

April 10, 2024

Heritage Committee Markham,
c/o Evan Manning,
Senior Heritage Planner
Development Services Commission
City of Markham, 101 Town Centre Boulevard,
Markham, Ontario L3R 9W3

Attn: Evan Manning
emanning@markham.ca

Re: Comments regarding:

Proposed Addition
86 John Street, Thornhill ON

Dear Evan Manning

I represent Elena Cesaroni who lives at 4 Leahill Drive, a designated property (John Edey House – 1845) located at the rear of 86 John Street in Thornhill ON.

At Ms. Cesaroni's request, I have reviewed the most recent Memorandum prepared by Markham Planning and addressed to the Heritage Markham Committee, dated April 10th, 2024. I have also reviewed the minor revisions shown on the drawings submitted by the applicant. I will summarize our concerns as follows:

1. We cannot support this application as it substantially contravenes the guidelines of the Thornhill Markham Heritage Conservation District Plan, specifically Section 9.2.5. Additions to Heritage Buildings:
 - a. With respect to the Location (9.2.5.1.) of the proposed addition,
 - b. With respect to the Building Form (9.2.5.2.) of the proposed addition,
 - c. With respect to the Design: Scale (9.2.5.3.) of the proposed addition,
2. We cannot support this application as it disregards the guidelines of the Thornhill Markham Heritage Conservation District Plan, specifically Section 9.2.6. Outbuildings to Heritage Buildings.

3. We cannot support this application as it substantially contravenes the policies of the Thornhill Markham Heritage Conservation District Plan, specifically Section 9.4. New Buildings¹:
 - a. With respect to Residential Village: Overview (9.4.2.),
4. We cannot support this proposal as the applicant has not demonstrated any reason why the proposed addition cannot conform to Zoning Bylaw 2237, specifically by requesting:
 - a. A proposed building depth that is almost double the permitted depth,
 - b. A proposed rear yard setback that is less than half of the required setback,
 - c. A floor-area ratio that is almost 50% more than permitted,

Note that we will continue to oppose this application at the Heritage Committee and the Committee of Adjustment, unless the proposed addition is reduced in size, height and mass and the location of the linked addition on the lot is respectful of the zoning regulations and the heritage neighbourhood building pattern.

Part 1 – Heritage Conservation Issues

The Heritage Markham Committee was formed in 1975. Its role is “*to advise and assist Council in matters relating to heritage conservation districts and individual buildings of historical and/or architectural significance.*” The Committee is required to be guided by “*the policies and regulations of the Ontario Heritage Act, heritage conservation guidelines endorsed by the Province of Ontario, policies in the Markham Official Plan, individual heritage conservation district plans, and heritage policies adopted by Markham Council.*” Noted referenced heritage documents include:

- Thornhill Markham Heritage Conservation District Plan, 1986,
- The Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada, 2010
- Architectural Conservation Notes, Ontario Ministry of Culture, 2022

To help the Heritage Markham Committee better complete its role, Francis Lapointe, a member of the Ontario Association of Architects (specializing in sustainable and heritage architecture), has completed the following review of the proposed addition to a heritage house located at 86 John Street in Markham. The review examines the project for conformance to the Thornhill Markham Heritage Conservation District Plan, adopted by Markham Council in 1986, under Part V of the Ontario Heritage Act.

¹ 9.2.6.2. “*For new garages and other outbuildings refer to New Development guidelines in Section 9.4.*”

A) 1.1. The Heritage Conservation District Concept

In the introduction to the Thornhill Markham Heritage Conservation District Plan (TMHDCP), the Author states that:

It is not the purpose of heritage conservation district designation to make the district a static place where change is prohibited. Rather, the purpose is to guide change so that it contributes to the district's architectural and historic character.

We also believe that renovations, additions, and new buildings can successfully contribute to a heritage district's character and growth, without damaging the inherent characteristics of the district. We also agree with the TMHDCP that the Thornhill Markham Heritage District is composed of modest-sized buildings on large lots with substantial trees:

The ongoing development of Thornhill has maintained the scale and character of the older parts of the village, with a variety of lot sizes and siting, mostly modest-sized buildings, mature and rich planting and landscaping, a rural or modified-rural road profile, and a proliferation of white wooden picket fencing. This character is strongly maintained in most of the village. Although the mills and their ponds are long gone, the valleys are preserved in a mostly natural state as parkland and hazard land, with significant amounts of woodland. The preservation of the valleys respects and honours the mill-town origins of Thornhill.

2

Construction within the Thornhill Markham Heritage District should be designed to be compatible with the heritage urban fabric. That includes the size, massing, height and location of additions and buildings on a lot. This objective is described in Section 2.0 of the TMHDCP:

2.0 Heritage Character and Heritage Statements

2.4.5 Objectives for New Development

To ensure compatible infill construction that will enhance the District's heritage character and complement the area's village-like, human scale of development.]

To guide the design of new development to be sympathetic and compatible with the heritage resources and character of the District while providing for contemporary needs.

