

ISSUE DATE:

October 3, 2012



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

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PL120219

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CITY OF MARKHAM

~~IN THE MATTER OF~~ subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Michael Baranowsky
Appellant:	Iman Jouri
Appellant:	Sam Jouri
Appellant:	Al Ladha; and others
Subject:	By-law No. 2012-13
Municipality:	Town of Markham
OMB Case No.:	PL120219
OMB File No.:	PL120219

*Copy: Legal  
(on behalf of Anna) Tom  
Lucy*

BEFORE:

J. DE P. SEABORN  
VICE CHAIR

) Wednesday, the 3rd  
)  
) day of October 2012

**THIS MATTER** having come on for public hearing and after the hearing, the Board in its Decision issued August 8, 2012 having allowed the appeal in part, and having withheld its Order to allow the parties an opportunity to review the precise wording required to modify the by-law in accordance with the Board's decision;

**THE BOARD ORDERS** that the appeal against By-law 2012-13 of the Town of Markham is allowed in part, and the Board amends By-law 2012-13 as set out in Attachment 1 to this order. In all other respects, the Board Orders the appeal is dismissed.

SECRETARY

## EXPLANATORY NOTE

### **BY-LAW NO. 2012-13**

A by-law to amend By-law 221-81, as amended.

Land Use Study

Hughson Drive, Lunar Crescent, Ankara Court, Polaris Drive and west end of Athens Drive

### LANDS AFFECTED

The proposed by-law amendment applies to Hughson Drive, Lunar Crescent, Ankara Court, Polaris Drive and Athens Drive (west end). The homes on these streets are single detached residential and they are located north of Highway 7, east of Woodbine Avenue.

### EXISTING ZONING

The lands are zoned in By-law 1507, as amended.

### PURPOSE AND EFFECT

The purpose and effect of the proposed by-law amendment is to incorporate the lands within By-law 221-81, as amended, and to introduce appropriate zoning standards to guide future development in the area. In addition, park land will be zoned appropriately (O1) to reflect the existing park within the neighbourhood.

ATTACHMENT 1



A by-law to amend By-law 221-81, as amended

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THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HEREBY ENACTS AS FOLLOWS:

1. That By-law 221-81, as amended, is hereby further amended as follows:
  - 1.1. By re-zoning the lands shown on Schedule 'A' attached hereto, to Single Family Residential – Third Density (R3) and Institutional and Open Space (O1).
  - 1.2. By adding to section 3, the following new subsection:

“3.4. Where a Zone symbol on the attached schedule(s) is followed by one or more numbers following the asterisk (\*) symbol, such as R3\*2, the numbers following the asterisk (\*) symbol refers to the subsections in Section 7 – Exceptions of this By-law that apply to the lands noted.”
  - 1.3. By adding to Section 7 – Exceptions, the following new subsection:

“7.2 Notwithstanding any other provisions of this By-law, the provisions in this Section shall apply to Part of Lot 11, Concession 4, lots 1-14 and 17-46 on Plan 4556, denoted by the symbol \*2 on Schedule 'A' attached to this By-law. All other provisions of this By-law, unless specifically modified/amended by this section, continue to apply to the lands subject to this Section.”

**7.2.1 For the purpose of this exception, the following definitions shall apply:**

    - (i) DEPTH means the shortest distance between two lines, both parallel to the FRONT LOT LINE, one passing through the point on the DWELLING which is nearest and the other through the point on the DWELLING which is the farthest from the FRONT LOT LINE.
    - (ii) STOREY means the portion of a DWELLING, other than a CELLAR or an unfinished attic, located between the surface

of any floor and the surface of the floor or roof above, and shall include a BASEMENT.

- (iii) BASEMENT means that portion of a DWELLING, between two (2) floor levels, which is located partly underground and which has more than one-half (1/2) of its height from floor to underside of floor joists of the STOREY next above, above the ESTABLISHED GRADE.
- (iv) CELLAR means that portion of a DWELLING between two (2) floor levels, which is located partly or entirely underground and which has more than one-half (1/2) of its height from floor to underside of floor joist of the STOREY next above, below the ESTABLISHED GRADE.
- (v) ESTABLISHED GRADE means the finished surface elevation at the outside front walls of a building or structure, which is arrived at by taking the arithmetic means of the levels of the finished ground surface at every location of change of grade at those outside front walls of the building or structure.

