

## **SECTION 3: GENERAL PROVISIONS**

The provisions of Section 3 shall apply to all zones, unless otherwise specified in these provisions.

### **3.1 ACCESSORY USES, BUILDINGS AND STRUCTURES**

Except as provided otherwise within a specific zone, accessory buildings and structures not attached to the main building shall:

- a) Not be established until or unless the main building or use to which it is accessory is established;
- b) Not be used for human habitation, except for Second Dwelling Units that are subject to Section 3.30;
- c) Not be located in any required front yard or the required exterior side yard;
- d) Not be located within, or partially within, any utility easement, corridor, daylighting triangle or storm drainage swale;
- e) Have a total lot coverage for all accessory buildings of not more than 10% in any Residential Zone and not more than 5% in any other Zone and the maximum lot coverage for all buildings shall not exceed the maximum lot coverage of the zoning category in which the property is located;
- f) Not exceed a building height of 7.0m; and
- g) Not be located less than 1.0m from an interior side or rear yard lot line.

### **3.2 AGRICULTURAL USES**

#### **3.2.1 Agriculture-Related Uses**

Agriculture-related uses may only be permitted in accordance with the provisions of Section 5, the Rural/Agricultural Zones and in accordance with the following:

- a) The use shall be conducted entirely within a detached accessory building in conjunction with an operational farm;
- b) Only one agriculture-related use is permitted on one lot;
- c) Ancillary retail/commercial sales and service activities shall be limited to the lessor of 50m<sup>2</sup> or a maximum of 10% of the gross floor area of the building;
- d) All buildings related to the use shall be located within a cluster of existing buildings;

- e) The minimum lot area shall be 1.0ha;
- f) The minimum lot frontage shall be 150m;
- g) The use and all associated facilities including parking areas shall not exceed a maximum area of 0.4ha;
- h) The maximum combined total floor area of the building utilized for the agriculture-related use shall be 250m<sup>2</sup>;
- i) The maximum area that may be utilized for open storage shall be 200m<sup>2</sup> and no more than one area of open storage shall be permitted;
- j) The area utilised for open storage shall be screened from the view of a public road;
- k) The use shall comply with the applicable noise emission standards of the Ministry of the Environment and Climate Change and where necessary, acoustic fencing, berms or other mitigation measures shall be provided to ensure that off-site sound levels generated by the use meet those standards;
- l) There shall be no external advertising other than a sign erected in accordance with the Town of Pelham Sign By-law;
- m) The use shall comply with the parking and loading requirements of Section 4; and
- n) Site Plan Control shall apply to any development.

### **3.2.2 On-Farm Diversified Uses**

On-farm diversified uses, including agri-tourism/value added uses, may only be permitted in accordance with the provisions of Section 5, the Rural/Agricultural Zones, and in accordance with the following:

- a) The use shall be accessory and 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;
- b) On-farm diversified uses that involve value-added packaging, processing, sale and/or storage of products shall be limited to products produced by, or derived from, the principal agricultural use(s) on the lot as the primary source of the majority of the product, and may include product sourced from agricultural uses on surrounding lots in the area as a secondary source of product;
- c) A maximum of three on-farm diversified uses shall be permitted on a lot;

- d) All buildings related to the use shall be located within a cluster of existing buildings;
- e) The area of the lot permanently, temporarily or seasonally devoted to on-farm diversified uses shall not exceed 2% of the total lot area to a maximum of 1 hectare, including the area of existing and new buildings and structures, required parking and loading areas, outside display and sales areas, outside storage areas and any other areas of the lot used for the on-farm diversified use, excluding existing driveways shared with a permitted principal use on the lot and areas that produce a harvestable crop;
- f) Production lands which are used for the growing of crops and simultaneously used as part of the activity area shall not be included in the calculation of the 2% noted in 3.2.2 e);
- g) The total gross floor area that is permanently, temporarily or seasonally devoted to on-farm diversified uses shall not exceed 500m<sup>2</sup> including the gross floor areas used within all main buildings or structures, and accessory buildings or structures on the lot;
- h) Accessory buildings or structures that are used for on-farm diversified used shall comply with the requirements of Section 3.1;
- i) Main buildings or structures that are used for on-farm diversified uses shall comply with the regulations of the applicable zone;
- j) The total lot coverage for all main buildings or structures and accessory buildings or structures shall not exceed the maximum lot coverage of the applicable zone;
- k) Retail sales that form part of the on-farm diversified uses shall be subject to the following:
  - i. The gross floor area devoted to retail sales shall not exceed 50% of the gross floor area of all buildings and structures used in conjunction with the on-farm diversified uses, to a maximum of 200m<sup>2</sup> of gross floor area for retail use;
  - ii. The gross floor area devoted to retail sale of products that are not produced on, or derived from, agricultural products produced on the lot shall not exceed 25% of the gross floor area of all buildings and structures uses in conjunction with the on-farm diversified use(s);
  - iii. A maximum of one retail outlet shall be permitted on a lot;
  - iv. The maximum area of the lot permitted to be used for outside display and sales areas shall be 25m<sup>2</sup> and shall not be counted as part of the maximum gross floor area permitted for retail use;

- v. Outside display and sales areas shall be setback a minimum of 3.0m to all lot lines; and
  - vi. Outside display and sales areas and any related structures shall not exceed a maximum height of 3.0m.
- l) Outside storage for purposes other than outside display and sales areas on the lot shall be located in a rear yard or side yard and screened from view from public streets and adjacent lots by planting strips in accordance with Section 3.16, and shall comply with the regulations of the applicable zone;
  - o) There shall be no external advertising other than a sign erected in accordance with the Town of Pelham Sign By-law;
  - m) Comply with the parking and loading requirements of Section 4; and
  - n) Site Plan Control shall apply.

