

Memorandum to the City of Markham Committee of Adjustment

December 6, 2022

File: A/197/22
Address: 117 Russell Jarvis Drive – Markham, ON
Applicant: Nadeem Awan
Hearing Date: December 14, 2022

The following comments are provided on behalf of the East District Team. The applicant is requesting relief from the following “Residential Two Exception *64 (R2*64)” zone requirements under Zoning By-law 177-96, as amended (the “Zoning By-law”), to permit:

a) By-law 177-96, Section 5.1 - Table B2(e):

a minimum interior side yard setback of 0.56 m, whereas the Zoning By-law requires a minimum interior side yard setback of 0.60 m; and

b) By-law 177-96, Section 6.5:

an accessory dwelling unit, whereas the Zoning By-law permits no more than one dwelling unit on a lot.

PROPERTY DESCRIPTION

The “Subject Property” (117 Russell Jarvis Drive) is located on the south side of the street, north of Lady Fern Drive, east of Rouge Bank Drive, and west of Legacy Drive. The Subject Property is developed with a two-storey detached dwelling. The Subject Property is located within a low rise residential neighbourhood, and is within close proximity to the Rouge River Community Centre, community parks, and schools.

ZONING PRELIMINARY REVIEW (ZPR) UNDERTAKEN

The applicant completed a ZPR on August 24, 2022 to confirm the variances required for the proposed development at that time.

PROPOSAL

As per the ZPR response the applicant requests variances to permit an accessory dwelling unit, as well as a reduction to the minimum west side yard setback to accommodate walk-up stairs to access the accessory dwelling unit.

NOTE:

As it relates to the requested accessory dwelling unit, staff advise that *Bill 23, More Homes Built Faster Act, 2022* received Royal Assent on November 28, 2022, and implemented changes to the *Planning Act, R.S.O. 1990, c. P.13, as amended* (the “*Planning Act*”) to limit the authority of municipalities to pass a Zoning By-law under Section 34 of the *Planning Act* that would prohibit the use of additional dwelling units within a detached house, semi-detached house or rowhouse, or within a structure ancillary to a detached house, semi-detached house, or rowhouse. Under this newly introduced legislation, the proposed accessory dwelling unit is permitted and would no longer require approval from the Committee of Adjustment (the “Committee”); however, the interior side yard setback remains a required variance. For further details, please see the Briefing Note attached as Appendix “C”.

COMMENTS

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.

Reduction in Minimum Side Yard Setback

Associated with the accessory dwelling unit, the applicant is proposing below grade walk-up stairs to access the basement unit. Due to the location of the stairs, a minimum side yard setback of 0.56 m is requested, whereas the Zoning By-law requires a minimum side yard setback of 0.60 m. This is a reduction of 0.04 m, or approximately 2.0 in.

Engineering staff have not identified any drainage concerns with respect to the reduced side yard setback. Additionally, staff have considered that the existing side yard setback of at least 1.20 m (3.94 ft) along the opposite side of the dwelling would provide occupants or visitors sufficient room to access the rear yard amenity area externally. Staff are of the opinion that the requested variance is minor in nature, and maintains the general intent and purpose of the Zoning By-law.

PUBLIC INPUT SUMMARY

No written submissions were received as of December 6, 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 satisfies the four tests. Staff recommend that the Committee consider public input and 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 minor variances.

APPENDICES

Appendix "A" – Conditions of Approval

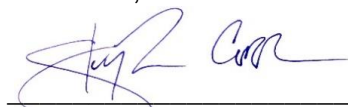
Appendix "B" – Plans

Appendix "C" – Briefing Note: Bill 23 Impacts on Accessory Dwelling Units

PREPARED BY:



Aleks Todorovski, MCIP, RPP
Planner II, East District



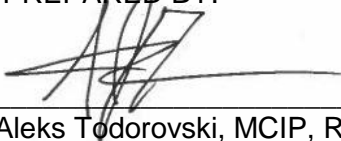
Stephen Corr, MCIP, RPP
Senior Planner II, East District

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/197/22

1. The variance applies only to the proposed development for as long as it remains.
2. That the variance applies only to the proposed development, in substantial conformity with the plans 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.

