

Responses to Federation of Citizens' Associations (FCA) – Guidance for the City of Ottawa's Committee of Adjustment

On February 15, 2023, as the Planning and Housing Committee considered the report titled, "2023 Draft Operating and Capital Budget – Planning and Housing Committee," the Federation of Citizens' Associations (FCA) presented a document titled, "Guidance for the City's Committee of Adjustment," which included several recommendations related to how the Committee of Adjustment "discharges its responsibilities" and "enhancing the role of the City's Planning Department as it participates in the Committee of Adjustment process."

The Committee of Adjustment and the Planning, Development and Building Services Department provided the following responses to the FCA's recommendations.

Committee of Adjustment

1. The Committee of Adjustment, when determining conformity of an application with the City's Official Plan, should include the relevant approved Secondary Plan as part of this process.

Ontario's [Planning Act](#) requires the Committee of Adjustment to consider many factors when deciding to approve or refuse an application. The Committee's three panels of adjudicators assess applications on a case-by-case basis, according to the applicable statutory test and the evidence presented at the hearing, including any written comments submitted before the Committee makes its decision. The Committee's consideration of a proposal's conformity with the City's Official Plan includes any land use evidence relating to an applicable Secondary Plan.

2. The Committee of Adjustment should provide written guidance on how it assesses whether an application is minor under the legislated 4 tests.

The Committee has the power to authorize a minor variance from the provisions of the Zoning By-law if, in its opinion, the application meets all four requirements under subsection 45(1) of the *Planning Act*. It requires consideration of whether the variance is minor, is desirable for the appropriate development or use of the land, building or structure, and whether the general intent and purpose of the Official Plan and the Zoning By-law are maintained.

In 2023, the Committee of Adjustment updated its webpages to provide additional information on participating at a hearing, commenting on an application, and the following guidance on the four-part test for a minor variance application:

- **The four-part test for a minor variance** application: The Committee of Adjustment may authorize a minor variance to the zoning by-law with respect to the land, building or structure or its use, if it considers that:
 1. it is **desirable**;
 - This test relates to desirability from a planning and public interest point of view relative to adjacent properties and the neighbourhood in general. Essentially, does the proposal fit well in the area?
 2. the **general intent and purpose of the City's [Official Plan](#) is maintained**;
 - For example, does the proposal respect the character of the neighbourhood? Does it meet other policy objectives such as protecting trees?
 3. the **general intent and purpose of the [Zoning By-law](#) is maintained**;
 - For example, is the proposed development compatible with the surrounding uses? If the proposal would reduce the minimum lot width and lot area of the property, would it maintain sufficient building setbacks, amenity space, and soft landscaping area?
 4. it is **minor**.
 - This is not about the mathematical difference between what is required and what is proposed. Instead, the key consideration is whether an unacceptable adverse impact would result from authorizing the requested relief from the zoning requirement.

It is the role of Committee of Adjustment adjudicators to assess the merits of a minor variance application on a case-by-case basis, according to the statutory test and the evidence presented at the hearing.

3. The Committee of Adjustment should adhere to the City's Infill Guidelines when assessing applications for minor variances for good and desirable planning under the legislated 4 tests.

The Committee of Adjustment considers all evidence presented, written and oral, relating to an application, including any professional land use evidence on the City's Infill Guidelines.

4. The Committee of Adjustment, when assessing an application as good and desirable planning under the legislated 4 tests, should consider the impact of the application on the surrounding neighbourhood character, particularly when identified by the local community association.

The Committee of Adjustment considers all evidence presented, written and oral, relating to an application, including any concerning the character of the neighbourhood as highlighted by area residents and the local community association.

