

LAND USE PLANNING REPORT

**HUGHSON/LUNAR/ANKARA
STUDY AREA
BROWN'S CORNERS**

Town of Markham

FINAL

June 2, 2010



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EXECUTIVE SUMMARY

This report has been prepared to determine whether additional lot creation should be permitted in the Hughson/Lunar/Ankara Study Area. In addition, this report reviews the existing zoning regulations that apply in the Study Area and makes a recommendation on whether these zoning regulations should be updated.

Both the Province and the Region of York require Markham to accommodate a significant portion of future growth through intensification inside the already built-up area of Markham, rather than on Greenfield lands at the edge of the built up area.

While intensification has already been occurring in Markham, there is an expectation that the rate of intensification in the Town will increase as the Town's population increases and the demand for alternative forms of housing increase. It is also expected that improved transit services, changing demographics, changing land economics, the establishment of additional employment in Markham and Markham's location itself will make intensification a more attractive prospect for developers.

The arguments typically in favour of intensification are that new development in built up areas will allow for the optimization of existing infrastructure and the more efficient and economical provision of services. The creation of diverse communities, more vibrant central areas, and higher levels of service, with a range of uses and opportunities also occurs when the number of people and jobs increases in built-up areas. Yet there are also arguments against intensification: increased traffic and density in defined areas can alter neighbourhood character, affect the stability of established communities, and over-stretch the capacity of existing infrastructure and facilities.

Based on the review of the history of development in the area, the current policy and regulatory framework, and the comments made by the public during the Open House held on April 15th, 2010, this report recommends that new lot creation in the Study Area not be permitted and that the zoning standards that apply be updated to reflect the character of the neighbourhood.

It is recognized that the Province encourages all municipalities to provide for additional intensification within the existing built up area. However, this encouragement does not necessarily mean that all areas and neighbourhoods within the built up area should be intensified. Instead, the Province requires that municipalities review the potential for intensification and establish policies that direct intensification into those areas that are the most suited. The Town of Markham has already gone through such a process and it has been determined that the potential for intensification is significant in those areas so identified. The Study Area has not been included as a potential intensification area. It is on this basis, and on the basis of the Study Area's age and character, that it is recommended that the Study Area be considered a stable residential neighbourhood and protected through an updated policy and regulatory regime.

1. STUDY AREA CONTEXT

The Study Area is located on the north-east corner of Woodbine Avenue and Highway 7, in the Brown's Corners Secondary Plan Area as shown on Figure 1. The Study Area is made up of Hughson Drive, Lunar Crescent, Ankara Court, Polaris Drive, and the east portion of Athens Drive. These streets and the 44 residential lots were created through a subdivision process on April 5, 1954. Surrounding this area is commercial development to the south-west and west, lining the Woodbine and Highway 7 corridor. To the north and north-east are newer subdivisions that were established in the late 1980's. To the far east of The Study Area, the valley of the Rouge River acts as a boundary line between the residential area and the commercial/industrial area further to the east.

The Study Area is accessed by Lunar Crescent which extends from Woodbine Avenue to Highway 7. However, Lunar Crescent has been closed to through traffic at the southerly intersection of Hughson Drive, meaning that vehicles from the Study Area cannot access Highway 7, nor can the Study Area be directly accessed by Highway 7. Vehicles can access Lunar Crescent from both the north and south bound lanes of Woodbine Avenue. However, a sign at the entrance to Lunar Crescent and Woodbine indicates that Lunar Crescent is not a through street. The Study Area can also be accessed by Athens Drive to the east which intersects with Montgomery Court which then intersects with Highway 7. At the intersection of Montgomery Court and Highway 7, is a sign which also indicates that Montgomery Court is not a through street. Given the restrictions placed on access and the signage at the entrances to the Study Area, the Town has clearly attempted to discourage any flow through traffic in the Study Area.

Figure 1 - Aerial view of the Hughson/Lunar/Ankara Study Area



Source: Google Maps and Town of Markham

The Study Area consists of 46 parcels, of which 44 contain single detached dwellings. The total gross land area comprising of Hughson Drive, Lunar Crescent, and Ankara Court is 10.5 hectares (25.9 acres). The net area (excluding streets) is 7.94 hectares (19.6 acres). Each of the 44 lots have been developed and given the large lot sizes and the age of the subdivision, there is a significant amount of mature vegetation within the Study Area. The lots were originally sized to provide for the development of individual septic systems and wells. Currently, the area is serviced by municipal sewer, water and stormwater services.

The lots within the Study Area have an average lot frontage of 32.5 metres (107 feet) and are mostly the site of one storey dwelling units (82%) with about half the dwellings having a one car garage. The average lot area of the Hughson/Lunar/Ankara Study Area is 1,567.2 metres square (16,900 square feet). Figure 2 shows the lot areas of the lots in the Study Area and the lot areas of adjacent lots as well.

Figure 2 - Lot Areas of Properties Within and Surrounding the Study Area



Source: Town of Markham

2. BACKGROUND OF STUDY AREA, SINCE 1954

As mentioned previously, the subdivision was created in 1954. At that time, there was very limited development in the area, with that development being in the form of rural commercial and industrial uses fronting on Highway 7 and Woodbine Avenue with the remaining land being used for farming purposes. Highway 7 at that time was a major east-west route that was then located north of the Toronto urban area extending east to Ottawa and west to Kitchener. Woodbine Avenue was also the major north-south route at the time extending from the Toronto urban area northwards into the Region of York.

Highway 404, which is the northern extension of the Don Valley Parkway, terminated at Steeles Avenue until 1978/1980, with both the on and off ramps to the 404 extending onto Woodbine Avenue. Construction of the 404 extension beyond Steeles Avenue began in about 1978. Figure 3 is an aerial photograph of the Woodbine and Highway 7 intersection in 1978.

Figure 3 - Construction of Highway 404/Highway 7 Interchange in 1978



Between 1978 and 1987, a significant amount of development occurred in the area as services were extended up Woodbine Avenue to access new employment development on the west side of Woodbine Avenue both to the north and south of Highway 7. Figure 4 is a photograph of the Woodbine and Highway 7 intersection in 1987.

Figure 4 - Aerial Photo of Woodbine and Highway 7 Intersection in 1987



Figure 4 also indicates that a new subdivision was established to the north and east of the Study Area and as the photograph indicates, it appears to have then been a very recent development. As part of the approval process for the newer subdivision, it was decided not to connect Montgomery Court with Hughson Drive and for this reason, Polaris Drive was not extended to the north. Figure 5 is an aerial photograph of the Woodbine and Highway 7 intersection in 1995 and it shows that additional commercial development started occurring to the south of Highway 7 in that time period. By 2009, the area was almost completely developed and few vacant or underutilized parcels of land remain. However, the Study Area has not changed during that time, and instead it has matured into a relatively stable neighbourhood with an established character.

Figure 5 - 1995 and 2009 Aerial Photos of Woodbine and Highway 7 Intersection.



The 44 residential lots created in 1954 have not been modified since they were created. As mentioned previously, each of these lots is the site of a single-detached dwelling. Based on a review of historical information, it would appear that 6 of the homes in the Study Area are replacement homes, meaning that the original home was replaced by a new home. All of the other homes in the Study Area are the original homes. While some new homes have been constructed, others have been added to over time. However, the neighbourhood has essentially retained its original character over time.

3. PLANNING ACT APPLICATIONS IN AREA

An application in the 1990's was submitted to the Town to create one new lot within the Study Area (32 Hughson Drive) but was later abandoned by the applicant. The only other application submitted was on December 21, 2009 and it applied to 10 Hughson Drive.

In a report on the 10 Hughson Drive application dated February 10, 2010, the Town of Markham planning staff summarized the application, which proposed the creation of a new lot having an area of 697 square metres (7,505 square feet) and retaining a lot that had the same lot area. Both lots would have equal frontages of 15.24 metres and 50 feet. An application for minor variance was also submitted, with that application proposing to reduce the minimum side yard setback of 3.0 metres (10 feet) to 1.2 metres (4 feet). The applications file numbers are B/33/09 and A/122/09.

It was recommended in the Staff Report that *“both applications for consent to sever and minor variance be deferred as they are premature, until the Study for the area is completed and in light of the Interim Control By-law enacted by Council.”* It was also indicated in the report that *“should Committee decide to consider the consent and*

minor variance applications, planning staff recommend that the applications be denied as they are not appropriate and are incompatible with the immediate area, as the proposed lot frontages and side yard setbacks would be substantially smaller than the existing lots and setbacks within the area, and not in keeping with the established character of the neighbourhood.” The Staff Report is attached to this report as Appendix A. The applications were dealt with by the Committee of Adjustment on February 17, 2010 and they were denied. The decision of the Committee of Adjustment was appealed to the Ontario Municipal Board.

An Interim Control By-law applying to the Study Area was passed by Council on February 9, 2010. A Staff Report recommending the passage of the Interim Control By-law is attached to this report as Appendix B. The decision to enact the Interim Control By-law was made to provide the Town with the ability to study the area and determine what standards should apply prior to decisions being made on individual applications. The Interim Control By-law was also appealed by the owner of 10 Hughson Drive. However, under the Planning Act, the Interim Control By-law remains in full force and effect until dealt with by the Ontario Municipal Board.

Six minor variances have also been granted in the Study Area as far back as records for the Town are available. These minor variances, which were generally intended to reduce required side yard setbacks, are summarized in Appendix C.

4. CURRENT ZONING IN STUDY AREA

The lands in the Study Area are subject to By-law 1507, which was enacted in 1954 at the same time as the subdivision was registered. No specific zones were applied to the lands and instead the location of permitted uses is regulated through the text. Figure 6 below is the Zoning Schedule.

Figure 6 - Zoning By-law 1507 Schedule



By-law 1507 specifically permits only single detached dwellings on the residential lots subject to the following standards shown on Table 1 below:

Table 1 - Current Zoning Standards for Study Area

Standards	Zoning By-law 1507
Minimum required ground floor area for one storey dwelling	92.9 m ² (1,000 ft ²)
Minimum required ground floor area for two storey dwelling	65.03 m ² (700 ft ²)
Minimum required setback to front lot line	9.1 m (30 ft)
Minimum required setback to other lot lines	3.0 m (10 ft)

Currently, the zoning standards for the Study Area only deal with minimum ground floor area and setbacks from lot lines. However, there are no regulations in By-law 1507 that deal with:

- Lot coverage;
- Floor space index;
- Building height;
- Distinguishing between rear and side yard setbacks;
- Lot frontage;
- Building frontage; and,
- Lot Area.

Given that most of the other residential areas in the Town are subject to these additional standards, it would appear at a minimum that some update of By-law 1507 is required.

5. SHOULD NEW LOTS BE CREATED IN THE STUDY AREA?

5.1 THE BASIS FOR MAKING A DECISION

Section 51 (24) of the Planning Act requires that decision makers have regard to the dimensions and shapes of the proposed lots in making a decision on an application to create a new lot. In our opinion, this Section of the Planning Act requires decision makers to:

- Determine whether the lot frontage and area is appropriate for the use proposed; and,
- Determine whether the lot frontage and area is compatible with the lot frontages and areas of other lots in the area.

Since lot frontage and area have an impact on the number of buildings and their size, the determination of whether the lot frontage and area proposed is consistent with other lots in the area is another factor in determining what impact a proposal may have on the character of the area. On the basis of the above, the most significant issue to resolve in the context of this planning process is whether the granting of permissions to create new lots will have a negative impact on the character of the Study Area.

Decisions on whether new lots should be created in existing residential areas are often based on whether the proposed development is compatible with adjacent development and whether the character of the adjacent development and area is affected. These are factors that are also considered when applications to replace an existing dwelling with a larger dwelling are submitted and to a large extent, the Town's current infilling by-laws were prepared to deal with this latter circumstance.

Land use compatibility has been an issue under consideration at numerous Ontario Municipal Board hearings. In a decision of the OMB dated August 11, 2006 (Decision/Order # 2263), a reference is made on page 7 of that decision to the language in another Decision: *"when he said being compatible with is not the same as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony."*

The criteria that assist in determining whether uses can 'exist together in harmony' when change is proposed in the context of new lot creation in a residential neighbourhood include:

- The relationship between the massing and height of existing and proposed buildings;
- The location of established building lines (the average setback of existing development from the street);
- The placement of existing and proposed buildings on a lot;
- The lot coverage of existing and proposed development;
- The nature of existing and proposed building materials; and,
- The location of driveways, garages and trees.

5.2 THE CHARACTER OF THE STUDY AREA

With the above factors in mind, using a 'character index' to determine the character rating of an area can be developed. The intent of such a 'character index' is to determine whether there is a high degree of consistency between the elements that define the character of an area. In our opinion, there is a higher feeling of 'quality of place' if there is high degree of consistency between those elements that define the character of an area. In addition, the more consistency amongst the main defining elements, the more obvious the character and the higher the neighbourhood will rank on a character index. Appendix D is a copy of the presentation presented at the public consultation event held in April 2010 to demonstrate the existing character of the neighbourhood.

In carrying out our analysis, we recognize that there are many different types of communities with many different character traits, and that it is important to understand that certain characteristics are not necessarily "better" than others. The character of a neighbourhood is a reflection of how the defining elements of the built form and setting are consistent (or not).

The main defining elements of character are outlined below:

1. Lot size
2. Vegetation - size, location, age, variety
3. Building - size, location, orientation, materials
4. Architectural style
5. Age of neighbourhood
6. Right-of-way treatment
7. Proximity of significant natural features

In our view, the more consistency there is amongst the above main defining elements, the more obvious the character is and the higher a neighbourhood will rank on a “character index”.

Notwithstanding the above, in neighbourhoods where there is no consistency in terms of the elements identified above, that neighbourhood can also have a certain character, however, that character would be considered to be more “eclectic”. It is for this reason that many older neighbourhoods developed before the Second World War in urban areas are more eclectic in nature as a result. To some extent the more eclectic a neighbourhood is, the more able it is from a compatibility perspective to experience change in the form of different building types and styles.

After the character of the neighbourhood is identified, then the challenge is to determine how that community character can be affected by new development. When there is a predominant consistency, new development should be evaluated to ensure it is in keeping with the surrounding character. It is important to maintain a certain amount of consistency in a neighbourhood in order to preserve its overall aesthetic appeal and sense of place.

It is often difficult to determine how significant a change or new development will have on a neighbourhood and whether the potential change is significant enough not to permit the proposed change to occur. There are some instances where changing the character of the neighbourhood is desirable, if other public interest objectives are met. An example of this may be where dwelling units within a neighbourhood are beyond repair and urban renewal is encouraged to improve the ‘quality of life’ in that area. However, in cases where change affects the character to an extent that there is a perceived decrease in the ‘quality of life’ or ‘sense of place’, then that change is not appropriate, especially in already stable communities.

As noted above, we do not believe and we are not making a judgement that any character is “good” or “bad”. Instead, it is our view that in a circumstance where it has been determined that an area or neighbourhood rates high on a character index, the time it takes for the character of an area to change will have the effect of decreasing the quality of place since these consistent elements of the character are being slowly lost.

In this case, the residential lots in the Study Area have been in existence since the 1950’s. It is a relatively private neighbourhood with a traffic barrier located on the south side of Lunar Crescent (onto Highway 7), mature vegetation between

commercial uses and residential units, and a relatively hidden entrance from Woodbine Ave. The only way to access the residential neighbourhood by vehicle is from Woodbine Ave. In addition, there is no direct access from the commercial parking lot associated with the Michelangelos food store onto Lunar Crescent.

The architectural style in the Study Area is from the post WWII era mixed with new modern day homes. To the far east of the Study Area boundary, there is a park preserved for open space recreation. This park is elevated from the street level and consists of large open green space, a jungle gym, and a path that connects to the other residential neighbourhood to the east.

In addition, the neighbourhood is the site of a number of mature trees that have the effect of muting some of the noise emanating from Highway 7 and Woodbine Avenue. The houses are set back from the street and spaced out, surrounded (some even blocked) by trees, and are elevated from the street to achieve a 'park-like setting' as you walk around Hughson Drive.

Table 2 below attempts to numerically describe the neighbourhood, in terms of its built form and the relationship between buildings and lots lines (Appendix C contains the data for each lot).

Table 2 - Study Area Statistics

Measurement	Neighbourhood Averages for the 44 residential lots
Width of Home	20.0 m (65.6 ft)
Lot Frontage	32.5 m (107 ft)
% of Frontage Occupied by Building	61.7%
Ground Floor Area	239.9 m ² (2,580 ft ²)
Lot Area	1,567.2 m ² (16,900 ft ²)
Lot Coverage (based on ground floor only)	15.3%
Front Yard Setback	11.4 m (37.4 ft)
Side Yard Setback	5.9 m (19.4 ft)
Rear Yard Setback	36.9 m (121 ft)

5.3 PLANNING OPINION ON LOT CREATION

As mentioned previously, Section 51 (24) of the Planning Act requires that decision makers have regard to the dimensions and shapes of the proposed lots in making a decision on an application to create a new lot. To determine how the Study Area would change if lot creation was permitted, a 3D rendering (Figure 7) that shows what the Study Area would look like has been prepared. The drawing assumes that each lot would be subdivided into two and that a two storey home would be built on each of the new lots. It was also assumed that the front yard setback would be 10 metres, the interior side yard setback would be 2 metres on each side and that the dwelling would have a depth of 17 metres.

