



**Community Planning & Development Department  
Planning Application Report**

March 7, 2022

**Subject: Recommendation Report for Zoning By-law Amendment – 30,  
54, 64, 66 & 68 Philmori Boulevard**

**Recommendation:**

**BE IT RESOLVED THAT Council receive Report #2022-58 –  
Recommendation Report for Zoning By-law Amendment 30, 54, 64,  
66 & 68 Philmori Boulevard for information as it pertains to File No.  
AM-10-21;**

**AND THAT Council direct Planning staff to prepare the by-law for  
approval of the Zoning By-law Amendment for Council's  
consideration.**

**Executive Summary:**

The purpose of this report is to provide Council with a recommendation regarding the application for Zoning By-law Amendment for 30, 54, 64, 66 and 68 Philmori Boulevard.

**Location:**

The application for Zoning By-law Amendment was received for the properties known as 30, 54, 64, 66 and 68 Philmori Boulevard, and described legally as Lot 120, 108, 103, 102 and 101, 59M-403 and Parts 117, 98 and 90-85, 59R-15010. All properties are located in the Residences at Lookout Point Subdivision. 30 Philmori Boulevard is located on the east side of Philmori Boulevard abutting Haist Street. 54, 64, 66 and 68 Philmori Boulevard are located on the north side of Philmori Boulevard south of the Niagara Escarpment Plan area (Figure 1).

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Figure 1: Property Locations



### Project Description and Purpose:

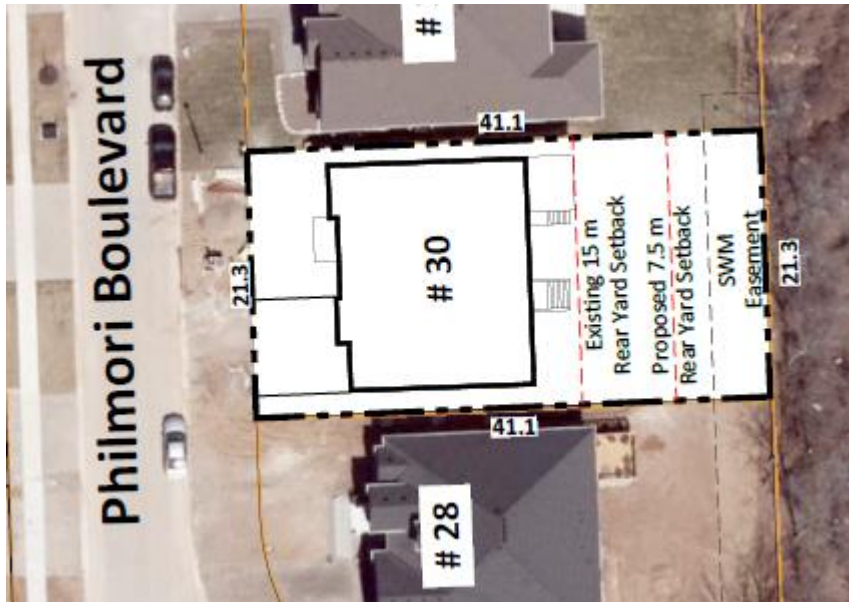
The requested Zoning By-law Amendment would rezone the lands from the site specific 'R1-185B' (*Residential 1*) and the site specific R1-187 (*Residential 1*) zones to a site-specific 'R1' (*Residential 1*) zone which would require a minimum rear yard of 7.5 metres and prohibit buildings or structures, including but not limited to, storage sheds, garages, pool houses, swimming pools, decks and gazebos within

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7.5 metres of the rear lot line (Figures 2, 3 and 4). This represents a reduction to the current minimum rear yard requirement of 15 metres.

*Figure 2: Requested Rear Yard Setback 30 Philmori Boulevard*



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*Figure 3: Requested Rear Yard Setback 54 Philmori Boulevard*

