

Policy Title: Minor Variance Applications

Policy Number: 07-06-01

Section:	Community Development	Subsection:	Committee of Adjustment
Effective Date:	February 2, 2017	Last Review Date:	February, 2017
Approved by: Leadership Team		Owner Division/Contact: Committee of Adjustment, Office of the City Clerk, Corporate Services Department	

Policy Statement

Property owners may apply to the Committee of Adjustment for minor variances to the Zoning By-law.

Legal Authority

The *Planning Act*, Section 45(1), provides that the Committee of Adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under Section 34 or 38 of the *Planning Act*, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, provided that in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

In addition to its powers under subsection (1), under Section 45(2) the committee, upon any such application,

- (a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit
 - (i) The enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under sub clause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
 - (ii) The use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose

prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee

Or

- (b) Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms to the uses permitted in the by-law

In addition to its powers under subsection (1) and (2), under subsection (3) a Council that has constituted a Committee of Adjustment may, by by-law, empower the Committee of Adjustment to grant minor variances from the provisions of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan and when a Committee of Adjustment is so empowered subsection (1) applies with necessary modifications.

Where a zoning by-law is amended in response to an application by the owner of any land, building or structure affected by the by-law or by a person authorized in writing by the owner, no person shall apply for a minor variance from the provisions of a zoning by-law in respect of the same land, building or structure before the second anniversary of the day on which the by-law was amended.

The Secretary-Treasurer shall refuse to accept an application for a variance where the zoning by-law does not exceed the second anniversary of its passing unless the Council for the Corporation of the City of Mississauga has declared by means of a resolution that such application is permitted.

Application

Application forms may be obtained from Committee of Adjustment staff, Office of the City Clerk or the City of Mississauga web site. Application forms are available in alternative formats upon request.

The completed application package is submitted to Committee of Adjustment staff and must include:

- One original application form
- Three (3) copies of sketch/plan (11 x 17 or smaller) otherwise fourteen (14) copies of a full size (folded) site plan
- "Appointment and authorization" form (when the application is being signed by an agent);
- "Permission to enter" form
- "Posting of advisory sign" form, and
- Applicable fee payment

The Committee of Adjustment may reduce or waive application fees under Section 69(2) of the *Planning Act* when it is determined that:

- The application resulted from an error on the part of the City, or
- The application fee would exercise an extreme hardship upon the applicant at the discretion of the Committee

Hearing

All applications are to be considered at public hearings. All hearings shall be located in meeting rooms that are accessible to the general public.

Notice of Hearing

The Committee of Adjustment staff shall provide notices of the public hearing in accordance with Ontario Regulation 200/96 under Section 3 (1) and (7) where required.

- Notice of the public hearing shall be provided by giving notice by personal service or prepaid first class mail to every owner of land within 60.00m (196.85ft.) of the area to which the application applies. However, if a condominium development is located within 60.00m (196.85ft.) of the area, notice may be given to the condominium corporation, according to its most recent address for service or mailing address as registered under Section 3 of the *Condominium Act*, instead of being given to all owners assessed in respect of the condominium development. An expanded circulation is required where relief is being requested from a separation distance identified in Table 2.1.2.1.1 of Zoning By-law 0225-2007, as amended. The fee will be calculated after submission of the application and will reflect the actual cost of circulation beyond the 60m (196.85ft.) circulation to the distance identified for the use in Table 2.1.2.1.1. The additional circulation fee is to be collected before the scheduled meeting.
- A notice shall be posted, clearly visible and legible from a public highway or other place to which the public has access, at every separately assessed property in the area to which the application applies or, where posting on the property is impractical, at a nearby location chosen by the Secretary-Treasurer.
- Every person and public body that has given the Secretary-Treasurer a written request for notice of a hearing on an application for a minor variance or permission under subsection 45 (1) or (2) of the *Planning Act* shall be given notice of the hearing by personal service, prepaid first class mail or telephone transmission of a facsimile of the notice.

Procedure

Applicants are required to attend the public hearing to present their application or request a deferral of the application. Written requests may be accepted in certain circumstances and only at the discretion of the Committee. All deferral requests shall be addressed at the beginning of

the meeting and all other matters shall be addressed in the order as they appear on the agenda, or at the discretion of the Committee. Applicants will be required to make a brief presentation of their application if required by the Committee.

