



**PLANNING AND BUILDING SERVICES**

**Town of Newmarket**                      www.newmarket.ca  
395 Mulock Drive                      planning@newmarket.ca  
P.O. Box 328, STN Main              T: 905.953.5321  
Newmarket, ON L3Y 4X7              F: 905.953.5140

**Planning Report**

TO:    Committee of Adjustment

FROM:                                         Peterson Rissis  
   Junior Planner, Development

DATE:                                         February 23, 2024

RE:     Application for Consent **CON-2024-001** and Minor Variance **MV-2024-006**  
   7-107 Harry Walker Parkway South  
   Town of Newmarket  
   Made by: Davis Drive 404 Retail GP Inc & 12652463 Canada Inc

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**1. Recommendations:**

***Consent Application***

That Consent Application CON-2024-001 be approved, subject to the following:

Clearing conditions:

1. To the satisfaction of the Secretary-Treasurer:
  - i. An electronic copy of the deposited reference plan showing the subject lands, which conforms substantially to the application as submitted; and,
  - ii. Proof of payment of all outstanding taxes and local improvement charges owing to date; and,
  - iii. Any required transfers to affect the severance and conveyance of the land;
  - iv. A letter shall be received from the applicant or authorized agent confirming that no further service easement(s) and/or right(s)-of-way, are necessary.
2. The Secretary-Treasurer shall receive a letter from the owner indicating that satisfactory arrangements have been made with respect to the reciprocal agreements, rights-of-ways, and access easements registered on title to bind future owners and ensure that the site will function as one; and,
3. The Secretary-Treasurer shall receive a letter from the Town of Newmarket, Development and Infrastructure Services – Planning Services Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in UFI Peer Review comments dated February 21, 2024, and the Town’s Tree Preservation, Protection, Replacement and Enhancement Policy prior to the issuance of any building permit; and,
4. That the concurrent minor variance application is approved by the appropriate authorities and that such approval is final and binding; and,

Advisory comments:

1. The consent pertains only to the request as submitted with the application;
2. The development be substantially in accordance with the information submitted with the application; and,
3. That the site plan application meets the overall minimum zone standards for the site as a whole; and,
4. Prior to any demolition or construction activity on the subject lands, the Town must be notified in order to conduct an inspection of the installed tree protection fencing and other tree protection measures.
5. Failure to comply with and maintain the conditions and comments of the Committee shall render the approval null and void.

***Minor Variance Application***

That Minor Variance Application MV-2024-006 be approved, subject to the following:

Clearing conditions:

1. The Secretary-Treasurer shall receive a letter from the owner indicating that satisfactory arrangements have been made with respect to the reciprocal agreements, rights-of-ways, and access easements registered on title to bind future owners and ensure that the site will function as one; and,
2. The Secretary-Treasurer shall receive a letter from the Town of Newmarket, Development and Infrastructure Services – Planning Services Department, indicating that satisfactory arrangements have been made with respect to the matters addressed in UFI Peer Review comments dated February 21, 2024, and the Town's Tree Preservation, Protection, Replacement and Enhancement Policy prior to the issuance of any building permit; and,

Advisory comments:

1. The variance pertains only to the request as submitted with the application; and,
2. The development be substantially in accordance with the information submitted with the application; and,
3. That the site plan application meets the overall minimum zone standards for the site as a whole; and,
4. Prior to any demolition or construction activity on the subject lands, the Town must be notified in order to conduct an inspection of the installed tree protection fencing and other tree protection measures.

5. Failure to comply with and maintain the conditions and comments of the Committee shall render the approval null and void.

**2. Subject Lands**

The above-described property (herein referred to as the “subject lands”) is located on Harry Walker Parkway South, south of Davis Drive. Surrounding land uses include commercial uses to the north; Highway 404 to the east; and, industrial uses to the south and west.

The site is currently occupied by a commercial plaza on the northern portion of the property, at the intersection of Harry Walker Parkway and Davis Drive. This plaza was constructed as Phase 1 of this development. Phase 2 (Buildings B, C, and D) is currently being reviewed as part of the site plan approval process. The proposed severance and minor variance application would not result in any changes to the development or layout of the site.

