



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

Monday, May 01, 2023

**Minor Variance Application: A7-2023P**

**Municipal Address: 26 Chestnut Street (Part 2 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 2 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. Application is made for relief to rectify a zoning deficiency as a result of consent application B5/2023P. The lands currently contain an existing single detached dwelling. Relief is sought from the provisions of the Zoning By-law:

- a) **Section 6.2.2** – Minimum Rear Yard - seeking minimum setback of 1.2m whereas 7.5m is required.

The requested variance is intended to provide minor flexibility in the event the final survey confirms the setback 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 located 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 variance conforms 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 retained lot would continue to provide a residential use that 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.

Town Planning staff are of the opinion the proposed minor variance conforms to the local Official Plan as it helps enable appropriate redevelopment and *intensification* within an existing residential neighbourhood and does 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. 4481(2022), as amended

The subject lands are zoned Residential 2 (R2) 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.	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 1.2 metres from the required 7.5 metres. It is noted the requested variance would recognize the setback from the proposed new lot line to the existing dwelling on Part 2 which is to be maintained. The site maintains a generous landscaped amenity space that can be used. The exterior side yard is fenced and there is a tree buffer along the street edge providing privacy for this area to function as amenity space for the dwelling. The existing shed on Part 1 will be relocated to this area also helping to frame and enclose this area making it more private. The impact of the reduction in the rear yard setback can be considered minor in this instance as functional private amenity area is still maintained on the site. Drainage concerns will be addressed through a lot grading and drainage plan that will ensure drainage is addressed on site and will not rely on neighbouring properties. As such, it is the opinion of staff the variance is considered minor in nature.
The variance is desirable for	Yes. The requested variance is considered to be desirable for the appropriate development or use of the land. The requested variance

the development or use of the land.	is not anticipated to have a significant negative impact on the streetscape or adjacent properties as the existing dwelling will be maintained. The reduction to the rear yard setback in this instance is desirable as appropriate private amenity area will be maintained on the site in the exterior side yard. As such, staff are of the opinion that the variance is desirable for the development or use of the land.
The variance maintains the general intent and purpose of the Zoning By-law.	Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the rear 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 and reasonable separation with the proposed dwelling on Part 1. With regards to the reduced rear yard, lot grading and drainage requirements are recommended as a condition of approval for the proposed development. 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. As such, staff are of the opinion the maintain maintains the intent and purpose of the Zoning By-law.
The variance maintains the general intent and purpose of the Official Plan.	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. The variance will facilitate appropriate redevelopment and intensification within an existing residential neighbourhood and does not conflict with any policies subject to demonstration of appropriate urban design and fulfillment of the proposed conditions of approval, including a lot grading and drainage plan. As such, staff are of the opinion the proposed 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
  - No comments.
- Public Works Department
  - Town is not supportive of Section 6.2.2 Minimum Rear Yard setback
- 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.



With regards to hardship, Planning staff note that if the rear yard is to be maintained at 7.5m, there would be significant impact on the proposed lot on Part 1 which is not desirable and would be a hardship.

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 A7/2023P **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 approval of the minor variance A7/2023P is subject to the final certification of Consent File and B5/2023P.

### **Prepared and Submitted by:**

Lindsay Richardson, MCIP, RPP  
Policy Planner

### **Recommended by:**

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