

City of MARKHAM



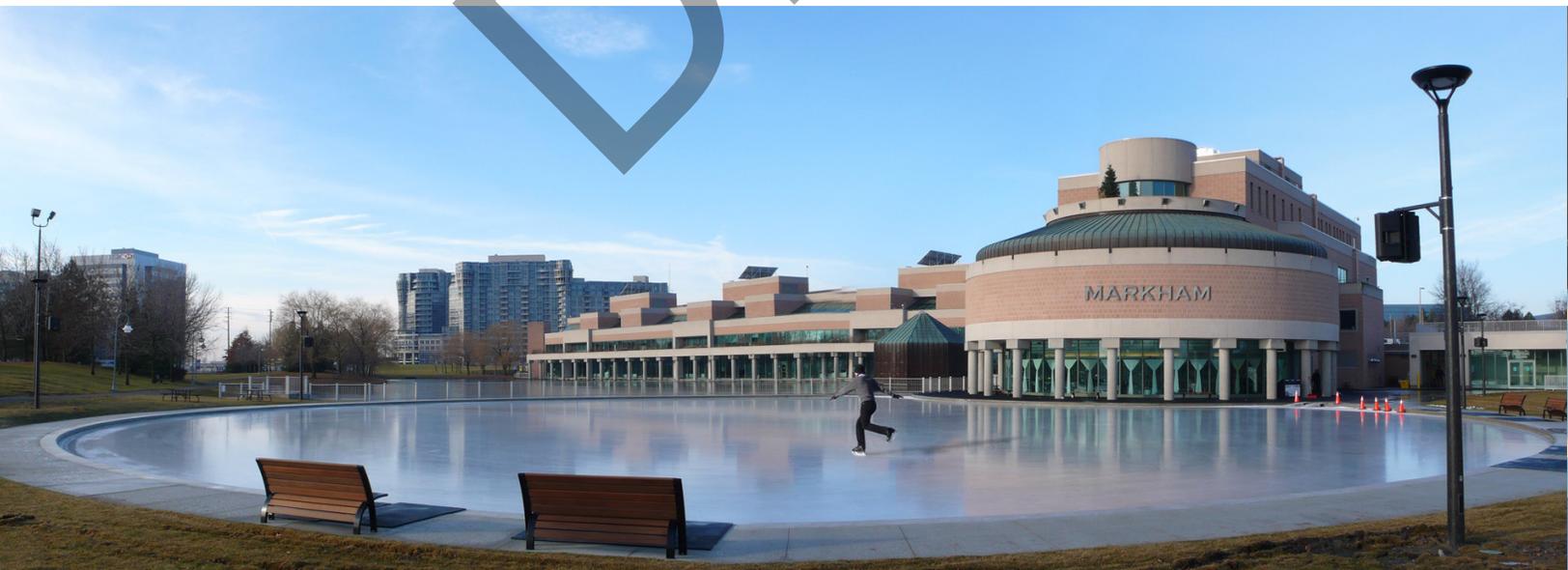
Comprehensive
Zoning By-law
Project



**Task 4b. Review and
Assessment of Minor
Variances**



January 22, 2014



Markham Zoning By-law Consultant Team

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Draft

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1 Introduction

The review and assessment of minor variances in Markham was undertaken using the City of Markham's AMANDA database, which contains information all minor variance applications filed with the City of Markham, since January 1, 1970 to the present. First, this report will explain how the AMANDA database was used to review and assess the minor variance information. Second, the report will show how the minor variances are distributed: both by specific variance type (i.e. front-yard setback, side-yard setback, etc.) and by grouped characteristics (i.e. lot line-related, lot size-related, building volume-related, etc.). Third, the report will look at how the types of individual variances, and groups of variances, have changed over time from the 1970s to today. Finally, fourth, where parent by-law and zoning category information is available, an analysis is conducted with respect to determine which types of individual minor variances most frequently appear in which by-laws.

2 Methodology

The intent of the minor variance review was to review every minor variance application within the AMANDA database with respect to: 1) parent zoning by-law varied, 2) the zoning to which the property is located and the zoning category, 3) the application date, and 4) approval status and the type of variance sought. A preliminary review was undertaken to determine the level of information available to complete the above analysis. This review concluded that the database system contained insufficient and inconsistently compiled data, making a detailed and thorough analysis difficult, if not impossible. As a case in point, of the 6,265 minor variance applications stored on AMANDA since 1970, the vast majority (5,391) do not reference the parent zoning by-law number being varied, let alone the relevant zone or zoning category.¹

Using the information which was available (i.e. the nature of the minor variance and the date applied for each application), an analysis captured the most commonly sought minor variances and how the types of variances have changed over time. Of the parent zoning by-law information which was available within the AMANDA database (874 application files), an analysis of which by-laws were varied the most, along with the types of variances sought per parent by-law was undertaken.

The method used to classify the minor variance information available was to use the database's search function to filter for key words such as "setback", "lot frontage", "FSI" or "parking space". Further filtering of the descriptions allowed for narrowing in on specific setback types, such as "rear yard", "side yard" or "front yard". The intention is to sort the minor variances as much as possible, before ultimately determining the broader trends. Table 1 is a list of the most common minor variances found in the database.

¹ This issue was discussed in the August 2014 project meeting held between the consultant team and City of Markham staff.

