

## COMMITTEE OF ADJUSTMENT

Planning and Development Services Department  
3540 Schmon Parkway, P.O. Box 1044  
Thorold, ON L2V 4A7  
905-227-6613

January 19, 2024

**TO:** Chairperson and Members of the Committee of Adjustment

**SUBJECT:** Minor Variance Application D13-24-2023  
40 Front Street North, Thorold, Ontario  
2731 000 003 04100 0000

### PROPOSAL:

The applicant has submitted a minor variance to legalize existing residential uses on the ground floor of an existing building in the Downtown Main Street (C1) Zone. All other requirements of the zoning bylaw are being maintained.

### RECOMMENDATION:

That Minor Variance Application D13-24-2023 to permit residential dwelling units located on the ground floor of an existing building **BE APPROVED** subject to the following conditions:

1. That the applicant engage a qualified professional to determine that the proposed change in use is consistent with the exemption criteria as set out in O.Reg. 153/04 to the satisfaction of the City of Thorold. If approved, the applicants shall provide this information to the City within two (2) years of the decision of the Committee of Adjustment.



Figure 1: Location Map

Site Description

The subject lands are located on the east side of Front Street North in the block bounded by Regent Street to the north and Albert Street East to the south within the Downtown Thorold Community Improvement Area. The lands comprise approximately 2,790 m<sup>2</sup> of lot area with approximately 25 metres of frontage on Front Street, as illustrated on the site plan concept sketch below. The lands are currently developed with a 3 storey apartment building originally constructed with ground floor commercial units. Unlike adjacent buildings along Front Street, where the buildings are located in close proximity to the street line, the subject building is located approximately 24 metres from the front property line with approximately 30 surface parking spaces located between the building and the front lot line. This limits the commercial interface with Front Street and makes it challenging for commercial uses to thrive without street presence.

