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Date December 16, 2024 **Report No.** 2024-690
To Chair and Members
City of Brantford Committee of Adjustment
From Ashley Timbs
Development Planner

1.0 Type of Report

Application(s) for Consent and/or Minor Variance []
Item for Consideration or Consent []

2.0 Topic Application B39-2024, B40-2024 and A56-2024 – 101A-C Usher Street

Agent – N/A

Applicant/Owner – Anthony Ricci

3.0 Recommendation

- A. THAT minor variance application A56-2024 seeking relief from Section 6.18.3.9 of Zoning By-law 160-90 to permit a minimum landscaped front yard of 33.4% (101A Usher St.) for an existing street fronting townhouse, whereas 50% is otherwise required, BE APPROVED;
- B. THAT minor variance application A56-2024 seeking relief from Section 6.18.3.9 of Zoning By-law 160-90 to permit a minimum landscaped front yard of 40.0% (101B Usher St.) for an existing street fronting townhouse, whereas 50% is otherwise required, BE APPROVED;
- C. THAT minor variance application A56-2024 seeking relief from Section 6.18.3.9 of Zoning By-law 160-90 to permit a minimum landscaped front yard

of 41.2% (101C Usher St.), whereas 50% is otherwise required, BE APPROVED;

- D. THAT minor variance application A56-2024 seeking relief from Section 7.8.2.1.2.2 of Zoning By-law 160-90 to permit a minimum lot width of 5.4 m (101B Usher St.) for an existing street fronting townhouse, whereas 6.0 m is otherwise required, BE APPROVED;
- E. THAT the reasons for the approval of the minor variance application are as follows: the proposed variance application 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 of the subject lands; and,
- F. THAT consent application B39-2024 to sever a parcel of land from an existing street fronting townhouse at 101A Usher Street, having a frontage of 6.3 m and a lot area of 386.6 m², and to retain a parcel of land having a frontage of 5.4 m and a lot area of 353.9 m², BE APPROVED, subject to the conditions listed in **Appendix A** of Report No. 2024-690;
- G. THAT the reasons for approval of the consent application are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act* and Staff are satisfied that the proposed development is desirable and compatible with the surrounding area and will not result in adverse impacts on surrounding properties. The application is in conformity with the general intent and policies of the Official Plan and Zoning By-law; and,
- H. THAT consent application B40-2024 to sever a parcel of land from an existing street fronting townhouse at 101C Usher Street, having a frontage of 6.4 m and a lot area of 408.5 m², and to retain a parcel of land having a frontage of 5.4 m and a lot area of 353.9 m², BE APPROVED, subject to the conditions listed in **Appendix B** of Report No. 2024-690;
- I. THAT the reasons for approval of the consent application are as follows: the proposed consent has regard for the matters under Section 51(24) of the *Planning Act* and Staff are satisfied that the proposed development is desirable and compatible with the surrounding area and will not result in adverse impacts on surrounding properties. The application is in conformity with the general intent and policies of the Official Plan and Zoning By-law; and,
- J. THAT pursuant to 45(8) – (8.2) and Sections 53(17) – (18.2) of the *Planning Act*, R.S.O 1990, c.P.13, the following statement SHALL BE INCLUDED in the Notice of Decision:

