

April 7, 2021

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

**Re: Consent Application B14-2021P**  
**87 – 91 Port Robinson Road, Pelham**  
Part of Lots 18 – 19, Plan 717  
**Roll No. 2732 030 004 06300**

The subject parcel, shown as Part 3 on the attached sketch, has a frontage of 11.192 m on the north side of Port Robinson Road, lying east of Station Street, legally described above, and known locally as 91 Port Robinson Road in the Town of Pelham.

Application is made for consent to partial mortgage discharge and to convey (sever) 426.3 m<sup>2</sup> of land (Part 3) for one unit of a 3-unit street townhouse block currently under construction. Part 4 (1285.4 m<sup>2</sup> of land) is to be retained for future residential development.

Note: This application is being heard concurrent with Consent files B12-2021P & B13-2021P.

### **Applicable Planning Policies**

#### Planning Act (Consolidated July 2016)

Section 51 (24) states that when considering the division of land, regard shall be had to the health, safety, convenience, accessibility and welfare of the present and future inhabitants of the municipality and among other things to,

- a) The development's effect on provincial matters of interest;
  - See PPS and Growth Plan analyses below.
- b) Whether the proposed subdivision is premature or in the public interest;
  - The lot creation is not premature as building permits were legally issued for the townhouse block currently under construction.
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivisions, if any
  - See Official Plan analysis below. The proposed lot creation does conflict with the East Fonthill Secondary Plan; however, building permits were issued in compliance with applicable law (including the Zoning by-law) at the time. The lot creation, in and of itself, does not hinder further surrounding redevelopment opportunities such as a subdivision, anymore than the existing buildings (under construction)

otherwise already might.

- d) The suitability of the land for such purposes;
  - The lands (and neighbourhood) are undergoing significant transformation as the East Fonthill Secondary Plan area evolves. The conveyance allows for individual ownership (tenure) of one unit of the 3-unit townhouse block currently under construction.
- f) The dimensions and shapes of the proposed lots;
  - The proposed lot dimensions and shape are rectangular in nature and comply with the current site-specific zoning in effect.
- h) Conservation of natural resources and flood control;
  - No natural resources are impacted because of the lot creation. An overall Lot Grading & Drainage Plan was required as a condition of building permit approval.
- i) The adequacy of utilities and municipal services;
  - Available.
- j) The adequacy of school sites
  - Available nearby.
- k) The area of land, if any, exclusive of highways, to be dedicated for public use.
  - No additional lands are proposed to be dedicated for public use as the lands are not designated as future parkland or open space. Cash-in-lieu of parkland dedication was paid at the time of building permit issuance.
- l) The extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy.
  - The proposed lot will simply allow for individual, freehold ownership of each townhouse dwelling unit. The townhouse block under construction is being built at, (or above) current energy efficient requirements under the Ontario Building Code.
- m) The interrelationship between the design of the plan of subdivision and site plan control matters relating to any development on the land, if the land is also located in within a site plan control area.
  - While the proposed lot is in an area designated for site plan control, the Town Site Plan Control By-law No. 1118 (1987) exempts street townhouse dwellings from site plan control.

Section 53 (1) states a land owner may apply for a consent and the council may, subject to this section, give a consent if satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality.

The severance is not premature, and does not compromise any future land use (re)development considerations on adjacent lands or the remnant parcel. Adequate land area is available to accommodate future public streets and laneways surrounding the subject lands. The proposed

lot geometry is rectangular and not abnormal for modern development standards. Neighbourhood commercial uses and public schools are also nearby.

#### 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 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 1.1.3.3 states municipalities shall identify appropriate locations and promote opportunities for intensifications where this can be accommodated taking into account existing building stock and the availability of suitable existing infrastructure and public service facilities.

The Niagara Region Official Plan prescribes an annual residential intensification rate of at least 15% for all lands within Pelham’s *Urban Settlement Areas*, this policy target is also reflected in the Pelham Official Plan.

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.

A Zoning By-law Amendment was approved by Town Council on March 7<sup>th</sup> 2016 which rezoned the subject lands from A (agricultural) to a site-specific RM1-263 zone. The RM1-263 zone only amended the default minimum corner lot frontage and side yard setback provisions.

Unfortunately, the site-specific zoning approved in 2016 did not adequately capture the types of performance standards necessary to execute the full policy intent of the Official Plan regarding medium density development fronting designated collector roads. As such, the safety

and compact form benefits normally associated with providing rear-loaded (laneway) developments cannot be realized as the developer pursued as-of-right building permits.

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. Due to the presence of a recently demolished single detached dwelling, the subject lands are considered significantly disturbed thus warranting the waiving of further archaeological evaluation on this site.

