

Memorandum

To: Committee of Adjustment (COA)
From: Planning and Legislative Services Department-Clerk's Division
Date: March 03, 2023
Re: Revised Terms of Reference

The purpose of this memorandum is to provide details for consideration, related to revised Terms of Reference. The proposed terms of reference, together with the Council adopted Procedural By-law and Council and Committee Code of Conduct will ensure Port Colborne's committee structure is responsive, accountable, and transparent.

In order to accomplish the City goals, it is imperative to evaluate the role of the Committee and make changes as necessary. As a result, staff have conducted a thorough review of the current committee structure. The objective was to identify any existing gaps between committee responsibilities, the City's Strategic Plan and ensure alignment with the current organizational structure.

Input received from the Committee and Council has been incorporated in the proposed terms of reference. The recommended terms of reference attached to this memorandum sets out the recommended terms of reference moving forward. Once reviewed by the committee the amended Terms of Reference will be considered by Council.

Respectfully Submitted:



Nicole Rubli
Acting City Clerk

Respectfully Submitted:



Saima Tufail
Interim Deputy Clerk



Committee of Adjustment Terms of Reference

Committee: Committee of Adjustment

Date Approved:

Date Revised: N/A

Approval: Council

Committee Resource:

1. Purpose

The Committee of Adjustment (COA) is a quasi-judicial body and a statutory tribunal, with authority delegated to it by the Council of the City of Port Colborne under the provisions of the Ontario *Planning Act*. The COA holds public hearings to make decisions on minor variance applications, pursuant to section 45 of the *Planning Act*, and consent applications, pursuant to section 53 of the *Planning Act*. The COA operates independently from Council and its decisions may be appealed by the Ontario Land Tribunal (OLT). The COA provides a forum for the consideration of applications for consent to sever land, and minor variances from the City's Zoning By-law which are not of sufficient magnitude to require changes through the formal rezoning process.

2. Committee Authority

The Council of the Corporation of the City of Port Colborne assigns the Committee of Adjustment the authority to:

2.1 Grant minor variances pursuant to Subsection 45 (1) of *The Planning Act*;

2.2 Grant applications pursuant to Subsections 45 (2) and 45 (3) of *The Planning Act*,

2.3 Grant consents pursuant to Section 53 of *The Planning Act*, which includes the giving of approval to the foreclosures or exercise of a power of sale in a mortgage or charge, pursuant to Subsection 50 (18) of *The Planning Act*, and the issuing of certificates of validation pursuant to Section 57 of the *Planning Act*.

3. Mandate

The COA must satisfy legal requirements concerning notice, public hearings, calling of witnesses, notices of decisions, and recording of proceedings. The COA considers and may authorize minor variances from the zoning by-law, review and permit extensions and enlargements to legal non-conforming uses and can grant consent for severances (land division). These decisions are made as follows:

- 3.1 In the case of severances (consent to sever), variances, and permissions, the Committee's decisions must be consistent with the Provincial Policy Statement, conform to Provincial Plans, and comply with the Region's and the City's Official Plans;
- 3.2 In the case of minor variances and permissions under Section 45(1) and (2), the COA must consider the applications per the requirements laid out in the *Planning Act*;
- 3.3 In the case of consents, the COA must have regard to the matters under section 51(24) of the *Planning Act*;
- 3.4 The COA must be aware of Council decisions when making its decisions and enact the City's Official Plan policies; and
- 3.5 Comply with the *Statutory Powers Procedure Act*.

4. Membership Composition

The Committee of Adjustment will be composed of:

- 4.1 At least one member of the Council of the Corporation of the City of Port Colborne. The Member(s) of Council must be appointed to the COA annually by by-law;
- 4.2 At least one member of the public. The Member(s) of the public shall serve a term that ends at the same time as the term of the Council that appoints them;
- 4.3 One non-voting member of staff who acts as a resource person, recording secretary, and provides administrative support to the Committee; and
- 4.4 Additional members of Staff, who may be called on for specific subject matter expertise as a resource to the COA.

5. Citizen Membership Eligibility Criteria

To facilitate the nomination and appointment of citizen members to the COA, with the aim of achieving diverse COA representatives, the following criteria will be considered:

5.1 Residency

Members must be a tenant or owner of land in the City of Port Colborne, or the spouse of such owner or tenant.

5.2 Technical Expertise:

Preference will be given to applicants with an understanding of planning frameworks and instruments, which include municipal policies and by-laws (the City's Official Plan, Zoning By-law, and other by-laws for controlling development), policies enacted by the Region of Niagara, and policies and legislation enacted by the Province of Ontario (the Planning Act, the Provincial Policy Statement, Provincial plans, and other applicable legislation).

5.3 Availability

It is imperative that an applicant be able to attend as many COA meetings as possible.

6. Recruitment of Members of the Public

6.1 For the selection of citizen members, the Clerk's Division shall invite interested members of the public to apply to be appointed to the COA.

6.2 The Clerk's Division shall advertise the recruitment of members of the public to the COA via the City's website and social media channels. The Clerk's Division may also choose to place an ad in the local newspaper.

6.3 Interested applicants must complete an application and may choose to provide their resume.

7. Term Expiration

The COA term shall be the same term as Council. Each COA member shall hold membership until a successor is appointed. In the case of a vacancy for any cause other than expiration of the term, the member appointed to fill the vacancy shall hold office for the remainder of the regular term.

