

Memorandum to the City of Markham Committee of Adjustment

February 7, 2025

File: A/152/24
Address: 1443 Denison Street, Markham (the “Subject Lands”)
Agent: Nethery Planning (the “Applicant”)
Hearing Date: Wednesday, February 19, 2025

The following comments are provided on behalf of the Central Team:

The Applicant is requesting relief from the following requirements of the “Select Industrial and Limited Commercial – M.C.(67%)” Zone of By-law 108-81, as amended, as it relates to an existing Health Centre. The variance request is to permit:

a) Section 4.3.8 and 7.4.1(c):

retail as an accessory use to a permitted Health Centre, whereas the by-law does not permit this use.

BACKGROUND

Property Description

The 0.95 ha (2.35 ac) Subject Lands is located on the south side of Denison Street and generally east of Birchmount Road (refer to Appendix “A” – Aerial Photo). Surrounding land uses include industrial and commercial buildings to the west and north, a Place of Worship (the Toronto Ling Liang Church) to the east, and an established low-rise residential neighbourhood to the south.

There is a recently constructed 6,645.32 m² (71,529.63 ft²) Health Centre with an accessory restaurant on the property, which according to permit records, received building occupancy in July 2024.

Proposal

The Applicant is proposing to convert a 156.38 m² (1,683.26 ft²) portion of the building into an accessory retail store, which will only be accessible from inside the building (refer to area highlighted in red in Appendix “B” – Floor Plan). No new development or changes to the exterior of the building are being proposed as part of this application.

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24, 2017, and updated on April 9, 2018)

The Official Plan designates the Subject Lands “Business Park Employment”, which provides for prestige industrial and office development. Section 8.5.2.2 of the Official Plan permits retail, service, restaurant, sports and fitness recreation use or financial institution as an ancillary use within a non-industrial building provided that:

- i. the combined gross floor area (“GFA”) devoted to all ancillary uses is limited to a maximum of 15% of the total GFA of the building, or in the case of an office building the total GFA of the ground floor, whichever is less; and
- ii. access to the premises of all ancillary uses is integrated within the building.

In September 2018, Council adopted site-specific Official Plan Amendment No. 23 (“OPA 23”) to provide for a sports and fitness recreation use as a discretionary use on the Subject Lands to permit the existing Health Centre.

Planning Staff have had regard for the requirements of the Official Plan in the preparation of the comments provided below.

Zoning By-Law 108-81 and Amending By-laws 4-83 and 2018-124

The Subject Lands are zoned “Select Industrial and Limited Commercial – M.C.(67%)” (the “M.C. zone”) under Zoning By-law 108-81, as amended, which permits industrial, warehousing, office, hotel, and motel uses. Section 4.3.8 prohibits retail sales except where specifically permitted in Sections 7.1.1(a)(b), 7.3.1(b) and 7.4.1(c). Sections 7.1.1(a)(b) and 7.3.1(b) do not apply to the M.C. zone. However, Section 7.4.1(c), which applies to the M.C. zone, permits accessory uses such as retail stores to serve the occupants of an office building or patrons of a hotel or motel, provided that no access shall be permitted except from the interior lobby of a building, that outdoor exterior signs advertising the accessory use shall not be permitted, and that the floor area devoted to accessory uses shall not exceed 5% of the GFA or 100 m².

It should be noted that Amending By-law 4-83 (“By-law 4-83”) specifies that notwithstanding the provisions of Section 7.4.1, the Subject Lands shall be used for no purpose other than data processing centres and associated uses, business and professional offices and banks or financial institutions. Furthermore, site-specific Amending By-law 2018-124 (“By-law 2018-124”) further amends By-law 4-83 and permits a Health Centre and one (1) restaurant accessory to a permitted Health Centre as additional permitted uses on the Subject Lands.

By-laws 4-83 and 2018-124 supersede the requirements of Section 7.4.1(c). As such, the proposed retail store does not comply with the requirements of Zoning By-law, as amended. The Applicant has submitted this application to permit the proposed use as further detailed in the comment section below.