TABLE 1: Most Common Minor Variances

- Front Yard Setback
- Side Yard Setback
- Rear Yard Setback
- Parking/Driveway Setback
- Undefined setback (no other information given besides “setback”)
- Encroachments
- Projections
- Distance Separation
- Floor Space Index/Floor Area Ratio
- Net Floor Area (NFA)/Gross Floor Area (GFA)
- Lot Area
- Lot Coverage
- Lot Frontage
- Lot Depth
- Building Depth
- Height/Storeys
- Accessory Structure
- Landscape Open Space
- Landscape Strip
- Parking Space Number
- Parking Space Size
- Restaurant Parking Number
- Loading Space Number
- Loading Space Size
- Permitted Use
- Units per hectare (maximum number of units)
- Non-Conforming Use Enlargement
- Garage (Erect, Build, Construct)
- Garage Width
- Driveway Width
- Porch Depth
- Sign Variance
- Deck Variance

Once the most common types were determined, the variances were grouped into categories, as reflected in Table 2 on the following page.

TABLE 2: Most Common Variances by Category

Setback-related	Front-yard Setback
	Side-yard Setback
	Rear-yard Setback
	Parking/Driveway Setback
	Undefined Setback
Yard-related	Encroachments
	Projections
Lot Size-related	Lot Area
	Lot Coverage
	Lot Frontage
	Lot Depth
Building volume-related	Floor space index (FSI)/Floor Area Ratio (FAR)
	Net Floor Area (NFA)/Gross Floor Area (GFA)
	Building Depth
	Height/Storeys
	Units per hectare (maximum number of units)
Use-related	Permitted Use
	Non-conforming use enlargement
	Distance separation
Landscape-related	Landscape open space
	Landscape Strip
Parking/loading-related	Parking space number
	Parking space size
	Restaurant parking number
	Loading space number
	Loading space size
	Driveway width
Accessory-related	Garage (erect, build, construct)
	Garage width
	Deck variance
	Porch variance
	Sign variance

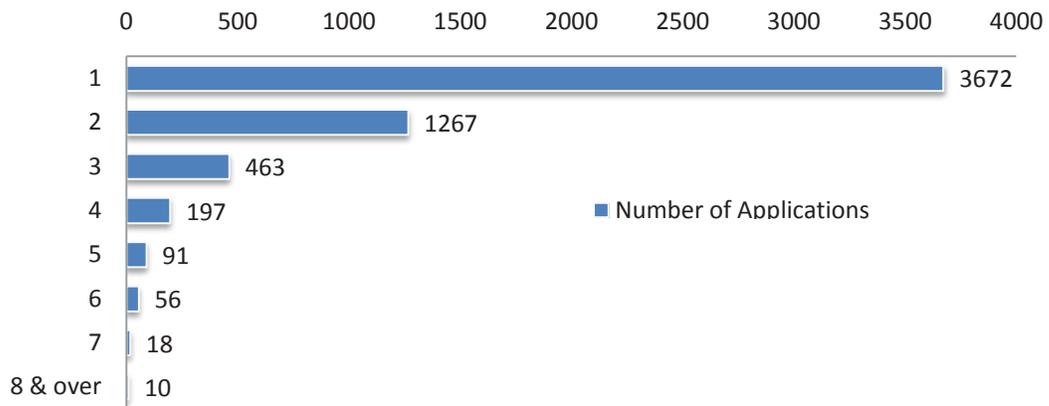
Using the above variances by type and category, a review was undertaken which broke down the distribution as a whole, how the variances sought have changed over time, and, where available, which parent by-laws were varied the most.

3 Analysis

3.1 Total Minor Variances (individual and by category)

Of the 6,265 minor variance applications, the analysis does not include 209 minor variance applications that were blank and an additional 282 applications that were either miss-classified as variances (i.e. consents or easements) or were one-off variances types which were not one of the most common variances listed in Table 1. Therefore, the total number of applications analyzed was 5,774. Within these applications, a total number of 9,367 individual most common variances were applied for. A large number of applications, therefore, sought more than one variance for a given application. Figure 1 shows the breakdown of the number of variances being sought per application, Figure 2 shows the distribution of individual variances by type and Figure 3 shows the distribution of variances by category.

Figure 1: Number of Variances per Application



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Figure 2: Distribution of individual variances by type

