

# Amended Memorandum to the City of Markham Committee of Adjustment

November 29, 2023

**File:** A/067/22  
**Address:** 6 Marie Court, Markham (Thornhill)  
**Owner:** Hamidreza Homayounisarvestani  
**Agent:** In Roads Consultants (Ida Evangelista)  
**Hearing Date:** Wednesday, November 29, 2023

The following comments are provided on behalf of the West District Team.

The Applicant is requesting relief from the following “Third Density Single Family Residential (R3)” zone requirements of By-law 2237, as amended, as it relates to a proposed rear deck extension. The variances requested are to permit:

- a) **Deck By-law 142-95, Section 2.2 (b)(i):**  
a maximum deck projection of 4.30 metres, whereas the by-law permits a maximum deck projection of 3.0 metres.
- b) **Deck By-law 142-95, Section 2.2 (b)(ii):**  
a minimum rear yard setback of 2.10 metres, whereas the by-law requires a minimum rear yard setback of 3.0 metres.

## BACKGROUND

### Property Description

The 838.86 m<sup>2</sup> (9,029.41 ft<sup>2</sup>) “Subject Lands” are located on the west side of Marie Court, south of John Street and generally east of Yonge Street (refer to Appendix “A” – Aerial Photo). The Subject Lands are located within an established residential neighbourhood comprised of a mix of one and two-storey detached dwellings. Mature vegetation exists across the property with several mature trees in the front yard and rear yards.

There is an existing 300 m<sup>2</sup> (3,234 ft<sup>2</sup>) two-storey detached dwelling on the Subject Lands which was constructed in 1970, according to assessment records.

The Subject Lands are within TRCA’s Regulated Area, as it is within close proximity to a valley corridor associated with the Don River Watershed.

### Proposal

The Owner has constructed a 33.86 m<sup>2</sup> (111.09 ft<sup>2</sup>) rear roof deck, by converting the existing flat roof at the rear of the dwelling. **The variances are attributable to the existing portion of the deck, the extents to where the hot tub is located.**

### Official Plan and Zoning

The Official Plan designates the Subject Lands “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 variances, infill development is required to meet the general 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.

#### Zoning By-Law 2237, as amended

The Subject Lands are zoned “Third Density Single Family Residential (R3)” under By-law 2237, as amended, which permits a single detached dwelling. The existing development does not comply with the Deck By-law requirements (By-law 142-95), with respect to the maximum deck projection and the minimum rear yard setback.

#### City-wide Deck Standards By-law 142-95, as amended

The City-wide Deck By-law 142-95, as amended (the “Deck By-law”), sets out the deck standards for the Subject Lands. Section 2.2 (b)(i), permits a maximum projection of 3 metres (9.84 feet) from the point on the dwelling closest to the rear lot line. The proposed development does not comply with the By-law requirements, as it consists of a deck higher than 1 metre (3.28 feet) in height that projects 4.30 metres (14.12 feet) from the point on the dwelling closest to the rear lot line. Further details of the maximum deck projection requirement are 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, *“it is not possible to comply to the existing by-law requirements as the deck is existing. A Minor variance is required to keep the structure.”*

#### **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 (HP 21 130890) 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.

#### **Increased Maximum Deck Projection Variance**

The Applicant is requesting a maximum deck projection of 4.30 metres (14.12 feet), whereas the by-law permits a maximum projection of 3.0 metres (9.84 feet) for decks with a height greater than 1.0 metres (3.3 feet) from the point on the dwelling closest to the rear lot line. This represents an increase 1.30 metres (4.26 feet).

The Applicant is not applying for variances related to lot coverage or height. The rooftop deck is accessed off the second storey of the dwelling, and has a height of 2.21 metres above grade (lower portion). Given the lot size, Staff are of the opinion that there will be no impact for surrounding properties from the existing deck. Staff therefore consider the variances to be appropriate for the site and have no objections.

### **Reduced Rear Yard Setback Variance**

The Applicant is requesting a minimum rear yard setback of 2.10 metres (6.89 feet), whereas the by-law requires a minimum rear yard setback of 3.0 metres (9.84 feet). This is an increase of 0.9 metres (2.95 feet). The variance is entirely attributable to the **existing deck**.

Staff are of the opinion that the requested variance will not have an adverse impact on the abutting properties at 4 and 8 Marie Court, is minor in nature, and in keeping with the general intent and purpose of the By-law. Staff have no objection to the variance.

