



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

Tuesday, August 06, 2024

**Minor Variance Application: A17-2024P**

**Municipal Address: 1311 Effingham Street**

**Legal Description: CON 8 PT LOT 5 RP 59R10838, PART 1**

**Roll number: 2732 020 010 12110**

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

The subject land is located on the north side of Pancake Lane, lying east of Effingham Street, being Part of Lot 5, Concession 8, in the Town of Pelham, and known locally as 1311 Effingham Street.

The subject land is zoned Specialty Agricultural (SA) in accordance with Pelham Zoning By-law 4481 (2022), as amended. Application is made to construct an addition to the garage and an addition to the main floor of the dwelling. The minor variance application seeks relief from:

- a) **Section 5.2.3 (Zone Requirements for a Single Detached Dwelling) "Minimum Corner Side Yard"** – to permit a minimum corner side yard of 3.445m whereas the By-law requires a minimum corner side yard of 8.0m.

The lands are located on the northeast corner of Pancake Lane and Effingham Street, having approximately 4,689.9 m<sup>2</sup> of lot area. The parcel has 41.45 metres of frontage on Effingham and 98.45 metres of frontage on Pancake Lane. The lands are accessed from a driveway off of Pancake Lane. According to the Town's Zoning By-law, the Effingham Street frontage is considered the front lot line, with the Pancake Lane frontage being an exterior side lot line. The lands currently contain an existing 1.5 storey brick dwelling.

**Applicable Planning Policies:**

Planning Act

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.

The subject property is located within the Prime Agricultural Area under the PPS, and more specifically within a Specialty Crop Area. Provincial and Regional policies state that specialty crop areas are to be given the highest priority of protection for long-term agricultural use. Permitted uses, among others, include agricultural/agricultural related uses, limited residential development and home occupations.

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 property is 4,689.9 m<sup>2</sup> in land area, is not actively farmed, and is considered to be a rural residential lot.

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. Accordingly, an archaeological assessment scoped to the area of disturbance will be a condition of approval.

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

### Greenbelt Plan (2017)

The property is designated Protected Countryside under the Greenbelt Plan, 2017 (Greenbelt Plan) and Specialty Crop Area under the Niagara Region Official Plan, 2022 (NROP).

### 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 within the Specialty Crop Area in the Provincial Agricultural System under the A Place to Grow: Growth Plan for the Greater Golden Horseshoe. Prime agricultural areas, including speciality crop areas are intended to be protected for long term agricultural use.

The subject property is impacted by the Region's Natural Environment System (NES), consisting of a permanent/intermittent stream. The property is also partially mapped as part of the Provincial Natural Heritage System (PNHS). As such, this feature is considered a Key Hydrologic Feature (KHF).

Policy 4.2.4.3 states that development or site alteration is not permitted within a vegetative protective zone, with the exception of that described in Policy 4.2.3.1. Policy 4.2.3.1(e) provides that development may be permitted within the VPZ provided the use does not expand into the key hydrologic feature or key natural heritage feature or vegetative protection zone unless there is no other alternative, in which case any expansion will be limited in scope and kept within close geographical proximity to the existing structure. The proposed structure fulfills the intent of these policies being an limited expansion to the existing structure.

Staff are of the opinion that the proposed variances confirm with the Growth Plan.

#### Niagara Region Official Plan (2022)

The Niagara Region Official Plan (2022) provides the policy guidance for future development across the Region.

NROP Policy 4.1.2.1 also states that single detached dwellings and accessory structures are permitted on existing lots of record in specialty crop areas provided they were zoned for such or permitted or permitted through other legislation as of December 16, 2004.

Policy 4.1.10.2 in the NOP states that expansions to existing buildings and structures, accessory structures and uses and/or conversions of legally existing uses which bring the use more into conformity with the Greenbelt Plan are permitted, provided new municipal services are not required and the use does not expand into key natural heritage features or key hydrological features or their associated vegetation protection zones.

The subject property is impacted by the Region's Natural Environment System (NES), consisting of a permanent/intermittent stream. The property is also partially mapped as part of the Provincial Natural Heritage System (PNHS). As such, this feature is considered a Key Hydrologic Feature (KHF). NOP Policy 3.1.5.3 requires the establishment of a 30-metre-wide Vegetation Protection Zone (VPZ) adjacent to any permanent/intermittent stream. Development or site alteration is generally not permitted within a KHF or its VPZ. However, NOP Policy 3.1.5.5(g) allows for expansions to existing buildings or structures subject to the demonstration that it does not expand into a KHF, Key Natural Heritage Feature or their VPZ.

The proposed addition to the house at the northeast corner is within 30 metres of a stream on the northwest side of the house. Regional environmental staff have determined pursuant to NOP Policy 3.1.5.5(g) that the expansion is limited in scope

and is unlikely to have a negative impact on the stream. As such, the application does not conflict with the NROP's NES policies.

Regional staff have recommended that a Tree Protection Plan be implemented to the Town's satisfaction during construction and that replacement plantings of native trees be considered should tree removals be necessitated.

Subject to the recommended conditions, staff are of the opinion the variance conforms with the Region's 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 our natural heritage features.

