

July 21, 2020

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

Re: Minor Variance Application A18/2020P
364 Sumbler Road, Pelham
Part of Lot 7, Concession 12, and Part 1 on RP 59R-11125
Roll No. 2732 030 017 07000

The subject land is located on the south side of Sumbler Road, lying west of Effingham Street, legally described above, and known locally as 364 Sumbler 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:

- i. **Section 7.7 (a) "Maximum (accessory) Lot Coverage"** to permit a maximum (accessory) lot coverage of 1.9 %, whereas 1 % is required.
- ii. **Section 7.7 (d) "Maximum (accessory) Building Height"** to permit a maximum building height of 5.92 m, whereas 3.7 m is required.

The proposal seeks to construct a detached garage accessory to the residential dwelling.

Applicable Planning Policies

Provincial Policy Statement (PPS) (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development, and sets the policy foundation for regulating the development and use of land. The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

Section 3 of the *Planning Act* requires that decisions affecting planning matters "shall be consistent with" policy statements issued under the *Act*. The PPS recognizes the diversity of Ontario and that local context is important. Policies are outcome-oriented, and some policies provide flexibility provided that provincial interests are upheld. PPS policies represent minimum standards.

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).

Policy 2.6.2 states *development* and *site alteration* shall not be permitted on lands containing *archaeological resources* or *areas of archaeological potential* unless significant *archaeological resources* have been *conserved*.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as 'Good General Agricultural Area'.

Policy 10.C.2.1.13 states that *development* and *site alteration* shall only be permitted on lands containing *archaeological resources* or *areas of archaeological potential* if the significant *archaeological resources* have been *conserved* by removal and documentation, or by preservation on site.

Pelham Official Plan (2014)

The Town of Pelham Official Plan is the primary planning document that will direct the actions of the Town and shape growth that will support and emphasize Pelham's unique character, diversity, cultural heritage and protect our natural heritage features.

The local Official Plan designates the subject land as 'Good General Agricultural' as per Schedule 'A'.

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 agricultural uses and a *significant woodland*. 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.

Policy D4.3 Archaeological Resources – states that Council recognizes that there are archaeological remnants of pre-contact and early historic habitation as well as archaeological potential areas within the Town. Council shall require archaeological assessments and the preservation or excavation of significant archaeological resources in accordance with Provincial guidelines, requirements and protocols.

Based on the Town's Heritage Master Plan, the subject lands are identified as having high potential for deeply buried archaeological material. This is likely a result of its proximity to a tributary and a historic transportation route.

Pelham Zoning By-law No. 1136 (1987), as amended

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

- i. **Section 7.7 (a) "Maximum (accessory) Lot Coverage"** to permit a maximum (accessory) lot coverage of 1.9 %, whereas 1 % is required.
- ii. **Section 7.7 (d) "Maximum (accessory) Building Height"** to permit a maximum building height of 5.92 m, whereas 3.7 m is required.

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 variance to increase accessory building lot coverage to 1.9 % is minor overall assuming there are no cultural heritage impacts associated with deeply buried archaeological resources. Adequate

