



## MEMORANDUM

**TO:** Heritage Markham Committee

**FROM:** Regan Hutcheson, Manager-Heritage Planning

**DATE:** November 11, 2020

**SUBJECT:** Information  
Local Planning Appeal Tribunal (LPAT) Decision  
105 and 107 Main Street  
Unionville Heritage Conservation District

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**Property/Building Description:** Two cultural heritage resources  
**Use:** Residential (107) and Commercial (105)  
**Heritage Status:** Significant properties in the Unionville Heritage  
Conservation District

### **Background**

- Owners had applied to the Committee of Adjustment for variances in support of a rear yard parking lot at 107 Main St for use by commercial patrons at 105 Main Street.
- The variance applications were not supported by Heritage Markham or the Committee of Adjustment, but were appealed to LPAT by the owners.
- The LPAT hearing occurred on September 25, 2020 by electronic means with the Manager of Heritage Planning as the City's witness in opposition to the variances.
- The appeal was dismissed and the variances not authorized.

### **Staff Comment**

- The LPAT decision is attached to this report.
- The matter of the rear yard parking lot behind 107 Main Street will now have to be addressed by the City.

## **Suggested Recommendation for Heritage Markham**

THAT Heritage Markham Committee receive as information

## Location



File: Q:\Development\Heritage\PROPERTY\MAINSTU\105\LPAT Appeal Parking lot\HM Nov 11 2020 Decision of LPAT.doc

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** November 03, 2020

**CASE NO(S):** PL200136

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | Fire-Works Property Group Inc.                  |
| Subject:                      | Minor Variance                                  |
| Property Address/Description: | 107 Main Street                                 |
| Variance from By-law:         | 122-72  |
| Municipality:                 | City of Markham                                 |
| Municipal File No.:           | A/16/19   |
| LPAT Case No.:                | PL200136  |
| LPAT File No.:                | PL200136  |
| LPAT Case Name:               | Fire-Works Property Group Inc v. Markham (City) |

**Heard:** September 25, 2020 by video hearing

**APPEARANCES:**

**Parties**

The City of Markham

Fire-Works Property Group Inc

**Counsel**

Francesco Santaguida  
Victoria Chai

Selina Zeng

**DECISION AND ORDER OF THE TRIBUNAL DELIVERED BY M. ARPINO**

## **INTRODUCTION**

[1] Fire-Works Property Group Inc. (“Applicant”) owns land in The City of Markham (“City”) located at 107 Main Street (“Property”). It is occupied by a detached residential dwelling, and a detached garage. The rear yard of the Property is partially paved and is being used as a parking area (“Parking Lot”).

[2] The Applicant also owns the land at 105 Main Street, which is immediately adjacent to the Property. The Parking Lot has been used to accommodate patrons and employees at 105 Main Street.

[3] The Property is designated Residential Low Rise in the City’s Official Plan (“OP”). It is located within the boundary area of the Unionville Heritage Conservation District (“Heritage District”). The Property is visible from a section of Highway 7 which is within the Heritage District.

[4] The Heritage District is subject to Site Specific Policies in the OP. The residential dwelling on the Property is designated a Group A Heritage Building (“Heritage Building”).

[5] The Property is within The Toronto Region Conservation Authority’s Regulated Area. It is bordered by a valley corridor associated with the Rouge River Watershed.

[6] The Property is zoned R3-Residential pursuant to the City’s By-law No. 122-72, which does not permit the Property to be used as a parking area. The Parking Lot does not conform to the parking lot restrictions in the City’s By-law No. 28-97. The City has taken steps to enforce the By-laws. The Applicant received an Order to Comply which stipulated the removal of the Parking Lot.

[7] The Applicant filed an application seeking two variances (“Application”).

- a. The first variance sought an amendment to s. 11.1 of By-law No. 122-72 to add a parking area as a permitted use of the Property.
- b. The second variance is for relief from the City’s Zoning By-law No. 28-97 to permit a rear driveway, parking pad and parking area to be located 0.61 metres (“m”) from the adjoining lot line; 2.68 m from the north lot line; and 5.5 m from the side lot line.

[8] On February 5, 2020, the City’s Committee of Adjustment (“Committee”) considered the Application and refused to grant the requested variances. The Applicant appealed the decision (“Appeal”).

