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**Date** February 7, 2024 **Report No.** 2024-85  
**To** Chair and Members  
City of Brantford Committee of Adjustment  
**From** Dora Pripon  
Development Planner

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### 1.0 Type of Report

Committee of Adjustment Decision Regarding Applications for Consent and Minor Variance

### 2.0 Topic

**APPLICATION NO.:** B03/2024, B04/2024, B05/2024, B06/2024, B07/2024 and A06/2024

**AGENT:** J. H. Cohoon Engineering Ltd. c/o Bob Phillips

**APPLICANT/OWNER:** 11325493 Canada Inc. c/o Usman Khan

**LOCATION:** 161 Fifth Avenue

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### 3.0 Recommendation

- A. THAT Consent applications B03/2024 requesting to sever a parcel of land from the subject property municipally addressed as 161 Fifth Ave, having a lot area of 156.6 m<sup>2</sup> and a retained parcel of land having a lot area of 228.5 m<sup>2</sup>, and to create an access easement to the rear yards BE APPROVED subject to the Conditions of Consent, attached to Report 2024-85 as **Appendix A**;

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- B. THAT the reason(s) for approval of B03/2024 are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act*, is suitable for the lands, in the public interest, and would not result in adverse impacts on surrounding properties;
- C. THAT Consent applications B04/2024 requesting to sever a parcel of land from the subject property municipally addressed as 161 Fifth Ave, having a lot area of 156.1 m<sup>2</sup> and a retained parcel of land having a lot area of 228.5 m<sup>2</sup>, and to create an access easement to the rear yards BE APPROVED subject to the Conditions of Consent, attached to Report 2024-85 as **Appendix A**;
- D. THAT the reason(s) for approval of B04/2024 are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act*, is suitable for the lands, in the public interest, and would not result in adverse impacts on surrounding properties;
- E. THAT Consent applications B05/2024 requesting to sever a parcel of land from the subject property municipally addressed as 161 Fifth Ave, having a lot area of 155.7 m<sup>2</sup> and a retained parcel of land having a lot area of 228.5 m<sup>2</sup>, and to create an access easement to the rear yards BE APPROVED subject to the Conditions of Consent, attached to Report 2024-85 as **Appendix A**;
- F. THAT the reason(s) for approval of B05/2024 are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act*, is suitable for the lands, in the public interest, and would not result in adverse impacts on surrounding properties;
- G. THAT Consent applications B06/2024 requesting to sever a parcel of land from the subject property municipally addressed as 161 Fifth Ave, having a lot area of 155.2 m<sup>2</sup>, and a retained parcel of land having a lot area of 228.5 m<sup>2</sup>, and to create an access easement to the rear yards BE APPROVED subject to the Conditions of Consent, attached to Report 2024-85 as **Appendix A**;
- H. THAT the reason(s) for approval of B06/2024 are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act*, is suitable for the lands, in the public interest, and would not result in adverse impacts on surrounding properties;
- I. THAT Consent applications B07/2024 requesting to sever a parcel of land from the subject property municipally addressed as 161 Fifth Ave, having a lot area of 223.8 m<sup>2</sup>, and a retained parcel of land having a lot area of 228.5

m<sup>2</sup>, and to create an access easement to the rear yards BE APPROVED subject to the Conditions of Consent, attached to Report 2024-85 as **Appendix A**;

- J. THAT the reason(s) for approval of B07/2024 are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act*, is suitable for the lands, in the public interest, and would not result in adverse impacts on surrounding properties;
- K. THAT application A06/2024 seeking relief from Section 7.9.4.84.1.1 of Zoning By-law 160-90 to permit a minimum lot area of 155 m<sup>2</sup> per unit, BE APPROVED;
- L. THAT the reasons for the approval of the minor variance are as follows: the proposed variance that would provide relief from Section 7.9.4.84.1.1 is in keeping with the general intent and purpose of the Official Plan and Zoning By-law, the relief requested is considered minor in nature and desirable for the appropriate development and use of the subject lands;
- M. 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 2024-85.”*

#### 4.0 Purpose and Description of Applications

The City of Brantford has received five Consent applications and a Minor Variance Application for the property municipally described as 161 Fifth Avenue. The applicant proposes to sever five lots from the existing lot, for a total of six lots that would range in size from 155.2 m<sup>2</sup> to 228.5 m<sup>2</sup> and would range in lot width from 5.49 m to 7.9 m, as shown in **Table 1 – Lot Dimensions** as well as **Figure 1 – Severance Sketch**. The proposed development for the site will be a six unit street townhouse building with access easements into the rear yards, as shown in **Figure 2 – Site Plan**.