8. Resignation:

A voting member of the COA shall cease to be a member of the COA upon submission of a letter of resignation to the City Clerk or if they are absent from three (3) successive scheduled meetings of the COA without authorization by a resolution.

9. Appointment of Chair and Vice-Chair

At the first meeting of a new COA term, the members shall appoint a Chair and Vice-Chair from among those COA members which are not also members of Council, as members of Council are not eligible to act as Chair or Vice-Chair.

10. Role of the Chair

The role of the COA Chair is to:

- 10.1 Preside at all COA hearings and meetings, exercising their authority and performing their duties;
- 10.2 Provide guidance and leadership to the COA as required; and
- 10.3 Ensure that each hearing and meeting abides by all rules of procedure and conduct, and that decorum is maintained.

11. Role of the Vice-Chair

In the absence of the Chair, the Vice-Chair assumes all functions of the Chair as required.

12. Role of Committee Members

All COA Members shall:

- 12.1 Review applications in advance of hearings and meetings;
- 12.2 Attend COA hearings to consider all applicant, agency, and public comments, then make decisions in public regarding applications and sign said decisions;

12.3 Contribute time, knowledge, skill, and expertise to fulfill the COA mandate;

12.4 Be cognizant of any conflict of interest, or perceived conflict, in terms of issues that may serve to benefit them personally;

12.5 Protect the privacy of individuals with respect to personal information contained in application forms and information circulated to the COA, ensuring that personal information is used solely for to process applications.

13. Meetings

13.1 All COA meetings shall be open and no person shall be excluded therefrom, except in the case of improper conduct or other matter identified in section 239(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25.

13.2 COA hearings are attended by COA members, Planning Staff, the Secretary-Treasurer, applicants and/or their representatives, and any member of the public who wishes to observe or participate in the proceedings.

13.3 The COA shall meet in accordance with Council approved schedule. Additional meetings may be held through a special meeting request to the Secretary-Treasurer and dependent on availability of COA members.

13.4 COA meetings will take place at a City facility.

13.5 All matters pertaining to a closed meeting must first be approved by the Clerk to ensure it is appropriately being dealt with in closed session.

14. Minutes

The minutes of all COA meetings shall be recorded and distributed to COA Members.

The minutes shall be open to inspection in accordance with the *Municipal Act, 2001*, S.O. 2001, c. 25., as amended, and such minutes will be posted on the City's website.

15. Quorum

The Chair will call the meeting to order as soon as a quorum is present. Quorum is achieved when three members are present and constitute a quorum. Vacant seats shall count as seats for the purpose of calculating a quorum.

If quorum for a meeting is not present within fifteen (15) minutes of the designated time of commencing the meeting, the COA may proceed without a quorum, provided that at least three Members are present. The Secretary-Treasurer is not required to be present to record the minutes, no motions will be passed, and no formal business can occur.

16. Conflict of Interest

16.1 It is the responsibility of each member to identify and disclose a pecuniary interest on any item or matter before Council, or Committee in accordance with the *Municipal Conflict of Interest Act*, R.S.O.1990, c.M. 50.

16.2 Where a Member has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Committee at which the matter is the subject of consideration, the Member will, in accordance with *Municipal Conflict of Interest Act*, R.S.O.1990, c.M. 50 (5):

- file a written statement of the interest and its general nature with the Clerk prior to the meeting;
- not take part in the discussion of, or vote on any question with respect to the matter;
- not attempt in any way before, during and/or after the meeting to influence the vote on the matter.

16.3 Where a meeting is not open to the public, in addition to complying with the requirements under the *Municipal Conflict of Interest Act*, the Member will forthwith leave the meeting for the part during which the matter is under consideration.

16.4 The Clerk will record the particulars of any disclosure of pecuniary interest made by Members of Committees in the minutes of that meeting and update the Pecuniary Interest Registry. The Registry will be available for public inspection.

17. Procedures

Procedures for the proceedings of meetings shall be governed by the *Planning Act*, the Procedural By-law, and Robert's Rules of Order.

18. Remuneration

The remuneration of the Members of the Committee of Adjustment for the City of Port Colborne shall be governed by the Appointment to Boards and Committees By-law.

19. Staff Liaisons

The Secretary-Treasurer of the Committee of Adjustment for the Port Colborne shall be the staff liaison for the City of Port Colborne. The Secretary-Treasurer shall keep record of: COA minutes, all COA applications, and the decisions thereon, and all other official business of the COA. The staff liaison will provide administrative, procedural, and technical support to the COA. The liaison will co-ordinate all requests for advice from the COA through meeting agendas. COA responses to such requests shall be co-ordinated by the liaison to the Clerk's division.

Departmental Representatives / Planners will act as subject matter experts and provide information to assist the COA in reaching decisions.

20. Resources

1. City of Port Colborne Procedural By-Law
2. *Municipal Act, 2001, S.O. 2001, c. 25*
3. *Planning Act, R.S.O. 1990*
4. City of Port Colborne Code of Conduct
5. City of Port Colborne Appointment to Boards/Committees Policy
6. *Municipal Conflict of Interest Act, R.S.O. 1990, c.M. 50*
7. Robert's Rules of Order
8. *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*

21. Terms of Reference

Any responsibilities not clearly identified within these Terms of Reference shall be the responsibility of the City of Port Colborne Staff. Council may, at its discretion, change the Terms of Reference for this Committee at any time. Any changes proposed to these Terms of Reference by the Committee shall be recommended to Council via the City Clerk through a report. At the discretion or upon the mandate of the Committee being fulfilled, the Committee may be dissolved by resolution of Council.