A Guide to The Committee of Adjustment (COA) and "Minor Variances"

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This guide is meant to enable residents to understand the process when dealing with the COA when it considers an application for a "minor variance" from the requirements of the Zoning Bylaw.

The development industry knows this process all too well. It is time for the homeowner to understand it as well.

The Planning Act allows Council to establish a COA to deal with many items: however this brief guide only deals with applications for a "minor variance" (mv).

No Zoning bylaw is perfect. For whatever reason a builder or homeowner may seek a variance from the zoning regulations to permit the construction of a new house or an addition to an existing home.

The COA is appointed by Council, and its rules of procedure are subject to the Provincial regulations under the Planning Act. In Oakville there are five members on the COA, none of whom is a council member. The COA meets twice a month at Town Hall, usually on Tuesdays at 7 p.m.

Application Evaluation

The COA decisions are based on four criteria that they are obliged to consider before rendering a decision. These criteria are listed below and are specifically referenced in the Planning Act.

1. Does the application maintain the general intent and purpose of the Official Plan.
2. Does the application maintain the general intent and purpose of the Zoning Bylaw.
3. Is the variance desirable for the appropriate development or use of land.
4. Is the variance application minor.

In order to assist the COA, the Planning Department prepares a report on each application with a recommendation as to whether or not the four criteria are met. In general it would appear that most mv applications are approved because they are indeed "minor".

In addition to the four general criteria a resident should know that to evaluate an application from your perspective requires you to have knowledge of certain sections of the Official Plan.

- Section 11.1.9 identifies additional criteria to help you in that regard.
- Oakville Council adopted "Design Guidelines for Stable Residential Areas". You should read this document as it will help you to evaluate the application.
- Familiarize yourself with the Zoning Bylaw as it affects your area. Due to the fact that Oakville developed in stages, not all zones have the same regulations, and in this regard you will find the Planning and Zoning staff very helpful.
- Have a good understanding of the existing development characteristics in your area. This will help you to determine if the proposal is in fact desirable and appropriate for your neighbourhood.
- Some areas of Oakville have a "Heritage District" designation. Check to see if one applies in your area. Read the report as it will help you to further evaluate the appropriateness of the variance proposal in your "stable residential neighbourhood." The Oakville Heritage Society will be asked to evaluate all applications in the Heritage District.
- If the property in question is in a "flood plain", the local Conservation Authority will be asked to evaluate the appropriateness of the application.

Last, but most important, you must determine if the request for a minor variance is indeed "minor". There is no definition as to what is "minor". It is a very subjective evaluation. Minor is usually interpreted to mean the degree to which the variance has a "negative impact on the surrounding neighbourhood". If the impact is perceived to be "small", then it is "minor". If it perceived to be huge or "major", then the application is generally denied. It all depends on how you frame your argument. For example, if you are opposed to an application because the new home or addition to an existing home will cover 32% of the lot when the Zoning Bylaw allows only 19%, there is no guarantee that this huge increase will be denied.

You should remind the COA that any variance that is grossly in excess of that which already exists in the neighbourhood and is much greater than what is permitted in the Zoning Bylaw, must be rejected. In other words, if lot coverage is to have any real meaning, some significant recognition must be given to it. If not, setting a maximum lot coverage is meaningless.

You must stress the negative impact that the request will have on the immediate neighbours, such as, the large coverage is not in keeping with the houses on the street, reduced privacy in the rear yard, less sunlight on abutting properties, a reduced front yard will inhibit your enjoyment of the existing street

scape and severely limit light from entering your front porch, more coverage means less grass, less open space and less opportunity for protecting a more extensive tree canopy (which is a hallmark of the old, stable residential areas.) Excessive bulk and massing of the new building/addition may not be compatible with the prevailing characteristics of the neighbourhood. All these things are mentioned in

"The Design Guidelines for Stable Residential Areas".

COA Hearing at Town Hall

The COA must notify you of a hearing on the application at least 10 days before the meeting. If you agree with the application, do nothing or send in a letter of support.

In addition, the COA requires the applicant to install an orange sign on their front lawn to notify the general public about the variance(s) and of the time and date of the hearing.

If you do not agree with the application, do your homework as outlined above, and object to it in writing. Every resident interested in the application should attend the hearing and speak to the issues that will affect them the most. Each speaker is allowed up to five minutes.

The Friday before the hearing the COA members each receive a copy of a Planning Staff report recommending approval, denial or deferral. This report will include all letters supporting or opposing the application. COA members are encouraged to visit the site of the application before the hearing so that they can make an "informed" decision.

Experience has shown that if the Staff Report recommends denial, quite often the applicant requests that the application be deferred. As this request is made at the very beginning of the meeting, it is important for you to be there at 7 p.m. The request is usually granted. You will receive a notice of the next meeting in the mail but only if you sign a green sheet which is usually at the back of the room.

What happens next is that the applicant or his agent reconsiders his proposal and a meeting then ensues with the Planning staff with an attempt to modify the application to obtain a favourable staff recommendation. To our knowledge the neighbourhood residents are not invited to attend these meetings. Little or no resident consultation is undertaken or considered. Often, with a favourable new staff report the developer's application is approved at the next meeting. It's good practice to remind the COA that we (the residents and Council) look to them to protect stable residential areas and uphold the policies of the Official Plan, the new Zoning bylaw regulations and the new Design Guidelines.

Whoever attends the hearing of the COA is allowed to speak to the issue for five minutes. Therefore, it is wise to be very well prepared. If the residents have not had enough time to evaluate the application they are permitted to request a deferral at the beginning of the meeting at 7 p.m. Whether or not one is granted depends on the resident's reasons and the COA's understanding and evaluation of that request. (A request for a deferral by the applicant, if granted, currently costs $643.00. A request for deferral by the neighbours costs nothing.)

When residents have not had sufficient time to evaluate the application due to holidays, sickness, and the need to speak to Planning Staff, a deferral request may be warranted. If it is a particularly complicated application including many variances and a companion "consent" application, you may need more time to engage a planner or lawyer to represent you.

In making your case to the COA you should do what the applicant's agent does.

- Prepare a written text of what you are going to say so that you stay within the five minutes allotted to each person speaking.
- Prepare maps and photos that help you portray the neighbourhood as the residents see it.
- Have many residents attend the hearing and speak about their opposition to the application.
- Express your willingness to cooperate with the applicant to find a mutually satisfactory alternative, if that is your desire/intention. This all takes time but the end result is usually beneficial to all. In a word, you would like to "mediate" a solution without the expense of dealing with the issue at the Ontario Municipal Board (OMB), should a decision be appealed to the OMB.

If time permits, you should attend a COA hearing two weeks before, to see how these meetings are conducted in order to be better prepared.

Sometimes, before you receive notice of a hearing, the Applicant (home owner or agent) will visit the neighbourhood to solicit their support. Don't sign anything until you have done your own research and have spoken to neighbours.

Appealing the COA decision

If a decision is made at the COA meeting and you disagree with that decision anyone who attends the meetings and has signed the green sheet can appeal that decision to the Ontario Municipal Board (OMB) for a cost of $150 currently. A new hearing at the OMB will now begin to cost you money ($10,000 to $15,000 as an estimate for planning and legal services). Depending on the OMB's workload the new hearing may take anywhere from 6 weeks to 3 months in the future. The hearing lasts no longer than one day and there is no appeal from the OMB's decision, except on a point of law.

For additional information on how the OMB process works call the OMB at 416 326 5363.

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