3

The construction proposed for 86 John Street consists of a separate building that is linked to the heritage building with an enclosed walkway. The project was originally conceived as a separate 'coach house' and was described as such by Evan Manning, Senior Heritage Planner, in a prior City of Markham Planning memorandum:

² Section 2.0 Heritage Character and Heritage Statement, 2.2. Statement of Heritage Value, Thornhill Markham Heritage Conservation District Plan, Philip H. Carter, 1986

³ Section 2.0 Heritage Character and Heritage Statement, 2.4.5. Objectives for New Development, Thornhill Markham Heritage Conservation District Plan, Philip H. Carter, 1986

An enclosed one-storey link is proposed to connect the coach house with the rear elevation of the existing dwelling. The existing garage is proposed to be removed to accommodate the coach house.⁴

It appears that the original design was revised by providing a 'one-storey link' between the addition and the main heritage building, likely to reduce the number of minor variances required for a detached coach house. The idea that this project consists of two buildings intentionally 'linked' to create one building is further confirmed in the latest Planning Memorandum, as described in the Application/ Proposal portion of the memorandum:

An enclosed one-storey link is proposed to connect the rear addition with the north elevation of the existing dwelling.

Staff also have no objection to the construction of the one-storey link as it provides the benefit of a weather protected circulation route between the main dwelling and the proposed addition while still maintaining the legibility of both as distinct elements.⁵

A separate larger building joined by a one-storey link is NOT a building form typically found in the Thornhill Markham Heritage District. Therefore, the proposed linked rear addition to 86 John Street is not consistent with the heritage mazing typically visible in the heritage district.

B) Section 9.2.5. Additions to Heritage Buildings

The Thornhill Markham Heritage Conservation District Plan (TMHDCP) provides dozens of design guidelines for the renovation and restoration of heritage buildings, as well as guidelines for appropriately designed additions and new buildings in the District. The TMHDCP describes in words and in illustrations that an addition to a heritage building should not divert attention from the original building and should not be more imposing.

i. With respect to the Location (9.2.5.1.) of the proposed addition, the guidelines state:

1. *“Attached exterior additions should be located at the rear or an inconspicuous side of a historic building.”*
2. *“Additions should be limited in size and scale in relationship to the historic building.”*

⁴ Memorandum, Heritage Markham Committee, C of A Variance Application, 86 John Street, Thornhill. A/106/23, July 12, 2023.

⁵ Memorandum, Heritage Markham Committee, C of A Variance Application, 86 John Street, Thornhill. A/106/23, April 10th, 2024.

The proposed addition at 86 John Street generally conforms with item 1. of the above, since it is primarily located in the rear yard of the lot. But the project does not conform to Item 2. The proposed addition is substantially larger (136.86 sm or 67%) than the original building.⁶

Furthermore, the original building consists of a single dwelling unit, whereas the proposed addition consists of two additional dwelling units, a large garage and a large 'games room' that can easily be converted into a dwelling unit in the future. Therefore, the proposed addition does not conform to Section 9.2.5.1.

ii. With respect to the Building Form (9.2.5.2.) of the proposed addition, the guidelines state:

1. *"The form of the original heritage building should be considered in the design of a new addition.*
2. *The attached addition should in no way dominate the street presence of the heritage building nor detract from any of its important historical features."*

While the applicant has presented a design for the addition that appears complimentary, architecturally it may be too much the same as the original building. It should also be noted that:

- a 'one storey link' is not a typical form in the heritage district,
- The large mass of the proposed addition dwarfs the heritage house,

Most critical to this argument is that the original heritage building is in fact a much smaller one-storey building! The second storey and the side porch are additions completed as recently as 2002. Furthermore, the second storey addition was built based on the recollection of the previous owners who stated that:

"Family accounts say that it was intended to be 2½ or 3 storeys tall, but the scheme wasn't completed due to financial constraints".⁷

The above quoted 'family account' is typical of many projects. Most buildings start small and grow as the financial capacity of the owners increases. That said, approving the construction of the second floor and side porch addition in 2002 conflicts with the Guidelines for Rehabilitation Projects: Additions or Alterations to the Exterior Form:

"Not Recommended: Constructing a feature of the exterior form that was part of the building's original design but was never actually built, or a feature thought to have existed during the restoration period but for which there is insufficient documentation."⁸

Furthermore, to repeat that mistake by allowing a proposed development to be based on a recent post-heritage designation development to double the building mass is flawed. If that is

⁶ GFA of existing heritage building = 204.06 sm, GFA of proposed addition = 340.92 sm source – Applicant's drawings.

⁷ Thornhill Heritage Conservation District Inventory, Billerman House, 86 John Street

⁸ Standards and Guidelines for the Conservation of Historic Places in Canada, Parks Canada, page 132, 2010

allowed, then in 10 or 15 years, should another much larger addition be allowed to again double the proposed massing of the 'new' house? Eight dwelling units instead of four dwelling units? That notion disregards multiple heritage conservation principles that state that the original building as designated is the portion of the building that needs to be preserved, protected, and enhanced, not the subsequent renovations and additions.

