

COMMITTEE OF ADJUSTMENT

MINOR VARIANCE REPORT

STATUTORY AUTHORITY: Section 45 of the Planning Act, 1990

APPLICATION: CAV A/074/2024 (Deferred from May 15, 2024)

RELATED FILE: N/A

DATE OF MEETING:

By videoconference and live-streaming video on the Town of Oakville's Live Stream webpage at oakville.ca on November 13, 2024 at 7 p.m.

<u>Owner (s)</u>	<u>Agent</u>	<u>Location of Land</u>
1600767 ONTARIO LIMITED	JOHNSTON LITAVSKI LTD. (ADRIAN LITAVSKI) 235 Lakeshore Road East Suite 202 Oakville, ON L6J 1H7	PLAN 608 PT LOT 7 RP 20R5425 PART 1 1140 Invicta Dr Town of Oakville

OFFICIAL PLAN DESIGNATION: Business Employment

ZONING: E2 sp: 3, Business Employment

WARD: 6

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 heavy vehicle parking area on the subject property proposing the following variance(s) to Zoning By-law 2014-014:

No.	Current	Proposed
1	<i>Part 3</i> Parking Area, Heavy Vehicle means 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.	To modify the definition of parking area, heavy vehicle to mean an area on a lot for the parking for trucks, tractors and commercial vehicles exceeding a gross weight of 4,500.0 kilograms, as licensed by the Ministry of Transportation.
2	<i>Table 10.2, footnote 18</i> Heavy vehicle parking area is permitted only accessory to another permitted use.	To permit heavy vehicle parking area as a primary use.

CIRCULATED DEPARTMENTS AND AGENCIES COMMENTS RECEIVED

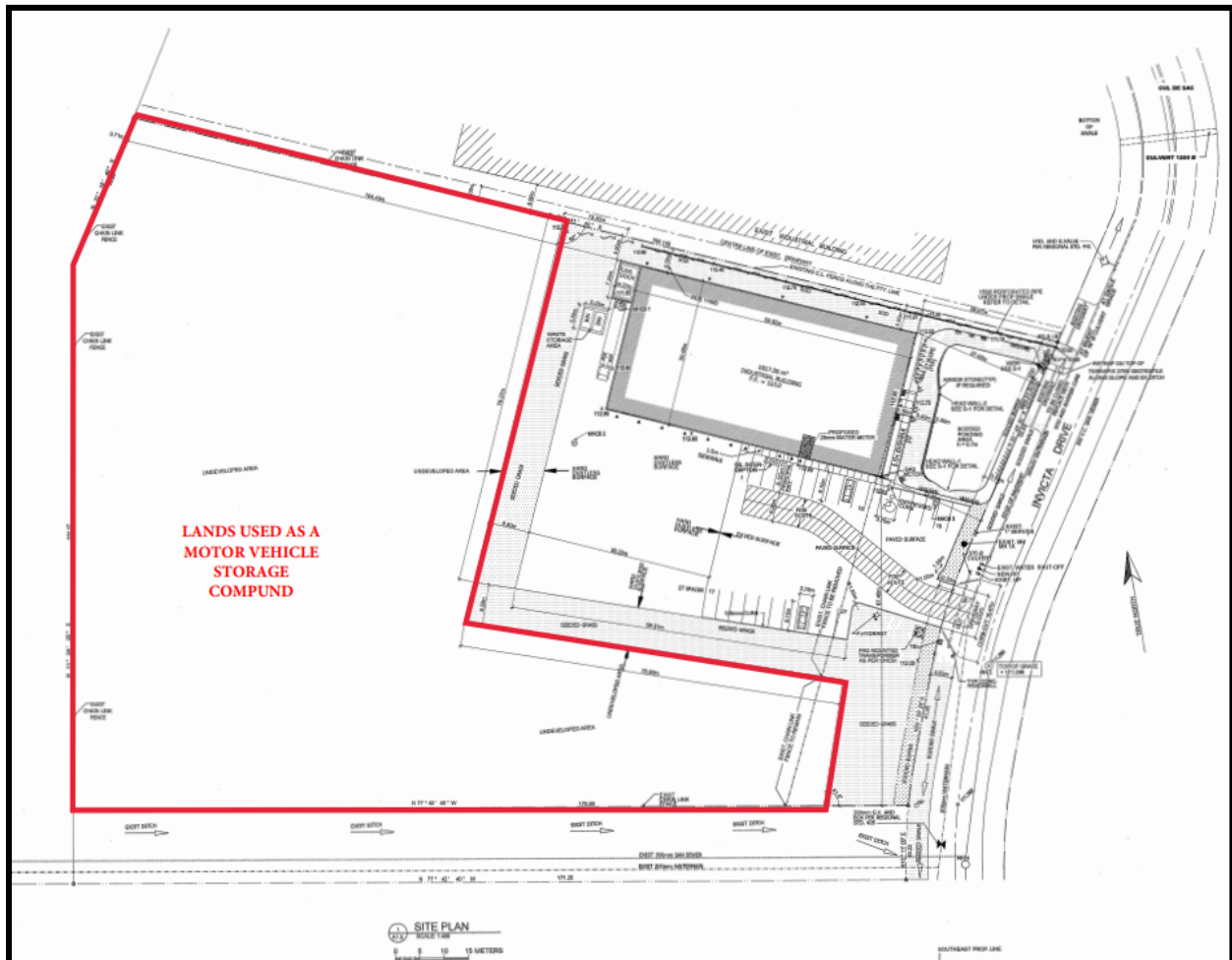
Planning Services:

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

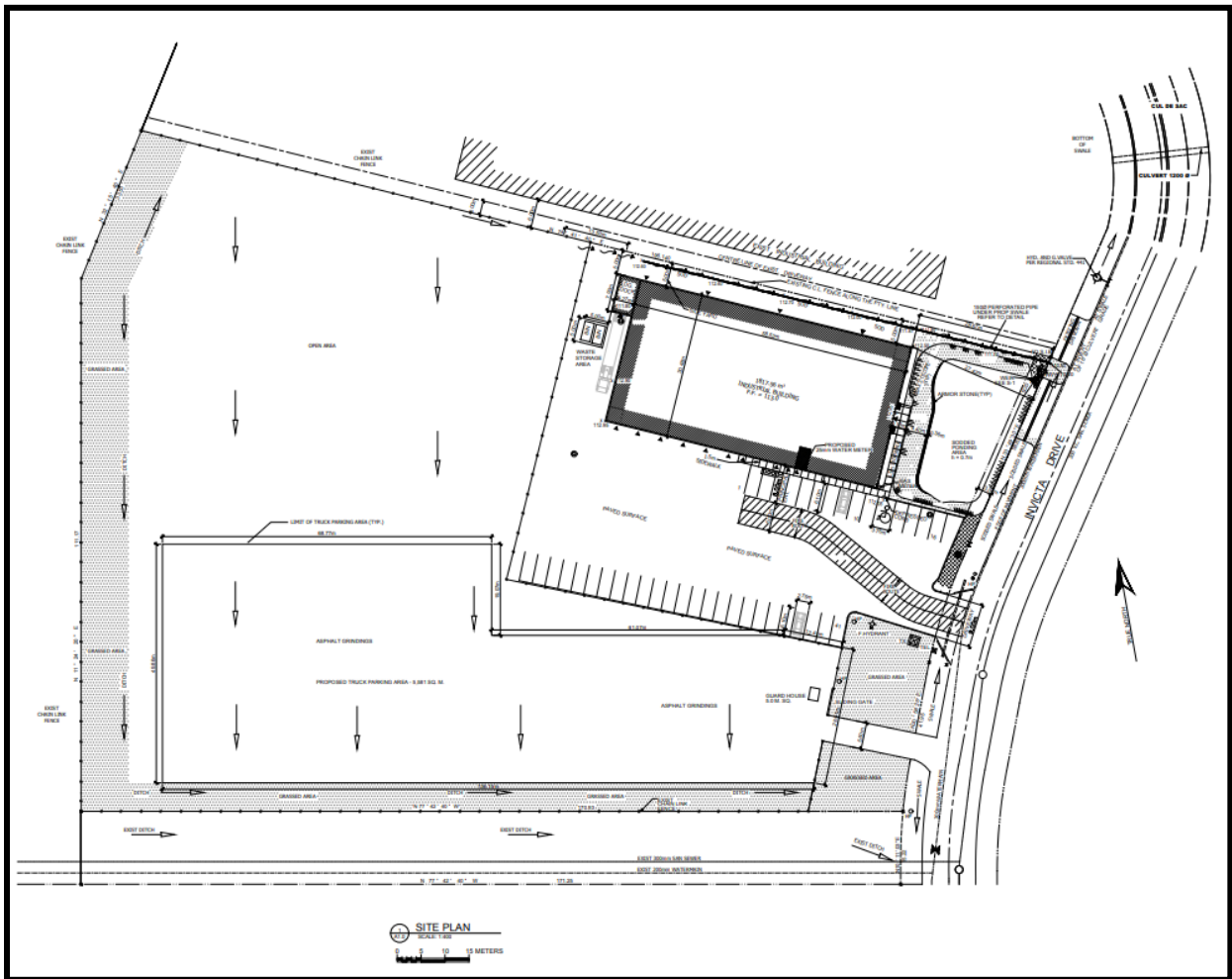
A minor variance application was previously submitted for consideration by the Committee on May 15, 2024. This application was deferred, at the request of the applicant, to provide the opportunity to address staff concerns with the proposed application. A revised minor variance application is now before the Committee of Adjustment for consideration.