The proposal will facilitate the individual sale of freehold (fee simple) townhouse dwelling units. The lot creation does not induce further residential construction given the nature of the current multi-unit residential zoning in effect. In Planning staff's opinion, the proposed consent is consistent with the PPS.

#### 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 located within a 'Settlement Area' and 'delineated built-up area' according to the Growth Plan. 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.

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

- a) the vast majority of growth will be directed to *settlement areas* that:
  - i. have a *delineated built boundary*;
  - ii. have existing municipal water / wastewater systems; and

iii. can support the achievement of *complete communities*.

Policy 2.2.6.2 Housing – states that notwithstanding policy 1.4.1 of the PPS (2014), in implementing policy 2.2.6.1, municipalities will support the achievement of *complete communities* by:

- a) planning to accommodate forecasted growth to this Plan's horizon;
- b) planning to achieve the minimum intensification and density targets in this Plan;
- c) considering the range and mix of housing options and densities of the existing housing stock; and
- d) planning to diversify their overall housing stock across the municipality.

The proposed severance will facilitate the individual ownership (freehold tenure) of each townhouse dwelling unit. The 3-unit townhouse block currently under construction is supplied with existing water and sanitary sewer services extending along the frontage of the subject lands.

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

The Regional Official Plan designates the subject land as 'Built-Up 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.G.8.1 states *Built-Up Areas* will be the focus of residential intensification and redevelopment.

Regional staff did not object, nor request to be circulated the proposed applications as the development does not conflict with Provincial and Regional interests.

The proposed severance conforms to the Regional Official Plan because the lands are located within the *built-up* area which is the planned focus of residential intensification and redevelopment over the long term.

#### 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 'East Fonthill Secondary Plan Area' and 'Built

Boundary' according to Schedules 'A1' and 'A4' respectively. The East Fonthill Land Use Plan (Schedule A5) more specifically designates the subject lands as 'EF-Medium Density Residential'. The subject lands front Port Robinson Road, which is designated as a 'Collector Road' according to Schedule 'A6'.

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage intensification and redevelopment within the *Urban Area* specifically in proximity to the Downtown.

Policy A2.3.2 Urban Character – stated objectives of this Plan include:

- To respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood.
- To encourage the intensification and use of the lands within the Fonthill Downtown core and to make every effort to improve its economic health by encouraging redevelopment and broadest mix of compatible uses.
- To maintain and enhance the character and stability of existing and well-established residential neighbourhoods by ensuring that redevelopment is compatible with the scale and density of existing development.
- To encourage the development of neighbourhoods which are compact, pedestrian-friendly and provide a mix of housing types.

The proposed severance does not induce new construction / *intensification*. In fact, the severance approval merely subdivides the lands along the building's existing demising walls to facilitate individual ownership. The neighbourhood is undergoing considerable transition and its character is evolving regularly as a mixed-use, dense, compact and walkable urban village. The proposed lot is comparable in geometry, land use and orientation with the neighbourhood. The front-loaded driveway access that is presently being built is not in keeping with the Secondary Plan policies. Specifically, objectives respecting positive urban design, streetscape characteristics, and transportation safety principles normally associated with rear-loaded development through the provision of alleyways.

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 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.

No Part IV designated heritage properties flank the subject lands and an archaeological

evaluation was waived due to the existing disturbed grounds.

Policy B1.7.3.1 (East Fonthill Development Objectives) – states the following development objectives will be implemented by the mechanisms set out in this Plan.

- b. To ensure a well-designed, attractive, pedestrian & bicycle-friendly community;
- 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;
- d. To create a *complete community* with a safe, healthy and functional environment;
- j. To design roads at a pedestrian scale that are also bicycle-friendly, with attractive public spaces;
- k. To develop a land use pattern and transportation system that supports vehicle traffic, transit, bicyclists and pedestrians.
- l. To provide a hierarchy of collector and local roads that is based on a connected modified grid network.

Policy B1.7.4 (Design Policies) – states the Demonstration Plans (*Appendix A*) have been prepared to articulate a response to policies of this Secondary Plan and the associated Urban Design Guidelines. The Demonstration Plans act as a guideline for development and approval processes that are required to implement this Plan, particularly zoning and draft plans of subdivisions / condominiums. All development shall be generally consistent with *Appendix A*. Adjustments and refinements are anticipated and do not require an Official Plan Amendment, provided that the intent and general design approach inherent to the Demonstration Plans are achieved to the Town's satisfaction.

Town Planning staff note that although building permits have been issued for the subject lands, and the current site-specific (RM1-263) zoning is not entirely conducive to rear-loaded development product, the lands to the north (rear) are still geographically capable of supporting a public or private laneway at a later date. A rear laneway will serve to benefit nearby lands fronting Port Robinson Road, improving their redevelopment capacity potential, without compromising the overall balance of the revised Neighbourhood Plan development objectives and policy goals of the Secondary Plan.

