

David and Mary Jo Drago
[REDACTED] Pelham St. N
Fonthill, ON L0S 1E3

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

17 April 2023

Dear Secretary Treasurer

Please accept this letter as an addendum to my previous letter of opposition to the Application for Consent at 26 Chestnut St.

In light of the implementation of the new Comprehensive Zoning By-law (4481) the following is to be considered by the Committee of Adjustment. Previous arguments are still to be considered; even though many no longer apply, the overall intent of the argument remains.

On 3 April 2023, "The Ontario Land Tribunal approved the order with the result that the Comprehensive Zoning By-law is deemed to have come into force on August 30, 2022." Furthermore, "the Comprehensive Zoning By-law regulates the use of land throughout the Town of Pelham in accordance with Section 34 of the *Planning Act*. The Comprehensive Zoning By-law has been updated to conform to the Town Official Plan, Region of Niagara Official Plan and Provincial legislation. The effect of the Comprehensive Zoning By-law will be improved development parameters that help create a more attractive, prosperous and livable community. (<https://engagingpelham.ca/comprehensive-zoning-by-law-review>).

Be it noted, that in the Town of Pelham press release dated 4 April 2023, director of community planning and development Barbara Wiens stated the following: "With fundamental shifts in the focus of the provincial, regional, and local policy framework since the previous 1987 zoning by-law, Pelham has worked with public consultation, staff and Council to align the Comprehensive Zoning By-law with the current planning policy framework at all levels of government." (<https://engagingpelham.ca/comprehensive-zoning-by-law-review>)

It is clear, therefore, that after one year of serious deliberation and review, public consultation and consultation with all levels of government the Town of Pelham adopted its new Comprehensive Zoning By-law as one that conforms to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation.

Concerning the Residential R2 Zone

The new Comprehensive Zoning By-law (4481) sub-section 6.2 sets the following Zone Requirements for Single Detached Dwellings:

Minimum Lot Frontage 12.0m

Minimum Lot Area 360m²

Minimum Front Yard 3.0m except 6.0m where there is an attached garage

Maximum Front Yard 6.0m Minimum Side Yard 1.2m

Minimum Corner Side Yard 3.0m

Minimum Rear Yard 7.5m

It is argued, therefore, that these are the requirements that “conform to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation.” The Town of Pelham has created these requirements to “regulate the use of land, buildings and structures in the Town of Pelham.”

These requirements allow for reasonable development and are implemented to allow for reasonable density in urban areas as determined by the Town of Pelham, Niagara Region and Provincial legislation. The requirements are **minimums**, and, as such, should not be reduced any further. To seek further reduction of these requirement precludes that a proposed lot is **NOT** feasible for consent or building.

Concerning the Application of the Zoning By-law

The new Comprehensive Zoning By-law (4481) is to be applied so that “No person, other than a public authority, shall reduce any lot by conveyance or otherwise so that it does not meet the requirements of this By-law, or if it did not meet the requirements initially, that it is further from meeting them.” [*Town of Pelham Zoning By-law 4481, 1.3(b)*]

It is argued that this direction in the By-law conforms “to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation” and that the Town of Pelham, therefore, opposes any development that reduces another lot and places that existing lot in non-compliance of the Town of Pelham’s zoning By-laws.

The application of the new Comprehensive Zoning By-law (4481) also dictates that “Except as provided otherwise within a specific zone, accessory buildings and structures not attached to the main building shall:

c) Not be located in any required front yard or the **required exterior side yard**;

e) Have a total lot coverage for all accessory buildings **of not more than 10% in any Residential Zone** and not more than 5% in any other Zone and the maximum lot coverage for all buildings shall not exceed the maximum lot coverage of the zoning category in which the property is located.”

It is argued that this direction in the Comprehensive Zoning By-law (4481) conforms “to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation” and that the Town of Pelham opposes lots where garages, sheds and other outbuildings occupy a significant portion, **more than 10%**, of the lot. As this exists in the new Comprehensive Zoning By-law (4481), it is also a part of the greater vision of the Official Plan of the Town of Pelham, the Niagara Region and the Province of Ontario.