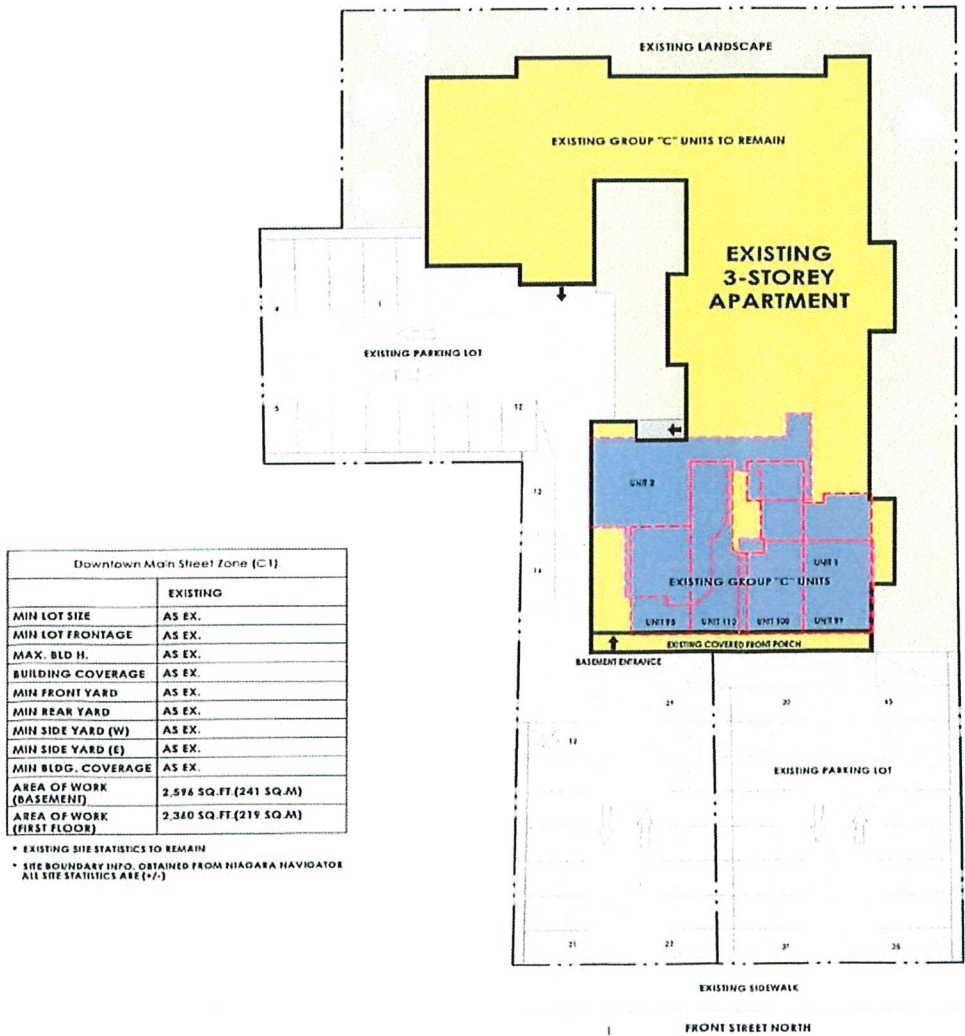


Figure 2: Site Plan Sketch

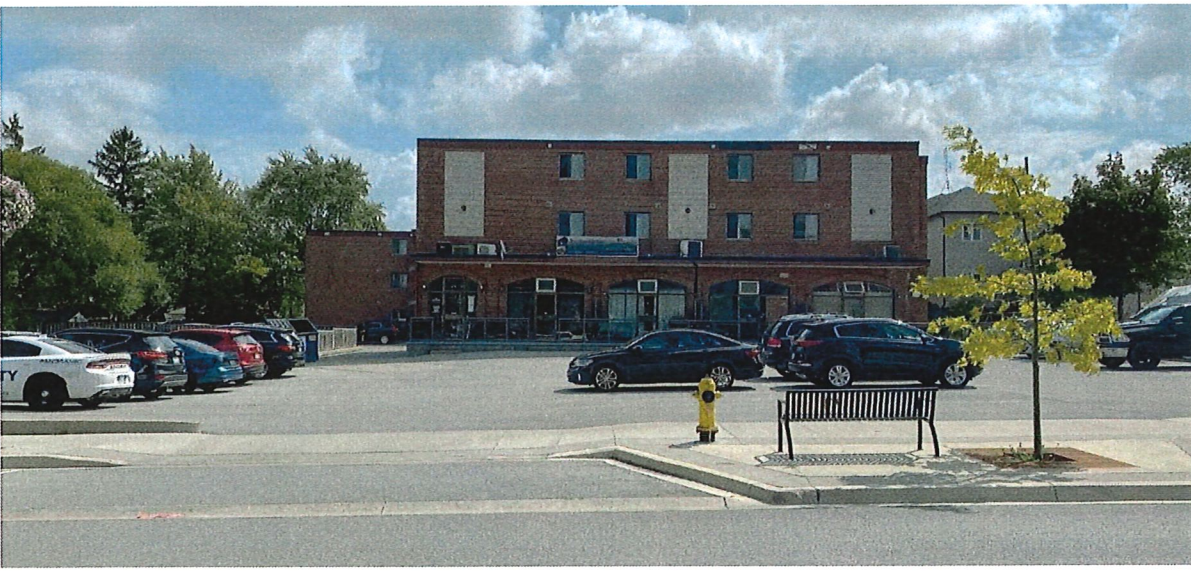


Figure 3: Street View looking East at Front Street elevation

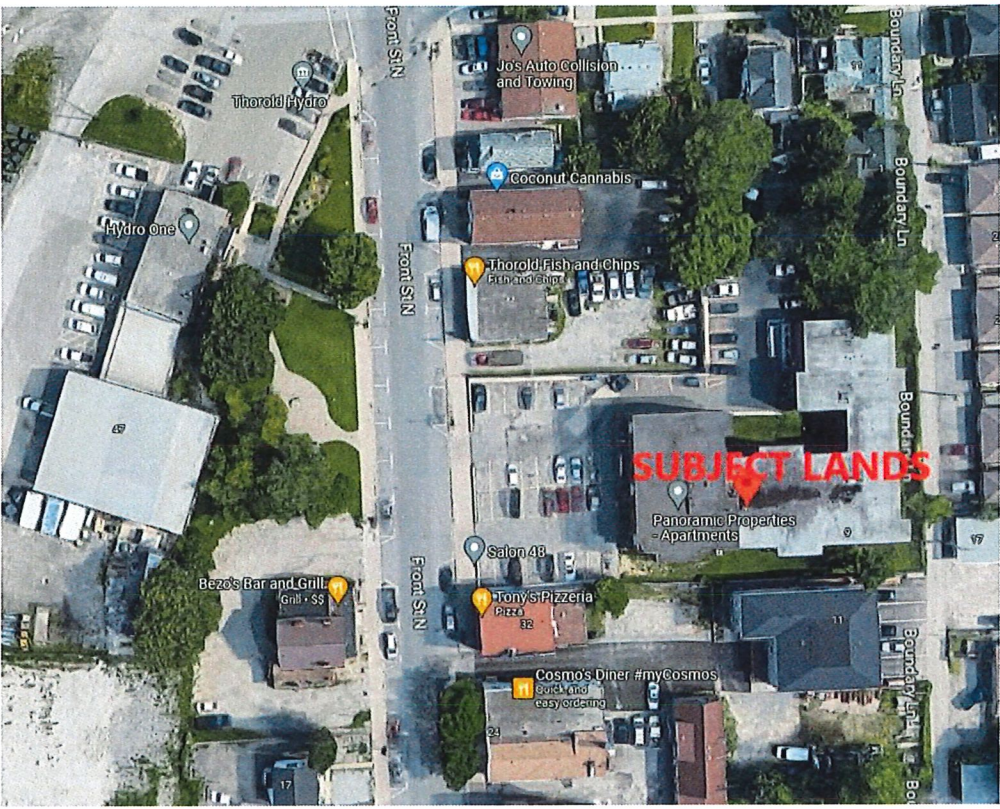


Figure 4: Air Photo illustrating location of building on property

### **MINOR VARIANCE PLANNING ANALYSIS:**

This application has been submitted pursuant to Section 45(2) of the *Planning Act*, that provides 'Other Powers' to the Committee of Adjustment including:

- 'a) where any lands, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,
  - (i) The enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
  - (ii) The use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or
- (b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law.'

Further to the above noted provisions of the *Planning Act* there is further case law (Fraser v. Rideau Lakes (Township), 2020 Carswell Ontario) which outlines that the test to be applied by the committee is NOT the typical four (4) tests for a minor variance (i.e. is the general intent of the Official Plan and Zoning By-law maintained, are the variances appropriate for the development of the land and are the variances minor). Instead, the committee must determine:

- 1) Whether the proposed expansion is appropriate; and
- 2) Whether it will result in undue adverse impacts on the surrounding neighbourhood.

Finally, under the provisions of the City of Thorold Official Plan (CTOP) Section E2 contemplates non-conforming uses. Specifically Section E2.2 outlines that:

'If a property occupied by a non-conforming use cannot be acquired or the building(s) relocated, the Committee of Adjustment may, without an amendment to this Plan, allow similar or more compatible extensions or changes to a non-conforming use. Prior to such approval, the Committee shall consider the following:

- a) The size of the extension in relation to the existing operation;

- b) Whether the proposed extension is compatible with the character of the surrounding area;
- c) The characteristics of the existing use in relation to noise, vibration, fumes, dust, smoke, odours, lighting and traffic generation and the degree to which any of these factors may be increased or decreased by the extension; and
- d) The possibilities of reducing these nuisances through buffering, building setbacks, landscaping, Site Plan Control and other means to improve the existing situation, as well as minimize the problems from extension.'

