


<b>TITLE:</b> <b>SUBDIVISION &amp; VARIANCE</b> <b>PROPERTY LOCATED AT 21 WILLOWCREST AVENUE</b> <b>PARCELS A/B, PLAN 1269 BLTO, PARCELS 1/2, PLAN 1287</b> <b>BLTO, PARCEL B, PLAN 1547 BLTO, PARCEL 1, PLAN 1592 BLTO</b> <b>OWNER &amp; APPLICANT: BRANDON EVERGREEN ENTERPRISES</b> <b>LTD.</b>		
<b>MEETING DATE:</b> May 18, 2022		<b>Page 1 of 10</b>
<b>DEPARTMENT:</b> Planning & Buildings	<b>ATTACHMENTS:</b> A. Application related documents B. Map, air photo & drawings C. Development Review Group report D. Previous concept plan E. Letter of opposition	
<b>PRESENTER:</b> Bernice Leyeza, Community Planner	<b>MANAGER:</b> Ryan Nickel, Director Planning & Buildings	

**RECOMMENDATIONS:**

***Subdivision***

That the Planning Commission recommends Brandon City Council approve the application to subdivide (4500-22-719) 21 Willowcrest Avenue (Parcels A/B, Plan 1269 BLTO, Parcels 1/2, Plan 1287 BLTO, Parcel B, Plan 1547 BLTO, Parcel 1, Plan 1592 BLTO) to create one (1) lot and a public road in the Residential High Density (RHD) Zone, subject to the owner or successor:

1. Entering into a development agreement with the City of Brandon, to be registered in series with the subdivision, with the following conditions:
  - a. The Developer agrees that the development agreement shall be outlined into three sections:
    - Overall Site Conditions of Development (shared responsibility of all property owners);
    - Lot 1 Conditions of Development; and
    - Lot 2 Conditions of Development.

The Developer further agrees to construct a maximum of 194 high density residential units and a public right-of-way in general consistency with the proposed site plan and any variation of the plan may require the Developer to obtain approval from Brandon City Council who may request additional public input and amendment to the agreement.

**Overall Site Conditions of Development**

- b. The Developer agrees to dedicate a portion of Willowcrest Avenue to the City as public right-of way. The portion of road to be dedicated shall be in accordance

with the Subdivision Application Map and the Plan of Subdivision and shall be a minimum width of 7.3m with sufficient boulevard to accommodate a sidewalk. Should the Developer be unable to dedicate sufficient right of way to accommodate a sidewalk, the Developer will be required to secure an Easement Agreement with the property owner of 1640 Sycamore Drive to allow for unimpeded access to the sidewalk in perpetuity for both Lot 1 and Lot 2.

- c. The Developer agrees to construct a 1.8m sidewalk along the north side of the right-of-way for the entire length of Lot 1. The design of all work proposed in the right-of-way is subject to review and acceptance by the City Engineer prior to the issuance of a development permit, and shall be performed as stated in the latest edition of the City of Brandon's Standard Construction Specifications.
- d. The Developer agrees to plant a minimum of 3 private trees on the south side of the right-of-way within Lot 1 in lieu of City boulevard trees. The Developer will be responsible to maintain these trees.
- e. The Developer agrees to submit to the Engineering Department all materials testing data, televising including mandrel results and as-built drawings confirming that construction to date has been completed in accordance with the Standard Construction Specifications for all works that are proposed to be transferred to City ownership through the right-of-way dedication extending Willowcrest Avenue. Such results are to be reviewed by the City with acceptance of all works to be confirmed in writing prior to the release of a development permit.
- f. The Developer agrees to design and construct Willowcrest Avenue from Lyndale Drive to the westerly limits of Lot 2. Road construction must also include the relocation of the existing fire hydrant at the northeast corner of Lyndale Drive and Willowcrest Avenue and any related shallow infrastructure relocations. The Developer will be required to submit design drawings as prepared by a professional engineer with such design being subject to review and acceptance by the City Engineer.
- g. The Developer agrees to provide the City with a Detailed Cost Estimate for all work within the right-of-way. The Detailed Cost Estimate is to include all work proposed to be public and all work previously constructed under the original Developer which will become public through the right-of-way dedication. The Detailed Cost Estimate is to be prepared by the Developer's Consulting Engineer and is to be submitted for review and acceptance by the City Engineer.

