

# Memorandum to the City of Markham Committee of Adjustment

October 12, 2021

**File:** A/035/21  
**Address:** 8 Weidman Lane – Markham, ON  
**Applicant:** Neil Tenn  
**Hearing Date:** October 20, 2021

The following comments are provided on behalf of the East District team.

The applicant is requesting relief from the following “Community Amenity Three Exception \*512 (CA3\*512) Zone” requirement under By-law 177-96, as amended, as it relates to an existing rear yard deck. The variance requested is to permit:

**a) By-law 177-96, Section 6.2.1 b) iii):**

a deck to be located at the second storey, whereas the By-law requires that the floor of the deck is not higher than the floor level of the first storey of the main building; and

**b) By-law 177-96, Section 6.2.1 b):**

A deck with a maximum projection of 3.05 m (10.0 ft) from the wall closest to the rear lot line, whereas the By-law permits a deck with a height greater than 1.0 m (3.28 ft) above the lowest ground surface to extend a maximum of 3.0 m (9.84 ft) from the wall closest to the rear lot line.

## **BACKGROUND**

In accordance with Planning staff’s recommendation, this application was deferred sine die by the Committee of Adjustment (“the Committee”) at the initial hearing on September 22, 2021 (Appendix “E”). The deferral provided the applicant time to request an additional variance relating to a maximum deck projection from the wall closest to the rear lot line (see variance b) noted above), and allowed for an updated notice of hearing to appropriately reflect this additional request, in accordance with the *Planning Act R.S.O. 1990, c. P.13, as amended*. The initial variance requested is noted in the previous staff report dated September 22, 2021 (Appendix “D”).

## **Property Description**

The subject property is located on the north side of Weidman Lane, east of Donald Cousens Parkway, south of Major Mackenzie Drive East, and west of Delray Drive. There is currently a three-storey townhouse located on the property, with an existing rear yard deck at the second storey. The property is located within a residential neighbourhood, which contains low rise housing forms, including three-storey townhouse dwellings, and two-storey semi-detached dwellings.

## **Proposal**

The applicant is proposing to recognize an existing rear yard deck at the second-storey level which projects 3.05 m (10.0 ft) from the building wall closest to the rear lot line, and has an approximate area of 11.59 m<sup>2</sup> (124.75 ft<sup>2</sup>), excluding the stairs.

## **Official Plan and Zoning**

Official Plan 2014 (partially approved on November 24/17, and updated on April 9/18)

The subject property is designated “Residential Low Rise”, which provides for low rise housing forms with building height of up to three-storeys.

## Zoning By-Law 177-96

The subject property is zoned “Community Amenity Three Exception \*512 (CA3\*512) Zone” under By-law 177-96, as amended, which permits one townhouse dwelling per lot. The subject development does not comply with the By-law with respect to the maximum deck height and projection.

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

The applicant has confirmed that a ZPR has not been conducted. However, the applicant has received comments from the building department through their building permit process, and Planning staff through their variance application to confirm the variances for the proposed development.

## **COMMENTS**

Section 45(1) of 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 Maximum Deck Height and Increase in Maximum Projection from the Dwelling Wall Closest to the Rear Lot Line

The applicant is requesting a deck to be located at the second-storey projecting a maximum distance of 3.05 m (10.0 ft) from the building wall closest to the rear lot line. The By-law requires that the floor of the deck is not higher than the floor level of the first-storey of the main building, and projects no more than 3.0 m (9.84 ft) from the wall closest to the rear lot line.

Properties within the immediate vicinity along Dundas Way and Weidman Lane have been similarly developed as three-storey townhouses, without a basement floor level. The By-law provides the following definitions:

- **basement** which means: *“that portion of a building below the first storey”*; and,
- **first-storey** which means: *“the storey with its floor closest to established grade and having its ceiling more than 1.80 m (5.91 ft) above grade.”*

A review of the architectural plans approved by the City in 2015 shows that the first-storey floor level as defined by the By-law is occupied by a recreation room at the rear; this is the lowest level of the dwelling, is not below grade, and provides for a walk-out into the rear yard. The kitchen and family room areas are shown to be located at the floor above, next to the existing deck entrance. Prior to construction of the deck, a Juliette balcony existed.

Approval of the requested variance would provide for alternate access to the rear yard area from the main living and dining area, and direct access to the outdoor amenity space at the second-storey.

