



OAKVILLE

REPORT

PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: MARCH 19, 2018

FROM: Planning Services Department

DATE: February 8, 2018

SUBJECT: Committee of Adjustment Options Report

LOCATION: Town Wide

WARD: Town wide

Page 1

RECOMMENDATION:

That Council receive the Committee of Adjustment Options Report and that staff proceed with drafting a By-law for the purposes of establishing criteria for consideration of a minor variance, in accordance with section 45(1.0.3) of the *Planning Act*.

KEY FACTS:

The following are key points for consideration with respect to this report:

- In 2017 Staff completed Phase 1 of the Residential Character Study which provided four (4) recommendations to better address how new development can respect residential character, including passing a By-law that establishes criteria for a minor variance.
- In 2015 the Provincial government adopted changes to the *Planning Act* through the *Smart Growth for Our Communities Act* (also known as Bill 73).
- Bill 73 changed the *Planning Act* in various ways, including matters related to the Committee of Adjustment and the four tests of a minor variance.
- Municipalities have the ability to establish additional criteria for a minor variance through municipal by-laws.
- Local criteria would help clarify what constitutes a minor variance when evaluating an application and would further enhance the objectives of the Livable Oakville Plan.
- Staff has been monitoring trends in minor variance applications and identified other Town studies that support the need for establishing additional criteria to reflect local context.

BACKGROUND:

Staff has initiated a process to examine the decision-making framework for the Committee of Adjustment, and how to provide tools which may narrow the spectrum of how minor variance decisions are made. Staff has conducted research into past

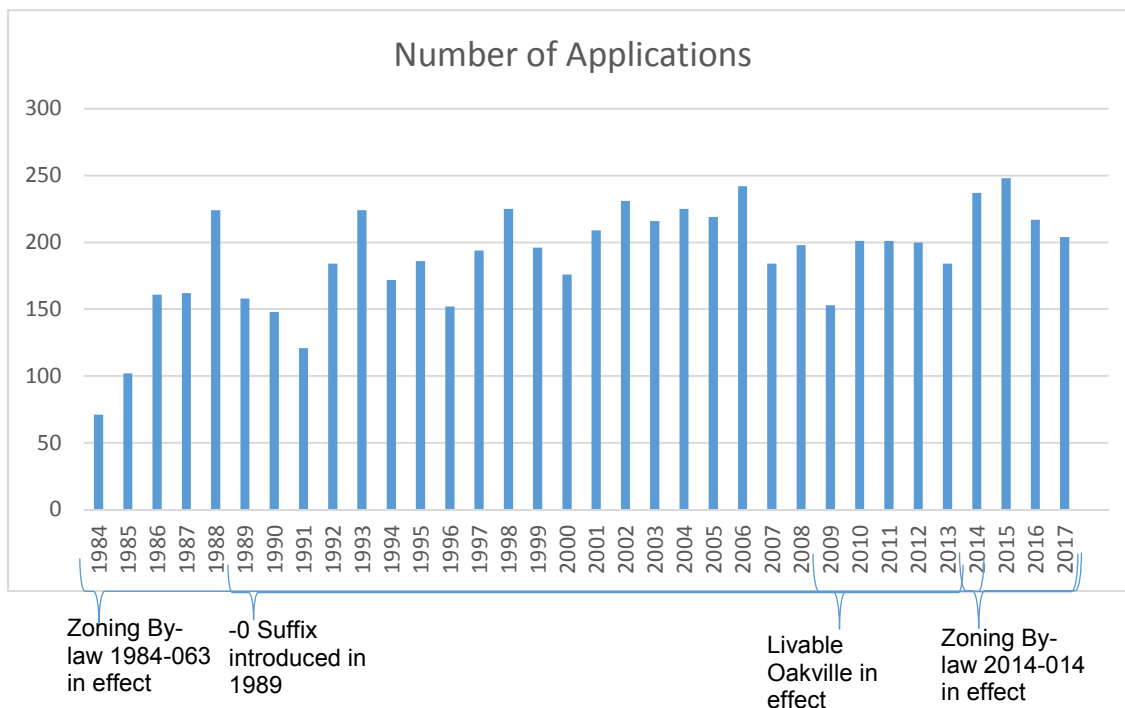
From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

minor variance applications and reviewed the findings of the recently completed Residential Character Study. Further, staff has evaluated various options on how best to manage the types of minor variance applications received and the decisions made by the Committee of Adjustment with respect to low density residential, more specifically the residential areas subject to the “-0” Suffix. A full assessment of the options is provided later in this report. After reviewing the various options, and considering the findings of the studies and the historical minor variance applications, it is staff’s recommendation that a Local Variance Criteria By-law (LVCB) should be passed. Establishing criteria for a minor variance application would be consistent with the recommendations of the Residential Character Study, provide an interim approach for managing increases in impervious surfaces beyond the Zoning By-law regulations, and offer a new decision-making tool when considering minor variance applications. Further, the criteria for a minor variance provides an opportunity to respond to the challenges of redevelopment within stable residential communities, while maintaining the Committee of Adjustment (COA) as a needed function in the planning approvals framework.

