



February 27, 2023

Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2
Attention:

RE: PH2. 5 Committee of Adjustment – Consultant Review

Dear Chair Bradford and Members of the Planning and Housing Committee

FoNTRA is pleased to see the results of the KPMG consultant review and supports the recommendation that City Planning to undertake the recommended implementation plan. This plan will begin to address the issues that we have been raising regarding the operations of the Committees of Adjustment and that hinder the important role of residents in the process. Ensuring an effective role of residents in the Committee process is even more essential now that democratic right of appeal has been taken away.

The report states that “concerns have been raised by a number of stakeholders that the process is too complex and inaccessible for many users. Some users have expressed 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 introduced in 2020.”

Our particular comments on the report’s delivery of initiatives in 2023 include:

- Revising the public notice and decision language – Reasons for the decisions must be provided, as many decisions now do not include any.
- Hosting session with applicants and members of the public outside the public gearing process – This is an essential initiative, in which FoNTRA members would be pleased to participate.
- Developing a comprehensive panellist training and professional development program – This is also an essential initiative that must include the provision of a fair process for participation of residents. FoNTRA would be pleased to assist with this component.

FoNTRA supports the KPMG implementation plan items. Please see the Appendix for detailed comments. We particularly note the following:

- Plan item 4. Regularly engage with applicants and members of the public – FoNTRA is able to provide information from the residents perspectives in such a process. We assume this would include participation in consultation on other items in the the the plan.

- Plan item 6. Refreshing requirement re elimination of zoning waiver process, in accordance with Recommendation 4. from item PH30.7 adopted by City Council on February 2 and 3, 2022. Waivers often include errors and therefore waste time of staff and those participating in the hearing. The former City of Toronto successfully eliminated this option.
- Plan item 5. Support equitable tenant participation – This is essential for a fair process. Home owners had been known to provide affected tenants with hearing notices.
- Plan item 7. Evaluate opportunities to provide more detailed reasons for Committee decisions. Current practice seems very uneven with decisions published without reason attached.

Other considerations include:

- The report does not address the role of City Planning in the hearings to provide advice on some applications and no planners attend. Some Committees seem to automatically accept the Planner's advice. Consideration should be given to providing more consistent and effective use of planning advice.
- The report ignores an important issue in decision making – the protection of trees. While not a variance issue per se, C of A decisions should not result in the needless loss of tree canopy. Consideration must be given as to how the Committee can better address the important City objective of increasing, not losing, tree canopy.

Geoff Kettel
Co- Chair FoNTRA

Cathie Macdonald
Co- Chair FoNTRA

CC: Gregg Lintern, Chief Planner and Executive Director, City Planning Division
Kyle Knoek, 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.

APPENDIX
Comments on the 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.

We agree that this recommendation is an important first step in the improvement initiatives. The stakeholder engagement should go beyond the traditional discussions with the building industry and should include residents' organizations and other interested parties.

Our view is that the Committee of Adjustment is an administrative tribunal and not a regular committee of the City. As an administrative tribunal, the standards for receiving evidence and decision making are quite high (e.g., as with the need for written decisions).

We observe that the Committee of Adjustment gives great deference to the Community Planner's report when it is submitted as part of an application. Some panel members have stated that since the Community Planner has made a recommendation to approve the application that is all the evidence that panel needs to make its decision. Note, that the Community Planner does not appear at the hearing to give evidence and does not factor other inputs, such as by residents, into their planning reports. The 'purpose statement' for the Committee of Adjustment is to review and weigh all evidence as part of their decision-making process.

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.

We support this initiative particularly as it addresses all public-facing communications.

There is also a need to make the City's Zoning Bylaws more accessible and user-friendly. In the past the City Staff have prepared presentations that explain terms like 'side yard setback' using graphical images.

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.

We would encourage Staff to provide the participation guide as pages on the City's website with an option to print pages as required. The glossy participation guides provided in the past are expensive to print and infrequently used.

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.

We would recommend that structured engagements should continue for at least a four year period, or until the KPMG recommendations are substantial complete.