Site photos of the property provided by the applicant, in combination with a site visit conducted by staff, shows that other second-storey decks have been constructed within the immediate vicinity. The juliette balconies provide residents who live in similar townhouses within the immediate vicinity with an opportunity to build a deck at the second-storey level, subject to obtaining a building permit. In this particular minor variance application, the applicant has constructed a deck into the rear yard area prior to obtaining the necessary approvals. Notwithstanding completion of construction, staff's assessment of this variance application is based on whether the development as proposed, meets the four tests of the *Planning Act*. In the event that the application is denied, the applicant would be required to address any existing non-compliances with the By-law, which may include partial, or full removal of the existing deck.

Staff have given consideration to:

- the context of properties within the immediate vicinity;
- the extent of the projection from the rear building wall, which in the opinion of Staff represents a modest increase from the maximum allowance; and
- development standards of the By-law which includes permissions for balconies to project a distance of no more than 2.0 m (6.56 ft) at a second-storey level.

Staff are of the opinion that the impacts of the proposed second-storey deck and its projection are minor in nature, and meet the general intent of the By-law. Accordingly, staff do not object to the proposed development, and recommend that the conditions in Appendix "A" be adopted in the event of approval.

#### **PUBLIC INPUT SUMMARY**

As of the initial hearing date (September 22, 2021), City staff received two letters, one of which cited concerns:

- with the foundation and sturdiness of the deck;
- that the deck was constructed prior to the final grading of the backyard; and
- that the height of the deck would not remediate privacy.

The other written submission was in support of the proposed deck.

Should this variance application be approved, staff note that the applicant would also be required to obtain a building permit which ensures that buildings, and structures such as this deck are built in accordance with the *Building Code Act* which sets standards for the design and construction of buildings to meet health and safety objectives, amongst other things.

No new written submissions were received as of the writing of this report (October 12, 2021). 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*, and are of the opinion that the variance request meets the four tests. Staff recommend that the Committee consider public input, and the conditions of approval detailed in Appendix "A" 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" – Aerial Photo: Properties along Dundas Way and Weidman Lane

Appendix "D" – Initial Staff Report: September 15, 2021

Appendix "E" – Minutes Extract: September 22, 2021

PREPARED BY:



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Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



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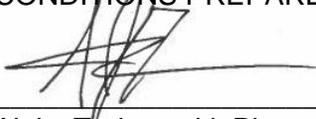
Carlson Tsang, Senior Planner, East District

**APPENDIX "A"**

**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/035/21**

1. That the variance applies only to the subject development for as long as it remains.
2. That the variance applies only to the subject 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 their designate that this has been fulfilled to their satisfaction.

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to read 'Aleks Todorovski', written over a horizontal line.

