

March 16, 2021

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

**Re: Minor Variance Application A13/2021P**  
**Port Robinson Road, Pelham**  
Block 1, Plan 59M-481  
**Roll No. 2732 030 020 07606**

The subject land is located on the south side of Port Robinson Road, lying west of Rice Road and legally described above, in the Town of Pelham.

The subject land is zoned 'Residential Multiple 1 – 291' (RM1-291) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The minor variance application requests relief from **By-law No. 4138 (2019)**:

- i. ***RM1-291 General Provisions Section 6.35 (c) "Yard Encroachments – Unenclosed Porches, Balconies, Steps & Patios"*** to permit encroachments of not less than 1.5 m from a front lot line or exterior side lot line, whereas 2 m is required, for units 31-36 and 54-60.
- ii. ***RM1-291 General Provisions Section 6.35 (c) "Yard Encroachments – Unenclosed Porches, Balconies, Steps & Patios"*** to permit encroachments of not less than 2.2 m from a rear lot line, whereas 4.5 m is required, for units 1-19.
- iii. ***RM1-291 Section 16.4 (h) "Maximum Exterior Side Yard"*** to permit a maximum exterior side yard of 7.5 m for units 44-45 and 7 m for unit 69, whereas 5 m is required.

The proposed minor variance will help facilitate an 87-unit block townhouse development (known as *Lavender Fields*) which has received Site Plan Approval from Town Council (file SP-06-2020).

### **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

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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 located in a ‘Settlement Area’ according to the PPS. Policy 1.1.3.1 states that settlement areas shall be the focus of growth and development.

Policy 1.1.3.4 states appropriate development standards should be promoted which facilitate *intensification, redevelopment* and compact form, while avoiding or mitigating risks to public health and safety.

The proposed minor variance application has been submitted to seek relief from certain site-specific zoning provisions in order to facilitate the applicant’s preferred site design layout.

Policy 2.6.2 states that development and site alteration shall not be permitted on lands containing archaeological resources or archaeological potential unless the resources have been conserved. The Town’s Heritage Master Plan identifies this area as having high archaeological resource potential, therefore an Stage 1 – 3 Archaeological Assessment and Ministry Clearance was previously completed and obtained as part of the Saffron Meadows Phase 3 subdivision, which created this block of developable land.

The proposed development seeks to modify the front and rear yard encroachment provisions for unenclosed porches and steps while also increasing the maximum exterior side yard setback for three (3) units. The latter is partially a product of the misaligned laneway resulting from the stormwater channel but also the developer’s choice to maintain the same rectangular dwelling footprint where a custom designed end-unit could have offered compliance. Regardless, the zoning relief will help facilitate the approved Site Plan Agreement and offer an efficient use of the land with a critical volume of dwelling units. Planning staff are of the opinion the requested zoning relief is consistent with the PPS and promotes appropriate development standards that help facilitate compact form while meeting *Greenfield* designation and urban design policy objectives.

#### 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 a *designated Greenfield area* and is located within a 'Settlement Area' according to the Growth Plan. *Designated Greenfield areas* are required to accommodate forecasted growth to this Plan's horizon. Guiding principles regarding how land is developed:

- Support the achievement of *complete communities* to meet people's needs through an entire lifetime.
- Prioritize *intensification* and higher densities to make efficient use of land and *infrastructure*.
- Support a range and mix of housing options, including second units and *affordable* housing, to serve all sizes, incomes, and ages of households.
- Provide for different approaches to manage growth that recognize the diversity of communities in the GGH.
- Integrate climate change considerations into planning and managing growth.

The requested zoning provisions help facilitate an efficient medium density townhouse development by allowing larger, more desirable front and rear yard amenity areas for public realm facing dwelling units. The encroachments would better address the public multi-use trail along the watercourse and the Port Robinson Road streetscape by facilitating more passive surveillance, neighbourly interaction and a stronger sense of place through built form and urban design. No sensitive *key natural heritage features* or deeply buried archaeological resources will be impacted by the proposed zoning relief.

#### Regional Official Plan (Consolidated August 2014)

The Regional Official Plan designates the subject land as 'Designated Greenfield Area' within the Urban Area Boundary.

Policy 4.G.6.2 indicates 'Urban Areas' will be the focus for accommodating the Region's growth and development.