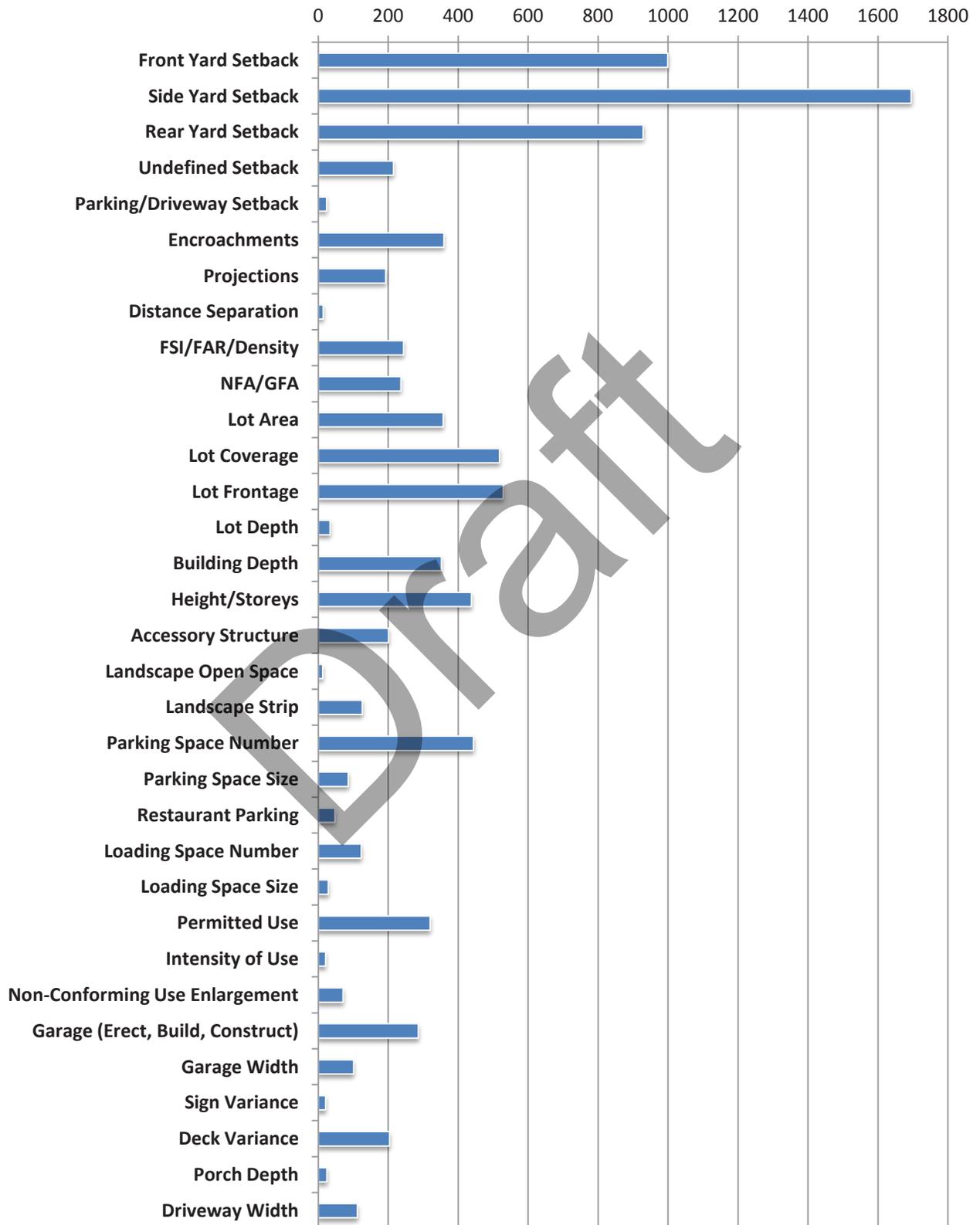


Figure 3: Distribution of Variances by Group

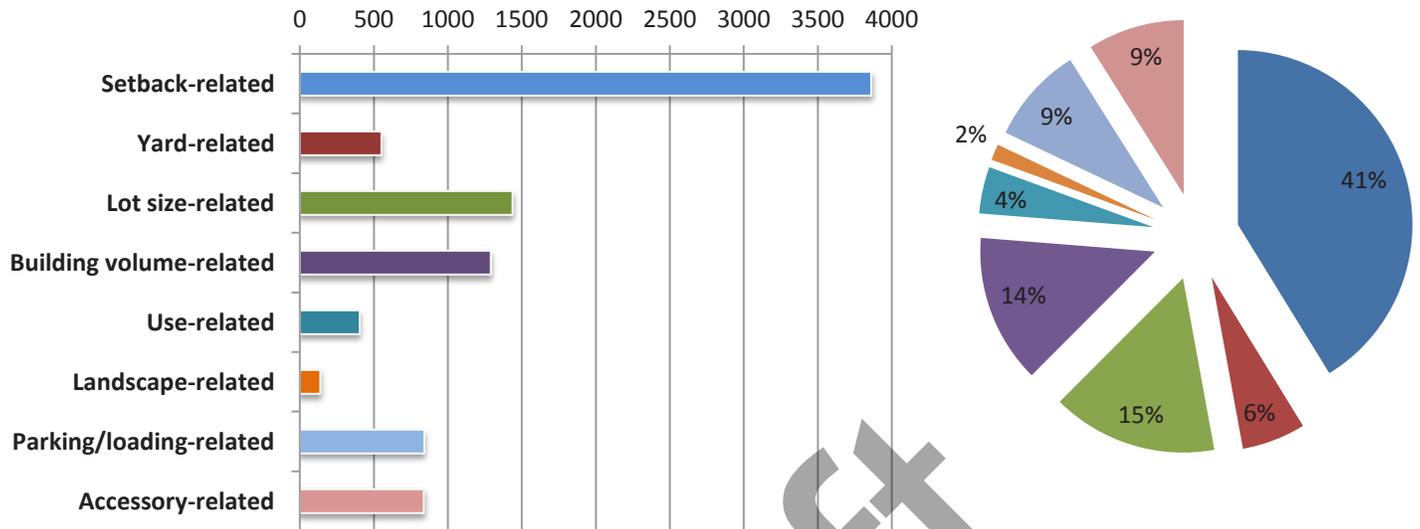
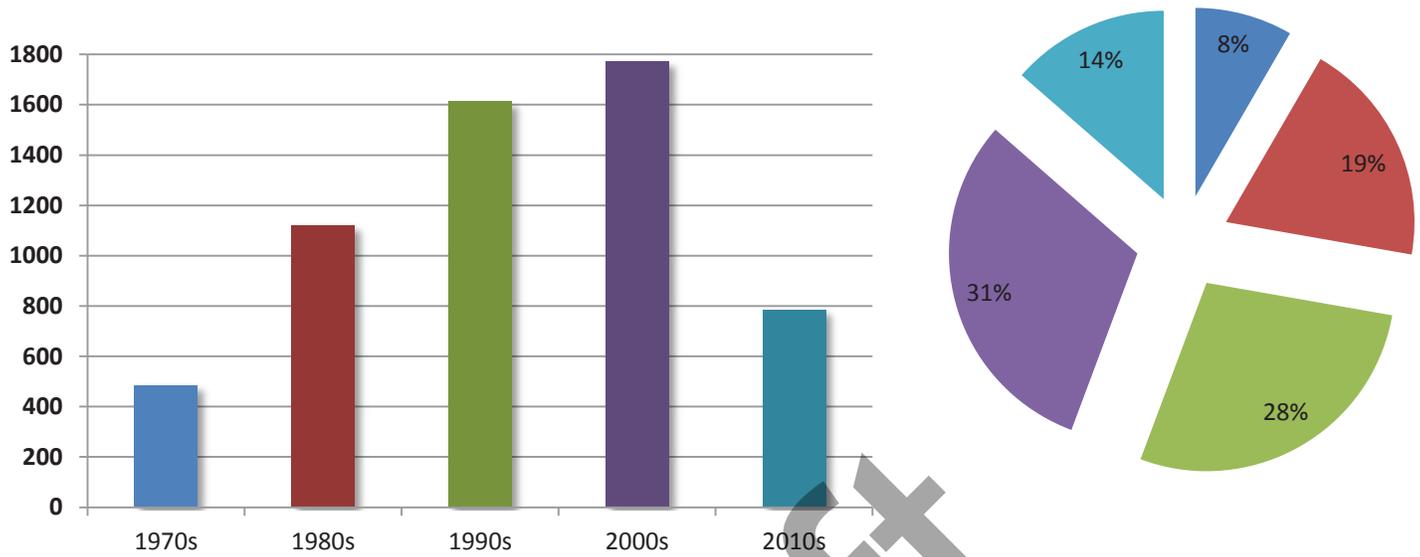