### **3.3 BED AND BREAKFAST ESTABLISHMENTS**

Where permitted, a bed and breakfast establishment shall be subject to the requirements of the zone in which it is located, and it shall:

- a) Be permitted only within a principal residence of an Owner and/or operator;
- b) Be located in a single detached dwelling only and be clearly secondary to the main residential use;
- c) Not be established or operated in an accessory building;
- d) Not contain more than 3 guest rooms;
- e) Be licensed through the Town's Short Term Accommodation Licensing By-law, pursuant to the *Municipal Act, 2001*;
- f) Obtain approval from the Regional Public Health Department and the Town's Building and Fire Departments;
- g) No bed and breakfast establishment located on a separate lot from a livestock facility, manure storage or anaerobic digester, shall be permitted unless the dwelling in which it is located complies with the Minimum Distance Separation (MDS I) formulae and guidelines developed by the province, as amended.
- h) Comply with the parking requirements of Section 4.

### **3.4 BUILDING RESTORATION**

- a) Nothing in this By-law shall prevent the strengthening or restoration to a safe condition of any existing building or structure, provided that such strengthening or restoration does not increase the height, area or volume or result in the change of the use of such building or structure so as to contravene any of the provisions of this By-law.
- b) Nothing in this By-law shall prevent the replacement of a building or structure which has been partially or completely destroyed by fire, an act of God or any other means, except within a floodplain, beyond the control of the owner on all or part of the existing foundation, provided the said building or structure is replaced within five years of it being partially or completely destroyed.

### **3.5 DAYLIGHTING TRIANGLES**

Within the Daylighting Triangle, no sign, fence, landscaping, building or structure shall be greater than 0.5m in height above the elevation of the ground at the lot line. There shall be no additional building setbacks offset from a daylight triangle.

### **3.6 DRIVE-THRU FACILITIES**

- a) Notwithstanding any other provisions of this By-law, where a building or structure incorporates a drive-thru service facility, an area for vehicles waiting to use the drive-through service facility shall be provided, in addition to any other parking areas. The stacking lane shall be located a minimum of 7.5m from any Residential, Institutional or Open Space Zone and vehicles may be parked in tandem within the stacking lane; and
- b) All drive-thru windows on building facades shall not face any streetline.

### **3.7 ENCROACHMENTS**

Every part of any yard required to be provided in any zone shall be open and unobstructed by any structure from the ground to the sky, in accordance with the following:

Structure	Yard	No part of any building or structure shall project into the specified yard more than:
Eaves or gutters, sills, belt courses, cornices, chimneys, firewalls, bay windows, pilasters, or other ornamental structures	Any yard	0.5m

Fences, freestanding walls, flag poles, garden trellises, retaining walls, light standards and similar accessory structures and appurtenances and hedges, trees and shrubs	Any Yard	Unrestricted
Exterior stairs in a Residential Zone	Any Yard	No restriction, provided the stairs are: a) No longer than 1.5m; b) No wider than 1.5m; and c) No closer to a lot line than 0.6m
Balconies, canopies, drop awnings, unenclosed porches	Front, exterior or rear yard	3m
Canopy attached to an apartment dwelling	Front or exterior side yard	3m
Clothes poles and antennae	Any yard except a front yard	
Decks (uncovered)	Exterior side yard or rear yard	4m
Fire Escapes	Exterior side or rear yard	1.5m, however a minimum interior side yard setback of 1.2m is required.
Air Conditioners and Generators	Front, side or exterior side yard	In a Residential Zone: a) 2m from the main wall of the main building in the front yard; or b) 0.3m from the exterior or side lot line
Operating Machinery (excluding air conditions or generators)	In a residential zone: a) Be permitted to encroach into any side yard adjacent to a street or rear yard of any lot used for residential purposes; c) Not be located less than 5m from an existing Residential use under separate ownership; and d) Be permitted to encroach into any side yard, provided that the operating equipment shall be no closer than 5m from any lot line.	

### **3.8 ESTABLISHED BUILDING LINE**

Within any zone where a permitted building or structure is to be erected on a lot located between two adjacent lots on which existing buildings are located not more than 30 metres apart, such permitted building or structure may be erected closer to the streetline, than required by this By-law, provided that the front yard setback of the proposed building or structure has a depth at least as great as the average depth of the front yards of said adjacent buildings and structures.

### **3.9 FOOD VEHICLES**

Where food vehicles are permitted by this By-law, the following provisions shall apply:

- a) Every food vehicle shall operate in accordance with the regulations for the zone in which the food vehicle is located;
- b) No food vehicle shall occupy a designated barrier-free parking space;
- c) No portion of a food vehicle shall be located within a Fire Route designated in accordance with the Fire Code or a Town By-law;
- d) No portion of a food vehicle shall be located within any daylighting triangle;
- e) Where required by the laws and regulations of the Province and Town By-laws, approval shall be obtained from the Regional Public Health Department, the Technical Standards and Safety Authority, and the Town Fire Department, as applicable to operate a food vehicle in any zone.

### **3.10 GARAGE SALES OR AUCTIONS**

Notwithstanding any other provision of this By-law, a garage or yard sale or auction is a permitted use in any agricultural, rural, residential or commercial zone provided that such sales are restricted to no more than three occasions per year and no more than three consecutive days at a time on any one lot.

