

March 2, 2021

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

Re: Minor Variance Application A10-2021P
614 Metler Road, Pelham
Concession 6, Part of Lot 12
Roll No. 2732 010 008 15500

The subject parcel, shown as Part 2 on the attached Consent Sketch, is located on the south side of Metler Road, lying west of Cream Street, legally described above, in the Town of Pelham.

The subject land is zoned 'Residential Village 1' (RV1) in accordance with Pelham Zoning By-law No. 1136 (1987), as amended. The minor variance application seeks relief from:

- i. **Section 9.2 (b) "Minimum Lot Frontage"** to permit a lot frontage of 28.78 m, whereas 36 m is required.
- ii. **Section 9.2 (e) "Minimum Interior Side Yard"** to permit an interior side yard of 1.5 m, whereas 3 m is required.

Note: This application is being considered concurrently with consent files: B5 & B6-2021P and minor variance files: A9-2021P & A11-2021P.

Applicable Planning Policies

Planning Act (Consolidated July 2016)

Section 45 (1) states that the Committee of Adjustment may authorize minor variance provisions of the (Zoning) by-law, in respect of the land, as in its opinion is (1) minor in nature, (2) objectively desirable for the appropriate development or use of the land, and the general intent and purpose of the (3) Zoning By-law and (4) Official Plan are maintained.

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 a 'Settlement Area', more specifically a rural settlement area / hamlet. According to policy 1.1.4, *Rural Areas* may include rural settlement areas.

Policy 1.1.4.1 – states that healthy and viable *rural areas* should be supported by, among other things:

- a) Building upon rural character, and leveraging rural amenities and assets;
- c) Accommodating an appropriate range and mix of housing in *rural settlement areas*;
- d) Encouraging the conservation and *redevelopment* of existing rural housing stock on *rural lands*;
- e) Using *rural infrastructure* and *public service facilities* efficiently;

The existing zoning only permits one single detached dwelling, which limits the ability to provide a mix of housing stock. The proposed lot geometry and frontage is configured in a way that seeks to preserve the existing rural residential dwelling on Part 2.

Policy 1.1.4.3 states that the Town shall consider rural characteristics, the scale of development and the provision of appropriate service levels when directing development in *rural settlement areas*.

Greenbelt Plan (2017)

The subject lands are designated as a 'Hamlet' (*Settlement Area*) within the 'Protected Countryside' according to Schedule 1 of the Greenbelt Plan. Hamlets are substantially smaller than Towns / Villages and play a significantly lesser role in accommodating concentrations of residential, commercial, and non-agricultural development. Hamlets are not locations to which growth should be directed.

Policy 3.4.4 – states that Hamlets are subject to the Growth Plan policies and continue to be governed by official plans and are not subject to the policies of this Plan, save for a few key policies, (water resource system, parkland, open space and trails etc.). Limited growth is permitted through infill and *intensification* of Hamlets subject to appropriate private servicing.

Growth Plan (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 subject parcel is located within a 'Rural Settlement' according to the Growth Plan. *Rural Settlements* are privately serviced areas, contain a limited amount of undeveloped lands that are designated for development and are subject to official plan policies that limit growth.

Policy 2.2.1 Managing Growth – 2. Forecasted growth to the horizon of this Plan will be allocated based on the following:

- b) Growth will be limited in *settlement areas* that:
 - i. Are *rural settlements*;
 - ii. Are not serviced by existing or planned *municipal water and wastewater systems*; or
 - iii. Are in the Greenbelt Area.

Policy 4.2.1– states that *Water resource systems* will be identified for the long-term protection of *key hydrologic features, key hydrologic areas*, and their functions.

Schedule ‘B1’ of the Town’s Official Plan identifies the subject lands as constituting a *highly vulnerable aquifer* and being located within the Fifteen Mile Creek subwatershed. As such, a number of land uses are prohibited.

According to the *Hydrogeological Assessment* and Regional staff, the proposed development appears capable of providing a sustainable level of private water and wastewater servicing subject to certain conditions of approval being fulfilled.

Town Planning staff are of the opinion the proposed zoning relief conforms to the Growth Plan.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as ‘Hamlet’ according to Schedules ‘A’ and ‘B’. Hamlets are low density settlement areas that play an important housing, social, cultural, and economic role for the people within the local community and in supporting the surrounding agricultural and rural areas.