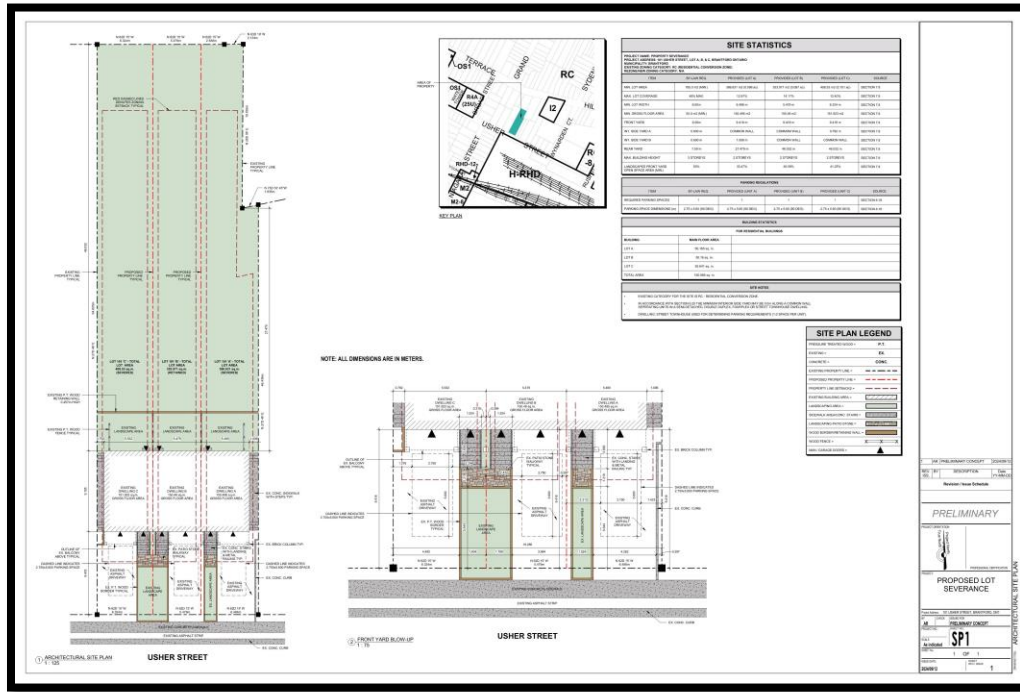
“Regard has been had for all written and oral submissions received from the public before the decision was made in relation to this planning matter, as discussed in Section 5.2 of Report No. 2024-690”.

4.0 Purpose and Description of Application(s)

Table 1 - Description of Application(s)

| Application Details | |
|----------------------------------|---|
| Type of Application | Consent and Minor Variance |
| Purpose of Application | <p>To sever an existing street fronting townhouse dwelling into three individual parcels, which can be then be legally sold and conveyed. To seek relief from front yard landscaped open space (Lot A/B/C) and to seek relief from minimum lot width for Lot B, as shown in Figure 1.</p> <p>The requested relief from Zoning By-law 160-90 is detailed in Table 3.</p> |
| Additional Relevant Information | |
| Previous Applications | N/A |
| Concurrent Planning Applications | N/A |

Figure 1 – Site Plan / Severance Sketch



(see Attachment for larger resolution)

Table 2 - Lot Dimensions for Severance

| Regulation | By-law 160-90 Section | Required | Severed Lot (A) | Retained Lot (B) | Severed Lot (C) |
|---------------------|-----------------------|--------------------|----------------------|----------------------|----------------------|
| Lot Area (minimum) | Section 7.8.2.1.1 | 230 m ² | 386.6 m ² | 353.9 m ² | 408.5 m ² |
| Lot Width (minimum) | Section 7.8.2.1.2.2 | 6.0 m | 6.4 m | 5.4 m | 6.3 m |

Table 3 - Relief Requested for Minor Variance

| Regulation | By-law 160-90 Section | Required | Proposed | Relief Requested |
|--------------------------------|-----------------------|----------|---------------|------------------|
| Landscape Front Yard (minimum) | Section 6.18.3.9 | 50% | 33.4% (Lot A) | - 16.5% |

| Regulation | By-law 160-90 Section | Required | Proposed | Relief Requested |
|--------------------------------|-----------------------|----------|---------------|------------------|
| Landscape Front Yard (minimum) | Section 6.18.3.9 | 50% | 40.0% (Lot B) | - 9.9% |
| Landscape Front Yard (minimum) | Section 6.18.3.9 | 50% | 41.2% (Lot C) | - 8.7% |
| Lot Width (minimum) | Section 7.8.2.1.2.2 | 6.0 m | 5.4 m (Lot B) | - 0.5 m |

Table 4 – Information on the Subject Lands

| Site Details | |
|---------------------|---|
| Site Features | <p>The site features on the subject lands include:</p> <ul style="list-style-type: none"> A townhouse dwelling containing three residential units <p>See Figures 2 & 3- Photo of the Subject Lands</p> |
| Surrounding Context | <p>The following are the surrounding features/uses of the subject lands:</p> <p>North Single detached dwellings</p> <p>South CN Rail Yard</p> <p>East Townhouse & single detached dwellings</p> <p>West Semi-detached & single detached dwellings</p> |

Figure 2 – Photo of Subject Lands



Figure 3 – Aerial Photo of Subject Lands



5.0 Input from Other Sources

5.1 Technical Comments

The application was circulated to all applicable departments and agencies on October 17th, 2024.

