

# Memorandum to the City of Markham Committee of Adjustment

May 10, 2019

**File:** A/42/19  
**Address:** 17, 31, 33, 47, 49, 59, 61, 75, 77, 91, 93 & 101 Mikayla Lane  
**Applicant:** Primont (Cornell 2) Inc.  
**Hearing Date:** May 29, 2019

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

The applicant is requesting relief from the Section 6.6.3 (a) By-law 177-96, as amended, to permit stairs to encroach up to 0.55 m into the interior side yard, whereas the By-law does not permit stairs to encroach into the interior side yard.

This variance relates to twelve (12) end unit townhouse dwellings proposed as part of a draft approved plan of subdivision. The subject units are situated on Blocks 4 to 9 of Draft Approved Plan of Subdivision 19TM-14003.

## BACKGROUND

### Property Description

The undeveloped subject lands are located on the west side of Donald Cousens Parkway, north of Highway 7 in the Cornell Community (See Figure 1). Surrounding land uses include:

- Existing Low Rise development to the north;
- Undeveloped lands, some with existing rural homes, to the east south and west, which are anticipated to be developed with mid rise, residential, mixed or employment uses in accordance with the Cornell Secondary Plan.

### Proposal

The site was the subject of Official Plan and Zoning By-law Amendment, and Draft Plan of Subdivision applications (Files OP/ZA/SU 14 109647) approved by Markham Council in November 2016 to permit a residential townhouse development containing 95.5 townhouses and 1.5 single detached dwellings. (Note these lands were approved to be developed in conjunction with abutting lands to the west owned by Cornell Rouge Development Corp to permit a total of 150 townhouses and 7 single detached dwellings).

Figure 1 shows the draft plan of subdivision approved for the subject lands, which was issued on February 9, 2017. As noted, this variance application applies to the end unit townhouse dwellings located on Blocks 4 to 9 on the draft plan, which are blocks that front Donald Cousens Parkway.

The proposed townhouse development pattern contemplates a lane based community where vehicle access to each home is provided via a rear lane. The interior townhouses are proposed to have porches and doors accessing the rear lane, whereas the end units have wider garages instead.

Through the technical review of the draft plan of subdivision, the Fire Department advised Planning and Engineering staff that Donald Cousens Parkway is not considered the Fire Access Route (FAR) serving the subject blocks because of the grading differential between the public street and front of the homes. Consequently the rear lane

(Mikayla Lane) is the principle FAR serving these dwellings and each unit is required to have independent at grade access through a door as a result. The porches/doors for the interior units satisfy this requirement. However, to accommodate this requirement for the twelve (12) subject end units, side entrances were introduced in the proposed building layouts. The requested variance to permit stairs in the interior side yards is necessary to access to these required doors.

## **OFFICIAL PLAN**

2014 Official Plan as partially approved on November 24, 2017 and further updated on April 9, 2018 (the "2014 Official Plan")

The site is designated 'Residential Mid Rise', which provides for townhouses, as well as multiplex buildings containing 3 to 6 units; stacked townhouses, apartment buildings, and buildings associated with day care centre, places of worship and public schools.

The site is also within the Cornell Centre Key Development Area and applicable transition policies require that until an updated secondary plan is approved for Cornell Centre, the provisions of the Official Plan (Revised 1987), as amended and the current Cornell Secondary Plan shall continue to apply.

Official Plan (Revised 1987) and 2008 Cornell Secondary Plan (OPA 168)

The subject site is designated 'Residential' – 'Residential Neighbourhood Cornell Centre' in the Official Plan (Revised 1987) and 2008 Cornell Secondary Plan. The 'Residential Neighbourhood Cornell Centre' designation provides for multiple dwelling (stacked townhouse) and apartment buildings, with heights ranging between four to six storeys and minimum Floor Space Index (FSI) of 1.5.

As part of Markham Councils approval of the draft plan of subdivision, a site specific official plan amendment was also approved for the subject lands to permit three-storey townhouses within a minimum FSI of 0.75. The proposed development conforms to the Official Plan.

## **ZONING**

The subject lands are zoned Residential Two\*562 (R2\*562) under By-law 177-96, as amended which permits townhouse dwellings. Section 6.6.3 a) of By-law 177-96, as amended, outlines permitted encroachments for stairs and landings accessing buildings in required front, rear and exterior yards only. There is no provision to permit stairs to encroach within the required interior side yard, which in the case of the subject end unit townhomes is 1.2 metres.

### **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: *"To ensure adequate access and response time these units from Mikayla Lane, Fires Services staff have required direct access from Mikayla Lane. In order to accommodate this requirement, side doors with steps to access these doors have been proposed in the interior side yards for blocks 4 to 9"*

### **Zoning Preliminary Review (ZPR) Not Undertaken**

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. However, staff note that the subject development is being concurrently reviewed through a Townhouse Siting Application (TSA) through the Urban Design section. The TSA is reviewed City Zoning staff who have confirmed that no other

variances are required except for the stair encroachment being considered through this application. The TSA can be approved upon final approval of this variance application.

Ultimately, 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 are identified during the Building Permit review process, further variance application(s) or revisions to the plans 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.

### CONCLUSION

It is the opinion of the Planning staff that requested variance to permit stairs to encroach up to 0.55 m into the required interior side yard for 12 end units on Blocks 4 to 9 of Draft Plan of Subdivision 19TM-14003 satisfy the four tests of the Planning Act. Staff recommend a condition be included in any approval decision requiring the applicant to submit a Solicitors Certificate that mutual access easements will be registered on title of each of the subject lots within the interior side yards. This is to ensure that access could still be provided between abutting homes where the encroachments into the side yard are permitted.

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:

  
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Stephen Corr, Senior Planner, East District

REVIEWED BY:

  
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Stacia Muradali, Senior Planner, East District



#### Appendix 'A' – Conditions of Approval

1. That the applicant submit a Solicitors Certificate to the satisfaction of the Director of Planning and Urban Design, or his designate, that mutual access easements will be registered on title of the subject lots to permit unencumbered access within the side yards.
2. That the applicant submit a letter from the Toronto Region Conservation Authority (TRCA) confirming that any TRCA conditions, financial or otherwise have been satisfied.