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Date December 6, 2023 **Report No.** 2023-645
To Chair and Members
City of Brantford Committee of Adjustment
From Lindsay King
Development Planner

1.0 Type of Report

Committee of Adjustment Decision Regarding Application for Minor Variance

2.0 Topic

Application No.: A36/2023
Agent: Upper Canada Consultants c/o Craig Rohe
Applicant/Owner: 1000147958 Ontario Inc.
Location: 9 Garden Ave., Brantford

3.0 Recommendation

- A. THAT application A36/2023 seeking relief from Section 2.1.79.2.1 of Zoning By-law Amendment 72-2022 to permit a reduced minimum lot area of 153 m²/unit, whereas 162.5 m²/unit is required, BE APPROVED;
- B. THAT the reasons for approval of the minor variance are as follows: the proposed variances are in keeping with the general intent of the Official Plan and Zoning By-law 160-90, the relief requested is considered minor in nature and is desirable for the appropriate development and use of the subject lands; and

- C. THAT application A36/2023 seeking relief from Section 2.1.79.2.10 of Zoning By-law Amendment 72-2022 to permit a reduced Landscaped Open Space of 33%, whereas 36% is required, BE APPROVED;
- D. THAT the reason(s) for approval of the minor variances are as follows: the proposed variances are in keeping with the general intent of the Official Plan and Zoning By-law 160-90, and the relief requested is considered minor in nature and desirable for the appropriate development and use of the subject lands; and,
- E. THAT pursuant to Section 45(8) – (8.2) of the *Planning Act*, R.S.O 1990, c. P. 13, the following statement SHALL BE INCLUDED in the Notice of Decision:

“Regard has been had for all written and oral submissions received from the public before the decision was made in relation to this planning matter, as discussed in Section 6.2 of Report 2023-645.”

4.0 Purpose and Description of Application

The City of Brantford has received a minor variance application for the lands municipally addressed as 9 Garden Avenue. The applicant seeks relief from Zoning By-Law 160-90, specifically reductions to the minimum lot area and landscaped open space. **Table 1** summarizes these items as they relate to the Zoning By-Law 160-90, the previously approved Zoning By-Law Amendment 72-2022 (attached as **Appendix A**), and the current minor variance.