Policy B1.7.7.2 states that the Demonstration Plans provided in Appendix A and the Urban Design Guidelines provided in Appendix B, may constitute the road, block and land use plan, if the proposed development is generally consistent with the Demonstration Plans and Urban Design Guidelines, to the satisfaction of the Town. The Neighbourhood Master Plan shall form the basis of Draft Plans of Subdivision, implementing zoning and/or Site Plan Approvals.

The subject lands are geographically situated within Residential 'Neighbourhood 1' according to



Schedule 'A4'. As a result of a recently approved Subdivision (River Estates Phase 2), deviating considerably from the Demonstration Plan, the developer had worked with the Town in providing a revised Neighbourhood Master Plan to satisfy the Secondary Plan policies. This latest approved iteration of the Neighbourhood 1 Master Plan still contemplated a highly interconnected street grid complemented by a network of rear laneways running parallel to, and supporting future development along designated Collector Roads such as Port Robinson Road.

The submitted *Planning Justification Report (PJR)* states that the Demonstration Plans found in Appendix A of the Official Plan, are not 'policy', but instead a guide. According to policy B1.7.7.2, the Demonstration Plan and Urban Design Guidelines (Appendix B) may constitute the Road, Block and Land Use Plan, the Streetscape Plan and the Urban Design Guideline components of the Neighbourhood Master Plan. It goes on that the Neighbourhood Master Plan shall form the basis of implementing zoning, subdivisions and Site Plan Approvals. The Town shall be satisfied that the Plan has been completed, and all of the policies of this Plan have been appropriately fulfilled.

Town Planning staff note that the Appendices are actually being directly referenced by the policies and identified as development objectives that are to be met with general consistency, and that shall form the basis of development approvals, in order to conform. Unfortunately, the existing site-specific zoning did not adequately capture the types of performance standards suitable for rear laneway development. Further to the *PJR's* analyses, Town Planning staff recognize that if the intent of the 2016 site-specific zoning were to provide rear-loaded vehicle access, the front yard setback would have been reduced. Unfortunately, this was missed, but the lot geometry (notwithstanding the under-construction houses), was more than capable of dedicating adequate land for a rear laneway while still accommodating adequate private lot depth. In this case, the developer has specifically chosen not to provide for the rear lane, despite the property being capable of supporting one, which is quite unfortunate.

Policy B1.7.7.4.2 (EF-Medium Density Residential Development Policies) – states development on the basis of public or private lanes is encouraged and may be required where dwelling units front onto a Collector Main Street (Port Robinson Road).

The Town has been consistent in seeking to implement a network of rear laneways running parallel to existing (or new) collector roads throughout East Fonthill, pursuant to the Secondary Plan policies / Demonstration plans and on the basis of sound planning practice. This has been achieved in coordination with various landowners, to the maximum and most reasonable extent possible. Rear laneway developments offer a healthier presence of built form typically characterized by buildings closely aligned near the travelled road with vehicle access and utilitarian services provided off a back alleyway. This arrangement provides enhanced rear yard amenity privacy, safer vehicle ingress & egress, reduced pedestrian / bicyclist conflicts, and



additional parking opportunities both off-street, and on-street, where available. Buildings street-front oriented without dominant attached garage doors help soften the front yard through additional landscaping, not dominated by pavement, and the additional glazing from private development offers a better 'sense of place' for the public realm through a stimulating private interface (windows, doors, porches etc.) fostering neighbourhood interaction.

Town Planning staff will continue to work with the various land owners to achieve these policy requirements through future *Planning Act* development applications, and this consent application does not compromise these policies.

Policy D5.2.1 states that for any consent application, the Committee of Adjustment shall be satisfied that (among other things) the proposed lot:

- a) Fronts on and will be directly accessed by a public road;
  - ✓ Yes.
- b) Will not cause a traffic hazard;
  - ✓ The recent addition of each new driveway apron is not in keeping with the Official Plan policies and safe transportation practice generally, particularly on a busy collector road. Port Robinson Road is anticipated to handle considerably more traffic well into the future. Residents and visitors of front-loaded development are typically required to 'back-out', onto the public road in reverse with poor visibility which is known to cause safety conflicts with those walking, riding bicycles or other travelling vehicles.
  - ✓ However, the development currently under construction complies with the Zoning By-law in effect and Town staff were required to issue Driveway Entrance Permits as well as building permits in accordance with the *Ontario Building Code*.
- c) Is in keeping with the intent of relevant provisions and performance standards of the Zoning By-law;
  - ✓ The proposed lots comply with all applicable zoning regulations, (e.g. minimum lot frontage & lot area).
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
  - ✓ Yes and was required prior to building permit issuance.
- e) Will not have a negative impact on the drainage patterns in the area;
  - ✓ Demonstration required as a condition of building permit approval.
- f) Will not affect the developability of the remainder of the lands, if they are designated for development by this Plan;
  - ✓ The severance will not impede the ability for the vacant neighbouring lands to the north to be developed, or the *legal non-conforming* lands to the west & east to be redeveloped.
- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;

