


<b>TITLE:</b>  <b>VARIANCE</b> <b>545 PACIFIC AVENUE</b> <b>OWNER: 5382280 MANITOBA LTD.</b> <b>APPLICANT: WARNER BUCK</b>		
<b>MEETING DATE:</b> December 19, 2018		<b>Page 1 of 4</b>
<b>DEPARTMENT:</b> Planning & Buildings	<b>ATTACHMENTS:</b> A. Application related documents B. Map, air photo & drawings C. Public participation report	
<b>PRESENTER:</b> Shengxu Li, Community Planner	<b>MANAGER:</b> Ryan Nickel, RPP, Chief Planner	

## **RECOMMENDATIONS:**

### **Railway Setback Variance**

That Variance Application V-20-18-B to vary Clause 71(c)(1) of the Zoning By-law by reducing the Railway Protection Overlay Zone setback from 15m to 2.7m to allow for the construction of a commercial building in the HUB Mixed Use (HMU) Zone be approved at 545 Pacific Avenue (Lot 2, Plan 2470 BLTO) in accordance with the letter of intent “Attachment A-2 and A-3” the site plan “Attachment B-2”, and the building section plan “B-3”, subject to the owner or successor, prior to the issuance of a development permit engaging a Consulting Engineer, duly licensed to practice by the Association of Professional Engineers & Geoscientists for the Province of Manitoba, for the purpose of design for all aspects of grading, servicing and drainage construction within the development and adjacent public right-of-way.

### **Basement Storage Facility Variance**

That Variance Application V-20-18-B to vary Table 13: HUB Use Table to allow for a temporary change of use to a warehouse and storage facility in the basement of the proposed building in the HUB Mixed Use (HMU) Zone be approved at 545 Pacific Avenue (Lot 2, Plan 2470 BLTO) in accordance with the letter of intent “Attachment A-2 and A-3” and the site plan “Attachment B-2”, subject to the use being valid for up to five years from the date of approval.

## **BACKGROUND:**

### ***Request***

The applicant, Warner Buck, on behalf of the property owner, 5282280 Manitoba Ltd., is applying to vary two clauses of the City of Brandon Zoning By-law No. 7124 for property located at 545 Pacific Avenue in the HUB Mixed Use (HMU) Zone:

- Clause 71(c)(1) of the Zoning By-law by reducing the Railway Protection Overlay Zone setback from 15m to 2.7m
- Table 13: HUB Use Table to allow for a temporary change of use to a warehouse and storage facility in the basement of the proposed commercial building.

***Development Context***

The subject site is currently vacant, and is located on north side of three-way intersection of Pacific Avenue and 6<sup>th</sup> Street. The site slopes northward towards the railway right-of-way, resulting in an elevation change that the rear yard adjacent to railway right-of-way is about four to five metres lower than the front yard facing Pacific Avenue. Uses surrounding the site include Canadian Pacific Railway (CPR) right-of-way to the north, multiple dwellings and surface parking to the south, and a vacant lot and surface parking to the east and west. Pacific Avenue provides access to the site.

***History***

A commercial building with multiple tenants previously occupied the site. In May 2018, a fire destroyed several buildings in the Brandon Downtown, including the building on the subject site.

**ANALYSIS:**

The applicant is proposing to construct a one-storey, 1,180 square metres commercial building fronting Pacific Avenue, with commercial uses on the main floor and a warehouse and storage facility in the basement. Under the Planning Act a use (warehouse and storage facility) that is not allowed in a zone may be approved on a temporary basis, by variance, for a maximum of five years.

***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;******Railway Protection Overlay Zone setback Variance***

A 2.7m railway setback is consistent with majority of existing commercial developments along Pacific that are developed in close proximity to the railway right-of-way

***Temporary Warehouse and Storage Facility Use Variance***

The proposed temporary storage facility is in the basement only. Due to the elevation change on the site, the basement area can't be viewed or directly accessed from the street level. Commercial uses on the first floor is consistent with the general natural 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;***

*Railway Protection Overlay Zone setback Variance*

The intent of the 15m setback from the railway for new commercial building is to ensure safety of future tenants from train derailments and spills as well as minimize noise and vibration nuisances from the railway on new development. The setback reduction is mitigated by the elevation difference between the railway and the site, as well as a 3.35m crash wall, that exceeds the recommended 2.13m height in the *FCM Guidelines for New Development in Proximity to Railway Operations*. The setback reduction will not be detrimental to CPR's operations and people's health and welfare in surrounding areas.

*Temporary Warehouse and Storage Facility Use Variance*

The applicant is proposing to operate the storage business in regular business hours by appointments, and only have employees to access the storage area. No hazardous goods will be allowed in the storage. The request for basement storage will not negatively affect the health and welfare of people in surrounding area, as well as any potential development.

- 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***

*Railway Protection Overlay Zone setback Variance*

The 15m setback from railway right-of-way (for commercial building) significantly reduces the buildable area of the site. Providing an equivalent vertical separation of over three metres mitigates the impact of the setback reduction allows the subject site to be re-developed.

*Temporary Warehouse and Storage Facility Use Variance*

The storage business in proposal will be confined only in the basement area where the space has no active use (e.g. retail) value due to the elevation difference on the site. The proposed use will relieve the injurious effect on the applicant's property.

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

*Railway Protection Overlay Zone setback Variance*

The proposal conforms to subsection 13.2.11 of Brandon & Area Planning District (BAPD) Development Plan 2013, regarding establishing suitable setback for development near railways.

The proposed development conforms to policies of City of Brandon the HUB Secondary Plan regarding full building coverage on front yard, preserving views towards and beyond Pacific Avenue by limiting building height, and onsite parking located besides the building. Except for the railway setback and temporary storage use variances, the proposal complies with all other applicable provisions in the Zoning By-law.

*Temporary Warehouse and Storage Facility Use Variance*

The storage business is concealed in the proposed commercial building and is not accessible and viewed from the street level. As part of the commercial building, the storage use complies with other applicable provisions in the Zoning By-law.

***Commenting Agencies***

All comments have been addressed and summarized below.

*City of Brandon*

- Following requirements are proposed to be conditions of approval:
  - The Developer shall engage a Consulting Engineer, duly licensed to practice by the Association of Professional Engineers & Geoscientists of the Province of Manitoba, for the purpose of design for all aspects of grading, servicing and drainage construction within the development and adjacent public right-of-ways
  - Should the final site design propose cross vehicle movement between the site and the site to the west at 635 Pacific Avenue a cross-access agreement will be required to be registered on both titles.
  - As per Clause 97(2)(a) of the Planning Act, a variance order to make a temporary change of land use can only be valid for maximum five years

**LEGISLATIVE REQUIREMENTS:**

***Notification***

In accordance with Section 169 of The Planning Act, notice of this Public Hearing regarding this application was sent to owners of property within 100 metres (328 feet) of the subject site and notice posters were posted on the site.

***Public Outreach***

In accordance with Section 13 of the Zoning By-law, the applicant mailed the proposal to owners of nearby properties. As of the writing of this report, the Planning & Buildings Department has not received representation in favour of or in opposition to this application.