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Date July 3, 2024 **Report No.** 2024-411

To Chair and Members
City of Brantford Committee of Adjustment

From Lindsay King
Intermediate Development Planner

1.0 Type of Report

Committee of Adjustment Decision Regarding
Application for Minor Variance

2.0 Topic

Application No.: A32-2024

Agent/Applicant: Ken Bekendam

Owner: 1000147958 Ontario Inc. (c/o Ken Bekendam)

Location: 9 Garden Avenue

3.0 Recommendation

- A. THAT minor variance application A32-2024 seeking relief from Section 7.9.4.79.2.1 to permit a minimum lot area of 102 m²/unit, whereas 153 m²/unit is otherwise required, BE REFUSED;
- B. THAT the reasons for the refusal of the minor variance are as follows: the proposed variance is in keeping with the general intent and purpose of the Official Plan, however the relief requested is not considered minor in nature,

is not desirable for the appropriate development and use of the subject lands, nor does it maintain the purpose and intent of the Zoning By-law; and,

- C. THAT minor variance application A32-2024 seeking relief from Section 7.9.4.79.12 to permit a parking ratio of 1.11 spaces/unit, whereas 1.5 spaces/unit is otherwise required, BE REFUSED;
- D. THAT the reasons for the refusal of the minor variance are as follows: the proposed variance is in keeping with the general intent and purpose of the Official Plan, and desirable for the appropriate development and use of the subject lands, however the relief requested is not considered minor in nature, nor does it maintain the purpose and intent of the Zoning By-law; 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 submission received from the public before the decision was made in relation to this planning matter, as discussed in Section 6.2 of Report No. 2024-411.”

4.0 Purpose and Description of Application

The applicant is seeking approval for a minor variance application for the lands municipally known as 9 Garden Avenue to develop the subject lands into 51 stacked townhouse units. In 2022, this site was rezoned to permit 33 stacked townhouses with site specific provisions for minimum lot area/unit, minimum lot width, maximum lot coverage, maximum building height, minimum front yard, minimum rear yard, minimum gross floor area (GFA)/unit (162.5 m²/unit or 33 units), and minimum amenity space. In 2023, the applicant received approval on a minor variance application for the subject lands, which allowed a further reduction to the minimum GFA/unit (153 m²/unit or 35 units) and to the minimum landscaped open space. In 2024, this site received conditional site plan approval for the concept plan attached as **Appendix B**. One of the conditions of approval was that the applicant be approved for the required minor variances, as shown below in **Table 1**.

Table 1 - Minor Variance Requests

| No. | Regulation | By-law Section | Required | Current Proposal | Deficiency |
|-----|-----------------------|----------------|--|--|---------------------------------------|
| 1. | Minimum Lot Area/Unit | 7.9.4.79.2.1 | 153 m ² /unit (34 units) | 102 m ² /unit (51 units) | 51 m ² /unit (17 units) |
| 2. | Minimum Parking Ratio | 7.9.4.79.12 | 1.5 spaces/unit (77 spaces) | 1.11 spaces/unit (57 spaces) | 0.39 spaces/unit (20 spaces) |

The applicant is now proposing 51 stacked townhouse dwelling units, and 57 parking spaces. The concept drawing previously approved by the Committee and the current proposal are included as **Appendix A** and **Appendix B**, respectively. Each dwelling unit has a separate entrance, and the applicant shows four accessible parking spaces. The applicant has also shared that 11 units will be ‘affordable’ as defined by CMHC and is working with this organization to secure funding on this basis.

5.0 Site Features

The subject lands are on the east side of Garden Avenue, south of the CN railway line and north of Colborne Street, as illustrated in **Figure 2**. The property is approximately 5,355 m², has approximately 43.8 m of frontage. The site is now vacant, with no structures on site. There are several mature trees along the property perimeter.

Figure 1 - Aerial of Subject Lands



The surrounding lands consist of low and medium density residential uses primarily in the form of single detached and townhouse dwelling units. The property on the northeastern corner of Garden Avenue and Colborne Street is a mechanic shop with used car sales. Colborne Street also has demarcated bike lanes, as well as access to a public transit stop with services to the Lynden Park Mall, and the inter-city bus station downtown. The lands are designated “Residential” in the Official Plan and Zoned “Residential Medium Density Type A Zone – Special Exception 79 (R4A-79)”, as shown in **Appendix C** and **Appendix D**, respectively.

