



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

Monday, June 03, 2024

**Minor Variance Application: A11-2024P**

**Municipal Address: 572 River Road**  
**Legal Description: CON 14 PT LOT 11**  
**Roll number: 2732 030 017 17100**

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

The subject land is zoned Agriculture (A) and Environmental Protection Zone 1 (EP1) in accordance with Pelham Zoning By-law 4481(2022), as amended. Application for relief is made, to facilitate the construction of an attached garage and to rectify zoning deficiencies as a result of a consent application B10-2024P. The applicant seeks relief from the following section(s) of the Zoning By-law:

1. **Section 5.1.3 "Minimum Front Yard"** – to permit a minimum front yard setback of 5.53m whereas the By-law requires a minimum front yard setback of 8.0m;
2. **Section 5.1.3 "Minimum Interior Side Yard"** – to permit a minimum interior side yard setback of 4.2m whereas the By-law requires a minimum interior side yard setback of 8.0m;
3. **Section 5.1.3 "Maximum Lot Coverage"** – to permit a maximum lot coverage of 17% whereas the Bylaw permits a maximum lot coverage of 10%;
4. **Section 5.1.3 "Minimum Lot Frontage"** – to permit a minimum lot frontage of 39.3m whereas the By-law requires a minimum lot frontage of 180.0m;
5. **Section 5.1.3 "Minimum Lot Area"** – to permit a minimum lot area of 1326 m<sup>2</sup> whereas the By-law requires a minimum lot area of 4000m<sup>2</sup>.

This application is being considered concurrently with Consent File B10-2024P and Minor Variance File A12-2024P.

**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 (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.

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 variance 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 subject lands are impacted by the Region's Natural Environment System, consisting of the Welland River West Provincially Significant Wetland Complex, Other Woodland, and permanent/intermittent watercourse. The property is also partly mapped as part of the Provincial Natural Heritage System. As such, these features are 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 variance 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.

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 such, staff are of the opinion the variance 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.

Policy E5 indicates that the boundaries of the Environmental Protection designations may be imprecise and subject to change, given the dynamic and or seasonal nature of some natural heritage features. The Town shall determine the extent of the environmental areas on a site-by-site basis when considering development proposals, in consultation with the appropriate agencies. Any minor refinement to the Environmental Protection designation shall not require an Amendment to this Plan.

Given that the EP1 designation on the subject property relates to the Welland River, buffer and floodplain, it is reasonable to consider the Environmental Protection One designation to apply to those areas and the lands outside of these areas where the proposed garage is proposed to be designated Good General Agricultural. Accessory uses to residential dwellings are permitted in the Good General Agricultural designation.

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.

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 planning

justification report with the application. Staff are satisfied the reasons detailed in the report are appropriate and agreed with its conclusions.

Town Planning staff are of the opinion the proposed variance 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, the portion of the property outside of the Welland River, buffer and floodplain, can be considered to be zoned Agricultural. Staff acknowledge that the proposed garage does not further fragment the features on site, and, therefore, offer no objection to the application from a natural heritage perspective.

The subject lands are zoned Agriculture (A) and Environmental Protection Zone 1 (EP1). Under the regulations of the Zoning By-law the minor variance application requests relief from:

1. **Section 5.1.3 “Minimum Front Yard”** – to permit a minimum front yard setback of 5.53m whereas the By-law requires a minimum front yard setback of 8.0m;
2. **Section 5.1.3 “Minimum Interior Side Yard”** – to permit a minimum interior side yard setback of 4.2m whereas the By-law requires a minimum interior side yard setback of 8.0m;
3. **Section 5.1.3 “Maximum Lot Coverage”** – to permit a maximum lot coverage of 17% whereas the Bylaw permits a maximum lot coverage of 10%;
4. **Section 5.1.3 “Minimum Lot Frontage”** – to permit a minimum lot frontage of 39.3m whereas the By-law requires a minimum lot frontage of 180.0m;
5. **Section 5.1.3 “Minimum Lot Area”** – to permit a minimum lot area of 1326 m2 whereas the By-law requires a minimum lot area of 4000m2.

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 Test	Variance	Test Response/Explanation
The variance is minor in nature.		<b>Section 5.1.3 “Minimum Front Yard”</b>

	<p>Yes, the variance is minor in nature. The reduced setback on the subject property and adjacent properties is minimal given the surrounding context. The rural residential/agricultural character of the neighbourhood is not anticipated to be impacted through the proposed variance. The lot area remains available to handle stormwater runoff, the existing septic system, and preserve amenity area.</p>
	<p><b>Section 5.1.3 "Minimum Interior Side Yard"</b></p> <p>Yes, the variance is minor in nature. No negative impacts are anticipated on the adjacent property as adequate distance separates the nearest residential neighbour from the location of the proposed attached garage. An adequate setback will be maintained for access to the rear, drainage, and maintenance.</p> <p><b>Section 5.1.3 "Maximum Lot Coverage"</b></p> <p>Yes, the variance is minor in nature. The increased coverage amounts to approximately 7% of the entirety of the lot. No negative impacts are anticipated on the adjacent properties as adequate distance separates the nearest residential neighbour from the location of the addition to the dwelling. Adequate yard setbacks will be maintained for access to the rear, drainage, and maintenance.</p> <p><b>Section 5.1.3 "Minimum Lot Frontage"</b> <b>Section 5.1.3 "Minimum Lot Area"</b></p> <p>Yes, the variances are minor in nature. The lands are considered a rural residential lot given their current use. There are six (6) contiguous residential lots found along River Road, with similar frontages and areas. The lands are considered a rural residential lot given their current residential use. No adverse impacts are anticipated to result from the requested relief.</p>
<p>The variance is desirable for the development or use of the land.</p>	<p><b>Section 5.1.3 "Minimum Front Yard"</b></p> <p>Yes, the variance is desirable for the development or use of the land. The requested variance is not anticipated to have negative impacts on the streetscape given the placement of the accessory structure setback from the street and the existing character of the area. The location is desirable as the setback will enable the proposed accessory structure to be setback further from the Welland River and stable top of slope.</p> <p><b>Section 5.1.3 "Minimum Interior Side Yard"</b></p> <p>Yes, the variance is desirable for the development or use of the land. 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><b>Section 5.1.3 "Maximum Lot Coverage"</b></p> <p>Yes, the variance is desirable for the development or use of the land. The increase in lot coverage for the accessory building is desirable as it will permit design flexibility while maintaining adequate amenity area. An attached garage is an appropriate development for the lands.</p>

