

**PLANNING AND BUILDING SERVICES****Town of Newmarket**

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Planning Report

To: Committee of Adjustment

From: Meghan White
Senior Planner

Date: January 14, 2021

Re: Application for Minor Variance D13-A25-2020
1240 Twinney Drive
Town of Newmarket
Made by: Davis Drive 404 Retail GP Inc.

1. Recommendations:

That Minor Variance Application D13-A25-2020 be approved, subject to the following conditions:

- i. That the variance pertains only to the request as submitted with the application, specifically that the accessory use of a motor vehicle service station is limited to one (1) gas bar; and
- ii. That the development be substantially in accordance with the information and sketch submitted with the application.

2. Application:

An application for a minor variance has been submitted by the above-noted owner to request relief from Zoning By-law 2010-40 as amended, to permit a Large Format Retail Store to have an accessory motor vehicle service station, specifically a gas bar.

Relief is also requested to permit the same Large Format Retail Store to have a gross floor area of 15,329 square meters whereas the site specific zone limits a Large Format Retail Store to a maximum of 12,541 square meters. Each relief requested is presented below:

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.5.1 Permitted Uses in the Employment Zones	A motor vehicle service station is not listed as an accessory use to a Large Format Retail Store.	To allow one (1) motor vehicle service station (gas bar) as an accessory use to a Large Format Retail Store
2	2010-40	V(a) of EM-109	A Large Format Retail Store shall not have a Gross Floor Area greater than 12,541m ² and be limited to one Large Format Retail Store on the lands subject to this by-law.	To allow a Large Format Retail Store to have a gross floor area of 15,329m ² .

The above-described property (herein referred to as the “subject lands”) is located in one of the employment areas of Newmarket. The area is primarily employment uses with ancillary commercial uses. The property is currently vacant. It is the second phase of the overall development of the vacant lands along Harry Walker Parkway, Davis Drive and Highway 404. The first phase has received site plan approval and is under construction.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to construct a Large Format Retail Store that is larger than permitted by the site-specific zoning, and allowing it to have one accessory motor vehicle service station, specifically a gas bar.

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

Conformity with the general intent of the Official Plan

The subject lands are designated “Mixed Employment” in the Town’s Official Plan. This designation permits a range of employment/industrial uses and some commercial uses. Regarding this designation, the Town’s Official Plan states:

“The Mixed Employment designation includes business and professional offices and industrial activities where the storage of goods and operating facilities occurs within wholly enclosed buildings. A high standard of building and site design, landscaping and signage is required in the Zoning By-law and through site plan approval.”

This designation permits, among other uses, Service Commercial uses, including motor vehicle uses.

In 2012, the subject lands were part of an Official Plan Amendment application and rezoning to allow, among other uses, a Large Format Retail Store. A Large Format Retail Store was found to be an ancillary use in the Mixed Employment designation based on the Region of York’s Official Plan definition. It was determined that ancillary retail and service uses are appropriate and may be permitted subject to necessary limitations on cumulative floor areas as well as individual size of any one ancillary retail use. The Town has been consistently applying this approach since that time.

In 2012, after the OPA was approved, there was approximately 20,140m² of additional ancillary retail floor area permitted in the Leslie Street South Employment Area. In 2013, Council approved a rezoning at 400 Harry Walker Parkway S. The rezoning authorized 2,245m² of retail floor space leaving 17,895 m² available. This application is seeking to take another 2,788 m² of that ancillary retail space. There would still be 15,107 m² available for future applications, and the employment area is generally built out. Therefore, this approach is appropriate.

Permitting the redevelopment of the lands with a Large Format Retail Store meets the intent of the Official Plan and therefore this test is met.

Conformity with the general intent of the Zoning By-law

The subject lands are zoned Mixed Employment Exception 109 (EM-109) by By-law 2010-40, as amended. Large Format Retail Stores are permitted in this site-specific zone.

