Subject:	Extension of Temporary Use Zoning By-law – 2005 Bethesda Road (File No. ZBA 24.009)
Staff Report No.	DS-054-24
Department/ Commission:	Development Services Commission
Date:	November 6, 2024

Recommendation:

- 1) That Council approve the application submitted by the Owner to extend the Employment Light Exception Five Temporary zone to permit the storage, assembly and cleaning of scaffolding and other construction materials and parking of automobile and trucks at 2005 Bethesda Road, for a period of up to 3 years to December 1, 2027; and,
- 2) That Council enact By-Law No. 2024-132-ZO, being a Temporary Use By-Law to amend By-law 2010-001-ZO, and direct staff to issue a Notice of Passing.

Report Highlights

- The Town has received a request from Malone Given Parsons on behalf of the DiCostanzo family and The Vianova Group Inc., to extend the Temporary Use Zoning By-law for 2005 Bethesda Road, which was originally passed by Council on December 01, 2015 for a period of three (3) years until December 01, 2018.
- Council had granted an extension to the Temporary Use Zoning Bylaw on June 5, 2018 for a period of three (3) years until December 01, 2021.
- Council further approved an amendment and granted extension to the Temporary Use Zoning Bylaw on July 20, 2021 for a period of three years until December 1, 2024.

 Staff recommend that the Applicants' request for extension to the Temporary Use Zoning Bylaw, be granted for a period of three (3) years until December 1, 2027 and the zoning by-law be passed.

1. Purpose:

On September 19, 2024, The Town received a request from Malone Given Parsons ("Applicant") on behalf of the DiCostanzo family and The Vianova Group Inc., ("Owner") to extend the Temporary Use By-law to permit the Employment Light Exception Five Temporary zone [El(5)(t)], to continue to permit the storage, assembly and cleaning of scaffolding and other construction materials and parking of automobile and trucks at 2005 Bethesda Road, for a period of up to 3 years until December 01, 2027. The request also includes permission for outdoor storage of pool materials.

Temporary by-laws are not permitted to exceed 3 years from the day of the passing of the by-law unless council grants and extension in accordance with Section 39 (2) and (3) of the *Planning Act* 1990 as amended.

Staff have reviewed the request and are recommending that the request be granted and that Council pass the zoning by-law for a period of three years until December 1, 2027.

2. Background:

2.1 Location

The subject property municipally known as 2005 Bethesda Road, comprises of an area of 9.51 hectares (22.6 acres) and has a frontage of 250 metres (820 feet) on the south side of Bethesda Road Figure 1 below shows an aerial view and location of the subject property. See Figure 1 below and Attachment 1 to this report for the Location Map.



Figure 1

2.2 Surrounding Land Uses

The subject land is located immediately north of the Town's Cardico Drive industrial subdivision, and east of Highway 404. The subject site is located approximately 1 km metres north of the boundary of the Gormley Industrial Area. There is no interchange or access to Highway 404 at Bethesda Road currently

Below is a description of the adjacent land uses:

- North Bethesda Road and Simeon Lake and associated features which are considered collectively to form part of a Provincially designated Area of Natural and Scientific Interest (ANSI) and a private recreational facility
- **East** Agricultural uses
- South Vacant rural lands and beyond those, an industrial subdivision (Cardico Drive)
- West Highway 404 and industrial uses within the Town of Richmond Hill

2.3 **Previous Applications and History on the subject lands**

2.3.1 Planning Act Applications 1991

In October of 1991 applications were made to the Town requesting an Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision with respect to the Subject Property together with other lands and continues to remain open at the Town. The applications were to redesignate the lands from "Rural" to "Prestige Industrial" and "General Industrial" and to rezone the lands from "Rural" to "Industrial General" and "Industrial Prestige". The application was appealed to the OMB based on Town Council's refusal to enact the proposed OPA and ZBA.

2.3.2 Ontario Municipal Board Decision - 1994

The subject property was part of an Ontario Municipal Board (OMB) hearing process associated with the preparation of the Gormley Industrial Secondary Plan in the early 1990's. The subject property was included in the appeal of the Secondary Plan and related Official Plan Amendment applications. The subject hearing led to the final approval of the Gormley Industrial Secondary Plan as it is currently constituted.

