

January 5, 2021

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

**Re: Minor Variance Application A1/2022P**  
**42 Philmori Boulevard, Pelham**  
Plan 59M-403, Lot 114  
**Roll No. 2732 020 010 03514**

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The subject land is located on the north side of Philmori Boulevard, lying east of Joyce Crescent, legally described above, and known municipally as 42 Philmori Boulevard in the Town of Pelham.

The subject land is zoned 'Residential 1-187' (R1-187) in accordance with Pelham Zoning By-law 1136 (1987), as amended by By-law No. 3325 (2012). The minor variance application requests relief from:

- i. **Section 30 (Exceptions) R1-187(e) "Minimum Interior Side Yard"** - to permit a minimum interior side yard of 1.9m whereas the bylaw requires 3m.
- ii. **Section 30 (Exceptions) R1-187(g) "Minimum Rear Yard"** - to permit a minimum rear yard of 11.8m whereas the bylaw requires 15m.

### **Applicable Planning Policies**

#### Planning Act (Consolidated July 2016)

Section 45 (1) states that the Committee of Adjustment may authorize minor variance provisions of the (Zoning) by-law, in respect of the land, as in its opinion is (1) minor in nature, (2) objectively desirable for the appropriate development or use of the land, and the general intent and purpose of the (3) Zoning By-law and (4) Official Plan are maintained.

#### 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 1.1.3.4 states that appropriate development standards should be promoted which facilitate *intensification, redevelopment* and compact form, while avoiding or mitigating risks to public health and safety.

The proposed minor variance application has been submitted to seek relief from minimum interior side yard and rear yard requirement in order to construct a single-detached residential dwelling on the vacant lot.

#### 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.

Policy 11.A.2 states the Region encourages the development of attractive, well designed residential construction that:

- c) Emphasizes the entrance.
- d) Is accessible to all persons.
- g) Provides an attractive, active transportation friendly streetscape.
- h) Contributes to a sense of safety within the public realm.
- j) Creates or enhances an aesthetically pleasing and functional neighbourhood.

Policy 7.B.1.19 states that where development or site alteration is approved within the Core Natural Heritage System or adjacent lands as set out in Table 7-1 the applicant shall submit a Tree Saving Plan maintaining or enhancing the remaining natural features and ecological functions. The Plan shall be prepared in accordance with the Regional Forest Conservation By-law and the

local tree conservation by-law as appropriate and its implementation monitored by a member of the Ontario Professional Forestry Association

The subject property is impacted by the Region's Core Natural Heritage System (CNHS), consisting of Provincially Significant Earth Science Area of Natural and Scientific Interest (ANSI) and Significant Woodland. The proposed reduction in the minimum rear yard setback would permit development in closer proximity to these features.

Based on the nature of the structure proposed within the reduced setback (i.e. a covered deck only, no pool or other accessory structures), and the limited proposed encroachment, Regional Environmental Planning staff requested the completion of an Edge Management Plan in lieu of an Environmental Impact Study (EIS) at the pre-consultation stage, which identifies additional native vegetative plantings adjacent to the rear property line. Staff have reviewed the Edge Management Planting Plan, prepared by Beacon Environmental (dated August 18, 2021) and confirm that the Plan adequately addresses Regional concerns. Additionally, to further mitigate potential impacts to the Region's CNHS, staff recommend that the Committee also require the installation of permanent fencing without any gates along the extent of the rear lot line, unless already installed at that location.

Regional staff has no objection to this minor variance application as the development generally aligns with Provincial and Regional policies. Regional staff were satisfied with the submitted Edge Management Planting Plan and has included recommended conditions to protect the abutting Regional Core Natural Heritage System features.

#### 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 "Low Density Residential – Special Policies" within the 'North West Fonthill Secondary Plan' area of the Town Official Plan.

Policy A2.1.2 Natural Environment – states the natural environment objectives of this Plan are to make planning decisions that consider the health and integrity of the broader landscape as well as the long term and cumulative impacts on the ecosystem.

In response to this policy requirement, the applicant has submitted an Edge Management Planting Plan, prepared by Beacon Environmental (dated August 18, 2021) to ensure that the integrity of the adjacent natural landscape is maintained and protected and similar to the

Region's requested condition, Town will request the applicant install permanent fencing along the rear lot line which must be maintained and remain undisrupted by any form of site alteration or redevelopment in perpetuity.

