

Committee of Adjustment - Consultant Review

Date: February 6, 2023

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

SUMMARY

In May 2021, City Council directed the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Ombudsman, to report to Planning and Housing Committee on a consultant review of the Committee of Adjustment. As a result of this direction, City Planning retained KPMG, who conducted this review over the course of 2022. KPMG delivered its Final Report titled "Committee of Adjustment Review" in January 2023.

The full Committee of Adjustment Review KPMG Final Report is attached to this report as Attachment 1 and is also available on the City's website.

This staff report summarizes KPMG's review and recommendations. It also outlines a multi-year implementation plan to move these recommendations forward. Through continued consultation and priority setting with the public, applicants, City staff, and other stakeholders, City Planning staff will work over the next two to three years to implement these transformational changes. The overarching goal of these efforts is to increase public confidence in and satisfaction with the Committee of Adjustment review and hearings process and enable all users to effectively participate in the Committee of Adjustment.

RECOMMENDATIONS

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

1. The Chief Planner and Executive Director, City Planning, report back to the Planning and Housing Committee in Q1 2024 on the status and results of the implementation plan contained in this report.

FINANCIAL IMPACT

There are no financial impacts arising from this report.

DECISION HISTORY

At its May 2021 meeting, through item PH22.7, City Council directed the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Ombudsman, to report to Planning and Housing Committee on a consultant review of the Committee of Adjustment.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.PH22.7>

In November 2021, through item PH29.14, staff provided a status update on this review as well as continuous improvement efforts to the Committee of Adjustment's processes and practices.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.PH29.14>

In February 2022, through item PH30.7, City Council requested that the Chief Planner and Executive Director, City Planning, in consultation with the Chief Building Official and Executive Director, Toronto Building, review application requirements for the Committee of Adjustment to consider requiring a preliminary zoning review to verify the minor variances and remove the option of a zoning waiver.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH30.7>

In February 2022, through item PH31.14, the Planning and Housing Committee requested the Chief Planner and Executive Director, City Planning, review the procedures of the Committee of Adjustment to improve virtual meetings and to report back on this item.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH31.14>

COMMENTS

Introduction

The Committee of Adjustment is an independent, quasi-judicial administrative tribunal that hears and decides on applications for minor variance, consent, and the extension or enlargement of legal non-conforming uses under the Planning Act. It is administered by the City Planning Division but is independent from City staff and City Council.

Although the Committee of Adjustment makes decisions on planning approvals for what are generally smaller scale development projects, it plays an important role in the redevelopment and renewal of Toronto's housing stock and facilitates a wide variety of commercial, institutional and industrial developments. Every year, the Committee

considers between 3000 and 4500 applications at over 90 hearings. The approvals granted by the Committee allow residents to accommodate changing household needs through renovations or new construction, facilitate gentle intensification in neighbourhoods, enable investment and the evolution of the city in other ways. The Committee of Adjustment is also often the first and only touchpoint many Torontonians will have with a development approval process, and allows applicants of all levels of experience to have small projects receive the necessary approvals for zoning compliance in a relatively quick and cost-effective manner.

Given the diversity of stakeholders and the sometimes conflictual nature of applications, there will always be some users unhappy with Committee decisions. While not everyone will get the outcome they want from the Committee, the public should generally have confidence in, and satisfaction with how the decision was reached. Stakeholders should walk away from their experience with the Committee of Adjustment confident that the process was fair, transparent, accessible, efficient, and adhered to the principles of natural justice.

Although the Committee of Adjustment review and decision-making process is less complex than larger scale planning applications, there have been concerns raised by a variety of stakeholders that the process is too complex and inaccessible for many users. Some users have also expressed a lack of confidence and satisfaction in the process and do not believe the current practice consistently delivers quality decisions. Further, there have also been concerns raised about the public's ability to effectively participate in the public hearings, both in the traditional in-person model and in the virtual hearing model, which was introduced in June 2020.

As a result of these concerns, at its meeting on May 5, 2021, City Council directed the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor, the Chief Building Official and Executive Director, Toronto Building, and the Ombudsman, to report to Planning and Housing Committee on results of a consultant review of the Committee of Adjustment. Council directed that the review should include the following topics:

- a review of the Committee of Adjustment findings in the End-to-End Review of the Development Review Process Final report dated August 16, 2019;
- the challenges of conducting virtual public hearings and an overview of current processes;
- a review of best practices and potential technological improvements;
- recommendations respecting the establishment of an advisory committee;
- undertaking public engagement;
- promoting good conduct by applicant and general public participants;
- scoping of supporting materials and information that would help applicants and the general public prepare for an effective representation at hearings; and
- review of the Committee of Adjustment procedures and processes based on tribunal best practices and to ensure they support panel members in achieving procedural fairness and natural justice.