Policy 4.H.3.5 states that the minimum lot size for new lots in Hamlets should be 1 hectare unless a *Hydrogeological Assessment* determines that a smaller land area will adequately accommodate private water and sewage treatment facilities for long-term operation. In all cases, a minimum of 0.4 hectare (1 acre) of usable lot area for septic system purposes shall be provided.

Despite the reduced minimum lot frontage, the proposed lot area(s) exceed the minimum 0.4 ha usable lot area requirement. A *Hydrogeological Assessment* was prepared by Terra-Dynamics Consulting Inc. demonstrating that private services can adequately be accommodated, subject to recommended conditions.

Regional staff provided comments on the concurrent severance applications and offered no objections pending their recommended conditions of approval are satisfied.

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 ‘Rural Settlement’ according to Schedule ‘A’, and ‘Highly Vulnerable Aquifer’ according to Schedule ‘B1’. The North Pelham Hamlet is not a focus area for future growth in the Town but does have policies that support limited development.

Policy A2.7.2 Cultural Heritage – states it is the Plan’s objective to ensure that the nature and location of cultural heritage and archaeological resources are known and considered before land use decisions are made. Encouraging development that is adjacent to significant cultural heritage resources to be of an appropriate scale and character.

No Part IV designated heritage properties exist on, or surround the subject lands, save for the Comfort Maple

Tree to the southwest. The Town's Heritage Master Plan identified the subject lands as having high potential for deeply buried archaeological resources. Therefore, a Stage 1 – 2 Archaeological Assessment was required by the Town and Region and was prepared by Detritus Consulting Ltd. to address the policy requirements. No further archaeological evaluation were recommended as no significant resources were uncovered and a clearance letter was received from the Ministry of Heritage, Sport, Tourism and Culture Industries.

In support of local policy and the Regional Official Plan, a *Hydrogeological Assessment*, prepared by Terra-Dynamics Consulting Inc. was prepared in accordance with a Terms of Reference reviewed by Regional staff.

It is noted that the minor variance application seeks to legalize the minimum lot frontage requirement of the default RV1 zoning provision to facilitate the concurrent severance applications.

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.

Although the *Planning Act*, and Provincial planning case law does not recognize the demonstration of 'need' or 'hardship' as a *fifth test* of a minor variance, the local Official Plan raises this matter.

The Planning Justification Brief submitted with the application speaks to the *4 tests* under the *Planning Act* but not Policy E1.5.

The proposed minor variance conforms with the Pelham Official Plan as it supports additional housing, gentle low density residential growth appropriate for a rural settlement area. The lot frontage and geometry is compatible with the neighbourhood and logical given its objective to preserve the existing dwelling on Part 2.

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

The subject lands are currently zoned 'RV1' (Residential Village One) according to Schedule 'A1' of the Zoning By-law.

The proposed lots (Parts 1 – 3) do not comply with the section 9.2 b) ('RV1' zone) requirement for minimum lot frontage of 36 m. In addition, in an effort to satisfy both the minimum lot area provisions of the Zoning By-law and Niagara Region policies, and to preserve the existing dwelling on Part 2, zoning relief has been requested to permit a 1.5 m side yard setback, (file: A10-2021P). There does not appear to be any zoning issues associated with section 6.14 a) – Minimum Distance Separation requirements for new non-farm uses.

The minor variance application seeks relief from:

- i. **Section 9.2 (b) "Minimum Lot Frontage"** to permit a lot frontage of 28.78 m, whereas 36 m is required.
- ii. **Section 9.2 (e) "Minimum Interior Side Yard"** to permit an interior side yard of 1.5 m, whereas 3 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.	<p>Granting the reduced lot frontage is minor overall because there are no negatively induced impacts to the subject lands or its surroundings. Specifically, the reductions are not so significant that they would negatively distort the rural character, and low density attributes of the North Pelham hamlet.</p> <p>Furthermore, the variances on their own merit do not compromise the ability for the subject lands to be adequately serviced privately and avoid negative impacts to the <i>highly vulnerable aquifer</i>, subject to the conditions of the concurrent severance application(s).</p>
2. The variance is desirable for the development or use of the land.	<p>Granting the requested zoning relief will help facilitate the orderly development and gentle, low density residential growth that is anticipated and appropriate for designated Rural Settlement areas. The limited intensification of these designated hamlets are considered desirable if planned well and addressed in Provincial, Regional and local planning policies. The variance will facilitate the lot's creation and help add to the housing stock of Pelham.</p>
3. The variance maintains the general intent and purpose of the Official Plan.	<p>The requested zoning relief maintains the intent and purpose of the Official Plan because their permission will not negatively impact the low density, rural settlement area character of North Pelham given the marginally reduced provisions. With the benefit of ensuring all the recommended conditions of severance approval are achieved, Town Planning staff are of the opinion there will be no negative impacts to the <i>highly vulnerable aquifer</i> despite the addition of new residences and private sewage systems. Furthermore, no significant archaeological resources were uncovered as part of the Stage 1-2 Archaeological Assessment, so there are no issues from those cultural heritage policies at this time.</p>
4. The variance maintains the general intent and purpose of the Zoning By-law.	<p>The requested zoning relief maintains the intent and purpose of the Zoning By-law because adequate frontage and side yard is available to maintain the low density, rural settlement neighbourhood character and a sustainable private sewage system. The proposed frontage is also sized well enough to accommodate both a driveway entrance, adequate building face exposure to the public realm and maintain good spatial separation between lots. The larger side yard setback requirements for privately serviced dwellings in the RV1 zone helps increase balanced ground water infiltration rates and allow access to service rear yard private sewage systems.</p>

Agency & Public Comments

On January 27, 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 27, 2020)
 - No objections.
- Building Department (February 16, 2021)
 - No comments.
- Public Works Department (February 16, 2021)
 - No comments.

Public comments were received from a neighbouring resident, which are summarized below.

- 1) Concerned with potential negative impacts to the water table.
 - As part of the development applications, the applicant retained the services of a licensed Water Resource Engineer to conduct a *Hydrogeological Assessment* analyzing the private servicing capabilities of the subject lands and impacts to the highly vulnerable aquifer.
 - The consultant recommended certain conditions be implemented to facilitate the development. The Region and Town have both requested these recommendations be required conditions of severance approval to ensure there are no negative impacts.

Planning Staff Comments

A pre-consult was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on September 3, 2020 to discuss the subject applications.

The subject lands are located on the south side of Metler Road, lying west of Cream Street and are surrounded by agricultural uses to south, a church to the east and rural residential dwellings elsewhere.

Planning staff reviewed aerial photography to better understand the surrounding context. The following supporting studies and reports were submitted with the applications:

- *Stage 1 – 2 Archaeological Assessment*, prepared by Detritus Consulting Ltd. (October 19, 2020)
- *Planning Justification Brief*, prepared by Upper Canada Consultants (Dec 2020)
- *Hydrogeological Assessment*, prepared by Terra-Dynamics Consulting Inc. (November 11, 2020)

The proposed reduced lot frontage provision does not compromise the intent of the Zoning By-law or policy framework. The reduced frontage still maintains a comparable parcel fabric for the North Pelham hamlet which is not out of character with traditional, good lotting practice. The reduced frontage is not so drastic that it would negatively distort the rural residential character and built heritage of Metler Road in this area.

Town Planning staff continue to recommend the proposed dwellings on Parts 1 and 3 employ design characteristics that are respectful architectural to the neighbourhood including these structures via mass, proportions and scale. Specifically, the main front wall of these future dwellings should maintain a consistent front building alignment that enhance the Metler Road streetscape. Future dwellings are strongly discouraged not to employ any garage forward / dominant designs (i.e. 'snout houses'). Preserving the built heritage and rural character of North Pelham is a policy objective of the Official Plan.

The recommendations of the *Hydrogeological Assessment* to install private sewage systems to the south complement Planning staff's desire to employ relatively short front yard setbacks that maintain a consistent building alignment, orientation and streetscape along Metler Road. The *Development Agreement* condition stipulates design and plan requirements to this effect.

The proposed zoning relief does not harm any *key natural heritage features* or sensitive ecological areas. Subject to conditions of severance approval, the proposed development should not adversely impact neighbouring properties, the *highly vulnerable aquifer*, *key natural heritage features* or the nearby specialty croplands.

Planning staff is of the opinion that the proposal applies current planning and development goals regarding the enablement of appropriate economic development on lands suitable to do so, being that of a designated *Rural Settlement* area.

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 A10-2021P **be approved** subject to the following conditions:

THAT the applicant

- Obtain final certification for consent files B5-2021P and B6-2021P from the Secretary-Treasurer of the Committee of Adjustment.

Prepared by,



Curtis Thompson, B.URPI
Planner

Approved by,



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