

December 5, 2017

Mrs. Nancy J. Bozzato, Secretary Treasurer
Committee of Adjustment
Town of Pelham
Fonthill, ON L0S 1E0

**Re: Minor Variance Application A36/2017P (Homes by Antonio Ltd.)
NA
Part of Lot 18, Concession 10 in the Town of Pelham
Roll No. 2732 010 016 15201**

The subject land is located on the southwest corner of Canboro Road and Farr Street, being Part of Lot 18, Concession 10 in the Town of Pelham.

The subject land is zoned 'Agricultural' (A) in accordance with Pelham Zoning By-law 1136 (1987), as amended. The minor variance application requests relief from:

- ***Section 6.14 a) whereas no dwelling on any adjacent lot shall be located within 300m of a livestock operation, to reduce the minimum distance separation to 86.24m of any livestock operation.***

The variance is requested to facilitate the construction of a single detached dwelling on an existing lot of record.

Applicable Planning Policies

Provincial Policy Statement (PPS), 2014

The PPS designates the subject land as within a 'Prime Agricultural Area', which shall be protected for long-term use as agriculture. The permitted uses (among others) include: agricultural / agricultural related uses, limited residential development and home occupations. 'Prime Agricultural Areas' are defined as including associated Canada Land Inventory Class 4-7 lands as well as 'Prime Agricultural Lands' (Class 1-3 lands).

Minimum distance separation formulae were developed by the Province to separate uses so as to reduce incompatibility concerns about odour from livestock facilities.

Rural land and prime agricultural area policies require that Minimum Distance Separation (MDS) formulae be applied for new land uses, and new or expanding livestock facilities.

Greenbelt Plan, 2017

Policies surrounding MDS are similar to those of the PPS (2014).

The Minimum Distance Separation (MDS) Document – Publication 853

The Ministry of Agriculture, Food & Rural Affairs (OMAFRA) issued the MDS Document in order to assist municipalities, farmers and consultants in implementing MDS as part of planning and development applications.

- Implementation Guideline No. 7 – Application of MDS for building permits on existing lots
 - While municipalities have the option to exempt buildings proposed through building permit applications on *lots* which exist prior to March 1, 2017, they are strongly discouraged from exempting these applications.
 - If local exemptions are supported for building permits on existing *lots*, a municipality shall adopt provisions in their comprehensive zoning by-law which clearly state the details for such exemptions. Examples of such provisions may include, but are not limited to, those which only require MDS I setback for building permit applications:
 - On existing *lots* which are vacant;
 - On existing *lots*, but where the MDS I setback cannot be met, then through a planning application, allow a *dwelling* provided that it be located as far as possible from the existing livestock facility;
 - On lots which exist prior to a specific date (e.g. March 1, 2017 or the date of adoption of a comprehensive zoning by-law);
 - On existing *lots* that are in a particular land use zone or designation;
 - On existing *lots* that are above or below a certain size threshold; or
 - For certain types of buildings (e.g. dwellings).
- Implementation Guideline No. 43 – Reducing MDS setbacks
 - MDS I setbacks should not be reduced except in limited site specific circumstances that meet the intent of this MDS Document.
 - If deemed appropriate by a municipality, the processes by which a reduction to MDS I may be considered could include a minor variance to the local zoning by-law provisions, a site specific zoning by-law amendment or an official plan amendment introducing a site specific policy area.

Town staff understand there may be few, existing vacant lots of record (such as this) remaining within the Town of Pelham that would conflict with MDS policies.

Regional Official Plan (Consolidated, August 2014)

The Regional Official Plan designates the subject parcel as 'Good General Agricultural Area'.

Policy 5.B.6 states single dwellings are permitted on existing lots of record, provided they were zoned for such as of December 16, 2004.

Pelham Official Plan, 2014

The local Official Plan designates the subject parcel as 'Good General Agricultural'. Policy B2.1.2 states (among other uses) one single detached dwelling is permitted on a vacant lot of record.

