

March 16, 2021

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

Re: Minor Variance Application A15/2021P
702 Sumbler Road, Pelham
Concession 12, Part Lot 14, and Part 2 on RP 59R-2563
Roll No. 2732 010 018 08300

The subject land is located on the southwest corner of Sumbler Road and Balfour Street, legally described above, and known locally as 702 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 lot coverage of 2.5%, whereas 1% is allowed; and
- ii. **Section 7.7 (d) "Maximum (Accessory) Building Height"** to permit a maximum building height of 6.1 m, whereas 3.7 m is allowed.

The proposal seeks to construct a building accessory to the existing 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 subject land is designated as 'Prime Agricultural Lands' 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 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.

Policy 2.1.8 states that *development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.4, 2.1.5, and 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*.

Regional Environmental Planning staff conducted a site visit prior to receiving the application given the proximity between the proposed development and the *Provincially Significant Wetland (PSW)*. They have confirmed that the proposed accessory building and associated driveway are located entirely within manicured lawn, which, in this case is considered the existing *development* footprint and not in an undisturbed natural state. Regional staff have waived the requirement for an Environmental Impact Study (EIS) because all *development* and *site alteration* is a minimum of 30 m from the *PSW*. In lieu of an EIS, Regional staff are requesting a detailed Landscape Plan be submitted as a condition of approval demonstrating the restoration of the 30 m *vegetated protection zone (VPZ)* adjacent to the proposed development footprint.

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*. The Town's Heritage Master Plan identifies this area as having high archaeological resource potential.

In response to policy 2.6.2, the applicant conducted a Stage 1 – 2 Archaeological Assessment, which concluded no significant archaeological resources exist within the study area. The Ministry of Heritage, Sport, and Tourism Culture Industries acknowledgement clearance letter is pending at this time.

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 subject parcel is designated as 'Prime Agricultural Lands' according to the Growth Plan.

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*.

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.

Policy 4.2.3 states that outside of *settlement areas*, *development* or *site alteration* is not permitted in *key natural heritage features* or *key hydrologic features*, except for expansions or alterations to existing buildings, accessory structures and uses. This exemption is subject to demonstration that the use does not expand into the *key hydrologic / natural heritage features* or *vegetation protection zone (VPZ)* unless there is no other alternative, in which case any expansion will be limited in scope and kept within close geographical proximity to the existing footprint.

Policy 4.2.4 states that outside *settlement areas*, a proposal for new *development* or *site alteration* within 120 m of a *key natural heritage feature* within the *Natural Heritage System* or a *key hydrologic feature* will require a natural heritage evaluation that identifies a *VPZ*. *Development* or *site alteration* is not permitted in the *VPZ*, with the exception of that described in policy 4.2.3.1.

Regional Environmental Planning staff conducted a site visit prior to the application and have confirmed that the proposed accessory building and associated driveway are located entirely within manicured lawn, which, in this case is considered the existing *development* footprint. Regional staff have waived the requirement for an Environmental Impact Study (EIS) because all *development* and *site alteration* is a minimum of 30 m from the *Provincially Significant Wetland (PSW)*. In lieu of an EIS, Regional staff are requesting a detailed Landscape Plan be submitted as a condition of approval demonstrating the restoration of the 30 m *vegetation protection zone (VPZ)* adjacent to the proposed development footprint.

The subject lands has been a rural residential lot of record for many decades, predating the Provincial Growth Plan. The proposed accessory building will not, subject to conditions, adversely

impact the sensitive *key natural heritage features*, rural neighbourhood character or the agricultural use of the surrounding lands.

Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as 'Good General Agricultural Area'. The subject lands are also impacted by the following environmental designations: Environmental Protection Area (EPA) and Environmental Conservation Area (ECA).

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 Area', 'Environmental Protection One' (EP1) and 'Environmental Protection Two' (EP2).

Policy A2.1.2 Natural Environment – states the natural environment objectives of this Plan are to make planning decisions that consider the health and integrity of the broader landscape as well as the long term and cumulative impacts on the ecosystem.

Policy B2 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. Among other uses, one single detached dwelling is permitted on a vacant lot of record. The subject lands are surrounded by a *Provincially Significant Wetland, Significant Woodland* and rural residential dwellings. Accessory buildings that serve legal residential dwellings are permitted uses, *as-of-right* in the Official Plan and Zoning By-law, subject to any applicable zoning regulations and applicable policy.

Policy B3.2.4.3 (EP3 Adjacent Lands) – states that no development or site alteration shall be permitted on lands within 120 m of a *PSW* unless an EIS demonstrates that there will be no negative impact on the feature or its ecological functions.

It is important to note that the Town, Region and NPCA have a *Memorandum of Understanding (MoU)* respecting the delivery of certain planning services and functions in Niagara. The *MoU* provides that the responsibility for the approval of Environmental Impact Studies in areas outside of *settlement areas* to rest with the Region as they have qualified staff in that specialty.

The subject lands are located outside of the urban *settlement areas* and the Region has waived the natural heritage evaluation (EIS) policy requirement in this case because the proposed structure is to be located outside of the prescribed 30 m *VPZ*. The *VPZ* will need to be naturally landscaped and planted with self-sustaining vegetation as per the Region's requested conditions. The lands subject to development have also already been impacted by human settlement. Therefore, Town staff can support waiving the requirement for an EIS given the proposed condition and Regional comments.

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. In response to this policy requirement, the applicant conducted a Stage 1 – 2 Archaeological Assessment, which concluded no significant archaeological resources exist within the study area. The Ministry of Heritage, Sport, and Tourism Culture Industries acknowledgement clearance letter is pending at this time.

