10506 APPROVED BY TRCA ON JUL 10 2015



P.I.N. 03022-0315 (LT)

P.I.N. 03022-0316 (LT)

P.I.N. 03022-0317 (LT)

P.I.N. 03022-0295 (LT)

REGISTERED PLAN 2426

LOT 6

LOT 6

LOT 6

LOT 6

LOT 6

LOT 6

LOT 6



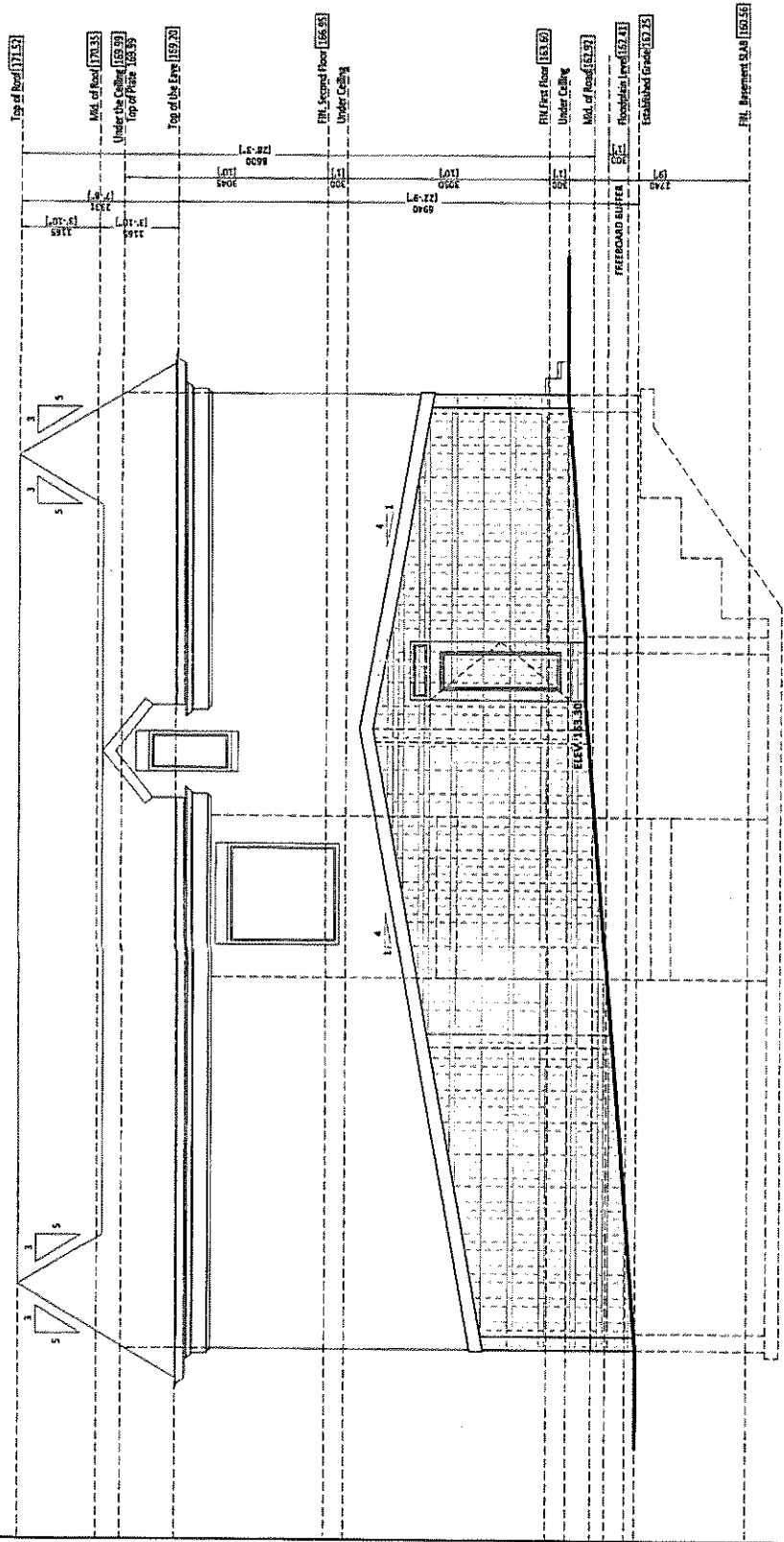




**RECEIVED**  
OCT 14 2015  
PLANNING & DEVELOPMENT  
TRCA

This document forms part of a permit under Ontario Regulation 169/06 APPROVED by TRCA on JUL 10 2015

This permit is valid only for the work shown on the drawings. Any change to the work shown on the drawings requires a separate permit. This permit is subject to the terms and conditions of the TRCA approval documents.

