



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

Tuesday, September 05, 2023

Minor Variance Application: A18-2023P

Municipal Address: 1053 Pelham Street (Part 1)

Legal Description: THOROLD PT TWP LOT 177 RP, 59R15938 PART 1

Roll number: 2732 030 019 05100

Nature and Extent of Relief/ Permission Applied for:

The subject land is located on the east side of Pelham Street, lying south of Homestead Boulevard, being Lot 177, Formerly Part of Thorold Township now Pelham, Part 1 on Reference Plan 59R-17702 (Part 1 on Sketch) in the Town of Pelham.

The lands are a corner lot, having 22.88 metres of frontage on Pelham Street and 31.78 metres of frontage on Homestead Boulevard. The lands have an area of approximately 728.5 m². The lands currently contain an existing single detached dwelling known as 1053 Pelham Street.

The subject land is zoned Residential 1 (R1) in accordance with Pelham Zoning By-law 4481(2022), as amended. Application for relief is made to recognize zoning deficiencies resulting from Consent File B13/2023P. The applicant seeks relief from the following sections of the Zoning By-law:

- a) **Section 3.7 "Encroachments – Decks (uncovered)"** – to permit an uncovered deck encroachment of 6.42m into the required rear yard, whereas an encroachment of 4.0m is permitted;
- b) **Section 6.1.2 "Minimum Rear Yard"** – to permit a minimum rear yard setback of 4.7m whereas the bylaw requires a minimum rear yard setback of 7.5m.

This application is being considered concurrently with Consent Files B13/2023P and B14/2023P and Minor Variance File A19/2023P. Note the application was previously subject to applications for consent in 2022 in which two (2) new lots were severed from the retained lands (B11-2023P and B12-2022P).

Applicable Planning Policies:

Planning Act, R.S.O. 1990, c.P.13

Section 45 (1) states that the Committee of Adjustment may authorize minor variance provisions of the Zoning By-law, in respect of the land, as in its opinion is (1) minor in nature, (2) objectively desirable for the appropriate development or use of the land, and the general intent and purpose of the (3) Zoning By-law and (4) Official Plan are maintained (the "Four Tests"). A discussion of the four tests is included below.

Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development and sets the policy foundation for regulating the development and use of land. The PPS provides for suitable development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

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

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

Policy 1.1.3.3 states municipalities shall identify appropriate locations and promote opportunities for intensifications where this can be accommodated considering existing building stock and the availability of suitable existing infrastructure and public service facilities.

The Niagara Region Official Plan prescribes an annual residential intensification rate of at least 15% for all lands within Pelham's *Urban Settlement Areas*, this policy target is also reflected in the Pelham Official Plan. The proposed development will contribute to meeting this target.

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*.

Policy 2.6.2 of the PPS does not permit development and site alteration on lands containing archaeological resources unless significant archaeological resources have been conserved. The lands are identified as displaying composite archaeological

potential per the Town's Archaeological Master Plan. An archaeological assessment was conducted on the lands at the time of the previous consent applications, which received Ministry clearance.

Staff are of the opinion that 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)

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 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.

The subject lands are located within the Delineated Built Boundary, being the settlement area of Fonthill. The application is generally consistent with the policies of the Growth Plan.

Staff are of the opinion that the proposed variance conforms with the Growth Plan.

Regional Official Plan (Adopted 2022)

The Region of Niagara adopted a new Official Plan on June 23, 2022. It was approved by the Province in November 2022.

Policy 2.2.2.5 now requires that across the Region 60% of all residential units occurring annually are to be in the Build-Up Areas and in Pelham, this translates into an annual intensification rate of 25% of new residential units are to be within the Built-Up Area. The principle objective is to increase housing choice and housing affordability across the Region to meet future housing needs.

Policy 2.2.1.1 states that development in urban areas will integrate land use planning and infrastructure planning to responsibly manage forecasted growth and to support

intensification, compact built form, a mix of land uses, and a diverse range and mix of housing.

Policy 2.3.1.4 also provides that new residential development and residential intensification are encouraged to be planned and designed to mitigate and adapt to the impacts of climate change by facilitating compact built form and incorporating sustainable housing construction materials or practices, green infrastructure, energy conservation standards, water efficient technologies, and low impact development.

Planning staff are of the opinion the proposed variance confirms with the Regional Official 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 subject lands are designated Urban Living Area / Built Boundary according to the Town's Official Plan. The purpose of the Urban Living Area designation is to recognize the existing residential areas of Fonthill and Fenwick and 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.

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage the majority of development to the Urban Areas where full sewer and water services are available. An objective is to encourage intensification and redevelopment within the Urban Area.

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 character of the neighbourhood will be maintained.