Earlier proposals by the Town preceding the approved Secondary Plan sought to designate a wider extent of Employment Area extending generally to Bethesda Road to the North and to the Markham/ Whitchurch-Stouffville boundary to the south. The initiative by the Town to designate this larger extent of employment land did not succeed due to issues related to employment land needs at the time. The OMB decision reflected the fact that a land needs analysis could not justify the proposed extent of employment lands represented by the secondary plan boundaries sought by the Town and the appellants who applied for the area specific official plan amendments, at the time.

The decision of the OMB effectively dismissed the appeals but allowed for the reconsideration of the matter if certain conditions surrounding the supply of dry industrial land could be met. The appellants have never requested the OMB (now Ontario Land Tribunal) to recommence the consideration of the applications. In the Employment Growth Study, prepared by MGP Ltd., in 2020, it is demonstrated that the criteria are met for inclusion of additional lands into the industrial area (See Report DS-021-20).

2.3.3 Transitional Policies

The Subject Property benefits from the transitional status under the Growth Plan and the Oak Ridges Moraine Conservation Plan ("ORMCP") based on the Official Plan Amendment, Zoning By-law Amendment, and Draft Plan of Subdivision applications that were filed on October 1991. See additional comments in section 3.6.2 below.

2.3.4 Minister's Order

Section 18(1) of the ORMC Act provides: "that if a matter relating to land to which the Oak Ridges Moraine Conservation Plan applies was appealed to the Ontario Municipal Board, whether before or after December 16, 2003, the Minister may do one or both of the following:

1. Amend the relevant official plan or zoning by-law with respect to the matter, by order.

2. Notify the Board that its consideration of the matter should be deferred."

On this basis, the Minister has the authority to issue an Order which effectively approves the subject Official Plan Amendment and creates a site-specific exception permitting the development of the site for Employment Uses.

On August 25, 2015 Town Council considered a Development Services report concerning the status of the historic planning applications and adopted resolutions as follows:

1) THAT Town Council supports the consideration of a Minister's Order pursuant to Section 18(1) of the Oak Ridges Moraine Conservation Act approving the Official Plan and Zoning By-law amendments by Frank DiCostanzo, Rita DiCostanzo and John DiCostanzo at 2005 Bethesda Road and by 1483404 Ontario Limited at 12934 Woodbine Avenue for employment uses.

2) AND THAT staff be authorized to attend any meetings with the Ministry of Municipal Affairs and Housing in support of this matter.

To staff's knowledge there has been no progress on this matter, to date.

2.3.5 <u>2015</u>-Temporary Use Zoning By-law Application ZBA15.010 and Site Plan Application SPA 15.035

On December 1, 2015, the Town of Whitchurch-Stouffville granted a Temporary Use Zoning By-law 2015-176-ZO and zoned the lands to EL(5)(t)(h-1) to permit the use for the temporary storage, assembly, and cleaning of scaffolding materials and the accessory outdoor storage of the scaffolding materials, and fifteen (15) parking spaces for employees abutting Bethesda Road totaling approximately 1.4 hectares of a larger land holding of 9.51 hectares, within the northerly portion of the property. The temporary use zoning by-law was to expire on December 01, 2018.

Figure 2 below shows the area of development and the site plan as approved in 2015.

