



Community Planning and Development Department
Committee of Adjustment
Monday, April 03, 2023

Consent Application: B5/2023P

Municipal Address: 26 Chestnut Street

Legal Description: Lot 17 on Plan 716

Roll number: 2732 020 003 04900

Location of Lands and Purpose of Application:

The subject parcel, shown as Part 1 on the attached sketch, has a frontage of 18.57m on the south side of Hurricane Road, lying west of Chestnut Street, being Lot 17 on Plan 716 in the Town of Pelham. The parcel is approximately 783 m² in area and has 40.6 metres of frontage on Hurricane Road and 20.3 metres of frontage on Chestnut Street.

Application is made for consent to partial discharge of mortgage and consent to convey 352 square metres of land (Part 1) for future construction of a single detached dwelling. Part 2 is to be retained for continued residential use of the dwelling known municipally as 26 Chestnut Street.

This application is being considered concurrently with Minor Variance Files A6/2023P and A7/2023P.

Applicable Planning Policies:

Planning Act (Consolidated April 2022)

Section 51(24) of the *Planning Act* states that when considering the division of land, regard shall be had to the health, safety, convenience, accessibility, and welfare of the present and future inhabitants of the municipality and among other matters, including:

- a) The development's effect on provincial matters of interest;
 - See PSS and Growth Plan analysis in sections below.
- b) Whether the proposed subdivision is premature or in the public interest;

- The application is not considered premature and is able to uphold the public interest as it is within the Urban Area Boundary where development is to be directed and is seen as an appropriate form of gentle intensification. Note that public interest is a broad term and is reflected by approved policy and is distinct from the public's personal interest on a matter.
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivisions, if any;
- See Official Plan discussion below.
- d) The suitability of the land for such purposes;
- The lands and surrounding neighbourhood are predominately low density residential dwellings. The proposed consent would facilitate the construction of an additional single detached dwelling on the proposed lot and is suitable for such use.
- f) The dimensions and shapes of the proposed lots;
- The dimension and shape of the proposed lot will be able to comfortably site a new single detached dwelling and an accessory building. The dimension and shape of the retained lot is also suitable to accommodate the existing dwelling and proposed relocated shed. It is noted minor variances are required.
- h) Conservation of natural resources and flood control;
- No natural resources or flood concerns have been identified. A lot grading and drainage plan will be recommended as a condition of approval.
- i) The adequacy of utilities and municipal services;
- The retained parcel is connected to municipal infrastructure and has access to the full range of public services. Utilities and municipal services are available to service the severed parcel and it will be required to connect to municipal services.
- j) The adequacy of school sites;
- Available nearby. School Boards did not comment on application.

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.

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 lands are in a “Settlement Area”, the Fonthill Urban Settlement Area, according to the PPS. Policy 1.1.3.1 states that settlement areas shall be the focus of growth and development.

Policy 1.1.3.3 states municipalities shall identify appropriate locations and promote opportunities for intensifications where this can be accommodated considering existing building stock and the availability of suitable existing infrastructure and public service facilities.

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

Infill development is an acceptable form of *intensification* so long as new development is compatible in nature, is compact, and avoids adverse impacts to provincial interest, public health, safety, and the quality of the human environment. Planning staff are of the opinion the proposed consent is consistent with the PPS and promotes appropriate development standards that help facilitate compact form and *intensification*.

Planning staff are of the opinion the requested application for consent is consistent with the PPS.

Greenbelt Plan (2017)

The lands are located outside of the Greenbelt Plan and thus the policies of the Greenbelt Plan do not apply.

Growth Plan for the Greater Golden Horseshoe (2020)

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 to this Growth Plan, subject to any legislative or regulatory provisions providing otherwise. The policies of this Plan take precedence over the PPS to the extent of any conflict.

The Growth Plan contains various guiding principles which are intended to guide decisions of how land is developed. The guiding principles include building compact, vibrant, and complete communities, managing and encouraging development in appropriate locations, and optimizing the use of existing infrastructure. The subject lands are designated 'Delineated Built-Up Area' according to the Growth Plan.

