



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

Tuesday, August 08, 2023

**Minor Variance Application: A16-2023P**

**Municipal Address: 105 Welland Road**  
**Legal Description: Part Lot 1, Concession 10**  
**Roll number: 2732 030 012 05602**

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

The subject land is located on the north side of Welland Road, lying west of Pelham Street, legally described above, and known locally as 105 Welland Road in the Town of Pelham.

The subject land is zoned Institutional (I) in accordance with Town of Pelham Comprehensive Zoning By-law 4481 (2022). Application is made to develop the lands for a six-storey residential apartment condominium consisting of 48 dwelling units, with exterior surface parking, an interior garage, and underground parking. The application seeks relief from five (5) provisions of the Zoning By-law:

- a. **Section 4.1.4.8 – “Parking Area Location on Lot”** – requesting a surface parking area setback of 1.9 metres to a lot line (westerly lot line), and 3.0 metres to a street line, whereas a minimum setback of 3.0 metres to an interior lot line, and 7.5 metres to a street line are required.
- b. **Section 9.2.3 – “Minimum Lot Area”** – requesting a reduced minimum lot area of 80 square metres per dwelling unit, whereas a minimum lot area of 150 square metres per dwelling unit is required.
- c. **Section 9.2.3 – “Minimum Side Yard”** – requesting a reduced side yard setback of 3.0 metres (to easterly lot line) whereas a minimum of 6.0 metres is required.
- d. **Section 9.2.3 – “Maximum Building Height”** – requesting a maximum building height of 21.0 metres whereas a maximum building height of 15.0 metres is permitted.
- e. **Section 4.3.1(a) – “Minimum Bicycle Parking Requirements”** - to permit a minimum bicycle parking ratio of 0.25 short-term bicycle parking spaces per unit (12 spaces) whereas the by-law requires a minimum of 0.8 short-term bicycle parking spaces per unit (35 spaces).

The site is approximately 3,893.15 m<sup>2</sup> in lot area and is rectangular in shape. The property has 83.9 metres of frontage on Welland Road and 71.34 metres of frontage on Pelham Street.

The Applicant is proposing to develop the lands for the purposes of a 6-storey, 48-unit residential apartment building. The development includes a total of 61 parking spaces, a majority of which are located in the 2-floor parking garage within the building, with the remaining spaces provided as surface parking. The building is located in the southeast corner of the site, running parallel to the eastern lot line. Access to the site is proposed from a 6.2 metre laneway that runs north-south and provides access to the parking levels at the rear of the building. An amenity area and landscape buffer area is provided along the western and northern property lines. Surrounding land uses include institutional use to the east, single detached homes along Woodside Square to the north, townhouse dwelling units to the West, and a commercial gas station and plaza to the south along with a residential condominium development consisting of semi-detached and townhouse units to the south.

Please note previous applications for the subject lands including both an application for consent and application for Zoning By-law Amendment. A consent application was conditionally approved by the Committee of Adjustment on June 5<sup>th</sup>, 2023 (Town file: B10-2022P). A Zoning By-law Amendment application (Town file: AM-07-2022) was withdrawn.

### **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 1.1.3.2 provides that land use patterns in settlement areas be based on densities and mix of land uses which efficiently use land, resources, and infrastructure, supports active transportation, is transit supportive and minimizes impacts to air quality and climate change and promote energy efficiency. Land use patterns shall be based on a range of uses and opportunities for intensification and redevelopment. The proposed development will facilitate the redevelopment of an underutilized site for future residential use providing for a more efficient use of land, resources and infrastructure.

Policy 1.1.3.3 states municipalities shall identify appropriate locations and promote opportunities for intensifications where this can be accommodated considering 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.

The Niagara Region Official Plan prescribes an annual residential intensification rate of at least 25% for all lands within Pelham's Urban Settlement Areas. The proposed development will contribute to meeting this target. It is noted that this is a minimum target and can be exceeded.

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.

Policy 1.4.1 and 1.4.2 speak to the need to provide an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents by permitting and facilitating all housing options and all types of residential intensification in accordance with the policies of the PPS.

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 application for minor variance is consistent with the PPS and promotes appropriate development standards that help facilitate compact built form, housing choice and intensification that can be safely serviced by existing infrastructure and contributing to the development of a complete community.