Table 1 - Lot Dimensions

	Required (F-R4A-84 Zone)	(Retained Lot)	Parcel 1 B03/2024	Parcel 2 B04/2024	Parcel 3 B05/2024	Parcel 4 B06/2024	Parcel 5 B07/2024
Lot Width	5.4 m	7.9 m	5.49 m	5.49 m	5.49 m	5.49 m	7.94 m
Lot Depth	N/A	28.58 m	28.5 m	28.41 m	28.33 m	28.25 m	28.13 m

<b>Lot Area</b>	*1075 m <sup>2</sup>	228.5 m <sup>2</sup>	156.6 m <sup>2</sup>	156.1 m <sup>2</sup>	155.7 m <sup>2</sup>	155.2 m <sup>2</sup>	223.8 m <sup>2</sup>
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\*This is an oversight. More information about this is found in **Section 7.2.1** of this report.

Figure 1 - Severance Sketch

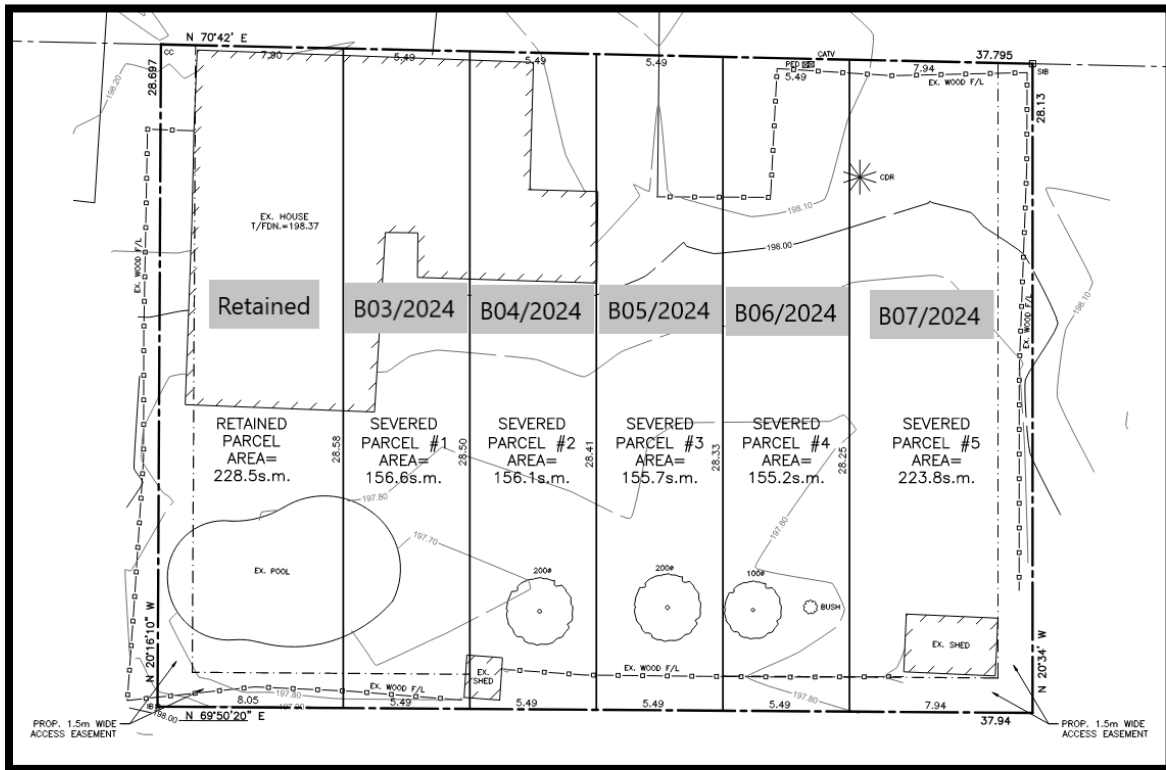
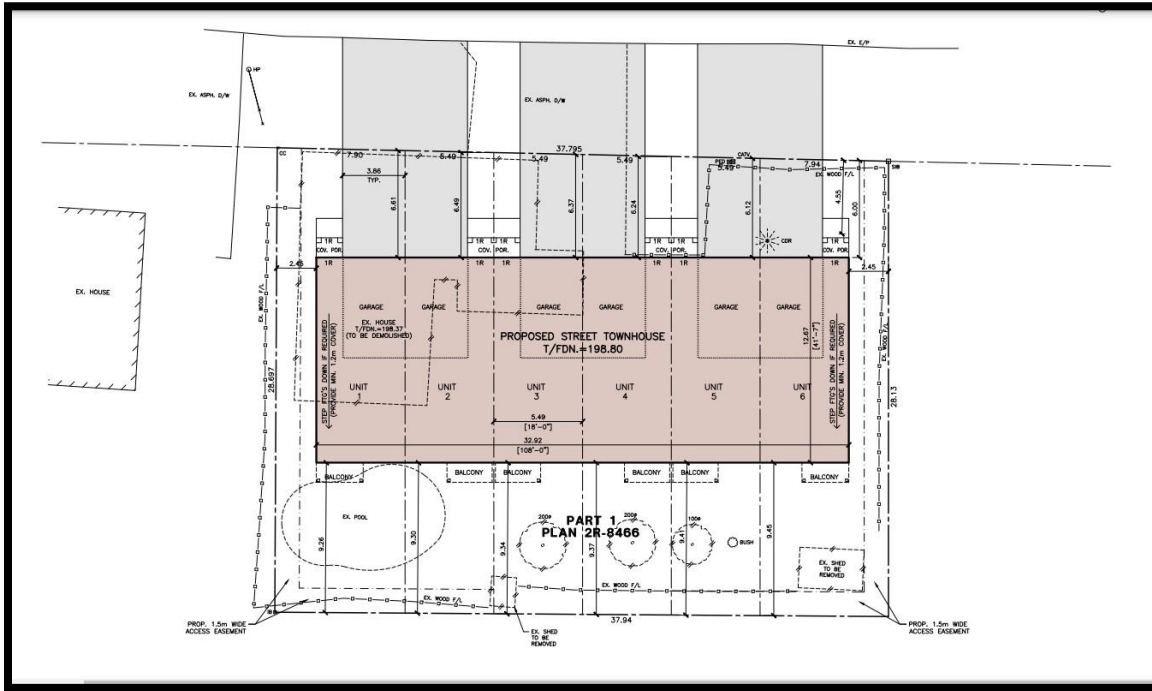


