

David and Mary Jo Drago
[REDACTED] Pelham St. N
[REDACTED]

Committee of Adjustment
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON, L0S 1E3

20 March 2023

Dear Secretary Treasurer,

Please accept this letter to register our objections to the application for consent under the file number B5/2023P concerning the subject parcel being Lot 17 on Plan 716 on the subject lands known municipally as 26 Chestnut St. in the Town of Pelham, and to register our objections to the application for minor variances under the file number A6/2023P and A7/2023P.

We are the owners of the dwelling and land municipally known as [REDACTED] Pelham St. N., situated directly west of the subject property, 26 Chestnut St. Our house was constructed in 1910 and has been our residence, our first and only home, since 1990.

This letter will detail our objections in two parts: Part A: Objections to the Application for Consent Under File Number B5/2023P and Part B: Objections to Application for Minor Variances Under File Number A6/2023P and File Number A7/2023P.

Our objections in each part will specifically address the four Statutory Tests as directed in Subsection 45(1) of the Planning Act which must be considered by The Town of Pelham Committee of Adjustment, and satisfied by the applicant, before an application for zoning variance can succeed.

Sincerely yours,

David and Mary Jo Drago

PART A: OPPOSITION TO APPLICATION FOR CONSENT

Is it minor in nature?

It is concluded that the application for consent involves variances of major nature that have a negative impact on the existing dwelling and lot at 26 Chestnut St. based on the following:

- The lot frontage, lot, yard setbacks, and lot coverage zoning requests are major and **diminish** the existing charm of this area. An examination of the neighbourhood plan shows uniform lots and yard spaces. The proposed lot and development clearly have **negative impacts** on the character and uniformity of this historic neighbourhood plan.



- The proposed lot and the existing development at 26 Chestnut St. demand numerous **reductions** and **increased maximums** to be considered viable, and **negatively impact** the integrity of the Town of Pelham by-laws.
- The proposed lot and dwelling demands **reduction** of adequate side yard setbacks and provides only one open grass space to manage stormwater runoff **negatively impacting** neighbouring properties, particularly the rear yard of 1585 Pelham St., situated directly west of the proposed development.

The development **negatively impacts** the owner's absolute, exclusive and undisturbed title to the limits of their lot lines.

- Reductions and reconfigurations to the lot and dwelling known as 26 Chestnut will provide **inadequate** rear yard space of merely 1.2 meters. There will be no egress from the dwelling to the rear yard space or the side yard space on the north side of the property.
- The proposed elimination of back yard space at 26 Chestnut St. requires the demolition of a magnificent shade tree. The interior side yard reductions of the proposed development risk destroying privacy cedars at the rear of 1585 Pelham St.

The *Planning Justification Brief* prepared for the applicant, demonstrates inherent contradictions in its presentation of the proposed lot and the reductions to 26 Chestnut St. The Planning Justification Brief speaks of the owner “*looking to redevelop the **under-utilized** rear yard*”(*Planning Justification Brief*, 4) of 26 Chestnut St. by eliminating its rear yard completely, then boasts of the desirability of such space in the justification for the new development by claiming that “*the reduced front yard setback will help preserve the more **desirable** rear yard.*” (*Planning Justification Brief*, 7)

It must be noted that the dwelling at 26 Chestnut St. is currently a **rental property**. The proposed reconfigurations to the unit and its lot would certainly test the tolerance of an owner-resident. No back yard amenities, no egress to open yard spaces.

It is concluded that the application for consent and the proposal for 2 Hurricane Rd are too large and that the application should be governed by the provisions that apply to Second Dwelling Units in the Town of Pelham based on the following:

- The application for consent seeks to **double** the permitted maximum lot coverage for accessory from the acceptable 10% as provided in the By-law.
- The site plan submitted with the application for consent depicts a development that is too large in size and scale for the proposed lot. The site plan shows that 45.5 percent of the lot will be utilized by structures – a dwelling unit and an accessory garage.
- The over-scale of the dwelling and lot plan are further complicated by the reduction of required lot area by 8 square meters.
- The proposed dwelling unit is to be 90 square meters and a maximum allowable height of 10.5 meters. The proposed building is out of scale for the lot size. The height of the proposed dwelling and its vertically oriented windows intrude upon the privacy of rear yard and amenity spaces at 1585 Pelham St. to the west and the south facing condominium properties to the north.
- The proposed redevelopment of 2 Chestnut St. completely eliminates its rear yard.
- The large-scale reductions at 2 Chestnut St. requires the removal of a mature shade tree which could otherwise be preserved.
- The application for consent seeks to reduce the front yard set back by 50 percent.

