**Minutes – Board of Adjustment – February 5, 2020**

## PUBLIC HEARINGS

**Item No. 11 Variance – 200 Salter Street**
**(Mynarski Ward)**
**File DAV 197511/2019C**

BOARD OF ADJUSTMENT DECISION:

The Board of Adjustment concurred in the recommendation of the Winnipeg Public Service, as amended, and approved a Variance on "the land" to permit the following:

1. For the establishment of Auto/light truck/motorcycle, repair, service, sales and rental to permit as follows:

   A. 8 parking spaces;

2. For the maintenance of a fence to permit height of 12 feet (3.66 metres).

Subject to the following conditions:

1. That the Auto/light truck/motorcycle, repair, service, sales and rental use shall not operate between the hours of 10:00 p.m. and 9:00 a.m.

2. That no more than eight (8) vehicles shall be parked or otherwise stored anywhere on the property unless enclosed within a building.

3. That an ornamental fence at least 4 feet in height, be installed and maintained along the east property line in front of all parking stalls abutting street right-of-ways, and along the entire south property line excepting for a break to allow either a matching gate or a drive aisle, to the satisfaction of the Director of Planning, Property and Development.

4. That all fencing shall be installed within six months of this order coming into force and effect.

5. That there shall be no banner signs, mobile signs, billboard signs, or A-board signs permitted anywhere on the property, except that a mobile sign shall be permitted on the site for a period of up to thirty (30) days in association with a new occupancy permit.

6. That final plans, showing the location and details of fencing shall be submitted to the Director of Planning, Property and Development for approval prior to the issuance of any development or building permits; and thereafter shall be maintained to the satisfaction of the Director of Planning, Property and Development.

DECISION MAKING HISTORY:

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

Moved by Kara Bjornson,
That the report of the Winnipeg Public Service be taken as read.

Carried

Moved by Kara Bjornson,
That the receipt of public representations be concluded.

Carried

Moved by Kara Bjornson,
That in accordance with Subsection 247(3) of The City of Winnipeg Charter, the Variance,

(a) [✓] is consistent [ ] is not consistent
with Plan Winnipeg, and any applicable secondary plan;

(b) [✓] does not create [ ] does 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 [ ] is not
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 [ ] is not
compatible with the area in which the property to be affected is situated.

DECISION MAKING HISTORY (continued):

Supporting Comments:

1. The Board of Adjustment agreed with the administrative comments contained in the report of the Urban Planning Division dated January 27, 2020, except for condition number three with respect to the fence.

Carried

Moved by Kara Bjornson,

That the recommendation of the Winnipeg Public Service be concurred in, with the following amendment:

- In Condition 3, delete the words “light proof” after “That an ornamental”

and the Variance be approved.

Carried

Moved by Kara Bjornson,

That the public hearing with respect to this application be concluded.

Carried

# THE CITY OF WINNIPEG
# VARIANCE ORDER
## BOARD OF ADJUSTMENT

**DAV 197511/2019C**

| | |
|---|---|
| Before: | Board of Adjustment<br>Bill Sawka, Chairperson<br>Bill Evans<br>Kara Bjornson |
| Hearing: | February 5, 2020<br>Council Building, 510 Main Street |
| Applicant: | JSG Auto Repairs Ltd. (Sandeep Chauhan) |
| Premises Affected: | 200 Salter Street |
| Legal Description: | EXC S 8 LOT 73/74 PLAN 53 37/8 ST J, hereinafter called "the land" |
| Property Zoned: | "C2" Commercial Community |
| Nature of Application: | To vary the "C2" District Dimensional Standards of the Winnipeg Zoning By-Law No. 200/2006 to permit the following: |

1. For the establishment of Auto/light truck/motorcycle, repair, service, sales and rental to permit as follows:

    A. 8 parking spaces instead of 11 parking spaces;

    B. parking stalls width of 8.5 feet (2.59 metres) and 9.5 feet (2.74 metres) instead of 10 feet (3.05 metres) when adjacent to a wall or fence;

2. For the maintenance of a fence to permit height of 12 feet (3.66 metres) instead of 6.5 feet (1.98 metres) located on the west property line.