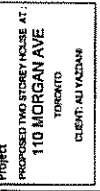


**WEST ELEVATION**  
0 0.5 1 1.5

The TRCA is not responsible for the accuracy of the information provided in this drawing. The user of this drawing is responsible for verifying the information provided in this drawing. The user of this drawing is responsible for verifying the information provided in this drawing. The user of this drawing is responsible for verifying the information provided in this drawing.

REV.	DESCRIPTION	DATE
01	ISSUED FOR PERMITTING	2015.07.10
02	CHANGED ARCHITECTURE	2015.07.10
03	CHANGED ARCHITECTURE	2015.07.10
04	CHANGED ARCHITECTURE	2015.07.10
05	CHANGED ARCHITECTURE	2015.07.10
06	CHANGED ARCHITECTURE	2015.07.10
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15	CHANGED ARCHITECTURE	2015.07.10
16	CHANGED ARCHITECTURE	2015.07.10
17	CHANGED ARCHITECTURE	2015.07.10
18	CHANGED ARCHITECTURE	2015.07.10
19	CHANGED ARCHITECTURE	2015.07.10
20	CHANGED ARCHITECTURE	2015.07.10

Project: PROPOSED TWO-STORY HOUSE AT 110 MORGAN AVE TORONTO CLIENT: AU VADIAN



ADA Engineering Solutions Inc.  
Address: 1000 Bay St. Toronto, ON M5G 1A5  
Phone: (416) 593-1111  
Email: info@adaengineering.com

Designed by: EHSAN ZAREIAN  
Checked by: ALIREZA SAIED  
Scale: 1/50  
Project No: 201511DMA-16  
Date: 01-06-2015

Drawing Title: WEST ELEVATION

A08



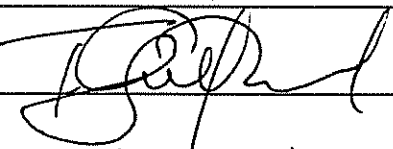


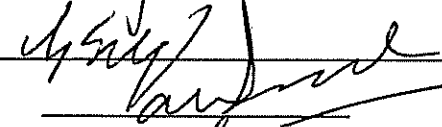



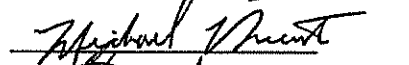




## Committee of Adjustment Resolution

File Number: A/40/16  
 Hearing Date: Wednesday, May 11, 2016  
 Owner(s): Aboutaleb Yazdani  
 Agent: Aboutaleb Yazdani  
 Property Address: 110 Morgan Avenue Thornhill  
 Legal Description: PLAN 2426 LOT 62  
 Zoning: By-law 2237, as amended, R4 - SINGLE DETACHED DWELLING  
 Official Plan: Urban Residential  
 Ward: 1

**Last Date of Appeal: Tuesday, May 31, 2016**

Moved by Tom 

Seconded by Greg 

- Arun Prasad 
- Michael Visconti 
- Gary Muller 
- Jeannie Reingold 
- Tom Gutfreund 
- Gregory Knight 

THAT Application No. A/40/16, submitted by Aboutaleb Yazdani owner(s) of 110 Morgan Avenue Thornhill, PLAN 2426 LOT 62, requesting relief from the requirements of By-law No. 2237, as amended, to permit the following:

**Section 6.1:** a minimum west side yard setback of 0.5 metres; whereas, the By-law requires a 1.2 metre side yard setback for the one storey portion of the dwelling; as it relates to a unenclosed attached roofed carport addition.

The variance request be **approved** for the following reasons:

- (a) In the opinion of the Committee, the general intent and purpose of the By-law will be maintained;
- (b) In the opinion of the Committee, the general intent and purpose of the Official Plan will be maintained;
- (c) In the opinion of the Committee, the granting of the variance is desirable for the appropriate development of the lot;

(d) In the opinion of the Committee, the requested variance is minor in nature.