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

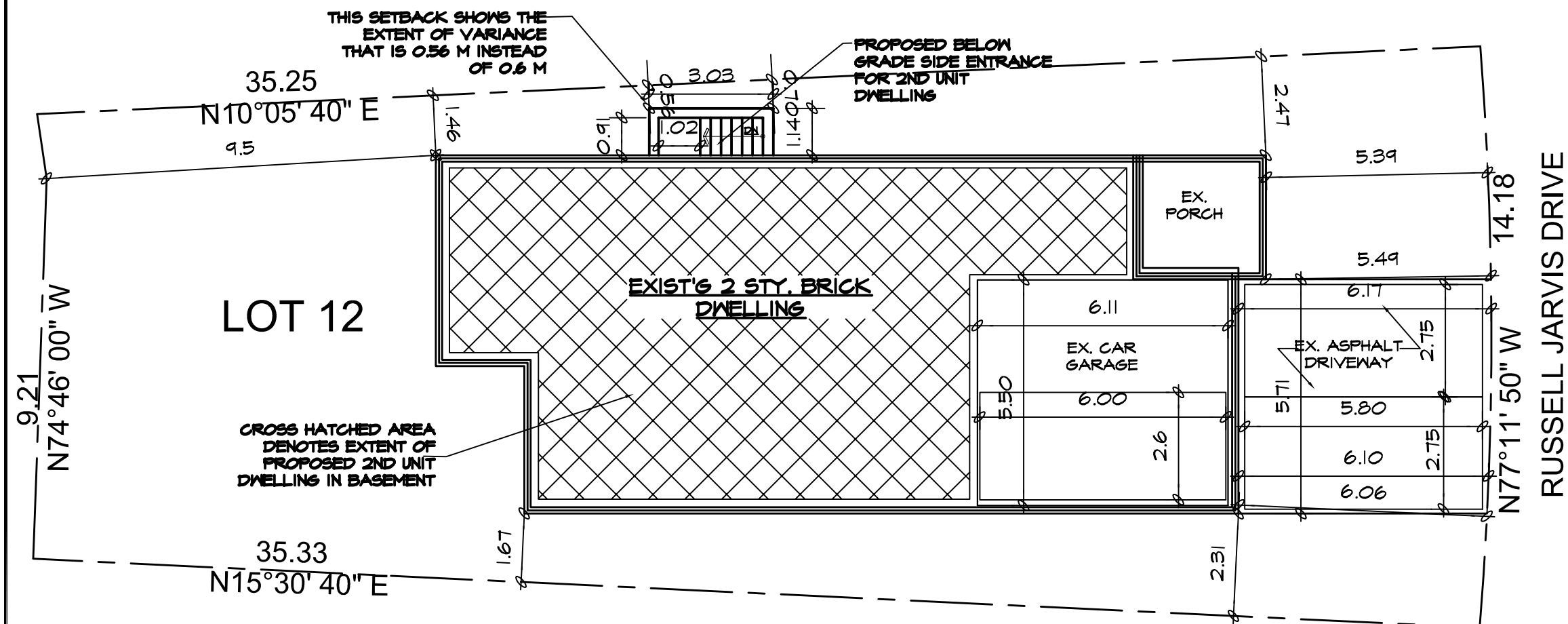
APPENDIX “B”

PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/197/22

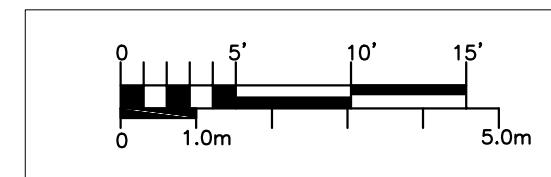
Appendix B

File: 22.260631.000.00.MNV

Date: 12/09/22
MM/DD/YY



EXISTING	PROPOSED
BUILDING AREA (G.F) (INCL. GARAGE+FRONT PORCH)	TOTAL BASEMENT FINISH AREA=93.34 SQ.M. [1004.39 SQ.FT] (EXCLUDING FURNACE & STAIRCASE)
LOT COVERAGE	PRINCIPLE UNIT AREA IS 249.16 SQ.M
FLOOR AREA GROUND FLOOR	2ND UNIT AREA IS 93.34 SQ.M.
FLOOR AREA 2ND FLOOR	2ND UNIT IS LESS THAN PRINCIPLE UNIT
GROSS FLOOR AREA	EX. LOT COVERAGE & GROSS FLOOR AREA UNCHANGED
(GRD+2ND FL EXCL. GARAGE & PORCH)	
BASEMENT AREA (UNFINISHED)	



