

OPERATION OF THE COMMITTEE OF ADJUSTMENT

Date:	August 26, 2008
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference	pg080052

SUMMARY

This report addresses issues raised by the Planning and Growth Management Committee at the meeting held on April 10, 2008, (PG14.2) in response to the report dated March 6, 2008. The report dated February 27, 2008 addressed policy changes pertaining to the operation of the Committee of Adjustment.

The Planning and Growth Management Committee adopted recommendations on April 10, 2008, dealing with such matters as:

- staff reports regarding severance applications
- the substance of reports
- early notification to Councillors on severance applications and electronic notification of Committee's decisions
- staff attendance at the Ontario Municipal Board
- increase in application fees
- the establishment of a reserve fund to hire planners to defend the Committee of Adjustment decisions at the OMB.

These recommendations were referred to staff for a report to the Planning and Growth Management Committee on the implementation plan and financial implications.

Many of these recommendations are already in place in the Committee of Adjustment offices.

That this report be received by the Planning and Growth Management Committee for information.

Financial Impact

The report has no financial impact.

INFORMATION

The Planning and Growth Management Committee adopted the following recommendations in principle and referred them for comments.

1. a. Planning staff write reports on all applications for severance and associated applications.

City Planning staff will continue to prepare reports on severance applications to create new lots and associated applications. Reports are generally not prepared for delegated consents, which include technical severances (re-establishing lots that merged in title), lot additions, leases in excess of 21 years, mortgages and discharges of mortgages and creating and/or re-establishing easements/rights-of-way, as they rarely involve new development. This delegated practice will continue.

- b. In written reports, Planning staff bear in mind that the City's by-laws and existing character of neighbourhoods should be maintained unless there are compelling reasons to do otherwise.

The *Planning Act* requires that the Committee of Adjustment members and commenting agencies carefully consider the 4 tests. City Planning staff are trained to be mindful of the statutory requirements when conducting site inspections of properties that may be the subject of a written staff report. City Planning staff when writing reports on Committee of Adjustment applications consider not only the merits of the proposal but also critically review it from a planning perspective. 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 are to be imposed. The Official Plan states that the physical character of the neighbourhood be maintained.

- c. Planning staff notify Councillors of all severance applications at the time they are received.

Committee of Adjustment offices will continue to work toward the adopted best practice of mailing notices of public hearing not less than 15 days prior to each hearing. Districts with higher volumes of applications and public hearings are better equipped to meet this deadline as agenda schedules are set in advance of the actual public hearing date. Districts that have fewer hearings and lower application volumes are basically accepting complete applications and scheduling them for hearing at the

same time. In all instances, this administrative practice is well within the 14 day consent and 10 day minor variance public notification requirement set by the *Planning Act*.

- d. Planning staff review all instances in which the Committee of Adjustment has rejected an application to determine whether City staff can attend the hearing in defence of the Committee decision.

City Planning staff will continue the city-wide adopted practice that has been in place since amalgamation that requires an individual Councillor to bring forward a motion to Community Council or City Council requesting Legal Services staff to attend a hearing at the Ontario Municipal Board. 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 evidence.

In those cases where there is no planning or City-wide interest, and Council adopts a motion by an individual Councillor to appeal a decision, 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.

- e. Committee of Adjustment fees be increased to cover any increased costs, and that staff report on this matter to the Planning and Growth Management Committee.

At this time, the Development Review Application Review Team (DARP) is undertaking a review of fees associated with all community planning including Committee of adjustment fees, development applications and associated inspections. DARP is an interdivisional staff team committed to continuously improving the development review process and is presently working with a consultant to finalize a cost recovery process and is presently working with a Consultant to finalize a cost recovery exercise that identifies all capital cost related to application processing. Once completed, the Deputy City Manager responsible for City Planning will be reporting on the results and an approach to increasing all community planning and development fees.

With respect to the above matters, these tasks and requested actions are part of the ongoing administration of day to day functions in the Committee of Adjustment offices and are being implemented.

- 2. a. Where a case history, from a planning perspective, exists on a property, the Planning Department attach the relevant decision documents as part of the application.

All minor variance and consent applications are given a critical review by Committee of Adjustment and Community Planning staff that includes a history search of previous planning applications on the subject property. The Planning Act requires that all

applicants to disclose whether or not the subject land has ever been the subject of a previous application to the Committee of Adjustment. Searching records for previous decisions is a regular procedure that is undertaken during the processing of all C of A applications and where previous planning applications are found, relevant decisions are attached as part of the Committee of Adjustment agenda.

- b. Councillors receive electronic notification of all decisions of the local Committee of Adjustment.

