

August 11, 2021

By E-Mail Only to cofa@vaughan.ca

Pravina Attwala
Assistant Secretary Treasurer
Office of the City Clerk
Committee of Adjustment
2141 Major Mackenzie Drive
Vaughan ON, L6A 1T1

Dear Ms. Attwala:

**Re: Committee of Adjustment File No. A100/21 – 32 Elmway Court
Letter of Opposition
Mr. Elliot Steiner and Elm Thornhill Woods (2013) Inc.**

We are counsel to Mr. Elliot Steiner and Elm Thornhill Woods (2013) Inc. (“**Elm**”). Elm is the developer of Elmway Court. Mr. Steiner is a principal of Elm, and is also the co-owner of 38 Elmway Court.

Mr. Steiner received the Public Notice advising of the Committee of Adjustment Hearing (the “**Hearing**”) scheduled for August 12, 2021 concerning the above-noted application, which seeks to permit the construction of a proposed swimming pool and cabana (the “**Application**”) in the backyard of 32 Elmway Court (the “**Subject Lands**”). Mr. Steiner’s property is located directly to the south of the Subject Lands, and they share a mutual property line.

As an adjoining property owner, Mr. Steiner has significant concerns with the Application as currently constituted, which we will set out below and speak to further at the Hearing.

It is our submission that the Application does not meet the four-part test under ss. 45(1) of the *Planning Act*.

Cabana Setback

Our client is cognizant of the fact that no variances are required for the proposed cabana’s height, mass, or square footage under the City’s Zoning By-law 1-88 (the “**By-law**”). However, a significant variance is required to reduce the interior side yard setback from 1.2 metres to 0.65 metres in order to permit the construction of the cabana extremely close to Mr. Steiner’s mutual property line.

It is important to recognize that a structure such as the proposed cabana is only permitted as-of-right *because* of the significant interior side-yard setback as set out in the By-law. By-law provisions and performance standards work together. Once the By-law performance standard relating to setbacks is varied, the other components of the cabana create significant impact on Mr. Steiner's property. The structure will become incredibly imposing upon Mr. Steiner's backyard and will create overlook and shadowing issues. Pictures of Mr. Steiner's backyard are shown in **Attachment "A"**.

Therefore, it is our submission that the Application does not meet the four-part test, as it is not minor and it does not maintain the purpose and intent of the By-law.

Water Drainage and Site Grading

The proposed pool and cabana will alter the grade of the Subject Lands and could significantly impact the drainage of the surrounding neighbourhood.

As part of the development of Elmway Court, Elm entered into a subdivision agreement with the City in 2015 (the "**Agreement**"). Section 8 of the Agreement concerns lot grading, and in particular ss. 8.7(b) states:

"If the subsequent owner of a lot alters its grade after certification, the Owner [Elm] or the City is not responsible for the grading of such lot, and if the alteration adversely effects an adjacent lot, then the owner of the latter lot may enforce the provisions of this agreement which requires every owner to maintain his lot in accordance with the approved Lot Grading Plan."

[Emphasis added]

On its face, this section of the Agreement stands for two important principles:

1. An owner of a property captured by this Agreement – that is, an owner of a property on Elmway Court – cannot alter the grade of their property, as it is contrary to the Agreement. This Agreement is registered on title to the Subject Lands and the applicant would have been aware of it when they purchased their property;
2. Because the altering of grade is not permitted, any adverse effects caused by same may be subject to legal action.

It is with this context in mind that the merits of the Application must be questioned. The applicant has submitted no documentation from an engineer describing the proposed grade change and its effect on neighbours. Worse still, the applicant is proposing to do something that is explicitly prohibited by virtue of the Agreement, which again, is registered on title and binds itself to the land.

In addition, the applicant has not considered the impact on the existing swale that runs between and near the rear of these properties, adjacent to a publicly used walking trail. It

would be deeply unfortunate if any grading changes cause drainage issues that would potentially lead to flooding of this swale, leaving a swampy and muddy public trailway. This is why the Agreement prohibits any grading changes to the properties on Elmway Court. The City and Elm worked together to ensure that these types of impacts would never occur. Therefore, it is our respectful submission that the Application fails the four-part test, as it is not desirable for the appropriate development and use of the Subject Lands.

Pictures of the swale as currently operating between the Subject Lands and 38 Elmway Court are shown in **Attachment "B"**.

Conclusion

Taken together, it is our client's submission that the Application as presently constituted:

- In the very least should be deferred to allow the applicant time to submit proper, thorough, and comprehensive grading and drainage reports and plans and to revise the Application to limit the impact of the cabana on Mr. Steiner's property; or
- Should be refused as the Application does not meet the four tests as it is not minor, does not maintain the purpose and intent of the By-law, and is not appropriate for the development and use of the Subject Lands, and that the Application, on its face, contravenes the Agreement that is registered on title which prevents any grading changes.