Figure 1 illustrates that two-thirds (63%) of all minor variance applications involve applications for a single variance. In general, the applications seeking less than three variances per application tended to be for residential purposes, while applications for four or more typically were for commercial and industrial employment uses.

In terms of the most commonly sought individual minor variance types, Figure 2 illustrates that side-yard setbacks (1,695) are by far the most frequently applied for. Front yard (999) and rear yard (929) setbacks are second and third, respectively, while lot frontage (529) and lot coverage (518) round out the top five. Also significant are variances for parking space number (444) and height/storeys (438).

When looking at variances by category shown in Figure 3, setbacks from a lot line represent 41% of the 9,367 total variances sought by type, or 3,862 variances altogether. Variances related to the size and coverage of a lot represent 15% (1,438), while the mass, volume and/or height of a building (1,291) are approximately 14% of all variances. All other variances together make up a total of 30%.

Figure 4: Distribution of Minor Variance Applications by Decade



3.2 Minor Variances over Time

The types of variances sought and the volume of applications submitted has changed over time. Figure 4 shows which decade the 5,774 minor variance applications used for this analysis were filed.

The analysis found that 483 minor variance applications filed during the 1970s, 1,120 in the 1980s, 1,613 in the 1990s, 1,774 in the 2000s and 784 so far this decade. The average number of variances increased from roughly 48 applications per year during the 1970s to 177 per year in the 2000s. So far, the present decade has seen a slight decrease to roughly 165 minor variance applications per year.

In terms of the types of minor variances applied for, these have changed with time as well. Figure 5 shows how the variance types by group have evolved throughout the decades.

