

## **Minor Variances for Additional Height and Density on Related Zoning By-law Amendments**

**Date:** November 20, 2024

**To:** Planning and Housing Committee

**From:** Interim Chief Planner and Executive Director, City Planning

**Wards:** All

### **SUMMARY**

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This report responds to motion [2024.PH9.13](#), which requested staff to report back on whether the City should adopt a by-law under Section 45 of the *Planning Act* to establish criteria that would limit what qualifies as a minor variance when applicants request additional height and density for large scale multi-storey development proposals that already hold site-specific zoning permissions as an outcome of a private application for a zoning by-law amendment (ZBLA).

This report provides an overview of the Committee of Adjustment's (CofA) role in reviewing applications for minor variances from City zoning by-laws, and a summary of minor variance applications related to site-specific ZBLAs to inform the recommendations. Staff have analyzed if an additional criteria by-law pursuant to S.45(1.0.3) of the *Planning Act*, would be useful in determining the merits of applications seeking additional height and density for large scale multi-storey development proposals that already hold site-specific zoning permissions as an outcome of a private application for a ZBLA. Staff do not recommend that the City adopt a criteria by-law under Section 45 of the *Planning Act* for the reasons provided in this report.

Staff have analyzed minor variance data between 2014 and 2024, which includes pre- and post-legislative changes. The data indicates that the magnitude of the issue is relatively small and does not support the need for specific criteria. While the magnitude of the number of applications for an increase in height and density permissions has increased in recent years, the applications are concentrated in a few wards. Staff's interpretation of the data is that the increase in applications is a response to recent market conditions; staff see no indicators in the data that this will be a long-term trend. The existing four tests under the *Planning Act* work well to determine the appropriateness of a minor variance for increased height and density related to a ZBLA. Staff believe a more impactful change would be for more consistent, and predictable commenting practices on these types of applications by Community Planning, which staff will implement administratively as a best practice going forward.

## RECOMMENDATIONS

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

1. Planning and Housing Committee receive this report for information.

## FINANCIAL IMPACT

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

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

## DECISION HISTORY

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Planning and Housing Committee passed [2024.PH9.13](#) on January 29, 2024, which directed the Chief Planner and Executive Director, City Planning, to review and report back on whether the City should adopt a by-law under Section 45 of the *Planning Act* that would establish criteria that would limit what qualifies as a minor variance when applicants request additional height for large-scale multi-storey development proposals that already hold site-specific zoning permissions.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.PH9.13>

At its November 21, 2019 meeting, Planning and Housing Committee passed [2019.PH11.14](#) Committee of Adjustment Applications Analyses and Service Improvements. This informational report provided a breakdown of information on applications and summarized recent enhancements to the CofA review and approvals processes.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.PH11.14>

## BACKGROUND

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### Authority of Committee of Adjustment

The CofA is an independent quasi-judicial administrative tribunal that makes decisions under the *Planning Act* on applications for minor variance, consent, and permissions to extend or enlarge legal non-conforming uses. The *Planning Act* grants authority to Municipal Councils to appoint committees to approve a number of minor applications. Section 45 of the *Planning Act* permits the CofA to make decisions on minor variances from the Zoning By-law and to grant permission for altering or changing a lawful non-conforming use of land, buildings, or structures.

## Criteria By-law for a Minor Variance

A minor variance is a minor change from a municipal zoning by-law which controls the use of land, buildings, and structures. The *Planning Act* (s.45(1.0.1) provides authority for the province to establish additional criteria for what constitutes a minor variance in addition to “the four tests” (see below), but the Province has not utilized this authority. Municipalities also have the authority to establish criteria for what constitutes a minor variance under s.45(1.0.3) of the *Planning Act*. Although the authority to establish additional criteria in addition to the four tests was enabled under the *Planning Act* in 2015, no municipality in Ontario has adopted a by-law to establish additional criteria. The Town of Oakville considered a draft by-law in 2019 but never adopted it. A Council adopted criteria-by-law could be appealed to the Ontario Land Tribunal by any registered owner of land in the City of Toronto that made oral or written submissions before the by-law was passed. Additionally, the Minister could appeal, as could a public body that is not a registered owner of land in the City.

## The Four Tests

The CofA exercises the authority set out in Section 45 of the *Planning Act*, which allows for the authorization of variances from zoning by-laws passed under Section 34 and 38. The CofA must consider the application within its statutorily mandated process. For every application before it, the CofA weighs the evidence presented to it and makes a determination based on the preponderance of evidence as to whether the application meets the four tests established in Section 45(1) of the *Planning Act*.