History of the Committee of Adjustment

The Town’s records show that a COA had been established as early as 1956 under the former Township of Trafalgar to address minor variances to the applicable Zoning By-law. A COA has continued to be a function of the development planning approvals framework within the Town since that time. The size of the Committee, its members and the administration of the Committee has evolved over time, along with how Town planning staff has provided support to the function and operation of the Committee.

Records indicate that the volume of applications considered annually has remained relatively consistent since the mid-1980s, as seen from the chart below:



Over the years, the Planning Department has provided professional planning advice to the Committee in the form of written comments. These comments were often short responses that highlighted any conflict with the Official Plan or the Zoning By-law as it related to the four tests of a minor variance. More recently, the Planning Department and the Community Development Commission has evolved to providing detailed and fulsome written comments which reflect the new, multi-discipline approach, as well as attending COA meetings to better support the Committee with any questions or concerns that may arise.

The volume of minor variance applications has been relatively consistent as shown in the table above, but there has been an obvious change in the nature of the applications being submitted. Where once the COA often dealt with deviations from side yards to address new decks or small additions, the Committee and staff are now confronted with variances directly related to the influx of newer dwellings replacing the original housing stock resulting in requests for increases to floor area or height.

The *Planning Act* sets out the parameters which permit a municipality to establish a COA. Council included a policy in the Livable Oakville Official Plan which states that Council shall appoint a Committee of Adjustment (Policy 28.7.1). In maintaining this tool within the development approvals framework, it provides an opportunity for deviations from the Zoning By-law to be reviewed in a timely, efficient, and cost effective manner. In 2015 a new position was created within the Planning

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

Department to provide a planner exclusively dedicated to the review and commenting of COA related matters. In response to community concerns related to the COA, staff provided a strengthened multi-discipline approach to the evaluation of minor variance and consent applications, and an increased dedication to ensuring the COA members receive support and tools to be effective in their role and decision making.

Changes in Planning Policy

In the 1980s, the community and Council noticed the changes occurring in the neighbourhoods, and Council passed By-law 1989-266 which introduced the “0” Suffix within the former Zoning By-law 1984-063. This By-law intended to regulate the size and volume of a detached dwelling in certain areas of the Town. The By-law allowed for renewal and change within neighbourhoods, but provided limitations to ensure that properties were not overbuilt and did not present negative impacts onto abutting properties.

In 2009 the Livable Oakville Official Plan was adopted by Council and included new policies that addressed compatibility with and protection of the character of neighbourhoods, and included Policy 11.1.9. Policy 11.1.9 introduced specific criteria aimed at maintaining and protecting the existing character of neighbourhoods in Oakville. Further, in 2014, Council passed a new Zoning By-law 2014-014 which maintained the essence of By-law 1989-266 and further implemented the Official Plan. Together, these tools are intended to form the baseline for the evolution of built form within the Town’s established neighbourhoods.

Also, more recently, broad policy changes have occurred with respect to watershed and natural heritage management, infrastructure management, as well as land use planning. As a result, some properties have been impacted in a manner which limits or even prevents them from making changes on their property. For instance, the regulated boundaries for the conservation authority within Oakville has increased to the point where a flood plain limit may now pass through an existing dwelling. New development would not be permitted in this area. Further, these restrictions may result in a new dwelling that is substantially smaller than the existing dwelling if all regulations of the Zoning By-law were complied with or further, render the property undevelopable without seeking relief from the Zoning By-law.

Since the Zoning By-law is a broad document that covers the majority of circumstances, it does not address every property and their unique attributes. The COA is an important tool in these instances to ensure new development remains proportional and compatible with the character of the neighbourhood, and facilitates those who have a physical difficulty in the use or development of their property.

