

05-2024

May 6, 2024

4:00 pm

Town of Pelham Municipal Office - Council Chambers

20 Pelham Town Square, Fonthill

The Town of Pelham is holding hybrid meetings of Council and Committee in accordance with Procedure By-law 4507(2022). Public access to meetings will be provided in-person at the location indicated on the agenda, via Livestream: www.youtube.com/townofpelham/live and subsequent publication to the Town's website at www.pelham.ca.

Pages

1. **Attendance**
2. **Call to Order, Declaration of Quorum and Introduction of Committee and Staff**
3. **Land Recognition Statement**

We begin this meeting by acknowledging the land on which we gather is the traditional territory of the Haudenosaunee and Anishinaabe peoples, many of whom continue to live and work here today. This territory is covered by the Upper Canada Treaties and is within the land protected by the Dish With One Spoon Wampum agreement. Today this gathering place is home to many First Nations, Metis, and Inuit peoples and acknowledging reminds us that our great standard of living is directly related to the resources and friendship of Indigenous people.
4. **Approval of Agenda**
5. **Disclosure of Pecuniary Interest and General Nature Thereof**
6. **Requests for Withdrawal or Adjournment**
7. **Applications for Minor Variance**

7.1	A4-2024P(2) - 1313 Victoria Avenue	1
	1. Town of Pelham Planning	
	2. Town of Pelham Public Works	
	3. Town of Pelham Building	
	4. Niagara Region	
7.2	A8-2024 - 928 Foss Road	19
	1. Town of Pelham Planning	
	2. Town of Pelham Public Works	
	3. Town of Pelham Building	
	4. Niagara Region	
7.3	A9-2024P - 2 Pelham Town Square	34
	1. Town of Pelham Planning	
	2. Town of Pelham Public Works	
	3. Town of Pelham Building	
8.	Applications for Consent	
8.1	B8-2024P - Summersides Village, Port Robinson Road - Part of Lot 167, Part of Lots 17, 18, 19 on Plan 717, 2024-0095-Planning	54
	1. Town of Pelham Planning	
	2. Town of Pelham Public Works	
	3. Town of Pelham Building	
	4. Niagara Region	
	5. Niagara Peninsula Energy (NPEI)	
	6. Hydro One	
	7. Biglieri Group	
9.	Minutes for Approval	77
	April 02, 2024	

10. Adjournment



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

Monday, May 06, 2024

Minor Variance Application: A4-2024P (2)

Municipal Address: 1313 Victoria Avenue

Legal Description: PELHAM CON 8 PT LOT 18 PT, LOT 19 PT LOT 20 (UNREG)

Roll number: 2732 010 016 07800

Nature and Extent of Relief/ Permission Applied for:

The subject land is zoned Specialty Agriculture (SA) in accordance with Pelham Zoning By-law 4481(2022), as amended. Application for relief is made, to permit a mobile food truck as an On-farm Diversified Use that requires relief from the following section(s) of the Zoning By-law:

- **Sections 3.1(c) On-Farm Diversified Uses** - Requesting a front yard setback of 9.5 metres to a 40m² accessory structure related to an on-farm diversified use (covered tent), whereas on-farm diversified uses are not permitted in the required front yard.

Staff note additional variances on this property were previously approved on April 2, 2024. The above variance was deferred from consideration on April 2, 2024, and revised to meet Building Code requirements brought to light during the review of the original variance request. Building Code requirements necessitated moving the covered tent to be greater than 3 metres away from the existing barn. As such, the covered tent was shifted 3 metres closer to the front lot line which increased the degree of zoning relief required.

The applicant has applied for site plan approval which is currently under review by the Town.

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.

The PPS defines an on-farm diversified use as: *uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agritourism uses, and uses that produce value added agricultural products.*

Section 1.1.4 of the PPS speaks to rural areas in municipalities. Policy 1.1.4.1(f) states that healthy, integrated and viable rural areas should be supported by:

- f) *promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources.*

The proposed OFDU will enable the owners to diversify their income opportunities while supporting the existing agricultural use of the lands.

Policy 1.1.5.4 states that development that is compatible with the rural landscape and can be sustained by rural service levels should be promoted. The proposed OFDU is compatible with the rural landscape. Through the review of the minor variance application, the Niagara Region is to conduct an inspection of the existing septic system to ensure it is functioning properly and the use can be adequately serviced.

Policy 1.1.5.8 states that Opportunities to support a diversified rural economy should be promoted by protecting agricultural and other resource-related uses and directing non-related development to areas where it will minimize constraints on these uses. The proposed OFDU supports the rural economy by providing an additional income source for the owners, while also supporting the agricultural use of the lands. A discussion of the impacts is included in the four tests of a minor variance section of this Report. Staff are of the opinion the potential impacts of the OFDU are not anticipated to adversely impact the agricultural use of the property, or surrounding area.

Policy 2.3.3.1 permits on-farm diversified uses in prime agricultural areas. The PPS prescribes that OFDUs shall be compatible with, and shall not hinder, surrounding agricultural operations. Criteria for these uses may be based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents,

which achieve the same objectives. Publication 851 - OMAFRA's *Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas* provides guidance on evaluating OFDUs. To qualify as an agriculture-related use or on-farm diversified use in Prime Agricultural Areas, the following criteria must be met, in line with PPS policy 2.3.3.1. A response to each test is given:

1. *The use must be located on a farm.*
 - ✓ The use is located on a farm that is in active production for the purpose of cash crop.
2. *The use must be secondary to the principal agricultural use of the property.*
 - ✓ The use is secondary to the principal agricultural both spatially and temporally. The use is limited in area and is limited to seasonal operation.
3. *The use must be limited in area.*
 - ✓ The use is limited in area to under 2% in line with OMAFRA guidelines. No active agricultural lands are proposed to be removed from production.
4. *The use includes, but is not limited to, home occupations, home industries, agri-tourism uses that produce value-added agricultural products.*
 - ✓ The PPS language related to uses that are not directly related to agriculture suggests that in prime agricultural areas, these operations must be at a reasonable scale, as discussed under the "secondary to..." and "limited in area" criteria. See discussion under #3 above.
 - ✓ The use includes product processed on site that is for sale for consumption. This is considered a value-added process under the OMAFRA guidelines, thus meeting the above noted criterion.
5. *The use shall be compatible with, and shall not hinder, surrounding agricultural operations.*
 - ✓ Please see discussion below. The proposed OFDU is not anticipated to hinder surrounding agricultural operations in terms of traffic, noise, or agricultural character of the area. Staff note the OFDU has been operating on a seasonal basis under a temporary license. No issues related to compatibility have been raised.

Further, the OMAFRA guidelines raise servicing as a crucial component in considering OFDUs. Appropriate servicing levels (water and wastewater) must be available to sustain the use. As part of the minor variance application, the Region is to conduct a visual inspection of the septic system to ensure it is adequate to handle the volumes associated with the OFDU.

Staff are of the opinion the variances are consistent with the Provincial Policy Statement and the OMAFRA's *Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas*.

Greenbelt Plan (2017)

The subject property is within a Prime Agricultural Area. The Greenbelt Plan designates the subject property Specialty Crop Area (Niagara Peninsula Tender Fruit and Grape Area) within the Protected Countryside designation.

Policy 1.2.2(d) of the Greenbelt Plan states a goal of the Protected Countryside designation is to enhance urban and rural areas by promoting the provision of the appropriate flexibility to allow for agricultural, agriculture-related and on-farm diversified uses, normal farm practices and an evolving agricultural and rural economy. The proposed OFDU, in the opinion of staff, provides for this flexibility and is thus in line with the intent of the Protected Countryside designation.

Policy 3.1.2.1 states: All types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected, and a full range of agricultural uses, agricultural-related uses, and on-farm diversified uses are permitted based on the provincial Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. Proposed agriculture-related uses and on-farm diversified uses shall be compatible with and shall not hinder surrounding agricultural operations.

In the opinion of staff, the proposed OFDU conforms with the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas, as discussed in the above noted section. The OFDU is considered compatible with and is not anticipated to hinder the existing agricultural operations in the immediate area or on-site.

Staff are of the opinion the proposed variances are consistent with the Greenbelt Plan.

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.

Section 4.2.6 of the Growth Plan provides the policy base for the Province's Agricultural System. Agricultural uses are to be protected for the long term. 4.2.6.7 encourages municipalities to support the long-term economic prosperity and viability of agricultural areas through promoting agri-product businesses, while balancing agricultural resources and minimizing land use conflicts. The proposed OFDU, although not directly related to the agricultural use on the site, can be seen as an agricultural related use, as some local produce is used in the preparation of the product. Further the use supports the continued agricultural use of the lands from an

economic viability standpoint. As such, staff are of the opinion the use is appropriate for the lands.

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. Within the Greenbelt Area the lands are designated 'Speciality Crop Area' on Schedule F – Agricultural Land Base.

Policy 4.1.2.3 states: "In specialty crop areas and prime agricultural areas, all types, sizes, and intensities of agricultural uses and normal farm practices shall be promoted and protected, and a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are permitted." The variances will facilitate an OFDU that is secondary to the principal agricultural use of the property.

Policy 4.1.7.5 states: "Agriculture-related uses and on-farm diversified uses shall be consistent with the provisions of the Provincial Policy Statement, and conform to the Growth Plan, Greenbelt Plan, and Niagara Escarpment Plan." As noted above, in the opinion of staff, the OFDU is consistent with the PPS, and conforms with the Growth Plan and Greenbelt Plan.

As such, staff are of the opinion the proposed variances conform to 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 natural heritage features.

The local Official Plan designates the subject land as 'Specialty Agricultural, Environmental Protection 3, and partially within the Greenbelt Natural Heritage Overlay.' The OFDU is proposed on the portion of the lands designated Specialty Agricultural.

The Specialty Agricultural designation is intended to implement the Province of Ontario's Greenbelt Plan and recognize the importance of specialty croplands in the Provincial and Regional economies. An on-farm diversified use is a permitted use in the Specialty Agricultural designation.

OPA 15 was approved in August 2022. OPA 15 added new policies to the Official Plan which deal with On-Farm Diversified Uses. The following policies apply, in accordance with B2.1.5:

a) *On-farm diversified uses may be permitted in accordance with the policies of this Plan. Allowing a range of appropriate on-farm uses contributes to economically sustainable agriculture in the Town and facilitates broader access to local food and beverages, agricultural products, VQA wines while preserving the agricultural land base and maintaining the agricultural landscape.*

- ✓ The proposed use is an OFDU. Please refer to analysis in PPS section of this Report.

b) *On-farm diversified uses must be both secondary to the principle agricultural use of the property and limited in area. Such uses include but are not limited to home occupations, home industries, agri-tourism uses and other uses that produce value added agricultural products.*

- ✓ In the opinion of staff, the use is secondary to the principal agricultural use both spatially and temporally.

c) *The adaptive re-use of surplus farm facilities on existing farms for on-farm diversified uses and agri-tourism uses at a scale that is appropriate to the farm operation will be encouraged to conserve built heritage resources and cultural heritage landscapes that would otherwise disappear as a result of no longer being required for farm purposes.*

- ✓ One of the existing barns on site is being used to support the OFDU, being a commercial kitchen. The kitchen is utilized for on-site food preparation.

d) *Lot creation to accommodate on-farm diversified uses is not permitted.*

- ✓ Lot creation is not proposed through the application.

e) *On farm diversified uses involving 500 square metres or less will be permitted as of right in the implementing Zoning By-law.*

- ✓ OMAFRA guidelines stipulate that the area calculation should account for all aspects related to an on-farm diversified use such as buildings, outdoor storage, landscaped areas, berms, well and septic systems, parking and new access roads. The aggregate area dedicated to the OFDU is approximately 854 m². This area calculation includes the parking area, septic system, barn #3 on the applicant's sketch, covered tent area, employee washroom, and the food truck. This is approximately 0.36% of the lot area of the subject lands.

- i. Barn #4 was excluded as this is an established legal non-conforming use.

- ✓ The size of all structures associated with the use is approximately 426 m². This is approximately 0.18% of the lot area of the subject lands.

- Covered tent (40 m²), food truck (18 m²), barn 3 (355 m²), and employee washroom (13 m²)

- Septic bed (135 m2), parking area (226 m2), outdoor seating area (70 m2)

As such, staff are of the opinion that the proposed variances conform with the Town’s Official Plan.

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

The subject lands are zoned Speciality Agricultural (SA), Greenbelt Natural Heritage Overlay, and Environmental Protection 1 (EP1) per Town of Pelham Comprehensive Zoning By-law 4481. On-farm Diversified Uses are a permitted use in the SA zone. Under the regulations of the Zoning By-law, the minor variance application requests relief from:

- **Section 3.1(c) On-Farm Diversified Uses** - Requesting a front yard setback of 9.5 metres to a 40m2 accessory structure related to an on-farm diversified use (covered tent), whereas on-farm diversified uses are not permitted in the required front yard.

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
The variance is minor in nature.	<p>Section 3.1(c) On-Farm Diversified Uses</p> <p>Yes, the variances are considered minor in nature. The reduced setback on the subject property and adjacent properties is minimal given the lot context. The agricultural character of the neighbourhood is not anticipated to be impacted through the reduced setback to the OFDU. The lot area remains available to handle stormwater runoff and has adequate area for the OFDU to function. It is also noted that the accessory structure is seasonal in nature vs. year-round. As such, staff are of the opinion the variance is minor in nature.</p>
The variance is desirable for the development or use of the land.	<p>Section 3.1(c) On-Farm Diversified Uses</p> <p>Yes, the variance is desirable for the development or use of the land.</p> <p>The requested variances are not anticipated to have negative impacts on the street given the character of the area. The location is desirable as the reduced setback will enable the proposed use to be located close to the street for visibility, however, maintaining a generous setback as to not affect sightlines and to alter the character of the surrounding agricultural area. In the opinion of staff the OFDU is an appropriate use for the site and thus 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>Section 3.1(c) On-Farm Diversified Uses</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of restricting uses in the front yard is to ensure that the structure remains accessory to the principal use of the lot and that there remain adequate setbacks from the street. The OFDU has been designed and sited as to not detract from the agricultural use of the property. 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 3.1(c) On-Farm Diversified Uses</p> <p>Yes, the variances maintain the general intent and purpose of the Official Plan. Staff are of the opinion that the requested front yard setback variances are not considered to have significant impacts within the context 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>

Agency and Public Comments:

On April 10, 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
 - The applicant shall circulate the comprehensive Lot Grading & Drainage Plan should the region require it. Lot Grading and Drainage Plan should demonstrate that the drainage neither relies, nor negatively impacts neighboring properties, and that all drainage will be contained within the respective lot.

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

Planning Staff Comments:

Based on the discussion provided in this report, staff is of the opinion the variances are minor in nature, conform 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 A4/2024P(2) **be approved** subject to the following condition(s):

THAT the applicant:

- Enter into a site plan agreement with the Town to the satisfaction of the Director of Community Planning and Development.

Prepared and Submitted by:

Andrew Edwards, BES
Planner

Recommended by:

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

**Engineering Department
Committee of Adjustment Report**

For

**A4-2024P (2)
1313 Victoria Avenue**

April 17,2024

Town staff have reviewed the following documentation for the purpose of **A4-2024P**- Minor Variance application for:

The subject land is zoned Specialty Agriculture (SA) in accordance with Pelham Zoning By-law 4481(2022), as amended. Application for relief is made, to permit a mobile food truck as an On-farm Diversified Use that requires relief from the following section(s) of the Zoning By-law:

Sections 3.1(c) On-Farm Diversified Uses - Requesting a front yard setback of 9.5 metres to a 40m² accessory structure related to an on-farm diversified use (covered tent), whereas on-farm diversified uses are not permitted in the required front yard; and

This full report contains following comments in conjunction with Minor Variance application **A4-2024P – 1313 Victoria Avenue**

Introduction:

The subject land is located on the east side of Victoria Avenue, lying south of Highway 20 West, being Part of Lot 20, Concession 8, in the Town of Pelham.