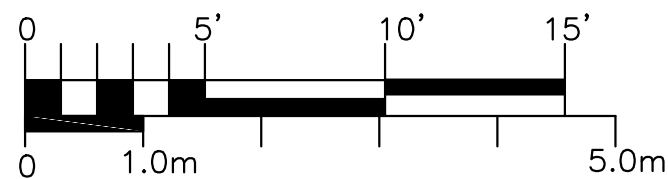
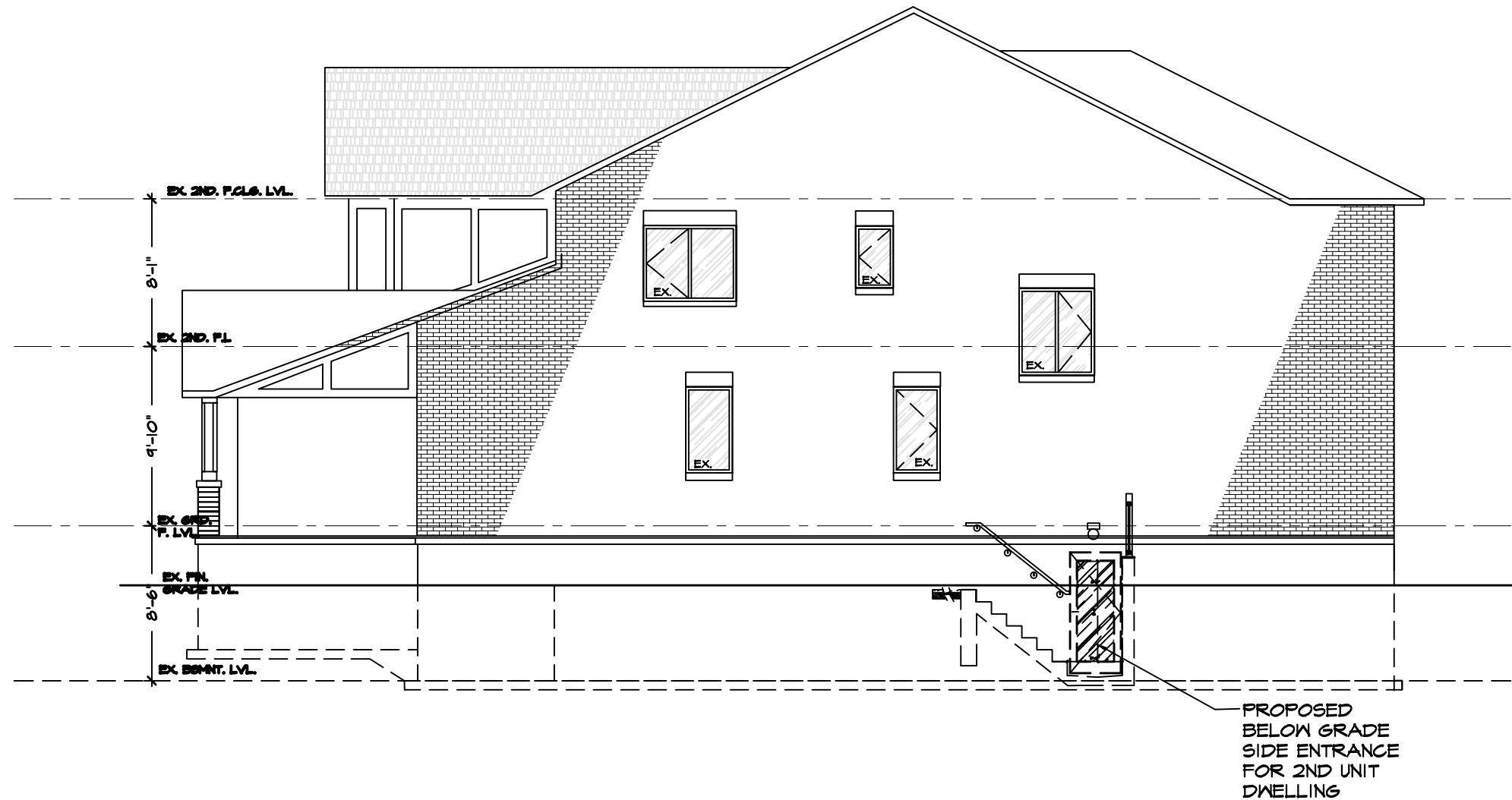
SITE DATA	M/SM	Owners	Project	Sheet title:
ZONING		NADEEM AWAN	MINOR VARIANCE FOR SIDE ENTRANCE SETBACK & PROPOSED BASEMENT APARTMENT FOR 2ND UNIT DWELLING AT 117 RUSSELL JARVIS DR, MARKHAM, ON, L3S 4B3.	SITE PLAN
PLAN NO:	65M-3420			Revisions
LOT NO:	12			Drawn By: TM
LOT AREA	442.27 SQ.M.			Checked By: AM
				Scale: AS NOTED
				Date: 13.09.2022
				Dwg. no.
				A1.0
				REV. NO: -