It is the opinion of the Board of Adjustment that subject to conditions listed below, if any, this Variance meets the statutory criteria as outlined in Subsection 247(3) of The City of Winnipeg Charter in that it:

(a) [✓] is consistent [ ] is not consistent
with Plan Winnipeg, and any applicable secondary plan;

(b) [✓] does not create [ ] does 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 [ ] is not
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 [ ] is not
compatible with the area in which the property to be affected is situated.

Supporting Comments:

1. The Board of Adjustment agreed with the administrative comments contained in the report of the Urban Planning Division dated January 27, 2020, except for condition number three with respect to the fence.

ORDER:

The Board of Adjustment orders that the provisions of the "C2" District Dimensional Standards of the Winnipeg Zoning By-Law No. 200/2006 are varied on “the land” to permit the following:

1. For the establishment of Auto/light truck/motorcycle, repair, service, sales and rental to permit as follows:

   A. 8 parking spaces;

2. For the maintenance of a fence to permit height of 12 feet (3.66 metres).

Subject to the following conditions, which the Board of Adjustment considers necessary to ensure compliance with criteria (a) to (d) as outlined in Subsection 247(3) of The City of Winnipeg Charter, namely:

1. That the Auto/light truck/motorcycle, repair, service, sales and rental use shall not operate between the hours of 10:00 p.m. and 9:00 a.m.

2. That no more than eight (8) vehicles shall be parked or otherwise stored anywhere on the property unless enclosed within a building.

3. That an ornamental fence at least 4 feet in height, be installed and maintained along the east property line in front of all parking stalls abutting street right-of-ways, and along the entire south property line excepting for a break to allow either a matching gate or a drive aisle, to the satisfaction of the Director of Planning, Property and Development.

4. That all fencing shall be installed within six months of this order coming into force and effect.

5. That there shall be no banner signs, mobile signs, billboard signs, or A-board signs permitted anywhere on the property, except that a mobile sign shall be permitted on the site for a period of up to thirty (30) days in association with a new occupancy permit.

6. That final plans, showing the location and details of fencing shall be submitted to the Director of Planning, Property and Development for approval prior to the issuance of any development or building permits; and thereafter shall be maintained to the satisfaction of the Director of Planning, Property and Development.

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: February 11, 2020

CERTIFIED BY:



Leah Cowan
Senior Committee Clerk

HOW TO APPEAL

If you object to this Order, you are entitled to file a notice of appeal. Your notice of appeal must:

(a) be in writing;

(b) contain your name, mailing address and phone number;

(c) be addressed as set out below;

(d) be received at that office not later than 4:30 p.m. on February 28, 2020;

**[IF RECEIVED LATE YOUR APPEAL CANNOT BE HEARD.]**

(e) refer to Variance Order No. DAV 197511/2019C; and

(f) provide the reason(s) for the appeal

The City Clerk may not schedule an appeal hearing until your notice of appeal meets the above requirements.

| | |
|---|---|
| Address: | City Clerk, City of Winnipeg<br>c/o Appeal Committee<br>Susan A. Thompson Building<br>Main Floor, 510 Main Street<br>Winnipeg, Manitoba, R3B 1B9 |
| Fax: | 204-947-3452 |
| Email: | CLK-Appeals@winnipeg.ca |

THE FOLLOWING PERSONS MADE REPRESENTATIONS AND ARE ENTITLED TO APPEAL:

In Support:

Gagandeep Sandhu
Sandeep Singh

In Opposition:

Nil

For Information:

Nil

For the City:

J. Hildebrand, Planner, Planning Property and Development Department
R. Galston, Planner, Planning, Property and Development Department

**EXHIBITS FILED FOR DAV 197511/2019C**

1. Application dated December 31, 2019
2. Notification of Public Hearing dated January 8, 2020
3. Manitoba Status of Title 3026834/1
4. Letter of authorization dated September 30, 2019 from Jagmoop S. Sandhu, Sandeep S. Chauhan and Sunpreet S. Sandhu to Sandeep Singh Chauhan
5. Confirmation from the Zoning and Permits Administrator that the subject property may be posted in substitution for newspaper advertising
6. Plans, Sheet 1 for File DAV 197511/2019C dated December 31, 2019
7. Report from the Urban Planning Division dated January 27, 2020
8. Inspection Report

Exhibit "7" referred to in File DAV 197511/2019C

# ADMINISTRATIVE REPORT

**Title:** DAV 19-197511\C – 200 Salter Street

**Issue:** For consideration at the public hearing for a variances associated with the establishment of an auto/light truck/motorcycle, repair, service, sales and rental use.

