



Report to: Development Services Committee

Report Date: November 18, 2014

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<b>SUBJECT:</b>	RECOMMENDATION REPORT Procedural By-law for the City of Markham Committee of Adjustment PR 14 128493
<b>PREPARED BY:</b>	Tom Villella – Manager, Zoning and Special Projects – Ext. 2758
<b>REVIEWED BY:</b>	Ron Blake – Acting Senior Development Manager

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**RECOMMENDATION:**

- 1) That the report dated November 18, 2014 titled “RECOMMENDATION REPORT – Procedural By-law for the City of Markham Committee of Adjustment, PR 14 128493”, be received;
- 2) That a Procedural By-law for the Committee of Adjustment be endorsed for adoption by Council; and,
- 3) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**PURPOSE:**

The purpose of this report is to request the Development Services Committee to endorse a Procedural By-law for the City of Markham Committee of Adjustment.

**BACKGROUND:**

Section 238 of The Municipal Act, 2001, SO 2001, c. 25, as amended (the “*Municipal Act*”) requires all committees and local boards to adopt a procedural by-law to govern the calling, place and proceedings of meetings. Although the City of Markham has adopted a general procedural by-law intended to apply to all municipal boards and committees, the Committee of Adjustment is a special, quasi-judicial body operating at “arms-length” from City Council, and as such warrants its own procedural by-law. This is a practice observed by many other municipalities in Ontario. In addition to a local procedural by-law, the Committee is also bound by regulations found in both the *Municipal Act* and The Planning Act, RSO 1990, c.P. 13, as amended (the “*Planning Act*”) respecting its’ operation.

In 2013, staff of the Zoning and Special Projects Team initiated a formal process to prepare a procedural by-law at the request of the City Clerk. Background research was

completed, involving surveys of other Ontario municipalities and the compiling of information on “best practices” through review of similar by-laws.

**OPTIONS/ DISCUSSION:**

Attached as “Appendix 1” is a draft procedural by-law for the City of Markham Committee of Adjustment. The draft was prepared in consultation with the offices of the City Clerk and the City Solicitor, and was endorsed by the Committee of Adjustment at its meeting of September 17, 2014. The procedural by-law provides guidance on the following matters:

- Calling of hearings
- Location of hearings
- Composition of Committee
- Quorum
- Conduct of Meetings
- Voting
- Decisions of the Committee
- Conflict of Interest

Staff recommends that the procedural by-law contain only the most important applicable regulations, and that a series of “policy directives” be developed to address other more administrative matters. Policy directives would be adopted by the Committee of Adjustment. This allows for the addition of procedural directions without requiring a formal amendment to the procedural by-law. The current set of policy directives (attached as Appendix 2) cover the following:

- Change of Conditions
- Lapsing of Provisional Consent
- Consents for Boundary Adjustments

All policy directives that are developed must be consistent with the provisions of the *Planning Act*, the *Municipal Act* and any local procedural by-law (such as the one currently under consideration). It is intended that additional policy directives be adopted by the Committee of Adjustment as time progresses, in order to deal with any additional administrative matters that may arise.

**FINANCIAL CONSIDERATIONS:**

None.

**HUMAN RESOURCES CONSIDERATIONS**

The proposed by-law and policy directives will be administered by current Zoning and Special Projects Team Staff.

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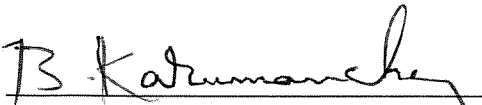
**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Not applicable.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

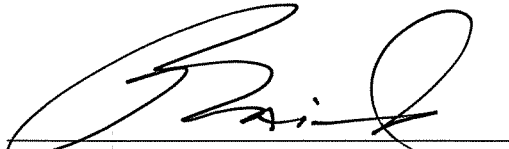
The draft procedural by-law was developed in consultation with staff of the office of the City Clerk and City Solicitor. As well, the draft by-law was endorsed by the Committee of Adjustment at its meeting of September 17, 2014.