Figure 2 - Site Plan



## 5.0 Site Features

The subject lands are designated “Residential” in the Official Plan and zoned “Flood – Residential Medium Density Type B – Exception 84 Zone (F-R4A-84)” in Zoning By-law 160-90, as shown in **Appendix B** and **Appendix C**, respectively. The following is a description of the land use surrounding the subject lands.

- North** Residential detached dwellings (158, 160 & 162 Fifth Ave)
- South** Residential detached dwelling (364 Erie Ave)
- East** Single detached dwelling (360 Erie Ave) and School administration building across the street
- West** Open space (designated “Residential” in the Official Plan)

Figure 3 - View of subject lands from Fifth Ave looking northeast



Figure 4 - View of the neighboring properties across the street



## 6.0 Input from Other Sources

### 6.1 Technical Comments

This application was circulated to all applicable departments and agencies on December 15, 2023. Several departments provided conditions, as shown in **Appendix A – Conditions of Consent** and **Appendix D – Technical Comments**. However, no objections were received.

### 6.2 Public Comment

A Notice of Public Hearing was issued by personal mail (19 notices) on January 16, 2024 to property owners within 60 metres of the subject lands pursuant to the *Planning Act*. No public comments were received at the writing of this Report.

## 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 of the analysis is provided below.

## 7.2 Planning Analysis

### 7.2.1 Consent Applications

The *Planning Act* sets the standard to which provincial and local interests, policies, and goals are implemented. Section 51(24) of the *Planning Act* lists the criteria that the Committee of Adjustment must have regard for when considering a consent application, as summarized in the table below.

Table 2 - Criteria for Considering a Consent Application

Criteria for Considering a Consent Application	Discussion
<p>1. That the plan conforms to the Official Plan</p>	<p>The proposed consent applications are for the purpose of creating five new residential lots within an existing residential neighbourhood. According to the Official Plan, the subject lands are also near a designated intensification corridor to the west. The Official Plan notes that the intent of Intensification Corridors is as follows.</p> <p>Section 5.3.3.a.  <i>“...function as the connective spines of the City, as well as destinations for the <b>surrounding neighbourhoods</b>. It is the intent of this Plan that lands within the Intensification Corridor Designation provide significant opportunities for creating vibrant, pedestrian and transit-oriented places through investment in infrastructure, residential intensification, <b>infill and redevelopment</b>...”</i></p> <p>The subject lands previously contained a single detached dwelling which has since been demolished and now are currently vacant (see <b>Figure 3</b>). The proposed severances would facilitate the proposed re-development of the 3-storey 6-unit townhouse for the subject lands, as it would allow the creation of the individual units.</p> <p>Section 3.1 of the Official Plan contains policies, which promote housing opportunities consisting of a mix and range of market-based housing types, tenures and affordability characteristics to meet the needs of a growing and diverse population. The proposed development would positively contribute to the housing stock available in the community.</p> <p>In addition to the ‘Residential’ designation, the subject lands are also designated within “Special Policy Area 1” as per Schedule 7-1 of the City of Brantford Official Plan regarding the floodplain. Policy 6.1.2(b) states <i>“Notwithstanding the uses permitted by the underlying land use designations established elsewhere in this Plan, the following shall not be permitted in Special Policy Areas 1 and 2:</i></p> <ul style="list-style-type: none"> <li data-bbox="727 1780 1416 1839">i. <i>Uses that would permit vulnerable persons to occupy the site;</i></li> <li data-bbox="727 1839 1357 1875">ii. <i>New essential emergency services consisting of</i></li> </ul>



