

**Issues from January/February 2016 Committee of Adjustment EYK
Variances, especially when combined with severances. (DRAFT)**

LIST OF ISSUES

Is it appropriate for the COA not to consider citizen's requests and reasons for deferral.

Is it appropriate for COA to say that only impacts determine what is minor.

Is it appropriate for COA not consider tree issues during application consideration but rely on Urban Forestry conditions.

Is it appropriate for the Planning Reports to include to make observations on trees and perhaps other items such as extra entrances with cars backing on to busy roads..

Is it appropriate to use OPA 320 to evaluate applications.

Is it appropriate to ask applicants to address impact of key OP policies in both writing and diagrams for a complete the application.

Is it appropriate for Planning Department to settle with the applicant without involving those directly affected and revising their report accordingly.

Is it appropriate to have community meetings prior to or after COA hearings.

Is it appropriate to allow increased taxes to influence a decision.

Is it appropriate to approve 3 storey houses in low density zoning catagories anywhere in Long Branch.

Is it appropriate to have drawings and elevations included in the circulation notices for Long Branch or details posted on the internet.

Is it appropriate to take into consideration first floor rooms that are counted as basements under the zoning code as part of massing. Once these "basements" are occupied eg a carpet is laid, they increase density beyond that permitted.

Is it appropriate for the Long Branch Neighbourhood Association Group to be forwarded the agenda once it is established, like other community groups.

Is it appropriate to attach conditions to all severance/variance applications that the new buildings will be substantially the same as the plans submitted.

Is it appropriate to consider the plans submitted rather than the supporting severance and variance especially when the approval requires development to have substantially the same design as the drawings.

Is it appropriate for Planning Reports to include reasons for supporting or not supporting OP policies.

Is it appropriate for the Planning Reports to say the application should be refused in its current state when deferral is recommended.

Is it appropriate to add as a condition that “twin houses” should have their design contrasted to reflect the Long Branch built fabric

Is it appropriate to have differing standards for North and South Long Branch. East Alderwood has been transformed in certain sections.

Is it appropriate for decision makers ie COA members not to visit the site of applications.

CONTEXT

Definitions

Planning Act Section 1, Purpose:

a) promote sustainable economic development in a healthy natural environment by means provided under the Act.

In other words “Good planning through policies eg the Official Plan and control eg Zoning”

d) provide for processes that are fair by making them open, accessible, timely and efficient.

In other words “A transparent process to which those concerned are kept informed and delivery of a decision as soon as reasonably possible”

e) encourage co-operation and coordination among various interests.

In other words “keep all those concerned in touch with each other and promote dialogue”

City of Toronto Committee of Adjustment Website

Definition of a Variance - Small changes or exceptions to existing land use or development restrictions contained in the zoning bylaw are called minor variances.

City of Toronto Variance Application

This includes a question. Why cannot the current zoning be met. Mostly the reason in connection with severances is increased profit.

Commentary

Over the last 10 years, due to decisions by the OMB with pressure from the development industry, the variance process has changed from the original intention of the Planning Act and now embraces larger changes. While the Courts have ruled that variances must be minor in size as well as impact, they have also said that size need not be expressed in a decision.

With a sea change in approach, variances have become more complex especially when combined with severances. This has gone hand in hand with approvals for narrow lots with 3 storey houses – an alien form to Long Branch. Many places still only use severances where they comply with the zoning eg Mississauga but in Toronto significant changes are the norm. The OMB is notorious for overriding local decisions. If the OMB were removed from the equation we would have far better planning.

In the words of one resident “Long Branch is being butchered”. This is the view of many. Other comments are “We do not want to be Bramptonised” “the new buildings look stupid”, “they are blots on the landscape”. A neutral who is environmentally aware would wonder “how has planning gone astray”. The anger and frustration was expressed at the May 4th 2015 public meeting and since then a number of positive steps have been taken by key players. However development pressure continues to increase and Long Branch is the epicentre for severances. Not only do the severances take advantage of the unique historic and aesthetic environment they start to spoil it as well. We have an extreme situation in Long Branch with the overwhelming number of applications being submitted.

The severance/variance process still uses the same method of public input it used 10 years ago and since its inception in the 1940s, despite the potential for more severe consequences especially for abutting neighbours.

A major positive outcome from this deep concern about planning is that a Neighbourhood Association is forming and about 30 people meet regularly to create the mandate of the new association. Others are that the Planning Department now send out a status report on current applications including their comments and that an Urban Design Study has been started with Long Branch being used as a test bed. Open dialogue exists between the Planning Department and the community

Residents and owners receive notice of variances within about 200 feet a little over 2 weeks beforehand if the notice is sent out on the last day according to Provincial rules. Notice is also placed on the property in question. COA staff, of course, operate by the rule book.

However most recipients do not understand the notice, many people have not the time or inclination to go to the Civic Offices and comprehend the proposal. Really you need to employ a professional. No information is available to interpret impact such as an impact statement addressing the 4 main areas of the Official Plan, a bird's eye view or how the new development fits into the urban fabric especially the front facade. In Switzerland 50 years ago an applicant was required to construct a life size wooden outline on site so that judgment about impacts could be demonstrated. Lack of translatable information is a barrier to community involvement.

In addition it is usually at least a 3 hour wait during the daytime to present to the COA. It is often a first time experience for residents who feel uncertain of procedures. Some find it intimidating similar to being the centre of attention in a packed courthouse. Much is often at stake for the householder.