Concerning File Number: A7/2023P and File Number A6/2023P

As of 3 April 2023, the Application for Consent and Application for Minor Variance at the Subject Land known municipally as 26 Chestnut St. the new Comprehensive Zoning By-law (4481) no longer requires minor variances to be heard concerning the following:

Section 6.16(a) “Parking Requirements -NO LONGER REQUIRED

Section 6.1(b) “Location Accessory Uses – NO LONGER REQUIRED

Section 14.2 (d) “Minimum Front Yard - NO LONGER REQUIRED

Section 14.2(e) “Minimum Interior Side Yard – NO LONGER REQUIRED

The new Comprehensive Zoning By-law (4481) deems the proposal by the applicant to be within the parameters of the By-law in these four areas. Minor variance is no longer required and the applicant can be deemed in conformity “to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation.”

As the four former items are now in compliance with the new Comprehensive Zoning By-law, **attention must be directed to the three main areas** in the Application for Consent and Variance that do NOT comply with the new Comprehensive Zoning By-law and are to be considered NON-CONFORMING “to the Town Official Plan, the Region of Niagara Official Plan and Provincial legislation.” The areas of dispute include the following:

1. The applicant’s request to permit a minimum lot area of 350sm whereas the by-law requires a minimum lot area of 360sm
2. The applicant’s request 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.
3. The applicant’s request to permit a minimum rear yard setback of 1.2m whereas the by-law requires a minimum rear yard set back of 7.5m.

These are **major** variances and if granted completely eradicate the new Comprehensive Zoning By-law (4481). The sub-sections concerning **MINIMUM LOT AREA, LOT COVERAGE (ACCESSORY USES) and MINIMUM REAR YARD** are the few sub-sections of the former Zoning By-law governing Residential R2 areas not to have been reduced after thorough review,

public consultation and consultation with all levels of government. They are, in a sense, sacrosanct: by their very nature, they are too important, too valuable to be interfered with or altered.

Please refer to previously submitted arguments proving that the application for consent and variance does not pass the Four Tests and, therefore, cannot be granted.

As well, the site plan provided by the applicant shows the relocation of a shed, existing in the back yard of 26 Chestnut, to be relocated to the “exterior side yard” of the reduced property at 26 Chestnut. An exterior side yard is defined as “a side yard immediately adjoining a public street.” The visual illustration provided in the new Comprehensive By-law (4481) clearly defines this.

It is argued that the applicant has mistaken this for an “interior side yard.” The applicant’s proposed placement of the existing shed, as per the site plan, is in violation of the Comprehensive Zoning By-law (4481) and must require application for variance for proposed location. To then place the existing shed within the “interior side yard” would further diminish the property to the south and clearly diminish the patio space at the proposed development. So, there is no place on 26 Chestnut St. to accommodate the shed: not the exterior side yard, not the interior side yard, nor the front yard. This is the consequence of reducing back yard requirements.

Neither the Town of Pelham, the Niagara Region nor the Province of Ontario envision urban zones with no back yards.

Neither the Town of Pelham, the Niagara Region nor the Province of Ontario envision urban zones with lots covered by sheds, garages and other outbuildings.

Neither the Town of Pelham, the Niagara Region nor the Province of Ontario envision urban zones that haphazardly reduce minimum lot sizes to promote density at the expense of character and uniformity.

Neither the Town of Pelham, the Niagara Region nor the Province of Ontario envision urban zones that allow lots to be created while compromising the conformity of an existing lot.

To allow such is to set precedent that will become a banquet feast for residents and developers throughout the town. It will have serious repercussions concerning the character and beauty of the established urban areas in the Town of Pelham.

To quote Barbara Wiens, the new Comprehensive Zoning By-law is designed to “help create a more attractive, prosperous and livable community.”

It is for these reasons, and the reasons previously submitted, that consent and variance cannot be granted at 26 Chestnut St.

Sincerely yours,

David and Mary Jo Drago