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Date December 6, 2023 **Report No.** 2023-709
To Chair and Members
City of Brantford Committee of Adjustment
From Tausha Adair, BES, MCIP, RPP
Intermediate Development Planner

1.0 Type of Report

Committee of Adjustment Decision Regarding Application for Minor Variance

2.0 Topic

Application No.	A40/2023
APPLICANT/OWNER	B. Murray
AGENT	J. H. Cohoon Engineering Limited
Location	8 Sterling Street

3.0 Recommendation

- A. THAT application A40/2023 seeking relief from Section 7.8.2.1.3.1 of Zoning By-law 160-90 to permit a maximum lot coverage of 48.1%, whereas 43.3% is required, BE APPROVED, conditional upon the registration of an environmental easement for operational noise and vibration emissions, in favour of CN Rail;
- B. THAT application A40/2023 seeking relief from Section 7.8.2.5 of Zoning By-law 160-90 to permit a modified minimum front yard, BE APPROVED provided the front yard setback to the garage is 6.0 m, conditional upon the

registration of an environmental easement for operational noise and vibration emissions, in favour of CN Rail;

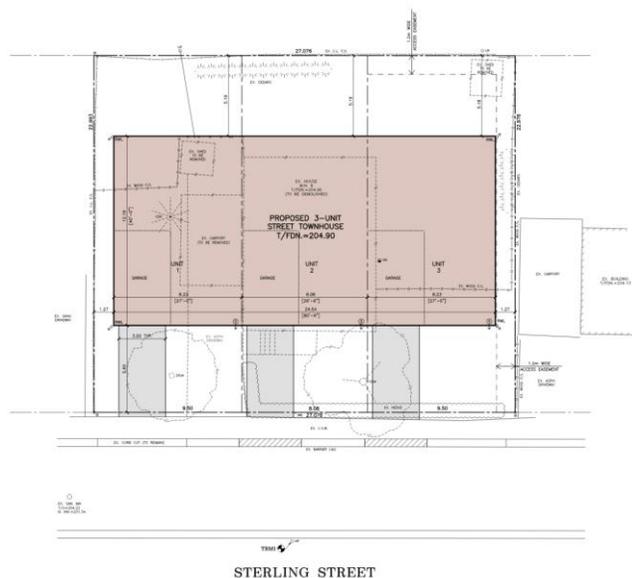
- C. THAT application A40/2023 seeking relief from Section 7.8.2.6 of Zoning By-law 160-90 to permit a minimum rear yard of 5.18 m, whereas 7.5 m is required, BE APPROVED, conditional upon the registration of an environmental easement for operational noise and vibration emissions, in favour of CN Rail;
- 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, the relief requested is considered minor in nature and is 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 2023-709”.

4.0 Purpose and Description of Application

A minor variance application has been received for the lands municipally addressed as 8 Sterling Street. The applicant is proposing to construct a two-storey 3-unit street townhouse, with a GFA of 299.1 square metres.

Figure 1 - Conceptual Site Plan



In order to facilitate the residential development, minor variances are proposed to provide relief from the following sections of Zoning By-law 160-90:

- Section 7.8.2.1.3.1 to permit a maximum lot coverage of 48.1%, whereas 43.3% is required;
- Section 7.8.2.5 to permit a minimum front yard of 5.6 m, whereas 3.59 m is required; and
- Section 7.8.2.6 to permit a minimum rear yard of 5.18 m, whereas 7.5 m is required.

Although the applicant has requested 5.6 metre front yard, staffed has amended this request to provide 6.0 metres from the garage. Further, Staff has also addressed the comments from CN Rail by amending the recommendations above with additional wording. These matters are discussed further in Sections 6.1 and 7.2 of this Report. To facilitate the development as proposed, the applicant is seeking the following relief Zoning By-law 160-90:

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

Regulation	By-law Section	Required	Proposed	Relief Requested
Maximum Lot Coverage	7.8.2.1.3.1	43.3% (Variance A13-2022)	48.1%	+ 4.8 %
Minimum Front Yard	7.8.2.5	3.59 m (Variance A13/2022)	5.6 m	+ 2.01 m
Minimum Rear Yard	7.8.2.6	7.5 m	5.18 m	- 2.32 m

5.0 Site Features

The subject lands are located on the western side of Sterling Street, south of Spring Street, north of Grand River Avenue. The lands have an area of 471 m² and contain a single detached dwelling. The subject lands are located in an established residential area consisting of primarily single detached dwellings.

Figure 2 - Location Map

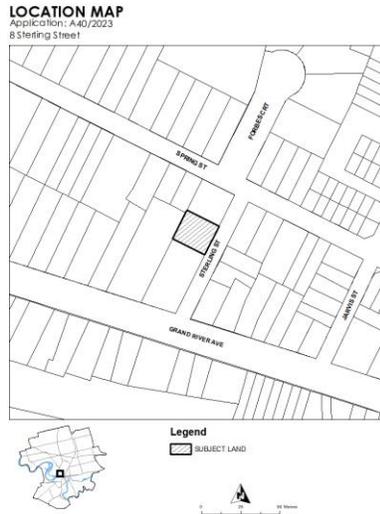


Figure 3 - Aerial Photo



Figure 4 - View of the subject property.



