

December 3, 2019

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

Re: Minor Variance Application A27/2019P
997 Canboro Road
Part of Lot 20, Concession 9, and Part 1 on RP 59R-500
Roll No. 2732 010 016 10903

The subject land is located on the north side of Canboro Road lying east of Victoria Avenue (Regional Road 24), legally described above, and known municipally as 997 Canboro Road in the Town of Pelham.

The subject land is zoned 'Agricultural' (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The minor variance application requests relief from:

- **Section 6.14 a) whereas no dwelling on any adjacent lot shall be located within 300m of a livestock operation, to reduce the minimum distance separation (MDS) to 201m of any livestock operation.**

The variance is requested to facilitate the construction of a single detached dwelling on an existing lot of record.

Applicable Planning Policies

Provincial Policy Statement (PPS), 2014

The PPS designates the subject land as within a 'Prime Agricultural Area', which shall be protected for long-term use as agriculture. 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).

Minimum distance separation formulae were developed by the Province to separate uses so as to reduce incompatibility concerns about odour from livestock facilities. MDS legislation is also meant to help protect farmers and those looking to sustain their livelihoods in the agricultural industry by means of carrying out their *normal farm practices*.

Policy 2.3.3 states that in *prime agricultural areas*, new land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the MDS formulae.

Greenbelt Plan (2017)

Policies surrounding MDS echo those originating from the PPS (2014). For instance, policy 3.1.2 states new land

uses, including the creation of lots (as permitted by policy), and new or expanding livestock facilities, shall comply with the MDS formulae.

Should the existing livestock facility located to the east seek to expand its capacity, it would be required to the MDS II calculation. The MDS I calculation is reserved for new, non-livestock developments such as the subject application.

The Minimum Distance Separation (MDS) Document – Publication 853

The Ministry of Agriculture, Food & Rural Affairs (OMAFRA) issued the MDS Document in order to assist municipalities, farmers and consultants in implementing MDS as part of planning and development applications.

- Implementation Guideline No. 7 – Application of MDS for building permits on existing lots
 - While municipalities have the option to exempt buildings proposed through building permit applications on *lots* which exist prior to March 1, 2017, they are strongly discouraged from exempting these applications.
 - If local exemptions are supported for building permits on existing *lots*, a municipality shall adopt provisions in their comprehensive zoning by-law which clearly state the details for such exemptions. Examples of such provisions may include, but are not limited to, those which only require MDS I setback for building permit applications:
 - On existing *lots* which are vacant;
 - On existing *lots*, but where the MDS I setback cannot be met, then through a planning application, allow a *dwelling* provided that it be located as far as possible from the existing livestock facility;
 - On lots which exist prior to a specific date (e.g. March 1, 2017 or the date of adoption of a comprehensive zoning by-law);
 - On existing *lots* that are in a particular land use zone or designation;
 - On existing *lots* that are above or below a certain size threshold; or
 - For certain types of buildings (e.g. dwellings).

- Implementation Guideline No. 43 – Reducing MDS setbacks
 - MDS I setbacks should not be reduced except in limited site specific circumstances that meet the intent of this MDS Document.
 - If deemed appropriate by a municipality, the processes by which a reduction to MDS I may be considered could include a minor variance to the local zoning by-law provisions, a site specific zoning by-law amendment or an official plan amendment introducing a site specific policy area.

Town staff understand there are very few, existing vacant lots of record (such as this) remaining within the Town of Pelham that would conflict with MDS policies due to their proximity to existing livestock facilities.

Regional Official Plan (Consolidated 2014)

The Regional Official Plan designates the subject parcel as ‘Protected Countryside’ & ‘Unique Agricultural Area’.



Policy 5.B.6 states single dwellings are permitted on existing vacant lots of record, provided they were zoned for such as of December 16, 2004.

Pelham Official Plan (2014)

The local Official Plan designates the subject parcel as 'Specialty Agricultural'. Policy B2.2.2 states (among other uses) one single detached dwelling is permitted on a vacant lot of record.

Pelham Zoning By-law Number 1136 (1987)

The Zoning By-law identifies the subject parcel as 'Agricultural' (A). The permitted uses (among others) include:

- a) Agricultural uses including greenhouses;
- c) One single detached dwelling on one lot;
- g) Uses, buildings and structures accessory to the foregoing permitted uses.

