

Agenda Date:	December 10th, 2018 – Committee of the Whole
Subject:	Committee of Adjustment Appointment of Members, Resolution to Permit Minor Variance Applications, Amendments to Terms of Reference
Attachments:	Appendix 1: <i>Planning Act</i>, Section 44 & 45 Appendix 2: <i>Planning Act</i>, Section 45(1.3) & 45(1.4)

RECOMMENDATION

The following recommendation is provided for the Committee of the Whole's consideration:

That Committee of Whole recommend to Council that the following people be appointed to the Committee of Adjustment for the term December 1, 2018 to November 30, 2019:

- **Nancy Peckford**
- **Jim McManaman**
- **Craig McCormick**
- **John Barclay**
- **Doreen O'Sullivan**

AND FURTHER That Schedule B-2 of By-Law 15-15 be repealed;

AND FURTHER That a resolution be passed to permit general minor variance applications prior to the two-year anniversary of the day on which a Zoning By-Law amendment was approved by Council.

BACKGROUND

Section 44 of the *Planning Act* empowers municipalities to establish a Committee of Adjustment, where they have a zoning by-law in effect, pursuant to Section 34 of the *Act*. (**Appendix 1**) North Grenville has an approved comprehensive Zoning By-law in effect and has also passed a by-law to constitute a Committee of Adjustment (By-Law 15-15). The members of a Committee of Adjustment are appointed by Council at the beginning of a new term of Council and, therefore, it is necessary to appoint members to the Committee at this time. This is required in order for the Committee to be functional and to grant variance permissions within the Municipality.

A second and related issue is Section 45(1.3) of the *Planning Act* which prohibits anyone from applying for a minor variance in respect of any land, building or structure prior to the two-year anniversary of the parent zoning by-law being amended. Section 45(1.4) however, permits council to pass a resolution to permit minor variance applications prior to the second anniversary of a by-law being amended. (**Appendix 2**) The rationale for passing such a resolution is outlined in the Analysis section below.

ANALYSIS

Appointment of Committee of Adjustment Members

A Committee of Adjustment has authority to grant permissions and minor variances to the provisions of the Zoning By-Law. It also has the ability to legally interpret the provisions of the By-Law, where they are unclear or in dispute. The members of a Committee of Adjustment are appointed by Council at the beginning of a new term of Council and remain on the Committee until new members are appointed by Council.

Under the *Planning Act*, hearings on an application for a minor variance are to be held within 30 days of the secretary-treasurer receiving an application. A staff member of the Planning Department historically has been appointed to the role of secretary-treasurer who looks after the intake of applications, prepares public notice circulation, coordinates meeting agendas and take meeting minutes.

The Committee is convened as applications are received. Hearings are scheduled prior to regular Council or Committee of Whole meetings, usually at 6:15 p.m. The previous Committee of Adjustment heard 25 applications over the course of their four-year term.

In order to fulfill the mandate of the Committee to hear minor variance applications, Council will need to appoint members to the Committee of Adjustment. The *Planning Act* permits a council to appoint not less than three persons, as the council considers advisable. This provides Council the option to appoint members of the public, Council or a combination of public and Council members to the Committee of Adjustment.

Since the amalgamation of the three previous municipalities (Township of Oxford-on-Rideau, Township of South Gower and the Town of Kemptville), the Committee of Adjustment for the Municipality of North Grenville has been comprised of Council appointing themselves as members. This is permitted under Section 44(3) of the *Planning Act*, provided members of Council are appointed annually by by-law. This is the common practice among smaller municipalities throughout Ontario. Appointing members of Council to the Committee of Adjustment also provides continuity between the decisions of the Committee and the purpose and direction of Council. By also appointing members of Council this provides an opportunity for continued service to the public as minor variance applications will be able to proceed.

Municipal By-Law

By-Law No. 15-15 is a by-law to establish terms of references for committees of Council. This By-Law also includes the terms of reference for North Grenville's Committee of Adjustment. As the Committee of Adjustment is a statutory committee governed by the *Planning Act*, staff recommend that Schedule B-2 of the By-Law, which addresses the Committee of Adjustment, be repealed and that a separate by-law be approved to establish the Committee, appoint members and specify its governance.

Resolution to Allow Minor Variance Applications within Two Years

Section 45(1.3) of the *Planning Act*, prohibits anyone from applying for a minor variance prior to the two-year anniversary of the parent zoning by-law being amended. This prevents individuals from making minor variances to the provisions of a By-Law in situations where items were omitted from the original Zoning By-Law amendment or if

there are unique characteristics to a particular property that prevent a development from meeting a By-Law provision until two years after the By-Law has been in place.

Section 45(1.4) of the *Act*, allows Council to pass a resolution to permit minor variance applications prior to the second anniversary of a By-Law being amended. This resolution can be made with respect to a specific application, a class of applications or general application. The passing of a resolution to permit variance applications does not pre-determine the outcome of a minor variance decision, as variance applications are subject to the review and decision of the Committee of Adjustment and are evaluated against the four tests in the *Planning Act*.

ALTERNATIVES

Appointment of Committee of Adjustment Members

1. That members of the public be appointed to the Committee of Adjustment or alternatively, a combination of members of the public and Council members be appointed to the Committee of Adjustment.

