

# Committee of Adjustment



**Put your best foot forward**

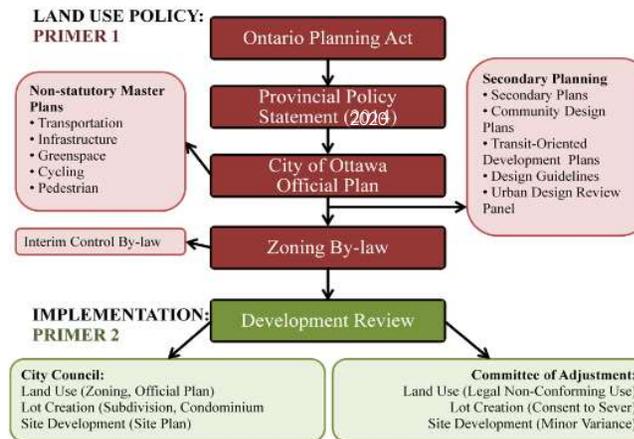
FCA Workshop, June 9, 2022

Heather Pearl

## The Planning Hierarchy

The *Planning Hierarchy* is intended to provide a visual representation of how the various pieces of legislation and other planning tools in Ontario work together to provide the policy basis for planning, and to aid in the development review process.

As you will see as you continue your way through the web materials, the Planning Act enables the Provincial Policy Statement, the Official Plan and the Zoning By-law, and each consecutive document must be consistent with those that come before it. In Primer 2, you will see how the policy documents described in this session guide the development review process.



<https://ottawa.ca/en/planning-development-and-construction/learn-about-planning-process/planning-primer>

## Committee of Adjustment

<https://ottawa.ca/en/planning-development-and-construction/committee-adjustment>

Quasi-judicial tribunal

- Jurisdiction from *Section 45; Planning Act* of Ontario
- Appointed by City Council
- Independent and autonomous from the City Administration.

## Committee of Adjustment

- Mandate: to consider and make decisions on:
  - applications for Minor Variances from the provisions of a Zoning By-law
  - applications for Consent to “sever” a property, or for any agreement, mortgage or lease that extends for more than 21 years
  - applications for Permission, which deal with the enlargement or extension of a building or structure that is legally non-conforming, or a change in non-conforming use
  - applications for Validation of Title and Power of Sale

**Cannot grant exemptions to the by-law that would constitute a change of zoning.  
Know your neighbourhood zoning and associated Bylaws!**

<https://ottawa.ca/en/planning-development-and-construction/maps-and-zoning/zoning-law-no-2008-250/zoning-law-2008-250-consolidation#zoning-law-2008-250-consolidation-site-map>

City **encourages** Applicants to **consult** with community associations, neighbours and the City Infill Forester before filing Applications for projects.

- This is not codified in Provincial Law, so the City can't require it.

**CofA Panel does take it into consideration, however. Speak up!**

A City Planner is assigned to review the file and prepare a Report for the Panel.

**Ask CofA office for contact information.  
Speak to the Planner.  
Request the Report.**



## The Four Tests of a Minor Variance

1. Does it conform to the general intent of the Official Plan?
2. Does it conform to the general intent of the Zoning By-law?
3. Is it desirable for the appropriate development of the lands in question?
4. Is the requested variance minor?

**No firm definition of “Minor”. Determination of “Minor” involves an analytical process.**

“As to individual analysis of each of the four parts, while guidance has been provided through case law, it **remains clear that the interpretation of what is minor cannot be boiled down to a checklist and must be evaluated on the unique circumstances surrounding the requested variance.**”

**Ref N°: ACS2008-CMR-LEG-0019**

## The Four Tests of a Minor Variance

### Test #1: Does it conform to the general intent of the Official Plan?

- The Official Plan is the City's Master Planning document created under the authority of
- Part III, section 16 of the Planning Act
- Contains the goals, objectives and policies to guide future land use and development within the city
- Required to contain policies that respond to the sub-sections in this Act, such as:
  - (14) An official plan shall contain policies that identify goals, objectives and actions to mitigate greenhouse gas emissions and to provide for adaptation to a changing climate, including through increasing resiliency. 2017, c. 23, Sched. 3, s. 5 (2).
- Must be consistent with policies in the Provincial Policy Statement.

