



Minutes

The Blue Mountains, Committee of Adjustment

Date: August 17, 2022

Time: 1:00 p.m.

Location: Town Hall, Council Chambers - Virtual Meeting
32 Mill Street, Thornbury, ON

Prepared by:

Kyra Dunlop, Secretary/Treasurer

Members Present: Robert Waind, Bill Remus, Peter Franklyn, Jim Oliver

Members Absent Jim Uram

Staff Present: Director of Planning and Development Services Adam Smith,
Intermediate Planner Travis Sandberg and Planner Natalya Garrod

A. Call to Order

A.1 Traditional Territory Acknowledgement

We would like to begin our meeting by recognizing the First Nations, Metis and Inuit peoples of Canada as traditional stewards of the land. The municipality is located within the boundary of Treaty 18 region of 1818 which is the traditional land of the Anishnaabek, Haudenosaunee and Wendat-Wyandot-Wyandotte peoples.

A.2 Committee Member Attendance

Chair Waind called the meeting to order at 1:02 p.m. with all members in attendance except Jim Uram who sent his regrets. Peter Franklyn joined the meeting at 1:03 p.m.

Town staff present were Director of Planning and Development Services Adam Smith, Planner Travis Sandberg and Intermediate Planner Natalya Garrod.

A.3 Approval of Agenda

Moved by: Jim Oliver

Seconded by: Bill Remus

THAT the Agenda of August 17, 2022 be approved as circulated, including any additions to the agenda.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

A.4 Declaration of pecuniary interest and general nature thereof

NOTE: In accordance with the *Municipal Conflict of Interest Act*, the Town Committee of Adjustment By-Law 2019-5, and the Town Procedural By-law 2021-76, Committee of Adjustment Committee Members must file a written statement of the interest and its general nature with the Clerk for inclusion on the Registry.

None

B. Deputations/Presentations

Under the authority of the Municipal Act, 2001 and in accordance with Ontario's Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The Corporation of the Town of The Blue Mountains wishes to inform the public that all information including opinions, presentations, reports and documentation provided for or at a Public Meeting, Public Consultation, or other Public Process are considered part of the public record. This information may be posted on the Town's website and/or made available to the public upon request.

None

C. Minor Variance Applications

C.1 Application No. A40-2022

Owner: Tyrolean Property Ltd.

Applicant/Agent:

Municipal Address: 151 Birch View

Legal Description: PLAN 824 LOT 22

Chair Waind read aloud the Public Meeting Notice and Planning staff also confirmed that the Public Hearing Notice was circulated in accordance with the Planning Act by pre-paid first-class mail and was posted on-site on the subject lands. The Secretary/Treasurer also provided a summary of all written comments received as a result of the Public Notice. Planning Staff then provided an overview of the review and recommendations contained in the Staff Recommendation Report.

Chair Waind then opened the public portion of the hearing and asked if anyone in attendance wished to speak to the application.

Andrew Pascuzzo, the applicant's authorized agent, provided their opinion in support of the application and noted that he had seen the staff report.

As there was no one else in attendance to speak in favour of or in opposition to the proposal, Chair Waind closed the public meeting.

Chair Waind asked what the clergy principle was. Intermediate Planner Natalya Garrod noted that the clergy principle was a decision put forward through the Ontario Land Tribunal to ensure planners use policies in place at the time an application was submitted. Natalya noted for the subject application that staff looked at the Zoning By-law that was in place at the time of the applications' submission.

Jim Oliver noted he was surprised at the number of bedrooms per unit and asked how many storeys the buildings would need to be. Andrew Pascuzzo noted that the buildings were 3 storeys. Jim Oliver asked if there were other short term accommodation style buildings in the neighborhood that were also that height. Andrew noted that the height being proposed is consistent with the neighborhood and that the subject property area permitted short term accommodation and that the property owner owned short term accommodation buildings in the neighborhood. Jim Oliver asked how far from the back of unit 3 is it to the back of the property. Andrew advised that it was approximately 30 metres and the ravine behind the properties separate a row of dwellings to the north and south which front on a separate road and that they had completed a slope stability study to determine what the required setbacks from the watercourse would need to be. Jim Oliver asked if Andrew knew who owned the land on which the watercourse passes through. Andrew advised the lands were owned by a number of different properties owners, including on his own client's property.

