



Minutes

The Blue Mountains, Committee of Adjustment

Date: January 15, 2025
Time: 1:00 p.m.
Location: Town Hall, Council Chambers and Virtual Meeting
32 Mill Street, Thornbury ON
Prepared by: Carrie Fairley, Secretary-Treasurer

Members Present: Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, Robert Waind

Staff Present: Manager of Community Planning, Shawn Postma, Chief Building
Official Tim Murawsky and Planner I Manuel Riveria

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

Secretary-Treasurer Carrie Fairley called the meeting to order at 1:00 p.m. and noted that all Committee of Adjustment Members were present, in Council Chambers.

A.3 Approval of Agenda

Moved by: Robert Waind

Seconded by: Michael Martin

THAT the Agenda of January 15, 2025, be approved as circulated, including any additions to the agenda.

Yay (5): Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Carried (5 to 0)

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 2024-04, and the Town Procedural By-law 2023-62, 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

A.5 Previous Minutes

Moved by: Michael Martin

Seconded by: Jim Oliver

THAT the Minutes of December 18, 2024, be approved as circulated, including any revisions to be made.

Yay (5): Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Carried (5 to 0)

A.6 Other Committee Business

A.6.1 Annual Chair Shift

Secretary-Treasurer, Carrie Fairley spoke regarding the annual appointment of the Chair and Vice Chair to the Committee of for the 2025 calendar year. The Committee discussed and made nominations for the Chair and Vice Chair.

Chair Oliver thanked the Committee for appointing him as the Chair for 2025.

Vice Chair McKinlay thanked the Committee for appointing him as the Vice Chair for 2025.

A.6.1.1 Appointment of Chair to the Town of The Blue Mountains Committee of Adjustment for the 2025 Calendar Year

Moved by: Robert Waind

Seconded by: Duncan McKinlay

THAT in accordance with the Town of The Blue Mountains Procedural By-law 2023-62, Jim Oliver is appointed as the Chair of the Committee of Adjustment for the 2025 calendar year ending December 31, 2025.

Yay (5): Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Carried (5 to 0)

A.6.1.2 Appointment of Vice Chair to the Town of The Blue Mountains Committee of Adjustment for the 2025 Calendar Year

Moved by: Jim Oliver

Seconded by: Jan Pratt

THAT in accordance with the Town of The Blue Mountains Procedural By-law 2023-62, Duncan McKinlay is appointed as the Vice Chair of the Committee of Adjustment for the 2025 calendar year ending December 31, 2025.

Yay (5): Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Carried (5 to 0)

B. Public Meeting

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.

B.1 Consent Application No. B09-2024 (Deferred from the August 21, 2024, meeting)

Owner: Joe and Lynda Elmes

Applicant/Agent: Colin Travis, Travis & Associates

Municipal Address: Town Plot Lot 10 SW Louisa Street NE Alice Street RP 16R-8525 Part 1

Chair Oliver noted this Consent Application was deferred from the August 21, 2024, Committee of Adjustment meeting and is back before the Committee with new information from Staff.

Secretary-Treasurer Carrie noted that three letters were received from residents regarding this Application and further noted the letters were similar in nature where their concerns were regarding the potential impacts to the Beaver River Trail, should this lot be created. The Secretary-Treasurer further noted the comments requested Council approval in clearing the proposed conditions. Carrie confirmed that the letters were received after the deadline to receive comments and further confirmed that the letters were circulated to the Committee and Staff in full.

Manager of Community Planning Shawn Postma provided an overview of the recommendation report including the Council resolution which was not in support of executing a municipal land use agreement for the upgrade of Alice Street, East, to municipal standards which would have provided lot frontage and access to a proposed lot. Shawn noted that municipal land use agreements are a delegated staff function and further noted with the new direction provided by Council, staff will not enter into a Municipal Land Use Agreement that would use Alice Street East.

