

COMMITTEE OF ADJUSTMENT

MINOR VARIANCE REPORT

STATUTORY AUTHORITY: Section 45 of the Planning Act, 1990

APPLICATION: **CAV A/074/2024**

RELATED FILE: N/A

DATE OF MEETING: BY VIDEOCONFERENCE AND LIVE-STREAMING VIDEO ON THE TOWN'S WEBPAGE AT OAKVILLE.CA ON WEDNESDAY, MAY 15th, 2024 AT 7:00 P.M
0

<u>Owner (s)</u>	<u>Agent</u>	<u>Location of Land</u>
1600767 ONTARIO LIMITED	ADRIAN LITAVSKI JOHNSTON LITAVSKI LTD. 235 LAKESHORE RD E, SUITE 202 OAKVILLE ON L6J 1H7	1140 INVICTA DR PLAN 608 PT LOT 7 RP 20R5425 PART 1

OFFICIAL PLAN DESIGNATION: BUSINESS EMPLOYMENT
WARD: 6

ZONING: E2 SP 3
DISTRICT: EAST

APPLICATION:

Under Section 45(1) of the *Planning Act*, the applicant is requesting the Committee of Adjustment to authorize a minor variance to permit a motor vehicle storage compound on the subject property, whereas Zoning By-law 2014-014 does not permit a motor vehicle storage compound in the E2, Special Provision 3 zone.

CIRCULATED DEPARTMENTS AND AGENCIES COMMENTS RECEIVED

Planning Services:

(Note: Planning Services includes a consolidated comment from the relevant district teams including, Current, Long Range and Heritage Planning, Urban Design and Development Engineering)

CAV A/074/2024 – 1140 Invicta Dr (East District) (OP Designation: Business Employment)

The applicant proposes to permit a *motor vehicle storage compound* on the subject property, whereas Zoning By-law 2014-014 (the “**Zoning By-law**”) does not permit a *motor vehicle storage compound* in the E2, Special Provision 3 zone.

Section 45 of the *Planning Act* provides the Committee of Adjustment with the authority to authorize minor variances from provisions of the Zoning By-law provided the requirements set out under 45(1) in the *Planning Act* are met. Staff comments concerning the application of the four tests to this minor variance request are as follows:

Site and Area Context:



Aerial Photo of 1140 Invicta Drive – Town of Oakville Mapping

The subject property is located adjacent to other properties zoned and designated Business Employment. The rear of the subject property abuts a Natural Area and is located less than 70 metres from a stable residential neighbourhood. Dwellings on Falgarwood Drive overlook the Natural Area that abuts the subject property. Based on the materials submitted by the applicant and a site visit on May 2, 2024, it appears that the site is already occupied by the proposed use which consists of the parking of Truck Cabs and the storing of personal vehicles.

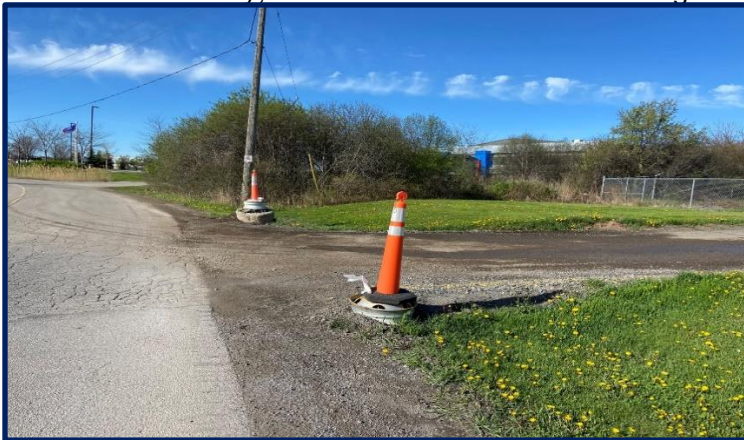


1140 Invicta Drive – Taken from across the street on May 2, 2024



1140 Invicta Drive – Taken at the entrance on May 2, 2024

The property was regraded with a new access created onto Invicta Drive without the required permit(s) / approval(s). Based on aerial imagery, it also appears that the pre-existing trees and vegetation were cleared to accommodate the current activities, also without the required permit(s) / approval(s). This failure to obtain required permit(s) / approval(s) resulted in no staff review of noise impacts, stormwater management, grading, drainage, landscaping, tree preservation, slope stability, lighting, turning movements / safety, etc. It is noted that no screening of the motor vehicle storage compound, such as



trees were installed along Invicta Drive.