The notable comments are summarized below.

Table 5 - Technical Comments

| Department/Agency | Comments |
|-----------------------|---|
| <p>CN Rail</p> | <p>Noted that the development of sensitive uses in proximity to railway operations cultivates an environment in which land use incompatibility issues are exacerbated. CN encourages the municipality to pursue the implementation of the following criteria as conditions of approval:</p> <ul style="list-style-type: none"> • The Owner shall be required to grant an environmental easement for operational noise and vibration emissions, registered against the subject property in favor of CN; OR • That the following clause should be inserted on land title, 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: <p>“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.”</p> <p>Staff have included these requirements as a condition of consent in Appendix A and B.</p> |

5.2 Public Comments

This application was circulated for public comment on November 15, 2024, to property owners within 60 m of the subject lands pursuant to the *Planning Act*.

At the time of writing this report, no public comments on this application have been received.

6.0 Planning Staff Comments and Conclusion

The Subject Lands are designated “Residential” in the City’s Official Plan and zoned “Residential Conversion (RC)” in the Zoning By-law 160-90, as shown in **Appendix C** and **Appendix D** respectively. The subject lands are currently zoned “Neighbourhood Low Rise (NLR)” in Zoning By-law 124-2024 as shown in **Appendix E**. Zoning By-law 124-2024 was approved by Brantford City Council on September 24, 2024, and has since been appealed to the Ontario Land Tribunal (OLT).

6.1 Planning Analysis for Consent

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 6 - Consent Criteria

| Criteria for Considering a Consent Application | Discussion |
|--|---|
| <p>1. That the plan conforms to the Official Plan</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> <ul style="list-style-type: none"> a) when a Plan of Subdivision is deemed unnecessary and where the application conforms to the policies of the Official Plan, b) no more than three new lots are being created; and c) all lots have frontage on a municipal road and do not require that municipal services be extended. <p>This application meets all the above criteria with the creation of two new lots and one retained lot. Municipal services are available and will not have to be extended. Staff are therefore of the opinion that the proposed severences meet the general intent of the Official Plan in regard to land division.</p> |
| <p>2. The dimensions and shapes of the proposed lot</p> | <p>As shown in Table 2, both the retained and severed lots comply with the required lot area and Lot A and C comply with the lot width in the Zoning By-law 160-90. Lot B requires minor relief from lot width in the Zoning By-law 160-90.</p> <p>The proposed lots are very similar in both size and shape to other residential dwelling lots in this area. The subject lands are also developed already with an existing street townhouse dwelling.</p> |
| <p>3. The adequacy of utilities and municipal services</p> | <p>Both the proposed severed and retained parcels have frontage on a fully-serviced public road, and therefore, servicing is considered adequate. These severences result in three individual units and will be required to have separate servicing. A Condition of Consent for B24-2024 & B25-2025, as shown in Appendix A and Appendix B respectively, is a requirement that the 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. Planning Staff have no other concerns regarding the adequacy of servicing for the proposed severed parcels.</p> |

