



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

Monday, May 06, 2024

Minor Variance Application: A8-2024P

Municipal Address: 928 Foss Road

Legal Description: Part of Lot 18, Concession 11

Roll number: 2732 010 018 06600

Nature and Extent of Relief/ Permission Applied for:

The subject land is located between Foss Road and Sumbler Road, lying east of Victoria Avenue, being Part of Lot 18, Concession 11, in the Town of Pelham and known locally as 928 Foss Road in the Town of Pelham.

The subject land is zoned Agricultural (A) and Environmental Protection 1 (EP1) in accordance with Pelham Zoning By-law 4481(2022), as amended. The majority of the property is zoned Agricultural (A), with the EP1 lands located to the rear of the site in an area that is not actively farmed. Application for relief is made, to facilitate the construction of an agricultural building (poultry barn).

The applicant seeks relief from the following section(s) of the Zoning By-law:

- 1. Section 3.17(a) "Minimum Distance Separation Requirements"** – to permit a setback of 4.57m to an interior lot line whereas Minimum Distance Separation II (MDS II) regulations require a setback of 13m; and,
- 2. Section 5.1.2 "Zone Requirements for Agricultural Use"** – to permit an interior side yard setback of 4.57m whereas the By-law requires a minimum side yard setback of 20m.

The applicant is proposing to construct an 1,858 m² poultry barn in the east of the site on a portion of the lands that are not actively farmed. The surrounding lands are predominantly agricultural in nature, with a limited amount of single detached residential dwellings being located in the area of the subject lands.

The subject lands comprise an area of approximately 12.3 hectares and contain agricultural land in production, farm buildings, a single detached dwelling, and an existing poultry barn.

MDS Guidelines require setbacks to be calculated between new or expanding livestock facilities and single detached residential dwellings, in order to minimize impacts, such as odour impacts.

The applicant has indicated that the barn is proposed in its proposed location as it will maintain a greater setback from the nearest residential dwelling to the west. The property to the east of the proposed poultry barn is currently used for agricultural purposes. Further, the applicant has indicated locating the barn in its proposed location will eliminate the need to take lands that are in active agricultural production out of production.

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.

Provincial and Regional policies protect 'Prime Agricultural Areas' and 'Specialty Crop Areas' for long-term use for agriculture. A variety of uses and activities are permitted in Prime Agricultural Areas, including agricultural uses, agriculture-related uses and on-farm diversified uses.

2.3.3.2 of the PPS states in prime agricultural areas, all types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in accordance with provincial standards.

Section 2.3.3.3 of the Provincial Policy Statement (PPS) states that new land uses, including the creation of lots, and new or expanding livestock facilities shall comply with the Minimum Distance Separation formulae.

The lands are identified as displaying archaeological potential per the Town's Heritage Master Plan. In accordance with Provincial legislation, a stage 1-2 archaeological assessment scoped to the area of disturbance is required if deep ground disturbance is proposed. Staff have reviewed the foundation details provided with the application and will waive the requirement for an archaeological assessment. As the impact is limited in scope and nature, an archaeological advisory will be given in lieu of requiring an archaeological assessment.

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

Publication 853 – The Minimum Distance Separation (MDS) Document

Publication 853 outlines the specific Implementation Guidelines which shall be executed during the application of the Minimum Distance Separation (MDS) Formulae to calculate setbacks. It contains a number of implementation guidelines used to apply MDS. The Minimum Distance Separation II (MDS II) formula was established under the Agricultural Code of Practice to determine setbacks between proposed new, enlarged or renovated livestock facilities and other existing or approved development.

The publication state that MDS II setbacks should not be reduced except in limited site-specific circumstances that meet the intent of the document. Examples include circumstances that mitigate environmental or public health and safety impacts, or avoid natural or human-made hazards.

Town Building staff completed the MDS calculation which resulted in a minimum building setback of 13 metres of the structure to the nearest lot line, and a minimum of 129 metres to the nearest Type A (e.g. residential) use. The barn maintains a setback of 161 metres to the nearest residential dwelling.