**3. Application**

An application for a minor variance has been submitted to request relief from Zoning By-law 2010-40, as amended, to facilitate the construction of multi-unit commercial buildings, a large format retail store, and an accessory motor vehicle service station. The purpose of the minor variance application is to allow the existing zoning to apply to the entire subject land, regardless of a future severance. The consent sketch is included as Attachment 1.

A concurrent consent application has also been submitted to sever the southern portion of the subject land to permit the large format retail store and associated gas bar to be held in separate ownership. The application also proposes easements and reciprocal agreements to allow the parking and driveways to be shared by users of both properties.

The requested variance is outlined below:

Relief	By-law	Requirement	Proposed
1	2010-40	To apply the standards of By-law 2010-40 on an individual basis for each parcel	To apply the standards of By-law 2010-40 to the whole of the lands as if no severance, partition, or division occurred.

**4. Planning Considerations**

Applications for minor variance and consent have been submitted to request relief from Zoning By-law Number 2010-40, as amended, to permit the severance of the southern portion of the property.

The applicant is requesting a severance to divide the land into two parcels, noted as Parcel A and B on the consent sketch (refer to Attachment 1). The applicant would retain Parcel B (11.4 acres), while Parcel A (18.61 acres) would be under different ownership. Easements and reciprocal agreements are required to allow the driveway access and parking spaces to be shared between the two properties (refer to Attachment 2).

The Zoning By-law provides zone standards that generally apply to each individual property. The minor variance application requests that the existing zone standards apply to the subject land as a whole,

rather than individually on the two separate parcels that are to be created by the concurrent consent application.

#### **4.1 Planning Considerations – Minor Variance**

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

##### **I. Conformity with the General Intent of the Official Plan**

The subject lands are within the “Business Park – Mixed Employment” area of the Official Plan, which permits a range of employment, industrial, and limited commercial uses. Uses that are incidental to these primary permitted uses are also allowed under this designation. The general objectives of the Business Park policies are to:

- a) Encourage the provision of an adequate and appropriate supply of employment lands to accommodate opportunities for economic development in the Town, particularly the Highway 404 Corridor; and,
- b) Contribute to the employment portion of the Town’s population to employment ratio target of 2:1; and,
- c) Support and encourage a wide range of industrial operations which are important to the economic health of the Town; and,
- d) Encourage the use of alternative and renewable energy sources for production and manufacturing.

The “Business Park – Mixed Employment” designation within the Official Plan permits a range of uses, including business and professional offices, industrial activities, ancillary retail, and service commercial uses, which includes motor vehicle uses. The proposed uses are permitted within this designation. Subject to the recommended clearing conditions and advisory comments, the requested variances are considered to conform to the Official Plan. This test is met.

##### **II. Conformity with the general intent of the Zoning By-law**

The subject lands are zoned as Mixed Employment - Exception 109 (EM-109) under Zoning By-law 2010-40, as amended. The Mixed Employment zone permits a variety of commercial uses, including a large format retail store and motor vehicle service station.

The applicant is requesting relief from the By-law to apply the zone standards of the EM zone over the entirety of the subject land rather than on an individual basis for each parcel. The general intent of the By-law is to ensure the orderly development and to prevent developments that are incompatible with the surrounding context. The application meets the minimum zoning requirements on an individual basis for the proposed severed parcels, including minimum lot area, frontage, lot coverage, and side and rear yard setbacks. However, the proposed severance leads to deficiencies in parking on Parcel B and an abundance on Parcel A. When applying the zone requirements over the entire subject land, the application meets the minimum requirement.

Despite the proposed severance, the site would continue to function as one but would allow the severed parcel to be retained under different ownership. To ensure that the site continues to function well in the future, both lots would be bound by reciprocal agreements and easements that would be registered on

title and bind future landowners. The intent of this variance is to change how the zone standards are applied to the subject land. If approved, the subject lands would still be required to meet the minimum zone standards overall, which would be dealt with through the site plan approval process. The general intent of the By-law is maintained, and therefore, this test is met.

