

July 28, 2021

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

**Re: Minor Variance Application A31/2021P**  
**282 Canboro Road, Pelham**  
Part of Lot 5, Concession 8, being Part 3 on 59R-16877  
**Roll No. 2732 020 010 14600**

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The subject land is located on the south side of Canboro Road lying east of Effingham Street, legally described above, and known locally as 282 Canboro Road in the Town of Pelham.

The subject land is zoned Commercial Rural "CR" in accordance with Pelham Zoning By-law 1136(1987), as amended. The residential dwelling was established within the Commercial Rural zone prior to the adoption of Zoning By-law 1136(1987), thus having a legal non-conforming status.

The Applicant is seeking permission pursuant to Section 45 (2) (a) (ii) of the Planning Act to permit a similar change in use to the existing legal-non conforming use, in order to convert the existing single detached residential dwelling into a commercial business office.

### **Applicable Planning Policies**

#### Planning Act (Consolidated July 2016)

Section 45 (2) (a) (ii) grants powers to the Committee of Adjustment where any land, on the day the Zoning By-law was passed, was lawfully used for a purpose, may permit, the use of such land for a purpose that, in the Committee's opinion, is similar to the purpose for which it was originally used or is more compatible with the uses permitted by the Zoning By-law.

#### 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’. ‘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, diversification of the economic base and providing opportunities for economic activities in prime agricultural areas, in accordance with policy 2.3 and conserving biodiversity.

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 no physical alterations to the exterior of the dwelling or to the property, and that no new infrastructure is required with the similar change in use application as the business would occupy the existing building, an archeological assessment is therefore not required.

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

#### Greenbelt Plan (2017)

The Greenbelt Plan designates the intersection of Effingham Street and Canboro Road as a ‘Hamlet’. Hamlets are also included within the definition for ‘Settlement Areas’ and are located within the Protected Countryside.

Policy 1.4.2 states that the policies of this Plan generally do not apply to lands within the boundaries of Towns/Villages and Hamlets and that Official plans will continue to govern land use within these settlement areas based on policy direction provided by the Growth Plan.

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 similar change in use will not require new municipal services, and will not expand into key natural heritage features or key hydrologic features or their associated vegetation protection zones, and is therefore, able to conform to the policies in the Greenbelt Plan.

#### 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 'Prime Agricultural Area', which is outside of an approved settlement area according to the Growth Plan. Therefore, the natural heritage system policies of the Growth Plan apply (policy 4.2.2).

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.

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.

The proposed similar change in use does not fragment any key natural heritage features or key hydrologic features.

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

The Regional Official Plan designates the subject land as 'Unique Agricultural Area' and 'Greenbelt Natural Heritage System'.

Policy 5.B.8.3 states that in 'Unique Agricultural Areas' expansions/conversions of legally existing uses which bring the use into more conformity with the Regional Official Plan are permitted subject to the demonstration of no new municipal services being required and that the use does not expand into any key natural heritage features and key hydrological features.

The subject application is not proposing any new physical alterations to the exterior of the dwelling or to the property with the similar change in use application, as the business would occupy the existing building. As such, no new municipal services are proposed and no expansion into key natural heritage features and key hydrological features will occur.

Regional staff are satisfied that the proposed development is consistent with Regional environmental policies, and offer no objections to the minor variance to allow an office in place of a residence.

#### 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 E2 (Non-conforming Uses) states as a general rule, existing uses that do not conform with the policies of this Plan should gradually be phased out so that the affected land use may change to a use which is in conformity with the goals of the Official Plan and the intent of the Zoning By-law. In some instances, it may be necessary and practical to allow the replacement, extension or enlargement of non-conforming uses through the granting of a minor variance or by placing the use in an appropriate zone.

The proposed similar change in use to convert the existing legal non-conforming residential dwelling to a commercial business office should not compromise drainage, privacy or sensitive natural heritage features and is in keeping with the overall character of the neighbourhood.

Town Planning staff are of the opinion the proposed similar change in use conforms to the Official Plan.

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

The subject land is zoned 'Commercial Rural' (CR) in accordance with Pelham Zoning By-law 1136 (1987), as amended. Permitted uses under Section 21 of the 'CR' zone include (among others): automobile service stations, veterinarian's clinic, service shops, farm produce markets, convenience retail stores, restaurants, uses, buildings and structures accessory to the foregoing uses, as well as accessory residential uses to any of the foregoing permitted uses except automobile service station.

The existing residential dwelling is not among the permitted uses, however, as it was lawfully established prior to the adoption of the current Zoning By-law, it is considered to be a legal non-conforming use pursuant to Section 6.15 (a) of the Zoning By-law which allows any legal non-conforming use to continue as long as the use is not abandoned.

The application is made to permit a similar use of 'Commercial business office'.

**Agency & Public Comments**

On July 6, 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 (July 21, 2021)
  - No objections to the minor variance to allow an office in place of a residence.
- Building Department (July 20, 2021)
  - A building permit is required for the proposed interior alterations and change of use.
- Public Works Department (July 8, 2021)
  - No comments or conditions.

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

**Planning Staff Comments**

A pre-consultation meeting was held with the applicant(s) of the property and staff from the Town and Niagara Region Planning & Development Services on May 6, 2021 to discuss the subject

applications. A *Planning Justification Brief* was submitted on behalf of the applicant by Upper Canada Consultants in support of the proposed development.

The subject lands are located on the south side of Canboro Road, lying east of Effingham Street. The property is surrounded by the following:

North: Rural residential dwellings

East: Auto, truck and industrial repair shop / rural residential dwelling

South: Agricultural / rural residential dwellings

West: Bulk water filling station

Planning staff is of the opinion that the application for a similar change in use to the existing legal-non conforming use is more in keeping with the goals of the Official Plan and the intent of the Zoning By-law. The reasoning being the proposed use is more compatible with the uses permitted in the 'Commercial Rural' (CR) Zone as stated in the Zoning By-law.

The applicant should be aware that any further additions or site alterations may be subject to Site Plan Approval as per the Town's Site Plan Control By-law.

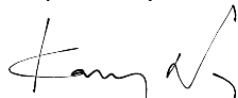
In Planning staff's opinion, the application is consistent with the PPS, Provincial and Regional plans, and conforms to the general policies and intent of both the Official Plan and Zoning By-law and is appropriate for the development and use of the land. The authorization of the similar change in use is not expected to generate any unreasonable negative impacts for adjacent uses or the community at large than what is currently permissible.

Given this analysis, Planning staff recommend that minor variance file A31/2021P **be approved** subject to the following conditions:

**THAT** the applicant

- Apply for and receive Building Permit for the proposed interior alterations and change of use.

Prepared by,



Kenny Ng, B.ES  
Planner

Approved by,



Barbara Wiens, MCIP, RPP  
Director of Community Planning and  
Development