The Four Tests are:

- 1) Is it minor?
- 2) Does it maintain the general intent and purpose of the Zoning By-law?
- 3) Does it maintain the general intent and purpose of the Official Plan?
- 4) Is it desirable for the appropriate development or use of the land, building or structure?

The four tests in the *Planning Act* serve as the basis for the panel members to make determinations on planning applications on a case-by-case basis. The panel members must find that an application meets all four tests to approve an application, and each variance in an application must satisfy all four tests.

The *Planning Act* does not define “minor”; however, there is extensive case law on the topic. What is minor depends on the facts, circumstances, and context of the specific application. Each application requires an assessment of the significance of the variance(s) to the surrounding circumstances and in terms of the existing zoning by-law. The test of minor is not intended as simply a numerical assessment; it is an assessment of the impact of a proposal. An application requesting a variance with a small numerical value may have a great impact even though the numerical value is small and vice versa. If the impacts associated with the requested variances are minor in nature from both a quantitative and qualitative perspective, and will not result in any undue adverse impacts, the panel members may find that the variance(s) is minor.

The second test examines whether the variance in question maintains the general intent and purpose of the zoning by-law. The panel members must consider what the zoning by-law seeks to achieve or what impacts it looks to avert. As an example, development standards such as setbacks, step backs, density, and height restrictions are used to limit the intensity of built form and its impacts on adjacent land uses including maintaining sunlight on adjacent streets, parks, or sensitive land uses. In a case of an application for a variance from a recently adopted site-specific ZBLA, it is still possible to maintain the intent of the zoning by-law when circumstances and the policy context have changed. In this instance, panel members consider whether a minor variance will maintain the general intent and purpose of the site-specific zoning by-law for the subject property.

In the third test, the panel members examine whether the variance in question maintains the general intent and purpose of the Official Plan. The panel members must consider if a proposed variance will be compatible with the Official Plan's vision, goals, policies, or designations. The panel members may approve a proposal that meets many, but not all, of the policies if the application meets the overall intent of the Official Plan.

The fourth test examines if the application is desirable for the appropriate development of the land. The panel members must determine if the variance would be considered desirable based on whether it will be more beneficial to approve the variance than to adhere strictly to the by-law, or if the variance will add value to the use or development that could not otherwise be realized. This is an objective test based on the desirability or appropriateness of the variance from the standpoint of the public interest, rather than the private interest of the applicant. This test questions whether the variance offers some public interest value or benefit to the public and the landowner that a strict adherence to the by-law may not achieve.

To reject an application, the panel members need only find that one of the tests “Four Tests” described above are not met by the application.

## **Legislative Changes**

Bill 73 *Smart Growth for Our Communities Act*, 2015 came into effect on July 1, 2016. This Bill made amendments to the *Planning Act* including a two-year prohibition on applications seeking variances from a site-specific ZBLA from the date of enactment of the site-specific ZBLA.

Bill 23 *More Homes Built Faster Act*, 2022 came into effect on November 8, 2022. The Bill removed the two-year prohibition on minor variance applications related to a site-specific ZBLA. The removal of this legislative provision permits applicants to apply to the CofA in short succession after enactment/approval of a site-specific ZBLA, which was also the situation prior the coming into force of Bill 73 in 2015. In addition, Bill 23 amended the *Planning Act* to only permit the applicant, the Minister, and specified persons and public bodies to appeal a decision by the CofA to the Toronto Local Appeal Body.

## COMMENTS

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In response to Planning and Housing Committee's direction, staff have completed an analysis of data related to CofA applications made following a site-specific ZBLA. The data covers a ten-year period. Staff have identified several trends that are described below in detail.

### Information on the Data Collection Process

Staff have extracted data from CofA applications over a ten-year period of time in three specific legislative eras. The timeframes are significant because they indicate periods of time where provincial legislation changed regarding the ability to seek a minor variance from a related site-specific ZBLA. The three specific timeframes are as follows: two years before a prohibition-period was instituted by Bill 73; during the time when prohibition-period applied (8 years); and after the prohibition-period was removed by Bill 23 (1.5 years).

The three timeframes are:

- Timeline 1: From July 1, 2014, to June 30, 2016 (two years before Bill 73)
- Timeline 2: From July 1, 2016, (Enactment of Bill 73) to November 7, 2022 (1 day prior to Enactment of Bill 23)
- Timeline 3: From November 8, 2022, until July 31, 2024 (Enactment of Bill 23)

See Attachment 1 for a full presentation of the data.