### **III. Desirable for the appropriate development of the land**

It is generally desirable to allow the owner to invest in their property and establish new commercial uses within the Town, subject to the limits of the By-law and impacts on neighbouring properties. The proposed development is compatible with the planned built form for the Business Park – Mixed Employment area, allowing a mix of industrial, commercial, and retail uses. Detailed design of the site would continue to be reviewed through the site plan approval process.

As the requested relief would allow the property owner to invest in their property and arrange the property to suit their needs without significant impact to neighbours or the community, the variance is desirable for the appropriate development of the lot. This test is met.

### **IV. Minor nature of the variance**

When considering if the variance is minor, it is not just the numerical value that should be considered. Committee is requested to consider the overall impact of the variance, and more specifically, whether an application creates unacceptable adverse impacts of a planning nature. The proposed variance requests that the property be considered as one lot for the purposes of zoning compliance. The development would still be required to meet the minimum zone standards overall, regardless of the consent application.

In consideration of the above, the proposed variance meets the four tests under the *Planning Act*.

## **4.2 Planning Considerations – Consent**

### **I. Conformity with the Official Plan**

Section 16.1.5.2 of the Official Plan sets out the circumstances in which an application for consent will be granted. The section outlines that consents shall only be granted where:

- A. The severance is for the purpose of infilling within the existing development;
- B. A plan of subdivision is not necessary;
- C. The number of lots created is three or less;
- D. The lot can be adequately serviced by sanitary sewage disposal, water supply, and storm drainage facilities;
- E. No extension, improvement or assumption of municipal services is required;
- F. The lot will have frontage on an improved public road, and access will not result in traffic hazards;
- G. The lot will not restrict the ultimate development of adjacent lands;
- H. The size and shape of the lot conforms with the requirements of the Zoning By-law, is appropriate to the use proposed and compatible with adjacent lots; and,
- I. The consent complies with all relevant provisions of the Official Plan.

The proposed consent meets clauses (a) to (i). Additionally, Section 50(3)(f) of the Planning Act and Section 16.1.5.1 of the Official Plan allows for consent applications to create easements, as requested

by the applicant. The proposed application would not conflict with the purpose and intent of the Official Plan.

## **II. Conformity with the Zoning By-law**

The subject lands are zoned as Mixed Employment - Exception 109 under Zoning By-law 2010-40. This zone contains requirements for minimum lot area, lot frontage, yard setbacks, parking, and maximum lot coverage. Subject to the approval of the concurrent minor variance, together the severed and retained parcel would comply with the applicable zone standards.

## **5. Other comments:**

### **Site Plan Approval**

A Site Plan Application has been received for the subject land and is currently under review.

### **Tree Preservation**

An Arborist Report was submitted in support of the application. This report indicates that there are a total of 114 trees on and within 4.5 metres of the property. The applicant is proposing the removal of 67 trees to accommodate the proposed development. Tree protection barriers must be provided for the 47 retained trees, in accordance with the Town's Tree Policy. The Town requires securities to be posted to allow for the replacement of any trees that have been damaged or destroyed at a rate specified by the Tree Preservation, Protection, Replacement and Enhancement Policy. The securities will be required through the site plan approval process.

### **Heritage**

The subject lands are not designated under the Ontario Heritage Act or on the municipal list of non-designated properties.

### **Commenting agencies and departments**

Engineering Services has no objection to this application.

The subject lands are not within the LSRCA-regulated area.

The Region of York has advised that a 400mm Newmarket East ET Watermain runs along the east side of the lot. The applicant is to ensure that the integrity of the watermain shall be maintained at all times during construction, with specific comments and conditions provided on the site plan application. It is also advised that while the proposed application does not trigger any Source Water Protection Requirements, if there is a change and/or the application is amended, Water Resources will require recirculation.