Thornhill Heritage Conservation District Inventory

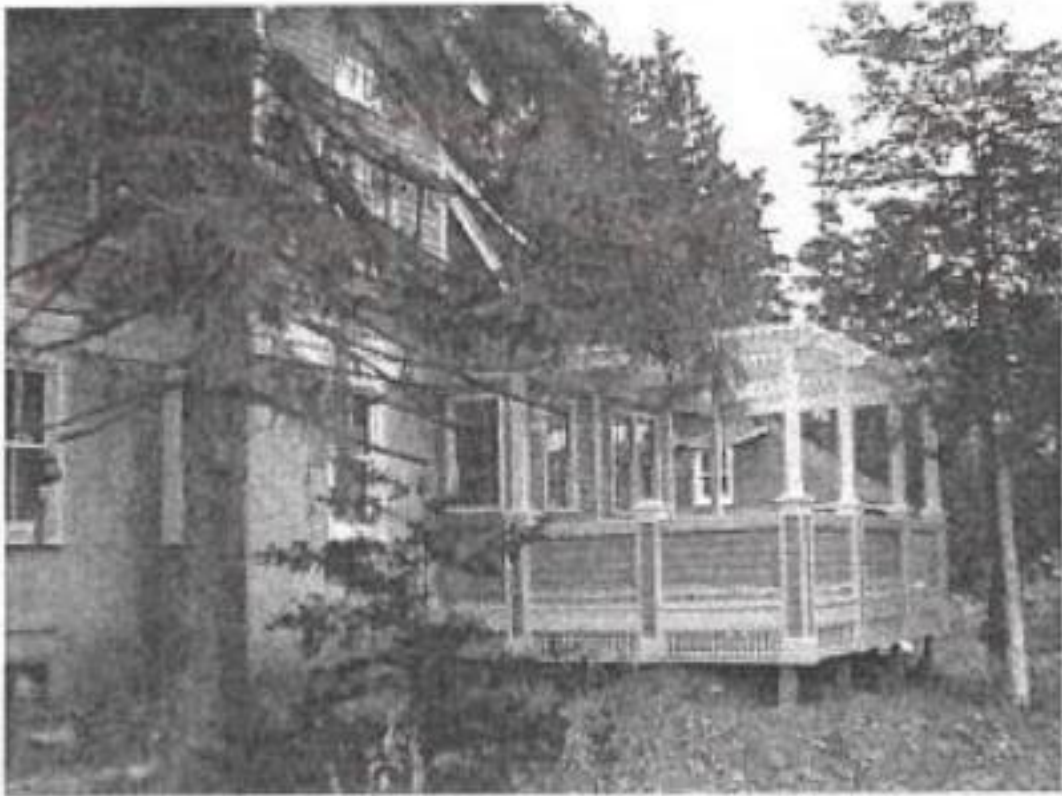
History: Built in 1912 for the Billerman family, and in their hands until 1998 after the death of George Billerman, son of the builder. Family accounts say it was intended to be 2-1/2 or 3 storeys tall, but the scheme wasn't completed due to financial constraints. Interior panels came from Queens Park after a fire in one of its wings in the early 1900s, and the panel backs are stamped with installation notes like 'Queens Park-North Corridor. A very skillful and sensitive second-floor addition was completed in 2002 by Darryl Simmons and Nancy Capelli. See comments. Subject to a Conservation Easement with the Town.

Comments: The house is very interesting, both in its original form, and in its current state. The insubstantial roof edge and overhang on the original, compared with robust details on the ground floor (the brackets under the oriel window, for instance), lends credence to the story of the truncated construction.

The renovation has preserved all of the elements of the original cottage, and added an accurate rendition of a Craftsman style addition. This creates impression that the original owner added to the house a decade or so later, and it can be a successful design strategy for large additions. It distinguishes between the original building and the addition, but retains an overall historic character.



Figure 1 - Description of the originally designated house at 86 John Street
(source: Thornhill Heritage Conservation District Inventory)



A gazebo/deck was part of the addition. THCD photograph.

Figure 2. - The east side porch was also built in 2002.
(source: Thornhill Heritage Conservation District Inventory)

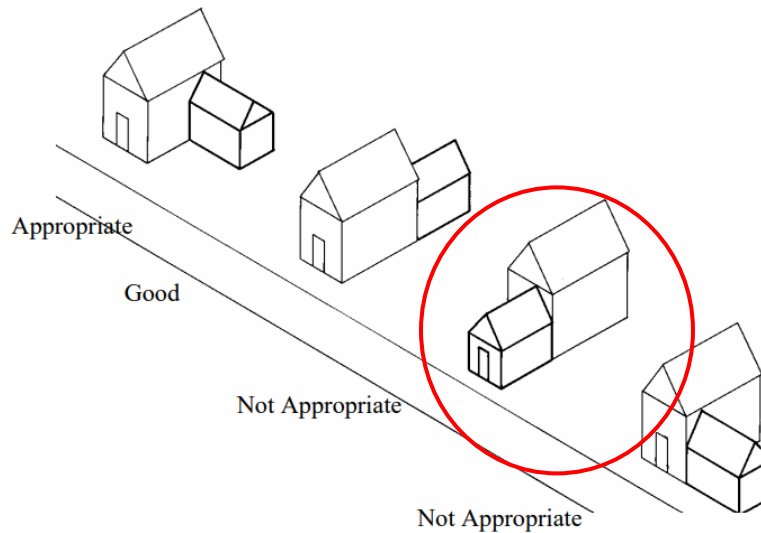
iii. With respect to the Design: Scale (9.2.5.3.) of the proposed addition, the guidelines state:

1. The design of additions should reflect the scale of the existing heritage buildings.
2. An addition should not be greater in scale than the existing building.