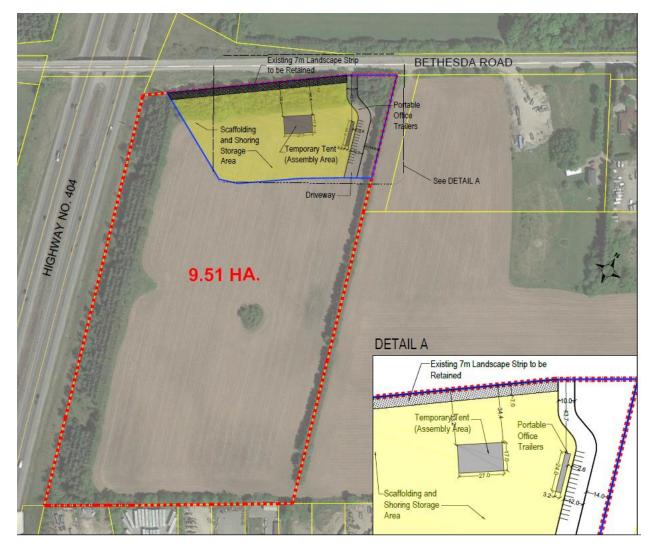


Figure 2: Plan for the Temporary use by-law from 2015

Several studies and reports were submitted for consideration through the re-zoning process in 2015. The Natural Heritage Evaluation provided by the Owner, prepared by Beacon Environmental, dated September 22, 2015 was submitted with the original

application to address the prescribed provisions. The Beacon Environmental Natural Heritage Evaluation identifies that there are no Natural Heritage Features on the Subject Property and that *"development could occur in a manner that is consistent with the requirements and spirit of the ORMCP with respect to the protection of natural heritage features and functions."*

After the Temporary Zoning By-law 2015-176-ZO was granted by Council the Owner proceeded with an application to the Town for Site Plan Control Agreement [File No. SPA 15.035], as required by the holding symbol h-1 implemented through the temporary zoning by-law amendment. The Site Plan Agreement was registered on May 18, 2018.

2.3.6 <u>2018</u> - Extension of Temporary Use Zoning By-law Amendment Application ZBA18.006 and Removal of Holding Symbol

On June 5, 2018, Council granted an extension of the Temporary Zoning By-law through By-law 2018-091-ZO [File No. ZBA18.006] until December 1, 2021 and removed the holding symbol (h-1) on the property. The extension to the temporary use by-law did not propose any changes to the existing storage areas, temporary structure(s), new uses, and / or expanding over a greater portion of the larger land holding. The condition for removing the Holding Symbol was satisfied with the execution of a Site Plan Control Agreement [SPA 15.035].

Figure 3 below shows the area of development and the approved site plan from 2018 which was not changed from what was previously approved in 2015.

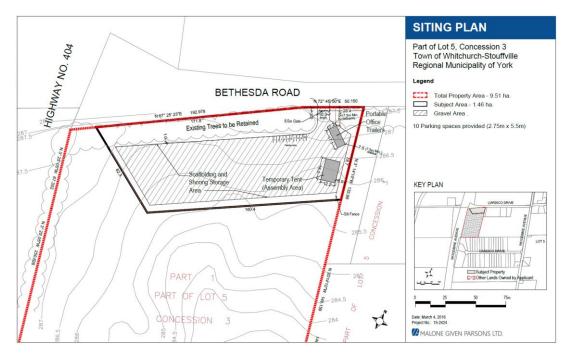


Figure 3: Approved site plan for the temporary use by-law from 2018

A Site Plan Control Agreement is currently in effect on the subject lands.

2.3.7 2020 - Request for Minister's Zoning Order

In May 2020 the Owner submitted a request to the Town seeking Council's endorsement of a Minister's Zoning Order to permit Light Employment Industrial development on the entirety of the subject lands. Town staff prepared a Report No. DS-021-20 to Council for the June 2020 meeting with a recommendation to support the request. Council endorsed the draft MZO and directed Staff to forward a copy of the report to the Minister of Municipal Affairs and Housing, York Region and the City of Richmond Hill. The motion was Carried.

To staff's knowledge a Minsters Zoning Order has not been issued by the Minister of Municipal Affairs and Housing.

2.3.8 <u>2021</u> – Amendment and Extension of Temporary Use Zoning By-law Application ZBA 21.003

In June 2021, the Owner submitted an application to amend and extend the Temporary use Zoning By-law to expand the previously approved development area and continue to permit the storage, assembly and cleaning of scaffolding and other construction materials and amend the by-law to permit additional parking of automobile and trucks on 5.25 hectares of a larger land holding of 9.51 hectares.

Figure 4 below shows the approved site plan for the request in 2021.