**Critical Path:** Board of Adjustment as per the Development Procedures By-law and The City of Winnipeg Charter.

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| R. Hayer, MCP | n/a | n/a | |

## RECOMMENDATIONS

The Urban Planning Division recommends **approval-in-part** of the application to vary the "C2" dimensional standards of Zoning By-Law No. 200/2006 to permit the following:

1) for the establishment of Auto/light truck/motorcycle, repair, service, sales and rental to permit as follows:
    a) 8 parking spaces instead of 11 parking spaces;
    b) ~~parking stalls width of 8.5 feet (2.59 metres) and 9.5 feet (2.74 metres) instead of 10 feet (3.05 metres) when adjacent to a wall or fence;~~
2) for the maintenance of a fence to permit height of 12 feet (3.66 metres) instead of 6.5 feet (1.98 metres) located on the west property line only.

Subject to the following condition(s):

1) That the Auto/light truck/motorcycle, repair, service, sales and rental use shall not operate between the hours of 10:00 p.m. and 9:00 a.m.
2) That no more than eight (8) vehicles shall be parked or otherwise stored anywhere on the property unless enclosed within a building.
3) That an ornamental light-proof fence at least 4 feet in height, be installed and maintained along the east property line in front of all parking stalls abutting street right-of-ways, and along the entire south property line excepting for a break to allow either a matching gate or a drive aisle, to the satisfaction of the Director of Planning, Property and Development.

4) That, all fencing shall be installed within six months of this order coming into force and effect.

5) That there shall be no banner signs, mobile signs, billboard signs, or A-board signs permitted anywhere on the property, except that a mobile sign shall be permitted on the site for a period of up to thirty (30) days in association with a new occupancy permit.

6) That final plans, showing the location and details of fencing shall be submitted to the Director of Planning, Property and Development for approval prior to the issuance of any development or building permits; and thereafter shall be maintained to the satisfaction of the Director of Planning, Property and Development.

## REASON FOR THE REPORT

- The applicant is proposing to establish an auto/light truck/motorcycle, repair, service, sales and rental use and accessory parking area. Variances are required to accommodate the proposal.
- Variance applications require a public hearing as per *The Development Procedures By-law* No. 160/2011 and *The City of Winnipeg Charter*, section 249.
- The report is being submitted for the Board of Adjustment's consideration of the development application at the public hearing.

## IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Urban Planning Division are concurred in, the proposal can proceed.

## FILE/APPLICANT DETAILS

**FILE:** **DAV 19-197511\C**
**RELATED FILES:**
**COMMUNITY:** Lord Selkirk - West Kildonan Committee
**NEIGHBOURHOOD #:** 3.302 (William Whyte)

**SUBJECT:** To vary the "C2" dimensional standards of Zoning By-Law No. 200/2006 to permit the following:

1) for the establishment of Auto/light truck/motorcycle, repair, service, sales and rental to permit as follows:
    a) 8 parking spaces instead of 11 parking spaces;
    b) parking stalls width of 8.5 feet (2.59 metres) and 9.5 feet (2.74 metres) instead of 10 feet (3.05 metres) when adjacent to a wall or fence;
2) for the maintenance of a fence to permit height of 12 feet (3.66 metres) instead of 6.5 feet (1.98 metres) located on the west property line.

**LOCATION:** 200 Salter Street
**LEGAL DESCRIPTION:** EXC S 8 LOT 73/74 PLAN 53 37/8 ST J

**APPLICANT:** Sandeep Chauhan
919 Louelda Street
Winnipeg , Manitoba R2K 3H4

**OWNER:** Oleg Feklisov
200 Salter Street
Winnipeg , Manitoba R2W 4K2

## DISCUSSION

### CRITERIA FOR APPROVAL

Pursuant to Section 247(3) of *The City of Winnipeg Charter*, an application for a variance with respect to a property may be approved if the variance:

(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.

