

**REPORT #:** DES 2017 28  
**DATE:** 16 May 2017  
**TO:** Deputy Mayor and Members of Committee of the Whole  
**SUBJECT:** **Home Occupation Review**  
**PREPARED BY:** Brandon Slopack, Planner

**1. RECOMMENDATIONS:**

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That Report DES 2017 28 regarding "Home Occupation Review", be received and that Council direct staff to undertake Option \_\_\_\_, as identified within.

**2. PREAMBLE:**

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On October 18, 2016 Council passed a resolution requesting Staff to provide information related to broadening home based business permissions within the zoning by-law. This resolution was provided generally in response to recent inquiries from residents and property owners regarding permissions within Zoning By-law 2010-050 primarily related to outdoor swim schools and music lessons operating as home occupations. Staff have reviewed existing permissions and conducted research to determine if and/or how other municipalities address these uses within their zoning by-laws.

The purpose of this report is to clarify existing zoning permissions for outdoor swim schools and music lessons as home occupations and provide options specifically related to outdoor swim schools. The report also provides a summary of the process required and issues to consider related to expanding the uses permitted as home occupations. Finally, the report includes a request for Council to identify any specific potential home occupation uses they wish Staff to investigate.

**3. BASIC DATA PERTAINING TO THE MATTER:**

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**Introduction and Background**

The Bradford West Gwillimbury Official Plan (OP) supports home occupations in residential areas as Policy 5.3.1.2 states that *home based businesses and accessory uses that are appropriate to a residential neighbourhood will be encouraged and regulated in the zoning by-law.*

In conformity with the OP, Zoning by-law 2010-050, through Section 4.12 (See **Attachment 5.1**) permits home occupations subject to a number of regulations to ensure the home occupation is small in scale and the potential for negative impacts on the adjacent residential uses and the general character of residential neighbourhoods are minimized. The primary regulations include:

- limiting the use to being conducted as an indoor accessory use within a permitted dwelling unit;
- maximum one (1) non-resident employee;
- requiring the operator of the business to reside in the dwelling;
- restricting the use to the dwelling and prohibiting the use from being conducted in any accessory building, yard or private garage;
- maximum gross floor areas (gfa) dedicated to the home occupation;
- stipulating that the home occupation shall not create noise, vibration, fumes, odour, dust, glare or radiation that is detectable outside the dwelling unit; and
- specifically prohibiting certain uses such as adult entertainment, paint shop, tattoo parlour, pet salon and fitness centre.

For reference, *Home Occupation* is defined in the Zoning By-law as “*the use of part of a dwelling unit for the conduct of a profession, trade or occupation that results in a product or service and which is clearly accessory to the principal residential use of the dwelling unit.*”

In the summer/fall of 2016 Staff received an inquiry from a local swim school operator regarding backyard swim schools operating within residential neighbourhoods in contravention of the Zoning By-law. Three properties were identified however the complainant did not file a formal complaint with the Town. Notwithstanding, they did file a complaint with the Simcoe Muskoka District Health Unit (SMDHU) and the SMDHU subsequently contacted the Town. At that time the Town initiated an investigation and has since confirmed that that private swim lessons were being taught at the three (3) subject locations.

Around the same time, the Town received complaints concerning excessive traffic and intermittent noise concerns resulting from personal music lessons and group choir lessons being offered from a residential dwelling on Langford Boulevard. Staff investigated the complaint and given the nature and scale of the operation it was determined that the use was considered a “commercial school” by definition and was therefore not permitted as a home occupation. Staff have confirmed that the use has since ceased to operate at the subject location.

Due in part to these complaints and a general interest in home occupation permissions and regulations, Council passed the following Resolution (2016-445) at their October 18, 2016 Regular Meeting:

*“That Staff be requested to provide information pertaining to the following: the steps required to broaden home based businesses in the Zoning by-law ....”*

In effort to provide some clarity and direction regarding the specific uses mentioned above and to address Council’s motion, each of the items are discussed in detail in separate

sections below.

