



WELLINGTON NORTH
SEMPER PORRO

**COMMITTEE OF ADJUSTMENT
EDUCATION AND TRAINING SESSION
CLOSED MEETING JUNE 29, 2020 @ 7:00 p.m.
VIA ZOOM**

COMMITTEE OF ADJUSTMENT

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What is the Committee of Adjustment?

The Planning Act allows a municipal council to appoint a Committee of Adjustment to:

1. Consider **minor variances** from zoning by-laws,
2. Permit changes and extensions to legal non-conforming uses or structures, and to
3. **Interpret** generalized by-laws.

It is the **duty (mandate) of the Committee to make decisions**. Committee of Adjustment may **approve or deny** a variance application based on their understanding and judgment of the facts or evidence and in consideration of those matters prescribed by the Planning Act. The Committee may also **defer** an application if it requires more information, or if further clarification is needed from the applicant or staff.

Other responsibilities of the Committee, Chair and Members include, but are not limited to:

- ensuring all matters are dealt with in an open public meeting;
- ensuring all interested parties have an opportunity to speak to the issues at the hearing, while keeping order;
- ensuring that they have a good understanding of the applications and any potential impacts;
- declaring a conflict of interest where necessary; and,
- drafting the wording of decisions including enforceable conditions.

There are three pieces of legislation which are most important to the Committee of Adjustment: the Ontario Planning Act; the County of Wellington Official Plan; and, the Township of Wellington North Zoning By-Law 66-01. Other provincial or local plans, policies and regulations may also need to be considered.

The Ontario Planning Act

The Planning Act sets out the ground rules for land use planning in Ontario and describes how land uses may be controlled, and who may control them.

The Act is legislation passed by the provincial government to:

- promote sustainable economic development in a healthy natural environment within a provincial policy framework;
- provide for a land use planning system led by provincial policy;
- integrate matters of provincial interest into provincial and municipal planning decisions by requiring all decisions shall be consistent with the Provincial Policy Statement when decision makers exercise planning authority;
- provide for planning processes that are fair by making them open, accessible, timely and efficient;
- encourage co-operation and coordination among various interests; and,
- recognize the decision-making authority and accountability of municipal councils in planning matters.

The Act provides the basis for:

- considering provincial interests, such as protecting and managing our natural resources;
- establishing local planning administration;
- preparing official plans and planning policies that will guide future development;
- a variety of tools that municipalities can use to facilitate planning for the future;
- establishing a streamlined planning process which emphasizes local autonomy in decision-making;
- regulating and controlling land uses through zoning by-laws and minor variances;
- dividing land into separate lots for sale or development through a plan of subdivision or a land severance;
- ensuring the rights of local citizens to be notified about planning proposals, to give their views to their municipal council, and allows for the appeal of decisions to the Local Planning Appeal Tribunal (LPAT); and,
- ensure that approval authorities or the LPAT have regard to decisions made by municipal council and approval authorities when dealing with the same planning matters.¹

Most importantly for the Committee of Adjustment, the Planning Act sets out the general administration of the Committee, the powers of the Committee, and the criteria that must be used when considering applications.

¹ Government of Ontario, (2010). *Citizens' Guide to Land Use Planning: The Planning Act*.

The County of Wellington Official Plan

The County of Wellington Official Plan establishes a long-term vision for Wellington County's communities and resources. The Plan provides policy to attain this long-term vision and all land use and servicing decisions must conform to the policies of the plan.

The policies contained in the plan have been established to guide Council and the Committee of Adjustment in making land use planning decisions.

The Official Plan is required under the Planning Act to conform to provincial policies.

The Township of Wellington North Zoning By-law

What is a zoning by-law?

A zoning by-law controls the use of land in a community. It states exactly:

- how land may be used;
- where buildings and other structures can be located;
- the types of buildings that are permitted and how they may be used; and,
- the lot sizes and dimensions, parking requirements, building heights and setbacks from the street.

An official plan sets out a municipality's general policies for future land use. Zoning by-laws put the plan into effect and provide for its day-to-day administration. They contain specific requirements that are legally enforceable. Construction or new development that doesn't comply with the zoning by-law is not allowed, and the municipality will refuse to issue a building permit.