Please find attached to this letter a Public Deputation From requesting that our associate Jamie Cole speak further to our clients' opposition to the application at the Hearing. Mr. Cole will be relying on the attachments to this letter during his presentation.

Do not hesitate to contact me should you have any questions or require any further information.

Yours truly,
DAVIES HOWE LLP



Aaron I. Platt

AP:JC
encl.: As above

copy: Client

Attachment “A”





25'-0"

13'-2"

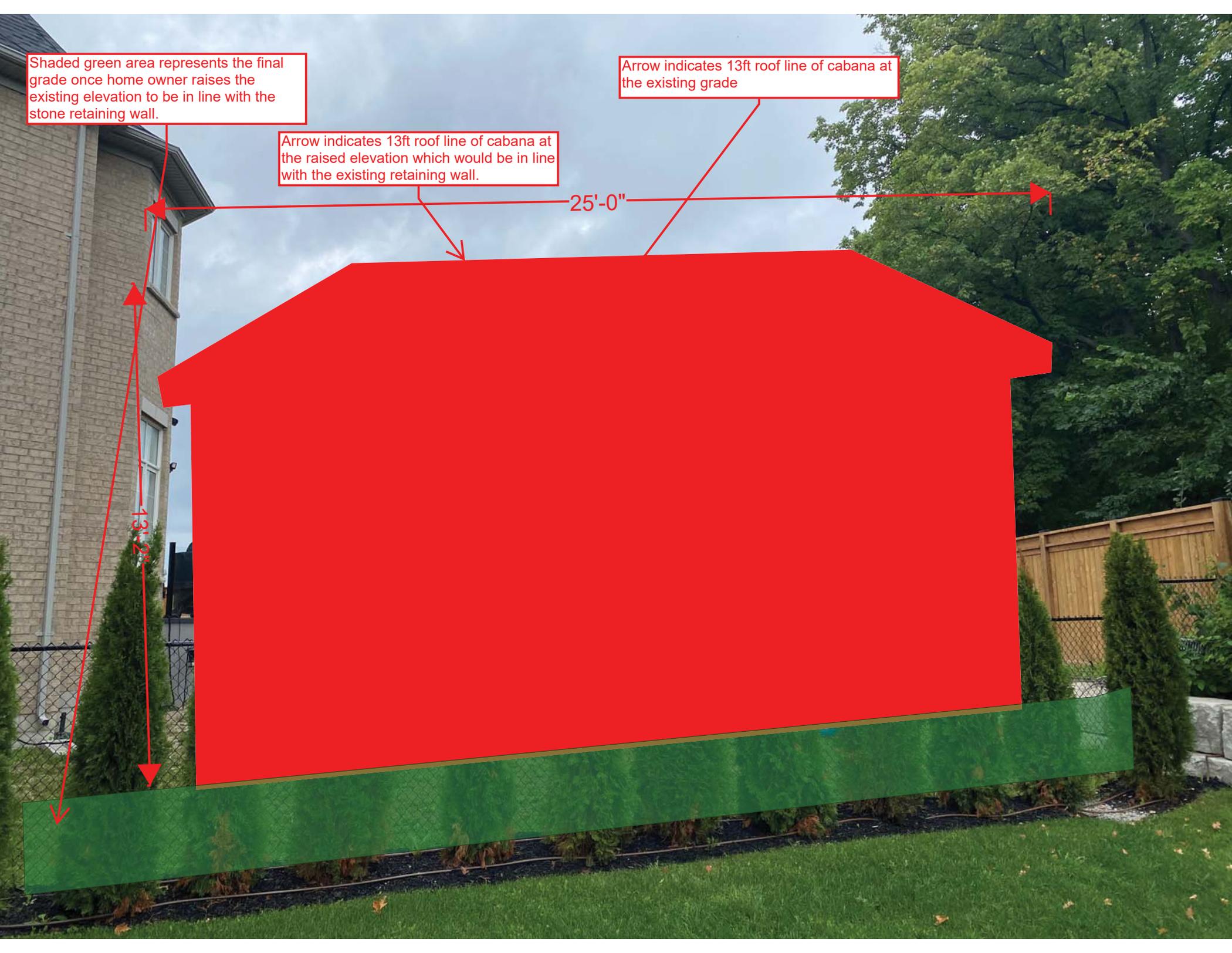
Shaded green area represents the final grade once home owner raises the existing elevation to be in line with the stone retaining wall.

Arrow indicates 13ft roof line of cabana at the existing grade

Arrow indicates 13ft roof line of cabana at the raised elevation which would be in line with the existing retaining wall.

25'-0"

13'-2"



Attachment “B”