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

Residential Character Study

In 2017, staff conducted an evaluation of residential character in order to understand from the community what character means to them, and to gauge the degree of change some neighbourhoods have experienced. The Study concluded that there were two character types: Type A – Areas developed before 1980; and Type B – Areas developed after 1980. Staff also observed that the Type A areas are predominantly zoned with the “-0” Suffix. The study identified that more change (additions and replacement homes) has occurred in Type A areas than in Type B areas.

During the public consultation process for the study several themes and topics were discussed, some of which relate to certain Zoning By-law regulations:

- Building siting and separation (Lot Coverage and Yard Setbacks)
- Building massing (Lot coverage, Residential Floor Area, Height)
- Vegetation (Lot Coverage, Driveway Widths and Coverage, Yard Setbacks)

The Zoning By-law will allow for some degree of change when the existing housing stock is replaced. However, when certain regulations are exceeded, it can greatly affect the character of the neighbourhood.

It was clear in the Residential Character Study findings that the majority of change had occurred in full compliance with the Zoning By-law, but further tools may be required for those who are seeking a minor variance from the Zoning By-law. The Residential Character Study concluded that:

Based on the findings, the following recommendations outline a range of options to improve the policy direction and development approval process to better address residential character, development trends and the public feedback received through this study.

8.1 Official Plan

- *Review the existing Residential Land Use policies in the Official Plan to ensure that building siting, massing, height, landscaping and trees are identified as important elements contributing to the existing character of the residential areas.*
- *Consider incorporating policy language in the official plan and design documents which clarifies that existing residential character is to be respected.*

8.2 Zoning By-law

- *Review the existing Residential zones within the Type A areas, to ensure that the regulations related to setbacks, height and landscaping are appropriate to align with and respect the existing character.*
- *Explore options for the residential zones within the Type A areas that would be associated with potential design review for new construction and large additions, to ensure that the residential character of the existing streetscape is addressed through the proposed development.*

8.3 Urban Design

- *Review the Design Guidelines for Stable Residential Communities, in conjunction with Official Plan and Zoning By-law reviews, to ensure consistency between policy and design direction and terminology.*
- *Explore options for design specific development review prior to building permit for low density residential new construction or large additions within Type A areas.*

8.4 Committee of Adjustment

- *Review the committee of adjustment process and explore the option of additional prescribed criteria for the consideration of minor variances, as permitted by the Planning Act.*

Currently, the residential policies of the Official Plan are under review through the 5-Year Official Plan Review. Concurrent with the policy review, the Zoning By-law and the Urban Design Guidelines will be reviewed and modifications or enhancements may be made. It is through recommendations #8.1, #8.2, and #8.3 of the Study that Official Plan policy, Zoning By-law regulations, and Urban Design Guideline enhancements are intended to address the impact of changes in neighbourhoods in compliance with Zoning. In the interim, staff has recommended in this report to explore the option of additional prescribed criteria for a minor variance (Recommendation #8.4 of the Residential Character Study). The implementation of additional criteria for a minor variance will provide a reduced scope for both the COA and staff to consider minor variance applications.

COMMENT/OPTIONS:

The first phase of the Residential Character Study has been completed and staff will embark on the second phase this year. The next phase includes implementing the recommendations of the Study by reviewing the Residential policies in the Official Plan, the Zoning regulations in the “-0” Suffix areas of By-law 2014-014, and the Urban Design Guidelines for Stable Residential Communities. This review is anticipated to provide different options and tools to address the as-of-right changes in stable neighbourhoods. In the interim, staff understand the challenges with

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

managing minor variance requests during this time, and have evaluated various options on the most effective tools to ensure continued respect for the character of residential neighbourhoods that are affected by new development.

There is a strong endorsement of the Official Plan and specifically policy 11.1.9 by the community and Council. In order to refine those objectives, staff propose changes to the Committee of Adjustment review process that will provide the Committee with the necessary tools to further enhance the objectives of the Livable Oakville Plan. The following options have been evaluated.

Options for the Committee of Adjustment

Option: Remove the Committee of Adjustment function from the planning approvals framework

Should Council wish to remove the COA as a tool in the planning approvals framework, Council would be required to pass an Official Plan Amendment. Should the COA be removed, a minor variance application could not be submitted. To pursue this direction, Council may consider that there may be property owners that require relief from the Zoning By-law in order to make any kind of change to their property. In this instance, staff may see an increase in Zoning By-law Amendment applications to address minor alterations to the By-law. Further, matters relating to consent such as new lots, easements, lot additions, etc. should be redirected to Council or a delegated authority.