The applicant originally proposed 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. Since May 15, 2024, the applicant reduced the portion of the property occupied by their operation and revised the application. The area not occupied by the operation is blocked off by concrete blocks as shown in the images below.

The revised application proposes to modify the definition of *parking area, heavy vehicle* to mean an area on a lot for the parking for trucks, tractors and commercial vehicles exceeding a gross weight of 4,500.0 kilograms, as licensed by the Ministry of Transportation, whereas the Zoning By-law only permits a *heavy vehicle parking area* as an accessory use in association with a primary use on a lot. They also propose permitting a heavy vehicle parking area as a primary use, whereas Table 10.2, footnote 18 of the Zoning By-law only permits a heavy vehicle parking area accessory to another permitted use.



Excerpt of Original Site Plan prepared by applicant dated December 14, 2004



Excerpt of revised Site Plan prepared by applicant dated July 15, 2024

Site and Area Context:

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 site visits on May 2, 2024 and November 4, 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.



Aerial Photo of 1140 Invicta Drive – Town of Oakville Mapping



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



1140 Invicta Drive – Taken from across the street on November 4, 2024



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



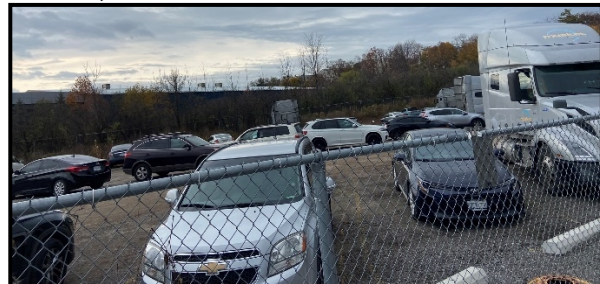
1140 Invicta Drive – Taken at the entrance on November 4, 2024



1140 Invicta Drive – Front of property on November 4, 2024



1140 Invicta Drive – Rear of property on November 4, 2024



1140 Invicta Drive – Parking areas on November 4, 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.

The operation has been reduced since the previous application, but in addition to the concerns already listed, the circulation of the site and location of parking has not been reviewed by staff through a site plan application to ensure that it works for the operation of the site and complies with the Zoning By-law. It is unclear if adequate drive aisles and parking spaces are provided that would comply with the Zoning By-law. It is also unclear whether there are potential adverse impacts on adjacent properties since the appropriate approvals have not been sought.



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



Aerial Photo of 1140 Invicta – Google Images approximately early 2021.

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:

Overall, staff have concerns with the appropriateness of the application since it is unclear whether there are adverse impacts on adjacent properties as the applicant has not demonstrated compliance with relevant required permit(s) / approval(s).

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.

It is noted that pursuant to section 29.3.1 of Livable Oakville where lists or examples of permitted uses are provided in this Plan, they are intended to indicate the possible range and type of uses that are to be 'considered'. A *heavy vehicle parking area* is not listed within the possible range of uses that are to be 'considered'.

Pursuant to Section 14.4.2 of Livable Oakville (Business Employment Permitted Uses) accessory uses may be permitted (with emphasis added):

Accessory uses may be permitted in conjunction with permitted light industrial uses. Accessory retail uses shall be on the same lot and clearly subordinate, and directly related, to the functioning of the permitted use.

The *heavy vehicle parking area*, as proposed, is not an accessory use. If it were an accessory use, it is noted that the auxiliary verb "may" means that the policy is permissive, not directive nor mandatory (such as auxiliary verbs 'should' or 'shall'). Accordingly, in order to determine if the use is permitted, the impacts and conformity with other policies needs to be determined. The existing use was constructed illegally. Due to these actions, the impacts of the proposed use have not been assessed through required / necessary permitting / planning process.

Generally, lands designated 'Business Employment' are zoned E2 (Business Employment) to implement the designation. A *heavy vehicle parking area* is permitted as an accessory use in the E2 Zone and further regulated through Section 10.6, Outside Processing, Outside Storage and Heavy Vehicle Parking Areas and Table 4.11.2, Required Widths of Landscaping by Zone. The application is to allow the *heavy vehicle parking area* as a primary use which would make it separate and distinct from the existing building on the subject property. The submitted materials do not adequately demonstrate that the additional regulations will be met. Several other issues may exist as a result of the failure to obtain required permit(s) / approval(s) before construction.