A request for an application to be withdrawn from the scheduled hearing date by the applicant or authorized agent must be for reasonable cause. The request for withdrawal must be set out in writing if made prior to the hearing, or the request may be made orally at the commencement of the hearing.

If a request for withdrawal of an application is made in writing prior to the commencement of the hearing, on the basis of reasonable cause, the Secretary-Treasurer shall make a record that the application has been withdrawn and shall immediately give notice to all property owners within 60 m of the subject lands that the application has been withdrawn. Where the Secretary-Treasurer has made a record that an application has been withdrawn, the Committee shall take no further action in respect of that application.

Where a written request for withdrawal of an application fails to set out reasonable cause for the withdrawal, or where the Secretary-Treasurer is unable to determine whether the written request for the withdrawal sets out reasonable cause, the request for withdrawal of an application shall be presented to the Committee at its next scheduled hearing and the Committee shall determine what further action to take in respect of that application.

Where a request for withdrawal of an application is made orally at the hearing, the Committee shall become seized of the matter and shall determine whether to grant the request or whether to continue with a hearing on the application. If the Committee grants the request for withdrawal of an application, upon the conclusion of the hearing the Secretary-Treasurer shall immediately give notice to all property owners within 60 m of the subject lands that the application has been withdrawn.

Any interested parties may attend the hearing and will be given an opportunity to speak in favour of or against the application, within the time limit set out in the Committee's Procedure By-law.

Decisions

All Committee decisions shall be made in accordance with the Committee's legislated powers under Section 45 (1), (2) and (3) of the *Planning Act*.

The decision of the Committee is only valid where it is concurred by the majority of the members of the Committee that heard the application and the decision of the Committee, whether granting or refusing an application, shall be in writing and shall set out the reasons for the decision; contain a brief explanation of the effect, if any, that the written and oral submissions relating to

the application made to the Committee before its decision or at the hearing, had on the decision; and shall be signed by the members who concur in the decision.

The Committee may subject an application to conditions and/or restrictions for such time and subject to such terms and conditions as the Committee considers advisable and as are set out in the decision.

Requests for Decisions

The Secretary-Treasurer shall, no later than ten days from the making of the decision, send one copy of the decision certified by him or her to the applicant and to each person who appeared in person or by counsel at the hearing or who filed a written request for notice of the decision.

Appeals of Decisions

Decisions of the Committee of Adjustment may be appealed to the Local Planning Appeals Tribunal, in accordance with Section 45(12) of the *Planning Act*.

Role of Committee of Adjustment Staff

The Committee of Adjustment, Support Services Staff must:

- Accept, process and follow up on all Minor Variance Applications for the Committee of Adjustment
- Refer any questions concerning possible charges for City requirements to the Development Services Section, Planning & Building Department
- Carefully consider and limit any information given out on the telephone to established facts
- Not advise anyone on any possible decision of the Committee of Adjustment as this is a qualified privilege of authority by the Committee of Adjustment members at a scheduled hearing
- Not distribute any information concerning any decision made by the Committee of Adjustment members prior to the official signing of the decision
- Have the approval of the Secretary Treasurer or Committee Chair before giving out any information concerning a deferred application to the Applicant, Agent or Solicitor
- Never loan out Committee of Adjustment files or leave them unattended at any time
- Allow the public to view application forms and plans prior to the hearing
- Allow the applicant to review departmental and agency comments in the office (copies must not be given out without the approval of the Secretary-Treasurer)
- Prior to the hearing, not allow the public to view departmental and agency comments, letters or other material addressed to the Committee of Adjustment, or any councillor's comments, unless required under the *Planning Act*, if said information has not been provided to the Committee, and
- Ensure that in the event of an interruption in mail service, the correct procedures are implemented in order to provide the best services possible in those circumstances

Revision History

Reference	Description
SMT – 2010 03 31	
June 20, 2013	Scheduled review; admin changes to Application requirements
GC-0623-2015 – 2015 10 28	Amended to reflect additional circulation area identified in Table 2.1.2.1.1 of Zoning By-law 0225-2007, as amended
February 2, 2017	Scheduled review. Revised to reflect current legislation and practices.
August 29, 2018	Housekeeping – OMB renamed to Local Planning Appeal Tribunal.