



Report to: Development Services Committee

Meeting Date: September 27, 2021

SUBJECT: Application for a Heritage Permit to address Heritage Easement Agreement requirements to permit a rear yard sports pad and accessory building, 233 Main Street, Unionville, Ward 3 File: 21 136912

PREPARED BY: Regan Hutcheson, Manager, Heritage Planning, ext. 2080

REVIEWED BY: Ron Blake, Senior Development Manager, ext. 2600

RECOMMENDATION:

- 1) THAT the report titled “Application for a Heritage Permit to address Heritage Easement Agreement requirements to permit a rear yard sports pad and accessory building, 233 Main Street, Unionville, Ward 3”, dated September 27, 2021, be received;
- 2) That although the loss of the mature vegetation from the rear yard without prior authorization or approval is of concern, Council approve the Heritage Permit application in support of the introduction of a rear yard concrete sports pad and cabana structure (subject to securing a Building Permit), given that this construction has transpired and enforcement of the tree removal issue is underway and given the location and lack of visibility of the work from the public realm;
- 3) That the replanting of trees on the property to the extent possible is preferable to the payment of cash-in-lieu in order to enhance the heritage conservation district’s tree canopy;
- 4) That Council not support the introduction of a future rear yard building to enclose the rink/sports pad as it would be out of character with typical rear yard accessory buildings found in the City’s heritage conservation districts;
- 5) That this matter be considered by Markham Council on September 28, 2021 due to the Ontario Heritage Act review deadline; and
- 6) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

To consider a Heritage Permit application in support of a rear yard sports pad and small cabana building at 233 Main Street, Unionville.

BACKGROUND:

The property contains a cultural heritage resource in the Unionville Heritage Conservation District

The subject property is located on the east side of Main Street Unionville, north of Carlton Road and is within the Unionville Heritage Conservation District (see Figure 1- Location Map). The property contains a 1 ½ storey, single detached dwelling of frame construction, built circa 1870.

The property is also individually designated under Part IV of the *Ontario Heritage Act* (By-law 79-90), it is identified as a ‘Class A’ heritage property in the Heritage District and has a Heritage Easement Agreement registered on title to the property to provide additional protection.

Heritage Permit application was submitted after alterations were undertaken without City approval

In the spring of 2021, the City was notified that earthwork/re-grading and tree removals were being undertaken in the rear yard at 233 Main Street, Unionville without approval. See Attachment “A” for photographs. Work then continued with the introduction of concrete to form the sports pad.

On May 27, 2021 a Heritage Permit application was submitted in support of the introduction of a rear yard, concrete sports court/hockey rink. A proposed rear yard cabana for use associated with the existing pool and ice rink was also noted. See Attachment “B”. Although not part of the current application, the owner also indicated a desire to introduce a structure/building to cover the rink (concept plans attached as Attachment “C”).

The following statistics illustrate the size of the sports pad/ice rink:

Size of Rink: 60’ (18.29m) by 80’ (24.38)

South Side setback of Rink from property boundary: 2’8” (0.82m)

North Side setback of Rink from property boundary: ranges from 5’5” (1.66m) to 4’3” (1.3m)

Rear Yard (east) setback of Rink from property boundary: ranges from 6’8” (2.04m) to 13’5” (4.09m)

Size of Cabana – 30.33 m²

The applicant has indicated that the sports pad/ice rink is for personal use and not for a commercial business, notwithstanding the fact that the property owner is head director of the Toronto Professional Hockey School which offers hockey skill development training for children with this property being the business’s address.

Municipal approvals required for the identified work

Removal of trees

In the spring, 10 trees were removed from the property without securing the necessary municipal approvals, and enforcement is being pursued by the City. The owner has been given the option of planting new trees or a cash-in-lieu payment for each tree not planted.

In August, 5 additional trees were removed from the property and enforcement is underway. Details of the tree removals are provided in Appendix “E”.

Building

As to the appropriate approval process for the work, Building staff has noted that a concrete pad alone would not be regulated under the Building Code. Should a building eventually be constructed on the concrete pad, the entire concrete pad and the building will require a building permit. Building staff have also indicated that a building permit is required for any building larger than 10m² (108 sq

ft) (calculated as the area of the building's footprint) or any new building that contains plumbing, irrespective of size.