Staff is of the opinion that the application has not adequately demonstrated that the variance meets 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 *heavy vehicle parking area* as a primary use. A *heavy vehicle parking area* is defined under the Zoning By-law 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.”

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.”

Under the Zoning By-law, a *use* is defined as:

- a) “as a noun, the purpose for which land or a building or structure is arranged, designed, or intended or for which either building or land or structure is or may be occupied or maintained; or,
- b) as a verb, the doing or permitting of anything by the owner or occupant of any land, building or structure directly or indirectly or by or through any trustee, tenant, servant or agent acting for or with the knowledge or consent of such owner or occupant, for the purpose of making use of the land, building or structure.”

A primary *use*, and *accessory use* are different, with different intensities and related impacts. Staff do not accept the applicant’s justification that since the use is permitted as an accessory use, it should be permitted as a primary use on the lot. 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.

A *heavy vehicle parking area* is intended to support another permitted use on a property and additional regulations apply under regulation 10.6, Outside Processing, Outside Storage and Heavy Vehicle Parking Areas of the Zoning By-law. A *heavy vehicle parking area* 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. Table 4.11.2, Required Widths of Landscaping by Zone further requires 7.5 metres of landscaping between a heavy vehicle parking area and any interior side lot line and rear lot line of any use in any zone. There are further regulations under Part 5 under the Zoning By-law related to parking spaces and aisle widths that apply to the subject property. It is not clear through the application whether these additional requirements are being met.

A Site Plan Application could assist with appropriately evaluating the impact of allowing a use that is intended as accessory to be a primary use on a lot. Materials such as updated grading, servicing and drainage plans and a stormwater management report could be reviewed through a site plan application. Additionally, the submitted Noise study could be peer reviewed, and any required mitigation confirmed.

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 variances do not represent the appropriate development of the subject property and the variances are not minor in nature. The applicant has not demonstrated compliance with all other requirements of the town and adequately demonstrated that the proposal functions. Staff are not satisfied with the movable bollards to prevent the operation from exceeding the proposed area. Through a Site Plan Application (and agreement on title), staff would pursue the reinstatement of trees and natural vegetation over the land to be left open and would ensure no negative impacts on the adjacent properties and Natural Area.

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.

Bell Canada: No comments received.

Fire: No concerns for fire. Passed

Finance: No comments received.

Halton Conservation: No comments received.

Halton Region:

- It is understood that this application was deferred from May 15, 2024. Regional comments provided on May 7, 2024, still apply.
- 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 modification to the definition of Parking Area, Heavy Vehicle to mean an area on a lot for the parking for trucks, tractors and commercial vehicles exceeding a gross weight of 4,500.0 kilograms, as licensed by the Ministry of Transportation and to permit heavy vehicle parking area as a primary use, whereas Zoning By-law 2014-014 does not permit heavy vehicle parking area on the Subject Property.
- **RNHS**
Given the location of the proposed works in relation to the Regional Natural Heritage System (RNHS), the proposed development would trigger the Environmental Impact Assessment (EIA) requirements in accordance with Sections 118 (3) & (3.1)c) of the ROP. Staff would consider it appropriate to waive the Region’s EIA requirements in this instance as the proposed development will not likely result in any impacts on the features or ecological functions of the Regional Natural Heritage System.
- **General ROP Policy**
The Region’s Official Plan provides goals, objectives and policies to direct physical development and change in Halton. All proposed Minor Variances are located on lands that are designated as ‘Urban Area’ in the 2009 Halton Region Official Plan (ROP). The policies of Urban Area designation support a range of uses and the development of vibrant and healthy mixed-use communities which afford maximum choices for residence, work and leisure. The Urban Area policies state that the range of permitted uses and the creation of new lots in the Urban Area will be per Local Official Plans and Zoning-By-laws. All development, however, will be subject to the policies of the ROP.

Metrolinx:

Thank you for circulating Metrolinx the November 13, 2024, Committee of Adjustments Agenda for Oakville. Please be advised there are no applicable Metrolinx comments for the applications/properties in this agenda as all properties were outside our designated review zones.

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

Transit: No comments received.

Union Gas: No comments received.

Letter(s) in support – None

Letter(s) in opposition – None

J. Ulcar

Jennifer Ulcar
Secretary-Treasurer
Committee of Adjustment