

Update on Committee of Adjustment Virtual Public Hearings

Date: April 6, 2021

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

This report responds to City Council direction and a number of requests, further to a City Planning report titled Addressing the Committee of Adjustment COVID-19 related Application Backlog, dated September 4, 2020, which generally focus on four matters: an update on application volume; staffing and panel member capacity; public notification improvements; and participation at virtual public hearings.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning, recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

DECISION HISTORY

At its meeting on February 2, 2021, through item PH20.6, City Council requested the Chief Planner and Executive Director, City Planning, to report back to the Planning and Housing Committee in the second quarter of 2021 on potential improvements to virtual public hearings with regard to: feasibility of sending notices to all residential mailboxes within a 60 metre radius from the subject property; including a clearly stated deadline for comment submission on posted notices; reviewing the feasibility of moving the deadline for public submissions closer to the meeting date, from five business days to three

business days prior to the meeting; and reviewing the feasibility of extending the deadline for elected officials, providing a period of one business day after the notice (written comments) deadline. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH20.6>

At its meeting on December 16, 17 and 18, 2020, through item MM27.27, City Council directed the Chief Planner and Executive Director, City Planning, to report back through the Planning and Housing Committee in the first quarter of 2021, with a review of the public participation issues related to comment submission deadlines and the public notification approach. City Council also requested the Chief Planner and Executive Director, City Planning, to develop and implement protocols for virtual Committee of Adjustment hearings to address technical issues and support, and for altering the agenda and returning to an application once technical issues have been resolved. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM27.27>

At its meeting of September 30, October 1 and 2, 2020, through item PH16.4, City Council resolved that the Committee of Adjustment appointed members deemed to be cross-appointed to all Districts and Panels to help reduce the backlog in Toronto and East York District until December 31, 2020 and directed that cross appointment be used only as necessary from January 1, 2021 to November 14, 2022, and in these instances, panels shall be comprised of a majority of previously appointed members for those hearings. In addition, City Council requested the Chief Planner and Executive Director, City Planning, to report back through the Planning and Housing Committee in the first quarter of 2021, on improvements to virtual hearings related to: expanded notification timelines; ensuring Application Information Centre documents are online for general review in a timely manner before a hearing; ensuring written comments are part of the Committee of Adjustment's review of applications; and ensuring deputants on online meetings are provided sufficient time to address the Committee of Adjustment members. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH16.4>

At its meeting on June 29 and 30, 2020, through item MM22.21, City Council directed the Chief Planner and Executive Director, City Planning, to report to City Council, through the Planning and Housing Committee in September 2020, on increasing the capacity of the Committee of Adjustment to support clearing the backlog of applications caused by the COVID-19 service disruptions. City Council also directed that action items from the "End-to-End Review of the Development Review Process" that will have immediate or near-term impact in improving capacity for processing Committee of Adjustment applications, and that Committee of Adjustment Chairs be invited to speak to the Planning and Housing Committee when the Chief Planner and Executive Director's report is before the committee. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM22.21>

COMMENTS

In the last two years, City Planning staff have implemented many of the action items from the "End-to-End Review of the Development Review Process" in relation to the

Committee of Adjustment, and these cover some of the same matters discussed at the Planning and Housing Committee and City Council, and subject of this report. City Council's direction and requests, as outlined in the Decision History, focus on four areas of review.

Update on the Committee of Adjustment application backlog

Committee of Adjustment hearings resumed in a virtual format on June 3, 2020. As of April 1, 2021, 10 months later, the Committee of Adjustment panels had heard 2,783 applications at 82 virtual public hearings.

With each passing month, since the first virtual public hearing, staff have scheduled more applications per hearing. In June of last year, on average, 21 applications were heard per hearing. In March 2021, the average was 43 applications per hearing. With experience using the Webex video conference platform, and other processing and agenda management modifications, staff and members have been able to schedule more applications per hearing over the last nine months. The increase in applications scheduled per hearing has reduced the number of applications in the queue. Staff do not propose to further increase the average number of applications per hearing, as the length of each hearing has also increased. Some hearings have recently substantially exceeded a normal and reasonable workday time-frame, made more challenging by managing a hearing process on a virtual platform.

The substantial application backlog resulting from the cancellation of 18 scheduled Committee of Adjustment public hearings, from March 25, 2020 through to May 28, 2020, has been cleared. While a backlog continues to exist, resulting from a continued high volume of new applications, it has been reduced over the six last months. As of April 1, the average hearing wait-time in the Toronto and East York district is approximately 14 to 16 weeks, and 12 weeks or less in the Etobicoke York, North York and Scarborough districts.

From October to December of 2020, staff redistributed some applications from the Toronto and East York district, which had a large backlog of applications, to other districts for processing and hearings. During that time-frame, 184 Toronto and East York district applications were heard by panel members from the outer districts, which cleared an additional six hearings worth of Toronto and East York district applications.

The ability of staff to utilize cross-appointed members with full flexibility, as implemented in the last quarter of 2020, ended on December 31, 2020 with the adoption of PH16.4 as amended by City Council on September 30, 2020. Council did allow for a panel member from one district to occasionally sit on a panel in another, but in all instances panels must be comprised of a majority of members as previously appointed to their specific district. As such, application files from one district cannot be reallocated and considered by panel members all from another district.