Figure 1 - Conceptual Site Plan

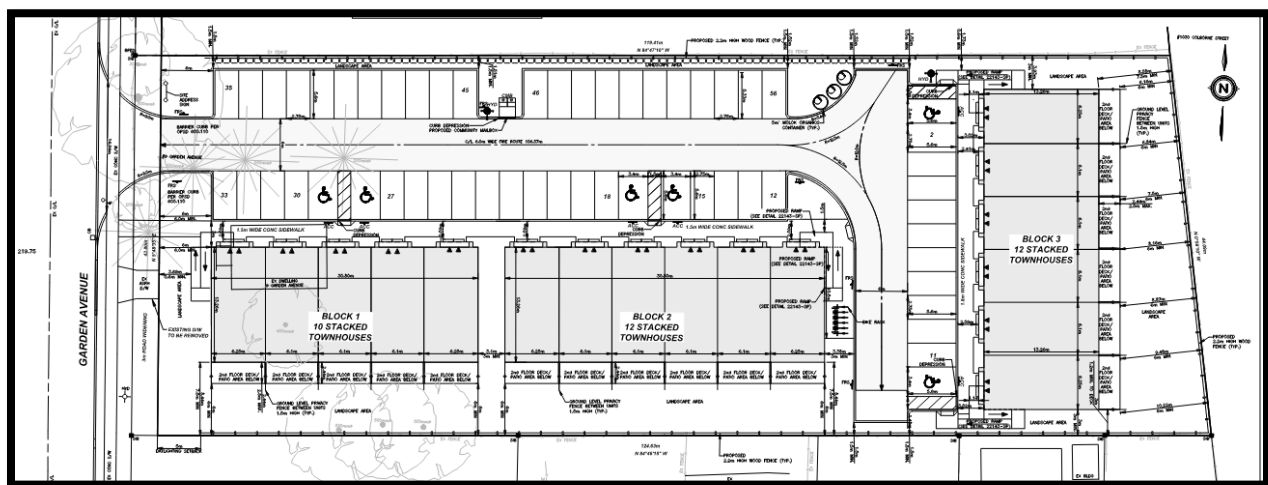


Table 1 - Requested relief from Zoning By-law 160-90

Regulation	By-Law Section (160-90)	Required (R4A-79)	Proposed	Relief Requested
Minimum Lot Area	7.9.2.1.1	162.5 m ² /unit	153 m ² /unit	9.5 m ² /unit
Minimum Landscaped Open Space	7.9.2.1.9	36%	33%	3%

5.0 Site Features

The subject lands are on the east side of Garden Avenue, south of the Canadian National (CN) Railway line and north of Colborne Street, as illustrated in **Figure 2**. The property is approximately 5,386 m², has approximately 43.8 m of frontage and currently has one vacant single detached residential unit and associated accessory buildings, including a detached garage and shed, which are proposed to be demolished to advance this development proposal, if approved. The surrounding lands consist of low and medium density residential uses (single detached and townhouse dwelling units). The property on the northeastern corner of Garden Avenue and Colborne Street has a commercial use (mechanic shop and used car sales). A location map, aerial photo, and site photographs are included below.

Figure 2 - Location Map

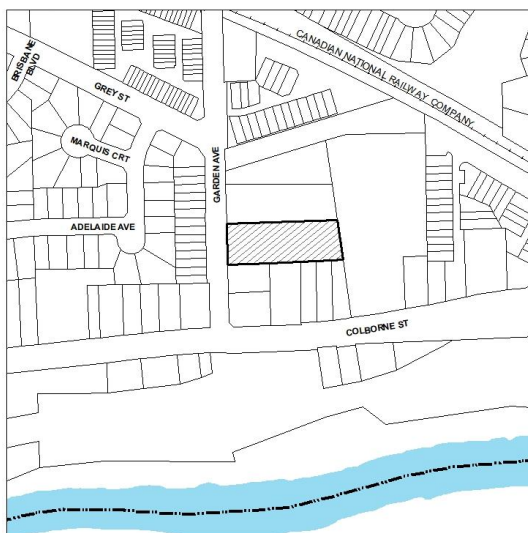


Figure 3 - Aerial Photo

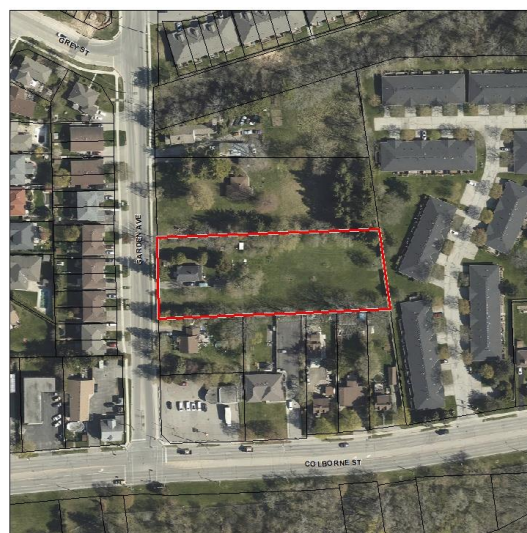


Figure 4 – East-facing view along the northern property line of the subject lands.



Figure 5 – Northeast-facing view of the subject lands.



Figure 6 – Existing Residential Dwelling on the subject lands.



6.0 Input from Other Sources

6.1 Technical Comments

The application was circulated to all applicable departments and agencies. A summary of the comments/conditions is provided below:

Table 2 - Department and Agency Comments

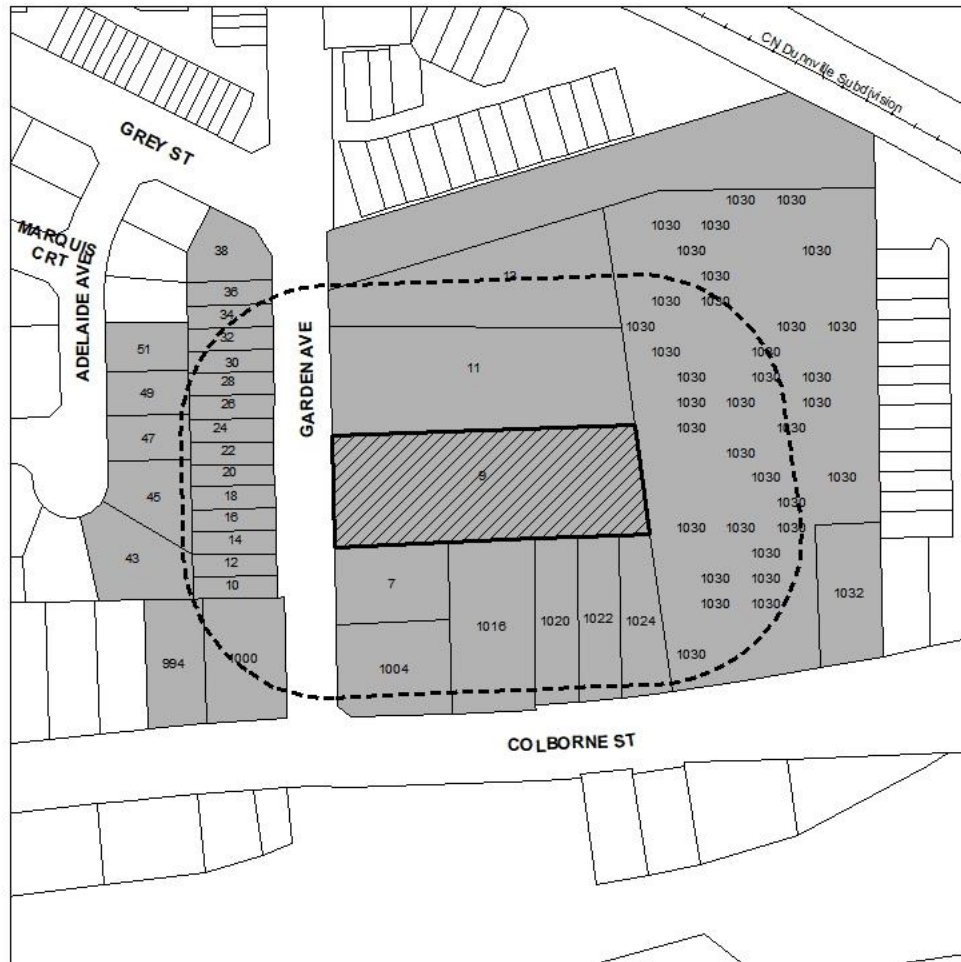
Agency Name	Agency Comment
Building Department	Maximum height will be checked at time of building permit review.
	A demolition permit is required for existing building.
	Any proposed construction will require that a building permit be applied for and approved through this department. Development charges may be applicable to any new development.
Environmental Services	No comment
Development Engineering	No comment
Landscaping	This ~3% reduction in landscaped open space does not seem huge,

Agency Name	Agency Comment
	however, it is important to note that common amenity space is not shown on the plan and typically amenity space is defined as common amenity space for residents to use, there is only individual amenity space, as such there is concern that they are asking for an overall loss of amenity and landscaped open space (145.59 m ²).
Water Compliance/ Source Water Protection	9 Garden Ave. is located within IPZ-3, however for this minor variance application the Restricted Land Use Declaration form is <u>not</u> required. ** Future applications may require the form to be completed, however at this time, there are no Source Water Protection requirements.
Transit	No comment
Transportation	No comment
Bell Canada	No comment
Canada Post	Please advise the developer that 3 modules will now be required as only 2 have been identified on their drawings.
Heritage	No comment

6.2 Public Response

Notice of public hearing was issued by personal mail (80 notices) and by posting a sign on-site. A plan illustrating the notification area is included below. At the date of the preparation of this report, staff has received two emails from members of the public who oppose the application (attached as **Appendix B**). The emails shared concerns regarding over intensification, loss of privacy, and insufficient parking. One of the individuals requested that, should the application be approved, a condition be imposed which will include a 2.4 m high fence be erected along the perimeter of the property. They also stated that they preferred one-storey units. One of the individuals also requested a higher-resolution Site Plan, which was provided by Staff. Planning Staff has considered these comments and have provided a response in Section 7.2 of this Report.

