

CONSENT APPLICATION

D10-B05-18 **CPPIB UPPER CANADA MALL INC. and
OXFORD PROPERTIES RETAIL HOLDINGS II INC.**
Part Lot 96, Concession 1, Part 1, Plan 65R-38065
17600 Yonge Street

MINOR VARIANCE APPLICATION (deferred from November 14, 2018 hearing)

D13-A25-18 **1956322 ONTARIO INC.**
Block K, Plan M47
48 Eastman Crescent

NEW BUSINESS

- Minutes of the regular Meeting of the Committee held on Wednesday, December 12, 2018



PLANNING AND BUILDING SERVICES

Town of Newmarket
395 Mulock Drive
P.O. Box 328, STN Main
Newmarket, ON L3Y 4X7

www.newmarket.ca
planning@newmarket.ca
T: 905.953.5321
F: 905.953.5140

Planning Report

To: Committee of Adjustment

From: Ted Horton
Planner

Date: January 17, 2019

Re: Application for Consent **D10-B05-18**
Part Lot 96, Concession 1, Part 1, Plan 65R-38065
17600 Yonge Street
Made by: CPPIB UPPER CANADA MALL INC. and
OXFORD PROPERTIES RETAIL HOLDINGS II INC.

1. Recommendations:

That Consent Application **D10-B05-18** be granted, subject to the following conditions:

1. Submission to the Alternate Secretary-Treasurer of fully executed transfer(s) in the form of Easements, conveying the subject lands; and
2. Submission to the Alternate Secretary-Treasurer of three white prints of a draft reference plan of survey to the satisfaction of the Town.

2. Application:

An application has been submitted by the owner of the above noted lands (the "subject lands") for consent to grant an easement over the subject lands (the western edge of the Upper Canada Mall lands) in favour of Sundial Homes (Davis) Limited for Parts 2, 3, and 4 of Plan 65R-38065 for the purposes of the construction and maintenance of a retaining wall and a drainage easement. The easement has been delineated in a reference plan and is identified as Part 1 on Plan 65R-38065.

The lands are located on the north side of Davis Drive, west of Yonge Street. The proposed easement would benefit planned townhouse lots to be located in a new residential subdivision just to the west of the Upper Canada Mall lands. The planned townhouse development has been approved through a zoning by-law amendment (By-law 2014-51) and decisions of the Ontario Municipal Board (PL130413 & PL100685). Draft plan of subdivision approval for the townhouse development has been granted by Council and the applicant is proceeding through detailed design exercises. The proposed easement is to allow the future property owners to travel over the Upper Canada Mall lands to maintain the wall in the future.

For clarity, the properties that are relevant to this application are provided below:

Location	Easement role	Occupant/Owner	Notes
Part Lot 96, Concession 1, Part 1, Plan 65R-38065	Dominant tenement	CPPIB UPPER CANADA MALL INC. and OXFORD PROPERTIES RETAIL HOLDINGS II INC. (Upper Canada Mall)	Proposal to create easement along western edge of property for construction and access
Parts 2, 3, and 4 of Plan 65R-38065	Servient tenement	Sundial Homes (Davis) Limited	Planned townhouse development, retaining wall to be located on these lots

The retaining wall is planned be approximately 230 metres in length across two sections, separated by a planned future road connection (excerpt from wall plan below). The wall is planned to be located just west of the property line that divides the Sundial lands from Upper Canada Mall (aerial photograph below).