Policy 2.6.2 states that development and site alteration shall not be permitted on lands containing archaeological resources or archaeological potential unless the resources have been conserved. The Town's Heritage Master Plan identifies this area as having high archaeological resource potential. Staff are aware that an Archaeological Assessment has been completed, however the Ministry clearance letter is outstanding and will be a condition of approval.

Staff are of the opinion the proposed variances are consistent with the Provincial Policy Statement.

#### 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 Growth Plan contains various guiding principles which are intended to guide decisions of how land is developed. The guiding principles include building compact, vibrant, and complete communities, managing and encouraging development in appropriate locations, and optimizing the use of existing infrastructure.

The subject lands are designated 'Delineated Built-Up Area' according to the Growth Plan. 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.

The residential development will help the Town to meet its delineated built boundary intensification targets. The development will help contribute towards the municipal property tax base which helps financially support the maintenance of linear infrastructure and public service facilities. The existing water and sanitary sewer mains already extend along the frontage of the subject and are available to be utilized with additional building connections.

Planning staff are of the opinion the proposed application for minor variance conforms with the Growth Plan by contributing to building compact and complete communities, contributing to housing a mix of housing options within an existing built-up area, and encouraging development in appropriate locations that can accommodate the proposed development and optimizing the use of existing infrastructure.

#### Niagara Region Official Plan (2022)

The Region of Niagara adopted a new Official Plan on June 23, 2022. Approval was granted by the Province on November 7, 2022. The new Region of Niagara Official Plan provides the policy guidance for future development across the Region.

The Regional Official Plan (ROP) designates the subject lands as 'Designated Urban Area (Built-Up Area).' The ROP directs development to take place in urban areas to support intensified development where appropriate servicing and infrastructure exists. Provincial and Regional policy place an emphasis on intensification and infill to foster the development of complete communities, including a mix of diverse land uses and housing choices, expanding access to many forms of transportation, and providing spaces that are vibrant and resilient in design.

A full range of residential uses are permitted generally within the Urban Area designation, subject to adequate municipal servicing and infrastructure and other policies relative to land use compatibility and environmental conservation. The proposed development is a permitted use in its current designation.

Policy 2.2.2.5 requires that across the Region, 60% of all residential units occurring annually are to be in the Built-Up Areas and in Pelham, this translates into an annual intensification rate of at least 25% of new residential units are to be within the Built-Up Area.

Planning staff are of the opinion that the proposed minor variance conforms with the policies of the Niagara Region Official Plan and the proposal will support future residential development in areas where appropriate servicing and infrastructure exist and the proposed development will contribute to providing a mix of land uses and housing choice and will support the intensification target established for the Town.

#### 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' on Schedule 'A1.' The purpose of the Urban Living Area designation is to recognize existing residential areas and to promote the efficient use of existing and planned infrastructure by creating the opportunity for various forms of residential intensification, where appropriate. All types of residential uses are permitted in the 'Urban Living Area/Built Boundary' designation along with complementary uses such as home occupations, bed and breakfast establishments, private home daycare, residential care facilities, daycare centres, institutional uses, and convenience commercial uses.

Policy A4.1.1 states that lands designated Urban Living Area are the site of existing and planned residential development and complementary uses on full municipal services or planned to be connected to full municipal services all within the urban boundaries of the Fonthill and Fenwick Settlement Areas. The development will make use of existing infrastructure. Any necessary upgrades to the system will be at the expense of the Applicant.

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage the majority of development to the Urban Area where full sewer and water services are available, and the objective is to encourage intensification and redevelopment within the Urban Area and in proximity to the Downtown, encourage diversity in housing to accommodate the broadest range of income levels and provide for housing that is affordable to the community. The proposed development is a form of intensification of an underutilized site in the Urban Area that will provide for housing choice in an area that is primarily serviced by grade-oriented housing options. It is noted however, that the proposed development is not considered to be affordable, however will provide housing for a greater range of income levels.

