



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

Tuesday, August 08, 2023

**Minor Variance Application: A14-2023P**

**Municipal Address: 2755 Maple Street**  
**Legal Description: CON 1 PT LOT 15 RP**  
**Roll number: 2732 010 008 00705**

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**Nature and Extent of Relief/ Permission Applied for:**

The subject land is located on the east side of Maple Street, lying south of Twenty Road, legally described above, and known locally as 2755 Maple Street in the Town of Pelham.

The subject land is zoned Specialty Agricultural and Environmental Protection 1 in accordance with Town of Pelham Comprehensive Zoning By-law 4481 (2022). Application is made to construct a 2-storey garage addition on the northerly side of the property and a 1-storey addition on the southerly side of the property, and seeks relief from:

- a. **Section 5.2.3 Minimum Interior Side Yard** – requesting a minimum interior side yard of 4.45 m, whereas a minimum setback of 8.0 metres is required.
- b. **Section 5.2.3 Minimum Rear Yard** – requesting a minimum rear yard setback of 11.4 m, whereas a minimum setback of 15.0 metres is required.

**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 (PPS) (2020)

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 Provincial Policy Statement (PPS) designates the subject land within the ‘Prime Agricultural Area’ and more specifically within a Specialty Crop Area. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. ‘Prime Agricultural Areas’ are defined as including associated Canada Land Inventory Class 4-7 lands as well as ‘Prime Agricultural Lands’ (Class 1-3 lands).

Policy 1.1.4.1 states that healthy, viable *rural areas* should be supported by, among other things, promoting regeneration, promoting diversification of the economic base in *prime agricultural areas*, in accordance with policy 2.3 and conserving biodiversity.

The proposed minor variance will permit an addition to an existing single detached dwelling and is in keeping with the policies of the PPS.

#### Greenbelt Plan, 2017

The Greenbelt Plan, together with the Growth Plan builds on the Provincial Policy Statement to establish a land use planning framework for the Greater Golden Horseshoe. The subject lands are designated as a ‘Protected Countryside’ according to Schedule 1 of the Greenbelt Plan.

Policy 4.5 2 permits single detached dwellings on existing lots of record, provided they were zoned for such as of the date the Greenbelt Plan came into force.

The proposed single detached dwelling and attached garage are consistent with the policies of the Growth Plan (see below) and provides for limited residential infill development on private services.

#### Growth Plan for the Greater Golden Horseshoe (2019)

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 with 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 a ‘Prime Agricultural Area’ according to the Growth Plan. Policy 4.2.2.3 a) states that (among other things), within the *Natural Heritage System* new development or site alteration will demonstrate that there are no negative impacts on key natural heritage features, key hydrologic features or their

functions.

*Development* is defined as the creation of a new lot, a change in land use, or the construction of buildings requiring approval under the *Planning Act*.

The proposed zoning relief would permit an addition to an existing single detached dwelling on an existing lot of record and is in keeping with the policies of the Growth Plan.

#### Region of Niagara Official Plan

The NOP designates the lands as within the Specialty Crop Area.

Schedule K of the NOP identifies the subject lands as being in an Area of Archaeological Potential. The requirement for an Archaeological Assessment was waived as the location of the addition is located in an area of previous disturbance.

Town Staff is satisfied that the proposed development is in keeping with the purpose and intent of the Region of Niagara Official Plan. Further, the Region did not object to the variance.

#### 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 'Specialty Agricultural.' Section B2.2.2 outlines the permitted uses and intentions of this designation, which are supportive of the development of low-density residential uses as part of the agricultural community and permits single detached dwellings.

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.

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.

It is a goal of the Official Plan to identify, conserve and enhance the Town's cultural heritage resources, as well as to prevent the demolition, destruction, inappropriate alteration, or use of cultural heritage resources. MPAC records indicate that the dwelling on the property is circa 1870. The original structure has been significantly altered, including new siding material, aluminum fascia, new windows, doors, reconstructed porch and building additions. Staff are of the opinion the proportion of

the new addition is compatible with the original structure and will distinguish new from old. Accordingly, the cultural heritage value of the original dwelling is being maintained.

Town Planning staff are of the opinion the proposed minor variance conforms to the local Official Plan as it helps enable appropriate development within the speciality agricultural area. The site has not been used for agricultural purposes for some time and is surrounded by other low-density development. Staff are satisfied that the proposal is in keeping with the general intent of the Official Plan.