Comprehensive Zoning By-law 2024-19

The Comprehensive Zoning By-law 2024-19, as amended, does not apply to the Subject Lands. However, Staff note that the lands immediately to the west and north of the Subject Lands are zoned “Employment – Business Park (EMP-BP)” which permits accessory retail stores to a permitted industrial use provided it does not exceed the lesser of 500 square metres of net floor area or a maximum of 15% of net floor area of the principal use.

Zoning Preliminary Review (ZPR) Not Undertaken

The Applicant has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. It is the Applicant's responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. Staff further note that a building permit has recently been received for the Subject Lands (Permit No. 24 19925 NH), in which the target review date for the first review cycle is March 6, 2025. If the variance request in this application contains errors, or if the need for additional variances is identified through the Building Permit review process, further variance application(s) may be required to address the non-compliance.

COMMENTS

The *Planning Act* states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- 1) The variance must be minor in nature;
- 2) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- 3) The general intent and purpose of the Zoning By-law must be maintained;
- 4) The general intent and purpose of the Official Plan must be maintained.

Retail as an Accessory Use

The Applicant is proposing to permit retail as an accessory use to a permitted Health Centre, whereas the by-law does not permit this use.

Staff have reviewed the Planning Opinion Letter submitted by the Applicant (refer to Appendix "C") and are in agreement with the assessment that the proposed use meets the four tests of the *Planning Act*. The Applicant has indicated that the combined GFA of the accessory uses (2.4% for the accessory retail and 3.5% for the accessory restaurant) accounts for 5.9% of the GFA of the building, which is in keeping with the provisions set out in the Official Plan.

Staff note that the intent of By-law 108-81, as amended, is to prohibit accessory retail uses for industrial and warehousing uses and to only permit accessory retail for non-industrial employment uses such as office, hotel and motel uses. The By-law at the time did not contemplate accessory retail for other non-industrial employment uses, such as a Health Centre. Although By-law 108-81, as amended, limits accessory retail to a maximum GFA of 5% or 100 m², Staff are of the opinion that the proposed 156.38 m² (1,683.26 ft²) accessory retail use represents a minor deviation from what the By-law permits and meets the intent of the By-law as the proposed retail use will occupy less than 5% of the GFA of the building. Furthermore, and as previously mentioned, the lands located immediately to the west and north of the Subject Lands are zoned to permit accessory retail. As such, Staff are of the opinion that the proposed use is appropriate and will not impact the surrounding employment uses.

To ensure that the proposed retail use meets the intent of the Official Plan and Zoning By-law, Staff recommend that should the Committee of Adjustment approve the variance, that no exterior access or exterior signs associated with the retail use shall be

permitted, and that the retail use be restricted to a maximum GFA of 157 m² (1,689.93 ft²) or 2.4% of the total GFA of the building.

Given the relatively small size of the proposed accessory retail, Staff have no concerns with the requested variance, subject to the conditions outlined in Appendix “D” of this report.

PUBLIC INPUT SUMMARY

No written submissions were received as of February 7, 2025. 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 Section 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the *Planning Act* and have no objection. Staff recommend that the Committee consider public input in reaching a decision.

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

Please refer to Appendix “D” for conditions to be attached to any approval of this application.

PREPARED BY:



Melissa Leung, RPP, MCIP, Senior Planner, Central District

REVIEWED BY:



Sabrina Bordone, RPP, MCIP, Development Manager, Central District

File Path: Amanda\File\ 24 200074 \Documents\District Team Comments Memo

APPENDICES

Appendix "A" – Aerial Photo
Appendix "B" – Floor Plan
Appendix "C" – Planning Opinion Letter
Appendix "D" – Conditions