**Is the proposed expansion appropriate?**

The property is designated as Downtown along Front Street where the residential units are proposed and Downtown Transitional to the rear of the property where the existing 3 storey building is located. Front Street North is also identified in Policy A5.5 of the City of Thorold Official Plan as being an intensification corridor. In addition, residential intensification policies under B1.1.3 *“provide that consideration of development proposals for residential intensification be focussed on lands located in the **Downtown**, Downtown Transitional or Regeneration Overlay designations”*.

In addition, Section B1.2.1 of the City's Official Plan states that *“the purpose of the Downtown designations is to maintain and promote downtown Thorold as a focal point for commerce and hospitality in the City and to continue with the restoration of culturally and historically significant buildings.”* The City's vision for the downtown as stipulated in Section B1.2.3 is that *“Downtown be reinforced as a focal point for commerce and hospitality in the City, accommodating a diverse mix of commercial, residential, cultural and social uses. In Downtown Thorold specifically, this Plan envisions more housing opportunities. This plan therefore envisions that some lands within the Downtown designation may be utilized for high-density residential uses, particularly in locations or in buildings that have remained vacant of commercial activity for extended periods”*

In accordance with the policy noted above, the proposed conversion of the commercial space to residential units could be supported as the commercial spaces have remained vacant for extended periods. The policy recognizes residential use and encourages intensification for residential uses in the downtown. Therefore, the conversion of the ground floor commercial space to residential units meets the general intent of the Official Plan.

The subject property is zoned Downtown Main Street (C1) in the City of Thorold's Zoning Bylaw 60- 2019. The C1 zone permits residential uses to be located above or behind commercial uses. The existing four (4) units located on the ground floor do not comply with this requirement, therefore, a variance is being requested to permit these units on the ground floor.

In addition, the building where the units are located is setback 24 metres from the street line where the zoning currently restricts the front yard setback to a maximum of 3.0 metres. The purpose of this requirement is to support commercial activity and engage

pedestrians at the street front thereby activating the street. Adjacent properties with ground floor commercial uses are located in close proximity to the street line as is typical in the Downtown commercial area and as illustrated in the aerial photograph provided as Figure 3.

Further, the potential for future commercial use of the ground floor will remain, should the need arise.

