



Report to: Development Services Committee

Meeting Date: February 28, 2023

SUBJECT:	Minor Heritage Permit Application – Front Yard Landscape Alterations - 145 John Street, Thornhill Heritage Conservation District (Ward 1)
PREPARED BY:	Evan Manning, Senior Heritage Planner, ext. 2296
REVIEWD BY:	Regan Hutcheson, Manager of Heritage Planning, ext. 2080 Stephen Lue, Senior Development Manager, ext. 2520

RECOMMENDATION:

- 1) THAT the February 28, 2023, report titled, “Minor Heritage Permit Application – Front Yard Landscape Alterations - 145 John Street, Thornhill Heritage Conservation District (Ward 1)”, be received;
- 2) THAT the February 8, 2023, recommendation from Heritage Markham Committee to deny the Minor Heritage Permit application for the unauthorized front yard landscape alterations at 145 John Street (in accordance with Appendix ‘B’ of this report), be received as information;
- 3) THAT Council deny the Minor Heritage Permit application seeking approval of the unauthorized front yard alterations at 145 John Street;
- 4) THAT the gate posts and interlock pavers be removed from the former sodded areas at 145 John Street;
- 5) AND THAT Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report seeks direction from Council regarding a Minor Heritage Permit application (the “Application”) for unauthorized front yard landscape alterations at 145 John Street (the “Subject Property”) within the Thornhill Heritage Conservation District.

BACKGROUND:

Unapproved alterations were undertaken to the Part V-designated property

The Subject Property is designated as a constituent property of the Thornhill Heritage Conservation District (THCD) pursuant to the *Ontario Heritage Act* (the “Act”) and contains a single detached dwelling with a detached garage constructed in 1969 as per MPAC records.

The City received the Application for the partial paving of the front yard, driveway and side yards. These pavers replaced sodded areas that formerly existed adjacent to the driveway, and along the

side yards (note that the previous driveway treatment was also interlock). Posts for driveway gates also appear to have been installed.

When contacted by Heritage Section staff (“Staff”) about the unauthorized alterations, the Applicant stated that they were unaware that work necessitated submission of a Minor Heritage Permit application, and that they had received advice to the contrary from Staff. The following is a chronology of the interaction with the Applicant:

- September 1, 2022: Staff received the Applicant’s email that indicated their intention to “redo” the front yard, as discussed via a telephone conversation in Spring 2022. The Applicant advised that a plan was attached to the email, but Staff confirmed no attachment was included.
- On September 17, 2022: The Applicant followed-up with Staff and sent another email that included the plan and an apology for not attaching the material to the email dated September 1, 2022.
- On September 19, 2022: Staff confirmed by email to the Applicant that the proposed alterations would require approval through a Heritage Permit application (now known as a Minor Heritage Permit application), and provided the following feedback on the proposal:

“The large expanse of hard surfacing proposed in the rendering are not really in character with the heritage district which typically features lawns and gardens.”

It is at this time that Staff were informed that the majority of the alterations were completed without prior knowledge or approval from Staff (refer to Appendix ‘A’ for photographs of the unauthorized alterations).

The Applicant cited the following rationale for the alterations in the Application and in their deputation to the Heritage Markham Committee (“Heritage Markham”):

- Difficult to keep the sodded area in good condition owing to shade and poor drainage
- The front yard pavement would provide their teenage children an area for sport practice (e.g. basketball)
- The front yard paved area would provide sufficient vehicle maneuvering space to avoid the need to reverse onto John Street when exiting the driveway (given the high traffic volume on John Street, this offered a safer form of egress from the Subject Property)

The Subject Property is categorized as Class ‘C’ - Other Buildings/Properties in the Thornhill Heritage Conservation District Plan (the “District Plan”)

As described in Section 2.2.2 (‘Building/Property Classification’) of the District Plan, Class ‘C’ properties possess the following qualities:

- *They are building/properties primarily constructed post-1939*
- *They include buildings/properties that are sympathetic to the District by virtue of their scale or design qualities*
- *They include buildings/properties not sympathetic to historic character of the District*

Note that only Class ‘A’ and ‘B’ buildings are considered to contribute, support, and define the heritage character of the neighbourhood, according to the District Plan. Section 4.3 of the District Plan encourages improvements to Class ‘C’ buildings intended to enhance the District’s character.

