



**Community Planning and Development Department
Committee of Adjustment**

Monday, May 01, 2023

Minor Variance Application: A10-2023P

Municipal Address: 2761 Maple Street

Legal Description: Part of Lot 15, Concession 1; Part 22, Plan 59R-6462

Roll number:

Nature and Extent of Relief/ Permission Applied for:

The subject land is located on the east side of Maple Street, south of Twenty Road, legally described above, and known locally as 2761 Maple Street in the Town of Pelham.

The subject land is zoned Specialty Agriculture (SA) and Environmental Protection One (EP-1) in accordance with Town of Pelham Zoning By-law 4481(2022). Application is made to construct a single detached dwelling with an attached garage, and seeks for relief from:

- a. **Section 5.2.3 "Minimum Interior Side Yard"** – to permit a southerly interior side yard setback of 3.0m whereas the bylaw requires 8.0m.

Applicable Planning Policies:

Planning Act, R.S.O. 1990, c.P.13

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 (the "Four Tests"). A discussion of the four tests is included below.

Provincial Policy Statement (PPS) (2020)

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’ and more specifically within a Specialty Crop 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 states that healthy, viable *rural areas* should be supported by, among other things, promoting regeneration, promoting diversification of the economic base in *prime agricultural areas*, in accordance with policy 2.3 and conserving biodiversity.

The proposed minor variance will permit the development of a single detached dwelling and attached garage on an existing lot of record and is in keeping with the policies of the PPS.

Greenbelt Plan, 2017

The Greenbelt Plan, together with the Growth Plan builds on the Provincial Policy Statement to establish a land use planning framework for the Greater Golden Horseshoe. The subject lands are designated as a ‘Protected Countryside’ according to Schedule 1 of the Greenbelt Plan.

Policy 4.5 2 permits single detached dwellings on existing lots of record, provided they were zoned for such as of the date the Greenbelt Plan came into force.

The proposed single detached dwelling and attached garage are consistent with the policies of the Growth Plan (see below) and provides for limited residential infill development on private services.

Growth Plan for the Greater Golden Horseshoe (2019)

This Plan informs decision-making regarding growth management and environmental protection in the Greater Golden Horseshoe (GGH). All decisions made after May 16, 2019, that affect a planning matter will conform with this Growth Plan, subject to any legislative or regulatory provisions providing otherwise. The policies of this Plan take precedence over the PPS to the extent of any conflict.

The subject lands are located within a ‘Prime Agricultural Area’ according to the Growth Plan.

Policy 4.2.2.3 a) states that (among other things), within the *Natural Heritage System* new development or site alteration will demonstrate that there are no negative impacts on key natural heritage features, key hydrologic features or their

functions.

Development is defined as the creation of a new lot, a change in land use, or the construction of buildings requiring approval under the *Planning Act*.

The proposed zoning relief would permit the creation of new single detached dwelling and attached garage on an existing lot of record and is in keeping with the policies of the Growth Plan.

Region of Niagara Official Plan

The NOP designates the lands as within the Specialty Crop Area and a portion of the parcel is identified as Hydrologically Sensitive Area containing a Highly Vulnerable Aquifer (HVA), which is defined as a key hydrologic area. Policy 3.1.10 of the NOP does not permit development or site alteration unless it can demonstrate that it will not have a negative impact on the quantity or quality of water, hydrologic function, interaction and linkage between key hydrologic areas, natural hydrologic characteristics of a watercourse, natural drainage systems and flooding or erosion. The Niagara Peninsula Conservation Authority buffer provided in the concept plan appears to be relatively consistent with the coverage of this key hydrologic area, however a portion of the proposed septic system intercepts with the HVA.

Schedule K of the NOP identifies the subject lands as being in an Area of Archaeological Potential. The Applicant has provided a Stage 1 and 2 Archaeological Assessment Report which concluded that there were no archaeological resources identified on the property and that no further assessment was required.

Finally, the subject property is adjacent to portions of the Region's Core Natural Heritage System (CNHS), consisting of Type 1 (Critical) Fish Habitat. Provincial and Regional policies require the completion of an Environmental Impact Study (EIS) to assess potential impacts that may result from the proposed development. Environmental Planning Staff have visited the property and determined that due to the scope, nature, and location of the proposed development, specifically the distance of the development footprint to the adjacent feature, Staff were supportive of waiving the EIS requirement in favour of a Landscape Plan in this instance.

Town Staff is satisfied that the proposed development is in keeping with the purpose and intent of the Region of Niagara Official Plan.

Town of 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 natural heritage features.

The local Official Plan designates the subject land as 'Specialty Agricultural.' Section B2.2.2 outlines the permitted uses and intentions of this designation, which are

supportive of the development of low-density residential uses as part of the agricultural community.

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.

Although the *Planning Act*, and Provincial planning case law does not recognize the demonstration of 'need' or 'hardship' as a *fifth test* of a minor variance, the local Official Plan raises this matter.

