

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas, P. Eng.
Managing Director, Development & Compliance Services
and Chief Building Official

Subject: Deferred Matter (Item 4) - Variances granted by the Committee of Adjustment – Information Report

Meeting on: March 19, 2018

Recommendation

That, on the recommendation of the Manager, Development Planning, the following report relating to an overview of the nature of Variance Applications granted in 2015, 2016 and 2017 by the Committee of Adjustment BE RECEIVED

Executive Summary

Summary of Request

Municipal Council has directed staff to report annually on the nature of Variances granted by the Committee of Adjustment.

Purpose and the Effect of Recommended Action

The purpose and effect of this Information Report is to provide an overview of the nature of Variances granted by the Committee of Adjustment over a three (3) year period. Analysis will provide an overview of trends and breakdown by various categories of Variance Applications considered by the Committee of Adjustment.

Rationale of Recommended Action

Municipal Council has directed staff to report annually of the nature of Variances granted by the Committee of Adjustment.

Analysis

1.0 Minor Variances

1.1 What is a Minor Variance?

A minor variance is a small variation or relief from the requirements of the Zoning By-law. A minor variance approval functions as a certificate of permission, because it allows the property owner to obtain a building permit even though their property does not comply precisely with the regulations of the Zoning By-law.

1.2 Who makes a Decision to Grant a Variance

The Committee of Adjustment is provided with authority to approve, with or without conditions, refuse or defer requests for Minor Variances.

The committee serves as a quasi-judicial body that has independent authority, as delegated by Council, to consider applications for minor variances under the *Planning Act*.

Council may by by-law, constitute and appoint a committee of adjustment comprised of no less than three individuals. London's Committee of Adjustment currently consists of five (5) members, who are not Members of Council and are appointed to hold office for the term of office of the Council that appoints them.

1.3 Basis for Decisions of Variance Applications

Committee members must base their decisions on the planning merits of the application after having considered the recommendations of staff and receiving input from the applicant and members of the public.

The Planning Act (Section. 45(1) and 45(2)) provides the basis for decisions of the Committee of Adjustment.

The committee may authorize a minor variance from the provisions of the by-law, if the committee is satisfied that the application meets all of the following four tests (S.45(1)):

- I. Is the variance minor in nature;
- II. Is the variance desirable for the appropriate development or use of the land, building or structure;
- III. Does the variance meet the general intent and purpose of the by-law; and
- IV. Does the variance meet the general intent and purpose of the Official Plan.

The Committee of Adjustment may also consider applications that request the extensions, enlargements or changes to legal non-conforming uses under the Zoning By-law. The committee may authorize a minor variance from these types of requests if the committee is satisfied that the application is consistent with section 45(2) of the *Planning Act*, as follows:

- I. For the same use, or a more compatible use than was permitted by the by-law; or,
- II. Confirm specific uses that are defined in the by-law in general terms.

Decisions made by the committee must contain reasons for the decision and indicate how the variance meets the four tests or satisfies the criteria of the Act for legal non-conforming uses or for uses not specifically mentioned in the Zoning By-law.

The Committee decisions may attach conditions and subject to such terms that the committee considers necessary. Decisions made by the committee may be appealed to the Ontario Municipal Board.

1.4 Examples / Types of Minor Variance Applications

Typical examples of relief to the Zoning By-law by way of a Minor Variance include:

- locational (Yard) setbacks for main structures (interior, exterior, front and rear yards);
- parking deficiencies, front yard parking, parking setbacks and coverage;
- changes to legal non-conforming Uses/uses not specifically mentioned in the Zoning By-law;
- accessory structures – decks, sheds, detached garages (location, height and footprint)
- height, coverage, gross floor area (GFA), landscaped open space.