We would further recommend that the Director, Zoning and Secretary-Treasurer Committee of Adjustment provide an annual review to the Planning and Housing Committee. This process currently in place for the Toronto Local Appeal Body and provides a public forum to review the activities of the tribunal.

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.

We agree with this recommendation particularly as renters do not receive notices of hearings.

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.

We agree with the recommendation requiring a “one-page summary letter, contextual drawings and a rationale for why the variances are required.” This specific recommendation is an effective method of simplifying the context of the application before the Committee. Note that rationale for the variances should be described in planning terms (e.g., Official Plan) and not in economic terms (e.g., market demand).

We have continued to ask City staff to explain why the zoning waiver continues to be an acceptable process. We are not aware of any other municipal zoning department where this is acceptable practice. Our residents say that this is like putting the fox in charge of the proverbial hen house. We have observed that most zoning waivers in our planning district contain incorrect or missed variances. We believe that zoning waivers should be eliminated.

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.

Some Committee decisions are made in less than five minutes (in application that are unopposed), so it is hard to understand how the panel has reviewed the application within the context of the four planning tests. In these cases, the panel summarizes by saying that since there is no opposition, the application must represent good planning.

We would recommend that when the new panels sit, the responsibility of the Chair should be to summarize the oral reasons provided by the different members of the panel to arrive at their decision to approve or refuse application. While this method would not provide for written reasons (as procedurally required), the method would provide a stop gap measure to train panel members in articulating the reasons for their decision.

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.

The common practice today for many agents is ask for twice what their clients need in order to meet-in-the-middle. For example, the Applicant may ask for a 21m depth where the bylaw requires 17m. At the hearing, the Applicant would revised the depth to 19m claiming that the change was substantive and the application should be approved. There is often no evidence provided to indicate that the 19m depth is prevailing or represents good planning. We would welcome the opportunity to provide stakeholder input on this item.

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 break-out 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.

Our residents' associations are often asked to assist residents who are digitally challenged meaning that they do not have computers or lack the necessary technology to review the application information or to participate in a Webex session. These residents have to participate by telephone and will not understand any of the changes that may be made on the floor of the hearing (see Item #8).

When in-person hearings were held, the practice at COA/TEY would be to defer applications with opposition until later in the session. Applicants and opponents were encouraged to meet in the hallway to arrive at settlements. This process worked and a number of cases were settled in this manner.

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.

We look forward to these improvements. We will poll our association members and provide a separate submission to the Director of Committee Adjustment with some ideas on best practices.

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.

This is important and useful initiative. The panel members should also receive training that reflects changes resulting from new bylaws (e.g., resulting from EHON initiatives).

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.

The City's website home page for Committee of Adjustment should provide information on how residents can file a complaint with respect to the conduct of a hearing.

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.

The commenting practices of Community Planning needs further review. There are different approaches used across the City to determine whether Planning letters are provided to the Committee. Agents often insist that since Community Planning has not commented on the application that the Planning department has no issues with the proposal.

Confusion also continues to exist with respect to overlapping roles and responsibilities between Transportation (as with parking), Urban Forestry (as with tree canopy) and Engineering (as with drainage and other issues). Residents are often required to perform monitoring roles to ensure that the necessary hand-offs to city departments take place.

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.

We currently rely on the regular updates of closed Committee of Adjustment applications that are made available in spreadsheet format via the City's Open Data portal. We would recommend adding several fields to this spreadsheet including the name of Panel Chair and the number of variance approved to this spreadsheet.

We recommend that the City prepare and file another spreadsheet on the Open Data portal that shows the voting record of panel members. The voting record of Panels and panel members would be a useful KPI to determine performance of each panel.

We would further recommend that the City make available Decision Notices for a period of two calendar years. This is a process that is followed by all Committee of Adjustment offices across the province. This information should be posted in the Open Data portal to ensure access by all interested parties.

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.

We believe the existing service model delivery does not allow for the review of applications with reference to the four planning tests. This cannot be done in a five-minute submission window.

Smaller applications might be properly handled by one city-wide Committee with specialized expertise (e.g., sheds, garages, swimming pools). Opposition to these applications must be permitted to ensure fairness. Zoning Waivers should not be allowed for these applications.