

Guildwood Village Community Association



Founded in 1958

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Toronto, Ontario M1E 5G5

## Urban planning

# Guidelines and recommendations for Applicants or Opponents for minor variances/severances

## Table of Contents

### Table of Contents

Executive summary.....	3
Definitions.....	3
What is a Minor Variance Application?.....	3
What is a severance.....	4
When are either required?.....	4
Guiding principles or, things you need to know or do before you start.....	6
A question of timing.....	8
Documentation.....	8
An overview of relevant planning documents.....	10
Planning Act.....	11
Provincial Policy Statement 2014.....	12
Key policies.....	12
Definition of intensification.....	15
Built environment.....	16
Places to Grow. Growth Plan for the Greater Golden Horseshoe (2017).....	17
City of Toronto. Official Plan.....	18
Overview.....	18
Designated growth areas.....	18
Settlement areas.....	18
Intent of the Official Plan.....	18
The Zoning By-Law.....	20
Applying for a minor variance/severance.....	21
Basic criteria.....	21
Responsibilities.....	21
Key steps.....	21
Opposing a minor variance and/or severance.....	22
1. Is the variance minor?.....	22

2. Appropriate development.....	22
3. General intent and purpose of the zoning bylaw.....	22
4. Does the variance requested maintain the general intent and purpose of the Official Plan (OP)?	23
5. Community Engagement.....	23
6. Presenting your evidence.....	23
Further details on considerations for opposing a minor variation.....	24
Light, privacy and views.....	24
Sunlight.....	24
Privacy.....	24
Views.....	25
Mass, bulk and height.....	25
Drainage.....	25
Building maintenance.....	25
Trees.....	25
Traffic and parking.....	26

## Executive summary

There is a strong provincial direction to limit urban sprawl, especially in the greater GTA, or any urban area surrounded by agricultural areas.

**This forces urban centres to comply with the expectations of the Growth Plan 2017, including the determination of the designated targets for intensification and density within urban boundaries. In other words, neighbourhoods as we know them may be stable, but will not remain static. We are seeing an increase in the number of minor variance applications.**

The urban planning process can be daunting. It uses language that requires interpretation; it can involve multiple levels of review, beginning with the municipal Committee of Adjustment and possibly proceeding to a local appeal body (The Toronto Local Appeal Body for the City of Toronto and the Local Planning Appeal Committee outside of Toronto).

This document is specific to minor variances and severances and is intended to inform residents<sup>1</sup> of considerations needing attention whether applying for, or opposing, a minor variance or a severance – or both.<sup>2</sup>

## Definitions

### *What is a Minor Variance Application?*

A Minor Variance Application or Zoning By-law (ZBL) Amendment Application is an application to amend or rezone the by-law assigned to a specific site. The Planning Act allows municipalities to establish a Committee of Adjustment to receive and consider an application for relief from the standards as set in the ZBL.

1. “Minor” deviations might be defined as those which are of such inconsequential nature that the proposed request substantially complies with the purpose and intent of the zoning standards. However, when viewed collectively, a multitude of “minor” variances for the same property may exceed that which is considered “minor”.
2. Issues may arise related to the general area: the development is incompatible with the established built form and character of the neighbourhood and it will erode the aesthetics of the streetscape

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<sup>1</sup> The impetus for this document came from the experiences of two neighbourhood groups in Guildwood Village in Scarborough.

<sup>2</sup> This document contains excerpts from both *A Primer on Minor Variances*, County of Peterborough, 2012 and *Guide for Objecting to a Minor Variance And/Or a Land Severance*, Frank G. Oakes, 2011

3. If the extent of the change proposed by the variance will constitute a rezoning, the variance is not considered minor

### *What is a severance*

Individuals wishing to sever 1 lot into 2 will require a land severance, which is the authorized separation of a piece of land to form two new adjoining properties. This is commonly known as consent.

### *When are either required?*

If a property owner wishes to alter or develop their property in a way that differs from these performance standards or doesn't conform with the Zoning By-law, to obtain relief to proceed with their application they must apply for a site-specific amendment to the By-law. They can do this through either a Zoning By-law Amendment application (commonly called a rezoning) or a Minor Variance application.