Criteria for Considering a Consent Application	Discussion
	<p style="text-align: center;"><i>police, fire and ambulance stations and major electrical sub-stations; and,</i></p> <p style="text-align: center;"><i>iii. Basements or crawlspaces shall not be permitted in new development, including additions to existing buildings.”</i></p> <p>The proposed consent applications comply with these policies.</p> <p>Section 9.3 (g – i) of the Official Plan also outlines criteria for the subdivision of land and stipulates when consents are appropriate which includes:</p> <p style="margin-left: 40px;"><i>g) A Consent to sever land shall only be considered where a Plan of Subdivision is deemed to be unnecessary and where the application conforms to the policies of the Official Plan,</i></p> <p style="margin-left: 40px;"><i>h) The maximum number of new lots approved by the City on one property through Consent shall be three (3), <b>where appropriate.</b></i></p> <p>Should these consent applications be approved, the number of new lots created on the property will be six (6). Although this is the case, as mentioned above, Staff is of the opinion that these severances would conform to the policies of the Official Plan. As discussed further below, the proposed development for this site has already undergone rigorous analysis through the Zoning By-law Amendment process (file number <a href="#">PZ-02-22</a>), which has been approved by City Council. Therefore, Staff find that a Plan of Subdivision application, which would most likely have a longer timeline to complete than a consent application, would be unnecessary and slow down the development of additional residential units to the neighbourhood, as encouraged by the Official Plan.</p>
<p>2. The dimensions and shapes of the proposed lot</p>	<p>In 2022, City Council members approved Zoning By-law <a href="#">PZ-02-22</a> on these subject lands. Council approved that application for total lot area of 1075 m<sup>2</sup> with a minimum lot area of 155 m<sup>2</sup> per unit. Staff notes that the minimum lot area of 1075 m<sup>2</sup> is currently included in the Zoning By-law (Section 7.9.4.84.1.1) however; the line item to note is that the minimum lot area per unit is 155 m<sup>2</sup> was not included. As such, we can proceed with the assumption that the proposed severances meet the approved Zoning By-law minimum lot area per unit of 155 m<sup>2</sup> as the smallest lot area is Parcel 4 at 155.2 m<sup>2</sup> (B0-06-2024) (see <b>Figure 1 – Severance Sketch</b>). Staff notes that all of the proposed parcels meet the required Lot Width as per exception 84 in the Zoning By-law which is 5.4m/unit (see <b>Table 1 – Lot Dimensions</b>).</p> <p>The proposed minimum lot area per unit is similar to other parcels with exception policies in zone R4A which were either approved by Council or the Committee of Adjustment. For example, 611 to 675 Grey Street (R4A-36) has a minimum lot area of 148 m<sup>2</sup> per unit and 105 Garden Avenue (R4A-59) has a minimum lot area of 160 m<sup>2</sup> per unit.</p>
<p>3. The adequacy of utilities and municipal services</p>	<p>The retained parcel and severed lots will have frontage on a municipal roadway and have access to municipal services and utilities. It is noted that a condition of approval of these consent applications is that a Servicing Plan prepared by a qualified Engineer licensed in the Province of Ontario, be</p>

Criteria for Considering a Consent Application	Discussion
	submitted to the satisfaction of the Manager of Development Engineering or his/her designate, as shown in <b>Appendix A</b> .

### 7.3 Minor Variance Application

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. Section 7.9.4.84.1.1 of the Zoning By-law should have included a minimum lot area per unit, in this case, 155 m<sup>2</sup> per unit. As noted above, this was an oversight by the applicant and City Staff. This inclusion of a per unit minimum lot area would be consistent with other exceptions to the minimum lot area for the R4A zone in the Zoning By-law (Section 7.9.2) in other areas of the City. However, Section 7.9.4.84.1.1 only displays a minimum lot area of 1075 m<sup>2</sup>, as amended by By-law No. 147-202.