Policy A2.3.2 (Urban Character) – states the objectives of this Plan to protect and enhance the character of the existing Urban Areas, which include (among others):

- To maintain and enhance the Urban Areas as diverse, liveable, safe, accessible and attractive communities.
- 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 maintain and enhance the character and stability of existing and well-established residential neighbourhoods by ensuring that development and redevelopment is compatible with the scale and density of existing development.
- To foster a sense of civic identity through a high standard of urban design in public and private development.

Policy B1.6.2.3 (Low Density Residential – Special Policies) states that it is the intent of the Town to permit large lot single-detached dwelling units in an environmentally sound manner, including the protection of the interpretive, educational and scientific value of the surrounding landscape.

The proposed minor variance would facilitate the construction of one new single-detached dwelling on the proposed lot. The neighbourhood character is strictly ground-oriented residences (i.e. single detached) on large lots with a mixture of 1 & 2-storey houses. The proposed dwelling is compatible in area, frontage, massing, height and orientation with the adjacent and broader neighbourhood.

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.

Potential archaeological resources have been addressed in the subdivision application which resulted in the creation of the lot and therefore, no additional archaeological work is required for this proposal.

Policy E1.5 states that in addition to the Planning Act's four tests considered in determining whether to grant a minor variance, applicants should be prepared to demonstrate a need for the requested relief on the basis that the subject zoning provision is not warranted in a particular circumstance, causes undue hardship, or is otherwise impossible to comply with.

The applicant has indicated in the submitted planning justification brief that the reason it is not possible to comply with the zoning provisions is because of the natural configuration and location of the subject lot, being an elbow street unit with a slightly irregular pie-shape due to the bend of the road. As a result, the lot has a narrower lot frontage with a wider rear lot line at the back. To accommodate for this unique situation, a reduction of the interior side yard setback has been requested to facilitate the particular building design.

Town Planning staff are of the opinion the proposed minor variance conforms to the local Official Plan as the application is able to address the adjacent natural heritage concern with an integrated edge management plan, as well as providing a physically compatible and appropriate development that can compliment the character of the surrounding neighbourhood in terms of aesthetics, privacy, sun/shadowing and introduce minimal impact to the view corridors along roadways and between buildings. The height, siting and the orientation of the building aligns with the existing residential properties, while the scale and the massing of the building are moderate in comparison with properties in proximity. It is not an oversized building that would create outstanding nuisance and it is therefore, able to maintain the intent and purpose of the Official Plan without being disruptive or unpleasant.

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

The subject land is currently zoned a site-specific 'Residential 1-187' (R1-187) according to the Zoning By-law. The permitted uses include:

- a) One single detached dwelling;
- b) Accessory uses;
- c) Home occupations.

The minor variance application requests relief from:

- i. **Section 30 (Exceptions) R1-187(e) "Minimum Interior Side Yard"** - to permit a minimum interior side yard of 1.9m whereas the bylaw requires 3m.
- ii. **Section 30 (Exceptions) R1-187(g) "Minimum Rear Yard"** - to permit a minimum rear yard of 11.8m whereas the bylaw requires 15m.

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.	The proposed reduced interior side yard setback is considered minor in nature given that the reduction is not too large overall and will not result in detrimental impacts to the adjacent neighbourhood in terms of additional