Shawn noted the remaining issue to deal with regarding this Application is how access can be provided to the proposed new lot. Shawn provided alternative solutions to consider, such as upgrading Wellington Street South, as it is currently unopened and if upgraded to municipal standards it could provide road access to both the severed and retained lot. Shawn noted another alternative option maybe available for the severed lands to gain access via an easement over the retained lands, and further noted that would be a temporary solution until the retained lands are further developed, which at that time, Wellington Street could be upgraded to full municipal standards. Shawn noted a third option would be to enter into a road agreement, and noted these have been done in the past, to provide driveway access, off Wellington, to this lot, until such time as Wellington Street is brought up to full municipal standards. Shawn added that this option is not being recommended and is generally not supported by the Town, as these agreements have led to conflicts and issues and where possible, those types of

agreements should be avoided. Shawn cautioned that none of the suggestions he just mentioned have been fully evaluated.

Member Pratt noted her concerns in the second recommendation noted in the Staff Report regarding cash in-lieu. Member Pratt referred to the Official Plan (OP) noting that parkland dedication as a priority in the OP and further noted that there is potential parkland around this property. Member Pratt further noted there are master plans that are being completed and a lot of unknowns surrounding this space, and further noted one known thing is the community wants a park, and a trail and suggested that this is the start of parkland that if we can add to that, we can make it better. Member Pratt noted the sixth recommendation contained in the Staff Report should be amended to include the requirement to provide drawings that incorporate the trail, the potential parkland and where the road ends and the parkland connects to it. Member Pratt further noted that an engineer should be involved but also a landscape architect and this is the chance to built parkland in this corner of Town.

Chair Oliver sought Staff's input on Member Pratt's suggestion regarding in addition to the recommendation of an engineered Lot Development Plan that a landscape architect's plan is also needed, for the nature areas, adjacent to the lot. Shawn noted depending on the access route that is proposed and if trees will be impacted, it would be appropriate at that time to ensure standard requirements such as a tree inventory and protection plans are put into place and to understand what the implications of those are. Shawn noted the owner of the subject lands did undertake this with the Alice Street Road allowance, to understand what would be removed, preserved or enhanced. Shawn noted it would be premature to determine right now all the different scenarios, however, tree protection and enhancement is a priority of this Town and is something Town Staff would be looking for to address this condition.

Member Pratt noted that she is not just speaking about protecting trees, but also for the arrangement for a proper access to the trail, possible parkland dedication and how it all connects to the existing trail.

Shawn noted under the *Planning Act* does not allow for the requirement for park planning and programming of the park, that is the responsibility of the Town and if the Town were to accept this as a land dedication, it would be up to the Town to determine how the land would be used and how the space would be programmed.

Member McKinlay questioned the process that took away the delegated authority of Staff. Member McKinlay further noted that when the motion was passed by the Committee regarding a land use agreement, Member McKinlay noted his assumption

was that Town Staff would work with the Applicant on the land use agreement, and it would come back to the Committee but what was received was a motion from Council. Shawn provided information to the Committee regarding a delegation by the area residents to Council regarding protecting the trail and that is why Council provided a resolution. Member McKinlay further questioned if the delegated authority was removed by Council and Shawn noted that it was not. Member McKinlay further noted his concerns on the process of this application. Shawn noted the delegated authority remains with Town Staff and entering into municipal land use agreement, provided it is not on Alice Street. Shawn noted that Council has not taken over approval of this municipal land use agreement they have just provided direction through resolution that Alice Street is not an acceptable location.

The Committee and Staff discussed if it is possible for Council to be further involved in this application. Shawn noted that no further direction was given for Council to be involved any further in this application.

The Agent for the Applicant, Colin Travis of Travis and Associates, spoke regarding the suggested addition to condition number six, to include Council, noting that given the interest in this file, Council would likely be involved. Colin noted the conditions are a carry-over from other staff reports that recommended approval and the net result is a lot of homework to be completed by the Applicant to determine if one of the two options potential solutions that were identified would work, to receive access and servicing. Colin spoke regarding the recommendation for 5% cash-in-lieu, noting his understanding for the need for a local park in the area to be identified and noted the OP could identify that. Colin spoke regarding the process for cash and lieu, when it comes to one lot severances, which is generally to ask for cash in-lieu. Colin further noted when looking at a 2.5-hectare lot, the parkland contribution is maxed out at 5% of that lot. Colin noted that 5% of 2.5% would be approximately 2500 square metres and when the remaining lands are developed, there may end up being another 500 square metres. Colin further noted that under the *Planning Act*, the net result of the entire land holds when they are developed, maybe three or four hundred square metres total.