Section 2.2.1 of the Growth Plan directs growth to settlement areas that have a delineated built boundary, have existing municipal services, and can support the achievement of complete communities. The Growth Plan states municipalities will support the achievement of complete communities by planning to accommodate forecasted growth, planning to achievement the minimum intensification and density targets of the Plan, considering the range and mix of housing options and densities of existing housing stock, and planning diversify overall housing stock.

The additional residential lot will help the Town to meet or exceed its *delineated built boundary* intensification targets. The proposed lot will help contribute towards the municipal property tax base which helps financially support the maintenance of linear infrastructure and *public service facilities*. The existing water and sanitary sewer mains already extend along the frontage of the subject lands but would be better utilized with additional building connections.

Planning staff are of the opinion the proposed application for consent conforms with the Growth Plan.

Region of Niagara Official Plan

The Region of Niagara adopted a new Official Plan on June 23, 2022. The Region of Niagara Official Plan provides the policy guidance for future development across the Region.

The lands continue to be designated as Built-Up Area in the new Official Plan, however the intensification rates have changed from and the policy 2.2.2.5

now requires that across the Region 60% of all residential units occurring annually are to be in the Built-Up Areas and in Pelham, this translates into an annual intensification rate of 25% of new residential units are to be within the Built-Up Area.

The lands are designated as Built-Up Area in the new Official Plan. Staff are of the opinion that the proposed consent conforms with the Regional Official Plan.

Town of Pelham Official Plan

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 'Urban Living Area/Built Boundary' on Schedule 'A1.'

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage intensification and redevelopment within the *Urban Area* specifically in proximity to the Downtown.

Section A2.3.2 Urban Character sets out the objectives for the urban character of the Town. Objectives include to respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood, and 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. The proposal is supported by the Town Official Plan policies that encourage infill within existing built-up areas. It is noted compatibility does not necessarily mean the same as, rather the ability to coexist together.

The character of this neighbourhood is an eclectic mix of housing and density including single detached and townhouse units reflecting a variety of housing styles from traditional to modern and constructed over a variety of era's of development. For example, the existing house on Part 2 was constructed in 1911 and the garage in 1986, the townhouses at 1599 Pelham Street across the road from the subject lands were constructed in the late 1970's and recently new single detached dwellings on the north side of Hurricane Road were constructed this year. The dwellings on adjacent properties were also constructed between 1910-1912. The neighbourhood is considered to be a stable established neighbourhood that has been experiencing some recent intensification with the approval of four new residential lots at 3 Hurricane Road, however it is reflective of a neighbourhood that has experienced change

at different times and has evolved over time such that changes have been successfully absorbed into the fabric of the neighbourhood. The proposed lot creation would provide for residential development that reflects of the density and contributes to the eclectic character of the area.

Policy A2.5.2 Infrastructure – stated objectives of this Plan include maintaining existing infrastructure in a manner that is cost effective and contributes to the quality of life of citizens.

Policy B1.1.3 states that in considering residential intensification proposals, the following criteria are applicable:

- a) Schedules A1 and A2 to this Plan identify a number of areas that may be good candidates for residential intensification. This does not preclude consideration for other sites in the Urban Living Area designation provided these sites abut arterial or collector roads or are located on a local road on a site that is no further than 100 metres from an intersection with an arterial or collector road;
 - The subject lands abut Hurricane Road which is identified as a Collector Road. Further, the subject lands are situated approximately 50 metres east of Pelham Street, an Arterial Road.
- b) Intensification and redevelopment proposals are encouraged to achieve a unit density and housing type that is in keeping with the character of the density of the neighbourhood where it is proposed. Within the identified intensification areas identified on Schedules A1 and A2 the implementing Zoning By-law may establish minimum and maximum densities of between 10 and 25 units per hectare;
 - The surrounding neighbourhood is characterized by low to medium density residential dwellings, comprised of one to two storey single detached dwellings and townhouse dwellings. The proposed consent will facilitate the development of an additional single detached dwelling which is in keeping with the character of the surrounding neighbourhood. The existing R2 zone permits a maximum net density of 28 u/h assuming the default minimum lot area of 360 m². The proposed density is approximately 26 units per hectare, which, in the opinion of staff meets the intent of policy B1.1.3. It is noted that the subject lands are not within an intensification area identified on Schedules A1 and A2 and therefore the density provisions of 10-25 units/hectare do not apply in this instance.