Zoning By-law 160-90 requires a lot area per unit of 185.0 m<sup>2</sup> for townhouse dwellings in a R4A zone. The proposed development is comprised of 6 units and would require a total lot area of 1,110 m<sup>2</sup>. As per Staff Report [2022-438](#), Staff recommended approval of the reduced lot area to 1,075 m<sup>2</sup>, for the following reasons.

*“The requirement for minimum lot area is included in the Zoning By-law to ensure that new development and redevelopment is able to accommodate appropriate building sizes and to prevent properties from being overdeveloped. It is the opinion of Planning Staff that the proposed reduced lot area is sufficient to facilitate the proposed modestly sized two and three bedroom townhouses without negatively impacting usability of the units or the lands. Further, the proposed reduction in lot area would allow a greater unit yield for the townhouse development. It should be noted that reduction in lot area for similar developments has been supported by Council in the past.”*

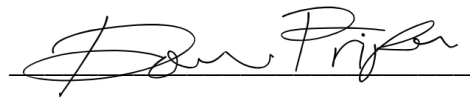
Given that Zoning By-law Amendment [PZ-02-22](#) has been approved, it has already been determined that the reduction in overall minimum lot area meets the general intent of the Official Plan, the general intent of the

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Zoning By-law, as well as is desirable. For the reasoning mentioned above, Staff recommends approval of this minor variance.

## 7.4 Conclusion

A site inspection was completed on January 22, 2023. Upon completion of this visit and review of all applicable policies, Staff is supportive of the requested severances and easements regarding file B03-2024 to B07-2024 subject to the conditions in **Appendix A** as well the approval of variance regarding file A06/2024. The supported severances would facilitate additional residential development that is in keeping with the vision of the Official Plan and provisions in the Zoning By-law. For the reasons discussed above, the consent applications satisfy Section 51(24) of the *Planning Act* and the minor variance application satisfies the criteria of Section 45(1) of the *Planning Act*, and Staff recommends approval.



Prepared by: Dora Pripon  
Planner, Development Planning  
Prepared on: February 1, 2024



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

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## Appendix A – Conditions of Consent

1. Receipt of a registered reference plan showing the severed and retained parcels, and access easements.
2. Receipt and confirmation that Application A06/2024 receives final and binding approval and is in full force and effect.
3. Receipt of payment for cash-in-lieu of parkland (*amount to be determined in accordance with City of Brantford By-law 139-2022*).
4. Receipt of confirmation that all taxes are paid up to date;
5. Receipt of confirmation that the applicant shall submit to the Secretary-Treasurer a draft of the Transfer deed for review (*Upon registration a final copy of the Transfer deed shall be provided to the City*);
6. Receipt of confirmation from the Manager of Development Engineering or his/her designate, indicating that the deposited reference plan showing the severed and retained parcels of land has been received.
7. Receipt of confirmation from the Manager of Development Engineering or his/her designate, indicating that a Wastewater Allocation Request Form has been submitted and approved.
8. Receipt of confirmation from the Manager of Development Engineering or his/her designate, indicating that a Municipal Numbering Assignment Request Form to assign a municipal address number to the severed and/or retained parcel(s) has been submitted to the satisfaction of the Manager of Development Engineering.
9. The Owner/Applicant shall provide a Servicing Plan prepared by a qualified Engineer licensed in the Province of Ontario, to the satisfaction of the Manager of Development Engineering or his/her designate. The Servicing Plan shall indicate that the severed and retained parcels have been independently serviced with a sanitary and storm sewer connection and that these services do not cross the proposed severance line(s) and are connected directly to City infrastructure to the satisfaction of the Manager of Development Engineering.
10. The Owner/Applicant shall be responsible, financial and otherwise, to provide sanitary sewer connections to each parcel of land (severed and retained) to ensure each parcel has been independently serviced to the satisfaction of the Manager of Development Engineering or his/her designate.
11. The Owner/Applicant shall provide a Grading and Drainage Plan prepared by a qualified Engineer licensed in the Province of Ontario for each parcel, to the satisfaction of the Manager of Development Engineering or his/her designate. The Grading and Drainage Plans shall further demonstrate conformance with City of

