

February 2, 2021

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

Re: Minor Variance Application A12/2021P
414 Welland Road, Pelham
Concession 10, Part of Lot 8
Roll No. 2732 020 013 16600

The subject land is located on the south side of Welland Road, lying west of Effingham Street, legally described above, and known locally as 414 Welland 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 (d) "Maximum (accessory) Building Height"** to permit a maximum building height of 5 m, whereas 3.7 m is allowed to construct an accessory building to the 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 subject land is designated as 'Prime Agricultural Land' according to the PPS. 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 2.1.8 (Natural Heritage) – states *development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.4 - 2.1.6 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*.

Greenbelt Plan (2017)

The subject land is designated 'Tender Fruit & Grape Lands' (*Specialty Crop Area*) and 'Natural Heritage System' within the Greenbelt Plan's *Protected Countryside*.

Section 3.1.2 (Specialty Crop Area Policies) states that for lands falling within *specialty crop areas* of the *Protected Countryside* all types, sizes and intensities of agricultural uses and *normal farm practices* shall be promoted and protected.

Section 3.2.5.5 (Key Natural Heritage Features) states that new *development* or *site alteration* within 120m of a *key natural heritage feature* (i.e. wetlands / woodlands) within the Natural Heritage System or a *key hydrologic feature* within the Protected Countryside requires a natural heritage evaluation (EIS) which identifies a *vegetation protection zone* (VPZ).

Policy 4.5.2 (Existing Uses) – states that for lands within the Protected Countryside, single dwellings are permitted on existing lots of record, provided they were zoned for such as of December 16, 2004. Municipalities are encouraged to discourage non-agricultural uses where appropriate.

The subject land has been zoned 'Agricultural' under since at least 1987 (By-law No. 1136). This 'A' zone permits one single detached dwelling and related accessory uses. With respect to the Natural Heritage System policy requirements for a natural heritage evaluation, no Environmental Impact Study was provided in support of the proposed development.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject parcel as 'Protected Countryside' and 'Unique Agricultural Area' according to Schedules A and B, respectively. The property is also designated as 'Greenbelt Natural Heritage System' and impacted by a Type 2 Fish Habitat and *Significant Woodland* according to Schedule C.

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

Policy 7.B.1.11 states that *development* and *site alteration* may be permitted on adjacent lands to Environmental Protection and Conservation Areas as set out in Table 7 – 1 except for those lands within *vegetation protection zones* associated with Environmental Protection Areas in the *Greenbelt Natural Heritage System*. If it has been demonstrated that, over the long term, there will be no significant negative impact. The proponent shall be required to prepare an Environmental Impact Study (EIS) in accordance with Regional policy.

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.

Regional Environmental Planning staff note that the *Significant Woodland* feature as it is currently mapped, is likely more extensive. According to the Site Plan, the proposed accessory building is located adjacent to the dripline / woodland, and would not be capable of sustaining a 30 m VPZ near that general location.

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.

Schedule A of the Official Plan designates the subject parcel as 'Specialty Agricultural' and 'Greenbelt Natural Heritage Overlay'. While Schedule B also identifies 'Wooded Areas' on part of the subject lands. The purpose of the 'Specialty Agricultural' designation is to implement the Greenbelt Plan and recognize the importance of specialty croplands. Policy B2.1.2 states (among other uses) one single detached dwelling is permitted on a vacant lot of record.

Policy A2.1.2 states the objective of the Official Plan is to make planning decisions that consider the health and integrity of the broader landscape as well as long term cumulative impacts on the ecosystem. Planning decisions should also restrict and regulate land uses which could impact the water quality and hydrological and hydrogeological characteristics of watercourses, aquifers and wetlands.

Policy B3.4.2.3 (Environmental Protection Three {EP3}) – states that the features identified on Schedule B as 'Wooded Areas' have not been assessed or confirmed for significance. When an assessment of these features has been completed pursuant to the Greenbelt Plan and to the satisfaction of the Region and Town, those confirmed as being significant will be added to the EP3 designation.

Policy B3.5 (Greenbelt Natural Heritage Overlay) – states that the purpose of this designation is to implement the 'Natural Heritage System' provisions of the *Greenbelt Plan*. Development and site alteration may occur within this overlay provided that an EIS is prepared in accordance with Section C7.

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.

Figure 1: Approximate location of proposed development against Pelham's Composite Archaeological Potential mapping (Source: Pelham Heritage Master Plan – 2012)



Based on the Town's Heritage Master Plan composite archaeological potential mapping, most of the subject lands are identified as having high potential for deeply buried archaeological material (shown in pink on Figure 1). Town staff have overlaid the composite mapping on the subject lands' parcel fabric, and identified the

approximate location of the proposed structure to help confirm whether an archaeological evaluation is warranted.