The identified cabana is proposed to be 30.33m² in size and would require a Building Permit.

The owner has indicated that in the future, a building may be proposed to cover the sports pad. This type of structure would require Site Plan Approval and a Building Permit. No application has been made at this time.

By-law Enforcement /Heritage

On May 21, 2021, By-law Enforcement issued an 'Order to Comply' in response to "*building construction and/or alteration of land without required Heritage permits and approvals contrary to the applicable Heritage Easement Agreement and The Ontario Heritage Act*". The Heritage Permit application was submitted in response. The owner was also informed of the requirement to secure municipal approval as per the requirements of the Heritage Easement Agreement.

Heritage Markham does not support the alteration work

Originally this matter was to be reviewed by Heritage Markham on June 9, but the applicant requested a deferral. This matter was reviewed by the Heritage Markham Committee on July 14, 2021. The Committee indicated that it did not support the Heritage Permit application in support of the sports pad and cabana. Further, the Committee does not support a building or structure that would cover the sports pad and favours tree replanting as opposed to cash in lieu. See Attachment "D" for the Heritage Markham Extract.

The applicant also confirmed in writing to extend the review period for Council to make a decision from 90 days to 130 days starting June 1, 2021. The deadline for Council consideration is October 8, 2021.

OPTIONS/ DISCUSSION:

Guidance provided by heritage policies/ tools

As noted, the subject property is individually designated under the *Ontario Heritage Act* and is a significant resource within the boundaries of the Unionville Heritage Conservation District and subject to the District Plan policies. The City also has a Heritage Easement Agreement on the subject property. The utility of each protection device is further discussed below:

Individual Designation By-law

- The Designation By-law is an older by-law from 1990 that does not include a listing of specific heritage attributes, but includes a general statement as the reason for designation and its focus is on the dwelling unit.
- The sports pad in the rear yard would not appear to affect the reasons for designation.

Heritage Easement Agreement (HEA)

- The HEA between the property owner and the City was secured in 2004 from a previous owner.
- HEAs are an effective way for a municipality to protect and maintain its valuable heritage resources as they provide the highest level of protection. An HEA sets out the requirements for maintaining a property or specific heritage features of a property. The agreement is registered on title to the property and is binding on future owners.

- Section 2.8 of the Agreement notes that changes to the property require municipal permission and specifically notes the following require permission –sections (b) refers to “erection of buildings or structures of any type whatsoever”, (d) refers to “any change to the general appearance and topography of the lands”, and (g) refers to “the removal, destruction or cutting of trees, vegetation and shrubs”.
- The Statement of Reasons for the Heritage Easement focus on the historical and architectural reasons associated with the heritage resource, and includes a list of significant architectural features. The work undertaken does not conflict with the Statement of Reasons for the HEA.
- Through the provisions of the HEA, permission from the City is required for the identified work as it is a change to the general appearance of the lands, involves a small building (cabana) and involved the removal of trees. In response to this requirement, a Heritage Permit application was required and submitted after the work was well underway.

Unionville Heritage Conservation District and Plan

- A Heritage Permit is used when no other municipal permits are required in the District and change is to be undertaken.
- The overall goal of the District is:
 - *“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”.*
- One of the Plan’s objectives is to encourage the preservation of trees and mature vegetation (3.2.2). From a landscape treatment perspective, the Plan notes that landscape features can help express the character of both the specific building and the heritage environment (4.6) and that the conservation of existing historical landscapes...will be encouraged”. Guidelines for landscape and building features are provided in Section 9.4.10.1 of the Plan.
- Typical projects that require heritage review/approval involve changes to the building (s) on the property or the introduction of features such as front yard patios/ mechanical equipment that can be seen from the street.
- Projects that don’t typically require a Heritage Permit include “backyard patios, garden and tool sheds, gazebos, dog houses and other small outbuildings that are not readily visible from the street”.
- The identified work (cabana and rink/sports pad feature) is in the backyard and not visible from the public realm, however, a heritage permit was warranted under these circumstances due to the significant scale of the alterations and the HEA requirements to seek municipal approval for property alterations.