Section A2.3 speaks to the goals and objectives of the urban character across the Town. It is a goal of the Official Plan to protect and enhance the character of existing Urban Areas and to ensure development and redevelopment is compatible with the scale and density of existing development. The area is characterized by a mix of land uses including institutional, commercial, and low and medium density residential uses. Providing for redevelopment opportunities supports the mixed-use character of this neighbourhood and enhances the housing options available for future and existing residents at a scale and density that is compatible with the surrounding land uses. It is noted compatibility does not mean the same as, rather the ability to coexist harmoniously together. The proposed use is generally compatible in nature with the surrounding land uses, and the design of the site has taken into consideration landscape and spatial buffers to adjacent land uses.

Policy A2.5.2 Infrastructure – stated objectives of this Plan include maintaining existing infrastructure in a manner that is cost effective and contributes to the quality of life of citizens.

Per Section B1.1.3 of the Official Plan, residential intensification is generally encouraged in the Urban Living Area to provide for the efficient use of land and existing services. Further, Policy B1.1.3 states that in considering residential intensification proposals, the following criteria are applicable:

- a) Schedules A1 and A2 to this Plan identify a number of areas that may be good candidates for residential intensification. This does not preclude consideration for other sites in the Urban Living Area designation provided these sites abut arterial or collector roads or are located on a local road on a site that is no further than 100 metres from an intersection with an arterial or collector road;
  - ✓ The Subject Lands have frontage along Welland Road which is identified as a Collector Road. Additionally, the lands are located less than 100 metres from an intersection with Pelham Road, which is identified as an Arterial Road. Intensification along arterial and collector roads is supported by the Town Official Plan.
- b) Intensification and redevelopment proposals are encouraged to achieve a unit density and housing type that is in keeping with the character of the density of the neighbourhood where it is proposed. Within the identified intensification areas identified on Schedules A1 and A2 the implementing Zoning By-law may

establish minimum and maximum densities of between 10 and 25 units per hectare;

- ✓ The limitation of density to 10 to 25 units per hectare is not applicable to these lands and they are not located in an identified intensification area. The intent of this policy is to ensure compatibility and harmonious integration with the surrounding neighbourhood. The character of the neighbourhood is a mixed-use character comprised of institutional, commercial and residential uses with a range of densities between low and medium density. It is noted that this policy is not mandatory and is permissive as the policy states that 'proposals are encouraged' vs. 'required'. While the density of the subject development will be higher than the surrounding residential area, the development is compatible with the surrounding land uses and will integrate with the mixed-use character of the neighbourhood.
- c) Residential intensification and redevelopment proposals located on lands which abut local roads shall maintain the unit density and unit type of the surrounding neighbourhood, but may through a Zoning By-law Amendment, increase the unit density by up to 25% of the existing gross density of lands located within 300 metres of the site, provided the resultant development will be characterized by quality design and landscaping, suitable building setbacks, and further that parking areas and traffic movements will not negatively impact the surrounding neighbourhood from the perspectives of safety or neighbourhood character;
  - ✓ Not applicable as the proposal abuts a collector road and not a local road, therefore this policy does not apply to this proposal.
- d) Notwithstanding items (b) and (c), the creation of new freehold or vacant condominium infill lots through the consent process, for ground-oriented detached dwellings, may be permitted provided the proposed lot and unit type is similar to and compatible with the established character of the street or neighbourhood where it is proposed. The Zoning By-law shall establish minimum lot area and frontages and minimum and/or maximum densities which are considered appropriate within the Urban Living Area designation;
  - ✓ Not applicable. Does not apply as the proposal is not for ground-oriented detached dwellings.
- e) The creation of accessory apartments and in-law suites within residential neighbourhoods is considered to be an appropriate form of residential intensification. The establishment of accessory apartments shall occur in accordance with Policy B1.1.4 and Council may reduce the application fee for such amendments under the Town's Tariff of Fees By-law;
  - ✓ Not applicable as the proposal is not for accessory apartments or in-law suites.
- f) The provision of affordable housing in intensification areas will be encouraged; and,
  - ✓ The building will contribute to the housing stock across the Town, however it is understood that the proposed housing units will not be affordable housing units. It is noted that this is a permissive policy and while discussions have been had with the applicant regarding the

provision of affordable housing units, it is understood that the proposal will not be considered to be affordable.

- g) The Town will consider innovations for responsive processing of applications and amendments in the future including tools such as Conditional Zoning Amendments implementing a Development Permit system and the streamlining of processing concurrent development applications.
  - ✓ Not applicable.

