



***History***

The 500-block of 3<sup>rd</sup> Street experienced a transition in the 1990's from an area of predominantly detached dwellings to a mixed-density area, when four (4) four-unit multiple dwellings were developed at 510, 520, 530 and 540 – 3<sup>rd</sup> Street. In 2005, the Railway Protection Overlay Zone (RPOZ) provisions were incorporated into Zoning By-law No. 6642. The RPOZ impacted several sites along the north side of McTavish Avenue between 3<sup>rd</sup> Street and 6<sup>th</sup> Street, as McTavish Avenue served as the northern boundary of the Canadian National Railway (CNR) right-of-way between 3<sup>rd</sup> Street and 6<sup>th</sup> Street. The RPOZ provisions continue to exist under the current Zoning By-law No. 7124.

**ANALYSIS:**

The applicant proposes to develop a single-storey four-unit multiple dwelling with parking along the rear lane. The variance requests will allow the applicant to locate the southwest portion of the building in the RPOZ and reduce the required northern side yard setback.

***Consistency with Part 6, Section 97(1)(b) of The Planning Act and Demonstration that the Variance:******1. Will be compatible with the general nature of the surrounding area;***

The surrounding residential area is previously developed with dwelling units that are similar in proximity to the CNR right-of-way as proposed by the applicant for the subject site. Many of the existing dwellings in the immediate area are also one (1) storey in height and have side yards that are close to 1.2m. The proposal will be compatible with the general nature of the surrounding area.

***2. Will not be detrimental to the health or general welfare of people living or working in the surrounding area, or negatively affect other properties or potential development in the surrounding area;***

With respect to the side yard setback request, a 1.2m setback is a common side yard setback in the surrounding area, and these setbacks have not detrimentally affected other properties. The request to reduce the side yard setback will not likely generate any detrimental effects to other properties in the surrounding area.

With respect to the RPOZ variance request, the intent of the RPOZ provisions is to ensure that most types of developments, especially residential developments, are not adjacent to railway lines for various reasons, including but not limited to safety, use compatibility, and nuisance. That said, though the CNR right-of-way is immediately across McTavish Avenue from the subject site, the closest railway line to the subject site is over 105.0m away. Through discussions with CNR, the Planning & Building Safety Department understands that this request has a negligible impact on CNR's operations along its existing railway lines. Furthermore, the Planning & Building Safety Department understands that the new residents' safety risk from railway operations is mitigated by the distance of the closest railway line from the subject site and the speed of trains along that section of railway line. The request will not likely generate any detrimental effect to CNR's operations.

***3. Is the minimum modification of a zoning by-law required to relieve the injurious effect of the zoning by-law on the applicant's property; and***

With respect to the side yard setback request, the Planning & Building Safety Department conducted research and consultations in 2015 on how to facilitate appropriate infill residential development in already developed areas. One of the recommendations that came out of those consultations is to regulate the placement of residential buildings in accordance with the type of use proposed rather than the zone

in which the buildings are located. The City is in the process of considering amendments to the Zoning By-law; one of the amendments includes allowing buildings with no more than four (4) dwelling units and 11.0m or 2.5 storeys in height to have a minimum interior side yard of 1.2m instead of 3.0m. Given that the City is amending the Zoning By-law, and that the amendments may not be adopted before the applicant intends to develop the site, the request is the minimum modification of the Zoning By-law required to relieve its injurious effect on the subject site.

With respect to the RPOZ variance request, although the building is located in the RPOZ, the total separation between the proposed building and the railway track is 105.0m. Through discussions with CNR, the Planning & Building Safety Department understands this request has a negligible impact on CNR's operations along its existing railway lines. Given the distance between the subject site and the existing railway lines, the request is the minimum modification of the Zoning By-law required to relieve its injurious effect on the subject site.

**4. *Is generally consistent with the applicable provisions of the development plan by-law, the zoning by-law and any secondary plan by-law***

The proposed development conforms to the following Development Plan policies:

- 2.2.1 (location of residential development)—the subject site is within an area identified as “Residential” in Map One: Urban Land Use of the Development Plan;
- 2.2.2 (housing mix)—the surrounding residential area already consists of a mix of detached dwellings and multiple dwellings;
- 2.2.5 (higher density housing)—more intense residential developments are encouraged to be located in close proximity to The HUB and major institutions. The subject site is in close proximity to the Brandon Regional Health Centre; and
- 13.2.11 (setback from railways)—developments are to be suitably setback from railways to provide for a measure of safety and to reduce nuisance factors arising from railway operations. The proposed development still has a significant setback from existing railway lines.

The provisions being requested for a variance by the applicant still exist under the new Zoning By-law No. 7124:

- The minimum side yard requirement is now found under Table 10; and
- The RPOZ residential setback requirement is now found under subsection 71(b).

The proposed development complies with all other applicable provisions of the Zoning By-law. Four (4) dwelling units are permitted on the subject site based on the area and zone of the site, and the design of the building addresses both 3<sup>rd</sup> Street and McTavish Avenue through the location of entrances, windows and architectural features.

***Commenting Agencies***

All comments have been addressed and are summarized below.

***Canadian National Railway***

Canadian National Railway (CNR) does not oppose this application, but recommends the following:

1. Building mitigation measures are integrated into the building design, such as upgraded/appropriate masonry thickness and window glazing, and air conditioning, allowing occupants to close windows during warmer months if required; and

2. A “buyer beware” clause be inserted in all development agreements, offers to purchase, and lease or sale agreements within 300m of the CNR right-of-way.

The City does not require a development agreement for this proposed development, therefore the recommended clause will not be incorporated by the City. CNR’s comments have been forwarded to the applicant for consideration in the final design of the proposed building.

#### ***Public Outreach***

In accordance with section 13 of the Zoning By-law No. 7124, public outreach by the applicant was not required as the variance requests will not result in the increase of intensity or density of the use of the subject site.

#### ***Planning Commission Hearing & Decision***

In accordance with Section 36(2) of The Planning Act, the Planning Commission held a public hearing for this application on March 2, 2016; please see attached minutes of the hearing (Attachment C). One person objected to the application, citing concerns about the impact of the development on existing trees along the north property line, increased traffic, reduced street parking, and fire safety. Upon public testimony, the Planning Commission approved the variance application.

#### ***The Appeal***

The City of Brandon received a letter of appeal from the person who objected to the application at the March 2, 2016 public hearing (Attachment D). In his letter, the appellant states that the applicant can already develop a four-unit multiple dwelling under the existing setback requirements in the Zoning By-law.

#### ***Options***

The Planning & Building Safety Department advises that City Council has the following options:

1. Reject the application;
2. Approve the application in full, with or without conditions; or
3. Approve the application in part, with or without conditions.

In accordance with s. 100(1) of The Planning Act, City Council’s decision is final.

#### **RECOMMENDATION:**

That the Public Hearing for Variance Application V-02-16-B at 563 – 3<sup>rd</sup> Street be concluded.

That Variance Application V-02-16-B to vary Table 11 of Zoning By-law No. 6642 by decreasing the minimum required interior side yard setback from 3.0m to 1.2m, and Subsection 51.1(b) of Zoning By-law No. 6642 by decreasing the Railway Protection Overlay Zone for dwelling units from 30.0m to 20.0m, be approved in the RMD Residential Moderate Density Zone at 563 – 3<sup>rd</sup> Street (Lots 29/30, Block 79, Plan 8 BLTO) in accordance with the intent of the application “Attachment A-1”, the attached letter of intent “Attachment A-2” and the attached site plan “Attachment B-2”.