

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Committee of Adjustment

TERMS OF REFERENCE

Purpose

The Committee of Adjustment is a statutory tribunal with authority delegated to it by the Town of Wasaga Beach Council, under the provisions of the *Ontario Planning Act*, to hold public hearings to make decisions on applications submitted to the Town of Wasaga Beach Planning Department for minor variances, alterations in legal non-conforming uses and consents or severances. The Committee operates independently from Council and its decisions may be appealed to the Ontario Municipal Board.

Mandate

The Goal of the Committee of Adjustment is to provide for and conduct a fair hearing by:

- Allowing anyone wishing to speak to an application an opportunity to do so
- Giving due diligence to the consideration of each application
- Openly having all discussions about each application and making all decisions in public at the hearing
- Making rational decisions with appropriate, well thought out conditions
- Clearly stating the reasons for their decisions.

The Committee of Adjustment may:

- Give consent to convey or divide land when a plan of subdivision is not necessary, mortgage or charge land or grant an interest in land for 21 years or more for example by easement, right-of-way, lease, or agreements
- Give approval to the foreclosure of or exercise of a power of sale in a mortgage or charge and to issue of certificates of validation
- Authorize minor variances from the provisions of the Town Zoning By-Law for land, building or structure or their use
- Permit the enlargement or extension of an existing legal non-conforming building or structure
- Permit the use of land, building or structure for a purpose that is similar to the existing legal non-conforming use or is more compatible with the uses permitted by the Zoning By-Law
- Permit the use of land, building or structure for any purpose that conforms with the uses defined in general terms in the Zoning By-Law.

Any responsibilities not clearly identified within the Terms of Reference shall be in accordance with the *Ontario Planning Act*.

Minor Variances

The Zoning By-law regulates how land and buildings are used and where buildings and structures can be located. This By-Law also specifies lot sizes and dimensions, parking requirements, building heights and other regulations necessary to ensure proper and orderly development. However, sometimes it is not possible to meet all of the requirements of the Zoning By-Law. In that case, a property owner may apply for approval of a minor variance. A minor variance is not a right, it is meant to address the inflexibility of the Zoning By-Law so that an undue hardship is not created. A minor variance provides relief from a specific Zoning By-Law requirement, excusing a property owner from meeting the exact requirements of the By-Law.

For the Committee to approve this type of application, the Planning Act requires that the members must be satisfied that the application meets all of the following four tests:

- Is considered to be a minor change from the Zoning requirements (an evaluation of impact rather than a numerical value)
- Is desirable for the appropriate development or use of the land, building or structure;
- Maintains the general intent and purpose of the Official Plan and
- Maintains the general intent and purpose of the Zoning By-Law.

Legal Non-Conforming Uses

Legal Non-Conforming Uses are uses of property that met all of the requirements of the Zoning By-Law (and any other requirements) when they were established but no longer comply because the Zoning requirements have changed. To ease the hardship this change could place on a property owner, the Committee can consider applications for extension or enlargements of buildings or uses that no longer comply with the Zoning By-Law as well as applications for a change from one legal non-conforming use to another use.

For the committee to approve this type of application, the Planning Act requires that the members must be satisfied that:

- The non-conforming use was lawfully permitted before the current Zoning By-Law was approved
- The non-conforming use has continued, uninterrupted since that time

- The extended or enlarged building or use is located entirely within the original property limits
- In the case of a change in use, that the proposed use is similar to or more compatible to the new uses permitted by the Zoning By-Law.

Consent/Severance

Normally, new lots are created through approval of an application for a plan of subdivision. However, when only a small number of new lots are created and no new road is required, a full subdivision application may not be necessary. In this case, an application for consent to sever may be appropriate.

For the Committee to approve this type of application, the *Planning Act* requires that the members have regard to the following:

- Effect on health, safety, convenience, accessibility of persons with disabilities and welfare of present and future inhabitants of the municipality
- Effect on matters of Provincial interest, including:
 - Protection of ecological systems and agricultural resources
 - Conservation and management of natural resources and mineral resource base
 - Conservation of features of significant architectural, cultural, historical, archeological or scientific interest
 - Supply, efficient use and conservation of energy and water
 - Adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems and minimization of waste
 - Orderly development of safe and healthy communities
 - Accessibility for persons with disabilities to all facilities, services and matters to which this Act applies
 - Provision and distribution of educational, health, social, cultural and recreational facilities
 - Provision of a full range of housing and employment opportunities
 - Protection of financial and economic well-being of the Province and municipalities. Coordination of planning activities of public bodies and resolution of planning conflicts involving public and private interest
 - Protection of public health and safety and appropriate location of growth and development
 - Promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians
- Whether the proposal is premature or in the public interest and whether it conforms to Town and County Official Plans and adjacent plans of subdivision

- Suitability of the land for the purposes for which it is to be subdivided, number, width, location, grades, elevations and adequacy of proposed roads and roads linking proposed roads with the established road system
- Dimensions and shape of the proposed lots, restrictions or proposed restrictions on the land to be subdivided or the buildings and structures to be erected and restrictions on adjoining land
- Conservation of natural resources and flood control, adequacy of utilities, municipal services and school sites, area of land to be dedicated for public purposes, extent to which the proposal optimizes available supply, means of supplying, efficient use and conservation of energy,
- Interrelationship between the proposal and site plan control matters relating to any development, if the land is located within a designated site plan control area.