Town Planning staff are of the opinion the proposed minor variance conforms to the local Official Plan as it helps enable appropriate development within the speciality agricultural area. The site has not been used for agricultural purposes for some time and is surrounded by other low-density development. Staff are satisfied that the proposal is in keeping with the general intent of the Official Plan.

Town of Pelham Zoning By-law No. 4481(2022), as amended

The subject lands are zoned Speciality Agriculture (SA) and Environmental Protection 1 (EP-1) in accordance with Pelham Zoning By-law 4481(2022), as amended.

The Committee of Adjustment, in accordance with 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	Test Response Explanation
The variance is minor in nature.	<p>Yes, the variance is minor in nature. There is no precise definition or mathematical equation as to what constitutes minor. "Minor" is a relative term to be interpreted in the based on the individual circumstance of each application and lends itself to the degree of impact. The variance requests a reduction to 3.0 metres from the required 8.0 metres.</p> <p>Given the orientation, size of the site, and location of natural heritage features, the reduced side yard setback has been requested to permit the construction of a single detached dwelling and attached garage outside of the NPCA buffer area. The site maintains a generous amenity area and side yard separation between the abutting property. It is the opinion of staff that the impact of reducing the side yard setback to 3.0m would be minimal and the variance is considered minor in nature.</p>

The variance is desirable for the development or use of the land.	<p>Yes. The requested variance is considered to be desirable for the appropriate development or use of the land. The requested variance is not anticipated to have a significant negative impact on the streetscape or adjacent properties. The application proposes a built form that is similar in character to the surrounding properties and utilizes the developable area identified ensuring the natural heritage features on the site remain protected.</p> <p>As such, staff are of the opinion that the variance is desirable for the development or use of the land.</p>
The variance maintains the general intent and purpose of the Zoning By-law.	<p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the interior side yard setback is to ensure separation distance between abutting residential uses and to ensure there remains adequate amenity area for the lot in question. The property will maintain a generous side yard amenity space.</p> <p>As such, staff are of the opinion the maintain maintains the intent and purpose of the Zoning By-law.</p>
The variance maintains the general intent and purpose of the Official Plan.	<p>Yes, the variance maintains the general intent and purpose of the Official Plan. Staff are of the opinion that the requested variance is not considered to have significant impacts within the context of the Official Plan. The Speciality Agriculture designation is supportive of the development of low-density residential uses as part of the agricultural community. The reduction in the side yard setback will permit the development to occur outside of any natural heritage features on the site.</p> <p>As such, staff are of the opinion the proposed variance maintains the general intent and purpose of the Official Plan.</p>

Agency and Public Comments:

On April 5, 2023, a revised 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.

This revised notice recognizes the April 3, 2023, decision of the Ontario Land Tribunal which ordered that the new Town of Pelham Comprehensive Zoning By-law is now in full force and effect save and except as it applies to site specific lands identified on Appendix 1 of the decision and is deemed to have come into force on the day the ZBL was passed, namely August 30, 2022.

To date, the following comments have been received:

- Building Division
 - A building permit will be required for the proposed single detached dwelling and attached garage
- Public Works Department
 - The applicant will need to obtain a Driveway Entrance and Culvert Permit from the Public Works Department for the construction of all new or modification of existing driveways or entrances. Installation and/or modification of all entrances shall be completed in accordance with Town Standards; and
 - 2755 Maple Street cannot use the driveway of 2761 Maple Street for access
- Region of Niagara
 - No objections to the proposed variance as it is consistent with the PPS and conforms to Provincial and Regional Plans; and
 - Regional Staff will need a copy of the Ministry of Citizenship and Multiculturalism (MCM) acknowledgement letter advising of the entry of the archaeological assessment report in the Provincial Registry prior to the issuance of a Building Permit
- Niagara Peninsula Conservation Authority
 - No objections to the proposed variance

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

Planning Staff Comments:

Based on the analysis given in above sections, staff is of the opinion the proposal:

- makes efficient use of the land;
- will not result in overbuilding of the property;
- will not alter the view, sightlines or personal enjoyment of the subject property or any neighbouring properties; and,
- should not negatively impact the surrounding neighbourhood with regards to land use incompatibility, traffic, privacy and storm water runoff.

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.

Planning Staff Recommendation:

Planning staff recommend that minor variance file A10/2023P **be approved** subject to the following condition(s):

THAT the applicant

- Apply for and receive a building permit for the construction of the single detached dwelling and attached garage.
- Obtain a Driveway Entrance and Culvert Permit from the Public Works Department for the construction of all new or modification of existing driveways or entrances.
- Submit an acknowledgement letter advising of the entry of the archaeological assessment report in the Provincial Registry from the Ministry of Citizenship and Multiculturalism (MCM) to the satisfaction of the Region of Niagara.

Prepared and Submitted by:

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Policy Planner

Recommended by:

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