Memorandum to the City of Markham Committee of Adjustment

May 31, 2021

File:	**A/040/21**
Address:	**85 Citizen Court – Markham, ON**
Applicant:	**Humbold Properties Inc.**
Agent:	**Pound and Stewart Planning Consultants**
Hearing Date:	**June 9, 2021**

The following comments are provided on behalf of the Central Team. The applicant is requesting relief under By-law 108-81, as amended, as it relates to proposed accessory retail sales in support of a primary business, including warehouse, distribution, and the repair of personal mobility devices. The requested variance is to permit:

a) <u>By-law 108-81, Sec. 4.3.8:</u>
accessory retail sales, whereas the By-law prohibits retail sales.

BACKGROUND

Property Description

The 3.66 ac (14,829.0 m^2) subject property is located on the south side of Citizen Court, north of 14th Avenue, east of Birchmount Road, and west of Kennedy Road. The subject property is developed with two separate multi-unit buildings, one of which fronts onto Citizen Court (the "subject building"), and the other of which fronts onto 14th Avenue (municipally known as 4118 14th Avenue).

The property is located within an employment area primarily comprised of industrial, office, servicing, and limited commercial uses.

Proposal

The applicant is proposing to permit retail sales as an accessory use located within Units 9 and 10 of the subject building. Cumulatively, these units have an approximate gross floor area (GFA) of 765.0 m^2 (8,234.39 ft^2). The applicant is proposing that the accessory retail use component comprises of approximately 112.49 m^2 (1,210.83 ft^2), or 14.70% of the total GFA of the two subject units.

Official Plan and Zoning

<u>Official Plan 2014 (partially approved on Nov 24/17, and further updated on April 9/18)</u>
The Official Plan designates the subject property "General Employment", which provides for a mix of single and multi-unit industrial buildings with manufacturing, processing or warehousing as primary uses.

The Official Plan is specific in restricting accessory and ancillary uses to uses that directly support primary industrial uses (manufacturing, processing, or warehousing uses) of this designation, provided specific criteria are met. Areas designated "General Employment" are to be protected from incompatible sensitive land uses, and other non-industrial uses. While retail uses are a non-industrial use, the "General Employment" designation specifically provides for retail and, or service uses, provided that these uses:

- are accessory to the primary manufacturing, processing, or warehousing use;

- are located in the same premise as the primary use; and
- do not exceed 500.0 m^2 (5,381.96 ft^2) of GFA, or a maximum of 15.0% of the total GFA devoted to the primary use, whichever is less.

Zoning By-Law 108-81

The subject property is split zoned "Select Industrial and Limited Commercial – M.C. (40%)", and "Select Industrial and Limited Commercial – M.C. (60%)" under By-law 108-81, as amended. The subject building is located entirely within the area zoned "Select Industrial and Limited Commercial – M.C. (40%)", which permits the following uses:

- Commercial – Banks and financial institutions chartered under the laws of Canada;
- Professional and Business Offices;
- Commercial Schools;
- Hotels;
- Motels; and
- all uses permitted in Section 7.1.1 (M Zone), which includes the warehousing of goods and materials; and repair and servicing of goods.

Retail sales are prohibited, except where specifically permitted by the By-law. The M.C. (40%) zone only permits retail stores and personal service shops as accessory uses to office buildings, hotels, or motels, with retail being limited to include the sale of convenience goods such as newspapers, magazines, tobacco products, and candy.

Previous Minor Variance Applications

According to City records, the Committee of Adjustment ("the Committee) previously approved minor variance applications on the subject lands on two separate occasions, which are detailed as follows:

- In 1998, the Committee approved a minor variance application *(A/28/98)* to reduce the minimum landscape strip from 9.0 m (29.53 ft) to 7.0 m (22.97 ft), in order to permit the construction of a new industrial-commercial building; and
- In 1999, the Committee approved a minor variance application *(A/104/99)* to reduce the number of parking spaces required from 142 to 134 parking spaces, in order to permit Units 9 & 10 to be leased as office space.

Zoning Preliminary Review (ZPR) Not Undertaken

The applicant has confirmed that a ZPR has not been conducted. It is the applicant's responsibility to ensure that the application has accurately identified any non-compliances with the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required.

COMMENTS

The *Planning Act, R.S.O. 1990, c. P.13, as amended,* states that four tests must be met in order for a variance to be granted by the Committee:

a) The variance must be minor in nature;
b) The variance must be desirable, in the opinion of the Committee, for the appropriate development or use of land, building or structure;
c) The general intent and purpose of the Zoning By-law must be maintained;
d) The general intent and purpose of the Official Plan must be maintained.