Colin noted that what is before the Committee today, is the land severance application, which land is zoned appropriately, for the request. He noted there is a favourable staff report which is recommending cash in-lieu, and Colin further noted cash in-lieu is a standard way of dealing with allowances under the *Planning Act*, in this situation.

Member Martin questioned the proportionality between the severed and retained lots, noting the severed lot looks to be about a third of the size of the retained lot and questioned what is going to be on the retained lot. Colin noted the severed parcel would

be the residential lot and the retained parcel is zoned D – Development and designed as development under the OP. Colin noted under the minimum density criteria, those lands could be developed for single, semi detached or town house type units in the future.

The Committee further discussed the merits of the Application and the two options for access, as noted by Staff.

Shawn noted the three other options provided in the Staff Report are conceptual suggestions and there may be alternative options to be considered, and two of the three recommendations are possible and plausible. Shawn further noted currently there is no further details, and a further review and analysis would be required. Shawn noted that should Wellington Street be upgraded in the future, any temporary or interim access would have to be abandoned, and access would have to be off the public street and a proportion of cost may need to be assigned to the lands.

Member McKinlay spoke regarding the potential of the lands being developed in the future and the options available to the property owner in that regard.

Betty Muise, resident and TBM Tree Trust, spoke noting she has been working with community members regarding this application. Betty noted how this is overwhelming for a resident and therefore she is appearing before the Committee as a resident and volunteer who is concerned about natural space in the community. Betty noted her hope for the applicant to build their home and further noted their intention is to preserve a community asset. Betty noted this consent application is complicated with the requirement of a municipal land use agreement, that would impact the trail. Betty reiterated that they are just trying to preserve a valuable community asset, and they brought the community to say here is our voice. Betty noted that since entering a municipal land use agreement is delegated to Staff, they felt they did not have a voice. Betty further noted that a couple of Committee Members noted the importance of Council weighting in on this application, at a previous meeting and that is why it was suggested to involve Council in this decision, as outlined in a letter received.

Chair Oliver spoke noting his appreciation for the inclusion of the tree preservation plan as part of the Staff Report.

Chair Oliver sought clarification if the Wellington Street extension would be an appropriate alternate entrance and if it contains old apple trees and not any natural habit, which was confirmed.

Member Pratt questioned if a cul-de-sac would be required for the entrance to be located off Wellington Street. Shawn noted that all lots created in the Town must have

direct frontage and access onto a municipal street and if you do not have that, a building permit would not be issued. Shawn noted that alternative access can be proposed, to fulfill the requirements of the Zoning By-law. Shawn noted the Town does not have a position at this point nor does it have a preliminary design on how to build a road on Wellington Street. Shawn noted a cul-de-sac, as noted in the report may require additional land and would have to be designed in accordance with municipal standards and if deviated from that, may need Council approval.

Member Pratt noted her concern is Russell Street and that a dynamic design is needed.

Moved by: Duncan McKinlay

Seconded by: Michael Martin

THAT the Committee of Adjustment receive Staff Report PBS.25.008, entitled “Recommendation Report – Consent for New Lot B09-2024 – Part 1, 16R8525 (Elmes);”

Yay (4): Michael Martin, Duncan McKinlay, Robert Waind, and Jim Oliver

Nay (1): Jan Pratt

The motion is Carried (4 to 1)

Moved by: Jan Pratt

Seconded by: Jim Oliver

Amendments:

2. That the Applicant provide for parkland dedication for the fully property parcel, (both severed and retained) instead of cash-in-lieu, to the satisfaction of the Town of The Blue Mountains.