The District Plan provides policies and guidelines for landscape character

Section 4.5.1 – Landscape Treatment provides the following policy direction, “*Existing historical landscapes will be conserved. The introduction of complementary landscapes to the heritage environment will be encouraged.*”

Section 4.5.4 – Driveways (Residential) provides the following policy direction, “*Driveways are to be kept to a narrow width in order to preserve the expanse of the front yard.*” and “*Driveway entrances will not be gated.*”

Section 9.6.1 – Heritage Landscape Treatment states, “*The landscape treatment on private property visible from the street can do a great deal to help express the character of a heritage area*” and “*All property owners are encouraged to introduce a heritage landscape treatment to further enhance the character of the District.*”

Section 8.3.1 – The Heritage Permit is used when no other municipal approvals are required and would include the hard surfacing of the front yard.

The Application was not supported by Heritage Markham

Any alterations in the District are considered by Heritage Markham as part of the heritage approval process, unless delegated to Staff. Heritage Markham previously considered the Application on January 8, 2023, and recommended a deferral in order to allow the Applicant time to demonstrate whether the extent of softscaping complied with By-law 2016-20, which regulates minimum and maximum driveway widths and the associated percentage of *softscaping* required for a front yard. For properties with expanded driveways and lot frontages greater than 10.1m, a minimum of 40% *softscaping* is required in the *front or exterior side yard* in which the *driveway* is located. The Subject Property has a lot frontage in excess of 10.1 m.

Carissa Boyko, Municipal By-Law Enforcement Officer, visited the Subject Property on February 5, 2023 to address issues of compliance with the aforementioned by-law. Specifically, Ms. Boyko identified the permitted extent of the driveway and associated parking area in response to resident complaints that the Applicant was parking on the paved portion of the front yard. Ms. Boyko also advised the Applicant that by-law enforcement was not able to substantiate their claim that they complied with the requirement for 40% softscaping, and that the onus was on them to demonstrate compliance. Further, Ms. Boyko suggested that a dimensioned drawing of the front yard be provided to City staff for evaluation. In response to this suggestion, and based on earlier requests from Staff, the Applicant prepared a dimensioned drawing for presentation to Heritage Markham. A copy of this drawing is appended to this report as Appendix ‘C’.

At its subsequent meeting on February 8, 2023, Heritage Markham recommended the Application be denied and the unauthorized alterations within the formerly sodded areas be reversed given non-compliance with direction contained in the THCD Plan (refer to Appendix ‘B’ of this report for the meeting extract).

OPTIONS/ DISCUSSION:

Section 42(1) of the Act requires approval of alterations in a District

According to the Act, an owner is required to obtain a permit from the municipality to:

1. alter any part of the property other than the interior
2. erect, demolish or remove any building or structure on the property or permit the erection, demolition or removal

Normally, Staff approve Minor Heritage Permit applications under delegated authority if they comply with approved policies and guidelines. Given the nature of the landscape alterations, including their apparent non-conformance with the policies and guidelines of the District Plan, and visibility from the public realm, Staff sought direction from Heritage Markham at its meetings on January 11 and February 8, 2023. As noted above, Heritage Markham recommended that the Application be denied.

While Staff have delegated authority to approve Minor Heritage Permit applications, as per Section 42 (16) of the Act, denial of an application requires consideration by Council. In accordance with Section 42(4) of the Act, Council must give consideration of this matter within 90 days from the official notice of receipt, which ends on April 5, 2023. If Council fails to make a decision by this date, Council shall have deemed the permit approved.

Staff do not support the front yard landscape alterations

While Staff have no objection to the repaving of the driveway as it reflects the earlier site condition, the installation of driveway gate posts and the paving of the front yard are not supported. The District Plan is typified by properties with green landscapes and an absence of large expanses of paved surfaces. This condition is both historically accurate and conforms to direction in the District Plan to avoid extensive paving of front yards.