### SITE DESCRIPTION

**The subject site is located at the south west corner of Salter Street and Magnus Avenue in the William Whyte neighbourhood and the Mynarski ward.**

**The site is designated 'Areas of Stability-Mature Community' policy area under the *Complete Communities Direction Strategy* of *OurWinnipeg* and located on a Corridor.**

**The site is zoned "C2" Commercial Community District under the City of Winnipeg Zoning By-law.**

**Currently on the site is a one-storey commercial building (auto-body shop).**

**The site is approximately 7,124 sq. ft. in lot area, with approximately 107 feet of frontage on Salter Street and 66 feet of on Magnus Avenue.**

**The accessory parking area located behind the building was established without permits. The parking area is approximately 38 ft. deep and 65 ft. wide. The parking area takes access from the public lane to the south.**

**Along the west property line is a 12 ft. tall concrete cinderblock wall. This wall was previously the west wall of the building, the rear half of which was demolished without a permit.**

**Along the east property line along Salter Street, is a chain-link fence that was erected without permits.**

**Along the south property line towards the back lane is a sliding chain link metal gate.**




**Figure 1: Aerial Photo of Subject Site and Surrounding Uses *(flown 2018)***

**SURROUNDING LAND USE AND ZONING (See Figure 2)**

**North:** Magnus avenue; then a multi-use building (single residence and pierogi restaurant) zoned "C2" Commercial Community district.

**South:** Public lane; then multi-family dwelling containing four units and zoned "C2" Commercial Community district.

**East:** Salter Street; then an used car dealership zoned "C2" Commercial Community district.

**West:** Single-family dwelling zoned "R2" Residential Two-Family district.




**Figure 2: Zoning of the site and surrounding area.**

**DESCRIPTION OF THE PROPOSED DEVELOPMENT**

**The proposed development involves the establishment of an auto/light truck/motorcycle, repair, service, sales and rental use, accessory parking area, and maintenance of a 12 ft. tall fence.**

**The accessory parking area would contain 8 stalls for customer use. Merchandise for sales and rentals would be stored indoors.**

**Proposed Variances:**

**1a An auto/light truck/motorcycle, repair, service, sales and rental use is required to provide 1 parking space for each 250 sq. ft. of floor area over 2,000 sq. ft. In this case, the property contains a total floor area of 4,752 sq. ft. and 11 parking spaces are required. The applicant is proposing 8 stalls.**

**1b The Zoning By-law requires a minimum width of 10 ft. for parking stalls located next to a wall or fence. In this case, the site plan shows 4 parking stalls that would be located next to a wall or a fence. Of these, 1 stall would be 12 ft. wide, 1 stall would be 8.5 ft wide, and 2 stalls would be 9.5 ft. wide.**

**2 The Zoning By-law stipulates that the maximum height of a fence in the side yard of a commercial property is 6.5 ft. In this case, the applicant is proposing to maintain a 12 ft. tall wall (considered a fence) along the side yard between the parking area and adjacent dwelling. To the west of this wall is a detached garage which is accessory to the adjacent single-family dwelling.**

**Collaboration:**

**The subject application came as a result of the new Owner of the property approaching the City to obtain an occupancy permit for auto sales and rental use. Upon review, it was discovered that the existing building had been partly demolished without permits, that the parking area had been established without permits, and that fencing and a gate had been installed also without permits.**

**The Owner claims they were not aware of the previous deficiencies. However, it is typically the responsibility of any prospective buyer to conduct their own due diligence prior to acquiring a property.**

**Upon being notified of the variances necessary to establish the proposed use, the applicant contacted the Urban Planning & Design Division. The Division communicated to the applicant several concerns with the proposal; specifically that the applicant was proposing to generally maintain all non-conforming aspects without any site improvements.**

**The Owner maintains that they purchased the property as-is and have been generally unwilling to provide any site improvements.**

**ANALYSIS AND ISSUES**

**Complete Communities Direction Strategy:**

Under the *Complete Communities Direction Strategy* the proposed development is within the 'Areas of Stability – Mature Community' policy area and located along a Corridor (Salter Street). Key policies include:

- *Encourage intensification to occur at centres and along corridors.*

- *Support a mix of commercial services and employment uses that serve the local community.*

Corridors are considered transformative areas. The vision for these areas calls for their transition to vibrant, pedestrian-friendly districts.

Particular emphasis is placed on encouraging a built form that supports a pedestrian-friendly environment. This includes promoting a high-quality streetscape and focusing on improvements to the public realm.

Key policies include:

- *Promote high-quality plazas, parks, and streetscapes as focal points and networks that are connected to the greater community.*
- *Encourage urban design and/or form-based strategies that help define the character of Centres and Corridors through clarifying the massing and height of buildings, setbacks, appropriate open space areas and appropriate parking design and locations.*

Subject to conditions of approval, the variances would generally comply with the above noted policies.