1140 Invicta Drive – Access to Invicta Drive taken on May 2, 2024



Aerial Photo of 1140 Invicta – Google Images

Does the proposal maintain the general intent and purpose of the Official Plan?

The subject property is designated Business Employment which is intended to provide for a wide range of business and industrial uses. The uses in the Business Employment areas are intended to be predominantly within enclosed buildings and provide for office uses and light and service industrial operations with minimal impacts on the surrounding areas. Section 14.4.3 indicates that Business Employment uses should occur primarily within enclosed buildings and Section 14.4.4 indicates that limited outdoor storage shall be adequately screened and may be permitted through the implementing zoning.

Generally, lands designated 'Business Employment' are zoned E2 (Business Employment) to implement the designation. E2 does not permit a "motor vehicle storage compound". A "motor vehicle storage compound" is permitted within the E3 Zone (Industrial) under the Zoning By-law which typically falls within the 'Industrial' designation of the Livable Oakville Plan. Industrial areas are intended to provide for heavy industrial operations and are limited to well screened, highly accessible locations. A transportation terminal is also permitted within an Industrial designation.

As evident from the site visit, the proposed "motor vehicle storage compound" is used to store and dispatch truck cabs. It is separate and distinct from the existing building and is not accessory, nor 'limited'. In fact, it occupies most of the subject property. Setting aside that it was constructed illegally, the design accounts for no screening from Invicta Drive. Several other issues may exist as a result of this failure to obtain required permits / approvals before construction.

Pursuant to Livable Oakville, and based on the materials submitted in support of this minor variance application, this use would more appropriately be located within the 'Industrial' designation. Staff are of the opinion that the proposed variance does not meet the general intent of the Official Plan.

Does the proposal maintain the general intent and purpose of the Zoning By-law?

The applicant is requesting a variance to permit a “motor vehicle storage compound” which is defined under the Zoning By-law as:

“...an area of land with or without buildings or structures used for the temporary outside storage of motor vehicles” *[emphasis added]*.

Under the Zoning By-law, a “motor vehicle” is defined as:

“...an automobile, motorcycle, recreational vehicle, trailer, and any other vehicle propelled, towed or driven otherwise than by muscular power”.

It is noted that under the Zoning By-law, a “commercial vehicle” is defined as:

“...a motor vehicle having permanently attached thereto a truck or delivery body and includes ambulances, hearses, casket wagons, fire apparatus, tow trucks, buses and tractors used for hauling purposes on the highways” *[emphasis added]*.

It is also noted that under the Zoning By-law, a transportation terminal is defined as:

“...a premises or area of land used for storing, parking or dispatching of buses, trucks, tractor, or trailers, including servicing or repair within an enclosed building” *[emphasis added]*.

Based on the description of the operation by the applicant and a site visit on May 2, 2024, it appears that what is proposed could fall within the definition of a transportation terminal since it appears that truck cabs are being stored and dispatched from the property. As a result, it appears that the proposed use of a “motor vehicle storage compound” would not permit how the site is currently used and may not appropriately capture the definition of what is operating on the subject property.

This appears to be supported in the Applicant’s submissions as they noted that a “heavy vehicle parking area” is permitted within the E2 zone and that it is a similar use to what is proposed. Under the Zoning By-law, a “heavy vehicle parking area” is defined as:

“...an area on a lot for the accessory parking for trucks, tractors and commercial vehicles exceeding a gross weight of 4,500.0 kilograms, as licensed by the Ministry of Transportation, in association with the primary use of the lot” *[emphasis added]*.

