



September 14, 2019

10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2
Attention: Nancy Martins, Secretariat
email: phc@toronto.ca

Re: PH8.7 End-to-End Review of the Development Review Process

Dear Chair Ana Bailao and Members, Planning and Housing Committee,

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit volunteer organization comprised over 30 member organizations. Our members have an active interest in good planning of our City, one which ensures that the Development Review Process is open, transparent and fair, and accessible to residents to become engaged and participate at all stages.

The staff report describes the results of a consultant lead process to re-engineer the Development Review Process. The report references the need to hire staff to implement the Review's recommendations over a number of years. In the end, the staff report merely recommends that the report be received.

For the record, FoNTRA has, over several years, been engaged in discussing concerns about the current processes with City Planning staff and earlier this year submitted a proposal for an End to End Review focused on Committee of Adjustment and LPAT, which are part of the Development Review Process that is much in need of review (see Attachment).

Public Consultation

The consultant's Review does not appear to have involved any consultation with the public.

Excerpt from the staff report:

"Extensive stakeholder consultations were conducted to identify how the City can improve the clarity, certainty and transparency of the development review process to City staff, applicants and the public. In addition to stakeholder consultation, the review included documentation reviews, analysis of internal performance measures

and data, multiple workshops with the inter-divisional project team, high-level process mapping and research of leading practices from comparable jurisdictions”.

Excerpt from the consultant’s report:

“Extensive stakeholder consultations were conducted to identify how the City can improve the development review process. More than **150 stakeholders** were engaged, including: City staff across various divisions, geographies and levels; elected City officials; City agencies, boards and corporations; non-City agencies and boards; external commenting partners; and industry stakeholders, including developers, renovators, lawyers, urban planners, engineers, and other industry consultants”.

Extensive consultation ... Really? ... A process

- that did not involve the public and/or the residents who are impacted by the development being reviewed?
- that did not involve the public and/or residents who pay for the processes that are being reviewed?

Other Council Direction

We note the following direction regarding report back on the Committee of Adjustment as part of the End to End Review:

PH 4.5 Committee of Adjustment Panel Size and Structure

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH4.5>

4. City Council direct the Chief Planner and Executive Director, City Planning to report back to the Planning and Housing Committee by the third quarter of 2019 on the ongoing review of the Committee of Adjustment and related processes as directed by Executive Committee on Item 2018.EX35.7 at its June 19, 2018 meeting, including any related recommendations identified in the comprehensive divisional assessment of the development review process, at the discretion of the Chief Planner and Executive Director, City Planning.

5. City Council direct the Chief Planner and Executive Director, City Planning to report back on the feasibility of Committee of Adjustment hearings to commence at 1:00 p.m. with proceedings to continue into evening hours, to improve accessibility for residents.

The staff report does not appear to include the directed report backs?

We recommend:

- **that the Planning and Housing Committee refer the End to End Review report back to staff with direction that staff ensure a comprehensive analysis including past City Council direction, and that public consultation be undertaken before coming back to the Committee.**

Yours truly,

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Attachment: FoNTRA: "Minor Residential Planning and Development Decision-Making in Toronto: An "End to End" Overview of Policy and Process Issues", April 2019

Cc: Tracey Cook, Deputy City Manager, Infrastructure and Development Services
Gregg Lintern, Chief Planner and Executive Director, City Planning Division
Michael Mizzi, Director, Zoning and Committee of Adjustment
Kerri Voumvakis, Director, Strategic Initiatives
Lorna Day, Director, Urban Design

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of over 30 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.

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“Minor” Residential Planning and Development Decision-Making in Toronto: An “End to End” Overview of Policy and Process Issues

Federation of North Toronto Residents Associations

April 11, 2019

Introduction

This report outlines issues related to the Toronto Zoning By-law 569-2013 and the Toronto Committee of Adjustment’s handling of severances and minor variances related to residential land use planning and development.

City Planning and Toronto Building are both involved, but, rather than operate sequentially, they interlock:

- Zoning By-law development and management is the responsibility of City Planning
- Management of the Committee of Adjustment is the responsibility of City Planning
- Intake, Review and Acceptance of Committee of Adjustment applications, and Zoning Examination Reviews (by-law administration) are the responsibility of Toronto Building.

The review is divided into the following sections:

1. Zoning By-law Policy (City Planning)
2. CofA Application Intake (City Planning), and zoning review (TO Building)
3. Committee of Adjustment Hearings Policy and Procedures (City Planning)
4. Appeals of Committee of Adjustment decisions to TLAB
5. Construction regulation (TO Building)

While specific recommendations are made with respect to the individual sections, the overall recommendation is:

That the City should conduct a comprehensive “End To End” examination of the “minor” residential planning and development processes.