- ✓ No issue.
- h) Conforms with Regional lot creation policy as articulated in the Regional Official Plan.
  - ✓ No issue from Region in accordance with Memorandum of Understanding.
- i) Complies with the appropriate Provincial Minimum Distance Separation Formulae, where applicable.
  - ✓ Not applicable.

In accordance with Provincial and Regional policy, the Town will accommodate at least 15% of projected housing growth, or about 300 residential dwelling units, within the existing built boundaries of Fonthill and Fenwick.

It is noted that the application is for consent to partial mortgage discharge and to convey an existing townhouse dwelling unit (Part 1), currently under construction for the purposes of selling each townhouse unit individually, as opposed to a block of three (3) under single ownership. According to the application and *Planning Justification Report*, the remnant land (Part 4) is proposed to be retained for future development purposes, specifically another 3-unit townhouse block and a portion to be allocated for a future public street.

Town Planning staff are of the opinion the proposed severance application conforms to the local Official Plan, principally via direct extension of exercising as-of-right zoning compliance under a building permit, and less so with the clear policy intent of the East Fonthill Secondary Plan and Urban Design Guidelines.

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

The subject land is currently zoned 'Residential Multiple 1 – 263' (RM1-263) according to Schedule 'A5' of the Zoning By-law, pursuant to amending By-law No. 3719 (2016). Street townhouse dwellings are permitted subject to applicable regulations.

Unfortunately, the site-specific zoning previously endorsed by Town staff and approved by Town Council did not adequately calibrate the zoning provisions to execute the clear policy objective of certain parts of the East Fonthill Secondary Plan. Particularly, a rear-loaded medium density residential zone would have employed shorter front yard setbacks with a required rear-garage access provision, among other things.

Regardless, the proposed lot geometry complies with the applicable zone provisions to facilitate individual lot creation.

## Agency & Public Comments

On March 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 25, 2021)
  - Given the low hydrological and ecological function of the watercourse, NPCA staff have no objection to the proposed application.
- Niagara Region Planning & Development Services (March 4, 2021)
  - No Provincial or Regional interests.
- Bell Canada (March 16, 2021)
  - No concerns.
- Building Department (March 29, 2021)
  - Building permits were issued for the dwellings under construction.
- Public Works Department (March 30, 2021)
  - See conditions.

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

## Planning Staff Comments

Application is made for consent to partial mortgage discharge and to convey (sever) 426.3 m<sup>2</sup> of land (Part 3) for one unit of a 3-unit street townhouse block currently under construction. Part 4 (1285.4 m<sup>2</sup> of land) is to be retained for future residential development.

The subject lands are located on the north side of Port Robinson Road, lying east of Station Street and are surrounded by a quickly evolving secondary plan growth area. Town staff have visited the site and are quite familiar with the local context.

A pre-consult was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on January 21, 2021 to discuss the subject application. In addition to the Consent Sketch, a *Planning Justification Report* prepared by Jennifer Vida MCIP, RPP, was also provided in support of the proposed development.

For the Committee's understanding and public record, Town Planning staff wish to clarify an inaccurate claim made by the applicant in their *Planning Justification Report (PJR)*. Page 4 of this *Report* states that a 'zoning review' was conducted and approved in August 2020 by Town

Planning staff to review the owner's original plan to build all six (6) townhouse dwellings concurrently, prior to applying for building permit to ensure compliance and avoid delay. This is false. According to email records between the architect of record and the Town, Planning staff were only asked to review 'side yards and (building) setback' zone provisions on the draft Site Plan.

The applicant is aware of the Official Plan policy intent yet relies on deferring to, and leveraging the intent of the 2016 site-specific zoning to circumvent what is clearly desired as a rear-loaded built form.

In Planning staff's opinion, the application is otherwise consistent with the PPS and conforms to Provincial, Regional, and local plans.

Given this analysis, Planning staff recommend that consent file B14-2021P **be approved** subject to the following conditions:

**THAT** the applicant

- Submit a drawing confirming that no existing utilities cross the proposed lot line. Should any service(s) cross this lot line, the applicant will be responsible for costs associated with their relocation and/or removal.
- Provide the Secretary-Treasurer with a registerable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
- Provide the final certification fee of \$399, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.

Prepared by,



Curtis Thompson, B.URPI  
Planner

Approved by,



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