



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

Monday, March 04, 2024

**Minor Variance Application: A3-2024P**

**Municipal Address: 27 Milburn Drive**

**Legal Description: PL59 M128 PT BLK 18 RP, 59R6755 PART 4**

**Roll number: 2732 030 012 36100**

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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 between Woodside Square and Milburn Drive, being PCL 18-5 SEC 59M-128, PT BLK 18, Plan 59M-128 being Part 4 on 59R-6755 in the Town of Pelham.

The subject land is zoned Residential Multiple 1 (RM1) in accordance with Pelham Zoning By-law 1136(1987), as amended. Application is made to construct an accessory building (pool shed)/pool area and seeks relief from:

- **Section 3.1(c) Accessory Uses, Buildings and Structures** – requesting an accessory building be permitted a front yard setback of 2.18 metres, whereas accessory structures are not permitted in the front yard.
- **Section 3.33(b) Swimming Pools** – requesting a setback of 2.53 metres to a front lot line for pool circulating equipment in an enclosed building, whereas circulating equipment is not permitted closer to any street than the required yard for the main building or structure.

The subject lands are triangular in shape and are approximately 1,014.78 square metres in area. The lands have approximately 64 metres of frontage along Welland Road. The frontage of the lands is the longest lot line. The two additional lot lines are considered interior lot lines. The two corners of the site are at the intersections of Milburn/Welland and Woodside/Welland.

Although the subject lands have a Milburn Drive address, access to the site is provided from a driveway off of Welland Road. The lands currently contain a one-storey street townhouse dwelling and amenity area/deck in the side yard.

The applicant is proposing to construct a pool area and 58 square metre accessory structure (pool shed/outdoor living area) on the property within the defined front yard. The structure is proposed to be used for the purpose of a sheltered amenity area, a changing room, and a mechanical room for the pool circulating equipment. The structure is proposed to be in the southeast corner of the site.

## **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.

Planning staff are of the opinion the requested zoning relief is consistent with the PPS.

### 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.

Planning staff are of the opinion the proposed minor variance conforms with the Growth Plan.

#### Regional Official Plan (Adopted 2022)

The Region of Niagara adopted a new Regional Official Plan (ROP) on June 23, 2022. It was approved by the Province in November 2022. The subject lands are recognized as Built-Up Area in the Regional Official Plan.

Policy 2.3.1.4 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:

- a) facilitating compact built form; and
- b) 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 conforms 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 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 and accessory uses as part of a complete community.

Section A2.3 provides objectives for the urban character of existing Urban Areas. Objectives include, but are not limited to:

- 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 maintain and enhance the character and stability of existing and well-established residential neighbourhoods by ensuring that development and redevelopment is compatible with the scale and density of existing development.

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 indicated that due to the irregular

triangular shape of the lot, siting the accessory structure in an alternative location is challenging.

Staff are of the opinion the proposed variances conform with the Town's Official Plan.

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

The subject lands are zoned Residential Multiple 1 (RM1) per Town of Pelham Zoning By-law 4481. A street townhouse dwelling, and accessory uses are a permitted use in the RM1 zone. Under the regulations of the Zoning By-law, the minor variance application requests relief from:

- **Section 3.1(c) Accessory Uses, Buildings and Structures** – requesting an accessory building be permitted a front yard setback of 2.18 metres, whereas accessory structures are not permitted in the front yard; and,
- **Section 3.33(b) Swimming Pools** – requesting a setback of 2.53 metres to a front lot line for pool circulating equipment in an enclosed building, whereas circulating equipment is not permitted closer to any street than the required yard for the main building or structure.

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><b>Section 3.1(c) Accessory Uses, Buildings and Structures</b></p> <p>Yes, the variance is minor in nature. The closest portion of the structure to the front lot line is setback 2.18 metres (the northern portion of the structure). Staff note this portion of the structure is the covered outdoor living space. The proposed accessory structure maintains the intention of the regulations for accessory buildings in the Town's Zoning By-law. Given the irregular shape of the lot, although defined as a front yard, the area where the accessory structure is proposing effectively functions as a rear/side yard. Restricting the ability of the structure to be located in the front yard poses challenges for the placement of the pool area/accessory structure. Permitting the structure within the front yard is not anticipated to impact the streetscape in a significant way. The design/placement of the structure utilizes existing amenity area while maintaining a compatible built form with the surrounding neighbourhood. As such, staff are of the opinion the variance is minor in nature.</p> <p><b>Section 3.33(b) Swimming Pools</b></p> <p>Restricting the ability of the structure/circulating equipment to be located in the front yard poses challenges for the placement of the pool area/accessory structure. Permitting the structure within the front yard is not anticipated to impact the streetscape in a significant way. As such, staff are of the opinion the variance is minor in nature.</p>