The proposed minor variance is subject to policy B1.1.5. Section B1.1.5 Semi-Detached, Townhouse, Multiple and Apartment Dwellings states: In addition to the criteria listed in Policy B1.1.2, in considering a Zoning By-law Amendment and Site Plan application to permit a semi-detached dwelling, townhouse, multiple or apartment development, Council shall be satisfied that the proposal:

- a) Respects the character of adjacent residential neighbourhoods, in terms of height, bulk and massing;
  - ✓ Yes, the development respects the character of adjacent residential neighbourhoods. The building has been sited to the southeast of the property in order to mitigate impacts on neighbouring low-density residential uses. The neighbourhood includes medium density dwellings, commercial, and institutional uses. The addition of another housing form is not anticipated to impact the character of the surrounding neighbourhood. The increased setbacks achieve an appropriate amount of separation from the adjacent residential properties thus minimizing shadow and privacy impacts. Many of the existing mature trees along the property lines are proposed to be maintained to provide and additional level of buffering. Further the applicant has undertaken as part of the site plan process to include mature plantings within the landscape design along the north property line.
- b) Can be easily integrated with surrounding land uses;
  - ✓ Yes, the proposed use can easily be integrated with surrounding land uses. The proposed residential use is generally compatible with surrounding land uses. The proposed site plan directs the bulk and massing of the proposed apartment building towards the higher-density residential dwellings and commercial area to the south and away from the adjacent low-density residential areas.
- c) Will not cause or create traffic hazards or an unacceptable level of congestion on surrounding roads; and,
  - ✓ The Traffic Impact Study submitted in support of the previous ZBA and the addendum found the proposed residential driveway will operate with reserve capacity and the existing roadway system has surplus capacity to accommodate the proposed growth and the sight line distances for the driveway entrance meets the Transportation Association of Canada (TAC) design criteria for safe traffic movements entering and exiting the site.
- d) Is located on a site that has adequate land area to incorporate required parking, recreational facilities, landscaping and buffering on-site.

- ✓ Yes, the lot area is large enough to support parking, landscaping, and buffering from neighbouring properties. Please refer to analysis in Minor Variance Test section of this report.

Section B1.1.8.3 states: Existing uses within the Institutional designation may redevelop to other uses permitted in the Urban Living Area designation subject to a Zoning By-law Amendment which addresses the matters outlined in Policy B1.1.8.2.

It is the opinion of staff that the proposal does not require a Zoning By-law Amendment. The Town's Official Plan does not contain an Institutional designation. The lands are designated Urban Living Area and are currently vacant. The institutional use, being the adjacent Concordia Lutheran Church, is not redeveloping, it will remain and continue as an institutional use. Further to Section B1.1.8.3, the proposed residential use is a permitted use in the Town's Comprehensive Zoning By-law. In the context of the subject lands, a new use is being added, being an apartment dwelling, which is permitted in the Urban Living/Built Boundary designation and subject to the policies of B1.1.2 (permitted uses) and B1.1.5 (apartment dwellings).

Section E1.5 of the Official Plan speaks to minor variances. In determining whether to approve an application for minor variance, Committee need to be satisfied the proposal meets the four tests, in accordance with the Planning Act. Further, in making such determination, Committee will have more regard for the degree of impact which could result from the relief, and less regard to the numeric or absolute relief. Please refer to discussion below in the Zoning By-law and Planning Comments section of this report.

Based on the analysis above, staff is of the opinion the proposed minor variances conform to the Town's Official Plan.

#### Town of Pelham Zoning By-law No. 4481(2022)

The subject lands are currently zoned Institutional (I) according to Schedule 'C' of the Town of Pelham Comprehensive Zoning By-law 4481 (2022). An apartment dwelling use is permitted in the Institutional (I) Zone, variances have been requested for some of the zone provisions, however.

