

## COMMITTEE OF ADJUSTMENT

Planning and Development Services Department  
3540 Schmon Parkway, P.O. Box 1044  
Thorold, ON L2V 4A7  
905-227-6613

September 9, 2021

**TO:** Chairperson and Members of the Committee of Adjustment

**SUBJECT:** Minor Variance Application D13-21-2021  
2371 Merrittville Highway, Thorold, Ontario

PT TWP LOT 128  
273100002707500

### RECOMMENDATION:

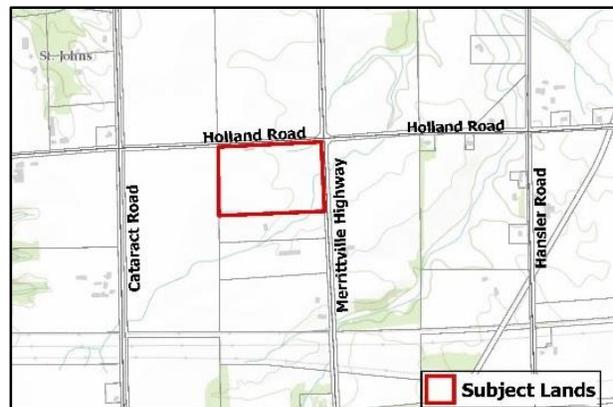
That the variances noted below be approved.

### PROPOSAL:

The applicant proposes to establish the following uses on the subject lands:

1. Pizza sales to a maximum building area of 10.85 m<sup>2</sup> and maximum pizza oven on slab area of 15.12 m<sup>2</sup>;
2. Ice cream sales to a maximum building area of 37.555 m<sup>2</sup> as identified on the submitted sketch; and
3. Fries/burgers/chicken finger sales to a maximum building area of 29.74 m<sup>2</sup> as identified on the revised sketch.

*Figure 1: Location of Subject Lands*



The subject property is located in the southwest corner of Merrittville Highway and Holland Road (see Figure 1). The principal use of the subject lands is a speedway, known as Merrittville Speedway.

To facilitate the proposed uses, an application to the Committee of Adjustment is required to allow the establishment of a use that is similar to the use currently operating on the property.

Where any land, building or structure, on the day a zoning by-law was passed, was lawfully used for a purpose prohibited by the by-law, Section 45(2)(a)(ii) of the Planning Act allows the Committee of Adjustment to permit a use that is similar to the purpose for which it was used on the day the by-law was passed or that is more compatible with the uses permitted by the by-law.

**CITY OF THOROLD OFFICIAL PLAN:**

The subject property is designated as 'Specialty Crop' in the City's Official Plan.

**COMPREHENSIVE ZONING BY-LAW 60-2019 (PARTIALLY UNDER APPEAL):**

The subject property is zoned 'AS' (Specialty Crop) under Zoning By-law 60-2019.

**PLANNING ANALYSIS:**

Unlike a typical Minor Variance application, the subject application is not evaluated under the four tests specified in Section 45(1) of the Planning Act. The Committee of Adjustment must decide if the application facilitates a use that is:

- similar to the purpose for which the subject land, building, or structure was lawfully used for when the new zoning by-law came into effect; or
- more compatible with the new permitted uses.

The subject lands have supported the existing speedway use for approximately 70 years. Ancillary food sales to patrons of the speedway have accompanied the speedway use as well. The application proposes to permit three additional buildings where different food items can be sold, either to patrons of the speedway or to those visiting the subject lands to purchase food only. One of the buildings contains a dedicated structure for an outdoor pizza oven.

The three buildings would be clustered near the northeast corner of the subject lands and would be supported by a dedicated parking area containing 30 spaces and various aisles to direct traffic accessing the buildings. The buildings would all be quite limited in size and function similar to food stands that are typical of sporting and entertainment events, allowing customers to walk up to purchase food. There is no indoor dining area proposed for any of the buildings.

In the opinion of staff, the buildings function in a similar manner to the existing concession stand on the property and meet the applicable test under Section 45(2)(a)(ii) of the Planning Act.

**CIRCULATION COMMENTS:**

There were no concerns provided to the City, however, the Niagara Region requested that the following items be submitted for review and approval:

1. That sediment and erosion control measures are installed prior to any additional construction within 30 metres of the watercourse on site, and be kept in good condition until the site is revegetated.
2. That a Stormwater Management Brief be submitted to the satisfaction of Niagara Region.

3. If the type of construction for the proposed building(s) will result in deep excavation (i.e. a full foundation/footings and not slab on grade type construction), the following condition is required:

That the owner submits a Stage 1-2 Archaeological Assessment for the area(s) of the proposed development, prepared by a licensed archaeologist, to the Ministry of Heritage, Sport, Tourism and Culture Industries, for review and approval with a copy provided to the Niagara Region. The report must be accepted by the Ministry, to the satisfaction of Niagara Region, prior to clearance of this condition. It should be noted that subsequent Stage 3 or 4 study may be recommended to mitigate any adverse impacts to significant archaeological resources found on the site through preservation or resource removal and documentation. If the licensed archaeologist or the Ministry recommends/requires further Stage 3 or 4 Archaeological Assessments, these report(s) must also be submitted to and accepted by the Ministry, to the satisfaction of Niagara Region.

NOTE: No demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a letter from the Ministry confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.

The sediment and erosion control measures and stormwater management brief will be provided as part of the site plan approval process. The applicant does not intend on doing any deep excavation for the construction of the proposed buildings and as such the Stage 1-2 Archaeological Assessment will not be required.

#### **CONCLUSION:**

It is the opinion of Planning staff that the application facilitates a similar use to the current use of the subject property and should be approved by the Committee of Adjustment.

Prepared by:

ELECTRONICALLY SIGNED

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Paul Klassen  
Senior Planner

Respectfully submitted by:

ELECTRONICALLY SIGNED

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Denise Landry, MCIP, RPP  
Manager, Planning Services