#### **7.2.2 Development Standards**

- (i) Minimum required FRONT YARD – 9 metres
- (ii) Minimum required INTERIOR SIDE YARD – 1.8 metres
- (iii) Minimum required EXTERIOR SIDE YARD – 2.0 metres
- (iv) Minimum required REAR YARD – 10 metres
- (v) Minimum LOT FRONTAGE – 50% (fifty percent) of the lot frontage of a lot of record existing on the date of the passing of this By-law amendment
- (vi) Minimum LOT AREA - 50% (fifty percent) of the lot area of a lot of record existing on the date of the passing of this By-law amendment
- (vii) Maximum HEIGHT – 9.8 metres
- (viii) Maximum number of STOREYS – two (2) within a single vertical plane.
- (ix) Maximum DEPTH of DWELLING: 19.9 metres, except that the DEPTH may be increased by 2.1 metres by an extension to the rear of the DWELLING provided such extension complies with all of the following:
  - The extension does not exceed one (1) STOREY;
  - The extension does not exceed 4.6 metres in HEIGHT; and,
  - The extension is not wider than one-half (1/2) the width of the DWELLING at its widest point.
- (xv) Maximum garage projection – garage shall not be located closer than 2.1 metres to the FRONT LOT LINE than the main building.

**7.3** “Notwithstanding any other provisions of this By-law, the provisions in this section shall apply to Lot 5 on Plan 4556, 65R 32975, Parts 1 & 2 (10 & 10A Hughson Drive), denoted by the symbol R3\*2\*3, as shown on Schedule “B”, attached hereto. All other provisions of this By-law, unless specifically modified/amended by this section, continue to apply to the lands subject to this Section.

**7.3.1 Development Standards**

- (i) Minimum LOT FRONTAGE – 15 metres
- (ii) Minimum LOT AREA – 600 square metres
- (iii) Minimum required SIDE YARD – 1.5 metres

**7.4** “The following provisions shall apply only to Part of Lots 6 and/or 22, Plan 4556 in which the maximum lot frontage and lot area comply with Sections 7.2.2(v) and 7.2.2(vi):

**7.4.1 Site Specific Provisions**

- (i) Notwithstanding the INTERIOR SIDE YARD provisions contained in Subsection 7.2.2 of this By-law, the minimum required INTERIOR SIDE YARD shall be 1.5 metres.
- (ii) Notwithstanding the STOREY definition contained in Subsection 7.2.1 of this By-law, a FINISHED ATTIC shall not be considered a STOREY.
- (iii) FINISHED ATTIC means that portion of a building situated wholly or partly within a sloping roof and in which there is sufficient space to provide a floor area equal to at least one-third (1/3) but not greater than two-thirds (2/3) of the floor area of the storey next below and having side walls not less than 1.37 metres in height and a ceiling sloped so as to provide a minimum height of 2.28 metres over at least fifty (50%) of its floor area.

1.4 By adding Schedule ‘A’, attached to By-law 2012-13, as Schedule ‘B’ to By-law 221-81, as amended.

- 2. All other provisions of By-law 221-81, as amended, not inconsistent with the provisions of this by-law shall continue to apply.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
24<sup>TH</sup> DAY OF JANUARY, 2012.

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KIMBERLEY KITTERINGHAM  
TOWN CLERK

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FRANK SCARPITTI  
MAYOR

ISSUE DATE:

**August 8, 2012**



PL120219

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Michael Baranowsky
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Appellant:	Sam Jouri
Appellant:	Al Ladha; and others
Subject:	By-law No. 2012-13
Municipality:	Town of Markham
OMB Case No.:	PL120219
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**APPEARANCES:**

**Parties**

Town of Markham (now the City of Markham)

Al Ladha  
Jeremy Tio

Michael Baranowsky

Sam Jouri

**Counsel**

Bruce Ketcheson

Michael Melling

**DECISION DELIVERED BY J. de P. SEABORN**

**Introduction**

The matter before the Board consists of several appeals in connection with By-law 2012-13 ("By-law") enacted by the Town of Markham (now the City of Markham, "City"). The purpose of the By-law is to introduce zoning regulations to guide redevelopment in an existing residential subdivision initially created in the mid- 1950s. Mr. Ladha and Mr. Tio have discreet issues and seek relief specific to their respective properties. Mr. Melling advised that given his clients' concerns are site specific, their appeals to the

entire by-law were withdrawn at the commencement of the hearing. Mr. Baranowsky and Mr. Jouri, also property owners in the subdivision, appealed the entire by-law largely on the basis that they object to any regulation that encourages lot division. Mr. Singh and Ms. Chang were identified as participants and each testified against the provision of the By-law that sets a performance standard for lot division.

### **Issues**

There were two main issues for determination. First, should the By-law include a standard to regulate lot division. Second, in the circumstances of the Ladha and Tio appeals, would it be good planning to provide a site specific exception to the proposed performance standards set out in the By-law for the number of stories and interior side yard setbacks.

