
TO: PLANNING COMMITTEE

SUBJECT: TEMPORARY USE EXTENSION FOR 164 INNISFIL STREET (1911940 ONTARIO INC. – LIQUIDATION NATION)

WARD: 2

PREPARED BY AND KEY CONTACT: D. SUDDABY, PLANNER, EXT. 4473

SUBMITTED BY: M. BANFIELD, RPP, DIRECTOR OF DEVELOPMENT SERVICES

GENERAL MANAGER APPROVAL: A. MILLER, RPP, GENERAL MANAGER OF INFRASTRUCTURE AND GROWTH MANAGEMENT

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Temporary Use Zoning By-Law Extension application, submitted by MHBC Planning on behalf of 1911940 Ontario Inc. for lands municipally known as 164 Innisfil Street, to permit a retail store on the subject lands be approved for one (1) year and six (6) months until June 3, 2022.
2. That the written and oral submissions received as part of the technical review, relating to this application have been, on balance, taken into consideration as part of the deliberations and final decision related to approval of the application for the Temporary Use By-law, including parking and traffic concerns.
3. That in accordance with Section 34(17) of the *Planning Act*, no further public notification is required.

PURPOSE & BACKGROUND

Report Overview

4. A Temporary Use By-law for the property to permit a retail store not related or ancillary to an industrial operation was approved for a period of one (1) year and six (6) months on June 3, 2019 and expired on December 3, 2020. An application to extend the Temporary Use By-law for an additional one (1) year and six (6) months was received on December 2, 2020.
5. A retail store is currently operating on the site and had a long history of outstanding zoning compliance matters. To address these zoning matters, planning staff have worked with the applicant to explore several solutions.
6. The purpose of this report is to recommend approval of an extension of a Temporary Use Zoning By-Law for the subject lands, being municipally known as 164 Innisfil Street for one (1) year and six (6) months in accordance with Section 39(3) of the *Planning Act*. If approved, a retail store not related or ancillary to an industrial operation would be permitted temporarily and would be allowed to operate within existing site conditions, including reduced parking.

7. In 2019, the applicant submitted for a temporary use for three (3) years, but staff recommended one (1) year and six (6) months to allow the applicant to participate in the Land Needs Assessment (LNA) process being undertaken as part of the new Official Plan Review. The applicant is looking to extend the Temporary Use By-law for an additional one (1) year and six (6) months in accordance with their original application submitted in 2019, that requested three (3) years. The applicant did not participate in the LNA process as the Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan) was amended to permit the consideration of a broader mix of uses in employment areas and therefore they did not believe their participation in the City's process was necessary. The applicant felt that an Employment Land Conversion request was not required to address the existing retail operation due to the recent modification of the Growth Plan policies. It should be noted that municipalities may be more restrictive than the policies of the Growth Plan.
8. Applications to amend the Official Plan and Zoning By-Law to permit a retail store not related to an industrial use are not ideal at this time given the work on the new draft Official Plan. It is noted that the recently released draft Official Plan is proposing to designate these lands 'Non-Industrial Employment' which does not permit retail as a primary use. The applicant has submitted comments in this regard. Should the designation not change through the new Official Plan, the applicant will be required to submit applications for an Official Plan Amendment and Zoning By-law Amendment.
9. The applicant must also make progress on addressing zoning and building compliance issues including legalizing all suites within the building, implement temporary modifications to the site (e.g., line painting, movable concrete bollards, and improved signage), and develop a plan to provide additional parking spaces, reduce the number of entrances, install pavement and curbing and resolve other deficiencies. No permanent improvements to the site such as paving, and curbing will be required until the retail use is permitted.

Location

10. As illustrated in Figure 1, the existing land uses surrounding the subject lands are as follows:

North: General industrial uses including a self-storage operation
East: Environmental protection area (Brock Park) and residential uses located east of Innisfil Street
South: Residential, general industrial, and commercial uses located south of Brock Street
West: Vacant general industrial land and commercial uses located west of Anne Street
11. The subject lands are approximately 2.9 hectares in size and has frontage onto Innisfil Street and Brock Street. The existing industrial building on the property is occupied by multiple uses including a retail store, office space and warehousing.
12. The proposed Temporary Use By-Law would apply to a portion of the property, identified as 'Subject Area' in Appendix "C", which occupies approximately 3,213 square metres on the western portion of the existing industrial building. The retail use (Liquidation Nation) has operated under a Temporary Use By-law since 2019, although it operated in advance of that in advance of land use permissions. Upon the expiry of the Temporary Use By-law, the permitted uses are intended to cease unless an extension is applied for, which the applicant did, and ultimately granted.

