



## Town of Niagara-on-the-Lake

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**REPORT #:** CDS-24-122 **COMMITTEE DATE:** 2024-07-18  
**REPORT TO:** Committee of Adjustment **DUE IN COUNCIL:** N/A  
**SUBJECT:** Fence Variance Application FV-04/24 – 1551 Niagara Stone Road

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 Fence Variance Application FV-04/24 for 1551 Niagara Stone Road be approved.

### 2. PURPOSE

The applicant is proposing to construct an acoustical fence to mitigate noise impacts along the east perimeter of the subject lands, and requests relief from Fence By-law 4778-14, as follows:

1. Maximum height of a fence on commercial lands from 3.0 metres, as required in the Fence By-law, to 3.5 metres for the proposed noise attenuation fence.

The application drawing and fence elevations are attached as **Appendix I**.

### 3. BACKGROUND

#### 3.1 Site Description and Surrounding Land Uses

The subject lands are known municipally as 1551 Niagara Stone Road, lying on the east side of Niagara Stone Road, south of Field Road within the urban area of Virgil. The location of the subject lands is shown in **Appendix II** to this report.

The subject lands have an approximate area of 1.46 hectares, with 69.7 metres of frontage on Niagara Stone Road. The subject lands are currently used for commercial purposes (Phil's Independent Grocer) with associated surface parking. The lands are serviced by municipal water and sanitary connections. The surrounding lands are characterized by commercial uses to the north and west, and residential uses to the south and east.

#### 3.2 Noise Attenuation

In response to a noise complaint received by the Ministry of the Environment, Conservation, and Parks (the "MECP"), Aercoustics Engineering Limited was retained by the applicant to complete a Noise Impact Study (dated January 19, 2024). The Noise Impact Study evaluated the impact of the operational noise associated with Phil's Independent Grocer (i.e., HVAC equipment, delivery truck movements and idling) on the surrounding environment, in order to identify any required noise mitigation measures. The results of this study indicate that current facility operations exceed the applicable MECP sound level limits. As such, noise control measures are required, including the construction of a wooden noise attenuation fence along

the east lot line approximately 3.5 metres in height and approximately 50 metres in length as shown in **Appendix I**. Implementation of these noise controls is expected to reduce noise impacts to levels which comply with the MECP sound level limits. Compliance with MECP sound level limits will be confirmed through verification measurements following implementation of the prescribed noise control measures, including construction of the noise attenuation fence.

#### **4. DISCUSSION / ANALYSIS**

##### **4.1 Fence Variance Tests – Section 45 of the *Planning Act, R.S.O. 1990, c. P.13***

Subsection 45(3) of the *Planning Act* provides the Committee of Adjustment power to grant minor variances from the provisions of any by-law that implements an Official Plan using the four tests of a minor variance provided in Subsection 45(1):

##### **1. Is the requested variance minor in nature?**

The wood noise attenuation fence is proposed to be located along the southeast perimeter of the lot, acting as an acoustical barrier to help reduce the noise impact of the existing commercial use on the surrounding sensitive land uses to MECP-acceptable levels.

The new fence is anticipated to reduce the impacts of the operational noise of the site on the adjacent sensitive receptors, most notably, the residential lots located immediately to the east. The increased height of the fence is also anticipated to provide additional privacy to adjacent residents. No impacts to the streetscape of Niagara Stone Road are anticipated based on the proposed location of the fence.

The requested variance is considered minor in nature.

##### **2. Is the requested variance desirable for the appropriate development or use of the land, building or structure?**

The proposal mitigates the ongoing operational noise impacts for the residents to the east of the site, enhancing the transition between the established commercial and residential uses. The construction of the fence does not result in the removal of any trees or landscaped areas.

Staff are of the opinion that the proposal is appropriate for the development of the lands.

##### **3. Does the requested variance maintain the general intent and purpose of the By-law?**

Staff are of the opinion that the design of the proposal is sympathetic to the mixed-use context of the neighbourhood, as the fence is anticipated to mitigate existing noise impacts on adjacent residents. The increase in height is not anticipated to pose adverse impacts to surrounding lands or the public realm.