Option: Replace the Committee of Adjustment

Should Council choose to replace the COA, Council could:

1. Repeal the current By-law that established the existing COA before the end of the current term. Council could immediately appoint new members of the public, or appoint themselves onto the new Committee. This new Committee would only be in effect until the end of the current term. The new Council would establish the next term of the COA as per the normal practices but could keep the Committee as members of Council exclusively; or
2. Wait until the end of the current term and establish a new COA for the next term as per the normal practices. Council can appoint members of the public or themselves to the Committee.

Should Council wish to appoint themselves to the COA, Council would need to consider the time commitment, scheduling logistics, and requirements to fulfill this role. An advantage for members of Council taking on the role of COA could result in

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

fewer Town-Initiated appeals. Should Council wish to appoint new members of the public, an advantage can provide for a new and fresh approach to the decision-making process. However, the disadvantage in either case is that the tests of the minor variance are still the same, and the process for making an application remains unchanged.

Option: Establish a Local Appeal Body

Over 10 years ago, the implications of establishing a Local Appeal Body (LAB) to adjudicate appeals related to minor variance and consent applications was presented to Council. Council chose not to pursue this direction due to costs and disadvantages to operating a tribunal-type body at a local municipal level. Since that time, the City of Toronto has established their own LAB. It took over one year to establish and is managed out of their Court System as an independent function separate from Council. The fees to appeal are the same as an appeal to the Ontario Municipal Board (\$300) and therefore, there is no cost recovery opportunities. Experts in planning, law, real estate and related fields make up the membership of this Body. In review of Toronto's LAB recent decisions, there are similar attributes which are consistent with the decisions of the OMB: The decisions are not consistent in style, format or rationale, and the decisions do not always agree with the municipal position and often overturn the decision of the Committee of Adjustment whether it was supportive or not. Staff continue to see no advantages to this approach.

Option: Pass a Local Variance Criteria By-law

Bill 73 amended the *Planning Act* to permit local municipalities to pass a By-law which establishes additional criteria to be satisfied in addition to the four tests of a minor variance under subsection 45(1) of the *Planning Act*, namely:

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

The new and additional criteria described by a Local Variance Criteria By-law (LVCB) is required to be passed by Council and would establish criteria that the COA must also consider before it can authorize a minor variance. Similarly, staff must also consider these criteria in order to provide advice and comment to the COA. Council may consider that an advantage to passing a LVCB would be the

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

effect of potentially reducing the number of applications submitted. The LVCB would provide a better tool to both the Committee and staff in the consideration of whether the application should be supported. A disadvantage may be that the LVCB would not prevent applications for minor variance from being submitted. The LVCB reflects the recommendation of the Residential Character Study to establish criteria for a minor variance application, and is an immediate solution while the other Study recommendations are being implemented.

Why pass a Local Variance Criteria By-law?

Staff has evaluated all of the options above and determined that passing a LVCB maintains a COA within the planning approvals framework while providing better control on the nature and scope of variances requested. It is staff's opinion that additional criteria for consideration of minor variance requests is an appropriate step to provide a necessary tool to better achieve the objectives of the Livable Oakville Official Plan. The LVCB also allows staff to explore the other recommendations of the Residential Character Study and implement new policies, regulations, and guidelines to better respect the character of neighbourhoods. This option also presents the least disruption to the existing COA and does not require any additional roles or responsibilities to be assumed by Council. Should further tools and policies be established through these other exercises, Council may choose to repeal the LVCB at a later date if they believe it is no longer required.

What are the criteria based on?

Planning staff has collected data on all minor variance applications since 2016. With respect to minor variances related to detached residential uses within the "-0" Suffix zones, staff has monitored trends regarding the type of variances requested, the deviation from the Zoning By-law requested, the position of staff, and the decision of the Committee. Staff has compiled the minor variance data that relates to detached residential development within the residential zones subject to the "-0" Suffix. The data set included only those variances which were supported by staff and approved by the COA with no appeals filed. The basis of using this data set is to ensure that variances being analyzed were similar in nature. In review of the variances applications, and understanding the trends of what has been approved, there are reoccurring themes that present potential conflicts with the objectives and findings of the Residential Character Study. These include:

- a) Lot Coverage
- b) Driveway Width
- c) Driveway Coverage
- d) Residential Floor Area Ratio
- e) Yard setbacks (Front, Rear and Side)
- f) Height

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

Each of these variances relates to elements of Policy 11.1.9 which addresses neighbourhood character, as well as the Urban Design policies of Section 6.1.2 which implements the Urban Design Guidelines for Stable Residential Communities. The criteria of the LVCB noted below reflect the types of variances that are typically requested. Therefore, should an owner of a detached residential property in the “-0” Suffix want to seek a variance for an increase in lot coverage they would have to demonstrate on their application how they comply with the LVCB.