Urban Forest Innovations Inc. (UFI), the Town's consulting arborist, has requested a revised Arborist Report from the applicant to accurately reflect the species, size, and condition of all significant trees located on or within 4.5 metres of the subject lands as several deficiencies in the tree inventory. UFI has also requested that prior to any demolition or construction activity on the subject lands, the Town must be notified in order to conduct an inspection of the installed tree protection fencing and other tree protection measures.

### **Effect of Public Input**

No public input was received as of the date of writing this report.

## **6. Conclusion:**

### **I. Minor Variance Application**

The requested variance be granted as the relief:

- (1) is minor in nature;
- (2) conforms to the general intent and purpose of the Official Plan;
- (3) conforms to the general intent and purpose of the Zoning By-law;
- (4) is considered desirable for the appropriate development of the lot.

### **II. Consent Application**

In Staff's opinion, the consent meets the relevant requirements of the Zoning By-law, the Official Plan, and is recommended to be granted, subject to the clearing conditions and advisory comments.

Respectfully submitted,



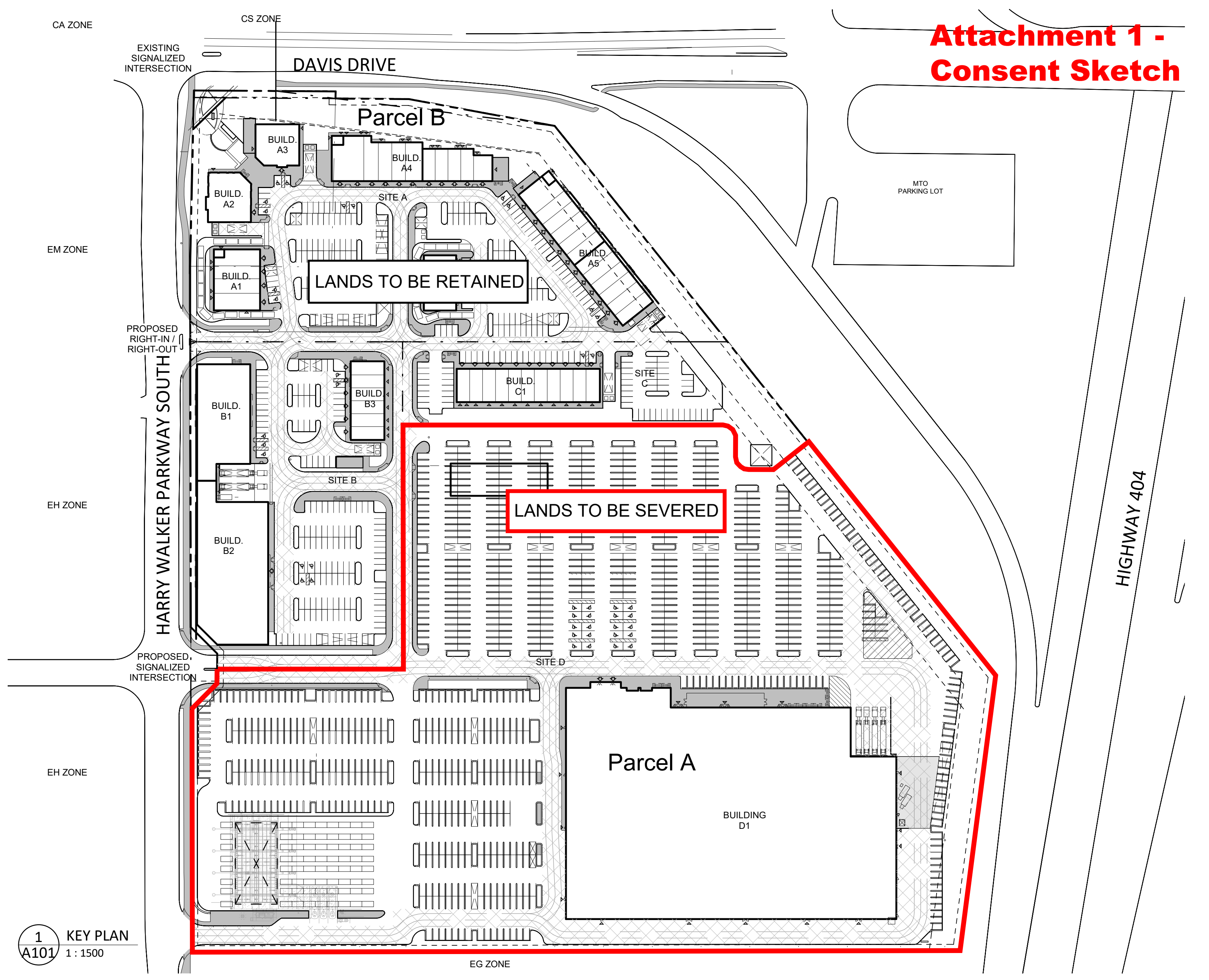
Peterson Rissis

Junior Planner – Development

Attachment 1: Consent Sketch

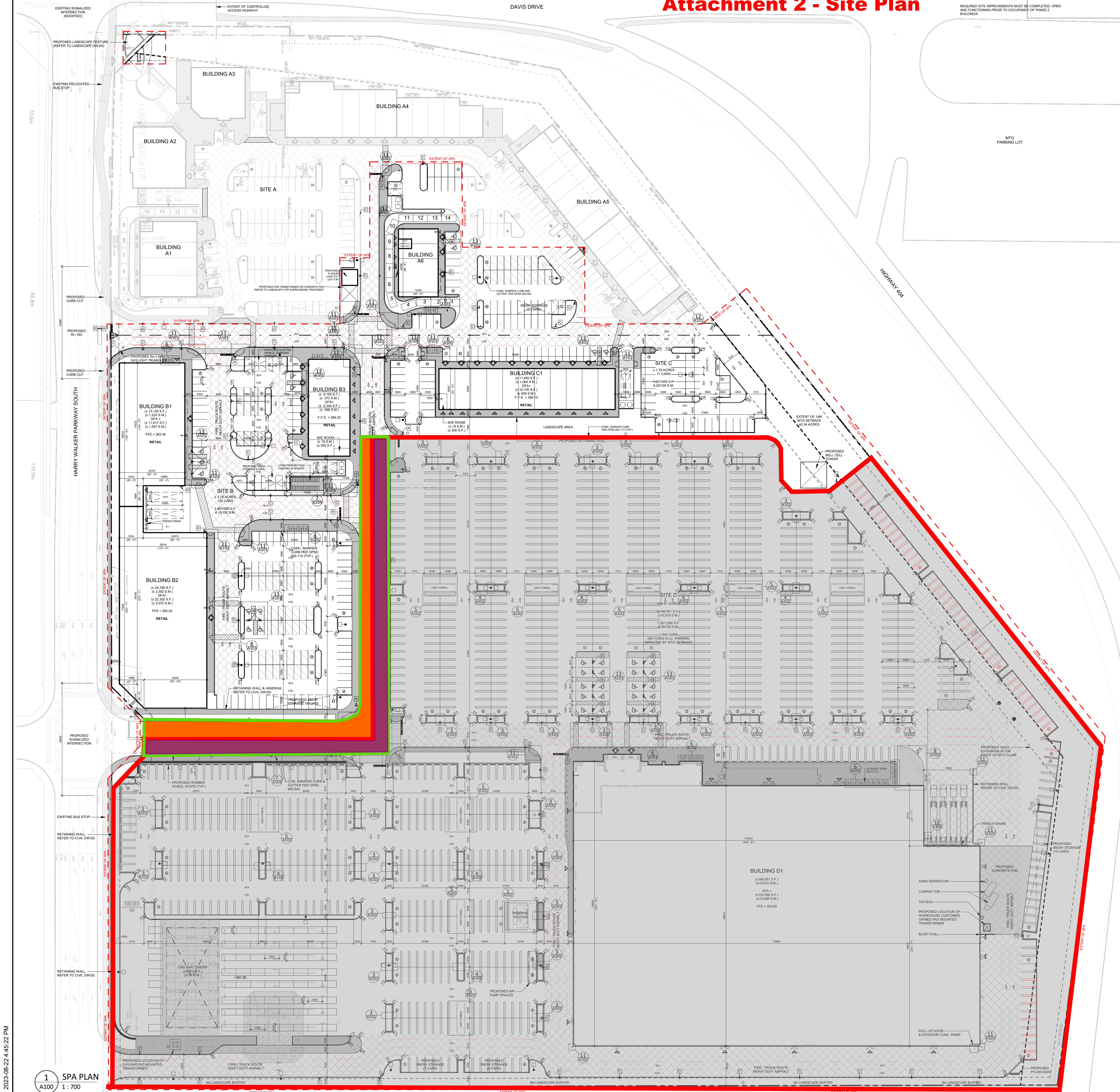
Attachment 2: Site Plan

# Attachment 1 - Consent Sketch





# Attachment 2 - Site Plan



## ZONING REQUIREMENTS

ZONING: EM 109  
 MAP: 25  
 BY-LAW REFERENCE: 2012-20  
 FILE REFERENCE: 014-NP-1100

LOCATION: SOUTHWEST CORNER OF DAVIS DRIVE AND HARRY WALKER PARKWAY SOUTH

LEGAL DESCRIPTION: 2280 DAVIS & 2487 TWINNEY DRIVE, TOWN OF NEWMARKET

USE BREAKDOWN

RETAIL AREA	168,055 S.F.	12,745 S.M.
RESTAURANT AREA	125,252 S.F.	12,345 S.M.
PERSONAL SERVICE	30 S.F.	0 S.M.
SUPERMARKET	11,999 S.F.	1,134 S.M.
RETAIL WAREHOUSE STORE	110,613 S.F.	13,992 S.M.

REGULATIONS

MIN. LOT AREA	3M	3M
MIN. LOT FRONTAGE	3M	3M
MIN. YARD SETBACKS	3M	3M
MIN. FRONT YARD SETBACK (DAVIS DRIVE)	3M	3M
MIN. SIDE YARD SETBACK	3M	3M
MIN. REAR YARD SETBACK (SOUTH LOT LINE)	12M	13M
MIN. FLOOR AREA	2,000 S.F.	19.5 S.M.
MAX. LEASABLE FLOOR AREA	2,000 S.F.	19.5 S.M.
MAX. FLOOR SPACE INDEX	2.000 S.F.	19.5 S.M.
MAX. LOT COVERAGE	N/A	N/A
MAX. HEIGHT	N/A	N/A