2.0 Nature of Variances granted by the CoA over a three year period

2.1 Breakdown of Nature of Variance

For the purposes of this report, Variance Applications were broken down into 5 separate categories which are listed and below:

- Locational (Yard) Setbacks for Main Structures;
- Parking Deficiencies, Front Yard Parking, Parking setbacks and coverage;
- Changes to Legal Non-Conforming Uses;
- Accessory Structures – Decks, Sheds, Detached Garages
- Height, Coverage, Gross Floor Area, Landscaped Open Space (Category 4 Variances)

Definitions/Descriptions of these categories are provided in APPENDIX 'A'

2.2 Three (3) Year Review of the Natures of Variance by Category

The following table provides a three (3) year glimpse of the variances applications considered by the Committee of Adjustment. The table is broken down by the various categories previously described. The table also provides data related to the yearly percentage of each category and the three (3) average for variances by each category.

TABLE 2.1 THREE YEAR REVIEW OF THE NATURE OF VARIANCES

Nature of Variances	2015	2016	2017
Totals (187) **	180	176	204
Locational (Yard) Setbacks for Main Structures (54) (29%) **	47 (26%)*	58 (33%)*	58 (28%)*
Parking Deficiencies, Front Yard Parking, Parking Coverage / Setbacks (31) (17%) **	37 (21%)*	31 (18%)*	24 (12%)*
Legal Non-Conforming (17) (9%) **	20 (11%)*	22 (12%)*	8 (4%)*
Accessory Structures (28) (15%) **	26 (14%)*	26 (15%)*	32 (16%)*
Height, GFA, Lot Coverage, Lot Area & Frontage, Landscape Open Space. (57) (30%)**	50 (28%)*	39 (22%)*	82 (40%)*

*Percentage of yearly total

**Average over the three (3) year period

Over the past three (3) years the Committee of Adjustment has reviewed an average of 187 minor variance applications, with 2017 seeing the highest volume (experienced in recent years).

Locational (Yard) Setbacks for main structures

Over the past three (3) years the Committee of Adjustment has reviewed a yearly average of 54 minor variance applications for yard setback regulations for main structures on a lot. These types of variances make up just under 30% of the overall number of variances considered by the Committee of Adjustment. The most common form of relief sought within this category are for front and interior yard setback variances. The primary contributor triggering front yard setback variances is often the result of direction within the London Plan to place new structures, particularly those within primary transit areas of the City, to locate closer to the street edge. Interior yard setbacks are often triggered from development pressures to maximize building footprints in trade-off for site amenities such as parking, landscaping, and various design elements. Staff anticipate that the new Zoning By-law that will be created to implement the London Plan will provide the regulatory framework to reduce Variances of this nature. Also, recent amendments to the Zoning By-law, particularly the new Infill Regulations (S.4.23) and amendments to several of the Residential R1 Zone variations with regards to interior yard setbacks for 2-3 storey residential structures have reduced the number of Variances of this nature.

Parking Deficiencies, Front Yard Parking, Parking setbacks and coverage

Over the past three (3) years the Committee of Adjustment has reviewed an average of 31 minor variance applications for the various parking regulations for uses and properties. These types of variances make up approximately 17% of the overall number of variances considered by the Committee of Adjustment on a yearly basis. Most of the parking regulations (S.4.19) of the Zoning By-law have been in place since the mid-1990's and as uses of existing buildings change or pressure to expand building footprints and densities emerge, conflict with existing regulations occur. Council has provided flexible regulations within strategic districts of the City (Downtown, Mainstreets) to relax many parking regulations, however some pressures continue to exist for expanding or changing land uses to meet the existing parking regulations of the by-law

Changes to Legal Non-Conforming Uses

Over the past three (3) years the Committee of Adjustment has reviewed an average of 17 applications for matters related to the extension, enlargement or change of use for legal non-conforming uses. These types of Committee of Adjustment applications make up just under 10% of the overall number of applications considered by the Committee of Adjustment. The *Planning Act* provides strong regulatory tools and rights to continue a use that is no longer permitted under the current zoning rules. The *Planning Act* further provides rights to such uses, buildings and lands to be enlarged, extended and to change from one non-conforming use to another. A Committee of Adjustment application is the manner in which these rights are exercised. The City of London, like many other historic and expanding communities, has a vast built form in many older and established areas of the City that are under pressure to expand or be repurposed.