Aleks Todorovski, Planner, Zoning and Special Projects

**APPENDIX "B"**  
**PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/035/21**



# Appendix B

File: 21.112033.000.00.MNV

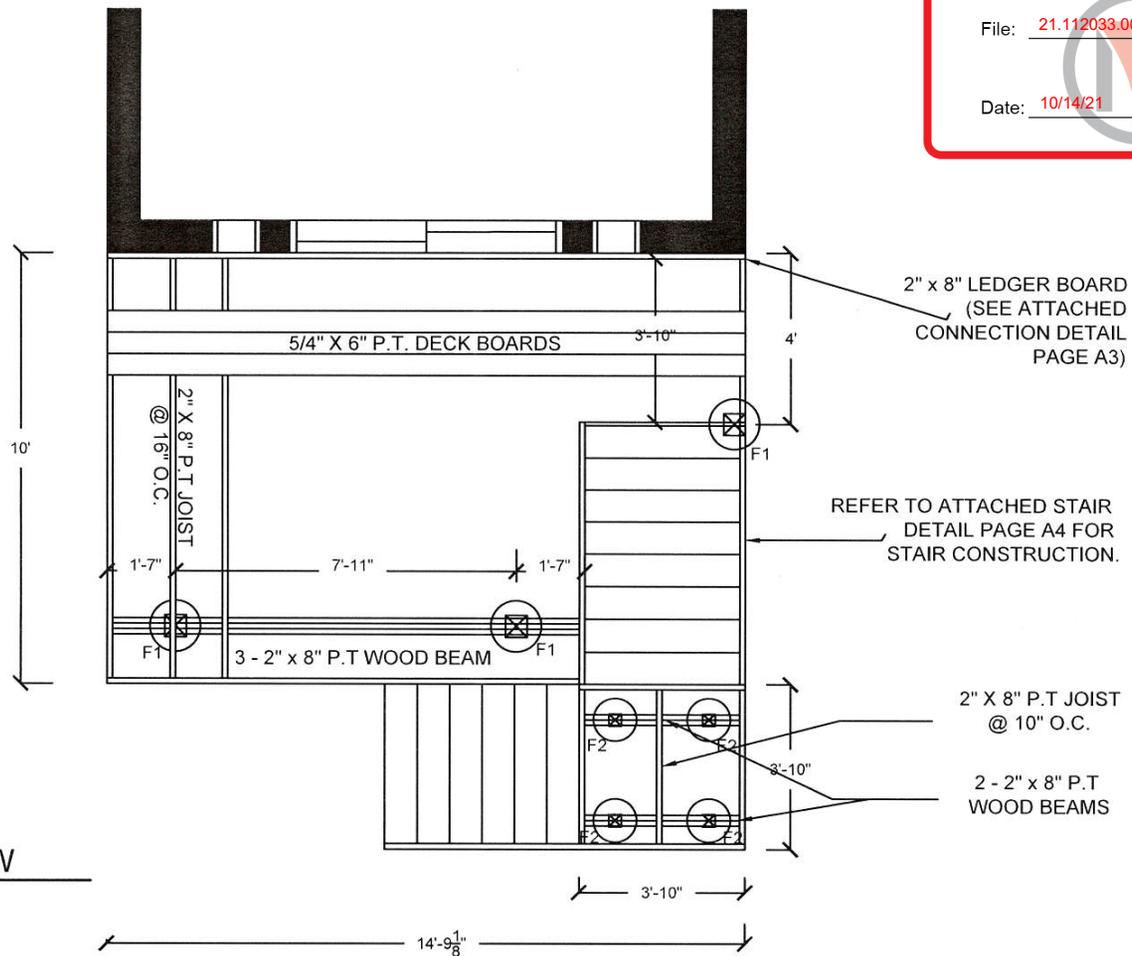
Date: 10/14/21  
MM/DD/YY

DECK TO BE CONSTRUCTED  
OUT OF NO.2 SPF LUMBER

F1 6" X 6" POST  
ANCHORED TO  
HELICAL PILE  
FOOTING

F2 4" X 4" POST  
ANCHORED TO  
HELICAL PILE  
FOOTING

HELICAL PILE FOOTINGS.  
REFER TO ATTACHED  
P.ENG DETAIL/ REPORT



1  
A1 DECK - PLAN VIEW  
SCALE: 1/4"=1'-0"

THE UNDERSIGNED HAS REVIEWED AND TAKES  
RESPONSIBILITY FOR THE DESIGN, AND HAS THE  
QUALIFICATIONS AND MEETS THE REQUIREMENTS SET  
OUT IN THE ONTARIO BUILDING CODE TO BE A DESIGNER

QUALIFICATION INFORMATION

MIKE ZARADIC 45290  
NAME BCIN

*Mike Zaradic*  
SIGNATURE

PROJECT:

PROPOSED DECK  
8 WEIDMAN LANE  
MARKHAM, ONTARIO

SCALE: 1/4" = 1'-0"