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	Explanation
1. The variance is minor in nature.	<b>4.1.4.8 Parking Area Location on Lot</b>  Yes, the variance is considered minor in nature. The variance is a result of the intentional siting of the building to the southeast of the property. The applicant has stated the structure was intentionally sited in the southeast corner of the site for several reasons, including the preservation of existing vegetation, enhanced opportunities for landscaped buffers to the existing residential properties to the west and

Minor Variance Test	Explanation
	<p>north, and increasing the physical distance between the structure and the neighbouring properties. As a result, siting the location of the parking lot was limited given the orientation of the site. The variance request is minimal and will have minimal impacts on the streetscape. It is noted of the parking spaces (1-3) which are necessitating the variance, 2 of the 3 spaces are accessible and have been prioritized near the entrance of the building. The use of landscaping will create an attractive streetscape with the building framing the street. As such, the variance is considered minor in nature.</p> <p><b>9.2.3 Minimum Lot Area</b></p> <p>Yes, the variance is minor in nature. The variance is requesting an area of 80 square metres per dwelling unit, whereas a minimum lot area of 150 square metres per dwelling unit is required. The reduced lot area is not anticipated to impact the functionality of the site or the ability to site the proposed building. The site will maintain adequate landscaped buffers and the retention of existing vegetation. As such, the variance is considered minor in nature.</p> <p><b>9.2.3 Minimum Side Yard</b></p> <p>Yes, the variance is minor in nature. The variance requests a reduced side yard setback of 3.0 metres to the easterly lot line abutting the institutional use whereas a minimum of 6.0 metres is required. The variance is a result of the siting of the building closer to the eastern property line allowing for a larger buffer between the building and the neighbouring residential uses to the west. The reduced setback to the eastern property line will have a lesser impact on neighbouring residential uses than if the building was located in the centre of the site. In addition, Public Works has not raised any concerns in relation to drainage. It is noted the adjacent property to the east is the Concordia Lutheran Church and the reduced setback will have minimal impact on this use. As such, the variance is considered minor in nature.</p> <p><b>9.2.3 Maximum Building Height</b></p> <p>Yes, the variance is minor in nature. The variance requests a maximum building height of 21.0 metres whereas a maximum building height of 15.0 metres is permitted. The question of whether a variance is minor in nature is not empirical in nature, rather it is a question of impact. Impact considerations include shadowing, compatibility, visual impact to the streetscape. The increase in height is not anticipated to have significant impacts on neighbouring land uses and is generally in character with surrounding land uses. Further, the step-back from the third storey and step backs on the front of the building at the 5th and 6th floor break up the overall building mass and lessen the impact of the increased height. Please refer to the analysis in the following sections, as well as discussion under Staff Comments. As such, the variance is considered minor in nature.</p> <p><b>4.3.1(a) Minimum Bicycle Parking Requirements</b></p> <p>Yes, the variance is minor in nature. Given the context, the requirement for 0.8 short-term bicycle parking spaces is excessive. Adequate short-term spaces will be provided (2 racks), and as such the variance is considered minor in nature.</p>

Minor Variance Test	Explanation
<p>2. The variance is desirable for the development or use of the land.</p>	<p><b>4.1.4.8 Parking Area Location on Lot</b></p> <p>Yes, the variance is desirable for the development or use of the land. The variance is desirable as it will provide design flexibility for the site and allow for the siting of the building closer to the street which from an urban design perspective is desirable. The variance will allow for accessible spaces to be located close to the entrance of the building, and allow for the retention of existing trees. As such, the variance is desirable for the development or use of the land.</p> <p><b>9.2.3 Minimum Lot Area</b></p> <p>Yes, the requested variance is desirable for the development or use of the land. The lot was created through a previous application for consent that met the minimum lot area for the Institutional zone. The reduction in lot area requirement is not anticipated to have substantial impacts on the surrounding area and is generally compatible in terms of use. The eastern, western, and northern property lines will be fenced and landscaped. 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. The reduction in minimum lot area will not impact the functionality of the site. As such, the variance is considered desirable for the development or use of the land.</p> <p><b>9.2.3 Minimum Side Yard</b></p> <p>Yes, the variance is desirable for the development or use of the land. The proposed variance allows for the siting of the building farther away from the existing residential uses to the west. The variance still allows for appropriate landscaping buffering and drainage. As such, the variance is desirable for the development or use of the land.</p> <p><b>9.2.3 Maximum Building Height</b></p> <p>Yes, the variance is desirable for the development or use of the land. The proposal provides for a form of development that is generally compatible and desirable for the surrounding area. The building has been sited in a location to reduce potential impact on neighbouring lands in terms of privacy and shadowing. The increased height is not anticipated to result in a built form that is inappropriate for the lands. The increased height will allow for the provision of two levels of parking within the building, reducing the need for surface parking, thus providing more space for landscaped areas. The increased height is due to the elimination of much of the surface parking, which is generally considered to be positive and desirable. As such, the variance is considered desirable for the development or use of the land.</p> <p><b>4.3.1(a) Minimum Bicycle Parking Requirements</b></p> <p>Yes, the variance is desirable for the development or use of the land. Given the context, the requirement for 0.8 short-term bicycle parking spaces is excessive. Adequate short-term spaces will be provided, and allow for better use of space, including more opportunities for enhanced landscaping. It is noted that bike storage inside the building will be provided for the residents.</p>

