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**Date** August 7, 2024 **Report No.** 2024-442  
**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 [X]

### 2.0 Topic

**Application No.** B29-2024 & A36-2024  
**Applicant/Owner** Muhammad Mughal  
**Location** 32 Niagara Street

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### 3.0 Recommendation

- A. THAT application A36-2024 seeking relief from Section 7.8.2.1.2.1 of Zoning By-Law 160-90 to permit a lot width of 8.3 m for the severed parcel, whereas a minimum of 9 m is otherwise required, BE APPROVED;
- B. THAT the reason(s) 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;

- C. THAT Consent application B29-2024 requesting to sever a parcel of land from the subject property municipally addressed as 32 Niagara Street, having a lot area of 333.97 m<sup>2</sup> and a retained parcel of land having a lot area of 472.66 m<sup>2</sup>, BE APPROVED subject to the Conditions of Consent, attached to Report 2024-442 as **Appendix A**;
- D. THAT the reason(s) for approval of B29-2024 are as follows: having regard for the matters under Section 51 (24) of the Planning Act, Staff is satisfied that the proposed consent application is desirable and compatible with the surrounding area and will not result in adverse impacts on surrounding properties; and,
- E. THAT pursuant to Sections 53(17)-(18.2) and 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 2024-442.”*

#### 4.0 Purpose and Description of Applications

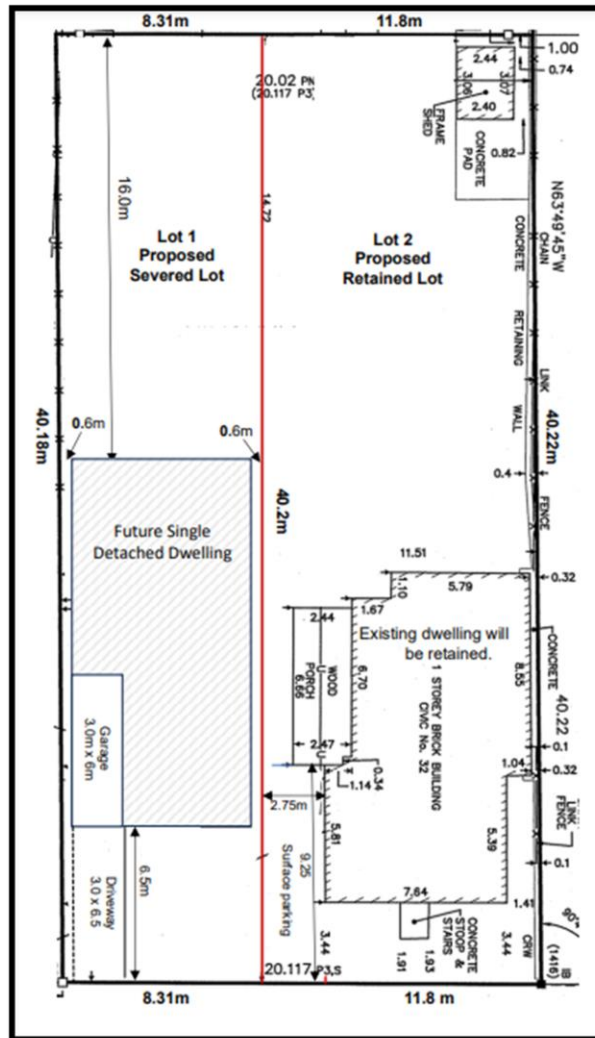
Concurrent consent and minor variance applications have been received for the lands municipally addressed as 32 Niagara Street. The dimensions of both the severed and retained lots are shown in **Table 1** as well as severance sketch in **Figure 1**. To facilitate the consent application, a minor variance application is also required for lot width, as illustrated in **Table 2**. The applicant is seeking relief for 0.7 metres.

The purpose of this application is to facilitate the construction of a 2-storey single detached dwelling, with a ground floor area of approximately 107.14 m<sup>2</sup> (refer to **Figure 1**). The proposed dwelling satisfies all other provisions in the Zoning By-law.

**Table 1 - Lot Dimensions**

	<b>Required (Current RC Zone)</b>	<b>Severed Lot (Lot 1)</b>	<b>Retained Lot (Lot 2)</b>
<b>Lot Area</b>	270 m <sup>2</sup>	333.97 m <sup>2</sup> (Complies)	472.66 m <sup>2</sup> (Complies)
<b>Lot Width</b>	9 m	8.3 m (Does not comply)	11.8 (Complies)

Figure 1 - Severance Sketch



## 5.0 Site Features

The subject lands are located west of Niagara Street, south of Usher Street, east of Bond Street and north of Young Street. The lot to be severed currently contains a detached garage, which is to be demolished, and replaced with a single detached dwelling. The lot to be retained currently has an existing single detached dwelling which is to remain, as shown in **Figure 2**.

