

York Mills Ratepayers Association

Guidelines for Dealing with Committee of Adjustment Applications

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IMPORTANT NOTICE TO READER: The information provided in this article is a brief summary for informational purposes only and is only applicable with respect to the Committee of Adjustment (North York) in the City of Toronto. It is not meant to be legal advice. If you require information or advice as it relates to your individual circumstances you are advised to consult with your own lawyer.

Table of Contents:

- A. INTRODUCTION**
- B. COMMITTEE OF ADJUSTMENT-MINOR VARIANCES & CONSENT APPLICATIONS FOR SEVERANCE**
- C. STEPS YOU MUST TAKE QUICKLY**
- D. WHAT COA HANDLES AND WHAT IT DOESN'T HANDLE**
- E. KEY LEGAL FINDINGS**
- F. APPEALS OF COA DECISIONS TO THE ONTARIO MUNICIPAL BOARD (OMB)**

A. INTRODUCTION

This guideline was prepared for York Mills residents when considering an objection to an application for a minor variance and when appearing before the City Committee of Adjustment (COA).

The YMRA Executive has a responsibility for assisting residents helping ensure that the development of our York Mills Area is in keeping with the Intents stated in the City's Official Plan and zoning bylaws as well as the Association's Articles of Association.

We live in what has been described by one homeowner as "a lovely community". Some streetscapes have and are still changing as a result of redevelopment and/or renovation of specific properties. Over the years the Association has encouraged property owners to respect and appreciate the characteristics of their neighbourhood as conveyed by the definitions and regulations stated in the City's Official Plan and implemented through the applicable zoning bylaws. In the course of this, homeowners and the YMRA may participate in COA and the Ontario Municipal Board (OMB) public hearings and processes.

Beyond this, however, ratepayers must remain involved, particularly after an OMB decision, and monitor negotiations that can occur between a developer and the City Planning staff in the preparing of the final siting plan or in some cases a site plan.

Under the current Planning Act, the City must provide notice 9 days before the Committee Of Adjustment (COA) hearing. When a notice is received that someone in your neighbourhood is applying for variances at the Committee Of Adjustment (COA) you, and any of your concerned neighbours, must move very quickly to determine whether you have any questions and/or objections to the application. During these 9 days, you must determine what the applicant is planning to do, what variances the applicant is asking the COA to approve and how the proposed variances may affect your and your neighbourhood. Note that your local Councilor and the COA Planning Staff recommend that the Applicant meet with immediate neighbours prior to the COA hearing on their Application.

York Mills Ratepayers Association

Guidelines for Dealing with Committee of Adjustment Applications

B. COMMITTEE OF ADJUSTMENT-MINOR VARIANCES & CONSENT APPLICATIONS FOR SEVERANCE

The role of the Committee of Adjustment is to provide flexibility in dealing with minor adjustments to zoning by-law requirements. To approve such variance, the Committee must be satisfied that these 4 critical points are followed:

- the variance requested is minor
- the proposal is appropriate for the development of the land and/or building
- the general intent and purpose of the City's Zoning By-law are maintained and
- the general intent and purpose of the Official Plan are maintained.

CATEGORIES OF VARIANCE APPLICATIONS YMRA OPPOSES:

Except in special circumstances, the YMRA would oppose applications to the COA for variances including;

- a. Changes that do not conform to the applicable zoning bylaw respecting length, height and set-backs.
- b. Changes contrary to emerging municipal planning direction with respect to the provision of municipal and emergency services.
- c. Changes having to do with below grade garages. Apart from drainage and aesthetics, other concerns include safety, snow clearance and neighbourhood preferences.
- d. Loss of greenspace.
- e. Loss of privacy due to intrusions from length variances, sideyard set-back variances and balcony variances.
- f. Loss of line of sight from length, sideyard and height variances.

The Committee Of Adjustment forms its opinions through a detailed review of all material filed with an application, letters received, deputations made at the public hearing and results of site inspections.