In this case, the proposed addition (340.92 sm) does not reflect the scale of the existing building (204.06 sm) and is in fact 67% larger than the current heritage building. Also noteworthy is that the original heritage building was a 1-storey bungalow, while the proposed linked addition is two-storeys and contains two dwelling units, a large garage and a potential third dwelling unit. As such, the proposed linked addition does not conform to Section 9.2.5.3. of the Thornhill Markham Heritage Conservation District Plan

Section 9.2 also provides an illustration that clearly illustrates that side or rear additions that are smaller, lower and more setback from the street than the main building is the preferred design

option. But the proposal for 86 John Street most resembles the third option circled below, and described as “not appropriate”.



The visual impact of the location of an addition and its relationship to the streetscape.

Figure 3 - Illustration from Part D Design Guidelines Section 9.2
(source: [Thornhill Markham Heritage Conservation District Plan](#))

C) Section 9.2.6. Outbuildings for Heritage Buildings

In the Additions to Heritage Buildings section of the Thornhill Markham Heritage Conservation District Plan (TMHDCP) readers of the heritage plan are advised that new ‘garages and outbuildings’ must be designed according to the New Development guidelines in Section 9.4

1. *“For new garages and other outbuildings refer to New Development guidelines in Section 9.4”.*

As previously described, the proposed linked addition at 86 John Street is a ‘technical addition’ since it is only joined to the heritage building by a one-storey link. For that reason, the proposal should be required to conform to Section 9.4. since it is a ‘new’ building much larger than the original building.

D) Section 9.4. New Buildings

It is our professional opinion that the proposed addition at 86 John Street should be designed in conformance with Section 9.4. New Buildings of the Thornhill Markham Heritage Conservation District Plan since as previously discussed, it is essentially a separate building. Section 9.4 describes the Thornhill Markham Heritage District as having small to medium size buildings, instead of the proposed very large addition with three (and potentially four) dwelling units:

“An important attribute of the Heritage District is the distinctive form and massing commonly found on a traditional streetscape, with the predominant building form being the small- to medium-sized single detached dwelling.” (underlining by FL)

Subsection 9.4.2.3. Overall Scale guidelines also state:

- 1. While new construction may vary in scale from the surrounding development, it should fit in with the existing streetscape in terms of rhythm, alignment and spacing.*
- 2. The ratio of green space to building mass and the sideyard setbacks should be generally consistent with the character of adjacent properties.*

Subsection 9.4.2.5. Building Form: Height guidelines also state:

- 1. New construction should be compatible with the traditional height pattern in the District of one-and-a-half and two storeys, and should have regard for the adjoining buildings on the street.*
- 2. The height of new residential buildings should be not be less than 80% or more than 120% of the average height of the residential buildings on immediate adjacent properties.*

The house immediately to the east of 86 John Street is a one-storey bungalow (90 John Street), while the house on the west side (84 John Street) is a single storey at the front, with a two storey addition in the middle and a single storey glazed pool structure beyond that. The heritage house north-east of the proposed addition (4 Leahill Drive), is a one-and-a-half storeys. Since there are NO houses immediately surrounding 86 John Street that are two storeys tall, the average height of adjacent dwellings is likely lower than one-and-one-half storey.

In Section 9.4.2. Residential Village, the description states that the District is composed of small houses on large lots:

“The residential village has a variety of lot sizes, frontages and setbacks. Houses were mostly modest scale, leaving generous yards on all sides. In the historic area, front yards tend to be shallow compared with the rear yards, where space was needed for stabling, herb and vegetable gardens and orchards.” (Page 97)

This proposed development reduces 86 John Street's rear yard to an unusable space that may simply be ignored. Canada's zoning regulations for small scale residential properties have historically preserved the rear yard for multiple reasons including providing ample distance the

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rear facades of neighbouring houses, reducing overlook and undesirable noise issues while allowing proper ventilation and sunlight to enter the back yards. The proposed addition is a very large and tall structure within several meters of the rear yard of 4 Leahill Drive and will cast significant shadows on 4 Leahill Drive's property.

The house directly east of the proposed addition (90 John Street) is a single storey bungalow that is sited close to John Street, and that has a small one-storey garage at the rear. In the image below, note the estimated size of the proposed addition behind the existing garage at 90 John Street.

The heritage house at 4 Leahill drive is also a small 1½ storey dwelling. There are several large gaps between these existing small dwellings that provide views to the rear yard of 86 John Street. The proposed addition at 86 John Street will loom over these two dwellings and be clearly visible from the back windows of 90 John Street and 4 Leahill Drive.



Figure 4 - View of rear addition from 90 John Street (view from Leahill Drive).
(Applicant east elevation superimposed on Google Streetsview image)

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Figure 5 - An aerial view of the subject property and its neighbours. The houses adjoining 86 John Street are all 1 1/2 storey or less.

In conclusion, it is clear that the proposed addition at 86 John Street does not comply with the heritage conservation guidelines suggested in the Thornhill Markham Heritage Conservation District Plan. Notably, the addition is too large, too tall, too close to the rear property line, and is an overdevelopment of the property.