Chair Waind asked staff if the Committee had the ability to extend the building permit deadline. Natalya advised that the 2 year timelapse of a building permit deadline was a Town standard practice and that if an extension was permitted it would be supported by staff. Natalya noted that site plan approval may be provided before the construction of municipal servicing. Andrew noted that his preference would be for a 5 year deadline as at today.

Moved by: Jim Oliver
Seconded by: Peter Franklyn

THAT the Committee of Adjustment receive Staff Report PDS.22.104, entitled
“Recommendation Report – Minor Variance A40-2022 – 151 Birch View Court
(Tyrolean)”

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

Moved by: Peter Franklyn
Seconded by: Bill Remus

AND THAT the Committee of Adjustment GRANT Minor Variance A40-2022 for the
property municipally known as 151 Birchview Trail in order to permit a surface parking
area to be setback 4 metres from the front lot line and to permit a total of 17 parking
spaces to service the Short Term Accommodation triplex, subject to the following
conditions:

1. That the development be constructed in a manner substantially in accordance
with the site sketch;
2. That the applicant receive Site Plan Approval; and
3. This variance to the zoning by-law is for the purpose of obtaining a building
permit and is only valid for a period of five (5) years from the date of decision,
on an exception basis. If a building permit has not been issued by the Town
within five years, the variance shall expire on August 17, 2027.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

C.2 Application No. A41-2022

Owner: Hopf
Applicant/Agent:
Municipal Address: 120 Creekwood Court
Legal Description: PLAN 16M59 LOT 10

Chair Waind read aloud the Public Meeting Notice and Planning staff also confirmed
that the Public Hearing Notice was circulated in accordance with the Planning Act by
pre-paid first-class mail and was posted on-site on the subject lands. The
Secretary/Treasurer also provided a summary of all written comments received as a
result of the Public Notice. Planning Staff then provided an overview of the review and
recommendations contained in the Staff Recommendation Report.

Chair Waind then opened the public portion of the hearing and asked if anyone in attendance wished to speak to the application.

Harold Hopf, the applicant, provided their opinion in support of the application and thanked the Committee and staff.

As there was no one else in attendance to speak in favour of or in opposition to the proposal, Chair Waind closed the public meeting.

Peter Franklyn noted that the staff report noted that the request applies to a structure that is intended to provide outdoor amenity space permitted as as-of-right at a minimum yard setback if it is detached. Peter asked if it was the same structure but merely detached we would not require a variance in this case. Natalya noted that detached structures are permitted to be within 15 metres of the rear lot line. Natalya noted that a structure could be located closer to the rear lot line had it been a detached structure. Natalya noted that there are other structures in the rear yard that are permitted to be closer to the setback.

Moved by: Bill Remus

Seconded by: Peter Franklyn

THAT the Committee of Adjustment receive Staff Report PDS.22.105, entitled "Recommendation Report - Minor Variance A41-2022 – 120 Creekwood Court"

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

Moved by: Jim Oliver

Seconded by: Peter Franklyn

AND THAT the Committee of Adjustment GRANT Minor Variance A41-2022 for the property municipally known as 120 Creekwood Court to permit the construction of an uncovered deck to project 4.3 metres into the rear yard and a staircase to project 5.5 metres into the rear yard, subject to the following conditions:

1. That the development be constructed in a manner substantially in accordance with the site sketch attached; and
2. This variance to the zoning by-law is for the purpose of obtaining a building permit and is only valid for a period of two (2) years from the date of decision. If a building permit has not been issued by the Town within two years, the variance shall expire on August 17, 2024.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

C.3 Application No. A42-2022

Owner: Derksen

Applicant/Agent:

Municipal Address: 027536 30th Sideroad

Legal Description: Collingwood Concession 11, Part Lot 30, Registered Plan 16R-9274, Part 1.