DATE: JUNE. 19, 2020

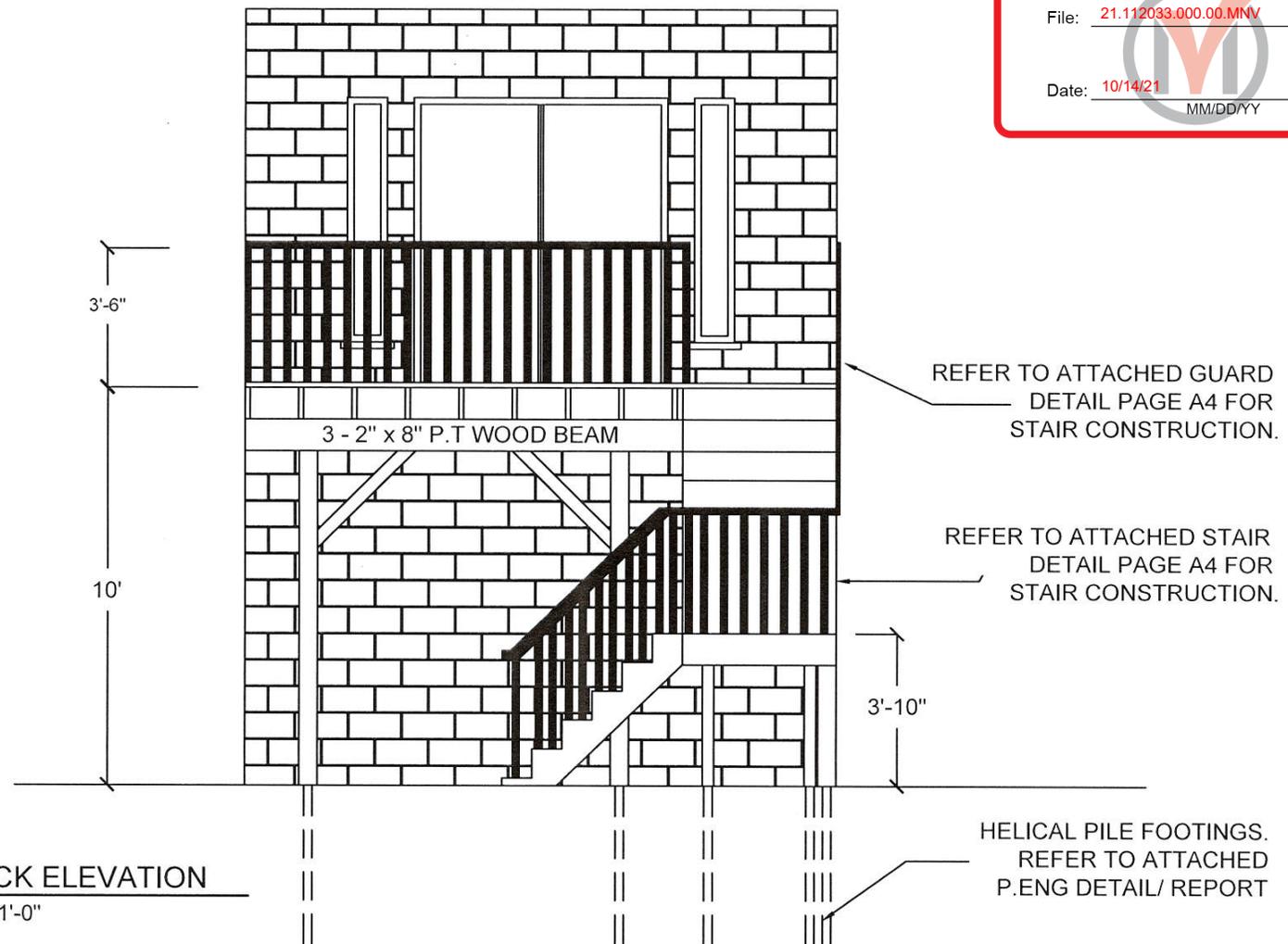
DRAWN BY: MIKE ZARADIC

A1

# Appendix B

File: 21.112033.000.00.MNV

Date: 10/14/21  
MM/DDYY



**1**  
**A2** REAR DECK ELEVATION  
SCALE: 1/4"=1'-0"

THE UNDERSIGNED HAS REVIEWED AND TAKES RESPONSIBILITY FOR THE DESIGN, AND HAS THE QUALIFICATIONS AND MEETS THE REQUIREMENTS SET OUT IN THE ONTARIO BUILDING CODE TO BE A DESIGNER

QUALIFICATION INFORMATION

MIKE ZARADIC 45290  
NAME BCIN SIGNATURE

PROJECT:  
  
PROPOSED DECK  
8 WEIDMAN LANE  
MARKHAM, ONTARIO

SCALE: 1/4" = 1'-0"

DATE: JUNE. 19, 2020

DRAWN BY: MIKE ZARADIC

# A2

**APPENDIX "C"**

**AERIAL PHOTO: PROPERTIES ALONG DUNDAS WAY AND WEIDMAN LANE**



### Legend

- Condominium Plans
- LANDMARKS\_6000
- SLRN\_6000
- PARKS\_6000
- Building Footprints

1: 500



25.4 0 12.70 25.4 Meters

### Notes

**APPENDIX "D"**  
**INITIAL STAFF REPORT: SEPTEMBER 15, 2021**

**DATE:** September 15, 2021  
**TO:** Chairman and Members, Committee of Adjustment  
**FILE:** A/035/21  
**ADDRESS:** 8 Weidman Lane – Markham, ON  
**HEARING DATE:** September 22, 2021

The following comments are provided on behalf of the East District Team. The applicant is requesting relief from the following “Community Amenity Three Exception \*512 (CA3\*512) Zone” requirement under By-law 177-96, as amended, as it relates to an existing rear yard deck. The variance requested is to permit:

**a) By-law 177-96, Section 6.2.1 b) iii):**

a deck to be located at the second storey, whereas the By-law requires that the floor of the deck is not higher than the floor level of the first storey of the main building.

