

**Memorandum to the City of Markham Committee of Adjustment**  
July 6, 2023

**File:** B/024/21, A/191/21, A/101/23  
**Address:** 10248 and 10268 9th Line, Markham  
**Owner:** Davinder Singh  
**Agent:** Harper Dell & Associates Inc.  
**Hearing Date:** Wednesday, July 12, 2023

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

**Application Descriptions:**

**Consent B/024/21 (Refer to Appendix A – Proposed Severance Plan for Parts)**

The Owner is requesting provisional consent to:

- a) Sever and convey a parcel of land with an approximate area of 7,800.1 m<sup>2</sup> (Part 2), to be merged with a parcel of land (Part 3) and create a lot with an approximate area of 11,354.9 m<sup>2</sup> and approximate lot frontage of 112 m;
- b) Retain a parcel of land with an approximate lot frontage of 71.36 metres and an approximate lot area of 6,974.3 m<sup>2</sup> (Part 1).

**Variance A/191/21 – Retained Lot, 10268 9<sup>th</sup> Line**

The Owner is requesting relief from the requirements of Zoning By-law 304-87, as amended, to permit:

- a) Section 5.5: a minimum building setback of 25.24 metres from the centerline of any arterial road or provincial highway, whereas the By-law permits a minimum building setback of 40 metres from the centerline of any arterial road or Provincial highway;
- b) Section 7.5(b): a minimum front yard setback of 5.18 metres, whereas the By-law permits a minimum front yard setback of 7.5 metres; and
- c) Section 7.5(a)(ii): a minimum lot area of 0.697 hectares, whereas the By-law requires a minimum lot area of 0.8 hectares

**Variance A/101/23 Severed Parcel, Merged Lot, 10248 9<sup>th</sup> Line**

The Owner is requesting relief from the requirements of Zoning By-law 304-87, as amended, to permit:

- a) Section 5.5: a minimum building setback of 31.53 metres from the centerline of any arterial road or provincial highway, whereas the By-law permits a minimum building setback of 40 metres from the centerline of any arterial road or Provincial highway;

**BACKGROUND**

**Property Description**

The “Subject Lands” are municipally known as 10248 and 10268 9<sup>th</sup> Line and are located on the west side of 9<sup>th</sup> Line, north of Major Mackenzie Drive East. They are within an area subject to the Minister’s Zoning Order (MZO), Ontario Regulation

104/72 (Airport Freeze) which is regulated by the Ministry of Municipal Affairs and Housing (MMAH). The Subject Lands are developed with two detached dwellings and accessory buildings. Private driveway access is provided separately from each dwelling to 9<sup>th</sup> Line. Staff note that approximately seven 'sea-can' storage containers are located on the Subject Lands. The Owner should confirm if the Sea-can containers are permitted by the applicable Zoning By-law with the Zoning Section of the Building Standards Division.

According to the Agent, the Subject Lands merged on title when 10248 and 10268 9<sup>th</sup> Line were both transferred under the same ownership. Consequently, the two properties merged into one, which occurs when abutting properties, not on registered plans of subdivision, are acquired by the same owner.

Historically, 10248 9<sup>th</sup> Line was rectangular in shape with an approximate area of 3,554.8 m<sup>2</sup> and approximate frontage of 112 m. 10268 9<sup>th</sup> Line, was irregular in shape, extending along the rear of 10248 9<sup>th</sup> Line, with an approximate lot frontage of 71.4 m and an approximate lot area of 14,774.4 m<sup>2</sup>. Notwithstanding that the properties have merged, the historical lot pattern is shown in City parcel mapping (Refer to Appendix B).

Surrounding land uses are agricultural to the north, east and west. The City of Markham East Operations Yard abuts the Subject Lands to the south. Lands on the east side of 9<sup>th</sup> Line are part of Rouge National Urban Park.