The Subject Lands are comprised of a total area of approximately 23.6 hectares. The primary use of the Subject Lands is agricultural production, with approximately 90% of the land being farmed. The remaining portion of the Subject Lands encompass a 2-storey farmhouse dwelling with a detached garage, four (4) separate barns and a washroom building which is utilized by employees of the agricultural operation. The four barns, along with the employee washroom, serve a dual purpose: they support the primary agricultural activities (cash cropping) and support the legal non-conforming use on the Subject Lands, being a commercial kitchen. This kitchen is utilized for on-site food preparation intended for off-site sale.

The Subject Lands are accessible via two gravel driveways from Victoria Avenue. One driveway is designed to facilitate access to the residential farm dwelling on the Subject Lands, while the other driveway supports the primary agricultural use.

Application for relief is made, to permit a mobile food truck as an On-farm Diversified Use that requires relief from the following section(s) of the Zoning By-law as stated above.

This full report contains following comments in conjunction with Minor Variance application A4-2024P – 1313 Victoria Street and shall be addressed to the satisfaction of the Director of Public Works. Note that further comments to be forthcoming on subsequent submissions.

Analysis:

Please see condition below.

Public Works offer the following comments:

- The applicant shall circulate the comprehensive Lot Grading & Drainage Plan should the region require it. Lot Grading and Drainage Plan should demonstrate that the drainage neither relies, nor negatively impacts neighboring properties, and that all drainage will be contained within the respective lot.

To: Sarah Leach

Cc: Andrew Edwards

From: Belinda Menard, Building Inspector, Community Planning & Development

Date: April 24, 2024

Subject: Building Comments on Applications to the Committee of Adjustment for
Minor Variance hearing – 1313 Victoria Avenue, Pelham
File Number: A4 - 2024P

Comment(s):

- No comment from Building Department.

Respectfully,
Belinda Menard, Dipl., Constr. Eng. Tech.
Building Inspector

Growth Management and Planning Division

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7

905-980-6000 Toll-free:1-800-263-7215

Via Email Only

March 19, 2024

File Number: PLMV202400028

Sarah Leach
Deputy Clerk/Secretary-Treasurer
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON L0S 1E0

Dear Ms. Leach:

Re: Regional and Provincial Comments
Application Type: Minor Variance
Town File Number: A4-2024P
Applicant/Agent: [REDACTED]
Owner: [REDACTED]
Location: 1313 Victoria Avenue, Pelham

Regional Growth Management and Planning Division staff has reviewed the materials circulated with the Minor Variance application for the lands located at 1313 Victoria Avenue in the Town of Pelham (“subject lands”).

The applicant is proposing relief from Pelham’s Zoning By-Law 4481(2022) to permit a mobile food truck as an On-Farm Diversified Use.

A pre-consultation meeting attended by the landowner, Regional, and Town staff was held on March 2, 2023. At that time the Town was requiring an Official Plan Amendment (“OPA”) and Zoning By-Law Amendment (“ZBA”) applications in addition to Site Plan Approval; however, staff acknowledge that the Minor Variance application was requested in lieu of an OPA/ZBA.

The following comments are provided from a Provincial and Regional perspective to assist the Town in its consideration of these applications.

Provincial and Regional Policies

According to the Provincial Policy Statement, 2020 ("PPS"), the subject lands are located within the Prime Agricultural Area, and more specifically within a Specialty Crop Area, and designated as Specialty Crop Area in the Niagara Official Plan, 2022 ("NOP"). The lands fall within the Protected Countryside of the Greenbelt Plan, 2017 ("Greenbelt Plan"), and more specifically within the Specialty Crop Area – Niagara Peninsula Tender Fruit and Grape Area.

Provincial and Regional policies permit a full range of agricultural, agriculture-related and on-farm diversified uses ("OFDUs") within specialty crop areas. Agriculture-related and OFDUs are intended to complement the principal agricultural uses on the property and in the surrounding area and contribute to the sustainability and viability of the farming operation.

The PPS defines OFDUs as those that are secondary to the principal agricultural use of the property, and are limited in area; these can include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.

Pursuant to the PPS, the Ontario Ministry of Agriculture, Food and Rural Affairs' ("OMAFRA") Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas ("OMAFRA Guidelines") provide criteria to consider when determining the classification of a diversification use in prime agricultural areas. These uses are to be considered based on the following criteria:

1. Located on a farm;
2. Secondary to the principal agricultural use of the property;
3. Limited in area;
4. Includes, but is not limited to, home occupations, home industries, agri-tourism uses and uses that produce value-added agricultural products; and
5. Shall be compatible with, and shall not hinder, surrounding agricultural operations.

With regard to Criterion #1, the proposed use is located on an agricultural parcel that is planted with cash crop.

The OMAFRA Guidelines recommend considering Criterion #2 based on spatial and temporal terms; the uses must be secondary relative to the agricultural use of the property, and the spatial limits are addressed through Criterion #3, and temporal considerations apply to uses that are temporary or intermittent, such as events.

Criterion #3 requires the OFDUs to be limited in area, recommending that these uses are limited to a maximum of 2% lot coverage with further limitations on the gross floor area ("GFA") of the buildings used for OFDUs (e.g. 20% of the 2%).

The Guidelines note that "limited in area" calculations should account for all aspects related to an OFDU, including any buildings, outdoor storage areas, landscaped areas,

berms, wells and septic systems, parking areas and new access roads, and that the lot area coverage ratio should be based on the size of the individual parcel of land where the use is located and not the total area of a farm operation. The size of the parcel is 23.6 hectares; therefore, in order to adhere to the recommended size limit, the total area of the proposed OFDU (and all aspects related to it) would need to be no larger than 0.472 hectares (4,720 sq. m) in area.

The Planning Justification Brief prepared by NPG Planning Solutions (dated February 15, 2024) notes that the GFA of the proposed OFDU is approximately 18 sq. m., noting that a portion of the existing gravel parking lot is to be used for parking and customer seating. Additional information is required to confirm that the proposal meets the "limited in area" criteria. Staff request the submission of a detailed site plan at the Site Plan Approval stage showing the total development envelope coverage of the site (including parking, seating areas, septic system, etc.) in square metres.

Archaeological Potential

The subject lands fall within the Region's mapped area of archaeological potential, as identified on Schedule 'K' of the NOP. Provincial and Regional policies state that development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved or the land has been investigated and cleared or mitigated following clearance from the Province.

Staff is of the understanding that the proposal will not result in any deep ground disturbance. As such, in lieu of an archaeological assessment, staff provide the following archaeological advisory clause:

"Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (MCM) (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the Niagara Regional Police Services as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Services Delivery (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the MCM should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act."

Private Servicing

Regional Private Sewage System staff are of the understanding that there are no public washrooms being added to the property to support the food truck and that all greywater from the food truck will be disposed of by the sewage system onsite.

Staff were unable to identify any records for the two existing septic systems onsite. One of the septic systems services the dwelling and the other services the employee washroom / food preparation area. The septic system for the dwelling is located east of the dwelling and the septic system for the employee washroom and food preparation sink is located east of the employee washroom.

The septic tank lids for the employee washroom and food preparation area were exposed and loosened prior to the onsite inspection. Staff observed no defects with the existing systems at the time of the inspection.

Given that the food truck will meet the minimum building code setbacks and that no building permits are required, staff offer no objection to the continued use of the existing sewage system to service the food truck. Please note, if at any time the sewage systems become defective or the sewage flows are added to the property, the existing septic systems would need to be replaced and meet current building code requirements.

Conclusion

In conclusion, Regional Growth Management and Planning Division staff offer no objection to the Minor Variance application as the proposal is generally consistent with the intent of Provincial and Regional On-Farm-Diversified Use policies. At the Site Plan stage, staff will require the submission of a detailed site plan to confirm that the proposal is consistent with the criteria for OFDUs outlined in the OMAFRA Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. The detailed site plan should account for all aspects related to the OFDU, including (but not limited to) any outdoor storage areas, landscaped areas, septic system, parking areas, seating areas, etc.

Please send copies of the staff report and notice of the Town's decision on these applications. If you have any questions related to the above comments, please contact me at carling.macdonald@niagararegion.ca

Kind regards,



Carling MacDonald
Development Planner, Niagara Region

cc: Pat Busnello, Manager of Development Planning, Niagara Region
Caitlin Goodale, Private Sewage System Inspector, Niagara Region



**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
The variance is minor in nature.	<p>Section 3.17(a) Minimum Distance Separation Requirements</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>Section 5.1.2 Zone Requirements for Agricultural Use</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>
The variance is desirable for the development or use of the land.	<p>Section 3.17(a) Minimum Distance Separation Requirements</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>Section 5.1.2 Zone Requirements for Agricultural Use</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>
The variance maintains the general intent and purpose of the Zoning By-law.	<p>Section 3.17(a) Minimum Distance Separation Requirements</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

**Engineering Department
Committee of Adjustment Report**

For

**A8-2024P
928 Foss Road**

April 5, 2024

Town staff have reviewed the following documentation for the purpose of **A8-2024P – 928 Foss Road** minor variance application for:

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

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.

Introduction:

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

The subject land is zoned Agricultural (A)/Environmental Protection 1 (EP1) in accordance with Pelham Zoning By-law 4481(2022), as amended. Application for relief is made, to facilitate the construction of a new dwelling.

The property is somewhat narrow, building another poultry barn to the west of the current barn is not desirable mainly due to the proximity of the nearest neighbour located at 938 Foss Road. In order to observe Minimum Distance Separation laws, the applicant prefers to keep this livestock barn as far as possible from the neighbours at 938 Foss Road in an effort to not affect them adversely. The property to the east of 928 Foss Road is used for agricultural purposes thus keeping the proposed barn closer to the east side will not directly affect any neighbours.

Analysis:

Please see comment below

Public Works offer the following Comment

Public Works does not have any further comments

To: Sarah Leach

Cc: Andrew Edwards

From: Belinda Menard, Building Inspector, Community Planning & Development

Date: April 24, 2024

Subject: Building Comments on Applications to the Committee of Adjustment for
Minor Variance hearing. 928 Foss Road, Pelham

File Number: A8 – 2024P

Comment:

- A building permit will be required for the construction of the Agricultural building.

Respectfully,
Belinda Menard, Dipl., Constr. Eng. Tech.
Building Inspector

Growth Management and Planning Division

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free:1-800-263-7215

Via Email Only

April 24, 2024

File Number: PLMV202400263

Sarah Leach
Secretary-Treasurer of the Committee of Adjustment
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON L0S 1E0

Dear Ms. Leach:

Re: Regional and Provincial Comments
Application Type: Minor Variance
Town File Number: A8-2024P
Applicant/Owner: [REDACTED]
Location: 928 Foss Road, Pelham

Regional Growth Management and Planning Division staff has reviewed the Minor Variance application for 928 Foss Road in the Town of Pelham (“subject lands”).

The applicant seeks relief from the following sections of the Town’s Zoning By-law 4481 (2022), as amended, to facilitate the construction of a new poultry barn:

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

The following comments are provided from a Provincial and Regional perspective to assist the Town in its consideration of the application.

Provincial and Regional Policies

The subject lands are located within a Prime Agricultural Area under the *Provincial Policy Statement, 2020* (PPS), *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020* (Growth Plan), and *Niagara Official Plan, 2022* (NOP). Provincial and Regional policies recognize that agricultural land is a valuable asset and that all types,

sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected in prime agricultural areas in accordance with Provincial standards.

The PPS and NOP (Policy 4.1.3.6) require that new development comply with the Minimum Distance Separation (MDS) formulae developed by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA), which is applied in order to separate uses to reduce incompatibility concerns about odour from livestock facilities. Regional staff note that municipalities are responsible for ensuring that MDS setbacks are met when reviewing land use planning applications or building permits. Therefore, the Committee should look for confirmation from Town staff to determine that the proposed decreased setbacks will not adversely impact surrounding sensitive land uses.

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.

Archaeological Potential

The subject lands fall within the Region's mapped area of archaeological potential, as identified on Schedule 'K' of the NOP. Provincial and Regional policies state that development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved or the land has been investigated and cleared or mitigated following clearance from the Province.

Regional staff note that the Town of Pelham has a Heritage Master Plan. As such, Town staff should be satisfied that any local archaeological provisions / requirements have been met. Should the Town require an archaeological assessment for the proposed development, staff request that all applicable reports and a Ministry letter of acknowledgement are circulated to the Region for review.

The following archaeological advisory clause is provided for information purposes:

"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."

Natural Heritage

The subject lands are impacted by the Region's Natural Environment System (NES), consisting of the Upper Coyle Creek Provincially Significant Wetland Complex (PSW), Other Wetland and potential Significant and/or Other Woodland. The property is also partly mapped as part of the Provincial Natural Heritage System (PNHS). As such, these features are considered Key Natural Heritage Features (KNHF) and/or Key

April 24, 2024

Hydrologic Features (KHF).

The NOP requires the completion of an Environmental Impact Study (EIS) when development or site alteration is proposed within 120 m of a KNHF/KHF. However, as the proposed development (new poultry barn) is more than 120 metres from the natural heritage features on site, staff offer no requirements from an environmental perspective.

Servicing

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.

As such, staff offer no objection to the application from a servicing perspective, provided no washrooms or additional employees are included with the proposal. If at any time washroom facilities are proposed within the barn, a new sewage system permit is required for the installation of a new system to accommodate the increase in sewage flows.

Conclusion

In conclusion, 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.

Please send copies of the staff report and notice of the Town’s decision on this application. If you have any questions related to the above comments, please contact me at carling.macdonald@niagararegion.ca.

Kind regards,



Carling MacDonald
Development Planner, Niagara Region

cc: Pat Busnello, MCIP, RPP, Manager of Development Planning, Niagara Region



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

Monday, May 06, 2024

Minor Variance Application: A9-2024P

Municipal Address: 2 Pelham Town Square

Legal Description: PLAN 25 PT LOT 26 NP717 RP, 59R2648 PART 1

Roll number: 2732 030 004 13601

Nature and Extent of Relief/ Permission Applied for:

The subject land is located on the east side of Pelham Street, lying south of Highway 20, being Part of Lot 26, Plan 25, in the Town of Pelham.

The subject land is zoned Town Square (TS) in accordance with Pelham Zoning By-law 4481 (2022), as amended. Application is made to facilitate the construction of a 5-storey mixed-use building:

1. **Section 4.1.1 "Minimum Parking Requirements"** – to permit a minimum number of vehicular parking spaces of 1.17 spaces per dwelling unit (55 spaces), whereas the By-law requires a minimum of 1.25 vehicular parking spaces per dwelling unit (59 spaces); and
2. **Section 4.1.1 "Minimum Parking Requirements"** – to permit a minimum number of 1.35 parking spaces per 100m² gross leasable floor area "GLFA" (2 spaces), whereas the By-law requires a minimum of 3.25 parking spaces per 100m² GLFA (5 spaces); and
3. **Section 4.1.4.1(a) "Parking Space Dimensions and Requirements"** – to permit a minimum vertical clearance of 2.5m for a parking space, whereas the By-law requires a minimum vertical clearance of 4.2m; and
4. **Section 4.3.1 "Minimum Bicycle Parking Requirements"** – to permit a minimum of 0.25 short-term bicycle parking spaces per dwelling unit (12 spaces), whereas the By-law requires a minimum of 0.8 short-term bicycle parking spaces per dwelling unit (38 spaces); and
5. **Section 8.3.1 "Town Square (TS) Permitted Uses"** – to permit residential apartments located on and above the first floor, whereas the By-law does not permit residential apartments at grade; and
6. **Section 8.3.3 "Town Square (TS) Zone Requirements"** – to permit a maximum retail frontage of 28m, whereas the By-law allows 12m; and
7. **Section 8.3.3 "Town Square (TS) Zone Requirements"** – to permit a minimum of 35% first-floor glazing, whereas the By-law requires a minimum of 50% first-floor glazing; and

8. **Section 8.3.3 “Town Square (TS) Zone Requirements”** – to permit a maximum building height of 20.5m for a Landmark Site, whereas the By-law permits a maximum building height of 20m.