### **3.11 HOMES FOR SPECIAL CARE**

Where a home for special care is permitted, it shall be subject to the requirements of the zone in which it is located, and the following:

- a) Parking shall be provided in accordance with Section 4;
- b) The home for special care shall comprise the sole use of the dwelling;
- c) The home for special care shall be subject to Provincial approval or licensing may be required;

- d) The maximum number of residents permitted in a home for special care shall be 10 residents, excluding staff or the receiving family; and
- e) The minimum floor area per home for special care shall be 100m<sup>2</sup>

### **3.12 HEIGHT EXCEPTIONS**

The height provisions of this By-law shall not apply to the following uses, nor shall such used be used in calculation of height:

- a) A belfry;
- b) A chimney;
- c) A clock tower;
- d) An elevator or stairway penthouse;
- e) A flag pole;
- f) A hydro-electric transmission tower;
- g) An ornamental structure;
- h) A communications antenna;
- i) A silo;
- j) A place of worship spire;
- k) A structure containing heating, cooling or other mechanized equipment pertaining to a building;
- l) A tower;
- m) A water tower; and
- n) A windmill

### **3.13 HOME-BASED BUSINESS**

#### **3.13.1 Home Occupations**

Where a home occupation is permitted in a Zone, the following provisions shall apply:

- a) Not more than one employee, in addition to the residents of the dwelling unit, shall be engaged in the business;



- b) Any dwelling unit containing a home occupation shall be occupied as a residence by the operator of the business;
- c) The use is entirely restricted to the dwelling unit and shall not be conducted in whole or in part in any accessory building, yard or private garage;
- d) No more than one home occupation shall be permitted in one dwelling;
- e) The maximum gross floor area dedicated to the home occupation shall be the lesser of 50m<sup>2</sup> or 25% of the gross floor area of the dwelling;
- f) There shall be no goods, wares or merchandise offered or exposed for sale or kept for sale on the premises other than those produced on the premises;
- g) There shall be no outside storage of materials, goods or vehicles in conjunction with the home occupation use;
- h) Parking shall be provided in accordance with Section 4;
- i) There shall be no external advertising other than a sign erected in accordance with the Town of Pelham Sign By-law; and
- j) A home occupation shall not create noise, vibration, fumes, odour, dust, glare or radiation that is detectable outside of the dwelling unit.

### **3.13.2 Home Industries**

Where a home industry is permitted in an Agricultural (A) or Specialty Agricultural (SA) Zone, the following provisions shall apply:

- a) Not more than 2 employees, who are not residents of the dwelling unit, shall be engaged in the business and working in the home industry and one parking space shall be provided for each employee;
- b) Any lot upon which a home industry is located shall be occupied as a residence by the operator of the business;
- c) Any accessory building and any associated activity area used for the home industry shall be located no closer than 30m from any lot line;
- d) A home industry shall only be located on a lot with a minimum lot area of at least 2ha;
- e) The maximum gross floor area dedicated to the home industry shall not exceed 100m<sup>2</sup>;

- f) The driveway accessing the home industry shall be shared with the driveway that is utilized for the residential use on the lot;
- g) Only the sale of goods that are primarily manufactured, processed, fabricated or produced on the premises shall be permitted;
- h) Outdoor storage of goods or materials related to a home industry shall be permitted in the rear yard and interior side yards only, provided that the area utilized for open storage does not exceed 50m<sup>2</sup>;
- i) No more than 2 currently licensed motor vehicles, associated with the home industry, shall be parked or stored on the lot and within and interior side or rear yard;
- j) Parking shall be provided in accordance with Section 4;
- k) There shall be no external advertising other than a sign erected in accordance with the Town of Pelham Sign By-law;
- l) No more than one home industry shall be permitted per lot; and
- m) The following shall not be permitted as a home industry:
  - i. Any use involving the storage, repair, maintenance and/or towing of motor vehicles or recreational vehicles.

### **3.14 HOLDING ZONES (H SYMBOL)**

Holding (H) Zones are established and identified on Schedules A through F of this By-law in parenthesis with a corresponding number, such as (H), following the zone symbol.

- a) Prior to the removal of the Holding (H) symbol, the only permitted uses on the lands subject to the Holding (H) symbol shall be those uses legally existing at the date the Holding (H) symbol is applied.
- b) Where a Holding (H) symbol is imposed on any land, the By-law which places the Holding (H) symbol on said lands shall set out the conditions to be satisfied to effect its removal.

### **3.15 LANDSCAPED STRIPS**

- a) Where land is required to be used for no other purpose than a landscape strip, it shall have a minimum width of 1.5m, measured perpendicular to the lot line it adjoins, except in the case of a rear yard swale where a minimum width of 3.0m shall be required.

- b) In all cases where ingress and egress driveways or walkways extend through a landscape strip, it shall be permissible to interrupt the strip within 3m of the edge of such driveway or within 1.5m of the edge of such walk.
- c) A landscape strip referred to in Section 3.16 may form part of any landscaped area required by this By-law.
- d) Landscape strips shall be planted with trees and bushes to form a visual screen at least 3.0m in height and may be in combination with privacy fencing.
- e) Where a lot is used for a non-residential purpose and the interior side or rear lot line, or portion thereof, abuts a Residential Zone, then a strip of land adjoining such abutting lot, or portion thereof, shall be used for no other purpose than a landscape strip in accordance with the provisions of Section 3.15.