Pelham Zoning By-law Number 1136 (1987)

The Zoning By-law identifies the subject parcel as 'Agricultural' (A). The permitted uses (among others) include:



- a) Agricultural uses including greenhouses;
- c) One single detached dwelling on one lot;
- g) Uses, buildings and structures accessory to the foregoing permitted uses.

Section 6.14 New development in or adjacent to an agricultural (A) zone

No residential use shall be established after the date of passing of this By-law adjacent to a livestock facility and conversely no new / enlargement of an existing livestock building shall be established adjacent to one of the foregoing non-farm uses, except in accordance with the following setback requirements.

- a) No non-farm use including a residential use accessory to a permitted adjacent agricultural use shall be established adjacent to a livestock building within a distance determined by the MDS formula.
Notwithstanding any of the above, no dwelling on any adjacent lot shall be located within 300m of a livestock operation, except as a dwelling on a lot existing at the date of passing of this By-law shall only comply with the MDS requirements.

The application requests relief from Section 6.14 a) to reduce the MDS requirement from 300m to 86.24m to allow for the construction of a dwelling on an existing lot of record that was created prior to the Zoning By-law being approved.

The Committee of Adjustment, in 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	Explanation
1. The variance is minor in nature.	Reducing the MDS requirement is minor overall given the lack of nuisance complaints with several existing dwellings in close proximity and the prevailing west winds directing odour from the nearby livestock operation to the east. Also, given the presence of other nearby residential uses that predated this proposal, no negative impacts are anticipated.
2. The variance is desirable for the development or use of the land.	The variance would be desirable as it would provide for the development of a single detached dwelling for which the lot was naturally created as a result of the Canadian Pacific Railway corridor. It is noted that the lot is currently vacant, and too small for a traditional independent cash crop operation.
3. The variance maintains the general intent and purpose of the Official Plan.	The variance maintains the general intent of the Official Plan because it would permit the construction of a single detached dwelling which is a permitted use on existing lots of record.
4. The variance maintains the general intent and purpose of the Zoning By-law.	Reducing the MDS requirement to 86.24m from a required 300m does not compromise the intent of the Zoning By-law because sufficient spatial separation is maintained between the existing and proposed use. Paired with a prevailing westerly wind and the lack of odour nuisance complaints, there has not been an issue with neighbouring residences, also within close proximity to the existing livestock operation.

On November 3rd 2017, a notice was circulated to agencies directly affected by the proposed application including internal Town departments (i.e. Public Works, Building, etc.) and all assessed

property owners within 60 metres of the property's boundaries.

To date, the following comments have been received:

- Public Works Department (November 17, 2017)
 - {See conditions & Appendix for comments}
- Building Department (November 22, 2017)
 - All necessary permits are required prior to construction commencing.
- Niagara Peninsula Conservation Authority (November 6, 2017)
 - No comments.
- Niagara Region Planning and Development Services (November 21, 2017)
 - {See Appendix for full comments}
 - There appears to be limited usable land available on the lot for the installation of a sewage system.
 - A detailed design plan for a Class 4 sewage system must be submitted to our Department for approval.

Public Comments:

- Doug / Tara Hargreaves (November 8, 2017)
Objects to the relief of the MDS requirement because the by-law was enacted to protect the business of farming and nearby residents.
 - Staff agree, although, the MDS policies of the Province deal specifically with nuisance via unpleasant odour and not necessarily '*normal farm practices*', as defined in the Farming & Food Production Protection Act, 1998, that is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances.
 - Moreover, the parcel is an existing lot of record which is not afforded many alternative options given the small lot area, lack of abutting properties to justify a merger and restrictive permitted land uses under the scope of the Greenbelt Plan, Niagara Regional Official Plan, Pelham Official Plan and Pelham Zoning By-law.

The barn opposite the proposed house (presumably 919 Canboro) is limited to only farming.