Accessory Retail Use

The applicant is requesting to permit accessory retail sales, whereas the By-law prohibits retail sales. The applicant submits that the proposed accessory retail use would support the primary industrial use and planned function of the property by providing space to allow customers to view and experience accessory products for their mobility devices before considering them for purchase. According to the floor plan, the proposed accessory retail sales use would be accessed by the main entry doors located at the front of the subject units, whereas the primary industrial (warehousing) use would be located at the back. Other uses include office space, and an assessment area in the middle of the subject units. The requested 14.70% of the units total GFA being dedicated to accessory retail sales would not exceed the maximum GFA as provided for in the Official Plan. The applicant submits that the larger floor space proposed to be dedicated to accessory retail sales is to provide for a safe and accessible floor space that would support maneuverability for customers and clientele of varying abilities.

PUBLIC INPUT SUMMARY

No written submissions were received as of June 31, 2021. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning staff have reviewed the application with respect to the four tests under Section 45(1) of the *Planning Act.* In consideration of the applicant's submission that the proposed retail use is an accessory component to the primary industrial function, staff do not anticipate that the use would adversely impact the planned function, as provided for in the Official Plan. However, staff note that the By-law currently in effect does prohibit retail stores. Staff recommend that the Committee satisfy themselves that the four tests of the *Planning Act* are met, and that public input be considered in reaching a decision. Should the Committee choose to approve the application, staff recommend that any approval be subject to those conditions detailed in Appendix "A".

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the By-law, and how they satisfy the tests of the *Planning Act* required for the granting of minor variances.

APPENDICES

Appendix "A" – Conditions of Approval
Appendix "B" – Plans

PREPARED BY:

Aleks Todorovski, Planner, Zoning and Special Projects

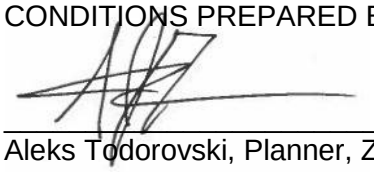
REVIEWED BY:

Sabrina Bordone, Senior Planner, Central District

APPENDIX "A"
CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/040/21

1. That the accessory retail use only be permitted up to a maximum of 114.75 m^2 (1,235.16 ft^2), or 15.0% gross floor area of the subject Units 9 & 10 for as long as the accessory use, and, or units remain.
2. That the variance applies only to the subject development, in substantial conformity with the batch stamped plans attached as Appendix "B" to this Staff Report, and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction.

CONDITIONS PREPARED BY:



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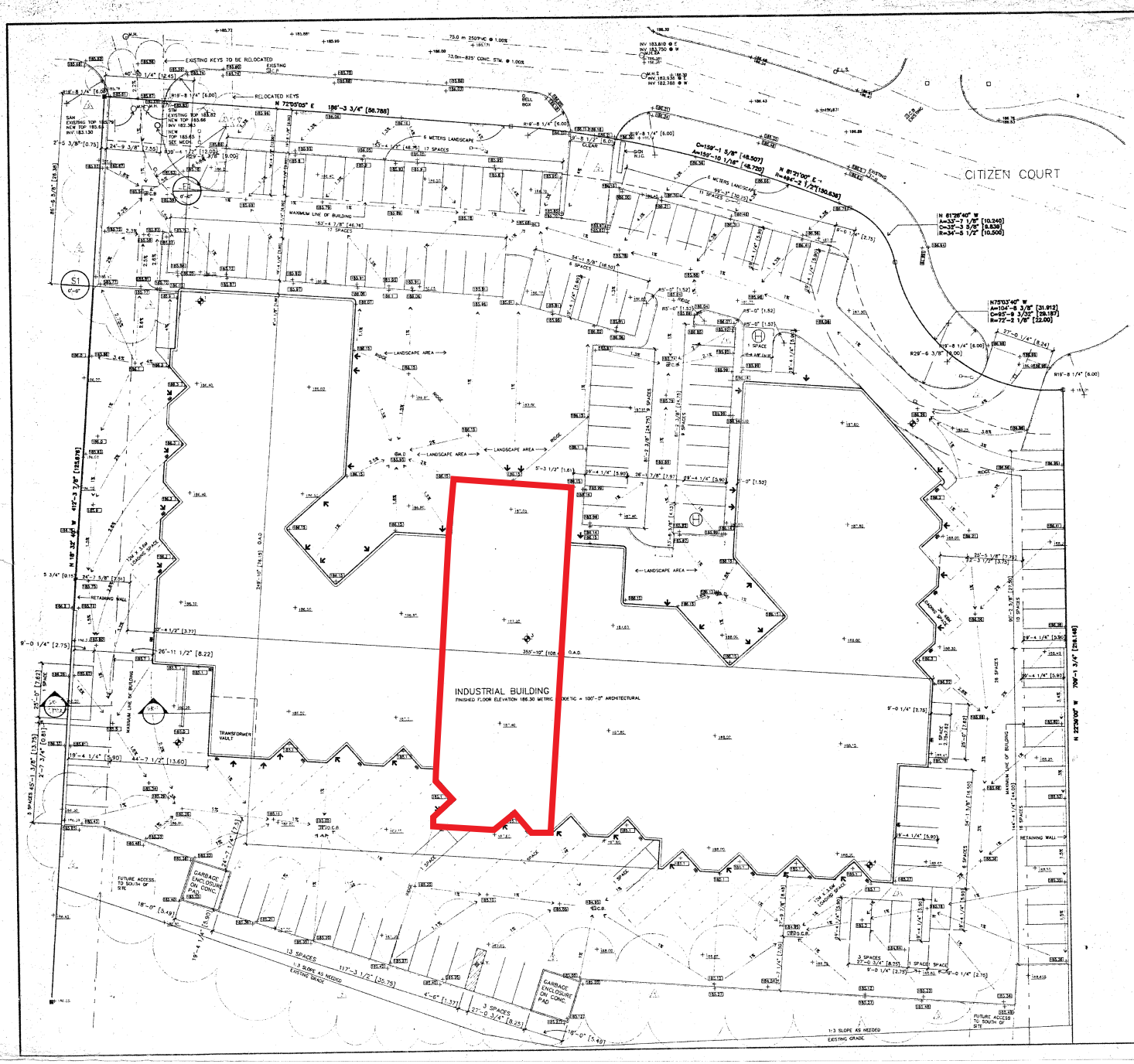
Aleks Todorovski, Planner, Zoning and Special Projects