Figure 5 - View of the subject property.



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	Provide spatial separation calculations for the rear building face for the reduced setback.

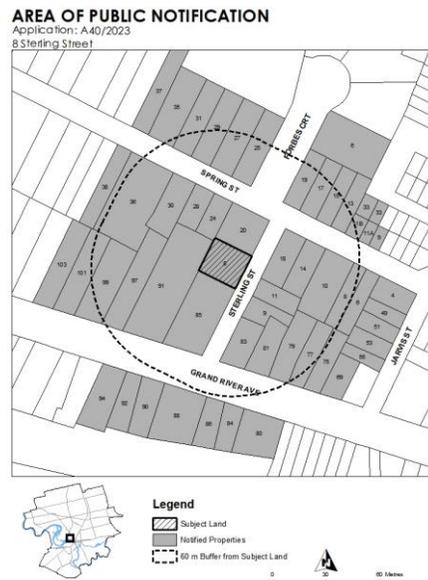
Agency Name	Agency Comment
	<p>No concerns regarding increased lot coverage requirements.</p> <p>Building permit required to demolish existing house, carport and shed (if over 15m² area).</p> <p>Any proposed construction will require that a building permit be applied for and approved through this department. Development charges may apply to any new development.</p>
Environmental Services	No comments.
Development Engineering	No comments.
Landscape	Development Landscaping is not in support of the reduced rear yard setback unless it can be demonstrated that development and grading of the property can occur without disturbance to the critical root zone of the existing boundary trees.
Economic Development	Economic Development has no comments on the application.
Source Water Protection	8 Sterling St. is not located within the Intake Protection Zone. There are no Source Water Protection requirements for this application.
Transit	None received.
Transportation	Staff cannot support the proposed 5.6 meter front yard setback since a minimum of 6.0 meters would need to be provided to prevent vehicular overhang onto the right-of-way.
Bell Canada	None received.
Long Range	None received.
Brant County	No comments.
Canada Post	No comments.
GRCA	None received.
MTO	None received.
CN Rail	It is noted that the subject site is within 1000 meters of CN railway operations including the Brantford Yard's. CN has concerns of developing/densifying residential uses in proximity to railway operations. Development of sensitive uses in proximity to railway operations cultivates an environment in which land use incompatibility issues are exacerbated. CN's guidelines reinforce the safety and well-being of any existing and future occupants of the area. Please refer to

Agency Name	Agency Comment
	<p>CN's guidelines for the development of sensitive uses in proximity to railways. These policies have been developed by the Railway Association of Canada and the Federation of Canadian Municipalities. CN encourages the municipality to pursue the implementation of the following criteria as conditions of an eventual project approval:</p> <ul style="list-style-type: none"> • <i>“The Owner shall engage a consultant to undertake an analysis of noise. Subject to the review of the noise report, the Railway may consider other measures recommended by an approved Noise Consultant.</i> • <i>The following clause should be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 1000m of the railyard right-of-way:</i> <p style="margin-left: 40px;"><i>“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 1000 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”</i></p> • <i>The Owner shall through restrictive covenants to be registered on title and all agreements of purchase and sale or lease provide notice to the public that the noise isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN.”</i> <p>CN anticipates the opportunity to review a noise study taking into consideration CN development guidelines.</p>

6.2 Public Response

Notice of public hearing was issued by personal mail (54 notices) and by posting of a sign on-site. At the date of the preparation of this Report, no written responses have been received.

Figure 6 - 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>Planning Staff is of the opinion that the proposed minor variance application is consistent with the direction set out in the PPS and 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.</p>	<p>The subject application conforms to the policies set out in the Official Plan.</p>
<p>City of Brantford Zoning By-law 160-90</p>	<p>The subject lands are zoned “Residential Conversion (RC)” in Zoning By-law 160-90. The “Residential Conversion (RC)” zone permits single detached, semi-detached, duplex, triplex, converted dwellings, and Street townhouse dwellings, comprising a maximum of three attached dwelling units, etc.</p>	<p>Aside from the proposed variances sought, the subject property will continue to satisfy all other zoning requirements of the RC Zone.</p>

7.2 Planning Analysis

When evaluating the merits of a minor variance application, the Committee of Adjustment must be satisfied that the four tests of Section

45(1) of the *Planning Act* have been met. 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