	<p>land area remains available to handle stormwater runoff, the existing septic system and preserve a rear yard amenity area.</p> <p>Increasing the accessory building height to 5.92 m is minor given the rural context. No negative impacts are anticipated by the adjacent neighbors as adequate distance separates the nearest residential neighbour from the building site.</p>
2. The variance is desirable for the development or use of the land.	<p>Increasing the accessory building lot coverage is desirable for the land because it will allow for enhanced use of the rural residential property which is relatively small in size and constrained for an agricultural area or traditional farming operation.</p> <p>The variance request to increase the accessory building height is desirable for the property as it allows for enhanced storage and use of the facility. No adverse impacts are anticipated on the surrounding lands.</p>
3. The variance maintains the general intent and purpose of the Official Plan.	<p>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. Given the proposed location of the accessory building, the requested increase in building height will not compromise the objectives of the Official Plan, particularly with respect to land use compatibility, storm water runoff and private sewage system servicing capabilities.</p> <p>The requested increase of accessory building lot coverage directly impacts the development's horizontal footprint upon the lands. Given the high potential for discovery of archaeologically significant resources, without the benefit of an archaeological assessment confirming otherwise, this increased lot coverage variance in the proposed location is considered to conflict with Policy D4.3. However, pending a Ministry archaeological clearance resulting from an Archaeological Assessment or ensuring that the building is constructed with a slab on-grade foundation, this would conform with the Official Plan. As a result, Town and Regional staff have recommended an archaeological assessment / Clearance as a condition of approval.</p> <p>The variances are appropriate given the site's rural context and meet the general intent of the Town Official Plan policies.</p>
4. The variance maintains the general intent and purpose of the Zoning By-law.	<p>The size of the proposed accessory building's height to 5.92 m, and increased lot coverage to 1.9 % is appropriate given the rural context. Reasonable amounts of open space remain available on the site for amenity area, stormwater runoff and sewage system purposes, thus the increased height and lot coverage will not adversely impact the rural character of the area or the surrounding countryside. The variance maintains the intent of the Zoning By-law with respect to accessory building massing, siting and locational scale.</p>

Agency & Public Comments

On June 18, 2020, a notice of public hearing was circulated by the Secretary Treasurer of the Committee of Adjustment to applicable agencies, Town departments, and to all assessed property owners within 60 metres of the property's boundaries.

To date, the following comments have been received:

- Niagara Region Planning & Development Services (March 25-26, 2020)
 - See conditions.
 - Normally, development is not permitted within 30 m of the required *vegetation protection zone (VPZ)* surrounding a *significant woodland*. Moreover, Regional policies require the completion of an *Environmental Impact Study (EIS)* when development is proposed within 50 m of *significant woodlands*. However, Regional staff are supportive of waiving the requirement for an EIS because the VPZ is not achievable given the location of the existing house and the proposed location of the garage will likely not adversely impact the *significant woodland*.
 - No objections, provided no plumbing or living space is included within the proposed garage.
- Building Department (March 30, 2020)
 - Building permits are required.
- Public Works Department (May 26, 2020)
 - No comments.

No public comments were received at the time of this writing.

Planning Staff Comments

The subject lands are located on the south side of Sumbler Road, lying west of Effingham Street. The property is currently surrounded by agricultural uses and a *significant woodland* (to the east).

The proposed minor variance application seeks zoning relief to increase the maximum (accessory) lot coverage from 1 % to 1.9 %, and increase the maximum (accessory) building from 3.7 m to 5.92 m in order to accommodate a detached garage as illustrated on the Site Plan. The proposed zoning to increase the accessory lot coverage and accessory building height should not facilitate any adverse impacts with regards to land use incompatibility, storm water runoff or privacy etc. However, the variance for increased accessory lot coverage may adversely impact local cultural heritage and archaeological resources which conflicts with Provincial policy, Regional and Town Official Plan policies.

Town Planning staff will be recommending a condition for either the completion of an archaeological assessment to be submitted to the Ministry of Heritage, Sport, Tourism & Culture for a standard Clearance Letter prior to issuance of a building permit, or a requirement that the building be constructed using a slab on-grade foundation to ensure no deep excavation is warranted.

In Planning staff's opinion, the application is consistent with the PPS and conforms to Provincial, Regional, and local plans.

Given this analysis, Planning staff recommend that minor variance file A18/2020P **be approved** subject to the following conditions:

THAT the applicant

- The applicant conduct either a Stage 1-2 Archaeological Assessment prepared by a licensed archaeologist and receive clearance from the Ministry of Heritage, Sport, Tourism & Culture prior to the issuance of a building permit. The Archaeological Assessment must cover the areas of the site proposed for disturbance, and be accepted by the Ministry prior to clearance of this condition. The licensed archaeologist may recommend further archaeological analysis or preservation steps be taken. No demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements; or
- The applicant apply for, and obtain a building permit for the proposed garage specifying a floating slab on-grade foundation.
- Ensure no plumbing fixtures, living space or bedrooms are provided in the building permit for the proposed garage.

Prepared by,



Curtis Thompson, B.URPI
Planner

Approved by,



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