Section 9.6.6 (Driveways) of the District Plan notes the following:

- Driveways should provide a service function on residential properties and assume a secondary role to that of the front yard landscaping
- Driveways are to be kept narrow on residential properties in order to preserve the expanse of the front yard
- Paving of the front yard is not supported
- The introduction of a hammerhead to allow cars that are backing out to turn around and exit the property facing forward is supported where necessary (i.e. John Street)
- Driveway entrances are not to be gated

Therefore, Staff would support the creation of a hammerhead driveway to address the Applicant's safety concerns as well as a walkway leading from the driveway to the dwelling's front entrance in a paving material different from what has been installed for the driveway. The current extent of paved surface, however, is not in keeping with the landscape character of the District, which is typified by mature plantings and lawn. As such, Staff opine that the unauthorized alterations do not comply with the policies and guidelines of the District Plan and should be reversed.

Further, demonstration of compliance with the softscaping requirements as described in By-law 2016-20 would not be sufficient to secure the support of Staff as the landscape alterations do not conform to the relevant policies and guidelines within the District Plan.

Driveway Gate Precedent

Note that Staff and Heritage Markham supported a Minor Heritage Permit application for a driveway gate at 146 John Street as it extended the existing white picket treatment across the driveway (the application was approved in January 2022). Notwithstanding guidance in the District Plan prohibiting the installation of driveway gates, Staff did not consider this alteration to be visually obtrusive or incompatible with the heritage character of the Subject Property or the District Plan more broadly. Further, the gate increased the safety for the Applicant's young children.

FINANCIAL CONSIDERATIONS:

None

HUMAN RESOURCES CONSIDERATIONS:

Not Applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The protection and preservation of cultural heritage resources is part of the City's Growth Management strategy.

BUSINESS UNITS CONSULTED AND AFFECTED:

The Application was reviewed by Heritage Markham, Council's advisory committee on heritage matters, at its meetings on January 11 and February 8, 2023.

RECOMMENDED BY:

Giulio Cescato, RPP, MCIP
Director of Planning and Urban Design

Arvin Prasad, MPA, RPP, MCIP
Commissioner of Development Services

ATTACHMENTS:

Appendix 'A': Property Map and Image of the Subject Property

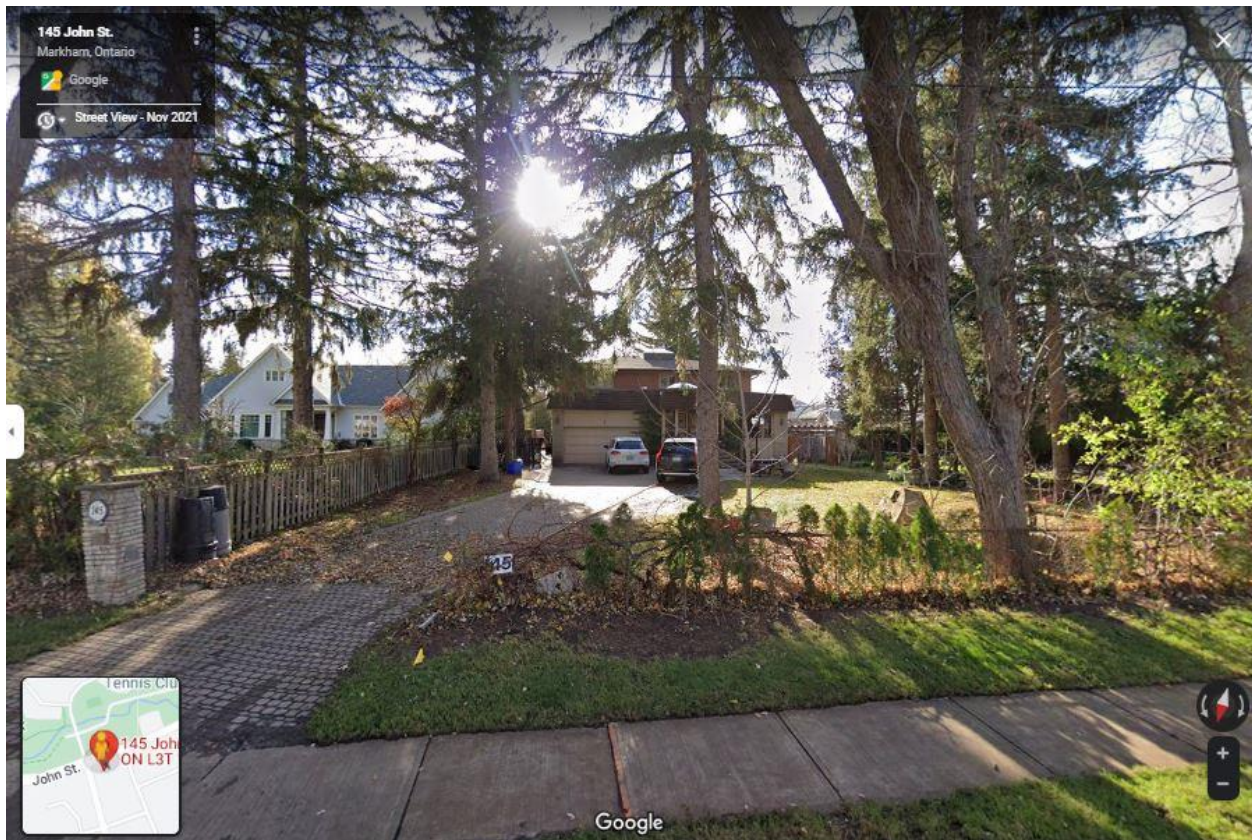
Appendix 'B': Heritage Markham Extracts January 11, 2023, and February 8, 2023