### **Private Back Yard Swim Lessons/Schools**

Back yard swim schools are not currently permitted as a home occupation as they would be conducted outside the main dwelling i.e. in the yard. Clause 4.12 (d) states that *the use is entirely restricted to the dwelling unit and is not conducted in whole or in part in any accessory buildings, **yard** (emphasis added) or private garage*. In addition, Clause 14.2 (j) stipulates that *a home occupation or a custom workshop shall not create noise, vibration, fumes, odour, dust, glare or radiation that is detectable outside the dwelling unit*. Given the nature of the use, noise would be the primary consideration if swim schools were permitted as home occupations. Additionally, Clause 4.12 (h) states that *there is to be no outside storage of materials, goods or vehicles in conjunction with the home occupation use*. Outdoor swimming lessons may require outside storage of equipment which would violate the by-law.

Staff conducted a review of the Home Occupation permissions and regulations within the zoning by-laws of nine (9) other local municipalities to gain an understanding of current practices as compared to BWG. The review showed that outdoor swimming lessons/schools are not permitted as a home occupation in all nine (9) municipalities. Similar to BWG, all the By-laws had the consistent restriction that home occupation uses must be entirely within the dwelling and/or there restrictions indicated that there can be no exterior evidence that a home occupation exists. A table summarizing the municipalities reviewed is provided as **Attachment 5.2**.

### **The Amendment Process**

There are three options for considering a land use that is not permitted as-of-right in the zoning by-law such as outdoor swim schools. They include:

- 1) a zoning by-law amendment initiated by the Town,
- 2) an owner initiated site-specific zoning bylaw amendment application or
- 3) an owner initiated application for minor variance through the Committee of Adjustment.

The Town initiated amendment option would require the Town to undertake the public consultation process, prepare a zoning by-law amendment and provide recommendation to Council through a Staff Report. If approved, the effect of such an amendment would be to permit backyard swim schools as home occupations as of right throughout the Town. A “blanket” zoning of this nature may be problematic in that the introduction of a non-residential use that is currently prohibited may lead to the establishment of a non-compatible use with limited ability to mitigate negative impacts such as traffic, parking and most importantly increased noise given the use would be conducted entirely outside. To help address this issue specific regulations could be considered such as: maximum number of students, maximum number of instructors, hours of operation and seasonal operation (i.e. June – August). Notwithstanding, a “blanket” amendment may set a precedent to establish other, potentially more offensive, “home occupations” in residential areas throughout the Town.

Under current regulations property owners interested in operating an outdoor swim school could either apply for a site specific zone amendment to permit a swim school (a use outside

the main dwelling) or they could apply for a minor variance to allow the use to be conducted outside the dwelling. The zone amendment option would require a complete application, a fee of \$5,150, planning justification, circulation to neighbouring properties, a public meeting, a staff recommendation report and a decision by Council. This process typically would take 3 - 4 months. Staff would note that the Planning Act technically permits assignment of conditions to zoning. However to use this tool the OP must include policies related to zoning with conditions and the conditions would be limited to those prescribed by the Provincial Minister. BWG's current OP does not include policies related to zoning conditions and to Staff's knowledge the prescribed conditions have not yet been formulated by the Province. As such this tool is limited in its ability to implement conditions to regulate the use. In addition, due to the temporary nature of backyard swim schools, it would appear that this process would be overly onerous and costly for owners.

The variance option similarly requires an application, circulation to neighbouring properties and holding of a public meeting, a Staff recommendation and Committee of Adjustment (C of A) decision. However this option is less onerous for owners as the justification and determination of appropriateness is less burdensome as it is based on the 4 tests for minor variances. This process is cheaper (\$824) and less time consuming as the C of A meeting is required to be held within thirty (30) days of the date of a complete application being submitted. More importantly this process allows the C of A to grant variances subject to conditions deemed necessary and appropriate to regulate the use to mitigate potential negative impacts on a site specific basis. As previously noted these conditions may include; limiting the months and hours of operation, limiting the timeframe of approval (i.e. permission expiration or be reassessed after a certain term); limiting the number of students and/or employees; health department approval and including a condition that the Noise By-law not be violated. Of the municipalities Staff contacted, a number of them acknowledged that requests for swim schools and other non-permitted home occupations are infrequently made however when they are requested the minor variance process has been used to consider the use on a case by case basis.

