

Planning and Development Services

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free: 1-800-263-7215

Via Email Only

November 17, 2020

File No.: D.17.06.MV-20-0045

Ms. Nancy Bozzato, Dipl.M.M., AMCT
Town Clerk/Secretary-Treasurer
Town of Pelham
20 Pelham Town Square, PO Box 400
Fonthill, ON L0S 1E0

Dear Ms. Bozzato:

**Re: Provincial and Regional Comments
Minor Variance Application
Town File Nos.: A28/2020P
Owner: [REDACTED]
Agent: Upper Canada Consultants (Craig Rohe)
Address: 1 Highway 20 West, Pelham
Legal Description: Lots 53 and 54, Part of Lot 55 on Plan 717 and Part of
Lot 1, Concession 7, Town of Pelham**

Regional Planning and Development Services staff have reviewed the information circulated for the above-noted minor variance application, which has been proposed to facilitate the construction of a residential apartment unit on the ground floor of a proposed 3-storey, mixed-use building. The applicant is seeking variances to permit a dwelling unit to be located on the ground floor behind a commercial use, a reduction in the minimum drive aisle width for a parking lot, and an increase in maximum residential gross floor area and maximum lot coverage.

The proposed 3-storey mixed-use building was subject to a previous site plan application, which Regional staff commented on by letter dated May 30, 2019, July 25, 2019, and August 14, 2019. The owner is proposing to revise the approved site plan to accommodate an additional residential unit on the ground floor at the rear of the building, resulting in modifications to the proposed parking lot configuration and architectural design of the building. A preconsultation meeting for the minor variance application was held on September 17, 2020, with staff from the Town and Region, as well as the Agent and Owner in attendance.

The following Provincial and Regional comments are provided to assist the Committee in their consideration of the application.

Provincial and Regional Policy

The subject lands are located within a Settlement Area under the Provincial Policy Statement (PPS), designated Delineated Built-Up Area under the Growth Plan for the Greater Golden Horseshoe (Growth Plan) and designated Urban Area (Built-Up Area) in the Regional Official Plan (ROP).

The PPS and Growth Plan direct growth to Settlement Areas and the Delineated Built-Up Area to efficiently use existing servicing, infrastructure, and public service facilities. An emphasis is placed on intensification and infill to foster the development of complete communities that have a mix of diverse land uses, and a range of housing options for the current and future population. The ROP permits a full range of residential, commercial and industrial uses generally within the Urban Area, subject to the availability of adequate municipal services and infrastructure. The policies of the ROP promote higher density development in Urban Areas, supporting growth that contributes to the overall goal of providing a sufficient supply of housing that is affordable, accessible, and suited to the needs of a variety of households and income groups in Niagara.

The proposal is considered infill development, and will result in residential intensification within the Built-Up Area, which will make more efficient use of designated urban land and existing infrastructure and contribute toward the Town achieving its annual 15% residential intensification target, as established by the ROP. The proposed minor variance application, which will facilitate the construction of an additional residential apartment unit on the ground floor of the proposed 3-storey mixed use building, will also provide an alternative form of housing, offering a range of options in the neighbourhood to meet the needs of a variety of households, populations and income groups. The proposed minor variance is therefore consistent with Provincial and Regional policies for the provision of a range of housing types and densities within the Built-Up Area.

Archeological Resources

The PPS and ROP provide direction for the conservation of significant cultural heritage and archaeological resources. Specifically, Section 2.6.2 of the PPS and Policy 10.C.2.1.13 of the ROP state that development and site alteration are not permitted on lands containing archaeological resources or areas of archaeological potential, unless significant archaeological resources have been conserved. Based on Provincial screening criteria, the subject lands exhibit high potential for discovery of archeological resources due to their proximity (within 300 m) to a registered archeological site and a watercourse.

The area of the proposed development has been subject to recent, intensive and extensive ground disturbance, as defined by the Province. Therefore, any

archaeological potential is now void. On this basis, Regional staff can waive the requirement for an archaeological assessment.

It is Regional staff's understanding that the development agreement for the previous site plan application contains standard warning clauses regarding the potential for the discovery of deeply buried archeological remains/resources during construction and grading activities. Recognizing that no archaeological screening or survey, regardless of its intensity, can entirely negate the possibility of deeply buried archaeological materials, Regional staff recommend that these standard warning clauses be carried over into any subsequent development agreements on the subject lands to ensure any archeological resources that may be encountered are appropriately conserved.

Record of Site Condition

Aerial photography and Municipal Property Assessment Corporation (MPAC) data indicate that portions of the subject property were last used for commercial purposes. In accordance with O. Reg. 153/04, a Record of Site Condition (RSC) must be filed on the Ministry of Environment and Climate Change's (MOECC) Brownfields Environmental Site Registry prior to any change in land use to a more sensitive use (i.e. commercial to residential).