### **Evidence and findings**

By way of background, the area to which the By-law applies is located on the northeast corner of Woodbine Avenue and Highway 7, in the Brown's Corners Secondary Plan Area. The area includes Hughson Drive, Lunar Crescent, Ankara Court and Polis Drive and a portion of Athens Drive. There are about 44 residential lots in the subdivision, created in 1954. The lot sizes and shapes vary. Existing frontages range from 24 metres to 40 metres and the homes are generally bungalows and split-level ranch style dwellings. Although there had been very little redevelopment activity in the area, in August 2010 provisional consent was given and a minor variance was authorized for 10 Hughson Drive. Consequently, the By-law under appeal includes site-specific standards for 10 and 10A Hughson Drive to recognize the recently approved permissions for those properties (following severance). The purpose of the By-law is to introduce a series of zoning standards to the subdivision so that redevelopment can proceed subject to updated standards. Zoning By-law 1507, enacted in 1954, sets minimal development standards and the purpose of the By-law is to introduce modern standards for owners who wish to redevelop their properties.

In advance of enacting the By-law, an interim control by-law was put in place and the City retained Meridian Planning Consultants ("Meridian") to prepare a report for review by the public. The purpose of the report was to "determine whether additional lot creation should be permitted" in the study area (Meridian Report, Exhibit 2, Tab 13, p.



1). The report also considered several new zoning standards for the area. The City embarked on an extensive public consultation process with the affected residents, many of whom objected to Meridian's recommendation against lot division. Thereafter, Council enacted the By-law and Mr. Baranowsky and Mr. Jouri, who supported the work undertaken by Meridian, have appealed the By-law as it will, in their view, encourage severances throughout the subdivision.

#### Lot division

The By-law provides a performance standard for minimum lot frontage set out as 50% of the lot frontage of a lot of record (s. 7.2.2 (v)) as well as a standard for minimum lot area, also set at 50% of a lot of record (s. 7.2.2 (vi)). Mr. Baranowsky and Mr. Jouri, each of whom testified, argued that this standard will encourage severances in the subdivision and erode the character of the neighbourhood. Mr. Baranowsky testified that the By-law is a departure from positions taken by staff and by municipal council. New homes have been constructed on existing lots and the effect of the By-law will be to encourage severances, resulting in smaller homes and a loss of value for existing homeowners. The provisions for lot division are not supported by the community and fail to protect the character of the neighbourhood. The Meridian report recommended preservation of existing lots of record which are large and include significant amounts of open space and protection of vegetation and mature trees. Mr. Jouri and Mr. Baranowsky each testified that the Meridian report constitutes good planning and its recommendations should be adopted by the Board, not the By-law under appeal enacted by Council. Similarly, Ms. Chang and Mr. Singh oppose any provision for lot division and argued that there are limited areas in Markham that support large lots. The surrounding subdivisions have smaller lot frontages and lot areas whereas their area is characterized by large lots and large home, a character that should be preserved.

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On the issue of including performance standards in the By-law that regulate lot division, the Board finds that the City's approach represents good planning. Similarly, the entire By-law is an appropriate response to the City's desire to guide redevelopment in the area. There are several reasons for this conclusion. First, the Board accepts that updating the zoning for the study area is necessary, a determination that was made by City staff, City Council and Meridian. Existing performance standards date back to the 1950s and provide little guidance for redevelopment. Standards such as maximum

height, dwelling depth, garage projection, minimum lot frontage and lot area, are not regulated under the existing zoning. Second, the evidence did not suggest that as a result of the By-law, the City will be deluged with applications for consent. During the public consultation process, several residents indicated they had no intention of seeking a severance. Neither Mr. Baranowsky nor Mr. Jouri have any intention of seeking lot division. However, there were also some residents who took the position that they wished lot division to be recognized and regulated in the By-law. Third, the By-law standards will not negate the need for applicants to satisfy the criteria for consent set out in the *Planning Act* (Act). City staff will evaluate applications, if any, and the area is also subject to site plan control. Accordingly, it does not follow that providing a standard in the By-law for lot division (as opposed to silence) will result in an increase in applications to sever. Last, the opinion evidence from Mr. Romano, supported by Mr. Manett on this issue, was persuasive. Mr. Romano recommended the By-law to the Board. It was his view that the relying on a standard of 50% of a lot of record for frontage and area is a reasonable approach, especially for irregular lots. The purpose of the By-law is to fill a gap. Historically, consents have not been regulated for the area and there has only been one application for a severance (10 Hughson Drive). The introduction of performance standards is good planning, especially where no previous standards were in place. It was Mr. Romano's opinion that the City's approach meets all provincial policy objectives and official plan requirements. The By-law has been enacted by Council following a lengthy public consultation process and it will guide future growth and is in the public interest. The Board agrees.