Figure 7 – Area of Public Notification Map



7.0 Planning Staff Comments and Conclusion

7.1 Policy Context

This application was reviewed in the context of the Provincial Policy Statement, the Growth Plan, the Official Plan and the Zoning By-law. A summary is provided in the table below:

Table 3 - Policy Context and Conformity

Document	Relevant Policy	Conformity
<p>Provincial Policy Statement (PPS) (2020) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (Growth Plan)</p>	<p>These policies set the standard to which provincial and local interests, policies and goals are implemented. The PPS outlines that Ontario’s long term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns.</p>	<p>This application constitutes residential intensification and contributes to the City’s efforts to increase housing supply and is therefore consistent with the PPS and conforms to the Growth Plan.</p>
<p>City of Brantford Official Plan (Envisioning Our City: 2051)</p>	<p>The subject lands are designated “Residential” on Schedule 3 of the City of Brantford’s Official Plan. The “Residential” designation permits residential units in Low-Rise, Mid-Rise, and High-Rise residential buildings (see Appendix C).</p>	<p>This infill proposal would accommodate the development of 34 residential units and help achieve the City’s overall target for residential intensification in the Built-Up Area.</p>
<p>City of Brantford Zoning By-law 160-90</p>	<p>The subject lands are Zoned “R4A-79” in Zoning By-Law 160-90. The R4A-79 Zone permits Stacked Townhouses (see Appendix D).</p>	<p>Aside from the requested variances, the proposed site plan conforms with the Zoning By-law.</p>

7.2 Planning Analysis

When evaluating the merits of a minor variance application, the Committee of Adjustment must be satisfied that the application meets the four tests of Section 45(1) of the *Planning Act*. To be approved, a minor variance must be minor in nature, desirable for the appropriate development and use of the land, and the general intent and purpose of

the Zoning By-law and Official Plan must be maintained. These tests are discussed in the table below:

Table 4 - Four Tests of a Minor Variance relating to requested relief for Minimum Lot Area

Four Tests	Discussion
<p>1. That the requested variance is minor in nature</p>	<p>“Minor” is determined by impact, not the value of the variance being sought.</p>
	<p>The requested reduction to the minimum unit size is deemed minor and appropriate as it allows for only two additional units, and the proposed unit size exceeds the Ontario Building Code’s minimum dwelling unit size of 13.5 m².</p>
<p>2. That the intent and purpose of the Zoning By-law is maintained</p>	<p>The intent of minimum unit areas is to provide adequate living space. It is staff’s opinion that the proposed unit will provide adequate living space.</p>
<p>3. That the general intent and purpose of the Official Plan is maintained</p>	<p>Section 5.2.1 of the Official Plan encourages residential development and intensification in the Residential Designation. Members of the public raised concerns regarding over intensification. Planning Staff are of the opinion that the proposed unit yield of two additional units is not considered an over intensification of the lands.</p>
	<p>The subject lands are designed Residential. It is staff’s opinion that the proposed relief to minimum unit size would allow for efficient land use of the land while maintaining the planned function of the Residential designation.</p>
<p>4. That the variance is desirable for the appropriate development and use of the land, building or structure</p>	<p>Staff are of the opinion that the proposed reduction to minimum unit size would to adversely impact the surrounding neighbourhood as the reduced lot size allows for adequate livable space and is similar to other infill developments recently approved in the City.</p>
	<p>Since the proposed relief would facilitate a minor increase in unit yield on the subject lands, the requested relief from the minimum parcel size is deemed desirable for the appropriate use of the land. A member of the public raised a concern respecting insufficient parking. However, this application is not seeking a reduction in parking and the current site specific by-law (72-2022) approved by Council on April 26, 2022 permitted parking ratio of 1.5 spaces/unit. No modification to parking is being sought with this application.</p>

Table 5 - Four Tests of a Minor Variance relating to requested relief for Minimum Landscaped Open Space