During the review of the previous Planning Act applications, the proposed development fell within the exemption provisions (Section 15) of the *Environmental Protection Act* (EPA) and Regional staff waived the requirement for an RSC. However, since this time, the EPA, including Section 15, has been amended by O. Reg 407/19. The exemption criteria is now more explicit, and states that an RSC is not required where a change in use meets all of the following criteria:

- i. Before the change, the property is used for a commercial or community use.
- ii. After the change, the property will be used,
 - a. for a commercial or community use as well as for a residential use,
 - b. for a commercial or community use as well as for an institutional use, or
 - c. for a commercial or community use as well as for both a residential use and an institutional use.
- iii. The change to residential use or institutional use is restricted to floors above the ground floor.
- iv. The building has no more than six storeys before the change and will have no more than six storeys after the change.
- v. The existing building envelope is to remain unchanged and there will be no addition to the exterior portions of the building.
- vi. The property on which the building is located is not used or has not ever been used, in whole or in part, for an industrial use, as a garage, as a bulk liquid dispensing facility, including a gasoline outlet, or for the operation of dry cleaning equipment.

The proposed apartment unit on the ground floor does not comply with criterion iii) above, and therefore the filing of an RSC is now required under the EPA. Regional staff

note that the EPA is considered applicable law under the *Ontario Building Code*, and therefore the requirement for an RSC can be addressed prior to the issuance of a building permit.

Noise

The subject lands have frontage on Regional Road 20 (Highway 20). The PPS requires that major facilities (including transportation infrastructure and corridors) and sensitive land uses (i.e. residential) be planned to “ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety...”. Further, the Regional Road Traffic Noise Control Policy (PW5.NO1.0) requires that all development applications for sensitive uses along existing Regional Roads be considered for noise abatement features.

Typically, Regional staff would require that a noise study, prepared in accordance with the Ministry of Environment, Conservation and Park (MECP) Noise Guidelines (NPC-300) and the Regional Road Noise Control Policy, be submitted to evaluate the impact of the Regional Road noise traffic. However, this requirement was waived by Regional staff as part of the previous applications on the subject lands, provided no balconies were proposed on the front façade. As the revised concept plan does not include balconies on the front façade, a noise study is not required in support of the current application.

Regional Development Charge Reduction Programs

The property is located within a Designated Exemption Area under Schedule E of the Regional Development Charge (RDC) By-law 98-2017, and is eligible for the Region’s Smart Growth Development Charge (DC) Reduction Program. The project may be eligible for a rebate of up to 50% of the RDCs paid, subject to meeting the requisite number of Smart Growth Design Criteria, under this program. More information can be found at <https://www.niagararegion.ca/business/property/reductions.aspx>.

The property may also be eligible for RDC rebates under the Region’s Brownfield Development Reduction Charge Program. In order to qualify for this program, the property must meet the definition of “Brownfield” development, as defined by the RDC By-law, including:

- The property was previously used for agricultural, industrial, institutional, or commercial or open lands or other use as prescribed under the *Environmental Protection Act*, R.S.O. 1990, c.E.19 and Ontario Regulation 153/04 (i.e. “brownfields” regulation), as amended by Ontario Regulation 407/19;
- Site remediation is required in accordance with a Phase 2 Environmental Site Assessment (ESA); and,
- A Record of Site Condition (RSC) has been filed on the Province’s Brownfields Environmental Site Registry (BESR).

November 17, 2020

If eligible for this rebate, up to 100% of the RDCs payable, but not exceeding the total eligible cost of remediation subject to the terms of Schedule D of the RDC By-law, may be available. Pursuant to Schedule D of the RDC By-law, applications for the Brownfield Development Reduction Charge Program must be made within 12 months of the commencement of remediation. More information can be found at <https://www.niagararegion.ca/business/property/brownfields-redevelopment-program.aspx>.

A copy of the Regional Development Charge By-law, including the schedules and definition of a brownfield, can be found at <https://www.niagararegion.ca/business/property/default.aspx>.

The Region is currently in the process of a review of all Regional incentive programs, which may result in changes to the current incentive programs. Also please note that By-law 2017-98 will expire on August 31, 2022. In advance of that date, the Region will be initiating a review of the By-law and preparation of a background study in support of Council's adoption of a new DC By-law prior to the By-law's expiry.

Conclusion

In conclusion, Regional staff have no objection to this minor variance application from a Provincial or Regional perspective, subject to the satisfaction of any local requirements. Regional staff note that the requirement for the filing of a Record of Site Condition (RSC) should be addressed prior to issuance of a building permit.

Please send a copy of the staff report and notice of the Committee's decision on this application.

If you have any questions related to the above comments, please contact me at Amy.Shanks@niagararegion.ca, or Britney Fricke, MCIP, RPP, Senior Development Planner at Britney.Fricke@niagararegion.ca.

Kind regards,



Amy Shanks
Development Planner

cc: Britney Fricke, Senior Development Planner, Niagara Region
Curtis Thompson, Planner, Town of Pelham