City Planning retained KPMG to conduct this review and the work began in February 2022. Broadly, the objective of the review was to identify recommendations to improve the effective participation of the public and applicants in the hearing process. City Planning staff and the consultant team worked together to refine the scope of the review and develop a work plan.

From February to November 2022, KPMG conducted this review, holding extensive stakeholder consultations; completing leading practice research of Committee of Adjustments in five comparator jurisdictions; reviewing relevant documents provided by the City, industry representatives and residents associations; and revisiting the Committee of Adjustment related recommendations contained in the KPMG End-to-End Review of the Development Review Process, which was completed for the City of Toronto in August 2019.

KPMG's Final Report on the Committee of Adjustment Review identifies 15 recommendations to improve the public hearing process for members of the public and applicants and proposes a high level implementation plan for their recommendations. Details on the recommendations and implementation plan are contained in the attached report.

Staff support the implementation of these recommendations and have outlined a multi-year work plan to move forward with the numerous improvement opportunities identified by KPMG.

As staff move forward with implementation and devise detailed solutions, they will continue to engage with all stakeholders: experienced and inexperienced applicants, building industry representatives, residents groups and other community organizations, members of the public, Committee of Adjustment panel members, staff in the City Planning Division, Legal Services, Toronto Building and other partners in development review, and the Ombudsman's office.

Implementation of KPMG Recommendations

Implementation of the KPMG recommendations should be considered within the following two contexts. First, staff have undertaken a steady stream of continuous improvement initiatives and have reported these service changes to Council over the last several years. These new recommendations build on this commitment to continuous improvement. Second, the thrust of recent Provincial legislation is bringing a renewed focus to process streamlining and avoidance of regulatory and process barriers. The emphasis of further change will be advanced with this context.

Summary

Some of KPMG's recommendations can be implemented relatively quickly, while others will take more time and significant further work. There are also recommendations that instruct staff to explore or investigate the feasibility and/or advisability of a potential improvement. For those recommendations, City Planning will undertake this exploratory

work and will then determine whether and how to move forward. Staff will report back to the Planning and Housing Committee in Q1 2024 on the status and results of this work.

City Planning will retain consultants and other external subject matter experts as necessary and recommended by KPMG. These costs will be covered by City Planning's Capital budget. Financial impacts for 2024 will be incorporated into the 2024 City Planning budget proposal.

Staff expect to be able to deliver the following initiatives in 2023:

- Developing and communicating a clear purpose statement to align stakeholders around a shared understanding of the Committee of Adjustment;
- Revising the public notice of hearing and decision language;
- Hosting sessions with applicants and members of the public outside of the public hearing process;
- Addressing the technical challenges in virtual meeting participation as identified by KPMG; and
- Developing a comprehensive panelist training and professional development program.

The rest of the implementation work program will be delivered in 2024 and 2025 and an update on the status of the work program will be provided to the Planning and Housing Committee in Q1 2024.

KPMG Recommendations and Implementation Plan

1. Develop and communicate a clear purpose statement to align stakeholders around a shared understanding of the Committee of Adjustment

Developing and communicating a shared understanding of what the Committee is and should be is foundational to many of the improvement initiatives recommended by KPMG. Given the importance of this project, it will be one of the first recommendations staff proceed with implementing. Staff intend on hiring an outside facilitator or consultant to lead the stakeholder engagement sessions and to assist with drafting the purpose statement and service charter recommended by KPMG.

2. Improve existing and develop new public facing communications and resources to enhance participation

Over the course of 2023, City staff will work with communications experts to improve existing, and develop new, public facing communications and resources to make them more accessible and user-friendly. This work will include a new public hearing guide, an FAQ document, a short instructional video, and a refresh of the Committee of

Adjustment website. Staff will also review and update the language and format of public notices, decisions, and other public-facing communication to improve their readability and accessibility.

3. Develop and promote an effective participation guide to empower applicants and members of the public

Staff will develop a participation guide for members of the public and applicants. Staff expect to engage an outside communications specialist to assist with creating this guide.