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1 Zoning By-law 569-2013 (City Planning)

1.1 Remaining By-law Appeal issues to be decided by LPAT

In late 2018 the LPAT issued its decision regarding the majority of the outstanding issues under appeal.

- LPAT referred some outstanding issues were referred back to City Planning for study and recommendations, for example, regarding the measurement of height and the definitions of floor levels.

We consider these to be important issues affecting the physicality and massing of buildings. For example, different methods of height determination (top of roof vs. half way up roof) have different design outcomes. It would therefore be desirable to have RAs involved in the discussion.

- Several relatively minor issues, which are organized into nine categories, remain with the LPAT:
 1. Parking - including the prohibition of a charge for Visitor Parking and other Public Parking regulations
 2. Special Residential - including Group Homes, Residential Care Homes, Crisis Care Shelters, Rooming Houses and Seniors Community Houses
 3. Schools — including Public and Post Secondary Schools
 4. Places of Worship
 5. Drive-Through Facilities and Eating Establishments
 6. Vehicle Fuel Stations
 7. Funeral Homes, Crematoria and Cemeteries
 8. Building Height and Horizontal Limits, for Functional Operation of a Building
 9. Propane

Recommendation

- That City Planning engage with stakeholders regarding both above categories of remaining issues, i.e. LPAT referrals to City and the (nine) outstanding minor issues.

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1.2 Community Identified By-law Issues

1.2.1 “Bonnet on a box” and “jumped up” house design

Some By-law changes have had unanticipated negative effects on street and neighbourhood physical character.

There is increasing incidence of the “bonnet on a box” (square) design, that increases the a building’s massing and fails to fit the prevailing character of the neighbourhood.

The “bonnet on a box” house design is also associated with a high deck at the rear of the house, as the raised first floor is carried through to the rear. The high deck creates privacy and invades neighbors' privacy and creates shadows.

These issues are driven by designers in their efforts to “design to the limits of the law” and maximize density.

A by-law amendment requiring minimum 50% roof area having minimum two (2) degree slope was introduced in an effort to control flat roof (“Modern”) roof design. The other by-law change was to introduce paired wall height limits. The By-law change has encouraged the proliferation of mansard roofs which often fail to fit the character of the neighbourhood.

Rear deck size and setback are regulated in certain Rx zones (and in the Davisville Village zoning amendment).

Recommendation:

- That City Planning consider the implications of by-law changes on streetscape and character of established neighbourhoods .

Semi-detached dwellings – Party Walls

Semi-detached dwellings are not required to have minimum setbacks from party walls. So when extensions are made to the rear of semi-detached dwellings they can be detrimental and unfair to the dwelling with which they share a common (party) wall. Cantilevered wall construction allowing for wall not aligned with the foundation should not be permitted.

There may be similar potential issues with row housing?

There is confusion related to discussion of the need for a ‘party wall agreement’

Recommendation

- That setback requirements related to construction along the party wall in semi-detached dwellings be developed.

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Driveways

Reverse Slope Driveways: are not permitted. However “Below Grade” (but not reverse slope) garages are permitted. By-law 569-2013 does not allow below grade garages based on “established grade” whereas Leaside by-law #1916 (as amended) did not permit below “finished grade” garages

The former by-law provided appropriate regulation for streets with hilly terrain

In such cases of below grade garages it is a landscape/safety issue rather than a flooding issue

Recommendation

- That the By-law should be modified to impose limits on the permitted depth of cut.

New Build vs. Renovation

In order to maintain character in established neighbourhoods, it is desirable to encourage renovation of existing dwellings rather than new builds. In some parts of the City the FSI ratio for new builds differs from the one for renovations, which was intended to discourage demolitions. However, this preference is negated by Committees of Adjustment when they discount the difference.

Recommendation

- City should consider ways of preferring renovations to new builds.

Requirement for parking to be behind the front wall

The reality is that parking occurs in front of the front wall, regardless of the presence of a garage. And there is little or no enforcement of this regulation.

Recommendation

- City should re-consider whether this regulation is still valid.

Driveway width

The by-law does not clearly define the permissible width of a driveway in front of an integral garage (it is the width of the garage door)

Recommendation

- Clarify the language of the by-law.

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Mutual driveways

There are inconsistencies in the handling of the mutual driveway surface area when a new integral garage with driveway is built.

Recommendation

- Need to clarify the treatment of the mutual driveway surface areas.

Eaves setback

The bylaw does not specifically state how the width of eaves trough is to be handled. There are frequent new builds where the eaves trough edge overhangs the property line.

Recommendation

- Clarify the language of the bylaw.

