

Memorandum to the City of Markham Committee of Adjustment

July 24, 2020

File: B/011/20
Address: 40 Albert St Markham
Applicant: Richard Gubb
Agent: Gregory Design Group (Shane Gregory)
Hearing Date: Wednesday August 12, 2020

The following comments are provided on behalf of the Heritage Team:

The applicant is requesting for provisional consent to:

- a) sever and convey a parcel of land with an approximate lot frontage of 12.22m (40.09 ft) and approximate lot area of 458.80 sq. m (4,938.48 sq.ft.) (Part 1); and,
- b) retain a parcel of land with an approximate lot frontage of 10.48m (34.38 ft.) and approximate lot area of 442.90 sq. m (4,767.34 sq.ft.) (Part 2).

The purpose of this application is to create a new residential lot line between a pair of semi-detached dwellings. This application is also related to Minor Variance application A/071/20.

BACKGROUND

Property Description

The 901.7m² (9,706 ft²) subject property is located on the west side of Albert Street in a residential neighbourhood of the Markham Village Heritage Conservation District (See Location Map – Figure 1). The neighbourhood is comprised of a mix of heritage and non-heritage one and two-storey detached dwellings. However, a four unit townhouse development is located immediately to the south and a semi-detached dwelling is located to the immediate north. The property is occupied by a modest, one storey brick Regency cottage constructed in 1856, and the most significant vegetation is in the form of a 33 cm (13 inch) dbh Oak tree located in the rear yard (See Photograph of the Existing Heritage Dwelling – Figure 2).

Proposal

The applicant is in the process of relocating the heritage building slightly to the north and constructing a two storey addition to the rear of the existing heritage dwelling with a detached garage. The heritage dwelling is proposed to be converted to a semi-detached dwelling. This was approved by the City through Site Plan Control in March of 2020 (SPC 19 121293). The semi-detached dwelling which incorporates the existing heritage dwelling is proposed to have a floor area of 2,580 ft² (239.7m²), while the entirely new semi-detached dwelling is proposed to have a floor area of 2,920 ft² (271.3m²). The development also includes a 292.8 ft² (27.2m²) detached, one bay, garage in the rear yard of the heritage dwelling unit. (See Figures 4 and 5 –Site Plan and Street Facing Elevation of the approved semi-detached dwelling).

The applicant is proposing to sever the property so that each unit of the approved semi-detached dwelling may be in separate ownership (See proposed lots Figure 3).

Official Plan and Zoning

Official Plan 2014 (partially approved on Nov 24/17, and further updated on April 9/18)

The subject property is designated “Residential – Low Rise”, which provides for low rise housing forms including single and semi-detached dwellings. Section 8.2.3.5 of the 2014 Official Plan outlines development criteria for the ‘Residential – Low Rise’ designation with respect to height, massing and setbacks. This criteria is established to ensure that the development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties and properties along the same street. In considering applications for development approval in a ‘Residential Low Rise’ area, which includes variances, infill development is required to meet the general intent of these development criteria. Regard shall also be had for retention of existing trees and vegetation, the width of proposed garages and driveways and the overall orientation and sizing of new lots within a residential neighbourhood.

Zoning By-Law 1229

The subject property is zoned R2 under By-law 1229, as amended, which permits both single and semi-detached dwellings. The minimum lot frontage for a pair of semi-detached dwellings is 75 feet.

COMMENTS

Consent applications are evaluated in the context of Section 51 (24) of the *Planning Act*, as well as provincial, and local land division policies.

Land Division

In order for land division to occur under the *Planning Act*, the process requires both provincial interests and local planning concerns to be satisfied. In Markham, land division is regulated within a policy-led planning system that consists of a number of inter-related types of legislation and policies including:

- The Planning Act and the Provincial Policy Statement (PPS)
- Other Provincial Plans (if applicable)
- Markham Official Plan
- Community Improvement Plans (if applicable)
- Local Zoning By-laws
- Site Plan Control Area By-law

a) The Planning Act

The *Planning Act* in Ontario provides the framework for the province’s policy-led planning system. All decisions regarding consent applications must:

- Have regard to criteria listed in subsection 51(24) which relates to the subdivision of land, and includes, but is not limited to:
 - Effect on matters of provincial interest listed in section 2 of the Act;
 - Suitability of the land for the purposes for which it is to be subdivided;
 - Lot dimensions and shapes;
 - Restrictions of the land;
 - Interrelationship with site plan control matters

Each of these criteria is explored below:

Matters of Provincial Interest

The subject property at 40 Albert Street does involve a matter of provincial interest. Specifically, that being section 2(c) “the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest” as the property is located in a designated heritage conservation and is occupied by a Type ‘A’ heritage dwelling which defines the heritage character of the district. The proposed semi-detached dwelling prominently incorporates and restores this heritage home to an earlier appearance, and the new addition and semi-detached dwelling has been carefully designed to be compatible and complementary to the both the architectural style of the existing heritage house and the greater historic character of the Markham Village Heritage Conservation District.

Suitability of the Land for its Intended Use

The property is a residential use, located in a stable residential neighbourhood, and will continue to be a low rise residential use.

Lot Dimensions and Shapes

The existing lot is appropriate for the proposed semi-detached dwelling despite requiring an accompanying variance to permit a minimum lot frontage of 74 ft. (22.56 m) for a pair of semi-detached dwellings whereas the By-law requires a minimum frontage of 75 ft. (22.9 m) for a pair of semi-detached dwellings. The proposed lot dimensions and shape are supported by Planning staff as they are compatible with the varied lots sizes found in the immediate neighbourhood. It is the opinion of staff that the accompanying variance application (A/071/20) meets the four tests of the Planning Act, as it is considered to be minor in nature and desirable for the appropriate development of the land, while maintaining the general intent and purpose of both the City’s Official Plan and Zoning By-law.

