

Committee of Adjustment**Minutes**

Meeting #: CofA 10/2021
Date: Tuesday, October 5, 2021
Time: 4:00 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present John Klassen
Sandra Marsh
Brenda Stan

Members Absent Donald Cook
Bernie Law

Staff Present Kenny Ng
Holly Willford
Sarah Leach
Derek Young
Jacqueline Miller

1. Attendance

Applicant, Agents and viewing members of the public via Town of Pelham YouTube Channel by Live-streaming.

2. Call to Order, Declaration of Quorum and Introduction of Committee and Staff

Ms. Sarah Leach, Assistant Secretary-Treasurer, recited the land recognition statement.

Noting that a quorum was present, Chair Klassen called the meeting to order at approximately 4:00 pm. The Chair read the opening remarks to inform those present on the meeting protocols and he introduced the hearing panel and members of staff present.

3. Disclosure of Pecuniary Interest and General Nature Thereof

There were no pecuniary interests disclosed by any of the members present.

4. Requests for Withdrawal or Adjournment

Ms. Leach, Assistant Secretary-Treasurer stated no requests for withdrawal or adjournment have been made.

5. Applications for Minor Variance

5.1 A35/2021P - 260 Welland Road

Purpose of Application

Application is made for relief of Section 7.7(a) "Maximum (Accessory) Lot Coverage" – to permit a maximum lot coverage of 1.4% whereas the by-law allows 1% provided the maximum lot coverage of all buildings does not exceed 10 percent and Section 7.7(d) "Maximum Building Height" – to permit a maximum building height of 7.3m whereas the by-law allows 3.7m.

Representation

The Agent, Mr. Joel Rypstra and Applicants, David and Krista Morrison were electronically present.

Correspondence

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Niagara Region
5. NPCA

Applicants Comments

A Member inquired if the proposed building would be built around the existing barn. The Agent, Mr. Rypstra responded that the existing barn will be removed. A Member sought clarification as to whether a demolition permit was required for removal of the barn. Mr. Rypstra indicated that it is an agricultural structure and would not require a demolition permit. A Member asked if the building would re-use the exact footprint of the barn, or exceed the current footprint. Mr. Rypstra responded that although the building would use the existing footprint it will be increased. A Member requested the height of the existing barn. Mr. Rypstra responded that the proposed building would be equal or less than the current structure.

Public Comments

Ms. Sarah Leach, Assistant Secretary Treasurer indicated she checked the clerks@pelham.ca email address at 4:19 pm and confirmed no e-mails had been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Member Comments

The Members indicated they had no further comments.

Moved By Sandra Marsh

Seconded By Brenda Stan

THAT Application for relief of Section 7.7(a) “Maximum (Accessory) Lot Coverage” – to permit a maximum lot coverage of 1.4% whereas the by-law allows 1% provided the maximum lot coverage of all buildings does not exceed 10 percent; is hereby: GRANTED;

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the impact on the subject property and adjacent properties is minimal given that adequate land area remains available for storm water runoff, privacy, the existing septic system and amenity area.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because it reuses the existing building footprint and the design employs typical rural built form which demonstrates and maintains the rural character of the property.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. No objections were received from commenting agencies or abutting property owners.**
- 7. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis**

and recommendation that this application meets the Planning Act tests for minor variance.

AND THAT Application for relief of Section 7.7(d) “Maximum Building Height” – to permit a maximum building height of 7.3m whereas the by-law allows 3.7m; is hereby: GRANTED;

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the impact on the subject property and adjacent properties is minimal given the rural context.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because it allows for enhanced storage and use of the facility.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. No objections were received from commenting agencies or abutting property owners.**
- 7. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

The above decisions are subject to the following conditions:

- 1. That all necessary building permits are required prior to construction commencing, to the satisfaction of the Chief Building Official, and shall not be approved for living accommodations or plumbing within the accessory building.**

Prior to Building Permit:

- 1. To the Satisfaction of the Niagara Region**
 - a. 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.