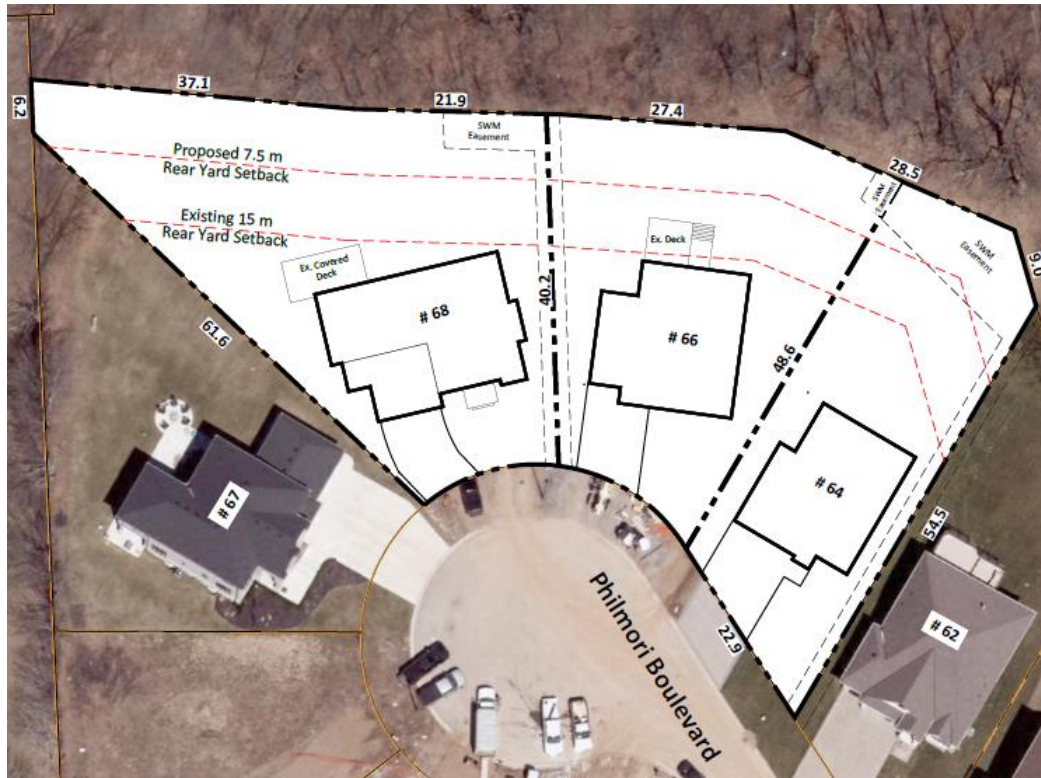


*Figure 4: Requested Rear Yard Setback 64, 66 & 68 Philmori Boulevard*



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### Policy Review:

#### *Planning Act, 1990*

Section 3 of the *Planning Act* requires that, in exercising any authority that affects a planning matter, planning authorities “shall be consistent with the policy statements” issued under the *Planning Act* and “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be”.

Section 34 of the *Act* allows for consideration of amendments to the zoning by-law.

#### *Greenbelt Plan, 2017*

The subject parcels are located in an identified settlement area that is outside of the Greenbelt Plan Area; therefore, the policies of the Greenbelt Plan do not apply.

#### *Niagara Escarpment Plan, 2017*



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The subject parcels are not located in the Niagara Escarpment Plan Area (just south of); therefore, the Niagara Escarpment Plan policies do not apply.

*Provincial Policy Statement, 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.

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. Settlement areas are to be the focus of growth and development.

Policy 2.1.8 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas 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.

Residential uses and accessory uses are supported in the Settlement Area. The Environmental Impact Study that was provided in support of the applications indicated that there would be no negative impacts on the natural features or the ecological functions subject to the report recommendations. The report recommendations were accepted by Regional environmental staff and therefore, the application conforms to Policy 2.1.8.

*Growth Plan for the Greater Golden Horseshoe, 2019*

The subject parcel is identified as being within a Delineated Built-up Area according to the Growth Plan for the Greater Golden Horseshoe, 2019. The Growth Plan policies aim to build stronger, prosperous communities by directing growth to built-up areas, promoting transit-supportive densities and a healthy mix of residential



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and employment land uses, preserving employment areas, planning for community infrastructure, and supporting the conservation and protection of natural systems, prime agricultural areas, and cultural heritage.

The natural heritage system for the *Growth Plan for the Greater Golden Horseshoe* excludes lands within settlement areas approved prior to July 1, 2017. The subject properties are within a settlement area.

Residential uses and incidental uses are supported in the Delineated Built-Up Area.

### ***Regional Official Plan, consolidated August 2015***

The Region of Niagara identifies this property as Urban Area (Built-up Area) which supports a range of commercial, institutional, employment and residential uses.

Policy 7.B.1.11 only permits development and site alteration on adjacent lands to Environmental Protection Areas if it has been demonstrated that there will be no significant negative impact on the Core Natural Heritage System component through the preparation of an Environmental Impact Study.

Residential uses are supported in the Urban Area (Built-up Area). The applicants have provided an Environmental Impact Study that demonstrates that no significant negative impacts to the woodland will occur due to the allowance for accessory structures 7.5 metres from the rear lot line. Further, the Region has advised that the application conforms to the Regional Official Plan policies.

