



# Staff Report

## Planning & Development Services – Planning

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**Report To:** Committee of The Whole  
**Meeting Date:** June 5, 2017  
**Report Number:** PDS.17.51  
**Subject:** Criteria for Committee of Adjustment to consider under new Zoning By-law  
**Prepared by:** Michael Benner, Director Planning & Development Services

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### A. Recommendations

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THAT Council receive Staff Report PDS.17.51 “Criteria for Committee of Adjustment to consider under new Zoning By-law” for information purposes.

### B. Overview

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On March 27, 2017 Council requested that staff prepare a report regarding criteria for the Committee of Adjustment that could be considered under the Town’s New Zoning By-law. This report addresses that direction.

### C. Background

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The Town of The Blue Mountains Committee of Adjustment (the Committee) is an independent body, appointed by Council, under authority granted by the Province of Ontario. The Committee for the Town was created through By-Law 2004-67 being a By-Law constituting a Committee of Adjustment and the Appointment of Members.

The Committee is comprised of 3 members of the public who are appointed with each term of Council. Presently those members are David Morgan, Robert B. Waind and Bill Remus. The Committee is also supported by Town staff with Lori Carscadden appointed as the Secretary/Treasurer for the Committee. Similar to the Committee of the Whole, Town Planning staff prepare reports for consideration by the Committee.

The Committee has authority under Sections 44 and 45 of the Planning Act to grant minor variances from the zoning by-law and fence by-law and other associated powers with extensions. Minor Variances are often necessitated by circumstances, peculiar to a property, which prevent the owner from developing it in a way which conforms to the Town’s Zoning By-laws. Examples of Minor Variance Applications include requests for relief from the building setbacks, building height, accessory structure floor area and parking provisions contained in the Zoning By-laws. Most Committees of Adjustment within the Province also have the authority to grant consents to sever lands. The Town’s C of A has not been granted this authority.

The Committee is authorized to grant a minor variance if all of the following criteria, commonly referred to as the “four tests,” are met:

- The variance is minor in nature, meaning that it would not trigger the need for an amendment to the Zoning By-laws;
- The variance is desirable for the appropriate development or use of the property;
- The general intent and purpose of the Zoning By-law is maintained;
- The general intent and purpose of the Official Plan is maintained.

If a Minor Variance does not meet all four tests, the variance is refused. The application may then have to be considered under a more formal process such as a Zoning By-law Amendment and/or Official Plan Amendment. The decisions of the Committee are appealable to the Ontario Municipal Board.

The Committee meets on a monthly basis, usually the third Wednesday of each month and considers applications received during the previous month as detailed in Attachment 2 to this report. On average, the Committee considers between 15 to 25 applications per year. Appeals are extremely rare with only 3 received since the Committee’s inception in 2004.

## **D. Analysis**

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The powers of the Town’s Committee are derived from Section 45 of the Planning Act as follows:

45. (1) grant minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof;
45. (2) permit the enlargement or extension of building or structures or the continuation of uses considered to be legal non-conforming uses under the municipal by-law.

The draft of the Town’s New Zoning By-law contains language, in section 1.6, regarding the decisions of the Committee made under former zoning bylaws as follows:

### **1.6 MINOR VARIANCES TO FORMER BY-LAWS**

“Where the Committee of Adjustment of the Town of The Blue Mountains or the Ontario Municipal Board has authorized a minor variance from the provisions of By-laws 83-40 (former Collingwood) or 10-77 (former Thornbury) as amended, in respect of any land, building or structure and the decision of the Committee of Adjustment of the Town of The Blue Mountains or the Ontario Municipal Board authorizing such minor variance has become final and binding prior to the enactment of this By-law, the provisions of this By-law, as they apply to such land, building or structure, shall be deemed to be modified to the extent necessary to only and solely give effect to the

provisions of that previous amendment that would otherwise not be in conformity or compliance with this By-law.”

Staff also suggest that the following additional wording (as presently exists in Zoning By-law 10-77) be added to section 1.6 of the New Zoning Bylaw:

“The Committee of Adjustment, upon application of the owner of any land, building or structure affected by this by-law may authorize such minor variance from the provisions of the By-law in respect of the land, building or structure or the use thereof, including the continuation of legal non-conforming uses, provided that, in the opinion of the Committee, the general intent and purpose of the By-law and Official Plan is maintained.”

Such wording will provide additional clarification to the role of the Committee of Adjustment.

## **E. The Blue Mountains Strategic Plan**

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Goal #1: Create Opportunities for Sustainability

Goal #2: Engage Our Communities & Partners

Goal #3: Support Healthy Lifestyles

## **F. Environmental Impacts**

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N/A

## **G. Financial Impact**

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The functions of the Committee of Adjustment are funded through the general tax levy and through application fees collected for Minor Variance applications.

## **H. In consultation with**

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PDS Staff

## **I. Attached**

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Attachment 1 – Bylaw 2004-67

Attachment 2 – Committee of Adjustment Application Process

Respectfully submitted,

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Michael Benner  
Director of Planning and Development Services

For more information, please contact:  
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**TOWN OF THE BLUE MOUNTAINS**

**BY-LAW NO. 2004 - 67**

**Being a By-law constituting a Committee of Adjustment and the Appointment of Members**

WHEREAS Section 44 of the Planning Act, R.S.O. 1990, C-P13, as amended, authorizes a municipality to constitute and appoint a Committee of Adjustment.

AND WHEREAS Council of the Corporation of the Town of The Blue Mountains finds it advisable to do so.

NOW THEREFORE, the Council of the Town of The Blue Mountains enacts as follows:

1. A Committee of Adjustment for the Town of The Blue Mountains, hereinafter "the Committee", is hereby constituted.
2. The Committee shall be comprised of three members appointed by Council and hold office for the term of Council.
3. The following persons are appointed to serve until the time indicated:
  - Robert Waind, term to expire on November 30, 2006,
  - Michael Martin, term to expire on November 30, 2006,
  - Peter Wilgress, term to expire on November 30, 2006.
4. The Committee shall meet once per month or as required and shall deal with those matters arising from Section 45 of the Planning Act, R.S.O. 1990, C-P13, as amended.
5. This By-law shall come into force on August 15, 2004.

READ A FIRST AND SECOND TIME THIS NINTH DAY OF AUGUST, 2004.

READ A THIRD TIME AND FINALLY PASSED THIS NINTH DAY OF AUGUST, 2004.

  
 Ellen Anderson, Mayor

  
 Stephen Keast, Clerk

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I hereby certify that the foregoing is a true copy of By-law No. 2004-67 as enacted by the Council of the Corporation of the Town of The Blue Mountains on the 9<sup>th</sup> day of August, 2004.