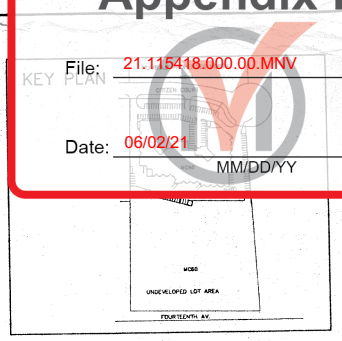
APPENDIX "B"
PLANS TO BE ATTACHED TO ANY APPROVAL OF FILE A/040/21

Appendix B

File: 21.115418.000.00.MNV

Date: 06/02/21 MM/DD/YY





SITE STATISTICS

NOTE:
SITE PLAN STATISTICS ARE BASED ON FUTURE LOT SEVERANCE BY THE OWNERS ALONG LINE INDICATED

REGISTERED PLAN	65R-12118		
ZONING	BYLAW 108-81		
BUILDING CLASS	F2		
TOTAL SITE AREA	34367	M^2	3.4367 HA.
DEVELOPED SITE AREA	14829	M^2	43%
UNDEVELOPED SITE AREA	19538	M^2	57%
GROSS FLOOR AREA	5206.2	M^2	56,041 S.F.
BUILDING FOOTPRINT	5153.7	M^2	55,476 S.F.
MAX. COVERAGE	40%		
PROPOSED COVERAGE	34.8%		
FLOOR AREA RATIO	35.1%		
PAVED AREA	48.2%		
LANDSCAPED AREA	17%		

REQUIRED PARKING SPACES	
REGULAR PARKING SPACES	133
HANDICAPPED SPACES	2
TOTAL PARKING SPACES	135
PROPOSED PARKING SPACES	
REGULAR PARKING SPACES	133
HANDICAPPED SPACES	2
TOTAL PARKING SPACES	135

MINISTRY OF LABOUR
REVIEWED
FOR COMPLIANCE WITH THE OCCUPATIONAL HEALTH AND SAFETY ACT AND REGULATIONS THEREUNDER.
JUN 7 1989
ONE REVIEWED COPY SHALL BE KEPT AT SITE

LEGEND

GRADE FROM ENGINEERING DRAWINGS
EXISTING GRADE
NEW GRADE
CATCH BASIN
SURVEY MONUMENT FOUND
SURVEY MONUMENT PLANTED
PEDISTRIAN ENTRANCE
FIRE HYDRANT
EXISTING LIGHT STANDARD
MAN HOLE
BORE HOLE
NEW LIGHT STANDARD
MOUNTED LIGHTING