The local Official Plan designates the subject lands 'Specialty Agricultural' according to Schedule 'A.' The purpose of the Specialty Agricultural designation is to implement the Greenbelt Plan and to recognize the importance of croplands. A Single detached dwelling is a permitted use in the Specialty Agricultural designation.

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 impact of the proposed variances is minimal.

Section E1.5 states in part:

*... 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.*

The owner provided a cover letter which outlined the need for the variance. The house and garage are oriented in such a way that the only natural extension of the garage is within the exterior side yard. The proposed garage is buffered by the existing treeline from Pancake Lane.

Planning staff are of the opinion that the proposed variance conforms with the Town of Pelham Official Plan.

#### Pelham Zoning By-law No. 4481 (2022), as amended

The subject lands are zoned Specialty Agricultural and are partially within the Greenbelt Natural Heritage System Overlay.

Under the regulations of the Zoning By-law, the minor variance application requests relief from:

- a) **Section 5.2.3 (Zone Requirements for a Single Detached Dwelling) “Minimum Corner Side Yard”** – to permit a minimum corner side yard of 3.445m whereas the By-law requires a minimum corner side yard of 8.0m.

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><b>The variance is minor in nature.</b></p>	<p>Yes, the variance is considered minor in nature.</p> <p>In the opinion of staff, the variance is minor in nature as the reduction to the setback is not anticipated to result in a negative impact on the adjacent uses, the streetscape, or substantially remove any of the amenity space of the lot. No visibility impacts to the intersection are anticipated as the dwelling is set back a large distance from the intersection. The Pancake Lane frontage of the site effectively functions as the front yard. The variance will facilitate a natural addition to the garage.</p> <p>As such, staff are of the opinion the variance is minor in nature.</p>
<p><b>The variance is desirable for the development or use of the land.</b></p>	<p>Yes, the variance is desirable for the development or use of the land.</p> <p>The requested variance is not anticipated to have a negative impact on the character of the surrounding area. The variances would allow for appropriate development through a building addition. The construction would be in character with the area which includes agricultural and residential uses and uses accessory thereto. The variance is desirable as it will permit design flexibility while maintaining adequate area for amenity space, drainage, and private sewage system servicing capabilities. The location of the garage maintains a more generous setback from the stream to the northeast than locating an accessory structure elsewhere on the property.</p> <p>As such, staff are of the opinion the variance is desirable for the development or use of the land.</p>
<p><b>The variance maintains the general intent and purpose of the Zoning By-law.</b></p>	<p>Yes, the variance maintains the general intent and purpose of the Zoning By-law.</p> <p>The intent of the exterior side yard setback is to maintain distance from the street to increase visibility for drivers, avoid over-development of lots, and allow for enhanced landscaping along corner lots.</p> <p>The proposed addition maintains adequate visibility at the intersection of Pancake Lane and Effingham Street, allows for adequate landscaping, and does not result in the overdevelopment of the site. The site would appear to have sufficient lot area in the event the existing septic system needs to be replaced. The reduction in exterior side yard is setback adequately from the front lot line.</p>

	As such, staff are of the opinion the variance maintains the general intent and purpose of the Zoning By-law.
<b>The variance maintains the general intent and purpose of the Official Plan.</b>	<p>Yes, the variance maintains the general intent and purpose of the Official Plan.</p> <p>The requested variances 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 June 18, 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 application will be required upon planning approval.
- 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.
  - Existing grading plan does not match the existing conditions of the property. Trees are not shown on the plan. Please include location of trees on plan.
  - An Updated comprehensive Lot Grading and Drainage Plan will be required, demonstrating overland flow routes, identifying swales and roof leader discharge locations, and showing neither parcel relies on the other for drainage, to the satisfaction of the Director of Public Works.
- Niagara Region
  - The application is consistent with the PPS and conforms to Provincial and Regional policies. As such, Regional Growth Strategy and Economic Development staff offers no objection to the application, provided a new sewage system permit is obtained prior to the issuance of a building permit to accommodate increased flows from the proposed dwelling addition. Staff suggest that a condition to this effect be included in the development agreement between the Owner and the Town of Pelham.
  - As noted above, staff recommend that a Tree Protection Plan be implemented to the Town’s satisfaction during construction and that

replacement plantings of native trees be considered should tree removals be necessitated.

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

### **Planning Staff Comments:**

Planning staff circulated the proposal for pre-consultation comments on February 8, 2024, which identified complete application requirements in support of the application.

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 A17/2024P **be approved** subject to the following condition(s):

**THAT** the applicant:

- 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 the applicant prepare and submit a Tree Protection Plan, to the satisfaction of the Town.
- Conduct a Stage 1-2 Archaeological Assessment prepared by a licensed archaeologist and receive clearance from the Ministry of Citizenship and Multiculturalism. At a minimum, the Assessment must cover the building envelope of the proposed lot eligible for disturbance, and be accepted by the Ministry prior to clearance of this condition. The licensed archaeologist may recommend further archaeological analysis or preservation steps be taken. No demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.
- That all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.

**Prepared and Submitted by:**

Andrew Edwards, BES  
Planner

**Recommended by:**

Shannon Larocque, MCIP, RPP  
Manager of Planning