The data analysis includes minor variance applications that have been heard by the panel members with a decision rendered. Starting from a list of site-specific ZBLAs, staff identified where the subject properties were subsequently subject to a CofA application to request permission for additional height and density. Instances within the ten-year period were arranged by timeframe to match the three significant timeframes noted above.

Staff additionally analyzed the following information:

- The number of minor variance (MV) applications related to a site-specific ZBLA and whether they were approved or refused;
- The number of overall CofA applications submitted for the same period of time;
- If a Community Planning report was submitted with the application and whether the report recommended approval or refusal; and
- ZBLAs that were approved or settled at the Ontario Land Tribunal or that were adopted by City Council. (See Attachment 1 for more details)

### Data Summary

As shown in Attachment 1, in the ten-year period staff identified 143 instances where the CofA made a decision on a MV application related to a site-specific ZBLA. Over the ten years, only 143 (0.43%) out of 33,530 MV applications were related to a site-specific ZBLA. Of the 143 MV applications, 91 (64%) were for variances to height and density permissions. More recent data in the first six months of 2024 indicates a noticeable

MV for Additional Height and Density on Related ZBLA

increase in MV applications related to a site-specific ZBLA for increased height and density: 23 of 1,539 (1.5%).

The following is a breakdown of the 91 MV applications for height and density over the ten-year period:

Timeline 1: July 1, 2014, to June 30, 2016 (the period before Bill 73)

- 2 instances

Timeline 2: July 1, 2016, (Enactment of Bill 73) to November 7, 2022 (Enactment of Bill 23)

- 24 instances

Timeline 3: November 8, 2022, until July 31, 2024 (Start of when Bill 23 removed the 2-year prohibition)

- 65 instances

Of the applications that had an MV for increased height and density, a total of 84 out of 91 were approved (92.3%), and 7 out of 91 were refused (7.7%). The approval rate did not vary significantly by district.

- Scarborough panel approved 9 applications and refused 1 application.
- North York panel approved 16 applications and refused 3 applications.
- Toronto and East York panel approved 54 applications and refused 3 applications.
- Etobicoke-York panel approved 5 applications and refused zero applications.

Certain wards in the City of Toronto are seeing more instances where a CofA application is filed after a site-specific ZBLA. A large majority of the requests for additional height and density are centralized in particular wards downtown, including University-Rosedale (Ward 11), Toronto-St. Paul's (Ward 12), and Toronto Centre (Ward 13).

### **Factors Influencing the Data Findings**

The data indicates a noticeable increase in the number of MV applications related to a site-specific ZBLA for increased height and density over a ten-year period, especially in the last two years. Staff have identified the following factors that may have influenced this trend:

- The repeal of the two-year prohibition on making a minor variance application following site-specific ZBLA through Bill 23 in November 2022;
- Increases in interest rates and construction costs affecting the economics of previously zoned development proposals;
- Changing context of planned and approved development surrounding development sites; and
- Increased focus on the housing crisis.

It is not possible to predict from the data analysis whether the trend will continue. It was not a trend prior to the *Planning Act* change in July 2016 (Bill 73) to restrict minor variances for two years after a zoning by-law amendment. The introduction of Bill 23 also affected the CofA processes and the ability to request additional height and density after a ZBLA. Staff believe the increased number of instances since November 7, 2022, are a

reflection of recent market conditions, in which applicants are seeking to achieve additional value to previous approvals, and where market conditions have shifted since the time of the original zoning approval.

### **Application of the Four Tests by Committee Members**

The four tests for minor variances are useful and effective to evaluate proposals that add height and density to site-specific by-laws because the application of the four tests will determine if the application is desirable and should be approved. City Planning staff and Legal Services staff, provide panel members training on applying and considering the four tests and on adjudication. Additional criteria would remove flexibility that the panel members have to apply their judgment on the four tests. The existing four tests under the *Planning Act* work well to determine the appropriateness of a minor variance for increased height and density related to a ZBLA. In contrast to most minor variance applications, there is often a recent staff report on the public record related to the site-specific ZBLA that typically describes the intent of zoning by-law provisions on a site-specific variance and an assessment of the original proposal in both the physical and policy contexts, providing useful information to assess the four tests.

