

June 30, 2021

Mrs. Holly Willford, Secretary Treasurer
Committee of Adjustment
Town of Pelham
Fonthill, ON L0S 1E0

Re: Minor Variance Application A19/2021P
1000 Effingham Street, Pelham
Part of Lot 6, Concession 10 a
Roll No. 2732 020 013 15300

The subject land is located on the west side of Effingham Street, lying south of Welland Road, legally described above, and known locally as 1000 Effingham Street 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"** seeking 1.5%, whereas 1% is required.
- ii. **Section 7.7 (d) "Maximum Building Height"** seeking 5 m, whereas 3.7 m is required.

The application is made for relief from the required lot coverage and building height, to rectify zoning deficiencies as a result of a constructed one-storey accessory building.

Note: The building permit file for the property's existing single detached dwelling is "open", the applicant is advised to schedule an inspection with Town Building staff to close the file.

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 Provincial Policy Statement (PPS) designates the subject land within the 'Prime Agricultural Area'. 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 (Rural Areas) – states that healthy, integrated and viable *rural areas* should be supported by (among other things):

- a) Building upon rural character;
- b) Promoting regeneration; and
- h) Conserving biodiversity and considering the ecological benefits provided by nature.

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

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.

Based on the Ministry of Heritage, Sport, Tourism and Culture Industries' (MHSTCI) Criteria for Evaluating Archaeological Potential, the subject property exhibits high potential for the discovery of archaeological resources due to its proximity (within 300 metres) to several past and present watercourses, as well as its location along a historic transportation route (Effingham Street). The Town's Heritage Master Plan also identifies this area as having composite archaeological resource potential. However, in considering that the accessory building was constructed on an existing foundation from a previous building (verified through past aerial images), and that no further site alteration was proposed as part of this development. An archeological assessment is therefore not required.

Planning staff are of the opinion the requested zoning relief is consistent with the PPS and promotes appropriate development standards without causing adverse impacts on the use of the lands or neighbourhood.

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.

Like the PPS, the Growth Plan designates the subject land as being within a 'Prime Agricultural Area' due to the Ministry of Agriculture, Food and Rural Affairs' use of Canada Land Inventory soil classifications. Policy 4.2.6 states that prime agricultural areas will be protected for long-term use agricultural use.

Policy 4.2.6.3 states that where agricultural uses and non-agricultural uses interface outside of settlement areas, land use compatibility will be achieved by avoiding or where avoidance is not possible, minimizing and mitigating adverse impacts on the Agricultural System. Where mitigation is required, measures should be incorporated as part of the non-agricultural uses, as appropriate, within the area being developed. Where appropriate, this should be based on an agricultural impact assessment.

The accessory building is relatively small in scale and is located in-line with adjacent rural residential dwellings. Planning staff are of the opinion that the requested variances conform to the Growth Plan policies and will not adversely impact the rural neighbourhood character or the agricultural use of the surrounding lands.

Greenbelt Plan (2017)

The subject parcel is designated 'Tender Fruit & Grape Lands' within the Greenbelt Plan's *Protected Countryside* and designated Specialty Crop Area.

Policy 4.5 states that all existing uses and single dwellings on existing lots of record are permitted, provided they were zoned for such prior to the Greenbelt Plan coming into force. Expansions to existing buildings and structures, accessory structures and uses and/or conversions of legally existing uses which bring the use more into conformity with this Plan are permitted as long as new municipal services are not required, and that the use does not expand into key natural heritage features or key hydrologic features or their associated vegetation protection zones, unless there is no other alternative, in which case any expansion shall be limited in scope and kept within close geographical proximity to the existing structure.

The proposed variance is intended to legalize an accessory building constructed on the subject property, which is accessory to an existing single-detached dwelling. The subject property is privately serviced, and therefore new municipal services will not be required. The accessory

building is located within a vegetation protection zones; however, most of the subject property is identified as having key natural heritage features, key hydrologic features, or within a vegetation protection zones, and therefore there are very few alternative locations for the accessory building on the lot. Additionally, the accessory building was constructed on an existing foundation from a previous building, and is therefore located within the existing development footprint on the subject property.

Planning staff are of the opinion that the constructed accessory does not conflict with Greenbelt Plan policy.

Regional Official Plan (Consolidated, August 2014)

The Regional Official Plan designates the subject land as 'Unique Agricultural Area'.

The subject land is impacted by the Region's Core Natural Heritage System (CNHS), consisting of the Fonthill Kame Provincially Significant Wetland Complex (PSW), Significant Woodland, and Type 2 (Important) Fish Habitat.

Regional policies require the completion of an Environmental Impact Study (EIS) when development and/or site alteration is proposed within 120 metres of PSW, 50 metres of a Significant Woodland or 15 metres of a Type 2 Fish Habitat.

Regional Environmental Planning Staff note that most of the subject property is identified as KNHF, KHF, or within a VPZ, and therefore there are very few alternative locations for the accessory building on the lot. Additionally, the accessory building was constructed on an existing foundation from a previous building, and is therefore located within the existing development footprint.