### **Do's**

#### **1. Be prepared**

- 1.1 Understand** both the application process resulting in an appearance before the Scarborough Committee of Adjustment [Committee of Adjustment] and the appeal process resulting in an appearance before the Toronto Local Appeal Body [appeal panel]
- 1.2 Understand** the protocol of both bodies and, the hearing process. [See Guiding Principles #3]
- 1.3 Research** the members of both panels. [See Guiding Principles #4]
- 1.4 Locate copies of decisions** from both the Committee of Adjustment and the appeal panel to understand the basis on which planning assumptions and interpretations are made and communicated. [See Guiding Principles #5]
- 1.5 Contact a professional planner** who can assist you with interpreting any of the above. [See Guiding Principles #6]
- 1.6 Consider retaining a lawyer** with experience in urban planning as your legal representative [See Guiding Principles #7]
- 1.7 Prepare, submit and reference all applicable documents supporting your argument** [See Documentation]

#### **2. Be educated.**

2.1. Read the following documents in this sequence carefully

**2.1.1** Planning Act, RSO 1990, c P.13

**2.1.2** *The Provincial Policy Statement 2014*

**2.1.3** *Places to Grow. Growth Plan for the Greater Golden Horseshoe (2017)*

**2.1.4** The City of Toronto *Official Plan*

**2.1.5** The City of Toronto *Zoning By-law*

**2.2 Reflect**, in any supporting documents, the spirit of planning documents, based on fact and opinion, not conjecture, nuance and emotion

**2.3 Communicate** why the Committee of Adjustment or an appeal panel should care about your intentions/concerns and how it might address those according to recognized standards

**2.4 Articulate** the issues clearly.

**2.5 Be honest and objective** in all communications, written or oral

**2.6 Back up** all arguments with hard evidence. **See Opposing a minor variance and/or severance 6.4**

### **3.0 Be patient**

1. This is a long process
2. Create a checklist/workplan that identifies all milestone activities, timing, documentation needed, key players and their responsibilities

### **Don'ts**

- 1.** Do not go before either the Committee of Adjustment or an appeal panel with a few unsupported catch phrases.
- 2.** Do not presume that similar applications can be used as precedents.  
“Indeed, an Ontario Municipal Board decision, including one from a senior member of the Board, is an important contribution to the field of administrative law and deserving of close scrutiny and attention for any bearing it may have on the proceeding extant. That said, such decisions are not binding on TLAB or, indeed, that Board itself. Every matter that comes before both tribunals must be examined in the light of their individual circumstances.”<sup>3</sup>
- 3.** Nonetheless, the use of previous decisions can be allowed. It is the concept of comity.<sup>4</sup>

<sup>3</sup> Decision and Order. September 21, 2017 TLAB Case File Number: 17 170515 S53 43, 17 170516 S45 43, 17 170517 S45 43

<sup>4</sup> <https://www.merriam-webster.com/dictionary/comity>. **Legal Definition of comity. 1 : comity of nations. 2 : the informal and voluntary recognition by courts of one jurisdiction of the laws and judicial decisions of another — called also judicial comity; compare choice of law, federalism, full faith and credit.**

## Guiding principles or, things you need to know or do before you start

### 1.0 Read the following documents in this sequence carefully

1.1 Planning Act, RSO 1990, c P.13

1.2 *The Provincial Policy Statement 2014*

1.3 *Places to Grow. Growth Plan for the Greater Golden Horseshoe (2017)*

1.4 The City of Toronto *Official Plan*

1.5 The City of Toronto *Zoning By-law ...*

And the terms associated with each

	Planning Act	PPS 2014	Growth Plan 2017	OP	ZBL
Delineated built up areas			x		
Settlement area		x	x	x	
Major growth area				x	
Neighbourhoods				x	
Transit supportive		x	x		
Intensification		x	x		
Density		x	x		
Lot area studies					
Established physical character				x	

### 2.0 Understand three fundamental processes, both resulting in representation before a tribunal/panel

- a. First, the application process resulting in an appearance before the Scarborough Committee of Adjustment and
- b. Second, the appeal process resulting in an appearance before the Toronto Local Appeal Body.
- c. Third, site plan controls if the municipality has implemented the concept

3.0 Understand the protocol of both bodies and, the hearing process. To do this, access the City of Toronto Planning Department website:

<https://www.toronto.ca/city-government/planning-development/> and then <https://www.toronto.ca/city-government/planning-development/committee-of-adjustment/> For the Toronto Local Appeal Body, access its website: <https://www.toronto.ca/city-government/planning-development/committee-of-adjustment/appeals/>

NOTE: Both Committee of Adjustment and Toronto Local Appeal Body sessions are open to the public as observers. Take advantage of this to get a first hand look at how the sessions are run. This will help you prepare your own presentation.