#### Performance standards

Mr. Melling indicated at the outset of the hearing that while his clients' appeals were originally filed against the entire By-law, each was seeking site-specific relief. In this regard, there were two standards at issue and Mr. Manett provided his planning opinion recommending the inclusion of a site-specific exception for each property as part of the By-law.

Dealing first with the performance standard regulating the number of storeys, the By-law sets the maximum number at two (2) within a single vertical plane. Mr. Manett testified that his clients do not object to the inclusion of two storeys as a maximum. However, the manner in which the definition of storey is expressed in the By-law means that if his

clients wish to renovate existing attic space, then the dwelling would be classified as three (3) storeys. Simply put, without any exterior renovation or change in height, finished attic space would trigger an additional storey. On this point, the City agreed that the application of the By-law should be relaxed on a site-specific basis. Mr. Romano agreed with Mr. Manett's planning opinion that a minor change in wording would allow a renovated attic to proceed. The Board agrees and accepts the planning opinions provided that renovated attic space should not be considered as an extra storey. The height restriction in the By-law (9.8 metres) is not challenged by Mr. Melling's clients and it is not their intention to seek relief that results in a three (3) storey dwelling upon redevelopment. Rather, they wish to make use of attic space through renovation which would have absolutely no impact to the streetscape or surrounding homes.

With respect to the second performance standard for which a site-specific exception is sought, the By-law proposes minimum interior side yard setbacks of 1.8 metres (s. 7.2.2 (ii)). Mr. Melling's clients request the Board relax that standard to 1.5 metres, again on a site-specific basis. The City argued that for this performance standard there should be no exception and if, following a severance, if any, a reduction in the interior side yard is warranted to accommodate a particular development proposal, then relief by way of an application for a minor variance can always be pursued.

On this issue, the history is relevant. As indicated at the outset, the By-law under appeal includes one site-specific exception to reflect a consent given and a variance authorized for 10 and 10A Hughson Drive, also owned by Mr. Ladha. The request for 12 Hughson and 11 Lunar is entirely consistent with that exception, which permits side yard setbacks at 1.5 metres. Accordingly, the Board finds that it is entirely consistent with the form of the proposed By-law to include a site-specific exception for these appeals to permit interior side yard setbacks at 1.5 metres. With respect to the proposed By-law standard of 1.8 metres, that setback is normally applied throughout Markham and both planners indicated that it was a standard that constitutes good planning and it should remain the governing standard. However, to conclude that these appellants should wait and request a variance for interior side yard setbacks through the minor variance process would be, as Mr. Melling suggests, not efficient for his clients. This is especially the case in circumstances where they have taken the steps to appeal the By-law, narrow and scope their appeals, relying on professional planning assistance throughout. The Board agrees and finds that the By-law should be amended to include

a site-specific exception reducing the required interior side yard to 1.5 metres for 12 Hughson and 11 Lunar. This result is consistent with the decision of the Board issued on August 13, 2010, where it was found that 1.5 metre side yard setbacks were compatible. In that case, which applied to 10 and 10A Hughson, the City had enacted an interim control by-law covering the area pending completion of and consultation on the Meridian report. The effect of the Board's decision was to remove 10 Hughson Drive from the interim control by-law.

There was no challenge generally to the performance standards set out in the By-law. Mr. Baranowsky and Mr. Jouri largely directed their respective testimony and evidence to the matter of lot division. The Board finds that the By-law represents good planning and adopts and relies upon Mr. Romano's detailed evidence and opinions in this regard. As Mr. Ketcheson submitted, the City followed an extensive public consultation process prior to Council enacting the By-law. Residents expressed a wide range of views and the By-law represents an appropriate balancing of interests. Most importantly, it puts in place performance standards to guide redevelopment in an area where the applicable zoning dates back to 1954. In this regard, all parties agreed that updated zoning can protect this stable residential area and provide standards for the future in circumstances where little regulation has been in place.

### **Decision**

**THE BOARD ORDERS** that the appeal is allowed in part and By-law 2012-13 of the City of Markham is approved substantially in accordance with Exhibit 2, Tab 4, subject to modifications, on a site-specific basis for 12 Hughson Drive and 11 Lunar Crescent, that provide that first, a finished attic shall not be considered an additional storey and second, a reduction to the interior side yard setback to 1.5 metres (following severance).

As suggested by Counsel, the Board's Order is withheld for a period of 30 days to allow the parties an opportunity to review the precise wording required to modify the by-law in accordance with the Board's decision. The Board's order approving the by-law will issue thereafter. If there is any difficulty in this regard, the Board may be spoken to.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE-CHAIR

