



September 18, 2020

10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2
Attention: Nancy Martins

RE: PH16.4 Addressing the Committee of Adjustment COVID-19 Related Application Backlog

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

Committee of Adjustment operations were initially suspended, due to COVID-19, in March, 2020, and then substantially adjusted to allow for virtual public hearings, which commenced on June 3, 2020. Related to the earlier suspension of hearings a backlog developed, amounting to approximately 700 Committee of Adjustment applications. The staff report recommends that council declare that all members appointed to the Committee of Adjustment shall be deemed to be cross-appointed to all city planning districts and panels for hearings until the end of November 14, 2022 in order to increase the capacity of the Committee of Adjustment to assist in addressing the backlog.

We object to the cross-appointments because it moves us still further away from the principle of having adjudicators who are residents of, and therefore more likely to understand and appreciate the areas and neighbourhoods for which they are making decisions. Members are supposed to visit the subject properties of the applications – is this feasible or reasonable if they are in another district?

In essence, the report brings forward an administrative recommendation to address the backlog of hearings, without reporting on or addressing the operational issues related to virtual Committee of Adjustment hearings, which are currently in place and expected to continue, with no indication as to when it might return to an in person pre-corona virus hearing format.

Issues with the current (virtual) hearings process include the following:

- the revised timeframes limit the opportunity for comments to be submitted both in writing and orally;
- residents not receiving Notices within the prescribed times and/or incorrect/outdated variances being listed in the Notices
- documents not being filed on the AIC in a timely manner to allow review by residents and RA's prior to the required submission deadlines

- written comments are not being posted in time for them to be part of the Panel members' deliberations;
- deputants who registered to speak to the Committee not being linked in/heard from;
- deputant input being limited, for example, by reducing the time allocation for resident deputations, in order to expedite the hearing.

All of which result in extreme frustration on the part of residents, and an increased incidence of TLAB appeals.

In addition, the report does not address the deep-seated issues with the Committee of Adjustment hearings in general, which continue and appear to be exacerbated under virtual hearings:

- residents' objections, especially written submissions, being totally disregarded by the Committee;
- members of the Committee not being acquainted with the tests and/or overtly deny the tests as laid out in the Planning Act and in the public notice;

And critically, initially we were advised that these hearings would be used for applications with (truly) minor variances. However, this has changed and now complex applications with severances and/or many variances, and multiple community objections are being heard in virtual hearings.

FoNTRA has argued for many years that the CofA process is inherently unfair to residents in opposition (for example, the applicant having the right to respond to objections but this right is not extended to opposing parties). With the virtual hearings, the new procedures increasingly favour the applicant and require opposing residents to appeal the approvals to the TLAB in an effort to get a fair hearing.

We note that the Committee has developed revised procedures that deal with virtual applications. These procedures are briefly documented in the recently updated CofA Rules and Procedures, as follows:

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- 4.11. In deciding whether to conduct an oral, written, or virtual public hearing the Committee may consider any relevant factors including:
- 4.11.1. the suitability of conducting such a hearing;
 - 4.11.2. whether the evidence is appropriate, including whether credibility is an issue;
 - 4.11.3. the extent to which facts are in dispute;
 - 4.11.4. the convenience of the parties, including any anticipated prejudice to a party;
 - 4.11.5. the avoidance of unnecessary delay;
 - 4.11.6. the fulfillment of the Committee's statutory mandate; and
 - 4.11.7. any other possible effects on the fairness of the proceedings.
- 4.12. The Committee shall not hold a hearing on an application as a written hearing if an objecting party satisfies the Committee that there is good reason for not doing so.
- 4.13. The Committee shall not hold a hearing on an application as a virtual public hearing if an objecting party satisfies the Committee that holding a virtual public hearing rather than an oral hearing is likely to cause the party significant prejudice.
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It is unclear how these new procedures can provide a process for residents to object at these virtual hearings. In order to ensure a fair process, the issues must be addressed immediately. Our suggestions for improvement include:

1. Document a clear process for objections to an application being heard at a virtual hearing. These objections must be taken seriously, as the process must be fair to all. The notice for the hearing of an item must include information as to how a person can make objections to a virtual hearing.
2. In-person hearings need to be scheduled for complex and/or controversial applications, with separate meeting agendas. Minor applications would continue to be heard virtually. Current City facilities are adequate to allow for safe in-person hearings at City Hall – Committee Rooms (Toronto and East York), and North York Civic Centre – Council Chamber.
3. If in-person meetings cannot be arranged, then the current process that limits the opportunities for objectors to make comments and see full information must be corrected.

We recommend:

- **that Planning and Housing committee refer the report back to staff and request the Chief Planner and Executive Director to provide a comprehensive report back on all issues with the virtual hearings format.**

Yours truly,

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c.c. FoNTRA Councillors
Gregg Lintern, Chief Planner and Executive Director, City Planning Division
Michael Mizzi, Director, Zoning and Secretary-Treasurer, Committee of Adjustment

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.