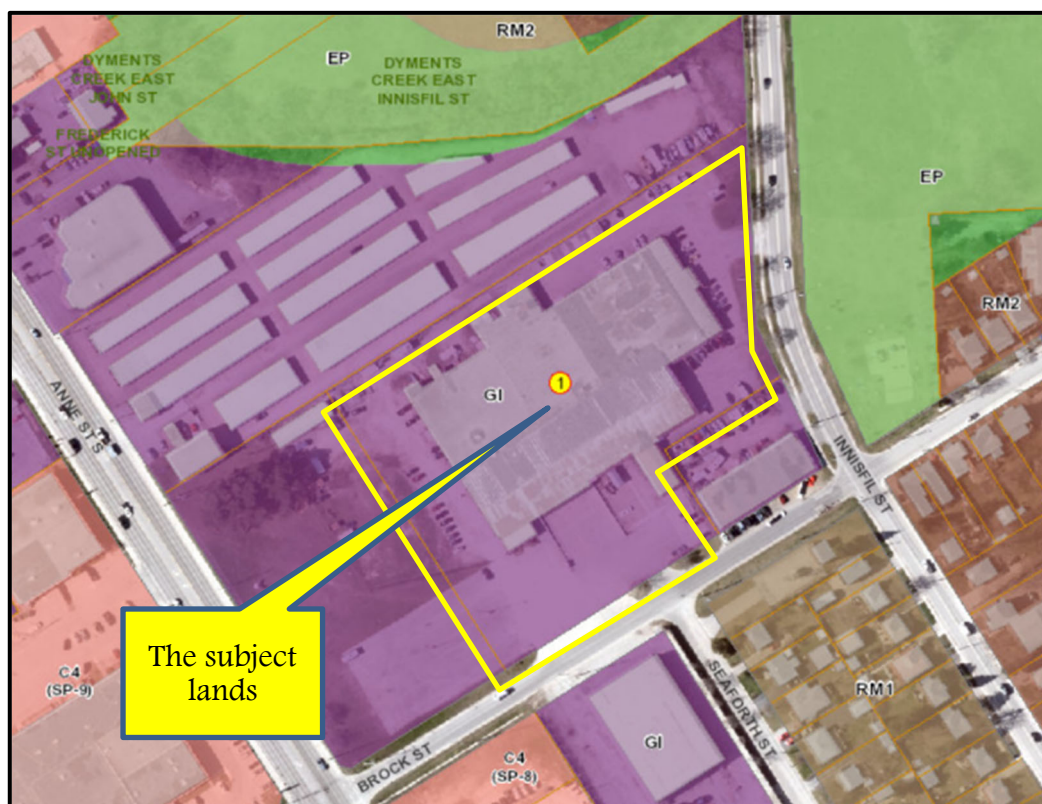


Figure 1: Key Map (Subject lands outlined in yellow)

Existing Policy

13. As per Section 39 of the *Planning Act*, R.S.O. 1990 ('*Planning Act*') a municipality may pass a Temporary Use By-Law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited for a period of up to three years. A municipality may extend a Temporary Use By-law under Section 39(3) of the *Planning Act*
14. The subject lands are designated 'General Industrial' in the City of Barrie Official Plan and zoned 'General Industrial' (GI) in the City of Barrie Comprehensive Zoning By-law 2009-141.

PUBLIC CONSULTATION

15. A public meeting was not required to be held for this application as it was an extension of an existing Temporary Use By-law and the application for extension was received prior to the expiration of the original temporary use.

DEPARTMENT & AGENCY COMMENTS

16. Building Services

Comments received note that the extension should be subject to the following conditions:

- An application for building permit be submitted with all designs required to legalize all the suites in this building in accordance with the requirements of the Ontario Building Code (OBC) by May 1, 2021; and,

- That any requests made by the Plans Examiner be addressed within 2 months of the requested date.

It should be noted that the construction and the proposed uses in the structure will be evaluated in detail when the construction drawings are submitted with an application for building permit. It will be expected that after the permit is issued:

- The repairs and upgrades must be completed within 6 months of the issuance date; and,
- All Inspections are requested and passed, and the permit is closed.

Planning staff agree with these comments, particularly with the need for the building to be inspected to ensure life safety standards are met and the building complies with the OBC. Planning staff will work with the applicant to ensure OBC matters on the property are addressed.