Appendix 'C': Dimensioned Drawing of the Front Yard as prepared by the Applicant

APPENDIX 'A': Property Map and Images of the Property



Property map showing the location of the Subject Property [outlined in yellow]
(Source: City of Markham)



The front yard of the subject property as it appeared in November 2021 prior to the recent alterations (Source: Google)



Images of the subject property post-alteration showing the paving of the former lawn (above) and grading work in preparation for the new driveway (Source: City of Markham)



Image of the recently paved side yard (Source: City of Markham)

**Images submitted by Applicant as part of the Minor Heritage Permit Application
(January 3, 2023)**



Looking south



Looking west, showing basketball net/court delineation



Looking north towards John Street from front yard



Looking north towards buffer between new paving area and John Street right-of-way

APPENDIX ‘B’: Heritage Markham Extracts January 11, 2023, and February 9, 2023

HERITAGE MARKHAM EXTRACT

Date: January 18, 2023

To: R. Hutcheson, Manager of Heritage Planning
E. Manning, Senior Heritage Planner

EXTRACT CONTAINING ITEM # 6.1 OF THE FIRST HERITAGE MARKHAM
COMMITTEE MEETING HELD ON JANUARY 11, 2023

6.1 HERITAGE PERMIT APPLICATION

FRONT YARD LANDSCAPE ALTERATIONS 145 JOHN STREET (16.11)

FILE NUMBERS:

Pending

Evan Manning, Senior Heritage Planner, advised that this item is related to a Minor Heritage Permit application for 145 John Street, located in the Thornhill Heritage Conservation District. By way of background, Mr. Manning advised that alterations to the front yard, including the introduction of decorative pavers on formerly sodded areas and the driveway were undertaken without prior approval from Heritage Section staff, but stated that the owners have indicated that they were not aware of the need for a Minor Heritage Permit application. Mr. Manning advised that this application has been received retroactively, and that Heritage Staff is recommending that Council deny the permit due to the extent of the paving and the fact that it is out of character for the Thornhill Heritage Conservation District, and in contravention of direction within the Thornhill Heritage Conservation District Plan.

Mr. Manning advised that the owners of the property were present to answer any questions pertaining to the application.

The following depositions were heard from the owner of the subject property and members of the public:

Homeira Shahsavand and Russol Heydari, owners of the subject property, explained that they have resided at the subject property for over a decade and that they are seeking approval of their application. They explained that they had been in communication with City Staff, but there were communication issues which led them to believe that approval from Heritage Section staff was not required prior to work commencing.

