



## REPORT FOR ACTION

# Tree Protection through the Committee of Adjustment Process

**Date:** December 13, 2017

**To:** Parks and Environment Committee

**From:** General Manager, Parks, Forestry and Recreation

**Wards:** All

## SUMMARY

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The purpose of this report is to provide a response to the motion adopted by City Council at its December 13, 14 and 15, 2016 meeting, requesting that the General Manager, Parks, Forestry and Recreation, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Chief Planner and Executive Director, City Planning, undertake a review of the Committee of Adjustment consent and minor variance review process as it relates to tree protection.

This report will comment on the existing processes Urban Forestry undertakes to review and comment on Committee of Adjustment applications, highlight potential process improvements concerning development impacts to trees, outline how tree protection is addressed through the Ontario Building Code permit review and issuance process, and provide information on training and education for City staff administering the City tree protection by-laws and the Committee of Adjustment review process.

## RECOMMENDATIONS

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The General Manager of Parks, Forestry and Recreation recommends that:

1. The Parks and Environment Committee receive this report for information.

## FINANCIAL IMPACT

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There are no financial impacts resulting from the adoption of this report.

## DECISION HISTORY

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At its meeting of December 13, 14 and 15, 2016, through EX20.29, City Council directed the General Manager, Parks, Forestry and Recreation, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Chief Planner and Executive Director, City Planning to undertake a review of the Committee of Adjustment consent and minor variance review process as it relates to tree protection and to report in the first quarter of 2017 on the results of this review, such review to include:

- a. a description of the existing process;
- b. potential improvements to the existing process that would enhance the protection of trees, such as but not limited to the requirement for an arborist's report (including protection measures) to be submitted with Committee of Adjustment applications and public notice being given in conjunction with the Committee of Adjustment application where the application involves the proposed destruction or injury of a tree;
- c. methods by which tree protection may be dealt with as a matter of applicable law under the Building Code; and
- d. a proposed training and education plan for all City staff involved in the tree permit, minor variance and severance application review process.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX20.29>

## COMMENTS

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Among other benefits, trees provide shade, energy savings, erosion control, noise buffering, storm-water attenuation, wildlife habitat, and improve air quality through the removal of airborne pollutants. Trees also contribute to the quality of neighbourhoods and the City in general, and help to mitigate the effects of climate change. As such, City and private tree removal and injury is regulated in order to prevent the unnecessary loss of these public benefits. The legislative and decision-making frameworks governing tree protection, tree removal and tree injury are described in detail below.

### Legislative and Decision-Making Framework

#### Tree By-laws

City of Toronto *Municipal Code, Chapter 813, Trees* provides for the protection of City-owned street trees of all diameters and trees on private property having a diameter of 30 centimetres (cm) or greater. City of Toronto *Municipal Code, Chapter 658, Ravine and Natural Feature Protection* provides for the protection of all trees and natural features in designated areas of the city. These by-laws are collectively referred to as the "tree by-laws".

## City of Toronto Act

The tree by-laws are governed by Section 104 of the *City of Toronto Act*. It grants the City the authority to enact by-laws prohibiting or regulating the destruction or injuring of trees. It also stipulates when the tree by-laws do not apply. Sections 104(3)(c) and (c.1) exempt the injuring or destruction of trees as a condition to the approval of a site plan, a plan of subdivision or a consent or as a requirement of a site plan agreement or subdivision agreement from the application of the City tree by-laws.