Restrictions on the Land

The restrictions on the subject property relate to the fact that the property is officially designated pursuant to Part V of the *Ontario Heritage Act*. Council has adopted a heritage conservation district plan through a specific by-law. This heritage plan provides policies and design guidelines to guide alterations and development. The owner must obtain a “Heritage Act” permit from the municipality to alter any part of the property, or to erect, demolish or remove any building on the property. Therefore any new development (lot creation and any future buildings) are subject to the restrictions and guidance found in the heritage conservation district plan. The semi-detached dwelling approved by the City’s Planning Department was designed to comply with the policies and guidelines for the retention and restoration of heritage buildings and for the design of architecturally compatible additions to heritage buildings.

Interrelationship with Site Plan Control Matters

The subject property is also located within a site plan control area and the semi-detached building currently under construction was approved in March 2020 by the City’s Planning and Urban Design Department through the Site Plan Approval process.

b) Consistency with the Provincial Policy Statement

The Provincial Policy Statement (PPS) 2020 sets the policy foundation for regulating the development and use of land in Ontario. Decisions that affect a planning matter are to be

consistent with the Provincial Policy Statement. Section 2.6 of the PPS addresses cultural heritage resources. The policy requires that significant built heritage resources and **significant cultural heritage landscapes (a heritage conservation district) shall be conserved**. As per the current proposal, the existing heritage dwelling has been retained and will be restored along with architecturally compatible new additions. Therefore, the creation of a new lot in this circumstance is not viewed as being detrimental to the heritage attributes of the property as well as the overall character and integrity of the heritage conservation district.

c) Conformity with the Official Plan

The Official Plan represents the municipality's chief planning tool to provide direction to approval authorities and the public on local planning matters. The 2014 Official Plan includes applicable policies respecting **infill development** (Section 8.2.3.5), **heritage conservation** (4.5.3.9, 4.5.3.10, 4.5.3.6) and **land use** in Markham Village (Section 9.13.4.1).

Infill Development

Section 8.2.3.5 which describes development criteria or infill development in areas designated as "Residential Low Rise" states that Council shall ensure infill development respects and reflects the existing pattern and character of adjacent development by ensuring that the lot frontages and lot areas or the proposed new lots shall be consistent with the sizes of existing lots on both sides of the street on which the property is located. The proposed lots are compatible with the varied lots frontages and areas found in the immediate neighbourhood despite requiring a variance to permit a slightly reduced minimum lot frontage for a pair of semi-detached dwellings.

Heritage Conservation

The heritage development approval policies of Section 4.5.3.9 provides the ability to protect and conserve cultural heritage resources or mitigate adverse affects as a condition of severance approval. Section 4.5.3.10 notes that each land severance proposal will be evaluated on its own merits and its compatibility with the heritage policies of the Official Plan or any heritage conservation district plan. The consent will not negatively affect the heritage resource itself and the new lots are compatible with the heritage character of the district.

Section 4.5.3.6 allows the City to obtain a heritage conservation easement to further protect a cultural heritage resource. Markham Council has approved an Easement Policy which indicates that where a heritage structure is to be retained on either the retained or conveyed parcel as a result of a consent application to the Committee of Adjustment, the City will recommend to the Committee of Adjustment that a Heritage Conservation Easement be secured as a condition of approval.

Markham Village

The Land Use Objectives described in Section 9.13.4.1 of the 2014 Official Plan regarding the Markham Village Heritage Conservation District are to provide a variety of residential forms while ensuring compatible new development that recognizes the distinct character of the existing heritage buildings and landscape of the district. The semi-detached building already under construction was designed in accordance with the policies for new buildings contained in the Markham Village Heritage Conservation District Plan and was reviewed and approved by the municipal heritage committee (Heritage Markham).

d) Compliance with the Zoning By-law

The zoning by-law enables the municipality to implement the vision set out in the Official Plan. It identifies the permitted land uses and the required development standards. The semi-detached dwelling under construction is a permitted use of the property, and generally conforms with the development standards for semi-detached dwellings contained in By-law 1229, as amended.

e) Urban Design and Engineering

There were no comments from Engineering on the subject application. However, Urban Design has identified the need for parkland dedication due to the creation of an additional dwelling unit in separate ownership. Payment of cash-in-lieu of Parkland Dedication will be required in accordance with By-law 195-90, as amended for the newly created lot.

CONCLUSION

In concluding that the proposal is appropriate, staff has had regard for the criteria in Section 51 (24) of the Planning Act.

Planning staff recommends support for the consent.

Please see Appendix "A" for conditions to be attached to any approval of this application.

PREPARED BY:



Peter Wokral, Senior Heritage Planner

REVIEWED BY:



Regan Hutcheson, Manager of Heritage Planning

FIGURE 1 – LOCATION MAP

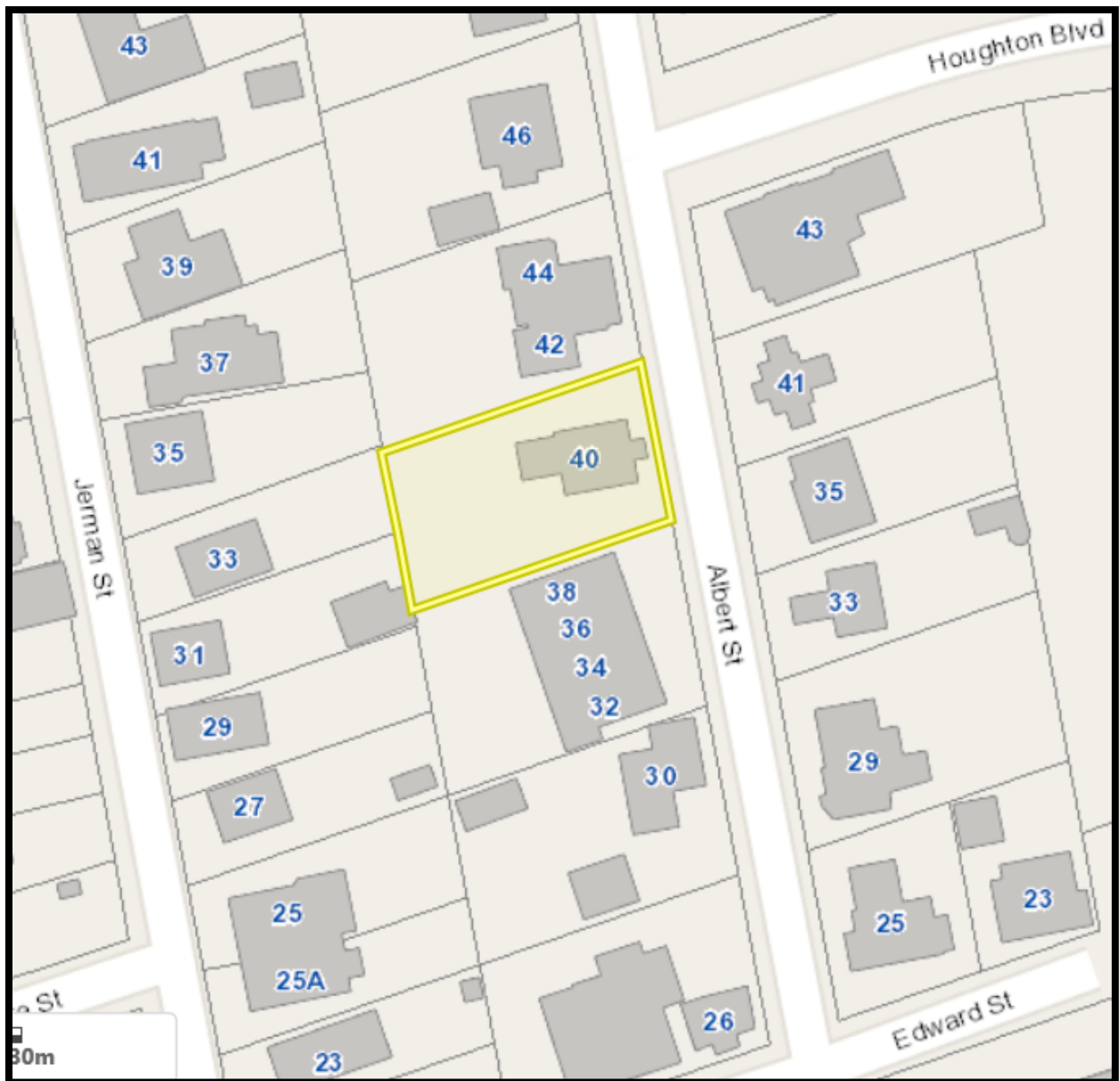


FIGURE 2 – PHOTOGRAPH OF THE EXISTING HERITAGE DWELLING