Chair Waind read aloud the Public Meeting Notice and Planning staff also confirmed that the Public Hearing Notice was circulated in accordance with the Planning Act by pre-paid first-class mail and was posted on-site on the subject lands. The Secretary/Treasurer also provided a summary of all written comments received as a result of the Public Notice. Planning Staff then provided an overview of the review and recommendations contained in the Staff Recommendation Report.

Chair Waind then opened the public portion of the hearing and asked if anyone in attendance wished to speak to the application.

Paul Derksen, the applicant, provided their opinion in support of the application. Paul noted that the previous owner had purchased the land in the 1930's, which was sold to the Clendenan family and then farmed by various families since. Paul noted that the lands had been continually farmed for over 100 years. Krystin Rennie, the applicant's authorized agent, noted that staff had mentioned that the "D" zoning would be pushed aside at this time. Krystin noted that "D" zoning would allow future development and if the property was zoned for development that the applicant would not need to bring forward the Minor Variance Application. Krystin noted that the Official Plan does reference the importance of agricultural use and that the subject property was located on the settlement boundary line and surrounded by farm lands. Krystin advised that they were not expecting municipal servicing to the Clarksburg area at this time but were pursuing this.

As there was no one else in attendance to speak in favour of or in opposition to the proposal, Chair Waind closed the public meeting.

Chair Waind noted that the staff report noted that the property is located in a transitional area moving from rural to village west, and that both residential and agricultural uses are adjacent to the subject lands. Chair Waind noted that we were not creating a new parcel at all but realigning some lot lines and providing an easement for hydro. Chair Waind noted that in order to deal with the application for building relief would the Committee be able to merely recognize the deficiency in the setback for the barn forgetting about the zoning altogether. Chair Waind noted that these agricultural uses were probably in existence long before the provisions of the *Planning Act* and the Committee was not dealing with anything other than an existing use that will not effect anyone else other than the owners. Intermediate Planner Travis noted that through the review of the application and the lot addition application Town staff did not receive satisfactory evidence that the existing use was a legal non-conforming use. Travis noted

that in reviewing the lot addition that the existing use was a legal non-complying use and therefore the request is to recognize a non-complying use. Travis noted that if the use was legal non-complying the owner would have inherent rights under the *Planning Act*. Travis noted that under the four tests of a Minor Variance Application that introducing an agricultural use into Community Living Area under the Official Plan is not supportable.

Chair Waind noted that this application was not introducing a new use. Jim Oliver noted that if agricultural uses had been ongoing on the property for decades why would the property not meet the definition of a legal non-conforming use. Travis noted that the applicant needed to demonstrate that the agricultural use was established before the Zoning By-law and that the key question was whether the farm was continuously used on the subject property. Travis advised that staff had not received evidence that the land was continuously farmed to clearly demonstrate it meets the legal non-conforming use.

Jim Oliver asked what the age of the barn was. Travis noted that staff had not been provided with that information. Travis advised that there are other barns in Town that were old but which were not used for agricultural purposes and that the application is being reviewed under section 45(1) of the *Planning Act*. Peter asked when the property was designated Community Living or Village Residential. Travis confirmed that the Zoning By-law 83-40 enacted by Collingwood Township in 1984 designated the lands Village Residential. Chair Waind noted that nothing is changing other than the lot line and that these lands would be used for farming. Chair Waind noted that in good faith we tried to provide more meaningful lot lines and that the zoning issue would have had more to do with a lot line. Chair Waind noted that he did not see how a new use for an existing operation was being introduced. Peter noted that the circumstances were unique as there had been agricultural activity on the subject property but that we did not know if it was continuous since 1984. Peter noted that the property was on the outskirts of Town and asked if the owner was planting cash crops rather than using the horse barn if that would be any different. Travis noted that it would still be considered an agricultural use under the Zoning By-law and Official Plan.

Jim Oliver asked if part of the reason why the application was coming forward was to prevent future issues. Paul Derksen noted that he had a dozen chickens and horses on the farm and had been told that this was not permitted. Paul noted that he would like to keep using the land as it has been used.