#### Review the Official Plan

- **Excerpt and document the policies that support your case.**
- **Note and be prepared to respond to policies that an opponent might cite**
- **City publishes Guidelines to provide context for the policies and the Zoning By-laws. Speaks to Intent:**
- **Design and Planning Guidelines:** <https://ottawa.ca/en/planning-development-and-construction/community-design/design-and-planning-guidelines/completed-guidelines>
- **Urban Design Guidelines for Low-rise Infill Housing:** <https://documents.ottawa.ca/sites/documents/files/documents/cap133008.pdf>
  - These are under review, but still are relevant.

## The Four Tests of a Minor Variance

### Test #2: Does it conform to the general intent and purpose of the Zoning By-law?

Intent is outlined in the rationale presented to Planning Ctee and Council when the By-law is presented to these bodies for approval, derives from the Policies in the Official Plan and is elaborated in City Guidelines.

Zoning By-law: <https://ottawa.ca/en/planning-development-and-construction/maps-and-zoning/zoning-law-no-2008-250/zoning-law-2008-250-consolidation#zoning-law-2008-250-consolidation-site-map>

**Purpose** is to:

- Regulate and control land and property markets to ensure complementary uses.
- Stimulate, slow down, or redirect development to specific areas (e.g.: Transitway, Mainstreets, Neighbourhoods)
- Respond to current economic imbalances (e.g.: lack of affordable housing)
- Prescribe land use (e.g.: residential, institutional, commercial, industrial, agricultural or combinations of these.
- Enable the application of the policies in the Provincial Policy Statement & Official Plan. (example: policies relating to climate change mitigation)

**Intent** speaks to **how** the above will be accomplished.

- Considers matters such as spacing, privacy, density, light, air flow, infrastructure and environment / climate change mitigation (two examples):
  - One Intent of the Mature Neighbourhoods Overlay is to create a consistent look on the street and provide sufficient front yard greenspace for gardens and trees.
  - One Intent of the Alternative Provisions is to preserve mid-block open space, conserve trees and create opportunities for tree planting.

**Older communities developed under previous By-laws are vulnerable to the current policies on infill & intensification. Know your community and its development history. Decide what is possible to defend and protect.**

## The Four Tests of a Minor Variance

### Test #3: Is it desirable for the appropriate development of the lands in question?

Must be desirable from a planning and public interest perspective, not that of the applicant.

Consider:

- Factors that can affect the broad public interest (examples):
  - Climate change mitigation such as reducing the heat island effect in urban areas
  - Local infrastructure: are the storm sewers adequate? Are there storm sewers?
  - Impact on wetlands, river systems, agricultural lands, etc.
  - Impact on air quality: fumes, pollution, etc.
  - Provision of "missing middle" housing, etc.
  - Appropriate form & scale of development near established neighbourhood amenities & transit routes.
- The existing pattern of development should be respected. Proposed development should be:
  - Compatible with existing houses in the neighbourhood with respect to height, setbacks, greenspace, parking, privacy
  - Sensitive to streetscape character by having regard for existing uses, built form, and lot fabric
  - Supported by availability of services in the surrounding area such as bus stops, nearby LRT, neighbourhood amenities and green spaces.

**Note: In older neighbourhoods, the current zoning may support development that is different from existing patterns of development. If this is the case, the current zoning prevails.**

## The Four Tests of a Minor Variance

### Test #4. Is the requested variance minor?

1. Too large?
  - Variances that could be appropriate if for a different zone such as R4 instead of R3 (density), Commercial instead of Residential (use) should be considered by Planning Ctee, not CofA
  - If many variances are requested, cumulative impact on community may not be minor
  - Changes to sub-zone provisions such as lot width and area, often considered minor. E.G.:
    - Decrease in lot size may be deemed consistent with surrounding lot fabric and does not have visual impact on street.
2. Too important to be considered minor.
  - Determine extent of impact on neighbouring properties in immediate and general area.
  - e.g.: Proposed development's mass, height and bulk may cause loss of sunlight, mature trees, privacy, spacing, openness and access to abutting properties.
  - e.g.: May affect drainage, traffic, parking and noise.

Whether a particular **design** fits in is a matter of taste:

Cannot make a case to the CofA based on taste

## The Four Tests of a Minor Variance

If the Application fails one test, it fails all

Statutory requirement in subsection 3(5) of the Planning Act for decisions of all planning tribunals (such as the CofA) to be consistent with government policy statements.