Rather than a criteria by-law, a more impactful change to consideration of variances for additional height and density would be to implement more predictable and consistent commenting practices on these types of applications by Community Planning.

### **Community Planning Staff Reports**

The current CofA application process includes a circulation of all applications to Community Planning. Comments from Community Planning Districts are invited and encouraged, but a report is not currently a requirement for the application to be heard by Committee. Community Planning staff review each application based on the four tests. If staff are of the opinion that one of the four tests are not met, or that conditions of approval should be recommended, then Community Planning will submit a report on the application for consideration by the Committee.

Staff have analyzed the ten-year data and identified when an application was accompanied by a report and when it was not. Community Planning submitted a report on 49 of the 91 applications. Of those instances when a report accompanied an application, 5 were refused by a CofA panel, and 44 were approved. When a report did not accompany an application, 2 were refused and 40 were approved. More recently, the CofA saw an increase in instances in 2024. Of the 23 total instances, 13 instances had reports, and there were 10 instances where Community Planning did not provide a report.

CofA panel members often express that they value the information and planning opinion provided in Community Planning staff reports. The staff reports provide important information and guidance to inform the panel member's decision-making process on these applications. Accompanying City Planning reports can provide further clarity, application history, context (location, and planning policy framework), Ontario Land Tribunal (OLT) appeal/settlement details, if any, and other useful information for panel members to make an informed decision on an application. Reports also provide

members of the public with an understanding of Community Planning's assessment of the merits of an application. Community Planning staff, and other commenting partners, will continue to provide a report to assist the panel member's decision-making process. CofA staff will work with Community Planning staff to establish consistent and predictable commenting practices on minor variance applications related ZBLA applications going forward.

## **Encouraging the Public to Participate and Provide Comments on ZBLA Applications brought for Additional Height and Density to CofA**

Through Bill 23, which came into effect November 8, 2022, a site-specific ZBLA that may have been approved or settled at the Ontario Land Tribunal can in short order apply for increases for height and density through a minor variance application. In addition, Bill 23 removed the ability for third-party appeals of CofA decisions. Staff have heard the concerns from residents about these changes.

Staff encourage the public to participate in CofA hearings and submit oral or written comments on all MV applications. The public can attend hearings and speak for or against an application, and their deputations will be considered by panel members when applying the four tests. It is important that the public engages at the CofA hearings both in favour and in opposition to applications before the panels. The CofA is a stand-alone process that is not connected to the ZBLA. Submissions from members of the public can provide the Committee with important information to consider when assessing applications against the four tests.

For more information and assistance on how to participate in the CofA process, the public can visit the [Committee of Adjustment website](#). Information on applications that may be of interest is available on the [Application Information Centre](#).

## **Conclusion**

The CofA is an independent, quasi-judicial body that makes decisions under the *Planning Act*. The *Planning Act* does not restrict minor variance applications for site-specific zoning by-laws. The CofA cannot bar an application from proceeding to the CofA if it meets application standards and is allowed by Provincial legislation following the adoption of Bill 23 which removed two-year prohibition on minor variance applications related to a site-specific ZBLA.

Additionally, the City is striving to meet housing targets in a housing crisis, and adding additional height and density allows for additional units to be added to proposed developments. The CofA must weigh the evidence presented to it and make a determination on whether the application meets the four tests established under the *Planning Act*: 1) Is it minor?; 2) Does it maintain the general intent and purpose of the zoning by-law?; 3) Does it maintain the general intent and purpose of the Official Plan?; and 4) Is it desirable for the appropriate development or use of the land, building or structure?

Staff do not recommend that the City adopt a criteria by-law under Section 45 of the *Planning Act*. The data indicates that the magnitude of the issue is relatively small and does not support the need for specific criteria. While the magnitude of the number of applications for an increase in height and density permissions has increased in recent years, the applications are concentrated in a few wards. Staff's interpretation of the data is that the increase in applications is a response to recent market conditions whereby applicants are seeking to add additional housing for a multitude of reasons and will not be a long-term trend. The existing four tests under the *Planning Act* work well to determine the appropriateness of a minor variance for increased height and density related to a ZBLA. CofA staff will work with Community Planning staff to establish consistent and predictable commenting practices on minor variance applications related ZBLA applications going forward.

## **CONTACT**

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## **SIGNATURE**

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## **ATTACHMENTS**

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Attachment 1 - Minor Variance Height and Density with Related ZBLA  
Attachment 2 - Height and Density Minor Variance Application with Related ZBLA, by  
Ward