Sub-basement below a basement

This type of built form has started to appear. There are concerns with foundations and drainage on adjacent properties (and likely on the property itself)

Recommendation

- Sub-basement should be regulated/banned through the by-law until the potential adverse impacts are understood.

2 Committee of Adjustment

2.1 Application Intake (Toronto Building)

Incomplete Applications

The COA application intake desk regularly accepts incomplete applications. This is a problem with both renovations and new builds. For example, the fee may not be recorded or the fee recorded on the application form is often incorrect. Without the fee and signature, the application is incomplete. If there is no fee indicated on the application form, there is no financial audit trail.

Recommendation

- Incomplete applications should be rejected.

Site Plan Statistics

The applicant is required to include a cover page with site plan statistics

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The format of these statistics is not standardized and this complicates the zoning review
Landscaping numbers are frequently missing in site plan statistics and/or landscaping calculations are incorrect

Recommendations

- The City should specify the contents of the site plan statistics page
- A standard template should be provided for use by applicants
- Consider providing an Excel worksheet to assist in the calculations.

Survey Related Issues

The survey document is often not signed by the Land Surveyor. In survey documents there are occasionally minor errors that are later identified by the abutting neighbours. There is no identified procedure for addressing and resolving these issues. City Legal should provide guidance to Toronto Building staff and the C of A staff on how to resolve these issues.

There are occasional instances where the survey document is altered (via Photoshop) with the representation in the Site Plan (A1). Any changes of this nature should be specifically identified on the Site Plan.

There are occasional survey disputes (e.g., as with the location of the property line) that can be quite significant. Again, there is no identified procedure for addressing this issue.

Recommendation

- That Toronto Buildings ensure that incomplete or erroneous applications (as per examples above) are not// not be accepted

2.2 Zoning Examination Review (Toronto Building)

Missed / Erroneous Variances

The zoning review process frequently misses a variance or wrongly identifies a variance. The public has no way of appealing the zoning examiner's decision. Committees of Adjustment do not entertain or acknowledge missing or erroneous variances.

Staff claim that missed variances are discovered in the building permit stage and sent back to the Committee of Adjustment. There is no effective process in place to address missed variances (no penalties, no enforcement).

Recommendations

- That Toronto Building should consider introducing a new form called 'Dispute with respect to a Missed Variance'. The form would be filled out online and

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would be sent to the Zoning Examiner (Toronto Building). A copy of the form would be posted to the AIC as part of the file

- Disputed or potential missing or erroneous variances should be noted in the Committee of Adjustment Decision Document and Meeting Minutes and forwarded to the appropriate staff in the Buildings Department.

Waivers

Variance lists prepared by the applicant under the Waiver process frequently have missed or erroneous variances. It is suggested that waivers are unjustified and demonstrate a higher level of errors and/or missing variances than applications that have received zoning review.

We have previously requested that the Waiver process be reviewed with a view to elimination. What is the status of this request?

Recommendation

- (As previously recommended). Waivers should be eliminated.

3. Committee of Adjustment Hearings Policy and Procedures (City Planning)

3.1 Role in Tree Protection

The City Council decision of March 26, 2018 (2018.PE 25.1) includes several resolutions requiring tree protection to be taken into account at all stages of the Committee of Adjustment application processing and decision-making including requiring that Tree Protection Zones (TPZs) be shown on all Site Plans (A1).

These City Council directions represent a significant change to C of A's as up till now the C of A has not accepted any active role with respect to tree protection, merely minuting if there are Urban Forestry comments. The eight recommendations adopted by City Council should be implemented as soon as possible

Recommendations

- That City Planning ensure that the Committee of Adjustment members are educated in the revised policy and procedures with respect to Tree Protection and ensure that the City website is updated with respect to the changes in Tree Protection procedures.

3.2 Introduction of revised Plans and related variances at the Hearing

Each Panel considers the introduction of new plans on the day of the hearing in a different manner;

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The agent may claim that City Planning is ‘okay’ with the revised plans, but there is no evidence provided. Hearsay evidence should not be permitted.

Residents do not receive copies of these revised plans/variances in advance, and are disadvantaged in having to adjust their remarks to respond to last minute “on the fly” changes;

Applicants should be required to provide a marked-up version of the requested variances to all Panel member and all interested parties.

Sketches should be provided to all Panel members and all interested parties to show any significant changes to the building elements.

Some variance changes may introduce new variances that are not declared.

Recommendations

- The Panels should prepare a common set of rules that describe those changes that can be made on the fly
- The Committee should defer or reject applications with significant changes
- When changes are made, the revised variances are recorded for the motion and it may be necessary to confirm the changes by attaching the revised plan to the decision. Each Panel appears to apply different rules as to when the plans are to be attached to the decision
- All Panels should have a published set of rules with respect to attaching plans.

