

August 13, 2019

Mrs. Nancy J. Bozzato, Secretary Treasurer
Committee of Adjustment
Town of Pelham
Fonthill, ON L0S 1E0

Re: Minor Variance Application A21/2019P
954 River Road, Pelham
Concession 14, Part of Lot 11
Roll No. 2732 030 017 17300

The subject land is located on the south side of River Road, lying east of Cream Street, legally described above and known municipally as 954 River Road, in the Town of Pelham.

The subject land is zoned 'Agricultural' (A) to the north, and 'Hazard' (H) to the south, in accordance with Pelham Zoning By-law 1136 (1987), as amended. The proposed accessory building (detached garage) requires zoning relief through a minor variance application as follows:

- **Section 7.4 d) "Minimum Front Yard"** seeking 6.4m, whereas 13m is permitted;
- **Section 7.7 a) "Max (Accessory) Lot Coverage"** seeking 6.3%, whereas 1% is permitted;
- **Section 7.7 a) "Max (Overall) Lot Coverage"** seeking 13%, whereas 10% is permitted; and
- **Section 7.7 d) "Max (Accessory) Building Height"** seeking 7m, whereas 3.7m is permitted.

Policy Overview

Provincial Policy Statement (PPS), 2014

The Provincial Policy Statement (PPS) designates the subject land within the 'Prime Agricultural Area'. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. 'Prime Agricultural Areas' are defined as including associated Canada Land Inventory Class 4-7 lands as well as 'Prime Agricultural Lands' (Class 1-3 lands).

Regional Official Plan (Consolidated, August 2014)

The Regional Official Plan designates the subject parcel as 'Good General Agricultural Area' to the north and 'Environmental Conservation Area' to the south.

Pelham Official Plan, 2014

The local Official Plan designates the subject parcel as 'Good General Agricultural'. Policy B2.1.2 states (among other uses) one single detached dwelling is permitted on a vacant lot of record.

Policy B2.1.1 states the purpose of the *Good General Agricultural* designation is to protect and maintain land suitable for agricultural production and permit uses which are compatible with agriculture. The subject lands, are surrounded by several rural residential lots. Accessory buildings (i.e. garages) that serve legal residential dwellings are permitted uses, *as-of-right* in the Official Plan and Zoning By-law, subject to any applicable performance standards and applicable policy.

Pelham Zoning By-law Number 1136 (1987)

The Town Zoning By-law identifies the subject parcel as 'Agricultural' (A) to the north, and 'Hazard' (H) to the south. The Hazard zone prohibits accessory residential buildings. It is not known whether the delineation of the Hazard zone was originally meant to reflect the regulated Floodplain extent, or the stable Top-of-Bank, regardless, the Zoning classification does not accurately reflect the current mapping data available. However, the Zoning By-law is law, and the Zoning Schedule depicts the proposed garage as being partially within the Hazard zone. As a result, the proposed location is not permitted and the applicant will either need to further reduce the front yard setback or reduce the depth of the building footprint.

Section 7.4 Requirements for Dwellings

d) Minimum Front Yard 13 m Request = 6.4 m

Section 7.7 Requirements for buildings and structures accessory to dwellings

a) Maximum (Accessory) Lot Coverage 1% Request = 6.3%
a) Maximum (Overall) Lot Coverage 10% Request = 13%
d) Maximum (Accessory) Height 3.7 m Request = 7 m

The Committee of Adjustment, in Section 45 (1) of the *Planning Act*, may authorize a minor variance from the provisions of the by-law, subject to the following considerations:

Minor Variance Test	Explanation
1. The variance is minor in nature.	The requested variances together, as proposed, may not be minor in nature because insufficient information exists to evaluate whether the garage will be safely located away from the steep slope and to minimize any adverse impacts to the regulated hazard lands.
2. The variance is desirable for the development or use of the land.	The requested variances together, as proposed may not be desirable for the use of the land because it could facilitate an unsafe building condition whereby the proposed garage is located to close, or within the stable top-of-bank, and the construction activities may compromise the integrity of the slope.
3. The variance maintains the general intent and purpose of the Official Plan.	The proposed use of a building accessory to a single detached house is permitted in the 'Good General Agricultural' designation of the Official Plan and the policy does permit uses which are compatible with agriculture. The increase in accessory building height will not compromise the objective of the Official Plan. Increasing the accessory building lot coverage will not impede the private servicing capacity of the septic system and does not raise any issues with Official Plan policies.