Minor Variance Test	Explanation
<p>3. The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p><b>4.1.4.8 Parking Area Location on Lot</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. Section 4.1.4.8 of the Zoning By-law sets forth setbacks for parking areas specific to dwelling type. The intention of these provisions is to ensure visual impacts of parking areas are reduced to the extent possible, and to ensure the streetscape is softened through the use of landscaping. The variance is necessary to locate three additional spaces near the frontage of the building, two of which are accessible. The site maintains adequate area for landscaping. As such, the variance maintains the general intent and purpose of the Zoning By-law.</p> <p><b>9.2.3 Minimum Lot Area</b></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 shape the physical layout and character of a site. The purpose of minimum lot areas is to ensure that there is adequate space for parking, landscaping and amenity areas on the property. The function of the site is maintained. The site maintains adequate space for parking and landscaping. As such, the variance maintains the general intent and purpose of the Zoning By-law</p> <p><b>9.2.3 Minimum Side Yard</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intention of the minimum side yard is to ensure there is adequate spacing between neighbouring uses and to ensure there remains adequate room for drainage. 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, the variance maintains the general intent and purpose of the Zoning By-law.</p> <p><b>9.2.3 Maximum Building Height</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the maximum building height is to maintain compatibility between uses and to ensure shadowing and visual impacts and other impacts are mitigated to the extent possible. The residential use of the property is generally compatible in nature with the surrounding land uses, which include low to medium density residential, institutional, and commercial development. The building has been sited along the eastern property line of the site so as to provide the largest buffer possible from the neighbouring residential properties to the west.</p> <p>A shadow impact study was prepared and submitted along with the application. With regard to shadowing, the majority of shadowing impacts in the spring, summer, and fall months are contained to the site itself and the neighbouring institutional building. Shadowing impacts on the residential properties to the west and north are most pronounced in the morning hours (8am), and generally have minimal to no impact past the midday mark (noon) as the shadowing moves to east. No minimal shading impacts to rear yard amenity spaces of residential properties are anticipated in the spring, summer, and fall months. The longest shadow conditions occur on December 21<sup>st</sup>, during the winter months when</p>

Minor Variance Test	Explanation
	<p>outdoor amenity spaces are used less frequently. Shadowing impacts are mitigated through the use of large side and rear yard setbacks to the low-density residential properties to the north and west.</p> <p>As such, the variance is considered to maintain the general intent and purpose of the Zoning By-law.</p> <p><b>4.3.1(a) Minimum Bicycle Parking Requirements</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intention for requiring short term bicycle spaces is to promote and facilitate cycling as a sustainable mode of transportation, and to support the creation of cyclist-friendly development patterns. The intention is intended to ensure adequate infrastructure is provided to accommodate cyclists, making it safer and more convenient for short term visitors of the site. The proposed development provides for the required number of long-term bicycle parking spaces, and as such, the short-term spaces are primarily intended for the use of visitors. The development will provide for 2 short term bicycle racks, equating to 12 short term spaces. Given the neighbourhood context, and the ability for residents to store bicycles in private storage lockers, the reduction in short-term spaces is considered appropriate and is considered to maintain the intent of the Zoning By-law.</p>
<p>4. The variance maintains the general intent and purpose of the Official Plan.</p>	<p><b>4.1.4.8 Parking Area Location on Lot</b></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 lands are designated Urban Living Area / Built Boundary. The intention of this designation is to permit a diverse mix of land uses that contribute to a complete community. 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. The proposed building and dwelling are generally compatible with and generally in keeping with the existing character of the 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. As such, staff are of the opinion the proposed variance maintains the general intent and purpose of the Official Plan.</p> <p><b>9.2.3 Minimum Lot Area</b></p> <p>Yes, the variance maintains the general intent and purpose of the Official Plan. Please see analysis in Section 4.1.4.8 above.</p> <p><b>9.2.3 Minimum Side Yard</b></p> <p>Yes, the variance maintains the general intent and purpose of the Official Plan. Please see analysis in Section 4.1.4.8 above.</p> <p><b>9.2.3 Maximum Building Height</b></p> <p>Yes, the variance maintains the general intent and purpose of the Official</p>