Figure 7 - Implications of Lot Creation



It is our opinion that lot frontage has a significant impact on character since the larger the lot, the more open space exists and the more landscaping, vegetation and trees that also exist. In addition, the amount of frontage devoted to driveways and garages is less and the percentage of the front lot line that is occupied by a building is also generally less. In addition, the larger the lot, the more separation there is between dwellings. If new lot creation was permitted in the Study Area, there would be:

- less separation between dwellings on the two new lots in comparison to between other dwellings on the street;
- less of a setback between the new homes and the lot lines of adjacent lots than generally exists today;
- more driveway and garage as a percentage of the front lot line;
- less landscaping, shrubbery and trees in the front yard;
- a greater percentage of the front lot line devoted to building than generally exists at the present time;
- potential tree loss as a result of construction activities; and,
- a higher degree of on-going construction activity in the Study Area for a period of years as existing homes are demolished and new homes constructed.

In our opinion, the above impacts would not be desirable for the streets in the Study Area. In addition, any new lot created would provide for two substandard lots from each existing lot, which would be half (1/2) the average lot size in terms of frontage and lot area thereby creating a significant disparity with the average lot sizes in the Study Area. It is also our opinion that there is a general public interest in protecting the character of existing established neighbourhoods because these are areas where there does not exist a general expectation for change.

It is recognized that Provincial policy generally supports intensification and the maximizing of the use of existing infrastructure. However, these Provincial policies in our opinion do not require that municipalities consider the redevelopment of existing stable neighbourhoods to meet these Provincial goals. Instead, it is the intent of the Province, as articulated within the Growth Plan, to direct intensification to urban growth centres, transit and intensification corridors, major transit station areas and in other major intensification areas. This means that there is no expectation that all other areas are required to intensify, unless a municipality decides it would be appropriate to do so. The Study Area cannot be considered in the above list of intensification areas identified by the Province. As a result, there is no compelling need nor does it represent good planning to initiate the transition of this neighbourhood to meet Provincial objectives. A summary of current Provincial policy and its implications on the Study Area is contained within Appendix E to this report.

In addition to the above, the Study Area has not been identified as an Intensification Area by the Town, which has already gone through a process of identifying where intensification should be directed, as described in Appendix F to this report.

This process has resulted in the development of a strategy that focuses intensification within Markham Centre, along major corridors and in key development areas. The overall intent of the strategy is to firstly ensure that the intensification target for Markham can be implemented and to also indicate where major change in the form of intensification is not expected nor encouraged. In our opinion, this is a key component of any intensification strategy, since the identification of areas that will change and areas that will not change over time provides a certain amount of surety to Town residents and also allows for the investment in time and energy in the right places. Establishing priority areas for intensification also provides the basis for infrastructure planning and making decisions on how best to service these areas. In addition, long term decisions on transit, with transit usage being very dependant on the density and location of development, can be made when such a strategy has been prepared.

The Study Area is located to the north and east of one of the Key Development Areas identified by the Town, which is the area focused on the Highway 7 and Woodbine intersection. At the present time, much of the existing development in this key development area is low - density single storey and single use commercial development. The Town anticipates that over time, this area will regenerate with higher density forms of development. The boundary of the Key Development Area does not extend into the Study Area, primarily because the Study Area is the site of a stable residential neighbourhood. Given the work completed by the Town, it is clear that the focus of the analysis and recommendations was on those areas that have the

greatest potential for intensification because of their current land use and/or location. In addition, the Intensification Areas identified by the Town are able to accommodate the intensification 'allocation' to Markham established by the Region of York. It is also our understanding that the potential exists to significantly exceed that 'allocation' over time in the areas so identified.

In addition to the above, there are a number of policies within the Markham Official Plan that combine to indicate that there is a public interest in maintaining the character of existing areas (neighbourhoods):

- Section 2.1.1.d) in particular indicates that Council will endeavour to maintain and improve the physical character and appearance of existing communities.
- Section 2.1.2 b) indicates that Council will study ways and means of improving existing communities.
- Section 2.3 contains a number of policies that are intended to deal with visual appearance. One of the objectives of the Town in this regard is to 'encourage good building and landscape design in sympathy with the distinct character of the communities...."
- Section 2.7 deals with severances and in addition to referring to Section 51(24) of the Planning Act, indicates in Section 2.7.2 b) infilling may be permitted "without disturbing the pattern of the existing development".
- Section 3.3.6 indicates that the implementing zoning by-law in the Urban Residential designation shall, when considering development on existing undersized lots, consider whether the lot size is 'in keeping with adjacent development" and that "the proposed dwelling is sited and designed in such a manner that a reduction in lot size does not adversely affect the amenity of surrounding properties." While the above policy deals with a circumstance where development is proposed on an existing under-sized lot, the principles to be considered are very relevant in this case, since it is proposed that undersized lots be created.

Appendix G contains a description of the relevant Official Plan policies.

5.4 SUMMARY

It is on the basis of the above that there is no compelling need to provide for the creation of additional lots within the Study Area to meet the Town's minimum intensification target. In addition, opening the Study Area up to lot creation is not good planning, since it will precipitate a period of change in the neighbourhood that will have an impact on its current character and stability.

It is recognized that if the permission was granted to create new lots, not every landowner would take advantage of that permission in the short to medium terms. In some cases, landowners may not take advantage of this permission in the long term. However, the period of change (the time during which new lots are created and new

homes constructed) is destabilizing, since the fabric of the neighbourhood is changing and its allure and quality as a stable residential neighbourhood is affected in a negative manner. In addition, decisions by homeowners not wishing to sever their lots to improve their properties may be delayed because of the uncertainty and as a result, a cascade of decisions get made on an individual basis that will also have the effect of destabilizing the neighbourhood and affecting its character.

There are many examples of neighbourhoods throughout the Greater Toronto Area that have retained their charm and character through the maintenance of the lot fabric that exists in the neighbourhood. For example, the City of Vaughan recently went through a process that resulted in the approval of OPA 589, which had the effect of identifying “enclaves” within the City in which new lot creation is not permitted. The City of Vaughan's approach was tested through an application for consent and minor variance in one of these ‘enclaves’ that was decided upon by the Ontario Municipal Board in a decision issued on March 17, 2008 (PL070251). On page 21 of that Decision, the following was stated by the Ontario Municipal Board:

Ms. Stewart in her submission stated that compatibility means “in harmony with” and referred to the Board to an often quoted decision by Mr. Chapman where he stated, “being in harmony with implies nothing more than being capable of existing together in harmony” (Motsi v. Bernardi, 20 O.M.B.R. 129 at Page 5). Considering the phrase in harmony more carefully, surely it means in harmony with the nearby area, being the area south of Uplands.

I believe that by formulating the “in harmony” test as Ms. Stewart referred to it, Mr. Chapman meant more than peaceful co-existence because peaceful co-existence has much more to do with people than things such as lots and houses. In the context of the Planning Act, surely “in harmony” must mean parts combined into a pleasing or orderly whole, congruity, a state of agreement or proportionate arrangement of size and shape.

A number of references are also made in the Decision to other decisions made by the Ontario Municipal Board on page 23. A full copy of the Decision is attached to this report as Appendix H since many of the factors considered are similar to the factors being considered in the context of this Planning Report.

In summary, it is our opinion that there is a public interest in maintaining the quality of place through the protection of neighbourhoods or areas like the Study Area, since they are representative of a stable and mature neighbourhood. These types of neighbourhoods are considered to be very desirable generally to the home buying public primarily because of their stability. In our opinion, the granting of permissions to create lots which are half the size of other lots in the Study Area will have the Effect of destabilizing the neighbourhood and initiating a process of transition from one character to another. While there may be instances where such a transition is in the public interest, it is our opinion that there is no public interest in supporting the transition of a stable residential neighbourhood from one character to another, since the degree of change will be significant, when compared to the type of development that currently exists.

With respect to zone standards, there is a need to modernize the standards to bring them in line with other By-law provisions in use in the Town and contemporary thinking on the nature of the By-law standards that should apply in neighbourhoods such as the one in the Study Area. It is on this basis that the zone standards discussed in Section 6 of this report are recommended for the neighbourhood. The effect of these standards is to protect and maintain the open space character of the neighbourhood, while providing for opportunities for development and redevelopment on existing lots.

6. WHAT ZONE STANDARDS SHOULD APPLY?

Based on the assessment of the Study Area contained in this report and the ideas and comments made by the landowners living within the study area, it is recommended that new zoning standards should be developed.

While the location of buildings, driveways and other elements of development on a site are important considerations in existing low density residential neighbourhoods, it is quite often the architectural style and the bulk and massing of a proposed development that has the most important impact on the character of a street, area or neighbourhood.

While it should not be the intent of any municipality to control personal preferences and tastes, it is our view that there is an overall public interest in controlling the design of new dwellings if there is a public interest in protecting the existing character of a street, area or neighbourhood. This is certainly the case in new greenfield neighbourhoods, where a considerable amount of time and effort is spent on the design and look of new development, in order to make certain it well to adjacent development and future development. While the context is different, since this new development is being planned alongside other new development, it is our opinion that there is also a need to consider the building relationship issues in existing neighbourhoods.

Notwithstanding the above however, there are a few items that do need to be considered in the context of applications to develop single detached dwellings and existing residential neighbourhoods. The first has to do with identifying the defining elements of the architectural style of the existing dwellings in the vicinity of the proposed development. Elements of the architectural style that should be reviewed include:

- The height of buildings;
- The pitch of the roof and the location of the rooflines;
- The building materials used;
- The colour of the building materials;
- The level of floor of the front entrance in relation to the street;
- The nature of the architectural features, such as columns; and,
- The nature and colour of the roofing materials.

In an existing established neighbourhood, these are all important considerations since the planning principle being recommended in the Study Area is that new development

should relate to both existing development and other new development as much as possible. In moving forward with the consideration of design issues, it is not proposed that the process be rigid, instead the process should be designed to require that new development complement existing development wherever possible to support its integration into an existing neighbourhood fabric.

At the present time, By-law 1507 permits a minimum ground floor area of 92.9 m² (1,000 ft²) for a one storey building and 65.0 m² (700 ft²) for a two storey building. The minimum front yard setback is 9.1 m (30 ft) and from any other lot line it is 3.0 m (10ft). There are no provisions in the By-law to control the bulk or massing of the building, this is mainly due to the fact of the time in which the By-law was enacted where housing sizes were not commonly as big as they are in the 21st century.

While floor area ratios and lot coverage provisions do have an impact on the massing of a home on a street, the provisions do not take into account the different lot frontages and lot depths that may exist in the Town. For example, 25, 31 and 45 Hughson Drive are both the site of significantly larger homes than the homes on adjacent larger properties and are significantly different in bulk and character. In addition, calculating floor area ratio is sometimes challenging as well, since only floor areas can be utilized, which does not account for the open spaces that may extend from one floor to another in the interior of a home. The FAR calculation also doesn't take into account any space in an attic and the pitch of a roof that may provide for an attic, since attics typically do not include floor space. In addition the calculation does not take into account the amount of mass above grade that may be part of a cellar, as defined.

As a result, it is our opinion that there should be a simpler way to control the massing of buildings on a street. One such way would be to develop a standard that relates to the amount of the front lot line that is faced by a building. Such a provision would recognize the varying lot frontage conditions that may exist in the Study Area and in the Town of Markham generally and would provide for more open space on larger lots than on smaller lots in a manner that is proportionate to the lot frontage.

On the basis of an analysis carried out in the Study Area, it has been determined that the percentage of the front lot line occupied by building is about 61.7% on average. However, it is noted that some of the larger lots have significant homes on them such as 31 Hughson Dr., which has a percentage of front lot line occupied by building of just over 84%. However, the majority of the homes along Hughson are in the 55% to 70% range.

If this approach was selected, it is recommended that the percentage of front lot line faced by building be no more than 70%. This means that only 21 metres of the frontage of a 30 metre wide lot could be used for building and that the side yards on either side would be 4.5 metres. To provide some flexibility however, and recognizing that it may not always be feasible or desirable to have equal side yards, it is recommended that the 30% be divided between the side yards in a manner that is appropriate for the site, provided that in no case shall it be less than 3.0 metres on one side, which would be consistent with the current standard. In order to minimize the impacts of new construction on adjacent lots, it is also recommended that the height of the main

building within 4.5 metres of a side yard be no more than 4.6 metres, which would permit one storey.

If the front lot line massing relationship tool is used, there would be no requirement to include a FAR provision in the by-law.

With respect to the required front yard, it is recommended that the required front yard remain at 9 metres, since the current average front yard setback is 11.42 metres for this neighbourhood. This will take into account any variations and allow for flexibility. In addition, it is recommended that the current restriction on garage projections from the infilling By-laws of the Town of Markham apply to this neighbourhood. This would mean that a garage cannot project any closer to the front lot line than 2.1 metres beyond the point of the main building closest to the front lot line and a maximum width of 7.7 metres.

With respect to the rear yard, it is recommended that the current rear yard provision of 3.0 metres be changed to 10.0 metres (since the 3 metres applied to both the rear yard and side yard, there was no distinction between the two). The maximum height should be 9.8 metres or two storeys. It is also recommended that the maximum depth of dwelling provision be applied in this area as well. Given that the current by-law does not establish minimum lot frontage and lot area requirements, it is recommended that such minimum standards be included to provide clarity and that these standards simply recognize the lot frontages and lot areas that exist today, and will exist on the effective date of the by-law amendment that would be passed by Council to implement the recommendations made in this report.

Table 3 on the next page summarizes the above recommendations:

Table 3 - Summary of Recommendations for Zoning By-law Regulations

Minimum required front yard	9 metres
Minimum required interior side yard	30% of the lot frontage provided that in no case shall the yard be less than 3.0 metres on one side.
Minimum required exterior side yard	4.0 metres
Minimum required rear yard	10.0 metres
Maximum height	9.8 metres and two storeys. Notwithstanding the above, the maximum height is 4.5 metres and one storey within 4.6 metres of the interior side lot line.
Maximum depth of dwelling	16.8 metres, which can be increased to 18.9 metres if the additional depth is one storey and less than 4.6 metres in height and not more than $\frac{1}{2}$ the width of dwelling at widest point.
Maximum garage projection	Garage shall not be located closer than 2.1 metres to front lot line than main building or porch from lot line.
Minimum lot frontage	Existing as of the effective date of passing of By-law Amendment by Council to implement the recommendations made on Table 3.
Minimum lot area	Existing as of the effective date of passing of By-law Amendment by Council to implement the recommendations made on Table 3.

Appendix A

Staff Report

M E M O R A N D U M

DATE: February 10, 2010

TO: Chairman and Members, Committee of Adjustment

FROM: Dave Miller, MCIP, RPP, Senior Project Coordinator

PREPARED BY: **Stacia Muradali** for the Central Team

COPY TO: **Elvio Valente** - copy by AMANDA comment

FILE: **B/33/09 & A/122/09**

ADDRESS: 10 Hughson Dr Markham

HEARING DATE: February 17, 2010

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

BACKGROUND

The applicant is requesting provisional consent to sever and convey a parcel of land having an approximate area of 697.2 m² (7,505 ft²) while retaining a parcel of land having an approximate area of 697.2 m² (7,505 ft²) (B/33/09). The proposed severance would result in two building lots to facilitate the development of two new residential dwellings.

The applicant is also requesting relief from Zoning By-law 1507, to permit a 1.2m (4ft) side yard setback, whereas; the Zoning By-law requires a minimum side yard setback of 3m (10ft) (A/122/09).

Property Description

10 Hughson Drive (the "subject property"), is located within a single family residential community, north of Highway 7, east of Woodbine Avenue, directly north-east of the existing Michelangelos supermarket, and commercial/ retail/ restaurant development which is located on the north-east corner of Highway 7 and Woodbine Avenue. There is low density residential, industrial and commercial uses surrounding the subject property.

The subject property has a lot frontage of 30.48m (100ft) and contains a single detached bungalow, accessory structure, and several mature trees. Other properties on Hughson Drive have frontages generally ranging from 24m (78ft) to 40m (131ft). This residential community is characterized by large lots, generous setbacks and openness, mature trees, and primarily bungalows, with the exception of some lots which have been redeveloped with larger homes on existing lots. Severances have not occurred within this enclave. This residential development has remained relatively stable since it's development in the 1950s. A more recent development (Montgomery Court area) abuts

this residential development to the north and east, dating back to the 1990s, with lot frontages generally ranging from 15.24m (50ft) to 20m (65ft).