Four Tests	Discussion
1. That the requested variance is minor in nature	Given the proposed fencing and amenity space which will be implemented through the site plan control process, the proposed reduction to minimum the Landscaped Open Space of 3% is considered minor.
2. That the intent and purpose of the Zoning By-law is maintained	The intent of the minimum Landscaped Open Space provision is to ensure privacy is maintained, facilitate an attractive living space, and support stormwater management for the subject lands. It is Staff's opinion that through the proposed fencing and amenity space design, adequate privacy and stormwater management will be provided. Furthermore, it is Staff's opinion that 33% Landscaped Open Space is sufficient and will provide for an attractive and appropriate space. In response to a resident's concern regarding privacy fencing, Staff acknowledge that those matters will be addressed and implemented through the site plan control process.
3. That the general intent and purpose of the Official Plan is maintained	Section 5.2.1 of the Official Plan encourages residential development and appropriate intensification in the Residential Designation.
	The subject lands are designated Residential. It is Staff's opinion that the proposed relief to Landscaped Open Space is only a slight reduction and would continue to allow for the efficient use of the land while maintaining the planned function of the Residential designation.
4. That the variance is desirable for the appropriate development and use of the land, building or structure	Planning Staff are of the opinion that reduced Landscaped Open Space is desirable for the appropriate development and use of the lands.

7.3 Conclusion

Staff completed a site inspection on October 11, 2023. Upon completion of this visit, review of the applicable policies, and review of the public input, Planning Staff are supportive of the reduction to minimum lot area and the landscaped open space for the reasons provided in this Report. The minor variance would facilitate the development of two additional dwelling units, which will contribute to the City's range of housing stock, and is in line with the Province's direction of providing more homes. It is Staff's opinion that the proposed reductions meet the four tests for minor variances, as outlined in Section 45(1) of the *Planning Act*. For the reasons mentioned above, Staff recommend that the requested reduction to minimum lot area from 162.5 m²/unit to 153 m²/unit and the requested reduction to minimum landscaped open space from 36% to 33% for A36/2023 be approved.



Prepared by: Lindsay King
Planner, Development Planning
Prepared on: November 29, 2023



Reviewed by: Joe Muto, RPP, MCIP
Manager of Development Planning

Appendix A – Approved Zoning By-law Amendment No. 72-2022

BY-LAW NUMBER 72-2022 OF THE CORPORATION OF THE CITY OF BRANTFORD

By-law to amend By-law No. 160-90, being a By-law to regulate the use of lands and the location and use of buildings and structures in the City of Brantford.

WHEREAS the Council of the Corporation of the City of Brantford desires that By-law No. 160-90, as amended, be further amended as hereinafter set out;

AND WHEREAS such amendments will be within the terms and intent of the Official Plan for the City of Brantford;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BRANTFORD UNDER THE PROVISIONS OF SECTIONS 34 OF THE PLANNING ACT R.S.O. 1990 HEREBY ENACTS AS FOLLOWS:

1. SCHEDULE AMENDMENTS TO BY-LAW NO. 160-90

- .1 THAT Schedule "A" Map F-15 be amended as shown on Schedule "A" Map 1, attached to and forming part of this By-law, and summarized as follows:

Change from "Residential Medium Density Type A Zone (R4A)" to "Residential Medium Density Type A - Exception 79 Zone (R4A-79)"

2. TEXT AMENDMENTS TO BY-LAW NO. 160-90

- .1 That Section 7.9.4. be amended by the addition of the following new subsection:

.79 9 Garden Avenue (R4A-79)

- .1 Notwithstanding any provision of this By-law to the contrary, as shown on Schedule 'A', attached to and forming part of this By-law, any lot within any R4A-79 Zone may be used for all uses permitted the R4A Zone, plus the following uses:

- .1 Stacked Townhouse Dwellings;

- .2 Notwithstanding any provision of this By-law to the contrary as shown on Schedule 'A', attached to and forming part of this By-law, no person shall within any R4A-79 Zone use any lot, or erect, alter or use any building or structure for the uses

permitted in Section 7.9.4.79.1.1, except in accordance with the following provisions:

.1	Lot Area (Minimum)	162.5 m ² /unit
.2	Lot Width (Minimum)	30 m
.3	Lot Coverage (Maximum)	40%
.4	Building Height (Maximum)	3 Storeys
.5	Front Yard (Minimum)	6.0 m
.6	Rear Yard (Minimum)	7.5 m
.7	Side Yard (Minimum)	3.0 m
.8	Common Walls	In accordance with Section 6.20
.9	Gross Floor Area (Minimum)	70.0 m ² /unit
.10	Landscaped Open Space (Minimum)	36%
.11	Amenity Space	

.1	Minimum	5.5 m ² /unit
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.2	For the purpose of this By-law, Amenity Space shall mean space within a building or outside of a building which provides private and/or common active and/or passive recreation areas for residents of a	
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residential use.

- .3 Notwithstanding any other provision in this by-law, townhouse dwelling units shall not have any detached accessory buildings or structures located in any yard between the building and street facing Garden Avenue. Notwithstanding Chapter 438 of the Municipal Code for Fencing as amended, the said yard shall not be enclosed by an opaque privacy fence
- .12 Parking (Minimum) 1.5 spaces/unit
- .13 Planting Strip (Minimum) 1.5 m along the northerly, southerly and easterly lot line.
- .14 Privacy Fence (Minimum) A continuous 2.2 m high fence shall be provided and maintained along the northerly, southerly and easterly lot line.

That all the provisions of the R4A Zone in Section 7.9.2 to this By-law, and all other provisions of this Bylaw, as amended, that are consistent with the provisions herein contained, shall continue to apply mutatis mutandis.

3. EFFECTIVE DATE

THAT this By-law shall become effective from and after the date of passing thereof.

READ A FIRST TIME: April 26, 2022
READ A SECOND TIME: April 26, 2022
PASSED: April 26, 2022



MAYOR



CLERK

Appendix B – Public Input

Lindsay King

From: Lindsay King
Sent: Monday, October 23, 2023 8:41 AM
To: [REDACTED]
Subject: RE: 9 Garden Avenue File No. A36/2023
Attachments: 9 Garden Avenue - Preliminary Site Plan - Minor Variance Application.pdf

Hello Eric,

Thank you for providing written comment on the Minor Variance application for 9 Garden Avenue. I understand that you are not able to make the public meeting on November 1, however your comments regarding over-intensification and your interest in a fence will be considered all the same. You are free to provide additional comment as you please.

Please find attached a larger map of the site. The attached map shows a proposed 2.2 m (7.2 G) high wood fence.

I can confirm that the applicant's cover letter details the plan to develop the property as a residential condominium. I'd also like to clarify that condominium units may be rented.

I am happy to help with further questions. Kind regards,

Lindsay King

Planner, Development Planning

City of Brantford, Planning and Development Services

City Hall, 58 Dalhousie St., PO Box 818, Brantford ON N3T 2J2 519-759-4150

www.brantford.ca

[REDACTED]

Sent: Sunday, October 22, 2023 2:42 PM

To: Lindsay King <LKing@brantford.ca>

Subject: 9 Garden Avenue File No. A36/2023

CAUTION EXTERNAL EMAIL This email originated from outside of the City of Brantford email system. Do not click links or open attachments unless you recognize the sender and know the content is safe. If you are unsure, please contact the Service Desk at ext. 5555

Hello Lindsay,

We received notification on Friday October 20, 2023, regarding a Notice of Public Hearing Committee of Adjustment regarding 9 Garden Ave. The letter indicated that a Key Map showing the lands to which these applications apply, and details of the proposal is enclosed. This is true; however, the printing and size of the map is so small that it is difficult to see and read. Is it possible to have a larger map sent to make this easier to see?

In the notice it stated the property was previously subject to a Zoning By-law Amendment to facilitate the development of a 32 unit stacked townhouse condominium on the subject lands. It further states that the proposal now contemplates

34 stacked townhouse dwelling units . In the proposed change there is no reference to condominium as was previously passed. Is this development still proposing to be condominium or are these rental townhouses?

