

January 12, 2021

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

Re: Minor Variance Application A3/2021P
1012 Cream Street, Pelham
Concession 10, Part of Lot 12
Roll No. 2732 010 014 18300

The subject land is located on the north side of Chantler Road, lying east of Effingham Street, legally described above, and known locally as 257 Chantler 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 7.2 (a) "Minimum Lot Frontage"** to permit a minimum lot frontage of 125.8 m, whereas 180 m is required;
- ii. **Section 7.2 (b) "Minimum Lot Area"** to permit a minimum lot area of 3.5 ha, whereas 10 ha is required;
- iii. **Section 7.2 (e) "Minimum Side Yard"** to permit a minimum side yard of 18 m, whereas 46 m is required.

The proposal seeks to legalize an existing 186 m² agricultural barn resulting from a conditionally approved consent application to convey a boundary adjustment, (file B10-2020P) that reduced the lot area and lot frontage and adjusted the side property line of Part 1.

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 1.1.4.1 states that healthy, viable *rural areas* should be supported by, among other things, promoting regeneration, promoting diversification of the economic base in *prime agricultural areas*, in accordance with policy 2.3 and conserving biodiversity.

The proposed minor variance will legally recognize the smaller agricultural parcel and existing barn which were legally established and undersized once the Fenwick urban settlement area was expanding in the 1980s. The minor variance will fulfill the conditions of severance approval and separate the southern agricultural lands from the northern urban lands. This will allow someone whom is only interested in developing the urban lands to do so without the burden associated with the balance of the rural lands to the south, and vice-versa.

Greenbelt Plan (2017)

The northern half of the property (Parts 2 – 3) are located within the Village of Fenwick *settlement area* which the *Greenbelt Plan* designates as a ‘*Town / Village*’. However, the southern half of the property (Part 1) is designated ‘*Tender Fruit & Grape Lands*’ within the Greenbelt Plan’s *Protected Countryside*.

Similar to the PPS policies, the *Specialty Crop Area* designation is intended to be protected for long-term agricultural use. Lands within the *Towns and Villages* designation are governed by the Growth Plan policies.

Policy 4.6.1 e) states that lot creation is discouraged but minor lot adjustments or boundary additions may be permitted, provided they do not create a separate lot for a residential dwelling in *prime agricultural areas*, including *specialty crop areas*, and there is no increased fragmentation of a *key natural heritage feature* or *key hydrologic feature*.

The proposed application is for minor variance approval to legalize the existing undersized agriculturally zoned lands which are proposed to be detached from the urban lands to the north via a previously approved boundary adjustment. The consent does not create any new lots, nor does this zoning relief have the ability to facilitate any additional lots or frustrate other Greenbelt Plan policies. Therefore, the proposed application conforms to this Provincial land use Plan.

Growth Plan for the Greater Golden Horseshoe (2019)

This Plan informs decision-making regarding growth management and environmental protection in the Greater Golden Horseshoe (GGH). All decisions made after May 16, 2019 that affect a planning matter will conform with this Growth Plan, subject to any legislative or regulatory provisions providing otherwise. The policies of this Plan take precedence over the PPS to the extent of any conflict.

The southern half (Part 1) is located within a ‘*Prime Agricultural Area*’ while the northern half (Parts 2 – 3) are identified as being within a ‘*settlement area*’ according to the Growth Plan. More specifically, Part 2 is a *designated greenfield area* while Part 3 is identified as being within a *delineated built-up area* due to the presence of existing development.

Policy 4.2.2.3 a) states that (among other things), within the *Natural Heritage System* new development or site alteration will demonstrate that there are no negative impacts on key natural heritage features, key hydrologic features or their functions.

Development is defined as the creation of a new lot, a change in land use, or the construction of buildings requiring approval under the *Planning Act*. The proposed zoning relief would help fulfil the conditions of approval for a recently approved consent application to convey a boundary adjustment. Boundary adjustments are not considered *development* by definition. The existing barn was legally established with the benefit of a building permit and the proposed variances do not alter the location of the barn as it related to the existing *key natural heritage features* present on the land. Also, given that there is no new development or site alteration induced, or being considered under these applications, the requirement for environmental evaluations to determine impacts is not required.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates Part 1 as 'Unique Agricultural Area' while Part 2 is identified as a 'Designated Greenfield Area' and Part 3 is identified as a 'Built-up Area', the latter two parts both being situated within the 'urban area boundary'. The subject land also shares the following environmental designations on at least part of the subject property: *Environmental Conservation Area (ECA)* and *Fish Habitat*.

Regional staff were satisfied with how the proposed boundary adjustment conforms with Provincial policies, avoids fragmentation of *key natural heritage features* and meets Regional lot creation criteria.

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 northern half (Parts 2 – 3) as 'Urban Living Area / Built Boundary', with Part 2 also containing a 'Greenfield Overlay' and subject to special policy B1.1.10 to the north. The southern half (Part 1) is designated 'Specialty Agricultural' and 'Environmental Protection Two' (EP2).

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. No Archaeological Assessment was submitted with this application because no development is being proposed in terms of construction or new lots. Should further redevelopment be proposed on Parts 2 – 3, an archaeological evaluation will be required.

Policy E1.5 (Minor Variances) – states that applicants should be prepared to demonstrate a need for the requested zoning relief on the basis that the subject zoning provision is not warranted in a particular circumstance, causes undue hardship, or is otherwise impossible to comply with.