4. Regularly engage with applicants and members of the public outside of the public hearing process

Staff will organize and host structured engagements with applicants and members of the public outside of the public hearing process as recommended by KPMG. The first public session will be held before the end of Q2 2023 with regularly scheduled meetings to follow.

5. Support equitable tenant participation in the public hearing process

Staff will explore the feasibility of KPMG's various recommendations on how to better support tenants in the public hearings process. Staff will investigate how to provide equitable notice of Committee of Adjustment hearings to all residents within the notice area, which may or may not include mailing notice to tenants; if the Committee of Adjustment application form should be updated to include a disclosure requirement on impacted residential tendencies; and if there should be tenant specific participation resources developed. City Planning staff will work with the City Clerk on ensuring that any changes to notice distribution are consistent with the notice practices for other planning applications.

6. Consider refreshing application requirements for minor variance and consent applications

Commencing in 2023 and carrying into 2024, staff will evaluate all current Committee of Adjustment application requirements. Through this exercise, staff will determine which requirements should be maintained, modified or discontinued, and what new materials should be required. Staff will also specifically consider requiring a one-page summary letter, contextual drawings and a rationale for why the variance(s) is (are) required, as recommended by KPMG. As part of this project, City Planning staff, in consultation with Toronto Building staff, will also consider whether to eliminate the option of a zoning waiver and instead require a zoning review for every application, in accordance with Recommendation 4 from item PH30.7, adopted by City Council on February 2 and 3, 2022.

In conducting this rationalization exercise, staff will consult with applicants, members of the public, panel members and staff in other divisions involved in development review. Staff will also develop terms of reference for the updated application requirements.

7. Evaluate opportunities to provide more detailed reasons for Committee of Adjustment decisions

The question of how to deliver more detailed reasons for Committee of Adjustment decisions is an important and complex one that requires significant additional study. Staff will explore the question of how the Committee of Adjustment could provide more detailed reasons in written decisions, and what any changes to the current practice would mean for the way in which the Committee of Adjustment runs meetings and makes, delivers and issues its decisions.

8. Consider eliminating substantive revisions to applications following the distribution of the public notice

Staff will explore KPMG's recommendation to consider eliminating substantive revisions to applications following the distribution of public notice. As part of this work, staff will consult with both internal and external stakeholders, and will incorporate that feedback into the detailed implementation efforts.

9. Address the technical challenges of the virtual public hearing process

Staff are currently working to implement KPMG's recommendations regarding the technical challenges certain users experience in virtual public hearings. Starting in July 2022, virtual participation was expanded to allow applicants and public deputants to appear via video and not just audio. Working with staff in the City Clerk's office and Technology Services, City Planning staff are exploring what additional microphone, screen sharing and camera permissions can be given to applicants and deputants, as well as how to provide a dedicated technical resource to support participants during virtual hearings.

Starting in Q1 2023, staff will investigate tools for live agenda monitoring and electronic registration for speakers. Staff will also explore the feasibility of providing virtual breakout rooms to try to recreate the opportunity for the hallway discussions between participants and applicants that occurred when meetings were held in-person. The logistics of providing virtual breakout rooms may be more challenging with the upcoming transition to hybrid in-person/virtual Committee of Adjustment hearings, which is explained in more detail later in this report.

10. Standardize hearing practices to improve transparency and predictability

Staff will continue to work to standardize hearing practices across districts by determining and documenting best practices, and communicating these to panel members and the staff that administer Committee of Adjustment hearings. These standardized practices will be included in an updated panel members' manual, which will be distributed to the new cohort of panel members at their inaugural training session in the fall of 2023. Further, panel members will be trained on these best practices as required and staff will work on an ongoing basis to ensure they are consistently applied.

11. Implement quarterly members' meetings for panelist training and professional development

In consultation with Committee of Adjustment panel members, staff will develop a comprehensive panelist training and professional development program to be implemented when the new group of panel members commence their term in the fall of 2023. The program will involve more frequent training sessions and cover a variety of topics and skill set areas, as recommended by KPMG.

This work will build on the improvements already made to the panel member training program in recent years. In 2022, in addition to the semi-annual training sessions, City Planning staff introduced a lunch and learn series for panel members. Panel members were invited to attend a total of five lunch time virtual seminars on a variety of topics.

12. Implement guidance directions to increase consistency within and across panels

Prior to the commencement of the new term of panel members in the fall of 2023, staff will explore how to implement guidance directions as recommended by KPMG.