- 5. The Committee of Adjustment should require that any amended or additional application documentation be completed and filed with the Committee of Adjustment at least a week before the hearing, so that all interested parties have access to the file documentation. When additional information is received all interested parties registered with the Committee of Adjustment should be informed. The Committee of Adjustment should not permit revised documentation from the applicant to be presented at a scheduled hearing. When there are revisions or additions to the documentation occurring less than a week before the hearing, the hearing be postponed to provide the required notice to interested parties.**

The *Planning Act* requires the Committee of Adjustment to hear applications within a specified timeline. For example, the Committee must hold a hearing within 30 days of receiving a complete minor variance application. Also, public notification of the hearing must occur no less than 10 days before the proceeding. In practice, the Committee of Adjustment posts the panel agendas online earlier than prescribed by statute – approximately 18 days before the hearings. If an applicant submits revised plans or additional documentation shortly before the hearing, the Committee panel will consider any request to adjourn (postpone) the hearing to provide additional time to consider new information.

- 6. The Committee of Adjustment, at its hearings, when seeking a response from the applicant as a result of interventions made by hearing participants, should provide the opportunity for rebuttal.**

The following is the order of presentations during Committee of Adjustment hearings:

- 1. Applicant's presentation (if the Panel requests one) then questions from Members.*
- 2. Oral submissions from the City Planner, if any, and questions from Members.*
- 3. Oral submissions from the public and questions from Members.*
- 4. Applicant's reply to all oral submissions and responses to Members' questions.*

Similar to subsection 83(5) of [City Council's Procedure By-law](#) concerning delegations from the public at Committee meetings and providing that “[n]o person, without leave of the Committee, shall speak for longer than five minutes”, section 15

of the Committee of Adjustment's [Rules of Practice and Procedure](#) provides as follows:

15.2. All those making presentations to the Committee shall be provided with a maximum of 5 minutes to present. Any submissions beyond the 5 minutes shall be at the discretion of the Chair.

15.3. Following submissions from members of the public, the Committee shall give the applicant or their representative the opportunity to respond to those submissions, and to any comments received from commenting agencies or interested parties.

15.4. Any other input after the applicant's response shall be at the discretion of the Chair.

Because the onus is on the applicant to demonstrate that their application meets the statutory requirements, procedural fairness requires that the applicant have an opportunity to respond to all comments made at the hearing. It is the panel chair's role to enforce the rules and exercise any discretion they deem appropriate under the circumstances.

7. The Committee of Adjustment database should be user-friendly and searchable by address of application, type of application, type of relief sought – for example, by setbacks, by height, (where applicable) by heritage characteristic, (where applicable) by trees, and by decision. Standard language should be used to support this feature to ensure consistency. As well, the QR code on the Committee of Adjustment hearing notice sign provided at the site of the application should link directly to the application file.

The Committee of Adjustment's decisions are published on eScribe, the City of Ottawa's digital platform for Council and Committee agendas. The decisions are searchable by keywords.

As for the QR code on Committee of Adjustment signs, it links to the Committee's web pages where the public can access hearing agendas and published application documentation, as well as links to obtain more information from Committee staff. The Committee of Adjustment will continue to explore opportunities to improve access to application information online.

Planning, Development and Building Services Department (PDBS)

Planning Services provides a development review function within the Planning, Development and Building Services Department. The Development Review All Wards (DRAW) team was created in March 2024. Within this team, five Planner 1s and two Engineers in Training (EITs) work fully on Committee of Adjustment applications. These

staff are supported by two senior planners, one senior engineer, and one manager in the DRAW team. DRAW team staff also work on affordable housing projects, schools and overflow files from other geographic teams.

Commenting on Committee applications (such as minor variances, consents, and permissions) and attending hearings to respond to questions are the tasks most visible to community members, as reflected in the FCA comments. There are three Committee of Adjustment Panels, and DRAW planners usually attend two every Committee cycle, such as both Panel 1 and 2, or both Panel 2 and 3.

