


TITLE: VARIANCE 821 — 9TH STREET (LOTS 19/20, BLOCK 56, PLAN 8 BLTO) OWNER: STEPHANIE AND CHARLES JORDAN APPLICANT: KATE MCKENZIE		
MEETING DATE: September 7, 2022		Page 1 of 4
DEPARTMENT: Planning & Buildings	ATTACHMENTS: A. Application related documents B. Map, air photo & drawings	
PRESENTER: Justin Quigley, Community Planner	MANAGER: Ryan Nickel, Director of Planning & Buildings	

RECOMMENDATIONS:

That Variance Application V-13-22 to decrease the required railway right-of-way from 30.0m to 22.1m be approved at 821 – 9th Street (Lots 19/20, Block 56, Plan 8 BLTO) in accordance with the attached letter of intent “Attachment A-1”, site plan “Attachment B-3”, and concept renders “Attachments B-4 through B-6”, subject to:

1. The owner or successor, at the time of building permit, submit a letter outlining design and construction details that outline mitigating measures to reduce the impact of noise and vibration. The following mitigating measures are recommended for consideration:
 - a. Forced air ventilation systems with central air conditioning;
 - b. The exterior wall siding of the building closest to the railway line to be brick or a masonry equivalent for the exposed façades;
 - c. Acoustically upgraded windows meeting the minimum requirements of the Building Code and providing a maximum 35 dBA indoor limit for bedrooms and 40 dBA for living rooms;
 - d. Locating noise sensitive rooms away from the railway side;
 - e. Noise barrier fence providing a maximum 55 dBA limit for outdoor living areas;
 - f. Living the outside of the foundation walls with a resilient layer; and,
 - g. Isolating the upper floors from the foundation wall and any internal column supports using rubber pads designed to deflect 5 to 20mm under load.

The applicant shall outline in the letter which mitigating measures from the above have been included in the detailed design, which mitigating measures from the above have been addressed through alternative means, and, where mitigating measures from the above cannot be included, reasons for not accommodating such measures.

BACKGROUND:***Request***

The applicant Kate McKenzie, on behalf of owners Stephanie and Charles Jordan, is applying to reduce the Railway Protection Overlay Zone (RPOZ) from 30.0m to 22.1m to construct a duplex dwelling for a property located at 821 – 9th Street in the RMD Zone.

Development Context

The subject site currently has a detached dwelling. Uses surrounding the site include a mixture of low- to moderate-density dwellings. General commercial is located on three of the corner properties along the street, as well as one block west along 10th Street. Access is currently provided by a front approach to a garage and is also available by a rear lane right-of-way. The CN railway line is located on the opposite side of the street and crosses along the intersection of 9th Street and College Avenue.

History

The site is occupied by a single-detached residential dwelling that was built in 1904. The applicant notes that an A/C Unit and Shed is currently encroaching on the property from 811 – 9th Street, as outlined in site plan “Attachment B-3”.

ANALYSIS:***Variance***

The applicant is proposing to construct a duplex with portions to be constructed within the 30.0m RPOZ, as outlined in the site plan “Attachment B-3”. The applicant has identified that compliance with the Zoning By-law and the Urban and Landscape Design Standards Manual in order to develop the site will require a reduction in the RPOZ.

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;***

Allowing a RPOZ reduction will provide the applicant the ability to propose the siting of the proposed duplex to the front yard setback and site parking to the rear of the site. The applicant can then site the structure in line with the existing building to be retained on site as well as the residential dwellings along 9th Street. Siting the parking to the rear also complies with the nature of the surrounding area as recommended by the Urban and Landscape Design Standards Manual. The proposed reduction to the railway right-of-way therefore 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 requested RPOZ reduction allows the proposal to comply with all other provisions of the Zoning By-law and Urban and Landscape Design Standards Manual. The intent of the By-law and Standards are to encourage development that reduces the impact imposed upon neighbouring properties. CN has identified that the intensity of use proposed for the site will not negatively affect the safe and continued operation of trains along this rail line. The property proposes a site layout that does impose added risks to the property itself, namely increased noise and vibration concerns. However, CN suggests that the conditions outlined in this report's recommendation will significantly mitigate these added risks to a point of minimal concern. The proposed RPOZ reduction will therefore not be detrimental to the health or general welfare of people in the surrounding area, nor negatively affect other properties or potential development in 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

Any potential development to occur on the site of an increased intensity to the use currently existing on the site will require some modification to the Zoning By-law due to the restrictions the railway right-of-way imposes. The applicant previously applied for a variance under several design iterations, including reducing the rear yard setback to site parking at the front in order to avoid any potential risk associated with the railway line. City administration's initial review of the earlier iterations indicated that allowing the structure to be built to the rear of the site would not be consistent with the Urban and Landscape Design Standards Manual, and would not be compatible with the general nature of the surrounding area. This variance request is therefore the minimum modification of the Zoning By-law to 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

Brandon & Area Planning District Development Plan 2013

- Site designated "Residential" (Map 1)
- Proposal is an infill development, which is a general priority of the Development Plan (1.6.2(l), 10.2.3)
- Proposal provides a mixture of housing options in the neighbourhood (2.2.2)
- Proposed development will contribute to a range of housing density options in the neighbourhood (2.2.4)

City of Brandon Zoning By-law

- Proposed duplex dwelling complies with all other provisions of the Zoning By-law, including bulk and siting requirements, and parking
- Proposed building design shows compliance with the site design standards in the Urban & Landscape Design Standards Manual

Commenting Agencies

All comments have been addressed and summarized below.

CN Rail

Further to mitigation measures as outlined in this report's recommendation, CN has requested the applicant work with their counsel to prepare provisions that inform occupants of the dwelling that there will be railway operations that may result in a nuisance by way of noise and vibration. The applicant is encouraged to contact CN for the development of these provisions, such as a save harmless agreement or easement in favour of CN for operational noise and vibration.

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 all owners of properties within 100m of the site and performed door-to-door outreach with nearby properties. The applicant identified that the consultation did not result in any comments or concerns. As of writing of this report, the Planning & Buildings Department has not received comment in support or in opposition to this development.