### **Proposal**

The Owner is requesting provisional consent to sever the subject lands back into two separate properties, for each of the dwellings at 10248 and 10268 9<sup>th</sup> Line. Instead of severing the properties to reflect historical boundaries, the Owner is proposing to regularize the lot pattern with two rectangular shaped properties, where the severed portion 'Part 2' will merge with 'Part 3' as a reconfigured 10248 9<sup>th</sup> Line, and the retained parcel 'Part 1' will be a reconfigured 10268 9<sup>th</sup> Line. Appendix C shows the proposed severance sketch and Appendix D shows the proposed Draft Reference Plan. The proposed severance is not creating a new residential development lot.

Variations are requested to permit a reduced front yard setback for the retained lot and reduced setbacks to the centreline setback of 9<sup>th</sup> Line for both the severed and retained lots, which all reflect existing conditions to each dwelling. The Owner is also requesting a variance to permit a reduced lot area for the retained lot, to facilitate the proposed severance.

### **COMMENTS**

Minister's Zoning Order – Ontario Regulation 104/72 (Airport Freeze):  
The subject lands are within an area subject to the Minister's Zoning Order (MZO), Ontario Regulation 104/72 (Airport Freeze) which is regulated by the Ministry of Municipal Affairs and Housing (MMAH). The MZO, Ontario Regulation 104/72 has

been in effect since the early 1970s and its purpose is to regulate development in the vicinity of a possible future airport on lands in Federal ownership in the neighboring City of Pickering. In an email dated January 31, 2013, Planning Staff from the MMAH advised that 'this MZO is silent regarding consents [and] as no development is proposed [the MMAH] would look to the local municipality as the approval authority for consents, building permits and planning applications'.

#### **Official Plan:**

The Subject Lands are designated 'Countryside' in the City of Markham 2014 Official Plan which provides for a dwelling unit, home occupation, secondary suite, farm labour residence, agricultural uses, agricultural related uses and limited compatible non-agricultural uses such as conservation projects, veterinary clinics, recreational uses, research farm, produce stand and canine and feline boarding.

#### **Zoning:**

The Subject Lands are zoned Rural Residential Two (RR2) under By-law 304-87, as amended, which permits one detached dwelling per lot, home occupations and private home daycares. The RR2 Zone requires a minimum lot area of 0.8 ha (1.98 ac), a minimum lot frontage of 60.0 metres (197 ft) and a minimum front yard setback of 7.5 m (24.6 ft). Also, as a means of protecting for future road widening's, the By-law includes a minimum centreline setback of 40 m (131.2 ft) to arterial roads and provincial Highways as a general provision for zones. 9<sup>th</sup> Line is a Region or York arterial road. The Owner has requested the variances noted Application Description and Proposal sections of this memorandum.

#### **Zoning Preliminary Review (ZPR) Undertaken**

The Owner completed a Zoning Preliminary Review (ZPR) on April 11, 2023 to confirm the variances required for the proposed development. 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.

#### **Public Input Summary**

There were no written comments received at the time this report was prepared on July 6, 2023. Any additional comments will be provided to Committee of Adjustment members by the Secretary Treasurer at the hearing.

#### **Comment/Discussion:**

Consent Applications are reviewed in the context of Section 51(24) of the Planning Act. Section 45 (1) of the Planning Act outlines four tests that must be met in order for a variance to be granted by the Committee of Adjustment, summarized as follows:

1. The variance must be minor in nature;
2. The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
3. The general intent and purpose of the Zoning By-law must be maintained;
4. The general intent and purpose of the Official Plan must be maintained.

## External Review Comments

### Region of York

The Region of York has reviewed the proposed consent and variance applications and has advised that there is objection to their approval. As noted, the Region of York has authority over 9<sup>th</sup> Line and has not identified concerns with the requested variances to reduce centreline setbacks to this Regional arterial road.