2. **To the Satisfaction of the Niagara Peninsula Conservation Authority**
 - a. **Apply for and receive a work 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.**

Carried

5.2 A36/2021P - 368 Canboro Road

Purpose of Application

Application is made for relief, to construct a 2 storey single detached dwelling, from: Section 7.4(c) "Maximum Lot Coverage" – to permit a maximum lot coverage of 15% whereas the by-law allows 10%; Section 7.4(d) "Minimum Front Yard" – to permit a minimum front yard of 11 metres whereas the by-law requires 13 metres; Section 7.4(f) "Minimum Side Yard" – to permit a minimum side yard of 1.2 metres whereas the by-law requires 9 metres; and Section 6.16(d)(iv) "Ingress and Egress – Minimum Distance Between Driveways" – to permit a minimum distance between driveways of 3.5 metres from the western property line and 1.5 metres from the eastern property line whereas the by-law requires 7.5 metres.

Representation

The Agents, Mr. Craig Rohe and Mr. Ethan Laman of Upper Canada Consultants and Applicant, James Van Den Brink were electronically present.

Correspondence

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Nagara Region
5. NPCA
6. Yvon and Wendy Audette

Pre-Registered Members of the Public

1. Caitlin Manson

Applicants Comments

A Member requested confirmation that it is the intent of the Applicants to remove the existing structure and re-build. The Agent, Mr. Craig Rohe provided confirmation and stated that the current configuration and integrity of the existing structure is not suitable to meet the requirements of the Applicants. Mr. Rohe further stated that the requested variances are intended to establish general parameters that will afford the applicants the ability to develop a suitable home while also being respectful of the requirements along The Canboro Road Corridor.

Mr. Rohe provided an overview of each requested variance. He indicated that the requested front yard setback was in the interest of Town staff as it would position the home closer to the road thereby aligning it with existing dwellings along Canboro Road. Mr. Rohe stated that the requested side yard setback would bring the building envelope to closer conformity with the Zoning By-law. He stated that the relief is consistent with the Ontario Building Code and provides the Applicants greater flexibility. Mr. Rohe reiterated that all requested conditions are to the satisfaction of Town Staff and therefore may result in alterations of the building footprint.

With regard to lot coverage, Mr. Rohe stated that the request is appropriate for the property and would provide the Applicants the ability to construct an accessory structure in the future. Mr. Rohe indicated that the request is proposed at this time to avoid coming back to the Committee of Adjustment in the near future.

Mr. Rohe stated that the lot is 12 metres long and does not provide great flexibility for the location of the driveway. He further stated that the variance would allow for a safe location while maintaining the existing character. Mr. Rohe expressed satisfaction with respect to the staff recommendation report and recommended conditions.

A Member expressed concern regarding access to the backyard without encroaching onto the neighboring property. In response, Mr. Rohe indicated that the building footprint requires massaging, noting that the minor variances have been pursued to set up minimums and facilitate the building design. Mr. Rohe stated that access will be looked at and may be offered by way of augmenting the building to provide a clear path of travel or using the garage and side door for passage. In addition, Mr. Rohe stated that pursuant to the conditions, Town Staff will have final approval on the front and side elevations of the dwelling and will consider this prior to clearance and building permit issuance. The Member expressed concern with regard to the feasibility of performing construction without equipment being required to cross the property line, specifically referencing the side yard setback. Mr. Rohe responded that the requested minimum side yard would provide for greater room for maneuverability than the current structure.

A Member asked if Town Staff had suggested the new structure be closer to the front lot line. Mr. Rohe responded that the suggestion originated from pre-consultation with Town Staff. He further explained that Official Plan policies exist within the Town of Pelham that speak to The Canboro Road Corridor, which encourage structures to be located closer to the street. Mr. Rohe noted that from a planning perspective, this makes sense for urban design.

A Member further expressed concern with regard to rear access of the property. The Member asked if the proposed plans had yet been approved by Town Staff. Mr. Rohe indicated that the requested side yard setback is standard and is in closer conformity with the Zoning By-law. Mr. Rohe reaffirmed that staff have no objection to the variance in principle but offer conditions to provide for additional checks. The Member stated that the written public comments related to access have been considered. The Member expressed satisfaction with the Town reviewing and approving the final documentation as requested in the proposed conditions.