What does a Local Variance Criteria By-law look like?

A LVCB provides a scope as to what is considered to be a minor variance. While public consultation will be completed through this process to help inform the content of the By-law, staff has considered a variety of elements only respecting detached residential properties within the “-0” Suffix zone that the criteria may address:

- A minor variance provides relief for a unique restriction that affects a single detached residential property that would prevent them from complying with the Zoning By-law, such as:
 - a. Lot shape
 - b. Topography
 - c. Rights-of-way pattern
 - d. Easement
 - e. Property that is listed or designated as a heritage structure, or within a Heritage District

- A minor variance provides relief for single detached residential properties that are impacted by natural or hazard areas that would prevent them from complying with the Zoning By-law, such as:
 - a. Stable-top-of-bank
 - b. Natural Area Zoning
 - c. Mature vegetative features
 - d. Other areas regulated by the local conservation authority

- A minor variance provides relief for single detached residential properties that are needing to provide buildings or structures that implement policies or objectives of the *Accessibility for Ontarians with Disabilities Act* (AODA), that would otherwise prevent them from complying with the Zoning By-law, such as:
 - a. Ramps
 - b. Walkways
 - c. Mechanical facilities, such as elevators or lifts

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

- A minor variance provides relief for single detached residential properties that have existing conditions that are needing to be maintained or extended, such as:
 - a. Construction error or As-Built condition
 - b. Historic/original building condition

The criteria would be in addition to the other tests of a minor variance and therefore would still require a complete evaluation against the Official Plan policies, including 11.1.9 and a determination of the appropriateness of the requested variance based on other Town policies, standards, and practices. For instance, a request to establish a driveway on a particular side of the property that is otherwise not permitted by the Zoning By-law may not conflict with Official Plan policy 11.1.9 but it may conflict with the road cut permit process. Therefore, that kind of variance would fail the test related to the desirability for the appropriate development of the property.

How do we pass a Local Variance Criteria By-law?

The authority to have a Local Variance Criteria By-law is under Section 45 of the *Planning Act*. However, through that section, a Local Variance Criteria By-law would be passed in a manner similar to a Zoning By-law Amendment under Section 34 of the *Planning Act*. The By-law is a stand-alone By-law similar to a fence or sign by-law. The draft By-law would be made available to the public for commenting, and an appeal period would follow the passing of the By-law. Any appeals filed against Council's decision for the By-law would be subject to the process established by Bill 139 (*Building Better Communities and Conserving Watersheds Act, 2017*), which received Royal Assent on December 12, 2017, and will be proclaimed on April 3, 2018.

Staff has shared information regarding this report and possible changes to the COA to the Developer Liaison Committee and the Infill Builders Liaison Committee. Staff intend to host an Open House in the coming weeks in addition to a Public Meeting, and the Statutory Public Meeting. Further, staff will present a draft by-law to Council on April 16, 2018 with a further finalized By-law for passing on May 14, 2018.

Conclusion

It is staff's recommendation that Council receive this report and direct staff to proceed with the preparation and drafting of a Local Variance Criteria By-law to implement one of the conditions of the Residential Character Study, and to improve the scope of the decision making process for the Committee of Adjustment. Staff has evaluated various options to address matters related to the Committee of Adjustment and their role in the planning approvals framework, and are of the opinion that a Local Variance Criteria By-law will further enhance the objectives of

From: Planning Services Department
Date: February 8, 2018
Subject: Committee of Adjustment Options Report

the Livable Oakville Official Plan and assist in managing issues related to redevelopment within stable residential neighbourhoods.

CONSIDERATIONS:

(A) PUBLIC

The Developer Liaison Committee and the Infill Builders Committee have been informed directly regarding the possible changes to the Committee of Adjustment. Further public consultation in the form of newspaper notice, open house(s), and public meetings will occur throughout the process of bringing the By-law forward.

(B) FINANCIAL

There are no financial implications

(C) IMPACT ON OTHER DEPARTMENTS & USERS

This report has been prepared in consultation with the Building Services Department, and the Development Engineering Department.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do
- be fiscally sustainable
- be the most livable town in Canada

(E) COMMUNITY SUSTAINABILITY

The proposal complies with the sustainability objectives of Livable Oakville.

Submitted by:

Mark H. Simeoni, MCIP RPP
Director, Planning Services