### Toronto Region Conservation (TRCA)

The Subject Lands are not within the TRCA Screening Zone, however the applications were circulated to the Conservation Authority to review the proposal because 10268 9<sup>th</sup> Line is in an area of interference associated with an unevaluated wetland along the west and north side of the property and that the unevaluated wetland may also be within the property boundaries. Also due to the Subject Lands adjacency to a valley corridor, flood plain hazard, and drainage features of the Rouge River Watershed. The TRCA advised that they have no objection to approval of the applications. The TRCA also confirmed that their application review fees have been paid.

## Reduced Front Yard and 9<sup>th</sup> Line Centreline Setback Variances

For the 'Retained Lot' (Part 1), municipally known as 10268 9<sup>th</sup> Line, the Owner is requesting variances to permit:

- a) a minimum building setback of 25.24 metres from the centerline of any arterial road or provincial highway, whereas the By-law permits a minimum building setback of 40 metres from the centerline of any arterial road or Provincial highway; and,
- b) a minimum front yard setback of 5.18 metres, whereas the By-law permits a minimum front yard setback of 7.5 metres.

For the reconfigured 'Severed Lot' (combination of Parts 2 and 3), municipally known at as 10248 9<sup>th</sup> Line, the application is requesting a variance to permit:

- a) a minimum building setback of 31.53 metres from the centerline of any arterial road or provincial highway, whereas the By-law permits a minimum building setback of 40 metres from the centerline of any arterial road or Provincial highway.

The requested reduced front yard and 9<sup>th</sup> Line Centreline Setback recognize existing conditions to each dwelling at 10248 and 10268 9<sup>th</sup> Line. The Region of York has no concern with the reduced centreline setbacks to the Regional arterial road. Development Planning staff opine that there is no impact associated with these variances, and that they satisfy the four tests of the Planning Act. Staff recommend a Condition of Approval (Appendix 'A') that these variances apply only to the existing dwellings on the Subject Lands.

## Reduced Lot Area – Retained Lot (Part 1) at 10268 9<sup>th</sup> Line

To facilitate the proposed severance, the Owner is requesting a variance to permit:

- a) a minimum lot area of 0.697 hectares, whereas the By-law requires a minimum lot area of 0.8 hectares.

This variance applies to the 'Retained Lot' (Part 1) only, and is a reduction of approximately .103 ha (0.25 ac). Staff opine that this small reduction will not be of impact to surrounding properties or be precedent setting to allow for reduced rural residential properties in the 'Countryside' designated areas of the City. Staff do not have concern with approval of this requested variance.

#### Proposed Consent Application

The Owner is requesting provisional consent to:

- a) Sever and convey a parcel of land with an approximate lot area of 7,800.1 m<sup>2</sup> (Part 2), to be merged with a parcel of land (Part 3) and create a lot with an approximate lot area of 11,354.9 m<sup>2</sup> and approximate lot frontage of 112 m;
- b) Retain a parcel of land with an approximate lot frontage of 71.36 metres and an approximate lot area of 6,974.3 m<sup>2</sup> (Part 1).

Staff have reviewed the proposed consent application and have no objection to its approval for the following reasons:

- The proposed consent is not creating a new residential development lot, but instead is re-establishing two lots that have historically existed on the Subject Lands.
- Considering a new lot is not being created the 'Countryside' policies of the Official Plan are not being offended by the fragmentation and severance of agricultural and rural lands.
- Severing the Subject Lands back into two lots will bring the properties back into conformity with the Zoning By-law which only permits one detached dwelling per lot; and
- That the severance to reconfigure the property boundaries will regularize the lot pattern with two deep rectangular lots, instead of the historical pattern shown on Figure 1.

It should be noted that the Subject Lands are within an area of the City that does not have municipal water and sewer services. The Subject Lands are serviced privately by well and septic systems to each dwelling. As a Condition of Approval, Staff recommend that the Owner submit a plan demonstrating that existing septic and well services serving each dwelling will not be impacted by the re-configured lot boundaries proposed by the Consent Application, to ensure they are wholly within each property. And that if impacted by the lot boundaries, these systems be reconfigured accordingly.