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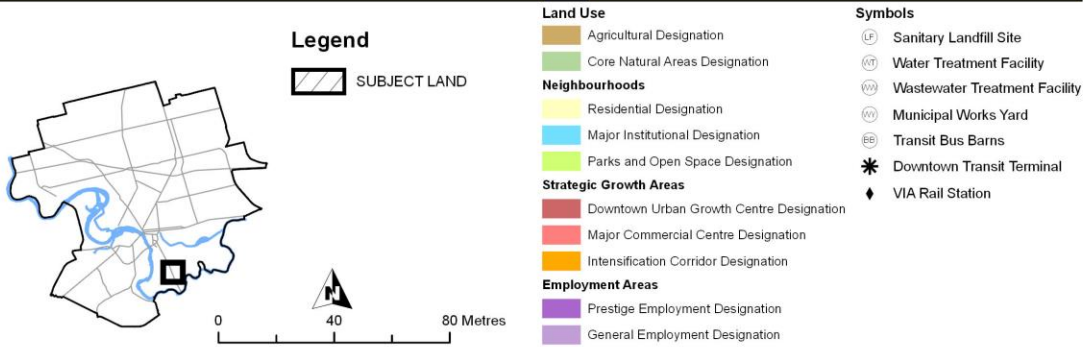
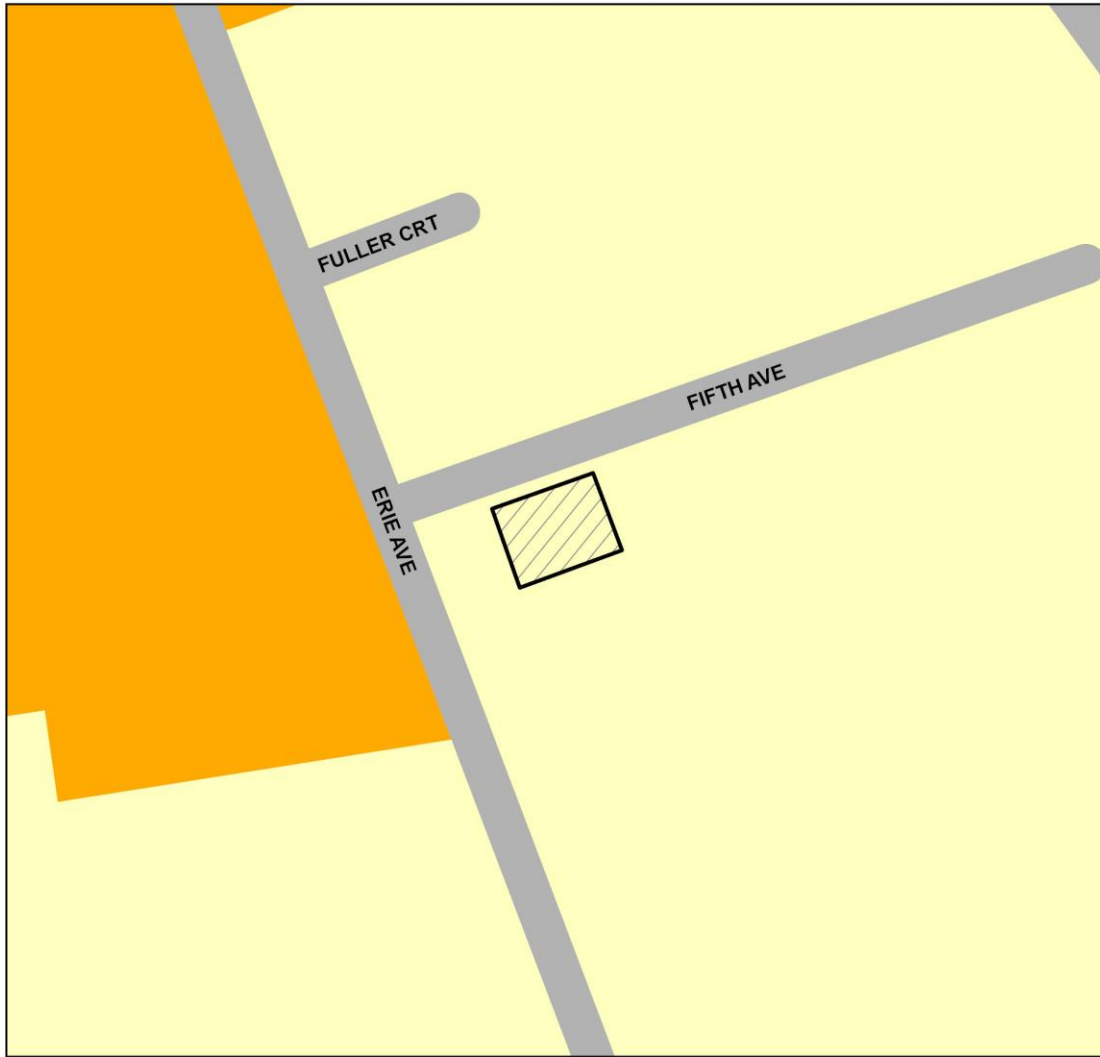
Brantford Official Plan – Section 6.1 Floodplain Areas (Top of Foundation Compliance, etc.) to the satisfaction of the Manager of Development Engineering.