FIGURE 3- PROPOSED SEVERANCE

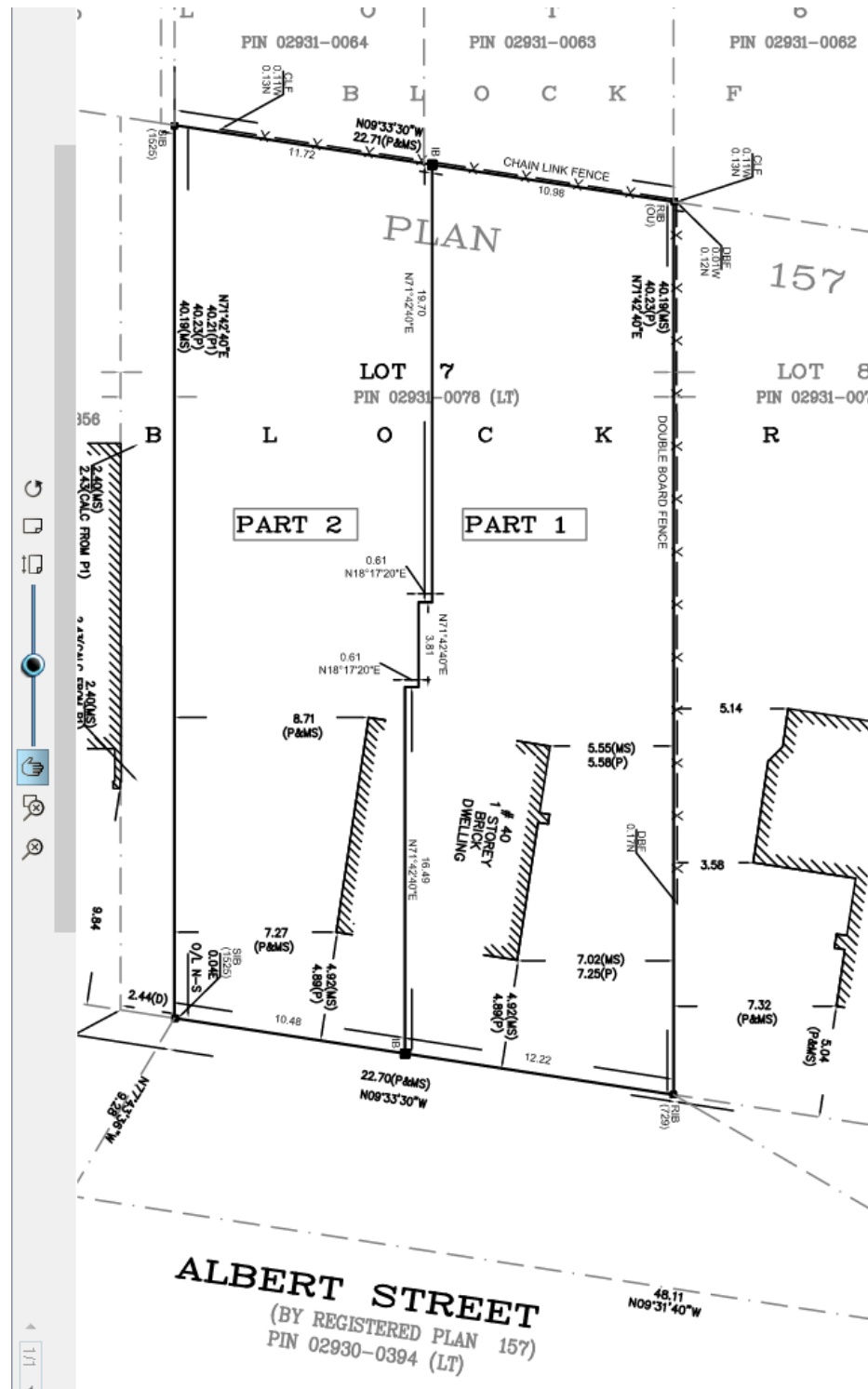


FIGURE 4 – APPROVED SITE PLAN

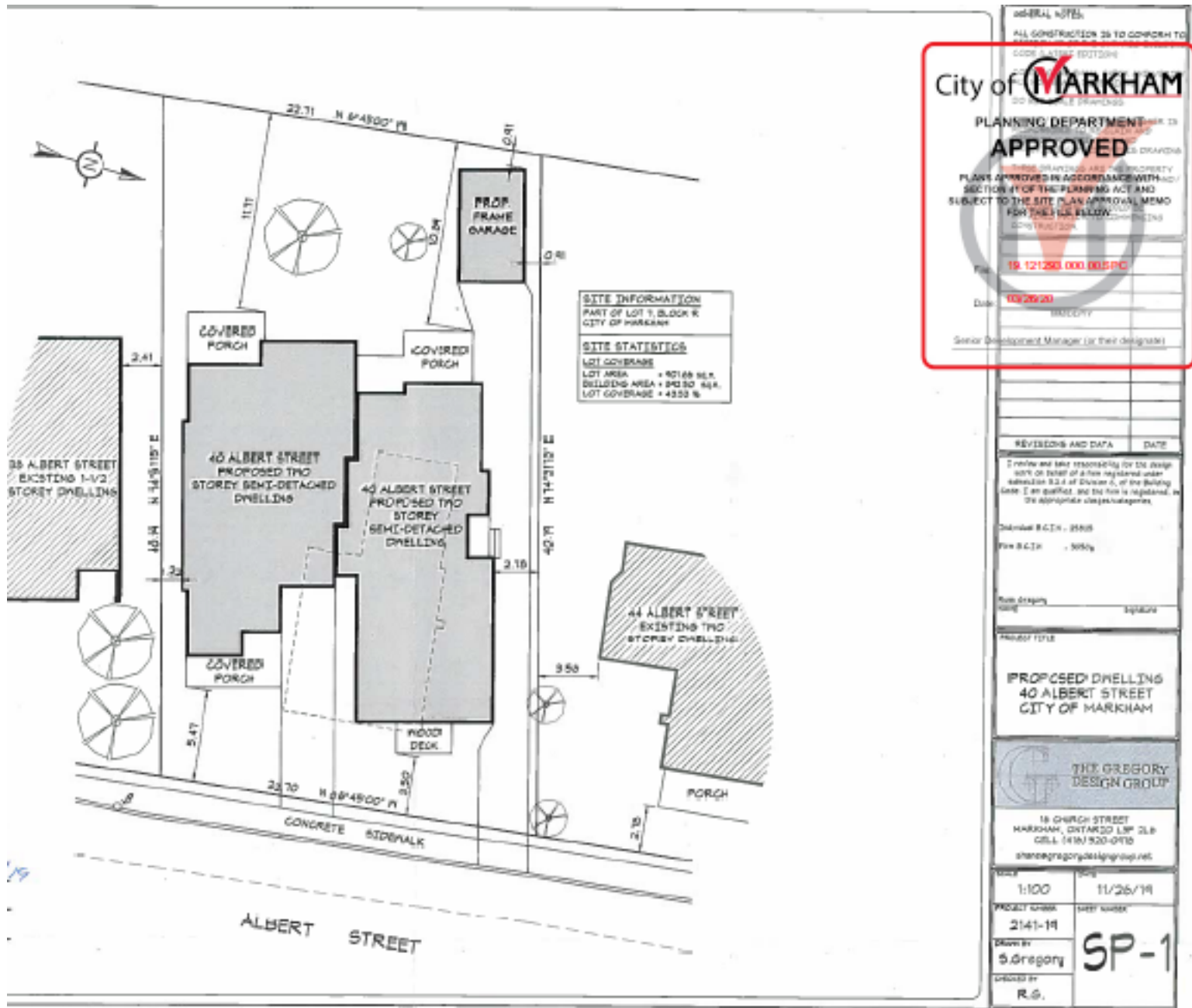
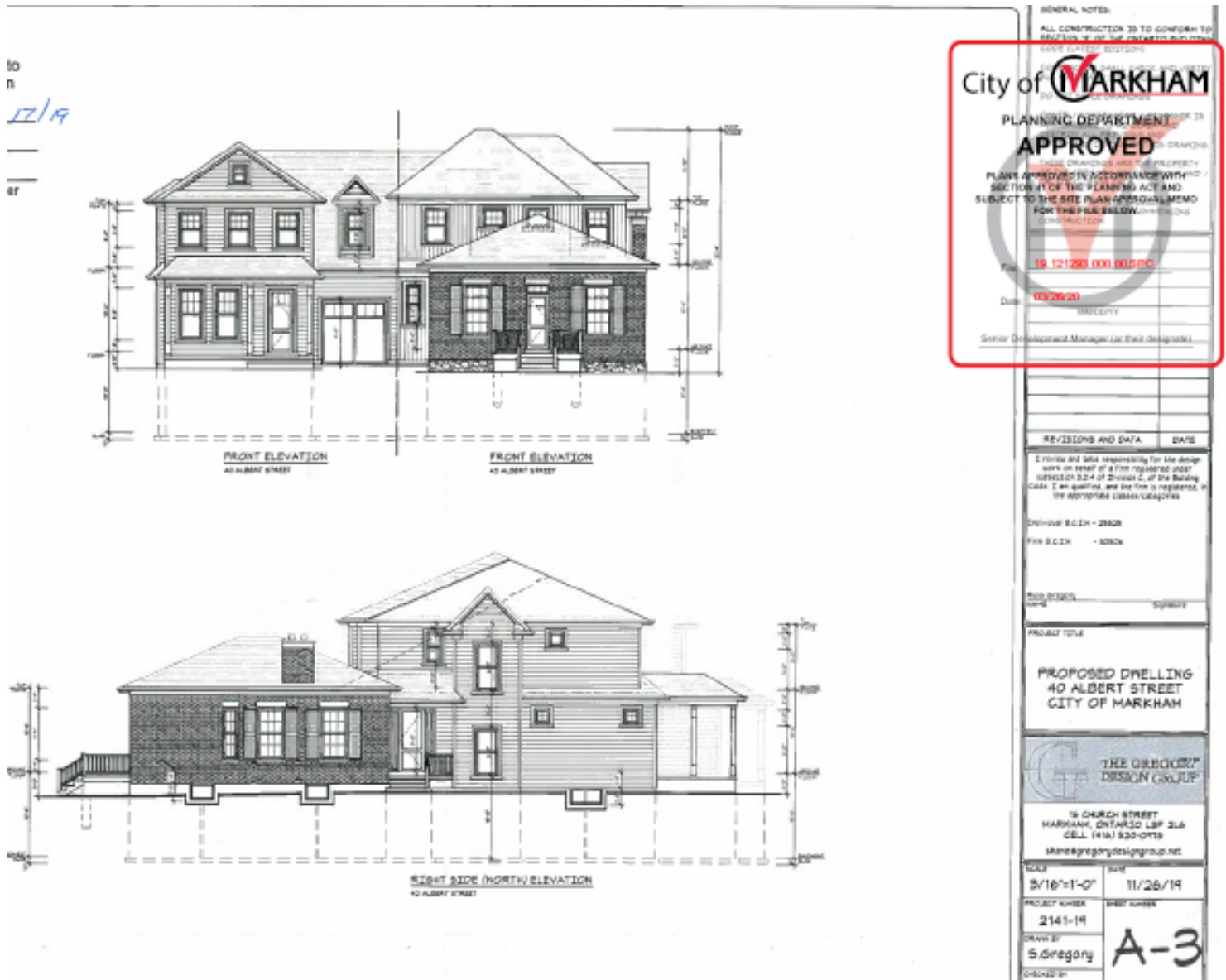