### **TRCA Comments**

Toronto and Region Conservation Authority (TRCA) provided comments via email dated November 21, 2023 indicating that they have no objections to the proposed minor variance application subject to conditions as detailed in Appendix "D".

### **PUBLIC INPUT SUMMARY**

No written submissions were received as of November 21, 2023. 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 request variances meet the four tests of the *Planning Act* and have no objection. 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 refer to Appendix "C" for conditions to be attached to any approval of this application.

PREPARED BY:



---

Hussnain Mohammad, Planner 1, Development Facilitation Office

REVIEWED BY:

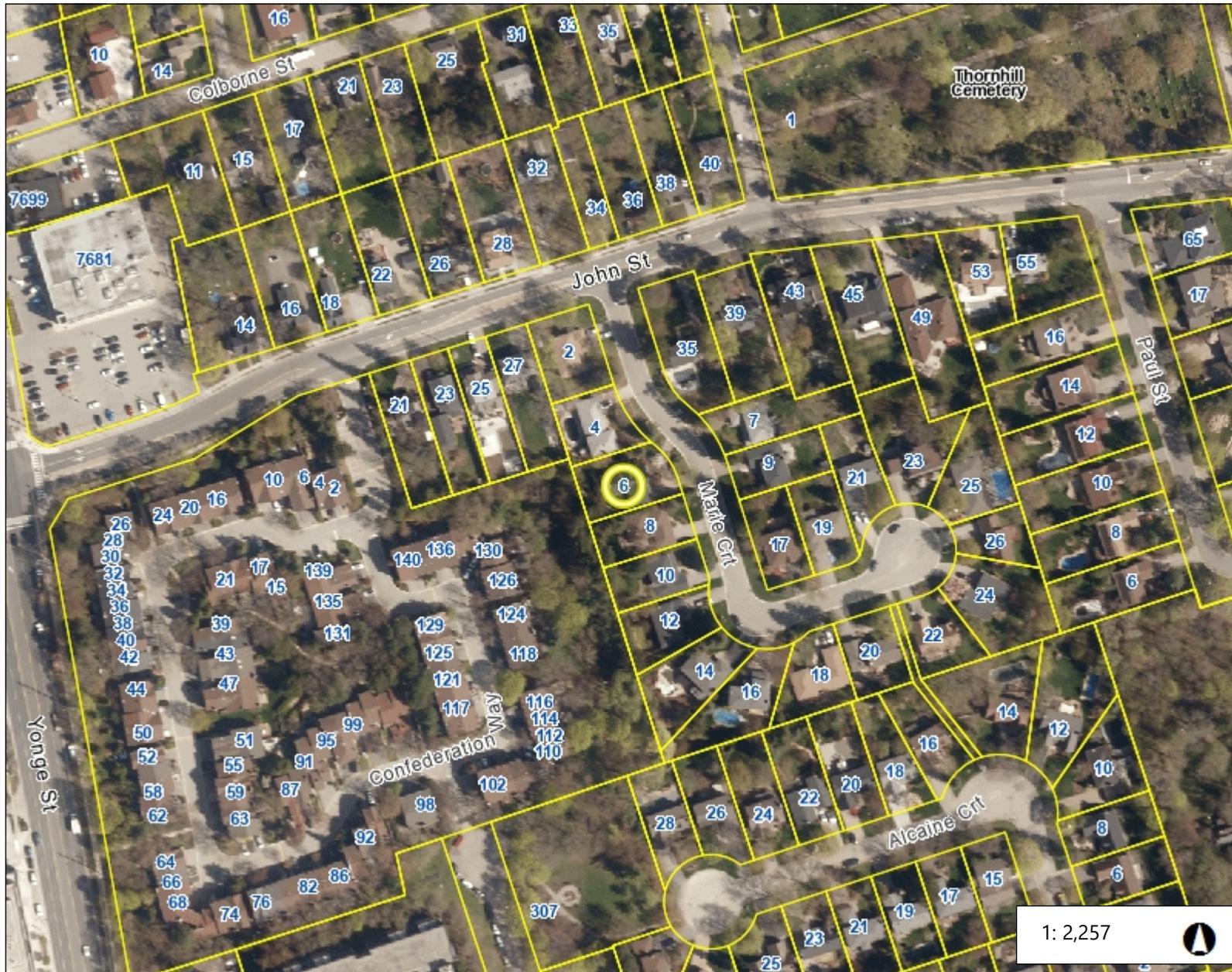


---

Rick Cefaratti, MCIP RPP, Senior Planner, West District

### **APPENDICES**

- Appendix "A" – Aerial Context Photo
- Appendix "B" – Plans
- Appendix "C" – A/067/23 Conditions of Approval
- Appendix "D" – TRCA Comments