SURVEY INFORMATION

ALL SURVEY INFORMATION TAKEN FROM PLAN OF TOPOGRAPHIC SURVEY OF PART OF LOT 6, CONCESSION 5, TOWN OF MARKHAM, REGIONAL MUNICIPALITY OF YORK, BY OTTO ERTL, O. L. S. NOVEMBER 1988, PROJECT NUMBER 88-241

ALL GEOTECHNICAL INFORMATION TO BE REFERANCED FROM GEOTECHNICAL INVESTIGATION PREPARED FOR HUMBOLD PROPERTIES BY V.A. WOOD ASSOCIATES LIMITED REF. NO. 1514-8-10

date	by	
FEB 1 89		SITE PLAN APP. WATER KEY LETTER
MAR 13 89		TURNING RADIUS
MAR 16 89		PARKING
MAR 6 89		FINAL

issued: owner/developer, tenant, permit, general contractor, tender, site plan application

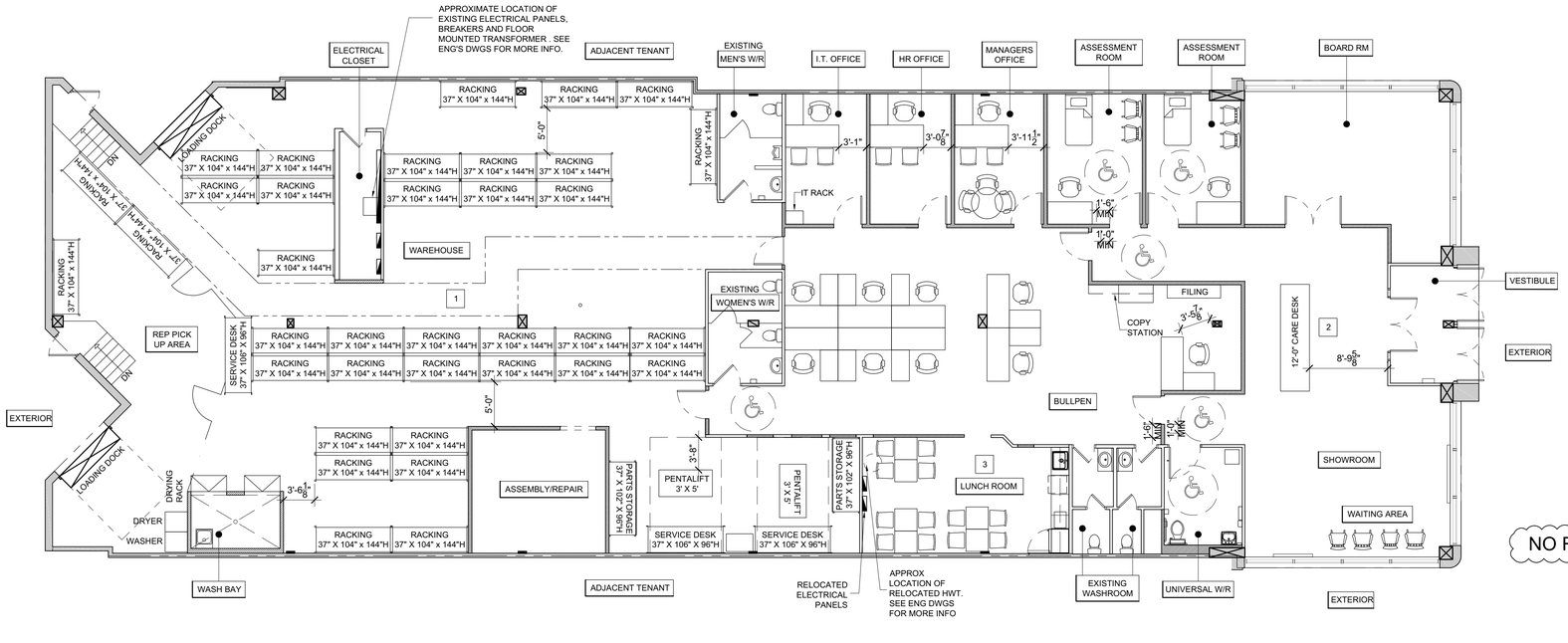
allan levine ARCHITECT
179 JOHN STREET 7TH FLOOR
TORONTO, ONTARIO M5T 1X4
(416)593-5503
FAX 593-6709

project title: HUMBOLD PROPERTIES LTD SOUTH SITE
MARKHAM, ONTARIO

drawing title: PARTIAL SITE PLAN

date: JUNE 1 89	scale: 1:250
drawn by	approved by
project number: 8835	
drawing number: A-100B-REV	