Part 2 – Bill 23 Issues

The Heritage Committee may be under the impression that the Provincial Governments' Bill 23 dictates that all development up to three dwelling units must be approved regardless of zoning or heritage restrictions, but that is simply not the case. The regulations specifically describe the number of units that are permitted to be built in existing, enlarged, or new houses located on lots zoned for single-family dwellings. The overall goals of Bill 23 (with respect to the number of permitted dwelling units) can be summarized as follows:

- a) A house, if it is large enough, should be allowed to contain two dwelling units within the same building envelop, as long as there is not more than one dwelling unit in an accessory structure on the same lot,
- b) A house, if it is large enough, should be allowed to contain three dwelling units constructed within the same building envelop, if there are no other dwelling units in an accessory structure on the same lot,
- c) An accessory structure can contain one dwelling unit, if the main building on the same lot has no more than two dwelling units in it.

Restrictions for residential units

- (3) No official plan may contain any policy that has the effect of prohibiting the use of,
 - (a) two residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if all buildings and structures ancillary to the detached house, semi-detached house or rowhouse cumulatively contain no more than one residential unit;
 - (b) three residential units in a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units; or
 - (c) one residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse on a parcel of urban residential land, if the detached house, semi-detached house or rowhouse contains no more than two residential units and no other building or structure ancillary to the detached house, semi-detached house or rowhouse contains any residential units.

Figure 2 - Excerpt from More Homes Built Faster Act, 2022 (Bill 23)

Bill 23 does not say that the proposed additions or new buildings do not have to conform to Heritage Conservation policies or to the Zoning bylaw. Instead, Bill 23 states that "...no official plan may contain any policy that has the effect of prohibiting the use of..." the buildings described above.

City of Markham Planning Staff have suggested that the proposed application for 86 John Street is an addition to an existing heritage building yet consistently describe the project it as two buildings connected by a 'one-storey link'.

In reality, and to any reasonable observer, the project is in fact a large accessory structure containing at least 2 dwelling units a large garage and a 'games room', linked to the existing heritage dwelling with an enclosed walkway, as defined by the City of Markham Zoning bylaw. As such, the project does not conform to any of the 'three dwelling units on the same lot' definitions provided in Bill 23, as described above.

Part 3 - Zoning By-law concerns

While zoning bylaw conformance is not normally the main concern of a Heritage committee, the extent of the minor variances from the zoning bylaw required for this project should be considered by the Heritage Committee, as they illustrate the extent to which the proposed development does not conform to the heritage fabric of the district.

One of the main objectives of a zoning bylaw is to allow for appropriate development while reducing impact on neighbouring properties. As any planner can attest, zoning regulations such as building depth, property setbacks and building height are designed to limit shadows and overview into rear yards of adjoining properties, and historically, houses were placed on lots to achieve those objectives. That is why a smaller lower accessory structure is permitted to be closer to a property line, but a larger taller house is not.

In the case of the proposed development at 86 John Street, the project fails to maintain the general intent and purpose of the zoning by-law and the requested minor variances are not minor:

- a. the proposed building depth of 31.48 m is almost double what is permitted (16.8 m);
- b. the proposed rear yard setback is 14'-10" (4.5 m) is more than 50% less than the required rear yard of 30'-0" (9.144 m);
- c. the proposed floor area ration of 44.73% is 11.72 % more than the permitted ratio of 33%,

Furthermore, I believe that two additional minor variances are required and not currently listed in the application:

- d. Three parking spaces are required whereas two are proposed,
and
- e. The height of the enclosed walkway exceeds the maximum permitted of 2.5 m.

At the last hearing, we heard that at least three parking spaces would be required for this project, whereas the proponent is proposing two parking spaces in the revised drawings:

The Committee provided the following feedback:

- Asked to clarify the parking requirement for the additional unit. Regan Hutcheson, Manager, Heritage, confirmed that it was his understanding that two parking spaces are required for a main unit, but noted that an additional parking space is not required for a second unit, but would be required for a third unit.

And finally, the status of the connecting 'one-storey link' between the heritage house and the addition mentioned several times in the Heritage Memorandum prepared by Staff needs to be clarified. In my opinion, the link falls under zoning regulation 6.3.1.9. Enclosed, unenclosed and roofed walkways, which describes enclosure walkways as '*permitted on a lot with a detached private garage subject to the provisions of this Section*'. The proposed linked addition started out as a coach house with apartments but is now suggested by staff to be an addition. One of the provisions of regulation 6.3.1.9 is that enclosed walkways are not permitted to be more than 2.5 m high, measured from established grade to the midpoint of a sloping roof.

6.3.1.9 Enclosed, unenclosed and roofed walkways

Enclosed, unenclosed and roofed walkways are permitted on a lot with a detached private garage subject to the provisions of this Section.

6.3.1.9.1 Size of enclosed, unenclosed and roofed walkways

Enclosed, unenclosed and roofed walkways shall be no wider than 2.75 metres with the width being measured from the exterior faces of the exterior walls. In addition, the height of enclosed, unenclosed and roofed walkways shall not exceed 2.5 metres.