Legend

- Parcel Overlay

1: 2,257



114.7 0 57.33 114.7 Meters

Notes















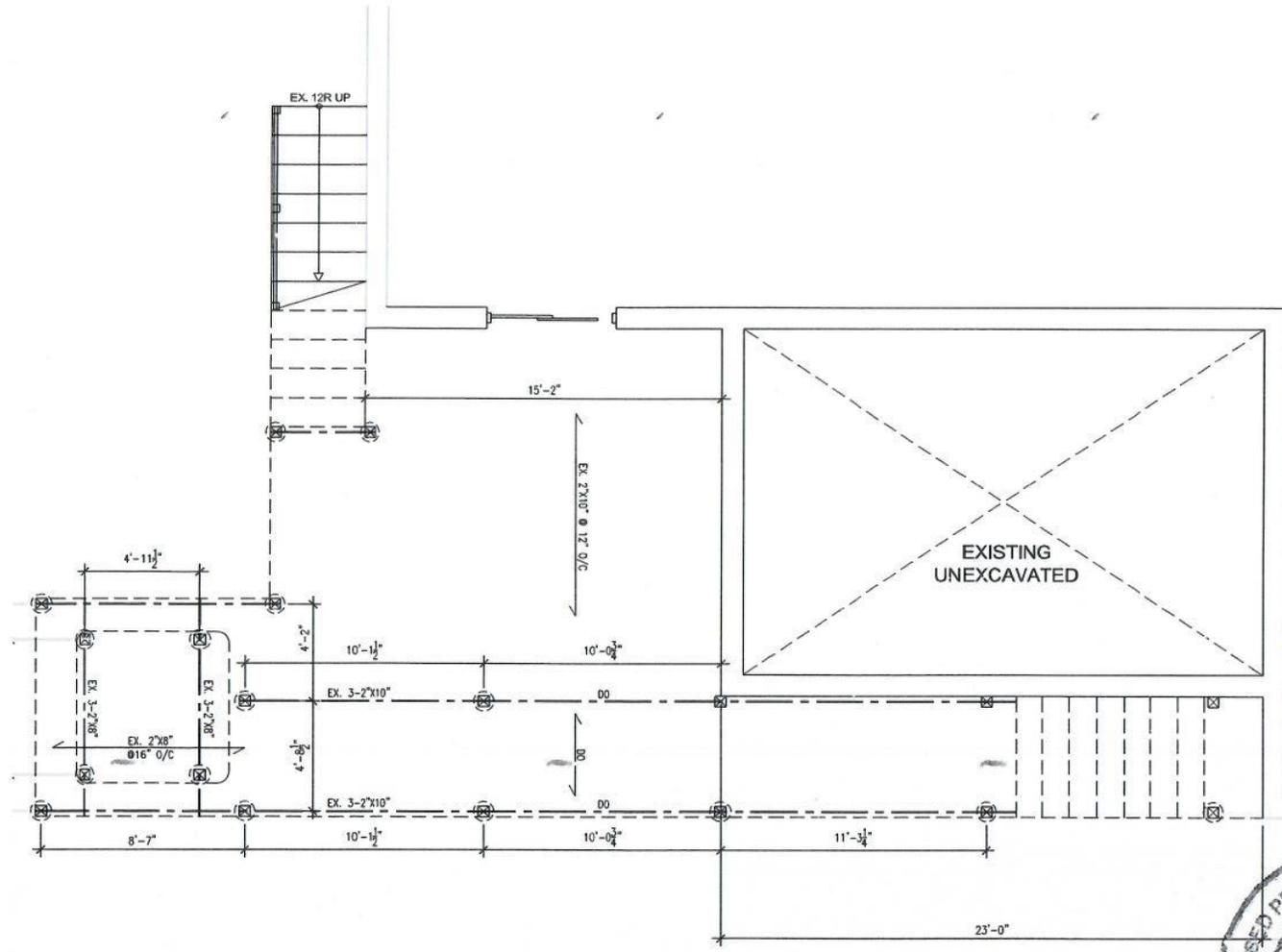
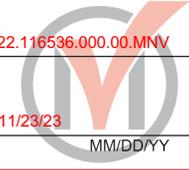




# Appendix B

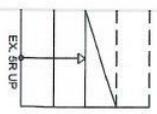
File: 22.116536.000.00.MNV

Date: 11/23/23  
MM/DD/YY



THE EXISTING HOT TUB  
STRUCTURE IS CAPABLE  
OF CARRYING HOT TUB LOAD

Digitally signed by  
Hossein  
DN: cn=Hossein, o  
ca,  
email=gullengineer  
ng@bellnet.ca, c=CA  
Date: 2022.02.04  
11:48:46 -0500



## **APPENDIX “C” – A/067/22 Conditions of Approval**

### **CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/067/22**

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 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.
3. That the applicant satisfies the requirements of the TRCA, financial or otherwise, as indicated in their letter to the Secretary-Treasurer attached as Appendix “D” to this Staff Report, to the satisfaction of the TRCA, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the TRCA.