Section E1.5 of the Official Plan speaks to minor variances. The policy outlines the four tests of a minor variance (discussed below) and stipulates that in making a determination of whether a variance is minor as required in Item Four, Committee shall have more regard for the degree of impact which could result from the relief and less regard to the magnitude of numeric or absolute relief sought by the applicant. Additionally, the policy states that applicants who request a minor variance 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.

Please refer to discussion in Four Tests section below. The applicant provided a planning justification brief providing an analysis of the requested variances.

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

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

The subject lands are zoned Residential One (R1) according to Schedule 'C' of the Town's Comprehensive Zoning By-law. The R1 zone permits a single detached dwelling and uses, buildings, and structures accessory thereto. Under the regulations of the R1 zone, the minor variance applications request relief from:

- a) **Section 3.7 "Encroachments – Decks (uncovered)"** – to permit an uncovered deck encroachment of 6.42m into the required rear yard, whereas an encroachment of 4.0m is permitted;
- b) **Section 6.1.2 "Minimum Rear Yard"** – to permit a minimum rear yard setback of 4.7m whereas the bylaw requires a minimum rear yard setback of 7.5m.

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.	Section 3.7 "Encroachments – Decks (uncovered)" Yes. The requested variance is considered to be minor in nature. The increased encroachment of the uncovered deck is not anticipated to result in a negative impact on the adjacent uses or substantially remove any of the rear yard amenity area of the lot. The orientation of the deck is considered moderate in scale and a logical extension of the outdoor amenity space. Further, there will be no shadowing impact and its presence would not encroach on neighbouring parcels' private amenity space. Section 6.1.2 "Minimum Rear Yard" Yes. The requested variance is considered to be minor in nature. The requested variance is not anticipated to have a significant negative impact on the streetscape or adjacent properties as the existing dwelling will be maintained. Adequate area does exist on the property to provide for appropriate outdoor amenity area.
The variance is desirable for the development or use of the land.	Section 3.7 "Encroachments – Decks (uncovered)"

	<p>Yes. The requested variance is considered to be desirable for the appropriate development or use of the land.</p> <p>The deck will enhance the outdoor amenity space. The requested variance is not anticipated to have negative impacts on the streetscape or adjacent properties. The scale of the proposed deck will not create a negative precedent since the amenity area will be maintained and will not affect the original intent of the building design.</p> <p>Section 6.1.2 "Minimum Rear Yard"</p> <p>Yes. The requested variance is desirable for the development or use of the land. The requested variance 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 interior side yard.</p> <p>Staff are of the opinion the variance is desirable for the development or use of the land.</p>
The variance maintains the general intent and purpose of the Zoning By-law.	<p>Section 3.7 "Encroachments – Decks (uncovered)"</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law.</p> <p>The intention of the maximum encroachment requirement is to ensure that there is sufficient space and separation between buildings, as well as to ensure there is adequate amenity space. The increased encroachment is not anticipated to have a significant visual impact and there remains adequate rear yard amenity space to service the dwelling.</p> <p>Staff are of the opinion that the increased encroachment is appropriate in this case and in keeping with the character of the area.</p> <p>Section 6.1.2 "Minimum Rear Yard"</p> <p>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.</p> <p>The parcel will maintain adequate amenity space. The reduced rear yard setback is not anticipated to have a significant visual impact from Homestead as the structure is existing.</p> <p>Staff are of the opinion that that intent and purpose of the zoning by-law is maintained.</p>
The variance maintains the general intent and purpose of the Official Plan.	<p>Section 3.7 "Encroachments – Decks (uncovered)"</p> <p>Yes. The requested variance is considered to maintain 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.</p> <p>Staff are of the opinion the variance maintains the general intent and purpose of the Official Plan.</p>

	<p>Section 6.1.2 “Minimum Rear Yard”</p> <p>Yes. The requested variance is considered to maintain 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 variance will have no impact on the streetscape as viewed from Homestead as it is recognizing existing conditions.</p> <p>Staff are of the opinion the variance maintains the general intent and purpose of the Official Plan.</p>
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Agency and Public Comments:

On August 9, 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 deck.
- Public Works Department
 - Per Public Works comments on Consent Files B112022P and B12/2022P and Minor Variance File A15/2022P and A16/2022P, the applicant has satisfied the all the requirements to clear all the conditions with regards to the lot grading and drainage, that the storm water runoff will not negatively impact nor rely upon neighboring properties. However, this proposed application resurfaced the issues with the creation of Future Part 2 and Part 3.
 - Please be advised that no sideyard walkways that impede swales shall be permitted.

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

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.

Staff note that with respect to hardship, that the existing dwelling is to be retained.

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 A18/2023P **be approved** subject to the following condition(s):

THAT the applicant:

- That the approval of the minor variance A18/2023P is subject to the final certification of Consent Files B13/2023P and B14/2023P.
- 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.
- That all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.

Prepared and Submitted by:

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Planner

Recommended by:

Barbara Wiens, MCIP, RPP
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