Section 6.5.1 of the Zoning By-law lists the uses permitted in the Employment Zone. The general intent of listing permitted uses is to control which uses are established in which parts of town. The By-law also sets out which uses can be accessory uses. The definition of an accessory use is “a use customarily incidental or subordinate to and exclusively devoted to the principal use and which operates together with the principal use on the same lot”. Typically, a gas bar would not be considered “normally incidental” to a Large Format Retail store. In this case, however, it is the EM-109 zone which permits a Motor Vehicle Service Shop (i.e. a mechanics), which is not significantly different than a Motor Vehicle Service Station (gas bar).

Section V(a) of EM-109 sets the maximum size for a Large Format Retail Store. As discussed above, the Town and the Region determined that a certain amount of retail uses could be permitted in the Leslie Street Employment Area as ancillary to and in support of employment uses. The maximum amount was set to ensure an appropriate mix of uses on this site and in the employment area overall. Since the rezoning in 2012, a different tenant has been confirmed for the Large Format Retail Store, and as is often the case, they have a very specific floor plate, which is slightly larger than the maximum established in the By-law. As the site development is much more advanced (then it was in 2012), the over all mix of uses has been established in accordance with the zoning by-law. Allowing additional ground floor area for the Large Format Retail Store will not prohibit an appropriate mix of other uses. Nor will it preclude other retail uses in the rest of the employment area (as discussed above).

The general intent of site specific Zoning By-law is to ensure an appropriate mix of land uses and that retail uses do not predominate the employment uses in the Employment Area. In this case, the mix of uses has been adhered to and a slightly larger Large Format Retail store will not negatively impact other the establishment of future employment uses.

Therefore the two points of variance meet the general intent of the Zoning By-law. This test is met.

Desirable for the appropriate development of the land

It is generally desirable to allow the establishment of new commercial uses and having new businesses locate in Newmarket, subject to the limits of the Zoning By-law and impacts on neighbouring properties. This deference is balanced against the desirability of development in the public interest when permission beyond that of the Zoning By-law is sought by way of a minor variance.

A new Large Format Retail Store is a desirable development of the lot. Specific impacts of the development can be addressed through the site plan approval process. The applicant will be submitting their site plan application shortly. This test is met.

Minor nature of the variance

The test of whether a variance is minor in nature is not simply an evaluation of the numerical value, nor is impact the sole determining factor. The proposed variances seek to allow the construction of a Large Format Retail Store with an accessory use in an area that is designed for and suitable for this type of use. Furthermore, no negative impacts are expected to neighbouring businesses or properties. This test is met.

In consideration of the above, the proposed variances are deemed to meet the four tests under the *Planning Act* and are recommended to be approved subject to the conditions noted above.

4. Other comments:

Commenting agencies and departments

The Chief Building Official has no comments on this application.

Engineering Services has no objection to this application.

As of the writing of this report the Regional Municipality of York and Lake Simcoe Region Conservation Authority have not provided comments on this application.

Effect of Public Input

One letter was received as of the date of writing this report. It was from a neighbouring business and they have no objection to the application.

5. Conclusions:

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 desirable for the appropriate development of the lot.

Respectfully submitted,


Meghan White, MCIP RPP
Senior Planner, Development

From: [Laura Tafreshi](#)
To: [Cho, Patricia](#)
Subject: RE: Committee of Adjustment - Notice of Application Circulation (January 20, 2021)
Date: January 14, 2021 4:45:45 PM
Attachments: [Newmarket Circ.pdf](#)

Good afternoon Patricia,

The property is not within an area that is regulated by the LSRCA under Ontario Regulation 179/06. Generally, we would not comment on committee of adjustment for applications outside the LSRCA regulated area per our MOU with the Town (attached).

We have no comments or concerns with respect to this proposal. Any submitted review fees will be refunded to the Owner.

Should you have any questions at this time, please let me know.
Kind regards,

Laura Tafreshi

Planner I

Lake Simcoe Region Conservation Authority

120 Bayview Parkway,

Newmarket, Ontario L3Y 3W3

Office: 905-895-1281, ext. 299 | Cell: 416-294-6973 (*preferred*)

L.Tafreshi@LSRCA.on.ca | www.LSRCA.on.ca

Twitter: @LSRCA

Facebook: LakeSimcoeConservation

Please note: the LSRCA Board of Directors approved a change to our Fee Policy. The new fees will take effect on January 1, 2021. Please click [here](#) for the new fee schedule.