3.3 Scheduling on the Day of the Hearing

Each Committee has a different method of scheduling their cases

Residents attending (i.e., objectors) can wait up to 4 to 6 hours to have their case heard. Too many cases are heard in a single day and/or the Committees are taking too long to hear certain cases.

Recommendations

- In general, more frequent schedule times (i.e., one and one half hour intervals rather than 4 hour intervals) would assist in reducing wait times
- An acceptable service level wait time should be established and wait times should be monitored.

3.4 Workload of the Panel

The Panel members may be unable to give proper attention through to the end of a long hearing day i.e., cases at the end of the day may be disadvantaged.

Recommendations

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- There should be a fixed limit on the number of cases to be heard
- This has already been suggested, and agreed to by Panel Chairs (35 items for a full day hearing), however it is not in place.

3.5 Panel Chair's Introduction at the start of Proceedings

There is considerable variation in the introductory remarks from the Panel Chair for each location (e.g., TEY as compared to NY).

There is an even larger variation in introductory remarks between locations. Experienced Panel Chairs provide more direction (and opinions) than the less experienced chairs.

The TEY Committee provides handout material that many residents find helpful.

Recommendations

- There should be consistency in introductory remarks across all Panels with a standard handout available at all locations

3.6 Committee discussions should be in public

Following the presentations and rebuttals the Committee may discuss the items, before a motion is made in public. These discussions should always be in public, not in private (as in a "huddle"). This is required in order to ensure that those present (or reviewing a tape) are aware of the factors that the members of the Committee felt were relevant to their decision making.

Recommendations

- Require that all in-committee discussions be held with an open microphone and be on the record.

3.7 Committee of Adjustment Facilities and Services

3.7.1 Recording of Hearings

The pilot program in TEY is very successful as an educational tool and a general resource for review of recent cases

Recommendations

- The pilot program should be extended to all planning districts but a significant improvement in the quality of reproduction than current is needed
- The online recording should be available in segments to facilitate viewing of specific cases.

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3.7.2 Overhead Projector

The overhead projector is now becoming an important part of the process. There is some disparity between available equipment across Panels (e.g., TEY compared to NY)

Projector equipment location is important. If the deputant does not have an assistant, considerable time is spent moving from the podium to the projector

Recommendations

- The overhead projector should be located near the speaker's podium
- The projection equipment should be upgraded to allow for zooming and focussing of the display

3.7.3 Timing of Deputations

The chess clock should be used for all deputations. If the clock is not working, then the Panel Chair should make accommodations to assist the deputants.

Timing of each deputation should begin after the deputant has provided their name and full address. This will ensure fairness to allow the deputant to speak for the full five minutes.

Recommendations

- The capturing of a deputant's personal identifying information should not be considered part of the timed presentation. Frequent visitors to the hearing have an advantage over first time visitors
- Accommodations should be made for deputants who may not be familiar with the use of the equipment.

3.7.4 Tables and Chairs for Hallway Discussions

Hallway discussions are an important part of the dispute resolution process.

Residents with disabilities may not be able to stand for discussions that often take 15 minutes or more.

Recommendation

Tables and chairs should be provided to assist with these discussions.

3.8 Committee of Adjustment Decisions

3.8.1 Access to Committee Minutes and Decision Data

Decision orders for a hearing are no longer available on-line as a complete set

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This hampers the ability of individual residents and residents' associations to conduct the necessary research

Recommendations

- All written material presented at the public hearing should be posted to the Application Information Centre

The case material including Minutes and Notices of Decision should be available

4. Appeals of CofA decisions to TLAB

There is a wide disparity in decision outcomes between the COA and TLAB. In our opinion the TLAB is overturning C of A decisions to an extent far beyond what one would reasonably expect in a fair process. This situation needs to be reviewed by the City including conducting an analysis to examine this problem, identify the reasons for it and report its findings in a public forum.

Recommendation

- City Planning should take the lead in bringing this issue forward

5. Building/Construction Issues (Toronto Building)

Additional Guidance for Residents

Applications to the C of A frequently identified property rights and other issues that are outside of the purview of the Committee. The following list identifies some of the issues that are not covered by the C of A.

Right of Entry Permits

Right of Entry permits are available for minor renovations. The definition of a minor renovation needs to be clarified

There is no right of entry for New Builds

Chimney Extension/Replacement

This is a civil matter for abutting neighbours

Surveys of Property Line

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Disputes sometimes arise related to the accuracy of the survey and sometimes the location of a boundary fence

Construction Agreements

A civil matter between neighbors but the Committee should minute that an agreement will be entered into by the concerned Parties

Recommendation

- The City should update the website to identify resources that can assist residents to resolve their specific issues.