Figure 5: Distribution of Variance Groups by Decade

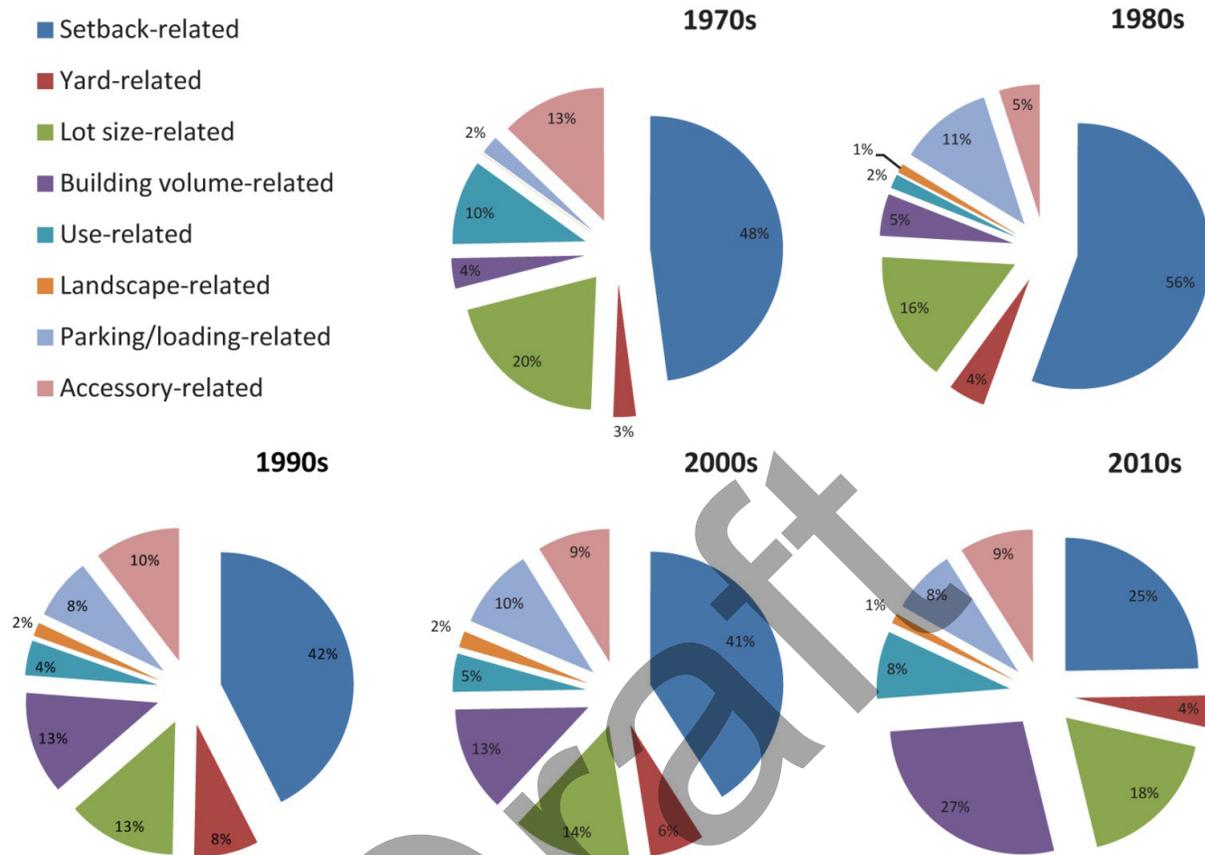


Figure 4 showed how the number of applications for minor variances has steadily increased throughout the decades, while Figure 5 shows the percentage breakdown in the grouped types of variances sought. Variances related to setback have dominated the types of variances sought since 1970 in Markham. Setback-related variances have accounted for a minimum of 40% of all variances and even made up over 56% during the 1980s.

By far the biggest trend identified is the increase in building-volume related variances. During the 1970s, there were only 20 variances affecting building volume (4% of all variances). This number increased to 75 during the 1980s (5% of all variances), 315 in the 1990s (13% of all variances), 402 in the 2000s (13% of all variances) and 479 so far this decade (27% of all variances). Variances related to yards (i.e. encroachments or projections), lot size, parking/loading, accessory structures, meanwhile, have remained largely constant as a percentage of all variances.