The site is located on the south side of Pelham Town Square. The site has approximately 55 metres of frontage on Pelham Town Square and is 1,530.63 square metres in area. Vehicular access to the site is provided from a driveway on Pelham Town Square. The site currently contains a parking area and two storey commercial building.

Surrounding land uses include commercial uses fronting Highway 20 to the north, a commercial plaza to the west, Peace Park and Pelham Municipal Offices to the south, and commercial/residential uses fronting Pelham Street to the east. The subject lands are also adjacent to the Pelham Farmer’s Market, which occupies the municipal parking lot to the west and operates every Thursday evening from May to October.

The applicant intends to construct a five-storey mixed-use building, consisting of a 148.4 square metre commercial unit, and 47 residential units, ranging in size. The commercial unit is below grade and fronts Pelham Town Square. Seven (7) of the 47 residential units are located on the ground floor, with the remaining 4 floors containing the remaining units. Parking for the development is proposed both at grade, and one level of underground parking. A total of 57 parking spaces are proposed to accommodate the site. 16 short-term bicycle parking spaces are provided at the northwest entrance of the building. 36 long-term bicycle parking spaces are located in the underground parking garage.

The concrete sidewalk providing access to the retail unit encroaches into the municipal road allowance. It is anticipated that the developer will enter into an encroachment agreement with the Town.

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.

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.

Policy 1.4.1 and 1.4.2 speak to the need to provide an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents by permitting and facilitating all housing options and all types of residential intensification in accordance with the policies of the PPS.

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 identifies this area as having high archaeological resource potential. An archaeological assessment was identified as an application requirement during pre-consultation with the applicant. As such, staff will require an archaeological assessment with the site plan submission.

The subject land is located in a ‘Settlement Area’ according to the PPS. Policy 1.1.3.1 states that settlement areas shall be the focus of growth and development.

Planning staff are of the opinion the requested zoning relief is consistent with the PPS.

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 located within the Delineated Built Boundary. Section 2.2.1 of the Growth Plan directs growth to settlement areas that have a delineated built boundary, have existing municipal services, and can support the achievement of complete communities. The Growth Plan states municipalities will support the achievement of complete communities by planning to accommodate forecasted growth, planning to achievement the minimum intensification and density targets of the Plan, considering the range and mix of housing options and densities of existing housing stock, and planning diversify overall housing stock.

Planning staff are of the opinion the proposed minor variance conforms with the Growth Plan.

Regional Official Plan (Adopted 2022)

The Region of Niagara adopted a new Regional Official Plan (ROP) on June 23, 2022. It was approved by the Province in November 2022. The subject lands are recognized as Built-Up Area in the Regional Official Plan.

Policy 2.3.1.4 provides that new residential development and residential intensification are encouraged to be planned and designed to mitigate and adapt to the impacts of climate change by:

- a) facilitating compact built form; and
- b) incorporating sustainable housing construction materials or practices, green infrastructure, energy conservation standards, water efficient technologies, and low impact development.

Planning staff are of the opinion the proposed variance conforms 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.

Policy A2.2.2 Growth & Settlement – states that it is a goal of this Plan to encourage the majority of development to the Urban Area where full sewer and water services are available, and the objective is to encourage intensification and redevelopment within the Urban Area and in proximity to the Downtown, encourage diversity in housing to accommodate the broadest range of income levels and provide for housing that is affordable to the community. The proposed development is a form of intensification of an underutilized site in the Urban Area. It is noted however, that the proposed development is not considered to be affordable, however will provide housing for a greater range of income levels.

B1.2.4.1(c) states that at least 50% of the dwellings to be constructed in the Downtowns should be affordable to low- and moderate-income households. According to the planning justification report, the proposed development does not explicitly contemplate, require, or exclude the provision for affordable housing units. A variety of unit sizes are proposed which will lend to a more affordable product.

The local Official Plan designates the subject land as Downtown. The purpose of the Downtown designation is to maintain and promote Downtown Fonthill and Downtown Fenwick as the focal points for commerce and hospitality in the Town, within which a pedestrian-oriented environment can be fostered. Permitted uses include a mix of retail and other such commercial uses, among residential uses.

The scale and location of new development in the Downtown area is to maintain and enhance the character of the Downtown areas; in Fonthill the promotion of a "town character" is encouraged, emphasised by mixed use buildings, which are to be accessible and linked to existing public spaces.

Section B1.2.4.3 of the Official Plan provides development and urban design policies specific to the Downtown designation. These policies encourage buildings be built at or near the front lot line, pushing parking to the rear of sites, and encourage a high degree of architectural quality including the use of glazing. Staff of the opinion the proposal generally conforms with the Town's Official Plan. Staff are in agreement with the analysis presented in the urban design brief included in the planning justification report.

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 applicant provided a planning justification brief along with the application that provided a policy analysis of the proposed variances.

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

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

The subject lands are zoned Town Square (TS) per Town of Pelham Comprehensive Zoning By-law 4481. Residential apartments located above the first floor, various commercial/retail uses, and accessory uses are permitted uses in the TS zone. Under the regulations of the Zoning By-law, the minor variance application requests relief from:

1. **Section 4.1.1 "Minimum Parking Requirements"** – to permit a minimum number of vehicular parking spaces of 1.17 spaces per dwelling unit (55 spaces), whereas the By-law requires a minimum of 1.25 vehicular parking spaces per dwelling unit (59 spaces); and
2. **Section 4.1.1 "Minimum Parking Requirements"** – to permit a minimum number of 1.35 parking spaces per 100m² gross leasable floor area "GLFA" (2 spaces), whereas the By-law requires a minimum of 3.25 parking spaces per 100m² GLFA (5 spaces); and
3. **Section 4.1.4.1(a) "Parking Space Dimensions and Requirements"** – to permit a minimum vertical clearance of 2.5m for a parking space, whereas the By-law requires a minimum vertical clearance of 4.2m; and
4. **Section 4.3.1 "Minimum Bicycle Parking Requirements"** – to permit a minimum of 0.25 short-term bicycle parking spaces per dwelling unit (12 spaces), whereas the By-law requires a minimum of 0.8 short-term bicycle parking spaces per dwelling unit (38 spaces); and
5. **Section 8.3.1 "Town Square (TS) Permitted Uses"** – to permit residential apartments located on and above the first floor, whereas the By-law does not permit residential apartments at grade; and

6. **Section 8.3.3 "Town Square (TS) Zone Requirements"** – to permit a maximum retail frontage of 28m, whereas the By-law allows 12m; and
7. **Section 8.3.3 "Town Square (TS) Zone Requirements"** – to permit a minimum of 35% first-floor glazing, whereas the By-law requires a minimum of 50% first-floor glazing; and
8. **Section 8.3.3 "Town Square (TS) Zone Requirements"** – to permit a maximum building height of 20.5m for a Landmark Site, whereas the By-law permits a maximum building height 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>Section 4.1.1 Minimum Parking Requirements – Residential</p> <p>Yes, the variance is considered minor in nature. The variance requests a reduction in the parking rate for residential dwelling units from 1.25 parking spaces per unit, to 1.17 parking spaces per unit. This is effectively a reduction of 4 parking spaces. Each of the 47 residential units will have a dedicated parking space, with seven (7) additional spaces that can be dedicated for visitor parking, or additional spaces for a certain unit. Each residential unit has a dedicated parking space. In addition, the commercial parking spaces can be used as visitor spaces outside of business hours. It is the opinion of planning staff that the variance is minor in nature.</p>
	<p>Section 4.1.1 Minimum Parking Requirements – Commercial</p> <p>Yes, the variance is considered minor in nature. The variance requests a reduction to 1.35 parking spaces per 100m² gross leasable floor area "GLFA", whereas the By-law requires a minimum of 3.25 parking spaces per 100m² GLFA. This is effectively a reduction from five (5) spaces to two (2) spaces. Given the relatively small commercial GFA, two (2) parking spaces is considered appropriate, given the availability of public parking in the vicinity of the site (e.g., Town Hall parking lot). It is noted non-residential parking is not a requirement in adjacent zones (MS zones). As such, staff are of the opinion the variance is minor in nature.</p>
	<p>Section 4.1.4.1(a) Parking Space Dimensions and Requirements</p> <p>Yes, the variance is considered minor in nature. Staff note the parking space vertical clearance requirement was reduced to 2.0 metres through By-law No. 13 (Housekeeping Amendment, Town File: AM-08-2023) to be in keeping with the minimum requirements of the Ontario Building Code and to provide consistency. However, as the housekeeping amendment is currently under appeal the 4.2 metre requirement remains in effect. The requested variance is greater than the minimum requirement of the OBC. As such, staff are of the opinion the variance is minor in nature.</p>
	<p>Section 4.3.1 Minimum Bicycle Parking Requirements</p> <p>Yes, the variance is minor in nature. Given the context, the requirement for 0.8 short-term bicycle parking spaces is excessive. The bicycle parking space requirement was reduced to 0.25 spaces per unit through the</p>

	<p>housekeeping amendment. The housekeeping amendment is under appeal and as such, the higher requirement applies. Given the variance request would comply with the reduced requirement as contemplated through the housekeeping amendment, staff are of the opinion the variance is minor in nature. The development will maintain 36 long-term spaces for the use of the residential units. There are adequate short term spaces for visitors to the residential units.</p> <p>Adequate long-term spaces will be provided, and as such the variance is considered minor in nature.</p>
	<p>Section 8.3.1 Town Square (TS) Permitted Uses – Residential Uses at Grade</p> <p>Yes, the variance is considered minor in nature. Ground level commercial space is being maintained along the Pelham Town Square frontage. The residential uses at grade have frontage along Peace Park, which are not anticipated to detract from the active retail frontage along Pelham Town Square. The development will maintain an active streetscape along Pelham Town Square for pedestrians. As such the variance is considered minor in nature.</p>
	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Retail Frontage</p> <p>Yes, the variance is considered minor in nature. Due to the configuration of the parking for the site, the design of the retail unit is long and narrow, resulting in a unit that exceeds the maximum retail frontage requirement. From a visual perspective, the variance is not anticipated to detract from the streetscape in a negative way. The unit will maintain a high degree of glazing, contributing to a pedestrian friendly and inviting façade as viewed from the public right of way. As such the variance is considered minor in nature.</p>
	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Glazing</p> <p>Yes, the variance is considered minor in nature. The elevations provided by the applicant show a high percentage of glazing on the first storey. The variance is deficient 15%. As part of the redevelopment of the site, the site building design will facilitate an active streetscape along Pelham Town Square. Higher storeys maintain a generous percentage of glazing. As such, planning staff are of the opinion the variance is minor in nature.</p>
	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Height</p> <p>Yes, the variance is considered minor in nature.</p> <p>The variance requests a maximum building height of 20.5 metres whereas a maximum building height of 20.0 metres is permitted. It is noted the request is made to provide flexibility for the design of the building should grading or design changes be made at detailed design. As currently contemplated, the building does not exceed the maximum height.</p> <p>The question of whether a variance is minor in nature is not empirical in nature, rather it is a question of impact. Impact considerations include shadowing, compatibility, visual impact to the streetscape. The increase in height is not anticipated to have significant impacts on neighbouring land uses and is generally in character with surrounding land uses. The sun</p>

	<p>shadowing study showed minimal shadowing impacts on the adjacent park and public spaces. Shadowing is mostly contained to public and private parking spaces, as well as the public ROW.</p> <p>As such, staff are of the opinion the variance is considered minor in nature.</p>
<p>The variance is desirable for the development or use of the land.</p>	<p>Section 4.1.1 Minimum Parking Requirements – Residential</p> <p>Yes, the variance is desirable for the development or use of the land.</p> <p>The residential and commercial spaces are synergistic from a parking perspective as they have differing peak parking demands at different times of the day. This allows for more efficient use of spaces and ultimately a reduced parking supply that avoids an oversupply, which is desirable for the development of the site. In addition, there is a municipal parking lot to the west of the site which can function as additional visitor parking. Each residential unit will maintain a dedicated parking space. As such, staff are of the opinion that the variance is desirable for the development of the site.</p> <p>Section 4.1.1 Minimum Parking Requirements – Commercial</p> <p>Yes, refer to analysis above respecting minimum residential parking.</p> <p>Section 4.1.4.1(a) Parking Space Dimensions and Requirements</p> <p>Yes, the variance is desirable for the development or use of the land.</p> <p>Staff note the vertical clearance requirement was reduced to 2.0 metres through By-law No. 13 (Housekeeping Amendment, Town File: AM-08-2023) to be in keeping with the minimum requirements of the Ontario Building Code and to provide consistency. The variance will enable design flexibility and eliminate excessive height of the structure for parking areas. As such, staff are of the opinion the variance is desirable for the development or use of the land.</p> <p>Section 4.3.1 Minimum Bicycle Parking Requirements</p> <p>Yes, the variance is desirable for the development or use of the land. Given the context, the requirement for 0.8 short-term bicycle parking spaces is excessive. Adequate short-term spaces will be provided, and allow for better use of space, including more opportunities for enhanced landscaping along Pelham Town Square in the form of tree plantings. It is noted that long-term bike storage inside the building will be provided for the residents, and in addition there are short term bicycle spaces in Peace Park.</p> <p>Section 8.3.1 Town Square (TS) Permitted Uses</p> <p>Yes, the variance is desirable for the development or use of the land. Permitting residential uses at grade will contribute to the housing stock of downtown Fonthill. Permitting at grade residential dwelling units is not anticipated to detract from the commercial unit along the frontage of the site. The development will bring a commercial use closer to the street’s edge, contributing to an active interface between the site and the ROW. As such, staff are of the opinion the variance is desirable for the development of the lands.</p>

	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Retail Frontage</p> <p>Yes, the variance is desirable for the development or use of the land. The proposed commercial unit will foster an active street presence, with the use of glazing and shallow setback to the property line. The proposed retail use is compatible with the surrounding area and is appropriate for the site. As such, staff are of the opinion the variance is desirable for the development or use of the land.</p> <p>Section 8.3.3 Town Square (TS) Zone Requirements – Glazing</p> <p>Yes, the variance is desirable for the development or use of the land. Currently, the existing building does not have a high degree of glazing. The variance will facilitate an appropriate design for the site. As such, staff are of the opinion the variance is desirable for the development or use of the land.</p> <p>Section 8.3.3 Town Square (TS) Zone Requirements – Height</p> <p>Yes, the variance is desirable for the development or use of the land. The proposal provides for a form of development that is generally compatible and desirable for the surrounding area. The increased height is not anticipated to result in a built form that is inappropriate for the lands. The increased height will allow for design flexibility should changes to the grade be necessary. The increased height is due to is the elimination of much of the surface parking, which is generally considered to be positive and desirable. As such, the variance is considered 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>Section 4.1.1 Minimum Parking Requirements – Residential</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the minimum parking space requirement is to ensure a site functions efficiently and meets basic service levels. More than 1 space is available for the exclusive use of each dwelling unit and as such is anticipated to function efficiently. There is adequate public parking in the vicinity of the site for visitor parking.</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 4.1.1 Minimum Parking Requirements – Commercial</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the minimum parking space requirement is to ensure a site functions efficiently and meets basic service levels. Two (2) parking spaces are provided for the commercial unit, which is assumed will be used for employee parking. Staff note in the adjacent Main Street zones there is no parking requirement for non-residential uses. There is adequate public parking in the vicinity of the site to accommodate parking for the commercial use. The reduction in 3 commercial parking spaces is not anticipated to result in significant negative impacts for the parking strategy of the site.</p> <p>As such, staff are of the opinion the variance maintains the general intent and purpose of the Zoning By-law.</p>

Section 4.1.4.1(a) Parking Space Dimensions and Requirements

Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of zoning by-law is to provide parking spaces with dimensions that accommodate the standard vehicle size. Through the housekeeping amendment, the vertical clearance dimension was changed to 2.0m, in line with the minimum standard of the Ontario Building Code. The requested variance is greater than that of the minimum standard.

