Minutes – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – September 12, 2011

PUBLIC HEARINGS

Minute No. 22 Appeal – Variance – 250 Broadway
(Fort Rouge - East Fort Garry Ward)
File DAV 139618A/2011B

STANDING COMMITTEE DECISION:

The Standing Policy Committee on Downtown Development, Heritage and Riverbank Management allowed the appeal in part, concurred in the decision of the Director of Planning, Property and Development as amended and approved a Variance on "the land" for the maintenance of two accessory, off street at-grade parking areas to permit:

1. small car spaces exceeding 30% of the total number of parking spaces provided.

2. parking aisle widths of 7.0 feet and 15.0 feet instead of 20.0 Ft.

subject to the following conditions:

1 That this Variance order shall take effect only upon the completion of paving of the parking areas and driveways in accordance with Section 230(3)c of Zoning By-Law 100/2004.

2. That a plan showing four (4) foot ornamental fencing and landscaping be submitted to the Director of Planning, Property and Development for approval prior to installation, and be maintained to the satisfaction of the Director.

3. That west of the building, fencing shall be set back a minimum of 40 feet.

Further, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management cancelled Variance Order DAV 139618/2011B.

Minutes – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – September 12, 2011

DECISION MAKING HISTORY:

The Winnipeg Public Service advised that all statutory requirements with respect to this appeal have been complied with.

Moved by Councillor Gerbasi,

That the report of the Winnipeg Public Service be taken as read.

Carried

Moved by Councillor Gerbasi,

That the receipt of public representations be concluded.

Carried

Moved by Councillor Gerbasi,

That criteria (a) to (d) of Subsection 247(3) of The City of Winnipeg Charter, are satisfied.

Carried

Moved by Councillor Gerbasi,

That the appeal be allowed in part and the decision of the Director of Planning, Property and Development be concurred in with the following amendments, namely:

- Delete Part 3. of the Variance Application

- Delete Condition 2. in its entirety and replace with the following:

  "2. That a plan showing four (4) foot ornamental fencing and landscaping be submitted to the Director of Planning, Property and Development for approval prior to installation, and be maintained to the satisfaction of the Director."

- Add the following Condition 3.:

  "3. That west of the building, fencing shall be set back a minimum of 40 feet."

Carried

DECISION MAKING HISTORY: (continued0

Moved by Councillor Gerbasi,
That Variance Order DAV 139618/2011B be cancelled.

Carried

Moved by Councillor Gerbasi,
That the public hearing with respect to this appeal be concluded.

Carried

THE CITY OF WINNIPEG
VARIANCE APPEAL ORDER
Standing Policy Committee on Downtown Development, Heritage and Riverbank Management

DAV 139618A/2011B

Before:	Standing Policy Committee on Downtown Development, Heritage and Riverbank Management Councillor Swandel, Chairperson Councillor Browaty Councillor Gerbasi Councillor Havixbeck
Hearing:	September 12, 2011 West Committee Room Council Building, 510 Main Street
Applicant:	Arch Hoigman, Winpark Dorchester Properties
Premises Affected:	250 Broadway
Legal Description:	Lot 43 Plan 23855 1 ST J, hereinafter called "the land"
Property Zoned:	"M" Multiple-Use Sector
Zoning Atlas Sheet:	AA25
Nature of the Application:	To vary the "Multiple Use" Sector regulations of the Downtown Zoning By-law No. 100/2004 for the maintenance of two accessory, off street at-grade parking areas to permit: 1. small car spaces exceeding 30% of the total number of parking spaces provided; 2. parking aisle widths of 7.0 feet and 15.0 feet instead of 20.0 feet,

3. a fence height of 6.0 feet instead of 4.0 feet.

ORDER OF THE DIRECTOR OF PLANNING, PROPERTY AND DEVELOPMENT:

The Director of Planning Property and Development approved a Variance, File DAV 139618/2011B, to Arch Hoigman, Winpark Dorchester Properties, for premises located at 250 Broadway, for the maintenance of two accessory, off street at-grade parking areas to permit:

1. small car spaces exceeding 30%of the total number of parking spaces provided.

2. parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.