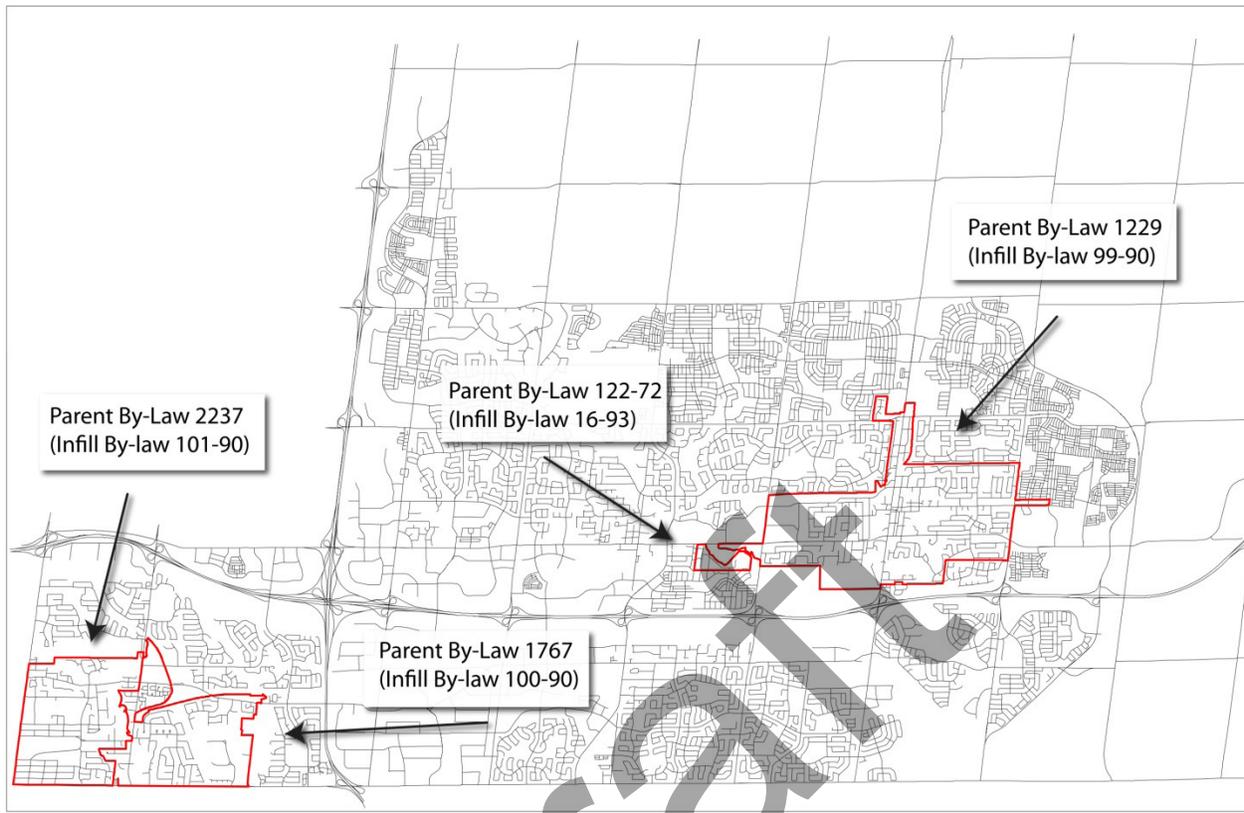
3.3 Minor Variances by Parent By-law

As mentioned early, of the 6,265 minor variance application files on the AMANDA database, only 874 make reference to a specific parent by-law, while 176 minor variances made reference to an amending by-law. As variances made to an amending by-law are associated with a parent by-law, Table 3 shows the total number of variances for each parent by-law.

Table 3: Number of Minor Variances by Parent By-Law

Parent By-Law	# of Variances and Associated Variances	Parent By-Law	# of Variances and Associated Variances
1229	173	145-78	1
1442	14	162-78	3
1507	4	163-78	33
1767	91	184-78	5
1914	2	72-79	8
2150	36	91-79	1
2237	182	118-79	15
2489	15	134-79	12
2551	12	153-80	19
2571	19	165-80	20
2612	16	72-81	39
2325-68	27	90-81	21
11-72	31	108-81	22
122-72	34	193-81	4
77-73	13	28-82	11
83-73	6	194-82	2
84-73	2	196-82	1
119-73	28	304-87	12
151-75	31	19-94	2
88-76	1	177-96	75
127-76	3	2004-196	5
250-77	11	TOTAL	1050

Of the parent by-laws which are referenced by minor variance applications within the AMANDA database, four in particular stand out. Parent by-laws number 1229, 1767, 2237, and 122-72 collectively contribute to over 45% of all minor variance applications within the analysis. A common element amongst these three parent by-laws is that they are amongst the oldest in Markham (and therefore have had the most opportunity to be subject to minor variance applications). More importantly, each of these parent by-laws are subject to Markham's "infill by-laws": by-law 99-90 (which amended 1229), by-law 100-90 (which amended 1767), by-law 101-90 (which amended 2237), and by-law 16-93 (which amended 122-72). These "infill by-laws" were created in the early 1990s as a response to a trend where older and smaller homes were being enlarged or demolished and replaced with newer and much larger homes. The purpose of the "infill by-laws" was to "ensure that residential redevelopment is compatible complementary with surrounding development and to maintain the existing character of established neighbourhoods..." Figure 6 shows the location of the four parent by-laws which were subject to the "infill by-laws".

Figure 6: Markham Infill By-laws

3.4 Minor Variance Approval Rate

A sample of minor variance decisions by Markham's Committee of Adjustment was analyzed to determine the approval success rate of the typical minor variance application. Every decision from April 2009 to November 5, 2014 was looked at. In the total of 1,151 Committee of Adjustment decisions, 851 (73.4%) were approved, 261 were deferred (23%), 33 (3%) were denied and 6 (0.5%) were withdrawn. When taken into account the deferred applications which were ultimately approved, the approval success rate for minor variance applications in the City of Markham is almost 97%.

4.0 A CLOSER LOOK

This section will take a closer look at variances for permitted uses and parking space number to get a better understanding of each. These variances are significant, not because they make up a large percentage of the variances overall, but because of their impact on planning. For example, changing a permitted use through the minor variance process is usually not considered a best practice as it is explicitly contravening the intention of the by-law. With respect to parking space number, the analysis is intended to understand, as much as possible given the data available through the AMANDA database, what uses the parking variances are for and by what degree the parking is being varied. Like permitted use variances, substantial changes in parking space numbers should typically be achieved through the re-zoning process.

4.1 Permitted Uses

In order to have a use permitted which is outside of those specifically listed in a by-law an applicant is typically required to apply for a zoning by-law amendment. Changes in permitted use are generally not considered a minor change to the by-law. This section will take a closer look at variances within the AMANDA database to that appear to be permitted a change in use to understand whether these changes are truly minor.

The various types of variances which dealt with permitted uses include: variances to allow a use not specifically permitted within the by-law, variances to have a similar or compatible use to be considered as one of the identified permitted uses, variances for accessory or ancillary uses and variances which ambiguously sought 'relief' for a specific use. Table 4 shows how the permitted use variances breakdown according to these various types.

Table 4: Breakdown of Permitted Use Variances

Permitted Use Variances		
Type	# of variances	% of total
Use not specifically permitted	165	52%
Similar and/or Compatible Use	71	22%
Accessory/Ancillary Use	64	20%
“Relief” from the by-law	24	8%

The majority of permitted use variances were for uses that were not specifically permitted in the by-law. Within the AMANDA database, these variances had descriptions such as “to extend the uses permitted by by-law 1394 to permit “personal service shops”, “requesting variance to allow industrial purposes; whereas the By-law permits agricultural uses” and “to permit an indoor recreation facility for children ages 1-10 to host birthday parties; whereas, this use is not specifically permitted under the existing Industrial zoning designation.”