6.3.1.9.2 Permitted locations for enclosed, unenclosed and roofed walkways

- a) *Enclosed, unenclosed and roofed walkways are permitted in:*
- i) *the required rear yard; and,*
 - ii) *in the area between a detached private garage and the main building on a lot.*

Planning Staff may indicate that they don't consider this 'one-storey link' to be an enclosed walkway, yet zoning regulation 3.40 defines an enclosed, unenclosed and roofed walkways as:

3.40 ENCLOSED, UNENCLOSED AND ROOFED WALKWAY

"Enclosed, Unenclosed And Roofed Walkway" means a *structure* with no *basement* that connects a detached *accessory building* and the *main building* on the *lot* and which is designed and used as a walkway between *buildings* and not used for any other purpose.

So, if the proposed 'one-storey link':

- is a walkway,
- is enclosed,
- links a house to an accessory structure,
- is not used for any other purpose...

...than it must be an enclosed walkway, and the addition must be an accessory structure.

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It should also be noted that there are other design solutions that are easily achievable and that may not require any minor variances, or at least less substantive minor variances. As we suggested at the last Heritage Markham Committee hearing, below is another alternate sketch of the proposed development that conforms to the setback regulations of the zoning bylaw, while minimizing impact on neighbours. All parking spaces are accessible, the proposed addition conforms to all lot setbacks, all trees are preserved, and the heritage building is unaffected. We continue to fail to understand why the proponents have not revised their design to conform to the zoning regulations.

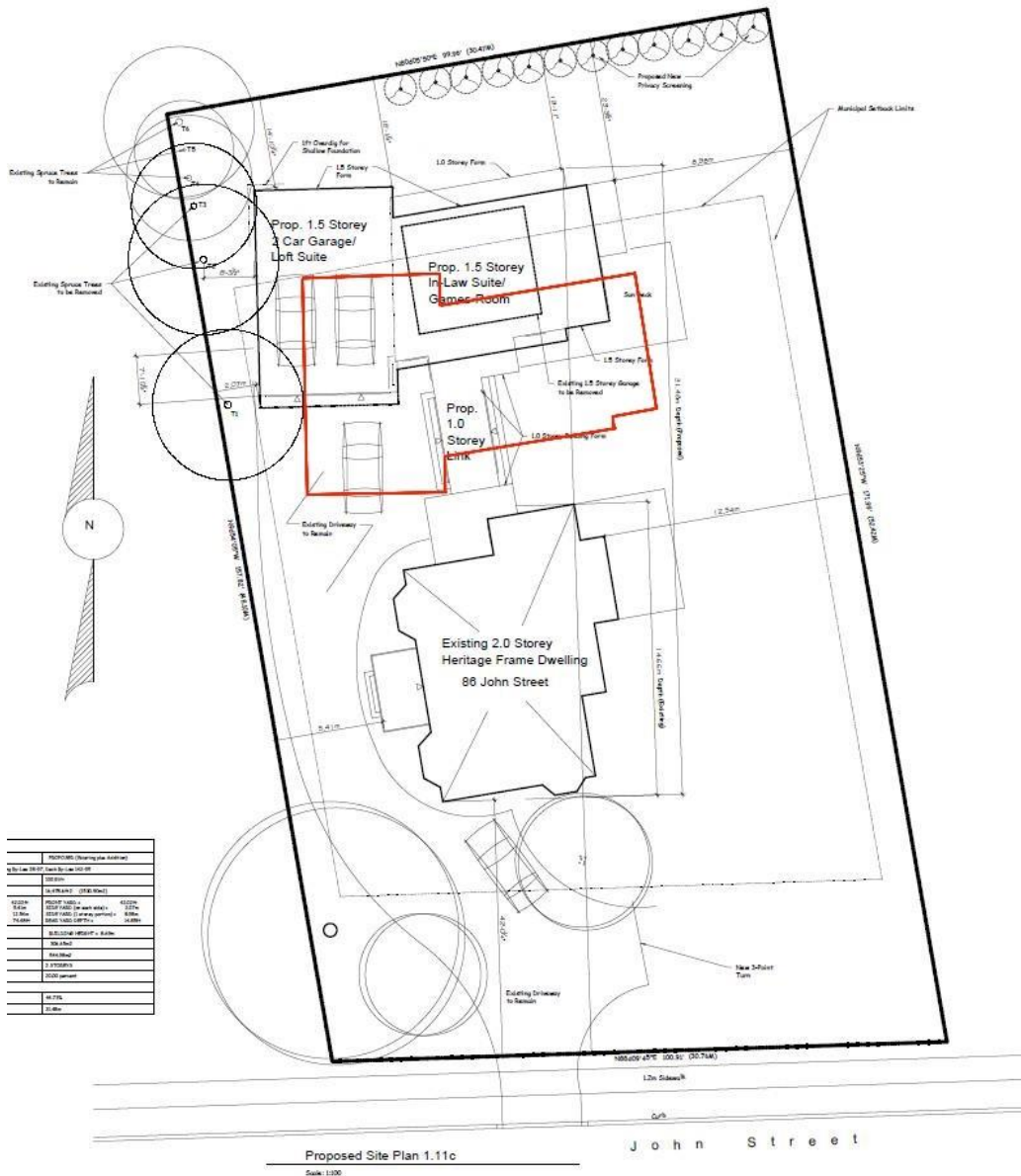


Figure 6 - The red outline relocates the proposed addition to fit within the lot setbacks.
(based on site plan prepared by Scott Rushlow Assoc. Ltd.)