Ms. Shahsavand and Mr. Heydari explained that they undertook the work to allow them to access John Street without having to reverse, to address concerns around vehicle safety. They also explained that paving the front yard provided more activity space for their teenage children who play a number of competitive sports, and that grass was difficult to grow in their yard. They indicated that porous material was used to ensure that there won't be drainage issues impacting both their property as well as adjacent properties. They also noted it was their understanding that they complied with the municipal by-laws which governs driveway width and the minimum percentage of front yard softscaping.

David Jordan, owner of a nearby property on John Street, expressed support for the application noting that the permit process can be complex, every property is unique and there should be flexibility in the enforcement of District Plan guidelines. Mr. Jordan expressed his appreciation of landscape alterations undertaken by the applicant and noted that from his observation, drainage does not appear to be an issue on the subject property and surrounding areas.

The Committee members provided the following feedback:

- Inquired about the purpose of the hard surface paving on either side of the driveway, and questioned why the work wasn't located in the rear yard instead;
- Discussed their belief that the Owners of the property did not intend to subvert processes, but noted the precedent that may be set if their application is approved;
- Concurred that there is increased traffic at the intersection of John Street and Henderson Avenue and acknowledged the difficult sightlines between the driveway and roadway; and
- Expressed concern for the reduction of greenspace which took place as a result of the paving.

The Owner clarified their plans to continue to plant trees throughout the property and emphasized their interest in greenspace and environmental protection.

It was noted that the Clerk had previously distributed written correspondence from members of the public on this matter to committee members.

Recommendation:

THAT Heritage Markham supports the Minor Heritage Permit Application for the front yard landscape alterations at 145 John Street.

Motion Failed

After some debate, the Committee consented to defer this item to the Heritage Markham Committee meeting on February 8, 2023.

Recommendation:

THAT this item be deferred to the Heritage Markham Committee meeting on February 8, 2023,

THAT the deputation from the following individuals be received:

- **Homeira Shahsavand**
- **Russol Heydari**
- **David Jordan**

AND THAT the written correspondence in opposition to the application from Brian Fischer, Vice President, Ward One (South) Thornhill Residents Inc., Diane Berwick, Joan Honsberger, Valerie Tate and Valerie Burke, be received;

Carried

HERITAGE MARKHAM EXTRACT

Date: February 9, 2023

To: R. Hutcheson, Manager, Heritage Planning
E. Manning, Senior Heritage Planner

EXTRACT CONTAINING ITEM # 6.2 OF THE SECOND HERITAGE MARKHAM
COMMITTEE MEETING HELD ON FEBRUARY 8,
2023

6.2 HERITAGE PERMIT APPLICATION

FRONT YARD LANDSCAPE ALTERATIONS

145 JOHN STREET, THORNHILL HERITAGE CONSERVATION DISTRICT (16.11)

FILE NUMBER:

HE 23 110708

Evan Manning, Senior Heritage Planner, provided a brief introduction to this item, reminding members that it was deferred from January's Heritage Markham meeting to allow the Applicant to confirm if alterations complied with By-law 2016-20, which was in question at the previous meeting. Mr. Manning advised that the by-law requires that a 40% of the front-yard must contain softscaping given the applicant's driveway width and lot frontage. Mr. Manning confirmed that Heritage Section Staff do not object to the paving of the driveway but object to the extent of paving in the formerly sodded front-yard. Mr. Manning advised that front yard alterations must conform to the requirements of the aforementioned by-law as well as direction in the Thornhill Heritage Conservation District Plan. In response to safety concerns noted by the Applicant at the previous meeting, Mr. Manning confirmed that Staff would be willing to work with the Applicant on a hammerhead driveway configuration to allow safe exit from the driveway onto John Street.

Councillor Karen Rea, Chair, confirmed that she would allow deputants who spoke to this application at the January Heritage meeting to speak again, asking them to ensure that they remain within the five-minute speaking limit.