Moved by: Jim Oliver
Seconded by: Peter Franklyn

THAT the Committee of Adjustment receive Staff Report PDS.22.106, entitled
“Recommendation Report – Minor Variance A42-2022 – 30th Sideroad (Derksen)”

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

Moved by: Jim Oliver
Seconded by: Peter Franklyn

THAT the Committee of Adjustment GRANT Minor Variance A42-2022 subject to the following conditions:

1. permit the existing agricultural uses to continue as permitted uses on the subject properties;
2. permit a minimum rear yard set back of 5.0 metres, whereas a minimum of 9.0 metres is required.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

C.4 Application No. A43-2022

Owner: Van Allen
Applicant/Agent:
Municipal Address: 119 Hoover Lane
Legal Description: Concession 7, Part Lot 27

Chair Waind read aloud the Public Meeting Notice and Planning staff also confirmed that the Public Hearing Notice was circulated in accordance with the Planning Act by pre-paid first-class mail and was posted on-site on the subject lands. The Secretary/Treasurer also provided a summary of all written comments received as a result of the Public Notice. Planning Staff then provided an overview of the review and recommendations contained in the Staff Recommendation Report.

Chair Waind then opened the public portion of the hearing and asked if anyone in attendance wished to speak to the application.

Jo Redman, the applicant's authorized agent, provided their opinion in support of the application. Jo noted that the adjacent property next to the subject property was owned by the property owners and they had owned those sites for over 30 years.

As there was no one else in attendance to speak in favour of or in opposition to the proposal, Chair Waind closed the public meeting.

Moved by: Peter Franklyn

Seconded by: Jim Oliver

THAT the Committee of Adjustment receive Staff Report PDS.22.107, entitled “Recommendation Report – Minor Variance A43-2022 – 119 Hoover Lane (Van Allen)”

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

Moved by: Peter Franklyn

Seconded by: Bill Remus

AND THAT the Committee of Adjustment GRANT Minor Variance A43-2022 to permit a minimum interior side yard of 1.25m to permit a proposed addition to an existing single detached dwelling unit, subject to the following conditions:

1. That the development constructed in a manner substantially in accordance with the site sketch attached; and
2. That this variance to the zoning by-law is for the purpose of obtaining a building permit and is only valid for a period of two years from the date of decision. If a building permit has not been issued by the Town within two years, the variance shall expire on August 17, 2024.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

C.5 Application No. A44-2022

Owner: Carbon Holdings Ltd.

Applicant/Agent:

Municipal Address: 222 Bay Street East

Legal Description: Plan 410 Lot 67 & 68

Chair Waind read aloud the Public Meeting Notice and Planning staff also confirmed that the Public Hearing Notice was circulated in accordance with the Planning Act by pre-paid first-class mail and was posted on-site on the subject lands. The Secretary/Treasurer also provided a summary of all written comments received as a result of the Public Notice. Planning Staff then provided an overview of the review and recommendations contained in the Staff Recommendation Report.

Chair Waind then opened the public portion of the hearing and asked if anyone in attendance wished to speak to the application.

Gord Russell, the applicant's authorized agent, provided their opinion in support of the application. Gord provided an overview of the history of the application. Gord advised that two original lots were created within Plan 410, being Lot 67 and 68. Gord noted that on Lot 67 in the 1950's and 1960's there was a cottage and accessory garage constructed. Gord noted that in 1975 the cottage was taken down and a new house constructed and the existing garage remained, and that in 2015 the Diamond's approached the owner of the house and purchased Lot 67, and Lot 68 which is vacant land. Gord noted that the Diamond's decided to tear down the existing house, merge the two lots, build a new home and maintain an accessory building. Gord noted that the owner's did not know the accessory building crossed the lot line. Gord noted that now that the new house is built they had a survey that shows the existing accessory building which was constructed in the 1950's crosses the boundary line by a maximum of 2 feet, and that what the owners wanted to do to achieve proper title was to move the accessory building onto the property and provide a setback of 1 metre. Gord noted that without a doubt they were legal non-complying, because they had confirmation that the non-compliance was legal up to the property line at 0 metre setback. Gord noted they would like to improve that setback by moving the building by 1 metre setback. Gord noted that they had approached planning staff and that they were instructed to proceed with an application under section 45(1), which seeks a variance, of the *Planning Act* rather than section 45(2), which allows for other powers of the Committee of Adjustment. Gord noted that at the time they had this initial discussion with staff they were advised that staff could likely support the application under s 45(1). Gord noted that they submitted their application and were recommended to get feedback from neighbouring properties regarding the proposed variance of moving the accessory structure and received positive comments back on the application. Gord noted that they submitted their application in accordance with all direction including preliminary meeting with staff and the planning report now recommends refusal of the variance. Gord noted that if the application is denied the building will stay where it is. Gord noted that if it was more appropriate to review the application under s45(2) which deals with the enlargement or relocation of an existing building then we can proceed that way. Gord noted that he had spoken to the Director of Legal Services Will Thomson who advised that reviewing the application under s45(2) was probably the best way to proceed. Gord noted that he can re-submit the application to be dealt with under s45(2) if desired, but that he does feel that the application meets the 4 tests of a minor variance under s45(1) which is how this application was submitted.

