



**Community Planning and Development Department
Committee of Adjustment**
Monday, June 03, 2024

Consent Application: B10-2024P

Municipal Address: 594 River Road
Legal Description: CON 14 PT LOT 11
Roll number: 2732 030 017 17300

Location of Lands and Purpose of Application:

The subject parcel, shown as Part 1 on the attached sketch, has a frontage of 8.84m on the south side of River Road, lying east of Cream Street, being Part of Lot 11, Concession 14, in the Town of Pelham.

The Subject Lands are located on the south side of River Road in the Town of Pelham, approximately 100 metres east of Cream Street. 572 River Road abuts 594 River Road to the east. Both 572 and 594 River Road are located along the north bank of the Welland River, which delimits their southern extent.

The Subject Lands slope downward to the Welland River, with each existing lot occupied by detached dwellings that are one-storey at the front and have walkout basements to the rear.

Both 572 and 594 River Road are serviced by private water and septic systems. Application is made for consent to convey 244 square metres of land (Part 1), to be added to the abutting property to the east (Part 3), for future construction of an attached garage. Part 2 is to be retained for continued residential use of the dwelling known municipally as 594 River Road.

This application is being considered concurrently with Minor Variance Files A11-2024P and A12-2024P.

Applicable Planning Policies:

Planning Act

Section 53 (1) states a land owner may apply for a consent and the council may, subject to this section, give a consent if satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality.

Provincial Policy Statement (PPS) (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 appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.

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

According to the PPS, the lands are considered to be within a prime agricultural area. The permitted uses, among others, include agricultural/agricultural related uses, limited residential development and home occupations.

Both residential lots are serviced by individual on-site sewage and water services, consistent with PPS policy 1.6.6.4. On-site sewage and water services will not be impacted by the proposed consent and attached garage.

Provincial and Regional policies aim to protect agricultural land for long-term agricultural use. Specifically, Section 2.3 “Agriculture” of the PPS sets the policy framework for prime agricultural areas. Policy 2.3.6.1 permits limited non-agricultural uses in prime agricultural areas. Planning staff note that the properties are relatively small in area, are not farmed and are considered to be rural residential lots at this time.

PPS policy 2.3.4.2 provides that lot adjustments in prime agricultural areas may be permitted for legal or technical reasons. Under the PPS, legal or technical reasons are defined as means “severances for purposes such as easements, corrections of deeds, quit claims, and minor boundary adjustments, which do not result in the creation of a new lot.”

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 also identifies this area as having composite archaeological resource potential. An archaeological assessment was submitted with the application.

The proposed boundary adjustment involves lands that are being used as a rural residential lot, that are not conducive to farming. There are no anticipated impacts to surrounding agricultural uses as a result of the application. Staff are of the opinion that the boundary adjustment can be considered to be for a legal or technical reason.

Staff are of the opinion that the proposed consent is consistent with the Provincial Policy Statement.

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 lands are designated prime agricultural area in the Growth Plan for the Greater Golden Horseshoe. No new residential uses are proposed as a result of the requested boundary adjustment.

The property is also partly mapped as part of the Provincial Natural Heritage System and considered Key Natural Heritage Features and/or Key Hydrologic Features.

Section 4.2.3.1(e)(i) of the Growth Plan allows for expansions to existing buildings and structures provided that the use does not expand into KNHF/KHF or the VPZ unless there is no other alternative, and the expansion or alteration in the feature is minimized and, in the vegetation protection zone, is directed away from the feature to the maximum extent possible. The proposed boundary adjustment does not further fragment the features on site, and further the attached garage does not expand into the KNHF. Given the size of the site, staff are of the opinion there is no alternative location that is outside of the 30 metre VPZ.

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

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 ("NOP") provides the policy guidance for future development across the Region.

Similar to the PPS, the NOP restrict lot creation in agricultural areas, and only permit severances for agricultural lots, legal or technical reasons, minor boundary adjustments, a residence surplus to a farming operation, and infrastructure (subject to specific criteria). Regional policy defers to local municipalities to determine what is considered a "legal or technical reason" for a consent within the Prime Agricultural Area.

NOP Policy 4.1.4.3 requires that all development and uses include sustainable on-site private water supply and private sewage disposal systems. The existing septic system for 594 River Road is wholly contained on "Part 2" and that the proposed development will not remove any useable area for future replacement of the septic system from the retained lands. A septic inspection was conducted in October 2023. Staff note due to limited area on the site and environmental restrictions from the Welland River,

staff note that the future replacement of the sewage system at 594 River Road will require the use of a holding tank rather than a standard in-ground septic bed.

Regional staff provided comment on the application which concluded the proposal is generally consistent with the Provincial Policy Statement and does not conflict with Provincial and Regional policies, and offered no objection.

As stuff, staff are of the opinion the consent conforms with the NOP.

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 our natural heritage features.

The local Official Plan designates the subject lands as 'Good General Agricultural' and 'Environmental Protection One EP1' according to Schedule 'A.' 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. Planning staff note that the properties are relatively small in area, are not farmed and are considered to be rural residential lots at this time.

The lands designated Environmental Protection One (EP1) on Schedule A of the Town's OP are located along the shoreline of the Welland River along the southern boundary of the Subject Lands.

Town policy B3.7.4.2 requires a geotechnical report for lands within or adjacent to stable slopes. A geotechnical report was submitted with the application. It found the proposed attached garage would not negatively impact the stability of the slope and determined it would be setback 8-11 metres from the top of stable slope (i.e. stable top-of bank). Recommendations also address design and construction to ensure the stability of the slope is not negatively impacted by altering natural drainage and that vegetation on the slope is protected during construction and/or repaired/improved post-construction.