6.2 Planning Analysis for 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 7 - Four Tests of a Minor Variance

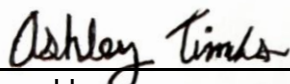
| Four Tests | Discussion |
|---|---|
| <p>1. That the requested variance is minor in nature</p> | <p>“Minor” is determined by impact, not by the value of the variance being sought.</p> <p>The relief sought in this application are existing conditions that only become deficiencies as a result of the three townhouse units being severed into individual lots. This application does not propose any external alterations to the existing dwelling and as such it is Staff’s opinion that the requested variances are minor in nature.</p> |
| <p>2. That the intent and purpose of the Zoning By-law is maintained</p> | <p>The subject site is zoned “Residential Conversion Zone” (RC) in Zoning By-law 160-90. The intent of this zone is to accommodate a range of residential uses. The intent of the front yard landscape space provision is to ensure that an adequate portion of front yards are landscaped and to ensure that snow storage and stormwater management can be accommodated. The intent of the minimum lot width provision is to ensure that adequate space is provided for things such as servicing, parking, and general functionality of the lot. The proposed variances will address existing site conditions and therefore it is Staff’s opinion that the general intent and purpose of the Zoning By-law will be maintained.</p> |
| <p>3. That the general intent and purpose of the Official Plan is maintained</p> | <p>The subject site is designated “Residential” in the Official Plan. The intent of this designation is to provide for a range of residential dwellings; townhouse dwellings are permitted. It is Staff’s opinion that the proposed variances would maintain the general intent and purpose of the Official Plan.</p> |

| Four Tests | Discussion |
|---|---|
| 4. That the variance is desirable for the appropriate development and use of the land, building or structure | It is the opinion of Staff that the proposal is desirable as it would facilitate the severance of the townhouse into individual units so that they can be legally sold. The consent will not result in any physical changes to the existing street townhouse dwelling. Staff do not anticipate that the relief sought will create any adverse impacts on the neighbourhood as they address existing conditions and are characteristic of the neighbourhood. |

6.3 Conclusion

Staff recommends approval of the subject application(s) for the following reasons:

- The application(s) satisfies Section 51(24) and Section 45(1) of the *Planning Act*, as detailed above.
- The consents and minor variances will allow the existing townhouse dwelling to be converted into individual units. The applications do not propose any external alterations to the existing dwelling and are not anticipated to cause any adverse impacts on the surrounding area.
- A site inspection was completed on November 6th, 2024 and no issues were found.



Prepared by:
Ashley Timbs, Development Planning
November 28th, 2024



Reviewed by:
Jeff Medeiros, MCIP, RPP, Acting,
Manager of Development Planning
December 11, 2024

APPENDIX A – Conditions of Consent (B39-2024)

1. Receipt of a registered Reference Plan showing the severed and retained parcels and an easement for access, to the satisfaction of the Manager of Development Planning or their designate.
2. 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*).
3. Receipt of confirmation that all taxes are paid up to date, to the satisfaction of the Manager of Development Planning or their designate.
4. 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.
5. 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.
6. 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 to a legal outlet and that these services do not cross the proposed severance line(s) and are connected directly to City infrastructure.
7. The Owner Applicant shall be **responsible financially and otherwise, to provide sanitary and storm sewer** connections to a legal outlet for 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.
8. The Owner/Applicant shall provide a **Grading and Drainage Plan** prepared by a qualified Engineer licensed in the Province of Ontario, to the satisfaction of the Manger of Development Engineering or his/her designate.
9. The Owner will be required to obtain a Water Service Connection Permit for each new service and pay all applicable fees prior to commencing any work to connect the new water service; the City will complete the inspection of all connections to City water mains;
10. Receipt of confirmation from the Environmental Services Department indicating that their requirements have been satisfied.
11. The Owner will be required to obtain a Right-of-Way Activity Permit prior to commencing any work within the City's Road right-of-way.

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12. Receipt of an undertaking provided from the applicant's Solicitor confirming that either a warning clause in favour of CN Rail is inserted on land title, 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, or that an environmental easement in favour of CN Rail will be registered on title, to the satisfaction of the Manger of Development Planning or their designate.

 13. That the above conditions be fulfilled and the Certificate of Consent be issued on or before **December 17th, 2026**, after which time the consent will lapse.

