



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

Monday, May 01, 2023

Minor Variance Application: A6-2023P

Municipal Address: 26 Chestnut Street (Part 1 on Sketch)

Legal Description: Lot 17 on Plan 716

Roll number: 2732 020 003 04900

Nature and Extent of Relief/ Permission Applied for:

The subject land is located on the south side of Hurricane Road, lying west of Chestnut Street, being Lot 17 on Plan 716 in the Town of Pelham, known locally as 26 Chestnut Street (Part 1 on Sketch) in the Town of Pelham.

The subject land is zoned Residential 2 (R2) in accordance with Pelham Zoning By-law 4481(2022), as amended. Note that this application is being heard in conjunction with Consent File B5/2023P. The lands to be severed (Part 1) are proposed to be developed with a single detached dwelling and detached accessory building. Application is made for relief to rectify zoning deficiencies as a result of consent application B5/2023P, preserve the orientation of the existing detached accessory building and improve development efficiency. The application requests relief from the following sections:

- a) **Section 3.1(e) "Lot Coverage (Accessory Uses)"** – to permit a maximum lot 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; and
- b) **Section 6.2.2 "Minimum Lot Area"** – to permit a minimum lot area of 350m² whereas the by-law requires a minimum lot area of 360m²

The requested variances are intended to provide flexibility in the event the final survey confirms either provision to be marginally smaller than what is shown on the sketch.

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 (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 suitable development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

Section 3 of the Planning Act requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the Act. The PPS recognizes the diversity of Ontario and that local context is important. Policies are outcome-oriented, and some policies provide flexibility provided that provincial interests are upheld. PPS policies represent minimum standards.

The subject land is in a ‘Settlement Area’ according to the PPS. Policy 1.1.3.1 states that settlement areas shall be the focus of growth and development.

Policy 1.1.3.3 states municipalities shall identify appropriate locations and promote opportunities for intensifications where this can be accommodated taking into account 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 requested zoning relief is consistent with the PPS and promotes appropriate development standards that help facilitate compact form and *intensification*.

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)

The Growth 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 subject lands are located within the Delineated Built Boundary. 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.

Planning staff are of the opinion the proposed minor variances conform with the Growth 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 'Urban Living Area / Built Boundary.' Section B1.1.2 outlines the permitted uses and intentions of this designation, which are supportive of the development of lower density residential uses as part of a complete community.

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. The proposal is seen as an appropriate form of intensification in the Urban Area.

Policy A2.3.2 Urban Character – stated objectives of this Plan 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.
- To encourage the intensification and use of the lands within the downtown core of Fonthill and to make every effort to improve the economic health of the core by encouraging redevelopment and the broadest mix of compatible uses.
- To encourage the development of neighbourhoods which are compact, pedestrian friendly and provide a mix of housing types, community facilities, small-scale commercial centres and public open spaces.

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 variance would provide for residential development that reflects of the density and contributes to the eclectic character of the area.

Section B1.1 of the Official Plan provides the policy base of the Urban Living Area designation. Policy B1.1.1 recognizes the existing urban area of Fonthill and the role the Town will need to accommodate various forms of residential intensifications, where appropriate. 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.

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

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. Please refer to discussion in Four Tests section below.

Town Planning staff are of the opinion the proposed minor variances conform to the local Official Plan as the assist in enabling appropriate redevelopment and *intensification* within an existing residential neighbourhood and do not conflict with any policies subject to demonstration of appropriate urban design and fulfillment of the proposed conditions of approval.

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

The subject lands are zoned Residential 2 (R2) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The variance application seeks relief from the following provisions of the Zoning By-law:

- a) **Section 3.1(e) "Lot Coverage (Accessory Uses)"** – to permit a maximum lot 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; and
- b) **Section 6.2.2 "Minimum Lot Area"** – to permit a minimum lot area of 350m² whereas the by-law requires a minimum lot area of 360m².

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.	<u>3.1(e) Lot Coverage (Accessory Uses)</u> Yes, the variance is minor in nature. The increased lot coverage is minimal given the lot and surrounding context. Given the surrounding urban context, the increased lot coverage is considered minor in nature. It is noted the accessory building is located on the same footprint as the

	<p>existing accessory building. The variance is required as a result of the proposed consent. No expansion to the footprint of the accessory building is proposed and there have been no complaints with regards to the accessory building in the past. As such, it is the opinion of staff the variance is minor in nature.</p> <p><u>6.2.2 Minimum Lot Area</u></p> <p>Yes, the variance is minor in nature. The variance requests a minimum lot area of 350 m², whereas 360 m² is required – a reduction of approximately 2.8%. The proposed reduced lot area is an adequate size for a single detached dwelling and accessory structure.</p> <p>The variance is considered minor as it is not so significant that a dwelling cannot be comfortably sited on the proposed lot and the reduction of 10m² (107 ft²) does not result in an adverse impact on the functionality of the site. As such, it is the opinion of staff that the proposed minor the variance is minor in nature.</p>
<p>The variance is desirable for the development of the use of the land.</p>	<p><u>3.1(e) Lot Coverage (Accessory Uses)</u></p> <p>Yes, the requested variance is desirable for the development or use of the land. The increase in lot coverage for the accessory building is desirable as it will permit design flexibility for the site and allow for the footprint of the existing accessory building to be maintained. The requested variance is appropriate and desirable as it will not result in shadowing on adjacent properties, will allow for the continued use of the rear yard as private amenity space, will not alter the function of the subject property.</p> <p><u>6.2.2 Minimum Lot Area</u></p> <p>Yes, the requested variance is desirable for the development or use of the land. The requested variance will facilitate a consent that is aligned with the objectives of the Town's Official Plan. The reduction in lot area is not anticipated to have substantial impacts on the surrounding area and is generally compatible with lot areas in the surrounding area.</p>