The minor variance will result in the location of the structure that is further setback from the nearest residential dwelling than would otherwise be permitted.

As such, staff are of the opinion the variance meets the intent of the Minimum Distance Separation (MDS) Document.

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 property is designated Prime Agricultural Area which is intended to protect the lands for long term agricultural use. The lands are currently being used for agricultural purposes, and will continue to be used for agricultural purposes.

Staff are of the opinion the variances conform 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. The agricultural land base is comprised of prime agricultural areas, including specialty crop areas, and rural lands.

The Niagara Official Plan generally states prime agricultural areas shall be protected for long-term use for agriculture. The proposed poultry barn is an agricultural use and the lands will continue to be used for agricultural production.

Staff are of the opinion the variances conform 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 lands are designated Good General Agricultural, Environmental Protection 1, and Environmental Protection 2. The lands on which the poultry barn is proposed is designated Good General Agricultural. The purpose of the Good General Agricultural designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture.

The proposed use is agricultural in nature and will continue to support and be compatible with the surrounding agricultural area.

Section E1.5 states in making a determination of whether a variance is minor as required in Item Four, Committee will 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. The applicant submitted a cover letter with the applicant that detailed why the poultry barn is sited in its proposed location. Staff are satisfied the reasons detailed in the cover letter are appropriate.

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

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

The subject lands are zoned Agricultural (A) and Environmental Protection 1 (EP1). Agricultural uses are a permitted use in the Agricultural zone. Under the regulations of the Zoning By-law the minor variance application requests relief from:

- **Section 3.17(a) "Minimum Distance Separation Requirements"** – to permit a setback of 4.57m to an interior lot line whereas Minimum Distance Separation II (MDS II) regulations require a setback of 13m; and,
- **Section 5.1.2 "Zone Requirements for Agricultural Use"** – to permit an interior side yard setback of 4.57m whereas the By-law requires a minimum side yard setback of 20m.

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
<p>The variance is minor in nature.</p>	<p><i>Section 3.17(a) Minimum Distance Separation Requirements</i></p> <p>Minor is a relative term to be interpreted in the based on the individual circumstance of each application and lends itself to the degree of impact. Planning staff have reviewed the applicant in the context of existing development on the lands, and existing characteristics of the surrounding area. The applicant seeks to reduce the MDS II setback to a lot line from 13 metres to 4.57 metres. The lands to the east are currently used for agricultural purposes. The nearest residential dwelling is located approximately 160 metres to the west which exceeds 129 MDS setback to a sensitive use. As such, staff do not anticipate any adverse impacts to sensitive land uses.</p> <p>As such, staff are of the opinion the variance is minor in nature.</p> <p><i>Section 5.1.2 Zone Requirements for Agricultural Use</i></p> <p>The applicant seeks to reduce the side yard setback of an agricultural building from 20 metres to 4.57 metres. The applicant has indicated the building is proposed in its current location, as siting the poultry barn further to the west would bring the use closer to the nearest residential dwelling, as well as take agricultural lands currently farmed out of production. The proposed location is also a result of the relatively narrow frontage for an agricultural property. The neighbouring property to the east is currently farmed. The proposed 4.57m sideyard setback is adequate to maintain the building. As such, impacts such as odour, and visual impacts are reduced.</p> <p>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><i>Section 3.17(a) Minimum Distance Separation Requirements</i></p> <p>The variance is considered an appropriate use of the land as agricultural uses are permitted in the Agricultural zone. The applicant is proposing to expand an existing operation with the construction of a new barn. The structure is located in an appropriate location and as such staff are of the opinion the variance is desirable for the development or use of the land.</p> <p><i>Section 5.1.2 Zone Requirements for Agricultural Use</i></p> <p>The variance is considered an appropriate use of the land as agricultural uses are permitted in the Agricultural zone. The applicant is proposing to expand an existing operation with the construction of a new barn. The structure is located in an appropriate location and 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><i>Section 3.17(a) Minimum Distance Separation Requirements</i></p> <p>The general intent and purpose of the Zoning By-law as it relates to MDS II setbacks is to mitigate the potential impacts of new or expanding existing livestock operations on abutting residential uses. Staff are of the opinion the location of the barn minimizes potential impacts (such as odour and visual impacts) on adjacent sensitive residential uses.</p> <p>As such, staff are of the opinion the variance maintains the general intent and purpose of the Zoning By-law.</p>