17. Fire Prevention

The City's Fire Prevention Officer has no concerns with granting an 18-month extension on the condition that the retail space is not increased or expanded unless authorized by building permits.

Planning staff concur with comments from the Fire Prevention Officer and planning approval would be required prior to any new development on the lands.

18. Development Services (Approvals)

No concerns or comments.

19. Development Services (Transportation Planning)

Transportation Planning Staff would like the access to be reduced and have proper definition and that additional parking spaces be provided. The applicant was asked to investigate the feasibility of using the neighbouring property for additional parking and to provide clarification if there is currently an agreement in place to utilize the adjacent lands for overflow parking. If not, the applicant should review the feasibility of entering into an agreement with the adjacent property to provide for additional parking stalls.

As the continued operation of the retail use on the subject lands is uncertain and temporary, planning staff do not recommend the applicant be required to make any permanent improvements to the site. Rather, staff will work with the applicant to implement temporary modifications to the site (e.g., line painting, movable concrete bollards, and improved signage) through the Exemption from Full Site Plan process. These modifications, while temporary, will improve operations on the site on an interim basis. Should the retail use be permitted on a permanent basis, the applicant will be required to proceed through Full Site Plan Approval to ensure all matters are addressed.

20. Development Services (Zoning)

Comments received regarding standard compliance have identified deficiencies in the side and rear yard setbacks, and parking. Further, parking needs to be paved and curbed and that lands abutting the road must be paved for parking and loading spaces.

Planning staff are of the opinion that while these deficiencies need to be rectified, doing so would only be appropriate should the use becomes permanent. Staff do not believe requiring the applicant to address these issues, many of which are resulting from existing site conditions and not new development, prior to the use being permanently permitted is appropriate. Staff will work with the applicant to address parking area deficiencies noted above on a temporary/interim basis.

POLICY ANALYSIS

Policy Planning Framework

21. This sub-section provides a detailed review of the proposed Temporary Use Zoning By-Law in the context of the applicable land-use policy.

Ontario Planning Act, R.S.O. 1990

22. Section 39 of the *Planning Act* allows municipalities to pass Temporary Use By-Laws which may permit uses that are otherwise prohibited. Temporary Use By-Laws may be permitted for up to three years and may be extended upon Council's discretion. The *Planning Act* does not provide additional direction on what grounds Temporary Use By-Laws may be passed.

Provincial Policy Statement (2020) (PPS)

23. The Provincial Policy Statement (2020) (PPS) provides overall policy directions on matters of provincial interest related to land use planning and development and sets the policy foundation for regulating the development and use of land. The PPS can be found in its entirety at the following link: <https://www.ontario.ca/page/provincial-policy-statement-2020>
24. The PPS contains policies that provide direction for communities to manage and direct land uses to achieve efficient development and land use patterns. This is achieved by ensuring that sufficient land is available to accommodate an appropriate range and mix of residential and employment uses; avoiding land use patterns which may cause public health and safety concerns and promotes efficient and cost-effective development.
25. Staff have reviewed the relevant policies of the PPS and are of the opinion that the proposed interim use of the industrial lands for a retail store is consistent with the applicable policies of the Provincial Policy Statement (2020).

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan)

26. A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (Growth Plan), as amended, is the Ontario government's initiative to plan for growth and development in a way that supports economic prosperity, protects the environment, and helps communities achieve a high quality of life. It provides a framework for implementing Ontario's vision for building strong, prosperous communities by managing growth and it establishes the long-term framework for where and how the region will grow. The Growth Plan can be found in its entirety at the following link: <https://www.ontario.ca/document/place-grow-growth-plan-greater-golden-horseshoe>
27. Staff have reviewed the policies of the Growth Plan and are of the opinion that the interim use of the industrial lands for a retail store does conform with the future goals and growth objectives of the City as it relates to the long-term objectives of the Growth Plan. The Growth Plan has broadened the uses under Section 2.2.5 of employment lands policies by defining Employment Areas as "areas designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities". Section 2.2.5.3 notes that retail uses shall be located in areas where there is active transportation and existing planned transit. The applicant will be required to work through the new Official Plan process and land use designation for the site, while the temporary use is permitted, otherwise a separate Official Plan Amendment and Zoning By-law Amendment will be required which will address the Growth Plan policies.