	<p>shade potential, privacy, spacing and openness, stormwater runoff concern and the availability of amenity space. The view corridors into the escarpment along roadway and between the buildings from the sidewalk which situates on the other side of the street will be largely unaffected and the viewing opportunity is preserved with minimal disruption given the standard height and massing of the building. Despite being a somewhat bulkier built form than adjacent units, the building can minimize the visual impact through its white brick exterior and contrasting roof and cladding materials.</p> <p>The proposed reduced rear yard setback is considered minor in nature given that the reduction is relatively minimal and will not result in detrimental impacts to the adjacent natural heritage features, as well as the neighbourhood at large. The proposed encroachment (covered deck) will have minimal impact while the Edge Management Planting is sufficient in meeting Regional and Town natural heritage feature preservation and buffer requirement.</p>
2. The variance is desirable for the development or use of the land.	<p>The variance to reduce the minimum interior side yard is desirable for the lands as it will allow for the creation of a reasonably sized dwelling on a large, vacant residential lot within the delineated built boundary of the Fonthill urban settlement area. The reduced side yard setback will be negligible in terms of resulting impacts and would appear indistinguishable from a streetscape perspective. It mostly follows the existing pattern of development in adjacent areas with the exception of a slight encroachment into the side yard which will not be discernable from the public realm perspective.</p> <p>The variance to reduce the minimum rear yard is desirable as it gives an opportunity to review an existing neighbourhood which situates adjacent to a natural heritage feature and in response to the development, appropriate measures and studies have been conducted and are able to meet Regional and Town requirement. The reduction will facilitate a less disruptive structure (covered</p>

	deck) rather than a building foundation which will likely result in higher levels of impacts.
3. The variance maintains the general intent and purpose of the Official Plan.	The variances to reduce the minimum side and rear yard setback maintain the policy intent of the Official Plan as they allow for a modest, compatible building in an existing neighbourhood within the delineated built boundary. It will add to the existing housing supply, support infrastructure maintenance and make more efficient use of a large existing vacant residential lot. The minor reduction in side and rear yard setback will not negatively impact the character of the neighbourhood nor disrupt the existing streetscape but instead help create a form of diversification to the existing neighborhood.
4. The variance maintains the general intent and purpose of the Zoning By-law.	The variance seeking reduction of the minimum side and rear yard setback maintain the general intent of the Zoning By-law as the proposed building will largely follow the zone requirements with minimal modifications. The spacing of the houses are marginally varied while the privacy, density, built form and character are fundamentally in-keeping with the surrounding neighbourhood and would not incur incompatibility.

### Agency & Public Comments

On November 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:

- Building Division (December 20, 2021)
  - Building permit required for the proposed covered rear deck.
- Public Works Department (Jan 5, 2022)
  - The following comments shall be addressed to the satisfaction of the Director of Public Works. Note that further comments to be forthcoming on subsequent submissions.
    - The developer should be made aware that there is an existing stormwater management easement located along the northern limits of the property as shown on the submitted plans. Municipal Easements are required to



- protect and ensure access to the Municipal infrastructure located on the subject property.
- The developer should be made aware that no development will be allowed on the easement, with the exception of minor landscaping (restricted to lower type vegetation, no large trees) in order to maintain access to an easement in perpetuity.
  - Please ensure that 1 metre offset from the side yard lot lines remain free and clear of all encumbrances for swales and drainage purposes.
  - That the applicant submits an overall lot grading and drainage plan to demonstrate that the drainage does not negatively impact nor rely on neighbouring properties, to the satisfaction of the Director of Public Works or his designate.
  - It is the responsibility of the owner/developer to pave the driveway apron within one year of occupancy being granted.
  - At future development application stages, the Town of Pelham will require a stormwater management brief outlining where the runoff will be directed and calculations showing that the existing infiltration trenches can accommodate the additional runoff. Staff require that the additional runoff will not negatively effect the embankments at the rear of the property.
- Niagara Region Planning and Development Services (January 3, 2022)
    - No objection to this minor variance application from a Provincial or Regional perspective, subject to the satisfaction of any local concerns, and the following conditions:
      - That the Edge Management Planting Plan, prepared by Beacon Environmental (dated August 18, 2021) be implemented on the subject property. If the Town requires this plan to be revised, it shall be submitted for the review and approval of Niagara Region prior to implementation; and,
      - That the owner install permanent fencing along the rear property line, without a gate, to prohibit access from the subject property to the abutting Regional Core Natural Heritage System features.

Four (4) public comments were received from neighbouring property owners, which are included on the Committee's Agenda and summarized below:

- Iqbal Khan (December 14, 2021)
  - The existing subdivision puts emphasis on the larger lot size and permissible footprints of houses, to preserve escarpment habitat and crowding of houses with sufficient side and backyard setbacks. The 3 metres side yard setback was intended to keep escarpment view visible from road.



