

September 29, 2021

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

Re: Minor Variance Application A35/2021P
260 Welland Road, Pelham
Part of Lot 5, Concession 10
Roll No. 2732 030 012 11800

The subject land is located on the south side of Welland Road, situated between Effingham Street and Staines Street, legally described above, and known locally as 260 Welland 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"** seeking 1.4%, whereas 1% is required.
- ii. **Section 7.7 (d) "Maximum Building Height"** seeking 7.3 m, whereas 3.7 m is required.

The application is made for relief to construct an accessory storage building.

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.

As noted from pre-application comments from the Niagara Peninsula Conservation Authority (NPCA), the subject property is impacted by a Provincially Significant Wetland (PSW) known as the Fontheill Kame Wetland Complex. Development within 30 metres radius of a Provincially Significant Wetland requires NPCA review and approval. The NPCA has subsequently requested a work permit from the NPCA be implemented as a condition of approval. The complete work permit application will include an Erosion and Sediment Control Plan, along with the condition that an enhanced naturalized buffer between the proposed works to the edge of the PSW be established.

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.

As noted from comments from the Regional Planning & Development Services, the subject lands exhibit high potential for discovery of archaeological resources given their proximity (within 300m) to several past and present watercourses, as well as its location along a historic transportation route (Welland Road). Based on a review of aerial photography, the existing barn structure appears to have been constructed prior to 1960, and therefore the lands surrounding the proposed structure likely have not been subject to recent (post-1960), intensive (over all or most of the area), and extensive (thorough or complete) disturbance that would void the need for an archaeological assessment, as specified in the provincial screening criteria. The Town's Cultural Heritage Master Plan also identifies the subject lands as having composite potential for deeply buried archaeological resources. Given the anticipated significant ground disturbance

resulting from the proposed building, the applicant must conduct a Stage 1 Archeological Assessment prepared by a licensed archaeologist, and any subsequent assessments at further stages if required, and receive clearance from the Ministry of Heritage, Sport, Tourism & Culture as a condition of approval.

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 subject to the results of the requested conditions.

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 Growth Plan designates the subject land as being within a 'Prime Agricultural Area' and the 'Provincial Natural Heritage System'. 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.

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 proposed accessory building will be reusing the existing accessory building footprint, and expanding away from the existing natural heritage features, 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, the agricultural use of the surrounding lands and the adjacent natural heritage system subject to conditions as requested by the NPCA.

Regional Official Plan (Consolidated, August 2014)

The Regional Official Plan designates the subject land as 'Good General 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) and Significant Woodland.

Regional policies require the completion of an Environmental Impact Study (EIS) when development and/or site alteration is proposed within 120 metres of PSW and within 50 metres of Significant Woodland. Further, Growth Plan policies also require that a minimum 30 metre Vegetation Protection Zone (VPZ) adjacent to KNHF/KHF, be established as natural self-sustaining vegetation. Development and/or site alteration is not permitted within a KNHF/KHF or its VPZ.

Regional Environmental Planning Staff note that the existing barn is located within the VPZ, while the proposed building expansion will be directed away from the natural heritage features. Given the scope, nature and location of the proposed development, Regional staff are satisfied that the proposed development is consistent with Provincial and Regional environmental policies, and offer no objections. Regional Staff recommended that standard erosion and sediment control fencing be installed prior to construction and maintained for the duration of construction. Staff also recommended planting additional native vegetation between the new accessory building and the adjacent wetland to the west.

Regional Private Septic System staff also reviewed the existing private septic system and offers no objections to the proposed accessory storage building, provided no plumbing or living space is included within it.

In conclusion, Regional staff are satisfied that the proposed development is consistent with Regional environmental policies and private septic system requirements, and offer no objections subject to the requested conditions.

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 'Good General Agricultural' and 'Environmental Protection One' as per Schedule 'A'.

Policy B2.1.1 states the purpose of the Good General Agricultural designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture.

Policy B2.1.2 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.

The proposed minor variance to seek relief from lot coverage and height requirement for the proposed accessory building 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 1.4%, whereas 1% is required.
- ii. **Section 7.7 (d) "Maximum Building Height"** seeking 7.3 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.	In considering the increase to the accessory building lot coverage to 1.4 %, 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 all buildings have an overall footprint of 638.8 m ² , which equates to an overall lot coverage of 3.2%. Adequate land area will remain available to handle stormwater runoff, maintain privacy, the existing septic system and preserve amenity area.