NOTE: If you are neither a lawyer nor an accredited planner, you will not be allowed to give planning opinions.

4.0 Research the members of both panels. Knowing the background of panel members will give you useful insights into how to prepare. On both Committee of Adjustment and Toronto Local Appeal Body websites the members of each are listed.

5.0 Obtain copies of decisions from both panels to understand the basis on which planning assumptions and interpretations are made and communicated. On both Committee of Adjustment (COA) and Toronto Local Appeal Body (TLAB) websites the record of decisions are listed. Precedents may not be recognized nor used in the adjudication of an application or appeal, but they are useful as research tools<sup>5</sup>

6.0 Contact a professional planner who can assist you with interpreting any of the above. If you retain a lawyer, he or she will probably have planners that they use routinely. If you do not, check decisions of either the COA or TLAB where planners are identified. Without a planner providing expert evidence, you may be, and probably will be, at an immediate disadvantage. This is particularly applicable to the appeal of a Committee of Adjustment decision.

7.0 Consider retaining a lawyer with experience in urban planning as your legal representative. A lot of urban planning is defined in the context of public policy and public law. Without a lawyer, you may be, and probably will be, at an immediate disadvantage

8.0 The importance of language

1. Reflect the spirit of planning documents, based on fact and opinion, not conjecture, nuance and emotion

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<sup>5</sup> E.g. <https://www.canlii.org/en/on/onomb/doc/2017/2017canlii36407/2017canlii36407.html?resultIndex=4>]

2. Communicate why the panel should care about your intentions/concerns and how it might address those according to recognized standards

## A question of timing

Currently, when an application is made, residents within a prescribed geographic area are informed of the application. At this point the onus shifts to the community.

**Recommendation:** In response to this, the neighbourhood should compile a checklist of 'community values' and 'community objectives' against which the application can be evaluated.

It is our understanding that the 'rules of engagement' will change, and that, in the City of Toronto, a three part, iterative process will be mandated: (1) a pre-application, pre-plan, conversation between developer and community; (2) developer and designers produce a first cut design to be reviewed with the community; and (3) the application is submitted.

As that process evolves, the community needs to understand how the process will be regulated, and if there is any attempt to short circuit the process, checks and balances in place to deal with that situation.

## Documentation

1. Create a list of all documents you will need throughout the process, including
  - a. Player or participant statements
  - b. Notice of intention to be a party or participant
  - c. Notice of appeal
  - d. Appeal support letter
  - e. Presentation(s) at the COA or TLAB hearings
  - f. Petitions (if applicable)
  - g. Expert statements (if you have a lawyer and/or planner)
2. Submit all documents prior to the hearings. If you do not, they may not be accepted as evidence at the hearing
3. Keep your presentation simple and fact-based. It must be defensible with limited opportunities under cross-examination to be discredited.
4. In addition to the Planning Act, PPS, Growth Plan, Official Plan and Zoning Bylaw, research all antecedent bylaws and any registered plans that are schedules to those bylaws. In the case of Guildwood Village, there are 14 such registered plans.



## An overview of relevant planning documents

1. Planning Act, RSO 1990, c P.13
2. *The Provincial Policy Statement 2014*
3. *Places to Grow. Growth Plan for the Greater Golden Horseshoe (2017)*
4. The City of Toronto *Official Plan*
5. The City of Toronto *Zoning By-law*

## Planning Act

**Section 3(5)** of the *Planning Act* states:

(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

- i. **shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision;** and
- ii. **shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.** 2006, c. 23, s. 5.

**Section 45(1)** requires that four tests must be satisfied before a minor variance can be approved.

- 1. the general intent and purpose of the Official Plan is maintained
- 2. the general intent and purpose of the Zoning Bylaw is maintained
- 3. the variance(s) is considered desirable for the appropriate development of the land
- 4. in the opinion of the Committee, the variance(s) is minor

**Section 51(24)** Relates to subdivision tests

For an application to succeed, it must pass all four tests.

## Provincial Policy Statement 2014

There is a statutory requirement in subsection 3(5) of the Planning Act that the decisions of all planning tribunals must be consistent with government policy statements. In 2014 the Ontario government revised a formal document regulating land development known as the Provincial Policy Statement (PPS).