	<p>However, permitting the increase of lot coverages may impact the safety of the property and adjacent lands given the steep hazard lands.</p> <p>The variances are not appropriate given the lack of information which is needed to evaluate the proposal against the Town Official Plan policies.</p>
4. The variance maintains the general intent and purpose of the Zoning By-law.	The variances do not meet the purpose of the Zoning By-law because the proposed location of the accessory building is prohibited in the Hazard zone. Thus, evaluating the relief request for building height and front yard is premature at this point because these provisions are likely to change and not applicable given the current proposal.

Comments

On July 17th 2019, a notice was circulated to agencies directly affected by the proposed application including internal Town departments (i.e. Public Works, Building, etc.) and all assessed property owners within 60 metres of the property's boundaries.

To date, the following comments have been received:

- Public Works Department (August 1, 2019)
 - No comments.
- Building Department (August 6, 2019)
 - A building permit is required, prior to construction commencing.
- Niagara Region Planning & Development Services (August 1, 2019)
 - Supportive of waiving the requirement for a Natural Heritage Evaluation / EIS, including the establishment of a 30 m VPZ (Vegetation Protection Zone) as there does not appear to be an alternative location for the garage given the parcel size.
 - Development should not be permitted within 15 m of the riverbank. It is also critical that appropriate sediment and erosion controls be installed around the building footprint and maintained during construction. Additional vegetation plantings (native shrub / tree species) along the riverbank are encouraged in keeping with the policy requirement.
 - No records for the existing legal non-conforming, in-ground leaching bed style septic system were found. No visible defects were found at the time of our inspection. The septic tank is located between the proposed garage and existing house. The proposed garage meets setback requirements to the septic system, and provided there is no plumbing or living space included in the garage, Regional Private Sewage Systems staff have no objections.
 - Regional Planning staff have no objection, see conditions.
- Niagara Peninsula Conservation Authority (July 31, 2019)
 - Based on a site visit, a floodplain elevation of 174.81m and mapping, the proposed garage appears to be located outside of the floodplain hazard.

- During a site visit, it was confirmed that the topography can be defined as a potential hazard land versus a regulated valley slope. This is because the angle of the slope is less than 3(h):1(V).
- The NPCA's Hazard Land policies apply to this proposal. A Geotechnical Engineer is required to confirm that the proposed activities will not have any impact on the stability of the existing slope over the long term. It must be demonstrated that all hazards and risks associated with the site have been addressed to the satisfaction of the Geotechnical Engineer and the NPCA prior to the NPCA supporting development.
- Recommend deferral, until such time that a Geotechnical Study has been reviewed and approved by the NPCA.
- An NPCA Work Permit will be required prior to the issuance of any building permits.

No public comments have been received.

Planning Comments

Planning staff note that the property is 0.19 ha (0.47 ac) in land area, is not farmed and is considered to be a rural residential lot. The proposed location of the garage can be seen in Figure 1. The subject land is surrounded by:

- North – Agricultural
- East – Rural residential dwellings
- South – Welland River
- West – Rural residential dwellings

Figure 1: (Left) View of property from River Road. (Right) View of location of proposed garage as seen near the Welland River.



Increasing the maximum lot coverages and the balance of requested zoning relief (height limit increase & reduce front yard) without adequate geotechnical information on the integrity of the stable top-of-bank could adversely impact the subject land and potentially neighbouring buildings which are all in relatively close proximity to the proposed garage and metres away from the Welland River floodplain.

The property falls within the NPCA advisory floodplain mapping area but the proposed garage is located outside of the floodplain extent. The stable Top-of-Slope does traverse the property, and it is not yet known whether

the proposed garage will be located at a safe distance to ensure no long term impact to the slope. The septic system is located at the required distance from the proposed garage.

The applicant has been advised that a Geotechnical Study is required prior to NPCA and Town Planning staff offering support on the minor variance applications. Town Planning staff have also identified that the proposed garage is partly located within the Hazard zone, which prohibits the accessory building use. Town staff require the garage to be located outside of the Hazard (H) zone, and wholly within the Agricultural (A) zone. This can be achieved either by shrinking the building footprint, or requesting a shorter front yard setback to reorient the building closer to River Road. This should also aid in the geotechnical analysis and construction phase.

Planning Staff is of the opinion that the application does not meet all of the four minor variance tests laid out by the *Planning Act*, at the time. The application is inconsistent with Provincial policies, the Regional Official Plan, and does not conform to the general intent of the Town's Official Plan and Zoning By-law.

Consequently, Planning Staff recommend that Application File Number **A21/2019P be deferred**, until such time as NPCA staff can provide supportive comments based on their approval requirements and the applicant demonstrates that all four tests under the *Planning Act* are met, **or alternatively be refused**.

Submitted by,



Curtis Thompson
Planner, B.URPI

Reviewed by,



Barb Wiens, MCIP, RPP
Director/ Community Planning & Development