City of Barrie Official Plan

28. The City of Barrie Official Plan (OP) provides guidance for consideration of land use changes, the provision of public works, actions of local boards, municipal initiatives, and the actions of private enterprise. It gives direction for implementing by-laws, guidelines for more detailed planning and the means for controlling growth so that the City's capacity to provide a healthy community environment is not exceeded. The OP can be found in its entirety at the following link:
<https://www.barrie.ca/City%20Hall/Planning-and-Development/Documents/Official%20Plan%20-%20January%202017.pdf>
29. Since the approval of the initial temporary use by-law in 2019 which permitted a non-industrial use on the industrially designated and zoned lands, the City of Barrie has completed a Lands Need Assessment (LNA) to select industrial lands that may be appropriate for an Employment Land Conversion. The subject lands were not identified for conversion through this process. The applicant did not participate in this process as recommended as they felt an Employment Land Conversion was not necessary based on the updates to the Employment Areas in the Growth Plan.
30. Being designated General Industrial, the lands are subject to the General Industrial policies of the City's Official Plan (OP). Policy 4.4.2.1. states "commercial uses such as retail stores not directly related to the function of industrial areas, or which are more appropriate in designated commercial areas, are not permitted" on lands designated for industrial uses. Further, policy 4.4.2.2.b) states that retail uses "...may also be permitted [on lands designated General Industrial] as long as they are ancillary or accessory to the primary [industrial] use...".
31. The City of Barrie is currently undergoing a new Official Plan and the applicant has submitted comments regarding the subject lands during the 90-day review period. The comments consisted of outlining the updates to Growth Plan which allow for retail uses in Employment Areas, requesting the City include the existing manufacturing and existing warehousing using within the list of permitted uses to recognize the existing uses on the site and to not limit the maximum gross floor area for a secondary use within the OP.
32. Section 6.9 of the OP speaks specifically to temporary uses and provides direction on how to address and accommodate temporary uses.
33. Policy 6.9.1 of the OP states that a temporary use shall be authorized "where it is considered to be positive in nature and of minimal impact to the surrounding area". The short- and long-term impacts of the retail store in an industrial employment area are unclear. As such staff cannot confirm that the temporary use is positive in nature. However, the use has been on the subject lands for over nine (9) years and, according to the applicant, has done so with no operational issues. Therefore, permitting the continued use for another 18-month period is unlikely to have impacts on the area.
34. Section 6.9.2 of the OP indicates that despite any other policies referenced in the OP, including those referenced above, the City may permit uses which would otherwise be prohibited.
35. Section 6.9.2.c) of the OP outlines criteria which, if applicable, a temporary use application is to fulfil to be approved. These criteria speak to:
 - a) The use being temporary in nature;
 - b) Compatible and not detrimental to surrounding uses and the wider community;
 - c) On lands or in a building of appropriate size;
 - d) That municipal services are available;

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- e) Neighbouring uses are buffered or protected from the proposed use, and;
 - f) That the By-Law establish site specific performance standards such as lot coverage or parking, as applicable.
36. The site and building being used for the retail store is not ideal and may not meet all the criteria outlined in Section 6.9 including the temporary nature of the use and compatibility with surrounding land uses. Nonetheless, any works needed to meet the criteria outlined above excluding OBC standards discussed earlier, should only be required if the applicable land use policies are amended to permit population related retail on the subject lands. The initial temporary use by-law approach was intended to address zoning conformity matters and to allow time for the new Official Plan to look at appropriate land uses for this area. The extension of this request to the original request of up to a three-year period is appropriate. However, staff believe after this time has elapsed the use should cease in this location or a permanent land use application should be brought forward for Council's consideration.

City of Barrie Comprehensive Zoning By-law

37. Section 7.2.2 of the City's Comprehensive Zoning By-law 2009-141 (Zoning By-law) permits accessory retail uses to locate on lands zoned 'General Industrial' (GI). However, accessory retail uses shall only be permitted in association with permitted industrial uses and are limited in size.
38. The existing retail use is not associated with, or ancillary to, industrial uses on the subject lands and exceeds the size permitted for a retail use. Despite these policies, planning staff recognize the retail store has been established. The proposed Temporary Use By-Law will give Planning staff time to work with the applicant to develop a permanent solution regarding the conflict between the existing retail store and the in-effect land-use policy.
39. The approval of the proposed Temporary Use By-law would allow retail use to continue for a period of one and half years and recognize existing site conditions.

Summary

40. Planning staff recommend the extension of the Temporary Use Zoning By-Law for the subject lands for a period of one (1) year and six (6) months in accordance with Section 39(3) of the *Planning Act*. If approved, a retail store not related or ancillary to an industrial operation would be permitted temporarily.