In summary, as it relates specifically to private outdoor swim lessons as a home occupation, Staff have provided Council with two options which include: 1) preserving the "status quo" whereby the use remain prohibited as a home occupation but could be considered through the minor variance application process or 2) directing Staff to undertake the necessary planning process to consider a specific Town initiated amendment to the zoning by-law that would permit swim schools as-of-right across the entire Town subject to any appropriate and necessary regulations. Based on the above considerations, Staff believe the preferred option would be the "status quo" option. The variance process provides a simpler, cheaper and less time consuming process that is appropriate given the temporary nature of the use. It provides for public consultation through the C of A and does not compromise the Town's ability, on a case by case basis, to complete an appropriate level of technical review, to test appropriateness of the use, to address potential impacts and to include conditions of approval, if granted.

Finally, if over time there is evidence that approved schools operate with minimal impact and/or complaint then Council could at that time consider a "blanket amendment" to permit swim schools as a home occupation as of right. Staff might suggest that the most efficient approach would be to include this in the comprehensive review of the zoning by-law that

would be initiated upon the completion of the OP review and update that is currently underway.

### **Music Lessons**

In addition to private outdoor swim schools, the Town has received recent inquiries and complaints related to music lessons/choir lessons being conducted as a home occupation. Specifically, a complaint was received regarding traffic and noise resulting from the use of a property on Langford Boulevard for personal music lessons and group choir lessons.

Upon further investigation and review of the current zoning by-law, Staff are of the opinion that music lessons would be permitted as a home occupation subject to compliance with home occupation regulations in Section 4.12. To comply the lessons would need to take place wholly within the dwelling and not create any noise that is detectable outside the dwelling. Given the nature of the use some ambient noise may be expected however Staff would be comfortable with the application and enforcement of the Noise By-law to meet the intent of the home occupation noise provision in the zoning by-law. Notwithstanding, Staff reserve the ability to make interpretations regarding permissions and compliance based on the nature and intensity of use. Such was the case for the Langford Boulevard property whereby upon further investigation the scale and nature of use fit more within the definition of *commercial school*, which is not permitted in residential zones.

Staff's research on music lessons revealed that all nine (9) of the local municipalities reviewed permitted music lessons as a home occupation. Most of the by-laws recognized a concern for noise, however Municipal Staff we spoke to indicated that this was not enough to restrict the use and that they could enforce the Zoning By-law and/or enforce the Noise Control By-laws if noise became an issue.

In order to address noise and other potential impacts some of the municipalities polled limit the number of students at a time (Burlington, Markham, Barrie and Aurora). However, many are similar to BWG whereby the home occupations must be located within a detached dwelling and not create any noise. (i.e. Burlington and Oakville). A table summarizing the municipalities reviewed is provided as ***Attachment 5.3***.

In summary, music lessons are permitted as a home occupation subject to meeting all applicable zoning by-law provisions and as such the Town can continue to regulate the use through both the Zoning By-law and the Noise By-law. It is acknowledged that additional provisions specific to this type of use could be helpful such as limiting the number of students. However, Staff would suggest that similar to outdoor swim schools additional provisions and/or amendments to the Zoning By-law could be considered through the comprehensive zoning by-law review slated to be completed after OP update.

### **Council Resolution 2016-445**

On October 18, 2016 Council passed a resolution requesting Staff to provide information on *the steps required to broaden home based businesses in the zoning by-law*.

Generally, the steps required to consider a Town initiated amendment to the home occupation

provisions in the zoning by-law would include:

- Council directing Staff to undertake the review;
- Issue identification and background research including reviewing the home occupation by-laws of other municipalities;
- Preparation of a draft zoning by-law amendment;
- Presentation of a draft zoning by-law amendment at a Public Meeting to obtain public comment;
- Finalize the zoning by-law amendment; and
- Present the zoning by-law amendment and Staff Recommendation to Council for consideration and decision.

The above process is the standard process for any Town initiated zoning by-law amendment. If Council directs Staff to initiate the project it would be helpful if specific uses or businesses of interest and/or concern could be identified to help focus the review and recommendations. To that end Staff have included an optional motion whereby Council would identify any such uses.