The Township of Wellington North has a **Comprehensive Zoning By-law** that divides the Township into different land use zones, with detailed maps. The by-law specifies the permitted uses (e.g. commercial or residential) and the required standards (e.g. building size, setbacks, location, parking, buffering, landscaping etc) in each zone.

Why do you need a zoning by-law?

A zoning by-law:

- Implements the objectives and policies of a municipality's official plan
- Provides a legal way of managing land use and future development
- Protects you from conflicting and possibly dangerous land uses in your community

Criteria for Considering Minor Variances

Section 45(1) of the Planning Act establishes the following four tests the **must be** applied to every application for a minor variance:

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

All four tests must be met for the application to be successful. There are numerous cases dealing with the application of the four tests and re-affirming that a valid decision must consider all four. Some other principles found in the case law include:

- **Minor** does not lead one to a mathematical exercise but rather it is a question of impact;
- **Minor** chiefly considers the degree of adverse impact that will occur if the variance is granted;
- A minor variance is a relative concept and, in appropriate circumstances, a committee can exempt an owner from a provision in a zoning by-law;
- Business competition is not a consideration in determining a minor variance; and,
- **Desirable** means desirable in relation to the subject and neighboring lands.

Decisions:

Section 45(8) of the Planning Act states:

- Decision must be decided by the majority;
- Decision must give reasons in writing - whether approved or denied.

Changes to Legal Non-Conforming Uses or Structures

If a property or building is being used for a purpose not permitted by the Zoning By-law, and the use existed prior to and continuously since the adoption of the by-law the use is considered "legal non-conforming". The use is legal because it pre-existed the by-law, but it does not conform. The Zoning By-Law does not permit the legal non-conforming structure or use to be changed or enlarged, unless it is being brought into total conformity with the by-law or meets the requirements/exceptions of section 6.21 of the zoning by-law. In all other cases, a change in use or enlargement of the building or structure will require an application to Committee of Adjustment. The following sections are applicable:

Enlargements of a Legal Non-Conforming Use or Structure:

According to section (S.45(2)(a)(i) of the Planning Act), the Committee may permit:

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 subclause (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.

Change in Use for an existing Legal Non-Conforming Use:

According to (S.45(2)(a)(ii) of the Planning Act, the Committee may permit:

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.

Under this section of the Planning Act the Committee may permit a change to a legal non-conforming use to a use that is not be allowed under the current By-Law, but **only if** the Committee deems that the new use is **similar** to the current legal non-conforming use, or **more compatible** with the by-law than the current use of the property.

Interpretation of By-Laws Regarding Permitted Uses

If the Zoning By-Law is unclear or too general on a particular issue, an Owner or Applicant may apply to the Committee of Adjustment for clarification of the issue, or to challenge the way the by-law is being interpreted by staff. Under Subsection 45 (2)(b) of the Planning Act, the Committee can make a decision on how the by-law should be interpreted:

Where the uses of land, buildings or structures permitted in the By-law are defined in general terms, [the Committee] may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the Bylaw.

Conditions for Decisions

Section 45(9) of the Planning Act gives the Committee of Adjustment the authority to impose conditions on a decision regarding minor variances, a change to a legal non-conforming use or structure, or an interpretation of a by-law:

Any authority or permission granted by the Committee under subsections (1)(2) and (3) of Section 45 of the Planning Act may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision.

The Planner and/or Secretary-Treasurer to the Committee of Adjustment will compile a list of all proposed conditions for each application that have been recommended by the various circulated agencies and departments. Draft conditions will be included with the information given out at each meeting. Based on the planning considerations of the application and evidence heard the Committee may accept, reject or modify any of the conditions being recommended. The Committee may also add additional conditions as warranted.

Meeting Expectations

Meetings

Committee of Adjustment meetings are held once a month. Applications are scheduled for the next possible meeting in which the required notification period (10 days) can be met.

Site Visits

In order to understand the application and make informed decisions, it is strongly recommended, however not required, that all committee members undertake site visits. This helps to ensure that each member has a visual appreciation of the context of individual proposals and any issues that may be raised at the hearing.