### **3.16 LOT AND YARD REQUIREMENTS**

#### **3.16.1 Requirements for a Lot**

- a) Except as otherwise provided in this By-law, no building or structure shall be erected, altered, extended or enlarged except upon a lot, nor shall land be used for any permitted use unless it comprises a lot, but this provision shall not prevent the use of any parcel or tract of land for agricultural purposes excluding the erection or enlargement of any building or structure, except a fence.
- b) Except where a second unit or farm help house(s) is permitted, no person shall erect more than 1 single detached dwelling, 1 semi-detached dwelling, 1 duplex dwelling, 1 triplex dwelling, 1 fourplex dwelling or 1 converted dwelling on one lot.

#### **3.16.2 Frontage on an Improved Road**

No person shall erect any building or structure in any zone after the date of passing of this By-law, unless the lot upon which such building or structure is to be erected fronts on an improved public road.

An improved road means a road which has been constructed in such a manner so as to permit its use by means of normal vehicular traffic by the public.

This shall not apply to prevent the erection of a permitted building or structure on a lot in a Registered Plan of Subdivision or Plan of Condominium where a Development or Subdivision Agreement has been entered into with the Town, notwithstanding that the road or roads will not be assumed by the Town until the end of the maintenance period. This provision shall not prevent the enlargement, extension, reconstruction or other structural alteration of an existing building or structure which is located on a lot which does not have direct access to or fronts an improved public road, provided the use of the building or structure does not change, is permissible within the zone in which it is

located and complies with all applicable yard and setback requirements of the Zoning By-law.

### **3.16.3 Minimum Lot Area**

The minimum lot area shall be as contained in the appropriate section of this By-law for the zone in which the lot is located. However, the Niagara Region Planning and Development Services Department may require a larger lot area for water supply and sewage disposal facilities, in which case the lot area requirements of the Niagara Region Planning and Development Services Department shall prevail.

### **3.16.4 Lots Reduced by Public Acquisitions**

Where the area of a lot is reduced by means of an acquisition of part of the lot by a public agency for the purpose of providing a public service, and where such acquisition causes the lot to be reduced, or any building or structure existing lawfully on the lot on the date of such acquisition to have a lot area, lot frontage, lot depth, lot coverage, front yard setback, side yard setback or rear yard setback that does not conform to the requirements hereof for the zone in which such lot is located, then the lot as reduced shall continue to be used as if no such acquisition had taken place, provided that:

- a) No change is made in the dimensions or area of the lot as reduced, subsequent to the date of such public acquisition, that would increase the extent of the said non-conformity; and
- b) No building, structure or addition is erected on the lot as reduced, subsequent to the date of such public acquisition, except in accordance with all of the provisions hereof for the zone in which such lot is located.

### **3.16.5 Lots with More than One Use**

- a) Where a lot contains more than one permitted use defined separately herein, other than an accessory use, each such use shall conform to the provisions of this By-law which are applicable to such use in the zone in which the said lot is located as if such use existed independently of any other use.
- b) Where standards or provisions pertaining to two or more uses on one lot are in conflict, the highest or most restrictive standards or provisions shall prevail.

### **3.16.6 Lots with More than One Zone**

- a) Where a lot is divided into two or more zones, each such portion of the said lot shall be used in accordance with the provisions of this By-law which are applicable to the zone wherein such portion of the said lot is located.
- b) Notwithstanding subsection a) and subject to subsection c) for the purpose of determining required yard setbacks, the provisions of the said zone in which a building or structure is to be erected shall apply.

- c) Where one of the zones of the lot(s) is EP1, the required setback for each of the respective zones shall be the greater of that determined under subsection a) above, or as otherwise required by the Niagara Peninsula Conservation Authority, in accordance with the provisions of the *Conservation Authorities Act*, as amended from time to time.

### **3.16.7 Existing Undersized Lots**

Where a lot, having a lesser lot area and/or lot frontage than required herein, existed on the date of passing of this By-law, or where such a lot is created by a public authority or correction of title, such smaller lot may be used and a permitted principle building or structure may be erected and/or used on such a smaller lot provided that all other applicable provisions of this By-law are complied with and provided that a sewage system that complies with the regulations under the Building Code, or can be connected to the sanitary sewer and water system can be installed on the lands.

## **3.17 MINIMUM DISTANCE SEPARATION REQUIREMENTS**

- a) New and expanded livestock facilities, manure storage facilities and anaerobic digesters are subject to the Minimum Distance Separation II (MDS II) requirements development by the province, as amended from time to time, and shall comply with the requirements of the *Ontario Nutrient Management Act*.
- b) No dwelling shall be erected or located on a separate lot unless it complies with the requirements of the *Ontario Nutrient Management Act* and the Minimum Distance Separation I (MDS I) formulae and guidelines developed by the province, as amended from time to time. An existing off-site dwelling, destroyed by a catastrophic event, may be replaced by a new dwelling provided that the new dwelling is sited no closer to the lot on which the livestock facility is located than the previously existing dwelling.
- c) A new livestock facility may replace a former livestock facility destroyed by a catastrophic event, provided that the new livestock facility does not result in increases in the values of Factors A, B or D, of the MDS Formulae, compared to what existed at the livestock facility prior to the catastrophic event, such that there is no switch to a livestock type with a higher odour potential, there is no increase in the number of nutrient units housed and there is no switch to a manure system type with a higher odour potential.
- d) Notwithstanding the MDS requirements, where new development on a vacant lot of record is unable to comply with the MDS requirements, a dwelling may be permitted on the lot provided the dwelling is located on the lot the furthest distance reasonably feasible from the impacted livestock facilities.