In addition to supporting hearings, staff undertake the following:

- Working with applicants and other departments on clearing conditions following decisions, often with urgency as applications near their two-year lapse date
- Speaking with applicants, subject matter experts and the public regarding concerns about proposals, and problem solving within very tight timelines
- Attending Ontario Land Tribunal hearings when applications are appealed
- Responding to inquiries
- Answering interpretation questions
- Reviewing zoning and OP policies
- Research and analysis for consistency
- Dividing up applications, taking over files for staff who have left the City, recording past correspondence and creating SharePoint files
- Streetscape Character Analysis review and analysis
- Cash-in-lieu of Parkland calculations
- Attending pre-consultation meetings with more senior staff as support or where there are concurrent development and Committee of Adjustment applications

To demonstrate workload, the four DRAW Planner 1s tracked inquiries and condition clearing over a five-day period from August 26th until August 30th in the three panel inboxes. This did not include condition clearing by other planners still involved because of their past involvement. These are the results:

- 21 requests to clear conditions
- 17 clearances of conditions
- 83 total inquiries (including conditions)
- 67 responses provided (including conditions)

Staff believe this is a fair representation of the workload – extrapolated would mean several hundred inquires each month.

The Committee of Adjustment must meet the statutory timelines set out in the *Planning Act*. Applications are scheduled once they are deemed complete. Consequently, there is no maximum number of applications per hearing. In 2024, there were 60 hearings across all three panels to date, with an average of 7 applications per hearing and a range of 3 to 14. These numbers are lower than past years.

Ontario Land Tribunal hearings require several days preparation and are usually no more than two days in duration for appeals of Committee of Adjustment decisions. In 2023, there were 17 appeals and in 2024 to date there have been 26.

Planner 1s on the DRAW team may not attend all hearings. Staff determine if there is a City interest. They may however be subpoenaed to give evidence.

In conclusion, Planning Services staff are frequently referred to as a commenting agency, but as shown above, provide core functions to support Committee of Adjustment. Planning Services staff likely contribute more time and effort than what is reflected in the \$659 portion and the \$1102 portion of the \$2412 fee for minor variance or consent applications respectively.

PDBS provided the following direct responses to the FCA's five recommendations directed to the City:

- 1. The City of Ottawa should delegate a planner to assist community groups and residents with navigating the Committee of Adjustment process, including interpreting City policies (eg the Official Plan, Zoning Bylaw, Infill Guidelines, Tree Bylaw, etc.) and interpreting the documents filed by the applicant.**

The Committee of Adjustment is an independent, quasi-judicial body created under the authority of the *Planning Act*. The City's role in this process is as a commenting agency, rather than the responsible authority.

The City of Ottawa has existing resources available to the public. Community associations and residents can always contact Development Information Officers (DIO) for information on the Zoning By-law. The Committee of Adjustment has a dedicated website that provides information on legislative requirement, decision criteria, hearing process and public participation, The Planning, Development and Building Services Department offers Planning Primer sessions to help residents learn about the Official Plan and other policy documents. Three Planning Primers tailored to Committee of Adjustment applications were delivered by the City in October, 2023.

For Committee of Adjustment applications, Planning Services functions as a commenting agency, so the appropriate venue for community associations and residents to provide comments and questions is through the public hearings or directly to the Committee staff.

It is important to note that currently, Planning Services staff who work on Committee of Adjustment files do not act as planning consultants who provide services to applicants and the community to achieve their goals, but rather review applications on their merits.

Should it be the will of Council to have a service available to the community where Planning Services staff provide professional opinion and interpretation of policies, an estimated starting complement of three FTEs would be required. An assessment of where these positions should be located organizationally would have to occur, to limit any perception or real conflict of interest that may arise. It may be within Planning Services, imbedded in Committee of Adjustment, or through the retention of an external planning consultant subject to Council approval.

Staff's understanding is that providing a planning consultant for community use and funded from application fees would be a first in the province.

2. City Planning staff, when assessing an application filed with the Committee of Adjustment, should affirm whether or not each individual test (of the legislated 4 tests), in their opinion, has or has not been met, and provide a rationale for that opinion. This should also include the relevant Secondary Plan policies.

Planning Services staff evaluate minor variance applications based on the four criteria under Section 45(1) of the *Planning Act* and evaluates consent applications based on the criteria under Section 51 (24) of the *Planning Act*.