- c) Residential intensification and redevelopment proposals located on lands which abut local roads shall maintain the unit density and unit type of the surrounding neighbourhood, but may through a Zoning By-law Amendment, increase the unit density by up to 25% of the existing gross density of lands located within 300 metres of the site, provided the resultant development will be characterized by quality design and landscaping, suitable building setbacks, and further that parking areas and traffic movements will not negatively impact the surrounding neighbourhood from the perspectives of safety or neighbourhood character;
- Hurricane Road where the proposed lot abuts is not a local Road. Not applicable.
- d) Notwithstanding items (b) and (c), the creation of new freehold or vacant condominium infill lots through the consent process, for ground-oriented detached dwellings, may be permitted provided the proposed lot and unit type is similar to and compatible with the established character of the street or neighbourhood where it is proposed. The Zoning By-law shall establish minimum lot area and frontages and minimum and/or maximum densities which are considered appropriate within the Urban Living Area designation;
- The proposed use is similar to the surrounding neighbourhood, being mostly comprised of single detached dwellings and medium density residential uses. The existing dwelling on Chestnut Street is to be retained. The severed lands are proposed to contain a single detached dwelling fronting Hurricane Road and an accessory building, consistent with the other residential uses and permissions allowed in the surrounding area.
- e) The creation of accessory apartments and in-law suites within residential neighbourhoods is considered to be an appropriate form of residential intensification. The establishment of accessory apartments shall occur in accordance with Policy B1.1.4 and Council may reduce the application fee for such amendments under the Town's Tariff of Fees By-law;
- Second dwelling units are permitted in single detached dwellings and accessory buildings subject to meeting the zoning by-law requirements for such uses. The proposed application is for a new single detached dwelling.
- f) The provision of affordable housing in intensification areas will be encouraged; and,

- The new lot will allow for one additional single detached dwelling to be constructed on it. The Town does have policies that permit second dwelling units in single detached dwellings and accessory buildings that if employed would help foster housing affordability.
- g) The Town will consider innovations for responsive processing of applications and amendments in the future including tools such as Conditional Zoning Amendments implementing a Development Permit system and the streamlining of processing concurrent development applications.
- Not applicable.

Policy D5.2.1 states that for any consent application, the Committee of Adjustment shall be satisfied that (among other things) the proposed lot:

- a) Fronts on and will be directly accessed by a public road that is maintained on a year round basis;
- Access will be provided from Chestnut Street for the retained lot and Hurricane Road for the proposed lot, which are both public roads.
- b) Will not cause a traffic hazard as a result of its location on a curve or a hill;
- No traffic hazards are anticipated from the proposed consent.
- c) Is in keeping with the intent of relevant provisions and performance standards of the Zoning By-law;
- The proposed consent for residential use is in keeping with the intent of the Zoning By-law. It is noted that minor variances are being requested, please refer to concurrent minor variance reports.
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
- Yes, municipal services exist on Chestnut Street.
- e) Will not have a negative impact on the drainage patterns in the area;

- A Lot Grading Plan will be required at the Building Permit stage demonstrating that drainage will be maintained on-site and not negatively impact on adjacent properties.
- f) Will not affect the development ability of the remainder of the lands, if they are designated for development by this Plan;
- N/A. The retained lot will be retained for existing residential use.
- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
- No environmentally sensitive features are on the property.
- h) Conforms with Regional lot creation policy as articulated in the Regional Policy Plan; and,
- Yes.
- i) Complies with the appropriate provincial Minimum Distance Separation Formulae, where applicable.
- N/A.

The Town's Cultural Heritage Master Plan identifies the subject lands as having composite potential for deeply buried archaeological resources. The applicant must conduct an Archaeological Assessment prepared by a licensed archaeologist and receive clearance letter (s) from the Ministry of Heritage, Sport, Tourism & Culture.

Town Planning staff are of the opinion the proposed severance conforms to the local Official Plan as it helps enable intensification within an existing neighbourhood and does not conflict with any policies subject to the satisfaction of the conditions of approval.