Public Comments

Neighboring resident, Mr. Nigel Witteveen appeared on behalf of himself and Ms. Caitlin Manson. Mr. Witteveen expressed concern with the reduction of the side yard, noting that the home would be in close proximity to the windows of the neighboring property. Mr. Witteveen suggested that positioning the home farther back would mitigate the obstruction of the neighboring windows and satisfy concerns.

At the direction of the Chair, Mr. Rohe responded the proposed placement of the home originated from consultation with Town Staff. He further noted that the Applicant indicated they may be comfortable positioning the home farther back. Mr. Rohe suggested that through the design exercise and submission of detailed plans, the neighbor will gain a better understanding of design elements such as window placement. Mr. Rohe indicated that the requested conditions provide direction to the Applicant to evaluate and address the concern brought forward by Mr. Witteveen.

A Member inquired how to ensure the concern will be addressed, suggesting either a condition be implemented or commitment by Town Staff. Ms. Leach noted staff's presence in the hearing, additionally indicating that Mr. Witteveen's comments are on record for Staff's consideration during the clearance and building permit stage. The Secretary-Treasurer, Ms. Willford, noted that if the Committee were to approve the variance as requested, the Committee would be establishing minimums. Ms. Willford further stated that approval would allow the Applicants to build within the minimums, with no guarantee that the house would be pushed back as a result of the concern. Ms. Willford identified the Committees ability to grant the variances as requested or revise closer to the Zoning By-law. Town Planner, Kenny Ng noted that the concern of the neighbor will be addressed during the clearance of conditions which require the submission of front and side lot elevation plans as well as perspective view drawings. A Member asked if the neighbor could be included in the review process. Mr. Ng responded that the neighbor's comments would be considered.

Ms. Sarah Leach, Assistant Secretary Treasurer indicated she checked the clerks@pelham.ca email address at 4:54 pm and confirmed no e-mails had been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Member Comments

The Members offered no further comments.

Moved By Brenda Stan

Seconded By Sandra Marsh

Application for relief of Section 7.4(c) “Maximum Lot Coverage” – to permit a maximum lot coverage of 15% whereas the by-law allows 10%; is hereby: GRANTED;

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the impact on the subject property and adjacent properties is minimal.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because the overall lot coverage is not significantly increase and the proposed dwelling is average sized.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

Application for relief of Section 7.4(d) “Minimum Front Yard” – to permit a minimum front yard of 11 metres whereas the by-law requires 13 metres; is hereby: GRANTED;

The above decision is based on the following reasons:

- 1. The variance is minor in nature as adequate distance separates the building face from the public street and is in line with adjacent properties.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**

4. The proposal is desirable for the appropriate development and/or use of the land because it is in keeping with the frontage of adjacent properties.
5. This application is granted without prejudice to any other application in the Town of Pelham.
6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.

Application for relief of Section 7.4(f) “Minimum Side Yard” – to permit a minimum side yard of 1.2 metres whereas the by-law requires 9 metres; is hereby: GRANTED;

The above decision is based on the following reasons:

1. The variance is minor in nature as the redevelopment will not result in drainage issues, subject to conditions.
2. The general purpose and intent of the Zoning By-Law is maintained.
3. The intent of the Official Plan is maintained.
4. The proposal is desirable for the appropriate development and/or use of the land because the proposed dwelling has approximately the same side yard setback (to the west) as the existing building and provides for visual screening.
5. This application is granted without prejudice to any other application in the Town of Pelham.
6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.

Application for relief of Section 6.16(d)(iv) “Ingress and Egress – Minimum Distance Between Driveways” – to permit a minimum distance between driveways of 3.5 metres from the western property lines and 1.5 metres from the eastern property line whereas the by-law requires 7.5 metres. is hereby: GRANTED;

The above decision is based on the following reasons:

1. The variance is minor in nature as the proposed driveway is generally located in the same area and is more central within the site.
2. The general purpose and intent of the Zoning By-Law is maintained.
3. The intent of the Official Plan is maintained.
4. The proposal is desirable for the appropriate development and/or use of the land because it will be relocated to a more central location and improve vehicular circulation and access.
5. This application is granted without prejudice to any other application in the Town of Pelham.
6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.