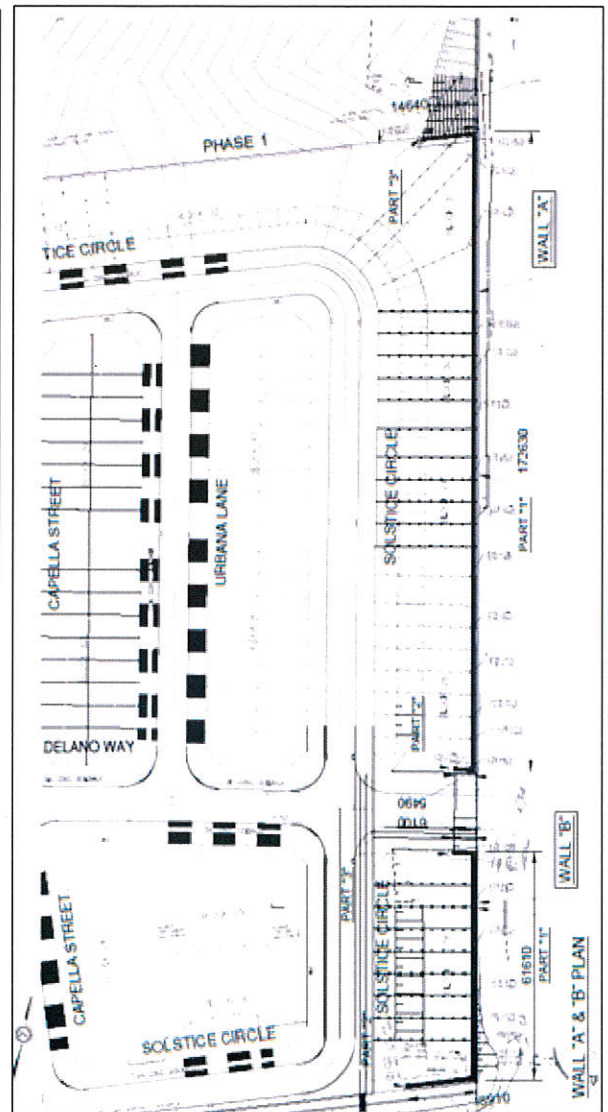


The wall varies in height as the grade changes along the property line, ranging between approximately 2 to 3 metres in height and being topped with a 2.4m concrete fence.

3. Planning considerations:

Official Plan

The Committee of Adjustment is required to have regard to matters under subsection 51(24) of the Planning Act, which includes that the proposal conforms to the Official Plan. The Town of Newmarket Urban Centres Secondary Plan includes the subject (Upper Canada Mall) lands as the Regional Shopping Centre Area and plans for a mix of high-density buildings with a range of uses on the site. Schedule 5 of the Secondary Plan requires a future minor collector road connection between the Upper Canada



Mall site and the planned residential development to the west, which is provided for in this application through the proposed gap in the retaining wall. The planned townhouse development area is designated as Emerging Residential, which allows for a range of housing types including townhouses.

Long-term maintenance

As the land on which the wall is to be located is planned to be divided through a plan of subdivision that has been draft-approved, the ownership of the wall will also be divided such that each property owner owns the portion of the wall that is located on their lot. While the proposed easement would entitle each homeowner to enter onto Upper Canada Mall's property, the retaining wall will require the cooperation of each individual property owner to ensure the long-term maintenance of the wall. Each property owner will be obliged, through the subdivision agreement, to maintain their portion of the wall at their own expense.

The draft plan of subdivision process is used to capture all of the planning issues generated by interdependent lots. A draft plan of subdivision is used to sort out all the issues and obligations in a clearly articulated master agreement that runs with the land. The proposed retaining wall easement will serve to allow property owners to enter onto the Upper Canada Mall lands to fulfill their obligations under the subdivision agreement to work together to maintain the retaining wall. The easement will also allow for drainage from the wall to run onto the Upper Canada Mall lands.

4. Other comments:

Tree protection

The subject lands are subject to the Tree Preservation, Protection, Replacement and Enhancement Policy, which is addressed through the draft plan of subdivision.

Effect of public input

No public input was received by Planning Services as of the date of writing this report.

Commenting agencies and departments

Building Services has reviewed the application and does not have any comment on the proposed consent.

Engineering Services has reviewed the application and has no objection to the proposed easement.

The Regional Municipality of York has reviewed the application and has no objection to the proposed easement.

5. Conclusions:

The consent conforms to the purpose and intent of the policies of the Town's Official Plan, and Committee has had regard for the applicable matters under the Planning Act, and the consent should be granted.

Respectfully submitted,



Ted Horton
Planner



PLANNING AND BUILDING SERVICES

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395 Mulock Drive

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Planning Report

To: Committee of Adjustment

From: Ted Horton
Planner

Date: January 17, 2019

Re: Application for Minor Variance **D13-A25-18**
Block K, Plan M47
48 Eastman Crescent
Made by: 1956322 Ontario Inc.