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

The subject lands are zoned Residential 2 (R2) in accordance with Zoning By-law No. 4481 (2022). Permitted uses include: one single detached dwelling, semi-detached, duplex dwelling, second dwelling units, home occupations, and uses, buildings, and structures accessory thereto.

Minor variance applications (A6/2023P and A7/2023P) are being heard in conjunction with the proposed severance to address deficiencies from the Zoning By-law. Please refer to minor variance reports for a fulsome analysis.

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 4481 (2022) 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
 - No comments.
- Public Works Department
 - No side-yard walkways that impede side-yard swales shall be permitted.
 - Each lot is to be individually serviced with water and sanitary sewer lateral in accordance with Town of Pelham Engineering Standards. Installation of any missing services will require a Temporary Works Permit obtained through the Public Works Department. These works are to be completed prior to consent and the applicant shall bear all costs associated with these works. Locate cards are to be provided to the Town once works are complete.
 - Town staff will require a comprehensive lot grading and drainage plan demonstrating that storm water runoff will not negatively impact nor rely upon neighboring properties, to the satisfaction of the Director of Public Works or his designate.
 - That the Applicant confirm no existing utilities cross the proposed new property line. Should any services cross this new property line the applicant shall be responsible for the costs to relocate the utilities.

Five (5) public comments were received at the time of writing this report. The comments are included in full on the public agenda and summarized below.

David and Mary Jo Drago

- *Opposes the consent and variances; Concerns relating to negative impacts of reduced lot area, setbacks, coverage; Concerned with negative impacts on the character of the neighbourhood; Concerns with lack of green space and impacts for stormwater runoff/drainage; Concerns related to a lack of amenity area and loss of mature trees and no egress to an open yard; Suggested second dwelling unit would be more appropriate for the site; Concerns with compatibility related to an overbuild of the site; Concerns with the scale of the proposed dwelling; Concerns with privacy and overlook on neighbouring properties; Concerns the number of variances does not respect the intent of the Zoning By-law; Concerns related to scale and density; Concerns related to the intensification of the surrounding area; Concerns the proposed variances associated with the consent application do not meet the four tests of the Planning Act; Concerns the retained lot will not maintain a carport or private garage; Concerns with snow storage and potential impacts on neighbouring properties and integrity of existing cedars and fence; Concerns with light and noise impacts; Concerns with the size, scale, and density of the proposal; Concerns related to impacts on the heritage/character of the surrounding neighbourhood; Concerns with precedence setting;*

Blue Mackay

- *Opposes the consent and variances; Concerns with respect to the character and compatibility of the proposal with the surrounding neighbourhood; Concerns the proposed variances associated with the consent are not minor in nature;*

Cheryl Lapalme

- *Opposes the consent and variances; Concerns with the removal of trees; Concerns with traffic impacts on Hurricane Road; concerns the number of variances requested is not minor; concerns respecting the character and stability of the existing neighbourhood; Concerns related to parking on public road; Concerns with drainage along Hurricane Road;*

Robert & Victoria McCauley

- *Opposes the consent and variances; Concerns lot area is not large enough to support dwelling; Concerns with fire and storm drainage; Concerns with parking and traffic impacts on local streets;*

Gary Birch

- *Opposes the consent and variances; Concerns related to reduction of green space and loss of private trees; concerns related to drainage along*

Hurricane Road; Concerns with impacts of construction; Concerns with potential removal of hydro pole; Concerns with precedence setting;

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 January 19, 2023, to discuss the subject application.

Planning staff have reviewed the *Planning Justification Brief* submitted by Better Neighbourhoods Development Consultants dated February 27, 2023, as well as reviewed all agency and public correspondence submitted to date and offer the following for the Committee's consideration:

When considering any Planning Act application, a planner must always consider the "public interest" and ensure that their professional recommendations take this concept into account. In very general terms the public interest reflects policy and the common well-being of a population but often is confused with public opinion or personal interests of the public. Public opinion is what various stakeholders think and say about an issue at a point in time; public interest is an attempt to identify and address the underlying concerns today and into the future, and to balance them against one another, to reach a recommendation. For any project, there is often more than one public interest, and it is the responsibility of the planner to identify and balance these multiple interests to meet the identified needs reflected in public policy.