The information in this message (including attachments) is directed in confidence solely to the person(s) named above and may not be otherwise distributed, copied or disclosed. The message may contain information that is privileged, confidential and exempt from disclosure under the Municipal Freedom of Information and Protection of Privacy Act and by the Personal Information Protection Electronic Documents Act. If you have received this message in error, please notify the sender immediately and delete the message without making a copy. Thank you.

From: Cho, Patricia <pcho@newmarket.ca>

Sent: January 7, 2021 12:36 PM

To: Laura Tafreshi <L.Tafreshi@lsrca.on.ca>

Cc: Kelly Nesbitt <K.Nesbitt@lsrca.on.ca>; Info Mail <infomail@lsrca.on.ca>

Subject: Committee of Adjustment - Notice of Application Circulation (January 20, 2021)

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Hi Laura,

Happy New Year ☺ Hope you had a wonderful holiday.

The next virtual Committee of Adjustment hearing will be held on Wednesday, January 20th, 2021. The Committee of Adjustment invites your advice and comments on the following application:

- **D13-A25-20 – 1240 Twinney Drive (WARD 2)**

The applicant is proposing to add a Motor Vehicle Service Station and Large Format Retail Store. Application is to seek relief to permit a Large Format Retail Store to have a gross floor area of 15,329 square metres and to permit a Motor Vehicle Service Station as an accessory use to the Large Format Retail Store.

For your convenience, you may download the submitted documents in digital format and Notice of Hearing on the Town's file share site with the link below:

<https://tonfileshare.newmarket.ca/share.cgi?ssid=0MBFw6J>

Could we please kindly ask that this review be completed by Wednesday, January 13, 2021. From my understanding, LSRCa has completed a review of their Phase 1 plans. Please feel free to send me the last comments from that. Apologies if they had been previously sent to the Planner on the file, but with the recent staffing changes, we were not able to locate them. Also, the application fee has been placed in an envelope in the drop off bin at the address Kelly previously provided.

Please let me know if you have any questions.

Thank you,
Patricia

Please note that I am working remotely due to the COVID-19 pandemic and can be reached by email.



Patricia Cho, BA., MSc. (Planning)

Planner

Planning and Building Services

[Newmarket.ca/zoning for zoning Information](https://www.newmarket.ca/zoning-for-zoning-information)

[@townofnewmarket](#)

Newmarket: A Community *Well* Beyond the Ordinary

From: [Potter, David](#)
To: [Cho, Patricia](#)
Cc: [Larmer, Jennifer](#); [Greenham, Curtis](#); [Olsen, Michelle](#); [Antsyferov, Katrina](#); [Corrigan, Wendy](#); [Nagulan, Janany](#); [Bickers, Craig](#); [Ghiami, Lida](#); [Marra, Franco](#)
Subject: RE: Committee of Adjustment - Notice of Application Circulation (January 20, 2021) - Comments
Date: January 12, 2021 11:59:15 AM

Hi Patricia:

Please see comments below (in red).

Cheers,
Dave

From: Cho, Patricia <pcho@newmarket.ca>
Sent: January 6, 2021 3:11 PM
To: Taylor, John <jtaylor@newmarket.ca>; Woodhouse, Victor <vwoodhouse@newmarket.ca>; Kwapis, Bob <bkwapis@newmarket.ca>; Bisanz, Christina <cbisanz@newmarket.ca>; Simon, Grace <gsimon@newmarket.ca>; Broome, Kelly <kbroome@newmarket.ca>; Twinney, Jane <jtwinney@newmarket.ca>; Morrison, Trevor <tmorrison@newmarket.ca>; Sharma, Jag <jsharma@newmarket.ca>; Noehammer, Peter <pnoehammer@newmarket.ca>; Unger, Jason <junger@newmarket.ca>; Potter, David <dpotter@newmarket.ca>; Prudhomme, Rachel <rprudhomme@newmarket.ca>; Majdi, Sepideh <smajdi@newmarket.ca>; Schell, Ryan <rschell@cyfs.ca>; Villanueva, Lawrence <lvillanueva@newmarket.ca>; Lyons, Lisa <llyons@newmarket.ca>; Saini, Kiran <ksaini@newmarket.ca>; rowcentre@bell.ca; Development Services <developmentservices@york.ca>
Cc: Cammaert, Adrian <acammaert@newmarket.ca>; Morton, Devon <dmorton@newmarket.ca>
Subject: Committee of Adjustment - Notice of Application Circulation (January 20, 2021)