Policy 4.C.5 states *Designated Greenfield Areas* will be planned as compact, complete communities by:

- a) Where permitted by scale, accommodating a range of land uses.
- b) Where limited by scale or configuration, making a significant contribution to the growth of the respective *Urban Area*.
- c) Providing opportunities for integrated, mixed land uses.

- e) Ensuring that Greenfield development is sequential, orderly and contiguous with existing built-up areas.

Policy 4.J.4 states the Region encourages private realm site design that addresses public safety, active transportation, landscaping, and human scale in buildings facing public space.

Policy 11.A.2 states the Region encourages the development of attractive, well designed residential construction that:

- c) Emphasizes the entrance.
- d) Is accessible to all persons.
- g) Provides an attractive, active transportation friendly streetscape.
- h) Contributes to a sense of safety within the public realm.
- j) Creates or enhances an aesthetically pleasing and functional neighbourhood.

#### 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 'Secondary Plan Area' within the Fonthill Settlement Area. More specifically, the East Fonthill Secondary Plan designates this parcel as EF – Medium Density Residential. Policy B1.7.7.4 outlines the permitted uses and intentions of this designation. Subsection h) states that development on the basis of public lanes is encouraged and may be required where dwellings front onto a Collector Main Street. The front and rear encroachment zoning provision requests are a response to the desire for maximizing dwelling unit volume, design efficiency, providing functional and desirably sized front and rear yard covered amenity areas. The request to increase the maximum exterior side yard setback is a partially a product of the skewed road alignment but also a desire to minimize construction costs by negating custom designed townhouse end units.

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.

The naturalized channel (stormwater course) flanking the southern lot line of the subject lands is designated 'Environmental Protection Two' (EP2). The NPCA and Niagara Region both indicated they had no objections to the zoning relief as their matters of interest were previously dealt with through the Site Plan Approval process.

Policy A2.3.2 Urban Character – stated objectives of this Plan include (among others):

- To enhance the *urban areas* as diverse, livable, safe, accessible and attractive communities.
- To ensure that new development areas are integrated into the fabric of the existing community in conformity with approved Secondary Plans.
- To encourage the development of neighbourhoods which are compact, pedestrian-friendly and provide a mix of housing types.
- To foster a sense of civic identity through a high standard of urban design in public and private development.

The proposed minor variances have some impact on the stated objectives of Policy A2.3.2 as they relate to streetscape and urban design matters. Particularly, the requested encroachments will actually enhance the public realm of both the multi-use trail along the southern flank, but also the Port Robinson Road streetscape by fostering a livelier and more engaging built form with covered porches architecturally designed at a human scale.

Policy A2.5.2 Infrastructure – stated objectives of this Plan include maintaining existing infrastructure in a manner that is cost effective and contributes to the quality of life of citizens.

Policy B1.7.3.1 (East Fonthill) Development Objectives – states that the following private (and public) development objectives will be implemented by the mechanisms in the Official Plan, the implementing Zoning and Site Plan Approvals. The East Fonthill development objectives (that relate to this development) are:

- c) To create a sense of identity and continuity within the community through design treatments that residents and visitors can recognize as characteristic of the Secondary Plan Area;
  - ✓ The East Fonthill neighbourhood is still in its early days but the policy objectives and Demonstration Plans envision a tasteful urban village with collector roads like Port Robinson Road being flanked by rear-loaded, medium density residential development. The policies and urban design guidelines also reinforce the desire to provide forward-facing, buildings that address open spaces including stormwater channels and multi-use pathways. The proposed zoning encroachments helps reinforce these objectives and the increased maximum exterior side yard setback is minor overall due to the skewed laneway and lot geometry, no negative impacts are anticipated.
- d) To create a complete community with a safe, healthy and functional environment that can accommodate between 6,500 and 7,500 new residents and jobs combined;
  - ✓ The proposed minor variances do not hamper the ability for East Fonthill to meet its projected growth targets.

- k) To develop a land use pattern and transportation system that supports motorized vehicular traffic, transit, cyclists and pedestrians and provides alternate transportation routes to most destinations;
- ✓ The subject lands utilize a private laneway for vehicle access. Rear-loaded developments are superior to front-loaded developments when it comes to public safety and the human scaled experience for those walking and riding bicycles as transportation means, as well as drivers and transit vehicles. The proposed zoning relief does not conflict with this policy.