Section 6.14 New development in or adjacent to an agricultural (A) zone

No residential use shall be established after the date of passing of this By-law adjacent to a livestock facility and conversely no new / enlargement of an existing livestock building shall be established adjacent to one of the foregoing non-farm uses, except in accordance with the following setback requirements.

- a) No non-farm use including a residential use accessory to a permitted adjacent agricultural use shall be established adjacent to a livestock building within a distance determined by the MDS formula.

Notwithstanding any of the above, no dwelling on any adjacent lot shall be located within 300m of a livestock operation, except as a dwelling on a lot existing at the date of passing of this By-law shall only comply with the MDS requirements.

The application requests relief from Section 6.14 a) to reduce the MDS requirement from 300m to 200m to allow for the construction of a dwelling on an existing lot of record that was created prior to the Zoning By-law being approved.

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.	Reducing the MDS requirement is minor overall given the lack of nuisance complaints with other existing dwellings in close proximity to the east and the prevailing westerly winds directing odour from the nearby livestock operation to the east. The variance is also minor overall because it maintains the calculated MDS I setback as determined by OMAFRA based on verifiable metrics and not just an arbitrary baseline setback lacking calibration.

	Furthermore, given the presence of other nearby residential uses which predate the Zoning By-law and are located within the MDS radii, no negative impacts are anticipated.
2. The variance is desirable for the development or use of the land.	The variance would be desirable as it would provide for the development of a single detached dwelling for which the lot was legally created and is large enough that future agricultural production / development is feasible. It is noted that the lot is currently being farmed for what appears to be cash crops. The proposed dwelling would not compromise the largest balance of the subject lands to continue to be farmed for agricultural purposes.
3. The variance maintains the general intent and purpose of the Official Plan.	The variance maintains the general intent of the Official Plan because it would permit the construction of a single detached dwelling which is a permitted use on existing lots of record provided they were zoned for such as of December 16, 2004, under Policy B2.2.2.
4. The variance maintains the general intent and purpose of the Zoning By-law.	Reducing the MDS requirement to 201m from a required 300m does not compromise the intent of the Zoning By-law because sufficient spatial separation is maintained between the existing and proposed use. Paired with a prevailing westerly wind and the lack of odour nuisance complaints, there has not been an issue with the neighbouring residence to the east, also within closer proximity to the existing livestock operation. The proposed dwelling still complies with the calculated MDS I formula in accordance with Provincial policy and Section 6.14 of the Zoning By-law.

On November 4th 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 (November 19, 2019)
 - {See conditions & Appendix for comments}
 - A Driveway Entrance & Culvert Permit is required prior to building permit.
- Building Department (November 20, 2019)
 - All necessary permits are required prior to construction commencing.
- Niagara Region Planning and Development Services (November 20, 2019)
 - {See Appendix for full comments}
 - The proposed dwelling complies with the calculated MDS I formula but cannot meet the Zoning By-law's default 300m setback which triggers the need for zoning relief.
 - No objections.

Public Comments:



- Henk / Helen Fennema (November 20, 2019)
Objects to the relief of the MDS requirement because the by-law was enacted to protect the business of farming and nearby residents from noise and odour.
 - Staff agree, although, the MDS policies of the Province deal specifically with nuisance via unpleasant odour and not necessarily '*normal farm practices*', as defined in the Farming & Food Production Protection Act, 1998, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances.
 - The parcel is also an existing lot of record and one single detached dwelling is a permitted use as the lands were zoned to permit this as of December 16, 2004.
- The current or future owners may complain about the proximity to the poultry barn and odour originating from the facility.
 - Town staff are proposing the owner enter into a Development Agreement with the Town to be registered on title which will address driveway / building location matters and various warning clauses such as those related to the livestock facility's proximity and the potential to experience unpleasant odours etc. This Agreement runs with the land so that future owners are also made aware of these conditions / clauses prior to closing.
- Concerned about future land value of their property (which contain the poultry barn) in the event a prospective purchaser wishes to expand the poultry operation, they may be restricted in doing so.
 - This is true, all new or expanding livestock operations are required to comply with the MDS policies of the PPS, Greenbelt Plan, Regional Official Plan, Pelham Official Plan and Pelham Zoning By-law. All new livestock developments are required to undergo the MDS II formulae calculation. However, there already exists at least five (5) other neighbouring residential dwellings within the 300m MDS radius. Thus, the proposed dwelling alone is not the trigger for similar future zoning relief on a potential poultry barn expansion.