Conclusion

The matter of tree removal is being addressed through enforcement provisions by City staff. As to the construction of a concrete sports pad, it would not appear to require a Building Permit. The proposed Cabana structure at over 30 m² in size would require a Building Permit.

From a heritage planning perspective, any proposed change on the property should be viewed through a heritage lens to assess whether the changes are detrimental to the objectives to be achieved through the Unionville Heritage Conservation District or the Heritage Easement Agreement.

The loss of trees from the rear yard section of property is regrettable from a heritage perspective and this is being addressed through enforcement by the City. Mature trees are one of the contributing heritage attributes found in heritage conservation districts.

Although not a typical backyard feature, it is challenging to argue that the permanent rink/sports pad itself and small cabana alone have a negative impact on the cultural heritage value of the property given the distance of these features from the heritage dwelling and the absence of any landscape features identified in the designation by-law. The lack of visibility of these features from the street also mitigates impact on the District.

The applicant has indicated that the rink/sports pad is for use by family/friends and is not a commercial venture (which is not permitted in a residential area).

The proposal for a future building to cover the entire rink surface would appear to have an impact and be out of character with typical outbuildings in rear yards of residential properties. To proceed with that type of project would require a Site Plan Control Application and if approved, a legal Agreement (prior to Building Permit issuance) as well as likely requiring variances through the Committee of Adjustment. In any event, staff would not support a large building in the rear yard to cover the entire rink.

FINANCIAL CONSIDERATIONS

Not applicable.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

Heritage Markham Committee was consulted. Legal Services Department has reviewed the report.

RECOMMENDED BY:

Biju Karumanchery, M.C.I.P., R.P.P.
Director of Planning & Urban Design

Arvin Prasad, M.C.I.P., R.P.P.
Commissioner of Development Services

ATTACHMENTS:

Figure 1 - Location map

Attachment "A" – Photographs/Illustrations – Existing House and Alteration Work (separate attachment)

Attachment "B" – Submitted Plans for Ice Rink and Cabana (separate attachment)

Attachment "C" – Conceptual Plans for Covering Ice Rink (separate attachment)

Attachment "D" – Heritage Markham Committee Extract – July 2021

Attachment "E" – Tree Removals/Enforcement

Figure 1

Location Map



Attachment “D” – Heritage Markham Committee Extract – July 2021

**HERITAGE MARKHAM
EXTRACT**

DATE: August 3, 2021

TO: R. Hutcheson, Manager of Heritage Planning
J. Rahim, By-law Enforcement
C. Storto, City Solicitor

EXTRACT CONTAINING ITEM #6.2 OF THE SEVENTH HERITAGE MARKHAM
COMMITTEE MEETING HELD ON JULY 14, 2021.

6.2 HERITAGE PERMIT APPLICATION

HERITAGE EASEMENT AGREEMENT

REAR YARD SPORTS PAD

**233 MAIN STREET, UNIONVILLE HERITAGE CONSERVATION DISTRICT
(16.11)**

FILE NUMBER: Pending

Extracts:

R.Hutcheson, Manager, Heritage Planning
J. Rahim, By-law Enforcement
C. Storto, City Solicitor

Peter Wokral, Senior Heritage Planner, addressed the Committee and provided a summary of the staff memorandum. The owner of 233 Main Street Unionville is seeking a heritage permit for a rear yard sports pad, and cabana. Municipal approval of these works is required as per the Heritage Easement Agreement. Some of the work has already been undertaken on the property without any approvals. Trees were cut down without permission, and the concrete sports pad has already been built. The owner is now seeking permission for the completed and proposed work.

Peter Wokral clarified that the owner has discussed covering the sports pad with a building in the future, but has not submitted a development application or building permit in this regard at this time.