- North**      Single detached dwellings
- South**     Single detached dwellings
- East**        Single detached dwellings and CN rail yard

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**West**      Single detached dwellings

Figure 2 - Photo of Subject Lands



## 6.0 Input from Other Sources

### 6.1 Technical Comments

This application was circulated to all applicable departments and agencies on June 21, 2024. Several departments provided conditions of consent, as shown in **Appendix A**. The notable comments are summarized below.

**Cultural Heritage** Staff will require a Stage 1 Archaeological Assessment as the subject property is within an area of Archaeological Potential. This has been captured as a condition in **Appendix A**.

**Transportation** Staff noted that the applicant will be required to obtain a Right of Way Activity Permit administered by the City's Operational Services Department for all work proposed within the road allowance for the purpose of constructing, altering, or extending a driveway approach.

The applicant will also be required to show all existing infrastructure clearly identified on the submitted site plan. All driveways and curb returns shall be designed in such a manner as to avoid public and private objects

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and utilities. This can be addressed as part of a future right-of-way (ROW) permit process with the City. The applicant has been made aware of this requirement.

**CN** has expressed concerns with any proposed residential uses in proximity to railway operations, due to the noise, vibration, safety issues and potential trespass. CN's approach, to sensitive developments in proximity to a railyard, is largely based on a collaborative project by the Federation of Canadian Municipalities and the Railway Association of Canada, the Guide for New Development in Proximity to Railway Operations (the "FCM-RAC Guidelines") and the Province of Ontario Land Use Compatibility, D-series guidelines (the "D-6 Guidelines").

The FCM-RAC Guidelines recommend a minimum setback of 300m for sensitive uses from railyards, a standard that CN fully endorses. Furthermore, the Brantford Railyard is a Class 3 Industrial Facility, as defined in the D-6 Guidelines. The D-6 Guidelines require a 300 metres separation from a Class 3 industrial facility (i.e. the railyard) and a sensitive land use (i.e. the Proposed Development). The proposed development introduces an incompatible sensitive land use within close proximity to the yard.

Additionally, there may be alterations to, or expansions of, the railway facilities on railways or in railyards, in the future, including the possibility that the railway may expand its operations, which may affect the living environment of the residents in the vicinity, increasing the importance of the recommendations outlined in the FCM-RAC Guidelines and D-6 Guidelines and the need for land use compatibility evaluations to be completed.

As outlined above, the recommended setbacks by the FCM-RAC Guidelines and the D-6 Guidelines, for a sensitive use located in proximity to a railyard, cannot be met by the proposed development. As such, CN is opposed to the proposed development. If the City is considering approving the proposed development, CN requires the implementation of the following criteria as conditions of an eventual project approval:

1. 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 railway right-of-way:

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“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a rights-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.”

2. The Owner shall enter into an Agreement with CN stipulating how CN's concerns will be resolved and will pay CN's reasonable costs in preparing and negotiating the agreement.
3. The Owner shall be required to grant CN an environmental easement for operational noise and vibration emissions, registered against the subject property in favour of CN.
4. The implementation of the following mitigation measures in the dwelling design and construction:
  - Forced air ventilation systems with central air conditioning,
  - The exterior wall siding of buildings to be brick or a masonry equivalent for the exposed facades,
  - STC 35 or greater for all windows on all facades with exposure to the rail facilities

Regarding the encroachment of the development within the minimum setback of 300 m for sensitive uses from railyards, Planning staff believes that this development is appropriate as it is proposed in an existing established residential neighbourhood and there has been similar severances approved in this neighbourhood including a recent approval at the corner of Niagara St. and Usher St. Staff also note that there are existing residential dwellings even closer to the railyard than the subject

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lands. To address the CN Rail requirements, a condition of approval has been included in **Appendix A**, which requires the property owner shall enter into a development agreement with CN Rail prior to the construction of any future residential building on the subdivided lot.

**Grandbridge** requested that service to the Existing Dwelling/Proposed Lot #2 be relocated due to aerial encroachment. The applicant will be required to contact GrandBridge Energy Inc. for the relocation of the aerial line, and when ready to set up the service for Proposed Lot #1.

## 6.2 Public Comment

A Notice of Public Hearing was issued by personal mail on July 19, 2024 to property owners within 60 metres of the subject lands pursuant to the *Planning Act*. A member of the public provided comments in opposition to the application which are summarized below and included in **Appendix D**.

The resident is of the opinion that the proposal will cause added infill and intensification to the neighbourhood that is uncharacteristic of the established area that is Niagara Street. The small lot size and crammed-in look can negatively impact property values, privacy, lack of landscaping, degree of sunlight for neighbouring properties, cause potential issues with neighbouring foundations and drainage, parking on the street and access traffic. Prolonged construction that could restrict access to the hospital for emergency services given the large equipment that would have to be on site is also a concern.

Planning staff have responded to this resident and provided the following clarifications regarding some of the concerns stated:

- The severance will not impact the landscaped open space of 32 Niagara Street. Almost all of the proposed lot to be severed is currently paved, as shown in **Figure 2**.
- The proposed dwelling footprint meets the side yard requirements in the Zoning By-law. The proposed dwelling will be no closer than adjacent neighbouring properties.
- The proposed dwelling is proposed to have a driveway to accommodate a parking space.