## Official Plan

In the context of development approvals, the tree by-laws exist within the framework of Toronto's *Official Plan*. The policies within the *Official Plan* strive to balance economic, social and environmental factors. The *Official Plan* contains policies relating to the protection of trees, including preservation and enhancement of the urban forest, regulation of injury and destruction of trees and protection of natural features. Relevant policies within the *Official Plan* include:

### *Section 3.1.2 Policy 1.d)*

*New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by:*

*d) preserving existing mature trees wherever possible and incorporating them into landscaping designs.*

### *Section 3.4 Policy 1.d)*

*To support strong communities, a competitive economy and a high quality of life, public and private city-building activities and changes to the built environment will be environmentally friendly, based on:*

- *d) preserving and enhancing the urban forest by:*
  - *i) providing suitable growing environments for trees;*
  - *ii) increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and*
  - *iii) regulating the injury and destruction of trees;*

### *Section 3.4 Policy 10*

*Development is generally not permitted in the natural heritage system illustrated on Map 9. Where the underlying land use designation provides for development in or near the natural heritage system, development will:*

*a) recognize natural heritage values and potential impacts on the natural ecosystem as much as is reasonable in the context of other objectives for the area: and*

*b) minimize adverse impacts and when possible, restore and enhance the natural heritage system.*

## **Building Code Act**

The City of Toronto requires a building permit applicant to submit a Tree Declaration Form with the application to be reviewed by Urban Forestry. The purpose of the Tree Declaration Form is to draw attention to the provisions of the tree by-laws including general information and related tree permit information. Toronto Building electronically circulates the Tree Declaration Forms to Urban Forestry for every building permit application which has the potential to impact a private or City tree.

Because tree by-laws are not listed as applicable laws under the Ontario Building Code, they cannot be used in the same manner as zoning compliance for the refusal to issue a building permit. Despite the above, the issuance of a permit under the *Building Code Act* does not remove the onus and obligation on the owner to obtain tree permits and/or other related permissions as required. Violations of the tree by-laws are enforced by Urban Forestry. Applicants and property owners are advised of this tree permit process on the Tree Declaration Form and to contact Urban Forestry for further tree related permit requirements.

Urban Forestry does not require property owners to build less than allowed by local zoning, also known as "as-of-right" development, even if there are by-law protected trees that would be impacted by the development. Section 813-18(10) of the Private Tree By-law allows for issuance of permits to injure or destroy trees where development is permitted as-of-right. In these cases, Urban Forestry attempts to achieve a net benefit to the natural environment through replacement planting and establishing tree protection for the remaining trees on site.

## **Planning Act and Committee of Adjustment**

The Committee of Adjustment is a Council-appointed citizen panel with delegated decision-making authority under the *Planning Act*. The Committee considers applications for consents to sever ("consents") and minor variances to zoning by-laws. An application to build must comply with zoning by-laws and other applicable laws prior to permit issuance. If a proposed building does not conform to the existing zoning requirements, it must obtain zoning by-law amendments and/or other further approvals for minor variances through the Committee of Adjustment.

To approve any minor variance, the Committee of Adjustment must be satisfied that:

- the proposal is appropriate for the development of the land and/or building;
- the general intent and purpose of the City's *Official Plan* is maintained;
- the general intent and purpose of the City's *Zoning By-law* is maintained; and
- the variance is minor.

These are typically referred to as the "four tests".

To approve any consent, the Committee of Adjustment must be satisfied that a Plan of Subdivision is not required and that the criteria under Section 51(24) of the *Planning Act* are met. This includes whether the proposal conforms to the *Official Plan* and adjacent Plans of Subdivision, that municipal services are adequate to service the proposal, and that there is consideration of the conservation of natural resources and flood control.

The *Planning Act* provides authority to the Committee of Adjustment to impose conditions on any approval. All conditions must be specific, enforceable and related to the minor variance or consent to sever. Conditions imposed on consent to sever applications must be satisfied within one year. There is no time frame to satisfy conditions imposed on an approved minor variance. If conditions have been imposed on an approval, Toronto Building staff will require confirmation from the relevant division that a condition has been cleared prior to issuing a building permit.

## **Existing Process for Reviewing and Commenting on Committee of Adjustment Applications**

Urban Forestry staff review every minor variance and consent to sever ("consent") application submitted to the Committee of Adjustment. The review and response to minor variances and consent applications are specific to the site and objections and conditions apply only to proposed variances or the consent that will impact trees protected under the tree by-laws. Urban Forestry staff either object to the application, request deferral, confirm that it has no objections, or that it has no objections subject to certain conditions.