This is where the government's intensification policy originates and accordingly persons objecting to any matter coming before the Committee should read and document the provisions supporting their objection and be prepared to respond to any provisions that may support the developer's case.

The PPS may be accessed at [www.mah.gov.on.ca](http://www.mah.gov.on.ca). **Note: for both the PPS and the Growth Plan, words that are defined are italicized**

### *Key policies*

#### **Policy. 1.1.1**

Provides that healthy, livable, and safe communities are sustained by

- a) promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;
- b) **accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons)**, employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;
- c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;
- d) avoiding development and land use patterns that would prevent the efficient expansion of *settlement areas* in those areas which are adjacent or close to *settlement areas*;
- e) promoting cost-effective development patterns and standards to minimize land consumption and servicing costs;
- f) improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society;

g) ensuring that necessary *infrastructure*, electricity generation facilities and transmission and distribution systems, and *public service facilities* are or will be available to meet current and projected needs; and

h) promoting development and land use patterns that conserve biodiversity and consider the impacts of a changing climate

### **Policy 1.1.3.2**

Provides: Land use patterns within settlement areas shall be based on:

a) densities and a mix of land uses which:

1. efficiently use land and resources;

2. are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;

3. minimize negative impacts to air quality and climate change, and promote energy efficiency;

4. support active transportation;

5. are transit-supportive, where transit is planned, exists or may be developed; and

b) a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.

### **Policy 1.1.2**

Sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of up to 20 years. However, where an alternate time period has been established for specific areas of the Province as a result of a provincial planning exercise or a *provincial plan*, that time frame may be used for municipalities within the area.

***Within settlement areas, sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas.***

Nothing in policy 1.1.2 limits the planning for *infrastructure* and *public service facilities* beyond a 20-year time horizon.

### **Policy 1.1.3.1**

*Settlement areas* shall be the focus of growth and development, and their vitality and regeneration shall be promoted

### Policy 1.1.3.2

Land use patterns within *settlement areas* shall be based on:

a) densities and a mix of land uses which:

1. efficiently use land and resources;
2. are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
3. minimize negative impacts to air quality and climate change, and promote energy efficiency;
4. support *active transportation*;
5. are *transit-supportive*, where transit is planned, exists or may be developed; and
6. are *freight-supportive*; and

b) **a range of uses and opportunities for *intensification* and *redevelopment*** in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.

### Policy 1.1.3.3

Planning authorities shall identify appropriate locations and promote opportunities for *intensification* and *redevelopment* where this can be accommodated taking into account **existing building stock or areas**, including *brownfield sites*, and the **availability of suitable existing or planned *infrastructure* and *public service facilities* required to accommodate projected needs**.

### Policy 1.1.3.4

Appropriate development standards should be promoted which facilitate *intensification*, *redevelopment* and *compact form*, while avoiding or mitigating risks to public health and safety.

### Policy 1.1.3.5

...where provincial targets are established through provincial plans the provincial target shall represent **the minimum target**...

### Policy 1.4.3

Planning authorities shall provide for an appropriate range and mix of housing types and densities to meet projected requirements of current and future residents of the regional market area by:

- a) establishing and implementing minimum targets for the provision of housing which is *affordable to low and moderate income households*.
- b) permitting and facilitating: all forms of residential intensification, including second units, and redevelopment in accordance with policy 1.1.3.3;
- c) directing the development of new housing towards locations where appropriate levels of infrastructure and public service facilities are or will be available to support current and projected needs;
- d) promoting densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and support the use of active transportation and transit in areas where it exists or is to be developed; and
- e) establishing development standards for residential intensification, redevelopment and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety.

#### Definition of intensification<sup>6</sup>

The definition of intensification: "means the development of a property, site or area at a higher density than currently exists through

- a) *redevelopment*, including the reuse of *brownfield sites*;
- b) the development of vacant and/or underutilized lots within previously developed areas;
- c) infill development; and
- d) the expansion or conversion of existing buildings.

Under Section 4.0 "Implementation and interpretation" <sup>7</sup> the PPS directs that "official plans shall identify provincial interests and set out appropriate land use designations and policies" (sic) and under Section 1.1 3 "Settlement areas" speaks to "the orderly progression of development within *designated growth areas ...*" (1.1.3.7, p.8)

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<sup>6</sup> P.44

<sup>7</sup> P. 33

### *Built environment*

In the preamble to the PPS 2014, it states, Part I: “The Provincial Policy Statement provides for appropriate development while protecting resources of provincial interest, public health and safety and the quality of natural and **built heritage**” (sic). P1. And

Policy 1.1.3 5: Planning authorities shall establish and implement minimum targets for *intensification and redevelopment* within **built-up areas**, based on local conditions.

