

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: Minor Variance Applications Considered by the
Committee of Adjustment 2018 – Information Report

Meeting on: November 4, 2019

Recommendation

That, on the recommendation of the Director, Development Services, the following report relating to an overview of the nature of the Minor Variance applications considered in 2018 by the Committee of Adjustment **BE RECEIVED**.

Executive Summary

Summary of Request

Council has directed staff to report annually on the nature of the Minor Variance applications considered 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 the Minor Variance applications considered in 2018 by the Committee of Adjustment (“CoA”). This report also provides a breakdown of the variances considered by the CoA by various categories and provides an overview of trends over a three (3)-year period.

Rationale of Recommended Action

Council has directed staff to report annually on the nature of the Minor Variance applications considered by the Committee of Adjustment.

Analysis

1.0 Minor Variances

1.1 What is a Minor Variance

A Minor Variance is a small change or relief from the regulations of the Zoning By-law that would allow a property owner to obtain a building permit when various conditions of their property do not comply precisely with the regulations of the Zoning By-law.

1.2 Who makes a Decision to Grant a Minor Variance

The CoA is provided with authority to approve, with or without conditions, refuse or defer requests for variances.

The CoA serves as a quasi-judicial body that has independent authority, as delegated by Council, to consider applications for Minor Variances under the Planning Act R.S.O 1990, c. P.13 (“Planning Act”).

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

1.3 Basis for Decisions of Minor Variance Applications

CoA 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 CoA.

The CoA may authorize a Minor Variance from the regulations of the Zoning By-law, if the CoA is satisfied that the application meets the four tests within Section 45(1) of the Planning Act, as follows:

- 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 CoA may also consider applications that request extensions, enlargements or changes to legal non-conforming uses under the Zoning By-law. For changes to legal non-conforming uses the CoA may authorize these types of requests if the CoA is satisfied that the request is similar to the purpose for which land, building or structure was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed.

1.4 Categories of Minor Variance Applications

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

- main structures locational yard setbacks (i.e. side (interior/exterior), front and rear yards);
- parking deficiencies, front yard parking, parking setbacks and coverage;
- legal non-conforming uses and uses not specifically mentioned in the Zoning By-law;
- accessory structures (i.e. decks, sheds, detached garages and car ports) locational yard setbacks, lot coverage and height; and
- lot area, frontage and coverage, gross floor area ("GFA"), landscaped open space and height.

For the purposes of this report, Minor Variance applications were broken down into five (5) separate categories consistent with the typical examples provided above. More fulsome definitions/descriptions of these categories are provided in APPENDIX 'A' to this report.

2.0 Nature of Minor Variance Applications

2.1 Nature of Minor Variances 2018 and Three (3)-Year Comparison

The following table provides a breakdown of the nature of Minor Variance Applications in 2018 by each of the five (5) categories as an absolute number and as a percentage of the total number of Minor Variance applications that year. The table also provides an overview of trends through a 3-year comparison of Minor Variance applications.

Table 2.1 Nature of Minor Variance Applications

Nature of Variances	2016	2017	2018
Totals (176) **	176	204	148
Main Structures Locational Yard Setbacks (48) (27%) **	58 (33%)*	58 (28%)*	29 (20%)*
Parking Deficiencies, Front Yard Parking, Parking Coverage & Setbacks (23) (13%)**	31 (18%)*	24 (12%)*	14 (9%)*
Legal Non-Conforming (17) (10%) **	22 (12%)*	8 (4%)*	19 (13%)* (4)
Accessory Structures Locational Yard Setback, Lot Coverage, Height (30) (17%) **	26 (15%)*	32 (16%)*	32 (22%)*
Lot Area, Frontage, & Coverage, GFA, Landscape Open Space & Height (58) (33%)**	39 (22%)*	82 (40%)*	54 (36%)*

*Percentage of yearly total

**Average over the three (3) year period

In the three (3)-year period from 2016-2018, the lowest number of Minor Variance applications were considered by the CoA in 2018 – a total of 148 Minor Variance applications. In the three (3)-year period from 2016-2018 the average number of Minor Variance applications was 176 applications. There is a reduction in the three (3)-year average number of Minor Variance applications from the previous three (3)-year period (2015-2017) when the average number of Minor Variance applications was 187 applications.