The Planning Act puts the onus on the applicant to demonstrate that the intent of the Official Plan is met. This requires addressing policy 2.2.2 which says growth will be directed away from neighbourhoods so that their character can be respected and reinforced, policy 3.4.1 on trees, policy 3.1.2 that says new development will be "massed and its exterior façade will be designed to fit harmoniously into the neighbourhood" and avoid undue impacts on neighbouring properties and policy 4.1.5 which includes a

number of criteria including massing and scale of nearby properties and a variety of criteria for development which respects and reinforces character.

The loss of trees seems to be considered as collateral damage by decision makers. The OMB actually removed a condition on 2 27th Street about trees which led to 7 100 feet high pines being lost not to mention 2 other “protected trees”. 69 Laburnham, 97 27th Street and 58 Ash are examples of trees being lost because Urban Forestry’s hands are tied when a severance/variance approval is given. They cannot refuse a permit if the development requires tree destruction.

Urban design knowledge is required to interpret the Official Plan and the OMB and the development planners usually lack this. They believe such items as reflecting architectural features such as flat roofs or contrasting designs to reflect the different house appearance is beyond their purview. The Planning Department have urban design experts but it is not always possible to see their influence in comments. Experiential or serial vision (urban design where one looks at the effect on people moving through the neighbourhood) is absent in nearly all North American jurisdictions.

The other factor is that the City has recently adopted OPA 320 which clarifies how Section 4.1.5 should be interpreted. The OMB has favoured the notion that if there is a single similar severance in a wide area around the site then the character of the neighbourhood is reinforced and respected. Hopefully the OPA will stop this practice and deter development planners parroting this line. The test is now clarified as the predominant character and this is now City policy since it speaks with bylaws.

This lack of information is also a burden on the COA who seem to act somewhat intuitively as well as the OMB who must have regard for the local decision making file. There seems to be a bias towards development perhaps because of the thought that increased taxes accrue. It has never been shown that overall new residential development is beneficial to the bottom line - in fact quite the reverse. People need services. The new buildings are selling for over \$1m. Affordable accommodation could be provided if a lot is unsevered but includes a secondary suite. We are a student oriented neighbourhood with Humber College being a neighbour.

There is a myth that residential development contributes to lower taxes or allows civic benefits. This is part of the reason the planning system has broken down in the context of severances accompanied by many variances.

Such applications can have as many or more problems for the community (especially abutting owners) than zoning amendments. Residents and owners have to suffer consequences of removing their rights in the form of overshadowing, overwhelming structures and overlook as well as jarring intrusions into the rhythm of the street. Development squashed on to undersized lots frequently has boundary problems such as trespass, undermining neighbours foundations, cutting down boundary trees or trees on a neighbour's property. Builders frequently ignore building bylaws. Because of the attitude of builders neighbours are fearful of protecting their rights. People have left the neighbourhood because of the impacts, even moved Province or emigrated. Mistakes made now last for maybe 100 years. Residents are sometimes involved in stressful discourse with applicants for years.

Neighbourhood Plans have not been used in Toronto for many years. This is where a stakeholder group is brought together and in unison with planners and other staff specialists prepare a plan together. This requires full service planning that budgets have not been able to support. Current staff are already stretched.

Community meetings have never taken place before hearings so dialogue is minimal if any. Such meetings have the benefit of allowing planners to incorporate the sense the community has of a proposal. Applicants simply want a quick answer from the COA so they can appeal to the development friendly OMB. In a progressive move the Planning Department have started to recommend to the COA that community meetings be held to bring a proposal more in keeping with the Official Plan after the initial hearing. The Councillor's Office has been actively supporting this with written requests to the COA.

The Planning Act is full of provisions for the community to be able to shape their own neighbourhood within the framework of the overall City interest. "Localism" is a national policy in some countries eg England.

Case Studies

Case Study 1 - Address unknown

The COA only allowed a deferral request by an applicant on an item on the February 11 COA meeting. Their view is that the applicant must be given the opportunity to have their proposal considered for approval or refusal. At the Committee a neighbour was told by the applicant that he would seek deferral so that she could review any modifications proposed. She stated she had no idea of the original proposal or how the proposal had been modified. Nevertheless the Committee approved the application. The OMB consider requests for deferral/adjournment from non applicants.

Case Study 2 - 88 Laburnham

Revised plans had been significantly changed in order to meet the planner's interpretation of what conformed to the Official Plan. The planner's revised report was submitted a day before the hearing and new plans were not available to the public. The applicant asked for deferral as the Councillor had asked for that. Had the applicant not co-operated this too could have been approved.

Furthermore the planning report supported a far greater density than previously on such applications. There was no explanation in the report but was later confirmed that the extra density was within the building envelope (or box where development within the site is permitted) and that North Long Branch was not in a fabric study that had been conducted by the Planning Department for South Long Branch. The Planning Department are on record that on a refusal by the COA the Planning Department will involve the public affected in discussions with the applicant.

It should be mentioned that once the Planning Department has agreed with the developer it is difficult although not impossible for the community to win at the OMB. Residents cannot afford to spend \$20,000 to \$30,000 for planning and legal expertise and a great deal of time defending their current rights. There is no intervener funding. It is a difficult manoeuvre for the City to appeal an approval through Community Council and City Council and then hire outside consultants. The Councillor has to be willing to support the appeal.

Case Study 3 - 40 38th Street and 56 Ash

At the January 14 COA 2 severance applications (the 3 storey 25 feet frontage lots) were approved since no one showed up at the meeting for reasons previously mentioned but not because there was no strong objection. The COA appear to feel lack of attendance means neighbourhood support or lack of concern about the application. One site had a very similar application that COA turned down next door. The Planning Department and the Councillor supported deferral. The COA appeared not to grasp the Long Branch issues and to ignore or misunderstand the Official Plan. In addition approval of 56 Ash did not allow real planning with a possible compromise of having 3 units where 4 were proposed using the adjoining lot at 58 Ash.

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