On February 9, 2010, Markham Council enacted an interim control by-law for the residential community consisting of all of Hughson Drive, Lunar Crescent, Ankara Court and the west end of Athens Drive, including the subject property (the "Study Area") (see attached). The interim control by-law temporarily restricts land use while the Town studies and reviews the land use policies and zoning standards for the Study Area. The existing Zoning By-law (1507) for the Study Area dates back to 1954 and is lacking proper development standards and appears to be in need of being updated or replaced by a new Zoning By-law, to more appropriately regulate any redevelopment activity in the Study Area. The Local Councillor and Staff will schedule a community information meeting (and any others that may be necessary) to facilitate the Study.

Proposal

The applicant is proposing to sever the existing 100ft lot into two 50ft lots. The applicant is proposing to construct two (2) houses, two (2) storeys each, with gross floor areas of approximately 415.2m² (4,470 ft²). The applicant is requesting a variance to provide reduced side yard setbacks of 1.2m (4ft).

COMMENTS

In considering an application for consent, regard shall be had for the criteria in Section 51(24) of the Planning Act, which includes:

- a) Conformity with the Official Plan;
- b) Compatibility with adjacent uses of land;
- c) Compliance with the Zoning By-law;
- d) Suitability of the land for the proposed purpose, including the size and shape of the lot(s) being created;
- e) Adequacy of vehicular access, water supply, sewage disposal;
- f) protection from potential flooding
- g) heritage conservation
- h) Whether the proposed is premature or in the public interest

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.

Official Plan:

10 Hughson Drive is designated "Urban Residential" in the Town's Official Plan and "Urban Residential- Low Density" in the Brown's Corner Planning District Secondary Plan (which is non-statutory). The "Urban Residential" designation seeks to maintain and improve the quality of the existing residential development.

Zoning: Parent By-law:

The Zoning By-law (1507), which was enacted in 1954, allows single detached dwellings, with development standards related only to lot line setbacks and minimum ground floor area of dwellings. The Zoning By-law requires a minimum lot line (side) setback of 3m (10ft).

CONCLUSION

Planning staff recommend that both applications for consent to sever and minor variance be deferred as they are premature, until the Study for the area is completed and in light of the interim control by-law enacted by Council.

Should Committee decide to consider the consent and minor variance applications, planning staff recommend that the applications be denied as they are not appropriate and are incompatible with the immediate area, as the proposed lot frontages and side yard setbacks would be substantially smaller than the existing lots and setbacks within the area, and not in keeping with the established character of the neighbourhood.

AMANDA file number: 10 109274

Appendix B

Interim Control By-law



Report to: Council

Report Date: February 9, 2010

SUBJECT: **INTERIM CONTROL BY-LAW**
Area comprised of Hughson Drive, Lunar Crescent,
Ankara Court, and the west end of Athens Drive
North of Highway 7, east of Woodbine Avenue

PREPARED BY: Stacia Muradali, Planner
Central District, Ext. 2008

RECOMMENDATION:

- 1) That the report titled "INTERIM CONTROL BY-LAW, Area comprised of Hughson Drive, Lunar Crescent, Ankara Court and the west end of Athens Drive (North of Highway 7, east of Woodbine Avenue)" be received;
- 2) That Staff be directed to undertake a Study of the land use and zoning standards for the area comprised of Hughson Drive, Lunar Crescent, Ankara Court and the west end of Athens Drive (North of Highway 7, east of Woodbine Avenue), and in particular, to review the appropriateness of the existing Zoning By-law in the area, and to identify any necessary changes to Town policies and regulations for the area;
- 3) That Meridian Planning Consultants be retained to conduct the Study;
- 4) That pursuant to Section 38 of the Planning Act, Council enact an Interim Control by-law for the Study Area, substantially in accordance with the proposed By-law attached as Appendix 'A', to this report;
- 5) That the Town Solicitor and necessary Staff be authorized to appear at the Ontario Municipal Board in the event of an appeal of the Interim Control By-law;
- 6) That Staff, in consultation with the Local Councillor, arrange for a community information meeting to discuss issues associated with this Study;
- 7) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

EXECUTIVE SUMMARY:

Not applicable.

PURPOSE:

This report recommends that a Study of land use and zoning standards be conducted for the area north of Highway 7, east of Woodbine Avenue, and comprised of Hughson Drive, Lunar Crescent, Ankara Court, and the west end of Athens Drive (the "Study

Area"). Zoning By-law 1507 which applies to the Study Area, and which was enacted in 1954, provides minimal development standards: minimum ground floor area and lot line setbacks. The Study will determine the implications of the existing zoning standards, especially in light of anticipated applications for consent to sever the larger lots within the Study Area. This report recommends immediate enactment of an interim control by-law to control redevelopment or changes in land use during the period of the Study.

BACKGROUND:

Subject area and area context

The Study Area is comprised of Hughson Drive, Lunar Crescent, Ankara Court, and the west end of Athens Drive, north of Highway 7, east of Woodbine Avenue (the "Study Area"). The Study Area abuts a supermarket (Michelangos), commercial, retail, and restaurant development which is located to the south of the Study Area, at the north-east corner of Highway 7 and Woodbine Avenue. There are industrial uses to the west, low density residential and industrial uses to the north, and residential uses and the Rouge River to the east. The Study Area is fully serviced.

The Study Area is comprised of approximately 44 lots, with frontages ranging from approximately 24m (78ft) to 40m (131ft). The area is comprised primarily of bungalow and split-level type homes, with some lots having been redeveloped with larger homes on existing lots. This subdivision was developed in the 1950s and there has been little redevelopment activity, with the exception of a few minor variance applications and one severance application submitted for 32 Hughson Drive in 1986 (which was deferred and did not proceed), and newer homes built on existing lots. The Study Area has remained relatively stable and has maintained its character of large lots with generous setbacks and openness and mature trees. A more recent development (Montgomery Court area) abuts the Study Area to the north and east, and is subject to a separate Zoning By-law. This more recent development occurred around the early 1990s, with lot frontages generally ranging from approximately 15m (50ft) to 20m (65ft).

OPTIONS/ DISCUSSION:

Interim Control By-law proposed for the Study Area

A severance and minor variance applications have been submitted for 10 Hughson Drive, a property within the Study Area. The severance application requests permission to divide the existing 30.48m (100ft) lot, into two 15.24m (50ft) lots. The owner is also requesting permission to vary the existing By-law which requires a minimum side yard setback of 3m (10ft) to 1.2m (4ft) to accommodate the proposed severance. Zoning By-law 1507 which applies only to the Study Area, and which was enacted in 1954, provides minimal development standards: minimum ground floor area and lot line setbacks. The Study will determine the implications of the existing zoning standards, especially in light of anticipated applications for consent to sever the larger lots within the Study Area.

The current severance application for 10 Hughson Drive is the first severance application to be submitted in recent years. A severance application was submitted in 1986 for 32

Hughson Drive, however, the application was deferred and did not proceed. The existing Zoning By-law (1507) for the Study Area is lacking proper development standards and appears to be in need of being updated or replaced by a new Zoning By-law, to more appropriately regulate any redevelopment activity in the Study Area. A Study is required to determine zoning standards for the Study Area. The zoning review process will include public consultation, and will no doubt include discussion and consideration of the impact of potential future severances and the current severance application in the Study Area, and the appropriateness of redevelopment through lot creation.

Section 38 of the Planning Act authorizes Town Council to pass an Interim Control By-law in order to temporarily restrict land use while the Town studies and reviews the land use policies and zoning standards for the affected uses in the Study Area. The proposed Interim Control By-law (see Appendix 'A') seeks to prohibit new single family detached dwellings or redevelopment within the Study Area while the review is under way. The Interim Control By-law would not prevent lawfully existing residential uses on existing lots of record, except as noted in the by-law.

The proposed Study is anticipated to be completed within the legislated time frame of one (1) year. All property owners within the Study Area, and those within 120m from 10 Hughson Drive, will receive Notice of the passing of the Interim Control By-law, and the Local Councillor and Staff will schedule a community information meeting (and any others that may be necessary) to facilitate the Study process.

CONCLUSION

It is recommended that Council direct the undertaking of a study to review the land use and zoning standards in the Study Area as they relate to new residential development and, if necessary, bring forward recommendations setting out proposed new land use and development regulations for properties within the Study Area. It is further recommended that the proposed Interim Control By-law (see Appendix 'A') for the properties in the Study Area be enacted immediately, for a one (1) year period. The Planning Act does provide Council the authority to extend the By-law for a further one year period, if necessary.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

None at this time.

HUMAN RESOURCES CONSIDERATIONS

None at this time.


ALIGNMENT WITH STRATEGIC PRIORITIES:

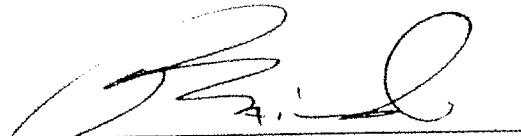
The proposed Study will review land use policies and zoning standards to enable appropriate redevelopment and growth management within the Study Area.

BUSINESS UNITS CONSULTED AND AFFECTED:

Staff have consulted with the Legal Services Department on the draft by-law attached and this report.

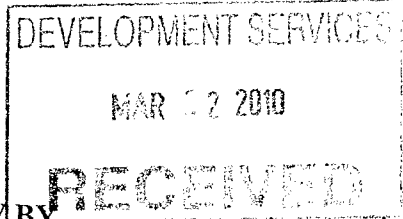
RECOMMENDED BY:


Biju Karumanchery, M.C.I.P., R.P.P.
Senior Development Manager


James Baird, M.C.I.P., R.P.P.
Commissioner of Development Services

ATTACHMENTS:

Appendix 'A': Interim Control By-law for the Hughson Drive/ Lunar Crescent
Study Area



**NOTICE OF THE PASSING
OF AN INTERIM CONTROL BY-LAW**

THE CORPORATION OF THE TOWN OF MARKHAM

TAKE NOTICE that the Council of The Corporation of the Town of Markham passed Interim Control By-law 2010-6 on the 9th day of February, 2010, under Section 38 of the Planning Act.

AND TAKE NOTICE that any person or public body may appeal to the Ontario Municipal Board with respect to the By-law by filing a notice of appeal setting out the objection to the By-law and the reasons in support of the objection with the Clerk of The Corporation of the Town of Markham, not later than 4:30 p.m. on the 12th day of April, 2010. If you wish to appeal to the OMB, a copy of an appeal form is available from the OMB website at www.omb.gov.on.ca. The appeal must be accompanied by a certified cheque or money order in the amount of \$125.00 made payable to the Minister of Finance.

An explanation of the purpose and effect of the By-law, describing the lands to which the by-law applies, and a key map showing the location of the lands to which the by-law applies are attached. The complete Interim Control By-law is available for inspection in the Clerk's office during regular office hours, 8:30 a.m. to 4:30 p.m. Monday to Friday. For more information, please contact Stacia Muradali, Development Services Commission, at (905) 477-7000, ext. 2008.

The Council of the Town of Markham has the authority to extend the period during which the by-law will be in effect to a total period not exceeding two years.

DATED at the Town of Markham this 26th day of February, 2010.

Kimberley Kitteringham, Town Clerk
Town of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

Note: Only individuals, corporations and public bodies may appeal an Interim Control By-law to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or the group on its behalf.

EXPLANATORY NOTE

BY-LAW NO: 2010-6

A By-law to amend By-law 1507, as amended.

Hughson Drive/Lunar Crescent Study Area

LANDS AFFECTED

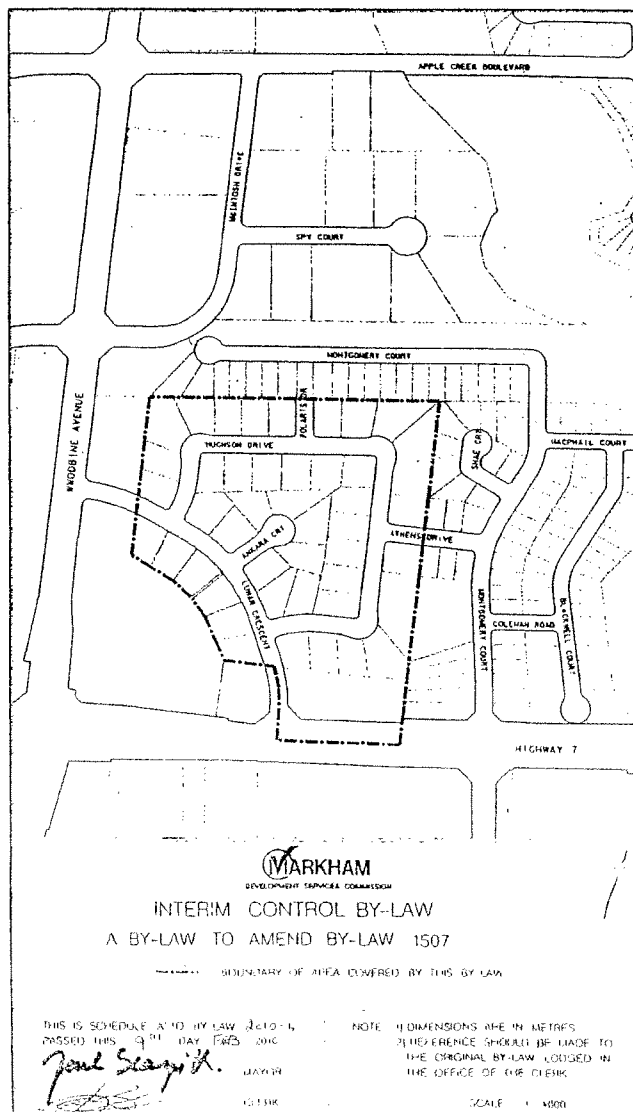
This proposed interim control by-law applies to all properties on Hughson Drive, Lunar Crescent, Ankara Court and two properties on the west end of Athens Drive outlined on Schedule 'A'. This Study Area is located north of Highway 7, east of Woodbine Avenue.

PURPOSE OF THE BY-LAW

To enable a study of land use policies and zoning standards to be undertaken for the Study Area during the term of the by-law.

EFFECT OF THE BY-LAW

To prohibit certain land uses within the Study Area during the term of the by-law.





BY-LAW 2010-6

Interim Control By-law
Section 38 of the Planning Act

A By-law to amend By-law 1507, as amended

WHEREAS Section 38 of the Planning Act, R.S.O. 1990, as amended, provides that Council of a Municipality may pass an interim control by-law to prohibit the use of land, buildings or structures within a defined area (the "Study Area"), where it has directed that a study be undertaken in respect of the land use policies and regulations for that area;

AND WHEREAS the Council of the Corporation of the Town of Markham has directed by resolution dated February 9, 2010 that a Study of land use policies and zoning standards for Hughson Drive, Lunar Crescent, Ankara Court and the west end of Athens Drive (north of Highway 7, east of Woodbine Avenue) be undertaken, and in particular, a review of the appropriateness of existing zoning bylaw in the area and to identify any necessary changes to Town policies and regulations for the area;

AND WHEREAS Council has directed that an interim control by-law applying to the said lands within the Study Area be enacted immediately in accordance with the provisions of Section 38 of the *Planning Act, R.S.O. 1990*;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HEREBY ENACTS AS FOLLOWS:

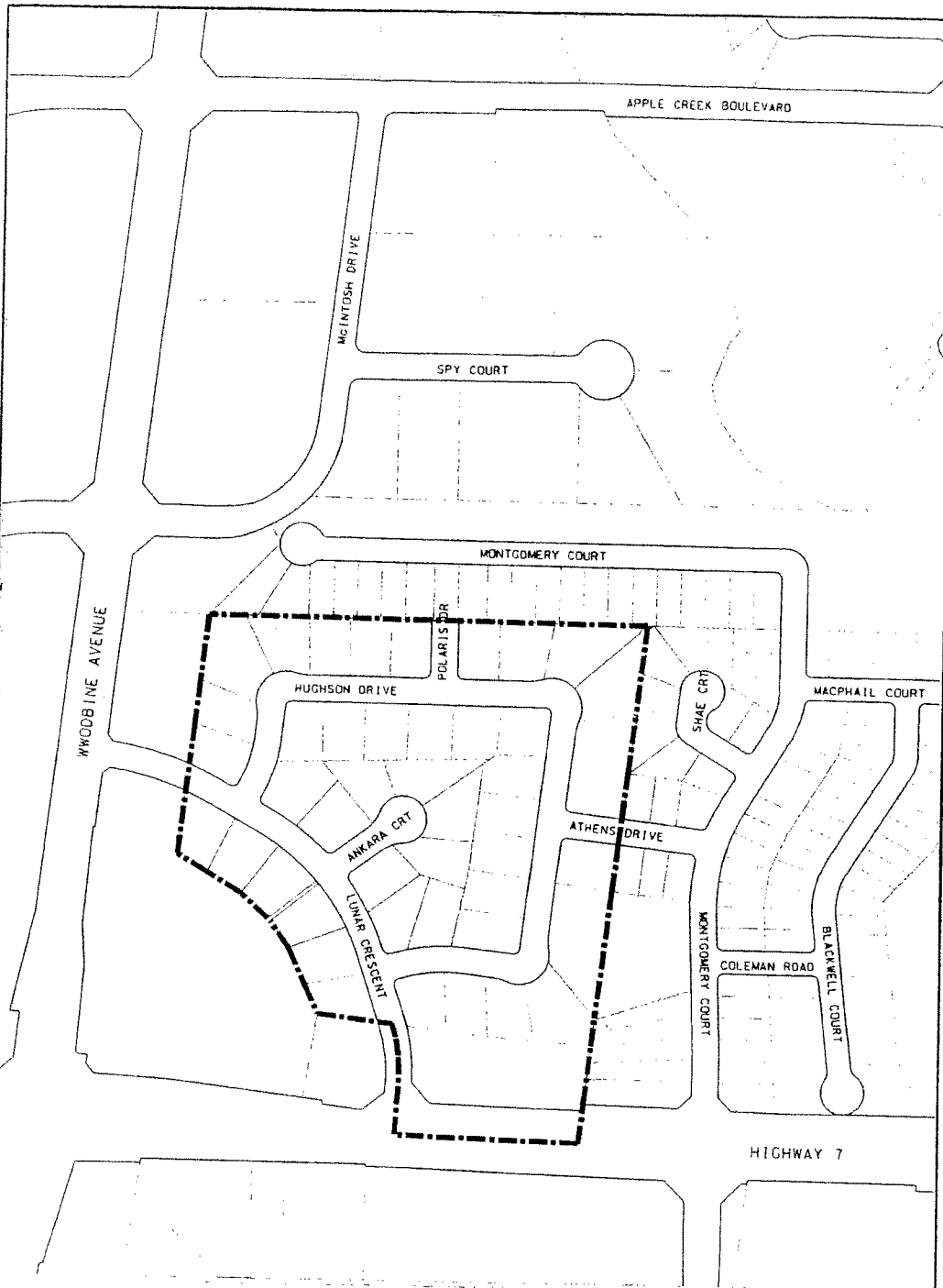
1. The lands shown on Schedule 'A' attached to this by-law are the lands affected by this by-law and are hereby established and declared to be an Interim Control Area;
2. The provisions of this by-law shall apply to the Interim Control Area;
3. Notwithstanding any other by-law to the contrary, no person shall, within the Interim Control Area established by this by-law, use any land, building or structure for the following uses:
 - a) The development of any new single detached dwelling; or
 - b) External renovations, additions, alterations or changes to any existing dwelling or structure on an existing lot of record;
4. For the purposes of this by-law, "existing" means existing on the date of this by-law;
5. For clarity, this by-law does not apply so as to prohibit:
 - a) The alteration and/or enlargement of an existing dwelling or structure on an existing lot of record:
 - i. where a building permit is not required under applicable law, or
 - ii. provided an application for a building permit has been made, or a building permit has been issued and all other applicable regulations have been complied with prior to the passing of this by-law;

- b) Interior renovations to an existing dwelling or structure on an existing lot of record:
 - i. where a building permit is not required under applicable law, or
 - ii. provided an application for a building permit has been made, or a building permit has been issued and all other applicable regulations have been complied with prior to the passing of this by-law;
 - c) the repair or restoration of a single detached dwelling that has been damaged;
 - d) an accessory building or structure, deck or pool provided all applicable regulations have been complied with;
6. This by-law shall be in effect for one (1) year from the date of its passing unless otherwise extended in accordance with the provisions of the *Planning Act*.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
9TH DAY OF FEBRUARY, 2010.


KIMBERLEY KITTERINGHAM
TOWN CLERK


FRANK SCARPITTI
MAYOR



DEVELOPMENT SERVICES COMMISSION

INTERIM CONTROL BY-LAW A BY-LAW TO AMEND BY-LAW 1507

--- BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE 'A' TO BY-LAW 2010-6
PASSED THIS 9TH DAY FEB, 2010

Paul Szepiet
MAYOR
CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
2) REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK

SCALE 1: 4000

101/02/2010 12:01:07 PM

Appendix C

Statistical Analysis of Study Area

Parcel	Address	Front Lot Line	Building Frontage	% of Frontage Occupied	Rear Yard Setback	Left Side Yard Setback	Right Side Yard Setback	Front Yard Setback	Lot Area	Ground Floor Area	Lot Coverage (%)
1	2 Hughson Dr.	35	24.69	70.54%	31.8	1.2	6.76	12.02	1461.5	296.5	20.29%
2	4 Hughson Dr.	31	22.55	72.74%	33.8	1.52	5.27	8.96	1494.2	371.63	24.87%
3	6 Hughson Dr.	34.6	22.83	65.98%	27.4	0	15.51	7.79	2512	144.15	5.74%
4	8 Hughson Dr.	29.7	26.03	87.64%	48	2.7	2.99	6.87	1656.6	307.87	18.58%
5	10 Hughson Dr.	30.5	14.07	46.13%	30.9	11.77	3.72	11.99	1390.7	187.8	13.50%
6	12 Hughson Dr.	30.5	17.05	55.90%	30.9	8.99	4.62	12.16	1391.3	154.03	11.07%
7	14 Hughson Dr.	30.5	10.44	34.23%	30.9	9.67	10.44	7.94	1385.9	251.36	18.14%
8	18 Hughson Dr.	30.5	9.32	30.56%	30.9	11.04	10.22	12.97	1387.2	155.34	11.20%
9	20 Hughson Dr.	34.9	21.81	62.49%	41.2	2.67	11.04	10.78	1693.9	172.61	10.19%
10	22 Hughson Dr.	29.3	23.3	79.52%	69.8	6.01	3.16	7.71	2235.3	310.46	13.89%
11	24 Hughson Dr.	29.6	24.5	82.77%	67.6	8.32	4.69	12.95	2248.8	257.09	11.43%
12	26 Hughson Dr.	36.4	24.17	66.40%	45.3	8.09	5.31	9.7	1755	299.55	17.07%
13	28 Hughson Dr.	35.4	17.46	49.32%	35.4	8.47	9.41	10.69	1554.6	159.45	10.26%
14	9 Hughson Dr.	28.7	9.35	32.58%	33.4	5.84	14.01	14.03	1393.2	255.54	18.34%
15	11 Hughson Dr.	31.7	21.06	66.44%	32	5.43	5.07	14.64	1430.2	184.75	12.92%
16	15 Hughson Dr.	32.9	21.7	65.96%	32.6	5.49	5.49	13.72	1432.3	278.22	19.43%
17	17 Hughson Dr.	33.3	19.22	57.72%	33.5	6.93	6.89	15.68	1415.7	211.46	14.94%
18	19 Hughson Dr.	35.8	21.6	60.34%	28.7	5.74	6.85	15.54	1423	233.22	16.39%
19	25 Hughson Dr.	37.3	31.17	83.57%	37.5	1.66	3.41	3.41	1392	457.94	32.90%
20	3 Hughson Dr.	38.2	12.46	32.62%	19.3	12.99	11.47	5.69	1808.1	251.75	13.92%
21	6 Lunar Cres.	35.2	27.89	79.23%	42.7	7.95	1.31	14.38	1663.5	299.04	17.98%
22	4 Ankara Crt.	28.1	20.47	72.85%	47.2	5.77	4.14	9.24	1446.1	173.84	12.02%
23	6 Ankara Crt.	35.9	16.36	45.57%	79.6	17.55	2.79	8.72	1613	155.55	9.64%
24	8 Ankara Crt.	28.8	24.48	85.00%	61	4.4	2.33	10.24	1653.7	304.04	18.38%
25	27 Hughson Dr.	32.7	25.65	78.44%	21.7	0	5.35	15.01	1392.4	274.99	19.75%
26	29 Hughson Dr.	30.5	19.04	62.43%	30.5	5.02	6.42	14.61	1393	188.35	13.52%
27	31 Hughson Dr.	30.5	25.83	84.69%	30.5	1.04	3.62	7.55	1393	531.43	38.15%
28	10 Ankara Crt.	20.4	13.66	66.96%	36.4	8.65	2.45	9.22	1489.6	131.62	8.84%
29	10 Lunar Cres.	32.5	14.96	46.03%	31.1	14.13	3.34	8.15	1459.5	151.12	10.35%
30	12 Lunar Cres.	25.6	11.24	43.91%	35.2	6.6	8.14	7.06	1498.1	186	12.42%
31	43 Hughson Dr.	30.6	24.7	80.72%	27.1	2.46	3.69	6.88	1481.2	270.48	18.26%
32	33 Hughson Dr.	30.5	23.54	77.18%	30.5	1.15	5.66	12.8	1432.2	228.13	15.93%
33	41 Hughson Dr.	29	9.83	33.90%	29.7	6.7	12.46	13.99	1441.8	266.59	18.49%
34	32 Hughson Dr.	35.5	28.61	80.59%	36	6.85	0	13.12	1565	245.68	15.70%
36	38 Hughson Dr.	29.4	8.56	29.12%	20.6	4.2	1.35	14.06	2188.8	383.85	17.54%
37	40 Hughson Dr.	30	20.41	68.03%	34.1	4.95	5.21	10.01	1410.4	162.64	11.53%
38	42 Hughson Dr.	30.4	20.33	66.88%	31.1	3.49	6.65	12	1408.5	271.2	19.25%
39	44 Hughson Dr.	38.8	15.12	38.97%	45.4	12.13	2.34	12.13	1409	167.98	11.92%
40	3 Lunar Cres.	38.9	24.96	64.16%	36.4	4.9	3.02	13.54	1579.8	241.55	15.29%
41	5 Lunar Cres.	37.6	20.4	54.26%	30.4	7.01	7	15.54	1609.7	175.85	10.92%
42	7 Lunar Cres.	37.1	21.63	58.30%	28	5.12	6.06	16.5	1565	206.04	13.17%
43	9 Lunar Cres.	36.6	26.6	72.68%	24.7	2.57	2.64	15.55	1481.1	224.92	15.19%
44	11 Lunar Cres.	36.6	21.51	58.77%	30.6	3.74	9.16	13.59	1566.2	202.88	12.95%
45	13 Lunar Cres.	34.8	21.21	60.95%	24.4	2.12	7.05	13.64	1354.6	173.24	12.79%
AVG.		32.54	20.04	61.66%	36.04	5.98	5.88	11.43	1567.19	239.95	15.57%

Appendix D

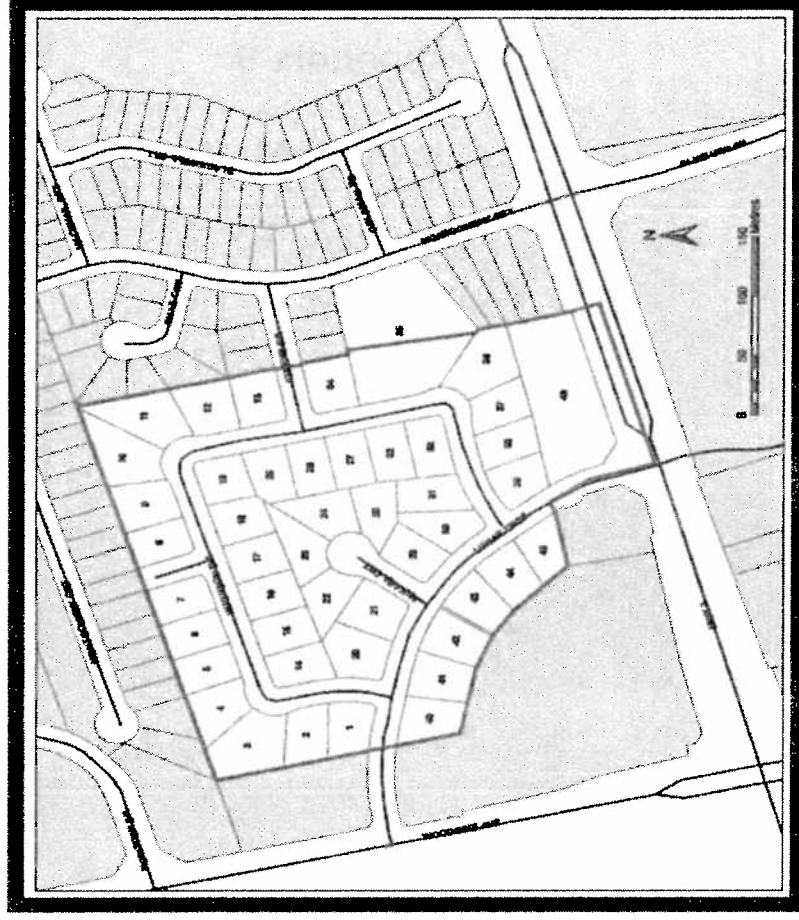
Public Presentation

Hughson/Lunar/Ankara Land Use Study

PURPOSE

APRIL 2010

Intent of study is to review the neighbourhood and make recommendations on whether new lot creation should be permitted and what appropriate zoning standards should be implemented.



PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

LOT CREATION

OPTIONS

MERIDIAN
A LAND CONSULTING FIRM

MARKHAM

1

Hughson/Lunar/Ankara Land Use Study

APRIL 2010

HISTORY

Subdivision Approved 1954

- Subdivision of 44 residential lots were created in 1954 in a predominantly rural area.
- Subdivisions to the north and east were developed in the 1980's.
- No new lots have been created in the subdivision since it existed.

Since 1954, some changes have occurred:

- 6 minor variance applications have been approved in the area.
- 5 out of the original dwellings were replaced since 1954.
- Application to create a new lot (10 Hughson Dr.) has been refused by the Town.

PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

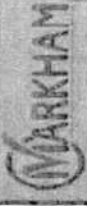
POLICY

INTERPRETATION

OPTIONS



MERIDIAN
LAND & FOREST SERVICE

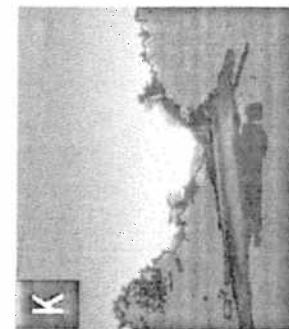
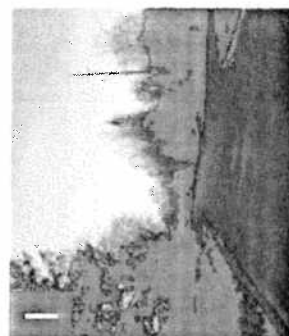
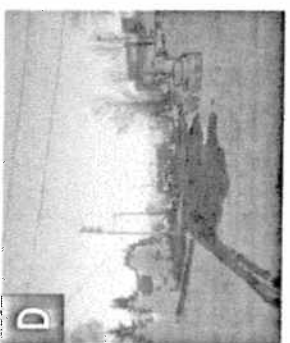
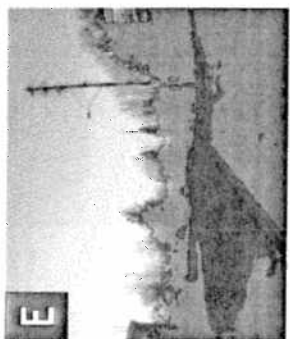
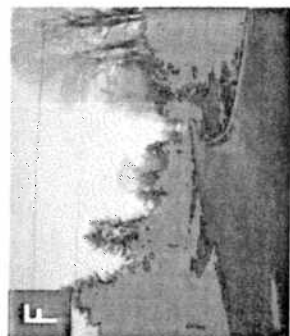
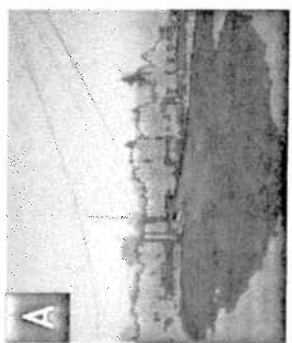
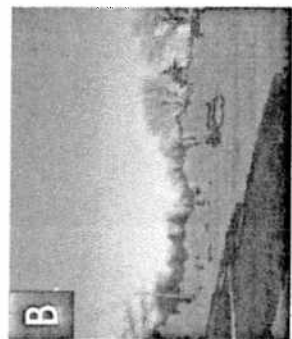
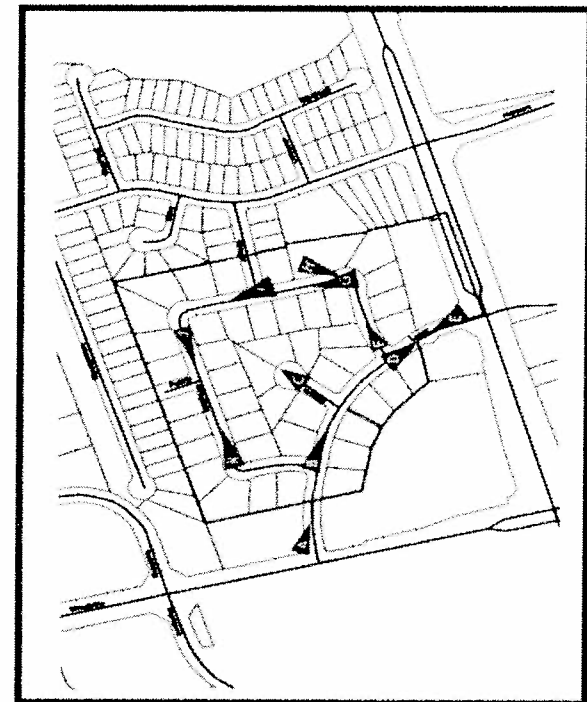