Any application approval may be subject to such terms and conditions as the Committee considers advisable.

Delegated Authority

The Committee of Adjustment is a quasi-judicial body, charged with observance and protection of applicable planning law and also with protecting the rights of the individuals affected by the decisions made.

The common law principles of natural justice require the Committee of Adjustment to ensure that individuals affected by their decisions have their equivalent of “a day in court”. The Committee must also satisfy legal requirements concerning notice, public hearings, calling of witness, notices of decisions and recording of proceedings. All timelines under the Act will be strictly adhered to.

As well as the legal procedures detailed in the *Planning Act*, the *Municipal Act*, the *Statutory Powers Procedure Act*, the *Municipal Conflict of Interest Act* and the *Municipal Freedom of Information and Protection of Privacy Act* govern the Committee of Adjustment.

The Committee of Adjustment is guided by planning policies and controls established by the Town of Wasaga Beach Council through the Official Plan, Zoning By-Laws and other By-Laws for controlling development and the planning policies of Simcoe County and the Province of Ontario, including the *Planning Act*, statements of Provincial interest as defined in policy statements, implementation guidelines and Provincial plans.

The Committee of Adjustment has the authority to act on matters to carry out the mandate of the Committee pursuant to the *Ontario Planning Act*, using its discretion and judgment.

Committee Composition

Upon recommendation from the Mayor and with input provided by the Committee of Adjustment Chair, Committee members will be appointed by Town Council.

Council may, by resolution as and when required in order to maintain the requisite number and composition of members on the Committee, select and appoint new members to the Committee for the duration of the term.

The Committee will be composed of up to five (5) persons who demonstrate the following qualifications:

- A commitment to and interest in the community
- An understanding of the planning framework and planning instruments, including Town Official Plan, Zoning By-Laws and other By-Laws for controlling development and planning policies of Simcoe County and the Province of Ontario, including the *Planning Act*, policy statements, implementation guidelines and Provincial plans
- Resident or owner of property in the Town of Wasaga Beach
- Organized, available and committed to conduct site inspections of subject properties and attend all Committee meetings
- Objective and have an open mind in order to fully consider the evidence provided
- Access to a computer and an e-mail address in order to receive and respond to Committee communications and information, including hearing and application notices and agenda packages with large text and graphics files

The Committee shall be composed of the following:

- Five (5) members who are citizen volunteers who reside and/or own property within the municipality, voting members
- Staff Liaison, Planning & Development Department, as a non voting staff resource
- Recording Secretary, Planning & Development Department, as a non voting staff resource

Only members, appointed by Council, may vote on any issue.

Other parties, with interest, such as subject matter experts, may be invited to the meetings, as required, but without voting privileges.

Council may, by resolution at any time and from time to time at its sole discretion remove any member, voting or non-voting, from the Committee, as it deems advisable.

A Committee member may apply for a re-appointment for any number of consecutive or non-consecutive terms.

Resignations from the Committee must be in writing to the Committee Chair and Town Clerk.

The advertising of vacancies and appointments will be in accordance with the policies and practices adopted by Council from time to time.

Committee Positions & Roles

Chair: One member will be chosen by majority vote of the Committee at the first meeting of each New Year to Chair the meetings and oversee the business of the Committee for that year.

Acting-Chair: A Vice-Chair for the same duration will be chosen by majority vote of the Committee, as needed. The role of Acting-Chair is that of Chair when assuming the role of Chair.

Secretary-Treasurer: A Secretary-Treasurer shall be appointed by a majority of the Committee membership, as a non voting member. The role of Secretary is to confirm the meeting date and location with the Clerk's Office, shall keep on file minutes and records of all applications and the decisions thereon and of all other official business of the Committee, prepare the Agenda, take the minutes, and provide a copy of the minutes to the Town Clerk's office and all Committee members. The Secretary will be a staff member of the Planning & Development Department.

All Members:

- Review applications sent to them in advance of the meeting
- Visit the site of each application prior to the meeting
- Attend the Committee of Adjustment hearings, consider applicant, agency and public comments and make decisions in public regarding applications
- Contribute time, knowledge, skill and expertise to the fulfillment of the Committee's mandate

Term of Office

The term of the members of the Committee shall be four years coinciding with the term of the Council that has made the appointment.

Meetings

The Committee of Adjustment will meet monthly, with the specific dates and times for meetings to be determined by the Committee at its October meeting each year, and provided to the Town Clerk.

Additional meetings may be called by the Chair if there are urgent matters that need to be discussed. Meetings shall not conflict with regular meetings of the Development Committee, Committee of the Whole and regular meetings of Council.

Committee members are expected to attend all regularly scheduled meetings. In the event that a member is unable to attend a meeting, the member must contact the Chair in advance and advise him or her. If a member has been absent for three consecutive regularly scheduled meetings and has failed to advise the Chair in advance, the member shall be deemed to have abandoned his or her appointment and the position shall be considered vacant.