- h. The Developer will be responsible to submit an Irrevocable Letter of Credit totalling 15% of the Detailed Cost Estimate. Submission of the Letter of Credit is required prior to the issuance of a development permit.
- i. The Developer agrees to secure an Easement Agreement for shared drainage between Lot 1 and Lot 2. The Easement Agreement shall include the drainage outlet of Lot 1 and at a minimum, acceptance of 5-year pre-development stormwater flows from Lot 1. The Easement Agreement shall be registered in series with the Plan of Subdivision.
- j. The Developer agrees to execute a Construction Conforming Agreement for Lot 1, Lot 2 and 1640 Sycamore Drive to allow for continued and unimpeded secondary access of Lot 1 over Lot 2 and 1640 Sycamore Drive and Lot 2 through 1640 Sycamore Drive. The Construction Conforming Agreement is to be registered on all affected titles prior to the release of any building permits for Lot 1 and/or Lot 2.
- k. The Developer agrees to clear snow on Willowcrest Avenue east of Lyndale Drive in perpetuity.

Lot 1 Conditions of Development

- l. The Developer agrees to mitigate the increased stormwater runoff on Lot 1 by either controlling the release rate to that of a 5-year pre-development event while providing storage for a 100-year post-development event or providing evidence of an agreement with Lot 2 to allow for runoff to be discharged onto Lot 2 at an uncontrolled rate whereas Lot 2 will control the release rate to that of a 5-year pre-development event while providing storage for a 100-year post development event taking both Lot 1 and Lot 2 into consideration. The Developer will be required to submit design drawings as prepared by a professional engineer with such design being subject to review and acceptance by the City Engineer.
- m. The Developer agrees to enter into a Private Sewer and Water Agreement with the City. The Private Sewer and Water Agreement is to be registered on Lot 1 in series with the Plan of Subdivision. Upon registration of this agreement on title, the City undertakes to discharge the previous Private Sewer and Water Agreement currently registered on title of the original parcel. All registration costs shall be at the sole cost of the Developer.
- n. The Developer agrees to improve and maintain the public reserve area located south of Lot 1 for the entire length of Lot 1. This shall include but not be limited

to, designing and constructing a 1.8m (6.0ft) high fence on the south property line of the public reserve and landscaping and tree planting within the public reserve. The Developer further agrees to maintain the public reserve and fencing, which includes but is not limited too, cutting grass and watering the trees, in perpetuity.

- o. The Developer agrees to abandon all watermain east of “*Sta 0+055,83, as shown on Drawing C2.2*” stamped as “Reviewed for Construction” dated October 16, 2017 which was installed for future looping purposes. The Developer further agrees to install a new fire hydrant at the southerly dead end of the private watermain.
- p. The Developer agrees that all existing private water services, which were installed in accordance with previously accepted design drawings and are proposed to be abandoned, are to be disconnected at the private watermain.
- q. The Developer agrees that all existing private sewer services, which were installed in accordance with previously accepted design drawings and are proposed to be abandoned, are to be disconnected at the private sewer main.
- r. The Developer agrees that prior to the issuance of the subdivision certificate of approval, to contribute to the Brandon School Division in lieu of land dedication in the amount of \$3,645.00 for the proposed 18 units. Payment of receipt will be required prior to issuance of the subdivision certificate of approval.

*Lot 2 Conditions of Development*

- s. The Developer agrees to mitigate the increased stormwater runoff on Lot 2 by controlling the release rate to that of a 5-year pre-development event while providing storage for a 100-year post-development event. The Developer will be required to submit design drawings as prepared by a professional engineer with such design being subject to review and acceptance by the City Engineer.
- t. The Developer agrees to enter into a Private Sewer and Water Agreement with the City. The Private Sewer and Water Agreement is to be registered on Lot 2 in series with the Plan of Subdivision. Upon registration of this agreement on title, the City undertakes to discharge the previous Private Sewer and Water Agreement currently registered on title of the original parcel. All costs of registrations shall be at the sole cost of the Developer.

- u. The Developer agrees to improve and maintain the public reserve area located south of Lot 2 for the entire length of Lot 2. This shall include but not be limited to, designing and constructing a 1.8m (6.0ft) high fence on the south property line of the public reserve and landscaping and tree planting within the public reserve. The Developer further agrees to maintain the public reserve and fencing, which includes but is not limited to, cutting grass and watering the trees, in perpetuity.
- v. The Developer acknowledges the site will be subject to development charges. Network Infrastructure charges shall be in accordance with the 2022 Fee Schedule in the amount of \$154,627.60 and will be due upon the execution of the development agreement. Should the development agreement not be executed in the year in which development charges have calculated, the development charges calculation will be re-calculated to reflect the current year in which the agreement is signed. Additional development charges will be charged against any future buildings and will be applied at the time of issuance of a building permit.
- w. The Developer agrees that prior to the issuance of the subdivision certificate of approval, to contribute to the Brandon School Division in lieu of land dedication in the amount of \$33,615.00 for the proposed 166 units. Payment of receipt will be required prior to issuance of the subdivision certificate of approval.
- x. The Developer agrees to provide written confirmation that necessary arrangements have been made for postal service and that the pick-up/drop-off location of the community mail box has been determined between the Developer and Canada Post, to the approval of Canada Post.