Although a Town initiated amendment could identify some additional home occupation provisions and potentially broaden the spectrum of as-of-right home occupations permissions, Staff advise that the current provisions are typical as compared to other municipalities and are sufficiently broad to provide some flexibility in use permission. The provisions are specifically written to regulate the permitted uses through performance standards designed to ensure minimal negative impact on residential neighbourhoods. The by-law purposely does not list permitted uses as it would be challenging to identify all potential uses that could be conducted as home occupations and conversely only prohibits a select few. This leaves room for judgement as to the use being permitted subject to satisfying the use regulations which then by association provides a fairly broad choice of home occupations with the focus being on minimizing potential negative impacts.

Existing processes such as minor variance and site specific zoning by-law amendment provide opportunities to broaden the range of home occupations without initiating a Town wide amendment. For example, the minor variance process is a public process that would allow Staff to review requests such as swim schools on a case by case basis to determine any issues or concerns and ultimately provide recommendation as to the appropriateness of the use being conducted outside the main dwelling. This process has the added benefit of allowing conditions to be applied to any approvals for the purpose of further regulating the use.

It should be noted that with respect to property owners that face zoning by-law non-compliance issues, Staff suspend enforcement efforts if the subject matter is under review by the Town or the property owner has applied for a rezoning/variance to address the non-compliance. Suspending the enforcement effort provides a reasonable opportunity for the zoning compliance issue to be resolved. Exceptions to this approach occur if a life safety issue exists or there is potential for impacts on Town property.

In summary staff suggest the following options are available for Council's consideration:

**Option A** - That Council direct Staff to continue to implement and enforce the current zoning by-law regulations regarding outdoor swimming schools and music lessons as home occupations (“status quo”); and

That Council direct Staff to include a review of the home occupation provisions in the next comprehensive review and update of the Zoning By-law.

Or

**Option B** - That Council direct Staff to initiate the public consultation process and the preparation of a draft by-law for consideration of an amendment to Zoning By-law 2010-050 to specifically permit outdoor swim schools as a home occupation as-of-right subject to performance standards and to identify any additional provisions related to teaching of music lessons as a home occupation.

And/Or

**Option C** - That Council direct Staff to initiate a general review of the Home Occupation section of the Zoning By-law and report back to Council on any recommended amendments that may broaden the choice of home based businesses in the zoning by-law including following specific uses for consideration \_\_\_\_\_, pursuant to Resolution 2016-445.

In conclusion, Council has a number of options available regarding specific uses (swim schools, music lessons) and home occupation provisions and permissions in general. Staff have provided a number of motions for Council to consider. Notwithstanding, staff believe that the existing by-law provisions balance flexibility related to permitted uses while at the same regulating home occupations to ensure minimal impact on the residential neighbourhoods in which they are located. It is suggested that the most efficient and desirable option would be Option A (status quo) which is to complete the review and present amendments for consideration at the time of the comprehensive review and update of the Zoning By-law after the OP update is complete. If the update is stalled for any reason the Town initiated review could commence at any time through motion of Council.

If Council selects Option A, Staff will assist any affected property owners with the variance process if they choose to pursue an application.

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#### **4. EFFECT ON TOWN FINANCES:**

Implementation of the identified options are not anticipated to have a significant impact on the Town’s budget. Each option would require different quantities of staff time with the Town initiated amendment options (B & C) being the most labour intensive.

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#### **5. ATTACHMENTS:**

Attachment 5.1 – Zoning By-law Excerpt (Section 4.12 – Home Occupations)  
Attachment 5.2 – Outdoor Swim Lessons Municipal Review Summary  
Attachment 5.3 – Music Lessons Municipal Review Summary

**6. APPROVALS:**

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Ryan Windle, Manager of Community Planning  
Ian Goodfellow, Director of Finance/Treasurer  
Geoff McKnight, Chief Administrative Officer

