



STAFF REPORT ACTION REQUIRED

OPERATION OF THE COMMITTEE OF ADJUSTMENT

Date:	March 6, 2008
To:	Planning and Growth Management Committee
From:	Acting Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference	pg080016

SUMMARY

This report addresses issues raised by Planning and Growth Management Committee at its meeting on November 1, 2007, (PG10.6), in response to the report dated October 16, 2007, regarding policy changes pertaining to the operation of the Committee of Adjustment. More specifically, the report addresses improving the planning process, writing of reports and the impact on appeals, reducing the backlog of applications, the process so that Committee decisions are defended without need for a motion from a Councillor, the possibility of creating a “Panel” to hear major projects which have received prior approval and are requesting changes, and a process for reporting out on a quarterly basis on Committee of Adjustment decisions in order to highlight emerging trends and challenges.

The Committee of Adjustment (CofA) for the City of Toronto has been through multiple changes since amalgamation, particularly as it relates to structural organization, Panel member composition and staff turnover. Notwithstanding these changes, the administrative process followed by the four service districts which deal with Committee of Adjustment applications has been, for the most part, harmonized. The Committee of Adjustment members appointed for the 2006-2010 term of City Council began holding hearings in April, 2007. Efforts are being directed toward ensuring that new members are trained to provide good planning decisions which balance the interests of all stakeholders in the process. City Planning staff will continue to provide professional input, advice and opinions where warranted, based upon a critical review of each development application. If required, a staff report will be prepared and subsequently defended at the Ontario Municipal Board, by City Planning staff. It is the combination of having well trained Committee members who recognize an application which is contrary to the City’s

planning policies and the professional planning input from staff, which together can improve the planning process, reduce appeals, and result in balanced decisions which have a positive contribution toward city building in our neighbourhoods.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Planning staff report to Planning and Growth Management Committee on trends, identified during the review of variance applications conducted by the new Zoning Review Team, and that those and other trends be identified in a Committee of Adjustment Activity Report, by the end of 2008.

Financial Impact

This report has no financial implications.

COMMENTS

1. Status: Improving the Planning Process

City Council adopted recommendations toward improving the planning process, in May, 2006 (06-PT #2(2a)). Since then, Committee of Adjustment staff have been meeting on a regular basis to assess harmonized practices and to determine what improvements are still required. The following list highlights the harmonized documents and improvements to CofA business practices implemented to date:

- Standard application form, checklist and submission requirements
- Public information brochures for minor variance and consent processes
- Standard information/data tracking system
- Standard Public Hearing Notice documents and procedures
- Standard Document templates for Agenda, Minutes and Decisions
- Committee Members Manual containing detailed information on the Committee of Adjustment structure, function, roles, duties and protocols
- Staff Members Manual outlining harmonized policies, processes and procedures
- Harmonized consent process regarding other Divisional input
- Agenda Listings for all Committee meetings posted on City's web-site
- Training sessions for Committee members delivered April and November, 2007
- Electronic communication of documents and material, where possible, to Committee members and Ratepayer groups upon request.

2. Staff Reports and Impact on Appeals

Minor variance and consent applications are given a critical review from a planning perspective by Committee of Adjustment and Community Planning staff prior to public notification. Site inspections are conducted and each development proposal is assessed with respect to the intent of the zoning by-law, the intent of the Official Plan, whether it is considered desirable for the neighbourhood, if similar applications have been granted in the vicinity, whether it offends other city-wide policies or if specific conditions should be imposed.

Conducting a thorough planning evaluation of development proposals has, in many cases, resulted in changes to the requested variances to more closely comply with existing zoning by-law restrictions or requirements. The extent of the variance is often reduced, if not eliminated, thereby becoming more acceptable from a planning perspective. In addition, staff strongly encourage owners/applicants to approach surrounding neighbours where possible, to further explain their development concept. As a result, staff are seeing improved variance requests and negotiated solutions with changes which address planning and neighbourhood concerns, thereby reducing the need to prepare a staff report. Based on this practice, there are at least three notable instances where reports to the Committee may be warranted:

- (a) those applications which do not maintain the intent and purpose of the Zoning By-Law or Official Plan nor represent appropriate development of the land.
- (b) those applications which arise from case managed applications which have previously gone through an Official Plan Amendment or Zoning By-Law Amendment process.
- (c) those variances which, if granted, should be subject to certain conditions, representing a better development within the neighbourhood.

In other instances, staff continue to write reports if further information and clarification is required, to assist the Committee members in fully understanding the development proposal before them. For example, we may wish to submit a historical background report or explain in more depth the context for which an application may be before them. Also, reports may be written recommending a deferral to provide applicants an opportunity to address outstanding planning concerns.