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

The subject land is zoned 'Residential Multiple 1 – 291' (RM1-291) in accordance with Pelham Zoning By-law 1136 (1987), as amended. Under the site-specific Zoning By-law Amendment **No. 4138 (2019)** minor variance application requests relief:

- i. **RM1-291 General Provisions Section 6.35 (c) "Yard Encroachments – Unenclosed Porches, Balconies, Steps & Patios"** to permit encroachments of not less than 1.5 m from a front lot line or exterior side lot line, whereas 2 m is required, for units 31-36 and 54-60.
- ii. **RM1-291 General Provisions Section 6.35 (c) "Yard Encroachments – Unenclosed Porches, Balconies, Steps & Patios"** to permit encroachments of not less than 2.2 m from a rear lot line, whereas 4.5 m is required, for units 1-19.
- iii. **RM1-291 Section 16.4 (h) "Maximum Exterior Side Yard"** to permit a maximum exterior side yard of 7.5 m for units 44-45 and 7 m for unit 69, whereas 5 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>Town Planning staff concur with the <i>Planning Justification Brief's</i> analysis on this test, specifically that the East Fonthill policy objectives direct a strong focus towards enhancing the public realm through the design of lively buildings, shorter front yard setbacks and urban design treatments such as large, covered front porches with vehicle access directed to the rear via an internal laneway.</p> <p>Normally, there might be legitimate privacy concerns associated with ever encroaching raised, rear yard decks located closer to other private rear yards. However, the requested rear yard deck encroachment backs onto a public</p>

	<p>open space with a new multi-use pathway. The requested encroachment is actually preferred in this case as it will help activate the trail and dissuade negative perceptions of private dwellings, <i>'turning their back'</i> upon the public realm.</p> <p>The minor variance to increase the exterior side yard setback on three (3) units is minor overall as the dwellings still widely capture the attention of the flanking laneway positively through enhanced architectural design treatments provided through the Site Plan Approval process. Yet also, the vast majority of townhouses on the subject lands will satisfy this maximum zoning setback, and these three end units have unfortunately resulted from the skewed lotting geometry directly caused by the stormwater channel alignment to the south. The three (3) units in question still exercise partial compliance on the opposite corner of the exterior side yard wall, where it was still practical for the applicant.</p>
2. The variance is desirable for the development or use of the land.	<p>The requested front and rear unenclosed porch / deck encroachments are desirable for the development and surrounding area because they will further help to active the streetscape through larger, more functional amenity areas which help facilitate a more inviting public-private interface. There are no privacy concerns with the rear yard encroachments because there is no immediate private land that would possibly be impacted.</p>
3. The variance maintains the general intent and purpose of the Official Plan.	<p>A <i>Planning Justification Brief</i> was supplied and spoke to the <i>Four Tests</i> of the <i>Planning Act</i> as well as some policies generally. Town staff are of the opinion the requested zoning relief will not compromise the general intent of the Official Plan as the encroachment revisions represent sound urban design principles in an evolving compact, mixed-use neighbourhood as well as promoting overlook onto public open spaces. There are no sensitive natural heritage features, privacy concerns, or stormwater management issues. These matters were also addressed under the Site Plan Approval process.</p> <p>The intent of the maximum exterior side yard setback provision is multi-fold. However most simply, the policy</p>



	<p>objective is meant to help ensure that buildings are designed, oriented and aligned in a manner that facilitates a relatively consistent streetscape that promotes a strong <i>sense-of-place</i> with considerable attention given to urban design. These policy objectives intend to manifest as a well-designed public-private realm through priority treatment of a human scaled experience, and not that of automobiles.</p> <p>Planning staff are of the opinion the minor variances requested uphold the general policy intent of the Official Plan, specifically those of the East Fonthill Secondary Plan and the associated Urban Design Guidelines.</p>
4. The variance maintains the general intent and purpose of the Zoning By-law.	<p>The intent of the front yard encroachment maximum of 2 m is to allow for a strong relationship between the public-private interface, but still maintain a suitable buffer between the sidewalk, travelled roadway and private structures. The original site-specific encroachment maximum was also intended to help reinforce the street frame enclosure causing peripheral <i>edge friction</i> for travelling vehicles helping to calm traffic speeds, while still providing for a softened front yard built environment. The request to allow for a 1.5 m maximum encroachment maintains the By-law's intent because the reduction will actually be indistinguishable given the alignment of the paved portion of the Port Robinson Road carriageway in relation to the legal front lot line. In other words, the perceived front yard setback will be greater than the actual setback / encroachment.</p> <p>The intent of the rear yard encroachment maximum of 4.5 m was to allow for a more efficient and functional use of the rear yard amenity areas where lot sizes (more characteristic of a <i>Greenfield designated</i> area) are typically smaller. The 4.5 m provision was set to ensure a suitable buffer between adjacent private rear yards mostly for privacy reasons. However, the units requesting an encroachment extension back onto public open space, which the site-specific By-law did not adequately qualify. Town Planning staff actually prefer the larger encroachment requested for these lots backing onto the channel, as they will provide improved</p>



