

# 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 16<sup>th</sup> Avenue (the “Subject Property”) is located at the northwest corner of 16<sup>th</sup> 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 16<sup>th</sup> Avenue, and one via an internal road off of 16<sup>th</sup> Avenue which also provides shared access to the lands municipally known as 5970 16<sup>th</sup> 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 16<sup>th</sup> 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 m<sup>2</sup> (34,275.0 ft<sup>2</sup>), 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 16<sup>th</sup> 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 16<sup>th</sup> Avenue. The Zoning By-law also requires that a minimum of 43 parking spaces are located on the lands known as 5970 16<sup>th</sup> 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 16<sup>th</sup> 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 m<sup>2</sup> (1,679.48 ft<sup>2</sup>).

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 16<sup>th</sup> 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 be 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, MCIP, RPP  
Planner II, East District

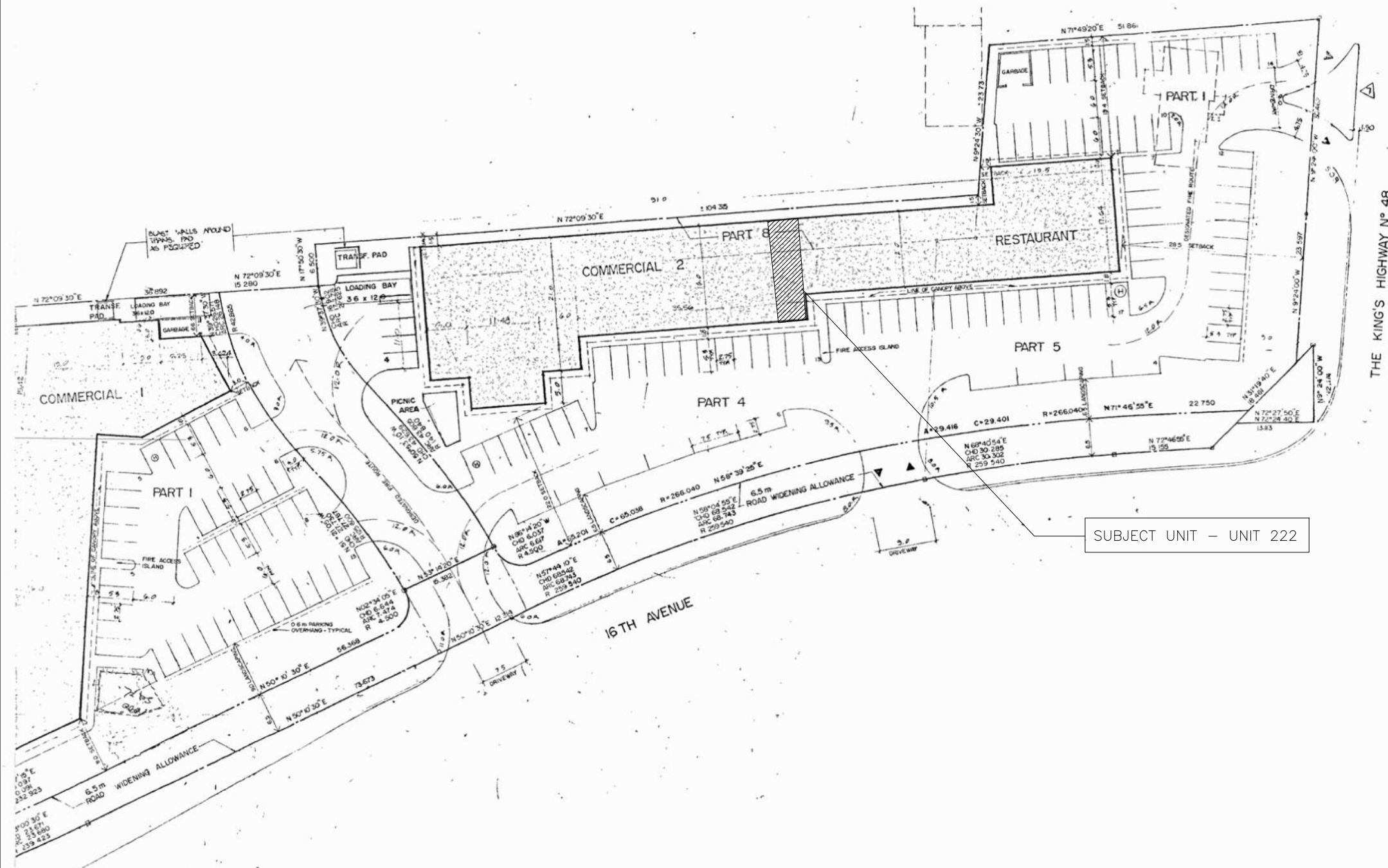
**APPENDIX “B”**

**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<sup>2</sup> (118073.2 ft<sup>2</sup>)

#### BUILDING AREAS:

BLOCK 1, COMMERCIAL BLDG 1	1247.8 m <sup>2</sup> (13432 ft <sup>2</sup> )
BLOCK 2, COMMERCIAL BLDG 2	1244.1 m <sup>2</sup> (13392 ft <sup>2</sup> )
RESTAURANT	692.2 m <sup>2</sup> (7451 ft <sup>2</sup> )
TOTAL AREA OF ALL BUILDINGS	3184.1 m <sup>2</sup> (34275 ft <sup>2</sup> )