Quorum

Where the committee is composed of more than three members, three members shall constitute a quorum as per Section 44 of the Planning Act.

Agenda

The Agenda of the Committee of Adjustment shall contain the following items:

- Call To Order
- Disclosure of Pecuniary Interest
- Minutes of Last Meeting
- Applications/Deputations/Presentations/Public Meetings
- Unfinished Business
- New Business
- Date of Next Meeting
- Adjournment

Public Meeting Process

- a) The meeting of the Committee is called to order by the Chair.
- b) The Chair and/or the Secretary-Treasurer may call for any requests for deferral of an application or for any request for withdrawal of an application.
 - i) A request for deferral of an application to a later meeting date must be for reasonable cause. The Committee may set a new meeting date for the consideration of the deferred application and may indicate any other requirements or conditions for deferral, such as re-notification, amendment or additional required information.
- c) The Chair may call each application in order determined by the agenda or in an order determined by the Chair of the meeting and/or the Committee. The Chair may ask the recording Secretary to read the application notice or item of Public Meeting.
- d) The Chair of the meeting may ask the applicant, authorized agent or the applicant's representative to introduce themselves and present the application.
- e) Committee members may ask questions of the applicant authorized agent or applicant's representative at this time. Questions may be asked during the presentation; however, typically questions are put forward by members of the Committee at the conclusion of the presentation.

- f) The Chair of the meeting may ask the Secretary-Treasurer to read all comments received from agencies, residents and others who responded to the circulation of the Notice of an Application. The Secretary-Treasurer at the direction of the Chair of the meeting may read aloud letters received from any persons expressing an interest in the application. At the discretion of the Chair of the meeting the Secretary-Treasurer may summarize the nature of the interest(s)/concern(s) being expressed.
- g) The Chair of the meeting shall invite anyone else having an interest(s)/concern(s) with respect to application(s) to come forward and advise the Committee of their position(s). The Committee members, through the Chair, may ask questions of those parties expressing an interest(s)/concern(s).
- h) The Committee shall give the applicant, authorized agent or the applicant's representative the opportunity to respond to any comments received from commenting agencies or interested parties.
- i) The Committee members, through the Chair of the meeting, may ask additional questions at this time.
- j) After having considered the issues raised by the applicant, authorized agent, applicant's representative, any respondents and the evidence heard at the meeting by the Committee, the Chair of the meeting may ask the members of the Committee for a motion with respect to the disposition of the application. The Chair of the meeting shall call for a vote by the Committee on the motion and the Chair shall announce, at the meeting, the decision of the Committee. The Committee members shall sign the decision at the meeting.
- k) All deliberations of the Committee shall be in open session and members of the public, including the applicant, authorized agent, applicant's representative and any respondents may be present during any such deliberations, with the exception of those items which may be discussed in closed session in accordance with Section 239 of the *Municipal Act*.

Governance

The Committee of Adjustment shall be subject to the provision of the Town's Procedural By-Law to Govern the Proceedings of Council and its Committee, as amended, and shall adhere to Town policies and procedures, the *Statutory Powers Procedure Act*, *Municipal Conflict of Interest Act* and *Planning Act*.

Communication and Reporting

Unless otherwise directed by Council, the minutes of all Committee meetings will be presented to the Development Committee, for information.

The Staff Liaison will report on Committee activity, as required, to the Development Committee.

Web presence is supported through the Town's web site at www.wasagabeach.com, based on information provided by the Planning Department.

Municipal Support

The Planning Department shall be the lead department and the Staff Liaison the contact person for the Committee of Adjustment and for general inquiries on zoning matters.

Requests for documentation, reports and support materials required by the Committee or outgoing correspondence will be directed to the liaison staff member.

Committee's activities are supported through the Planning Department.

The liaison staff member shall be present at all meetings of the Committee of Adjustment.

Additional staff and/or representatives from special interest groups may be requested to attend meetings at the discretion of the Manager of Planning & Development.

Finances

Routine administrative costs associated with the work of the Committee will be allocated from the Planning Department's annual budget.

The annual budget for the Committee of Adjustment forms part of the Planning Department and will be the responsibility of the Manager of Planning & Development.

The Manager of Planning & Development will be responsible for the Committee's routine administrative costs associated with the work of the Committee including remuneration, supplies, training and miscellaneous operating expense budget.

Members of the Committee of Adjustment shall be paid such compensation as Council may provide.

Upon recommendation of the Manager of Planning & Development, expenses incurred while serving in Committee capacity may be reimbursed, as per Town policy.

Confidentiality

The *Municipal Act* and *Conflict of Interest Act* shall bind the members of the Committee as it relates to confidentiality, conflict of interest, closed sessions, and any other requirement under the *Act*, which pertain to the conduct of officials.

Indemnities to Committee Members and Others

Committee members shall be covered by the municipality's general liability insurance policy as it relates to Committees of Council's activities.

Review and Update of the Terms of Reference

The Terms of Reference are established and approved by Council and can only be altered by Council.

Approved by Council this 13th of December, 2011 by By-Law No. 2011-118