**COMMENTS**

Following a detailed review of the plans, Planning staff have determined that an additional non-compliance with the By-law exists as it relates to a maximum deck projection from the wall closest to the rear lot line. Staff contacted the applicant, who provided confirmation of their request to defer this application to make the appropriate adjustments to their application (Appendix “A”). Accordingly, staff recommend that the subject application be deferred sine die to provide the applicant with the appropriate time to make these adjustments, and allow the notice of hearing to capture any additional variances in accordance with the *Planning Act, R.S.O. 1990, c. P.13, as amended*.

**APPENDICES**

Appendix “A” – Confirmation of Deferral Request: September 15, 2021

PREPARED BY:



Aleks Todorovski, Planner, Zoning and Special Projects

REVIEWED BY:



Stacia Muradali, Development Manager, East District

**APPENDIX "A"**  
**CONFIRMATION OF DEFERRAL REQUEST: SEPTEMBER 15, 2021**

**Todorovski, Aleks**

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**From:** [REDACTED]  
**Sent:** Wednesday, September 15, 2021 3:37 PM  
**To:** Todorovski, Aleks  
**Subject:** Re: Application Details Confirmation - A.035.21 - 8 Weidman Lane

Hi Aleks,

Thank you for your email. Please defer our application to the next available meeting. I will be in contact to see what the next steps are. Will I still be able to attend the meeting to better understand the process?

Thanks for your help again.

Warm regards,

[REDACTED]  
[REDACTED]

**APPENDIX "E"**  
**MINUTES EXTRACT: SEPTEMBER 22, 2021**

Committee member Tom Gutfreund indicated that the application meets the height development standard, and that all of the variances are typical to other variances presented at committee, and are minor in nature.

Mr. Khadra summarised the changes made from the previous owner. He stated he would make changes, if the committee requested.

Committee member Tom Gutfreund stated that he is satisfied with the changes made from the previous application.

The Chair stated that community members did provide letters of opposition, but the letter predated the revised drawings.

Committee member Jeamie Reingold indicated that she does not have issues with the application.

Committee member Sally Yan indicated that she understands the proposal and supports it.

**Moved By: Tom Gutfreund**  
**Seconded By: Sally Yan**  
**Tom Gutfreund, Jeamie Reingold, Kelvin Kwok**  
**Opposed By: Patrick Sampson**

THAT Application No A/031/21 be approved subject to conditions contained in the staff report.

Resolution Carried

**6. A/035/21**

**Owner Name: Neil Tenn**  
**Agent Name: Neil Tenn**  
**8 Weidman Lane, Markham**  
**PLAN 65M4454 PT BLK 1 RP 65R35904 PT 51**

The applicant is requesting relief from the requirements of By-law 177-96 as amended to permit:

- a) By-law 177-96, Section 6.2.1 b) iii):**  
a deck to be located at the second storey, whereas the By-law requires that the floor of the deck is not higher than the floor level of the first storey of the main building;

as it relates to an existing deck that was built without a permit. **(East District, Ward 5)**

The Secretary-Treasurer introduced the application.

**Moved By: Patrick Sampson**  
**Seconded By: Kelvin Kwok**

THAT Application No A/035/21 be deferred sine die.

Resolution Carried

**7. A/063/21**

**Owner Name: Lenny Lesmana Ng**  
**Agent Name: Yue Li**  
**132 Dundas Way, Markham**  
**PLAN 65M4454 PT BLK 1 RP 65R35904 PT 69**

The applicant is requesting relief from the requirements of By-law 177-96 as amended to permit:

- a) By-law 177-96, Section 6.2.1 b) iii):**  
a deck to be located at the second storey, whereas the By-law requires that the floor of the deck not be higher than the floor level of the first storey of the main building;
- b) By-law 177-96, Section 6.2.1 b):**  
a deck with a maximum rear yard projection of 3.65 m, whereas the By-law permits a deck with a maximum rear yard projection of 3.0 m;

as it relates to proposed deck attached to back of house. **(East District, Ward 5)**

The Secretary-Treasurer introduced the application.

Serena Li appeared on behalf of the application.

Neil Tenn of 8 Wideman Lane supports the deck.

Committee member Jeamie Reingold indicated she supports the application.

Committee member Tom Gutfreund asked about the building permit process.

Committee member Patrick Sampson asked about the privacy of the adjacent neighbours.