1. Recommendations:

That Minor Variance Application D13-A25-18 be granted, subject to the following conditions:

- a. That the applicant be advised that prior to the issuance of any demolition permit or building permit compliance will be required with the provisions of the Town's Tree Preservation, Protection, Replacement and Enhancement Policy and Public Tree Protection By-law, including tree protection, securities, and compensation;
- b. That the applicant be advised that the injury or removal of any tree located wholly or in part on a neighbouring property must be authorized by the owner of said tree;
- c. That the applicant be advised that they will be required to obtain municipal servicing for the lot prior to any building permit at their own cost;
- d. That prior to any construction, tree removal, or site alteration that the owner be required to enter into a site plan agreement with the Town, and to provide to the satisfaction of the Town the following:
 - i. Site plan;
 - ii. Grading plan;
 - iii. Servicing plan;
 - iv. Where a tree owned by a neighbour is to be injured or removed, authorization from that party;
 - v. An updated arborist report that reflects the other plans; and
 - vi. Compensation for all trees to be removed as required by the Tree Preservation, Protection, Replacement and Enhancement Policy;
- e. That the applicant be advised of the existing telecommunications infrastructure located in the municipal boulevard and of their responsibility to obtain approvals for its relocation, and of the existing parking lot on the abutting southerly property and of potential impact from vehicular proximity and headlights on the proposed southerly windows; and

- f. That the applicant be advised they will be required to pay applicable fees and charges including but not limited to development charges, building permit fees, and fees for the preparation and registration of the site plan agreement as laid out in the Town's Fees and Charges By-laws.

2. Application:

This is a resubmission of a minor variance application previously deferred by the Committee of Adjustment at the request of the applicant. This report discusses the revised application. For comparison purposes, a site plan is available in attachment to this report that is an overlay of both versions of the proposed development.

The lands are located on the east side of Eastman Crescent, east of Howlett Ave. The purpose of the minor variance application is to seek relief from the zoning by-law to develop the lot with a single detached dwelling that is closer to property lines than is typically permitted. The requested variances are listed below with context for how the revised application varies from the previous application

#	By-law	Section	Requirement	Original Proposal	Revised Application
1	2010-40, as amended	6.2.2	Minimum front yard setback 7.5m	A front yard setback of 6.67m	Same
2			Maximum lot coverage 35%	Lot coverage of 42%	Removed
3			Minimum side yard setback for two-storey structure 1.8m	A minimum side yard setback of 0.9m on each side	A minimum side yard setback of 1.2m on each side
4		4.2	No interior side-yard encroachment permitted for steps	An interior side yard setback of 0.45m for below grade steps	Removed
5			No interior side yard setback permitted for a deck	A side yard setback of 0.9m for an uncovered deck	Removed

The subject lands are currently vacant. The lot was created through a plan of subdivision in 1978 and has remained undeveloped since that time. For much of the time since its creation the lot has been used as a yard by the owner of the lot to the north. The subject lands are within a single-detached residential subdivision and abutted to the south by a veterinary clinic and apartment building on Davis Drive.

3. Planning considerations – Minor Variances

3.1 Variances

In order to authorize a minor variance, Committee must be satisfied that the requested variances pass the four tests required by the *Planning Act*. In this regard, staff offer the following comments:

3.2 Conformity with the general intent of the Official Plan

The subject lands are designated “Stable Residential” in the Town’s Official Plan. Regarding this designation, the Town’s Official Plan states:

It is the objective of the Stable Residential Area policies to:

- a. sustain and enhance the character and identity of existing residential communities; and,
- b. encourage the preservation and maintenance of the Town's existing housing stock, supplemented by various forms of residential intensification such as infilling and the creation of accessory dwelling units.

This designation permits single detached dwellings, and supports efforts to invest in the existing housing stock. It may be argued that the proposed structure differs from the built form of the surrounding dwellings, however the requested relief is not a matter of architectural style but of built form permissions and specific zoning standards. In this regard, the proposal to develop the lot with a use and built form that is contemplated by the Official Plan meets the general intent of the Plan. In staff’s opinion, this test is met.

3.3 Conformity with the general intent of the Zoning By-law

The general intent of the zoning by-law’s built form permissions is to limit the size of structures in order to maintain compatibility and similarity of structures. By limiting lot coverage and building height, and by requiring setbacks, building size is restrained and the by-law seeks to ensure that houses are similar in size and that a diverse range of housing sizes are preserved across Newmarket. In the case of the proposed variances for the built form of the structure, the revised application no longer requests a structure that is larger in coverage than is typically permitted. Rather, the requested relief is now limited to a reduction in the front-yard setback from 7.5m to 6.67m, and a reduction in the side-yard setback for a two-storey structure from 1.8m to 1.2m.