12. The Owner/Applicant shall be responsible, financial and otherwise, to urbanize and restore the municipal right of way across the entire frontage of each parcel to City of Brantford Standards, as per the Linear Design Manual (Asphalt, Curbs, Boulevard Topsoil and Sod, Sidewalk, Street Trees, Driveways), to the satisfaction of the Manager of Development Engineering.
13. Receipt of confirmation that the Grand River Conservation Authority requirements have been met.
14. Receipt of confirmation that the Building Department requirements have been met.
15. Receipt of confirmation that the Development Engineering Department requirements have been met.
16. That the above conditions be fulfilled and the Certificate of Consent be issued on or before **February 7, 2026**, after which time the consent will lapse.

**Appendix B – Official Plan**

**OFFICIAL PLAN EXCERPT MAP**

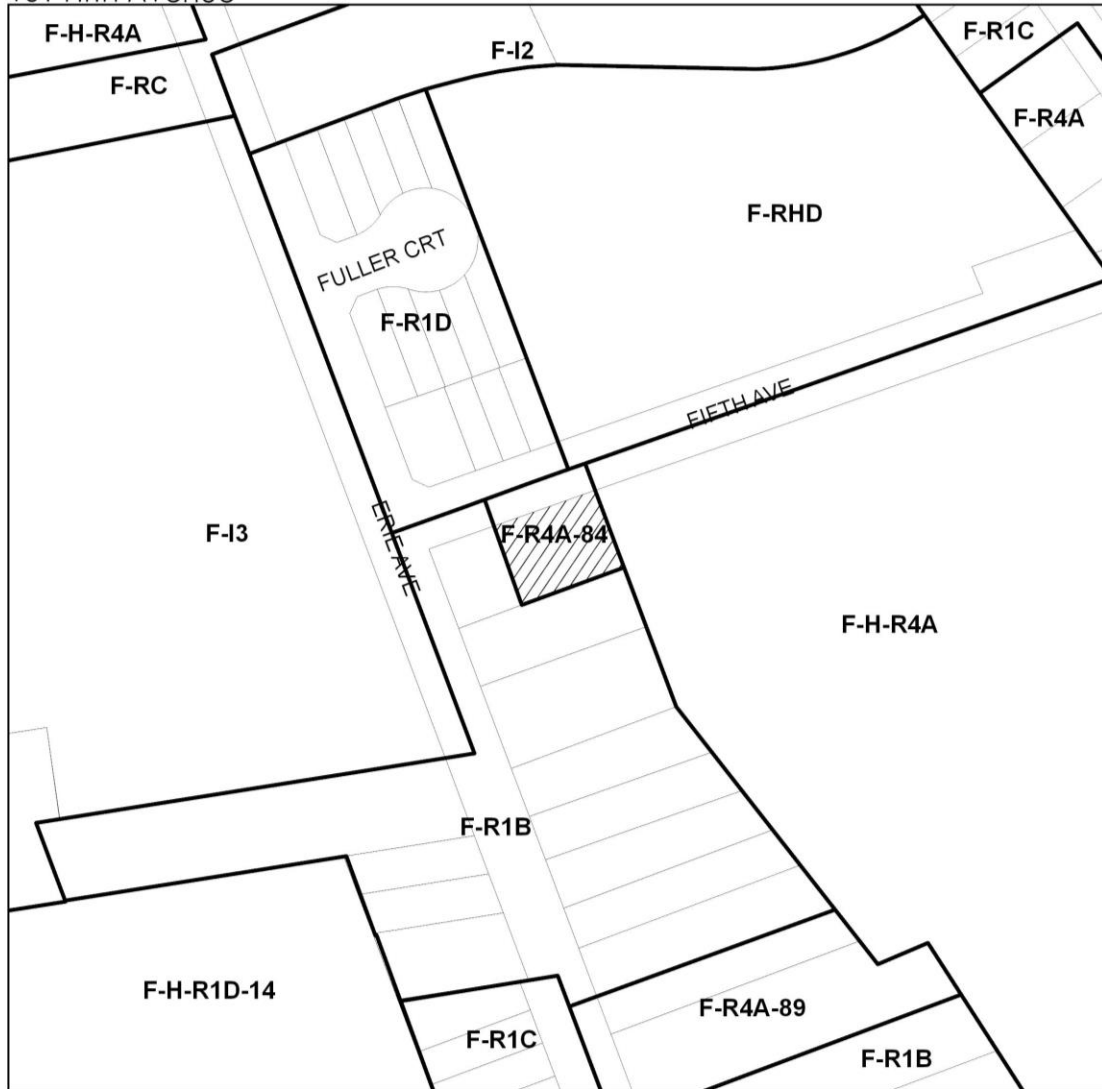
Application: B03/2024 to B07/2024 & A06/2024  
 161 Fifth Avenue