FIGURE 5- APPROVED STREET ELEVATION



APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF B/011/20

1. Payment of all outstanding realty taxes and local improvements charges owing to date against both the subject and retained parcels, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled.
2. Submission to the Secretary-Treasurer of the required transfers to effect the severances applied for under Files B/011/20, in duplicate, conveying the subject lands, and issuance by the Secretary Treasurer of the certificate required under subsection 53(42) of the Planning Act.
3. Submission to the Secretary-Treasurer of seven white prints of a deposited reference plan showing the subject land, which conforms substantially to the application as submitted.
4. Payment of the required Conveyance Fee for the creation of residential lots per City of Markham Fee By-law 211-83, as amended.
5. Approval of the associated variance application (A/071/A) requesting a variance to permit a minimum lot frontage of 74 ft. for a pair of semi-detached dwellings;
6. Execution of a Heritage Easement Agreement to protect the cultural heritage resource;
7. Payment of cash-in-lieu of Parkland Dedication in accordance with By-law 195-90, as amended for the newly created lot. The applicant shall submit an Appraisal report prepared by a member of the Appraisal Institute of Canada in accordance with the City's terms of reference respecting the proposed new lot, to be reviewed and approved by the City.
8. Fulfillment of all of the above conditions within one (1) year of the date that notice of the decision was given under Section 50(17) or 50(24) of the Planning Act, R.S.O. 1990, c.P.13.

CONDITONS PREPARED BY:

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Peter Wokral, Senior Heritage Planner

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July 24, 2020

File: A/071/20
Address: 40 Albert St Markham
Applicant: Richard Gubb
Agent: Gregory Design Group (Shane Gregory)
Hearing Date: Wednesday August 12, 2020

The following comments are provided on behalf of the Heritage Team:

The applicant is requesting relief from the following requirements of By-law 1229, R2 as amended, to permit:

- a) a lot frontage of 74 feet for a pair of semi-detached dwellings, whereas the By-law requires a lot frontage of 75 feet for a pair of semi-detached dwellings;**

as it relates to a proposed severance for a pair of semi detached dwellings under construction. This application is related to Consent Application B/011/20.

BACKGROUND

Property Description

The 901.7m² (9,706 ft²) subject property is located on the west side Albert Street in a residential neighbourhood of the Markham Village Heritage Conservation District (See Location Map – Figure 1). The neighbourhood is predominantly comprised of heritage and non-heritage, one and two-storey detached dwellings, but there is a four unit townhouse development immediately to the south, and a semi-detached dwelling immediately to the north. The property is occupied by a modest, one storey, brick Regency cottage constructed in 1856, and the most significant vegetation is in the form of a 33 cm (13 inch) dbh Oak tree located in the rear yard (See Photograph of the Existing Heritage Dwelling – Figure 2).

Proposal

The applicant is in the process of relocating the heritage building slightly to the north and constructing a two storey addition to the rear of the existing heritage dwelling with a detached garage, as well as an attached semi-detached dwelling. This was approved by the City through Minor Variance application A/48/19 and Site Plan Control application SPC 19 121293 in March of 2020. The semi-detached dwelling which incorporates the existing heritage dwelling is proposed to have a floor area of 2,580 ft², (239.7 m²) while the entirely new semi-detached dwelling is proposed to have a floor area of 2,920 ft² (271.3 m²). The development also includes a 292.8 ft² (27.2 m²) detached, one bay, garage in the rear yard of the heritage dwelling unit. (See Figures 4 and 5 –Site Plan and Street Facing Elevation of the approved semi-detached dwelling).

The requested variance was not identified in the Site Plan approval process and must be addressed now in order to legalize the construction of the semi-detached dwellings.

The applicant is also proposing to sever the property so that each unit of the approved semi-detached dwelling may be in separate ownership through the associated Committee of Adjustment Consent application (B/011/20) (See proposed lots Figure 3).