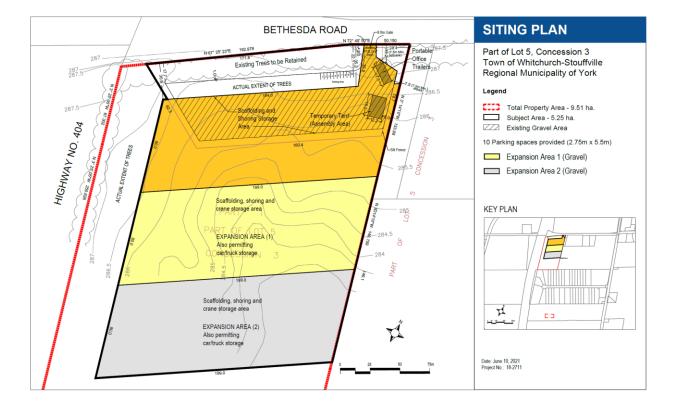


Figure 4 - Proposed Plan 2021 for Temporary use by-law

A Public meeting was held on July 6, 2021. Council passed the Temporary Use zoning By-law on July 20, 2021 to zone the lands as Employment Light Site specific exception Five Temporary [EL(5)(t)] for a period of up to 3 years until December 1, 2024.

Council required a Site Plan approval application be submitted for the proposed development to finalize the proposed site design, complete updates to all required technical studies and to execute an Amendment to the Site Plan Agreement with the Town.

An amendment to the current site plan agreement has been processed and drawings have been approved by the Town. At this time, staff are working with the Owner to execute and register the Agreement.

3. Analysis:

3.1 Temporary Use Zoning By-law – Section 39(1) *Planning Act*

The provision of a temporary zoning by-law to permit the proposed use is governed by Section 39 (1) of the Planning Act. It states that "*The council of a municipality may, in a by-law passed under section 34, authorize the use of land, buildings or structures for any purpose out therein that is otherwise prohibited by the by-law.*" Temporary by-laws are not permitted to exceed 3 years from the day of the passing of the by-law unless council grants and extension (Section 39 (2) and (3)).

As discussed in previous sections, the temporary use zoning by-law is set to expire on December 1, 2024.

3.2 <u>2024</u> – Current Request for extension of Temporary use zoning by-law

The Applicant Malone Given Parsons, behalf of the Owners John Di Costanzo family and The Vianova Group Inc., has requested that the temporary use zoning by-law on the subject lands be extended for another 3 years. The additional time would allow the Owner to resolve transitional development applications ad planning permissions on site with the Ontario Land Tribunal without impeding current business operations on site.

The Applicant's submitted Application for extension and Planning Justification report requests the following:

- That the temporary use be extended for another 3 years to allow Mr. DiCostanzo and his team to resolve planning permissions on the site with Town staff and the Local Planning Appeals Tribunal without impeding business operations; and,
- That under Section 1: Permitted Uses, the wording of Section 1.ii) be revised to "Temporary tent structures and associated office trailers shall be permitted for assembly, storage and cleaning of scaffolding materials, outdoor pool materials and related construction equipment and the accessory storage of the scaffolding, on the subject lands and parking for automobiles and trucks until December 1, 2027. Related construction equipment includes: steel crane tower sections, pile

drivers, mini excavators, fork lifts, and mobile cranes. No construction equipment/materials that will pose a threat for environmental contamination will be permitted."

3.3 Existing Temporary use zoning by-law area

The Owner has not requested for any amendment to the development area, as previously approved by Council for the temporary use zoning by-law.

5.25 ha of the total lot area of 9.51 ha is currently being utilized for the uses permitted by the current temporary use zoning by-law EL(5)(t). No change has been proposed to the development area in terms of size or configuration.

The existing development area and site plan is illustrated in Figure 5 below.