Policy D4.3 Archaeological Resources – states that Council recognizes that there are archaeological remnants of pre-contact and early historic habitation as well as archaeological potential areas within the Town. Council shall require archaeological assessments and the preservation or excavation of significant archaeological resources in accordance with Provincial guidelines, requirements, and protocols. An archaeological assessment was submitted with the application.

Policy D5.2.1 states that for any consent application, the Committee of Adjustment shall be satisfied that (among other things) the proposed lot:

- a) Fronts on and will be directly accessed by a public road that is maintained on a year round basis;

- ✓ Unchanged. Access will remain from River Road for both parcels.
- b) Will not cause a traffic hazard as a result of its location on a curve or a hill;
 - ✓ Unchanged.
- c) Is in keeping with the intent of relevant provisions and performance standards of the Zoning By-law;
 - ✓ To be addressed through concurrent applications for minor variance.
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
 - ✓ Yes. Confirmed through Regional site inspection.
- e) Will not have a negative impact on the drainage patterns in the area;
 - ✓ Yes. A lot grading/drainage plan will be required.
- f) Will not affect the develop ability of the remainder of the lands, if they are designated for development by this Plan;
 - ✓ Each land designation and zone are proposed to remain intact on their respective parcels.
- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
 - ✓ No negative impact is anticipated.
- h) Conforms with Regional lot creation policy as articulated in the Regional Policy Plan; and,
 - ✓ No objection from Niagara Region.
- i) Complies with the appropriate provincial Minimum Distance Separation Formulae, where applicable.
 - ✓ N/A.

Policy D5.2.2 sets the policy basis for boundary adjustments. The policy states: A consent may be permitted for the purpose of correcting conveyances, enlarging existing lots or through acquisition by a public body, provided no new building lot is created. In reviewing an application for a boundary adjustment, the Committee of Adjustment shall be satisfied that the boundary adjustment will not affect the viability of the use of the properties affected as intended by this Plan.

The viability of the both the benefiting and retained lands to be used for residential purposes will be maintained. Upon completion of the boundary adjustment, both parcels will retain sufficient lot area and that is adequate for private servicing. The viability of the retained lands for residential use remains intact. The viability of the benefiting lands is enhanced through a larger lot area.

Town Planning staff are of the opinion the proposed lot boundary adjustment conforms to the local Official Plan.

Town of Pelham Comprehensive Zoning By-law 4481 (2022)

The lands are zoned Environmental Protection 1 under the Town's Zoning By-law. With respect to the zone boundaries, Section 1.5(b)(ii) states that EP1 zones *"generally reflects the natural features and the location of the boundary may be determined by lot line, road, rail line, or where the zone does not abut any of the*

above, by the scale of the map or as confirmed through an Environmental Impact Study.” As a result, a portion of the lands can be considered to be zoned Agriculture.

Staff acknowledge that the proposed boundary adjustment does not further fragment the features on site nor introduce new residential uses to the properties, and, therefore, offer no objection to the application from a natural heritage perspective.

Zoning deficiencies resulting from the consent application are being addressed through concurrent minor variance applications.

Submitted Materials:

Planning Justification Report

- A Planning Justification Report was submitted with the application which provided background for the application and analyzed Provincial, Regional, and local planning policy.

Archaeological Assessment

- An archaeological assessment was submitted in support of the application. No archaeological resources were discovered as part of the Stage 2 assessment. The applicant also submitted the Ministry of Citizenship and Multiculturalism clearance letter with the application.

Geotechnical Report (Slope Stability Assessment)

- The Report evaluated the stability of the existing slope, including identifying the top of stable slope location. The report provided recommendations for the design and construction of the proposed attached garage from a geotechnical perspective. The report concluded the proposed construction will have no negative impact on the stability of the slope.

Agency and Public Comments:

On May 7, 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
 - No comments.
- Public Works Department
 - 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.
 - 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.
- 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.
 - Niagara Region Growth Management and Planning Division
 - The proposal is generally consistent with the Provincial Policy Statement and does not conflict with Provincial and Regional policies pertaining to consents in prime agricultural areas. As such, Regional Growth Management and Planning Division staff offer no objection to the application, provided the Town is satisfied that the boundary adjustment qualifies for legal or technical reasons.
 - Niagara Peninsula Conservation Authority
 - NPCA Policy indicates:
 - Lot additions and boundary adjustments may be supported where it has been demonstrated that there is sufficient room outside of the flood hazard to accommodate a building envelope, including space for servicing and amenities.
 - Lots created through Consent are to be setback from the long-term stable top of slope.
 - NPCA staff note that this is a boundary adjustment and not the creation of a new lot.
 - Additionally, technical staff have indicated that there will be sufficient room outside of the flood hazard to accommodate a building envelope, including space for servicing and amenities.
 - As such, the NPCA can support the proposed consent application in principle.

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

Planning Staff Comments:

Based on the analysis in the sections above, Planning staff is of the opinion that the proposed boundary adjustment is consistent with the PPS and conforms to Provincial, Regional, and local plans. The resulting parcels will comply with applicable Zoning By-law following approval of the concurrent minor variance applications, and should not negatively impact the surrounding neighbourhood with respect to traffic, privacy, and stormwater management.

Planning Staff Recommendation:

Planning staff recommend that minor variance file B10/2024P **be approved** subject to the following condition(s):

THAT the applicant:

- Provide the Secretary-Treasurer with a registerable legal description of the subject parcel, together with a copy of the deposited reference plan, if applicable, for use in the issuance of the Certificate of Consent.
- Provide the final certification fee of \$436, payable to the Treasurer, Town of Pelham, submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.
- 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.
- 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.
- 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.
- That all necessary zoning approvals (minor variance) be obtained for both Part 2 and Parts 1 and 3.

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