### **3.18 MUNICIPAL SERVICES**

Notwithstanding any other provisions of this By-law, no lands shall be used nor any building or structure erected or used thereon, unless:

- a) Municipal sanitary sewer and water services are available and capable of servicing the said land, building or structures. Municipal sanitary sewer and water services are required for development within any Urban Boundary as shown on Schedules A through E, and no use shall be permitted without being connected to such services in such area.
- b) Written approval is received from the Niagara Region Planning and Development Services Department for the use of private septic services for those lots located outside of the urban boundary.

### **3.19 NIAGARA ESCARPMENT COMMISSION JURISDICTION**

Lands located within the Niagara Escarpment Plan Area illustrated on Schedules A and C are lands that provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment. The delineation of the Niagara Escarpment Area is based on the most current information available, and may not be accurate or up to date in some areas.

- a) Development within the Niagara Escarpment Development Control Area is regulated by the Niagara Escarpment Commission through the issuance of development permits.
- b) Within the Niagara Escarpment Plan Area, development includes a change in the use of any land, building or structure.

### **3.20 NON-CONFORMING USES**

- a) No lands shall be used and no building or structure shall be used except in conformity with the provisions of this By-law unless such use legally existed prior to the passage of this By-law and provided that it has continued and continues to be used for such purpose, and that such use, when established, was not contrary to a By-law passed under Section 34 of the *Planning Act*, R.S.O. 1990, cP.13 or a predecessor thereof that was in force at that time.
- b) A use of a lot, building or structure which under the provisions hereof is not permissible within the zone in which such lot, building or structure is located shall not be changed except to a use which is permissible within such zone.

### **3.21 OBNOXIOUS USES**

Notwithstanding anything contained herein, no land shall be used and no building or structure shall be erected, altered or used for any purpose which is obnoxious, and without limiting the generality of this subsection, for any purpose that creates or is likely to become a nuisance or offensive, or both:

- a) By the creation of noise or vibration; or
- b) By reason of the emission of gas, fumes, smoke, dust or objectionable odour; or
- c) By reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, motor vehicles, trailers, or parts of vehicles or trailers, machinery or other such material; or
- d) By any combination of a) through c); or
- e) Any use that is not legally permitted.

### **3.22 PRE-FABRICATED SHIPPING CONTAINERS**

Pre-fabricated shipping containers and unlicensed trailers shall not be permitted to be used or stored on any lot in a Residential Zone.

This provision shall not restrict the use of a pre-fabricated shipping container or unlicensed trailer to be used in a Residential Zone on a temporary basis for the storage of construction materials and equipment for any project undertaken by or on behalf of a public authority or for any construction project for which the Municipality has issued a building permit, provided the container or trailer is removed prior to final inspection.

### **3.23 PRIVATE HOME DAYCARE**

Where a private home daycare is permitted, it shall be subject to the requirements of the zone in which it is located and the following:

- a) Is permitted within any residential dwelling unit; and
- b) Notwithstanding any other provisions of this By-law, no part of any required front yard shall be used for the purposes of an outdoor play space accessory to a private home daycare.

### **3.24 PROHIBITED USES**

The following uses are prohibited in any Zone:

- a) The use of any trailer, tourist trailer, motor home or pre-fabricated shipping container for human habitation except where such tourist trailer or motor home is located in a camping establishment, in a trailer park or in a mobile home park.

- b) The use of any motor vehicle for human habitation.
- c) The use of a truck, bus or coach body for human habitation.
- d) The storage of disused rail cars, streetcars, truck bodies or trailers except where legally permitted by this Zoning By-law.
- e) The outdoor storage of partially dismantled motor vehicles or trailers or motor vehicle or trailer parts except where legally permitted by this Zoning By-law.
- f) Obnoxious uses.
- g) The manufacturing, refining, rendering or distillation of acid, ammonia, chlorine, coal, creosote, explosives, fireworks, glue, petroleum or tar.
- h) The bulk storage of industrial chemicals, hazardous waste or liquid industrial waste as defined under the *Environmental Protection Act*, as amended.
- i) Permanent race tracks for automobiles or machines.

### **3.25 PUBLIC USES**

The provisions of this By-law shall not apply to prevent the use of any land, building or structure by any public authority, except for a waste disposal site, provided that:

- a) Such use building or structure complies with the yard, setback and height provisions of the Zone in which it is located; and
- b) No outdoor storage is permitted unless such outdoor storage is specifically permitted in the Zone in which the use is located.

Notwithstanding the above provisions, buildings and structure associated with a public works yard owned by a public authority are exempt from the height requirements of this By-law.

Nothing in this By-law shall prevent a public authority from providing or using land as a street or rail line nor prevent the installation of a utility main including a water main, sanitary sewer, storm sewer, gas main, pipeline or overhead or underground hydro, telecommunication or other utility supply or communication line.

### **3.26 RAILWAY AND PIPELINE RIGHT-OF-WAY SETBACKS**

Notwithstanding anything contained in this By-law:

- a) No residential building shall be located closer than 30.0m to a railway right-of-way;



b) For TransCanada Pipeline:

- i. No permanent structures are permitted within 7.0m of the pipeline right-of way;
- ii. Accessory structures must maintain a minimum 3.0m setback of the limit of the pipeline right-of-way; and
- iii. No building or structures shall be permitted within 3.0m of the pipeline right-of-way.

c) For Enbridge Gas Pipeline:

- i. All development within 30.0m or crossings of the pipeline shall require written consent from Enbridge Gas and is the responsibility of the applicant to obtain prior to development approval.