I also have concerns about the perimeter fencing. I can't see on the map the material of how tall it will be.

I have some additional concerns about this proposed development My first concern is the density proposed. This is not a large lot. There are a few developments in the immediate area that consist of single-story condominium units. They are 41 Garden Ave. 1030 Colborne Street East. (which abuts the east side of the proposed development) and 1038 Colborne Street East. I believe a development of condominiums such as these would be a better fit in the area rather than stacked townhouses.

I would like to see an 8-foot perimeter fence erected.

What arrangements are being made for garbage, recycling, and yard waste collection as well as storage of this material on the property? Will it be collected internally, or will it be placed curbside on Garden Ave.?

These are some of my concerns, but I am sure there will be more.

Unfortunately, we will not be able to attend the meeting on November 1, 2023 due to previous commitments but we do certainly want to be notified of any further meetings and notified of any decisions made by notice of this email 'We would like our concern/questions submitted on our behalf.

Regards,

Eric and Wendy Jennings 1022 Colborne Street East BranVord, Ontario

N3S 3T6

From: Lindsay King
Sent: Tuesday, November 21, 2023 2:36 PM
To: [REDACTED]
Subject: RE: 9 Garden Ave.

Hello Gina,

Thank you for providing feedback on the 9 Garden Avenue Minor Variance application. I am the Planner reviewing this file and I will take your comment into consideration when developing my recommendation. Your comment will become part of the public record. If you have further comments or questions, please do feel free to contact me. I am happy to help.

Kind regards,

Lindsay King
Planner, Development Planning
City of Brantford, Planning and Development Services

City Hall, 58 Dalhousie St., PO Box 818, Brantford ON N3T 2J2
519-759-4150
www.brantford.ca

Lindsay King

From: Gina Muller [REDACTED] >
Sent: Sunday, November 19, 2023 6:37 PM
To: Lindsay King
Subject: 9 Garden Ave

Follow Up Flag: Follow up
Flag Status: Flagged

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Hi Lisa

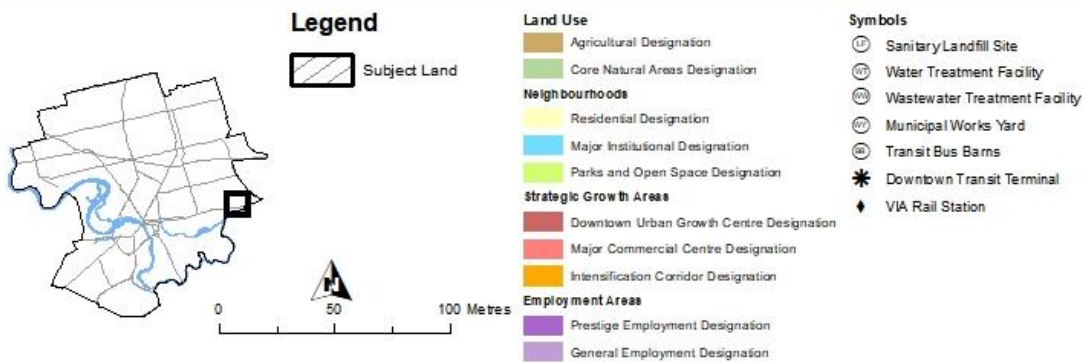
We had a concern about parking. We have noticed that the stacked townhome complex's on the corner of Grey St and Garden Ave. have people parking on the street for lack of parking. Most people have two cars and also on occasion visitors, with only 50 parking spots not including the barrier free spots which we believe according to attached plans means handicap parking this means a considerable shortage of parking spots. Especially since there is no street parking on Garden Ave. Also ecstastically they don't fit into the landscape of the section of Garden Ave which is semi-detached 2 story, single story town homes and a few 2 story single dwellings.