~~4. That the depth of the severed lot is confirmed to be located entirely within the R1-1 zone or that the depth of the severed lot be modified to ensure that it is located entirely within the R1-1 zone.~~

6. That the Applicant retain an appropriate consulting service to provide detailed design drawings for the provision of appropriate access to the site, to the satisfaction of the Town and Council. A Municipal Land Use Agreement, or other Agreement as deemed appropriate by the Town, shall be entered into to facilitate all approved works. All costs associated with the installation of required works shall be the responsibility of the Applicant.

7. That the Alice Street nor the Russell Street rights-of-way shall not be used to satisfy Conditions 4 and 5.

Yay (1): Jan Pratt

Nay (4): Michael Martin, Duncan McKinlay, Jim Oliver, and Robert Waind

The motion is Lost (1 to 4)

Member Waind provided salient comments for the record, should this matter proceed to the Ontario Land Tribunal or even perhaps the Divisional Court of Ontario. Member Waind noted since graduation from law school in 1969 he has spent more than 55 years in real estate and development matters both at the municipal level for more than 40 of those years and the remainder in private practice here and in London.

Member Waind noted that in all those capacities he has always tried to make the correct and fair decisions based on the laws before us. To that end, Member Waind noted his concerns with the manner in which this particular matter seems to be proceeding. Member Waind further noted that before the Committee is an Application for Consent and that this matter was dealt with over two years ago, with the consent being granted subject to several conditions. Member Waind noted that unfortunately, the Applicant was unable to satisfy the conditions, and the approval lapsed and is now back before this Committee. Member Waind noted that the Provincial Policy Statement (PPS) as well as The County Official Plan and The Blue Mountains Official Plan all speak in some manner about the development of residential dwellings or units in order to address the housing shortage within the province. Member Waind noted that one of the principal tenets of good planning is that lands should be developed to their “highest and best use”. Member Waind noted that with this Application there is a parcel of land that abuts or fronts 4 municipal streets within the Town of Thornbury. He further noted that these lands are currently zoned Residential and Development. The parcel proposed to be severed fronts primarily onto Alice Street and from the sketch attached to staff’s recommendation report, the road extends well past the property lines. Member Waind noted that based on the existing zoning it would seem to indicate that these lands would naturally be serviced from Alice Street and noted that the Town has now changed its mind in that regard. Member Waind submitted that their decision may have been a bit hasty noting that it must be remembered that municipal streets or road allowances are established for two primary purposes. Member Waind noted that one purpose is the fluid movement of vehicular traffic with some provisions for pedestrian use as well. The second is to provide a location for municipal services that can be installed and maintained without the need to access or use private property abutting or adjacent to the municipal road allowance itself. Member Waind further noted that it has always been deemed to be a “best practice” to have all development wherever possible, to have more than just one access road. Member Waind pointed out that in the Application at hand the lands front four road allowances and good planning would assume that in the end all of these existing roads would be fully open and would provide a complete loop for vehicular and pedestrian traffic. Member Waind noted that this is not a Greenfield Site somewhere out in the sticks but within the heart of the Town.