3. a fence height of 6.0 Ft instead of 4.0 Ft.,

subject to the following condition(s) which the Director of Planning, Property and Development Department considers necessary to ensure compliance with criteria (a) to (d) above, namely:

subject to the following conditions:

1. That this Variance order shall take effect only upon the completion of paving of the parking areas and driveways in accordance with Section 230(3)c of Zoning By-Law 100/2004.

2. That the design of the fencing and landscaping be in accordance with the recommendations of Downtown Urban Design Review.

Pursuant to the provisions of The City of Winnipeg Charter, Danny Akman, Akman Management Ltd., appealed the Variance Order DAV 139618/2011B and after Notice, the appeal was heard on September 12, 2011.

Upon consideration of the evidence adduced and submissions made, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management is of the opinion that, subject to the condition(s) imposed under this appeal Order if any, criteria (a) to (d) of Subsection 247(3) of The City of Winnipeg Charter, set out below, are satisfied:

(a) is consistent with Plan Winnipeg, and any applicable secondary plan;

(b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway;

(c) 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

(d) is compatible with the area in which the property to be affected is situated.

ORDER:

The Standing Policy Committee on Downtown Development, Heritage and Riverbank Management orders:

That the appeal is allowed in part and the provisions of the "M" Multiple-Use Sector District regulations of Winnipeg Zoning By-law No. 200/2006 are varied on "the land" for the maintenance of two accessory, off street at-grade parking areas to permit:

1. small car spaces exceeding 30% of the total number of parking spaces provided;

2. parking aisle widths of 7.0 feet and 15.0 feet instead of 20.0 feet,

subject to the following conditions necessary to ensure conformity with the statutory criteria of The City of Winnipeg Charter:

1. That this Variance order shall take effect only upon the completion of paving of the parking areas and driveways in accordance with Section 230(3)c of Zoning By-Law 100/2004.

2. That a plan showing four (4) foot ornamental fencing and landscaping be submitted to the Director of Planning, Property and Development for approval prior to installation, and be maintained to the satisfaction of the Director.

3. That west of the building, fencing shall be set back a minimum of 40 feet.

That Variance Order DAV 139618/2011B dated July19, 2011, is cancelled.

THIS ORDER IS SUBJECT TO ALL BUILDING, HEALTH OR OTHER REGULATIONS PERTAINING TO THE LAND HEREIN REFERRED TO.

NOTE: VARIANCE REQUESTED HAS BEEN MODIFIED.

DATE OF ORDER: September 13, 2011

CERTIFIED BY:



Carlos Gameiro
Senior Committee Clerk

THE FOLLOWING PERSONS MADE REPRESENTATIONS:

In Support of the Appeal:

Danny Akman, Akman Management Ltd.

In Opposition to the Appeal:

Richard Bel, The Fort Garry
Arch Hoigman, Winpark Dorchester Properties
B. Lofchick, World Wide Management
Jeff Rabb

For Information on the Appeal:

Nil

For the City:

Mr. B. Thorgrimson, Acting Director, Planning, Property and Development Department
Mr. J. Keirnan, Coordinator Parks, Riverbanks and Community Initiatives, Planning, Property and Development Department
Mr. K. Kowalke, Planner, Planning, Property and Development Department
Ms S. Murata, Solicitor, Legal Services Department

EXHIBITS FILED FOR DAV 139618A/2011B

1. Order DAV 139618/2011B dated July 19, 2011
2 Notice of Appeal filed by Danny Akman, Akman Management Ltd, received August 2, 2011
3. Notification of Public Hearing dated August 25, 2011
4. Surveyor's Building Location sketch dated 2010
5. Confirmation from the Zoning Development Administrator that the subject property may be posted in substitution for newspaper advertising
6. Plan, Sheet1, for File DAV 139618/2011B dated June 13, 2011
7. Report from the Planning and Land Use Division dated August 23, 2011
8. Inspection Report
9. Photographs (7) of the subject area, submitted at the public hearing by Danny Akman
10. Communication (undated) from Richard Bel, The Fort Garry, submitted at the public hearing by Arch Honigman in opposition to the appeal
11. Communication dated September 7, 2011 from B. Lofchick, World Wide Management Ltd. submitted at the public hearing by Arch Honigman in opposition to the appeal
12. Photographs (18) of Apartment Complexes in the vicinity of the subject property, submitted at the public hearing by Arch Honigman
13 Photographs (7) of 250 and 270 Broadway, submitted at the public hearing by Arch Honigman in opposition to the appeal
14. Drawings (3) of the subject property, submitted at the public hearing by Arch Honigman in opposition to the appeal
15. Communication dated August 12, 2011 from Lee Caldwell to Arch Honigman, submitted at the public hearing by Arch Honigman
16. Communication dated August 30, 2011 from Wintec Building Service to Arch Honigman, submitted at the public hearing by Arch Honigman