CONTEXT MAP

Huchson/Lunar/Ankara Land Use Study

APRIL 2010

VIEWS



PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

EDUCATION

OPTIONS



Huchson/Lunar/Ankara Land Use Study

APRIL 2010

EXISTING BUILT FORM



PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

LEGISLATION

OPTIONS



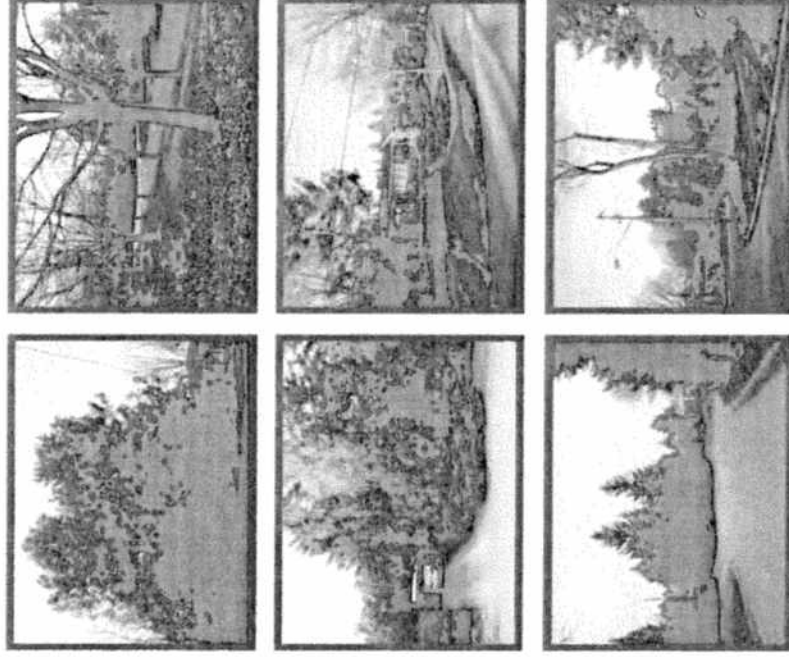
Hughson/Lunar/Ankara Land Use Study

APRIL 2010

NEIGHBOURHOOD CHARACTER

The main defining elements of character are outlined below:

1. Lot size
2. Vegetation - size, location, age, variety
3. Building - size, location, orientation, materials
4. Architectural style
5. Age of neighbourhood
6. Right-of-way treatment



Hughson/Lunar/Ankara Land Use Study

APRIL 2010

DESCRIPTION

	Neighbourhood Averages for the 44 Residential Lots
Building Frontage	20.0 m (65.6 ft)
Lot Frontage	32.5 m (107 ft)
% of Frontage Occupied By Building	61.7%
Building Footprint	239.9 m ² (2,580 ft ²)
Lot Area	1,567.2 m ² (16,900 ft ²)
Lot Coverage	15.5 %
Front Yard Setback	11.4 m (37.4 ft)
Side Yard Setback	5.9 m (19.4 ft)

- Study Area consists of 46 parcels and is 10.5 hectares.
- Subdivision consists of relatively large lots with significant setbacks from neighbouring lots and streets.
- 82% of dwelling units are one storey.
- About half have a one car garage and single lane driveway.
- Area consists of large mature trees and other vegetation.

PURPOSE

HISTORY

MAPS & VIEW

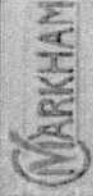
CHARACTER

DESCRIPTION

POLICY

CO-ORDINATION

OPTIONS



Huchson/Lunar/Ankara Land Use Study

POLICY & ZONING

APRIL 2010

POLICY

- The Official Plan designates the residential component of Study Area as Urban Residential

ZONING

- Zoning By-law 1507 applies to the area and was enacted in 1954 at the same time as the subdivision was registered. Zoning permits single detached dwellings subject to the following:
 - Minimum ground floor area of 92.9 sq. m or 1,000 sq. ft for one storey
 - Minimum ground floor area of 65.03 sq. m or 700 sq. ft for two storey
 - Minimum setback to front lot line is 9.1 m or 30 ft
 - Minimum setback to lot lines is 3.0 m or 10 ft.
- Currently, there is no lot coverage restriction or floor space index restriction

PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

TOUCHSCREEN

OPTIONS



Hughson/Lunar/Ankara Land Use Study

APRIL 2010

LOT CREATION

What would happen if each lot was permitted to be divided into two lots?

Existing Subdivision



If new lots are permitted



PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

LOT CREATION

OPTIONS

Hughson/Lunar/Ankara Land Use Study

POSSIBLE BUILT FORM

APRIL 2010

If each lot was permitted to be divided into two lots



PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

LOT CREATION

OPTIONS



Hughson/Lunar/Ankara Land Use Study

APRIL 2010

OPTIONS

Option 1

No new lots permitted
and existing zoning
remains as is.

Option 2

Develop new zoning
standards but not permit
any new lots

Option 3

Develop new zoning
standards and permit new
lots

PURPOSE

HISTORY

MAPS & VIEW

CHARACTER

DESCRIPTION

POLICY

IMPLEMENTATION

OPTIONS



MERIDIAN
PLANNING CONSULTANTS

Appendix E

Summary of PPS and Its Implications on the Study Area

APPENDIX E

THE IMPLICATIONS OF PROVINCIAL POLICY ON THE STUDY AREA

Both the Province and the Region of York require Markham to accommodate a significant portion of future growth through intensification inside the already built-up area of Markham, rather than on Greenfield lands at the edge of the built up area.

While intensification has already been occurring in Markham, there is an expectation that the rate of intensification in the Town will increase as the Town's population increases and the demand for alternative forms of housing increase. It is also expected that improved transit services, changing demographics, changing land economics, the establishment of additional employment in Markham and Markham's location itself will make intensification a more attractive prospect for developers.

The arguments typically in favour of intensification are that new development in built up areas will allow for the optimization of existing infrastructure and the more efficient and economical provision of services. The creation of diverse communities, more vibrant central areas, and higher levels of service, with a range of uses and opportunities also occurs when the number of people and jobs increases in built-up areas. Yet there are also arguments against intensification: increased traffic and density in defined areas can alter neighbourhood character, affect the stability of established communities, and over-stretch the capacity of existing infrastructure and facilities.

The Provincial Policy Statement defines development as the *"creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the Planning Act."* Because the proposal at 10 Hughson Drive is for the creation of a new lot, any decision made on the application has to be consistent with the Provincial Policy Statement in accordance with the Planning Act. In addition, any recommendations made in this report must also be consistent with the Provincial Policy Statement. Given that the proposed development could be considered as intensification, the focus of the policy review in this report is on this form of development.

Increasing the amount of development within an already urbanized area has become a prevalent theme in planning reform in Ontario. Intensification was an "encouraged" form of development in the 1996 Provincial Policy Statement (PPS):

"Provision will be made in all planning jurisdictions for a full range of housing types and densities to meet projected demographic and market requirements of current and future residents of the housing market area by...encouraging all forms of residential intensification in parts of built-up areas that have sufficient existing or planned infrastructure to create a potential supply of new housing units available from residential intensification" (PPS 1996, Section 1.2.1.4).

With the release of the PPS (2005), the concept of intensification was expanded to now become a “required” component of municipal planning programs:

“Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs” (PPS (2005), Section 1.1.3.3).

“Planning authorities shall establish and implement minimum targets for intensification and redevelopment within built-up areas. However, where provincial targets are established through provincial plans, the provincial target shall represent the minimum target for affected areas” (PPS (2005), Section 1.1.3.5).

“Planning authorities shall provide for an appropriate range of housing types and densities to meet projected requirements of current and future residents of the regional market area by:

- e) establishing development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety” (PPS (2005), Section 1.4.3(e)).*

Clearly, the Province is expecting municipalities to place greater emphasis on promoting intensification in all urban areas across Ontario. In the GTA, this policy requirement is translated in the Growth Plan for the Greater Golden Horseshoe into a general target for upper-tier municipalities to meet:

“By the year 2015 and for each year thereafter, a minimum of 40 per cent of all residential development occurring annually within each upper-tier municipality will be within the built-up area” (Growth Plan, Section 2.2.3.1).

Given the current Provincial Policy framework, which directs that significant changes occur in existing urban areas to make more efficient use of their infrastructure, there is now an expectation that municipal Official Plans establish the basis and context for change and are expected and encouraged to promote change in designated areas. The key factor to consider with respect to intensification is where it should be directed. The Preamble to the PPS in this regard indicates the following;

“It recognised that the wise management of development may involve directing, promoting or sustaining growth. Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns.” (PPS (2005), Part IV).

“Planning authorities shall establish and implement planning policies to ensure the orderly progression of development within designated growth areas and the timely provision of the infrastructure and public service facilities required to meet current and projected needs.” (PPS (2005), Section 1.1.3.8)

Clearly, the Province is expecting municipalities to place greater emphasis on promoting intensification in areas intended for growth (designated growth areas).

To further articulate how and where growth and development is to occur in the Greater Golden Horseshoe, the Province released a Growth Plan for the area in 2006. It provides a framework for implementing a vision for building stronger and prosperous communities, while at the same time making efficient use of public infrastructure.

Section 2.2.2.1 a) and b) in the Growth Plan state the following about intensification:

“Population and employment growth will be accommodated by -

- a) directing a significant portion of new growth to the built-up areas of the community through intensification*
- b) focusing intensification in intensification areas”*

Intensification is defined in the Growth Plan as it is in the PPS as shown below:

The development of a property, site or area at a higher density than currently exists through:

- a) redevelopment, including the reuse of brownfield sites;*
- b) the development of vacant and/or underutilized lots within previously developed areas;*
- c) infill development; or*
- d) the expansion or conversion of existing buildings.*

Section 2.3.2.6 of the Growth Plan then directs municipalities to develop an intensification strategy as set out below:

"All municipalities will develop and implement through their Official Plans and other supporting documents, a strategy and policies to phase in and achieve intensification and the intensification target. This strategy and policies will:

- a) be based on the growth forecasts in Schedule 3, as allocated to lower-tier municipalities in accordance with policy 5.4.2.2;
- b) encourage intensification generally throughout the built-up area;
- c) identify Intensification Areas to support achievement of the intensification target;
- d) incorporate the built boundary delineated in accordance with Policy 2.2.3.5;
- e) recognize urban growth centres, intensification corridors and major transit station areas as a key focus for development to accommodate intensification;
- f) facilitate and promote intensification;
- g) identify the appropriate type and scale of development in Intensification Areas;
- h) include density targets for urban growth centres where applicable, and minimum density targets for other Intensification Areas consistent with the planned transit service levels, and any transit-supportive land-use guidelines established by the Government of Ontario;
- i) plan for a range and mix of housing, taking into account affordable housing needs; and,
- j) encourage the creation of secondary suites throughout the built-up area".

The Growth Plan identifies areas across the Greater Golden Horseshoe to accommodate intensification and encourages this development to occur in the following areas:

1. *Urban Growth Centres;*
2. *Intensification Corridors;*
3. *Major Transit Station Areas; and,*
4. *Other major opportunities that may include infill, redevelopment, brownfield sites, the expansion or conversion of existing buildings and grey fields.*

These areas are intended to be focal areas for investment in institutional and region-wide public services and are to accommodate a significant share of the population and employment growth. An Urban Growth Centre is an area where a significant amount of investment and growth is to be directed, and one such area in Markham is located in Markham Centre, located to the east of the Study Area, in the vicinity of Highway 7 and Warden Avenue.

Intensification Corridors are defined as:

"A thoroughfare and its associated buffer zone for passage or conveyance of vehicles or people. A transportation corridor includes any of the following:

- a) *Major roads, arterial roads, and highways for moving people and goods;*
- b) *Rail lines/railways for moving people and goods;*
- c) *Transit rights-of-way/transitways including buses and light rail for moving people."*

Major Transit Station Areas are defined as:

“The area including and around any existing or planned higher order transit station within a settlement area; or the area including and around a major bus depot in an urban core. Station areas generally are defined as the area within an approximate 500 metre radius of a transit station, representing about a 10-minute walk.”

Section 2.2.5 of the Growth Plan discusses Major Transit Station Areas and Intensification Corridors. These areas are to be identified in Official Plans and are to achieve increased residential and employment densities that support and ensure the viability of existing and planned transit service levels. They are also to achieve a mix of residential, office, institutional, and commercial development wherever appropriate.

Given the current Provincial policy framework, which directs that significant changes occur in existing urban areas to make more efficient use of infrastructure, there is now an expectation that municipal Official Plans establish the basis and context for where change is expected and encouraged and where change is not expected and therefore discouraged. In our opinion, the Growth Plan is very explicit on where intensification is to be directed, and they are generally those areas on major roads, in central areas or near major transit station areas. This means that there is no expectation that all other areas be required to intensify, unless a municipality decides it would be appropriate to do so.

One of the components of any decision on the identification of change/no change areas is the character of an existing neighbourhood or area and the impact change may have on that character. Once the character has been identified, the test in determining whether change can occur in an area is the degree to which change is or can be made compatible with existing development and the character of existing development.

A further component that has an impact on where change is appropriate is location. For example, encouraging intensification in downtown areas and along major transit corridors is generally considered to be appropriate, since it is in these areas where there is a higher expectation that development and redevelopment that utilizes infrastructure will occur. In addition, these areas have generally been in transition for many years as a result of their location. Other areas away from downtowns and major roads have generally been resistant to change and as a result have remained relatively ‘stable’.

Appendix F

Growth Strategy

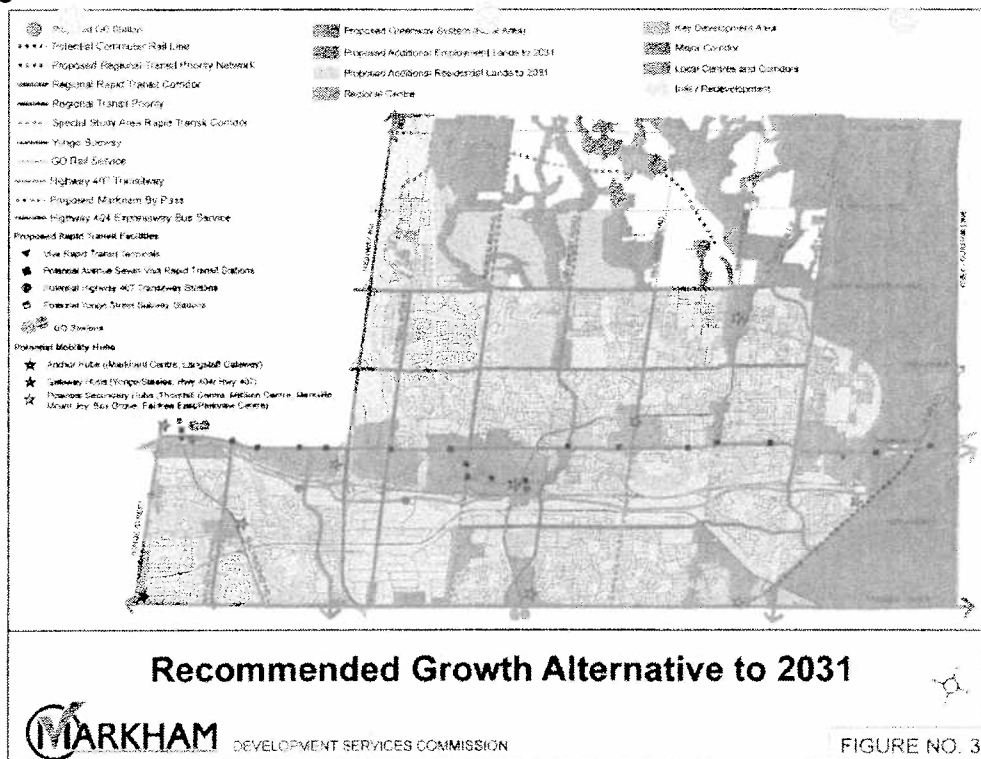
APPENDIX F TOWN OF MARKHAM GROWTH STRATEGY

As the Greenfield land supply becomes more limited generally in the Greater Toronto Area and the number of proposals for higher density residential development increase in Markham, the Town requires a clearly articulated intensification strategy to ensure the 'right' type of intensification occurs in the 'right' places and results in the development of a sustainable and complete community.

The Town of Markham has prepared such a strategy for Growth Management, intended to address the policy requirements for intensification established by the Province of Ontario and the Region of York. This strategy was endorsed in May 2010. The Town's Growth Strategy is intended to identify where, and how much growth should occur within the Town of Markham. It is not intended to direct intensification to established residential areas, except in the case of compatible minor infill and second suites where permitted, consistent with Town policies. Furthermore, new development within intensification areas is intended to be appropriate in scale and complement existing and adjacent development to the Town's existing residential areas.