## Places to Grow. Growth Plan for the Greater Golden Horseshoe (2017)

1. An application should conform to the Growth Plan of the Greater Golden Horseshoe
2. 2.2 Policies for Where and How to Grow. 2.2.2 Delineated Built-up Areas

### **Section 2.2.2 (2)**

Identifies that a minimum of 50% of all residential development ... will be within the *delineated built-up area*, and Section 2.2.3 Urban Growth Centres.

### **Section 2.2.3.2**

Identifies the urban growth centres to be targeted. The former City of Scarborough is not included in that list.

### **Section 5.2.4(5)**

Indicates that “Within *delineated built-up areas*, municipalities may plan for development beyond the horizon of this plan for strategic growth areas *that are delineated in official plans* (sic)

The term ‘delineated built-up area’ does not appear in the text of the City of Toronto Official Plan.

## City of Toronto. Official Plan

### *Overview*

An Official Plan is legislated under the Planning Act and sets out a municipalities goals, objectives and policies to manage and direct physical change and the effects on the social, economic and natural environment of the municipality...[s.16(1)(a) Planning Act]. Generally broad in nature, it sets out how certain areas within a municipality are to be developed i.e. where residential, industrial, commercial areas, etc are contemplated. These areas are described under a land-use designation. Land-use designations are typically prescriptive in that they lay out what is permitted and how development may proceed.

Note that the Official Plan has both supporting text and stated policies. **Concentrate on the latter.**

Typically when a variance is reviewed under the test, “is the general intent and purpose of the Official Plan maintained” turn to the land use designation and what the goal of that designation is. Would the variance detract from the goal and objective of that designation?

The Official Plan of the City of Toronto is very clear on three points:

### *Designated growth areas*

Is the community a designated growth area based on the Official Plan?

### *Settlement areas*

The entire City of Toronto is considered to be a Settlement Area.<sup>8</sup>

### *Intent of the Official Plan*

The following is the stated intent of the Official Plan, Chapter Four, “Development Criteria in neighbourhoods” (p4-3): “Physical changes to our established *Neighbourhoods* must be sensitive, gradual and generally ‘fit’ the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a neighbourhood”. **This is key to the adjudication of the application.**

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<sup>8</sup> [www.neptis.org/publications/appendix-municipal-mapping-sources/chapters/city-toronto](http://www.neptis.org/publications/appendix-municipal-mapping-sources/chapters/city-toronto)

In addition, Section 5.5 of the planning guide (The Planning Process, p. 5-19) states, “Following receipt of a complete planning application, Council will determine whether the City is satisfied with pre-application community consultation, in particular any pre-application community meeting(s) held in accordance with City standards, and whether one or more subsequent community meetings will be required under the provisions of Policy 5.5.1(c)(ii).

**Note: At a conference held on April 17, 2018, “Beyond the Backyard, Exploring the Future of Community Building”, it was indicated that the City of Toronto was supportive of a process with pre-application community consultation**

## **Policies**

### **Policy 3.2.1**

Housing (City of Toronto OP Housing Policies) states:

A full range of housing, in terms of form, tenure and affordability, across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents. A full range of housing includes: ownership...housing... The existing stock of housing will be maintained and replenished. New housing supply will be encouraged through intensification and infill that is consistent with this Plan.

### **Policy 4.1**

Neighbourhoods, policy 4.1.8, states:

The Official Plan relies on the numerical standards of the zoning by-law to ensure new development is compatible with the physical character of established residential neighbourhoods. These standards for development deal with building type, height, density and building setbacks from lot lines.

## Policy 4.5<sup>9</sup>.

The policies established for *Neighbourhoods* are prefaced by this sentence:  
Development in established *Neighbourhoods* will respect and reinforce the existing physical nature of the neighbourhood, including in particular

- b) size and configuration of lots
- c) heights, massing, scale and dwelling type of nearby residential properties
- e) setbacks of buildings from the street or streets

**NOTE: Lot size is one criterion in the Official Plan and the Official Plan does not use lot frontage as a criterion. It is worthwhile arguing that lot size means different dimensions of which lot frontage is one.**

## The Zoning By-Law

The Zoning By-Law (ZBL) sets minimum requirements which should be met, or exceeded, under conditions which are normally encountered, or expected to be encountered. In practice, various situations arise which make it impractical or impossible to comply with the prescribed requirements. In such cases, the minor variance (MV) process is required.