Exhibit "7" referred to in File DAV 139618A/2011B

ADMINISTRATIVE REPORT

Title: **DAV 11-139618/B - 250 Broadway**

Critical Path: Standing Policy Committee on Downtown Development, Heritage and Riverbank Management

AUTHORIZATION

Author	Department Head	CFO	CAO
P. Regan	B. Thorgrimson	N/A	Deepak Joshi Chief Operating Officer

RECOMMENDATIONS

The Planning, Property and Development Department (Planning and Land Use Division) recommend that the appeal against the Order of the Director to vary the "Multiple Use Sector" regulations of the Downtown Winnipeg Zoning By-law No. 100/2004 to permit:

1) small car spaces exceeding 30% of the total number of parking spaces provided;
2) parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.;
3) a fence height of 6.0 Ft instead of 4.0 Ft.;

be dismissed.

REASON FOR THE REPORT

The Standing Policy Committee on Downtown Development, Heritage and Riverbank Management is delegated the authority to hear and decide on appeals of decisions of the Public Service on Conditional Use applications in downtown Winnipeg.

- While fencing and accessory parking are permitted under Zoning By-Law, the dimensional standards were not met for either.
- Conditions of approval for the variance were recommended to ensure that the impacts on surrounding properties or the public right-of-way would not be substantial.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Planning, Property and Development Department (Planning and Land Use Division) are concurred in, a development permit can be issued.

HISTORY

In 2010, fencing and accessory parking was installed at the site without a development permit. Neither the fence nor the parking conforms to the regulations of Zoning By-Law 100/2004.

After a complaint was received, zoning enforcement contacted the property owner regarding the need for a development permit, resulting in the variance application.

On July 19, 2011, Planning, Property and Development approved the variance with conditions.

FINANCIAL IMPACT

Financial Impact Statement Date: August 19, 2011

Project Name:

DAV 11-139618/B - 250 Broadway

COMMENTS:

The recommendations contained in this report is that the Planning, Property and Development Department (Planning and Land Use Division) recommend that the appeal against the Order of the Director to vary the "Multiple Use Sector" regulations of the Downtown Winnipeg Zoning By-law No. 100/2004 to permit:

1) small car spaces exceeding 30% of the total number of parking spaces provided;
2) parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.;
3) a fence height of 6.0 Ft instead of 4.0 Ft.;

be dismissed.

There are no financial implications associated with this report.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

N/A

SUBMITTED BY

Department	*Planning, Property and Development*
Division	*Planning and Land Use*
Prepared by	Kurtis Kowalke
Date:	August 23, 2011
File No.	DAV 11-139618/B

List of Schedules and Attachments

1. Attachment 1 – Planning Discussion

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Attachment 1 – Planning Discussion

DATE: August 18, 2011
FILE: DAV 11-139618/B
RELATED FILES:
COMMUNITY: City Centre Community
NEIGHBOURHOOD #: 1.165
SUBJECT: To vary the "Multiple Use" Sector regulations of Downtown Zoning By-Law No. 100/2004 for the maintenance of two accessory, off street at-grade parking areas to permit:
1) small car spaces exceeding 30% of the total number of parking spaces provided;
2) parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.;
3) a fence height of 6.0 Ft instead of 4.0 Ft.

LOCATION: 250 Broadway
LEGAL DESCRIPTION: LOT 43 PLAN 23855 1 ST J

APPLICANT: Arch Honigman Winpark Dorchester Properties
585 RIVER AVE
WINNIPEG MB R3L 2S9

OWNER: 5968055 MANITOBA LTD.
C/O WINPARK DORCHESTER PROPERTIES
585 RIVER AVE
WINNIPEG MB R3L 2S9

RECOMMENDATION: Approval with Condition(s)

CRITERIA FOR APPROVAL
Pursuant to Section 247(3) of the City of Winnipeg Charter, a Conditional Use application can be approved with condition(s) if the proposed development:
(a) is consistent with Plan Winnipeg and any applicable secondary plan;
(b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway;
(c) 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
(d) is compatible with the area in which the property to be affected is situated.