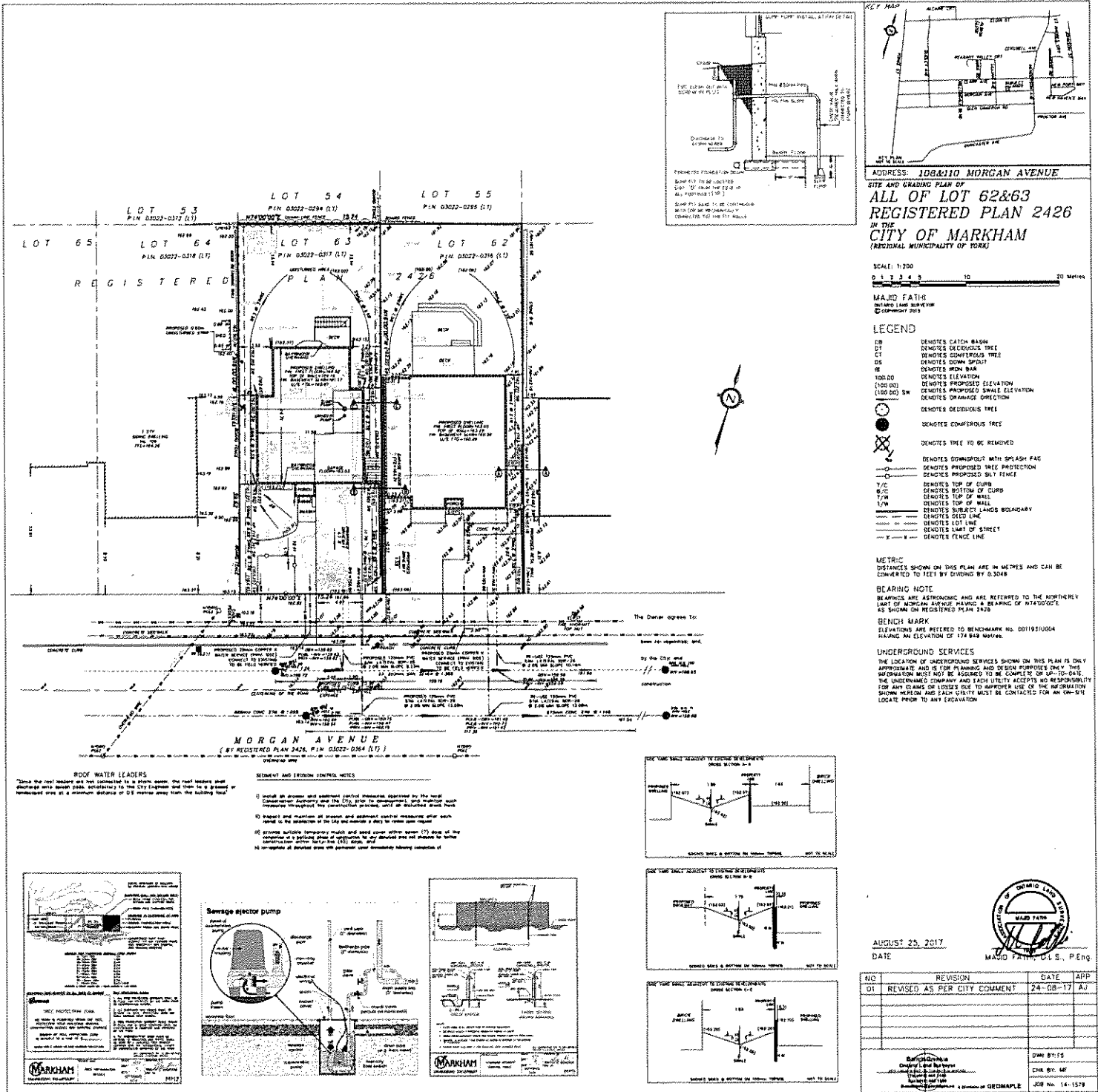
Subject to the following conditions:

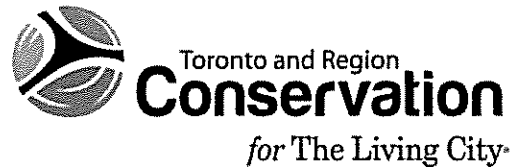
1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as "Appendix B" to this Staff Report, to the satisfaction of the Director of Planning and Urban Design or designate;
3. That the variance only applies to allow an unenclosed carport with no walls;
4. Submission and approval of a siting / grading plan of the property, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Engineering or designate;
5. That subject to the review and approval of a siting/grading plan, the owner demonstrate that the pre-existing drainage pattern within the property is not altered in such a way as to cause any adverse impact on the naturally occurring drainage from the site, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Engineering or designate;
6. That subject to the review and approval of a siting/grading plan, the owner demonstrate that there is no negative impact along any abutting property respecting surface water drainage, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Engineering or designate;

Resolution Carried

**SPECIAL NOTE TO OWNERS AND AGENTS:** It is the responsibility of the owner and/or agent to ensure that all conditions of approval are met through the respective departments noted therein. Failure to do so may result in additional approvals being required.