The Zoning By-law allows for a single detached dwelling, and the property owner has the right to develop one in this location. The lot is unusual in size and dimensions, and naturally poses challenges for the owner to develop it which causes the application for relief from the zoning by-law. The requested relief would allow the owner to develop the lot with a structure whose setbacks are narrower than would otherwise be permitted, but which are not incompatible with the surrounding area. While hardship is not a test or requirement for a minor variance, strict adherence to the zoning by-law and denial of any relief does pose greater challenges for the development of uniquely-shaped lots than most conventional lots. In staff’s opinion, this test is met.

3.4 Desirable development of the lot

It is desirable to develop the lot with a single detached dwelling and to allow property owners to invest in, redevelop, and improve their properties in accordance with the Official Plan and the Zoning By-law. Zoning By-laws establish how properties may be used and provide how nearby property owners may expect change to occur over time. As a legally existing lot where single detached dwellings are permitted, it is reasonable to expect that the subject lands be developed with such a use.

Front-yard setbacks are intended in part to ensure sufficient space for distance from the street and a consistent frontage of building facades – as this remnant lot does not have an abutting southerly detached structure but rather stands at the start of a sharp curve in the street, the effect of a reduced front-yard setback is expected to be lessened.

Side-yard setbacks are intended in part to ensure sufficient space for light, water, and owner access around buildings. Such development standards vary throughout Newmarket and each neighbourhoods may contain variations in setbacks without compromising compatibility. The abutting structure to the north has side-yard setbacks that are less than would be permitted by the zoning by-law requirements of today.

As the requested relief would allow the property owner to develop the property in a manner that recognizes the unique shape of the lot while maintaining an appropriate size, in staff's opinion this test is met.

3.5 Minor nature of the variances

When considering if a variance is minor, it is not simply the numerical value. Nor is impact the sole determining factor, as in some cases, a variance may not be minor even if there is no impact on other properties. The test of whether a variance is minor requires Committee to consider both the size and the importance of the proposed relief.

The proposed relief would allow a single detached dwelling with side-yard setbacks that are less than what would typically be required by the by-law but does not vary significantly from established permissions or the surrounding area. The request is to allow side-yard setbacks of 1.2m for a two-storey structure, while 1.8m is typically required. The subject lands could develop a one-storey home with a 1.2m side-yard setback without the need for any relief, and the abutting structure to the north has a side-yard setback of 1.6m for a two-storey structure. Some minor relief may be necessary to facilitate the development of the lot due to the unique shape of the lot and the reduced requested relief achieves this purpose. In staff's opinion, this test is met.

In consideration of the above the proposed variances meet the four tests under the *Planning Act*.

4. Other comments:

Tree protection

The Town's Tree Preservation, Protection, Replacement and Enhancement Policy requires properties that are subject to a development application to submit an arborist report, protect trees during construction, and compensate for any removed trees by replanting or paying an amount to the Town commensurate with the removed trees.

An updated arborist report was submitted with the application and reviewed by the Town's consulting arborist. The Town's consulting arborist noted matters to be addressed before development occurs, namely:

- That servicing and grading plans be reviewed alongside an updated arborist report to ensure compatibility of design
- That the arborist report be revised to include all significant trees to ensure proper protection and required compensation
- That any injury of trees owned wholly or in part by the Town or neighbours be authorized first by the respective owner

Heritage

There is no structure on the lot, and no applicable heritage designation.

Effect of public input

Planning Services received comments from the public related to the original submission concerned with the size of the structure given the small size of the lot. Given the reduced scale of the variances for the revised application, these concerns may be mitigated.

Planning Services also received concerns from the abutting southerly property occupants related to the proximity of their parking lot to the proposed structure and related to the need to maintain existing drainage patterns. The owner of the subject lands will be aware of the existing parking area and may elect to install fencing that is of greater opacity, and the southerly property occupants have indicated they are willing to work with the owner of the subject lands to do so. Furthermore, the proposed conditions of this report would require the preparation of a grading plan to be reviewed by Engineering Services related to water runoff.

Commenting agencies and departments

The Regional Municipality of York has reviewed the application and has no objection to the proposed minor variances.

Building Services has reviewed the application and noted that they have no objection to the proposed minor variances.

Engineering Services has reviewed the application and does not have any objections to the proposed variance provided that existing drainage patterns are not altered, and that any increase in stormwater runoff is maintained onsite and construction does not occur within any easement(s), where applicable.

5. Conclusions:

That the relief as requested:

- (1) is minor in nature;
- (2) conforms to the general intent and purpose of the Official Plan and Zoning By-law; and
- (3) is considered a desirable development of the lot.

Respectfully submitted,



Ted Horton
Planner