Official Plan and Zoning

Official Plan 2014 (partially approved on Nov 24/17, and further updated on April 9/18)

The subject property is designated “Residential – Low Rise”, which provides for low rise housing forms including single and semi-detached dwellings. Section 8.2.3.5 of the 2014 Official Plan outlines development criteria for the ‘Residential – Low Rise’ designation with respect to height, massing and setbacks. This criteria is established to ensure that the development is appropriate for the site and generally consistent with the zoning requirements for adjacent properties and properties along the same street. In considering applications for development approval in a ‘Residential Low Rise’ area, which includes variances, infill development is required to meet the general intent of these development criteria. Regard shall also be had for retention of existing trees and vegetation, the width of proposed garages and driveways and the overall orientation and sizing of new lots within a residential neighbourhood.

Zoning By-Law 1229

The subject property is zoned R2 under By-law 1229, as amended, which permits both single and semi-detached dwellings.

Applicant’s Stated Reason for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is, “*Due to Lot Width*”.

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. However, the applicant has received comments from the Building Department through their permit process to confirm the variances required for the proposed development.

COMMENTS

The Planning Act states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Reduction in Minimum Lot Frontage

The applicant is requesting a variance to permit a minimum lot frontage of 74 ft. (22.6 m) for a pair of semi-detached dwellings whereas the By-law requires a minimum lot frontage of 75 ft. (22.86 m), for a pair of semi-detached dwellings.

Given that the City has already reviewed and approved the semi-detached dwellings now under construction through earlier variance and site plan approval applications, the requested variance is considered minor in nature, desirable for the appropriate development of the land and maintains the general intent and purpose of both the City’s Official Plan and Zoning By-law.

PUBLIC INPUT SUMMARY

No written submissions were received as of July 24, 2020. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff has reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the Planning Act and has no objection. Staff recommends that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

Please see Appendix "A" for conditions to be attached to any approval of this application.

PREPARED BY:



Peter Wokral, Senior Heritage Planner

REVIEWED BY:



Regan Hutcheson, Manager of Heritage Planning

FIGURE 1 – LOCATION MAP

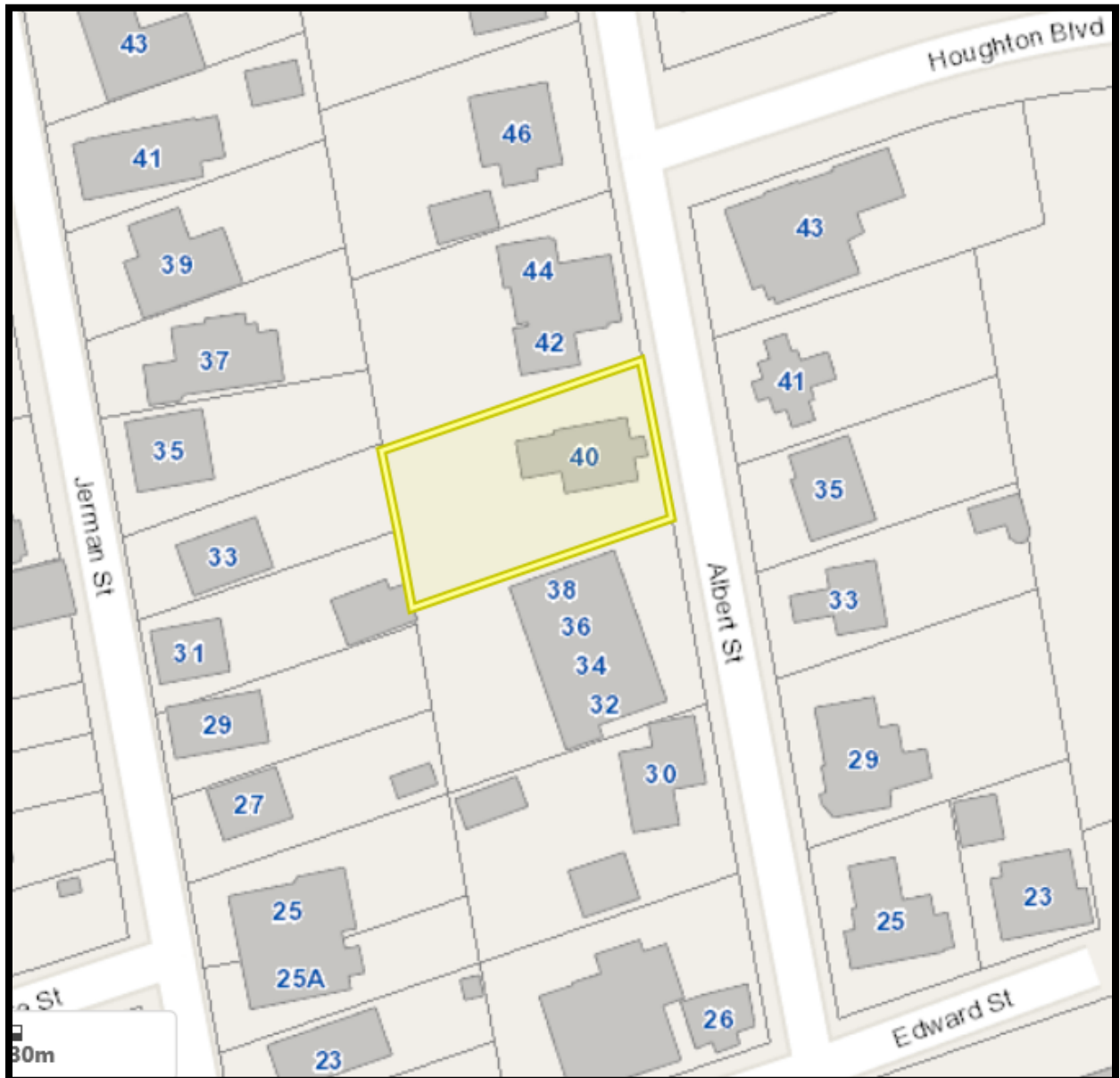


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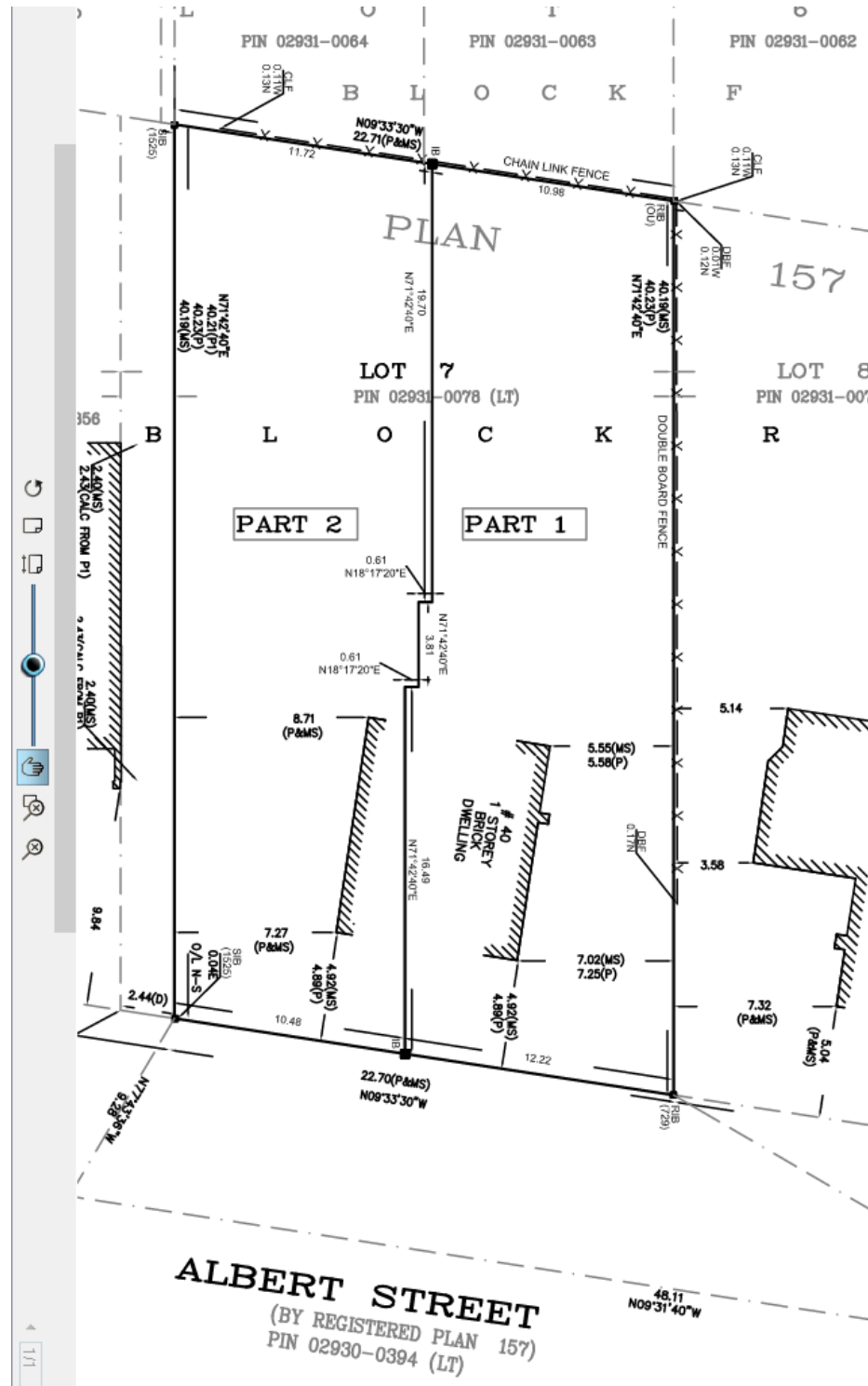