Variances for similar or compatible were described in language such as “considering a driving school to conform with the general term “office “ as permitted in the By-law”, “to allow variety store and dry cleaning operation to be considered similar uses to those permitted in the by-law” or “to confirm that a private school is similar or more compatible to those uses permitted in the by-law, which includes a commercial school”. While variances for accessory and ancillary uses typically sought to enlarge the area permitted for an accessory use, or have an acceptable accessory use be allowed on its own and not in associate with another, permitted use.

From a land use planning perspective, variances allowing a use which is not specifically permitted should be avoided. Changes in use permissions should only be achieved through the rigorous process of a zoning by-law amendment and should not be seen as minor in nature. Similar and compatible uses, on the other hand, are more acceptable forms of use variances since it is well understood that changing economic and social conditions will bring variations in how a specific use is manifested on the ground.

Dealing with accessory and ancillary use variance will require planners to carefully weigh up the intent the relationship of the accessory and ancillary uses to the parent use, as well as the scale of the change being sought. Despite, these uses typically being housed only a portion of a building, not all accessory and ancillary changes will be minor in nature. Variances that seek to double the amount of gross floor area associated with that use, for example, even if still only a fraction of the overall GFA, could depending on the circumstance be seen as a change in use.

4.2 Variances for Parking Requirements

This section will look at the breakdown of variances related to parking space number. Similar to the permitted use variances above, varying the number of parking spaces required should typically be achieved through an amendment to the parking by-law. In order to minimize the amount of minor variance applications being processed, this section will seek to identify the types of uses most frequently subject to parking requirement variances.

Overall, there are 444 minor variance applications on the AMANDA database that deal with a variance from the parking space requirement. Of these, there are 174 applications which identify the specific use (i.e. Residential, Commercial, Industrial, or Institutional) to which the parking is being varied (and 189 total individual parking variances as some applications vary multiple uses and standards). Using the

applications which identify a specific use as a sample, Table 5 shows the percentage of parking variance by use.

Table 5: Parking Space Variances by Use

Parking Space Variances		
Use Type	# of variances	% of total
Residential	39	21%
Commercial	112	59%
Industrial	21	11%
Institutional	17	9%

Table 5 shows that commercial uses account for the majority of parking requirements variances. Within the commercial use-type, restaurants make up little under 50%. If restaurants were a use-type all on their own, they would make up 27% of parking variances, much more than even residential uses.

A sample was also taken for each use to determine how much the parking requirements are being varied. Table 6 shows the results of this analysis.

Table 6: Deviation from Parking Requirement.

Parking Space Variances		
Use Type	Average Deviation	Average % Change
Residential	-12 spaces	-8%
Commercial	-16 spaces	-13%
Industrial	-18 spaces	-17%
Institutional	-90 spaces	-33%

The first observation based on the sample taken is that parking requirement variances predominantly seek a lower requirement than the minimum allowed under the by-law. This is true across all uses. The only use that had a few examples of variance seeking to supply more parking than the maximum, were commercial and these were generally for retail uses.

The use that sought the biggest deviation from the parking requirements set out in the by-law, were institutional, especially for Places of Worship. The average deviation for institutional uses was approximately 90 spaces (a change of 33%). In one instance, a Place of Worship sought a parking reduction of 211 spaces, from 606 to 395. In another, a reduction was sought from 189 spaces to 86 – a difference of over 50%. It is important to note, however, that institutional uses represented a very small sample (17 variances overall and only 5 which outlined the amount of parking being varied).

A separate sample was taken of the minor variance applications which made no mention of the use. The average parking reduction in this case is 16 spaces, with an average percentage change of 14%.

Overall, minor variances to the parking in Markham are invariably attempt to reduce the amount of parking required. As with permitted uses, these types of applications should be facilitated through the zoning by-law amendment application process as much as possible. Analysis of these minor variances shows that rarely are these applications minor in nature with the average being well over 10%.

5 MINOR VARIANCE TRANSITIONS

In transitioning to a new zoning by-law, the City of Markham will be require a strategy for recognizing existing minor variance permissions. This section contains a review of the approaches taken from three other Ontario municipalities who have undergone a similar exercise in recent times. The municipalities consulted for this research include Ottawa, Mississauga, and Toronto. Three questions were posed:

- 1) Were approved minor variances recognized under the new by-law?
- 2) How were approved minor variances *not* acted upon treated in the new zoning by-law?
- 3) How were minor variance applications treated that were submitted prior to the approval of the new zoning by-law, but which heard by the Committee after the date of the passing?

Below is how each respective municipality answered each question.

5.1 Ottawa

- 1) Were approved minor variances recognized under the new by-law?

Minor variances were not recognized. If acted upon (i.e. built), however, these properties were considered to be “legal non-complying” and properties maintained this status even if a structure was demolished.

- 2) How were approved minor variances *not* acted upon treated in the new zoning by-law?

Land-owners were given a time period of two years upon approval of the new zoning by-law to act upon their variance.

- 3) How were minor variance applications treated that were submitted prior to the approval of the new zoning by-law, but which heard by the Committee after the date of the passing?

Applicants were given sufficient notice that their application would require a variance under the new zoning by-law and were advised to submit a variance under the new by-law as well.

5.2 Mississauga

- 1) Were approved minor variances recognized under the new by-law?