REPORT SUMMARY
- While fencing and accessory parking are permitted under Zoning By-Law, the dimensional standards were not met for either.
- Conditions of approval for the variance were recommended to ensure that the impacts on surrounding properties or the public right-of-way would not be substantial.

SITE DESCRIPTION
The subject site is a three storey apartment building in the Broadway-Assiniboine Neighbourhood of the Fort Rouge – East Fort Garry Ward. The site occupies approximately

13,000 square feet on the south side of Broadway between Smith Street and Garry Street and is zoned "Multiple Use Sector".

North: office building and accessory parking zoned “M’ Multi-Use

South: multi-family residential zoned “D” Downtown Living

East: non-accessory parking lot zoned “M’ Multi-Use

West: multi-family residential zoned “M’ Multi-Use



Figure 1: 2009 air photo map of subject parcel and surrounding context

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The owner erected a six foot fence and put down gravel to accommodate parking on the east and west side of the property.
- Neither the fence, the parking spaces nor the drive aisles meet the dimensional standards in the zoning by-law, and therefore, a variance is being sought.
- The owner intends to pave the parking area if the variance is upheld.



Figure 2: 2009 photo of west yard



Figure 3: 2011 photo of west yard

ANALYSIS AND ISSUES

ZONING BY-LAW 100/2004

Although Zoning By-Law 100/2004 does not mandate a parking requirement, it does provide minimum standards for parking lot design to ensure that vehicles can flow smoothly in and out, and do not backlog causing queuing on public right-of way. The dimensional standards also help avoid incidental damage to adjacent properties.

In this case, the subject property and the abutting parking lot on the east side are under the same ownership. Normally, a proposed 7 foot wide driveway would be of concern from the point of view of safety and functionality. Upon recent inspection, it appears the aisle is actually wider than 7 feet. Any future redevelopment of the adjacent property to the east may make this access more difficult such that it would no longer be useable except for bike parking.

COMPATIBILITY WITH THE AREA

In addition to minimizing conflict in the movement of vehicles, the Planning, Property and Development Department also considers the visual impacts of the additional parking on the character and quality of the streetscape. Broadway is one of Winnipeg's most prominent boulevards and part of the Trans-Canada route. As developed, the changes to the site have compromised the open, green appearance of the property. The fence, while it screens the parking lot, is also an unarticulated blank wall adjacent to Broadway. The quality of the fence design is not in keeping with the architecture of the building or with the standards of urban design found at other properties along Broadway. (See Figure 4.)

The Planning, Property and Development Department has discussed some proposed remediation measures with the applicant. The fencing at the northwest corner of the property would be relocated further back and landscaping would be restored in the west side yard to the satisfaction of the Director of Planning, Property and Development. Downtown Urban Design Review will also look at other potential means of mitigating the visual appearance of the fence, such as shrub planting, painting and detailing of the fence. There is an expectation that the paving and other remedial site work will be completed during the remainder of this construction season.



Figure 4: parking fence adjacent to 191 Broadway

REASONS FOR RECOMMENDATIONS

In the context of Section 247(3), the Planning and Land Use Division recommends **approval** for the following reasons:

(a) is consistent with Plan Winnipeg and any applicable secondary plan;
(b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway;
(c) 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
(d) is compatible with the area in which the property to be affected is situated.

RECOMMENDED CONDITIONS OF APPROVAL

1) That this Variance order shall take effect only upon the completion of paving of the parking areas and driveways in accordance with Section 230(3)c of Zoning By-Law 100/2004.
2) That, west of the building, fencing shall be set back a minimum of 40 feet.
3) That the design of the fencing and landscaping be in accordance with the recommendations of Downtown Urban Design Review.