In Planning Staff's opinion, the variance is appropriate for the development of the lot, as there are no adverse impacts anticipated and all other requirements of the bylaw are being met. The lands are currently developed with a three (3) storey apartment building and the proposal will legalize four (4) additional occupied residential dwelling units that have been converted from the prior commercial use. The existing building setback is further removed from the street frontage than is typical in a downtown situation and provides limited opportunity for engagement and pedestrian connectivity required for viable main street commercial activity.

As such, staff is of the opinion that the requested variance is appropriate for the development of the land.

**Will the application result in undue adverse impacts on the surrounding neighbourhood?**

The proposed variance will permit the continued use of the converted units for residential purposes thereby providing needed housing within the downtown core. Legalizing the existing uses would have little impact as the residential uses have existed for more than a decade with no known conflict or negative impacts.

As such, staff is of the opinion that the requested variance is minor.

**COMMENTS:**

The application was circulated in accordance with the requirements of the Planning Act to property owners within 60 metres of the subject lands. The application was also circulated to internal departments and external agencies for comments, which are summarized below.

The following Departments/Agencies have provided comments stating that they have no issues with the application: The Ministry of Transportation, Niagara Escarpment Commission, Building Division, Fire Prevention, TransCanada Pipeline, GioRail, NPCA and City of Thorold Engineering Division.

**Niagara Region**

- Regional Staff notes that City staff should be satisfied that the proposed change in use is consistent with the exemption criteria as set out in Ontario Regulation 153/04.

Public comments

- Comments provided by Heritage Thorold have been attached to this report. In response to these comments and further discussed under discussion of whether the expansion is appropriate above, the following considerations are re-iterated:
  1. The property has unique characteristics with setbacks from Front Street and location of a parking lot between the building and the street line that inhibit pedestrian interface and typical street front presence required for viable commercial development. This is in contrast to adjacent and surrounding development as illustrated in Figure 4 above;
  2. Additional housing units within the Downtown designation are encouraged and residential unit counts for intensification are determined to be minimum targets as assessed by Regional land needs assessment analyses;
  3. Downtown Thorold is intended to be an area for residential intensification as stipulated in the City of Thorold Official Plan, the Provincial Policy Statement and A Place to Grow.

**CONCLUSION:**

It is the opinion of Staff conversion of commercial space in the Downtown area is not typically supportable. However, the existing structure is a unique residential property in the core of the downtown area, and the commercial component has struggled to find consistent tenants historically. The setback from Front Street, and the residential component make the commercial space less desirable as it isn't easily recognizable commercial space. Based on these unique circumstances, it is recommended by Planning staff that application D13-24-2023 requesting a minor variance to permit residential uses on the ground floor of an existing multiple residential dwelling be **approved**.

Prepared by:

ORIGINAL SIGNED  
Marc Davidson  
Senior Development Planner

This report was prepared in consultation with Tara O'Toole, Manager of Planning

To: Committee of Adjustment, City of Thorold, January 2024 Meeting

From: Heritage Thorold – 40 Front Street North, additional comments

Heritage Thorold submitted comments for the Committee of Adjustment's meeting on September 21<sup>st</sup>, 2023, expressing concerns over ground-floor residential usage at 40 Front Street North. In response to remarks made by the Planning Consultant regarding these comments, Heritage Thorold would like to restate that we do acknowledge the unique character of this building due to its set-back. Heritage Thorold had also declared to be in full support of downtown intensification, just not at the expense of commercial activity in the downtown core. Allowing ground-floor residential units here could set a precedent for other landlords to follow suit.

These concerns were echoed by Members D'Angela and Di Paola. Councillor D'Angela mentioned the proposal to be not fitting for downtown, and potentially impacting not just this building, but others in the area. Mr. Di Paola remarked that a precedent could be set which could undermine the zoning bylaw and cause unintended consequences.

The Heritage Committee was not aware that the four ground floor units at 40 Front Street North have been rented to residential tenants for over ten years. While this might confirm the notion that commercial activity on this site is limited due to the position of the building, and that no commercial units would be eliminated by this proposal, it poses an even greater concern for a potential unfortunate precedent. Property owners on Front Street would not only be able to argue that what was allowed here should be allowed on their property, they might also opt to simply disregard zoning regulations, rent their ground-floor units to residential tenants without permission, and then apply for a minor variance after the fact, because this has worked before.

If the Committee of Adjustment votes in favour of this proposal, Heritage Thorold recommends a strict provision stating that these are exceptional circumstances due **only** to the 24-meter setback of the building from the street. Approval should **not** be granted on the grounds that these units have been occupied – without permit – as residences for more than a decade.

Respectfully,

Anna O'Hare, Heritage Thorold