Apart from the "Steps You Must Take Quickly" (below), the Association has a longstanding policy which permits its President or, if delegated, the Chairman of the YMRA's development committee to have the authority to communicate with the COA on applications which arise between Executive meetings.

This permits the YMRA to register initial opposition to those items we feel critical to maintaining the character of the community – height- length of dwelling, side-yard setbacks, below grade garages, third storey, first floor elevation, density, lot coverage and lot severances. The policy also permits us to have sober second thoughts at the next meeting of the Executive and drop our opposition, if appropriate.

C. STEPS YOU MUST TAKE QUICKLY

Read the Notice Of Application and visit the site so that you can visualize what the applicant is planning and if you decide the application meets the 4 critical points listed in Section B.

Read these YMRA GUIDELINES thoroughly; confirm that the variance application is within one of the categories a-f (see Section B) that the YMRA usually objects to.

York Mills Ratepayers Association Guidelines for Dealing with Committee of Adjustment Applications

Call the North York COA planner involved with the application (name & tel # are on the notice). Request a copy of the site plan, the proposed building elevations and previous COA decisions in your neighbourhood. Ask whether there are any Staff reports on this application. Outline your concerns; perhaps the Staff will have suggestions.

Call the Applicant and discuss what questions you want answered, including "why" the Applicant is asking for specific variances and you can explain how you think his variances might affect you. Is the applicant willing to accommodate your concerns and alter their application?

Discuss the Application with your neighbours so that you can share your questions, concerns, and information gathering.

You may ask our Councilor, to assist you in getting more information and give you his/her support in objecting.

Prepare a letter of objection to the COA. You must address the specific variances being sought and describe how each could impact on your property and not just say that you don't want the variances granted. If there are any objections, the more who write, the more likely the COA will be responsive to your concerns. Letters can be faxed to the COA. Copy the Councilor with any letters you and your neighbours write.

It is always better to attend and speak at the COA hearing, in addition to sending your written comments. The COA members may ask you questions and you may respond to comments made by the Applicant at the hearing.

Following in this document is a more detailed discussion of various items that the COA deals with and examples of how they may be handled. York Mills Ratepayers Association is part of Ward 25 and may be able to assist you in dealing with COA matters in your neighbourhood.

D. WHAT COA HANDLES AND WHAT IT DOESN'T HANDLE

1. MINOR VARIANCES & CONSENT APPLICATIONS FOR SEVERANCE

Zoning regulations depend on area; most properties in our area are zoned R3 & R4.

The Application for Variance notice should show exactly what the Applicant is seeking versus what current zoning allows (which is shown below).

General Variance Information:

- Front = 7.5 meters (24.6ft) from front property line
- Each Side, from property line for:
 - a. 1-storey = 1.2m (3.94ft)
 - b. 2-storey = 1.8m (5.9ft)
- Back = 9.5m (31.17ft) from rear property line
- Building Height Flat Roof = 8.0m (26.25ft) Other Roof = 8.8m (28.87ft)
- Building Length = 16.8m (55.12ft) maximum but extension to 18.9m (62ft) is possible subject to several conditions
- Elevations above grade = 1.5m (4.92ft)- elevation of centre line of road (established grade) at centre point of lot
- Lot Area = a minimum 550 sq m (5920 sq ft) for R4 & 690 sq m (7427 sq ft) for R3

York Mills Ratepayers Association Guidelines for Dealing with Committee of Adjustment Applications

- Lot Coverage = 35% of lot area-all buildings incl garages/sheds
- Below grade garage = if under 45' frontage & driveway slope under 10% & stormsewers exist
- Front yard coverage = 50% maximum hard surface
- Driveway width = max 6m (19.69 ft) or width of garage
- Parking pads = none allowed in North York

Mitigating factors are below. Some variances may be allowed "technically" due to:

- Shape of lot
- Lot size
- Position on lot relative to adjacent homes
- Grade of Lot (all directions)
- Grade of roads

The items below are sometimes raised but technically are the responsibility of Site Plans & Technical Services. Nevertheless, you should discuss with the COA Planner if you think these items have a bearing on the specific application.