The Planning Justification Brief submitted with the application addressed the *4 tests* under the *Planning Act*. Planning staff recognize the proposed zoning relief as a demonstrated hardship because the existing lands designated and zoned for agricultural policies and permissions were legally established. Therefore, it is

impossible for all of the provisions to comply while still dividing the urban lands from the *prime agricultural* lands.

The proposed minor variance will facilitate the recently, conditionally approved severance that would separate the southern *prime agricultural* designated lands from the northern urban lands. This will allow someone whom is only interested in developing each respective parcel to do so without the burden associated with the balance of the agricultural (or urban) lands, as the case may be. Town Planning staff are of the opinion the requested minor variance conforms with the local Official Plan.

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

The subject land is currently zoned ‘Residential Village 1’ (RV1) to the north (Parts 2 – 3) and ‘Agricultural’ (A) the south (Part 1) according to the Zoning By-law. Under the default ‘Agricultural’ regulations of the Zoning By-law, the minor variance application requests relief from:

- i. **Section 7.2 (a) “Minimum Lot Frontage”** to permit a minimum lot frontage of 125.8 m, whereas 180 m is required;
- ii. **Section 7.2 (b) “Minimum Lot Area”** to permit a minimum lot area of 3.5 ha, whereas 10 ha is required;
- iii. **Section 7.2 (e) “Minimum Side Yard”** to permit a minimum side yard of 18 m, whereas 46 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.	Granting the reduced lot area, lot frontage and side yard setback is minor overall because there are no negatively induced impacts to the subject lands or its surroundings. In fact, by refusal of the zoning request, and thus the conditionally approved severance, the urban lands to the north, which form part of the East Fenwick Secondary Plan area, will be frustrated in future development opportunities, or vice-versa, because of the added land holding cost and complexity. Furthermore, the variances do not result in a loss of <i>prime agricultural</i> lands and have no impact on the protections concerned with existing <i>key natural heritage features</i> nearby.
2. The variance is desirable for the development or use of the land.	Granting the requested zoning relief will help facilitate the orderly development of the urban designated lands to the north, and help maintain the long-term viability of <i>prime agricultural</i> lands situated outside of the <i>urban settlement area</i> boundary. The zoning relief will recognize an existing undersized (agriculturally designated & zoned) parcel of land which is understandably being severed from its urban half as this is clearly desirable from a land holdings perspective and future redevelopment opportunities on either segment.
3. The variance maintains the general intent and purpose of the Official Plan.	The requested zoning relief maintains the intent and purpose of the Official Plan because their permission will not negatively impact the agricultural ventures on Part 1. The agriculturally designated lands

	<p>was already legally undersized from a policy perspective as the property was bisected by the urban settlement area boundary. The variances will facilitate the recently approved boundary adjustment and both individually, and collectively, these approvals do not have any material affect that would induce undesirable development practices on either parcel.</p>
<p>4. The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p>The requested zoning relief maintains the intent and purpose of the Zoning By-law because they would legally recognize the existing undersized 'A' (Agriculturally) zoned land which is still capable of serving a farming purpose. The existing 1-storey barn was legally established with the benefit of a building permit and can continue to be used for an agricultural purpose subject to these minor variances being approved.</p>

Agency & Public Comments

On November 19, 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 agency and staff comments have been received:

- Building Department (December 8, 2020)
 - No comments.
- Public Works Department (December 21, 2020)
 - No comments.

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

Planning Staff Comments

The subject lands are located near the southwest corner of Cream Street and Welland Road within the *Village of Fenwick*. The property is currently surrounded by agricultural uses, natural heritage features and several residential dwellings.

The proposed minor variance application seeks zoning relief to reduce the minimum side yard setback for an existing agricultural building from 46 m, to 18 m in order to accommodate a conditionally approved boundary adjustment which moves the lot line closer to this building. Similarly, this application also seeks to reduce the minimum lot frontage and lot area to accommodate the agriculturally zoned (Part 1) parcel and maintain the existing agricultural use permissions as a result of the parcel being smaller overall and bounded by the *urban settlement area* boundary to the north.

Maintaining the existing agricultural zone use permissions of section 7.2 was important for Town Planning staff as it helps preserve and continue to promote the agricultural resources and economy of the Town perpetually. Should the retained parcel, (Part 1) only have been recognized and specified as a future rural residential dwelling lot (section 7.4) or greenhouse lot (section 7.3), zoning relief would not have been required for

minimum lot frontage and minimum lot area. Instead, zoning relief would have been required for the existing barn to recognize it as a new *legal non-conforming* use, or to allow for a stand-alone accessory building of sorts.

Therefore, requiring the full complement of agricultural use permissions to remain on Part 1, save for existing environmental restrictions, was important for Planning staff in offering support for the recent approved severance application.

It should be noted that having an *urban settlement area* boundary dissect an existing property into two different land designations from a policy perspective, and two different zone categories from a By-law perspective may not be unique, but it can definitely frustrate the ability to develop each part respectively. This may not necessarily be a problem for all land owners, but for some, it can pose an unnecessary burden when one has to carry land holdings which serve for more as a burden, then an opportunity – whether it be due to expensive carrying costs, limited capital, or conflicting priorities of current and prospective owners.

In Planning staff's opinion, the application is consistent with the PPS, Growth Plan and conforms to the local Official Plan, meet the *four tests* under the *Planning Act* and represents sound land use planning.

Given this analysis, Planning staff recommend that minor variance file A3/2021P **be granted**.

Prepared by,



Curtis Thompson, B.URPI
Planner

Approved by,



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