MIN. LANDSCAPE BUFFER (DAVIS DRIVE)	3M	3M
MIN. SIDEWALK	1.8M	1.8M
TYP. PEDESTRIAN	1.5M	1.5M
PEDESTRIAN ABUTTS PROPERTY LINE	1.5M	1.5M

PARKING REQUIREMENTS

LOCAL SHOPPING CENTRE	1,267 CARS	1,435 CARS
RETAIL WAREHOUSE STORE	700 CARS	958 CARS
MIN. TYP. PARKING SIZE	2.60M X 5.5M	2.60M X 5.5M
MIN. BARRIER FREE PARKING SIZE	3.4M X 5.5M	3.4M X 5.5M
TYPE "T" (EVAN)	2.60M X 5.5M	2.60M X 5.5M
TYPE "B"	0.6M X 1.8M	0.6M X 1.8M
MIN. BICYCLE PARKING SIZE	40 SPACES	40 SPACES
MIN. 2 LONG TERM & 5 SHORT / 1 000 S.M. OF GFA	134 SPACES	120 SPACES
LONG TERM		
SHORT TERM		

SNOW STORAGE ACCOMMODATION

MIN. 5% OF REQ. PARKING	59 CARS	23 CARS
MIN. PARKING SPACES	59 CARS	23 CARS
MIN. PARKING AREA	958 S.M.	374 CARS

MIN. ASLE WIDTH

90 DEGREES (TWO WAY)	6M	
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ENTRANCE & EXITS

MIN. TO MAIN WIDTH	7.9M	7.9M
MIN. DIST. - DRAINAGE AND INTERSECTION	15M	15M

LOADING SPACES

MIN. LOADING SPACE	3.6M X 9M	3.6M X 9M
W/ 4.2M VEHICLE CLEARANCE	11 SPACES	13 SPACES

QUEUING LANE

MIN. QUEUING SIZE	2.6M X 5.5M	2.6M X 5.5M
QUEUING SPACES	14 SPACES	14 SPACES
FUTURE QUEUING SPACES	2 SPACES	2 SPACES
PROPOSED QUEUING SPACES	12 SPACES	12 SPACES