Confirm that you are using all relevant bylaws, i.e, the current City of Toronto Zoning Bylaw (2013) still under review and any antecedent bylaws for the study area..

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<sup>9</sup> P. 4.4

## Applying for a minor variance/severance

### *Basic criteria*

What basic criteria does a homeowner need to address in a minor variance/severance application?

- planning principles
- legal non-conforming use
- height restrictions
- footprint

### *Responsibilities*

When planning to alter/develop property, what responsibilities does a landowner have to his/her neighbours?

- to communicate their plan with full disclosure of what that plan entails
- to listen to neighbours' concerns and consider changes to help mitigate those concerns
- to advise them of adjustments to the plan

### *Key steps*

What are the key steps in the review procedure for minor variance applications?

- 1) Pre-Application Consultation
- 2) Preliminary Project Review
- 3) Submission of a Complete Application
- 4) Scheduling of Hearing and Posting of Public Notice Sign
- 5) Notice of Public Hearing and Application Circulation

What are the key steps in obtaining a severance?

- If you wish to sever your lot, you will need to file a consent application with the Committee of Adjustment.
- For details on Planning & Development, Committee of Adjustments as well as online application forms, visit the City of Toronto website:

<https://www.toronto.ca/311/knowledgebase/kb/docs/articles/city-planning/community-planning/committee-of-adjustments-in-district/Consent-applications-add-land-severance-adjustments-easements.html>

## Opposing a minor variance and/or severance

### 1. *Is the variance minor?*

A variance can be held to be not minor for two reasons, that it is too large or too important to be considered minor. The latter reason can be resolved by determining the extent of the impact on neighbouring properties in the immediate and general area. The primary issues raised for abutting owners are related to loss of sunlight, privacy, views, spacing and openness which may result from the mass, height and bulk of the proposed development

There may also be issues related to access, trees, parking, drainage, traffic and noise. The issues that may arise related to the general area are that the development is incompatible with the established built form and character of the neighbourhood and that it erodes the aesthetics of the streetscape.

### 2. *Appropriate development*

Would the granting of the variance result in a development that would be desirable for the appropriate development or use of the applicant's land or building?

It can be assumed that the applicant thinks the variance is desirable but the issue here is whether it is desirable from a planning and public interest perspective, not that of the applicant. The test of desirability includes consideration of the many factors that can affect the broad public interest as it relates to the applicants property and **accepted planning principles** and the **existing pattern of development**.

**This speaks to the question on the 'character of the neighbourhood'. An historical perspective is a significant argument.**

### 3. *General intent and purpose of the zoning bylaw*

Does the variance requested maintain the general intent and purpose of the zoning by-law?

The intent and purpose of a zoning by-law is to prescribe the front, rear and side yard set backs, building size, height and use. It speaks to matters such as spacing, privacy, density, light and air and gives the neighbourhood its built form and character. By-laws passed in the earlier part of the 20th century when our older communities were developed tended to be more restrictive than the present ones leaving these areas more vulnerable now to the current policies of infill and intensification.

A proposed development which is not compatible with existing houses in the neighbourhood with respect to size, set back and side yards and sensitive to issues such as privacy and parking and detrimental to the streetscape or the character of the neighbourhood, will not pass this test.

Familiarization with the architectural and zoning history (were earlier by-laws more restrictive?), registered plans and lot sizes will be helpful here.

#### *4. Does the variance requested maintain the general intent and purpose of the Official Plan (OP)?*

The OP although a city document, derives its authority from section 16 of the PA<sup>10</sup> and is the overall master-planning document for the city. It contains the goals, objectives and policies to guide future land use and development within the city and contains elements of the provincial government's intensification policy. This document must be researched and the provisions supporting your case documented and may be accessed at [www...../official plan](http://www...../official plan).

Is the property under review either a part of a settlement area, or one of the City of Toronto's designated growth areas?