APPENDIX B – Conditions of Consent (B40-2024)

1. Receipt of a registered Reference Plan showing the severed and retained parcels and an easement for access, to the satisfaction of the Manager of Development Planning or their designate.
2. Receipt of confirmation that all taxes are paid up to date, to the satisfaction of the Manager of Development Planning or their designate.
3. 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*).
4. 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.
5. 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.
6. 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 to a legal outlet and that these services do not cross the proposed severance line(s) and are connected directly to City infrastructure.
7. The Owner Applicant shall be **responsible financially and otherwise, to provide sanitary and storm sewer** connections to a legal outlet for 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.
8. The Owner/Applicant shall provide a **Grading and Drainage Plan** prepared by a qualified Engineer licensed in the Province of Ontario, to the satisfaction of the Manger of Development Engineering or his/her designate.
9. The Owner will be required to obtain a Water Service Connection Permit for each new service and pay all applicable fees prior to commencing any work to connect the new water service; the City will complete the inspection of all connections to City watermains;
10. Receipt of confirmation from the Environmental Services Department indicating that their requirements have been satisfied.
11. The Owner will be required to obtain a Right-of-Way Activity Permit prior to commencing any work within the City's Road right-of-way.

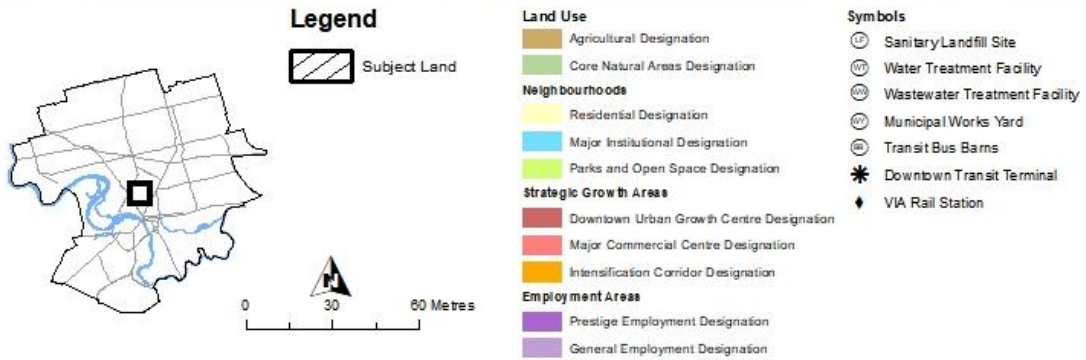
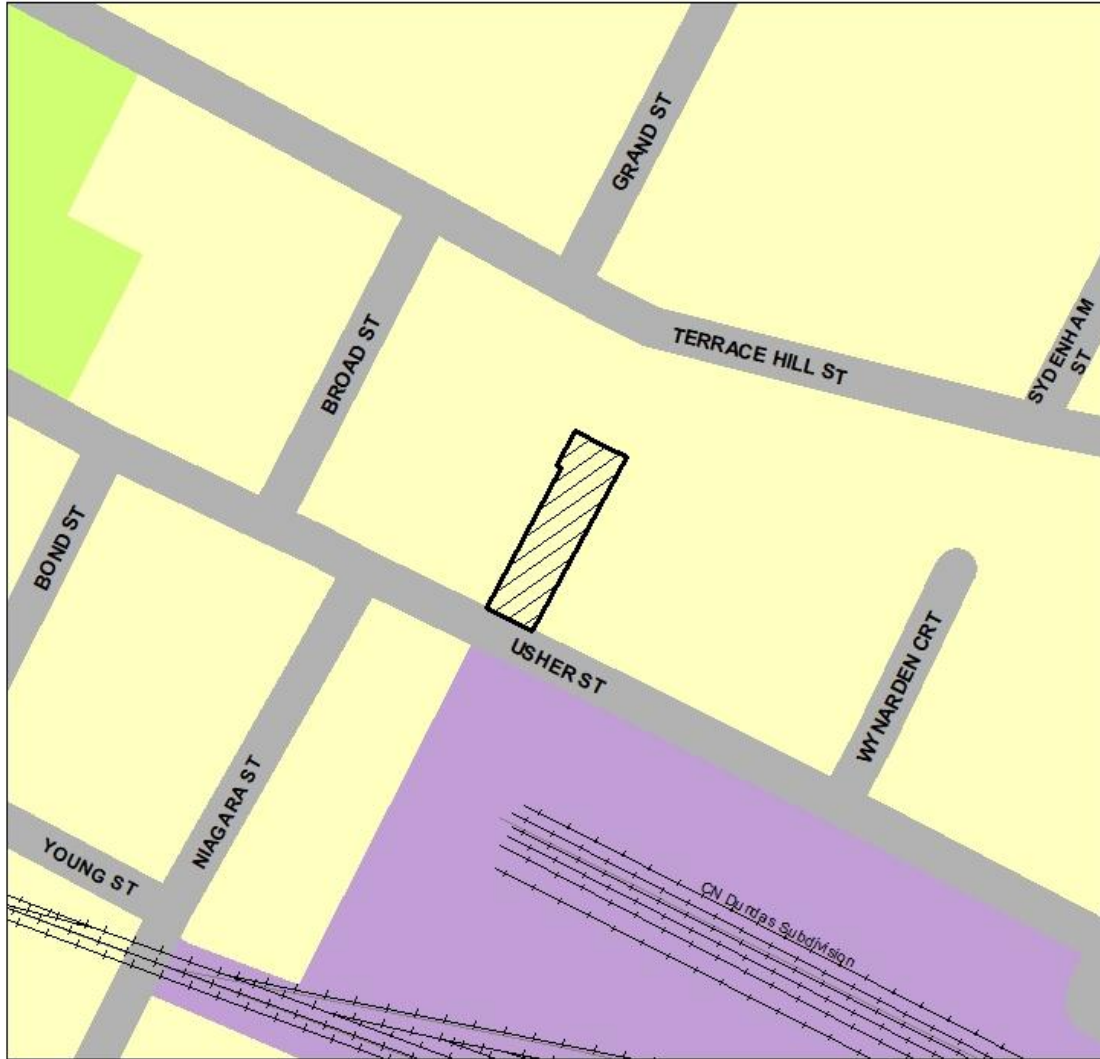
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12. Receipt of an undertaking from the applicant's Solicitor confirming that either a warning clause in favour of CN Rail is inserted on land title, in all development agreements, offers to purchase, and agreements of Purchase and Sale or Lease of each dwelling unit within 1000m of the railway right-of-way, or that an environmental easement in favour of CN Rail will be registered on title, to the satisfaction of the Manager of Development Planning or their designate.