Does it maintain the general intent & purpose of the Zoning By-law?

It is concluded that the application for consent the number of variances requested do not maintain the general intent and purpose of the Zoning By-law based on the following:

- The number of variances requested demonstrate that the proposals for 2 Hurricane Rd. and 26 Chestnut St. can only be achieved by rewriting much of the Zoning By-law.
- The proposals for the proposed severance place 26 Chestnut St. in direct contravention of the Zoning By-laws.
- The proposals for side yard set backs intrude upon the property rights of the owners of 1585 Pelham St. Zoning By-laws are created to protect adjacent properties, not to threaten them.

- The scale and density of the proposed dwelling and its accessory unit seriously diminish the charm and historical nature of the existing neighbourhood. Too few open spaces create a dense, concrete landscape.

Does it maintain the general intent and purpose of the Town of Pelham Official Plan?

- The proposed development clearly perverts the Town of Pelham's interpretation of unutilized urban spaces. The writers of the Official Plan were not promoting eliminating rear yards throughout the urban neighbourhoods. The dwelling unit at 26 Chestnut St. is a rental unit. The rear yard is completely utilized by its tenants – featuring a shed, gazebo, propane fire place and sitting area. While the owner of 26 Chestnut St. utilizes a rear yard somewhere else, the tenants of 26 Chestnut St. fully utilize this private space.
- The proposed lot and dwelling unit are not in character with the existing neighbourhood. The elevation sketch does not conform with the visual nature of this area established in the early Twentieth Century.
- The proposed development does not comply with the Town of Pelham Intensification Plan. The *Official Plan Schedule A1* shows the lot to be outside of the intensification corridor.
- The neighbourhood plan shows an underutilized open space two properties directly south of the subject lands. Future development on this more appropriate space will satisfy the intensification needs in this urban area. Development at 26 Chestnut St. is **unnecessary. (see photo)**
- The proposed severance is not necessary to meet intensification goals in this neighbourhood. This immediate area has already experienced its limit of intensification with 4 new lots created at 3 Hurricane Rd., the creation of the Fonthill Yards, and new construction of semi-detached dwelling units at 1554 Pelham St. A more suitable, unused space currently exists on Chestnut St. and is likely to be developed in the future. The application for consent and its number of variances is not necessary.

PART B: OPPOSITION TO REQUEST FOR VARIANCE

Re: Section 6.16 (a) Parking Requirements

To permit 1 parking space absent of a private garage or carport whereas the by-law requires 1 parking space in a private garage or carport per dwelling unit

1. Is the variance minor?

The application for a variance of this magnitude calls into the question of whether or not this is a minor variance. Application for this variance directly contravenes *By-law 1136 Section 6.22 Reduction of Requirements* which states: “No person shall change the purpose for which any lot, building or structure is used or erect any new building or structure or addition to any existing building or structure **or sever any lands from any existing lot if the effect of such action is to cause the original, adjoining, remaining or new building, structure or lot to be in contravention of this Bylaw.**”

The application for consent places the existing structure, 26 Chestnut St., into contravention of an important existing By-law.

2. Would the granting of the variance result in a development that would be desirable for the appropriate development or use of the applicant’s land or building?

The site plan indicates a drastic reduction in the length of the driveway for the existing unit, 26 Chestnut St., leaving parking visible in the front/side portion of the unit with no carport or garage coverage. As by-laws are in place to prevent this type of planning, then it can be determined that the repercussions from this variance are **not desirable**.

The size of the structure and its accessory structures for the proposed lot call for drastic reductions to 26 Chestnut St. and is, therefore, not appropriate from a planning perspective.

3. Does the variance requested maintain the general intent and purpose of the zoning by-law?

Due to the lack of garage or carport, the variance requested implies a drastic **Reduction of Requirements**. It does not maintain the general intent and purpose of the zoning by-law 1136 Section 6.22. Clearly, by making the existing garage part of the proposed lot, the applicant is reducing the requirements of the existing lot, 26 Chestnut St., to meet the requirements for the proposed lot.

The application for this variance plays a dangerous “shell game” and is manipulating the general intent of the zoning by-law: if the applicant were to build an accessory structure (garage) at 26 Chestnut to satisfy the purpose of Section 6.16(a) of the by-law, the applicant would then require a variance of Section 6.1(d) Lot Coverage (Accessory Uses) for 26 Chestnut St., **in addition to** the variance sought for the proposed lot.