The Town has expressed the preference through its strategy to accommodate as much growth as may be reasonable within the current settlement area in to reduce the need to expand the settlement area. In this regard, the Town has proposed to accommodate more intensification than required by the Region in a number of areas as shown on **Figure F1**. These areas include, Markham Centre, Avenue 7 and Yonge Street Corridors, including the Richmond Hill/Langstaff Gateway, the Galleria, Cornell Centre and the Yonge Steeles Corridor. The Hughson/Lunar/Ankara Study Area is not located within a designated intensification area.

Figure F1 - Potential Intensification Areas



In terms of the amount of intensification anticipated, the Region allocated 62,000 new dwelling units to the Town of Markham between the time period of 2006 to 2031. Markham requested that the number be increased to 72,000 new dwelling units, which exceeds the Region's allocation. The Growth Plan requires 40% of new housing should be within the Built Boundary through intensification between 2006 to 2031. The Region established a goal of 52% for the Town of Markham, but Markham Council further established a target of 60% for the same time period.

Table F1 summarizes the dwelling unit targets set out in the Markham Growth Strategy to accommodate anticipated growth to the year 2031.

Table F1 - Location of New Dwellings Units by 2031

Areas of Interest	Number of Additional Dwelling Units (2006-2031)
Within current Built Boundary	43,200
Within current urban area but outside Built Boundary	16,200
Within extension of settlement area	12,800
Total Additional Units (2006-2031)	72,200

Table F2 summarizes where and how much of the growth is expected as intensification.

Table F2 - Allocation of Intensification by Location

Intensification Category and Intensification Areas	Combined additional Forecast Units (2006-2031)
Regional Centres Markham Centre, Richmond Hill/Langstaff Gateway	Up to 18,800 units
Key Development Areas Cornell Centre, Yonge-Steeles Corridor, Markhamville, Commerce Valley/Galleria, Avenue 7 corridor/Woodbine, Yonge Corridor North	Up to 8,350 units
Major Corridors Markham Road Corridor-Armadale, Markham Road Corridor- Mount Joy, Steeles Ave. East Corridor, Avenue 7 corridor- Village Parkway, Kennedy Corridor- South Unionville	Up to 5,250 units
Location Centre/Local Corridors Miliken Centre, Fairtree East/Parkview Centre, Cathedraltown Centre, Kennedy Road Corridor North, Thornhill Centre, Cornell North Centre	Up to 4,750 units
Total	Up to 37,150 units

These units account for about 86% of the total 43,200 additional units that contribute to the 60% intensification target. It is noted that the Avenue 7 Corridor/Woodbine intensification area does not extend to the Study Area.

Appendix G

Relevant Official Plan Policies

APPENDIX G TOWN OF MARKHAM OFFICIAL PLAN

The Town of Markham Official Plan was partially approved by the Province on April 5, 1993 with further approvals granted later that year, also by the Province. While it is anticipated that the Official Plan will be updated to implement the Town's recent Growth Strategy, the current Official Plan continues to apply to all Planning Act applications.

The Hughson/Lunar/Ankara Study Area is subject to the non - statutory Brown's Corners Secondary Plan (North East) (PD13-3).

Section 2 of the Markham Official Plan contains the general policies that apply to all land uses in the Town. In this regard, Section 2.1 a) contains the four goals which collectively provide the basis for the policies in the Official Plan. These four goals are set out below:

- "i) to accommodate the population and development anticipated for the Town in the planning period;*
- ii) to provide the necessary services and facilities required by the present and future population;*
- iii) to maintain and strengthen individual community identities and the identity of the Town community as a whole;*
- iv) to provide for anticipated future growth within the confines of a compact urban envelope"*

The above goals recognize that the population of the Town of Markham will continue to expand and that the services required for that population will need to be provided. Goal iii) does have an impact on the Study Area, since it indicates that one of the goals of the Town is to *"maintain and strengthen individual community identities."*

The policies within later sections of the Official Plan are intended to implement the goals identified above. In this regard, Section 2.1.1. d) indicates that *"the Town shall endeavour to maintain and improve a physical character and appearance of existing communities"*. It is further noted in Section 2.1.1 e) that *"it will be an objective of Council to foster the development of an environment that will enhance the state of well being and the quality of life for residents of the Town"* With the implementation of these goals, Section 2.1.2 b) indicates that *"Council will study ways and means of improving existing communities."* The planning and design work being carried out for the Study Area in the context of this Planning Report is one example of a process that is designed to improve or maintain existing communities or neighbourhoods in the Town.

Section 2.2 of the Official Plan contains policies on the environment and natural resources. Within this section, it is stated in Section 2.2 c) i) that *"every effort will be made to enhance urban amenity through appropriate location of various land uses,*

performance standards, and site plan control approval.” The Town’s infilling by-laws (discussed later in this report) are also examples of how the Town has attempted to implement the Official Plan in this regard.

Section 2.3 of the Official Plan deals with visual appearance. One of the Town’s objectives in this regard is *“to encourage good building and landscape design in sympathy with the distinct character of the communities and within the natural features of the landscape.”* There are also a number of policies in Section 2.3.1 that indicate that the Town may establish design objectives and guidelines for any part of the urban area and that the emerging character of the surrounding area and the location characteristics of the site be considerations when applications for development are submitted. In implementing this section, Section 2.3.2. b) indicates that *“in applying the policies of this subsection in any given area, the Town may consult and seek the co-operation of local residents, ratepayers associations, local business associations etc. as appropriate.”* The policy then concludes with a requirement that site plan control be applied to implement the policies of this section. To some extent, the process initiated by Council in 2010 in the Study Area is an example of neighbourhood specific planning processes.

Section 2.7 of the Official Plan deals with land severances. It is indicated in this section that the provisions of Section 51(24) of the Planning Act are to be considered in the context of any application for consent. While this section of the Planning Act is relatively general and focuses on the health, safety, convenience and welfare of present and future inhabitants of the municipality, it does indicate that regard should be had to:

- “f) the dimensions and shapes of the proposed lots; and,*
- g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures to be erected on it and the restrictions, if any, on adjoining land.”*

Both of the above sections of the Planning Act are relevant in the consideration of applications to create new lots in the Study Area, since the proposal for any new lots within the Study Area will be significantly different from the sizes and dimensions of lots established originally in the Study Area beginning in 1954. These Planning Act provisions have the effect of requiring decision makers to:

- Determine whether the lot frontage and area is appropriate for the use proposed; and,
- Determine whether the lot frontage and area is compatible with the lot frontages and areas of other lots in the area.

Since lot frontage and area have an impact on the number of buildings and their size, the determination of whether the lot frontage and area proposed is consistent with other lots in the area is another factor in determining what impact a proposal may have on the character of the area.

It is noted in Section 2.7.1 b) i) of the Official Plan also deals with the same subject matter as the Planning Act since it states that *“regard shall be had to the compatibility of the size, shape and proposed use of the lot to be created with the present and proposed uses in the adjacent areas.”* This policy is intended to assist the approval authority in making decisions on whether a new lot and its size and configuration is compatible with other lots adjacent to the lands under application.

Section 2.7.2 of the Official Plan contains special provisions for land severances in the urban area. The policies in this section indicate *“where a severance is proposed, and it has the potential to lead to further severance applications on the same lot, a Plan of Subdivision is required”*. In addition, these policies indicate that severances, if approved should not have the effect of compromising the development of other adjacent lands. However, there is one policy in Section 2.7.2 b) that has an impact on the current land use study for the Study Area. This section indicates that *“severances will be considered for the purpose of infilling in an existing urban area, but shall not extend the existing urbanized areas. Infilling which economizes the use of urban space without disturbing the pattern of the existing development, or perpetuating an undesirable pattern of development, or prejudicing the pattern of future development, shall be considered acceptable.”*

This section (Section 2.7.2 b) has the effect of establishing the acceptability of proposals which *“economize the use of urban space”* provided certain conditions are met. It is also further noted that the policy includes the term ‘shall’, which establishes that such proposals are acceptable provided the conditions are met. Of the three conditions, the condition indicating that such a severance should not *“disturb the pattern of the existing development”* has an impact on any planning process or development application that proposes a pattern of development that is different from what exists in the area. One possible interpretation of what a ‘disturbance’ is in the context of this policy is a circumstance where the sizing of the proposed lots and the nature of the use proposed is not consistent with the sizes of adjacent lots and existing uses. However, it is noted that this policy is one of many to consider in making a decision on an application.

Section 3.0 contains the land use policies for each of the land use designations established by the Official Plan. Section 3.1 b) contains the objectives of the Town in this regard and two objectives in particular have an impact on the land use study being prepared for the Study Area. These objectives are to *“obtain the most desirable, orderly and efficient pattern of land uses possible for the Town”* and *“to provide adequate land for the anticipated future population and its supporting uses and employment areas including the more efficient use of developed land through the process of intensification.”*

All of the lands in the Study Area are designated Urban Residential and are therefore subject to Section 3.3 of the Official Plan. The predominant use of land in this designation shall be for housing and related purposes, including accessory apartments. Within the low density residential category a full range of low density housing forms are permitted, including single detached dwellings, semi-detached dwellings and townhouse dwellings.

Section 3.3.3 of the Official Plan contains the general urban residential policies and it is in this section where it is indicated in sub-section a) that *“the Town shall seek to maintain and improve the quality of the existing residential development in areas which are designated for continued residential use in this Plan.”* The lands subject to this land use study are designated for continued residential use.

On the basis of the above, it is clear that there are a number of policies within the Official Plan that combine to indicate that there is a public interest in maintaining the character of existing communities, while providing for opportunities for intensification.

The Hughson/Lunar/Ankara Study Area, also called the Arnleigh Heights subdivision is subject to the non statutory Brown's Corners Secondary Plan (PD13-3), which was adopted by the Town in January of 1981. This Secondary Plan focuses on the North East Quadrant of the Brown's Corners Planning District. Given the date of when the Secondary Plan was adopted, it is clear that some of the policies are outdated and may need refining. However, the Secondary Plan establishes the basis for the long term planning of the area.

The majority of the Secondary Plan Area is designated for Industrial - Commercial uses. Some wooded areas adjacent to the Rouge River are included in the Open Space designation and a neighbourhood park, approximately 1.1 hectares is a main opportunity for recreational open space activities. The Markham Official Plan designates the Arnleigh Heights Subdivision as Urban Residential (low density). Section 3 e) states:

“The Official Plan designates Arnleigh Heights subdivision as URBAN RESIDENTIAL and envisages a limited expansion to the area.”

Section 6.2.1 discusses the Urban Residential (Low Density) housing category:

- “a) In accordance with the provisions of Section 3.3.2(a) of the Official Plan, Low Density Housing shall be the only category permitted within the area designated Urban residential (Low Density)*
- b) Notwithstanding the provisions of Section 3.3.2(a)(i) of the Official Plan, single family detached dwellings only shall be permitted.*
- c) A landscaped buffer strip has been provided between the residential uses and the industrial uses which will provide a minimum separation between industrial and residential buildings of 60 m.”*
- d) Proponents of residential development in this area may be required to submit a detailed noise impact analysis, discussing possible adverse noise effects associated with vehicular traffic noise, noise from adjacent industrial operations, and/or aircraft noise associated with operations at Buttonville Airport. If necessary, noise control measures shall be provided to the satisfaction of the Town of Markham and the Ministry of the Environment.”*

Appendix H

Decision of Ontario Municipal Board

The policies indicate that development is clearly to be low density in nature. In addition, an effort was made to segregate the commercial and industrial area from the residential area.

ISSUE DATE:

Mar. 17, 2008



PL070251

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Applicant and Appellant: Rosa Estanol
Subject: Consent
Property Address/Description: 10 Fairlea Avenue
Municipality: City of Vaughan
Municipal File No.: B-005/07
OMB Case No.: PL070251
OMB File No.: C070071

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: Rosa Estanol
Subject: Minor Variance
Property Address/Description: 10 Fairlea Avenue
Variance from By-law: 1-88
Municipality: City of Vaughan
OMB Case No.: PL070251
OMB File No.: V070128
Municipal File No.: A-067-07

APPEARANCES:

Parties

Rosa Estanol
City of Vaughan
A. Baldassarra

Counsel

A. Stewart
C. Storto
B. Horosko

Participants

L. Mahaney
K. Simpson

DECISION DELIVERED BY D. L. GATES AND ORDER OF THE BOARD

This hearing commenced on November 27, 2007, at the City Hall in Vaughan, continued that evening, and was completed by a further one day hearing on December 18, 2007. During the hearing the Board heard from four professional planners, a number of residents, and received into evidence over 20 Exhibits. As Ms. Storto put it, this was not a typical severance hearing.

This hearing concerned an appeal from a decision of the City of Vaughan's Committee of Adjustment to deny a severance of 10 Fairlea Avenue in to two lots and to deny a variance to allow each severed lot to be occupied by a single family residence. Fairlea Avenue is located in the easterly part of Vaughan known locally as the Uplands Community, and is about two blocks west of Yonge Street, and runs parallel to it about two blocks south of Uplands Avenue and Langstaff School.

A storey-and-one-half dwelling is erected on the subject lot that faces Fairley Avenue and has its driveway and front door access on to Fairley Avenue. 10 Fairley is legally described as the whole of Lot 87 on Plan R-3765, (the "Plan"). There was uncontested evidence that this plan of 114 lots was registered in 1949 and no residential lot has ever been severed on this plan to date. Lots 1-8 front on the westerly side of Yonge Street and are primarily used for commercial purposes.

Lot sizes on this old plan are exceptionally generous compared to today's standards and Lot 87 is no exception. Being a corner lot it has 30m (100 ft.) frontage on Thornhill Avenue and 91.44m (300 ft.) flankage on Fairlea Avenue. The lot has a 76.20m (250 ft.) westerly side yard lot boundary and a southerly rear yard lot boundary of 32.41m (106.38 ft.).

The most southerly and westerly street within the Plan, Riverside Blvd., is unique for its time in that the plan shows it has extra width at roughly 32m and has boulevards (shown as blocks on the Plan) down the centre. Along both sides of Riverside Blvd. the lots appear from the plan to be at least double the size (although not double the frontage) of the lots elsewhere within the Plan.

Most of the other lots within the plan are rectangular in shape and have about 30m frontage and are about 45-50m in depth.

The only real exception to this general description of the plan occurs in the south-westerly portion of the plan that forms a triangular self-contained parcel bounded by Riverside Blvd., Fairlea Avenue, and Thornhill Avenue. All of the lots within this triangular area front on to the north-easterly side of Riverside Blvd. except two that legally (under the Zoning By-law) front on to Thornhill Avenue: Lot 87 being the corner lot known municipally as 10 Fairlea, and the neighbouring interior lot to the west fronting on to Thornhill Avenue, Lot 88.

Within the triangular portion of the Plan, the lots fronting on to Riverside are exceptional not only because of their size, but also because of their irregular shape and even larger frontages. Lots 87 and 88, while being of more rectangular shape, complement these lots, all being of similar large areas.

Technically within this triangular block, no lot fronts on to Fairly Avenue even though as mentioned above the existing house at 10 Fairlea Avenue faces on to Fairlea Avenue and its front door and garage provide access to Fairlea Avenue. There are four lots on the east side of Fairlea Avenue with dimensions of about 30m by 45m that have homes erected on them that face 10 Fairlea Avenue and the proposed lot.

The Board understands that the proposal is to divide 10 Fairlea Avenue so that the existing house may be retained on about 60% of Lot 87, and sell the balance being the southerly 40%, having an average frontage and depth of roughly 30m, as a building lot. The proposed new lot appears from the registered plan to be quite a bit smaller than any other lot on the plan. The existing house and proposed new house both will face Fairlea Avenue.

There are two plans within the same general area containing smaller lots registered north of Uplands Avenue: Plan M-0681 registered in 1955, and M-1279 registered in 1969.

The Board heard evidence of the difference in the Uplands community north of Uplands Avenue as compared to the earlier development to the south. The ambience of the community north of Uplands Avenue is clearly different from the community to the south. To the north there are curbs, gutters, and sidewalks with newer homes on smaller lots. To the south there is more of a country feel with no curbs, gutters, or sidewalks, but with ditches, larger lots, and centre landscaped boulevards along the

more southerly portion of Riverside Blvd. To the west of the lots fronting on to Riverside Blvd., both north and south of Uplands Avenue, there are two golf courses with a branch of the Don River meandering through. These uses also enhance the ambiance and spacious feel of the area.

The City, Ms. A. Baldassarra, an abutting neighbour, and the two Participants oppose the severance.

Mr. P. Smith's Planning Evidence

Mr. P. Smith, a professional planner, testified in support of the severance. He characterized the major issue here as follows: how does the proposed new lot and retained lot fit into the area?