1 SITE PLAN
A1.0 SCALE= 1:125

Appendix B

File: 22.260631.000.00.MNV

Date: 12/09/22
MM/DD/YY



1 WEST ELEVATION
A2.1 SCALE=1/8"=1'-0"

Owners
NADEEM AWAN

Project
MINOR VARIANCE FOR SIDE
ENTRANCE SETBACK &
PROPOSED BASEMENT
APARTMENT FOR 2ND UNIT
DWELLING AT 117 RUSSELL
JARVIS DR, MARKHAM, ON,
L3S 4B3.

Owners
NADEEM AWAN

Sheet title:
WEST ELEVATION

Revisions	Drawn By: TM	Checked By: AM
1	Scale: AS NOTED	Date: 13.09.2022
-		D'wg. no. A2.1
-		REV. NO: -
-		

APPENDIX “C”

BRIEFING NOTE: BILL 23 IMPACTS ON ACCESSORY DWELLING UNITS

Date: December 6, 2022
Prepared by: Greg Whitfield
Prepared for: City of Markham Committee of Adjustment
Subject: Bill 23 Impacts on Additional Dwelling Unit Requests

This briefing provides an overview of the impacts the passing of Bill 23 has on requests for additional dwelling units as it relates to the Committee of Adjustment (CoA).

BACKGROUND

PROVINCIAL POLICIES

More Homes, Built Faster Act, 2022

The *More Homes, Built Faster Act, 2022, S.O. 2022 – (Bill 23)* received Royal Assent on November 28, 2022. Portions of Bill 23 amended the *Planning Act, R.S.O. 1990, c. P.13, as amended* (The Act), to limit the authority of municipalities to pass a by-law under Section 34 of The Act that would prohibit the use of additional dwelling units within a detached house, semi-detached house or rowhouse, or within a structure ancillary to a detached house, semi-detached house, or rowhouse. These amendments also limit the authority to pass a by-law which would regulate the floor area of additional dwelling units, as well as requirements for more than one parking space to be provided in connection with additional dwelling units.

OFFICIAL PLAN AND ZONING

Zoning Provisions

City of Markham by-laws generally do not permit additional dwelling units within a detached, semi-detached or rowhouse dwelling as-of-right, necessitating the need for owners and applicants to seek approval from the CoA. The implications of Bill 23 eliminate the need for variance approvals related to requests for additional dwelling units in specific instances, as outlined under [Section 35.1](#) of The Act, without requiring a formal amendment to the in force Zoning By-law.

Zoning standards including, but not limited to, height, lot coverage, setbacks, depth, or standards for ancillary buildings or structures containing a dwelling unit shall continue to apply, as required, in the prevailing By-laws.

COMMENTS

While approval to allow an additional dwelling unit(s), as outlined above, will no longer require approval from the CoA, owner's will still be required to obtain a building permit which ensures the unit(s) comply with Building Code and Fire Code Regulations. Compliance with the Building Code includes, but is not limited to: ensuring sufficient natural light is provided to living and bedrooms;

ensuring there is proper egress or exiting in the event of an emergency; and, ensuring there is proper fire separation between dwelling units.

In addition, an approved additional dwelling unit(s) must be registered with the Fire Department prior to the occupancy of the unit.

NEXT STEPS

For applications scheduled on the December 7th and December 14th Committee of Adjustment hearings that include a request for additional dwelling units, Committee will not be required to make a decision on the additional dwelling unit permission. Committee may also not be required to make a decision on an associated reduction in parking if the proposed number of spaces complies with the City's zoning by-law, and the *Planning Act* under Bill 23.

Committee may still be required to render decisions on applications where other deficiencies not addressed by Bill 23 still exist under the zoning by-law.

Staff will provide guidance to Members and the Public at upcoming meetings as to which applications will no longer require consideration.

PREPARED BY:



Greg Whitfield, Supervisor, Committee of Adjustment

REVIEWED BY:



Brad Roberts, Manager, Development Facilitation Office