Below is another design option that should be explored. The rear addition could be reduced in size if the proposed 'games room' were relocated from the second floor of the linked addition to the east side of the existing heritage house. This would allow the games room to be closer to the users (assumingly the occupants of the main house) while preventing the 2nd floor space (with separate entrance) from easily being converted to a fourth dwelling unit in the future.

With respect to heritage concerns (as previously mentioned) the open east side porch was recently constructed in 2002, so it is not a protected heritage feature. And as described in the Thornhill Heritage Conservation District Inventory, if the previous 2022 additions can be built 'preserving all the elements of the original cottage, and added an accurate rendition of a Craftsman style addition' one presumes a new games room can be built to complement the original heritage house?

The renovation has preserved all of the elements of the original cottage, and added an accurate rendition of a Craftsman style addition. This creates impression that the original owner added to the house a decade or so later, and it can be a successful design strategy for large additions. It distinguishes between the original building and the addition, but retains an overall historic character.

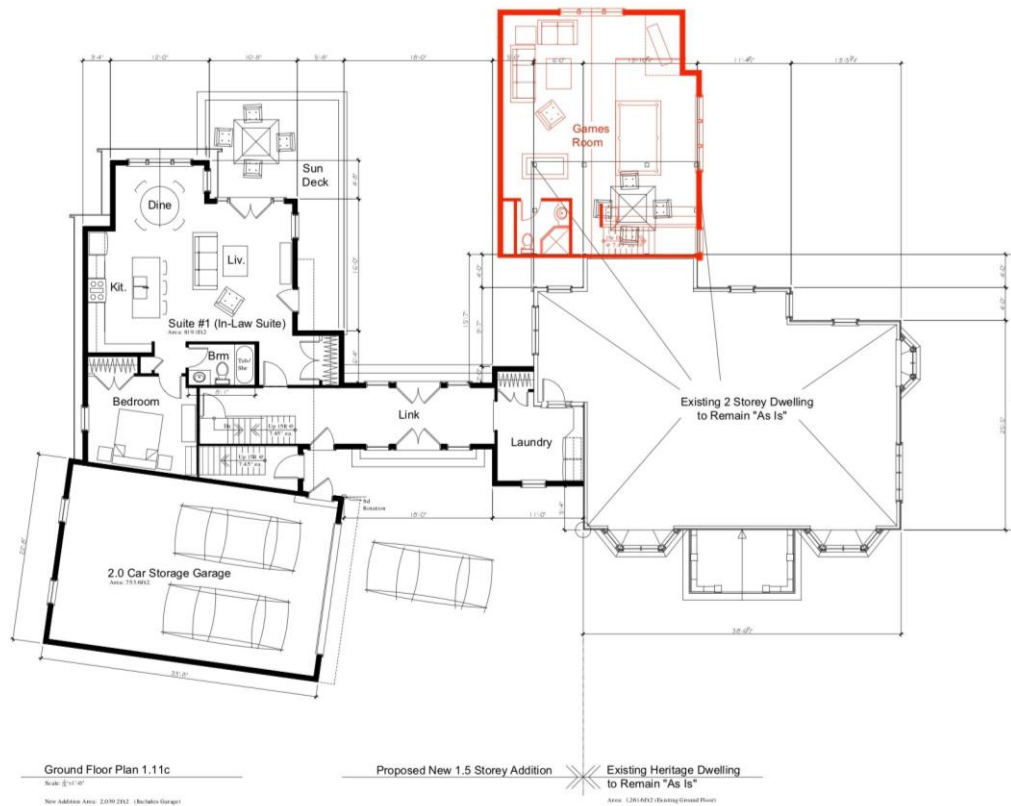


Figure 7 - The red outline above shows the 'games room' relocated from the second floor of the addition to the ground floor of the main house, making it directly accessible to the users.
 (based on floor plans prepared by Scott Rushlow Assoc. Ltd.)

It should also be noted that minor variances from the zoning bylaw for large rear yard additions have generally been denied by the OMB in the past. The sample decision below is a good example of what planning issues must be considered when approving minor variances, and how the validity of minor variances are to be determined, based on the four planning tests. Minor variances that are double what is permitted tend to be denied without delay. Large additions that do not conform to the existing urban fabric are also generally rejected:

“The key issue here is the size of the addition. This is a very large addition, in terms of its absolute size and mass. In this instance, the Board prefers the planning evidence of Ms. Spears, especially with regards to Variances 3 and 5 that individually and cumulatively, they do not meet the four tests in subsection 45 (1) of the Planning Act, they are not in the public interest, and do not represent good planning.

One of the four tests of a minor variance in subsection 45 (1) of the Planning Act (PA) is: Is the variance minor? This test is generally considered in terms of both size and impact. The length and mass of the proposed addition is simply too large. The Board acknowledges that the Subject Property is a double length lot but in this instance, the proposed depth/length is 43.85 m. (according to the variance) and this is more than three times the permitted maximum building depth/length of 14 m. Here, the existing building length is 17.48 m.; the proposed extension is 24.46 m. (Exhibit 1, Tab 20) and this is significantly longer than the existing building itself and therefore, it cannot in this instance be considered minor in terms of size. In terms of impact, the mass of the addition is overwhelming as compared to the neighbouring properties and is not minor.