As such, staff are of the opinion the variance maintains the general intent of the Zoning By-law.

Section 4.3.1 Minimum Bicycle Parking Requirements

Yes, the variance maintains the general intent and purpose of the Zoning By-law.

The intention for requiring short term bicycle spaces is to promote and facilitate cycling as a sustainable mode of transportation, and to support the creation of cyclist-friendly development patterns. The intention is intended to ensure adequate infrastructure is provided to accommodate cyclists, making it safer and more convenient for short term visitors of the site. The proposed development provides for the required number of long-term bicycle parking spaces, and as such, the short-term spaces are primarily intended for the use of visitors. Further, the short-term requirement was reduced through the housekeeping amendment.

As such, staff are of the opinion that the variance maintains the general intent and purpose of the Zoning By-law.

Section 8.3.1 Town Square (TS) Permitted Uses

Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of restricting residential uses to be located above grade is to ensure the primary function of the frontage of the building remains commercial, and maintains an active street presence. Due to the grading of the site, the concept contemplates residential units at-grade on the Peace Park with most of the retail unit is below grade on the street side. The development maintains an active street presence along Pelham Town Square. The residential units with frontage on Peace Park are not anticipated to detract from the retail uses proposed along the Pelham Town Square frontage.

As such, staff are of the opinion that the variance maintains the general intent and purpose of the Zoning By-law.

Section 8.3.3 Town Square (TS) Zone Requirements – Retail Frontage

Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of restricting the retail frontage of individual units is to encourage visual interest from the street, and to encourage an active streetscape. The frontage of the retail unit is a result of its narrow depth. The increased frontage is not anticipated to result in significant impact to the streetscapes in terms of visual interest. The frontage along Pelham Town Square will foster a more active street presence than is currently existing. As such, staff are of the opinion the variance maintains the general intent and purpose of the Zoning By-law.

	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Glazing</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the glazing requirement is to encourage highly transparent building frontages that foster an active streetscape. The building is proposed to have a high percentage of glazing on both frontages, facing the street as well as public park. The redevelopment of the site will significantly increase the glazing percentage when compared to the existing development. Staff are of the opinion the variance maintains the intent of the zoning by-law.</p>
	<p>Section 8.3.3 Town Square (TS) Zone Requirements – Height</p> <p>Yes, the variance maintains the general intent and purpose of the Zoning By-law. The intent of the maximum building height is to maintain compatibility between uses and to ensure shadowing and visual impacts and other impacts are mitigated to the extent possible. The residential use of the property is generally compatible in nature with the surrounding land uses, which include parkland, and commercial development. The sun shadowing study including in the planning justification report shows minimal impact on the surrounding area, as shadowing is mostly constrained to public ROW and parking lot. Staff note the request is to maintain flexibility should a minimum change in height be necessary during detailed design. As such, the variance is considered to maintain 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>All requested variances</p> <p>The variances maintain the general intent and purpose of the Official Plan. The subject lands are designated Downtown according to the Town’s Official Plan. The purpose of the designation is to maintain and promote Downtown Fonthill and Downtown Fenwick as the focal points for commerce and hospitality in the Town, within which a pedestrian-oriented environment can be fostered.</p> <p>The variances will facilitate compatible and appropriate development of the subject property. The redevelopment of the site will facilitate an inviting and pedestrian scaled development. The variance does not conflict with any policies subject to fulfillment of the proposed conditions of approval. As such, the variances maintain the general intent and purpose of the Official Plan.</p>

Agency and Public Comments:

On April 9, 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
 - No Construction Hoarding on town property.

- Staging area is to be indicated for materials and site compound.
- No contractor or equipment permitted to park on the Town's road allowance
- Sidewalk on Pelham Town Square to remain open at all times
- Haul Route Plan is required.
- No contractor shall park on municipal parking lots
- A comprehensive Stormwater Management Report is required, detailing the full stormwater management strategy.
- Site servicing plan/Functional Servicing Report
- Town staff will require a comprehensive lot grading and drainage plan demonstrating that storm water runoff will not negatively impact nor rely upon neighboring properties, to the satisfaction of the Director of Public Works or his designate.
- The applicant obtains a Driveway Entrance and Culvert Permit from the Public Works department for the construction of all new or modification of existing driveways or entrances. Installation and/or modification of all entrances shall be completed in accordance with Town Standards. The developer shall bear all costs associated with these works.

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

Supporting Materials:

Planning Justification Report prepared by Better Neighbourhoods Development Consultants

- A planning justification report was prepared in support of the minor variance application. The application provided an overview of the development concept, a description of the subject lands and surrounding area, as well as a policy analysis of the proposal's alignment with Provincial and Town policy. The brief also provides an overview of the various supporting materials submitted with the application.
- The report included an urban design brief, sun shadow study, and urban plane analysis.
- The urban design brief assesses the Town's urban design policies and the impact of the development on surrounding uses and the public realm, with a focus on the height of the structure. The building has southerly frontage on Peace Park. As such, the majority of summer shadowing is cast on the municipal parking lot to west, Pelham Town Square to the north, and the commercial plaza parking lot to the east. Winter shadowing is similar, however, more pronounced.

Planning Staff Comments:

Planning staff have reviewed all supporting materials as well as reviewed all agency and public correspondence submitted to date and offer the following for the Committee's consideration.

When considering any Planning Act application, a planner must always consider the "public interest" and ensure that their professional recommendations take this concept into account. In very general terms the public interest reflects policy and the common well-being of a population but often is confused with public opinion or personal interests of the public. Public opinion is what various stakeholders think and say about an issue at a point in time; public interest is an attempt to identify and address the underlying concerns today and into the future, and to balance them against one another, to reach a recommendation. For any project, there is often more than one public interest, and it is the responsibility of the planner to identify and balance these multiple interests to meet the identified needs reflected in public policy and the broader public interest.

The proposed development will provide opportunities to make efficient use of land and infrastructure and ultimately the proposal will contribute towards increasing housing choice and contribute to the development of a complete community, enhancing the downtown core of Fonthill. Generally speaking, a mixed use development in the downtown core is compatible from a land use perspective and the scale and residential density proposed can be integrated with the adjacent uses. Impacts can be mitigated through the implementation of certain building design features, landscaping elements, building placement, minimizing surface parking, etc. to provide for compatible development.

In terms of impact on the Farmer's Market, the planning justification report states the residential component of the building is anticipated to increase patronage of the Farmers' Market due to its high degree of walkability. Also, since the market operates in the evening, the proposed building will not cast shadows onto the market. Staff agree with the conclusion of the report. However, the applicant is advised future residential and commercial development will be impacted by the activities associated with not only the Farmers' Market, but also the Supper Market and Bandshell concert series held on the adjacent Town lands during the summer months. The residential and business units will be subject to noise, odour and loss of views resulting from these events and will need to consider design elements to mitigate the impacts these events have on the development along with the high demand for parking in the area during the events.

Planning staff are of the opinion that the proposed minor variance application is consistent with the PPS and conforms to the policy requirements of the Growth Plan for the Greater Golden Horseshoe, the Region of Niagara Official Plan and the Town Official Plan.

Planning Staff Recommendation:

Planning staff recommend that minor variance file A9/2024P **be approved** subject to the following condition(s):

THAT the applicant:

- That the applicant apply for and enter into a site plan agreement with the Town to the satisfaction of the Director of Community Planning and Development.
- 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 the applicant enter into an encroachment agreement with the Town to the satisfaction of the Director of Public Works.
- That all necessary building permits be acquired prior to construction commencing, to the satisfaction of the Chief Building Official.
- 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.
- Submit a comprehensive stormwater management report demonstrating that the drainage neither relies, nor negatively impacts neighbouring properties, to the satisfaction of the Director of Public Works, or designate.
- Obtain approval for a Driveway Entrance & Culvert Permit, as applicable, issued through the Public Works department, to Town standards. The applicant shall bear all costs associated with these works.

Prepared and Submitted by:

Andrew Edwards, BES
Planner

Recommended by:

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

**Engineering Department
Committee of Adjustment Report**

For

**A9-2024P
2 Pelham Town Square**

April 11, 2024

Town staff have reviewed the following documentation for the purpose of **A9-2024P – 2 Pelham Town Square** minor variance application for:

Application for relief is made, to facilitate the construction of a 5-storey mixed-use building. The applicant seeks relief from the following section(s) of the Zoning By-law:

Section 4.1.1 “Minimum Parking Requirements” – to permit a minimum number of vehicular parking spaces of 1.17 spaces per dwelling unit (55 spaces), whereas the By-law requires a minimum of 1.25 vehicular parking spaces per dwelling unit (59 spaces); and

Section 4.1.1 “Minimum Parking Requirements” – to permit a minimum number of 1.35 parking spaces per 100m² gross leasable floor area “GLFA” (2 spaces), whereas the By-law requires a minimum of 3.25 parking spaces per 100m² GLFA (5 spaces); and

Section 4.1.4.1(a) “Parking Space Dimensions and Requirements” – to permit a minimum vertical clearance of 2.5m for a parking space, whereas the By-law requires a minimum vertical clearance of 4.2m; and

Section 4.3.1 “Minimum Bicycle Parking Requirements” – to permit a minimum of 0.25 short-term bicycle parking spaces per dwelling unit (12 spaces), whereas the By-law requires a minimum of 0.8 shortterm bicycle parking spaces per dwelling unit (38 spaces); and

Section 8.3.1 “Town Square (TS) Permitted Uses” – to permit residential apartments located on and above the first floor, whereas the By-law does not permit residential apartments at grade; and

Section 8.3.3 “Town Square (TS) Zone Requirements” – to permit a maximum retail frontage of 28m, whereas the By-law allows 12m; and

Section 8.3.3 “Town Square (TS) Zone Requirements” – to permit a minimum of 35% first-floor glazing, whereas the By-law requires a minimum of 50% first-floor glazing; and

Section 8.3.3 “Town Square (TS) Zone Requirements” – to permit a maximum building height of 20.5m for a Landmark Site, whereas the By-law permits a maximum building height of 20m.

Introduction:

The subject site is in Historic Downtown Fonthill, a community of Pelham, Ontario. Just south of Highway 20 East, the subject land of approximately 1,530m² is occupied by an office commercial building and a surface parking lot. Services were installed to accommodate the building. The subject lands are also adjacent to the Pelham Farmer's Market, which occupies the municipal parking lot to the west and operates every Thursday evening from May to October.

The applicant is proposing a 5-storey mixed-use building with one 148.4 m² commercial unit and 47 residential units ranging in size (Figure 2 & 3). 57 vehicular parking spaces are proposed and accommodated within one level of underground parking and a second level of parking at-grade, both of which are accessed off Pelham Town Square Boulevard. The commercial unit is below grade and fronts Pelham Town Square Boulevard. Seven residential units are located on the ground floor fronting Peace Park and the remaining residential units are located on floors above. 16 short-term bicycle parking spaces are provided at the northwest entrance of the building. 36 long-term bicycle parking spaces are located in the underground parking garage.

Analysis:

The subject site is situated in busy downtown core of Fonthill and immediately surrounded by the following land uses:

- **North:** Office/commercial buildings and restaurants
- **East:** Commercial plaza
- **South:** Peace Park and Pelham Town Hall
- **West:** Office/commercial buildings and restaurants

The subject lands are also adjacent to the Pelham Farmer's Market, which occupies the municipal parking lot to the west and operates every Thursday evening from May to October.

Town Staff have reviewed application A9-2024P 2 Pelham Town Square. Please see Public Works Comments and Conditions below.

Public Works offer the following Comments

- No Construction Hoarding on town property.
- Staging area is to be indicated for materials and site compound.
- No contractor or equipment permitted to park on the Town's road allowance
- Sidewalk on Pelham Town Square to remain open at all times
- Haul Route Plan is required.
- No contractor shall park on municipal parking lots

Public Works offer the following Conditions

- A comprehensive Stormwater Management Report is required, detailing the full stormwater management strategy.
- Site servicing plan/Functional Servicing Report
- Town staff will require a comprehensive lot grading and drainage plan demonstrating that storm water runoff will not negatively impact nor rely upon neighboring properties, to the satisfaction of the Director of Public Works or his designate.
- The applicant obtains a Driveway Entrance and Culvert Permit from the Public Works department for the construction of all new or modification of existing driveways or entrances. Installation and/or modification of all entrances shall

be completed in accordance with Town Standards. The developer shall bear all costs associated with these works.

- That the Applicant confirm no existing utilities cross the proposed new property line. Should any services cross this new property line nor rely on adjacent properties.

To: Sarah Leach

Cc: Andrew Edwards

From: Belinda Menard, Building Inspector, Community Planning & Development

Date: April 24, 2024

Subject: Building Comments on Applications to the Committee of Adjustment for
Minor Variance hearing - 2 Pelham Town Square, Pelham
File Number: A9 – 2024P

Comment:

- No comment from Building Department.

Respectfully,
Belinda Menard, Dipl., Constr. Eng. Tech.
Building Inspector

Consent Application: B8-2024P

Municipal Address: N/A

**Legal Description: Part of Lot 167, Part of Lots 17, 18, 19 on Plan 717 –
Part 2 on Sketch**

Roll number: 2732 030 004 06200

Location of Lands and Purpose of Application:

The subject parcel, shown as Part 2 on the attached sketch, is an interior parcel of land situated north of Port Robinson Road, lying east of Pelham Street, being Part of Lot 167, Part of Lots 17, 18, 19 on Plan 717 in the Town of Pelham.

Application is made for consent to partial discharge of mortgage and consent to convey 1,060.70 square metres of land (Part 2), to be added to the abutting property to the east (Part 3) for future development. Part 1 is currently subject to applications for redline revision to the existing plan of subdivision and zoning by-law amendment. Part 1 will be retained for residential use.

Applicable Planning Policies:

Planning Act (Consolidated April 2022)

Section 51(24) of the *Planning Act* states that when considering the division of land, regard shall be had to the health, safety, convenience, accessibility and welfare of the present and future inhabitants of the municipality and among other matters, including:

- a) The development's effect on provincial matters of interest;
- b) Whether the proposed subdivision is premature or in the public interest;
- c) Whether the plan conforms to the Official Plan and adjacent plans of subdivisions, if any;
- d) The suitability of the land for such purposes;
- e) The number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and adequacy of them;
- f) The dimensions and shapes of the proposed lots;
- h) Conservation of natural resources and flood control;
- i) The adequacy of utilities and municipal services;

j) The adequacy of school sites;

Section 53 (1) states a landowner 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.