Given the scope, nature and location of the proposed development, Regional staff are supportive of waiving the requirement for a NHE/EIS, and conclude that the proposed development fulfills the requirements under the Greenbelt Plan for the construction of an accessory structure within a VPZ.

In conclusion, Regional staff are satisfied that the proposed development is consistent with Regional environmental policies, and offer no objections.

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 Town local Official Plan designates the subject land as 'Specialty Agricultural', with a 'Greenbelt Natural Heritage Overlay' as per Schedule 'A'.

Policy B2.2.1 states the purpose of the purpose of the *Specialty Agricultural* designation is to implement the Province of Ontario's Greenbelt Plan and recognize the importance of specialty croplands in the Provincial and Regional economies.

Policy B2.2.2 states that among other uses, one single detached dwelling is permitted on existing lots of record. 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 B.2.2.4 states that new buildings for livestock shall comply with the Minimum Distance Separation formulae.

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. However, as noted in notes above, Town and Regional Planning staff are of the opinion that an archeological assessment is not required in considering that the accessory building was constructed on an existing foundation from a previous building, and that no further site alteration was proposed as part of this development.

The proposed minor variance to seek relief from lot coverage and height requirement should not compromise drainage, privacy or sensitive natural heritage features and is in keeping with the residential character of the neighbourhood.

Town Planning staff are of the opinion the proposed zoning relief 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”** seeking 1.5%, whereas 1% is required.
- ii. **Section 7.7 (d) “Maximum Building Height”** seeking 5 m, whereas 3.7 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>In considering the increase to the accessory building lot coverage to 1.5 %, staff is of the opinion that although the lot coverage allowed will be exceeded, the impact on the subject property and adjacent properties is minimal. The variance is minor overall as the building has an overall footprint of 96.62m², which equates to an overall lot coverage of 0.25%. Adequate land area will remain available to handle stormwater runoff, maintain privacy, the existing septic system and preserve a rear yard amenity area.</p> <p>In considering the increase to the accessory building height to 5 m, staff is of the opinion that although the building height allowed will be exceeded, the impact on the subject property and adjacent properties is minimal given the rural context. The variance is minor overall as no negative impacts are anticipated by the adjacent neighbors as adequate distance separates the nearest residential neighbour from the accessory building. The accessory building is also surrounded by existing mature trees, which can help minimize the visual impacts caused by the additional height.</p>
2. The variance is desirable for the development or use of the land.	<p>The increase of the accessory building lot coverage is desirable as the accessory building reuses a former building footprint on the property and the building design employs a typical rural built form which demonstrates and maintains the rural character of the property. The variance is therefore considered to be appropriate and desirable for the development of the lands.</p>

	<p>The increase of the accessory building height is desirable as it allows for enhanced storage and use of the facility. No adverse impacts are anticipated on the surrounding lands.</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 'Specialty Agricultural' designation of the Official Plan and the uses which are compatible with agriculture are permitted. Given the location and the dimensions of the accessory building, the requested increase in building height and lot coverage 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 subject application should have no impact on the agricultural viability of the subject lands or the agricultural use of the surrounding area, and is therefore, able to maintain the intent and purpose of the Official Plan. It is noted that if the building is proposed to house livestock then it must also comply with the Minimum Distance Separation formulae.</p>
<p>4. The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p>The requested variance of the accessory building's height to 5 m, and increased lot coverage to 1.5 % is appropriate given the rural context. 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. The variance maintains the intent of the Zoning By-law with respect to accessory building height, massing, siting and locational scale.</p>

Agency & Public Comments

On May 26, 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 Region Planning & Development Services (June 21, 2021)
 - No objections, provided no plumbing or living space is included within the proposed accessory building.
- Building Department (June 17, 2021)
 - A building permit will be required.
- Public Works Department (June 23, 2021)
 - No comments or conditions.

One (1) public comment was received and is summarized as follows:

- Randy Beres (June 21, 2021)
 - No objection to the accessory building unless the purpose of the accessory building is to be used for a large scale commercial dog breeding facility.

Planning Staff Comments

The subject lands are located below the southwest corner of Effingham Street and Welland Road. The property is 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 5 m and to increase the maximum (accessory) lot coverage from 1 % to 1.5 %, in order to accommodate the constructed 96.62 m² (1,040 ft²) accessory building.

Planning staff are of the opinion that, subject to conditions, the constructed accessory building 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. The requested variance is minor in nature, conforms to the general policies and intent of both the Official Plan and Zoning By-law and is appropriate for the development and use of the land.

Given this analysis, Planning staff recommend that minor variance file A19/2021P **be approved** subject to the following conditions:

THAT the applicant

- Apply for and receive Building Permit for the constructed accessory building.

- Ensure no plumbing or living spaces be provided within the accessory building at the time of building permit.
- Ensure that the accessory building must meet the minimum setback distance derived from the Minimum Distance Separation (MDS) Formula if the building is to be used for housing livestock.

Prepared by,



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Approved by,



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Director of Community Planning and Development