Councillors will continue to receive, via e-mail, the Hearing Results report which is a brief overall summary of the results of the applications from each Committee of Adjustment office, at least 2 days following the public hearing. Paper copies of the notice of Decision, signed by the members is forwarded, via inter office mail, to the respective Ward Councillor, within 10 days following the hearing.

- c. Councillors receive earlier notification of the Committee of Adjustment applications.

Notwithstanding the *Planning Act* requirements that notice shall be given at least 10 days before the day of the hearing of an application for minor variance and 14 days for a consent application, Committee of Adjustment offices will continue to work toward the adopted best practice of mailing notices of public hearing not less than 15 days prior to each hearing. Districts with higher volumes of applications and more public hearings are better equipped to meet this deadline as agenda dockets are set well in advance of the actual public hearing date. Districts that have fewer hearings and lower application volumes are basically accepting complete applications and scheduling them for hearing at the same time. In all instances, the City of Toronto Committee of Adjustment administration is well within the 14 day and 10 notification requirement set by the *Planning Act*.

- 3. Planning and Growth Management Committee requested the Chief Planner and Executive Director of City Planning to report to the Committee on the establishment of a reserve fund to hire planners to defend the Committee of Adjustment decisions at the OMB when requested by either the Committee of Adjustment, the Planning staff, or the local Councillor.

The 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. Of the more than 3500 City-wide applications adjudicated by the Committee of Adjustment in 2007, there were approximately 300 appeals. Of those 300 appeals, Legal Services staff were directed to attend 50 to 60 hearings and of those cases, the need to hire an outside planner, due to the absence of City Planning support of the appeal, would be about 15 hearings.

Hearings of appeals of Committee of Adjustment decisions usually take one day, but in some instances may 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 where there is no support. While City Council could decide to establish a special reserve fund for funding of Committee of Adjustments, Provincial legislation prohibits the funding of such a fund from existing or increases to Committee of Adjustment fees. Such fees can only reflect the actual costs of processing the application. Notwithstanding existing budget constraints, it is still most appropriate that Legal Services attend those hearings and retain outside planning assistance in those cases where there is no City Planning support and Council has supported the appeal.

4. a. Historical background or relevant information

All minor variance and consent applications are given a critical review from a planning perspective by Committee of Adjustment and Community Planning staff. Part of the review includes a history search of previous planning applications on the subject property. Where previous planning applications are found, the relevant decisions are included as part of the Committee of Adjustment agenda and where relevant include previous planning applications and site specific by-laws on adjacent properties.

b. Heritage information

As part of the Committee of Adjustment Public Hearing circulation process internal departments receive copies of the hearing notices. Heritage Services is included in the circulation process and if Heritage Services has concerns with an application, they provide the Committee with comments and conditions if required.

c. Timely reporting to members of Council

Currently operating on a “best effort” to meet a minimum 15 day notification or earlier.

d. Timely notification to Councillors on appealed applications

Each District office advises the Councillors in their respective Community Council areas of those applications that have been appealed to the Ontario Municipal Board. This information is forwarded at the end of the 20 day appeal period.

e. In consultation with the Chief Building Official and Executive Director of Toronto building, and the City Solicitor, on whether the Committee of Adjustment should impose conditions requiring an applicant to provide relief to abutting owner where the proposed construction would adversely affect the operation of the abutting owner’s chimney or furnace.

New construction, particularly infill housing projects, can occasionally place adjacent buildings into non-compliance with a number of health and safety requirements of the Building Code. One such matter is the impact that a taller in-fill house may have on the operation of the chimney of an adjacent house. In May 2007, Toronto Buildings reported that, while the proposed construction may place an adjacent building’s chimney or

furnace in contravention of the Building Code, there is currently no ability to remedy these impacts using the Building Code.

At that meeting, Planning and Growth Management Committee also requested City staff to report on what mechanism could be used to deal with this issue through conditions imposed by the Committee of Adjustment.

<http://www.toronto.ca/legdocs/mmis/2007/pg/bgrd/backgroundfile-3919.pdf>

This problem has been reviewed with the City Solicitor and the Chief Building Official. Toronto Building has formally requested an amendment to the Ontario Building Code to the Ministry of Municipal Affairs & Housing on behalf of the City of Toronto regarding the issue of separation of existing chimneys in relation to proposed adjacent residential buildings. The matter is in the hands of the Province and the timing in dealing with this issue is not imminent. While the Committee of Adjustment does have the legal authority to impose remedial conditions where applicants are seeking minor variances to permit new house construction, it would not deal with those instances where new construction is permitted without the need for a variance to a by-law. In addition, it would be impractical to impose these types of conditions where the matter is most appropriately regulated through the Ontario Building Code. Toronto Building has further advised that dealing with this matter through the Committee of Adjustment creates significant difficulties for Building staff to enforce such a condition prior to permit issuance.

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