### **3.27 RECONSTRUCTION OF BUILDINGS AND STRUCTURES**

#### **3.27.1 RECONSTRUCTION, REPLACEMENT OR EXTENSION OF LEGAL NON-COMPLYING BUILDINGS AND STRUCTURES**

Where a building or structure has been lawfully erected on a lot having less than the minimum frontage and/or area, or having less than the minimum setback, and/or yard or any other provision required in this By-law, the said building or structure shall be deemed to comply with this By-law with respect to any deficiency or deficiencies; and further the said building or structure may be reconstructed or replaced provided that:

- a) The reconstruction or replacement does not further reduce such setback at the front yard and/or side yard and/or corner side yard and/or rear yard less than the minimum required by this By-law;
- b) Nothing in this By-law shall prevent a vertical or horizontal extension or addition from being made to an existing building or structure on a lot, even though such a building, structure or lot does not comply to one or more of the provisions of this By-law, provided such extension or addition itself is designed, located, used and otherwise in compliance with the provisions of this By-law, with the exception that no extensions or additions will be permitted in an Environmental Protection Zone; and
- c) All other provisions of this By-law are complied with.

#### **3.27.2 Agricultural Buildings and Structures**

Nothing in this By-law shall apply to prevent the reconstruction of any legal non-compliant agricultural building or structure situated in the Agricultural (A) or Specialty

Agricultural (SA) Zones in the case of partial or complete destruction caused by fire, lightning or severe weather event provided:

- a) Such building was in a state of good repair and was utilized for agricultural purposes at the time of destruction;
- b) Such building or structure, as replaced or reconstructed, shall not have in total a greater livestock housing capacity than lawfully existed in the destroyed or demolished building or structure at the date of its partial or complete destruction or demolition; and
- c) Where any yard existing at the date of the partial or complete destruction or demolition of such building or structure does not comply with the minimum yard or minimum setback required by this By-law, such yard shall not be further reduced.

### **3.27.3 Replacement of Other Buildings**

Any building other than a building used exclusively for residential purposes may, in case of this complete destruction, be replaced with a new building where the complete destruction is caused by fire, lightning or severe weather event provided that:

- a) Such destroyed or demolished building was in conformity with this By-law at the date of its complete destruction; or
- b) For buildings not in conformity with this By-law, the ground floor area of such building as replaced does not exceed that which was existing at the date of its complete destruction.

### **3.27.4 Replacement of Residential Buildings**

Any building used exclusively for residential purposes may, in the case of its complete destruction, be replaced with a new building or in the case of its partial destruction, be reconstructed where the complete or partial destruction, as the case may be, is caused by fire, lightning, explosion, or severe weather event provided that:

- a) Such destroyed or demolished building was lawfully used at the date of its partial or complete destruction;
- b) Such building as replaced or reconstructed shall not contain a greater number of dwelling units than lawfully existed in the destroyed or demolished building at the date of its partial or complete destruction;
- c) Where the ground floor area of the destroyed building was less than the minimum ground floor area permitted in the applicable Zone under this By-law, such building, as replaced or reconstructed, shall not contain a lesser floor area than lawfully existed in the destroyed or demolished building at the date of its partial or complete destruction or demolition;

- d) Where any yard existing at the date of the partial or complete destruction of such building does not comply with the minimum yard required in the applicable Zone under this By-law, then such yard shall not be less than the yard existing at the date of the partial or complete destruction or demolition of such building;
- e) The height of such building, as replaced or reconstructed, shall not exceed the maximum height permitted in the applicable Zone under this By-law; and
- f) Nothing withstanding Section 3.28.4 a) through e) where the building is destroyed by flood, the replacement of said structure shall be subject to the regulations of the Niagara Peninsula Conservation Authority.

## **3.28 SECOND DWELLING UNITS**

### **3.28.1 Urban Area**

- a) Up to two Second Dwelling Units are permitted in a single detached, semi-detached unit or townhouse dwelling unit in the R1, R2, R3, RM1, GF-R1, GF-R2, or GF-R3 Zones provided:
  - i. The maximum floor area of the second dwelling unit is 75m<sup>2</sup>;
  - ii. A maximum of one entrance is permitted along a front or corner side yard;
  - iii. A minimum of one parking space shall be required for the second dwelling unit;
  - iv. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage; and
  - v. All requirements of the Ontario Building Code, as applicable, shall be met.
- b) One Second Dwelling Unit is permitted in a detached accessory building that is accessory to a single detached dwelling unit, semi-detached dwelling unit or townhouse dwelling unit in the R1, R2, R3, RM1, RR, GF-R1, GF-R2, or GF-R3 Zone provided:
  - i. A maximum of one detached second dwelling unit is permitted per lot;
  - ii. The maximum floor area of the second dwelling unit is 75m<sup>2</sup>;
  - iii. The maximum height of the detached accessory building shall be 7.0m;
  - iv. For a Second Dwelling Unit located in a detached garage, the maximum height shall be 8.0m;

- v. The maximum distance of a Second Dwelling Unit is permitted from the closest portion of the principle dwelling located on a property is 40m unless the Second Dwelling Unit is located in an existing building;
- vi. A minimum of one parking space shall be required for the second dwelling unit;
- vii. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage;
- viii. All requirements of the Ontario Building Code, as applicable, shall be met; and
- ix. The detached accessory building shall be compliant with all other aspects of the zoning by-law.