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 spoke to the 4 tests under the *Planning Act* and policy E1.5. Town Planning staff recognize the proposed accessory building is 223 m² (2,400 ft²) in size, which is by no means 'small'. The structure would have a larger footprint than the dwelling (170 m²) and it will not be used for agricultural purposes. The applicant must realize that the Zoning By-law prohibits the use of accessory buildings for gain or profit (i.e. home occupations), and the use of these buildings are exclusively to serve the residential needs of the dwelling in a subordinate manner.

The proposed building Elevation Plans are incongruent with the proposed Site Plan. In that, the proposed overhead doors are shown on the long walls whereas the proposed driveway only

accesses the short wall on the north flank. These Elevation Plans must be reconfigured to support this driveway configuration, and have been identified in the conditions of approval. It is likely not possible to reorient the proposed driveway to serve the long walls and yet still receive supportive comments from Regional Planning staff, Town Planning staff or Town Engineering staff, collectively given the site constraints at this proposed footprint.

Therefore, pending the requested conditions outlined below accompany the proposed minor variance approval, Town Planning staff are of the opinion the proposed development conforms to the Official Plan.

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 lot coverage of 2.5%, whereas 1% is allowed; and
- ii. **Section 7.7 (d) "Maximum (Accessory) Building Height"** to permit a maximum building height of 6.1 m, whereas 3.7 m is allowed.

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 and height is minor overall assuming the requested conditions of approval are fulfilled without discount and given the rural character of the area.
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 by the surrounding <i>key natural heritage features</i>. The rural residential lot is an existing lot of record that could not be created under current Provincial, Regional or local policies and is unsurprisingly unlikely to ever support a viable agricultural 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 subject to suitable street facing (east) building Elevation Plans being approved and adhered to.</p>

<p>3. The variance maintains the general intent and purpose of the Official Plan.</p>	<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 and requested condition for revised Elevation Plans, 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 affects the development's horizontal footprint upon the lands. As such, there are requested conditions of approval which are meant to ensure the protection of cultural heritage resources and sensitive <i>key natural heritage features and key natural hydrologic features</i>.</p> <p>The variances are appropriate given the site's rural context and meet the general intent of the Town Official Plan policies.</p>
<p>4. The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p>The size of the proposed accessory building's height and increased lot coverage to 2.5 % is appropriate given the smaller lot size of this existing rural-residential lot of record. 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. Subject to conditions, particularly the Landscape Plan requiring a 30 m VPZ of natural self-sustaining vegetation, the zoning relief maintains the intent of the Zoning By-law with respect to accessory building massing, siting and locational scale.</p>

Agency & Public Comments

On February 10, 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 (March 3, 2021)
 - See attached.
 - No objections.
- Niagara Region Planning & Development Services (March 3, 2021)

- See attached.
- See conditions.
- Public Works Department (March 2, 2021)
 - See conditions.

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

Planning Staff Comments

The subject lands are located on the southwest corner of Sumbler Road and Balfour Street. The property is currently surrounded by *Provincially Significant Wetlands, significant woodlands*, and rural residential dwellings.

The proposed minor variance application seeks zoning relief to increase the maximum (accessory) building height from 3.7 m to 6.1 m and to increase the maximum (accessory) lot coverage from 1 % to 2.5 %, in order to accommodate the proposed 223 m² (2,400 ft²) accessory building.

Planning staff are of the opinion that, subject to conditions, the proposal should not negatively impact the adjacent *key natural heritage features*, surrounding neighbourhood with regards to land use incompatibility, traffic, privacy and storm water runoff.

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 A15/2021P **be approved**, subject to the following conditions:

THAT the applicant

- Amend the building Elevation Plans to remove all overhead door(s) on the east / west walls and relocate them onto the north wall, congruent with the current proposed driveway alignment, as well as provide a symmetrically proportionate amount of glazing to the building's mass on the east façade, to the satisfaction of the Director of Community Planning & Development.
- Obtain approval for a Driveway Entrance and Culvert Permit for the construction or modification of all new or existing driveway entrances. Installation of driveway entrances shall be in accordance with Town standards, to the satisfaction of the Director of Public Works and the applicant shall bear all costs associated with such.

- Obtain clearance from the Ministry of Heritage, Sport, Tourism & Culture Industries for the Stage 1 – 2 Archaeological Assessment, prepared by Detritus Consulting Limited (dated December 23, 2020), and that a copy of the Ministry's acknowledgement letter be provided to the Region. If the Ministry requires further archaeological work to be completed prior to acknowledging this Report, these Report(s) must also be submitted to and acknowledged by the Ministry, to the satisfaction of the Region, prior to clearance of this condition. No demolition, grading or other soil disturbances shall take place on the subject lands prior to the issuance of clearance letter from the Ministry through Niagara Region.
- Provide a revised Site Plan illustrating the study area shown on Figure 4 of the Stage 1 – 2 Archaeological Assessment, prepared by Detritus Consulting.
- Submit a Landscape Plan prepared by a qualified professional illustrating the restoration of the 30 m *vegetated protection zone* adjacent to the development footprint, including all proposed construction, grading and site alteration, to the satisfaction of the Niagara Region.
- Ensure no plumbing or living spaces be provided within the accessory building at the time of building permit, and that a new sewage system be installed to service the property, meeting all requirements of the *Ontario Building Code*.

Prepared by,



Curtis Thompson,
Planner

Approved by,



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