Possibly the most impactful regulatory change to effect the number of Minor Variance applications over the past three (3)-year period, and which may have contributed to the reduced number of Minor Variance applications in 2018, has been Bill 73 – Smart Growth for our Communities, 2015 (“Bill 73”). Bill 73 came into force and effect on July 1, 2016 and introduced new provisions in the Planning Act that included a two (2) year moratorium on Minor Variance applications subsequent to the passing of a Zoning By-law amendment, unless Municipal Council were to waive the moratorium through a separate decision of Council. As more Zoning By-law Amendments occur post Bill 73, the 2-year moratorium on Minor Variances becomes increasingly more relevant.

The intent of the changes to the Planning Act were to give greater control to municipalities to consider alterations of zoning regulations that Council determined to be important through Zoning By-law Amendment processes (i.e., would Council retain “carriage” of the zoning matters, or accept consideration by a delegated body). It was also recognized that there may be instances where adjustments to development proposals would be necessary and that minor relief from regulations would be required to permit the development. To address this, provisions were further included in the Planning Act to allow, by Council resolution, the opportunity to submit an application for a Minor Variance. A future report to the Planning and Environment Committee (“PEC”) will provide options for certain types of Minor Variance applications to proceed within the two (2)-year moratorium for Council to consider.

Since Bill 73 and the 2-year moratorium period came into force and effect, there have been seven (7) requests to Council to allow a Minor Variance application within the moratorium period. One (1) request to Council was made in 2017 and the remaining six (6) requests to Council were made in 2019. To date, Council has refused only one (1) requests to allow a Minor Variance application within the moratorium period.

The information reports to PEC that accompany these requests provide an overview of the previous reports pertinent to the Zoning by-law Amendments, and an overview of the pertinent matters from the Council resolution granting the Zoning By-law Amendments. The requested relief from the Zoning By-law is also identified in the information report to PEC, but an analysis of the planning merits of the requested relief is reserved for the report to the CoA. The increasing number of requests to Council in 2019 to allow a Minor Variance application within the moratorium period could suggest that applicants are increasingly more willing to undertake this process.

The nature of the moratorium Minor Variance applications most commonly included variances from the minimum interior side yard setbacks and from the maximum height of main buildings and variances from the minimum number of parking spaces. Variances have also been requested from the minimum lot area and from the maximum density.

2.2 Trends in Minor Variances 2018 and Three (3)-Year Comparison

In regards to the nature of the Minor Variance applications in 2018 and a three (3)-year comparison from 2016 to 2018, staff note the following with regards to each of the five (5) categories:

Main Structures Locational Yard Setbacks

The number of Minor Variance applications related to yard setback regulations for main structures is not as prevalent as in years past. In 2018, this category made up approximately 20% of the total number of Minor Variance applications whereas previously this category was near, or exceeded, 30% of the total number of Minor Variance applications. Notable regulatory changes that may have affected this category include the Regulations for Low-rise Residential Development in the Primary Transit Area in the Zoning By-law introduced in 2017 and updated in 2018.

In 2018, requested relief from minimum front yard and/or interior side yard setbacks were most common within this variance category. Variances within this category are often the result of pressures to intensify and maximize building footprints relative to other site functions.

Parking Deficiencies, Front Yard Parking, Parking setbacks and coverage

In 2018, the number of Minor Variance applications related to parking regulations made up less than 10 % of the total number of Minor Variances applications; and over the past three (3)-years this category on average made up 13% of the total number of Minor Variance applications. The 2018 percentage of Minor Variance applications related to parking regulations is fairly consistent with the three (3)-year average related to parking regulations.

Changes in land uses, expansions to building footprints or gross floor area over time often contribute to parking related variances; and although Council has introduced regulations to relax minimum parking regulations within strategic areas (i.e. the Downtown and Mainstreets), some parking difficulties continue to arise for changes to land uses or expansions to building footprints or gross floor area.

Changes to Legal Non-Conforming Uses

In 2018, applications to consider extensions, enlargements or changes to legal non-conforming uses made up 13% of the total number of applications to the CoA; and over

the past three (3)-years this category on average made up 10% of the total number of applications to the CoA, a slightly smaller proportion of the total number of applications.

The most common form of relief sought within this category are extensions, enlargements to legal non-conforming uses. The Planning Act provides strong regulatory tools and rights to continue a use that is no longer permitted under the current zoning provided it was once lawfully established and the use continues to present day. 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. An application to the CoA is the manner in which these rights are exercised. The City of London, like many other municipalities, has buildings and/or structures in many older and established areas that are under pressure to expand or be repurposed.