It is the responsibility of the applicant to demonstrate and satisfy the Committee that the application meets the applicable evaluation criteria. However, on applications where staff has concerns, the report will outline the rationale for the concern.

If City Council opted to direct staff to provide a rationale for each of the four legislated tests for each Committee of Adjustment application, it is crucial to acknowledge the existing timeline constraints and the impact of this decision on the planning process.

Currently, the city handles approximately 500 Committee of Adjustment applications annually. The lead planner begins their review just ten working days before the Committee of Adjustment hearing, only allowing a six-day window for providing comments due to the necessity of sending comments four days before the hearing. Should Council mandate a detailed rationale for each application, this would equate to an average of up to five hours per file. Considering the 3-14 files per Committee of Adjustment agenda, this could mean a substantial amount of increased capacity that would be required to facilitate this increased level of service within existing mandated timelines.

Should this change be possible to be accommodated by the Committee of Adjustment, Planning services would have to be monitor this process change and make a

recommendation to Council on whether additional FTEs are required to address volume of work beyond the additional time gained from the above process change.

3. City Planning staff, when assessing an application filed with the Committee of Adjustment, should affirm whether or not the application conforms with the City's Infill Guidelines, and provide a rationale for that opinion.

It is the responsibility of the applicant to demonstrate and satisfy the Committee that the application meets the applicable evaluation criteria. However, on applications where staff has concerns, the report will outline the rationale for the concern.

The City has various Design and Planning Guidelines that staff considers as part of the application review process. The City's Urban Design Guidelines for Low-rise Infill Housing is one tool that helps to achieve the Official Plan's strategic direction for intensification and site design.

From a legislative perspective, guidelines do not have the same statutory requirement in comparison to Official Plan policies, Secondary Plan policies or Zoning By-law regulations where the applicant must either meet or conform to. Furthermore, the guidelines are not intended to be used as a checklist for evaluating development proposals and are not applicable to every property or application.

4. When a Committee of Adjustment decision that has City Planning staff concurrence is appealed to the Ontario Land Tribunal, City Planning staff attend the OLT hearing to give evidence regarding their concurrence regarding the application.

There are not sufficient staff resources for committee planners to attend every Ontario Land Tribunal (OLT) appeal. Each case unique and the City's legal position and attendance is decided on a case-by-case basis based on the level of impact on City policy. Staff may also be subpoenaed to attend the hearing by the applicant or appellant.

In 2023 appeals, there were 17 appeals. In 2024 to date, there have been 26. We estimate 10-15 hours for a planner to adequately prepare for each appeal, in addition to the time spent at the hearing itself (which can last one to two days on average, with rare cases taking up to a week).

Staff will participate in an OLT hearing to represent a matter of City interest, which is determined by the DRAW manager.

Taking all this information into consideration, should Council wish to direct planners to attend all OLT hearings, we estimate two additional full-time employees (FTE) to handle this extra workload would be required.

5. When the Committee of Adjustment has approved an application (that is not appealed), the City's Bylaw Enforcement should ensure that the approved application is adhered to.

While By-law Enforcement is not within PDBS Department's purview, Staff agrees that Committee of Adjustment decisions are binding. If a proposal as constructed does not match what was approved, and there is a complaint filed, it would be considered a zoning violation and Bylaw Enforcement would be able undertake enforcement.

If the City Council chooses to move in the direction of proactive enforcement for adherence to approved applications by the Committee of Adjustment, the proposal of allocating an initial complement of 4 full-time employees (FTEs) to bolster the City's Bylaw Enforcement stands as a significant step towards ensuring compliance.

Financial considerations

- 3 FTEs to provide professional opinion and interpretation of policies to members of the public – CofA planner 1
- 2 FTE to create capacity to participate in Appeals – CofA planner 2
- 4 FTE for proactive enforcement – By-law Officer
- Total: 9 FTE to implement the recommendations

This would require an expenditure of over \$1 million and would result in a very significant increase to Committee of Adjustment fees.