This proposal is not in keeping with the existing physical character of the neighbourhood. On this basis, the proposed length - Variance No. 3 fails to meet the test of minor, in subsection 45 (1) of the PA.

Similarly, the gross floor area of the proposed extension corresponds directly with its length; the permitted increase in residential gross floor area is 15% of the lot area (60.23 sq. m.), whereas, the proposed addition will have a gross floor area equal to 54% of the lot area (214.69 sq. m.) – this is more than three times the applicable by-law standard. Consequently, Variance No. 5 cannot in this instance be considered as minor in terms of size. In terms of impact, the proposed addition consists of a single dwelling unit that dominates the rear yard and this is an over-development of the property.

Therefore, this addition is not minor. This application cannot proceed.

THE BOARD ORDERS that the appeal is allowed and the variances to the City of Toronto, Zoning By-law 438-86 as amended, are not authorized. This is the Order of the Board.”⁹

⁹ Ontario Municipal Board, Decision PL080645

Conclusion

Despite repeated requests, the applicant has yet to demonstrate why it is necessary to build a very large 2-car garage, a games room and two apartments at the rear of a modest heritage house, far exceeding the regulations of the zoning bylaw. This proposed addition (340.92 sm¹⁰) is 67% greater than the volume of the main heritage building (204.06 sm¹¹) and requires the removal of three large mature trees on the property, and likely cause injury to several other mature trees. Furthermore, and as previously suggested, there is ample space on the lot to build both a modest addition to the main building and a separate garage that conforms to the design guidelines of the Thornhill Markham Heritage Conservation District Plan and that would not likely require any minor variances from the Zoning Bylaw. The applicant has not demonstrated any Zoning or Heritage Act hardships that prevents appropriately sized and located addition(s) from conforming to the required regulations.

As previously discussed, this project is trying to be both a separate building and an addition to a heritage building. The applicant has chosen to separate the two buildings, presumably to reduce tenant noise for the occupants of the main house, to improve natural light for both the new building and the heritage house and to provide a minimum space between the main house and the addition for a garden. But in doing so, the proposed addition has a detrimental impact on the adjoining lots by being too close to the lot lines, blocking sunlight and airflow to those lots, removing an important tree cover, and potentially impacting natural storm water flows.

Joining the new and heritage building by a small link has circumvented multiple planning regulations. Had the proposed garage and two dwelling units been built as accessory structures, their combined height and floor area would have been too high and too large. By attaching the proposed garage to the main house with an enclosed walkway, those and several other zoning regulations were bypassed, including provincial regulations limiting secondary units in accessory structures to one dwelling unit only. To conform to Bill 23, the proposed addition needed to be connected to the heritage house via a one-storey enclosed walkway, thus changing the project from an accessory structure to a linked addition to a house. But the result is the same; overdevelopment in a back yard that impacts the neighbors' enjoyment of their lots.

The Heritage Markham Committee should consider all the data presented in this report and decide on the merits of this proposal based solely on the guidelines of the Thornhill Markham Heritage Conservation District Plan. In this case, this project fails to conform to the several guidelines of those guidelines, including:

- a) The proposed linked addition is not a true attached addition, but is actually a separate building linked by a one-storey enclosed walkway, a strategy used to circumvent zoning regulations for detached accessory structures,

¹⁰ per applicant's site statistics

¹¹ per applicant's site statistics

- b) 'detaching' the addition for 'heritage preservation reasons' is opposite of what is stated in the TMHCDP, which recommends mimicking the neighbourhood's building massing and spacing, instead of creating a new one 'linked addition' design style,
- c) The size and massing of the proposed addition is substantially larger than the existing building, and even more so considering that the heritage building consisted of the original single-storey structure without the east porch. Allowing this project to be more than triple the size of the area of the original building runs contrary to multiple guidelines of the TMHCDP,
- d) The height of the proposed addition is substantially more than the average height of the surrounding dwellings, contravening the guidelines of the TMHCDP,
- e) Finally, the proposed project requires minor variances from the zoning bylaw that are likely to be rejected at the Committee of Adjustment for exceeding the four planning tests.

As an Architect licensed to practice in Ontario, I have completed more than a dozen projects that involved designated buildings, both within my own practice and with other architects. I have rarely seen a project that so deliberately ignores good planning principles, zoning regulations and heritage concerns as this project does. I firmly believe that the project at 86 John Street can be designed to conform to the zoning regulations and the heritage guidelines while making good planning sense.

Approving this application in its current form will set an alarming precedent for the neighbourhood. Future development proposals that are double or triple the size of the original heritage structures will become commonplace, rear yards will disappear and the guidelines and goals of the heritage district will cease to matter.

I urge the Heritage Markham Committee to decide on the merits of this project based on the Thornhill Markham Heritage District Plan guidelines, not the desires of an applicant hoping to maximize the financial returns of their property at the expense of the zoning regulations, the typical building massing of the Heritage District and the neighboring properties.

Sincerely,



Francis J. Lapointe.
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