When Urban Forestry objects to a minor variance or consent application, a stand-alone memo is submitted to the Committee of Adjustment which provides details about the impacts to existing trees and cites relevant *Official Plan* policies supporting tree preservation. The intention of the memo is to ensure that the Committee of Adjustment is made aware of the potential impacts to existing trees so that these impacts are factored into the decision to approve the requested variance and/or consent. The memo also recommends that if the Committee of Adjustment approves the minor variance or consent to sever, despite Urban Forestry's objection, the approval be subject to appropriate standard condition(s). These conditions may include a requirement to submit a complete Application to Injure or Destroy Trees to Urban Forestry and/or, for City-owned trees, a non-refundable payment of the appraised value of the City-owned tree. If the Committee of Adjustment approves an application that would necessitate the removal or injury of a private-protected tree, Urban Forestry will issue the tree removal or injury permit when properly applied for. Section 813-18(5) of the Private Tree by-law authorizes the issuance of tree permits where injury or destruction is required for trees specifically identified in plans approved by a final and binding decision of the Committee of Adjustment.

Urban Forestry also provides advisory comments to the Committee of Adjustment in instances where as-of-right construction activities associated with the submitted plans may impact trees, even if the requested variance(s) and/or consents do not directly impact the trees. In these instances, Urban Forestry may recommend that property owners make changes to their plans or construct in a manner that accommodates existing trees. Should the Committee of Adjustment approve an application that would necessitate the removal or injury of a private protected tree, Urban Forestry will issue the tree removal or injury permit when properly applied for. Section 813-18(10) of the Private Tree by-law authorizes the issuance of tree permits where injury or destruction is required where development is permitted as-of-right. For City-owned trees, however, the issuance of a permit to remove or injure the tree may still be denied by Urban Forestry.

Urban Forestry will request a deferral of the Committee of Adjustment decision when a by-law protected tree may be impacted but it is unclear what the extent of the impact will be. The intention of the deferral is to provide the applicant with the opportunity to provide additional information, such as an arborist report or tree protection plan, to demonstrate whether the subject tree(s) can be protected. Following review of the information provided, Urban Forestry will respond to the Committee of Adjustment, providing either standard conditions or objecting to the application.

There are four general types of minor variance and/or consent applications that Urban Forestry comments on:

### **1. Applications in which variances do not directly impact private protected tree(s)**

Description: A development that requires minor variances is proposed where there is a healthy tree on the owner's property that is protected by *Municipal Code Chapter 813, Trees*. Although the development requires minor variances, it is the as-of-right portion of the development that would impact the tree.

Example: A minor variance is required for a front yard setback, but there is a healthy private tree in the rear yard protected by the Private Tree by-law and within the footprint of the as-of-right portion of the building.

Current Practice: Through an advisory comment, the Committee of Adjustment or applicant is informed that the applicant will be required to apply for a permit through Urban Forestry and also provide replanting. Urban Forestry does not request any conditions be imposed on a Committee of Adjustment approval if granted. If the variances are granted, Urban Forestry would authorize removal of the tree by permit under the Private Tree By-law with applicable replanting conditions.

### **2. Applications in which variances directly impact private protected tree(s)**

Description: A development that requires minor variances is proposed where there is a healthy tree on the owner's property that is protected by the Private Tree by-law. The portion of the building that requires the variances will impact the tree.

Example: Minor variances are required for gross floor area and rear yard setback, and the impacted tree is in the footprint of the building that would be allowed as a result of the variances.

Current Practice: Urban Forestry objects to the Committee of Adjustment and requests denial of the application and forwards its comments regarding this to the Committee of Adjustment. If the variances are granted despite Urban Forestry's objections, Urban Forestry would authorize removal of the tree by permit with applicable replanting conditions. Urban Forestry may also request deferral of the application if impacts are not clear.