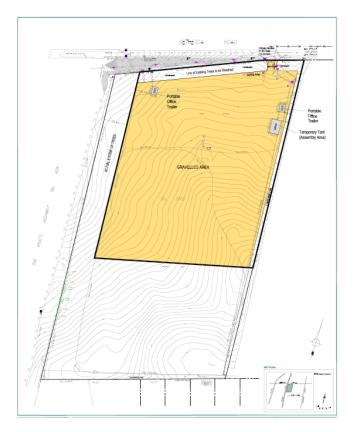


Figure 5

3.4 Current request for minor revision to the temporary use zoning by-law.

The Owner has requested a minor amendment to the current temporary use zoning bylaw to permit outdoor storage of pool materials. No other change has been requested to the current Temporary Use Zoning By-law in effect. The Owner intends to continue the current operations on site on a temporary basis, for another three (3) years.

3.5 Supporting Documents

The documents that were provided by the Applicant for the current application for extension of the temporary use zoning by-law, includes:

- Planning Opinion Letter dated September 19, 2024 prepared by Malone Given Parsons Ltd. (Attachment 3 to this report)
- Site Plan revision date May 30, 2022 prepared by Malone Given Parsons Ltd. (Attachment 2 to this report)

3.6 Applicable Policies

3.6.1 Provincial Policy Statement 2024 (PPS 2024)

The New PPS 2024 is in effect as of October 20, 2024, and replaces both the Provincial Policy Statement, 2020 and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019.

The PPS 2024 provides updated direction to guide growth within the Province of Ontario.

Section 2.8.1 of the PPS 2024 provides direction to Planning authorities to promote economic development and competitiveness by, "a) providing for an appropriate mix and range of employment, …" and b) providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses" and "c) identifying strategic sites for investment, monitoring the availability and suitability of employment sites, including market-ready sites, and seeking to address potential barriers to investment."

The Applicant, in the Planning Opinion Letter, included as Attachment 3 to this report, has indicated as follows:

"The Subject Lands have been identified by Aluma-Safway as their site for their Canadian Eastern division of operation as it possesses the necessary attributes such as access to the wider region, close proximity to their supply chain, access to transit, and the potential for synergies with the surrounding businesses. The addition of Aluma-Safway to the Canadian market would provide economic benefits to the Town and Region as well as increase the Town and Region's economic competitiveness in the construction industry. Additionally, the proposed temporary use on the Subject Property is an effective use of the lands for employment purposes that receive the benefit of the visibility and access afforded to the site from Highway 404."

It is staff's opinion that the request for extension of Temporary Use Zoning By-law would continue to allow uses on the property and meet the intent of Employment policies in PPS 2024.

3.6.2 Oak Ridges Moraine Conservation Plan (2017) - Transitional Application Status

The subject property is designated ORM Countryside Area. Countryside Areas are areas of rural land use such as agriculture, recreation, residential development, Rural Settlements mineral aggregate operations, parks and open space

The PPS 2024 directs that provincial plans, including the Oak Ridges Moraine Conservation Plan, be read in conjunction with and take precedence over the policies of the Provincial Planning Statement to the extent of any conflict, except where the relevant legislation provides otherwise. As such, the policies of the Oak Ridges Moraine Conservation Act and Plan are appliable for this application.

The historical applications by Verdi Alliance are considered to have "transitional status" under the ORMCP since they were submitted prior to the enactment of the ORMCP through the Oak Ridges Moraine Conservation Act (ORMC Act) 2001. Transitional status means that only a limited number of policies from the ORMCP apply. These policies are referred to as the "Prescribed Provisions" and are described under Section 48 of the ORMCP. These provisions address a number of specific environmental issues, but do not extend to other restrictions in the Plan.

Transitional status under the ORMCP does not remove the responsibility to comply or conform with other applicable planning policies and regulations of the planning process outside the framework of the ORMCP. The Ontario Municipal Board is seized with the Official Plan Amendment and Zoning By-law Amendment applications brought by the landowners prior to the time of the Board's 1994 decision, which are out of the Town's jurisdiction at this time.

The Owner had provided a Natural Heritage Evaluation, prepared by Beacon Environmental, dated September 22, 2015 to address the prescribed provisions, which is on file with the Town. A Natural Heritage Evaluation is to include the identification of any key natural heritage or hydrologically sensitive features on or adjacent the subject property, demonstrate that there will be no adverse effects on the features, identify practices that will maintain, improve or restore health, diversity and size of the features, and determine whether or not the minimum vegetation protection zone is sufficient. The prescribed provisions also require a review of whether there are any pathways for connectivity between any features.