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

The subject lands are zoned Speciality Agriculture (SA) and Environmental Protection 1 (EP-1) 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.	<p>Yes. The requested variances are minor in nature.</p> <p>The use of the lands will remain appropriate as a rural non-farm residential use and compatible with the surrounding area, which is characterized by non-farm single detached dwellings on rural residential lots and the degree of impact from the requested variances is minimal.</p> <p>Staff are of the opinion that the proposed variances are minor in nature.</p>
The variance is desirable for the development or use of the land.	<p>Yes. The requested variances are desirable for the appropriate development or use of the land as a rural non-farm residential use.</p> <p>The variances will facilitate an addition to the existing dwelling. The scale of the addition is in keeping with the character of the neighbourhood and will facilitate the development that meets the needs of the property owners. As such the variance is considered desirable for the development of the land. Further, the construction of the addition has been thoughtfully designed and situated on the landscape and will not necessitate any tree removal on the subject lands.</p>

	Staff is of the opinion the requested variances are desirable for the development or use of the land and will improve the functionality of the dwelling.
The variance maintains the general intent and purpose of the Zoning By-law.	<p>Yes. The requested variances are considered to maintain the general intent and purpose of the Zoning By-law.</p> <p>The interior side yard setback is intended to maintain access to side yards, provide adequate distance between dwellings, and provide adequate room for drainage. The intention of the rear yard setback is to ensure adequate distance between dwellings and provide an outdoor amenity area.</p> <p>The variances are necessary to provide adequate space for the addition while at the same time, maintain the natural features on the lands.</p> <p>The northern side of the dwelling maintains a large setback to the northern property line. The setback provides for adequate rear yard access and space should the existing septic system require an expansion. No issues of compatibility are anticipated.</p> <p>Staff are of the opinion the proposed variance maintains the general intent and purpose of the Zoning By-law.</p>
The variance maintains the general intent and purpose of the Official Plan.	<p>Yes. The requested variances are considered to maintain the general intent and purpose of the Official Plan.</p> <p>The requested reduced side and rear yard setback should have no impact on the agricultural viability of the surrounding area and will not compromise the objectives of the Official Plan, with respect to land use compatibility, storm water runoff and private sewage system servicing capabilities. The remaining lot area remains available to handle stormwater runoff, the existing septic system, protection of natural features and preserve a rear yard amenity area.</p> <p>The proposed built form of the addition is generally consistent in scale, and massing with existing dwelling and the character of the residential area.</p> <p>Staff is of the opinion that the variances maintain the general intent and purpose of the Official Plan.</p>

## **Agency and Public Comments:**

On June 28, 2023 a 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.

To date, the following comments have been received:

- Building Division
  - No comments.
- Public Works Department
  - Please be advised that the existing driveway must be removed prior to occupancy being granted.
  - The plan submitted does not show all existing structures. Please ensure that the plan is updated with all existing and proposed features that are to remain or be removed.
- Niagara Region
  - The subject property is located within the Area of Archaeological Potential, as identified in Schedule 'K' of the NOP. Regional staff note that the Town has a Heritage Master Plan. Town staff should be satisfied that any local archaeological provisions / requirements have been met.
  - Should Town staff require an archaeological assessment for the proposed development, Regional staff request that the assessment(s) are circulated to the Region.
  - The applicant is advised that any completed assessment would require a Letter of Acknowledgement from the Ministry of Citizenship and Multiculturalism (MCM).
  - Please note that a PSS fee was previously requested at the "pre-application" commenting stage; however, this will be covered through the septic permit application. As such, there are no PSS comments for this application. Feel free to reach out should you have any questions.

No public comments were received at the time of writing this report.

## **Planning Staff Comments:**

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 A14/2023P **be approved** subject to the following condition(s):

**THAT** the applicant:

- Apply for and receive a building permit for the proposed addition.
- The applicant must submit a comprehensive Lot Grading & Drainage Plan demonstrating that the drainage neither relies, nor negatively impacts neighboring properties, and that all drainage will be contained within the respective lot, to the satisfaction of the Director of Public Works, or designate.
- Obtain a Driveway Access and Culvert Permit from the Town for the construction of a new driveway entrance. Installation and/or modification of new entrances shall be completed in accordance with Town Standards prior to Building Permit and the Applicant shall bear all costs associated with the works.

**Prepared and Submitted by:**

Andrew Edwards, BES  
Planner

**Recommended by:**

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