### ***Pelham Official Plan (2014)***

The lands are in the North West Fonthill Secondary Plan Area and designated Low Density Residential – Special Policies and subject to Policy B1.6.2.3. The intention for this designation is 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 Low Density Residential – Special Policies designation permits only single detached units on large lots and uses compatible with, complementary to and serving the primary residential use of the land, such as home occupations, pocket parks and open space linkages.



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Policy B1.6.2.4(a) requires all development on lands designated Low Density Residential – Special Policies to proceed on the basis of the recommendations of an Environmental Impact Statement.

Policy B1.6.6 recognizes the importance of stormwater management in the Secondary Plan Area due to the soil being sand and the importance of the watersheds and their receiving watercourses. The area drains northeast to Twelve Mile Creek, the only cold water fishery in Niagara, and south to Coyle Creek.

Policy B1.6.6(b) states that the general objectives for stormwater management within this Secondary Plan Area are: i) To maintain, and where possible, improve the health and condition of the receiving watercourses; ii) The achievement of no net increase in stormwater run-off from the Area to adjoining lands; iii) To maintain, and where possible, improve the quality of stormwater entering surface and groundwater supplies; and, iv) To promote the use of naturalized methods of stormwater management.

The requested zoning by-law amendment will permit uses consistent with large lot single detached dwellings in an environmentally sound manner. The amendment is consistent with the recommendations of the Environmental Impact Study. The stormwater management report indicates that there will be no net increase in stormwater run-off to adjoining lands as a result of the additional structures in the rear yards. Stormwater runoff from the additional development will be accommodated by the existing naturalized method of stormwater management (infiltration trenches) in the rear yards. Based on this information, the amendment conforms to the Town's Official Plan.

*Zoning By-law 1136 (1987), as amended*

54, 64, 66 and 68 Philmori Boulevard are zoned R1-187 and 30 Philmori Boulevard is zoned R1-185B. Both zones permit single detached dwellings, uses, buildings and structures accessory thereto and home occupations subject to special regulations including (k) which prohibits buildings, structures, including but not limited to, storage sheds, garages, pool houses, swimming pools, decks and gazebos, within 15m of the rear lot line.

The applicant is requesting that (k) in both zones be amended to reduce the rear yard structure prohibition to 7.5 metres for the properties that are subject to the





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application. Some of the property owners wish to have pools, decks and sheds and others do not have specific plans at this time but would like to have the option to do something in this area in the future.

The requested zoning change will allow residents to make use of the rear yard amenity space without negatively affecting the woodland or the slope. As a result, the amendment applies good planning principles.

**Submitted Reports:**

*Planning Justification Report prepared by Better Neighbourhoods Development Consultants*

The report concludes that the requested zoning by-law amendment is appropriate as it supports and does not conflict with Provincial, Regional or local policies, will not create adverse impacts to natural heritage features or slope hazards and that the existing stormwater management system can accommodate the additional flows from future impermeable development in the rear yards.

*Scoped Environmental Impact Study prepared by Natural Resource Solutions Inc. dated September 2021*

The study recommends that a 7.5 metre setback be maintained from the rear lot line and that a fence with no gate access be installed at the rear lot line to prevent ecological impacts and discourage encroachments into the natural heritage feature. The distribution of an educational brochure is also recommended for residents to inform of best practices to prevent negative impacts to the natural heritage feature, including encroachments, dumping of yard waste and unauthorized trails as well as to encourage good stewardship practices. The study recommendation have been accepted by Regional environmental staff.

*Stormwater Management Assessment prepared by Upper Canada Consultants Engineers/Planners dated November 6, 2021*

The assessment concludes that the proposed zoning amendment to reduce the rear yard setback from 15 metres to 7.5 metres will not impact the existing stormwater management systems in the rear yards and the Philmori Boulevard and downstream stormwater systems within this development area. The findings of the report have been accepted by Town Public Works staff.



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Digital copies of the reports are available by contacting the Planning Division.

**Agency Comments:**

The application was circulated to commenting agencies and Town Departments. The following comments have been received (Appendix A):

*Enbridge Gas*            No objections.

*Niagara Peninsula Conservation Authority*    No objection.

*Niagara Region Planning and Development Services*

"...no objection to the proposed Zoning By-law Amendment from a Provincial and Regional perspective, provided the recommendations of the Scoped EIS, prepared by Natural Resource Solutions Inc. (dated September 2021), including the installation of permanent fencing on the rear lot lines (unless already installed at that location), and the preparation of an ecological brochure explaining the significance and sensitivity of the adjacent natural features (including appropriate stewardship activities), are implemented to the satisfaction of Town staff."