- Adequacy of roads, vehicular access, parking & loading
- Adequacy of utilities & municipal services

'HARDSHIP' REASON: Typically a claim by an applicant of "hardship" is not a legal or valid reason for the COA to grant a variance. An applicant may claim that if variances are not granted to them, it will impose "hardship" on them and/or their families. Someone who buys an older house and plans to knock it down or remodel it may claim that he has invested a lot of money in buying the house and if he cannot get the variances to build/remodel as he wishes to, it will cause him hardship. Our response to this is that anyone buying a property (including their real estate agent and their lawyer) should know the zoning regulations for that property prior to their purchase and be prepared to build/remodel within those regulations.

It is possible to have some individual family "hardship" situations arise that might be of a minor variance nature but these are few and far between. An example might be a need to construct a special ramp for a wheelchair or other mobility vehicle for someone who is incapacitated and which proposed new ramp might require a minor variance.

2. MINOR VARIANCE

Question. What is the definition of "minor"?

Answer. There is no specific legal definition of "minor" in terms of variances.

There are two quotations from a 2006 OMB case and the 2005 Ontario Superior Court that deal with the term MINOR VARIANCE. The quotations from these 2 cases provide only a general guideline. The answer for a particular case depends on the specific facts of the application. '

a. EXISTING LOT & EXISTING BUILDING

Many existing lots and buildings exist on lots that were legal when built on, but currently are too small, but are "grandfathered in" as "legal non-conforming". COA will not force such a building to be remodeled to conform to current regulations. However if extensive remodeling is planned (over 50% of existing foundation is changed), it would be considered a new house and current regulations do come into force. For example, the side setback for a 1-storey home in our area tends to be 1.2m

York Mills Ratepayers Association Guidelines for Dealing with Committee of Adjustment Applications

and for a 2-storey home 1.8m. If an owner of a current 1-storey building wants to add a 2nd floor then technically the 1st floor setback should be expanded by 0.6m on each side; but that just isn't going to happen. The concern is to allow a 2nd storey addition that may be narrower than the 1st storey and not "loom" over the neighbours on each side. It is a case of negotiation with applicants, neighbours and the COA planners to alter proposed additions to mitigate effects on neighbours, preferably before the COA hearing.

b. EXISTING LOT BUT NEW BUILDING

COA should not consider any variances for a new building on an existing lot. Applicant should be aware of existing regulations and should build within them. Applicant should not be allowed to claim any "hardship" in this situation. In this situation, a proposed new 2-storey house should have a side yard setback of 1.8 on each side and unless the lot shape or something very unusual exists, there seems no valid reason to allow a lesser setback. See DECISION OF COA (file #A0368/06NY) on June 20, 2006 re 9 Valley Ridge Place.

c. LOT SEVERANCE

Where applicant seeks to build more than 1 house per lot, by severing one lot into two; or by combining two or more lots and applying for severance to change lot configurations so that more than 1 house per original lot would be built. There are some localized by-laws in force which mandate "1 lot = 1 house".

For example, by-law 26098 (1981) regulates lots located on the S side of Valley Rd between Bayview Ridge Cres and Bayview Ave, along the W side of Bayview Ave between Valley Rd and Arjay Cres and along Bayview Ridge Cres, Valley Ridge Pl and Bayview Ridge inclusive as a neighbourhood unique to itself by recognizing that the lot frontages and areas are larger than required. There may be other by-laws in our area. Contact the Councillor's office and/or the Community Planner named in the Application.

3. REQUEST FOR DEFERRAL

Sometimes the applicant has not provided enough notice/details of their application to neighbours or there is inadequate time to prepare for a COA meeting. If this applies to you, a REQUEST FOR DEFERRAL letter may be submitted to the COA requesting more time to allow you and your neighbours adequate time for review, preparation and possible negotiation with the applicant. Note that the Applicant may request a deferral and be granted it before the date of the COA hearing. Everyone else must request a deferral as soon as possible after receiving the Notice of Application and before the COA hearing date. If unable to request in advance, you can make a request for deferral at the COA hearing (however this is not generally recommended unless you explain why you couldn't submit a pre-hearing date deferral request. The COA board will decide whether to grant it or not (another reason to attend the COA hearings in person!).