Committee discussed the following relative to the staff memorandum:

- Questioned if the property was for sale;

- Discussed whether the homeowner was planning to use the arena for private or commercial purposes, noting that a hockey school business is registered to the subject lands;
- Expressed concern that the owner cut down the trees and put in a concrete pad without a heritage permit or City approval;
- Expressed concern that a large portion of the lawn will be hard surfaces if the arena and cabana are permitted to be built on the subject lands and that this could cause drainage issues;
- Expressed concern that the sports pad is as incompatible with the heritage character of Unionville as is rear yard paved parking. The Committee was unsure why the sports pad is being supported by Heritage section staff while the paved parking at another heritage property on Main Street was ordered removed at the request of City staff;
- Suggested that new trees should be planted on the property;
- Noted that the arena would not be visible from the street view, but that it would be visible from approximately 10 surrounding backyards.

Recommendation

THAT the Heritage Markham Committee does not support the heritage permit for the rear yard sports pad and the small cabana structure;

AND THAT the Committee recommends that the replanting of trees on the property is preferable to the payment of cash-in-lieu in order to enhance the heritage conservation district's tree canopy;

AND THAT Heritage Markham does not support the introduction of a rear yard building to enclose the rink/sports pad as it would be out of character with typical rear yard accessory buildings found in the City's heritage conservation districts.

Carried

Attachment “E” – Tree Removals/Enforcement

A summary is provided below of the tree removals and enforcement actions by the City:

March/April 2021

- The property was inspected for reported tree violations. The inspection found three (3) regulated trees, one (1) Siberian elm and two (2) Manitoba maples had been cut at the base. Trunks, woody debris and fresh wood chips from chain saw cuts were observed in the back yard. Also additional trees were removed ahead of a subsequent Tree Permit application issuance. One (1) Norway maple, Two (2) Siberian elms and One (1) Manitoba maple, all of which were to be granted a permit were removed before the permit was issued.
- The destruction of the trees without a permit is in contravention of Tree Preservation By-law 2008-96, as amended, Section 6.0.
- There were some hazardous trees requiring removal.
- For the removal of 6 trees, the owner is required to plant twenty four (24) trees on 233 Main St Unionville, Markham, or pay to the City of Markham \$600 cash-in-lieu for each tree not planted. According to the Enforcement Order, the trees must be planted, or cash-in-lieu payment made, no later than September 30, 2021 at 4:30 pm
- For two (2) additional trees, five (5) deciduous shade trees, each with a minimum calliper (diameter) size of 50 mm at time of planting, or five (5) coniferous trees 250cm in height are to be planted anywhere on the property by Sep 30, 2021 or alternatively a cash-in-lieu payment may be made for \$300.00 for each tree not planted by September 30, 2021.
- The alternative cash-in-lieu would be used for tree planting on public land in the community.
- There is a court date set in September for these charges to be addressed.

August 2021

- On August 30, 2021, City of Markham staff, due to complaints of trees being removed, inspected 233 Main Street. Due to owner access constraints, staff conducted the investigation from vantage points at neighbouring properties. The investigation identified five (5) additional trees had been fully removed or were in the process of removal. Four stumps and one standing trunk, with no canopy was documented.
- No tree permits were issued for tree injury or removal on site and the destruction of the trees without a permit is in contravention of Tree Preservation By-law 2008-96, as amended. This represents ongoing violations and is a second and third offence recorded for the subject site.
- The previous ORDER from the spring was amended:
 1. The owner/s were ordered to remediate the disturbed tree protection zone areas around the concrete slabs and provide an assessment report by an ISA certified arborist as directed but not limited to the methods described:
 - a. Perform soil aeration and fracturing by an ISA certified arborist using hand tools only within the tree protection zone area for the remaining trees encroached by concrete slab.
 - b. Provide deep root fertilization and/or mycorrhizae inoculation by an ISA certified arborist for the remaining trees encroached by concrete slab

- c. Submit an invoice, and/or proof of payment and tree status report to City of Markham Tree Preservation Technician.
- 2. The owner/s were ordered to plant thirty (30) trees on 233 Main St Unionville, Markham, or pay to the City of Markham \$600.00 cash-in-lieu for each tree not planted.
 - a. The trees species used/planted may only be selected from the lists provided.
 - b. The trees must be at least 50-60 mm caliper (diameter) each at time of planting.
 - c. The trees must be planted, or cash-in-lieu payment made, no later than **May 30, 2022 at 4:30 pm.**
- Failure to comply with this provision will result in additional charges and a cash-in-lieu value for the trees will be added to the Property Tax Roll for collection.