**Variance Review:**

**1a:** Parking Supply:

- With respect to the variance to reduce the supply of parking spaces, the variance is minor in nature and the Division recommends approval of the variance.
- It is expected that a customers of an auto-body shop would be arriving typically for a scheduled appointment.

**1b:** Parking Stall Width

- As shown on Figure 3, the subject parking area is 38 ft. deep. The bylaw requires the stalls next to the building wall and fence to all be 10 ft. wide each.
- Modifying the site plan such that the width of the substandard stalls is increased to 10 ft., the interior stalls is decreased to 8.5 ft., and the accessible stall decreased to 10 ft., results in the same number of parking stalls.
- The Division advised the applicant to modify the site plan on numerous occasions to ensure variances are minimal.
- However, the applicant decided to apply for a variance proposing narrow stalls, regardless of the fact the bylaw requirement can be met.
- Given the bylaw can be met, there is no rationale to vary the bylaw.
- Therefore, the Division recommends that the variance for substandard stall width next to a wall or fence be rejected.

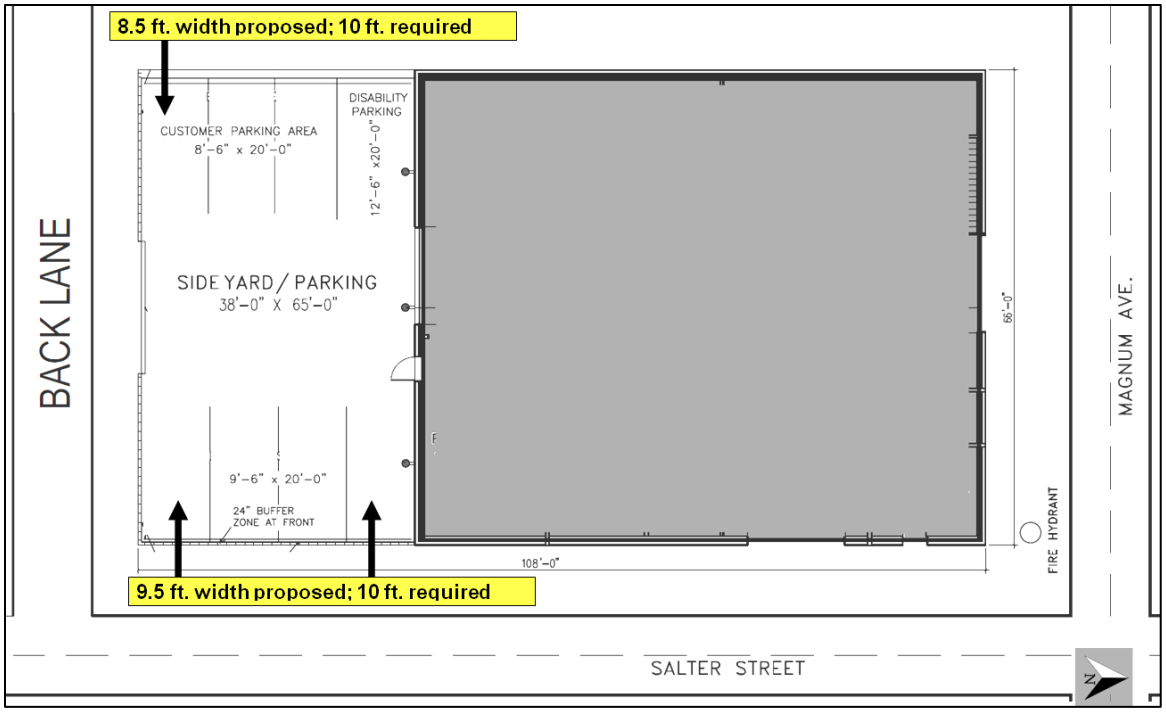


**Figure 3: Site plan showing proposed parking area.**

**2:** Fence Height of 12 feet:

- As noted, the subject building previously encompassed the entire lot and was demolished without permits.
- The subject fence along the west property line is comprised of concrete cinderblocks and is a remnant of the west wall of the subject building.
- The Winnipeg Zoning By-law stipulates that the maximum height of a fence in the west side yard is 6.5 feet under the “C2” Commercial Community zoning district.
- The bylaw also requires a commercial use abutting a residential use to buffer the commercial use. One such means of buffering is through the use of an opaque wall, however the minimum height for a buffer fence is 6.0 feet.
- The applicant is proposing to maintain the fence to act as a buffer between the subject property and the adjacent single-family dwelling. There is also a service conduit for a Hydro service mast attached to the concrete wall.
- Given the wall is existing and previously formed the west building wall, and given that directly west of the subject wall is a detached garage, the variance to allow a greater wall height is recommended for approval.