The proposed boundary adjustment is to add remnant lands (Part 2) resulting from a proposed redline revision to a draft approved subdivision (located in Part 1) and adding the remnant lands to other lands (Part 3) owned by the applicant which supports provincial interest by facilitating the creation of a subdivision plan within the settlement area, and making more efficient use of those subdivision lands and increasing housing supply in the urban area. Parts 2 and 3 will be subject to future development applications consistent the *Planning Act* requirements and with the approved Official Plan

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.

The subject lands are in a “Settlement Area”, the Fonthill Urban Settlement Area, according to the PPS. Policy 1.1.3.1 states that settlement areas shall be the focus of growth and development.

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 identifies this area as having high archaeological resource potential. It is noted that a Stage 1-2 Archaeological Assessment has been completed on Parts 1, 2 and 3 in 2020 and a Stage 3 Archaeological Assessment was completed on a portion of Part 1 as recommended by the Stage 1-2 Archaeological Assessment in 2021. No further archaeological assessments are recommended on Parts 1, 2 or 3.

The proposed parcel reconfiguration is being made to reconfigure existing lot lines and does not include any site alteration or construction. Planning staff are of the opinion the requested boundary adjustment is consistent with the PPS.

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 Growth Plan contains various guiding principles which are intended to guide decisions of how land is developed. The guiding principles include building compact, vibrant, and complete communities, managing and encouraging development in appropriate locations, and optimizing the use of existing infrastructure.

The subject lands are designated 'Delineated Built-Up Area' according to the Growth Plan. The proposed conveyance facilitates a boundary adjustment and would not be considered development. Further, the proposed lot boundary adjustment will facilitate the future development of the lands to the east, resulting in a consolidated parcel that will increase the flexibility of future development options and be able to help the Town to meet or exceed its *delineated built boundary* intensification targets. Accordingly, Staff is of the opinion that the proposed boundary adjustment is in keeping with the policies of the Growth Plan.

Niagara Region Official Plan (2022)

The Niagara Region adopted a new Official Plan in June of 2022. The Official Plan was forwarded to the Province and received approval in November of 2022. The Regional Official Plan (ROP) designates the subject lands as 'Delineated Built-Up Area' in the 'Urban Area' designation.

Policy 2.2.2.5 now requires that across the Region 60% of all residential units occurring annually are to be in the Built-Up Areas and in Pelham, this translates into an annual intensification rate of 25% of new residential units are to be within the Built-Up Area. The principal objective is to increase housing choice and housing affordability across the Region to meet future housing needs.

Policy Section 2.3.1 provides the policy direction with regards to a mix a housing options and specifically policy 2.3.1.1 states that the development of a range and mix of densities, lot, and unit sizes, and housing types, including affordable and attainable housing, will be planned for throughout settlement areas to meet housing needs at all stages of life. Policy 2.3.2.3 sets that target that 20% of all new rental housing is to be affordable and 10% of all new ownership housing is to be affordable.

Policy 2.3.1.4 also provides that new residential development and residential intensification are encouraged to be planned and designed to mitigate and adapt to the impacts of climate change by:

- a) facilitating compact built form; and
- b) incorporating sustainable housing construction materials or practices, green infrastructure, energy conservation standards, water efficient technologies, and low impact development.

Regional staff did not object as the proposal does not conflict with Provincial or Regional interests and planning policy.

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 subject lands are located within the East Fonthill Secondary Plan Area and designated East Fonthill - Low Density Residential in the Town's Official Plan. Permitted uses in the EF- Low Density Residential designation are single detached and semi-detached dwelling units; accessory apartments/secondary suites; accessory buildings and structures related to the primary residential dwelling unit; home occupations; places of worship; day nurseries; convenience retail and service commercial uses; parks, parkettes and open space linkages; and public uses and public and private utilities.

The East Fonthill Secondary Plan includes a Demonstration Plan for the intended land use of the area. The lands subject to the boundary adjustment are shown in the Demonstration Plan to have a roadway cut through the norther portion of the parcels.

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. Future access to lands will be accessed from Port Robnison Road.
- 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;
 - ✓ Yes.
- d) Can be serviced with an appropriate water supply and means of sewage disposal;
 - ✓ Yes, in accordance with the East Fonthill Stormwater Management and servicing plans.
- e) Will not have a negative impact on the drainage patterns in the area;
 - ✓ Yes, in accordance with the East Fonthill Stormwater Management and servicing plans.
- 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. As a condition of consent, the Town will require the dedication of the lands making up the public laneway to the Town.

- g) Will not have a negative impact on the features and functions of any environmentally sensitive feature in the area;
 - ✓ No negative impact.
- h) Conforms with Regional lot creation policy as articulated in the Regional Policy Plan; and,
 - ✓ No objection from Region Development Services Division.
- i) Complies with the appropriate provincial Minimum Distance Separation Formulae, where applicable.
 - ✓ N/A.

Policy B.1.711.5 applies to lands in the East Fonthill Secondary Plan and indicates that landowners work together and enter into Developer's Group Agreements in order to implement the development of the plan area. The Developer's Group Agreements are the mechanism to fairly address matters related to assigning cost sharing and other responsibilities in a reasonable and equitable manner with regards to servicing and timing of construction to ensure the development of a neighbourhood can proceed in an orderly manner and in accordance with the policies of the Secondary Plan so that one developer does not hold up the ability of another developer to move forward with their plans.

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 will be maintained. The viability of the retained lands for residential use remains intact. The viability of the benefiting lands is enhanced through a larger lot area for future residential development.

Town Planning staff are of the opinion the proposed lot boundary adjustment conforms to the local Official Plan subject to entering into a Developer's Group Agreement.

Town of Pelham Zoning By-law 4481 (2022)

Part 2 (the lands to be severed) zoned R2-137 according to Schedule 'C' of Zoning By-law 4481. Part 3 (benefitting lands) are zoned Residential Development (RD). Both the retained lands and the lands to be severed will comply with the Zoning By-law upon completion of the boundary adjustment.

Agency and Public Comments:

On April 9, 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
 - The Summersides Village subdivision (Part 1) is currently discharging into Port Robinson and 125 Port Robinson which is designed to discharge onto Moody Street, temporarily discharges to Port Robinson Road.
 - Per Public Works comments on SP-08-2023- 125 Port Robinson Road, engineering approval of Summersides Village and AM-01-2024 Summersides Village Redline, stormwater management strategy have been flagged by Town staff. Due to the increase of density and development in the area, significant flows are going through the Town's storm infrastructure. Stormwater pipes are running at the maximum capacity on Port Robinson Road. Any additional flows can cause the infrastructure to surcharge or fail.
 - That the Applicant extend the required sanitary and water, along with the stormwater sewer, east from MH#10, through Part 2 and Part 3 in accordance with the Overall East Fonthill Stormwater Management Plan and servicing plan for the construction of Moody Street.
 - That the Applicant enter into a Development Agreement with the Town to ensure that Moody Street is constructed along the proposed road allowance in accordance with the East Fonthill Master Plan.
 - Public Works Staff request a Holding Zone be placed on Part 2 & Part 3 until the developer provides a suitable construction schedule for the construction of Moody Street.

Two (2) public comments were received and are summarized as follows:

- Stephen Fischer
 - Expressed concern the application jeopardizes the future road system of the Neighbourhood Plan; No objection in principal to applications; Expressed previous applications in the area (B1-B3-2022P) were required to dedicate a portion of the lands for the future road system (Moody Street); Requested a condition be included for the approval which requires dedication of lands making up the future road system (the extension of Moody Street); Encouraged the Town to support a Development Agreement with landowners in the East Fonthill area.
- Rachelle Larocque, The Biglieri Group Ltd (on behalf of 2836344 Ontario Inc.)
 - Expressed concern the consent does not show the future road connection; Requested a condition be included for the approval which requires dedication of lands making up the future road system (the extension of Moody Street).

Planning Staff Comments:

Based on the analysis in the sections above, Planning staff is of the opinion that the proposed boundary lot adjustment is consistent with the PPS and conforms to Provincial, Regional, and local plans. The resulting parcels comply with applicable Zoning By-law regulations and should not negatively impact the surrounding neighbourhood with respect to traffic, privacy, and stormwater management. The proposed boundary adjustment helps facilitate land consolidation and will be subject to future development applications. This land consolidation is the first step in the future development approval process and, therefore it can be supported by Staff.

With respect to the public comments received on this application, Staff are requiring the lands that will make up the future Moody Street be dedicated to the Town.

Planning Staff Recommendation:

Planning staff recommend that minor variance file B8/2024P **be approved** subject to the following condition(s):

THAT the applicant:

- Ensure Part 2 merges on title with Part 3.
- 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.
- That the Applicant extend the required sanitary and water, along with the stormwater sewer, east from MH#10, through Part 2 and Part 3 in accordance with the Overall East Fonthill Stormwater Management Plan and servicing plan for the construction of Moody Street.
- That the Applicant enter into a Development Agreement with the Town to ensure that Moody Street is constructed along the proposed road allowance in accordance with the East Fonthill Master Plan.
- Public Works Staff request a Holding Zone be placed on Part 2 & Part 3 until the developer provides a suitable construction schedule for the construction of Moody Street.
- 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, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.

Prepared and Submitted by:

Andrew Edwards, BES
Planner

Recommended by:

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

**Engineering Department
Committee of Adjustment Report**

For

**B8-2024P
Summersides Village, Port Robinson Road**

April 15th, 2024

Town staff have reviewed the following documentation for the purpose of **B8-2024P – Summersides Village, Port Robinson** consent application for:

Application is made for consent to partial discharge of mortgage and consent to convey 1060.70 square metres of land (Part 2), to be added to the abutting property to the east (Part 3) for future development. Part 1 is currently subject to applications for redline revision to the existing plan of subdivision and zoning by-law amendment. Part 1 will be retained for residential use.

This report contains comments in conjunction with the P-08-2023- 125 Port Robinson Road, engineering approval of Summersides Village and AM-01-2024 Summersides Village Redline.

Introduction:

The subject parcel, shown as Part 2 on the attached sketch, is an interior parcel of land situated north of Port Robinson Road, lying east of Pelham Street, being Part of Lot 167, Part of Lots 17, 18, 19 on Plan 717 in the Town of Pelham.

The subject property is located in the East Fonthill Secondary Plan (EFSP) Area, north of Port Robinson Road, south of Summersides Boulevard, and east of Station Street. The subject lands are located on the north side of Port Robinson Road, south of Summersides Boulevard, and east of Station Street. The subject lands are 4.273 hectares in size.

The subject lands are located within the Pelham Urban Area, specifically the East Fonthill Secondary Plan, and are within the delineated Built-up Area per the Niagara Official Plan (2022).

AM-01-2024, A Planning Justification Addendum in support of applications for a Redline Revision to the Draft Approved Summersides Village Subdivision and a concurrent Zoning By-law Amendment to provide revised development provisions for the modernized Plan area.

The original applications for the subject lands included a Draft Plan of Subdivision 26T19-02-2021, Official Plan Amendment OP-AM-02-2021 and Zoning By-law Amendment AM-07-2021. The Draft Plan of Subdivision received approval on May 16th, 2022, and the Official Plan and Zoning By-laws were passed on June 20th, 2022.

The approved Draft Plan of Subdivision proposed the development of the land for seventy (70) single-detached residential lots. The modified plan proposes to include a mix of housing forms to better adhere to both the current market and results in dwellings with a lower purchasing price. A total of one-hundredand- nine (109) dwelling units are proposed, including thirty-five (35) single-detached dwelling units, fourteen (14) semi-detached dwelling units, and sixty (60) on-street townhouse dwelling units.

Along with this Redline Revision is a Zoning By-law Amendment application which is required to rezone the lands from the existing site-specific Residential 2 (R2) Zone to a new site-specific Residential 2 (R2) Zone for single-detached dwellings and an introduction of a site-specific Residential Multiple 1 (RM1) Zone to permit the proposed semi-detached and street townhouse dwellings.

This full report contains following comments in conjunction with the request for SP-08-2023- 125 Port Robinson Road, engineering approval of Summersides Village and AM-01-2024 Summersides Village Redline and shall be addressed to the satisfaction of the Director of Public Works. Note that further comments to be forthcoming on subsequent submissions.

Analysis:

Stormwater Management

The Summersides Village is currently discharging into Port Robinson and 125 Port Robinson which is designed to discharge onto Moody Street, temporarily discharges to Port Robinson Road.

Per Public Works comments on SP-08-2023- 125 Port Robinson Road, engineering approval of Summersides Village and AM-01-2024 Summersides Village Redline, stormwater management strategy have been flagged by Town staff. Due to the increase of density and development in the area, significant flows are going through the Town's storm infrastructure. Stormwater pipes are running at the maximum capacity on Port Robinson Road. Any additional flows can cause the infrastructure to surcharge or fail.

Public Works offer the following comments:

-

Public Works offer the following conditions:

- 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.
- That the Applicant extend the required sanitary and water, along with the stormwater sewer, east from MH#10, through Part 2 and Part 3 in accordance with the Overall East Fonthill Stormwater Management Plan and servicing plan for the construction of Moody Street.
- That the Applicant enter into a Development Agreement with the Town to ensure that Moody Street is constructed along the proposed road allowance in accordance with the East Fonthill Master Plan.
- Public Works Staff request a Holding Zone be placed on Part 2 & Part 3 until the developer provides a suitable construction schedule for the construction of Moody Street.

To: Sarah Leach

Cc: Andrew Edwards

From: Belinda Menard, Building Inspector, Community Planning & Development

Date: April 24, 2024

Subject: Building Comments on Applications to the Committee of Adjustment for
Minor Variance hearing. Summersides Village, Pelham

File Number: B8 – 2024P

Comment:

- No comment from Building Department.

Respectfully,
Belinda Menard, Dipl., Constr. Eng. Tech.
Building Inspector

Growth Management and Planning Division

1815 Sir Isaac Brock Way, Thorold, ON L2V 4T7
905-980-6000 Toll-free:1-800-263-7215

Via Email Only

April 22, 2024

File Number: PLCS202400286

Sarah Leach
Deputy Clerk/Secretary-Treasurer
Town of Pelham
20 Pelham Town Square, P.O. Box 400
Fonthill, ON L0S 1E0

Dear Ms. Leach:

Re: Regional and Provincial Comments

Application Type: Consent

Town File Number: B8-2024P

Applicant/Agent: [REDACTED]

Owner: [REDACTED]

Location: Summersides Village, Port Robinson Road (Part of Lot 167, Part of Lots 17-19 on Plan 717), Pelham

Regional Growth Management and Planning Division staff has reviewed the materials circulated with the application for consent for the lands situated north of Port Robinson Road and east of Pelham Street (Part of Lot 167, Part of Lots 17-19 on Plan 717), in the Town of Pelham (“subject lands”).

The applicant is proposing consent to partial discharge of mortgage and consent to convey 1,060.70 sq. m of land (“Part 2”), to be added to the abutting property to the east (“Part 3”) for future development.

Staff note that a redline revision of the existing plan of subdivision and zoning by-law amendment for “Part 1” is currently under review. These lands will be retained for residential use.

The following comments are provided from a Provincial and Regional perspective to assist the Town in its consideration of these applications.

April 22, 2024

Provincial and Regional Policies

The subject lands are located within a Settlement Area under the *Provincial Policy Statement, 2020* (“PPS”) and with the Delineated Built-Up Area under the *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020* (“Growth Plan”) and *Niagara Official Plan, 2022* (“NOP”). The lands are included in the East Fonthill Secondary Plan Area under the Town of Pelham Official Plan.