## **LEGISLATIVE TESTS**

[9] In making a decision under the Planning Act (the “Act”) with respect to a minor variance, the Tribunal must have regard to matters of Provincial Interest found in s. 2 of the Act, and to the decision of the approval authority. The decision must be consistent with the applicable Provincial Policy Statements and must conform to any applicable Provincial plans.

[10] In considering an appeal of an Application for Minor Variance, the Tribunal must be satisfied that the requested relief meets the four tests of a minor variance as set out in s. 45 (1) of the Act:

- (i) Does the request maintain the general intent and purpose of the OP?
- (ii) Does the request maintain the general intent and purpose of the Zoning By-law?
- (iii) Is the request desirable for the appropriate development or use of the land, building or structure?
- (iv) Is the variance minor?

## **EXPERT WITNESS, EXHIBITS AND VISUAL EVIDENCE, PARTICIPANTS**

[11] Regan Hutcheson, a Registered Professional Planner employed by the City was called by the City to testify. The Tribunal qualified Mr. Hutcheson to provide his opinion regarding land use planning in the matter before the Tribunal. Ms. Zeng, counsel for the Applicant, did not challenge the qualification.

[12] The Tribunal received document books from the City and from the Applicant which are Exhibit 1 and Exhibit 2 respectively.

[13] The Tribunal reviewed the minutes of the Heritage Markham Committee meeting convened on January 8, 2020. The committee considered the Application and did not recommend approval. The Heritage Markham Committee expressed concern regarding the precedent that would be set by supporting a variance to allow a paved rear lot of a residentially-zoned property.

[14] The Planning and Urban Design Department for the City had concerns about the spread of commercial uses into the residential neighbourhood north of 105 Main Street, and that a future request to permit commercial uses within the Heritage Building at the Property might be requested based on existence of the Parking Lot. The Toronto Region Conservation Authority had no objection to the approval of the Application.

[15] Exhibit 1 contains photographs of the Property and the Parking Lot. Mr. Hutchison testified that he took the photographs from various locations including from Main Street, Highway 7 and from the rear of the Property and from 105 Main Street.

[16] The photographs clearly illustrate to the Tribunal that the Parking Lot is visible from Highway 7. As such the Tribunal determined that the context of the Heritage Building, and the Property, plainly includes the Parking Lot.

[17] The Tribunal granted Participant Status to Christiane Bergauer-Free and Henry Chiu.

[18] Mr. Chiu was then called as a witness by the Applicant. Mr. Chiu informed the Tribunal that the Parking Lot has existed for approximately 20 years and it was installed prior to the Applicant's acquisition of the Property. He was not aware of any complaints or concerns about the Parking Lot. Mr. Chui testified that the Parking Lot is not visible from Main Street and does not negatively impact the adjacent properties. He stated that

the variances satisfied the legislative tests pursuant to the Act. The Tribunal did not qualify Mr. Chiu to provide expert opinion evidence.

[19] Mr. Chiu testified that the Parking Lot is not visible from Main Street whereas Mr. Hutcheson testified that the Parking Lot is partially visible from Main Street.

### **DOES THE REQUEST MAINTAIN THE GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN?**

[20] Mr. Hutcheson referred the Tribunal to s. 3 of the OP policies entitled Heritage Conservation District Principles.

#### **Section 3.1 Overall Goal**

To ensure the retention and conservation of the District's heritage resources and to guide change so that it contributes to and does not detract from the District's architectural, historical and contextual character.

[21] Mr. Hutcheson also reviewed s. 4.5 of the OP policies entitled Cultural Heritage Resources:

The protection and conservation of our cultural heritage is essential to the character of our community and contributes to other social, cultural, economic and environmental objectives of the City. As a result, cultural heritage conservation policies are integrated within many other areas of the Official Plan. Cultural heritage resources are a fragile and non-renewable resource in our community. Once lost or diminished, they are gone forever. Protection and conservation of cultural heritage resources not only enriches our lives, it is an important shared responsibility and legacy that can be left for future generations.

[22] It was Mr. Hutcheson's professional opinion that the Parking Lot at the rear of the Heritage Building within the Heritage District is contextually inappropriate and does not maintain the integrity of the cultural resource.

[23] It was Mr. Hutcheson's testimony that the goal of the OP policies regarding the Heritage District are intended to apply to structures, buildings and landscapes in the Heritage District. To support this opinion, he referred the Tribunal to various policies in the OP, including s. 3, s. 4-5-3-7, and s. 8.2.