Accessory Structures – Decks, Sheds, Detached Garages

Over the past three (3) years the Committee of Adjustment has reviewed an average of 28 minor variance applications for accessory structures located on a lot. These types of variances make up approximately 15% of the overall number of variances considered by the Committee of Adjustment. Although in most instances these types of variances have minor land use impacts, they can often incite considerable neighbourhood discussions at Committee meetings. The most common form of relief sought to accessory structures is for interior yard setback requirements. Most requests of this nature involve proposals to allow a decrease from the required 0.6 metres (2 feet) interior yards setback. Another common form of variance under this category are requests to grant relief to the maximum height limits of accessory structures (increases above the maximum of 4 metres (13.1 feet) or 6 metres (19.7 feet) height limits of the By-law. Finally, another common type of accessory structure variance is to the maximum coverage provisions of S.4.1(2) for accessory structures which limits the coverage to 10% of the lot area.

Height, Coverage or Gross Floor Area (Category 4 Variances)

Over the past three (3) years the Committee of Adjustment has reviewed an average of 57 minor variance applications for category 4 grouping of variances (Height, GFA, Lot Coverage, Lot Area & Frontage and Landscape Open Space). These types of variances make up approximately 30 % of the overall number of variances considered by the Committee of Adjustment. This category is quite inclusive of many property matters that are often the subject of a variance application. Triggers for many of these applications are often requests for consent or redevelopment proposals that seek to maximize the development limits of the site.

2.3 Appeals of the Decision of the Committee of Adjustment

Decisions of the Committee of Adjustment can be appealed to the Ontario Municipal Board by an applicant, a resident, a public body or other interested party. Appeals of the decisions of this current Committee of Adjustment are rare. Over the past three (3) years there have been a total of four (4) appeals of this Committee's decisions. There were two (2) appeals filed in 2016 and two (2) appeals filed last year in 2017. No appeals of the Committees decisions were filed in 2015.

3.0 Conclusion

The purpose and effect of this Information Report is to provide an overview of the nature of Variances granted by the Committee of Adjustment over a three (3) year period. On a go-forward basis, Development Services will provided a yearly update to Council on the breakdown by various categories of Variance Applications considered by the Committee of Adjustment.

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Appendix A

Variance Category Description

Locational (Yard) Setbacks for main structures

These types of Variances consist of requests for relief to the locational criteria of main buildings in terms front, side (interior / exterior) and rear-yard setback. The most common form of relief from the setback requirements of the Zoning By-law are related to front-yard setbacks. Requests for this form of relief are often required to facilitate urban design objectives for the siting of medium-to-high density residential land uses and some commercial structures. Other common requests for Yard setback relief relate to interior yard relief. This form of relief is often requested to allow for larger footprints of structures on an existing parcel of land.

Parking Deficiencies, Front Yard Parking, Parking setbacks and coverage

These types of Variance consist of requests for relief to parking requirements (number of spaces), locations of parking area setback (1-3 m from property line or front yard) and parking coverage..

Changes to Legal Non-Conforming Uses.

A legal non-conforming use is a use of land, building or structure which was legally established according to the applicable zoning regulations and building code laws of the time it was established, but which does not meet the zoning and building regulations currently in place. When legal non-conformance is confirmed, a Committee of Adjustment application may be considered to allow redevelopment, change of use or expansion to occur.

Accessory Structures – Decks, Sheds, Detached Garages

A separate category for Minor Variance applications exists specific to accessory structures. These structures are incidental and subordinate to the main use on the lot, consisting primarily of decks, sheds and detached garages or carports. Variances of this nature generally involve relief to the locational, height or coverage restrictions of the By-law related to accessory structures (S.4.1)

Height, Coverage or Gross Floor Area (GFA) etc (Category 4 variance).

The final category is a grouping that consists of most other regulations related to property development specifically building height, lot coverage, max./min. gross floor area, lot frontage and area and landscaped open space.