### **3. Applications in which a consent and variances directly impact private protected tree(s)**

Description: A development that requires a consent to sever as well as minor variances is proposed where there is a healthy tree on the owner's property that is protected by *Municipal Code Chapter 813, Trees*. The tree will be impacted by the portion of development that is permitted by the severance and minor variances.

Example: A large existing lot that currently has a small house on it will be severed and redeveloped with two houses. One of the new houses will be situated where a healthy privately-owned tree is located.

Current Practice: Urban Forestry objects to the Committee of Adjustment and requests denial of the application and forwards its comments regarding this to the Committee of Adjustment. If the variances are granted despite Urban Forestry's objections, Urban Forestry would authorize removal of the tree by permit with applicable replanting conditions. Urban Forestry may also request deferral of the application if impacts are not clear.

### **4. Applications in which a consent and/or variances directly impact City-owned tree(s)**

Description: A development that requires a consent to sever and/or minor variances that will impact a healthy City-owned tree on the public boulevard.

Example: A large existing lot that currently has one house on it will be severed and redeveloped with two houses with driveways that will require the removal of a City tree.

Current Practice: Urban Forestry objects to the Committee of Adjustment regarding the proposal and also advises the applicant that even if the consent and minor variances are approved, a permit to remove the subject tree may not be issued by Urban Forestry. Urban Forestry may not issue the permit to remove the City tree at which time, the applicant would be required to modify their plans or appeal to the appropriate Community Council.

## **Improvements Considered to the Existing Application Review Process**

City Council directed staff to consider potential improvements to the existing consent and minor variance review process that would enhance the protection of trees. Urban Forestry has collaborated with representatives from City Planning, Legal Services and Toronto Building to discuss the commenting and review process including the provision of arborist reports and/or tree protection plans as a part of a complete application to the Committee of Adjustment.

Through these discussions it has been determined that arborist reports and/or tree protection plans should not be required as part of a complete application as this level of detail is typically not required for Urban Forestry to provide comments.

Staff were also asked to consider improvements around public notice where a Committee of Adjustment application involves the proposed destruction or injury of a

tree. Currently, the Committee of Adjustment provides notice of all hearings in multiple ways. Notice is mailed to each surrounding property owner within 60 metres of the subject site at least 20 days before the hearing. Applicants are also required to post a notice sign on the subject property. The City also provides notice of public hearings via the Committee of Adjustment website, electronic notification of hearings to Councillors, resident associations, community representatives or individuals who have requested notice, and applicable City divisions or agencies. Residents can learn if an application involves the proposed destruction or injury of a tree by reviewing the file on City Planning Division's Application Information Centre, which includes Urban Forestry's comments, details of the application, and the contact information for the staff reviewing the file. Staff believe the above described notice is sufficient.

One improvement to be implemented is the provision of advisory comments to the Committee of Adjustment on the indirect impacts to trees on adjacent City property associated with proposed variances. In some cases garages and driveways which do not necessarily require variances will be shown on plans submitted to the Committee of Adjustment, where the construction of which may require removal of a City-owned tree. Where the approval of the Committee of Adjustment application will lead to a request for the removal of a City tree, even when not directly as a result of the proposed variance or consent to sever, Urban Forestry may recommend that the Committee of Adjustment deny the application in order to retain the healthy City tree. The tree by-laws do not provide direction to issue tree permits where injury or destruction of City trees is required for plans approved by a final and binding decision of the Committee of Adjustment. Along with the recommendation for denial, Urban Forestry will provide an advisory comment informing the Committee of Adjustment (and the property owner) that a permit may not be issued for the removal of the City tree, regardless of Committee of Adjustment approval.

These comments highlight Urban Forestry's support for protection of City-owned trees and provide the property owner with the opportunity to revise their plans ahead of the final Committee of Adjustment decision. If the property owner decides to proceed with the Committee of Adjustment application as is, and make an application for tree removal, Urban Forestry may deny the permit and refer the matter to the appropriate Community Council.