The application for consent is being made to convey 352m² of land for future construction of a single detached dwelling (Part 1) and to retain the existing single detached dwelling (Part 2) at 26 Chestnut Street for continued residential use. As noted earlier in this report, the Province and the Region of Niagara through their new Official Plan have set density targets for the Town of 25% annually. This is to be achieved through a mix of new development on designated lands and through infill and intensification opportunities within the existing built area.

When reviewing the consent application and the concurrent minor variance applications Staff note that there is no precise definition or mathematical equation as to what constitutes minor. "Minor" is a relative term to be interpreted and based on the individual circumstance of each application and lends itself to the degree of impact. Simply, what may be considered acceptable on one site, may not be appropriate on a different site based on any number of factors and individual circumstances. There is no detailed formula or simple answer for desirability when it comes to the use of the land. Further every *Planning Act* application is analyzed on a case-by-case basis and

on its own merit. Meaning that any decision made by the Committee does not set a precedence for future applications.

The proposal is supported by the Town Official Plan policies that encourage infill within existing built-up areas. This supports the long-term public interest by minimizing the impact of sprawl on agricultural lands while supporting re-investment in existing communities to maintain their stability and vibrancy, providing for an efficient use of infrastructure and land, and contributing to the development of compact communities that foster walkability and a sense of place. The proposal, if approved would permit the creation of an additional residential lot in a neighbourhood comprised of primarily single detached and townhouse dwelling units. Staff do not anticipate any issues in terms of land use compatibility with the surrounding residential uses. Adequate parking and private amenity areas are provided for both Parts 1 and 2 and Staff are of the opinion that the proposal represents a good example of gentle intensification within the existing neighbourhood.

With respect to concerns related to drainage, a lot grading and drainage plan will be required as part of the building permit process for the proposed dwelling and accessory structure which will ensure that the stormwater from the addition be managed on site. A condition is being recommended that requires the proponent to prepare a grading and drainage plan to the satisfaction of the Director of Public Works that demonstrates that appropriate on-site drainage can occur without adversely impacting adjacent properties.

It is not anticipated the proposed dwelling and accessory structure will result in noise or light pollution impacts over and above what is normal for a residential use which is not an adverse impact.

With respect to concerns that visitors may park along Hurricane Road and Chestnut Street, it is important to note that on-street parking is permitted on the Town road allowances unless signed otherwise or during a snow event. The severed and retained lots maintain private on-site parking and comply with the zoning requirements of 2 parking spaces for a single detached dwelling.

Some members of the public were critical of the modern building design and felt it does not fit in with the surrounding community. The surrounding neighbourhood includes a mix of single detached dwellings, semi-detached dwellings, and a multi-unit residential development. There is no consistent architectural style, rather there is an eclectic mix of architectural styles and influences representing various eras of development. It is noted compatibility does not necessarily mean the same as, rather the ability to coexist. The

proposed dwelling is 2 storeys, consistent with existing dwelling and adjacent dwellings.

Planning Staff understand that the surrounding neighbours are generally unsupportive of the consent application and concurrent minor variance applications. Staff is sympathetic to the fact that change on any level can bring a degree of discomfort and anxiety and recognize and acknowledge the comments and concerns raised by residents. However, Staff must make recommendations based on the planning merits of the application and balance it against the appropriate Provincial, Regional and Local planning policies. While the application is site specific, Staff must consider the implications through a broader, Town-wide lens and the broader public interest.

Based on the analysis in the sections above, Planning staff are of the opinion that the proposed consent is consistent with the PPS, and confirms to Provincial, Regional and local Plans. The resulting parcel will comply with applicable Zoning By-law regulations upon the granting of the concurrent minor variance applications and is not anticipated to negatively impact the surrounding neighbourhood with respect to traffic, privacy, and stormwater management.

Planning Staff Recommendation:

Planning staff recommend that consent file B5/2023P **be approved** subject to the following condition(s):

THAT the applicant:

- 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.
- That the applicant confirm that no existing utilities cross the proposed lot line. Should any services cross the lot line, the applicant shall be responsible for costs associated with their relocation and/or removal.
- 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.
- 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.

- Provide the Secretary-Treasurer with a registerable 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.
- Provide the final certification fee of \$423, 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.

Prepared and Submitted by:

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Recommended by:

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