This implies that trucks / commercial vehicles are being parked on the property is consistent with a transportation terminal definition, and reflects what was visible on the site visit. It is noted that Zoning staff reviewed a Zoning Occupancy Certificate (ZOC) application and determined the use to be a transportation terminal and the application was refused on July 10, 2023.

The By-law also makes an important distinction between a primary use and an accessory use. Under the Zoning By-law, an “accessory use” is defined as:

“...a use naturally or normally incidental to, subordinate to, and exclusively devoted to a principal use.”

A primary use, and accessory use are different, with different intensities and related impacts. Staff do not accept the Applicant’s justification which compares what is proposed (which is intended as a primary use) to a use that is permitted as an accessory use to the existing operation. Staff note that the landowner leased the lands to the ‘user’ of the site and as such there are two non-related operations on the site as such the proposed use is not accessory to the existing operation.

A “heavy vehicle parking area” is intended to support another permitted use on a property and additional regulations apply under regulation 10.6 of the Zoning By-law. It is only permitted in an interior side yard or rear yard, shall be set back a minimum of 3.5 metres from any lot line and is permitted to cover a maximum of 25% of the lot. The scale of the proposed use is of concern and does not meet the intent of the Zoning By-law.

For further clarity, a “motor vehicle storage compound” or “transportation terminal” are only permitted in the E3 Zone under the Zoning By-law which indicates that they are not permitted under the E2 Zone. As noted, lands zoned E3 are located in ways to reduce impacts on adjacent properties and are typically designated Industrial under the Official plan.

On this basis, it is staff’s opinion that the request does not maintain the general intent and purpose of the Zoning By-law.

Is the proposal desirable for the appropriate development of the subject lands and minor in nature?

Staff are of the opinion that the variance does not represent the appropriate development of the subject property and the variance is not minor in nature. As noted in the report above, the introduction of a primary use of this nature is not considered minor and what is operating is not desirable for the use of the property.

On this basis, it is staff’s opinion that the application does not meet the four tests and staff recommend that the application be denied.

Permitting Comments

As the associated site works were constructed illegally, it is recommended that the Applicant contact staff immediately to discuss an appropriate resolution. This statement does not imply that the land use would be supported by staff.

Fire: No concerns for fire.

Transit : Comments not received.

Oakville Hydro: We do not have any comments to add for this group of minor variance applications

Halton Region: 6.1 CAV A/074/2024 – 1600767 Ontario Limited, 1140 Invicta Drive, Oakville

- Due to recent Provincial legislation, as of July 1, 2024, the Region will no longer be responsible for the Regional Official Plan – as this will become the responsibility of Halton’s four local municipalities. As a result of this change, a Memorandum of Understanding (MOU) between the Halton municipalities and Conservation Authorities is being prepared that identifies the local municipality as the primary authority on matters of land use planning and development. The MOU also defines a continued of interests for the Region and the Conservation Authorities in these matters. Going forward, comments offered through minor variance applications will be reflective of this changing role.
- Regional staff has no objection to the proposed minor variance application seeking relief under Section 45(1) of the Planning Act in order to permit a motor vehicle storage compound on the Subject Property, whereas Zoning By-law 2014-014 does not permit a motor vehicle storage compound in the E2, Special Provision 3 zone.

Conservation Halton:

May 9, 2024

Re: Minor Variance Application
File Number: CAV A/074/2024
1140 Invicta Drive, Town of Oakville
Sandra Cimoroni and John Mann (Owners)
Batory Management c/o Paul Demczak (Agent)

Conservation Halton (CH) staff has reviewed the above-noted application as per our regulatory responsibilities under the *Conservation Authorities Act* (CA Act) and Ontario Regulation 41/24, and our provincially designated responsibilities under Ontario Regulation 686/21 (e.g., acting on behalf of the province to ensure decisions under the *Planning Act* are consistent with the natural hazards policies of the Provincial Policy Statement [PPS, Sections 3.1.1-3.1.7] and/or provincial plans).