Figure 2 - Streetview of Subject Lands



6.0 Input from Other Sources

6.1 Technical Comments

Staff circulated this application to all applicable departments and agencies on May 27, 2024. Several departments provided comments, as summarized below:

The **Building Department** advised that Building Permits would be required, should this application be approved.

CN Rail staff re-stated comments made during the site plan process, stating that 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. CN also requested that the following clause be inserted in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of the subject lands:

“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 300 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.”

Furthermore, CN requested restrictive covenants to be registered on title, provide notice to the public that the noise and vibration 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, and that the applicant enter into an Agreement with CN stipulating how CN's concerns will be resolved and pay for the registration of the Agreement. Finally, the applicant shall grant CN an environmental easement for operational noise emissions, registered against the subject property in favour of CN. These conditions are included in the conditional site plan approval for this site. Staff are satisfied that this is sufficient, and that there is no need to make these conditions of the minor variance as well.

Development Engineering Staff noted that the proposed reconfigured site plan removes a swale that collects drainage between Blocks 1 and 2 and send it to the rear of the dwellings as shown in Figure 3. If the swale is removed due to the proposed sidewalk, drainage will need to be accommodated accordingly. Staff also note concerns with drainage into the underground entrances and requested that civil engineering drawings be updated to show how these entrances will drain, noting that rainwater leaders may need to be modified to prevent discharge directly over the proposed sidewalk to avoid icy and unsafe winter conditions for pedestrians.

Transportation Staff noted that the planning brief provided no justification or studies to support the reduction in parking and pointed out that the brief simply references a *“minor reduction in lot area parking not easily discernable from the public realm.”* And claimed the *“requested variances are minor in nature as they do not undermine or affect the ability of the property to be developed as a residential condominium and will not have any adverse impacts on adjacent properties or the streetscape.”* Transportation Staff disagree with this statement and shared concerns with overflow parking that is likely to occur within the public realm or within private condominium blocks nearby. Staff studies of condominium rental townhomes in Brantford demonstrate the requirement of a minimum parking requirement of 1 space per unit plus .25 spaces for visitors. As such, staff will not support a parking rate of less than 1.25, as recommended in the draft Zoning By-law.

6.2 Public Comments

This application as circulated for public comment on June 19, 2024, to property owners within 60 m of the subject lands. At the time of writing this report, two comments have been received. Both expressed concern about overflow parking, particularly where Garden and Grey Street meet, and where a similar parking reduction was approved. Both comments are included as **Appendix E**.

7.0 Planning Staff Comments and Conclusion

7.1 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 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 2 - 4 Minor Variance Tests – Parking

| Four Tests | Discussion |
|--|--|
| That the requested variance is minor in nature | “Minor” is determined by impact, not by the value of the variance being sought. In this case, the impact of approval would be that a deficiency of 20 parking spaces would be permitted. Without a Transportation Impact Study or Parking Study, it is unclear whether the proposed residential intensification can be adequately accommodated on-site without significant overflow parking. With this, staff maintain that the relief sought is not minor and would indeed have a significant impact on nearby property owners and residents. |
| That the general intent and purpose of the Zoning By-law is maintained | The purpose of a minimum residential parking requirement is to ensure that there is sufficient parking for residents and visitors. Although it is likely that some residents could rely on public transit and active transportation rather than personal vehicles for this site, there is not a sufficient supply of visitor parking to accommodate the proposed development. The subject lands were rezoned in 2022 to a site specific R4A zone to permit 33 stacked townhouses with a parking ratio 1.5 spaces/unit. The proposed reduction to 1.1 spaces/unit does not meet the general intent of the approved zoning that is currently in effect. In the absence of a Transportation Impact Study or Parking Study, and considering Transportation Staff’s unsupportive comment, it is staff’s opinion that the purpose and intent of the Zoning By-law are not met. |