The requested variance maintains the general intent and purpose of the Fence By-law.

##### **4. Does the requested variance maintain the general intent and purpose of the Official Plan?**

The subject lands are designated as “Service Commercial” in the Town Official Plan (2017 consolidation, as amended). The goals and objectives of the Service Commercial designation

as set out in the Official Plan outline that these areas are intended to provide goods and services to the residents of the municipality and the travelling public. Retail commercial uses catering to travellers that rely heavily upon vehicular traffic for their business such as grocery stores are permitted in the Service Commercial designation.

Staff recognize the close proximity of residentially designated lands to the subject site, including the lands immediately to the east. The goals and objectives of the Residential designation as set out in the Official Plan outline that new development or redevelopment must be appropriately located and compatible with surrounding land uses in order to minimize the potential for land use compatibility impacts.

Staff are of the opinion that the proposed increase in height of the fence will assist in mitigating the operational noise impacts for the residents to the east of the site, thereby improving land use compatibility between the established service commercial and residential designations.

Staff consider the requested variance to maintain the general intent and purpose of the Official Plan.

## **5. TOWN, AGENCY AND PUBLIC COMMENTS**

The application was circulated to all appropriate Town departments and external agencies, and public notice was provided as required by the *Planning Act*. The following responses were received:

### Town Departments

Building – No objection.

Finance – No objection.

Fire and Emergency Services – No objection.

Heritage – No objection. Should the installation of the fence on the subject property unearth deeply buried archaeological resource(s), the owner is advised of the following:

*“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.”*

Operations – No objection.

Urban Forestry – It is anticipated the project will be completed without having to remove any trees. All work must be completed in compliance with the Town’s Private Tree By-law.

### Agencies

No agency comments were received at the time this report was prepared.

## Public

One public comment was received at the time this report was prepared, submitted on behalf of the Condominium Corporation of the lands adjacent to the subject property. The comment aimed to ensure that the proposal will have no adverse impacts on the residents or common element property of the condominium. In response to this comment, the applicant noted that Loblaws will take every effort to ensure that any negative effects on neighbouring lands related to the installation of the recommended noise fence will be minimized. Any tree removals associated with the proposal will be subject to the requirements of the Town's Tree By-law.

## **6. STRATEGIC PLAN**

The content of this report supports the following Strategic Plan initiatives:

### Pillar

1. Vibrant & Complete Community

### Priority

1.1 Planning for Progress

### Action

1.1 b) Planning for Progress Initiatives

## **7. OPTIONS**

The Committee may approve, refuse or modify the requested application.

## **8. FINANCIAL IMPLICATIONS**

Not applicable.

## **9. ENVIRONMENTAL IMPLICATIONS**

While removal of trees is not anticipated, the applicant will be required to comply with the Town's Private Tree Protection By-law No. 5139-19, in the event any tree removal is required during construction. As noted above, these impacts are related to the proposed location of the fence along the property line, and not the proposed increase in height.

## **10. COMMUNICATIONS**

Once the Committee of Adjustment makes a decision on the application, notice of the decision will be given as set out in the *Planning Act*. The decision of the Committee of Adjustment is subject to a 20-day appeal period from the date of the decision. If no appeals are received during the appeal period, the decision is final.

Changes to provincial legislation have been made by way of Bill 23 and third-party appeals from private property owners are no longer permitted.

## **11. CONCLUSION**

Planning Staff recommend approval of Fence Variance FV-04/24 as the requested variance is minor in nature, appropriate for the development or use of the land, building or structure, and is

considered to maintain the general intent and purpose of the By-law and Official Plan, pursuant to Subsection 45(1) of the *Planning Act*.

## 12. PREVIOUS REPORTS

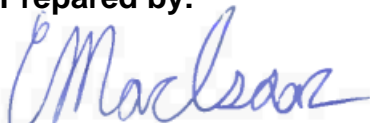
Not applicable.

## 13. APPENDICES

- Appendix I – Application Drawing and Elevations
- Appendix II – Location Map

Respectfully submitted:

**Prepared by:**



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**Reviewed by:**



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