	As such, the variance is considered desirable for the development or use of the land.
The variance maintains the general intent and purpose of the Zoning By-law.	<p><u>3.1(e) Lot Coverage (Accessory Uses)</u></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the maximum lot coverage provision of the By-law is to maintain adequate space for landscaping, leisure, drainage, and to maintain neighbourhood streetscapes and compatibility. The requested variance would not negatively impact the character of the area. The variances would allow established conditions to continue and facilitate compatible residential development.</p> <p><u>6.2.2 Minimum Lot Area</u></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the minimum lot area provision is to ensure lot areas are appropriate to accommodate site functionality and to ensure the proposed dwelling has sufficient area for siting the building siting and providing suitable setbacks.</p> <p>The variance requests a slight reduction of 10m² (107 ft²). The variance maintains the intent of the By-law as the lot will continue to allow for a single detached residential dwelling on a Residentially zoned lot.</p>
The variance maintains the general intent and purpose of the Official Plan.	<p><u>3.1(e) Lot Coverage (Accessory Uses)</u></p> <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 subject land's use is within the permitted use of the Urban Living Area / Built Boundary designation and will not impact the application's ability to meet the intent and purpose of the Official Plan as it relates to the provision of one additional dwelling unit in the Urban Living Area/Built Boundary. As such, staff are of the opinion the proposed variance maintains the general intent and purpose of the Official Plan.</p>

6.2.2 Minimum Lot Area

The surrounding neighbourhood is generally characterized by one to two storey single detached dwellings. The Official Plan states that development and redevelopment shall maintain and enhance the character and stability of existing and well-established residential neighbourhoods with regards to scale and density.

Staff are of the opinion that the requested variance is not considered to have significant impacts within the context of the Official Plan policies. The proposed detached accessory building and dwelling are generally compatible with and generally in keeping with the low-density residential character of the neighbourhood.

The proposal is generally consistent with the existing built form, scale, and massing with existing development and the character of the area.

Staff is of the opinion that the variance maintains the general intent and purpose of the Official Plan.

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
 - Demolition permit is required for existing Garage.
 - A building permit will be required for the proposed House and Accessory Building.

- Public Works Department
 - Town is not supportive of the following sections: Section 6.1(b) Location (Accessory Uses), Section 6.1(d) Lot Coverage (Accessory Uses) and Section 14.2(e) Minimum Interior Side Yard.
 - There are utilities in front of the proposed driveway (Guywire, Catch Basin, Traffic sign and Hydro pole)
 - The water service for the new lot will be from the existing watermain at the intersection of Chestnut and Hurricane, the service should be a minimum 2" with tracer wire and can be installed in the road allowance behind the curb.
- Hydro One
 - No comments or concerns.

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:

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.

Planning staff also note that with respect to hardship, that it is not desirable to shift the proposed lot further allowing for an increase in lot area to comply with the zoning by-law provisions as that would have a greater impact on

the dwelling on the retained lot, than the impact of a slightly smaller lot area for the proposed lot. Also, reducing the area of the accessory building to comply with lot coverage requirement will result in fewer design flexibility and functionality of the accessory building which is not desirable.

Planning staff note that Public Works have expressed concerns with the proposal and in order to satisfy Public Works concerns appropriate approvals are required including a comprehensive grading and drainage plan demonstrating that storm water runoff will not negatively impact upon neighbouring properties. Planning Staff also note that if any street trees are removed to accommodate the proposed new driveway entrance that the applicant is responsible for street tree replacement in accordance with the Town Tree Policy.

This minor variance application is being made to facilitate the development of a new single detached dwelling that would result from the approval of consent application B5/2023P.

Based on the analysis conducted, 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 variances are minor in nature, conform to the general policies and intent of both the Official Plan and Zoning By-law and are appropriate for the development and use of the land.

Planning Staff Recommendation:

Planning staff recommend that minor variance file A6/2023P **be approved** subject to the following condition(s):

THAT the applicant:

- That all necessary building and demolition permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.
- The applicant obtains 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

- Each lot is to be individually serviced a 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 any street trees removed be replaced by the applicant in accordance with the Town Tree Policy and to the satisfaction of the Director of Public Works.
- Prepare and submit a Site Servicing Plan to the satisfaction of the Director of Public Works or his designate.
- That the approval of the minor variance A6/2023P is subject to the final certification of Consent File and B5/2023P.

Prepared and Submitted by:

Lindsay Richardson
Policy Planner

Recommended by:

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