*Public Works*

"The installation of structures in the rear yards will increase the amount of stormwater runoff. The Town will require an inspection of all the infiltration trenches by a Certified Drainage Engineer prior to construction, and post construction, to ensure infiltration capacities have not been impacted by construction activities. The existing observation ports will permit the inspections to be carried out. These reports are to be submitted to the Town for review.

Staff require confirmation that the additional runoff from the structures will not negatively affect the embankments at the rear of the properties.

There is an existing stormwater management easement located along the northern limits of the property. 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.



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A 1 metre offset from the side yard lot lines must remain free and clear of all encumbrances for swales and drainage purposes.”

**Public Comments:**

On January 21, 2022 a public meeting notice was circulated to all property owners within 120 metres of the properties’ boundaries. In addition, public notice signs were posted in front of each property. A public meeting was held on February 14, 2022.

The following comments have been received at the time of writing of this report:

*Leo Benoit*

Opposed to the amendment due to: concern that future construction would interfere with the drainage and swales, causing flooding and impacting Twelve Mile creek; excavation and drainage issues will accelerate erosion and make lands unstable; unnecessary interference with the natural beauty and enjoyment of the Lathrop Nature Preserve.

*Michelle Strike*

Concerned specifically with respect to 30 Philmori Boulevard and that the ground disturbance will lead to soil erosion and collapse onto Haist Street. There is some evidence of erosion already (vegetation and tree loss). Also concerned that the distance to the swale is short and that any water back up will put additional pressure on the hill and cause further soil erosion/wash out.

**Staff Comments:**

Staff advise that the 15 metre prohibition for structures in the rear yards of these properties was established based on the recommendations of the Environmental Impact Study and Slope Stability Studies that were prepared at the time of approval of the Residences at Lookout Point Subdivision. The property owners have consulted with the Niagara Region and the Niagara Peninsula Conservation Authority and provided an updated Environmental Impact Study prior to applying for the zoning by-law amendment. It should be noted that the Niagara Region is responsible for providing review and comments regarding natural heritage features with respect to



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this application. The Niagara Peninsula Conservation Authority regulates the slope and stable top of bank and provides comments in that respect.

There is existing stormwater infrastructure (infiltration trenches) located along the rear lot lines of these properties which are included within easements. The Town may be required to access this area for maintenance over time and no construction or development is permitted in the easement areas or within the drainage swales, this restriction will remain.

If the requested zoning by-law amendment is approved, residents would be required to obtain pool permits from the Town prior to construction of pools and building permits for structures greater than 10m<sup>2</sup> or 108ft<sup>2</sup> and higher than 0.6 metres or 24 inches above ground level and comply with the proposed 7.5m setback from the rear lot line. In addition, to ensure that the infiltration trenches are operating appropriately both pre and post construction, staff recommend that the property owners be required to sign a written undertaking stating that they will hire a drainage engineer to undertake an inspection to ensure infiltration capacities have not been impacted by construction activities. The existing observation ports will permit the inspections to be carried out. These reports must be submitted to the Town for review.

In response to the comments from Leo Benoit, Planning staff advise that neither Town Public Works staff nor the Niagara Peninsula Conservation Authority have raised concerns with respect to flooding, erosion or impacts to Twelve Mile Creek. There will be no development within the drainage swales and development and construction activities will be setback from the drainage swales. Further, the applicants have provided a stormwater management report from a Professional Engineer, which indicates there will be no negative impacts as the existing infiltration trenches on the properties and that the infiltration trenches have adequate capacity to accommodate development in the rear yards of these properties given that there are redundancies in the design of these systems and downstream systems. The Lathrop Nature preserve is located on the other side of Haist Street and there is no impact on that property. Future residential accessory structures would still be located a minimum of 7.5 metres from the rear lot line. No tree removal is proposed and it is not anticipated that future accessory structures would be any more visible than the existing dwellings.





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In response to the concerns raised by Michelle Strike, flooding, erosion and/or collapse of the slope behind 30 Philmori Boulevard is not anticipated as a result of the reduced rear yard setback. No development is proposed beyond the stable top of slope and a 7.5m setback from the stable top of slope will be maintained. There is no evidence of slope instability along the Haist Street slope at this time. The infiltration trenches are designed to allow water to dissipate naturally into the ground and not over the slope, maintaining the stability of the slope. Some trees may have fallen or died on the slope, however these are the result of invasive species (emerald ash borer) and wind rather than erosion.

