

Town of Whitby Staff Report

whitby.ca/CouncilCalendar



Report Title: Delegation of Land Division Responsibilities from the Region of Durham to the Town of Whitby Committee of Adjustment

Report to: Committee of the Whole

Date of meeting: January 15, 2024

Report Number: PDP 01-24

Department(s) Responsible:

Planning and Development Department
(Planning Services)

Submitted by:

Roger Saunders, Commissioner of
Planning and Development x4309

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

John Taylor, Senior Manager of Zoning &
Administration x2908

Justin Malfara, Principle Planner, Zoning
& Administration x2930

1. Recommendation:

1. That Council approve a By-law to permit the Town of Whitby Committee of Adjustment to grant approval of both Minor Variance and Consent Applications within the Town of Whitby, in accordance with the relevant provisions of the *Planning Act*;
2. That Council approve the revised Committee of Adjustment Terms of Reference, including to the added responsibilities for Consents to land severance under Section 53 of the *Planning Act*;
3. That Council approve the proposed amendments to the Fees & Charges By-law #7220-17 (as amended), to introduce new fees related to Consent applications; and,
4. That Council approve an increase in the remuneration for Committee of Adjustment members from \$65 (sitting member) and \$75 (Chair), to \$125 (sitting member) and \$150 (Chair) effective February 1, 2024.

2. Highlights:

- The Town of Whitby Committee of Adjustment (CoA) is responsible for Minor Variance applications. The CoA is comprised of five members of the public who are appointed by Council to serve during the term of Council. The CoA is tasked with reviewing and rendering decisions on Minor Variance applications in accordance with Section 45 of the *Planning Act*. The CoA has an appointed Chair and Vice-Chair and is assisted by staff from the Planning and Development Department.
- The Region of Durham's Land Division Committee has historically had the delegated authority to consider Consent applications including, land severances, easements, lot line adjustments, title validations and leases or mortgages greater than 21 years.
- In 2022, the Province passed Bill 23. Bill 23 made several changes to the *Planning Act*, including removal of the Region's authority as it relates to Consents under Section 53 of the *Planning Act*. That authority is now delegated to lower tier Municipalities, including the Town of Whitby and all other Area Municipalities in the Region of Durham.
- It is appropriate that Consent applications be considered by the Town of Whitby CoA. As such, an update to the CoA Terms of Reference, Delegation By-law, Fees and Charges By-law, and Committee of Adjustment remuneration is proposed.

3. Background:

3.1 Town of Whitby Committee of Adjustment

The Town of Whitby has a Committee of Adjustment (CoA), consisting of five members of the public who have been appointed by Council at the beginning of each Council term. The CoA is authorized by Section 44 (1) of the *Planning Act* to consider requests for minor variances to the Town's Zoning By-laws.

The Committee provides a forum for the expeditious consideration of minor variances and permissions from the provisions of the Town's Zoning By-laws without the need for an amendment to the Zoning By-laws.

Currently, the CoA holds meetings every three weeks in a virtual format. The meetings are comprised of the Committee members, applicants, members of the public (interested parties), as well as Planning staff. On average, CoA meetings require 1-3 hours to conclude and approximately 2-10 applications may be heard at each meeting.

3.2 Bill 23, More Homes Built Faster Act 2022

In 2022, the Province passed Bill 23. Bill 23 made several changes to the *Planning Act*, including removal of the Region's authority as it relates to Consents under Section 53 of the *Planning Act*. That authority is now delegated to lower tier Municipalities, including the Town of Whitby and all other Area Municipalities in the Region of Durham.

3.3 Regional By-law 61-2023

In 1974, Durham Region Council delegated the authority for the granting of consents to the Regional Land Division Committee. Since that time, the Committee has processed Consent applications, with the assistance of Regional Planning staff providing intake/administrative support as well as technical planning/legal advice through the Secretary Treasurer and the Assistant Secretary-Treasurer.

In response to Bill 23, Regional Council passed By-law 61-2023 on October 25, 2023, thereby delegating Regional Council's Land Division responsibilities for Consents under the *Planning Act* to each of the Region's Area Municipalities, including the Town of Whitby.

The last day for accepting applications to the Region's Land Division Committee was October 20, 2023, and as of January 1, 2024, new consent applications must be considered by the Area Municipalities.

4. Discussion:

4.1 Consent Applications

Consents under the *Planning Act* allow for the subdivision or conveyance of land without the requirement of a plan of subdivision. Consent applications apply for the following:

- To create a new lot;
- To register a mortgage/charge or to discharge a mortgage on a parcel of land;
- To register a lease for a term of 21 years or more;
- To register an easement or a right-of-way;
- To undertake a correction of title;
- To undertake lot addition or lot line adjustment; or
- To undertake a Validate of Title, Power of Sale, or Foreclosure of Mortgage.

4.2 Delegation to the Town of Whitby Committee of Adjustment

As a result of Bill 23 and the subsequent passage of By-law 61-23 by the Region of Durham, the authority for Consents is now the responsibility of Town Council.

However, Section 54 of the Planning Act allows for the further delegation of the authority to an appointed officer or a committee of adjustment. Accordingly, it is recommended that the authority for Consents to land division be delegated to the Town's Committee of Adjustment and the Committee's Terms of Reference be updated to reflect the added responsibilities.

Consent applications are commonly delegated to Committees of Adjustment in many municipalities across Ontario

Most Greater Toronto Area (GTA) and surrounding lower-tier municipalities have delegated the authority for Consents to their respective Committees of Adjustment, including municipalities within York Region, Peel Region, Halton Region and Niagara Region.