The above decisions are subject to the following conditions:

1. That all necessary building permits are required prior to construction commencing, to the satisfaction of the Chief Building Official.

Prior to Building Permit:

1. To the Satisfaction of the Director of Community Planning and Development
 1. Provide front and side dwelling *Elevation Plan(s)* and perspective view drawing(s) that positively contribute to the surrounding neighbourhood and demonstrate compatibility and harmonious transition with the existing streetscape with respect to height, massing and design continuity, through the use of a front porch, windows symmetrically proportionate to the building's mass, a congruent use of exterior cladding, reduced garage dominance, etc. Said *Elevation Plans* shall be substantially unaltered from those at the time of building permit.
 2. Undertake a Tree Savings Plan identifying trees to be retained and remain undisrupted.

3. **Conduct a Stage 1-2 Archaeological Assessment prepared by a licensed archaeologist and receive clearance from the Ministry of Heritage, Sport, Tourism & Culture.**
 2. **To the Satisfaction of the Director of Public Works**
 1. **Obtain approval for a Driveway Entrance & Culvert Permit, as applicable, issued through the Public Works department, to Town standards. The applicant shall bear all costs associated with these works.**
 2. **Submit a comprehensive Lot Grading & Drainage Plan demonstrating that the drainage neither relies, nor negatively impacts neighbouring properties, and that all drainage will be contained within the respective lots, to the satisfaction of the Director of Public Works, or designate.**
 3. **To the Satisfaction of the Niagara Region**
 1. **Apply for and submit a New Septic Permit Application along with a detailed septic design by an approved septic contractor/designer, to the Niagara Region, for review and approval. The plan must demonstrate that the proposed development can be serviced by a new septic system on the restrictive lot. No construction shall commence prior to the clearance of this condition and upon a new septic system in place which can ensure full functionality.**

Carried

6. Applications for Consent

6.1 B29/2021P - 1239 Pelham Street (Part 3)

Purpose of Application

Applications B29/2021P - 1239 Pelham Street (Part 3) and B30/2021P - 1239 Pelham Street (Part 2) were heard concurrently.

Application B29/2021P is made for partial discharge of mortgage and consent to convey 1235.2 square metres of land (Part 3), for future construction of a single detached dwelling.

Application B30/2021P is made for partial discharge of mortgage and consent to convey 1157.6 square metres of land (Part 2), for future construction of a single detached dwelling. Part 1 is to be retained for continued residential use of the dwelling known municipally as 1239 Pelham Street.

Representation

The Agent, Mr. Mudassir Ahmed and Applicants, Mark and Wendy Wikston were electronically present.

Correspondence

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Hydro One
5. Bell Canada
6. Adrienne Markarian and David Burke

Pre-Registered Members of the Public

1. Cindy Pfeffer

Applicants Comments

The Agent, Mr. Mudassir Ahmed stated the intent of the Applicants is to sever two pieces of land from their large lot. Mr. Ahmed indicated that the Applicants have submitted a grading and drainage plan as well as the stage 1-2 archaeological assessment.

Public Comments

Adjacent property owner, Ms. Cindy Pfeffer spoke in favor of the application. Ms. Pfeffer noted her preference of additional housing as opposed to alternatives such as a drive-through. Additionally, Ms. Pfeffer stated that she is hopeful new development will reduce street noise within her home.

Ms. Leach, Assistant Secretary Treasurer checked the clerks@pelham.ca email address and confirmed that written comments were received from

Mr. William Kilpatrick during the public portion of the meeting. Ms. Leach read the public correspondence into the record, stating concerns with respect to ground water flooding. A copy is available through the Clerk's department.

At the request of the Chair, Mr. Ahmed responded that he has no prior knowledge of the purported drainage issues in the area. He further indicated that grading and drainage plans, along with foundation drawings will be submitted for the review and approval of Town Staff. Mr. Ahmed expressed that he is confident these provisions will ensure construction occurs appropriately with no impact on neighboring properties.

A Member indicated that that comments are related to an existing drainage problem and asked Mr. Ahmed if the Town had directed the Applicants to address this issue. Mr. Ahmed responded that this was the first time hearing of the issue and once a definite building footprint has been established, a grading plan will be submitted to the Town for review.