Minor Variance Test	Explanation
	<p>Plan. Please see analysis in Section 4.1.4.8 above.</p> <p><b>4.3.1(a) Minimum Bicycle Parking Requirements</b></p> <p>Yes, the variance maintains the general intent and purpose of the Official Plan. Please see analysis in Section 4.1.4.8 above.</p>

### Agency and Public Comments:

On July 4<sup>th</sup>, 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
  - A building permit will be required for the proposed structure.
- Public Works Department
  - Consideration be given to relocate the accessible parking stalls as the proposed location may potentially impact/restrict vehicular access to the development due to the nature of the usage. There is also a safety concern for the users of the accessible parking stalls crossing the access road to the development.
  - There will be a drainage swale required long the eastern property line for drainage purposes, the minimum width requirement for a swale is 2m and will be needed to ensure that the stormwater run-off doesn't impact the adjacent property. There will also be a requirement for building maintenance along the east face of the building that will require an access platform. Reducing the side yard setback may restrict working areas to place equipment.
  - That the applicant confirm that no existing utilities currently cross the proposed new property line. Should any services cross this new property line, the applicant will be responsible for costs associated with their relocation and/or removal.
  - A Construction of new or modification of existing driveways requires a Driveway Entrance Permit. This permit is obtained through the Public Works Department. All associated costs with this permit are the responsibility of the owner.

One (1) public comment was received at the time of writing this report, which is summarized below:

*Murray and Helen Downie*

- *Opposed to the variances; Concerned with the extent of relief requested; Believes the magnitude of the requested variances are not minor in nature.*

## **Supporting Materials:**

### *Planning Justification Brief prepared by Upper Canada Consultants*

- A planning justification brief was prepared in support of the minor variance application. The application provided an overview of the development concept, a description of the subject lands and surrounding area, as well as a policy analysis of the proposal's alignment with Provincial and Town policy. The brief also provides an overview of the various supporting materials submitted with the application.

### *Shadow Study prepared by Raimondo and Associates Architects Inc.*

- The majority of shadowing impacts in the spring, summer, and fall months are contained to the site itself and the neighbouring institutional building. Shadowing impacts on the residential properties to the west and north are most pronounced in the morning hours (8am), and generally have minimal to no impact past the midday mark (noon) as the shadowing moves to east. No to minimal shading impacts to rear yard amenity spaces of residential properties are anticipated in the spring, summer, and fall months. The longest shadow conditions occur on December 21<sup>st</sup>, during the winter months.

### *Sightline Assessment prepared by RV Anderson Associated Ltd.*

- In November 2022, a Traffic Impact Study was prepared in support of Zoning By-law Amendment file AM-07-2022. A sightline analysis was prepared to address concerns regarding to driver sightlines for the proposed access to the site. The assessment followed the guidelines found in the Transportation Association of Canada's (TAC) Geometric Design Guide for Canadian Roads. The assessment provided an analysis of sight distances from the existing access from 2.4m and 4.4m back from the edge of Welland Road. In addition, the assessment included the stopping sight distance for vehicles travelling along Welland Road to come to a safe stop in the event a vehicle pulls out from the site driveway. The assessment found that both the sight distances from the proposed access, as well as the stopping sight distance satisfy the current TAC guidelines.

## **Planning Staff Comments:**

Planning staff have reviewed all supporting materials 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 and the broader public interest.