#### *5. Community Engagement*

**Does the municipality have a policy that mandates consultation between applicant and community? And, at what point in the process?**

#### *6. Presenting your evidence*

1. Articulate the issues clearly. **Be objective and respectful.**
2. **Explain in detail the nature of the research that you have conducted including review of documents, consultation with planners, lawyers and individuals with experience in these matters.**
3. **Community sentiment supported by facts will carry more weight than if based on emotion or nuance.**
4. **All arguments must be backed up with hard evidence.**
  - a. **Hard evidence is usually provided by expert witnesses, e.g. ,**

<sup>10</sup> <https://www.canlii.org/en/on/laws/stat/rso-1990-c-p13/latest/rso-1990-c-p13.html>

**consultants reports, studies, plans, photos, computer and actual modeling, visual aids and other professional planning evidence**

- b. In contrast, vague or general statements, wishes and anecdotal observations will not meet the required standard of evidence and will therefore not be given much, if any, weight, in a hearing process.**
- c. If you do not have a lawyer nor a planner, do not present yourself as having an expert opinion, but rather an informed opinion. If you are providing any of the evidence as described in a) above.**

## Further details on considerations for opposing a minor variation

*(Guide for Objecting to a Minor Variance And/Or A Land Severance, Frank G. Oakes, 2012)*

### ***Light, privacy and views***

While there is no legal right in Ontario to sunlight, privacy or views, the Planning Tribunals have often in the face of insensitive development granted relief to neighbouring owners facing the loss of these qualities. The issue is not whether neighbours have a right to "light, privacy and views" but whether a proposed obstruction to such long established amenities is of such a magnitude as to cause an unacceptable adverse impact upon the neighbourhood to the point where the intent and purpose of the zoning by-law is not maintained.

### ***Sunlight***

Shadowing is the result of overbuilding and an insensitive increase in mass, height and bulk. Where this is a serious issue, it will warrant a sun and shade study which is easily obtainable. Such an objective and professionally qualified Report will greatly increase the chance of success in this issue. The number, size and location of windows in your home and the nature of family activities inside the areas served by those windows (e.g. early morning sun in breakfast room) will be an important factor in assessing the impact on a families quality of life as will the loss of enjoyment in gardening and other outside activities in areas to suffer shadowing. The advent of solar panels moves this issue beyond simple quality of life and introduces an economic factor to be considered.

### ***Privacy***

There is recognition in reported Decisions for the degree of discomfort for which a sense of being exposed can bring and proposed overbuilding allowing an overview of neighbouring properties is discouraged. Visual intrusion of this nature can take the form of views into windows of abutting homes or overviews of gardens and other outside private family areas. The number, size and location of windows in both the proposed and abutting houses will be an important factor

## ***Views***

While as stated there is no legal right to a view over the property of others, the OMB has on occasion protected the views and visual enjoyment of open areas shared by the community as a whole and the negative impact of insensitive and obstructive overbuilding on greenery and openness can be argued.

## ***Mass, bulk and height***

In establishing the front, side and rear yard setbacks and allowable height, zoning bylaws dictate the maximum legal size of a residential structure. Seeking variances to overbuild beyond what is allowed as of right frequently raises issues of mass, bulk and height.

Computer or actual modeling can be useful in dramatizing existing, as of right and proposed developments and the comparative effect on adjoining homes. A factor for consideration is whether the proposed construction is limited to the rear yard or does it impact on the openness and spacing of the streetscape and by encroaching into the side yards create a windowless barrier effect to the neighbours.

A subject to be raised here is whether some part of the proposed structure can be reduced in mass or height to minimize the impact on neighbouring homes.

## ***Drainage***

The foundations of older homes are particularly vulnerable to water leakage and lot drainage problems created by new development must be addressed. Failure to do so must be argued by abutting owners.

## ***Building maintenance***

Variance Applications for a reduction in side yards may create serious problems with respect to roofing and general maintenance and this must be argued where a reduction would impede these necessary activities.

## ***Trees***

The issue here is the impact on neighbouring properties from loss with respect to screening, shade and greenery. Questions to be raised are how many trees (or roots) are to be lost, condition or health of trees and age. An arborist may be consulted for a Report.

Replacement or replanting may be negotiated if there is sufficient space and sunlight and the Tribunals have often imposed these conditions as a qualification of consent. The arguments of adjoining owners will be assisted by Toronto's Tree By-Law.

## ***Traffic and parking***

In certain busy locations traffic may be a problem and this issue should be raised. Larger residential structures and intensification infill policies will inevitably result in more occupants (and persons visiting) with developers attempting to accommodate

more vehicles on site creating problems related to automobile easements and parking (including front yard parking) with visual impacts on adjoining yards and streetscapes, the negative aspects of which can be argued at Tribunal hearings.