The Urban Design Division is also recommending a Condition of Approval that the Owner submit a tree preservation plan to confirm that there will be no impact to existing trees resulting from the proposed severance.

## **CONCLUSION**

Based on the discussion above, staff have had regard for the criteria in Sections 45(1) and 51 (24) of the Planning Act, as well as applicable Provincial policy, the Region of York Official Plan, City of Markham Official Plan and Zoning By-law. Staff consider the proposed consent variance applications to be appropriate for the Subject Lands, but note that the onus is ultimately on the Owner to demonstrate the merits of the application to the Committee of Adjustment. Staff recommend that the Committee consider public input in reaching a decision, and should the applications be approved, Staff recommend that the Conditions in Appendix 'A' be included as part of the decision.

PREPARED BY:

A handwritten signature in blue ink, appearing to read "Stephen Corr". The signature is fluid and cursive, with a large loop at the beginning.

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Stephen Corr, Senior Planner II, East District

REVIEWED BY:

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Stacia Muradali, Development Manager, East District

File Path: Amanda\File\21 139321\Documents\District Team Comments Memo

## **APPENDIX “A”**

### **CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF A/191/21 & A/101/23**

1. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as ‘Appendix A’ to this Staff Report and dated June 21, 2023, 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.
2. That the requested variances to permit reduced front yard setbacks and/or reduced centerline setbacks to an arterial road (9<sup>th</sup> Line) apply only to an existing dwelling.

### **CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF B/024/21**

1. Payment of all outstanding realty taxes and local improvements charges owing to date against both the subject and retained parcels, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled.
2. Submission to the Secretary-Treasurer of the required transfers to effect the severances applied for under Files B/024/21, in duplicate, conveying the subject lands, and issuance by the Secretary Treasurer of the certificate required under subsection 53(42) of the Planning Act.
3. Submission to the Secretary-Treasurer of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted.
4. Subsection 50(3) or 50(5) of the Planning Act shall apply to any subsequent conveyance of or transaction involving the parcel of land that is the subject of this consent.
5. Submission of a Solicitor’s Certificate certifying that upon registration of the required transfers to effect the severance applied for under Files B/024/21, title to Part(s) 2 on the Draft Reference Plan submitted with File B/024/21 will merge with title to the lands to the east municipally known as 10248 9<sup>th</sup> Line, and will be legally described as Parts 2 and 3 on the deposited 65R Plan, all to the satisfaction of the Director of Planning and Urban Design or designate
6. That the Owner submit a plan demonstrating that existing septic and well services serving each dwelling will not be impacted by the re-configured lot boundaries proposed by Consent Application B/024/21, to ensure they are wholly within each property. And that if impacted by the lot boundaries,

these systems be reconfigured accordingly, to the satisfaction of the Director of Planning and Urban Design or their designate.

8. That the Owner submit a Tree Preservation and Protection Plan to the Manager of Urban Design, or their designate
9. Fulfillment of all of the above conditions within two years of the date that notice of the decision was given under Section 53(17) or 53(24) of the *Planning Act, R.S.O. 1990, c.P.13, as amended.*

CONDITONS PREPARED BY:

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Stephen Corr, Senior Planner II, East District



## Appendix B – Subject Lands Location and Parcel Mapping





I REQUIRE THIS PLAN TO BE DEPOSITED UNDER THE LAND TITLES ACT.		<b>PLAN 65R-</b>	
DATE _____, 2023		RECEIVED AND DEPOSITED	
DATE _____, 2023		DATE _____, 2023	
Z. ZENG ONTARIO LAND SURVEYOR		REPRESENTATIVE FOR THE LAND REGISTRAR FOR THE LAND TITLES DIVISION OF YORK REGION (No. 65)	

  

SCHEDULE				
PART	PART OF LOT	CONCESSION	ALL OF PIN	AREA(m <sup>2</sup> )
1				6974.3
2	22	8	03062-0040(LT)	7800.1
3				3554.8

**PLAN OF SURVEY OF  
PART OF LOT 22, CONCESSION 8  
(GEOGRAPHIC TOWNSHIP OF MARKHAM)  
CITY OF MARKHAM  
REGIONAL MUNICIPALITY OF YORK**

SCALE 1:300  
10m 5 0 10 20 METRES

MANDARIN SURVEYORS LIMITED, O.L.S.