13. Implement commenting guidelines to improve consistency and enable more effective participation

Starting in Q2 2023, City Planning staff will assemble a cross-divisional team to address the recommendations related to commenting practices. Additionally, changes to how the Committee of Adjustment currently processes comments will be considered as part of the service delivery model review recommended by KPMG. Because these recommendations involve staff and resourcing beyond the Committee of Adjustment, combined with the need for a possible change in the current service delivery model, it is expected that these implementation efforts will last into 2024.

14. Establish KPIs to enable continuous improvement

As recommended by KPMG, staff will develop and implement a comprehensive data collection program to better enable continuous improvement of operations. Staff will start this initiative by inventorying existing performance measures and will then work with relevant internal partners to create a new data collection and monitoring program. This work will take place throughout 2023 and into 2024.

15. Conduct a comprehensive review of the Committee of Adjustment's service delivery model

Staff support KPMG's recommendation to conduct a comprehensive review of the Committee of Adjustment's service delivery model as it may complement efforts to address certain systemic challenges in application processing and decision making identified in KPMG's review. The current decentralized, geographic service model should be revisited and new organizational options explored. In the first half of 2023, staff would like to engage a consultant to conduct this review, which KPMG estimates

would take approximately three to four months. This review will be tied into the City Planning Program Review, which is currently underway.

Continuous Improvement Update

Recent Improvements

Since the last update provided to the Planning and Housing Committee in November 2021, staff have implemented some important improvements to the Committee of Adjustment. These include the introduction of video participation for applicants and public deputants at Committee of Adjustment public hearings in July 2022 and an enhanced panel member education program which included a five-part lunch and learn series and two half-day training sessions. Committee of Adjustment staff also worked with Toronto Building and Toronto Local Appeal Body (TLAB) staff to allow appellants to submit TLAB appeal fees via credit card starting in November 2022.

Hybrid In-Person/Virtual Hearings

Now that COVID-19 public health restrictions on public gatherings have been lifted, City Planning plans to move to a hybrid in-person/virtual meeting model for Committee of Adjustment hearings. Staff are targeting the roll out of this new meeting model in Q2 2023.

Since the Committee of Adjustment held its first virtual public hearing in June 2020, Committee of Adjustment staff have heard from many applicants and members of the public that the ability to participate virtually has generally been a positive one, though there have been serious challenges with technology and participation for certain users. In order to maintain the improvements to access and participation facilitated by virtual meetings, while at the same time addressing the barriers faced by some users, Committee of Adjustment meetings will be offered in a hybrid in-person/virtual environment.

The proposed hybrid model will centre on in-person attendance, with options for virtual participation for applicants and members of the public. Staff and many panel members will attend and administer the hearing in-person. As mentioned above, applicants and public participants will have the option of in-person participation or virtual attendance via Webex. The meetings will be streamed on YouTube. Staff will incorporate the recommended improvements to virtual hearings identified by KPMG into the hybrid meeting model.

Bill 23 and the Committee of Adjustment

Bill 23, the More Homes Built Faster Act, made two important changes to Committee of Adjustment applications and appeals, both of which came into force on November 28, 2022. First, Bill 23 repealed the prohibition on minor variance applications for properties that received a site-specific zoning by-law amendment within the last two years.

Second, the provincial government eliminated the right of private third parties to appeal Committee of Adjustment decisions. Now, only the registered owner/applicant or their agent, the Minister of Municipal Affairs and Housing, specified persons (as defined by the Planning Act) and public bodies (as defined by the Planning Act) can appeal Committee of Adjustment decisions. The City of Toronto can still appeal a Committee of Adjustment decision because it falls within the definition of a public body.

The Bill 23 amendments to the Planning Act also removed the rights of third parties to proceed with previously submitted minor variance or consent appeals in certain circumstances. For impacted TLAB appeals, where a Notice of Hearing was not issued by the TLAB prior to October 25, 2022, under the provincially amended legislation, the appeal was deemed dismissed.

KPMG's review was conducted prior to Bill 23's passage, but staff will work to ensure that the spirit and intent of the review are carried forward into any process changes that may be implemented as a result of the Bill 23 amendments.

City Planning staff will continue to consult with the City Solicitor, the Chief Building Official and the Ombudsman and focus on the principles of natural justice, fairness, transparency, accessibility, efficiency, good planning and improved public confidence as they work to implement the KPMG recommendations and adapt to recent legislative changes.

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SIGNATURE

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ATTACHMENTS

Attachment 1: KPMG Committee of Adjustment Review Final Report (January 2023)