Homeira Shahsavand, Applicant, provided a brief presentation highlighting the reasons for the front-yard paving, including safety

concerns, lawn drainage issues, and additional play area for her children. Ms. Shahsavand also confirmed her understanding of the importance of greenspace in the neighbourhood.

Russol Heydari, Applicant, provided an update regarding the soft landscaping on the property. Mr. Heydari advised that a By-law Officer came to the subject property earlier in the week and confirmed that there were no by-law infractions as a result of the front-yard alterations. Mr. Heydari echoed the reasons for the front-yard alterations which were previously described by Ms. Shahsavand.

Zhila Heidari, Deputant and John Street resident, expressed her support for the front-yard alterations, noting that they were an improvement to the property. Ms. Heidari noted the high volume of traffic in front of the subject property as a result of its proximity to the intersection of John Street and Henderson Avenue. Ms. Heidari noted that the front yard was previously very muddy which was improved by the paving. Ms. Heidari also stated that the Applicant planted trees on the property and used high quality materials.

Massoud Mashadi, Deputant, expressed support for the application, noting that the front yard has improved in appearance. Mr. Mashadi also expressed concern regarding the volume of traffic along John Street and expressed support due to the safety concerns described by the Applicant.

David Jordan, Deputant and neighbour to the Applicant, expressed his support for the application and noted his disagreement with the Staff recommendations. Mr. Jordan briefly explained his reasons for support, which were also provided at the January 11th Heritage Markham Committee meeting. Mr. Jordan shared images of other homes in the area with substantial front-yard paving to emphasize his belief that the extent of the paving is not uncommon within the Thornhill Heritage Conservation District.

Barry Nelson, Deputant, requested to speak. It was confirmed that he did not make a deputation on this application at the January Heritage Committee meeting. Mr. Nelson urged the Committee to listen to the Applicant with empathy and noted that home use is vastly different post-pandemic. Mr. Nelson noted his agreement with the safety concerns expressed by the Applicant and advised that he has personally been on the property and has seen the issues first-hand. Mr. Nelson noted that as a previous member of the Heritage Markham Committee, he is an advocate of heritage conservation, but expressed that he does not believe this property is a true heritage structure.

The Committee members provided the following feedback:

- Emphasized the importance of removing safety from the discussion as the hammerhead driveway configuration would resolve safety concerns and is permitted within the Thornhill Heritage Conservation District Plan.
- Indicated the importance of adhering to policy in the District Plan as it will become more difficult for Committee and Council to maintain the integrity of the Plan if it is not upheld in a majority of circumstances.
- Agreed that the arguments in support of the application (i.e. recreation and safety) are outside of the purview of the Heritage Markham Committee, which has the responsibility to examine the issue through the lens of the District Plan, regardless of the heritage character of the home itself.
- Noted that although some questioned the heritage value of the subject property, it is within a heritage conservation district and thus is governed by the policies of the District Plan.

THAT Item 6.2 be tabled prior to Item 6.1 as several Deputants joined the meeting to discuss Item 6.2

Carried

Recommendation:

THAT Heritage Markham does not support the front yard landscape alterations and gate posts and recommends that the Minor Heritage Permit Application seeking approval of the unauthorized alterations be denied, and that the interlock pavers be removed from the former sodded areas.

AND THAT written submissions from the following individuals be received:

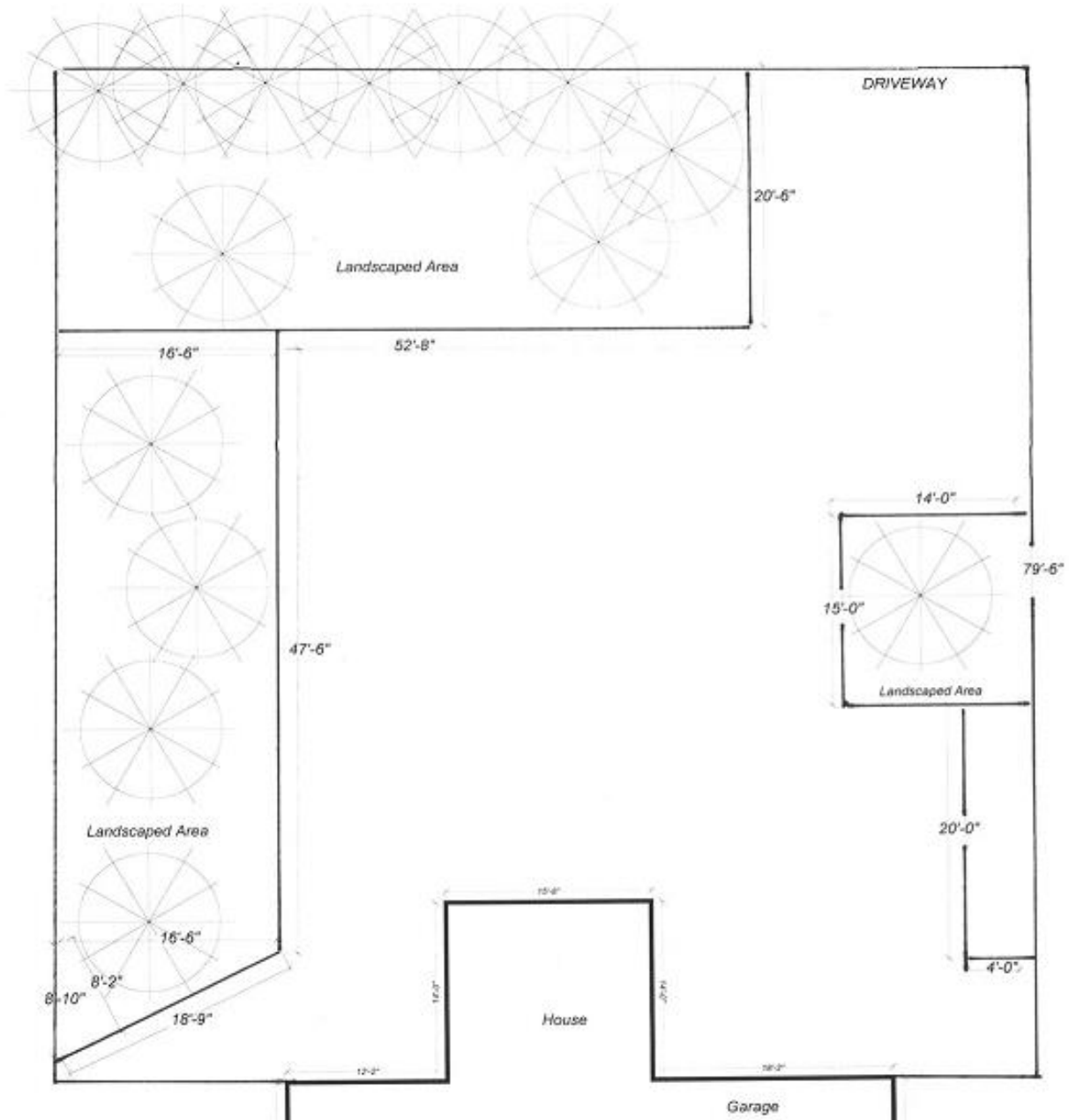
- **Shakiba & Massood Mashadi**
- **Bernie Reddick**
- **Neila Bergman**
- **Walter & Allison Duncan**
- **David Jordan**
- **Hossein & Zhila Heidari**

- **Gail Carson**
- **Nancy Kostelac;**

AND FURTHER THAT the deputations from the following individuals be received:

- **Homeira Shahsavand**
- **Russol Heydari**
- **Zhila Heidari**
- **David Jordan**
- **Barry Nelson.**

Carried

APPENDIX 'C': Dimensioned Drawing of the Front Yard as prepared by the Applicant

Front Yard

Front Yard Area Calculations and required Landscaped, (soft), Area

Lot Size 5583 sq. ft

40% of lot size 2233. Sq ft

Landscaped Areas;

52.75 X 20.5 = 1081 sq ft

47.5 X 16.5 =. 784 sq ft

Triangle =. 76 sq. ft

14 X 15 =, 210 sq ft.

20 X 4 = 80 sq ft

Total Landscaped Area =. 2231 sq ft