Section 43(1)(b) states that an application for major development shall be accompanied by a sewage and water system plan that demonstrates that the quantity and quality of groundwater and surface water will be maintained. Major development is the construction of building or buildings with a ground floor area of 500 square metres or more. The proposed temporary use on the subject property consists of a portable office trailer and temporary tent structure totalling approximately 460 square metres and this section is not applicable as it falls below the threshold but Section 43(1) Sewage and water services would still apply.

Staff have reviewed and approved all necessary drawings and reports/studies as required by the ORMCP policies, for the development on the property.

Staff is of the opinion that the development is generally in conformity with the ORMCP policies.

3.6.3 Subject Property and Provincially Significant Employment Zones

The subject property is included in the Town's request to the Province for a Provincially Significant Employment Zones (PSEZ), along the Highway 404 corridor.

The Highway 404 corridor is a significant piece of infrastructure for people and goods movement in York Region and provides a valuable strategic economic resource to the Province, the Region of York, and the Town. Lands located close to the 400-series highways are highly valued for economic development due to their ease of access to the 400-series highway network.

It is a strategic priority of Council to promote the Town's economic development objectives and investment readiness by pursuing the provision of full municipal services to the Town's existing employment areas, and the designation of additional employment areas along the Highway 404 corridor, including the subject lands within the proposed expansion to the Gormley Industrial Area.

It is staff's opinion that the subject property, is ideally suited for future employment development, advance the Town's objectives and would support Provincial policies to designate and preserve lands adjacent to major transportation corridors for employment uses and promote economic development and competitiveness.

In staff's opinion the development represents good planning.

3.6.4 Town's Official Plan

The subject property is designated ORM Countryside Area in the Town's current Official Plan and the Council adopted New Official Plan in May 2024, which is awaiting Provincial approval at this time.

The ORM Countryside Area recognizes areas of rural land use such as agriculture, recreation, hamlets, mineral aggregate extraction operations, parks and open space. Generally there is no permissibility for the development of rural employment areas in the Oak Ridges Moraine Area of the Town.

The proposed uses do not conform to the Town's Official Plan, as such the Temporary use zoning by-law has been established for the current uses on site.

Section 8.2.3 Temporary Use By-laws pursuant to the provisions of the Planning Act, bylaws may be passed by Council to permit the temporary use of lands, buildings or structures, which may not conform to this Plan in areas other than the Oak Ridges Moraine Area, provided that the following requirements are complied with:

- i) that the use is compatible with surrounding land uses and activities;
- ii) ii) adequate water supply and waste disposal activities are available to the satisfaction of the Town and the Region of York Health Services Department
- iii) that such temporary uses or activities do not result in a hazardous condition for either vehicular or pedestrian traffic and that the relevant parking area requirements are complied with; \
- iv) there is a signed agreement between the applicant and the Town which addresses issues related to installation/removal and maintenance; and,
- v) the Town is satisfied that the nature of the use is temporary and that any buildings and structures are kept to the minimum and can be easily dismantled.
- vi) Such a by-law shall define the area to which it applies and prescribe the period of time for which the authorization shall be in effect, having regard for the appropriateness of the use and the temporary nature of the use or activity. Council may pass subsequent by-laws granting extensions of up to three years to a temporary use by-law; however, once the subsequent by-law has lapsed, the use permitted by the by-law must cease and if the use continues it will be viewed as an illegal use in regard to the implementing Zoning By-law.

Subject to technical review of the drawings, reports and studies and supporting Planning Opinion Letter, and meeting the applicable criteria outlined in Section 8.2.3 of the Official Plan, the proposed uses may be supported from a policy planning perspective. The request for extension of the temporary use zoning by-law would allow for the uses to continue for another three (3) years.

3.6.5 Town's Comprehensive Zoning By-law 2010-001-ZO and requested Amendment and Extension

The subject property is currently zoned Oak Ridges Moraine-Countryside (ORM-C) and Employment Light Exception 5 temporary [EL(5)(t)].