Municipal Conflict of Interest

Like Council, the Committee of Adjustment is covered by the Municipal Conflict of Interest Act. The intention of this act is to ensure that hearings are conducted and decisions are made in a fair and equitable manner. If a committee member believes they have a conflict of interest or what might be perceived as a conflict, they should declare the conflict at the start of the hearing. A member who declares a pecuniary interest on any application should not participate in the discussion or vote on the decision for that application. It is customary that the committee member leaves the room during both the discussion and decision making process to avoid any perception of influencing the Committee's decision.

No Committee member shall directly or indirectly receive any profit from his/her position or solicit business for personal benefit or for the benefit of their immediate family or business associates. Such involvements include, but are not limited to:

- Members being the Affected party or employed by or doing business with the Affected Party;
- Members' immediate family being the Affected party or employed by or doing business with the Affected Party; and,
- Members' business associates being the Affected Party or employed by or doing business with the Affected Party

Affected Party means any individual, partnership, corporation, organization or other legal entity which has an interest in property, objects or other assets which are the subject matter of consideration by the Council/Committee.

A conflict of interest may be actual, potential or apparent. The same duty to disclose applies to each. The pecuniary interests of a Member's immediate family or business associate are considered to also be the pecuniary interests.

Committee members who abstain from voting as a result of conflict are identified in the minutes of the meeting.

Meeting Format

The following is an outline of the Committee meeting with some additional suggestions for the Chair.

- Calling the meeting to order. Follow the script provided for opening comments including informing those in attendance of the meeting format, approving the minutes and declaring pecuniary interest.
- Chairs can assume a motion. A chair does not have to wait for someone to move that the minutes be approved as read or corrected. He/she can state, "The minutes are approved as read (or corrected)". The chair should assume the motion and say, as many are in favor of adopting the minutes report, say "aye"; those opposed say "no". Then he/she announces the vote.
- Follow the agenda. The agenda is prepared by Planning staff ahead of the meeting.
- Chair calls each application in order on the agenda by application number and address. The secretary-treasurer will then introduce the application and state staff recommendations. The Chair will then ask whether there is anyone to speak representing the application, followed by anyone else wishing to speak to the application.
- Chair should ensure that those speaking provide their name and address first.
- Chair should ensure that speakers only speak in turn as called upon and that all questions or comments be directed through the Chair. Speakers are providing their comments to the committee and are not to debate the matter.
- The Chair can ask the Committee if they have any questions of the speaker prior to dismissing the speaker.
- Once all applications have been heard in the public meeting, the Committee will begin deliberations in the same order as the applications were presented. Debate and discussion cannot take place until a motion is proposed and seconded.
- Following a motion made and seconded, allow time for open discussion.
- Encourage participation, but remain neutral. The chairperson leads the group to its own evaluation of statement or an opinion. Keep discussion clearly focused on the motion.

- If a motion isn't seconded, it isn't discussed. A second does not mean someone is in favour of the idea but that it should be discussed. Discussion must go to the merits of the motion being discussed.
- Written Motions. Members should write a clearly thought-out motion to save time as it doesn't have to be amended many times to make it clear. A well thought out motion includes what the applicant is to do, and, how and when it is to be done. This is usually prepared ahead by the Secretary Treasurer but can be amended by the committee.
- Vote. After someone has made a motion, and the chair has repeated it. Chair to ensure that the motion is clear (particularly as it relates to conditions or deferrals). "It is moved and seconded to.....Is there any discussion?" If the chair looks around and no one wishes to discuss it, the chair can say, "All in favor?". (wait for the response from the group) "Those opposed?" (wait for response) Announce the vote. "The motion is carried/lost". Then go on to the next business in order.
- Motion to Adjourn. The chair can assume the unqualified motion to adjourn (and this is only after all business has been brought forth and it doesn't look like anyone is going to stand and present more). The chair can ask, "Is there any further business (pause, wait for someone to rise, and if no one does so) the chair can then say, "This meeting is adjourned". If the chair says the meeting is adjourned and one member objects, then the chair must take and vote and say, "All those in favor of adjourning the meeting? "Those opposed?"

Other tips for the Chair:

- Try to understand each speaker. Perhaps, additional questions would help the group understand the idea more clearly. Above all, the chairperson doesn't belittle any member of the group, either by word or implication.
- If the discussion or questions are getting off topic, the Chair should bring the matter back into focus.
- Opposition is a real factor in any group and is potentially a great resource for making sure details are complete. Bring disagreements out into the open, but keep discussion objective and focused.