The NOP, PPS and Growth Plan together direct development to take place in urban areas to support intensified development where appropriate servicing and infrastructure exists. Staff acknowledge that future development of the subject lands would contribute to achieving the minimum residential intensification target set out in Table 2-2 of the NOP (25% for the Town of Pelham).

Staff has reviewed the *Planning Justification Brief* prepared by Upper Canada Consultants (dated April 2024) and are satisfied with the analysis of Provincial and Regional policies. As such, staff offer no objection to the application.

Archaeological Potential

The subject lands fall within the Region’s mapped area of archaeological potential, as identified on Schedule ‘K’ of the NOP. Additionally, staff note that there is a registered archaeological site located within 300 m of the site.

Provincial and Regional policies state that development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved or the land has been investigated and cleared or mitigated following clearance from the Province. Staff advise that any future planning applications for site alteration and/or development, as defined in the PPS, may be subject to a Stage 1-2 archaeological assessment.

Conclusion

In conclusion, Regional Growth Management and Planning Division staff offer no objection to the application, as the proposal is consistent with the PPS and conforms to Provincial and Regional policies.

Please send copies of the staff report and notice of the Town’s decision on these applications. If you have any questions related to the above comments, please contact me at carling.macdonald@niagararegion.ca.

Kind regards,



Carling MacDonal
Development Planner, Niagara Region

cc: Pat Busnello, Manager of Development Planning, Niagara Region

From: [Jennifer Vida](#)
To: [Jodi Legros](#)
Cc: [Eric Beauregard](#); [William Heikoop](#); chelsea@ucc.com
Subject: FW: Committee of Adjustment Notice of Hearing - File B8-2024 - May 6, 2024
Date: Tuesday, April 9, 2024 3:33:54 PM
Attachments: [B8-2024P NOH Full Package.pdf](#)

Hi Jodi, I believe the email below is for you.

We are aware of the service area split and have no objections to these comments.

Thank you.

Jennifer

From: Yang Xiao <yang.xiao@npei.ca>
Sent: April 9, 2024 3:30 PM
To: jennifer@hummelproperties.net
Cc: Jim Sorley <jim.sorley@npei.ca>; Shanon Wilson <Shanon.Wilson@npei.ca>; Anthony Lastella <Anthony.Lastella@npei.ca>
Subject: FW: Committee of Adjustment Notice of Hearing - File B8-2024 - May 6, 2024

Hi Jennifer,

After reading through it, NPEI have no objection. As far as hydro servicing goes, this is NPEI's comments:

1. NPEI is the hydro service provider. NPEI already have approved hydro design for Summersides Village (Part1).
2. Part 3 & part 2 are entirely within Hydro ONE service area. For future hydro servicing Part 3 & 2, please contact Hydro ONE.

Let me know if you have comments.

Regards,
Yang

From: Jim Sorley <jim.sorley@npei.ca>
Sent: Tuesday, April 9, 2024 1:38 PM
To: Yang Xiao <yang.xiao@npei.ca>; Anthony Lastella <Anthony.Lastella@npei.ca>
Subject: FW: Committee of Adjustment Notice of Hearing - File B8-2024 - May 6, 2024

Hi Guys,

FYI

Jim

From: Jodi Legros <JLegros@pelham.ca>

Sent: Tuesday, April 9, 2024 12:47 PM

To: MR18Enquiry@mpac.ca; rowcentre@bell.ca; Jim Sorley <jim.sorley@npei.ca>; Enbridge (MunicipalPlanning@enbridge.com) <MunicipalPlanning@enbridge.com>; Hydro One (LANDUSEPLANNING@HYDROONE.COM) <LANDUSEPLANNING@HYDROONE.COM>

Subject: Committee of Adjustment Notice of Hearing - File B8-2024 - May 6, 2024

Good afternoon,

Attached, please find the Notice of Hearing for file:

- **B8-2024P Summersides Village, Port Robinson Road, Pelham**

Comments are due by: **April 24, 2024.**

Should you have any questions or concerns, please contact Sarah Leach, Deputy Clerk via email sleach@pelham.ca.

Best regards,



Jodi Legros

Legislative and Committee Coordinator, Clerks Department
Town of Pelham

D: 905-980-6664 | E: jlegros@pelham.ca

T: 905-892-2607 x322

20 Pelham Town Square | PO Box 400 | Fonthill, ON | L0S 1E0

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Jim Sorley
Director of Engineering Services, L.E.T., ME
(905) 356-2681 ext 6224
jim.sorley@npei.ca



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Sent to Internal Source

Yang Xiao
Engineering Technician
(905) 356-2681 ext 6239
yang.xiao@npei.ca



Register for our updated MyAccount before March 31, 2024 to be enrolled in eBiling and we'll donate \$10 a local charitable organization! To sign up [Click Here](#)

For more information about NPEI and the Programs and Services that we offer, please click on our

New Customer Info Guide [Click Here](#)

For Niagara Peninsula Energy Customers please [Click Here](#) to participate in our online customer service survey! (powered by SurveyMonkey)

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Sent to External Source

From: [AMIN Pransav](#)
To: [Jodi Legros](#)
Subject: Pelham - Part of Lot 167, Part of Lots 17, 18, 19 on Plan 717 (Summersides Village) – Part 2 - B8-2024
Date: Tuesday, April 23, 2024 1:03:54 PM
Attachments: [image001.png](#)

Hello,

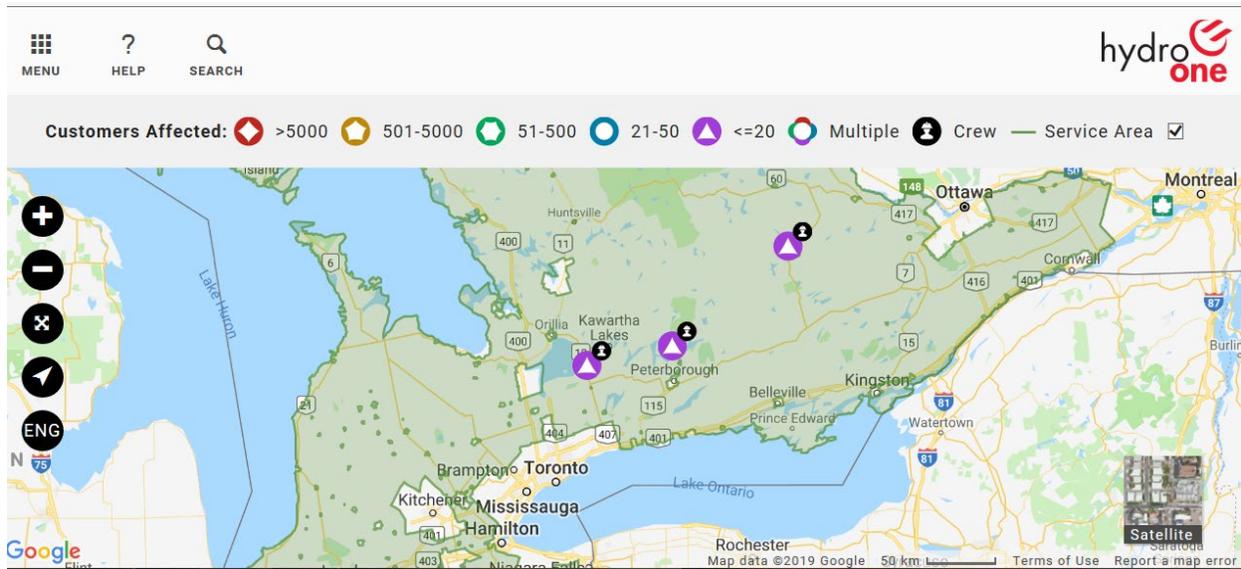
We are in receipt of your Application for Consent, B8-2024 dated April 9th, 2024. We have reviewed the documents concerning the noted Application and have no comments or concerns at this time. **Our preliminary review considers issues affecting Hydro One's 'High Voltage Facilities and Corridor Lands' only.**

For proposals affecting 'Low Voltage Distribution Facilities' please consult your local area Distribution Supplier.

To confirm if Hydro One is your local distributor please follow the following link:

<http://www.hydroone.com/StormCenter3/>

Please select " Search" and locate address in question by entering the address or by zooming in and out of the map



If Hydro One is your local area Distribution Supplier, please contact Customer Service at 1-888-664-9376 or e-mail CustomerCommunications@HydroOne.com to be connected to your Local Operations Centre

Please let me know if you have any questions or concerns.

Thank you,

Dennis De Rango

Specialized Services Team Lead, Real Estate Department

Hydro One Networks Inc.

Tel: (905)946-6237

Email: Dennis.DeRango@HydroOne.com

April 25, 2024

Town of Pelham
Committee of Adjustment
PO Box 400, 20 Pelham Town Square
Fonthill, Ontario L0S 1E0

Attention: Ms. Sarah Leach, Deputy Clerk, Secretary-Treasurer

Dear Ms. Leach

**RE: Application for Consent B8-2024P, Summersides Village, Port Robinson Road
TBG Project Number: 23030**

In response to Committee of Adjustment Application B8-2024P, we provide comments on behalf of our Client, [REDACTED]. We understand that the application has been submitted as a Lot Addition to add 1060.7 m² of land to the parcel to the east for future residential development.

This property is within the East Fonthill Secondary Plan Area, and further within a defined Neighbourhood Plan within the Secondary Plan Area. The purpose of the Neighbourhood Plan was to set out road fabric, densities, and housing types to create a pedestrian friendly and cohesive neighbourhood. We note that a future road connection is intended to go through Part 2 shown on the severance sketch as part of the application. These lands were part of the Summersides Draft Plan of Subdivision, but their removal has been requested through a redline revision which the Town is currently evaluating.

Our concern is that this road connection is no longer shown in either the draft plan of subdivision, or the proposed consent, making the timing for this component of the future road network being acquired by the Town a complete unknown. The Town has historically required that developers provide the road widening through applications for consent to ensure that these connections can be made in the future. In fact, this was a requirement of my Client's consent application further to the east. We would request that a similar condition be imposed on this application to ensure that the road connections are acquired by the Town in a timely manner.

We have no concerns with the requested lot addition, however, we are concerned with the timing of the road dedication being provided to the City to ensure that the road connection will be created, and will not impact the Neighbourhood Plan and developments further to the east.

Sincerely,
THE BIGLIERI GROUP LTD.

A handwritten signature in black ink, appearing to be 'Rachelle Larocque', with a stylized, cursive script.

Rachelle Larocque, BES, M.Sc., MCIP, RPP
Partner

cc. Barb Weins, Director of Planning


Meeting #: 04-2024
Date: Tuesday, April 2, 2024
Time: 4:00 pm
Location: Town of Pelham Municipal Office - Council Chambers
20 Pelham Town Square, Fonthill

Members Present Brenda Stan
 Don Rodbard
 Isaiah Banach

Members Absent Colin McCann
 John Cappa

Staff Present Sarah Leach
 Andrew Edwards
 Jodi Legros
 Gimuel Ledesma

1. Attendance

Applicants, Agents and viewing members of the public via hybrid in-person and live-stream through the Town of Pelham YouTube Channel.

2. Call to Order, Declaration of Quorum and Introduction of Committee and Staff

Noting that a quorum was present, Chair Banach called the meeting to order at approximately 4:00 pm. The Chair read the opening remarks to inform those present on the meeting protocols and he introduced the hearing panel and members of staff present.

3. Land Recognition Statement

Ms. Sarah Leach, Secretary-Treasurer, recited the land recognition statement.

4. Approval of Agenda

Moved By Don Rodbard
Seconded By Brenda Stan

THAT the agenda for the April 02, 2024, Committee of Adjustment meeting be adopted, as circulated.

Carried

5. Disclosure of Pecuniary Interest and General Nature Thereof

There were no pecuniary interests disclosed by any of the members present.

6. Requests for Withdrawal or Adjournment

Ms. Leach stated the applicant for A4-2024P, 1313 Victoria Avenue, has requested deferral of one of the four requested variances:

- **Sections 3.1(c) On-Farm Diversified Uses** – *relating to front yard setback of 12 metres to a 40m² accessory structure related to an on-farm diversified use (covered tent), whereas on-farm diversified uses are not permitted in the required front yard*

7. Applications for Minor Variance

7.1 A4-2024P - 1313 Victoria Avenue

Purpose of the Application

Application for relief is made, to permit a mobile food truck as an On-farm Diversified Use that requires relief from the following section(s) of the Zoning By-law:

Section 3.2.2(a) On-Farm Diversified Uses - Requesting the on-farm diversified use be permitted notwithstanding the use is not directly related to the existing permitted agricultural use(s) on the lot and shall primarily serve the existing permitted agricultural use(s) on the lot and the existing permitted agricultural use(s) on surrounding lots in the area; and

Section 3.2.2(b) On-Farm Diversified Uses - Requesting the on-farm diversified use be permitted notwithstanding the product is not produced by, or derived from, the principal agricultural use(s) on the lot as the primary source of the majority of the product; and

Section 3.1(c) On-Farm Diversified Uses - Requesting a front yard setback of 14 metres to a 18m² accessory structure related to an on-farm

diversified use (food truck), whereas on-farm diversified uses are not permitted in the required front yard.

Representation

The Agents, Jesse Auspitz and Robert Smit, and the Applicants, Teresa and John Rusin were present.

Correspondence Received

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Niagara Region

Applicants Comments

The Chair stated the proposal complies with the Official Plan, reflects OMAFRA guidelines, is minor, and is desirable. The Chair asked how the intent and purpose of the Zoning By-law is being met. The Agent, Robert Smit, responded the intent of the on-farm diversified use provision is that the use be compatible with the agricultural use on the property while permitting flexibility for the owner to diversify their business.

Public Comments

Ms. Leach, Secretary-Treasurer indicated she checked the clerks@pelham.ca email address at 4:18 pm and confirmed no e-mails have been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Moved By Brenda Stan

Seconded By Don Rodbard

That the public portion of the meeting be closed.

Carried

Member Comments

A Member identified that the period of operation is between April and October and asked if this regulation was enforced through a site plan agreement. Town Planner, Andrew Edwards, confirmed.

The Chair indicated he would not vote on the matter.

Moved By Brenda Stan

Seconded By Don Rodbard

Application A4-2024P for relief of 3.2.2(a) On-Farm Diversified Uses - Requesting the on-farm diversified use be permitted notwithstanding the use is not directly related to the existing permitted agricultural use(s) on the lot and shall primarily serve the existing permitted agricultural use(s) on the lot and the existing permitted agricultural use(s) on surrounding lots in the area, is hereby: GRANTED

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the OFDU is limited in area, is located on a portion of the site that is not actively farmed, is similar in character to the surrounding area, and is not anticipated to have negative impacts in terms of traffic and noise.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because the use is not anticipated to be incompatible with the surrounding agricultural area, is not anticipated to cause adverse impacts in terms of traffic volumes, noise, or taking agricultural lands out of active production.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

Application for relief of Section 3.2.2(b) On-Farm Diversified Uses - Requesting the on-farm diversified use be permitted notwithstanding

the product is not produced by, or derived from, the principal agricultural use(s) on the lot as the primary source of the majority of the product, is hereby: GRANTED

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the OFDU is limited in area, is located on a portion of the site that is not actively farmed, is similar in character to the surrounding area, and is not anticipated to have negative impacts in terms of traffic and noise.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because the use is not anticipated to be incompatible with the surrounding agricultural area, is not anticipated to cause adverse impacts in terms of traffic volumes, noise, or taking agricultural lands out of active production.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

Application for relief of Section 3.1(c) On-Farm Diversified Uses - Requesting a front yard setback of 14 metres to a 18m2 accessory structure related to an on-farm diversified use (food truck), whereas on-farm diversified uses are not permitted in the required front yard, is hereby: GRANTED

The above decision is based on the following reasons:

- 1. The variance is minor in nature as the agricultural character of the neighbourhood is not anticipated to be impacted, the lot area remains available to handle stormwater runoff and has adequate area for the OFDU to function.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**

4. **The proposal is desirable for the appropriate development and/or use of the land because the reduced setback will enable the proposed use to be located close to the street for visibility, however, maintaining a generous setback as to not affect sightlines and to alter the character of the surrounding agricultural area.**
5. **This application is granted without prejudice to any other application in the Town of Pelham.**
6. **The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

The above decisions are subject to the following conditions:

1. **To the Satisfaction of the Director of Community Planning and Development**
 1. **Apply for site plan approval and enter into a site plan agreement with the Town of Pelham.**

Carried

7.2 A5-2024P - 35 Philmori Boulevard

Purpose of the Application

Application for relief is made, to facilitate the construction of shed. The applicant seeks relief from the following section(s) of the Zoning By-law:

Section 3.1(c) "Accessory Uses, Buildings, and Structures" – to permit an exterior side yard setback of 1.2m whereas the By-law requires an exterior side yard setback of 3.0m.