Date: 10/18/2024

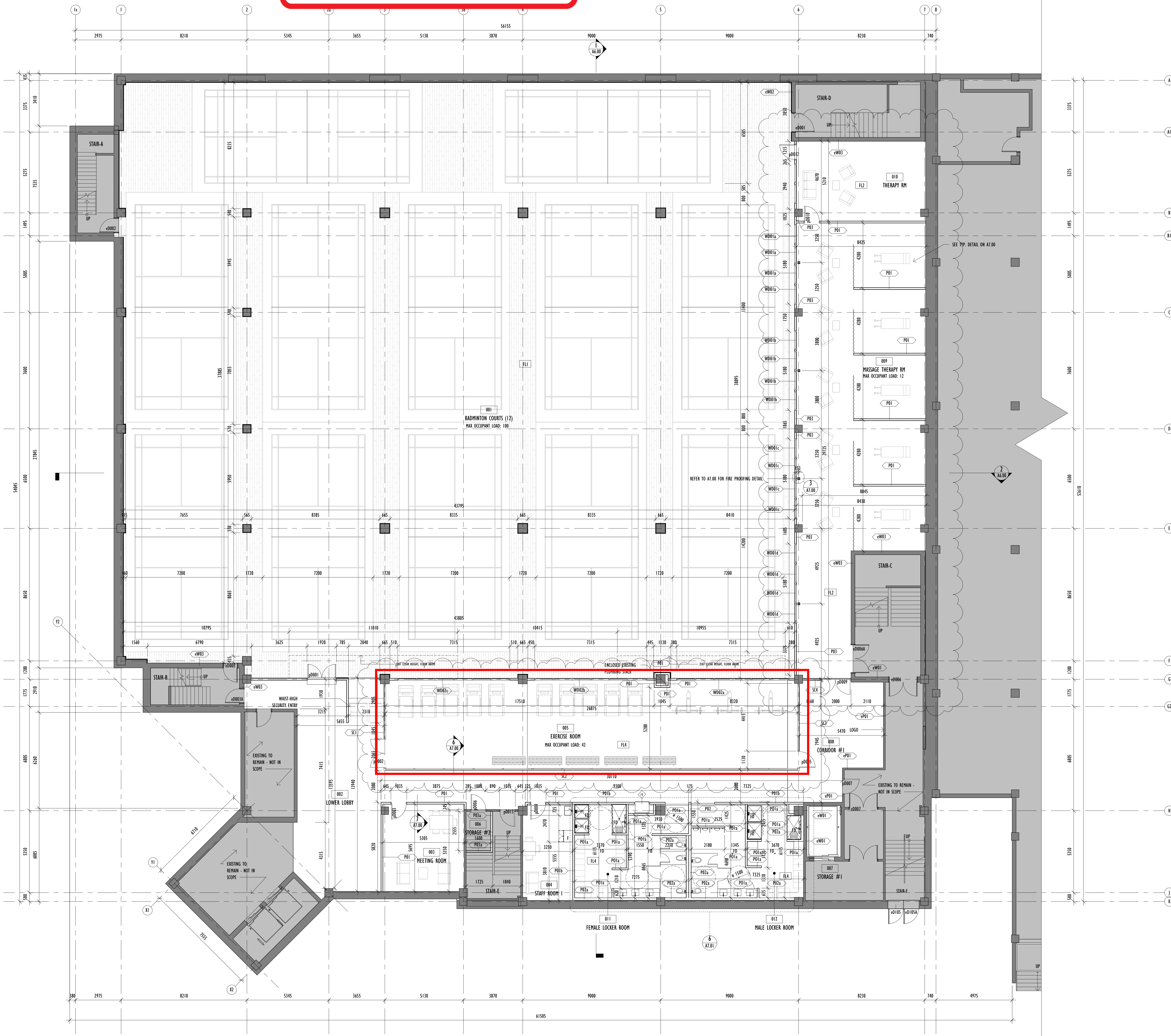
ALL CONSTRUCTION SHALL COMPLY WITH THE ONTARIO BUILDING CODE

NO PERSON SHALL CONSTRUCT OR DEMOLISH A BUILDING OR CAUSE A BUILDING TO BE CONSTRUCTED EXCEPT IN ACCORDANCE WITH THESE CERTIFIED BUILDING PERMIT DOCUMENTS, THE BUILDING CODE ACT AND THE BUILDING CODE.