ENVIRONMENTAL AND CLIMATE CHANGE IMPACT MATTERS

41. There are no environmental and/or climate change impact matters related to the recommendation.

ALTERNATIVES

42. The following alternative is available for consideration by Planning Committee:

Alternative #1

Planning Committee could refuse the approval of the proposed Temporary Use Zoning By-Law.

This alternative is not recommended. The use is existing and has existed for many years. Refusing the extension of the Temporary Use Zoning By-Law would result in a closure of a business and will abruptly put people out of work, causing financial hardship to employees and the business owner. In addition, the recommended course of action part of a comprehensive, time bound, and reasonable strategy to permanently resolve the zoning compliance matter.

FINANCIAL

43. There are no direct financial implications for the Corporation resulting from the proposed recommendation.
44. The applicant has the right to appeal Council's decision under the *Planning Act*. While an appeal is not anticipated, the City would incur costs to resolve the matter through the *Local Planning Appeal Tribunal* (LPAT).

LINKAGE TO 2018-2022 STRATEGIC PLAN

45. The recommendation(s) included in this Staff Report support the following goals identified in the 2018 - 2022 Strategic Plan:
- ☒ Growing Our Economy
46. The proposed Temporary Use By-Law will allow the continued operation of a retail store until a permanent land use solution is available.

Attachments: Appendix "A" – Application Summary

Appendix "B" – Draft Zoning By-law Amendment

Appendix "C" – Existing Site Sketch

APPENDIX "A" – APPLICATION SUMMARY

The subject lands are located on the northwest corner of Innisfil Street and Brock Street, east of Anne Street, known municipally as 164 Innisfil Street in the City of Barrie.

- The applicant submitted a Temporary Use By-law in 2019 for three (3) years. Staff recommended approval for one (1) year and six (6) months to allow the applicant to participate in the Land Needs Assessment as part of the Official Plan Review.
- The applicant did not participate in the previous Land Need Assessment (LNA) as the Growth Plan for the Greater Golden Horseshoe (2019) has been amended to include additional policy context to permit broader mixed uses in employment areas. The applicant has submitted comments in regard to broadening the permitted uses for the subject lands based on the revised policies of the Growth Plan as part of the 90-day review period for the new draft Official Plan.
- The applicant has requested the additional one (1) year and six (6) months (until June 3, 2022) as an interim solution while the City undertakes the development of the new Official Plan.
- It is recommended that this be the final extension of the temporary use unless the applicant has made considerable actions to remedy the outstanding compliance issues, has actively participated in the new Official Plan process and the change in the designation to permit a retail use on the site is supported through the new Official Plan. If the none of the above are achieved and the temporary use lapses, the applicant will be required to formally legalize the use through *Planning Act* applications or relocate the retail use.

APPENDIX "B" - PROPOSED TEMPORARY USE BY-LAW



Bill No.

BY-LAW NUMBER 2021-XXX

A By-law of The Corporation of the City of Barrie to amend By-law 2009-141, a land use control by-law to regulate the use of land, and the erection, use, bulk, height, location and spacing of buildings and structures in the City of Barrie.

WHEREAS the Council of The Corporation of the City of Barrie deems it expedient to amend By-law 2009-141 as to permit a retail store on a portion of the lands being Part of Lot 25, Concession 5, Geographic Township of Vespra, City of Barrie, County of Simcoe, and located on the western portion of the lands known municipally as 164 Innisfil Street, Barrie.

AND WHEREAS the Council of The Corporation of the City of Barrie adopted Motion 21-G-XXX

NOW THEREFORE the Council of The Corporation of the City of Barrie enacts the following:

1. **THAT** a retail store shall be permitted to operate within the western portion of the existing building, and the existing parking and other existing conditions shall be deemed to comply, on lands described as Part of Lot 25, Concession 5, Geographic Township of Vespra, now in the City of Barrie, County of Simcoe, and located on lands known municipally known as 164 Innisfil Street, Barrie, in accordance with Schedule "A" attached to this By-law being a portion of the zoning map. The retail store use shall be confined to its current location and size of approximately 3,212 square metres with no expansion thereof.
2. **THAT** the retail store shall be permitted as a temporary use until June 3, 2022, in accordance with the provisions of Section 39 of the *Planning Act*, R.S.O. 1990, c.P.13, after which time this By-law shall be deemed to be repealed.
3. **THAT** the remaining provisions of By-law 2009-141, applicable to the lands described above as shown in Schedule "A" to this By-law shall apply to the said lands except as varied by section 1 of this By-law.
4. **THAT** this By-law shall come into force and effect immediately upon the final passing thereof.