Representation

Representation was not present.

Correspondence Received

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building

Applicants Comments

None.

Public Comments

Ms. Leach, Secretary-Treasurer indicated she checked the clerks@pelham.ca email address at 4:25 pm and confirmed no e-mails have been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Moved By Don Rodbard

Seconded By Brenda Stan

That the public portion of the meeting be closed.

Carried

Member Comments

A Member asked if the easement referenced is a drainage easement. Engineering Technologist, Gimuel Ledesma, confirmed.

Moved By Don Rodbard

Seconded By Brenda Stan

Application A5-2024P for relief of Section 3.1(c) “Accessory Uses, Buildings, and Structures” – to permit an exterior side yard setback of 1.2m whereas the By-law requires an exterior side yard setback of 3.0m, is hereby: GRANTED

The above decision is based on the following reasons:

- 1. 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 or substantially remove any of the amenity space of the lot.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**

4. **The proposal is desirable for the appropriate development and/or use of the land because it would allow for development of a pool and accessory structures associated with the pool on an existing lot.**
5. **This application is granted without prejudice to any other application in the Town of Pelham.**
6. **The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

The above decision is subject to the following conditions:

1. **To the Satisfaction of the Director of Community Planning and Development**
 1. **Obtain a Pool Permit from the Town's By-law Department**
2. **To the Satisfaction of the Director of Public Works**
 1. **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.**
 2. **That the Applicant submit a written acknowledgment that the trees located within the rear yard easement will not impact the function of the rear yard swales and that there are no structures to be constructed in the easement along the rear lot line. Any future maintenance work required by the Town to maintain the easement could result in the removal of the trees and they will not be replaced.**

Carried

8. Applications for Consent

8.1 B7-2024P - 61 Port Robinson Road

Purpose of the Application

Application is made for consent to a partial discharge of mortgage and consent to convey 634.4 square metres of land (Part 1), for future construction of a semi-detached dwelling. Part 2 is to be retained for

continued residential use of the dwelling known municipally as 61 Port Robinson Road.

Representation

The Agent, Craig Rohe was present.

Correspondence Received

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building

Applicants Comments

Craig Rohe advised that a rezoning on the property was previously sought and secured. He stated it is the intention that the single detached dwelling remains on the remnant parcel at the time, with the potential for redevelopment in the future.

Public Comments

Shuai Dong expressed concern for water runoff and drainage. Mr. Rohe responded that a site servicing and grading plan is a condition of approval, which will demonstrate that flows can be accommodated. Mr. Rohe assured the grading plan would need to be approved by the Public Works department before building permit issuance.

Ms. Leach, Secretary-Treasurer indicated she checked the clerks@pelham.ca email address at 4:38 pm and confirmed no e-mails have been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Moved By Brenda Stan

Seconded By Don Rodbard

That the public portion of the meeting be closed.

Carried

Member Comments

The Chair acknowledged the neighbour's concerns and indicated the condition for a grading and drainage plan should satisfy concerns.

Moved By Brenda Stan

Seconded By Isaiah Banach

Application B7-2024P is made for consent to partial discharge of mortgage and consent to convey 634.4 square metres of land (Part 1), for future construction of a semi-detached dwelling. Part 2 is to be retained for continued residential use of the dwelling known municipally as 61 Port Robinson Road, is hereby:

The above decision is subject to the following conditions:

To the Satisfaction of the Director of Public Works

- 1. Town of Pelham Public Works Staff require that the applicant submit an overall lot grading and drainage plan to demonstrate that the drainage does not negatively impact nor rely on neighboring properties. The Plan shall show all proposed service connection locations.**
- 2. 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.**
- 3. A 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.**
- 4. Part 1 is to be individually serviced with its own sanitary and water connections. Installation of any services will require a Temporary Works Permit obtained through the Public Works Department. These works are to be completed prior to final consent and the applicant shall bear all costs associated with these works. Locate cards are to be provided to the Town once works are complete.**

To the Satisfaction of the Director of Community Planning & Development

- 1. A demolition permit approval is required for the existing detached garage on Part 1 and the site restored to the satisfaction of the Chief Building Official.**

2. **Sign the Town of Pelham’s standard “Memorandum of Understanding” explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior to the issuance of a Building Permit.**

To the Satisfaction of the Secretary-Treasurer

1. **That the Secretary-Treasurer be provided with a registrable 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.**
2. **That the final certification fee of \$436, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.**

This decision is based on the following reasons:

1. **The application conforms to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town’s Zoning By-law.**
2. **This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.**
3. **The Committee of Adjustment considered all written and oral submissions and finds that, subject to the conditions of provisional consent, this application meets Planning Act criteria, is consistent with the Provincial Policy Statement and complies with the Growth Plan, the Niagara Region Official Plan and the Town Official Plan.**
4. **The Owner agrees no demolition, grading or other soil disturbances shall take place on the subject land prior to the issuance of a Ministry of Citizen and Multiculturalism letter confirming that all archaeological resource concerns have been mitigated and meet licensing and resource conservation requirements.**
5. **The Owner acknowledges the newly created lots are to be self-draining. The swale on the east property line of the new lot must be on private property, not on the property line.**
6. **The Owner acknowledges the sump pump must discharge to grade, and not connect to the proposed RYCB.**

7. **The Owner acknowledges that water service for the existing house will need to be relocated to accommodate the proposed driveway, as the Town does not allow water services to be located under driveways.**

Carried

8.2 B4-2024P 201 Canboro Road - Part 1

Application B4-2024P and B5-2024P were considered concurrently.

Purpose of the Application

Application B4-2024P is made for consent to partial discharge of mortgage and consent to convey 380.9 square metres of land (Part 1), for future construction of a semi-detached dwelling unit. Part 3 is to be dedicated to the Town of Pelham for a road widening (no longer required). Part 4 is to be retained for continued residential use.

Application B5-2024P is made for consent to partial discharge of mortgage and consent to convey 348 square metres of land (Part 2), for future construction of a semi-detached dwelling. Part 3 is to be dedicated to the Town of Pelham for a road widening (no longer required). Part 4 is to be retained for continued residential use.

Representation

The Agent, William Heikoop was present.

Correspondence Received

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Niagara Region
5. NPCA

Applicants Comments

William Heikoop provided a brief presentation to further explain the proposal. A copy is available through the Secretary-Treasurer.

Mr. Heikoop expressed satisfaction with the majority of proposed conditions and asked the Committee to reconsider imposing the condition for the NPCA works permit.

Public Comments

Karen Buckley discussed Canada's climate goals and stated the woodlot at 201 Canboro Road supports the existing habitat and greenbelt. Ms. Buckley advised of a stipulation at the time of sale requiring that any changes not exceed the total area of the existing house. Ms. Buckley requested the past precedent of protecting the woodlot be upheld and asked if the total area is going to be changed from what is existing. The Chair clarified that the Committee's role in decision-making relies on assessing the Planning Act tests.

Sophie Buckley expressed the woodlot is a special place. She stated nature is important for both children and mental health. Sophie asked the Committee to consider the current and future children of Pelham.

Brian Young and Angela MacRae indicated the proposal appeared like too much intensification. Mr. Young and Ms. MacRae expressed concern for the maintenance of the private sewage system. They expressed further concern for traffic, speed, parking for visitors, and the safety of residents backing out of this development onto Canboro Road. Mr. Young asked what happens during snow clearing when the ditch becomes full, and identified that the culvert is not currently working properly. Mr. Young and Ms. MacRae expressed concern for stormwater runoff and drainage.

Nora Peat discussed her history with the property and the surrounding area. Ms. Peat agreed with the concerns expressed regarding traffic, parking, and safety. Ms. Peat expressed concern for stormwater runoff and drainage which would exacerbate existing issues and potentially lead to erosion. Ms. Peat discussed the threat of moral injury and gentrification. Ms. Peat asked about the change regarding the road widening and stated the proposal was poorly considered for the property.

The Chair asked why the road widening was no longer required. Engineering Technologist, Gimuel Ledesma, explained that the road was previously a regional road with road widening requirements.

The Chair asked if there is a restrictive covenant on title. The Agent, William Heikoop indicated he was not aware of any restrictive covenants and advised that any agreement would be subject to a civil matter outside of the Committee's purview. Mr. Heikoop advised that an environmental

impact study had been conducted and indicated several recommendations were made to ensure the applicant is not negatively impacting the woodlot feature.

Mr. Heikoop stated the geotechnical top-of-slope assessment indicated the slope was stable in the long term. Mr. Heikoop stated the proposed dwellings are closer to the road than the existing which increases the separation between the woodlot and the residential area. He assured the application does not fragment the feature.

Mr. Heikoop advised the dwellings will be serviced through a force main system. He discussed the requirement for a lot grading and drainage plan which should address drainage concerns and demonstrate that the development will maintain a similar drainage pattern. The Chair asked about the requirements for a force main once taken over by the municipality. Mr. Heikoop indicated it was a matter of maintenance.

With respect to traffic and driveway concerns, Mr. Heikoop stated that speed is an enforcement issue. Mr. Heikoop advised that the Zoning By-law parking requirements are met. He further advised that a driveway entrance permit and a new culvert are required to ensure that the flow of water isn't impeded. Concerning snow clearing, Mr. Heikoop indicated that while the Town deposits collected snow, there is a portion between the property line and the road that should accommodate additional snow if necessary.

A Member agreed that the location was not optimal for backing out of the driveway. Mr. Heikoop advised there are sufficient sightlines which should not be an issue if individuals are following the speed limit. Mr. Heikoop indicated alternatives are not visually desirable.

Mr. Heikoop explained the difference between what is permitted in the urban and rural boundaries, including service requirements and proposed use. Mr. Heikoop explained that the proposal could be brought forward through a site plan agreement but expressed desirability to obtain provisional approval through the consent process. He stated the dwellings are not meant to be luxury homes and are proposed to be between 800 and 1000 square feet.

Ms. Leach, Secretary-Treasurer indicated she checked the clerks@pelham.ca email address at 5:54 pm and confirmed no e-mails had been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed.

The Committee agreed to close the public portion of the meeting and deliberate.

Moved By Brenda Stan
Seconded By Don Rodbard

That the public portion of the meeting be closed.

Carried

Member Comments

The Chair stated that the use and parking as proposed is permitted. He stated that the NPCA, Niagara Region, and Town have looked at all aspects of the proposal and there is no reason to doubt their conclusions. The Chair expressed the proposal appeared to satisfy the requirements of the Planning Act.

Moved By Brenda Stan
Seconded By Isaiah Banach

Application B4-2024P is made for consent to partial discharge of mortgage and consent to convey 380.9 square metres of land (Part 1), for future construction of a semi-detached dwelling unit. Part 3 is to be dedicated to the Town of Pelham for a road widening (no longer required). Part 4 is to be retained for continued residential use, is hereby: GRANTED

The above decision is subject to the following conditions:

To the Satisfaction of the Director of Public Works

- 1. 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.**
- 2. That the Applicant submit an overall lot grading and drainage plan to demonstrate that the drainage does not negatively impact nor rely on neighboring properties.**

3. **2 units in the proposed Part 1 lot are to be individually serviced with its own sanitary and water connections if permitted. This work is to be done by the owner, at the owner's expense, and will require a Temporary Works Permit. Should these services cross property lines, Public Works will not support the consent to sever. These works are to be completed prior to consent and the applicant shall bear all costs associated with these works. Locate cards are to be provided to the Town once works are complete.**
4. **That the Applicant submit a Site Servicing Plan.**
5. **A 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.**

To the Satisfaction of the Director of Community Planning & Development

1. **That the Applicant sign the Town of Pelham's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior to the issuance of a Building Permit.**
2. **That the Applicant enter into a Development Agreement with the Town for Part 1, to ensure that all recommendations of the Environmental Impact Study (dated November 29, 2023) are implemented to the satisfaction of the Director of Community Planning and Development, including but not limited to:**
 - a. **That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 1. The TPP should be prepared in accordance with the Region's Woodland Conservation By-law (By-law 20-79).**
 - b. **That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan, prior to construction.**
 - c. **Any necessary tree removal and demolition of the existing buildings or structures will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat**

detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.

- d. If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.**
- e. Any lighting incorporated into the final building designs should be directed downward (i.e., towards the ground) and/or away from the adjacent woodlot (i.e., directed eastward) to the extent practicable.**
- f. The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.**
- g. All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.**
- h. Incorporation of Bird-Friendly Guidelines into the residence design such as those published in City of Toronto's "Best Practices for Bird-Friendly Glass" and "Best Practices for Effective Lighting" should be considered at detailed design.**
- i. Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.**
- j. That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not**

- include a mesh component, to avoid risk of entanglement of wildlife.
- k. That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland.
 - l. That continuous, permanent fencing be installed along the rear property line, adjacent to the Significant Woodland, to delineate property boundaries to limit potential encroachment into the woodland.
3. That the Applicant Enter into a Development Agreement with the Town for Part 4, to ensure that all recommendations of the Environmental Impact Study (dated November 29, 2023) are implemented to the satisfaction of the Director of Community Planning and Development, including but not limited to:
- a. That a Woodland Enhancement Plan be prepared, to the satisfaction of Niagara Region, for the area indicated on Figure 3 of the EIS. The Plan shall consist of a diversity of native tree and shrub plantings and incorporate wildlife habitat enhancement elements. Plantings of Pignut Hickory shall be incorporated into the Woodland Enhancement Plan
 - b. That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 4. The TPP should be prepared in accordance with the
 - c. Region's Woodland Conservation By-law (By-law 20-79).
 - d. That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan and Woodland Enhancement Plan, prior to construction.
 - e. That tree protection fencing be installed surrounding the Eastern Flowering Dogwood at the time of construction to avoid incidental mechanical damage to the trunk, branches, or roots.
 - f. Any necessary tree removal and demolition of the existing buildings or structure will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector

and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.

- g. If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.
 - h. The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.
 - i. All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.
 - j. Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.
 - k. That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.
 - l. That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland
4. That the following archaeological advisory clause be inserted in the Development Agreement between the landowner and Town of Pelham:

“Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (MCM) (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.

In the event that human remains are encountered during construction, all activities must cease immediately and the Niagara Regional police as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Services Delivery (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the MCM should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”

5. That final approval of all necessary zoning approvals be obtained for Part 1, through the approval of minor variance application A6-2024P.