NOTE: THE PROPOSED DEVELOPMENT IS SUBJECT TO COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE ZONING BY-LAW AND ALL OTHER APPLICABLE LAWS INCLUDING THE PROVISIONS OF A SITE PLAN AND/OR SUBDIVISION AGREEMENT WHICH MAY OR MAY NOT BE REGISTERED ON TITLE.

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Appendix B
File: 24.200074.000.00.MNV
Date: 2/10/2025
MM/DD/YYYY



PLAN LEGEND

◊	EXISTING FLOORING 1
◊	EXISTING FLOORING 2
◊	NOT WATER PROOFING
◊	1/2" FLOOR
◊	1/4" FLOOR
◊	3/8" FLOOR
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◊	100" FLOOR

LEGEND

▨	EXISTING
▨	PROPOSED

GENERAL NOTES:
1. REFER TO LIFE SAFETY PLANS FOR FIRE RATINGS AND TRAVEL DISTANCES.
2. REFER TO FIRE SPRINKLER LAYOUT DRAWINGS E-01-E-01 FOR FIRE SUPPRESSION.
3. REFER TO LIGHTING LAYOUT DRAWINGS E-01-E-03 FOR FIRE SAFETY REQUIREMENTS.

Architect's Stamp
ONTARIO ASSOCIATION OF ARCHITECTS
JASON WAYNE FUNG
LICENSED ARCHITECT
SOCIETY

Project: SPORTPLEX RENOVATION
Address: 1403 BIRCHMOUNT ST. MARKHAM ON L3R 9V7
Client: PATRICK AND MARIELE
Page No: 1/11
Scale: 1/100
Drawn By: AJG
Print Date: 04/20/2024

Sheet Title: PROPOSED BASEMENT FLOOR PLAN

Sheet No: A3.00

This drawing is the property of JASON FUNG ARCHITECT INC. and may not be used or reproduced without expressed approval. Refer to Engineering drawings before proceeding with work. The Contractor shall verify all dimensions and levels on site and report any discrepancies to JASON FUNG ARCHITECT INC. before beginning work. In no case shall the drawings be signed/issued unless the Contractor is responsible for any changes made to the drawing without JASON FUNG ARCHITECT INC.'S approval.

December 17, 2024

Committee of Adjustment
City of Markham
101 Town Centre Boulevard
Markham, Ontario, L3R 9W3

To the members of Markham’s Committee of Adjustment:

**Re: Planning Opinion Letter
1443 Denison Street**

Nethery Planning Inc. has been retained by Patrick Jabbar (the Owner) to provide planning advice and seek a variance from Zoning By-law 108-81, as amended. We are pleased to submit the following planning opinion in support of Mr. Jabbar’s desires to vary the City’s Zoning By-law.

CONTEXT FOR THE DEVELOPMENT

The subject property is located at 1443 Denison Street in the City of Markham (see Figure 1). The building on the subject property is being used as a health centre with an accessory restaurant. The owner would like to convert a portion of the health centre into a retail store (see attached floor plan, area to be converted outlined in red).



Figure 1: Location of Subject Property

The subject property is zoned 'Select Industrial and Limited Commercial [M.C.(67%)] Zone' under the City of Markham's Zoning By-law 108-81, as amended and designated Business Park Employment in the City's Official Plan. An Official Plan Amendment and Zoning By-law Amendment were sought and approved in 2018 by the previous owners to permit a health centre and accessory restaurant. The zoning of the subject property does not permit retail as an accessory use to the health centre.

The subject application seeks to add a retail store as an accessory use to the existing health centre. The retail store will occupy 2.4% (156.38 m²) of the total gross floor area (GFA) of the building (6,645.32 m²). The retail store will complement the facility's existing activities, including badminton, basketball, pickleball, and fitness gym usage, by offering sports-related equipment directly aligned with these activities. The retail component is proposed to be located within the existing footprint of the building and will only be accessible from inside the building.