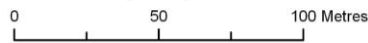
**Appendix C – Zoning By-law 160-90**

**ZONING MAP**

Application: B03/2024 to B07/2024 & A06/2024  
 161 Fifth Avenue



**Legend**  
 Subject Lands  
 Zone Boundary



**ZONING (Bylaw 160-90) and County of Brant(61-16)**  
 R1B RESIDENTIAL Type 1B (15 metre)  
 R1C RESIDENTIAL Type 1C (12 metre)  
 R1D RESIDENTIAL Type 1D (9 metre)  
 RC RESIDENTIAL CONVERSION  
 R4A RESIDENTIAL MEDIUM DENSITY Type A  
 I2 INSTITUTIONAL SCHOOL  
 I3 INSTITUTIONAL MAJOR  
 H HOLDING PROVISION  
 F FLOODPLAIN PROVISION  
 -# Exception Number

## Appendix D – Technical Comments

Agency Name	Agency Comment
<b>Accessibility</b>	No comments.
<b>Building Department</b>	<p>Proposed interior lot lines in line with current fire separations (which will become party walls).</p> <p>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.</p>
<b>Development Engineering</b>	<p>A Site Alteration Permit will be required for any changes/modifications made to the site as defined by the Site Alteration By-Law 29-2023. This Permit is administered by the City's Development Engineering Department.</p> <p>A Right of Way Activity Permit will be required for any access/driveway activity, any proposed excavation activity within the Right of Way and any occupancy activity within the Right of Way. This Permit is administered by the City's Operational Services Department.</p> <p>A Sanitary Lateral Connection Permit will be required for any proposed sanitary service connections. This Permit is administered by the City's Development Engineering Department.</p> <p>A Water Connection Permit will be required for any proposed water service connections. This Permit is administered by the City's Environmental Services Department.</p> <p>Full public services are to be constructed, or replaced if damaged (sidewalk, boulevards, driveway approaches, noise barrier, etc.)</p>
<b>Environmental Services</b>	No comments.
<b>Fire</b>	No comments.
<b>Grand River Conservation Authority (GRCA)</b>	<p>GRCA has reviewed this application under the Mandatory Programs and Services Regulation (Ontario Regulation 686/21), including acting on behalf of the Province regarding natural hazards identified in Section 3.1 of the Provincial Policy Statement (PPS, 2020), as a regulatory authority under Ontario Regulation 150/06, and as a public body under the Planning Act as per our CA Board approved policies.</p> <p>Information currently available at this office indicates that the subject lands are within the floodplain of the Grand River. This reach of floodplain is within Special Policy Area 1 outlined in the City of Brantford Official Plan. Please be advised that any future development on the subject lands must conform to the City of Brantford and GRCA Special Policy Area policies. A copy of GRCA's resource mapping is attached.</p> <p>Due to the presence of the floodplain, the subject lands are regulated by the GRCA under Ontario Regulation 150/06 - Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation. Any future development or</p>



Agency Name	Agency Comment
	<p>other alteration on the subject lands will require prior written approval from GRCA in the form of a permit pursuant to Ontario Regulation 150/06.</p> <p>The consent applications propose to sever five lots from the existing lot, creating a total of six lots. GRCA has no objection to the approval of the proposed consent applications. We note that the proposed development must meet the technical requirements in the Special Policy Area policies outlined in the City of Brantford Official Plan. Early pre-consultation with GRCA staff is recommended to review the applicable policies and determine submission requirements for any subsequent GRCA permit applications on the severed or retained lands.</p>
<b>Heritage</b>	No comments.
Landscaping	Please look to replant trees on the property due to the proposed removals, whether that be in the front or rear yard.
Long Term Planning	No comments.
Source Water Protection	161 Fifth Ave. is located within IPZ-3-v.8, however this consent & minor variance application does not require the Restricted Land Use Declaration form for Source Water Protection to be completed. There are no Source Water Protection requirements for this application.
Six Nations	Six Nations just asks that trees that are removed be replaced at a 10:1 ratio.
Transit	<p>The site is within the service area of route 1 (seven days per week) and route 12 (Evenings Monday to Saturday), the closest stop in located at Erie Ave and Ninth Ave (225m from the site)</p>
	Lift service would be offered curbside at this site along Fifth Ave.
Transportation	No comments.
Canada Post	Please be advised that Canada Post does not have any comments on this zoning application for lot size. As previously mentioned under file # PI-56-19 these 6 lots will be serviced by Community mailboxes to be installed. Any questions, please advise. Connie Richardson, Canada Post.

**GRCA Attachment:**