Minor variances were not recognized and considered “null and void”. If acted upon (i.e. built), however, were permissions were protected under a “Deeming Clause” within section 2.1.8 of the new by-law which stated that these structures were “deemed to be in compliance with the regulations of [the] by-law”. The deeming clause allowed these structures to be enlarged or altered, as long as they did not further contravene the regulations of the new zoning by-law. If a structure was torn down, however, a wholly new minor variance would have to be sought.

- 2) How were approved minor variances *not* acted upon treated in the new zoning by-law?

Approved minor variances not acted upon by the date of the passing of the new zoning by-law were considered to be null and void and a new minor variance was required.

- 3) How were minor variance applications treated that were submitted prior to the approval of the new zoning by-law, but which heard by the Committee after the date of the passing?

All applicants were advised of the new zoning by-law’s imminent approval and it was recommended that they sought a deferral until after the passing of the new by-law. Applicants who did so were not required to submit a fee payment with their new application. Applicants who did not defer, and did not receive their hearing until after the passing of the new by-law had to apply for a wholly new minor variance application.

5.3 Toronto

- 1) Were approved minor variances recognized under the new by-law?

In Toronto minor variances were not explicitly recognized under the new zoning by-law, however, applications which were approved before adoption of the new by-law were grandfathered-in. This means they are recognized going forward so long as the variance has been acted upon and has been built. If an approved structure has been demolished, however, the minor variance is no longer recognized and a new variance must be sought under the new zoning by-law.

Whereby the new zoning by-law introduced a more restrictive standard than that under the previous by-law, new variances were required under the new by-law, even for grandfathered structures. For example, if the side-yard setback requirement became even greater than the previous by-law, land-owners were required to seek a variance for the difference.

- 2) How were approved minor variances *not* acted upon treated in the new zoning by-law?

For grandfathered minor variances which were not been acted upon, a “sunset clause” was inserted within the new zoning by-law which establishes a deadline by which the variance is no longer valid. For Toronto, the sunset clause lasted for a period of three years.

- 3) How were minor variance applications treated that were submitted prior to the approval of the new zoning by-law, but which heard by the Committee after the date of the passing?

Applications not decided upon by the time of the passing of the new zoning by-law, if ultimately approved, were given the same treatment as the 'grandfathered' minor variances.

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6.0 CONCLUSIONS

This minor variance analysis was completed as part of the background review and assessment in support of the creation of a Zoning Issues and Strategic Directions Report for the City of Markham. The method was to use the City's AMANDA database to review minor variance applications made within Markham in order to uncover trends which could be used to inform the greater process of creating a new zoning by-law. The main trends identified through this analysis are:

- A very large portion of all minor variances are setback-related. These variance types occur twice as frequently as the next more common variance type. Side yard setbacks, in particular are the most common sought after minor variance in the City of Markham.
- While setback-related variances are the minor variance most frequently applied for, the historical trend has been for a greater and greater share of variances to be related to building volume. Minor variances for building volume, which accounted for roughly 4% of all variances in the 1970s, now make up almost 30%.
- The growth in building volume-related variances coincides with the analysis of variances by parent by-law. Markham's "Infill bylaws" which were meant to give the municipality greater control over the ability of landowners to enlarge, or tear-down and re-build larger houses, in Markham's established residential neighbourhoods, have resulted in a large number of variances in these areas.
- Parent by-laws which have seen the most minor variance applications are those in the oldest residential neighbourhoods of Markham.
- The overall success rate of minor variance applications in Markham is approximately 97%.

- 52% of minor variances filed for a permitted use are for uses not specifically permitted in the by-law. A greater attempt to funnel these proposals through the zoning by-law amendment process should be made.
- 59% of parking requirement variances are for commercial uses, and with restaurants alone making up almost half of these. Places of Worship seek the greatest reduction in parking as a percentage of the requirement; over 50% in some cases. A new zoning by-law should look at potential policies that more stringently dictate if a parking variance is truly 'minor'.

Given the success rate for minor variance applications, one goal in the development of a new comprehensive zoning by-law should attempt to minimize the number of applications. Using the findings of this report, the following suggestions are made:

1) Standards Analysis

Evaluate standards (i.e. setbacks, height, density, landscape requirements, parking, etc.) to determine if there is a need to adjust and harmonize these standards to better reflect how development is actually being implemented across the city. Specifically, setback- and building-volume related variances (together, these variance types account for over 50% all of minor variances) could be examined to determine the most frequently occurring deviation from the standard, as well as their location within Markham. New standards could be derived from this analysis which would result in a lower number of minor variances being sought.

2) Commercial Parking

Since commercial parking accounts for almost 60% of all parking variances, a focus on how to reduce these variances in particular would assist in lowering the number of minor variance applications. Suggestions for achieving this would be to establish blended parking rates for commercial plazas. This would prevent a need for a minor variance when a specific commercial use is replaced which does not quite meet the standard. Alternatively, using parking maximums rather than minimums on an area-specific basis (i.e. such as commercial uses along the Highway 7 VIVA line) would assist in reducing requirements for a variance as well.

3) Permitted Use and Defined Terms

Reducing the number of uses which are defined terms in the new zoning by-law and applying a broader approach to land uses will result in less minor variance applications for permitted uses. Uses which are narrowly defined are more likely to see a nuanced use change be brought before the Committee of Adjustment.