Mr. Smith reviewed provincial policy including the provisions of the *Planning Act*, Places to Grow, 2005 Provincial Policy Statement (PPS), and the Region of York's Official Plan, and opined that this severance was consistent with all, had regard for all, and to a limited extent implemented them by meeting goals of intensification with the creation of an additional lot. Mr. Smith clarified that the proposal is in the "spirit" of provincial growth plans. Mr. Smith admitted in cross-examination that the subject area is not a *designated growth area* under the 2005 PPS.

His review of the City's Official Plan began with OPA 210 which came into force November 4, 1987. This plan designated the area low density residential to be used for single family housing at a density not to exceed 22 units per ha. Here he calculated the density after the severance to be 8.36 units per ha. This calculation includes the area of the local streets and residential collector roads. He concluded that after the severance the density was still quite low. He conceded in cross-examination that the density figures are maximums only.

His review also included the City's OPA 589 which was adopted by the City in 2003. It provided that all development in older established residential areas characterized by large lots, or by historical, architectural, or landscaped value, shall be consistent with the overall character of the area.

City Council indicated that the Basis for the Amendment was:

1. There are established pockets of low density residential neighbourhoods in the Concord and Thornhill communities that have successfully maintained a historical pattern of large-lot residential development (30m./100ft. frontages), notwithstanding that there is no specific protection by Amendment Number 4 and Amendment Number 210 respectively...

3. There is merit in adding policies that would protect and recognize these areas as unique enclaves within their broader communities.

At the same time, the Purpose of the Amendment was stated to introduce a new policy "which will have the effect of recognizing and protecting the historical pattern of large residential lot sizes in Thornhill..."

The December 9, 2002, Staff Report which accompanied the Amendment noted that at the public meeting Council passed the following resolution: "That staff provide a report to a future Committee of the Whole meeting to explore alternatives for initiating an official plan amendment to include a 100 foot (30m) frontage minimum within the R1V Old Village Residential Zone by By-law 1-88, subject to Exception 9(662)." The accompanying Staff Report stated that OPA 589 was in response to an application to divide three of the larger lots on Arnold Avenue into 11 smaller lots having 13m frontage.

The forgoing quotations assisted Mr. Smith in concluding that in his opinion "character" is determined by frontage. Thus, because the proposed new lot meets the minimum frontage of 30m, creating it by severance, he opined, is consistent with the intention and purpose of OPA 589.

Notwithstanding the forgoing, he agreed under cross-examination that while Council focused on frontage in passing OPA 589, there are other elements of character including private amenity space such as rear yards.

OPA 589 amended Section 2.2.2.4 (q) of the City's OP to read:

All development in older established residential areas characterized by large lots or by historical, architectural or landscape value, shall be consistent with the overall character of the area.

Mr. Smith then went on to review the City's OPA 94, that contains the City's general land severance policies which the Board understands predated the official plan amendments previously mentioned. Section 2.1 "Special Criteria" states that; "regard should be had for the compatibility of the proposed size, shape and use of the lot to be created with the present and potential uses in the adjacent areas." Mr. Smith noted that this requirement is not mandated, but only must be regarded. For reasons that will be set out below, the Board did not find that Mr. Smith gave sufficient regard to this policy. His calculations in Exhibit 9(a) and 9(b) do not demonstrate sufficient regard.

Furthermore Mr. Smith referenced Section 3.1 where it stated, "Severances may be granted for the purposes of infilling in an existing urban area, but should not significantly extend the existing urbanized area. Infilling which economizes the use of urban space without disturbing the existing pattern of development or perpetuating the undesirable pattern of development or prejudicing the layout of future development may be acceptable." Here Mr. Smith stated that the severance sought would not extend the existing urban area. He also stated that the severance does economize the use of land. He concluded; "Our plan comfortably responds to OPA 94." The Board disagrees for the reasons set out below.

Mr. Smith reviewed the applicable Zoning By-law (By-law 1-88) and in particular Section 3.20 which provides:

No person shall erect more than one (1) single family detached dwelling or semi-detached dwelling on any lot in a Residential Zone, provided that:

- a) No person shall erect more than one (1) single family dwelling on any lot as shown on the following registered plans: 3765...M-681....

He explained that this was the zoning provision that the Appellant is seeking a variance from.

He advised that the property is zoned P1V which has strict zoning standards, such as a maximum building height of 9.5m, that the Appellant does not seek to vary. Mr. Smith referred to a number of corner properties that were excepted from the general provisions of P1V zone found at subsection 622 of the By-law, although none of them except the one at 44 Uplands Avenue, which I shall comment on later, are near 10 Fairlea Avenue. Mr. Smith found them relevant because he believed they indicated that

on some occasions City Council or this Board have excepted P1V properties from strict lot size requirements of By-law 1-88.

When tested under cross-examination, Mr. Smith did not appear to have a reasonable understanding of the Zoning By-law. This was quite evident to the Board by the numerous attempts at the hearing to redraw the property boundary between the retained and proposed new lot. Another example was Mr. Smith's uncertainty as to the appropriate rear yard setback. He did not know if special section 662 of the Zoning By-law applied here.

It appeared to the Board that the Appellant blamed the City for the Appellant's misunderstanding of the Zoning By-law provisions such that the only variance applied for was to Section 3.20 of the Zoning By-law. In a memorandum received by the Committee of Adjustment on or about December 20, 2006, a site plan from a legal survey was requested by the City's Building Standard's Department "illustrating the proposed building's setbacks from the proposed lot lines...to identify the necessary variances". Mr. Smith testified that a site plan was never submitted by the Appellant or her representatives.

Under cross-examination, Mr. Smith ultimately conceded that the rear yard setback for buildings on the proposed lot from Ms. Baldassarra's property line would change with the proposed severance from 9m as it is currently to becoming a side yard setback of as little as 1.5m. This is because the proposed new lot would front on to Fairlea Avenue.

He concluded from his analysis that allowing a severance here on this corner lot would not create a precedent. The Board notes that none of the properties Mr. Smith referred the Board to, except 44 Uplands (severance allowed by the OMB), are located in the Uplands community. The Board understands that the severance at 44 Uplands was never acted upon and lapsed. Also, that the lands being severed in that case were located on the north side of Uplands Avenue in Plan M-1279 abutting the Uplands Golf Course parking lot and on the main entrance road to the golf course.

Mr. Smith introduced into evidence a composite plan (Exhibit. 8) of the Uplands area with colouring to indicate lots smaller in frontage than 100 ft., 100 ft. frontage lots and lots larger than 100 ft. The number of lots in each category was tallied in Exhibit

9(a) by Mr. Smith. Lot areas were compared by him in Exhibit 9(b). While the Zoning By-law calculates lot frontage at 6.4m back from the property line, Mr. Smith used the front property line measurement as shown on the registered plans for comparison purposes.

Mr. Smith concluded that there was one lot less than 100 ft. in Plan R-3765, 28 in Plan M-1279, and 141 on Plan M-0681, the latter two plans being north of Uplands Avenue. The Board finds that Mr. Smith's analysis contains material shortcomings.

For instance, Lot 25 Plan R-3765 does not have a frontage of less than 100 ft., but its actual frontage would be about 110 ft. Mr. Smith failed to include any calculation for a daylight curve at the corner. Similarly, throughout the comparison there is no allowance for the curvature of the roads in calculating frontage. At 6.4m back from the Riverside road allowance all the lots would exceed 100 ft. not be 100 ft. In Plan M-0681 Lots 1-5 are identified as less than 100 ft. when in fact they have at least 100 ft. frontage.

Respecting lot area comparison, no lot was found by Mr. Smith as small as 939.25m² south of Uplands in Plan R-3765. North of Uplands Avenue, Mr. Smith identified the smallest lots at addresses # 31, 33, 35, 37 and 39 Longbridge Road as the smallest lots within Plan M-0681 at 913.9m². According to Mr. Smith there were 9 lots on Meadow Height Court of 845m² and the next smallest lot north of Uplands Avenue was 900.82m², all within Plan M-1279. In total he found 59 of the nearly 180 lots north of Uplands Avenue at less than 939.25 sq. m. As it later became evident and resulting from the changes to the severance plan, Mr Smith should have used 886.7m² for comparison purposes.

Because of Mr. Smith's earlier oversights, the Board was not confident with Mr. Smith's results on lot areas and had no way to check them because Exhibit 9(b) was based on municipal addresses and not lot numbers like Exhibit 8 and 9(a).

Other areas of R1V zoning were reviewed by Mr. Smith beyond the Uplands area and severances within this same zoning were found, mainly on corner lots. He also referred the Board to 44 Uplands where the Board permitted lots with frontages of as little as 22.53m and areas of 845m² to be created in 1992. The Board notes that the lot sizes proposed at 44 Uplands were very close to and nearly identical in size to the lots

identified by Mr. Smith as the smallest lots north of Uplands Avenue on Meadow Height Court. Also Section 3.20 of the Zoning By-law does not apply to the lands in Plan M-1279, including 44 Uplands.

Mr. Smith reviewed the tests for severance and concluded that this proposed lot meets the tests for the following reasons and its creation represented good planning:

- implements the 2005 PPS, Places to Grow, and Section 2 of the *Planning Act* by promoting intensification,
- not premature and in the public interest for the same reason,
- severance conforms to OP and nearby plans (R-3765, M-0681 and M-1279) because lot frontage is 30m,
- it is suitable because the size and orientation of the retained and proposed new lot suit the character of the area and both exceed by-law standards,
- no impact on roads,
- dimension and shape of lots similar to others, frontages as big or bigger than others,
- no restrictions on the land or adjoining land,
- normal grading is all that is necessary to conserve natural resources,
- servicing is available at the lot line,
- schools are not an issue given only one extra lot is being created,
- no lands are required to be dedicated here but the municipality will collect usual amounts such as development charges and cash-in-lieu of park dedication,
- Region has adopted LEED policy which will be implemented in the design of the building, no further energy conservation measures required,
- not in area of site plan control, therefore no site plan required, and

- no adverse impacts.

Mr. Smith reviewed the tests for minor variance and concluded that this proposed lot meets the four tests for the above noted reasons and the following :

- meets all zoning standards,
- meets all OP tests and conforms with all provincial policies,
- appropriate limitations if necessary could be included through conditions to the severance or variance.

The Board invited the Appellant to amend her application on the first day of this hearing because the severance plan appeared to the Board to be flawed. This is because the division line between the retained lot and new lot to be severed had to be changed as a result of the Appellant not fully understanding the Zoning By-law and how it would be interpreted when she made her application. The alternative would have been to proceed and, if severance was obtained, apply for a further variance or physically modify the dwelling on the retained lot so as to comply with the rear yard requirement of 9m set out in the Zoning By-law.

On the second day of the hearing, the Appellant requested this change and the Board acceded to her request pursuant to Sections 45(18.1) and 45(18.1.1) of the *Planning Act*, and granted this amendment without the requirement of further notice, the change being minor in nature. The Board understands the lot proposed to be created after the amendment has a frontage of 32.9m (at 6.4m from the street), one side yard of about 30.4m, the other that she shares with Ms. Baldassarra of about 32.41m, a rear yard lot line width of 22.7m, and an area of 882.7m².

Mr. R. Mino's Planning Evidence

Mr. Mino, a qualified land use planner, was called to give planning evidence by the City. He introduced into evidence a Staff Report that he supported that provided advice to the Vaughan Committee of Adjustment against the proposed severance and variance. He concluded that;

- the proposed lot was significantly smaller than others nearby,
- that the variance was not minor,
- that the appellant was seeking total exemption, not relief from the by-law,
- that the proposed severance does not fit the intent of OPA 94, when you compare lot size and shape, and
- more than lot frontage to consider here; rear yard much smaller which will alter the way rear yards function here.

Mr. Mino testified that this lot is zoned R1V OLD VILLAGE RESIDENTIAL ZONE which permits single family detached dwellings only. He noted that while this proposal might comply with the minimum frontage and area by-law requirements other provisions of the Zoning By-law were violated.

Mr. Mino stated that OPA 210 designated the subject lot low density residential for use by single family detached dwellings.

He also noted that Section 2 of OPA 94 quoted above does not deal directly with lot frontages, but with the size and shape of the proposed new lot. Here, the area of the new lot is 38% smaller than the lots nearby and, in his opinion, pie shaped, which Mr. Mino finds disturbs the existing pattern and distracts from the rectangular shaped lots that exist nearby. He also found that the new lot diminishes the function of the amenity of rear yard for both the new and retained lot unlike elsewhere within the plan. These lots will have much smaller rear yards than their neighbours.

In Mr. Mino's opinion, this proposal is not consistent with the intent of Section 3 of OPA 94 because it disturbs the existing pattern of development and may, in his opinion, encourage others in the area to apply, which may result in perpetuating an undesirable pattern.

He was concerned that if this severance were permitted it would be precedent setting. Mr. Smith would not agree that a severance here would set a precedent, but did agree that approval here would be an example of a severance in this community.

Mr. Mino stated that if a severance were allowed here, the consent could be helpful to others making applications for severances on 5 or 6 other large lots in the community, and might be just as helpful to others seeking severance in the R1V zones outside of the Uplands area in the same manner as other severances from outside the Uplands area were used by Mr. Smith at this hearing to support his position.

Mr. Mino testified the purpose of Section 3.20 of the Zoning By-law was to preserve large lots, and that there are not many of these large older lots left in the City of Vaughan.

He also indicated that OPA 589 was approved by the Region of York on behalf of the Province on July 12, 2006, after the 2005 Provincial Policy Statement came into force, and the 2005 PPS would have been considered by the Region when it gave this approval. He indicated that OPA 589 was a response by the municipality to an application to divide three R1V lots on Arnold Avenue into eleven lots having a minimum frontage of approximately 13m on an internal municipal road.

City Council accepted the Planning Staff recommendation and passed OPA 589 that contained the wording of 2.2.2.4(q) quoted above. The Staff Report, Exhibit 11, Tab 18, went on to say: "These minor policy additions will more adequately serve to maintain the integrity of the streetscapes and character of these areas, and provide guidance for the review of any future applications to ensure sensitivity to the existing development." He noted that there was no reference to lot frontage here even though he did acknowledge that the Basis of OPA 589 does make reference to 30m./100ft. frontages and makes reference to large lots.

Mr. Mino emphasized to the Board that the three pockets of large lot development in Vaughan are small in the scale of development that is taking place elsewhere in the City. He also reiterated his opinion that it is not only frontage to be considered but also area and shape to ensure consistent amenity space throughout.

He indicated that a similar application was made on this property in 1992 but withdrawn after many of the same neighbours expressed the same concerns then as they have now. If anything, Mr. Mino related the neighbourhood opposition is even greater now. Planning staff did not support the severance in 1992 for many of the same reasons given in testimony by Mr. Mino in this hearing.

Mr. Mino directed the Board to Section 1.1.1(b) of the 2005 PPS by which policy "healthy, liveable and safe communities are sustained by accommodating an appropriate range and mix of residential...uses to meet the long term needs". Here he suggested that these are areas to be protected while other areas are to take a mix. The Board understood from Mr. Mino's testimony that enclaves within the City are to be protected and are part of the mix, and that the proposed severance here, if granted, would undermine these special enclaves and the mix of residential uses available in the City.

Respecting *The Places to Grow Act* (Growth Plan), Mr. Mino indicated that the City was undertaking a review of an intensification strategy and targets to comply, and that it is unfair to say at this time this severance is mandated by this Policy until the City has had a fair opportunity to study the issue and work out a solution with the Province. He reiterated that the City saw these enclaves as historic older areas and that the City intends to work with the Region to delineate intensification areas. He opined that in Vaughan, intensification areas are not likely going to be stable older residential areas.

He suggested that intensification areas are usually centred around Regional Roads, transit, and servicing, and should not be implemented through private development applications, but after careful comprehensive study by the City.

Mr. Mino concluded his evidence by summarizing his reasons why this proposal failed the tests for severance and in particular Section 51(24)(a), (b), (c), (d) and (f):

- premature, difficult to tell if it complies with *The Places To Grow Act*,
- undermines stability of area, therefore not in public interest,
- disturbs 58 year-old pattern of development,
- does not conform to OPA 589; character of community is more than frontage,
- does not fit with OPA 94, must consider all of character of area,
- not suitable, too small to be compatible with other lots and to provide similar amenity space,

- lot smallest in the nearby community,
- siting a building on the proposed new lot would be more difficult and would result in a significantly smaller rear yard than lots nearby,
- rear yard not in character with the rest of the community, and
- not responsive to Province's goal of mix of housing type.

Mr. Mino testified that even if no variance was required here, he would still recommend against the severance. As regards the variance, he concluded that the proposal here was not minor in part because it represented a total exemption from the By-law prohibition of a severance here and for the other reasons noted above.

Legal counsel argued about the proper interpretation of Section 3.20 of the City's Zoning By-law. Mr. Horosko and Ms. Storto argued that the preamble speaks to lots within plans of subdivision and expresses the intention that severances can be permitted generally throughout the City. Subsection (a), they argued, was intended to zone lots in the specific plans of subdivision specified, which included Plan R-3765 and M-0681, but not Plan M-1297. They suggested that subsection (a) must be given a different meaning than the preamble, and to give plain meaning to all the words amounts to a prohibition of severances within this plan.