While Council has previously turned its attention to the question of cross appointing panel members, our analysis of its use last fall indicates it can greatly assist the operations of the Committee of Adjustment and reduce the backlog that impacts the Toronto and East York district. While no additional members are required, as discussed

below, cross appointing existing members for redeployment to any district or panel would provide staff with better flexibility for addressing a backlog.

Most panel members have dealt with applications in districts other than the district they are appointed to, and some have served in another district in a previous term of Council. Staff do not share concerns raised that panel members from one district will be too unfamiliar with the geography or zoning in another district. Further, minor variance and consent applications are similar across the city, and consideration of local conditions is a commonly understood principle.

Staffing and Panel Member capacity

Staff are not recommending an increase in the size of the staff or the number of panel members for processing and/or reviewing applications.

More so than other units within City Planning, the Committee of Adjustment has experienced a much higher than normal vacancy rate. In large part, a significant proportion of the complement in the Committee of Adjustment are entry-level planning staff and, with experience, they seek growth opportunities elsewhere, often within the division. While hiring processes are being expedited, with the Application Technician position in the Committee of Adjustment a pattern of turnover has been constant in the last year or two, and will continue to require ongoing efforts. When fully staffed or close to it, the Committee of Adjustment staff complement is sufficient in size to manage the current work-load.

Staff are not recommending the appointment of additional panel members. The number of panel members was increased by City Council, at its April 16 and 17, 2019 meeting (PH4.5), from 30 to 35, which is a sufficient number to support the current agenda schedule.

Public Notification Improvements

Public Notification Requirements

Public notification requirements for Committee of Adjustment applications are prescribed by Provincial legislation. Pursuant to the Planning Act, specifically Ontario Regulation 200/96, the City requires that a public notice sign be posted in a prominent location on the property and visible from the street for 10 days prior to the hearing and the City mails Notice of a Public Hearing to all owners of land within 60 metres of the subject property.

While legislation only requires notice (for an application for a minor variance) be given at least 10 days before the day of the hearing, the City's Committee of Adjustment has for many years mailed notice approximately 20 days ahead of a hearing. In response to concerns raised that mail delivery can be delayed since COVID-19, and to factor in that since hearings have been conducted in a virtual format written submissions must be emailed no later than 4:30 p.m., five business days before the hearing date, staff have recently modified internal processes to mail notice approximately 22-24 days ahead of a hearing.

City Planning was requested to look at the feasibility of sending notices to all residential mailboxes within a 60 metre radius from the subject property. While direct or bulk advertising type mail has been utilized by City Planning on occasion for larger planning studies, preparation and coordination is more labour intensive. This approach is not a practical option for thousands of Committee of Adjustment applications a year, or within the capacity of the current staffing complement, in particular, when a 60 metre radius for many applications will only include five or six addresses.

As added background, anyone who has spoken at a hearing or who makes a request is provided a copy of a Notice of Decision, regardless of whether they are an owner or tenant.

New Public Notice Signage

In early 2020, City Planning piloted new and larger signage requirements for Committee of Adjustment applications in Scarborough district. This spring, City Planning will be requiring the larger public notice sign for applications across the remainder of the municipality. Further, internal programming changes have been made, in order that this new signage will now include the written submission deadline.

Participation at Virtual Public Hearings

City Planning's Committee of Adjustment web-page is modified regularly and has been significantly updated since virtual public hearings commenced, including instructions on the process and participation.

Written Submissions and Agenda Material

Panel members are volunteer citizen appointees that receive per diem remuneration for attendance at hearings. As the number of applications on each hearing agenda have increased, the volume of related material (plans and drawings, circulation comments, written submissions) received and forwarded to panel members for their review has increased significantly. It is not uncommon that panel members require 15 to 20 hours to review agenda material ahead of the actual hearing.

Most hearings occur either on a Wednesday or Thursday. Coordinating and collating hearing material can take at least a day to complete. To ensure material is sent by the weekend prior to a hearing date, to allow panel members sufficient time to review all documents prior to a hearing, a written submission deadline of five business days before the hearing is required, and City Planning is not proposing it be reduced.

All material received by the Committee of Adjustment related to an application is added to the online Application Information Centre as soon as it is received. Material that arrives after the deadline and after the agenda has been sent to panel members are also posted to the Application Information Centre. Panel members are advised by the Deputy Secretary-Treasurer of material submitted late, including correspondence from councillors and division/agency comments, but such late material may not benefit from a review comparable to the agenda previously forwarded to the members.

Registered Speakers and Technical Support

To participate by telephone, computer, smartphone or tablet, the Committee of Adjustment requires that participants register in advance no later than 4:30 p.m., two business days before the hearing date. When staff receive a request to register to speak, staff confirm attendance and provide instructions for participating one business day before the hearing.

At hearings, the applicant/agent speaks first and has five minutes to make their presentation and another five minutes to rebut comments made by interested parties. Interested parties will be invited to speak after the applicant's initial presentation. Each speaker is provided five minutes and one opportunity to address the committee. At many hearings, staff may stack and sequence in over 100 speakers.

On rare occasions, a speaker may have technical difficulties connecting. Staff in attendance with the chair, or working remotely, will attempt to reconnect a speaker if they are having a problem doing so, repeatedly if required. Where necessary, the panel will temporarily defer an agenda item to allow staff and the registrant time to reconnect, not unlike what occurs at City Council's standing committees. While it has not been possible to connect some who did register to speak, such occurrences have been very few.

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SIGNATURE

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