There is also an accessory restaurant, located within the existing building that occupies 3.5% (231.78 m²) of the total GFA. Both accessory uses combined equal a total of 5.9% of the total GFA of the building.

The parking requirements will not be impacted by the conversion of a portion of the building to a retail store as both uses require 1 parking space per 30 m².

PLANNING ANALYSIS

Section 45(1) of the Planning Act, grants the Committee of Adjustment the authority to approve Minor Variances. For a Variance to be approved, it must meet the following four tests:

1. Maintain the general intent and purpose of the Official Plan,
2. Maintain the general intent and purpose of the Zoning By-law,
3. Be desirable for the appropriate development or use of the land, building, or structure, and
4. Be minor in nature.

The following analysis demonstrates how the proposed additional use satisfies each of the four tests.

DOES THE VARIANCE MAINTAIN THE GENERAL INTENT AND PURPOSE OF THE OFFICIAL PLAN?

The subject property is designated as Business Park Employment in the City of Markham's Official Plan. This designation focuses on supporting prestige industrial and office development while allowing accessory uses that enhance the primary employment function.

Accessory uses, as described in Section 8.5.2.2(h), include retail, service, and restaurant uses that are integrated into the primary use of the building and limited to 15% of the GFA.

The proposed retail store aligns with the designation's intent by providing an accessory use that complements the activities at the existing health center. The proposed retail use will occupy 156.38 m² (2.4% of the GFA), and the existing accessory restaurant use occupies 231.78 m² (3.5% of the GFA). Together, these uses account for approximately 5.9% of the GFA, which complies with the maximum 15% allowance for accessory uses under Section 8.5.2.2(h). Furthermore, the proposed retail store and restaurant are wholly contained within the building, and access is fully integrated, as required by the policy.

The property was subject to Official Plan Amendment No. 23, which introduced the sports and fitness recreation facility as a discretionary use in the Business Park Employment designation. This amendment acknowledged the site's role in providing unique recreational opportunities while maintaining consistency with the area's employment objectives. The proposed retail use continues to align with this vision by enhancing the functionality of the site without detracting from its employment-focused intent.

Furthermore, the proposal contributes to the planned function of the Business Park Employment area by enhancing the site's attractiveness and functionality, consistent with the broader goals outlined in Section 8.5.2.1. By providing services that directly support the existing employment use, the variance aligns with the intent and purpose of the Official Plan.

DOES THE VARIANCE MAINTAIN THE GENERAL INTENT AND PURPOSE OF THE ZONING BY-LAW?

The subject property is zoned 'Select Industrial and Limited Commercial [M.C.(67%)] Zone' under the City of Markham's Zoning By-law 108-81, as amended. The purpose of this zoning is to provide for industrial and limited commercial uses that align with the primary employment objectives of the Business Park Employment area. Accessory uses are permitted to serve the primary use of the property, provided they are appropriately scaled and do not detract from the intended industrial and employment function of the zone.

Retail sales/retail stores are explicitly permitted as accessory uses on a neighboring property zoned Select Industrial and Limited Commercial [M.C.(67%)] Zone, as outlined in By-law 2019-76. This demonstrates that similar uses are considered appropriate and compatible within this zoning designation, further supporting the proposed variance for this property. Selling sports-related equipment complements the primary use of the facility by supporting its activities, such as badminton, basketball, pickleball, and fitness training, while remaining fully contained within the existing building. At approximately 2.4% of the GFA, the retail component remains subordinate to the primary use and complies with accessory use provisions, without altering its primary use or affecting surrounding uses.

The proposal calls for the conversion of a section of the existing building from fitness center space to a retail store. The parking requirement for retail use is 1 parking space per 30m², which is the same as the parking rate for the existing fitness center. As a result, the proposed conversion does not generate any additional parking demand, and the site has adequate parking to accommodate the added use without impacting surrounding properties or operations.