#### SITE COVERAGE:

COVERAGE	29.02 %
FLOOR AREA RATIO	.29

#### PARKING REQUIREMENTS:

TOTAL PARKING PROVIDED (INCLUDING 3 HANDICAPPED SPACES)	137 SPACES
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### CY WONG & ASSOCIATES INC.

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

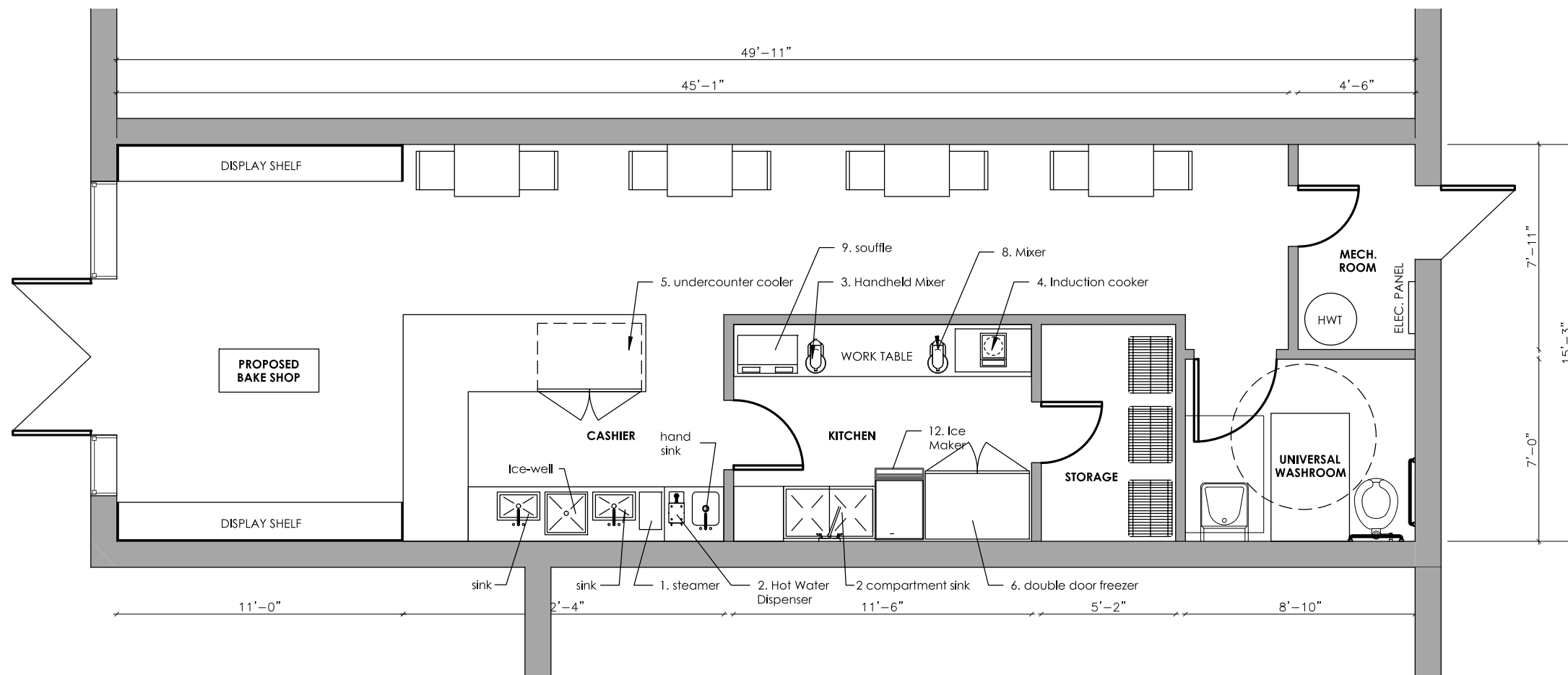
T: 416-841-3978 | EMAIL: CYWONG181@GMAIL.COM

DRAWING NAME Site Plan		Project Location: 5990 16th Ave., Unit 222, Markham, ON	
Date Jan. 10/22	Scale As Noted	SHEET NUMBER <b>A000</b>	
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 <b>A100</b>
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

NAD\_1983\_UTM\_Zone\_17N  
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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](mailto:cgis@markham.ca) and you will be directed to the appropriate department.

## Notes

Subject Property is denoted by Yellow Circle.