READ a first and second time this _____ day of March, 2021

READ a third time and finally passed this _____ day of March, 2021

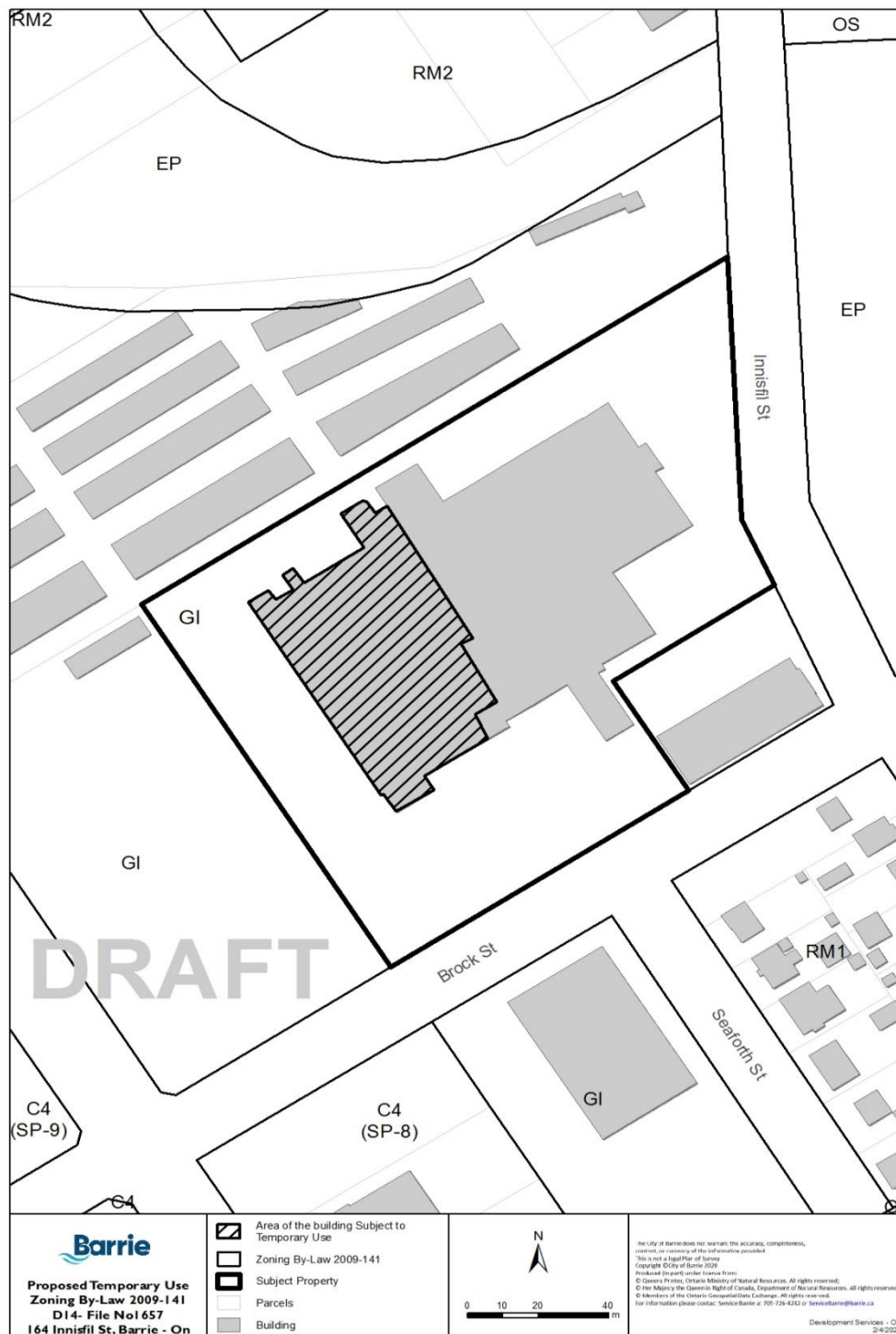


THE CORPORATION OF THE CITY OF BARRIE

MAYOR – J. R. LEHMAN

CITY CLERK – WENDY COOKE

Schedule "A" to Attached By-law 2021-XXX



APPENDIX "C" - EXISTING SITE SKETCH