A Member asked if the Applicant is only responsible for the water on the subject land. The Agent, Mr. Ahmed confirmed this to be true. Manager of Engineering, Mr. Derek Young stated that there is an existing drainage plan for the Brookfield/ Stefflar area that indicates the storm water runoff from the proposed lots does drain to the catch basin. Mr. Young confirmed that Mr. Ahmed is following what was previously designed. Mr. Young further commented that the original design illustrates a 3 metre swale that ran down the back of the lots which back onto this open land which no longer exists. A Member inquired if the Town must be notified of changes to property that may negatively impact drainage. Mr. Young confirmed that notification is not required unless of an existing registered easement. Mr. Young reaffirmed that Mr. Ahmed is working in accordance with the original design.

Ms. Sarah Leach, Assistant Secretary Treasurer indicated she checked the clerks@pelham.ca email address at 5:13 pm and confirmed no further e-mails had been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Member Comments

The Members provided no additional comments.

Moved By Sandra Marsh
Seconded By Brenda Stan

Application B29/2021P for partial discharge of mortgage and consent to convey 1235.2 square metres of land (Part 3), for future construction of a single detached dwelling. Parts 1 and 2 are to be retained for continued residential use of the dwelling known municipally as 1239 Pelham Street; is hereby: GRANTED;

Application B30/2021P for partial discharge of mortgage and consent to convey 1157.6 square metres of land (Part 2), for future construction of a single detached dwelling. Part 1 is to be retained for continued residential use of the dwelling known municipally as 1239 Pelham Street; is hereby: is hereby: GRANTED;

The above decisions are subject to the following conditions:

To the Satisfaction of the Director of Public Works

- 1. Submit a comprehensive Lot Grading & Drainage Plan for all parcels demonstrating that the drainage neither relies, nor negatively impacts neighbouring properties, and that all drainage will be contained within the respective lots, to the satisfaction of the Director of Public Works, or designate.**
- 2. Confirm that no existing utilities cross the proposed lot lines. Should any services cross these lot lines, the applicant shall be responsible for costs associated with their relocation and / or removal.**
- 3. Obtain a Driveway Entrance & Culvert Permit for the construction and/or modification of all new or existing driveways or entrances, issued through the Public Works department, to Town standards. The applicant shall bear all costs associated with these works.**

To the Satisfaction of the Director of Community Planning & Development

- 1. Sign the Town of Pelham's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior to the issuance of a Building Permit.**
- 2. Conduct a Stage 1-2 Archaeological Assessment prepared by a licensed archaeologist and receive clearance from the Ministry of**

Heritage, Sport, Tourism & Culture. At a minimum, the Assessment must cover the building envelope of the proposed lot eligible for disturbance, and be accepted by the Ministry prior to clearance of this condition. The licensed archaeologist may recommend further archaeological analysis or preservation steps be taken. No demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.

To the Satisfaction of the Secretary-Treasurer

- 1. That application for consent, file B29/2021P and B30/2021 receive final certification of the Secretary-Treasurer concurrently.**
- 2. That the Secretary-Treasurer be provided with a registrable 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.**
- 3. That 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.**

The decisions are based on the following reasons:

- 1. The application conforms to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town's Zoning By-law.**
- 2. This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.**
- 3. The Committee of Adjustment considered all written and oral submissions and finds that, subject to the conditions of provisional consent, this application meets Planning Act criteria, is consistent with the Provincial Policy Statement and complies with the Growth Plan, the Niagara Region Official Plan and the Town Official Plan.**

Carried

6.2 B30/2021P - 1239 Pelham Street (Part 2)

Application B30/2021P was heard concurrently with application B29/2021P. See application B29/2021P for minutes and decision.

7. Minutes for Approval

Moved By Sandra Marsh

Seconded By Brenda Stan

That the Committee of Adjustment minutes dated September 8, 2021 be approved.

Carried

8. Adjournment

BE IT RESOLVED THAT this Meeting of the Committee of Adjustment Hearing be adjourned until the next regular meeting scheduled for November 2, 2021 at 4:00 pm.



John Klassen, Chair



Assistant Secretary-Treasurer, Sarah Leach