Approved - 04 May 2017  
Approved - 05 May 2017  
Approved - 08 May 2017

- vii) The *use* shall be clearly subordinate and *accessory* to the main *use* on the same *lot*;
- viii) Only the sale of goods that are primarily manufactured, processed, fabricated or produced on the *premises* is permitted;
- ix) Outdoor storage of goods or materials related to a *home industry* is permitted in the *rear yard* and *interior side yards* only, provided that the area occupied by such outdoor storage of goods or materials does not exceed 50 percent of the *gross floor area* of the *home industry*;
- x) Only currently licensed *motor vehicles*, associated with the *home industry*, are parked or stored on the *lot* and within an interior side or *rear yard*;
- xi) Any outdoor storage associated with the *home industry* shall be located within a fenced compound and screened from view in accordance with the requirements of Section 4.25 of this by-law;
- xii) There is no external advertising other than a sign erected in accordance with the *Town's Sign By-law*;
- xiii) The following shall not be permitted as a *home industry*:
  - i) *Catering business*;
  - ii) *Contractor's yards*; and,
  - iii) Any *use* involving the storage, repair, maintenance and/or towing of *mobile homes, motor vehicles* or recreational vehicles; and,
- xiv) *Home industry uses* shall not include the generation of or storage of *hazardous waste, liquid industrial waste*, or any severely toxic contaminant listed in Schedule 3 contaminants of Ontario Regulation 347 of the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended and shall not generate *sewage effluent* in excess of 4,500 litres per day.

#### 4.12 HOME OCCUPATIONS AND CUSTOM WORKSHOPS

Where a *home occupation* or *custom workshop* is a permitted *use*, it shall be permitted subject to the following provisions:

- a) A *home occupation* shall be conducted as an indoor *accessory use* within a permitted *dwelling unit* without changing the primary residential character thereof;
- b) Not more than one non-resident employee, in addition to the residents of the *dwelling unit*, is permitted to be engaged in the *home occupation* and *custom workshop* business and working in the *dwelling unit*;

- c) Any *dwelling unit* containing a *home occupation* or *custom workshop* shall be occupied as a residence by the operator of the business;
- d) The *use* is entirely restricted to the *dwelling unit* and is not conducted in whole or in part in any *accessory building, yard* or *private garage*;
- e) No more than one *home occupation* or *custom workshop* shall be permitted in any *dwelling* and in no case shall there be both a *custom workshop* and a *home occupation* in the same *dwelling*;
- f) The maximum *gross floor area* dedicated to the *home occupation* or a *custom workshop* shall be in accordance with the maximum *gross floor areas* identified in Table 4.3, below:

**TABLE 4.3: MAXIMUM FLOOR AREA FOR A HOME OCCUPATION OR CUSTOM WORKSHOP**

ZONES	MAXIMUM GROSS FLOOR AREA
• All Residential Zones	25% or 50.0 sq.m, whichever is the lesser
• All other Zones, where permitted	25% up to a maximum of 100.0 sq.m

Note: *Floor area in basement or cellar* not to be included within calculation

- g) There are no goods, wares or merchandise offered or exposed for sale, or sold or kept for sale on the *premises* other than those produced on the *premises*;
- h) There is no outside storage of materials, goods or vehicles in conjunction with the *home occupation use*;
- i) There is no external advertising other than a *sign* erected in accordance with the *Town Sign By-law*;
- j) A *home occupation* or *custom workshop* shall not create noise, vibration, fumes, odour, dust, glare or radiation that is detectable outside the *dwelling unit*; and,
- k) The following shall not be permitted as a *home occupation* or *custom workshop*:
  - i) *Adult entertainment use*;
  - ii) *Catering business*;
  - iii) *Dating/escort services*;
  - iv) *Paint shop*;

- v) Tattoo parlour;
- vi) *Taxi service depot/dispatch establishments*;
- vii) *Animal clinic - Large Animal and Animal clinic - small animal*;
- ix) Any use involving the storage, repair, maintenance and/or towing of *mobile homes, motor vehicles* or recreational vehicles;
- x) *Pet salon*; and,
- xi) *Fitness centre*.

#### 4.13 LANDSCAPED OPEN SPACE REQUIREMENTS

##### 4.13.1 General Requirements

- a) Where this By-law specifically requires a minimum area of *landscaped open space* on a *lot*, no part of any *driveway, parking area, loading space, stoop, balcony* or rooftop terrace, other than an open landscaped area located directly above an underground *parking area* shall be deemed part of any such required *landscaped open space*.