The Town of Whitby Committee of Adjustment has experience in processing and evaluating planning applications

The Town of Whitby CoA members and staff have attended virtual and in-person training conducted by the Region of Durham Planning Department in Q4 of 2023.

The Committee is made up of members who are well versed in planning and/or have direct experience working in the planning profession. The Committee, as a whole, is often tasked with reviewing Minor Variance applications that are required to facilitate land division proposals.

As part of the Committee's role, members are required to review applications in accordance with the Town's Official Plan, Zoning By-laws, and other applicable standards. The Committee is also tasked with conducting site visits, providing input at public meetings, and corresponding with Town staff, applicants, and members of the public.

In consideration of the Committee's experience and current ability to successfully review and render decisions on Minor Variance applications, staff are of the opinion that the Consent application process can successfully be delegated to the CoA.

Certain Administrative matters such as notices, reports, site visits, meeting format, and decisions are similar in nature to the Minor Variance process

The *Planning Act* provides direction on how statutory requirements such as when notice of a hearing and notice of a decision must be provided, whereas other administrative matters including but not limited to report preparation/format, site visits, meeting format, etc. are generally subject to the Municipalities terms.

The CoA has previously held meetings every three weeks which was tailored to meet the statutory timelines regarding Minor Variance applications. However, the 2024 meeting schedule has been amended to have one meeting every four

weeks, which will allow the minimum 14 day notice of hearing requirement associated with Consent applications to be satisfied.

Consent applications require similar procedures as the current process for Minor Variance applications, including:

- notice sign preparation procedures undertaken by the Secretary Treasurer and Clerical staff;
- internal filing process;
- application review for completeness;
- site visits;
- agency circulation;
- report writing template and format;
- committee meeting format and decision protocol;
- notice of decision format to parties; and
- processing of appeals.

Challenges regarding staff resources

Prior to the passing of Regional By-law 61-2023, the Durham Region Planning Department was responsible for managing the review of Consent applications. Regional Staff resources included support from the Secretary Treasurer, Planning Clerk, Planner, and Manager of Planning.

One area of concern relates to requirements for deed and condition clearance in the Consent process. The Region of Durham Planning Department had a dedicated Law Clerk on a full-time basis who had a legal and planning background and was well versed in processing/reading transfer documents, encumbrances, mortgages, deed packages, PIN pages, legal acknowledgement and direction forms, and other similar tasks.

At this time, the Planning and Development Department does not have staff with a legal background or expertise in this area. In addition, the Town's Legal Division has staffing limitations to provide this function. The Legal Division will endeavour to assist the Planning in processing the legal aspects of the process, however, Planning and Legal will have to assess the type and volumes of consent applications to determine if additional staff resources are required or if external services may be required.

4.3 Updated Terms of Reference

The Town of Whitby CoA operates in accordance with an approved Terms of Reference. The existing CoA Terms of Reference will require certain revisions in order to reflect the added responsibilities for Consents. A revised Terms of Reference is included as Attachment 1 to this report, including a new Section (1.2), which outlines the legislated responsibilities for Consents and an update to

Section 2.0, which includes new responsibilities for processing and rendering decisions on Consent applications.

It is recommended that the revised Terms of Reference, pertaining to the expanded role of the CoA, be approved.

5. Financial Considerations:

5.1 Application Fee Update

It is recommended that the Fees & Charges By-law #7220-17 (as amended) be updated to introduce new fees related to Consent applications. Schedule M of the By-law currently includes a “Land Division Release Fee” of \$938.24, which will be repealed and replaced in accordance with, and in addition to the other proposed fees listed below. The proposed fees are the same or similar to the current fees required by the Region.

Type of Fee	Amount (\$)
Consent Application Fee	\$1,350.00
Town Planning Fee Review	\$500.00
Consent Release Fee	\$961.70
Tabling by Applicant Fee	\$300.00
Deed Stamping Fee	\$1,000.00
Deed Re-Stamping Fee	\$250.00

The above fees may be adjusted following the completion of the Development Application Approval Process (DAAP) Review that is currently under way.

5.2 Committee Remuneration

The Committee of Adjustment currently receives remuneration in the amount of \$65 per meeting for sitting members, and \$75 per meeting for the Chair. Prior to being dissolved, the Durham Region Land Division Committee earned \$200 per meeting with an additional stipend to the Chair on an annual basis. The number of applications at the Regional level are typically higher and the distance to travel for site visits is typically further than for a local Committee. Other local Durham Region Committee of Adjustments have proposed the following remuneration:

- Clarington: \$53.66 per meeting;
- Oshawa: \$125 per meeting;
- Ajax: \$65 per meeting and \$70 per meeting for the chair;
- Pickering: \$140/meeting (member) and \$150/meeting (Chair) plus \$0.61 per kilometer for mileage;

- Brock: \$60 per meeting plus mileage

In light of the additional duties the Committee members will be required to undertake, it is recommended that remuneration be increased from \$65 to \$125 per meeting for sitting members, and from \$75 to \$150 per meeting for the Chair.

6. Communication and Public Engagement:

Not applicable.

7. Input from Departments/Sources:

Not applicable.

8. Strategic Priorities:

The recommendations of this report advance the Town's Strategic Pillars and Actions, specifically Pillar 4, by promoting efficiency, effectiveness, and financial sustainability. Implementing the recommendations of this report will assist in the delivery of services that respond to community needs while balancing the impact to taxpayers.

9. Attachments:

Attachment 1: Draft Committee of Adjustment Terms of Reference