

OPERATION OF THE COMMITTEE OF ADJUSTMENT

Date:	March 16, 2009
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference	PG19.10 and MM24.20

SUMMARY

This report responds to two outstanding issues regarding operations of the Committee of Adjustment. The report addresses the Notice of Motion (MM.24.20) adopted by City Council at its meeting of September 24 and 25, 2008, regarding establishing a policy to impose costs to an applicant as it relates to a request for postponement after public notice has been given; and it responds to a request from Planning and Growth Management Committee, at its meeting of October 14, 2008 (PG 19.10), regarding additional resources required to achieve notification to Councillors on all severance applications at the time they are received.

RECOMMENDATIONS

The City Planning Division recommends that:

1. a policy be adopted such that, if an applicant requests postponement of a hearing after public notice has been given, and if time permits, that written notice of postponement be sent to all applicable residents and that notice of the new hearing date be issued at the expense of the applicant such that the direct cost of both mailings be recovered; and
2. staff notify the Ward Councillor of new applications for consent to create new lots, as soon as possible at the time of receipt.

Financial Impact

This report has no financial implications.

COMMENTS

1. Notice of Postponement Costs

City Council requested a report on the feasibility of establishing a policy such that, when a Committee of Adjustment application is postponed at the request of an applicant after public notice has been given, there be a requirement that a notice of postponement be forwarded to all residents who have received notification of the hearing, at the expense of the applicant; and that notice of new date of hearing be at the expense of the applicant.

The Planning Act requires the Committee of Adjustment to hear minor variance applications within 30 days of receipt of the application and to provide at least 10 days notification within that 30 day time frame. The Committee of Adjustment offices also strive to meet the adopted practice of mailing notices of public hearing up to 15 days prior to each hearing. If the Committee of Adjustment staff have been informed or have received a written request to the Committee to postpone a hearing from an applicant, after public notice has been given, there must be sufficient time remaining within the notification time period for staff to be able to prepare a further notice and ensure its receipt by the community prior to the hearing date. A re-scheduled notice must be prepared, sent to print, and forwarded to Metro Hall for mailing. This process usually is accommodated within three days, so the time frame within which this could be achieved is therefore limited.

There are many reasons cited for requesting a postponement of hearing. Requests may be received from Councillors wishing to hold a community meeting, or neighbours wishing to discuss the proposal directly with an applicant, or from planning staff to allow time to further negotiate with an applicant, or from a commenting agency such as Transportation Services or TRCA requiring submission of a study. On occasion, a request to postpone a hearing may be received from an applicant after a notice has been sent, due to a subsequently determined error on a Preliminary Project Zoning Review. Committee considers each request accordingly and depending on the circumstances, may defer consideration to another hearing date. In these cases, Committee may agree with the request as part of due process, and imposing further costs may not be appropriate.

It is in those cases wherein an applicant attends a hearing, after notice is issued, and requests a postponement with no prior notification to staff, or ability to notify those members of the public who have attended the hearing, which are of greater concern and cause inconvenience to all stakeholders. Often the reason relates to their decision to apply for a minor variance application without a Preliminary Project Zoning Review. If a Preliminary Project Zoning Review is not undertaken, the applicant accepts full responsibility for identifying all required variances to a zoning by-law, and signs a waiver

agreeing to such. Some applicants proceed in this manner, as opposed to obtaining a Preliminary Project Zoning Review, due to the time constraints involved in receiving a review, in addition to the timeframe required for the Committee of Adjustment process. If the applicant receives a Preliminary project Zoning Review after the public notice has been sent by Committee staff, some applicants request a postponement so that notice of all required variances to facilitate a development proposal can be given.

The Committee members have experience and give due consideration to all requests for postponement and to carefully review the circumstances and reasons associated with the request. If a postponement will add value to the Committee hearing process which will assist in their consideration of a specific development proposal, the Committee may grant a postponement.

The Committee can, and do, deny requests for postponement in those cases where the request is made by an applicant simply because they did not use the zoning review service or is being requested for purposes of delay, or if in the opinion of the Committee, is frivolous, inappropriate, or the reason cited will not affect their consideration of an application. The Committee has become well informed of the impacts that a postponement has on other owners as it relates to scheduling items on an agenda, inconvenience it causes to members of the public, delays it will cause other applicants, additional staff time and cost to the City. As a result, the Committee of Adjustment offices have observed a significant reduction in these particular requests from applicants.

Applicants are strongly encouraged to proceed to Committee only when all available material is provided. Applicants are advised by Customer Service staff and/or City Planning staff, that if they choose to attend a Committee hearing on the basis of a waiver, the risk of errors on their part may result in the need for a new application and full fee. It should be noted that imposing a new surcharge to simply cover the cost of a new notice of hearing date, has the potential to encourage the above practice by applicants. An applicant may consider the direct cost of a second mailing (\$1.08 plus g.s.t. per notice) to be small in comparison to having to re-apply and pay full cost for a new application submission. Staff will therefore continue their active approach toward discouraging applicant requests for deferral for inappropriate reasons.

2. Notice of Severance Applications to Councillors

Planning and Growth Management Committee requested a report on what additional resources would be needed to achieve notification to Councillors of all severance applications at the time they are received. There are no additional resources required to implement this new practice.

Upon receipt of a severance application to create new lots, the Committee of Adjustment offices will provide an acknowledgement letter to the applicant, together with a copy to the Ward Councillor. This letter will provide the earliest notification possible to a Ward Councillor and include information regarding the location, address, application, file

number, ward number, planner assigned and contact information. The Ward Councillor would then be in a position to contact the Committee of Adjustment office for more specific detail regarding the proposal. This practice is appropriate to apply to all severance applications for the creation of new lots, processed by the Committee of Adjustment offices. Councillors would therefore be provided more opportunity to engage in the consent for severance process, prior to also receiving the notice of public hearing which is forwarded minimum fourteen days prior to a hearing. This practice would further reduce those occasions of a Councillor attending a hearing to request a postponement due to insufficient notice to their office.

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SIGNATURE

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