A Zoning By-law Amendment is not required to permit the apartment use, as the Institutional zone permits an apartment building. The previous Zoning By-law also permitted an apartment built form but was restricted to a seniors citizens home. Zoning By-laws are not permitted to 'people' zone and cannot restrict people from living in a dwelling because of their age. The current Zoning By-law removes the age criteria or limitation for the apartment built form that previously existed in the Institutional Zone by permitting an apartment dwelling.

With respect to concerns related to traffic, privacy, shadowing, drainage, and the character of the neighbourhood, Staff are satisfied the concerns will be adequately addressed through the detailed site plan process. The supporting materials show that an effort has been made to reduce impacts on neighbouring properties, through the use of setbacks and landscaped buffers and appropriate siting of the building and minimizing the amount of surface parking.

With respect to privacy and shadowing, it is noted that a number of the existing mature trees along the perimeter of the property will be maintained, and they provide a landscape buffer to the proposed development. The Applicant has indicated after discussion with neighbouring property owners to the north that a line of coniferous trees will be planted along the northern property line. In addition, additional landscaping components will be reviewed as part of the site plan approval process as well as other building design elements and setbacks to ensure privacy impacts are minimized. A Visual Angular Plane analysis prepared by Raimondo and Associates was submitted in support of the previous Zoning By-law Amendment but was included in the planning justification brief submitted by the Applicant. The analysis uses a 45-degree plane to establish the siting of a building on a property to mitigate privacy concerns. The drawings show a 1:1 building height to setback (e.g., the building is setback equal in distance to neighbouring property line as it is in height) is achieved to the visual angular plane from the windows and balconies of the 6th storey units. The result is the upper units do not directly overlook private amenity spaces of the adjacent residential properties.

With respect to traffic, the Sightline Assessment prepared by RV Anderson Associates found that the sightlines were adequate. The Traffic Impact Study submitted as part of the former Zoning By-law Amendment application found the proposed residential driveway will operate with reserve capacity and the existing roadway system has surplus capacity to accommodate the proposed growth.

Members of the public expressed concerns relating to the character of the neighbourhood. Staff note that the neighbourhood is comprised of a mix of low to medium density housing, as well as commercial and institutional development. Neighbourhood character does not necessitate that all land uses must be the same as what is existing. Embracing a diverse range of land uses can contribute positively to the overall character and vitality of a neighbourhood. A mix of land uses including

varying densities of residential uses, commercial, and institutional can foster a lively neighbourhood that ensures the character of the neighbourhood is balanced and inclusive and contributes to building complete communities. An apartment dwelling is not out of character in this mixed-use neighbourhood and is in keeping with the mixed-use character and contributes to it, by providing additional housing choice to the area.

Planning staff are of the opinion that the proposed minor variance application is consistent with the PPS and conforms to the policy requirements of the Growth Plan for the Greater Golden Horseshoe, the Region of Niagara Official Plan and the Town Official Plan. The proposed consent will provide opportunities to make efficient use of land and infrastructure and ultimately the proposal will contribute towards increasing housing choice and contribute to the development of a complete community. Generally speaking, residential development adjacent to residential development is compatible from a land use perspective and the scale and residential density proposed can be integrated with the adjacent uses and impacts can be mitigated through the implementation of certain building design features, landscaping elements, building placement, minimizing surface parking, etc. to provide for compatible development.

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 A16/2023P **be approved** subject to the following condition(s):

**THAT** the applicant:

- Receive clearance from the Ministry of Heritage, Sport, Tourism & Culture with regards to the completed Archaeological Assessment. No demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.
- Apply for and obtain approval for site plan approval from the Director of Community Planning and Development.
- That all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.
- Submit a comprehensive Lot Grading & Drainage Plan demonstrating that the drainage neither relies, nor negatively impacts neighbouring properties, 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 or any modifications to existing driveways/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.

- Part 2 is to be individually serviced with its own sanitary and water connections. This work is to be done by the owner, at the owner's expense, and will require a Temporary Works Permit. Should there be an intention to sever the lot in the future, the sanitary and water services for each unit will need to be contained in their respective lots. Should these services cross property lines, Public Works will not support the consent to sever.

**Prepared and Submitted by:**

Andrew Edwards, BES  
Planner

**Recommended by:**

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