- A reduced side yard setback will change the symmetry and value of adjacent and other house in line and also obstruct escarpment view by reducing space between houses.
  - No objection to the reduced rear yard setback.
- Fernando Visbal & Maria Cecilia Gonzalez (December 17, 2021)
  - The reduce interior side yard setback will break the symmetry of adjacent houses, as the reduced distance will partially block the view to the tree line of the escarpment, and worried that own house will appear smaller without the spacious side yards.
  - The value of own property could potentially be negatively impacted.
- Gary Caron (December 17, 2021)
  - Would like a revised plan to respect the side yard setback to allow green space in the backyards to be viewed for the tree lined properties. Believes an oversized build would spoil the look of the street.
  - No objection to the reduced rear yard setback.
- Unidentified Individual (January 4, 2021)
  - Concerned that the view of the escarpment will be obstructed.
  - Felt that the size of the lots and the spacing between the houses gives an 'exclusive' feel to the subdivision as compared to other municipalities and subdivisions within the Niagara Region.

### 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 7, 2021 to discuss the subject applications. In addition to the application, an architectural plot plan, edge management plan, stormwater management assessment, building elevations and a Planning Justification Brief were also provided in support of the proposed development.

The subject lands are located on the north side of Philmori Boulevard lying west of Haist Street, and are surrounded by existing residential neighbourhood consist of single detached residential dwellings.

The proposed minor variance application seeks zoning relief to permit a reduction of 1.1 metres for the minimum interior side yard setback requirement and a reduction of 3.2 metres for the minimum rear yard setback requirement.

In considering the reduce rear yard setback, staff is of the opinion that although the development will result in a minor encroachment to the adjacent natural heritage feature, the impact on the subject property and adjacent properties, as well as to the natural heritage feature is minimal.

The required reduction is marginal and the form of encroachment (covered deck) will not result in adverse impact to the foundation or result in long term sustainability concern. It is noted however, that the implementation of the edge management planting must respect the existing stormwater easement and the 1 metre offset from the easement must be free of any structure or development.

In considering the reduced interior side yard setback, staff is of the opinion that although the development will slightly deviate from the existing neighbourhood condition in terms of the unusually high separation distance between each building, the proposed development is able to maintain an abundance of space between immediate buildings and the building itself is not oversized as it stays below the zoning limit for height and lot coverage requirement, while the massing and scale, as well as the design and architectural style of the house is comparable and able to compliment the existing neighbourhood. The lot also suffers slightly from being an elbow street unit which gives it an irregular, narrower lot frontage than proximate lots, and thus making it difficult in creating a building envelope that maintains the general orientation which aligns with adjacent units. With regards to the concerns raised by the public with respect to the impact on the view of the escarpment landscape, while the side yard setback is proposed to be reduced, it is not being reduced to such an extent that the view of the escarpment is lost and the reduction is such that the impact on the view would be negligible and not discernable from the public realm. It is therefore, in planning staff's opinion, a reasonable request to permit a reduction in the minimum side yard setback in this instance.

Planning staff are of the opinion that the proposal applies current planning and development principles and makes efficient use of the land and infrastructure, and should not negatively impact the surrounding neighbourhood with regards to land use incompatibility, traffic, privacy, view corridor and storm water runoff. The requested variances are minor in nature, conform to the general policies and intent of both the Official Plan and Zoning By-law and are appropriate for the development and use of the land.

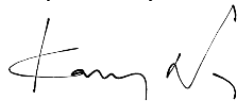
Given this analysis, Planning staff recommend that minor variance file A1/2022P **be approved** subject to the following conditions:

**THAT** the applicant

- Address the following to the satisfaction of the Niagara Region:
  - That the Edge Management Planting Plan, prepared by Beacon Environmental (dated August 18, 2021) be implemented on the subject property. If the Town requires this plan to be revised, it shall be submitted for the review and approval of Niagara Region prior to implementation; and,

- That the owner install permanent fencing along the rear property line, without a gate, to prohibit access from the subject property to the abutting Regional Core Natural Heritage System features.
- Submit an overall lot grading and drainage plan to demonstrate that the drainage does not negatively impact nor rely on neighbouring properties, to the satisfaction of the Director of Public Works or his designate.
- Apply for and receive all necessary building permits prior to construction commencing.

Prepared by,



Kenny Ng, B.ES  
Planner

Approved by,



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