	<p><b>Section 5.1.3 "Minimum Lot Frontage"</b>  <b>Section 5.1.3 "Minimum Lot Area"</b></p> <p>Yes, the variance is desirable for the development or use of the land. The reduced lot frontage and area does not alter the sewage and water servicing arrangements or impact the ability to provide sustainable on-site sewage and water services. The variance will facilitate an appropriate development for the site.</p>
<p>The variance maintains the general intent and purpose of the Zoning By-law.</p>	<p><b>Section 5.1.3 "Minimum Front Yard"</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of a minimum front yard is to ensure that there remain adequate setbacks from the street. The garage has been designed and sited as to not detract from the residential use of the property or the character of the area.</p>
	<p><b>Section 5.1.3 "Minimum Interior Side Yard"</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. 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 rural residential use of the adjacent lands, staff do not anticipate any issues in terms of compatibility, drainage, or spatial separation.</p>
	<p><b>Section 5.1.3 "Maximum Lot Coverage"</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the maximum lot coverage provision of the By-law is to maintain adequate space for landscaping, leisure, drainage, and to maintain neighbourhood streetscapes and compatibility.</p> <p>The increase in lot coverage is not anticipated to have any a negative impact with respect to the intent of the By-law.</p>
	<p><b>Section 5.1.3 "Minimum Lot Frontage"</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of a minimum lot frontage is to ensure adequate access to the street, in order to maintain safety, accessibility, and functionality. A secondary intent is to ensure consistency across the streetscape. Given the lot context, the variance is not anticipated to alter the streetscape in a significant way. Adequate frontage will remain for access and functionality of the site.</p>
	<p><b>Section 5.1.3 "Minimum Lot Area"</b></p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of a minimum lot area in the context of a rural residential lot is to ensure there is adequate space for private septic and water service, and to ensure drainage can be managed on site. The reduced lot area does not alter the sewage and water servicing arrangements or impact the ability to provide sustainable on-site sewage and water services. The variance will facilitate an appropriate development for the site.</p>



<p>The variance maintains the general intent and purpose of the Official Plan.</p>	<p><b>All variances</b></p> <p>Yes, the variances maintain the general intent and purpose of the Official Plan. 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.</p> <p>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>The proposal is generally consistent in built form, scale, and massing with existing development and the character of the area.</p> <p>As such, 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 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
  - A Building Permit will be required.
- Public Works Department
  - 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.
- 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
  - The minor variance application indicates that relief is being sought to reduce the allowable lot frontage, lot area, front yard setback, and interior side yard setback as well as to increase the allowable lot coverage.
  - Regarding the variances for lot frontage and lot area the NPCA understands that these requested variances are to facilitate the proposed boundary adjustment. As such the NPCA can support for the variances for lot frontage and lot area for minor variance application A11-2024P in principle.
  - Regarding the variance for front yard setback, interior side yard setback, and lot coverage the NPCA understands that these variances are to facilitate a proposed attached garage addition. The subject property is impacted by an apparent valley. The application contained a *Slope Stability Assessment Proposed Garage and Breezeway 572 River Rd, prepared by Soil-Mat Engineers & Consultants Ltd., dated December 7, 2023*. The Slope Stability Assessment indicated that at the closest point the proposed garage and breezeway would have a setback of 8m to the identified long-term top of stable slope. NPCA policy requires new development outside of the settlement area to have a minimum setback of 7.5 metres from the stable top of slope. As the proposed development is projected to be setback greater than 7.5 m the NPCA can offer support for the variances related to the proposed garage development.
  - Please note that the proposed garage is still proposed to be developed in the NPCA regulated area and as such a work permit will be required from the NPCA. Additionally, during the pre-consultation that was held in August 2023 the NPCA requested the following information that has not been provided as part of the COA package, this information will need to come in at the time of work permit application:
    - Erosion and Sediment Control measures will need to be shown on the submitted site plan.
  - Clarification on the submitted site plan as to whether the “Approx Septic Bed” is existing or proposed.

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

### **Planning Staff Comments:**

It is noted that PSW's are also regulated by the Niagara Peninsula Conservation Authority (NPCA). A work permit through the NPCA is a requirement.

Based on the analysis given in above sections of this report, 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 A11/2024P **be approved** subject to the following condition(s):

**THAT** the applicant:

- Obtain permit approval from the Niagara Peninsula Conservation Authority and pay all required fees.
- That all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.
- That the approval of the minor variance is subject to Consent File B10/2024P obtaining final approval.
- 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.

**Prepared and Submitted by:**

Andrew Edwards, BES  
Planner

**Recommended by:**

Shannon Larocque, MCIP, RPP  
Senior Planner