Planning Comments

Planning staff note the property is 5.4 ha (13 ac) in area, is farmed, and is a legally created, vacant lot of record. The subject lands are surrounded by the following:

North → CP Railway

East → Poultry Barn, rural residential dwellings

South → Rural residential dwellings, greenhouse

West → Rural residential dwellings, agricultural

The livestock facility in question is a purpose built broiler (poultry) barn constructed in approximately 1994 which is the origin of the Zoning By-law's MDS (*Minimum Distance Separation*) requirements in this case. Section 6.14 a) of the Pelham Zoning By-law enacts two MDS requirements for new residential uses adjacent to existing livestock buildings. The first is the calculated MDS I (1) setback as determined by OMAFRA (Ontario Ministry of Agriculture, Food & Rural Affairs), which is based on a prescribed formulae using standard inputs such as the type of livestock, size / capacity of the building, lot size and how the manure is handled among others. The MDS formulae are considered a *worst-case* scenario under policy. The second requirement is a *notwithstanding* baseline setback of 300 metres. The latter of which is the subject of this minor variance application, a reduction of the 300m baseline setback to 201m.

The Town is unaware of any previous odour complaints in the area around this existing poultry barn, though unused at this time, remains in good standing. Due to the prevailing westerly winds, any future odour impacts westward should continue to be minimal as the dwelling lies upward of the prevailing winds from the poultry barn.

The authorized agent submitted a Planning Justification Letter outlining the circumstances around his client's minor variance for MDS relief in the context of this neighbourhood. Principally, the letter points out the volume of existing residential dwellings located within the current MDS radius, the difference between the Zoning By-law's default baseline 300m setback requirement versus the calculated MDS setback using OMAFRA software. Planning staff generally agree with the applicant's planning rationale and its interpretation of the Zoning By-law's intent.

Staff recognize that, in other areas of the Town some conflict has arisen from new residents moving into existing dwellings next door to existing livestock operations. In some cases, these dwellings would not have been permitted under current MDS policies. However, in this case, given the proliferation of already existing residential neighbours well within the MDS radii, this would pose a similar challenge for any proposed expansion of the present livestock facilities (Figure 2). MDS II (2) formulae would be triggered under a proposed livestock facility expansion, and similarly, a minor variance for zoning relief may be applied for. Further, the proposed conditions below include that of a Development Agreement which would include a clause that the owner acknowledges his / her property is located within a calculated MDS radius and they may experience unpleasant odours from time to time.

Planning Staff is of the opinion that the application meets the four minor variance tests laid out by the *Planning Act*. The application is consistent with Provincial policies, the Regional Official Plan, and conforms to the general intent of the Pelham Official Plan and Zoning By-law.

The authorization of the minor variance is not expected to generate negative impacts for adjacent uses or the community at large. Consequently, Planning Staff recommend that Application File Number A27/2019P be **approved**, subject to the following conditions:

THAT

- Obtain approval from the Niagara Region Private Sewage Systems division for septic system compliance prior to building permit application.
- The applicant shall enter into a Development Agreement with the Town for the purposes of developing the lot to include:
 - Obtaining an Entrance Permit from the Public Works Department for the installation of a driveway / culvert, as applicable, in accordance with Town standards.
 - An owner warning clause specifying that, "The owner acknowledges that their property is located within a 300 metre baseline *Minimum Distance Separation* spatial requirement in the Town's Zoning By-law and that they may potentially, from time to time, experience unpleasant odours from an existing adjacent livestock operation."
 - An owner warning clause stating that, "Should deeply buried archaeological remains / resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Tourism, Culture & Sport and the Owner's archaeology consultant shall be notified immediately. In the event that human remains are encountered

during construction, the Owner shall also immediately notify the Police or coroner and the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services.”

- Restrictive covenant that the attached garage shall perpetually be prohibited from being converted into residential living space due to its location within the calculated MDS radius.
- All necessary building permits be obtained prior to construction commencing.

Prepared by,



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Approved by,



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