**METRIC**  
DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

**LEGEND**

- DENOTES MONUMENT SET
- DENOTES MONUMENT FOUND
- SB DENOTES STANDARD IRON BAR
- IB DENOTES IRON BAR
- P1 DENOTES PLAN OF SURVEY BY OMARI MWN1 SURVEYING LTD., O.L.S., DATE FEBRUARY 03, 2021
- P2 DENOTES PLAN 65R-38955
- PIN DENOTES PROPERTY IDENTIFIER NUMBER
- M DENOTES MEASURED
- N.S.E.W DENOTES NORTH, SOUTH, EAST, WEST
- B.F. DENOTES BOARD FENCE
- W.F. DENOTES WIRE FENCE
- 417 DENOTES J. V. NOSTRAND, O.L.S.
- 1727 DENOTES E. R. GARDEN, O.L.S.
- 1658 DENOTES OMARI MWN1, O.L.S.
- SM DENOTES SPEIGHT AND VAN NOSTRAND, O.L.S.
- NI DENOTES NOT IDENTIFIABLE
- OU DENOTES ORIGINAL UNKNOWN

  

**NOTES**

BEARINGS ARE U.T.M. GRID, DERIVED FROM OBSERVED REFERENCE POINTS A AND B, BY REAL TIME NETWORK (POWERNET) OBSERVATIONS, U.T.M. ZONE 17, NAD83 (CSRS)

DISTANCES ARE GROUND AND CAN BE CONVERTED TO GRID BY MULTIPLYING BY THE COMBINED SCALE FACTOR OF 0.99980795

OBSERVED REFERENCE POINTS (ORPs)  
U.T.M. ZONE 17, NAD83 (CSRS)  
COORDINATES TO URBAN ACCURACY PER SEC. 14(2) OF O.REG.216/10

POINT ID	NORTHING	EASTING
ORP A	4864592.53	640736.13
ORP B	4864805.61	640799.15

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN

**SURVEYOR'S CERTIFICATE**

I CERTIFY THAT:

- THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
- THE SURVEY WAS COMPLETED ON THE 2nd DAY OF JULY, 2022

FEBRUARY 16, 2023

DATE

Z. ZENG  
ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEYS RELATES TO  
AOLS PLAN SUBMISSION FORM NUMBER 220\*\*\*\*

**MANDARIN SURVEYORS LIMITED**  
ONTARIO LAND SURVEYOR CANADA LANDS SURVEYOR  
WWW.MANDARINSURVEYOR.COM  
2400 MIDLAND AVENUE #121 PHONE: (647)430-1366 FAX: (647)799-4068  
TORONTO, ONTARIO, M1S 1X7 E-MAIL: MANDARINSURVEYOR@GMAIL.COM

SURVEY BY: S.Z. | CAD No: 22-209RPLAN | JOB No: 2022-209

**Appendix C - Proposed Severance Plan**

**General Notes:**  
 1. Do Not Scale Drawings  
 2. These Plans Are For Preliminary Design Purposes Only  
 3. Site Plan Based Off of Survey  
 By: Mandam Surveyors Limited  
 Dated: July 07, 2022

Zoning Stats Markham			
Setbacks	Retained Lot	Severed & Combined Lot	By-Law Requirement
Front Yard	5.18 m	11.77 m	7.50 m
Rear Yard	79.40 m	74.45 m	7.50 m
Centerline or Road	25.24 m	31.53 m	40.00 m
Lot Area	6,974.30 m <sup>2</sup>	11,354.9 m <sup>2</sup>	8,000 m <sup>2</sup>