Council raised a number of questions and concerns with respect to the stormwater management system and potential impacts on the slope behind the properties resulting from additional development in the rear yards.

A member of Council enquired whether additional infiltration trenches should be installed to accommodate the additional run off from structures in the rear yard. New infiltration chambers would have to be at least 4 metres away from existing infiltration trenches and structures. There would not be sufficient room to accommodate something like this. Further, the stormwater management assessment indicates that the current infiltration trenches can accommodate the increased runoff and adequate capacity exists within the existing infiltration trenches.

A Councillor asked who would be responsible should the stormwater management design be unsuccessful and water travel down the slope onto Haist Street. Haist Street and the slope are the responsibility of the Town as the slope is located within the Haist Street road allowance right-of-way, however a Professional Engineer has signed off on the engineering design and the Engineer would ultimately be responsible in the event of a system failure.

A Councillor enquired as to why the stormwater management system is designed to accommodate the 5-year storm event. The stormwater management design criteria from the Ministry of Environmental, Conservation and Parks (MECP) requires the design for a 5-year storm event. MECP issued the Environmental Compliance Approval design for the subdivision based on the 5-year storm event. 95% of the Town's stormwater system is designed to the 5-year storm event and so it is not possible to discharge a 100-year storm event to the system. The remainder of



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water during larger storm events is dispersed by overland flow. Storm ponds however, are designed for a 100-year storm and their rate of flow is restricted. New developments are required to match post development storm flow rates to match pre development storm flows.

A member of Council brought up concerns about stormwater runoff impacting the temperature and volume of flows entering Twelve Mile Creek. The Residences at Lookout Point subdivision agreement required the developer to monitor stormwater for a period of five years and report the results to the Town and Niagara Peninsula Conservation Authority. No issues were noted during the five-year monitoring period which confirmed the storm pond design was appropriate and no further monitoring is required as it related to water temperature or flows from the facility.

Concerns were also raised about residents potentially obstructing swales and stormwater management infrastructure. The subdivision agreement requires that the swales and lot grading be maintained in accordance with the approved lot grading plan. Further, easements exist which prohibit structures or interference with the stormwater management infrastructure and allow the Town to complete maintenance as needed. Both the subdivision agreement and the easements are registered on title on the affected properties.

There were also a number of concerns raised about potential impacts on the stability of the slope behind 30 Philmori Boulevard along Haist Street. The Niagara Peninsula Conservation Authority (NPCA) regulates the slope. NPCA has indicated that they have no concerns about the slope's stability provided that structures are not located closer than 7.5 metres from the rear lot line which aligns with the stable top of bank. The prohibition of structures within 7.5 metres of the rear lot line will also protect any tree roots from the woodland on the slope. Given that development is 7.5m from the stable top of bank there are no concerns regarding the slope stability of the slope along Haist Street.

Staff also recommend that the fencing requirement along the rear lot line with no gate (as recommended in the Environmental Impact Study) be included in the requested zoning by-law amendment. The educational brochure recommended by the Environmental Impact Study has been prepared and is being distributed to residents on Philmori Boulevard backing onto the natural heritage feature.



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In response to the questions and concerns raised at the public meeting, one of the applicants provided some additional information which has been attached to this report as Appendix A.

In summary, it is Planning staff's opinion that the requested zoning by-law amendment to permit a reduced rear yard setback is appropriate and there will be minimal impact on adjacent properties and on the existing stormwater management system servicing the individual lots and the subdivision as there is capacity and appropriate redundancies in place in the system. In addition, it is Planning staff's opinion that the requested zoning by-law amendment is consistent with Provincial policy and plans, conforms to the Regional and Town Official Plans and represents good planning and therefore, should be approved noting that:

- The property owners must sign a written undertaking stating that they will hire a drainage engineer to undertake an inspection to ensure infiltration capacities have not been impacted by construction activities and submit the inspection report to the Town for review.
- The zoning by-law amendment will include the requirement for fencing with no gate along the rear lot line.
- The educational brochure recommended by the Environmental Impact Study is being distributed to residents on Philmori Boulevard with properties abutting the woodland feature.

### **Attachments**

Appendix A Email from Mark Stukel

### **Alternatives:**

Council could choose not to approve the application for zoning by-law amendment.

Council could choose to approve the requested zoning by-law amendment with modifications.

### **Prepared and Recommended by:**

Shannon Larocque, MCIP, RPP  
Senior Planner



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

**Reviewed and Submitted by:**

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Chief Administrative Officer