Accessory Structures Locational Yard Setback, Lot Coverage, Height

In 2018, the number of Minor Variance applications related to accessory structures made up 22 % of the total number of Minor Variances applications, an increase from 15% in 2015 and 16% in 2017. Over the past three (3)-years this category on average made up 17% of the total number of Minor Variance applications

Section 4.1 in the Zoning By-law regulates yard locations, yard setbacks, lot coverage, and height for accessory buildings or structures. The most common form of relief sought within this category is interior side yard or rear yard setbacks or lot coverage for an accessory buildings or structures. Relief sought from maximum permitted encroachments into required yards for open or covered, but unenclosed, porches or decks were also common. Section 4.27 in the Zoning By-law regulates permitted encroachments into required yards for porches, decks and other structures.

Lot Area, Frontage, & Coverage, GFA, Landscape Open Space & Height

In 2018, the number of Minor Variance applications related to lot area, frontage, coverage, gross floor area, landscape open space and height made up 36% of the total number of Minor Variances applications and is fairly consist with the three (3)-year average of 33% of the total number of Minor Variances applications. This category is inclusive of many property matters and variances within this category often trigger variances in other categories. For example, decreasing the minimum lot area or minimum lot frontage or increasing the maximum lot coverage or maximum gross floor area often cause the subsequent need for reduced minimum yard setbacks or a reduced number of parking spaces. For the purposes of Table 2.1 (above) and year-after-year comparisons, variances in this category causing variances in other categories were counted only once under this category.

Consent applications for lot creation or redevelopment proposals that seek to maximize the development limits often prompt Minor Variance applications within this category. In 2018, 23% of the total number of Consent decisions resulted in a corresponding Minor Variance application in 2018/2019. A future report to PEC will investigate opportunities under the Planning Act to delegate the Consent Approval Authority to the CoA, so that related Consent applications and Minor Variance applications can be considered concurrently by the CoA.

3.0 Appeals to the Decisions of the Committee of Adjustment

Decisions of the CoA can be appealed to the LPAT by an applicant, a resident, a public body or other interested party. Over the past three (3)-years, there have been seven (7) appeals to LPAT of this Committee's decisions. There were three (3) appeals in 2018,

two (2) appeals in 2017, and two (2) appeals in 2016. City-initiated appeals of the decisions of the CoA are rare, and by in large, Development Services only seeks direction from Council regarding a City-initiated appeal where the CoA's decision would set an undesirable precedent with respect to the interpretation of the Official Plan and would call into question or undermine the intended interpretation of the Official Plan.

4.0 Conclusion

The purpose and effect of this Information Report is to provide an overview of the nature of Minor Variance applications considered in 2018 by the CoA, and to provide an overview of trends through a three (3)-year comparison of Minor Variance applications and various categories. On a go-forward basis, Development Services will provide an annual update to Council on the breakdown by various categories of Minor Variance applications considered by the CoA.

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Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

October 28, 2019

cc: Michael Tomazincic, MCIP, RPP, Manager, Current Planning

Appendix A

Minor Variance Category Description

Main Structures Locational Yard Setbacks

This category of variances consist of requests for relief from the locational requirements of main buildings in terms of front, side (interior/exterior) and rear yard setbacks. The most common form of relief from yard setbacks relate to front yard and/or interior side yard requirements. Requests for relief from front yard setbacks are often required to facilitate urban design objectives for the siting of medium-to-high density residential buildings and some commercial buildings. Requests for relief from interior yard setbacks often allow for larger building footprints on an existing parcel of land.

Parking Deficiencies, Front Yard Parking, Parking Setbacks and Coverage

This category of variances consist of requests for relief from the parking requirements (i.e. number of parking spaces), location of parking area setbacks, 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 at the time it was established, but which does not meet the zoning regulations currently in place. When legal non-conformance is confirmed, an application to the CoA may be considered to allow extensions, enlargement, and/or a changes to legal non-conforming uses to occur.

Accessory Structures Locational Yard Setback, Lot Coverage and Height

This category of variance exists specific to accessory structures. These structures are incidental, subordinate and exclusively devoted to the main use on the lot, consisting primarily of decks, sheds and detached garages or carports. This category of variances generally consists of requests for relief from the locational, height or coverage requiremntns of the Zoning By-law related to accessory structures (Section 4.1)

Lot Area, Frontage and Coverage, GFA, Landscape Open Space and Height

This category of variaces consists of relief from most other regulations related to property development, specifically lot area, frontage, coverage, gross floor area ("GFA"), landscpae open space and building height. This category often has implications for the intensity of development permitted on a lot.