##### 4.13.2 Planting Strips - Location

A *planting strip* or buffer screen referred to in this Section may form a part of any *landscaped open space* required by this By-law and may form part of a required *yard*.

- a) A 3.0 metre-wide *planting strip* abutting the full length of the applicable *lot line(s)* shall be required:
  - i) Where a *lot* in an Institutional [excluding those *uses* subject to Section 4.25 of this By-law], Commercial [excluding the Core Commercial (C1) *Zone*], Employment or Open Space Recreational (OSR) *Zone* abuts an *interior side* or *rear lot line* of a *lot* in any Residential *Zone*;
  - ii) Where a *lot* zoned Residential Three (R3) abuts a *lot* in a Residential One (R1), Residential Two (R2) or Rural Settlement Area Residential (R4) *Zone*;
  - iii) Along a *street line* where *parking areas* are located adjacent to a *street*; and,
  - iv) Abutting all *public streets* having a width of 10.0 metres or greater in all *zones*, except in the Core Commercial One (C1), Residential One (R1), Residential Two (R2) or Rural Settlement Area Residential (R4) *Zone*;

## Attachment 5.2

<b>Outdoor Swimming Lessons Municipal Review Summary</b>		
<b>Municipality</b>	<b>Permitted Use</b>	<b>Comment</b>
Bradford West Gwillimbury	No	4.12 (d) – The use is entirely restricted to the dwelling unit and is not conducted in whole or in part in accessory building, yard or private garage.
Burlington	No	2.18.1 (a) - The residential appearance and character of the dwelling and property shall be maintained and no exterior alteration shall be made to the dwelling, which would indicate that any part of the premises is being used for any purpose other than that of a residential dwelling.
Innisfil	No	3.23.9 - In a Residential Zone, all on-site activities of a home occupation, other than parking, shall be confined to the associated dwelling unit, and shall not be undertaken within an attached or detached garage, or accessory building or structure.
Newmarket	No	4.6 (iii) - The use is entirely restricted to the dwelling unit and is not conducted in whole or in part in any accessory building, yard or detached garage.
Georgina	No	5.21(d) - there is no display visible from outside the premises, other than a legal sign, to indicate that any part of the dwelling house, unit or lot is being used for a purpose other than residential;
Markham	No	1.2(a) - the home occupation use is clearly a secondary use of the dwelling unit as a private residence and is conducted entirely within the enclosed building.
Barrie	No	5.2.10.1(b) - The home occupation shall be confined to the main building on the lot on which it is located except for a fenced outdoor play area for private day nursery facilities.
New Tecumseth	No	4.10(a)(v) - A home occupation shall be contained entirely within the dwelling.
Oro Medente	No	5.12(b) - shall be conducted entirely within a detached accessory building and/or the main building on the lot;
Aurora	No	6.21.1 - There shall be no exterior evidence of the occupation being conducted therein.

<b>Music Lessons Municipal Review Summary</b>		
<b>Municipality</b>	<b>Permitted Use</b>	<b>Comment</b>
Bradford West Gwillimbury	No	4.12 (j) – A home occupation or custom workshop shall not create noise, vibration, fumes, odour, dust, glare or radiation that is detectable outside the dwelling unit.
Burlington	Yes	No clear restriction.
Innisfil	Yes	Yes according to Planner.
Newmarket	Yes	No clear restriction.
Georgina	Yes	Yes, but noise is a concern. 5.21 (e) - such home occupation is clearly secondary to the main residential use and does not change the residential character of the dwelling nor create or become a public nuisance, particularly in regard to traffic, parking, noise, noxious odours or emission of smoke;
Markham	Yes	1.2(g) - any home occupation involving instructional activity shall be limited to a maximum of 4 students at a time.
Barrie	Yes	5.2.10.1(e) - Arts, Crafts and Instructional Services: including photographers, arts and crafts services, artists, sculptors, wood crafts, music instructors, tutors, furniture makers, graphic designers, jewelers, composers, and sign makers.
New Tecumseth	Yes	No clear restriction.
Oro Medente	Yes	Yes according to Planner.
Aurora	Yes	6.21.12 - teaching and musical instruction studio when limited to a single pupil at a time