In those cases where staff have written a report recommending refusal, it is adopted by Committee, and is appealed to the OMB by the owner, City Planning staff will attend the Board to defend the City's Zoning By-law or Official plan, if directed by Council. In those cases where no staff report is written due to the lack of any planning or City-wide interest, and Council adopts a motion by an individual Councillor to appeal a decision, City Council must authorize the City Solicitor to attend the Ontario Municipal Board hearing and retain an outside professional planning consultant to defend its appeal. Given the time constraints of a 20 day appeal period, an individual Councillor may request the

City Solicitor to lodge an appeal, however attendance at the Board hearing is still, and should be, directed by City Council.

Hearings before the Ontario Municipal Board are adjudicated based on the evidence presented and heard at that time. Committee of Adjustment and Ontario Municipal Board hearings are both established to facilitate the presentation of opposing positions or interests. In this regard, we do not believe there would be any impact on a Board Members decision, related to whether planning evidence is provided by an “in-house” staff member versus an outside planning consultant hired by the City.

The greatest impact from City-initiated appeals, where no City Planning staff report has been written, is the financial cost incurred by Legal Services to hire an independent outside planner to give evidence. We have been advised that of the over 3,500 applications adjudicated by the Committee of Adjustment City-wide in 2007, there were about 300 appeals. Of those 300 appeals, Legal Services staff were directed to attend 50 to 60 hearings each year. Of those cases, the need to hire an outside planner, due to the absence of city planning support of the appeal, on average would be 15 hearings.

Hearings of appeals of Committee of Adjustment decisions usually take one day, but some take longer. At about \$10,000 in planning fees for a hearing, the City spends about \$150,000.00 per year on consultants. In addition, Legal Services expends about 60 person-days per year of staff time in preparation on those hearings for which there is no internal planning staff support.

3. Backlog of Applications

The Committee of Adjustment hears up to 3500 applications annually. The 2007 distribution of application workload in each district was as follows: Toronto East York 35%, North York 30%, Etobicoke York 21% and Scarborough 14%, based on applications received between Jan 1 and Dec 31, 2007. In 2007, all districts and particularly Toronto East York and North York, experienced organizational changes, severe staff shortages for an extended period of time, introduced new harmonized practices, organized two new Panels and imposed cost containment measures. The combination resulted in substantial backlogs in processing time of applications.

Hearings in Toronto East York and North York are conducted by-weekly, with alternating Panels as instructed by Council. Agendas for any hearing range from 35 to 45 applications. Each hearing may take between 4 and 6 hours, including a briefing session with the Deputy Secretary-Treasurer. CofA members in both districts have expressed concern with their ability to properly prepare for and consider such large volumes at one hearing. Increasing the number of applications on each agenda will not reduce the backlog, nor will it assist us in achieving an efficient hearing process, without complaints from the public.

The ability to deal with the high volume of applications in a timely manner, depends largely on the availability of the administrative staff who perform the legislated duties, the availability of planning staff who engage in critical analysis and negotiations with applicants prior to a hearing, and the Panel's ability and capacity to hear public evidence on all the scheduled items. Staff are therefore aggressively filling all Committee of Adjustment administrative and planning positions. Constant staff vacancies and turn over for various reasons has an impact on our customer service delivery by removing consistency and stability. Filling any vacant position takes time and we anticipate improvement in 2008.

In addition to stabilizing staffing levels, the number of hearings per year and hearing start times have been adjusted in a manner which allows Toronto East York and North York to effectively hear more items per hearing, without straining the existing budget and staff resources. More specifically, extra hearings are being added and hearing start times adjusted, while minimizing staff overtime costs. These minor changes in hearing practices should help reduce the application backlog in 2008.

Another factor which contributes to the backlog is the on-going requests for deferral of an application, often granted by a Panel. These requests may originate from an applicant who has encountered resistance to a proposal or community groups/neighbours wishing more time to consider an issue. Deferrals increase the number of items on future agendas, which have already been allocated their application workload. Opportunity for future applications to be heard on a certain agenda therefore becomes limited, thereby contributing to the backlog. Panel members have therefore been advised to give very careful consideration to any request for deferral due to the on-going workload implications.

4. Motions from Councillors to attend OMB Hearings

The City Solicitor has no standing instruction from City Council to attend any Ontario Municipal Board hearing of an appeal of a Committee of Adjustment decision. Since amalgamation, the city-wide adopted practice in the four districts requires an individual Councillor to bring forward a motion to Community Council or City Council directing Legal Services staff to attend. Legal Services staff attends 50 to 60 such hearings each year. In addition to the Ontario Municipal Board hearing(s) itself, the required preparation time generally takes several days of both Legal Services and City Planning staff time; time which in both Divisions, is taken away from other core business.