	<p>Section 5.1.2 Zone Requirements for Agricultural Use</p> <p>The variance maintains the general intent of the Zoning By-law as the requested side yard setback reduction leaves adequate space for passage, drainage, and spatial separation between adjacent land uses. Given the agricultural use of the adjacent lands, staff do not anticipate any issues in terms of compatibility, drainage, or spatial separation.</p> <p>As such, staff are of the opinion the variance maintains the general intent and purpose of the Zoning By-law.</p>
<p>The variance maintains the general intent and purpose of the Official Plan.</p>	<p>Section 3.17(a) Minimum Distance Separation Requirements</p> <p>The intent of the Official Plan through the Good General Agricultural designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture. The proposed poultry barn meets the intent of agricultural uses permitted in the Official Plan, and will eliminate the need to take farmed lands out of production. As such, staff are of the opinion the variance maintains the general intent and purpose of the Official Plan.</p> <p>Section 5.1.2 Zone Requirements for Agricultural Use</p> <p>The intent of the Official Plan through the Good General Agricultural designation is to protect and maintain land suitable for agricultural production and permit uses which support and/or are compatible with agriculture. The proposed poultry barn meets the intent of agricultural uses permitted in the Official Plan, and will eliminate the need to take farmed lands out of production. The requested variance 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.</p> <p>As such, staff are of the opinion the variance maintains the general intent and purpose of the Official Plan.</p>

Agency and Public Comments:

On April 5, 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 will be required for the construction of the Agricultural building.
- Public Works Department
 - No comments.
- Niagara Region Growth Management and Planning Division
 - Regional staff do not object to the proposal from a planning perspective provided the Town is satisfied that the decreased setbacks meet the

- intent of the MDS formula and will not adversely impact the adjacent property.
- Regional Private Sewage System staff conducted an on-site inspection on April 22, 2024. Staff were unable to locate any records for the existing sewage system. Staff note that the existing sewage system is an older Class 4 type system (consisting of a septic tank and tile bed) and is considered "legal non-conforming". There were no visible defects found with the sewage system at the time of the inspection.
 - Staff determined that the proposed poultry barn will not encroach onto the existing sewage system and that there is enough usable land for the installation of a replacement sewage system in the future, when required.
 - Regional Growth Management and Planning Division staff offer no objection to the application, in principle, provided the Town is satisfied that the decreased setbacks meet the intent of the MDS formula and will not adversely impact nearby land uses.

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

Planning Staff Comments:

The applicant submitted a cover letter with the applicant that detailed why the poultry barn is sited in its proposed location. Staff have reviewed the letter and are satisfied the reasons detailed are appropriate. The poultry barn will maintain a greater distance to the nearest residential use should the variances be approved.

Based on the analysis given in above sections, staff is of the opinion the proposal 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 A8/2024P **be approved** subject to the following condition(s):

THAT the applicant:

- Apply for and receive approval of a Building Permit to the satisfaction of the Chief Building Official.
- The following advisory clause be included with the Building Permit: "If deeply buried or previously undiscovered archaeological remains/resources are found during development activities on the subject lands, all activities must stop immediately. If the discovery is human remains, contact the police and coroner to secure the site. If the discovery is not human remains, the area must be secured to prevent site disturbance. The project proponent must then follow the steps outlined in the Niagara Region Archaeological Management Plan: Appendix C."

Prepared and Submitted by:

Andrew Edwards, BES
Planner

Recommended by:

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