The application for this variance is manipulating the general intent of the zoning by-law. It is, in fact, insulting to the neighbours, where parking at 26 Chestnut was neatly concealed as per the by-law, but no longer will be if this variance is granted. The garage at 26 Chestnut St., by way of a zoning ruse will disappear.

As well, the application for this variance defies the purpose of this zoning by-law: all other new builds on existing lots, specifically 3 Hurricane Rd. and 1422 Pelham Street all have appropriate parking and garages. This begs the question “Why was this demanded of these applicants and not of this applicant?”

4. Does the variance requested maintain the general intent and purpose of the Official Plan (OP)?

The application for this variance seriously risks the integrity of the Town of Pelham Official Plan and its planning methods and guidelines. For the purpose of consistency, what is required of a new lot **must not minimize the requirements for an existing lot**; that is, what is required of a new lot must be consistently applied to all lots in the town. If a garage or carport is demanded by the zoning by-law for new builds on 3 Hurricane Rd. and 1440 Pelham St., then so must it be demanded for 26 Chestnut St. If this puts the unit at 26 Chestnut St. in jeopardy, **then it fails the test and the variance cannot be granted.**

The Town of Pelham's goals of density and intensification as set out in the Official Plan must not be achieved by a Reduction of Requirements as it risks reducing those requirements to nil and failing the Town's promise to "*respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood*" (Town of Pelham Official Plan A2.3.2) 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.*" (Town of Pelham Official Plan A2.3.2)

Re: **14.2(e) Minimum Interior Side Yard**

To permit a minimum interior side yard setback of 1.2m whereas the by-law requires a minimum interior side yard setback of 1.5m

1. Is the variance minor?

A variance of side yard set back directly impacts the property line between the proposed lot and the back of our property at 1585 Pelham St. N.

The proposed driveway would parallel the property line for approximately 15 meters, at a proposed distance of 1.2 meters from the fence and privacy cedar trees separating the properties and only 1 meter from the proposed dwelling unit.

This should be considered a **major variant** in that it allows for very little natural green space for drainage (water) and no area to pile snow for winter driveway clearing.

The proposed site plan indicates an area of approximately 40 square meters of driveway that would be shoveled and piled against the existing cedar trees and fence. With the proposed 1 meter between driveway and dwelling unit, it is unlikely that snow would be piled against the dwelling unit. This will greatly test the resiliency of the cedar trees and the integrity of the fence.

Both the fence and the cedar trees are integral to the privacy of the **much-utilized back yard space at 1585 Pelham St.** The owners of 1585 Pelham St. are not in a position to replace a fence, nor would it be possible to replace the mature cedar trees that offer necessary privacy, greenery, and light and noise reduction.

2. Would the granting of the variance result in a development that would be desirable for the appropriate development or use of the applicant's land or building?

While the applicant deems this variance to be desirable, the issue here is that this variance infringes upon the reasonable setback and risks damage to a privacy fence and mature cedar trees. What used to be a rear yard, is proposed to become a side yard dominated by a driveway.

The driveway running along the property line is **NOT** desirable for the reasons mentioned previously.

It cannot be considered desirable to develop a property that jeopardizes the structures and greenery of the adjacent property, particularly, when these are absolutely vital to the privacy and esthetics of this well-established and well-maintained property.

3. Does the variance requested maintain the general intent and purpose of the zoning by-law?

The intent and purpose of a zoning by-law is to prescribe the front, rear and side yard setbacks, building size, height and use. It speaks to matters such as spacing, privacy, density, light and air and gives the neighbourhood its built form and character.

The built form and character of 1585 Pelham St. relies on its greenery and private spaces. A variance of side yard set backs violates the intent of the existing by-law, as by its very nature was put in place to **protect adjacent properties** from such encroachments and risks to privacy and esthetics.

The pure scale of the proposed dwelling unit, its driveway and patio spaces are driving this motion to grant encroachment. Only a smaller, more reasonable construction would eliminate the need for a request for variance.

Ultimately, the size, scale and density of the proposal for a new lot and new build are raising issues and contradicting the general intents and purposes of zoning by-laws of the Town of Pelham. The application for this variance begs the question: Why does the proposed development have to be of such size, scale and density that it violates the intent and purpose of the zoning by-law and risks damage to structures and trees of a neighbouring property?