Good Afternoon,

The next virtual Committee of Adjustment hearing will be held on Wednesday, January 20th, 2021. The Committee of Adjustment will consider the following applications:

- D13-A24-20 – 258 Plymouth Trail ([WARD 4](#))
The applicant is proposing to add an accessory dwelling unit. Application is to seek relief to amend the definition of dwelling unit to permit a private entrance to an accessory dwelling unit to be from the garage. If access through the garage is proposed to be the principal entrance to the ADU, it would have to be suitably gas-proofed to ensure safe access and egress for the occupants at all times. Building Permit required for any material alterations to support an ADU.
- D13-A25-20 – 1240 Twinney Drive ([WARD 2](#))
The applicant is proposing to add a Motor Vehicle Service Station and Large Format Retail Store. Application is to seek relief to permit a Large Format Retail Store to have a gross floor area of 15,329 square metres and to permit a Motor Vehicle Service Station as an accessory

use to the Large Format Retail Store. **No Comments.**

- D13-A26-20 – 334 Savage Road (WARD 6)
*The applicant is proposing to add an accessory dwelling unit. Application is to seek relief to permit one parking space for an accessory dwelling unit to be within a garage. **Building Permit required for any material alterations to support an ADU.***

The Committee invites your advice and comments on these matters. The Committee would like to receive comments, if possible, a week before the Hearing of the application (**Wednesday, January 13, 2021**). For your convenience, you may download the submitted documents in digital format and Notice of Hearing on the Town's file share site with the link below:

<https://tonfileshare.newmarket.ca/share.cgi?ssid=0MBFw6J>

Please let me know if you have any questions.

Thank you,
Patricia

Please note that I am working remotely due to the COVID-19 pandemic and can be reached by email.



Patricia Cho, BA., MSc. (Planning)

Planner

Planning and Building Services

[Newmarket.ca/zoning for zoning Information](https://www.newmarket.ca/zoning-for-zoning-information)

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Newmarket: A Community *Well* Beyond the Ordinary



DEVELOPMENT AND INFRASTRUCTURE SERVICES - ENGINEERING SERVICES

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M E M O R A N D U M

TO: Jason Unger, B.E.S., M.PL., MCIP, RPP, Director, Planning and Building Services

FROM: Sepideh Majdi, P.Eng., Manager, Development Engineering

DATE: January 11, 2021

RE: Application for Minor Variance
Made by: DAVIS DRIVE 404 RETAIL GP INC.
File No.: D13-A25-20
Part Lot 35, Concession 3, Parts 1-3, PLAN 65R38559
1240 Twinney Drive
Town of Newmarket Ward 2
Engineering Services File No.: R. Twinney Dr

The applicant is proposing to add a Motor Vehicle Service Station and Large Format Retail Store. The following relief is requested from Zoning By-law 2010-40, amended by By-law 2012-20, to permit the following:

1. Relief from Section V(a) Provisions to EM-109 to permit a Large Format Retail Store to have a gross floor area of 15,329 square metres, whereas the By-law permits a maximum gross floor area of 12,541 square metres for a Large Format Retail Store.
2. Relief from Section 6.5.1 Permitted Uses to permit a Motor Vehicle Service Station as an accessory use to the Large Format Retail Store, whereas the By-law does not list a Motor Vehicle Service Station as a permitted accessory use for a Large Format Retail Store.

We have reviewed the application and supporting documentation and have no objection to the application.

Should you have any questions please contact the undersigned.

Sincerely,

ENGINEERING SERVICES

Sepideh Majdi, P.Eng.
Manager, Development Engineering