 13. That the above conditions be fulfilled and the Certificate of Consent be issued on or before **December 17th, 2026**, after which time the consent will lapse.

APPENDIX C – Official Plan

OFFICIAL PLAN EXCERPT MAP

Application: B24-2024 & B25-2024
 103 Usher Street



APPENDIX D – Zoning By-law 160-90

ZONING

Application: B24-2024 & B25-2024
103 Usher Street



Legend

- Subject Land
- Zone Boundary



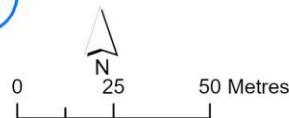
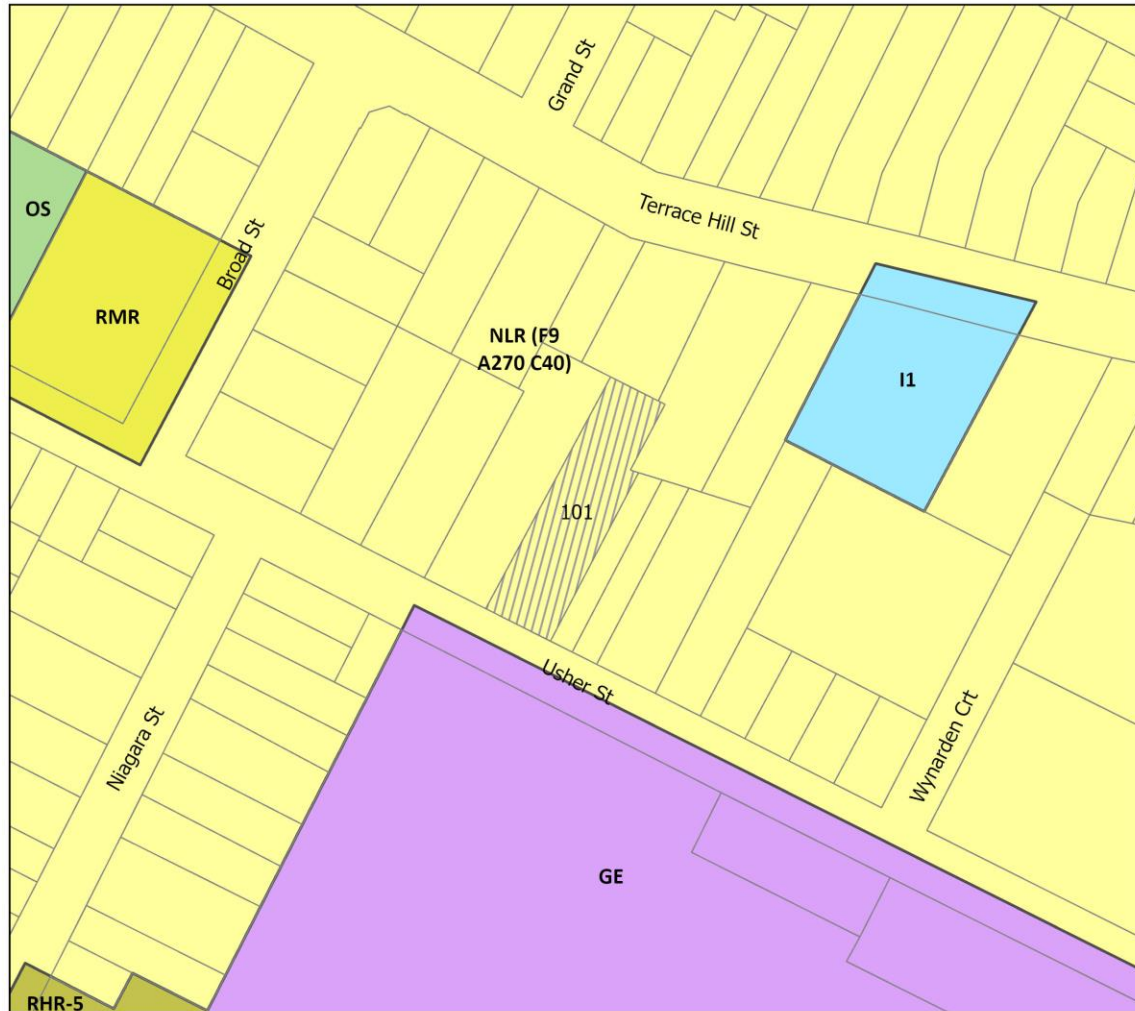
ZONING (Bylaw 160-90) and County of Brant(61-16)

- RC Residential Conversion
- R4B Residential Medium Density Type B
- RHD Residential High Density
- I2 Institutional School
- OS1 Open Space Type 1
- H Holding Provision
- # Exception Number

APPENDIX E – Zoning By-law 124-2024

ZONING (Bylaw 124-2024)

Application: B39-2024, B40-2024 & A56-2024
 101 A/B/C Usher Street



Legend

- /// Subject Land
- Schedule A Zones**
- Mixed Use Zones**
 - Historic Mainstreets (HM)
 - Upper Downtown (UD)
 - Lower Downtown (LD)
 - Major Commercial Centre (MCC)
 - Brant Heritage Conservation District (BHCD)
 - Intensification Corridor (IC)
- Commercial Zones**
 - Automotive Service (AS)
 - Convenience Commercial (CC)
 - Neighbourhood Commercial (NC)
- Residential Zones**
 - SR (Suburban Residential)
- Greenfield Neighbourhood Low-Rise (GNLR)**
- Neighbourhood Low-Rise (NLR)**
- Residential Mid-Rise (RMR)**
- Residential High-Rise (RHR)**
- Employment Zones**
 - General Employment (GE)
 - Prestige Employment (PE)
- Institutional Zones**
 - Minor Institutional (I1)
 - Major Institutional (I2)
- Other Zones**
 - Agricultural (A)
 - Core Natural (N)
 - Open Space (OS)
 - Development (D)
 - Six Nations