1. KEY LEGAL FINDINGS

The Ontario Superior Court of Justice, in a precedent setting case, examined the issue of how the COA and OMB are to handle applications and appeals relating to matters of minor variance. In the particular case, the COA initially ruled that an applicant should not be granted 3 out of 4 severances requested. The applicant appealed the COA decision to the OMB, which then overruled the COA decision and granted all 4 variances. Those opposing the variances appealed the OMB decision to the Ontario Superior Court, which then overruled the OMB decision on the basis that the OMB had not

York Mills Ratepayers Association Guidelines for Dealing with Committee of Adjustment Applications

applied the proper legal tests in determining whether to grant the requested variances. (See Ontario Superior Court Of Justice, Court File No.: Toronto 775/03 & 777/0 dated 2005070 and released July 8, 2005).

The summary by the Court included the following 4 major points that **MUST** be satisfied in order to be granted:

1. Be a minor variance
2. Be desirable, in the opinion of the committee (COA) for the appropriate development of use of the land, building, or structure
3. Maintain, in the opinion of the committee (COA), the general intent and purpose of the zoning by-law, and
4. Maintain, in the opinion of the committee (COA), the general intent and purpose of the official plan.

As a follow-up the case above, the Superior Court sent the case back to the OMB to reassess the 3 contentious requests for variance under these 4 major guidelines. The OMB decision was issued June 27, 2006 (some 2 ½ years after the original COA hearing and likely cost well over a hundred thousand dollars). The details of the subsequently revised OMB decision are defined under OMB Decision 1848 File No. V030264 (35 Green Valley Road). Noteworthy is that this time, each of the 3 denied variances were discussed in terms of the 4 guidelines. This time, instead of just granting all 3 variances as requested by the Applicant, the OMB granted only 1 completely; denied 1 completely and while granting the 3rd (now much reduced in scope) imposed various conditions on it.

As shown in the above example, when the OMB applied the proper four tests, it came to a different decision from when it first examined the case. Therefore when you prepare any objections to the COA for requests for variances it is highly recommended that you refer to the four key points as the legal reasons supporting your arguments for or against proposed minor variances.

In a recent COA decision the objection by the YMRA to the application for variance was successful against a request for variance and the COA in its written decision specifically relied on a summary of the above 4 points (A0368/06NY). This particular decision not only focused the issues to the COA members, but also provided appropriate wording for preparing replies on future applications for variances.

F. APPEALS OF COA DECISIONS TO THE ONTARIO MUNICIPAL BOARD (OMB)

Under current Provincial legislation, any decision of the COA (or for that matter the North York City Council) regarding zoning & variances may be appealed to the OMB. This includes applicants and those opposing the applications. Appeals to the OMB can become relatively costly, beyond an appeal file cost of some \$125. Usually there are costs for a lawyer, a professional planner, perhaps a traffic expert. In the past most appeals to the OMB have been by developers with relatively “deep pockets” and can add up to many thousands of dollars in cost. In cases where major community precedents are involved, and the City has been involved in opposing the COA application, the City might lead the appeal to the OMB. As well, the YMRA might be able to assist with the appeal to the OMB. Fund-raising in the community/neighbourhood usually is necessary. In some cases where decisions impact on more than just one small neighbourhood, hundreds of homeowners and more than one Ratepayers Association may be involved.

York Mills Ratepayers Association
Guidelines for Dealing with Committee of Adjustment Applications

To appeal any COA decision to the OMB, you must write a letter to the COA and pay the required fee (currently \$125). One letter to the COA, initiating a neighbours' appeal to the OMB of a COA decision granting some variances, outlining why the COA decision was incorrect and is being appealed serves as a good model (9COAfile No. A0253/06NY re 57 Roslin Avenue).

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