OVERALL SITE

MASS USE RETAIL AREA	1,228,445 S.F.	121,223 S.M.
PARKING REQUIRED	1,179 CARS	
PARKING PROVIDED	1,379 CARS	1,379 CARS
BARRIER FREE PARKING REQUIRED	604,71000 S.F.	6,500/7000 S.M.
BARRIER FREE PARKING PROVIDED	18,74" - 11" 8"	19 CARS
LOADING SPACE REQUIRED	12,74" - 13" 8"	25 CARS
LOADING SPACE PROVIDED	10,74" - 10" 8"	47 CARS
MEMBERSHIP CLUB AREA	113,560 S.F.	11,248 S.M.
PARKING REQUIRED	1,000 CARS	620 CARS
PARKING PROVIDED	961 CARS	961 CARS
LOADING SPACE REQUIRED	7,12,21000 S.F.	7,666/7000 S.M.
LOADING SPACE PROVIDED	10,74" - 10" 8"	47 CARS
TOTAL BUILDING AREA	1,272,488 S.F.	125,315 S.M.
TOTAL GFA	1,228,445 S.F.	121,223 S.M.
TOTAL PARKING REQUIRED	1,432 CARS	1,432 CARS
TOTAL PARKING PROVIDED (WITH MTO PARKING)	6,277,1000 S.F.	5,666/7000 S.M.
TOTAL PARKING PROVIDED (WITHOUT MTO PARKING)	1,379 CARS	1,379 CARS
TOTAL BARRIER FREE PARKING PROVIDED	6,04,21000 S.F.	5,457,7000 S.M.
TOTAL BARRIER FREE PARKING REQUIRED	12,74" - 21" 8"	38 CARS
LOADING SPACE REQUIRED	10,74" - 23" 8"	45 CARS
LOADING SPACE PROVIDED	10,74" - 23" 8"	12 SPACES
TOTAL SNOW STORAGE ACCOMMODATION	56 CARS	
REQUIRED (AREA)	59,590 S.F.	5953 S.M.
PROVIDED (AREA)	46 CARS	46 CARS
PROVIDED (AREA)	17,360 S.F.	1684 S.M.
COVERAGE		50%
MAXIMUM		
PROVIDED		20.8%

## SITE STATISTICS

SITE A AREA	15.83 ACRES	12.36 H.A.
SITE B AREA	13.79 ACRES	11.53 H.A.
SITE C AREA	11.79 ACRES	9.72 H.A.
SITE D AREA	18.61 ACRES	17.53 H.A.
TOTAL SITE AREA	190.61 ACRES	152.14 H.A.

USE BREAKDOWN

RETAIL AREA	168,055 S.F.	12,745 S.M.
RESTAURANT AREA	125,252 S.F.	12,345 S.M.
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## LEGEND