Town Planning staff are of the opinion that it may be premature to recommend approval of the minor variance without the benefit of a scoped EIS to the Region's satisfaction, confirming there will be no negative impacts to the natural heritage system.

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. The minor variance application requests relief from:

- i. **Section 7.7 (d) "Maximum (accessory) Building Height"** to permit a maximum building height of 5 m, whereas 3.7 m is allowed to construct an accessory building to the dwelling.

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 proposed increase in height is minor overall because the impact from increased height would not negatively impact neighbouring privacy concerns or provide unhealthy shadow impacts. The location of the building otherwise complies with the Zoning By-law respecting its geography, land use and lot coverage etc.
2. The variance is desirable for the development or use of the land.	The variance may not be desirable for the natural heritage system use of the property and surrounding area. At this time, it would be premature to indicate whether the zoning relief is desirable. In the absence of an EIS, it cannot be confirmed if the proposal is desirable for the use of these lands and sustaining the natural heritage system.
3. The variance maintains the general intent and purpose of the Official Plan.	The proposal has not demonstrated conformity with policy B3.5.4.1 and it cannot be determined whether the variance will otherwise maintain the general intent and purpose of the Official Plan. The Official Plan policies, (in concert with Regional and Provincial policies), require that an EIS be conducted in order to determine the significance of the natural heritage features and to what extent, the impacts the development may have on the features. This would determine if the proposal is compatible with the surrounding ecological features.
4. The variance maintains the general intent and purpose of the Zoning By-law.	The size of the proposed accessory building's height to 5 m is appropriate given the rural context. There are no privacy, shadow, massing or scale concerns with neighbouring properties or the public space. Town staff are of the opinion the variance maintains the general intent of the Zoning By-law.

Agency & Public Comments

On January 8, 2021, 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 Peninsula Conservation Authority (January 20, 2021).
 - No objections, however, the NPCA requires review and circulation of the building permit for the principle single detached dwelling to ensure there is no interference with the watercourse and potentially unevaluated wetland features in proximity.
- Niagara Region (January 20, 2021)
 - See attached.
 - Regional staff cannot support the application as the proposed accessory building will be situated within the required 30 m *vegetated protection zone (VPZ)* of the *Significant Woodland* (identified as a *Key Natural Heritage Feature* by the Greenbelt Plan).
 - An Environmental Impact Study (EIS) must be completed to the satisfaction of Regional staff demonstrating that the proposed development will be located outside of any *Key Natural Heritage Features* or *Key Hydrologic Features*, as well as any required buffers.
 - Subject lands exhibit high potential for archaeological resources. Defer to Town regarding potential assessment requirements due to Heritage Master Plan.
- Building Department (January 20, 2021)
 - Building permit(s) are required.
- Public Works Department (January 20, 2021)
 - No comments.

One member of the public provided comments indicating they have no objections to the proposal.

Planning Staff Comments

The subject lands are located on the south side of Welland Road, lying east of Effingham Street. The property is surrounded by rural residential lots, *significant woodlands* and some agricultural uses.

The proposed minor variance application seeks zoning relief to increase the maximum (accessory) building from 3.7 m to 5 m in order to accommodate a detached garage as illustrated on the Site Plan. No Pre-Consultation was scheduled between the applicant, Town and Region staff in advance of the minor variance submission. The Pre-Consultation meeting would have identified and raised the issues with this application in advance of proceeding formally to a hearing.

Niagara Region staff have provided detailed comments and have indicated they cannot support the application as presented until such time as a scoped EIS is provided to determine possible natural heritage impacts.

It should be noted that if the woodland were deemed significant, it would likely be physically impossible for the proposed accessory building's location to maintain a 30 m *vegetated protection zone* in its current location.

The applicant could alter the building to comply with the Zoning By-law's height requirement and proceed to building permit. Notwithstanding concerns about impacts to the *key natural heritage system* and the need for a scoped EIS to assess the proposal, Town Planning staff also draw attention to the potential for deeply buried archaeological resources on the proposed development site. If the Committee of Adjustment feels inclined to approve the variance, a condition should be required for the applicant to either conduct a Stage 1 – 2 Archaeological Assessment and receive Ministry clearance prior to the issuance of building permit, or, at the time of building permit, ensure the building be constructed using a slab on-grade style foundation to avoid deep excavation normally associated with traditional strip footings and foundation frost walls, in addition to a condition for the undertaking of a scoped Environmental Impact Study to the Region's satisfaction.

Town Planning staff are of the opinion that it would be premature to support the zoning relief at this time. Therefore, in staff's opinion, the application is inconsistent with the PPS and does not conform to Provincial, Regional, and local policies, and does not satisfy all *four tests* required under the *Planning Act*.

Given this analysis, Planning staff recommend that minor variance file A21/2020P **be refused**.

Prepared by,



Curtis Thompson, B.URPI
Planner

Approved by,



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