Though discussions between Municipal Staff and Council, Council may wish to amend the composition of the Committee of Adjustment, however, additional information and time is needed for Council to make a decision on how they wish to proceed. Staff can come back to Council with a report regarding the various options available for the Committee of Adjustment.

In addition, the appointment of members of the public would require a recruitment process for potential members followed by an appointment by Council, which would likely take 4-6 weeks. This would require current Committee members (the former Council) to remain on the Committee until new members are appointed.

Resolution to Allow Minor Variance Applications within Two Years

1. Not pass a resolution to permit general minor variance applications prior to the two-year anniversary of the day on which a zoning by-law amendment was passed. This alternative is not recommended as there may be circumstances where a minor variance during the two-year period of the passing of a By-Law is required for development applications to proceed. Applications for minor variances are also evaluated by the Committee of Adjustment under the four tests of the *Planning Act*.
2. Require that an application for a minor variance prior to the two-year anniversary of a By-Law being amended, make a specific request to Council to pass a resolution with respect to that application. This alternative is not recommended as it could result in delays in a development application as an applicant awaits a resolution of Council to permit the submission of their minor variance application.

FINANCIAL/STAFFING IMPLICATIONS

This item has been identified in the current budget: Yes ☐ No ☐ N/A ☒

This item is within the budgeted amount: Yes ☐ No ☐ N/A ☒

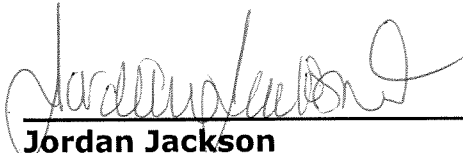
Staffing implications, as they relate to implementing Council's decision on this matter, are limited to the existing staff complement and applicable administrative policies as approved by Council.

Staff will need to train newly appointed Committee of Adjustment members on their roles and responsibilities under the *Planning Act* as well as provide training on the Local Planning Appeal Tribunal (LPAT). Any associated costs will be included in the proposed 2019 budget.

LINK TO COMMUNITY STRATEGIC PLAN

The Strategic Plan does not speak to this issue.

Prepared by:



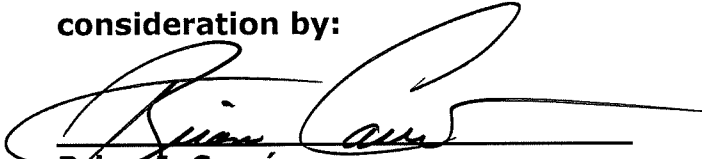
Jordan Jackson
Planner

Reviewed & submitted by:



Phil Gerrard
Director of Planning & Development

**Recommendation submitted for
Committee of the Whole
consideration by:**



Brian J. Carré
CAO

Committee of adjustment

44 (1) If a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1).

Copy of by-law to Minister

(2) Where a by-law is passed under subsection (1), a certified copy of the by-law shall be sent to the Minister by registered mail by the clerk of the municipality within thirty days of the passing thereof. R.S.O. 1990, c. P.13, s. 44 (2).

Term of office

(3) The members of the committee who are not members of a municipal council shall hold office for the term of the council that appointed them and the members of the committee who are members of a municipal council shall be appointed annually. R.S.O. 1990, c. P.13, s. 44 (3).

Idem

(4) Members of the committee shall hold office until their successors are appointed, and are eligible for reappointment, and, where a member ceases to be a member before the expiration of his or her term, the council shall appoint another eligible person for the unexpired portion of the term. R.S.O. 1990, c. P.13, s. 44 (4).

Quorum

(5) Where a committee is composed of three members, two members constitute a quorum, and where a committee is composed of more than three members, three members constitute a quorum. R.S.O. 1990, c. P.13, s. 44 (5).

Vacancy not to impair powers

(6) Subject to subsection (5), a vacancy in the membership or the absence or inability of a member to act does not impair the powers of the committee or of the remaining members. R.S.O. 1990, c. P.13, s. 44 (6).

Chair

(7) The members of the committee shall elect one of themselves as chair, and, when the chair is absent through illness or otherwise, the committee may appoint another member to act as acting chair. R.S.O. 1990, c. P.13, s. 44 (7).

Secretary-treasurer, employees

(8) The committee shall appoint a secretary-treasurer, who may be a member of the committee, and may engage such employees and consultants as is considered expedient, within the limits of the money appropriated for the purpose. R.S.O. 1990, c. P.13, s. 44 (8).

Remuneration

(9) The members of the committee shall be paid such compensation as the council may provide. R.S.O. 1990, c. P.13, s. 44 (9).

Filing of documents, etc.

(10) The secretary-treasurer shall keep on file minutes and records of all applications and the decisions thereon and of all other official business of the committee, and section 253 of the *Municipal Act, 2001* or section 199 of the *City of Toronto Act, 2006*, as the case may be, applies with necessary modifications to such documents. R.S.O. 1990, c. P.13, s. 44 (10); 2002, c. 17, Sched. B, s. 16; 2006, c. 32, Sched. C, s. 47 (11).

Rules of procedure

(11) In addition to complying with the requirements of this Act, the committee shall comply with such rules of procedure as are prescribed. R.S.O. 1990, c. P.13, s. 44 (11).

Section Amendments with date in force (d/m/y)**Powers of committee**

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

Two-year period, no application for minor variance

(1.3) Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).

Exception

(1.4) Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).