### **3.28.2 Agricultural and Rural Residential Zones**

- a) Up to two Second Dwelling Units are permitted in a single detached dwelling unit in the RR or A Zones provided:
  - i. The maximum floor area of the second dwelling unit is 93m<sup>2</sup>;
  - ii. A maximum of one entrance is permitted along a front or corner side yard;
  - iii. Septic approval must be obtained confirming the septic system can sustain the additional dwelling unit and a shared septic system is preferred;
  - iv. A minimum of one parking space shall be required for the second dwelling unit;
  - v. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage; and
  - vi. All requirements of the Ontario Building Code, as applicable, shall be met.
- b) One Second Dwelling Unit is permitted in a detached accessory building that is accessory to a single detached dwelling unit in the RR or A Zone provided:
  - i. A maximum of one detached second dwelling unit is permitted per lot;
  - ii. The maximum floor area of the second dwelling unit is 93m<sup>2</sup>;
  - iii. The maximum height of the detached accessory building shall be 7.0m;

- iv. For a Second Dwelling Unit located in a detached garage, the maximum height shall be 8.0m;
- v. The maximum distance of a Second Dwelling Unit is permitted from the closest portion of the principle dwelling located on a property is 40m unless the Second Dwelling Unit is located in an existing building;
- vi. Septic approval must be obtained confirming the septic system can sustain the additional dwelling unit and a shared septic system is preferred;
- vii. A minimum of one parking space shall be required for the second dwelling unit;
- viii. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage;
- ix. All requirements of the Ontario Building Code, as applicable, shall be met; and
- x. The detached accessory building shall be compliant with all other aspects of the zoning by-law.

### **3.28.3 Speciality Agricultural Zone**

- a) Up to two Second Dwelling Units are permitted in a single detached dwelling unit in the SA Zone provided:
  - i. The maximum floor area of the second dwelling unit is 93m<sup>2</sup>;
  - ii. A maximum of one entrance is permitted along a front or corner side yard;
  - iii. Septic approval must be obtained confirming the septic system can sustain the additional dwelling unit and a shared septic system is preferred;
  - iv. A minimum of one parking space shall be required for the second dwelling unit;
  - v. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage;
  - vi. All requirements of the Ontario Building Code, as applicable, shall be met;
  - vii. The single detached dwelling unit shall be located outside the Greenbelt Natural Heritage System; and

- viii. In areas outside the Greenbelt Natural Heritage System, Second Dwelling Units are only allowed in single detached dwellings on lots that were zoned for such as of the date the Greenbelt Plan came into effect (December 6, 2004).
- b) One Second Dwelling Unit is permitted in an existing detached accessory building that is accessory to a single detached dwelling unit in the SA Zone provided:
- i. The maximum floor area of the second dwelling unit is 93m<sup>2</sup>;
  - ii. The maximum height of the existing detached accessory building shall be 7.0m;
  - iii. For a Second Dwelling Unit located in an accessory detached garage, the maximum height shall be 8.0m;
  - iv. The maximum distance of a Second Dwelling Unit is permitted from the closest portion of the principle dwelling located on a property is 40m unless the Second Dwelling Unit is located in an existing building;
  - v. Septic approval must be obtained confirming the septic system can sustain the additional dwelling unit and a shared septic system is preferred;
  - vi. A minimum of one parking space shall be required for the second dwelling unit;
  - vii. Notwithstanding Subsection 4.1.4.3 (a), on a lot having an attached garage less than 5 metres in width, the driveway may extend beyond the width of the garage toward the side lot line to a maximum width of 5 metres and no closer than 0.6 metres to the side lot line, nearest to the garage;
  - viii. All requirements of the Ontario Building Code, as applicable, shall be met;
  - ix. The existing detached accessory building shall be compliant with all other aspects of the zoning by-law;
  - x. The existing detached accessory building shall be located outside the Greenbelt Natural Heritage System; and
  - xi. In areas that are outside the Greenbelt Natural Heritage System, a second dwelling unit is only allowed within an existing accessory building constructed prior to the effective date of the Greenbelt Plan (December 16, 2004).

### **3.28.4 Commercial Zones**

- a) Notwithstanding any other provisions of this By-law, one second dwelling unit is permitted on the ground floor in Commercial Zones provided:
- i. The second dwelling unit(s) in the Commercial Zone VC, MS, TS or DC shall be permitted to the extent of the provisions provided herein;
  - ii. The second dwelling unit in the existing Commercial Zone NC and GF-NC shall not exceed 33% of the ground gross floor area of the commercial building;
  - iii. The maximum floor area of the secondary dwelling unit is 55m<sup>2</sup>;
  - iv. Secondary dwelling units have a means of egress only to the rear or side yard and is separate from any means of egress for the commercial use(s); and
  - v. The second dwelling unit shall be located to the rear or above the commercial use.

### **3.29 SHORT TERM ACCOMODATIONS**

Where permitted, a short term accommodation shall be subject to the requirements of the Zone in which it is located, and it shall:

- a) Be permitted only in the A, SA, CR, VC, DC, MS, TS, and NC Zones;
- b) Permit a maximum occupancy of 10 persons per dwelling at any one time;
- c) Be licensed through the Town's Short Term Accommodation Licensing By-law, pursuant to the *Municipal Act, 2001*;
- d) Obtain approval from the Regional Public Health Department and the Town's Building and Fire Departments; and
- e) Comply with the parking provisions of Section 4.

### **3.30 SPECIAL EXCEPTIONS**

The Special Exceptions noted in Section 10 shall have effect in respect of the subject use and the provisions of the respective shall be amended insofar as required to give effect to the special provisions. All other provisions of the respective zone shall apply, with the necessary changes being made to the subject use.