Units 9 & 10 85 Citizen Court



A 7.0 FIXTURE PLAN
SCALE: 1/8"=1'-0"

AREA CALCULATIONS

AREA	SQ.FT	SQ.M	%
PRIVATE BOARDROOM	440.42 FT²	40.91	5%
PRIVATE ASSESSMENT ROOM	332.5 FT²	30.89	4%
SHOWROOM SPACE INCL WC	1210.91 FT²	112.49	14.7%
BULL PEN	1441 FT²	133.87	17.5%
MANAGERS OFFICE	442 FT²	41.06	5%
TOTAL OFFICE AREA INCL WC	2108 FT²	195.84	24.9%
ASSEMBLY REPAIR	220 FT²	20.44	3%
WAREHOUSE	3922 FT²	364.36	47.5%
TOTAL WAREHOUSE INCL STORAGE	4231.5 FT²	393.12	51.4%
TOTAL BUILDING AREA	8231.5 FT²	765	100%

FIXTURE PLAN KEYED NOTES:

1. ALL WAREHOUSE CAGING/RACKING SHALL BE SUPPLIED BY CLIENT & INSTALLED BY LANDLORD. LANDLORD TO COORDINATE CABLING FOR ASSOCIATED SECURITY DEVICES.
2. ALL FREESTANDING FIXTURES AND MILLWORK, INCLUDING CARE DESK ARE BY OTHERS. LANDLORD IS RESPONSIBLE FOR THE COORDINATION OF THE INSTALLATION OF FREESTANDING ITEMS THAT ARE NOT INCLUDED AS PART OF THEIR SCOPE OF WORK.
3. CLIENT TO SUPPLY AND LANDLORD TO INSTALL THE KITCHEN APPLIANCES:

   REFRIGERATOR:
   FRIGIDAIRE 18.0 CU. FT. TOP FREEZER-FRIGERATOR - WHITE, HINGE ON REFER TO DWG. #FFTR1814TW

   DISHWASHER:
   FRIGIDAIRE 5 CYCLE DISHWASHER WITH FRONT CONTROLS - WHITE. #FFCD2418UW

   MICROWAVE:
   WHIRLPOOL 1.6 CU. FT. COUNTERTOP MICROWAVE - WHITE. #YWMC30516HW

Appendix B
File: 21.1184.B.000.00.MKN
Date: 06/02/21 MM/DD/YY

G.L. SMITH
4711 Yonge St.
Suite 800
Toronto, ON.
M2N 6K8
T.416.497.3662
info@glsmith.ca
www.glsmith.ca

PROFESSIONAL STAMPS:

INTERIOR DESIGNERS OF CANADA DESIGNERS D'INTERIEUR DU CANADA — Gary L. Smith ONTARIO

ARIDO — GARY L. SMITH — Association of Registered Interior Designers of Ontario

The undersigned has reviewed and takes full responsibility for this design, and has the qualifications and meets the requirements set out in the Ontario Building Code to be a designer.

QUALIFICATION INFORMATION
Required unless design is exempt under Division C - 3.2.5.1. of the 2012 Ontario Building Code (or 2.17.5.1. of the 1997 Ontario Building Code

NAME		BCIN
GARY SMITH		20949

REGISTRATION INFORMATION
Required unless design is exempt under Division C - 3.2.4.1. of the 2012 Ontario Building Code (or 2.17.4.1. of the 1997 Ontario Building Code

FIRM NAME	BCIN
G.L. SMITH PLANNING AND DESIGN INC.	27497

ISSUE

#	Date	Description	Dwn
4.	JAN 19, 2021	REISSUE FOR PERMIT	MT
3.	JAN 14, 2021	ISSUED FOR CLIENT REVIEW	MT
2.	DEC 21, 2020	ISSUED FOR PERMIT	MT
1.	DEC 18, 2020	ISSUED FOR CLIENT REVIEW	MT

PROJECT TITLE:

MOTION

85 CITIZEN COURT
MARKHAM, ON
L6G 1A8
CRU 9-10

REVISION

#	Date	Description	Dwn
3.	APRIL 12, 2021	REV SQFT AS PER CLIENT EQUEST	MT
2.	MAR 9, 2021	REVISED PER PERMIT COMMENT	EW
1.	JAN 14, 2021	REVISED PER LANDLORD COMMENTS	EW

DRAWING TITLE:

FIXTURE PLAN

PRINT DATE: 12-Apr-21
SCALE: AS NOTED
DRAWN BY: EW
DRAWING NO: A7.0
CHECKED BY: MT
PROJECT NO: 20-1053