CONDITIONS PREPARED BY:



---

Hussnain Mohammad, Planner 1, Development Facilitation Office

November 21, 2023

CFN 68438.15  
Ex Ref: 65872

### Via E-Plan

Dear Hussnain Mohammad,

**Re: Minor Variance Application – (Application A/067/22)  
6 Marie Court  
Part Lot 30, Concession 1, Markham  
(Yonge Street and John Street)  
Applicant: In Roads Consultants (Ida Evangelista)  
Owner: Hamidreza Homayounisarvestani**

Toronto and Region Conservation Authority (TRCA) staff provide the following comments in response to the referenced Committee of Adjustment application, received by TRCA on November 14, 2023. We provide the following in accordance with TRCA's commenting role under the Planning Act and regulatory role under the Conservation Authorities Act (CA Act). For additional information, please see [TRCA Role in the Plan Input and Review Process](#).

### Purpose of the Application

TRCA staff understand that the purpose of this application is to request relief from the following requirements of By-law 2237, as amended, to facilitate the development of a proposed deck extension:

- a) **Amending By-law 142-95, Section 2.2 (b)(i):** a deck projection of 4.30 metres, whereas the by-law permits a maximum deck projection of 3.0 metres; and
- b) **Amending By-law 142-95, Section 2.2 (b)(ii):** a rear yard setback of 2.10 metres, whereas the by-law requires a minimum rear yard setback of 3.0 metres;

### Background

TRCA previously issued a permit (Permit No: C-211214) on October 15, 2021, to facilitate the development of a rooftop deck. The documents circulated in support of the above requested variances appear to be consistent with the approved permit drawings. However, TRCA staff note that TRCA Permit No. C-211214 has expired and that the proposed works have not commenced as of October 16, 2023.

### TRCA Permit Requirements

The subject lands contain Regional Storm Floodplain associated with a tributary of the Don River Watershed and its adjacent regulated allowance.

Due to the presence of natural hazards, the issuance of a TRCA permit pursuant to the Conservation Authorities Act is required prior to any development or site alteration within the regulated portion of the property.

Based on the review of materials circulated with this application, the proposed development is located within the regulated portions of the property. Thus, a **permit is required** from TRCA to facilitate the development associated with this application.

As noted above, the TRCA permit expired on October 16, 2023, necessitating the submission of a permit re-issuance to TRCA. All permits are issued for two years. Requests for initial permit issuance (only) beyond the standard two-year period (up to 5 years) will be subject to an additional fee of 50% of the current fee for each additional year to cover compliance monitoring and will require Executive Committee approval. Please contact the undersigned for further guidance and to obtain the permit re-issuance checklist of requirements.

### **TRCA Plan Review Fee**

By copy of this letter, the applicant is advised that TRCA have implemented a fee schedule for its planning application review services in accordance with applicable provincial regulations. This Minor Variance Application is subject to a fee of \$660 (Minor Variance – Residential – Minor). The applicant is responsible for fee payment within 60 days of the committee hearing date. Interest will be charged and accumulated beyond that time. Please contact the Planner noted below for an electronic invoice to facilitate payment.

### **Recommendations**

Based on the comments provided, TRCA staff have **no objection** to the approval Application **A/067/22** subject to the **conditions** identified in Appendix A.

Should you have any questions or comments, please contact the undersigned.

Regards,



Rameez Sadafal  
Planner I – York East Review Team  
Development Planning and Permits | Development and Engineering Services  
Telephone: (437) 880-2163  
Email: rameez.sadafal@trca.ca

/rs

Attached: Appendix A: TRCA Conditions of Approval

**Appendix A: TRCA Conditions of Approval**

#	TRCA Conditions
1	The applicant submits the TRCA plan review fee of \$660 within 60 days of the committee hearing date.
2	The applicant seeks and is issued a permit by TRCA pursuant to the <u>Conservation Authorities Act</u> .