| | |
|---|---|
| <p>That the general intent and purpose of the Official Plan is maintained</p> | <p>The City of Brantford Official Plan supports the parking reduction based on several key provisions under Section 7.0 Integrated Transportation System.</p> <p>Section 7.1 Multi-Modal Transportation System</p> <ul style="list-style-type: none">- Subsection (o) allows for adjustments to parking requirements where sufficient public transit and Transportation Demand Management (TDM) measures are available. The subject lands benefit from a public transit stop within 30 m, along with extensive pedestrian infrastructure including street-lit sidewalks, crosswalks, and bike lanes.- Subsection (p) permits parking adjustments for specific housing types, such as affordable housing, provided there is sufficient transit to serve residents, employees, and visitors. The applicant's grant application for 11 units of affordable housing further supports this criterion. Finally, subsection- Subsection (s) emphasizes the City's commitment to reducing single-occupant vehicle trips and promoting sustainable transportation options, aligning with the proposal's TDM strategies. <p>The application upholds the purpose and intent of the Official Plan by ensuring adequate alternative transportation options, promoting sustainable travel choices, and supporting affordable housing efforts, all of which align with the City's policies for reducing parking demands.</p> |
| <p>That the variance is desirable for the appropriate development and use of the land, building or structure.</p> | <p>Staff considers the proposed reduction in parking desirable for the appropriate use of the lands since the reduction in available parking spaces would promote a compact built form and increase the available supply of new housing. Reduced parking requirements would help to create a complete community, defined in <i>A Place to Grow: Growth plan for the Greater Golden Horseshoe</i> as <i>"places such as mixed-use neighbourhoods or other areas within cities, towns, and settlement areas that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options, and public service facilities."</i></p> |

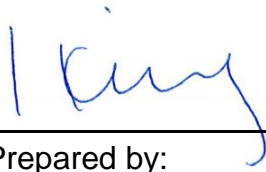
Table 3 - Minor Variance Tests - Minimum Lot Area

| Four Tests | Discussion |
|---|--|
| <p>That the requested variance is minor in nature</p> | <p>“Minor” is determined by impact, not by the value of the variance being sought. In this case, the impact of approval would be that an additional 17 units (an approximate 50% increase) would be permitted on the property. The approved site-specific Zoning By-law amendment reduced the minimum lot area/unit from 185 m²/unit (which would permit a maximum of 28 units on this property) to 167 m²/unit (which would permit a maximum of 33 units on this property). A subsequent minor variance application further reduced this provision to 153 m²/unit (which would permit 35 units on the property). Staff are of the opinion that this is not ‘minor’ and represents an over intensification and an over development of the subject lands.</p> |
| <p>That the general intent and purpose of the Zoning By-law is maintained</p> | <p>The purpose of minimum lot area per unit is to control population density, to ensure adequate livable and amenity space, and to ensure consistency with the built form and streetscapes. The additional units are all proposed as basement units, and so the built form is not intended to change from the previous minor variance application. Furthermore, the proposed amenity space exceeds the minimum required amenity space by approximately 4.75 m²/unit. The proposed reduction to the minimum lot area represents nearly a 50% reduction from the initial 185 m²/unit that was approved by City Council in 2022. Staff are of the opinion that the purpose and intent of the Zoning By-law is not met as originally presented to Council.</p> |
| <p>That the general intent and purpose of the Official Plan is maintained</p> | <p>The subject lands are designated “Residential”. Section 5.2.1(a) of the Official Plan notes that the intent of the Residential designation is as follows:</p> <p><i>“Lands within the Residential designation may include a full range of residential dwelling types, as well as supporting land uses intended to serve local residents. It is recognized that areas within the Residential designation will continue to evolve, with compatible development playing a modest role in achieving the City’s overall target for residential intensification in the built-up area.”</i></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 minor variance would facilitate an additional residential development and contribute to much needed housing in Brantford. The proposed development meets the general intent of the official plan.</p> |
| <p>That the variance is desirable for the appropriate development and use of the land, building or structure.</p> | <p>The request for a reduction to a minimum lot area is a result of an additional 17 units incorporated into the development plans for this site. The additional 17 units would all be basements units, and so there were minimal changes to the site plan. There were several walkways introduced to the site plan, which has raised concerns</p> |

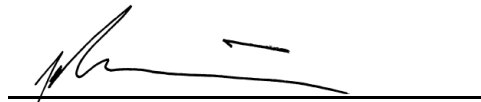
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| | from development engineering regarding drainage and grading. With these considerations in mind, staff are not convinced that the proposed additional 17 units would be desirable for the appropriate use of the lands and rather an overdevelopment of the site. |
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7.2 Conclusion

Staff completed a site inspection on Friday, June 14, 2024. Upon completion of this site visit and review of the relevant policies, Planning Staff are not supportive of the application as the minor variance requests are not considered minor and represent an overdevelopment of the subject lands. The requested reduction to parking does not maintain the general intent and purpose of the Zoning By-law, which is to ensure there is adequate parking on-site for residents and visitors. In conclusion, Planning Staff recommend refusal of the requested variances.



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June 26, 2024



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