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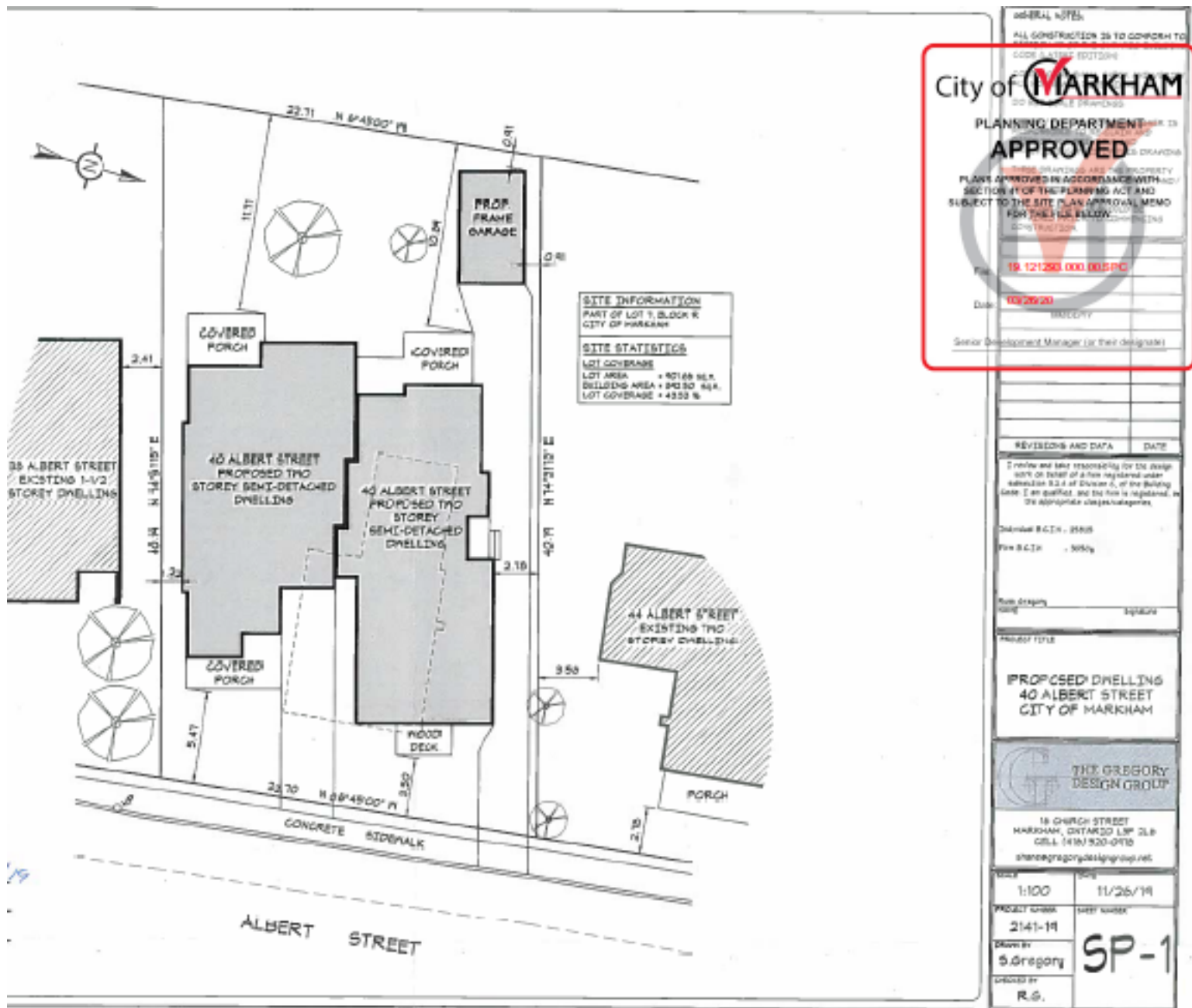
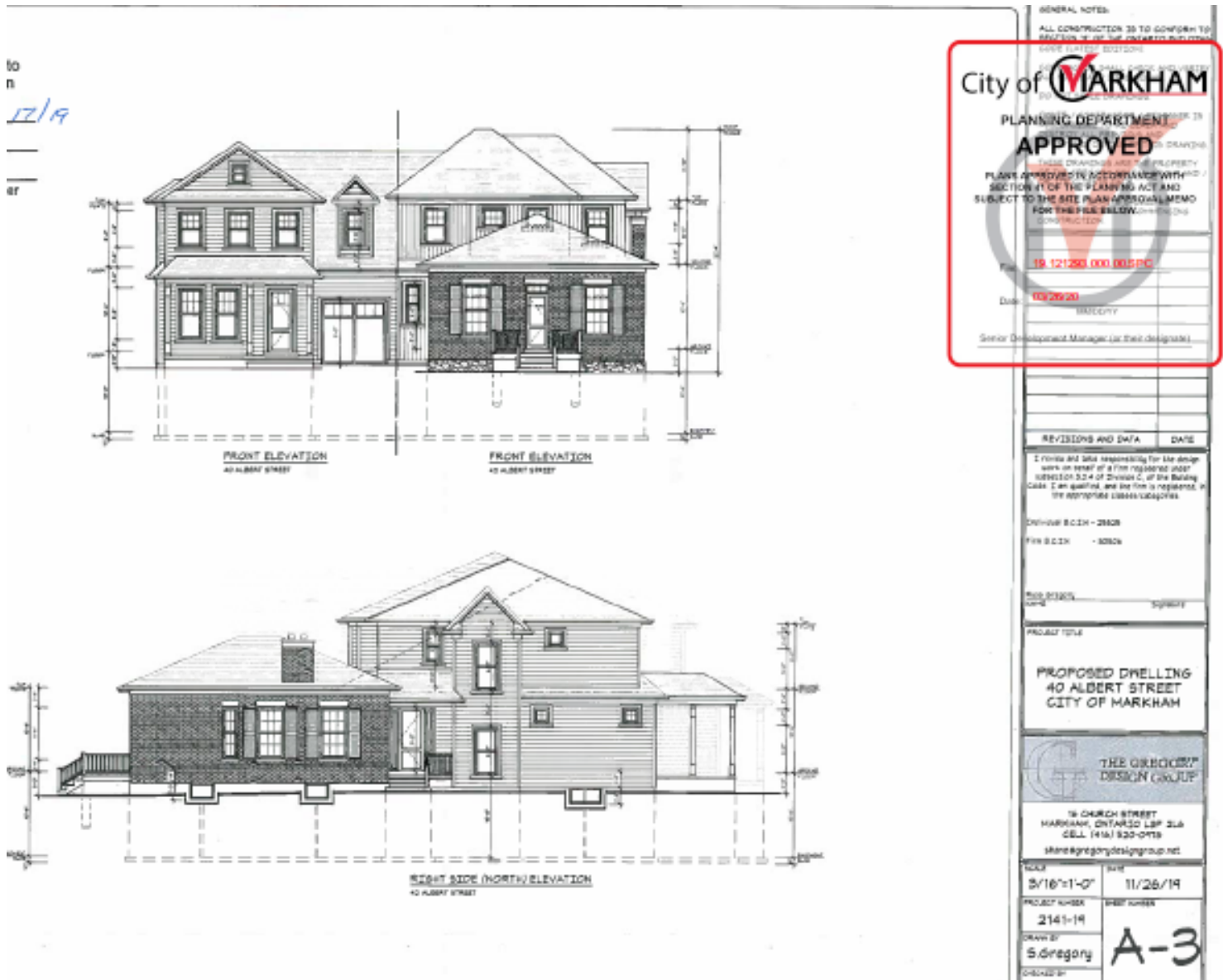


FIGURE 5- APPROVED STREET ELEVATION



APPENDIX “A”

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/071/20

1. The variance applies only to the approved development as long as it remains;
2. That the variance applies only to the subject development, in substantial conformity with the plans attached as ‘Figures 4 and 5’ to this Staff Report;
3. That the Secretary-Treasurer receive written confirmation from Heritage Markham that the requested variance is supported;

CONDITIONS PREPARED BY:

A handwritten signature in dark ink, appearing to read 'Peter Wokral', is written over a light gray rectangular background.

Peter Wokral, Senior Heritage Planner