**Conditions of Approval:**

To ensure the proposal complies with *Complete Communities*, is compatible with the area, and mitigate adverse effect on the streetscape, several conditions of approval are recommended.

It is recommended that the existing chain link fence be replaced with an ornamental light-proof fence. The fence would screen parked vehicles and improve the streetscape. The recommended minimum fence height is 4 ft., however the Zoning By-law does permit a maximum fence height of 6.5 ft. if the Owner decides to pursue a taller fence.

For consistency, it is recommended the new wooden fencing extend along the rear property line abutting the public lane and the metal gate be replaced with a matching style gate. Alternatively, the gate could be removed and a break in the fence would be permitted for the drive aisle area only.

As noted earlier in this report, the Division has communicated concerns to the applicant regarding the existing fencing and metal gate. The existing chain link fence and metal gate (which is more suited to an industrial area) is not appropriate in a commercial mixed use street setting such as Salter Street and could create a negative impact on the streetscape (see Figure 4).

It is recommended that the applicant be given 6 months to install the fencing and the condition be implemented through Plan Approval.



**Figure 4: Subject site, looking north from Salter Street. Existing chain link fence and metal gate shown.**

Other recommended conditions of approval include the following:

- The hours of operation should be restricted to ensure the use does not create noise or other disturbance to the adjacent residential area.
- The City has received numerous complaints about the number of derelict vehicles being stored on the property. The aforementioned condition relating to fencing will screen the parking area. However, it is also recommended that no more than 8 cars be allowed to be parked or stored in the accessory parking area. Any vehicles undergoing repairs or otherwise being serviced should be stored indoors or in a designated parking space.
- Given the subject use is on a prominent corridor street and in a residential area, it is recommended that signage be restricted on the property, with the exception of mobile signs which should be allowed for 30 days in association with a new occupancy permit. The building Owner can still add fascia signage or other signage that is in conformance with the bylaw to their property.

**REASONS FOR RECOMMENDATIONS**

In the context of Section 247(3), the Urban Planning Division recommends **approval-in-part** for the following reasons:

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

> ***In that,*** *the subject property is located in a commercial area of the neighbourhood and across the street from a similar use, which suggests the use*

*would be compatible with the immediate context, and subject to conditions of approval, the proposal would complement the streetscape.*

(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;

***In that,*** *the variance to allow a greater fence height on the west side will ensure the adjacent dwelling is sufficiently buffered from commercial operations on the subject property, and subject to conditions of approval the proposal would likely not have a negative impact on the streetscape.*

(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

***In that,*** *the existing site conditions including the location of the building and cinderblock wall create constraints to complying with zoning requirements and thus the variances, in part, can be considered the minimum modification, with the exception of variances for substandard parking stall widths for stalls next to a wall or fence which are not necessary because the bylaw can be met.*

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

***In that,*** *generally the building façade on Magnus Avenue will not change which suggests and the proposal would be generally similar to the existing use on the land and the variances would not be incompatible with the area.*

## OURWINNIPEG POLICY ALIGNMENT

The propose development aligns with the Key Direction for Areas of Stability under *OurWinnipeg*: *"Enhance the quality, diversity, completeness and sustainability of stable neighbourhoods and expand housing options for Winnipeg's changing population."*

## WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Conditions of approval are recommended to ensure the proposed development would align with the following Key Direction in the Winnipeg Climate Action Plan: "*Encourage climate-friendly landscaping in residential, commercial and industrial buildings."*

## SUBMITTED BY

| | |
|---|---|
| Department: | Planning, Property and Development |
| Division: | Urban Planning |
| Prepared by: | R. Hayer, MCP |
| Date: | Monday, January 27, 2020 |
| File No. | DAV 19-197511\C |

Exhibit “6” referred to in File DAV 197511/2019C