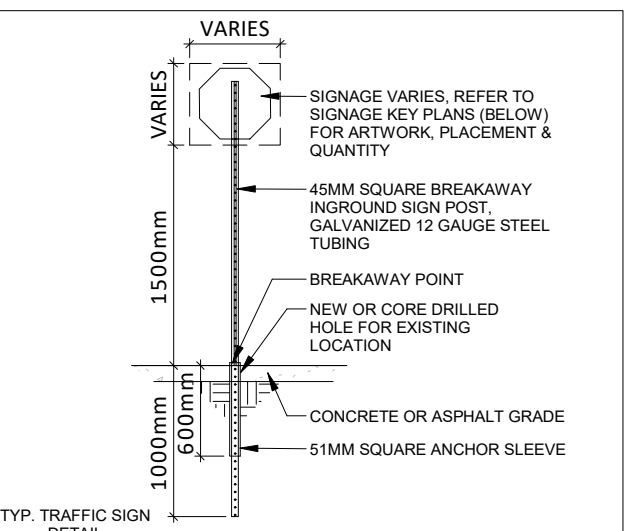
- PROPOSED ENTRANCE ARROW
- PROPOSED EXIT ARROW
- PROPOSED FIRE HYDRANT
- PROPOSED SIGNAGE
- ARROW INDICATES PROPOSED INTERNAL TRAFFIC FLOW
- PROPOSED SIMMISE CONNECTION
- PROPOSED CONCRETE SIDEWALK
- PROPOSED CONCRETE PAD
- PROPOSED PAINTED ASPHALT CROSSWALKS
- PROPOSED (HEAVY DUTY ASPHALT)
- PROPOSED PAVEMENT SIGN
- FIRE TRUCK PATH

# TURNER FLEISCHER

Turner Fleischer Architects Inc.  
 67 Leslie Road  
 Toronto, ON, M5B 2T8  
 T 416 425 2222  
 turnerfleischer.com

This drawing, as an instrument of service, is provided by and is the property of Turner Fleischer Architects Inc. The contractor must verify and accept responsibility for all dimensions and conditions on site and must notify Turner Fleischer Architects Inc. of any variations from the supplied information. This drawing is not to be scaled. The architect is not responsible for the accuracy of survey, structural, mechanical, electrical, etc. information shown on this drawing. Refer to the appropriate consultant's drawings before proceeding with the work. Construction must conform to all applicable codes and specifications of authorities having jurisdiction. The contractor working from drawings not specifically marked "For Construction" must assume full responsibility and bear costs for any corrections or damages resulting from his work.

ISSUANCE TYPE	DATE	DATE	DATE	DATE	DATE
SITE PLAN	A194	2/10/2022	MHB	JJJ	
SITE PLAN	A195	04/08/2023	JJJ		



SYMBOL	SIGN	DESCRIPTION
A	STOP	"STOP" SIGN Rb-1 (800x600mm) WHITE REFL. LEGEND & BORDER. RED REFL. BACKGROUND
B	P	"P" SIGN Rb-9 (300x450mm) BLUE REFL. INTERACTORY SYMBOL, BLUE REFL. SYMBOL OF ACCESS & SYMBOL BORDER. BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND "VAN ACCESSIBLE SIGN TO BE INCLUDED AT TYPE A SPACES"
C	P	"P" SIGN Rb-9 (300x450mm) BLUE REFL. INTERACTORY SYMBOL, BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
D	P	"P" SIGN Rb-9 (300x450mm) BLUE REFL. INTERACTORY SYMBOL, BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
E	P	"P" SIGN Rb-9 (300x450mm) BLUE REFL. INTERACTORY SYMBOL, BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
F	P	"P" SIGN Rb-9 (300x450mm) BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
G	P	"P" SIGN Rb-9 (300x450mm) BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
H	P	"P" SIGN Rb-9 (300x450mm) BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
I	P	"P" SIGN Rb-9 (300x450mm) BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND
J	P	"P" SIGN Rb-9 (300x450mm) BLACK SYMBOL, LEGEND & BORDER, WHITE REFL. BACKGROUND

7	2023-07-26	ISSUE FOR REVIEW	MHB
6	2022-09-16	ISSUED FOR SPA	JJJ
3	2020-12-18	ISSUED FOR COORDINATION	JHL
2	2020-12-08	ISSUED FOR COORDINATION	JHL
1	2020-11-27	ISSUED FOR SPA	JHL
#	DATE	DESCRIPTION	BY



PROJECT  
**404 & DAVIS DRIVE**  
 NEWMARKET, ONTARIO

DRAWING  
**SPA SITE PLAN**  
**FILE# SP.17.N.0106**

PROJECT NO.  
10.456

PROJECT DATE  
2023-02-27

DRAWN BY  
MHB

CHECKED BY  
JJJ

SCALE  
AS NOTED

DRAWING NO.  
**A100**