[24] The Tribunal has determined that the Parking Lot and the Heritage Building are visible to the Public from Highway 7. Even if the Parking Lot is only partially visible from Main Street, which appears to the Tribunal, to be the case, it is nevertheless clearly visible from Highway 7 and accordingly the Tribunal accepts Mr. Hutcheson's opinion that the location of the Parking Lot is contextually inappropriate and does not maintain the intent and purpose of the OP.

## **DOES THE REQUEST MAINTAIN THE GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW?**

[25] The R3- Residential zoning category permits no use other than single family detached dwellings. Mr. Hutcheson testified that the R3 zoning permits small scale residential dwellings that commonly have accessory garages, sheds, and rear yard amenity areas. Mr. Hutcheson testified that the permitted use in s. 11.1 of the City Zoning By-law is narrow and definitive and as such, the requested relief does not maintain the general intent and purpose of the Zoning By-law.

[26] Mr. Hutcheson also reviewed s. 6.2.4.4 of the City's By-law No. 28-97. He stated that the purpose of establishing parking lot setback restrictions is to ensure that there is enough separation and buffer between land uses. Mr. Hutcheson testified that If the existing Parking Lot is legalized, there would not be physical space for the amenities typically associated with the permitted use of the Property. It was his testimony that the requested variances to s. 6.2.4.4 of the City's By-law No. 28-97 for this reason, as well, do not maintain the general intent and purpose of the Zoning By-laws.

[27] The Tribunal has determined that the singular use permitted in the R3- zone, namely residential is qualitatively different and discordant with a parking area.

Consequently, the variances do not conform to the general intent and purpose of the Zoning By-laws.

## **IS THE VARIANCE DESIRABLE AND APPROPRIATE DEVELOPMENT OR USE OF THE LAND, BUILDING OR STRUCTURE?**

[28] Mr. Hutcheson testified that the location of the Parking Lot gives rise to potential conflict between motorists and the inhabitants of the Heritage Building. It was his opinion that the Parking Lot detracts from the residential use of the Heritage Building and the land surrounding it.

[29] Mr. Hutcheson opined that the location and size of the Parking Lot alters the fabric of the lot layout in the Heritage District.

[30] Mr. Hutcheson stated that legalizing the Parking Lot in order to accommodate the parking deficiency at 105 Main Street does not represent good land use planning.

[31] Mr. Hutcheson testified that in his opinion the variances are not desirable or appropriate development or use of the Property.

## **ARE THE VARIANCES MINOR?**

[32] Mr. Hutcheson testified that the cumulative impact of the Parking Lot on

- a. the use and enjoyment of the Heritage Building,
- b. the lot layout of the land in the Heritage District, and
- c. the vista of the Heritage District,

is significant.

[33] It was his opinion that the variances are accordingly not minor.

[34] The Tribunal accepts Mr. Hutcheson's substantiated planning opinion on this fourth test and finds that legalizing the Parking Lot in the rear yard of the Heritage Building is contextually inappropriate, it diminishes the functionality of the dwelling and detracts from the landscape of the Heritage District and that consequently, the variances are not minor.

[35] The Tribunal acknowledges that the Parking Lot was constructed by prior owners of the Property. This does not change the fact that the Applicants are requesting validation of previously unauthorized deviations from the zoning by-laws. This after-the-fact process is, on its face, objectionable and is not condoned by the Tribunal since to do so would undermine the orderly planning processes that presume that Applicants will always apply for variances and obtain construction permits before deviating from zoning by-laws. The way the Application comes before the Tribunal, (i.e. the validation of an already-constructed parking lot without the required variance approvals) and the existence of the Parking Lot, does not mean that the Application is to be considered any differently from a new application. The Tribunal has determined that the variances do not maintain the general intent and purpose of the OP or the Zoning By-laws and are not desirable for the appropriate development or use of the Property and are not minor.

[36] In arriving at its Decision, the Tribunal has had regard to all the evidence, to matters of Provincial interest, the decision of the Committee and the information and material the Committee considered in making its decision as provided to the Tribunal.

## **ORDER**

[37] The Tribunal orders that the Appeal is dismissed, and the variances are not authorized.

M. Arpino"  
M. ARPINO  
MEMBER