<p>The variance is desirable for the development or use of the land.</p>	<p><b><i>Section 3.1(c) Accessory Uses, Buildings and Structures</i></b></p> <p>The desirability test examines whether the variance is desirable from the standpoint of permitting appropriate development as a public interest. The proposed location for the accessory building is suitable based on the existing site conditions on the property. The accessory building is an accessory residential use. The proposed location is currently utilized as amenity space for the owners. In the opinion of staff the accessory structure is a compatible use with the surrounding residential neighbourhood. An accessory residential use is an appropriate development for the site. In the opinion of staff, the proposed location of the accessory structure is appropriate given the context and irregular triangular shape of the lot. As such, staff are of the opinion the variance is desirable for the development or use of the land.</p> <p><b><i>Section 3.33(b) Swimming Pools</i></b></p> <p>The pool equipment will be enclosed in the accessory structure and will maintain a generous setback to the neighbouring property to the east. Given the irregular shape of the property, locating the accessory structure and circulating equipment in the front yard is desirable as it will maintain adequate outdoor amenity area for the property owners. Locating the circulating equipment in the accessory structure will provide a visual and noise attenuating buffer for the machinery. As such, staff are of the opinion the variance is desirable for the development or use of the land.</p>
<p>The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p><b><i>Section 3.1(c) Accessory Uses, Buildings and Structures</i></b></p> <p>Under the regulations of the Zoning By-law, accessory structures are not permitted in the front yard. The intent of prohibiting accessory buildings within the front yard is to maintain the character of the streetscape and to ensure accessory buildings have minimal impacts on neighbouring properties.</p> <p>The existing front yard, as defined by the Town's Zoning By-law, functions as a rear/side yard given the irregular shape of the lot. The placement of the accessory building is not anticipated to alter the character of the streetscape, or the existing dwelling. A fence is required to enclose the amenity area. Upon construction, as viewed from Welland Road, the fenced yard will appear as an exterior side yard similar to the existing conditions of the dwelling directly across the street from the proposed development. Staff note a fence variance is required, and thus will be included as a condition of approval. Similarly, construction of the pool will require a pool permit through the Town's By-law Department. Obtaining the permit will be included as a condition of approval for the variance.</p> <p>Further, the Town's Municipal Engineering Design Manual requires a daylighting triangle (Local to Collector) of 5.0m by 5.0m. The structure is located outside of the required daylighting triangle.</p> <p>As such, staff are of the opinion the proposed variance maintains the general intent and purpose of the Zoning By-law.</p> <p><b><i>Section 3.33(b) Swimming Pools</i></b></p> <p>The Town's Zoning By-law requires that water circulating or treatment equipment, such as pumps or filters shall not be located any closer than 1.2m to any side lot line or rear lot line if enclosed in an accessory building or structure, or closer to any street than the required yard for the main</p>

	<p>building or structure. The intent of the setback is to mitigate potential impacts on neighbouring properties in terms of visual and noise impacts. The portion of the building where the circulating equipment is proposed is setback 2.53 metres from the front lot line. The circulating equipment is proposed to be enclosed in the structure thereby reducing visual and noise impacts on neighbouring properties.</p> <p>The Zoning By-law requires circulating equipment in an enclosed building be setback a minimum of 1.2 metres from rear and interior side yards. However, the Zoning By-law stipulates that the equipment shall not be closer to the required yard for the main building or structure, thus triggering the need for the variance as the enclosed room is within the required front yard. The analysis provided above of the variance required to Section 3.1(c) remains applicable to the variance required to Section 3.33(b). On the basis of the above, 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><b><i>Section 3.1(c) Accessory Uses, Buildings and Structures</i></b>  <b><i>Section 3.33(b) Swimming Pools</i></b></p> <p>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. The designation permits a wide variety of residential and accessory uses.</p> <p>The variances will facilitate an appropriate accessory use for the site. the variance does not conflict with any policies of the Official Plan. The fulfilment of the proposed conditions of approval will ensure there is no impact to neighbouring properties.</p> <p>As such, staff are of the opinion the proposed variances maintain the general intent and purpose of the Official Plan.</p>

### Agency and Public Comments:

On February 9th, 2024, 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 is required for proposed accessory structure.
- Public Works Department
  - 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.

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 variances are minor in nature, conform to the general policies and intent of both the Official Plan and Zoning By-law and are appropriate for the development and use of the land.

**Planning Staff Recommendation:**

Planning staff recommend that minor variance file A3/2023P **be approved** subject to the following condition(s):

**THAT** the applicant:

- Obtain all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.
- 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 approval for a fence variance, to the satisfaction of the Director of Community Planning and Development.

**Prepared and Submitted by:**

Andrew Edwards, BES  
Planner

**Recommended by:**

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