- *Provincial Policy Statement (PPS) 2020* regulates land use development in Ontario
  - Current version: <https://files.ontario.ca/mmah-provincial-policy-statement-2020-accessible-final-en-2020-02-14.pdf>
- Ottawa is in the process of instituting a new official plan.
  - Current version: <https://ottawa.ca/en/planning-development-and-construction/official-plan-and-master-plans/official-plan>
  - New Draft Official Plan: [https://engage.ottawa.ca/the-new-official-plan?tool=news\\_feed#tool\\_tab](https://engage.ottawa.ca/the-new-official-plan?tool=news_feed#tool_tab)

Planning Act lists 19 Matters of Provincial Interest.

- (example: Environmental considerations):
  - (s) the mitigation of greenhouse gas emissions and adaptation to a changing climate.

Policies in the Provincial Policy Statement and the Official Plan address these Matters.

- CofA must have regard to these, when making its Decisions.

**Anyone objecting to any matter coming before the Committee should read and document policies that support the objection. Be ready to respond to policies that may support an opponent's case.**

**Definitions are important. Review and understand the definitions in the:**  
Provincial Policy Statement 2020: (Section 6, page 40)  
Zoning By-law: (Part 1, Section 54)

## Appendix 1: Ontario Planning Act, Matters of Provincial interest – Part 1 Section 2 (Current as of June 2022)

<https://www.ontario.ca/laws/statute/90p13>

2 The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

- (a) the protection of ecological systems, including natural areas, features and functions;
- (b) the protection of the agricultural resources of the Province;
- (c) the conservation and management of natural resources and the mineral resource base;
- (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
- (e) the supply, efficient use and conservation of energy and water;
- (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
- (g) the minimization of waste;
- (h) the orderly development of safe and healthy communities;
- (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
- (i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- (j) the adequate provision of a full range of housing, including affordable housing;
- (k) the adequate provision of employment opportunities;
- (l) the protection of the financial and economic well-being of the Province and its municipalities;
- (m) the co-ordination of planning activities of public bodies;
- (n) the resolution of planning conflicts involving public and private interests;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development;
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;
- (r) the promotion of built form that,
  - (i) is well-designed,
  - (ii) encourages a sense of place, and
  - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;
- (s) the mitigation of greenhouse gas emissions and adaptation to a changing climate. 1994, c. 23, s. 5; 1996, c. 4, s. 2; 2001, c. 32, s. 31 (1); 2006, c. 23, s. 3; 2011, c. 6, Sched. 2, s. 1; 2015, c. 26, s. 12; 2017, c. 10, Sched. 4, s. 11 (1); 2017, c. 23, Sched. 5, s. 80.

**Appendix 2: Legal Report re: Minor Variance to Ottawa's Planning & Environment Ctee, Oct. 6, 2008  
(Ref N°: ACS2008-CMR-LEG-0019)**

<https://app06.ottawa.ca/calendar/ottawa/citycouncil/ec/2008/10-14/ACS2008-CMR-LEG-0019.htm>

CONCLUSION

- Homeowner has the right to determine whether they proceed with an application for minor variance.
  - No ceiling to be met, after which, they have no recourse but to proceed with an application for re-zoning.
- Certainly, if an application for minor variance is dismissed by the Committee of Adjustment and the decision of Committee is upheld by the Ontario Municipal Board, an applicant may change tactics and file an application for re-zoning at that point, but there is no checklist to direct a person one way or another.
- Planning staff may be consulted by any member of the public with respect to a proposed minor variance application, but staff approval is not a requirement of proceeding.
- Once an application has been submitted for minor variance, the Committee of Adjustment is required to give notice to the public and to various agencies.
- Among these agencies are various City Departments who will review and comment on applications of interest.
- Role is not to facilitate a public review process of the application, nor to engage the community to arrive at a community position on the application. Rather, the role of Planning staff is to review the application on behalf of the City in the context of the issues that the Committee must consider, and in the context of Council-approved planning policies.
  - Planning staff are a commenting agency and have no role to facilitate the processes and procedures established under the Planning Act that the Committee of Adjustment must comply with.
- Once before the Committee of Adjustment, the application must satisfy the four-prong test with respect to minor variances, as established in Section 45 of the Planning Act and in case law.
- Today, every application must satisfy each part of the test: (i) minor in nature, (ii) appropriate for the use and development of the land, building or structure, (iii) adheres to the intent of the official plan; and (iv) adheres to the intent of the zoning by-law.
- As to individual analysis of each of the four parts, while guidance has been provided through case law, it **remains clear that the interpretation of what is minor cannot be boiled down to a checklist and must be evaluated on the unique circumstances surrounding the requested variance.**