IS THE VARIANCE DESIRABLE FOR THE APPROPRIATE DEVELOPMENT OR USE OF THE LAND, BUILDING, OR STRUCTURE?

The proposed variance to allow for a retail store as an accessory use is desirable for the development and use of the property, as it enhances the functionality and appeal of the existing health center. The retail store will provide sports-related equipment directly aligned with the activities offered at the facility, such as badminton, basketball, pickleball, and fitness training, creating a more comprehensive experience for users. This accessory use supports the operation of the health center by meeting the needs of its patrons and ensuring its competitiveness as a modern facility within the Business Park Employment area. By locating the retail store entirely within the existing building and maintaining a scale that is subordinate to the principal use, the variance ensures compatibility with surrounding employment uses and the broader intent of the Business Park Employment designation. Overall, the variance facilitates the appropriate and desirable development of the property by enhancing its utility without adversely impacting the surrounding area, further supporting the goals of the Official Plan.

IS THE VARIANCE MINOR IN NATURE?

The proposed variance is minor in nature as it seeks to introduce a retail store as an accessory use, occupying 156.38 m² (2.4%) of the GFA of the existing building. When combined with the existing accessory restaurant use (231.78 m² - 3.5% of the GFA) the total accessory uses account for approximately 5.9% of the **GFA**, which is within the 15% GFA limit for accessory uses outlined in Section 8.5.2.2(h) of the Official Plan. This ensures that the retail use, alongside the restaurant, remains subordinate to the primary function of the site as a health center. Additionally, the accessory retail use is fully contained within the existing building.

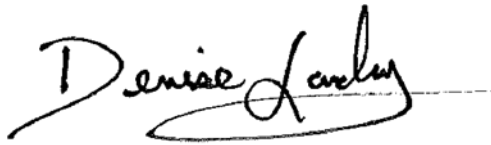
The retail store is functionally integrated into the operations of the health center, providing a complementary service that enhances the user experience without altering the overall use or intent of the site. Given its limited scale, compliance with Official Plan policies, zoning regulations, the variance is appropriately characterized as minor in nature.

CONCLUSION

In summary, the proposed Minor Variance for the property at 1443 Denison Street meets all four tests outlined in the Planning Act. The addition of a retail store as an accessory use maintains the general intent and purpose of both the Official Plan and the Zoning By-law by supporting the primary function of the site as a health center while enhancing its functionality and service offerings. The variance is desirable for the appropriate development and use of the property, providing complementary services to users of the facility without negatively impacting surrounding properties or the employment area. Furthermore, the variance is minor in nature, occupying only 2.4% of the GFA and remaining well within the allowable limits for accessory uses.

The proposal ensures the continued success and viability of the health center while aligning with municipal planning policies. Based on the analysis provided, it is respectfully submitted that the requested variance meets the four tests outlined in Section 45(1) of the Planning Act, represents good planning and is in the public interest.

Sincerely,



Denise Landry, MCIP, RPP
Principal Planner
netheryplanning.ca

Marcus Ruggiero, BA
Planner
netheryplanning.ca

Appendix D

File: 24.200074.000.00.MNV

Date: 2/10/2025
MM/DD/YYYY

APPENDIX "D"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/152/24

1. The variance applies only to the proposed development as long as it remains;
2. That the variance applies only to the subject development, in substantial conformity with the plan(s) attached as 'Appendix B' to this Staff Report, and that the Secretary-Treasurer receive written confirmation from the Supervisor of the Committee of Adjustment or designate that this condition has been fulfilled to their satisfaction;
3. That no access to the accessory retail use shall be permitted except from the interior lobby of the building,
4. That outdoor exterior signs advertising the accessory retail use shall not be permitted, and
5. That the floor area devoted to accessory retail use shall not exceed 157 m² (1,689.93 ft²) or 2.4% of the total GFA of the building.

CONDITIONS PREPARED BY:



Melissa Leung, RPP MCIP, Senior Planner, Central District