	<p>In considering the increase to the accessory building height to 7.3 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 building from the proposed accessory building. The accessory building is also situated on the rear yard, which can help screen the building from public view and minimize the visual impacts caused by the additional height.</p>
<p>2. The variance is desirable for the development or use of the land.</p>	<p>The increase of the accessory building lot coverage is desirable as the accessory building mainly reuses the existing building footprint on the property and the building design employs a typical rural built form and exterior finishes which help to demonstrate and maintain 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. The proposed accessory building is setback significantly from the roadway and from nearby buildings which also minimizes its impact on the landscape and surrounding area and uses.</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 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>

	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.
4. The variance maintains the general intent and purpose of the Zoning By-law.	The requested variance of the accessory building's height to 7.3 m, and increased lot coverage to 1.4 % 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 natural heritage features, subject to the results from the requested conditions. The variance maintains the intent of the Zoning By-law with respect to accessory building height, massing, siting and locational scale.

Agency & Public Comments

On August 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 (September 21, 2021)
 - Regional staff have no objection, subject to the satisfaction of any local requirements, and requested regional conditions (see attached regional comments, and conditions included below)
 - That the owner submits a Stage 1 Archaeological Assessment, prepared by a licensed archaeologist, to the Ministry of Heritage, Sport, Tourism and Culture Industries, for review and approval with a copy provided to the Niagara Region. The report must be accepted by the Ministry, to the satisfaction of Niagara Region, prior to clearance of this condition. It should be noted that subsequent Stage 2, 3 or 4 study may be recommended to mitigate any adverse impacts to significant archaeological resources found on the site through preservation or resource removal and documentation. If the licensed archaeologist or the Ministry recommends/requires further Stage 2, 3 or 4 Archaeological

Assessments, these report(s) must also be submitted to and accepted by the Ministry, to the satisfaction of Niagara Region.

NOTE: No demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a letter from the Ministry confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.

- That the accessory building not contain any plumbing or living spaces.
- Building Division (September 21, 2021)
 - Building permit is required for the proposed accessory structure.
- Public Works Department (September 22, 2021)
 - No comments or concerns.
- Niagara Peninsula Conservation Authority (September 22, 2021)
 - The NPCA has no objection to the proposed variance, but will require:
 - A work permit from our office. A complete work permit application will include an Erosion and Sediment Control Plan, as well as an enhanced naturalized buffer between the proposed works to the edge of the PSW. An NPCA Work Permit (New Construction) is \$1405.

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

Planning Staff Comments

The subject lands are located below the southeast corner of Effingham Street and Welland Road. The property is surrounded by Provincially Significant Wetlands, significant woodland, and rural residential dwellings.

The proposed minor variance application seeks zoning relief to increase the maximum (accessory) building height from 3.7 m to 7.3 m and to increase the maximum (accessory) lot coverage from 1 % to 1.4 %, in order to accommodate the proposed 278.7 m² (3000 ft²) accessory building.

Planning staff are of the opinion that, subject to conditions, the proposed 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.

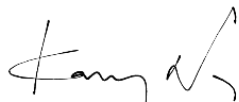
In Planning staff's opinion, the application is consistent with the PPS and conforms to Provincial, Regional, and local plans. The requested variance is minor in nature, conforms to the general policies and intent of both the Official Plan and Zoning By-law and is appropriate for the development and use of the land.

Given this analysis, Planning staff recommend that minor variance file A35/2021P **be approved** subject to the following conditions:

THAT the applicant

- Conduct and submit a Stage 1 Archaeological Assessment, prepared by a licensed archaeologist, to the Ministry of Heritage, Sport, Tourism and Culture Industries, for review and approval with a copy provided to the Niagara Region. The report must be accepted by the Ministry, to the satisfaction of Niagara Region, prior to clearance of this condition. If required, subsequent Stage 2, 3 or 4 Archaeological Assessment must also be submitted to and accepted by the Ministry, to the satisfaction of Niagara Region. No demolition, grading or other soil disturbances shall take place on the subject property prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.
- Apply for and receive work permit from the NPCA prior to Building Permit. The complete work permit application shall include an Erosion and Sediment Control Plan, along with the establishment of an enhanced naturalized buffer between the proposed works to the edge of the PSW.
- Apply for and receive Building Permit for the proposed accessory building prior to construction.
- Ensure no plumbing or living spaces be provided within the accessory building at the time of building permit.

Prepared by,



Kenny Ng, B.ES
Planner

Approved by,



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