Jerry and Gina Muller [Sent from Yahoo Mail for iPad](#)

Appendix C – Official Plan

OFFICIAL PLAN EXCERPT MAP

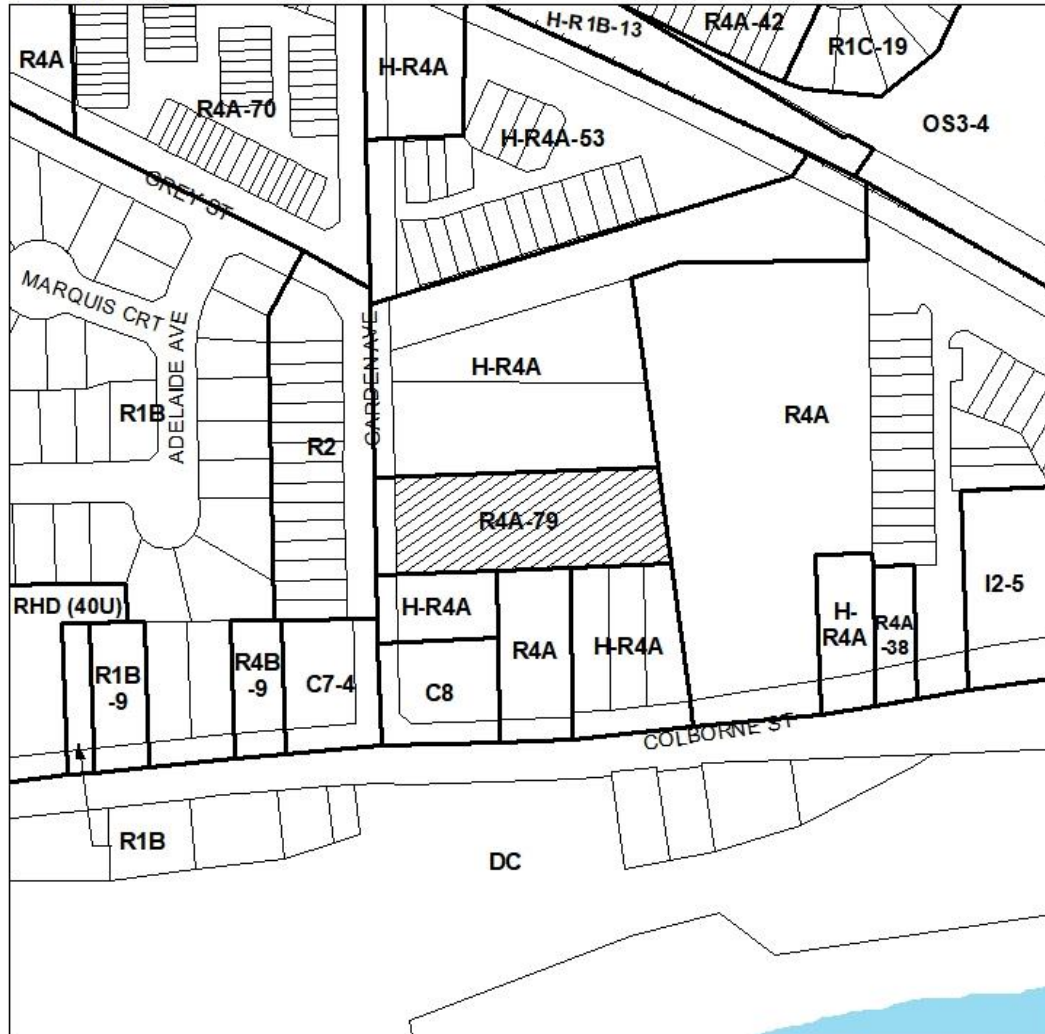
Application: A36/2023
 9 Garden Ave



Appendix D – Zoning

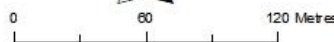
ZONING

Application: A36/2023
 9 Garden Ave



Legend

- Subject Land
- Zone Boundary



ZONING (Bylaw 160-90) and County of Brant(61-16)

- R1B Residential Type 1B (15 metre)
- R1C Residential Type 1C (12 metre)
- R2 Residential Type 2
- R4A Residential Medium Density Type A
- R4B Residential Medium Density Type B
- RHD Residential High Density
- I2 Institutional School
- C7 Convenience Commercial
- C8 General Commercial
- C9 Neighborhood Centre Commercial
- OS3 Open Space Restricted
- H Holding Provision
- DC Development Constraint
- # Exception Number