The site specific Temporary Use Zoning By-law (2021-073-ZO) as passed by Council on July 20, 2021 is noted as follows:

"7.3.1.5 EL(5)(t) 2005 Bethesda Road

- 1. Permitted Uses
- i) ALL ORM-C Uses

ii) Notwithstanding any other provisions of the bylaw, the following temporary uses shall be permitted on the subject lands until December 1, 2024:

a. tent structures for the assembly, storage and cleaning of scaffolding materials and related construction equipment and materials;

b. office trailers, and

c. outdoor storage of:

i. all construction equipment including steel crane tower sections, pile drivers, mini excavators, forklifts, and mobile cranes.

ii. all construction materials, and

iii. automobiles and trucks.

iv. Notwithstanding the foregoing, no outdoor storage of construction equipment or materials that will pose a threat for environmental contamination will be permitted

2. Regulations

The following regulations shall apply to the subject land:

Tent structures with a Maximum - Gross Floor Area of 320 square metres

Office Trailers with a Maximum Gross Floor Area of 140 square metres.

A minimum 4.5 m of the required yards shall be landscaped.

The minimum Front Yard Landscaped Area shall be 50% of the required 15 metre front yard setback.

Upon the expiry of this by-law on December 1, 2024, the subject lands will revert back to ORM-C and those uses permitted within the ORM-C Zone shall apply."

As discussed in section 3.4 above, the applicant has requested to include outdoor storage of outdoor pool materials as additional permitted use on the property. Staff is of the opinion that the additional storage of outdoor pool materials, within the area that is subject to the zoning by-law, has no impact to the site since outdoor storage of other materials (see by-law above) is already permitted by the Temporary Use Zoning By-law.

Staff has no concerns with the request to add outdoor storage of pool materials.

Staff has no concerns with the request for extension of the Temporary use zoning by-law for a period of three years until December 1, 2027.

Options:

a. Option A (Recommended)

That Council approve the request for extension to the Temporary use Zoning By-law and pass By-law 2024-132-ZO to allow the permitted uses to continue on a temporary basis until December 01, 2027. This option is recommended as the proposed development meets the strategic objectives of Council.

b. Option B

That Council deny the request for extension to the Temporary use Zoning By-law. This option is not recommended as the proposed development meets the strategic objectives of Council.

If Council chooses this Option B, upon receipt by the Town of a Notice of Appeal to the OLT, Council may consider directing the Town's Chief Administrative Officer to bring a report forward to Council to so that Council may provide direction to Staff on responding to the OLT Appeal.

4. Financial Implications:

None

5. Alignment with Strategic Plan:

1. <u>A Town that Grows</u> A Town that grows in support of complete communities

6. Broader Intergovernmental Impacts and/or Considerations:

See sections 3.6.1 to 3.6.2 above.

7. Communication:

No statutory requirement for notification for the request for extension of Temporary use zoning by-law.

8. Attachments:

Attachment No. 1 – Location Map

Attachment No. 2 – Site Plan dated May 30, 2022

Attachment No. 3 – Planning Opinion Letter dated September 19, 2024, prepared by Malone Given Parsons

9. Related Reports:

December 1, 2015 – PROPOSED TEMPORARY USE ZONING BY-LAW AMENDMENT (D14) & SITE PLAN CONTROL APPLICATION (D11) PART OF LOT 5, CONCESSION 3 2005 BETHESDA ROAD ZBA15.010 & SPA15.035

June 5, 2018 - Report No. DS-030-18 - Proposed Extension of Temporary Use Zoning By-law Amendment File No. ZBA18.006

June 16, 2020 - Report No. DS-021-20 - Vianova Group's Request for Ministers Zoning Order

July 6, 2021 - Report No. DS-025-21 – Application for a Zoning By-law Amendment (Temporary Use) – 2005 Bethesda Road (File No. ZBA21.003)

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For further information on this report, please contact the Department Head: Dwayne Tapp, Commissioner of Development Services at 905-640-1910 or 1-855-642-8697 ext. 2431 or via email at <u>dwayne.tapp@townofws.ca</u>.