It is requested that Administration be authorized to prepare a Development Agreement containing all conditions and requirements to protect the City's interests in accordance with any procedures, policies, by-laws and Acts.

2. Submitting written confirmation to the City of Brandon Planning & Buildings Department that arrangements have been made for postal service to the satisfaction of Canada Post;
3. Providing written confirmation to the City of Brandon Planning & Buildings Department that taxes for the property to be subdivided, for the current year plus any penalty, interest and arrears, have been paid in full or arrangements must be made satisfactory to Brandon City Council; and
4. Submitting written confirmation to the City of Brandon Planning & Buildings Department that arrangements have been made for a joint use easement agreement and Plan of Easement to the satisfaction of Manitoba Hydro, BellMTS, and Westman Communications

Group, and registering the easement agreement along with the easement plan, if required, in series with the plan subdivision.

### ***Variance***

That Variance Application V-06-22 to vary Table 10 under Section 51 of the Zoning By-Law by decreasing the required interior east side yard in from 4.6m to 3.0m in the Residential High Density (RHD) Zone be approved at Proposed Lot 1 within 21 Willowcrest Avenue, as set out under subdivision application 4500-22-719 (Parcels A /B, Plan 1269 BLTO, Parcels 1/2, Plan 1287 BLTO, Parcel B, Plan 1547 BLTO, Parcel 1, Plan 1592 BLTO), in accordance with the attached letter of intent “Attachment A-4” and site plan “Attachment B-3”.

### **BACKGROUND:**

#### ***Request***

The applicant, Aaron Dubois of Brandon Evergreen Enterprises Ltd., is applying for the following:

- To subdivide a property located at 21 Willowcrest Avenue to create one (1) lot and a public road in the Residential High Density (RHD) Zone, and
- To vary Table 10 under Section 51 of the Zoning By-Law by decreasing the required interior east side yard from 4.6m to 3.0m in Proposed Lot 1 of the associated subdivision application

Approval of these applications will allow for development of multi-unit dwellings, with a total of 25 dwelling units on Proposed Lot 1 and 165 dwelling units on Proposed Lot 2.

#### ***Development Context***

There are currently seven row house dwelling units under construction on the southwest corner of the site, which is located on the eastern end of Willowcrest Avenue east of 18<sup>th</sup> Street (PTH 10) and Lyndale Drive. Uses surrounding the site include a mixture of low- to high-density residential uses to the north, east, and south, and commercial uses to the west. Willowcrest Avenue provides primary access to the site.

#### ***History***

The applicant rezoned the subject site and 1640 Sycamore Drive in 2013 to develop both properties as a single site with 440 dwelling units. However, the joint development was not pursued further, and the applicant only pursued the development of the subject site in 2017, which required a new development agreement. The applicant obtained conditional approval of subdivision and permits to develop the first phase of the site, including the seven row house dwelling units, in 2018. The City has not yet issued occupancy permits for those dwelling units, as the applicant had not yet constructed Willowcrest Avenue and the private road into the development as set out in the 2017 development agreement.

**ANALYSIS:**

Approval of the concurrent subdivision and variance applications will allow for the development of 18 more dwelling units on Proposed Lot 1, totaling 25 dwelling units, 165 dwelling units on Proposed Lot 2, and the extension of the public road known as Willowcrest Avenue.

***Subdivision*****Consistency with the Development Plan**

- Site is within “Residential” area as designated in the Brandon & Area Planning District Development Plan 2013
- Policies 2.2.2 & 2.2.4 promote variety of housing types and densities across the City

**Consistency with the Zoning By-law**

- Site zoned as Residential High Density (RHD) since 2014 to accommodate the proposed density (190 total units)
- Proposed building height of the proposed buildings (two storeys on Proposed Lot 1 and four storeys on Proposed Lot 2) permitted in the RHD Zone
- Proposed site concept complies with bulk and siting requirements for RHD zone except for the required interior east side yard of Proposed Lot 1 (see “Variance” subsection for analysis)
- 6.0m wide public reserve buffer to the south to be planted (buffer trees), fenced to the south of public reserve, and maintained by developers to provide total separation of 10.6m between southernmost building and properties to the south
- 280 surface parking spaces proposed, which complies with the minimum parking requirement of 1.5 spaces per unit
- Primary greenspace/amenity area located central to site to be combined with existing greenspace to north
- Pedestrian connections provided internal to the site connecting to Lyndale Drive to the west and Sycamore Drive to the north