Four Tests	Discussion
1. That the requested variance is minor in nature	Planning Staff are of the opinion that this request for minor variances are considered minor in nature, as it would involve minor variations from the RC Zone By-law to permit a residential use within a predominately residential area. All other regulations of the By-law are satisfied.
	“Minor” is determined by impact, not by the value of the variance being sought. Allowing for the proposed variations will not change the character of the existing neighbourhood.
2. That the intent and purpose of the Zoning By-law is maintained	Aside from the proposed variances, the subject property will continue to satisfy all other zoning requirements of the RC Zone.
	In consultation with Transportation Staff, Staff cannot support the 5.6 meter front yard setback as proposed given that a minimum of 6.0 meters would need to be provided to prevent vehicular overhang onto the municipal right-of-way. It is Planning Staff’s opinion that a 6.0 metre front yard setback is recommended. Staff recommended the same provision for the previous application (A13/2022), wherein the Committee supported the same recommendation in their decision dated July 6, 2022.
	It is Planning Staff’s opinion that the proposed variances will continue to maintain the intent and purpose of the Zoning By-law, as amended by Staff.
3. That the general intent and purpose of the Official Plan is maintained	The Official Plan highlights several guiding principles aimed at promoting strategic intensification with balanced mixture of services, business, shopping and housing options for residents, students and visitors.
	It is the opinion of Planning Staff that the proposal will maintain the general intent and purpose of the Official Plan.
4. That the variance is desirable for the appropriate	This application is desirable as it supports a variety of goals for future intensification such as the efficient land use. The proposed variance will facilitate the development of

Four Tests	Discussion
development and use of the land, building or structure	residential units which will assist in increasing the much-needed housing stock in the City.

Comments were received from CN Rail which recommended the implementation of three conditions of eventual project approval (see **Table 2**). The three conditions included the request for a noise study to be completed, that a warning clause be added to purchase of sale agreements given the proximity to the railway which speaks to implementing noise and vibration mitigation measures into the design of future developments, and that restrictive covenants to be registered on title and all agreements of purchase and sale or lease provide notice to the public that the noise isolation measures implemented are not to be tampered with or altered and further that the Owner shall have sole responsibility for and shall maintain these measures to the satisfaction of CN.

Staff has reviewed the requested conditions and note that the proposed development of a two-storey three-unit townhouse would not be subject to site plan control given that the development would fall below the 10-unit requirement of applying site plan control (as now required by Provincial legislation). Given the new legislative framework, there is no mechanism or instrument to address the first two conditions requested by CN. However, this has been dealt by the Committee in similar minor variance applications. Staff has included wording to address this matter in Recommendations A to C by including the following wording after each variance “*conditional upon the registration of an environmental easement for operational noise and vibration emissions, in favour of CN Rail*”. In Staff’s previous experiences regarding such requests, this would address the comments received by CN Rail. For Committee members information, CN Rail had not provided comments on the previous application A13/2022, and therefore this additional wording was not recommended by Staff for that application. Staff has advised the agent, and they have not raised any objection to the Staff amended recommendation/wording.

7.3 Conclusion

A site inspection was completed on November 17, 2023. Upon completion of this visit and review of the applicable policies, Planning Staff are supportive of the requested variances regarding file A40/2023. For the reasons mentioned above, the minor variances satisfy the criteria of Section 45(1) of the *Planning Act*, and Staff recommends that application A40/2023 be approved with the staff amendment as indicated within Recommendation B above. The Staff amendment to the proposed front yard setback was discussed with the agent, and no concerns were raised through this discussion.

Tausha Adair

Prepared By:
Tausha Adair, BES, MCIP, RPP
Intermediate Development Planner
Prepared on: November 30, 2023

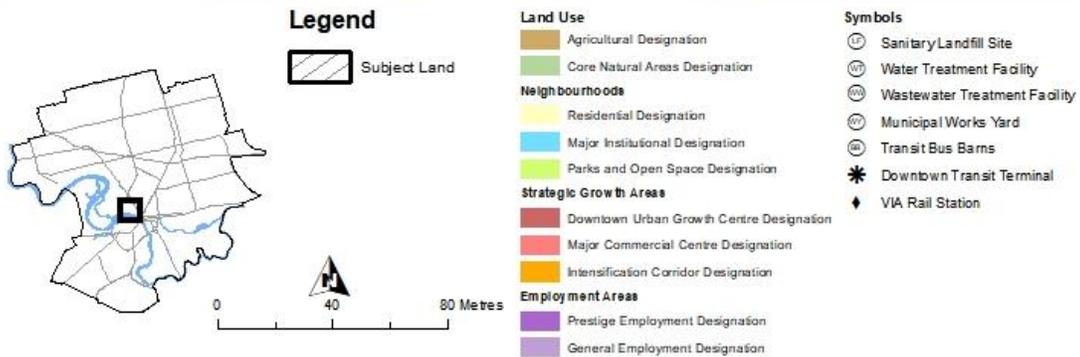
Joe Muto

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

Appendix A – Official Plan

OFFICIAL PLAN EXCERPT MAP

Application: A40/2023
8 Sterling Street



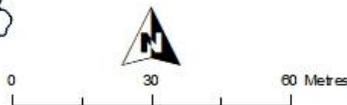
Appendix B – Zoning By-law

ZONING

Application: A40/2023
8 Sterling Street



Legend
Subject Land
Zone Boundary



ZONING (Bylaw 160-90) and County of Brant(61-16)
RC Residential Conversion
R4A Residential Medium Density Type A
R4B Residential Medium Density Type B
RHD Residential High Density
OS1 Open Space Type 1
-# Exception Number