# APPENDIX C





February 12, 2018

CFN: 57057.05  
X-REF: 55154.01, 54121

**BY EMAIL ONLY**

Mr. Rick Cefaratti  
Acting Secretary-Treasurer  
City of Markham  
101 Town Centre Boulevard  
Markham, ON L3R 9W3

Dear Mr. Cefaratti:

Re: **Minor Variance Application A/39/17**  
**110 Morgan Avenue, Markham**  
**Ruonan Yang (Owner)**  
**Aboutaleb Yazdani (Agent)**

This letter will acknowledge receipt of the above-noted application. Toronto and Region Conservation Authority (TRCA) staff have reviewed this application and provide the following comments.

**PURPOSE OF THE APPLICATION**

**A/39/17**

The applicant is requesting relief from the requirements of By-law 2237, as amended, as it relates to an unenclosed attached roofed carport addition.

**Requested Variance(s) to the Zoning By-law:**

- a) **Section 6.1:**  
A minimum west side yard setback of 0.4 metres; whereas, the By-law requires a 1.2 metre side yard setback for the one storey portion of the dwelling;
- b) **Infill By-law 101-90, Section 1.2 (vii):**  
A maximum floor area ratio of 55.5 percent, whereas the by-law permits a maximum floor area ratio of 50 percent; as it relates to an unenclosed attached roofed carport addition.

**APPLICABLE TRCA REGULATIONS AND POLICIES**

**Ontario Regulation 166/06 (as amended):**

The subject property is located within TRCA's Regulated Area, as it is partially within the Regional Storm Floodplain associated with a tributary of Don River Watershed. In accordance with Ontario Regulation 166/06 (Development, Interference with Wetlands and Alteration to Shorelines and Watercourses), a permit is 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.

***Living City Policies for Planning and Development in the Watersheds of the TRCA (LCP):***

The Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority (LCP) describes a "Natural System" made up of water resources, natural features and areas, natural hazards, potential natural cover and/or buffers. The LCP recommends that development, infrastructure and site alteration not be permitted within the Natural System and that it be conveyed into public ownership for its long term protection and enhancement.

**APPLICATION SPECIFIC COMMENTS****Floodplain Management:**

The subject property is located within the Regional Storm Floodplain and will be inundated with flood waters during a Regional Storm event. According to our current flood model, the Regional Floodplain elevation on the subject property is 162.41 masl (metres above sea level). Please be advised, in accordance with TRCA policy, non-habitable accessory structures (i.e. a carport) within the floodplain may be permitted provided that the works will not result in unacceptable impacts to flood storage and conveyance. Based on our review, TRCA staff does not anticipate any negative impacts in respect the attached roof carport addition.

**Permitting (Ontario Regulation 166/06):**

As noted above, a portion of the subject property is located within a Regulated Area of the Don River Watershed. On this basis, a TRCA permit pursuant to Ontario Regulation 166/06, as amended, is required from this Authority. Please be advised, TRCA issued a permit reissuance (Permit No. C-150495) to facilitate the construction of the proposed works on the subject property under Ontario Regulation 166/06 on January 17, 2017. However, upon review of the most recent submission, it appears that the registered owner of the property has changed. The original permit noted above was issued to Aboutaleb Yazdani and through his written consent he acknowledged that this permit is non-transferable and is issued only to the current owner of the property. Additionally, it was further acknowledged that upon transfer of the property into different ownership, this permit would be terminated and a new permit would be obtained from the TRCA by the new owner.

Given the information above, the current permit issued to Aboutaleb Yazdani is now invalid, due to the change in ownership. As such, the current homeowner is required to obtain a TRCA permit from this Authority prior to any works commencing on the subject site.

Furthermore, staff note that the Site and Grading Plan, prepared by Majid Fathi, dated August 25, 2017 illustrates a deck configuration that does not reflect the materials approved by TRCA staff. Please ensure that the materials submitted as part of your TRCA permit submission accurately reflect the existing/proposed works.

**APPLICATION REVIEW FEE**

In addition to regulatory responsibilities, TRCA has a role as a commenting agency for *Planning Act* applications circulated by member municipalities to assess whether a proposed development may be impacted by the TRCA.

By copy of this letter, the applicant is advised that the TRCA has implemented a fee schedule for our planning application review services. This application is typically subject to a \$580.00 review fee (2018 TRCA Planning Fees Schedule –Variance – Residential – Minor). The applicant is responsible for fee payment and should forward the fee to this office within 60 days of this letter.

**RECOMMENDATION**

On the basis of the comments provided above, TRCA staff have **no objections** to the approval of the above noted application subject to the following condition:

1. The applicant successfully obtains a permit under Ontario Regulation 166/06, as amended, for the proposed works;
2. The applicant remits the outstanding TRCA Planning Services review fee of \$580.00 within 60 days of this letter.

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

Sincerely,



Aidan Pereira  
Planner I, Planning & Development  
[apereira@trca.on.ca](mailto:apereira@trca.on.ca)  
Extension 5723

AP/as