City Planning staff cannot be required by City Council to attend. Rather, Legal Services inquires whether there is City Planning staff support for the position taken by City Council. If so, City Planning staff are prepared to attend the Ontario Municipal Board's hearing to provide professional planning evidence.

In those cases where Committee of Adjustment renders an approval against a refusal report from City Planning staff, or if a refusal decision as recommended by City Planning

staff is appealed by an owner, the City Solicitor may lodge an appeal on behalf of the City on the advice of the Chief Planner and Ward Councillor. This eliminates the occasional difficulty incurred by a Councillor to advance, and have adopted, a motion by City Council within the required 20 day appeal period. However, in order to ensure that attendance at OMB hearings respecting Committee of Adjustment decisions does not unduly divert resources from other core business, City Council direction should continue to be required for the City Solicitor and City planning staff to attend, and such attendance should be directed only on the advice of the Chief Planner.

In those cases where a planning report was not warranted and if an individual Councillor wishes the City to appeal the decision, a notice of motion to Community Council/City Council would still be required, in accordance with the current practice.

5. New Panel for Major Projects

The possibility of setting up a new stand alone Committee of Adjustment panel to adjudicate issues arising from major projects that have received prior approval and then come back for amendments that alter settled or agreed to conditions has several implications. Any new stand alone Panel would have to be appointed by City Council with the appropriate amendments to the Toronto Municipal Code, Constituting By-Law, Rules of Procedure, and any other necessary legislative adjustments.

Beyond the logistics of the legal framework within which the Committee of Adjustment operates, the more complex issue would be identifying the factors or criteria which would constitute consideration of an application before this “new Panel”. Each variance application is very specific to its own site and situation. Many reasons contribute toward an applicant proceeding by way of a minor variance before the C of A versus a zoning amendment considered by City Council. More often than not, it is based on the degree of change from the intent of Council regarding a site specific zoning amendment, whether or not there is Community Planning and Ward Councillor support for the change, and also the time frame required to facilitate the application. The time frame in which to process and have considered a minor variance application by the Committee of Adjustment is still considerably shorter than a Zoning By-Law Amendment process.

The City cannot refuse to receive a minor variance application. It is for this reason that our new practice of earlier planning staff evaluation and intervention be rigorously implemented. More importantly, C of A members must be qualified and trained to recognize the difference between those applications within the scope of their jurisdiction to make “minor adjustments” to a zoning by-law, versus those applications which exceed their jurisdiction. There is no quantifiable measure which can render a proposal as being “minor”. The application must be evaluated within the context of the four tests outlined in The Planning Act and any Panel, being an existing one or newly created one, would be obligated to evaluate the proposal in this manner.

For applications to adjust recent zoning amendments, Committee Panels would rely on the professional planning advice from Community Planning and would generally receive a report outlining the purpose and rationale for the variance. If staff were of the opinion that the application warrants consideration, and if the Committee is of the opinion that the application is beyond what is minor, then the application would simply be refused.

Constituting a new stand-alone Panel to consider such applications would not necessarily result in any different decision making process or results. The new Panel would still be required to assess the application based on an evaluation of the four tests under the Planning Act, as required by statute, conduct site inspections and consider all written and oral submissions, just as the current Panels are required to do. Therefore, constituting a new stand-alone Panel for this purpose is not recommended.

6. Emerging Trends and Challenges

Planning and Growth Management Committee requested a process for Panels to report on a quarterly basis in order to highlight emerging trends and challenges. City Planning staff recommend that this data collection and identification of emerging trends be included in an Activity Report to be prepared at the end of 2008, a year and a half after the current Panel appointments. Also, emerging trends are being identified during the research and analysis phase of the Zoning By-Law Project, currently being conducted by policy staff over the past year or two. Committee of Adjustment staff propose to work with the zoning team to establish new fields in IBMS, which would assist in the collection of the appropriate data for trends analyses in the future.

A review of variance applications by land use, zoning restriction and frequency, would assist in providing useful information regarding existing zoning restrictions which repeatedly do not meet the needs of the development market in certain neighbourhoods. For example, a substantially high number of applications in a particular area, related to the same restriction such as side yards, may reveal the need for Council to consider a new standard for that neighbourhood. Variance and lot division applications are the most revealing City Planning applications which provide Council and the public, with a snapshot of development activity in local neighbourhoods.

In order to provide substantive data from a comprehensive review of CofA development activity, it would more productive to conduct the research on a basis longer than three months. A Committee of Adjustment Activity Report is therefore, a more appropriate opportunity and format to identify and address, a number of issues and challenges regarding Committee operations. The first Activity Report should be prepared and forwarded to Planning and Growth Management Committee for the end of 2008.

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SIGNATURE

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