	<p>overlook onto the multi-use trail and help activate the publically accessible open space, and improve safety as was intended.</p> <p>The intent of the maximum exterior side yard setback was to require a stronger built form relationship to the public road / internal laneway system for streetscape activation, traffic calming and generally for urban design principles. The requested minor variance is mostly a result of the skewed laneway alignment caused by the stormwater channel flanking the southern lot line. Although the developer could have provided custom designed building footprints for these (3) end-units to comply, it would have raised costs for both the applicant and ultimately the future homeowner. Planning staff are of the opinion the intent of the By-law is clearly still being maintained as the streetscape relationship is strong overall and the far corner of each of these dwelling unit's walls are still compliant.</p> <p>Therefore, Planning staff are of the opinion the requested zoning relief maintains the intent and purpose of the site-specific Zoning By-law.</p>
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### Agency & Public Comments

On February 3, 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)
  - No objections.
- Niagara Region Planning & Development Services (February 8, 2021)
  - No objections. Regional and Provincial interest matters were addressed through Site Plan Approval.
- Public Works Department (March 2, 2021)
  - Public Works staff indicated concern with the proposed rear yard deck encroachment variance and its potential for impact on the stormwater drainage. It is noted, however, that the proposed development was subject to site plan

approval which has been granted and Public Works approved the engineering plans for this development as part of the site plan approval process. Therefore, the storm drainage was addressed to their satisfaction.

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

### **Planning Staff Comments**

The subject lands are located on the south side of Port Robinson Road, lying west of Rice Road. The property is surrounded by a mixture of vacant residential designated land, existing single detached dwellings and townhouse dwellings.

Planning staff have reviewed the *Justification Brief* (dated December 4, 2020) prepared by Upper Canada Consultants, submitted with the application.

The minor variance application is a response to the desire for increasing the volume of dwelling units, allowing for (more) efficient costs of design, development and ultimately future home ownership by maintaining consistent house designs. The zoning relief maintains adequate front and rear yard amenity areas, does not adversely cause any privacy concerns, compromise safety of the travelling public, and continues to aid in traffic calming objectives through the employment of peripheral edge friction caused by a relatively consistent alignment of building mass.

The requested enlargement of the maximum side yard setback for three (3) units is a response to the desire for building similar dwelling footprints within an irregularly configured street / laneway network resulting from the naturalized stormwater channel flanking the southern lot line.

Town Engineering staff with the Public Works department had raised concern with the requested variance to amend the permitted rear yard deck encroachments of units 1-19 due to the potential impacts on drainage. However, they supported the technical review of the Site Plan Control application, including the detailed design engineering (Grading, Servicing, Storm Drainage Area Plans etc.), and the development now has received Site Plan Approval. There no longer is a mechanism available to address these concerns given the approved and registered Site Plan Agreement and the construction plans illustrating the proposed deck encroachments. The applicant is advised of this concern and can expect strict adherence to the approved site servicing, grading and drainage requirements following completion.

Normally, there may be legitimate privacy concerns associated with ever encroaching raised, rear yard deck features located closer to other private rear yards. However, the requested rear yard deck encroachment backs onto a public open space with a multi-use pathway. The encroachment

is actually preferred in this case as it helps activate the trail and dissuades the perception of private dwellings, *'turning their back'* upon the public realm. It is unfortunate the site-specific Zoning By-law did not capture this specific design feature, but Planning staff are of the opinion the policies and the East Fonthill Secondary Plan and Urban Design Guidelines continues to be conformed with.

Planning staff are of the opinion that the proposal applies current planning and development principles dealing with appropriate *greenfield* development, making efficient use of the designated urban area lands, providing design flexibility where suitable to do so. The proposed minor variances should not negatively impact the 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 A13/2021P **be approved**.

Prepared by,



Curtis Thompson, B.URPI  
Planner

Approved by,



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