 - Not necessarily, the barn may be used for other permitted uses in accordance with the Agricultural (A) zone under Section 7.
- Ted Bowman (November 16, 2017)
Objects to the application on the basis that his own property will be subject to future complaints with regards to animals, noise, stored manure, etc.
 - Complaints rendered as a result of *normal farm practices* as defined in the Farming & Food Production Protection Act, 1998 would be dealt with via the Normal Farm Practices Protection Board (NFPPB).
 - Town staff are not aware of any nuisance complaints in this location.

Why would the Town allow a dwelling within 75' of a railway?

 - The Town would not allow this. Section 6.21 of the Zoning By-law states no residential dwelling is permitted to be built within 23m (75.46') of an active railway right-of-way.

The lot contains rare tree species planted by the previous owner that are under protection by the NPCA.

 - The NPCA has no *Regulation Lands* on this property but does have a *Planning Permit Screening* layer on-site. The NPCA had no issues with the proposal.

Planning Comments

Planning staff note the property is 0.5ha (1.3ac) in area, is not farmed, and is a legally created, vacant lot of record, created as a result of the Canadian Pacific (CP) railway corridor. A site visit was conducted by Planning Staff to note the conditions of the property and surrounding area. Numerous rural-residential lots exist to the west and east, as well as agricultural farmland in all directions, intersected by the CP railway and Farr Street at Canboro Road. The livestock facility which is the reason for the MDS requirement can be seen in Figure 1.



Figure 1: Farr Street looking north to Canboro Road. (Subject land on left)

A row of coniferous trees line the northern limits of the CP railway corridor. Potential exists for new trees to be linearly planted along the north lot line of the subject property, parallel to Canboro Road to act as an additional buffer.

The Town is unaware of any previous odour complaints in the area around the existing livestock operation. Also, due to the prevailing westerly

winds, any odour impacts should continue to be minimal as the dwelling lie to the south of the livestock facilities.

The authorized agent submitted a supporting rationale letter outlining the circumstances around his client's minor variance for MDS relief in the context of this neighbourhood. Principally, the letter points out the volume of existing residential dwellings located within the current MDS radius, the lack of historical issues and noted the discernable harmony in this area.

Staff recognize that, in other areas of the Town some conflict has arisen from new residents moving into existing dwellings next door to existing livestock operations. In some cases, these dwellings would not have been permitted under current MDS policies. However, in this case, given the proliferation of already existing residential neighbours well within the MDS radii, this would pose a similar challenge for any proposed expansion of the present livestock facilities (Figure 2). MDS II formulae would be triggered under a proposed livestock facility expansion, and similarly, a minor variance for zoning relief may be applied for. Further, the proposed conditions below include that of a Development Agreement which would include a clause that the owner acknowledges his / her property is located within a calculated MDS radius and they may experience unpleasant odours from time to time.

Figure 2: Subject livestock facility at 919 Canboro Rd



Planning Staff is of the opinion that the application meets the four minor variance tests laid out by the *Planning Act*. The application is consistent with Provincial policies, the Regional Official Plan, and conforms to the general intent of the Pelham Official Plan and Zoning By-law.

The authorization of the minor variance is not expected to generate negative impacts for adjacent uses or the community at large. Consequently, Planning Staff recommend that Application File Number A36/2017P be **approved**, subject to the following conditions:

THAT

- Obtain approval from the Niagara Region Private Sewage Systems division for septic system compliance prior to building permit application.
- The applicant shall enter into a Development Agreement with the Town for the purposes of developing the lot to include:
 - Obtaining an Entrance Permit from the Public Works Department for the installation of a driveway / culvert, as applicable, in accordance with Town standards.

- An owner warning clause specifying that, “The owner acknowledges that their property is located within a calculated radius as determined by the Ministry of Agriculture, Food & Rural Affairs Minimum Distance Separation formulae & the Town’s Zoning By-law Minimum Distance Separation spatial requirement and that they may potentially, from time to time, experience unpleasant odours from an existing adjacent livestock operation.”
- All necessary building permits be obtained prior to construction commencing.

Submitted by,



Curtis Thompson
Planner, B.URPI

Reviewed by,

Barb Wiens, MCIP, RPP
Director/ Community Planning & Development