### **3.31 SPECIAL SETBACKS**

Notwithstanding any other provisions in this By-law, the following shall apply:

#### **3.31.1 Setback from Environmental Protection One Zone & Environmental Protection Two Zone**

- a) Notwithstanding any other provisions of this By-law, the following setbacks shall apply to lands zoned Environmental Protection One (EP1) Zone and Environmental Protection Two (EP2) Zone:

Natural Heritage Feature	Building Setback
Provincially Significant Life Science Area of Natural and Scientific Interest	50m
Provincially Significant Wetland	120m
Habitat of Threatened and Endangered Species	50m
Environmental Conservation Area	50m
Type 1 – Critical Fish Habitat	30m
Type 2 or 3 – Critical Fish Habitat	15m
Regulated Floodplain	0m

- b) The setbacks noted in Section 3.31.1 a) may be modified without an amendment to the Zoning By-law through the approval of an Environmental Impact Study, approved by the appropriate regulatory authority.
- c) The setbacks noted in Section 3.31.1 a) do not apply to lands located in Fonthill, as illustrated on Schedule C.

#### **3.31.2 Setback from Environmental Protection Three Zone**

- a) Notwithstanding any other provision in this By-law, no building or structure shall be located within 120 metres of any Environmental Protection Three (EP3) Zone, with the exception that new agricultural buildings and structures are permitted within the 120 metres of an EP3 Zone, provided such buildings or structures maintain a 30 metre setback from the EP3 Zone.
- b) The setbacks noted in Section 3.31.2 a) may be modified without an amendment to the Zoning By-law through the approval of an Environmental Impact Study, approved by the appropriate authority.

#### **3.31.3 Setbacks from Slopes**

- a) Notwithstanding any other provisions of this By-law, no dwelling unit, building or structure shall be located within 7.5m of a slope or embankment that exceed 33% or a ratio of 3:1. This provision shall also not prevent the expansion or replacement of buildings or structures that existed on the effective date of this By-law within this setback area, provided the expansion or replacement does not have



the effect of reducing the setback from the slope or increasing the volume or floor area of a building or structure in a minimum required yard.

- b) In Urban Area infilling situations, a reduced setback may be considered in cases where there are site specific constraints which may necessitate the reduced setback. Any reduced setback request will require a geotechnical study approved by the appropriate authority.

### **3.31.4 Greenbelt Natural Heritage System**

Lands identified within the Greenbelt Natural Heritage System are located within the Greenbelt Natural Heritage Overlay designation of the Town's Official Plan and reflect lands within the Natural Heritage System of the Provincial Greenbelt Plan. Permitted uses in the Greenbelt Natural Heritage System shall be the uses of the zone category, subject to the following:

- a) Entering into a site plan agreement with the Town to address Section B3.5.4.1 of the Town's Official Plan;
- b) Maximum developable area shall be 25%; and
- c) Notwithstanding, agricultural buildings and structures are not subject to the above requirements.

### **3.31.5 Airport Influence Area**

No building or structure shall exceed 12.0 metres in height within the Airport Influence Area.

## **3.32 STORAGE OF RECREATIONAL VEHICLES, TRAILERS AND BOATS**

In any Residential Zone, no person shall store a recreational vehicle, mobile home, motor home, tourist trailer, boat and trailer or haulage trailer, except in accordance with the following:

- a) Where the lot is use for an apartment dwelling or boarding house, the storage of such vehicles shall be enclosed and shall only be permitted in spaces or areas that are in addition to the parking requirements of Section 4.
- b) The storage of such vehicles shall be permitted in any yard, provided that where storage occurs in a front or exterior side yard, a minimum setback of 1.5m from the front lot line or exterior side lot line shall be required for sight clearance purposes.

### **3.33 SWIMMING POOLS**

Notwithstanding any other provision of this By-law to the contrary, in any Zone a swimming pool may be erected and used in any side yard or rear yard provided:

- a) No interior wall surface of any such swimming pool shall be located closer than 1.5m to any side lot line, rear lot line or exterior side lot line, or closer than 3.0m to that portion of the rear lot line which abuts a side lot line of any adjoining lot;
- b) No water circulating or treatment equipment, such as pumps or filters shall be located closer than 3.0m to any side lot line, or rear lot line or 1.2m to any side lot line or rear lot line if enclosed in an accessory building or structure or closer to any street than the required yard for the main building or structure.
- c) A swimming pool shall not be considered as part of lot coverage.
- d) In the case of an indoor swimming pool in a separate building or structure or enclosure, the building, structure or enclosure shall comply with all accessory building provisions of the Zone in which such a building, structure or enclosure is located.

### **3.34 TEMPORARY USES**

- a) Nothing in this By-law shall prevent the use of any land, or the erection or use of any temporary building or structure incidental to and necessary for construction work on the premises for which a building permit has been issued and not expired, but only for so long as such use, building or structure is necessary for such construction work which has not been finished or abandoned for a period of one year.
- b) Nothing shall prevent the use of a mobile home, motor home or tourist trailer for the temporary accommodation of the occupants in the case of complete or partial destruction of the farm dwelling by fire, lightening, explosion, wind, flood or Act of God, or where its demolition is by order of the Town of Pelham, the Region of Niagara Health Services Department or other authority, for safety, health or sanitation requirements in the Agricultural (A) Zone or Specialty Agricultural (SA) Zone for a period of time not to exceed 18 months.
- c) Nothing shall prevent the use of land, or the erection of a real estate sales pavilion or model home on a temporary basis either located within or not more than 300 metres from a developing subdivision and which use shall be removed when all lots have been sold.