### **Tree Protection and Applicable Law under the Building Code Act**

City Council also directed staff to consider methods by which tree protection may be dealt with as a matter of applicable law under the Building Code. As mentioned, tree by-laws are currently not listed as applicable law for the purposes of issuing a building permit under the *Building Code Act*. While Toronto Building and Urban Forestry have set in place processes to provide notice where tree protection issues may be affected by development and construction, there are situations where Toronto Building is required to issue permits without requiring the clearance of Urban Forestry. This is a result of the statutory obligation of the Chief Building Official to issue a permit where all applicable law has been met.

The City can make a request that the Minister of Municipal Affairs and Housing amend the Building Code to include the tree by-laws in the definition of applicable law.

However, it is unclear whether the Minister will agree or whether this change would result in improved tree protection for trees in the City of Toronto as the requirements of the tree by-laws still must be satisfied even if a building permit has been issued.

In the meantime, Toronto Building is leading the City's strategy to minimize the negative impacts of the residential infill construction process. As part of this strategy, Toronto Building has released the "Good Neighbour Guide" which includes information on the City's tree by-laws. Toronto Building has also established an inter-divisional staff team to improve complaint management and improve the City's response to the negative impacts of construction in residential areas.

## **Training and Education**

The Committee of Adjustment application review and commenting process is continuously discussed with staff and monitored at the supervisor level. When staff consider requesting a deferral or objection on a Committee of Adjustment application, the application and the subject minor variances and/or consent to sever is reviewed and discussed with their supervisor to ensure that the proposed action is consistent with Urban Forestry's commenting process and the purpose of the tree by-laws.

In October 2015, Urban Forestry developed a comprehensive procedural document that was circulated to all Tree Protection and Plan Review staff involved in reviewing and commenting on Committee of Adjustment applications. This document clearly outlines the updated procedure for handling Committee of Adjustment applications and the method for providing comments and conditions.

In June 2017, staff met with Committee of Adjustment panel members to present Urban Forestry's process for reviewing and commenting on Committee of Adjustment applications. This presentation highlighted the City's tree by-laws, the purpose of the by-laws, the policy and legal framework of the by-laws including relevant *Official Plan* policies, the Committee of Adjustment authority under the *Planning Act*, and highlighted the impact of decisions on existing trees.

These actions have helped to standardize Urban Forestry's Committee of Adjustment review and commenting process and improve customer service by ensuring that staff are providing defensible, specific and consistent conditions. Urban Forestry plans to work with the individual committees to ensure that the Committee of Adjustment decision impacts are clearly understood.

## **CONTACT**

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Sarah Rogers, Solicitor, Legal Services, Tel: 416-392-8991, Email: [Sarah.Rogers@toronto.ca](mailto:Sarah.Rogers@toronto.ca)

Michael Mizzi, Director, Zoning and Secretary-Treasurer Committee of Adjustment, Tel: 416-392-0888, Email: [Michael.Mizzi@toronto.ca](mailto:Michael.Mizzi@toronto.ca)

Mario Angelucci, Director, Toronto Building, Tel: 416-392-7523, Email:  
[Mario.Angelucci@toronto.ca](mailto:Mario.Angelucci@toronto.ca)

Jason Doyle, Director, Urban Forestry, Parks, Forestry and Recreation, Tel: 416-392-1894, Email: [Jason.Doyle@toronto.ca](mailto:Jason.Doyle@toronto.ca)

Brian Mercer, Manager, Tree Protection and Plan Review, Urban Forestry, Parks, Forestry and Recreation, Tel: 416-392-0724, Email: [Brian.Mercer@toronto.ca](mailto:Brian.Mercer@toronto.ca)

## **SIGNATURE**

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Janie Romoff  
General Manager, Parks, Forestry and Recreation