It is the burden of the applicant to ensure, beyond doubt that adjacent structures and properties will be preserved. To suggest, as has been in the applicant's Planning Justification Brief, that *"both the retained and severed lot still will maintain adequate rear and side yard landscaped amenity areas, spatial separation for privacy & building maintenance, and open space to manage stormwater runoff"* (Justification Brief 6), does not meet this burden necessary for granting this variance. The site plan shows **NO side yard** to the west of the proposed dwelling and seeks to accommodate its scale and density at the expense of the adjacent property at 1585 Pelham St.

4. Does the variance requested maintain the general intent and purpose of the Official Plan (OP)?

The Town of Pelham Official Plan specifically states: *The primary purpose of the Official Plan is to provide the basis for managing growth that will support and emphasize the Town's unique character, diversity, civic identity, rural lifestyle and heritage features and to do so in a way that has a positive impact on the quality of life and health for the citizens who live and work in Pelham. The Official Plan is the primary planning document that will direct the actions of the Town and shape growth and development and on this basis, this Plan establishes a vision for the future land use structure of the Town. (Town of Pelham Official Plan, A1 THE COMMUNITY VISION)*

It must be emphasized that the spirit of the Official Plan is to emphasize the town's *"heritage features and to do so in a way that has a positive impact on the quality of life...for the citizens who live...in Pelham."* The lots created in the area bordered by Broad St., Pelham St, Hurricane Rd and Chestnut St, are features of the original D'veverado Plan created before the turn of the 20th Century. The dwellings at 1585 Pelham St and 26 Chestnut St. date back to circa 1910. The reconfiguration of 26 Chestnut St. casts a negative on the historical features of what was once the Village of Fonthill.

Furthermore, the Official Plan seeks *"To respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood."* (Town of Pelham Official Plan A2.3.2). The reduction of side yard and back yard setbacks in development proposed at 26 Chestnut St. does not respect *"the character of existing development"* and can easily be deemed **incompatible** *"with the character of the surrounding neighbourhood."*

Re: Section 6.1 (d) Lot Coverage (Accessory Uses)

To permit a maximum of coverage of 20% of the lot area for all accessory buildings whereas the by-law allows a maximum lot coverage of 10% of the lot area for all accessory buildings.

1. Is the variance minor?

This variance is considered to be **major** in that it requests a **doubling** of the maximum coverage of the lot area for all accessory buildings.

2. Would the granting of the variance result in a development that would be desirable for the appropriate development or use of the applicant's land or building?

While the Town of Pelham planning report suggests that the retention of the existing garage on the proposed lot is desirable, the report does not make reference to the fact that with the retention of the existing garage and the size and scale of the proposed dwelling unit, **45.5 percent** of the proposed lot would be occupied by physical structures.

The site plan suggests that the remaining 44.6 percent of the lot space would be mostly driveway and hard surfaced patio areas. Very little open green space is retained as per the site plan. This cannot be deemed desirable or appropriate development from an environment and drainage perspective. The only greenspace left on the proposed lot is to the north of the proposed dwelling unit and the request 1.2 meter strips bordering the property.

Clearly, the size and scale of the proposed dwelling unit, the lack of open green space and the accessory building utilizing 19.2 percent of the proposed building lot pose real drainage concerns for the site itself and the neighbouring properties, **including the proposed 1.27 meter backyard** of 26 Chestnut St.

3. Does the variance requested maintain the general intent and purpose of the zoning by-law?

The density of the proposed lot and dwelling, where structures utilize nearly half of lot space, requires a **major variance** which **doubles** the maximum coverage for all accessory buildings. The granting of a major variance to an important By-law would set a concerning precedence, whereby current and future lot owners could seek application to dominate their properties with undesirable out buildings. If the Town of Pelham is to **double the maximums** set forth in this section of By-law 1136, what other maximums could be doubled as well.

4. Does the variance requested maintain the general intent and purpose of the Official Plan (OP)?

The Town of Pelham Official Plan has, as its goal, to “*respect the character of existing development and ensure that all applications for development are physically compatible with the character of the surrounding neighbourhood*” (Town of Pelham Official Plan A2.3.2) 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.*” (Town of Pelham Official Plan A2.3.2)

Physical compatibility is in question in this application. Here, the developer seeks to “reduce requirements” on the one hand, and to “double the maximums” on the other hand. At what point does one realize that the developer’s vision is **incompatible in scale and density** with respect to the proposed lot itself, and the character of existing development”?

Reducing requirements and doubling maximums risk the creation of landscapes that are “*physically incompatible*” with the character of surrounding neighbourhoods and “*destabilize the character*” of existing and well-established neighbourhoods” – namely, the neighbourhoods of the Old Village of Fonthill, established during the late Nineteenth and early Twentieth Century.