To the Satisfaction of the Secretary-Treasurer

1. That the Secretary-Treasurer be provided with a registrable 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.
2. That the final certification fee of \$436, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.

This decision is based on the following reasons:

1. The application conforms to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town’s Zoning By-law.
2. This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.
3. The Committee of Adjustment considered all written and oral submissions and finds that, subject to the conditions of provisional consent, this application meets Planning Act criteria, is consistent

with the Provincial Policy Statement and complies with the Growth Plan, the Niagara Region Official Plan and the Town Official Plan.

4. The Applicant is aware that no sideyard walkways that impede sideyard swales are permitted and that the Town does not allow any service connections for Part 4 as it is not within the urban boundary.
5. The Applicant is aware that any proposed development will require NPCA approval and possible work permits.

Carried

Moved By Brenda Stan

Seconded By Isaiah Banach

Application B5-2024P is made for consent to partial discharge of mortgage and consent to convey 348 square metres of land (Part 2), for future construction of a semi-detached dwelling. Part 3 is to be dedicated to the Town of Pelham for a road widening (no longer required). Part 4 is to be retained for continued residential use, is hereby: GRANTED

The above decision is subject to the following conditions:

To the Satisfaction of the Director of Public Works

1. 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.
2. That the Applicant submit an overall lot grading and drainage plan to demonstrate that the drainage does not negatively impact nor rely on neighboring properties.
3. 2 units in the proposed Part 2 lot are to be individually serviced with its own sanitary and water connections if permitted. This work is to be done by the owner, at the owner's expense, and will require a Temporary Works Permit. Should these services cross property lines, Public Works will not support the consent to sever. These works are to be completed prior to consent and the applicant shall bear all costs associated with these works. Locate cards are to be provided to the Town once works are complete.

- 4. That the Applicant submit a Site Servicing Plan.**
- 5. A 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.**

To the Satisfaction of the Director of Community Planning & Development

- 1. That the Applicant sign the Town of Pelham's standard "Memorandum of Understanding" explaining that development charges and cash-in-lieu of the dedication of land for park purposes are required prior to the issuance of a Building Permit.**
- 2. Enter into a Development Agreement with the Town for Part 2, to ensure that all recommendations of the Environmental Impact Study (dated November 29, 2023) are implemented to the satisfaction of the Director of Community Planning and Development, including but not limited to:
 - a. That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 2. The TPP should be prepared in accordance with the Region's Woodland Conservation By-law (By-law 20-79).**
 - b. That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan, prior to construction.**
 - c. Any necessary tree removal and demolition of the existing buildings or structures will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.****

- d. If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.**
- e. Any lighting incorporated into the final building designs should be directed downward (i.e., towards the ground) and/or away from the adjacent woodlot (i.e., directed eastward) to the extent practicable.**
- f. The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.**
- g. All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.**
- h. Incorporation of Bird-Friendly Guidelines into the residence design such as those published in City of Toronto's "Best Practices for Bird-Friendly Glass" and "Best Practices for Effective Lighting" should be considered at detailed design.**
- i. Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.**
- j. That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.**
- k. That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland.**
- l. That continuous, permanent fencing be installed along the rear property line, adjacent to the Significant Woodland, to delineate**

property boundaries to limit potential encroachment into the woodland.

3. That the Applicant Enter into a Development Agreement with the Town for Part 4, to ensure that all recommendations of the Environmental Impact Study (dated November 29, 2023) are implemented to the satisfaction of the Director of Community Planning and Development, including but not limited to:
 - a. That a Woodland Enhancement Plan be prepared, to the satisfaction of Niagara Region, for the area indicated on Figure 3 of the EIS. The Plan shall consist of a diversity of native tree and shrub plantings and incorporate wildlife habitat enhancement elements. Plantings of Pignut Hickory shall be incorporated into the Woodland Enhancement Plan
 - b. That a Tree Preservation Plan (TPP) be prepared, to the satisfaction of Niagara Region, that indicates any trees that need to be removed to allow for the development of Part 4. The TPP should be prepared in accordance with the
 - c. Region's Woodland Conservation By-law (By-law 20-79).
 - d. That the development agreement contain wording wherein the owner agrees to implement the approved Tree Preservation Plan and Woodland Enhancement Plan, prior to construction.
 - e. That tree protection fencing be installed surrounding the Eastern Flowering Dogwood at the time of construction to avoid incidental mechanical damage to the trunk, branches, or roots.
 - f. Any necessary tree removal and demolition of the existing buildings or structure will take place between October 1 and April 30 to avoid the active season for bats. Should minor tree removal be required between May 1 and September 30, a qualified professional will complete an exit survey of suitable maternal roosting sites identified for removal a maximum of 24 hours before removal. The exit survey must make use of a bat detector and will occur for no less than the time period between sunset and 60 minutes after sunset. If an Endangered bat is identified during the survey, Ministry of the Environment, Conservation and Parks (MECP) should be contacted to obtain further direction prior to removal of the tree.
 - g. If construction activities occur during the active bat season (i.e., May 1 and September 30), work will be restricted to daylight hours only and the use of artificial lighting will be avoided.

- h. The removal of trees will be restricted to areas in direct conflict with the footprints of the proposed development features (e.g., residence, septic system, driveway, etc.) and grading, along with any hazardous trees in the immediate vicinity that pose an unacceptable risk to human life or property.**
 - i. All necessary vegetation removal will be completed outside the primary bird nesting period (i.e., to be completed between September 1 and March 31). Should minor vegetation removal be proposed during the bird nesting period, a bird nesting survey will be undertaken to confirm the presence or absence of nesting birds or bird nests within or adjacent to the areas subject to vegetation clearance. The survey is to take place within 48 hours of vegetation removal.**
 - j. Any Landscape Plans prepared as part of the development approval should incorporate species native to the local landscape.**
 - k. That a light duty silt fence be installed at the limit of any excavation and grading to delineate the work area and help minimize impacts (e.g., sedimentation and accidental encroachment) to adjacent vegetation and that the silt fence be properly embedded (as per Ontario Provincial Standard Specification 805) into the ground to reduce any offsite movement of silt. The silt fence used should be one that does not include a mesh component, to avoid risk of entanglement of wildlife.**
 - l. That the contractor has a spill kit on site to minimize potential contamination from accidental spills. The equipment should be inspected for leaks and refueling be completed in accordance with best management practices and at least 30 m away from the woodland**
- 4. That the following archaeological advisory clause be inserted in the Development Agreement between the landowner and Town of Pelham:**
- “Should deeply buried archaeological remains/resources be found during construction activities, all activities impacting archaeological resources must cease immediately, and the proponent must notify the Archaeology Programs Unit of the Ministry of Citizenship and Multiculturalism (MCM) (416-212-8886) and contact a licensed archaeologist to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists.*”**

In the event that human remains are encountered during construction, all activities must cease immediately and the Niagara Regional police as well as the Cemeteries Regulation Unit of the Ministry of Public and Business Services Delivery (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, the MCM should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.”

5. That final approval of all necessary zoning approvals be obtained for Part 2, through the approval of minor variance application A7-2024P.

To the Satisfaction of the Secretary-Treasurer

1. That the Secretary-Treasurer be provided with a registrable 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.
2. That the final certification fee of \$436, payable to the Treasurer, Town of Pelham, be submitted to the Secretary-Treasurer. All costs associated with fulfilling conditions of consent shall be borne by the applicant.

This decision is based on the following reasons:

1. The application conforms to the policies of the Town of Pelham Official Plan, Regional Policy Plan and Provincial Policy Statement, and complies with the Town’s Zoning By-law.
2. This Decision is rendered having regard to the provisions of Sections 51(24) and 51(25) of the Planning Act, R.S.O., as amended.
3. The Committee of Adjustment considered all written and oral submissions and finds that, subject to the conditions of provisional consent, this application meets Planning Act criteria, is consistent with the Provincial Policy Statement and complies with the Growth Plan, the Niagara Region Official Plan and the Town Official Plan.
4. The Applicant is aware that no sideyard walkways that impede sideyard swales are permitted and that the Town does not allow any service connections for Part 4 as it is not within the urban boundary.
5. The Applicant is aware that any proposed development will require NPCA approval and possible work permits.

8.3 B5-2024P - 201 Canboro Road - Part 2

File B5-2024P was heard concurrently with B4-2024P. See B4-2024P for minutes and decisions.

9. Applications for Minor Variance

Applications A6-2024P and A7-2024P were heard concurrently.

9.1 A6-2024P - 201 Canboro Road - Part 1

Purpose of the Application

Application A6-2024P for relief is made, to facilitate the construction of a semi-detached dwelling on Part 1 and to rectify zoning deficiencies as a result of a consent application B4-2024P. The applicant seeks relief from the following section(s) of the Zoning By-law: Section 6.2.3 (Semi-Detached Dwelling) “Minimum Rear Yard” – to permit a minimum rear yard setback of 5.75m whereas the By-law requires a minimum rear yard setback of 7.5m.

Application A7-2024P for relief is made, to facilitate the construction of a semi-detached dwelling on Part 2 and to rectify zoning deficiencies as a result of a consent application B5-2024P. The applicant seeks relief from the following section(s) of the Zoning By-law: Section 6.2.3 (Semi-Detached Dwelling) “Minimum Rear Yard” – to permit a minimum rear yard setback of 4.5m whereas the By-law requires a minimum rear yard setback of 7.5m.

Representation

The Agent, William Heikoop and the Applicant, Rocco DiPaola were present.

Correspondence Received

1. Town of Pelham Planning
2. Town of Pelham Public Works
3. Town of Pelham Building
4. Niagara Region
5. NPCA

Applicants Comments

Mr. Heikoop stated the proposal creates more rear yard amenity space than what exists. He advised no rear yard neighbours would be impacted. Mr. Heikoop indicated that it is likely the variance requests are solely for the pinch point and may considerably exceed what will be executed. Mr. Heikoop stated the proposal meets the four minor variance tests under the Planning Act.

Public Comments

Brian Young and Angela MacRae expressed concern regarding the installation of a fence that will prohibit access to the woodlot, as well as concerns regarding drainage and erosion. Mr. Young asked how many stories are proposed.

Nora Peat expressed concern with drainage and destabilizing the slope. Ms. Peat asked the acreage of Parts 1 and 2 and how many dwellings would be permitted. The Chair referred to the measurements as shown on the severance sketch and clarified what the Committee must consider as part of their decision-making. Ms. Peat stated the setback is insufficient.

Mr. Heikoop identified the requirement to install a chain link fence and protect the woodland from human disturbances. He indicated the geotechnical report addresses the concern regarding erosion, soil disturbance, and load-bearing capacities. Mr. Heikoop stated there is no finalized design but anticipates the dwellings to be 2-storey. Mr. Heikoop stated the proposed dwellings meet the minimum lot area requirement and the rear yard amenity area is greater than what currently exists.

The Chair asked why variances are requested without a finalized building design. Mr. Heikoop responded that the applicant did not want to invest in a building design without provisional consent and stated that visual appearance has no bearing on the decision.

The Committee recessed for 10 minutes.

Ms. Leach, Secretary-Treasurer indicated she checked the clerks@pelham.ca email address at 6:40 pm and confirmed no e-mails have been received with regard to the subject application. Ms. Leach indicated the public comment portion of the application could be closed. The Committee agreed to close the public portion of the meeting and deliberate.

Moved By Don Rodbard
Seconded By Brenda Stan

That the public portion of the meeting be closed.

Carried

Member Comments

The Chair acknowledged that while ideally plans would be provided to illustrate the development there appears to be no significant adverse impact.

Moved By Brenda Stan
Seconded By Isaiah Banach

Application A6-2024P for relief of Section 6.2.3 (Semi-Detached Dwelling) “Minimum Rear Yard” – to permit a minimum rear yard setback of 5.75m whereas the By-law requires a minimum rear yard setback of 7.5m, is hereby: GRANTED

The above decision is based on the following reasons:

- 1. The variance is minor in nature as a functional private amenity area is still maintained on the site.**
- 2. The general purpose and intent of the Zoning By-Law is maintained.**
- 3. The intent of the Official Plan is maintained.**
- 4. The proposal is desirable for the appropriate development and/or use of the land because as it is not anticipated to have a significant negative impact on the streetscape or adjacent properties and appropriate private amenity area will be maintained.**
- 5. This application is granted without prejudice to any other application in the Town of Pelham.**
- 6. The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**

7. **The Applicant is aware that no sideyard walkways that impede sideyard swales are permitted and that the Town does not allow any service connections for Part 4 as it is not within the urban boundary.**

The above decision is subject to the following conditions:

1. **That all necessary building and demolition permits are obtained prior to construction commencing, to the satisfaction of the Chief Building Official.**

Prior to Building Permit:

1. **To the Satisfaction of the Director of Community Planning and Development**
 1. **That the approval of the minor variance is subject to Consent Files B4-2024P and B5-2024P obtaining final approval.**
2. **To the Satisfaction of the Director of Public Works**
 1. **That the Applicant submit a comprehensive lot grading and drainage plan demonstrating that stormwater runoff will not negatively impact nor rely upon neighboring properties, to the satisfaction of the Director of Public Works or his designate.**

Carried

Moved By Brenda Stan

Seconded By Isaiah Banach

Application A7-2024P for relief of Section 6.2.3 (Semi-Detached Dwelling) “Minimum Rear Yard” – to permit a minimum rear yard setback of 4.5m whereas the By-law requires a minimum rear yard setback of 7.5m, is hereby: GRANTED

The above decision is based on the following reasons:

1. **The variance is minor in nature as a functional private amenity area is still maintained on the site.**

2. **The general purpose and intent of the Zoning By-Law is maintained.**
3. **The intent of the Official Plan is maintained.**
4. **The proposal is desirable for the appropriate development and/or use of the land because as it is not anticipated to have a significant negative impact on the streetscape or adjacent properties and appropriate private amenity area will be maintained.**
5. **This application is granted without prejudice to any other application in the Town of Pelham.**
6. **The Committee of Adjustment considered the written and oral comments and agrees with the minor variance report analysis and recommendation that this application meets the Planning Act tests for minor variance.**
7. **The Applicant is aware that no sideyard walkways that impede sideyard swales are permitted and that the Town does not allow any service connections for Part 4 as it is not within the urban boundary.**

The above decision is subject to the following conditions:

1. **That all necessary building and demolition permits are obtained prior to construction commencing, to the satisfaction of the Chief Building Official.**

Prior to Building Permit:

1. **To the Satisfaction of the Director of Community Planning and Development**
 1. **That the approval of the minor variance is subject to Consent Files B4-2024P and B5-2024P obtaining final approval.**
2. **To the Satisfaction of the Director of Public Works**
 1. **That the Applicant submit a comprehensive lot grading and drainage plan demonstrating that stormwater runoff will not negatively impact nor rely upon neighboring properties, to the satisfaction of the Director of Public Works or his designate.**

Carried

9.2 A7-2024P - 201 Canboro Road - Part 2

File A7-2024P was heard concurrently with A6-2024P. See A6-2024P for minutes and decisions.

10. Minutes for Approval

Moved By Isaiah Banach

Seconded By Don Rodbard

THAT the Committee of Adjustment minutes dated January 8, 2024 and March 4, 2024, be approved.

Carried

11. Adjournment

The hearing was adjourned at 6:43 pm.

Moved By Don Rodbard

Seconded By Isaiah Banach

BE IT RESOLVED THAT this Meeting of the Committee of Adjustment be adjourned until the next regular meeting scheduled for May 6, 2024, at 4:00 p.m.

Carried

Isaiah Banach, Chair

Sarah Leach, Secretary-Treasurer