Proposal

The applicant is requesting the Committee of Adjustment to authorize a minor variance to permit a motor vehicle storage compound on the subject property, whereas the Zoning By-law does not permit a motor vehicle storage compound in the E2, Special Provision 3 zone.

Ontario Regulation 41/24

CH regulates all watercourses, valleylands, wetlands, Lake Ontario Shoreline, hazardous lands including unstable soil and bedrock, as well as lands adjacent to these features. Not all regulated areas are mapped, but natural hazards, whether mapped or not, are considered regulated by a conservation authority. When a flood hazard is identified and/or mapped through technical studies, CH assesses risk and advises landowners of CH's regulatory requirements when development is contemplated in hazardous areas. The subject property may be regulated by CH as it may contain a flood hazard (spill) associated with the Morrison Wedgewood Diversion Channel. Spills are flood hazards/hazard lands under the *Conservation Authorities Act* and Ontario Regulation 41/24. A spill occurs when floodwaters leave a watercourse and its valley and spills overland, rejoining the same watercourse at a distance downstream or moving into another watershed. Permission is required from CH prior to undertaking any development activities within CH's regulated area and applications for development are reviewed under the *Conservation Authorities Act*, Ontario Regulation 41/24 and CH's Regulatory Policies and Guidelines (<https://conservationhalton.ca/policies-and-guidelines>).

The Town of Oakville is currently undertaking a Midtown Growth Area Review to guide development within the Midtown Strategic Growth Area. In support of this Review, a range of studies will be undertaken, including a Flood Hazard Mapping (FHM) Study, which is a collaborative initiative between Conservation Halton (CH) and the Town. The purpose of the Midtown Oakville FHM Study is to update the regulatory flood hazard modelling and mapping associated with the Morrison Wedgewood Diversion Channel to the southern extent of the Oakville Midtown Growth Area.

The subject property is located within the Midtown Oakville FHM Study area. While the subject property is not currently identified as within a mapped flood hazard, it may be subject to change as the magnitude and extent of the flood hazard is confirmed through the Study. CH has reviewed the application using the best available information and will advise of any changes as new information becomes available.

Provincial Policy Statement (Sections 3.1.1-3.1.7)

CH reviews applications based on its delegated responsibility to represent the Province on the natural hazard policies of the PPS (3.1.1-3.1.7). As per the above comments, delineation of the flooding and erosion hazard limits relative to the proposed development is required to assess the proposed development relative to the natural hazards policies of the PPS.

Given the above, CH has no concerns from a PPS perspective.

Recommendation

Given the above, CH staff has no objection to the requested minor variances.

Should any changes to the proposed development arise through the Minor Variance process, please keep CH apprised.

Please note that CH has not circulated these comments to the applicant, and we trust that you will provide them as part of your report.

We trust the above is of assistance. If you have any questions, please contact the undersigned at mlauzon@hrca.on.ca.

Bell Canada: Comments not received.

Union Gas: Comments not received.

Letter(s) in support – None.

Letter(s) in opposition – None.

General notes for all applications:

Note: The following standard comments apply to all applications. Any additional application specific comments are as shown below.

- The applicant is advised that permits may be required should any proposed work be carried out on the property i.e. site alteration permit, pool enclosure permit, tree preservation, etc.
- The applicant is advised that permits may be required from other departments / authorities (e.g. Engineering and Construction, Building Services, Conservation Halton, etc.) should any proposed work be carried out on the property.
- The applicant is advised that any current or future proposed works that may affect existing trees (private or municipal) will require an arborist report.
- The applicant is advised that any current or future proposed works will require the removal of all encroachments from the public road allowance to the satisfaction of the Engineering and Construction Department.
- The applicant is advised that the comments provided pertain only to zoning and are not to be construed as a review or approval of any proposal for the site. This review will be carried out through the appropriate approval process at which time the feasibility/scope of the works will be assessed.



Jasmina Radomirovic
Assistant Secretary-Treasurer
Committee of Adjustment