Chair Waind noted that the Town could issue an order to demolish the building on the road allowance. Gord noted that normally there would be an Encroachment Agreement to allow the owner 60 days to move the building, and that nobody has indicated an issue with the building. Gord noted that the applicant is requesting the change to comply. Director of Planning and Development Services Adam Smith noted that staff recommended to defer the application to determine if the application was a s45(2) issue and that staff intended to meet with the Director of Legal Services to consult. Gord noted that if the application was easier to support under s45(2) then the applicant

would proceed in that direction but that if the Committee did not have an issue with the application under s45(1) that he would ask the Committee to approve the minor variance today. Peter noted that the applicant had done the right thing by moving the building and found the history of the property very useful. Peter noted that per the site visit he conducted that the building was not intrusive and in fact the applicant was trying to make it better. Jim Oliver asked if the application was deferred and more work was required to be done if that would incur further expenses to the applicant. Gord noted that it would incur additional expense to his clients.

Steve Diamond, the owner, spoke in support of his application and noted that he would prefer to move forward today with the application which will improve what exists on the property today.

As there was no one else in attendance to speak in favour of or in opposition to the proposal, Chair Waind closed the public meeting.

Moved by: Jim Oliver

Seconded by: Peter Franklyn

THAT the Committee of Adjustment receive Staff Report PDS.22.108, entitled "Recommendation Report – Minor Variance A44-2022 – 222 Bay Street East (Carbon Holdings Limited)"

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

Moved by: Jim Oliver

Seconded by: Peter Franklyn

AND THAT the Committee of Adjustment GRANT Minor Variance A44-2022 for the lands known as 222 Bay Street to permit an existing accessory building, or a building of the same dimensions, to be located 1 metre from the front lot line and 0.5 metres from the interior side lot line.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waind

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

D. Consent Applications

None

E. Sign Variances

None

F. New and Unfinished Business

F.1 Previous Minutes

Moved by: Jim Oliver

Seconded by: Bill Remus

THAT the Minutes of July 20, 2022 be approved as circulated, including any revisions to be made.

Yay (4): Bill Remus, Peter Franklyn, Jim Oliver, Robert Waing

Absent (1): Jim Uram

The motion is Carried (4 to 0, 1 absent)

F.2 Business Arising from Previous Minutes

Jim Oliver noted that Council will be considering Committee of Adjustment Procedural By-law Changes. Secretary Treasurer Kyra Dunlop provided an overview of the process by which procedural by-laws were reviewed and the next steps for members of the public, including Committee members, to participate in the process if they wished.

G. Notice of Meeting Date

September 21, 2022

Town Hall, Council Chambers and Virtual

and

October 12, 2022

Town Hall, Council Chambers and Virtual

H. Committee Member Expenses

I. Adjournment

Moved by: Jim Oliver

Seconded by: Bill Remus

THAT the Committee of Adjustment does now adjourn at 3:21 p.m. to meet again at the call of the Chair.

Yay (3): Bill Remus, Jim Oliver, Robert Waing

Absent (2): Peter Franklyn, and Jim Uram

The motion is Carried (3 to 0, 2 absent)