This Report Submitted by:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: Kurtis Kowalke
PPD File # DAV 11-139618/B

Exhibit "6" referred to in File DAV 139618A/2011B

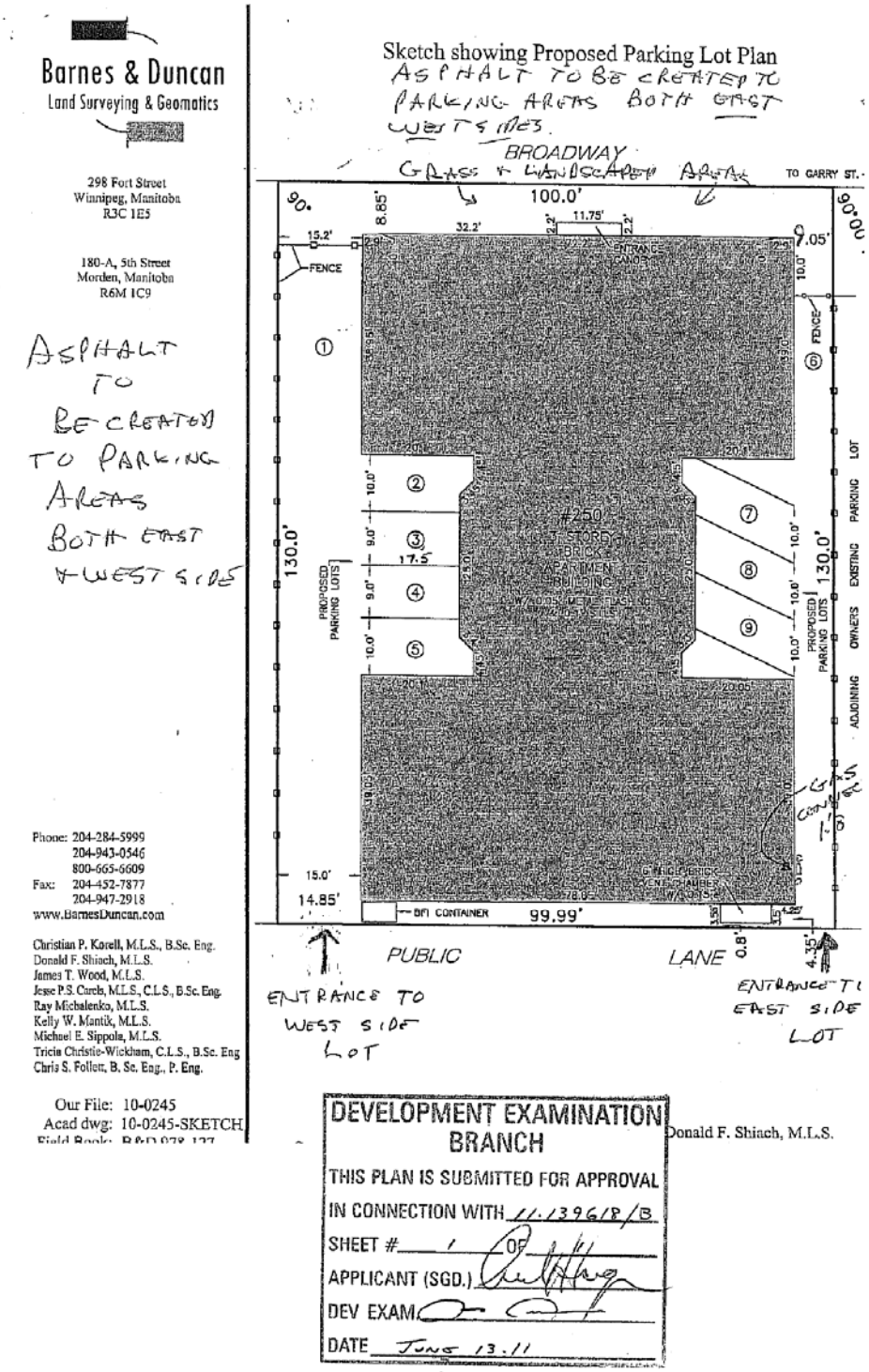

Exhibit "2" referred to in File DAV 139618A/2011B

From: "Daniel Akman"
To:
Sent: Tuesday, August 02, 2011 12:50 PM
Subject: FW: 250 Broadway
"DATE"

To Whom it May Concern

This letter authorizes Daniel Akman of Akman Management Ltd. to act on my behalf with respect to the variance requests at 250 Broadway.

Yours truly,

Drake Apartments Ltd.