Member Waind noted that the same criteria apply for services noting that all engineers will tell you that it is best, especially for water, to be looped to provide better flow and reduce the need for flushing etc., and further noted that is yet again another valid reason for the use of all four municipal road allowances here. Member Waind noted that in this instance the Applicant is prepared to do whatever is necessary to extend the services to the residentially zoned parcel in order to build a dwelling. They are also prepared to meet whatever the requirements the Town might impose in order to obtain an entrance permit, to the pre-zoned parcel. All at no cost to the town. Member Waind spoke regarding the submissions and delegations to Town Council regarding trail use and existing tree growth and noted that he is not aware of any formal establishment of a trail in this location, as set out in any policies or official plans. Member Waind further noted that the trees could be considered at best an interim land use on a municipal road allowance and noted that he is all for tree preservation but there are appropriate places and town road allowances should not be one of them. Member Waind spoke noting the Town may not have acted in good faith to all but freeze the access to these lands from Alice Street and noted there were no problems before and in fact saw it fit to pre-zone the land for residential use - only to now deny the access that any normal land owner in a similar situation would naturally expect, is totally unfair to say the least. Member Waind noted that there is no need for any municipal agreements and that all of the work and requirements simply must meet all usual standards to the satisfaction of the Town. Member Waind noted that neither “adverse possession” nor “prescriptive rights” such as trail use or tree growth, do not run against a municipality. Member Waind noted that the cutting down of some trees on a municipal road allowance is a red herring and tree growth is an interim land use and can be terminated at the whim or leisure of the Town, whenever the actual use or need for the road is required. He further noted that all good planning principles should always apply in all dealings by a Committee of Adjustment. The Member noted that here we have a previously approved severance with fulfillable conditions, all at not cost to the Town, that now is suddenly prohibited. Member Waind concluded that it seems to be totally unfair and not in keeping with appropriate planning criteria, that must be followed. He noted that we must always base our decisions on the existing planning policies while ensuring adherence to proper municipal standards.

Moved by: Duncan McKinlay

Seconded by: Michael Martin

AND THAT the Committee of Adjustment GRANT provisional consent for application B09-2024, subject to the following conditions:

1. That the Applicant meets all the requirements of the Town, financial and otherwise, for the Certificate of Consent to be issued.

2. That the Applicant provide payment of cash-in-lieu of parkland dedication for the severed lot, or 5% of its appraised value, to the satisfaction of the Town of The Blue Mountains.
3. That the Applicant provide payment of applicable Development Charges for the severed lot, as required by the Town.
4. That the depth of the severed lot is confirmed to be located entirely within the R1-1 zone or that the depth of the severed lot be modified to ensure that it is located entirely within the R1-1 zone.
5. That the Applicant retain an engineer to provide an engineered Lot Development Plan to demonstrate that the existing Town water and sewer services can be extended to service the severed lot. The Lot Development Plan shall be submitted to the Town prior to final approval and registration of the Lot. A Municipal Land Use Agreement, or other Agreement as deemed appropriate by the Town, shall be entered into to facilitate all approved works. All costs associated with the installation of required services shall be the responsibility of the Applicant.
6. That the Applicant retain an engineer to provide detailed design drawings for the provision of appropriate access to the site, to the satisfaction of the Town. A Municipal Land Use Agreement, or other Agreement as deemed appropriate by the Town, shall be entered into to facilitate all approved works. All costs associated with the installation of required works shall be the responsibility of the Applicant.
7. That the Alice Street right-of-way shall not be used to satisfy Conditions 5 and 6.
8. That the Applicant provide Phase 1 and Phase 2 Environmental Assessments, and that any recommendations from the Assessments be implemented, to the satisfaction of the Town.
9. That the Owner provides a description of the land and deposited reference plan, which can be registered in the Land Registry Office.
10. That all above conditions be fulfilled within two years of the Notice of Decision so that the Certificate of Consent pursuant to Section 53(42) of the Planning Act, can be issued by the Town.

Yay (1): Duncan McKinlay

Nay (4): Michael Martin, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Lost (1 to 4)

Moved by: Robert Waind
Seconded by: Michael Martin

THAT the Town of The Blue Mountains Committee of Adjustment REFUSES Consent Application B09-2024.

Yay (4): Michael Martin, Jim Oliver, Jan Pratt, and Robert Waind

Nay (1): Duncan McKinlay

The motion is Carried (4 to 1)

C. Committee Member Expenses

D. Notice of Meeting Date

February 19, 2025
Town Hall, Council Chambers, and Virtual

March 19, 2025
Town Hall, Council Chambers, and Virtual

E. Adjournment

Moved by: Michael Martin
Seconded by: Duncan McKinlay

THAT the Committee of Adjustment does now adjourn at 2:40 p.m. to meet again at the call of the Chair.

Yay (5): Michael Martin, Duncan McKinlay, Jim Oliver, Jan Pratt, and Robert Waind

The motion is Carried (5 to 0)