**Access**

- Secondary access to be provided through existing site to Sycamore Drive to the north. **Secondary access to Kelsey Bay has been removed from the concept and is no longer required**
- Additional portion of Willowcrest Avenue to be designed, constructed and dedicated as public right of way to provide access to both lots
- Public sidewalk to be constructed to the north of Willowcrest Avenue

### Land Drainage & Servicing

- Land Drainage to be stored through surface ponding and land drainage sewer (similar to existing site to the north) and connect through northern site to land drainage system on Sycamore Drive
- Water and Sewer servicing to be provided through Willowcrest Avenue as per proposed in previous concept

### **Variance**

The applicant is also concurrently applying for a variance on Proposed Lot 1 to decrease the required interior east side yard from 4.6m to 3.0m to accommodate the proposed 18-unit building and other required site elements.

### ***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 existing and proposed buildings on Proposed Lot 1 are set back, aided by a landscape buffer required under the 2017 development agreement, from the existing mobile homes to the south. The surrounding area is a mixture of low- to high-density dwellings, and 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;

The intent of the 4.6m required side yard in RHD Zone is to ensure a greater setback for taller buildings that are permitted in the RHD Zone (up to 12 storeys). Since there is a significant distance (approximately 30m away) from the proposed site line to the proposed building on the southeast corner of Proposed Lot 2, and with the proposed 18-unit building being no taller than three storeys, similar in height to the row houses under construction, reducing the required side yard will not be detrimental to the surrounding area.

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

The proposal is the minimum modification of the Zoning By-law to accommodate the existing row house dwellings under construction and other site elements (e.g. parking area).

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 proposal complies in all provisions of the Development Plan and, beyond the requested variance, the Zoning By-law.



***Commenting Agencies***

All comments have been addressed and summarized below.

***City of Brandon***

The City of Brandon advises that a development agreement is required, with conditions as identified in the “Recommendations” section and “Attachment C” in this report. Some key conditions are highlighted as follows:

- Developer to construct Willowcrest Avenue dedication in accordance with the application drawings
- Development will be tied to a maximum of 194 units as in the existing development agreement registered on title and shall be in general consistency with the site plan
- Prior to issuance of any development permits, the Developer shall not object to the City requiring and obtaining written confirmation of registration on titles an agreement, such as conforming construction agreement, to account for secondary access for Proposed Lots through 1640 Sycamore Drive
- Payment of development charges totaling of \$154,627.60 (for the correct year) for the Proposed Lot 2
- Brandon School Division requires school contribution of \$37,057.50 (for both Proposed Lots)

***Canada Post***

- Canada Post requires community mailbox installation for this development
  - City administration recommends this to be a condition of subdivision approval

***Property Taxes***

- Property Owner owing \$3,683.16 in property taxes for the year of 2020 that is subject to tax sale costs, and monthly penalty being added after May 1, 2022
  - City administration recommends this to be a condition of subdivision approval
- Property Owner owing \$29,907.71 in property taxes for the year of 2021 if paid in full by May 1, 2022
  - City administration recommends this to be a condition of subdivision approval

***Utilities***

- Manitoba Hydro, BellMTS, and Westman Communications Group will require joint blanket easement agreement to be registered in series of the subdivision
  - City recommends this be a condition of subdivision approval

**LEGISLATIVE REQUIREMENTS:*****Notification***

The subdivision is creating an extension of a public road and, under s. 125(2) of The Planning Act, a public hearing is required. In accordance with Section 169 of The Planning Act, notice of the public hearing was sent to owners of property within 100 metres (328 feet) of the subject property.

***Public Outreach***

In accordance with Section 13 of the Zoning By-law, the applicant mailed their proposal to owners of nearby properties on March 22 and April 2, 2022. The community participation report stated that one resident asked for an updated site plan. During the public outreach process, City administration received concerns from neighbourhood residents regarding the Public Reserve to the south of the site, fencing, and updated site plan. The applicant provided another community outreach letter, written by the developer of Proposed Lot 2, which addressed most of the concerns from the neighbourhood residents. As of the writing of this report, the Planning, Property & Buildings Department has received a letter of opposition to this application (Attachment E), where the main concerns are the increased traffic on Sycamore Drive and increased in density in the area.