SIGN HERE

President

From: Daniel Akman
Sent: August-02-11 8:50 AM
To:
Subject: 250 Broadway

Good morning:

Further to our conversation this letter will serve as our objection to the request for parking and fencing variances at 250 Broadway. We are the managers for 270 Broadway which is immediately to the west of 250 Broadway. Interestingly, my father built both 250 and 270 Broadway. He sold 250 on completion in the late 1940's but 270 remains in my family and is currently owned by my sister Elisabeth Bogner who resides in Vancouver. We are objecting for the following reasons:

1. As a result of the fencing in of 250 right on the property line the visual on Broadway is not in keeping with the character of the street. The removal of the green space between the 2 buildings is very negative and has the effect of furthering the concrete jungle theory. The impact is felt by both buildings.

2. Our tenants are negatively affected by the addition of traffic between the buildings and their views are also affected. In addition in the winter months how is the snow removal going to be handled? Will heavy equipment be required adding to noise and

disturbance?

3. As tenants of 250 come and go with the locking devices on cars beeping and car doors being closed at all times of the day and night tenants of both properties will be disturbed. Because of the closed in area behind the fencing is safety now an issue?

4. The sole purpose of the parking is to increase the revenue for the owner of 250 with no thought give to the overall effect on the neighbourhood.

Akman Management Ltd

Danny Akman

Exhibit "1" referred to in File DAV 139618A/2011B

DAV 11-139618/B

APPLICANT: Arch Honigman Winpark Dorchester Properties
585 RIVER AVE
WINNIPEG MB R3L 2S9

PREMISES AFFECTED: 250 Broadway
LEGAL DESCRIPTION: LOT 43 PLAN 23855 1 ST J
hereinafter called "the land".
PROPERTY ZONED: M
ZONING ATLAS SHEET: AA25
NATURE OF APPLICATION:

To vary the "Multiple Use" Sector regulations of Downtown Zoning By-Law No. 100/2004 for the maintenance of two accessory, off street at-grade parking areas to permit:
1) small car spaces exceeding 30%of the total number of parking spaces provided.
2) parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.
3) a fence height of 6.0 Ft instead of 4.0 Ft.

It is the opinion of the Director of Planning, Property and Development Department that subject to conditions listed below, if any, this order meets the statutory criteria of the City of Winnipeg Charter in that it:

(a) is consistent with Plan Winnipeg and any applicable secondary plan;
(b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway;
(c) 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
(d) is compatible with the area in which the property to be affected is situated.

C.W. Charter Subsection 247(3)

ORDER:
RE: 250 Broadway

The Director of Planning, Property and Development Department hereby orders that the provisions of the "Multiple Use" Sector regulations of Downtown Zoning By-Law No. 100/2004 and amendments thereto are **VARIED TO PERMIT** on "the land" the maintenance of two accessory, off street at-grade parking areas to permit:
1) small car spaces exceeding 30%of the total number of parking spaces provided.
2) parking aisle widths of 7.0 Ft and 15.0 Ft instead of 20.0 Ft.

3) a fence height of 6.0 Ft instead of 4.0 Ft., subject to the following condition(s) which the Director of Planning, Property and Development Department considers necessary to ensure compliance with criteria (a) to (d) above, namely:

1) That this Variance order shall take effect only upon the completion of paving of the parking areas and driveways in accordance with Section 230(3)c of Zoning By-Law 100/2004.
2) That the design of the fencing and landscaping be in accordance with the recommendations of Downtown Urban Design Review.

DATE OF ORDER: July 19, 2011

CERTIFIED BY:

_____

for Director Planning, Property and Development Department

HOW TO APPEAL

You must appeal against either the whole of this order or part(s) of it by filing a letter of appeal. This appeal will be heard by the Appeals Committee. That letter must:

(a) be addressed as set out below,

(b) be received at that office not later than 4:30 p.m. on August 2, 2011, [IF RECEIVED LATE YOUR APPEAL CANNOT BE HEARD.]

(c) refer to Variance Order No. DAV 11-139618/B, give brief reasons and describe whether you appeal the whole order or only part(s) of it.

You can attend the appeal hearing and speak on issues raised in someone else's appeal; but the Appeals Committee can only rule on issues raised in appeals filed. If you are not sure what others have appealed you should file your own appeal.

Address: Clerk of the Standing Policy Committee on Downtown Development
City of Winnipeg
City Clerk's Department
Council Building, 510 Main Street

Winnipeg, MB, R3B 1B9
Fax 947-3452