Ms. Stewart argued that Section 3.20 cannot prevent a legitimate severance meeting the tests set out in the *Planning Act*. The Board agrees with this position; however, the Board finds that the intention of this provision was not to prohibit severances here but to establish the existing lot size as the minimum zoning requirement for each of the lots within the enumerated plans. As Mr. Horosko pointed out, if this result was what the City was trying to achieve, there would be no other way of achieving it through zoning unless the City passed a site specific by-law for each individual lot in each of the plans identified.

Mr. Mino concluded that the proposed variance did not meet the tests set out in s.45 (1) of the *Planning Act* for the reasons mentioned above and the following:

- that the variance was not desirable for the appropriate development or use of the land because the lot and its rear yard did not fit the existing pattern of development,
- it therefore set an undesirable precedent,
- it did not properly take into account the zoning requirements for rear yard, and therefore the application was constantly changing and ultimately needed amendment,
- undermines the different OP policies as to character of the community, and
- proposed lot too small in its context.

Mr. Mino opined that the variance should not be supported and did not represent good planning.

Mr. J. Kennedy's Planning Evidence

Mr. Horosko called Mr. J. Kennedy, a professional planner, to express his opinion on this proposal.

Mr. Kennedy noted that through the amendment, the lot area of the new proposed lot would be 886.15m². Also he noted that the proposed new lot would have a frontage of 126 ft., a rear lot line of 76 ft., and a lot depth of 100 ft. In his experience this would be a very generous lot measured by today's standards but is a "postage stamp" compared to other lots in the community.

Mr. Kennedy directed the Board to OPA 94 which came into force in 1980. In particular he referred the Board to Section 2.1 which reads;

Regard should be had to the proposed size, shape and use of the lot to be created with the present and potential uses in adjacent areas.

The Board notes here that there is no reference to a larger community such as the Uplands area in defining what is meant by "adjacent areas".

Mr. Kennedy also referred the Board to OPA 210 which came into force in 1987 and in particular Section 2.2 as it read in Exhibit 18. There it states that subdivisions registered prior to May 28, 1985, shall be subject to the provisions of the existing effective Zoning By-laws. Section 2.2.2.1, already referred to, provides for single family detached units here and a maximum density of 22 units per site acre.

OPA 589 passed in 2003, amended Section 2.2.2.4 General Residential Policies by adding subsection (q) quoted above. In Mr. Kennedy's opinion OPA 589 was not about numbers and 30m frontage did not appear in the text of the amendment. The amendment was directed at retaining the character of the area.

With reference to Section 2.2 in Exhibit 18, Mr. Kennedy testified that the Zoning By-law that was in force for the subject lands was By-law 2523 passed in 1960. This By-law contained the precursor to Section 3.20 which read as set out in Exhibit 18(b) as follows;

(26) Use of Residential Lots

No person shall erect more than one single family detached dwelling or one semi-detached dwelling on any lot in an R Zone, provided that no person shall erect more than one single family residential dwelling on any lot as shown on registered plans:...3765,...M681.

The Board notes that two registered plans were registered within the Uplands community north of Uplands Road, Plan M-681 registered in 1955 and Plan M-1279 in 1969.

Mr. Kennedy noted that even under By-law 2523, minimum lot size areas were smaller than existing lot sizes here, but that the By-law controlled this by prohibiting severances on the older large lot plans identified in subsection 26 quoted above. Mr. Kennedy introduced into evidence [Exhibit 18(c)] a consolidated version of By-law 1-88 which in its first recital states that it is a by-law to consolidate Zoning By-laws which regulate the use of lands and the character, location, and use of buildings and structures in the City of Vaughan. He noted also that the zoning requirements were stated to be minimum requirements.

Mr. Kennedy referred the Board to the Basis of OPA 589 and in particular paragraph 3 which stated that the purpose of the amendment was based on the following considerations:

There is merit in adding policies that would protect and recognize these areas as an important historical component and as unique enclaves within their broader communities.

Mr. Kennedy testified that even though Plan 3765 was registered only 6 years earlier than Plan M-681, they were very different. He indicated that character in the Uplands community consisted of three parts:

- Plan 3765 consisting of very large lots consisting of frontages exceeding 100 ft., lot depths of 160 ft. being the shallowest, and at least 16,000 sq. ft. on average,
- Plan M-681 consisting of smaller lots of 80 ft.-120 ft. frontage, and
- Plan M-1279 consisting of the smallest lots in the community of approximately 70 ft. frontages.

Mr. Kennedy noted that frontage is only one of the components of character and that 2.2.2.2(q) does not speak to frontage. In visiting the area on two occasions, he noted the differences in appearance as noted above in the area south of Uplands Avenue as compared to north of Uplands Avenue. He concluded that the proposed lot is not in keeping with the overall character. He pointed out that the shallowest lot in Plan 3765 is 160 ft. deep, 60 ft. greater than the depth of the proposed lot. He indicated that while the Zoning By-law requires generous yards, (9m minimum front and rear yards, and 6m combined minimum side yards), not a single lot would have a residential dwelling unit located 9m from its rear lot line as is likely here.

He noted the spacious sideyards of the other homes here and the relationship of the houses on the lots and how they relate to other lots. Respecting other nearby lots, they are extensively landscaped, have mature trees, and wide open areas. He explained that change here is occurring in built form, not through smaller lot sizes. Vintage bungalows are being replaced by two storey dwellings.

He characterized the immediate area as a unique enclave within a broader community. He commented that while Vaughan 10 years ago was a low density

community, there are a significant number of high density opportunities and there is no need for intensification in this stable area.

He was critical of Mr. Smith's inclusion of the two plans north of Uplands Avenue. The oldest plan with the largest lots Plan M-0681, he opined, was not compatible and noted that Section 3.20 of the Zoning By-law does not apply to the newer Plan M-1279 north of Uplands. He testified that this was a pinnacle case and that if a severance were permitted here it would be a significant precedent for at least four other corner lots.

Therefore Mr. Kennedy concluded that the proposed variance did not meet the intent and purpose of the City's OP or Zoning By-law and was not minor. He believed that by this variance, the Board was being asked to change the intent and purpose of the Zoning By-law.

He said the variance was also not minor because it would have a significant impact on his client's property which shares a common lot line at the rear. Whereas previously a house would be required to have a rear yard setback of 9m, from the rear yard of Ms. Baldassarra's property, it could now be located as close as 1.5m, the rear yard of the old lot now becoming a side yard if the severance were allowed.

If the new house on the new lot was located only 1.5m from Ms. Baldassarra's property, he opined that it would affect Ms. Baldassarra's use and enjoyment of her own property. In part, this is because a new house located close to the property line would have an easy view into the rear yard of Ms. Baldassarra's property.

Mr. Kennedy agreed on cross-examination that Ms. Baldassarra has no right to expect no overview. On re-examination he emphasized that if the appeals were allowed here, there would be a change in the impact of others having a right to view into the Baldassarra's rear yard because a new two storey dwelling unit could be erected a minimum of 1.5m from Ms. Baldassarra's rear yard.

Mr. Kennedy also emphasized that context here isn't just about view but also what you see is what you get.

Mr. Kennedy did not find the proposed development appropriate given the fact that the area has remained unscathed for 60 years. In his opinion this proposal failed all four of the variance tests.

He also gave the Board his opinion that the proposed new lot fails many of the tests for severance set out in Section 51(24) of the *Planning Act*. For example, for the reasons he already gave, the proposal does not comply with the City's OP as required by Section 51(24)(c). In his opinion the new lot fails the test respecting the size and shape because the proposed lot is trapezoid in shape and only 32m by 30m. He noted that lot depths in the community were 160 ft. minimum, not 100 ft.

For all of the forgoing reasons he concluded that the Appeals should be denied.

In reply evidence, Ms. Stewart recalled Mr. Smith who explained that an amendment to the plan accompanying the severance was necessary and Exhibit 22 was introduced into evidence showing the revised lots to be severed and retained. Mr. Smith admitted in cross-examination that there was no lot as small as what was proposed here shown on Plans R-3765 or M-0681, and the only plan in the Uplands community where there was an example of a similar sized lot was Plan M-1279, the latter plan being a plan not included in the plan list in Section 3.20 of the City's Zoning By-law.

Mr. A. Artuchov's Planning Evidence

In reply evidence Ms. Stewart called another qualified planner, Mr. A. Artuchov. This was objected to by Mr. Horosko and Ms. Storto because in their opinion this permitted Ms. Stewart to split her case. In the circumstances here I allowed Mr. Artuchov to give evidence respecting the new plan, (Exhibit 22), which I ultimately agreed to accept as the amended severance plan. I also allowed Ms. Storto and Mr. Horosko to recall their own planning witnesses to address the changed plan.

Mr. Artuchov reaffirmed Mr. Smith's evidence that the severance as amended represented good planning. He admitted that the new lot would impact Ms. Baldassarra,

but opined that with proper screening, fencing, and landscaping, the proposal will have less of a negative impact on her.

Mr. Mino in his evidence respecting the changed plan pointed out discrepancies in the numbers from the various plans filed (at least 3) and testified that the Board should not rely on Exhibit 22 as being accurate. His opinion on what was purposed remained the same despite the changes to the plan.

Decision

The Appeals in this case are denied based on a number of reasons any one of which on its own would support the denial of this appeal.

Firstly, I prefer the planning evidence given by Mr. Mino and Mr. Kennedy to the evidence given by Mr. Smith and Mr. Artuchov. The planning evidence produced by the Appellants had many incorrect calculations and there were many different versions of the proposed plan. The Board was not confident in the calculations even on the last plan filed after almost a month's time to do the recalculation. These errors undermined the evidence given, particularly by Mr. Smith, and caused the Board to discount his evidence.

The Board found it difficult to give Mr. Artuchov's evidence much weight given that he was retained about five days before December 18, 2007, when the hearing continued and his evidence was only to deal with the proposed change to the severance plan. Even then his evidence undermined the Appellant's planning case to a certain extent by admitting that the proposal would affect Ms. Baldassarra adversely.

The Appellant's planners' comparison area was the entire Uplands area while the Opposing Parties' planners focused on the area south of Uplands. I find the surrounding area south of Uplands preferable here for comparison purposes for a number of reasons including the following:

- Physically, from the testimony and the photographs, the areas south and north of Uplands Avenue look and appear quite different,

- Section 3.20 of the City's Zoning By-law does not include one of the two plans of subdivision located north of Uplands Avenue,
- Section 2.1 of the City's OP requires severances to regard the proposed size, shape, and use of the lot to be created with the present and potential uses in adjacent areas,
- Section 45(1) of the *Planning Act* which requires a variance to be desirable for the appropriate development of the land,
- OPA 589 requires consistency with the overall character of the area, and
- Section 51(24)(c) of the *Planning Act* which requires conformity with adjacent plans of subdivision, if any.

When the proposed lot is compared to the lots south of Uplands, it can be readily concluded that the proposed lot to be severed is much smaller and inconsistent with the lot pattern, shapes, and size. The only measure it could be said to be compatible is on lot frontages, but the Board agrees with the Opposing Parties' planners that there is more to be considered than lot frontages.

Ms. Stewart in her summation stated that compatibility means "in harmony with" and referred the Board to an often quoted decision by Mr. Chapman where he stated, "being in harmony with implies nothing more than being capable of existing together in harmony" (*Motsi v. Bernardi*, 20 O.M.B.R. 129 at Page 5). Considering the phrase in harmony more carefully, surely it means in harmony with the nearby area, being the area south of Uplands.

I believe that by formulating the "in harmony" test as Ms. Stewart referred to it, Mr. Chapman meant more than peaceful co-existence because peaceful co-existence has much more to do with people than things such as lots and houses. In the context of the *Planning Act*, surely "in harmony" must mean parts combined into a pleasing or orderly whole, congruity, a state of agreement or proportionate arrangement of size and shape. For the reasons set out by the Opposing Parties' planners I do not find that the proposal here is in harmony with the existing community south of Uplands Avenue. Even if one were to include the northerly two plans I cannot see how this trapezoidal

shaped lot of wide frontage and shallow depth is in anyway like any lot north of Uplands Avenue.

Ms. Stewart argued that I should not be overly concerned about lack of lot depth because a person cannot see how deep rear lots are from the street. Perhaps so, but a person walking along Fairlea Avenue today would certainly notice the very deep rear yard 10 Fairley Avenue has today.

The Board was directed by Ms. Stewart to *Bashchak v. Reid*, OMB Case No. PLO60776 wherein Member Flint in paragraph five said that "in general, no one has a right to view over another's property". While this may be true, there is still a requirement under Sections 45(1) and 51(24) of the *Planning Act* that new development be compatible with the adjacent area and more particularly the character of the area.

I find that the immediate area here is perhaps the last area in Vaughan that perfectly reflects the semi-urban plans of subdivision of the early 1950's and that the generous side yards of corner lots are an important component of that planning era and must be retained here to maintain the character of the area.

This planning era was characterized by few of the urban services that people take for granted today such as sewers, sidewalks, curbs, or gutters. Similarly, from the photographs and plans, I could see that lots were very large with large separation distances between homes, and were well landscaped. One resident testified that his backyard is his own personal respite area and that a person could live for years in the neighbourhood and not meet all of his neighbours because residents spent so much time in their backyards.

I was told by the residents and by Mr. Kennedy that development here has not stopped, but its form is different than elsewhere. While there have been no severances here; the early bungalow type housing is being gradually replaced by larger two storey homes.

I prefer the cases cited by Ms. Storto in support of the proposition that even if an applicant for severance totally complies with the applicable Zoning By-law, that applicant may not be entitled to a severance.

This became an issue because Ms. Stewart argued that the Appellant never needed a variance and that the Appellant only applied and appealed because the City took the position that a variance was required here. In *Brovac v. City of Ottawa Committee of Adjustment* (OMB No. PL010172) Mr. Jackson stated at P.4:

In cross examination the witness admits the subject area is without curbs, storm sewers and sidewalks in terms of infrastructure. He admits that there are large trees on the subject property (60 to 70 percent of the lot is landscaped open space) and that with two new houses there could be a reduction in amenity area. He admits that the openness of the large lots in the area and their well endowed vegetation are part of the character of the area as low density residential.

At page 8 Mr. Jackson finds the following: "The Board is not bound by precedent but notes the decision *Fisher v. County of Simcoe Land Division Committee* 15 O.M.B.R. at 319, wherein the Board concluded that compliance with minimum Zoning By-law standards does not mean an as of right to a consent to sever."

Two other decisions cited by Ms. Storto so completely captured my conclusions here that I find it impossible not to quote from them fairly extensively. For instance Mr. O'Brien in *Kostuk v. Dalicandro et al.* OMB No. PL011083, stated at page 4:

Given the existing lot pattern in the neighbourhood, the Board accepts the evidence of the planners called by the City and Association that the dimensions and shape of lots are not consistent or compatible with the existing urban fabric of the neighbourhood, notwithstanding the issue of zoning compliance. The proposed lots would be a significant departure from the existing conditions and unprecedented in the area. The consent fails to have regard to the provisions of Section 51(24)(f) of the *Planning Act*...

Few neighbourhoods in the urban Toronto context can provide this type of community of large/expansive lots, ranch style bungalows and semi-rural cross-section streets (no sidewalks or curbs, swales / gutters, no sidewalks...

Similarly, the Board adopts the findings of Mr. Owen in *Alexopoulos v. Town of Richmond Hill*, OMB No. PL021044 where at page 2 he stated:

The resident's evidence convinces the Board that the retention of the average frontage of 100 feet, a main justification of the planning consultant for the proponent for the new lots, is not the dominant feature of the subdivision. It is a combination of the frontage, depth and overall area that creates the attractive open nature of the development and one that should be preserved, or in this case not so drastically altered...In this case, the Board finds that the encouragement of infill should not come at the cost of destabilizing this neighbourhood.

Here I heard similar evidence to what Mr. Owen heard from the Respondent's planners and I accept it.

Given all of the evidence, I cannot find that the proposed severance meets the intent and purpose of the City's OP or Zoning By-law which I believe are directed at maintaining the underlying lot fabric and allow for redevelopment of larger homes on existing lots. As Mr. Horosko argued concerning Section 3.20 of the Zoning By-law, if one's objective was to create a Zoning By-law that reflected existing lot sizes and shapes how else could you do it other than by zoning each lot individually by site specific by-law.

Also for the reasons stated above I do not think the variance meets any of the *Planning Act* tests. Respecting the severance, I find that the proposal fails to meet the following tests, Sections 51(24)(b), (c), (f) and (g) also for the reasons provided by the Opposing Parties' planners.

THE BOARD ORDERS that the appeals are dismissed, the variance is not authorized and the consent is not granted.

"D. L. Gates"

D. L. GATES
MEMBER