- With the exception of lot width, the proposed severed and retained lots meet the Zoning By-law requirements. Also, no easements are being requested.
- Construction practices have to adhere to the City’s By-law requirements. Construction activities will be monitored by the City.
- Property owners have to right to apply for a consent application to sever their property under Section 53 of the Ontario *Planning Act*. Additionally, the Official Plan encourages infill development, where appropriate, as a way to meet the City’s density targets.
- A condition of consent is that the applicant must submit a Grading and Drainage Plan which will address any potential grading issues.

## 7.0 Planning Staff Comments and Conclusion

### 7.1 Planning Background

The subject lands are designated “Residential” in the Official Plan and zoned “Residential Conversion (RC)” in Zoning By-law 160-90, as shown in **Appendix B** and **Appendix C**, respectively.

### 7.2 Consent Application

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
1. That the application conforms to the Official Plan	The purpose of the proposed consent application is to create one new residential lot with the intent to construct a residential dwelling within an existing residential neighbourhood. The Official Plan encourages a wide range of housing types to accommodate the anticipated population. Section 3.1(d) of the Official Plan promotes the supply of new affordable housing in a variety of locations, dwelling types and tenures.



Criteria for Considering a Consent Application	Discussion
	<p>Section 9.3 (g – i) of the Official Plan outlines criteria for the subdivision of land and stipulates when consents are appropriate which includes:</p> <p><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><i>h) The maximum number of new lots approved by the City on one property through Consent shall be three (3), where appropriate.</i></p> <p>The proposed severance application satisfies the general intent of the Official Plan regarding the division of land through a consent application.</p>
<p>2. The dimensions and shapes of the proposed lot</p>	<p>The dimensions and lot area of the retained and severed lot satisfy the provisions in the RC zone, except for the lot width of the severed lot. A more in-depth analysis of the deficiency in lot width is outlined below in <b>Table 4</b>.</p>
<p>3. The adequacy of utilities and municipal services</p>	<p>The proposed retained and severed parcels will both have frontage on a municipal roadway and have access to municipal services and utilities. It is noted that a condition of approval of this consent application is that a Servicing Plan prepared by a qualified Engineer licensed in the Province of Ontario, be submitted to the satisfaction of the Manager of Development Engineering or his/her designate, as listed in <b>Appendix A</b>.</p>

### 7.3 Minor Variance

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 maintain the general intent and purpose of the Zoning By-law and Official Plan. These tests are discussed in the table below.

Table 3 - Minor Variance tests

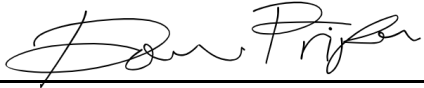
Four Tests	Discussion
1. That the requested variance is <b>minor</b> in nature	“Minor” is determined by impact, not by the value of the variance being sought. The proposed reduction to lot width would result in a property that is slightly narrower than those in the immediate vicinity. The applicant is proposing a lot width of 8.3 m and seeking relief for 0.7 m. Staff is of the opinion that this relief is minor and still generally consistent with the existing neighbourhood surrounding Niagara Street.
2. That the intent and purpose of the <b>Zoning By-law 160-90</b> is maintained	The intent and purpose of minimum lot width is to ensure adequate space for a residential dwelling including respective setbacks and parking. Although narrower, the proposed lot would still maintain adequate space for a residential dwelling. The proposed dwelling is set to have a building footprint of approximately 107 m <sup>2</sup> which satisfies the minimum required gross floor area of 70 m <sup>2</sup> . The proposed dwelling will also satisfy all other requirements, including the side, front, and rear yard requirements. Therefore, it is Planning Staff’s opinion that the proposed variance maintains the general intent of the Zoning By-law.
3. That the general intent and purpose of the <b>Official Plan</b> is maintained	The subject lands are designated “Residential”, wherein a range of dwelling types and supporting land uses are intended to serve the residents. It is the opinion of Staff that the proposed lot width variance maintains the general intent and purpose of the Official Plan.
4. That the variance is <b>desirable</b> for the appropriate development and use of the land, building or structure	It is the opinion of Planning Staff that the proposal is desirable as it would facilitate the creation of a residential lot with a single detached dwelling, which is a permitted use in the Official Plan and Zoning By-law.

## 7.4 Conclusion

A site inspection was completed on July 8, 2024. Upon completion of this visit and review of all applicable policies, Staff is supportive of the requested minor variance and severance applications subject to the conditions in **Appendix A**. The supported severance would facilitate the creation of a new residential lot in an established and developed residential neighbourhood. For the reasons discussed above, the consent application satisfies Section 51(24) and the minor variance application

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satisfies Section 45(1) of the *Planning Act*, and Staff recommends approval of both applications.



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Dora Pripon  
Development Planner  
Prepared on: August 1, 2024



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Reviewed By:  
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