**RECOMMENDED BY:**



Biju Karumanchery, MCIP, RPP

Acting Director, Planning and Urban Design



Jim Baird, MCIP, RPP

Commissioner, Development Services

**ATTACHMENTS:**

Appendix 1 – Draft Procedural By-law for the Markham Committee of Adjustment

Appendix 2 – Policy Directives for the Markham Committee of Adjustment

Appendix 3 – Committee of Adjustment Resolution of Endorsement

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## BY-LAW 2014-\_\_\_\_\_

### A By-law to Establish a Procedure for the Committee of Adjustment of the City of Markham

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WHEREAS the Council of the Corporation of the City of Markham has passed By-law 2011-194 to constitute and appoint a Committee of Adjustment; and,

WHEREAS Section 238(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act*"), as amended, requires every municipality and local board to adopt a procedure by-law for governing the calling, place and proceedings of hearings; and,

WHEREAS Section 239(1) and Section 239(5) of the *Municipal Act* requires all meetings to be open to the public and state that a meeting shall not be closed to the public during the taking of a vote; and,

WHEREAS the Committee of Adjustment for the City of Markham has been established pursuant to the *Planning Act, R.S.O. 1990*, c.P. 13, as amended;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM HEREBY ENACTS AS FOLLOWS:

#### 1. Application

- 1.1 The procedures contained in this By-law shall be observed in all proceedings of the Committee of Adjustment (the "Committee") and shall, subject to Section 1.2, be the procedures for the order and dispatch of business conducted by the Committee.
- 1.2 The Committee may also pass Committee policy directives respecting the conduct of business ("Policy Directives"), provided they are in accordance with the *Planning Act, R.S.O. 1990*, c.P. 13, as amended and the applicable regulations thereunder, (the "*Planning Act*"), and the provisions of this By-law.

#### 2. Calling of Hearings

- 2.1 All hearings of the Committee shall be called by the Secretary-Treasurer, and notice of any hearing shall be given by pre-paid mail as well as posting of a notice sign, in accordance with the *Planning Act*.
- 2.2 All agendas of hearings of the Committee shall be made available to the public at least five (5) calendar days prior to the scheduled meeting, and such agendas shall be made available through the City of Markham website.
- 2.3 The location of all meetings of the Committee shall be identified on the notice of hearing referred to in section 2.1.

- 2.4 A sign or signs, prepared by the City and providing notice of the public hearing, shall be placed on all properties subject to a Committee application in accordance with the *Planning Act* and section 2.5 if applicable.
- 2.5 In the case of a corner lot or such other lot with frontage on more than one public or private street, a notice sign as referred to in section 2.4 shall be erected on each street, in a location where it can be clearly seen from such street.

### **3. Location of Hearings**

- 3.1 The location of all hearings of the Committee shall be identified on the notice of hearing referred to in section 2.1.

### **4. Committee of Adjustment Administration**

- 4.1 The members of the Committee shall elect from among themselves both a Chair and a Vice-Chair.
- 4.2 In the absence of the Chair, the Vice-chair shall carry out the responsibilities of the Chair required by this By-law and the Policy Directives. In the absence of both the Chair and the Vice-chair, the members of the Committee present shall elect a Chair for the meeting.
- 4.3 The Committee shall appoint as Secretary-Treasurer and as Assistant Secretary-Treasurer the current employees of the City of Markham Planning and Urban Design Department so designated by the City.

### **5. Quorum**

- 5.1 A minimum of three (3) members of the Committee shall be present to constitute a quorum.
- 5.2 Subject to subsection 5.1 above, the inability of a member to act due to a declared Conflict of Interest in accordance with section 9 does not impair the powers of the Committee or of the remaining members of the Committee.
- 5.3 If no quorum is present thirty (30) minutes after the time appointed for the meeting of the Committee, the Secretary-Treasurer shall record the names of the members of the Committee present and the meeting will stand adjourned until the next appointed time. If all those members of the Committee who are present remain until a quorum is present, then the meeting shall proceed.

### **6. Conduct of Meetings**

- 6.1 The meeting Chair shall conduct meetings in accordance with this By-law, the Policy Directives, and the *Planning Act*.

6.2 The meeting Chair shall:

- a) Call the meeting to order;
- b) Call for disclosures of Conflict of Interest in accordance with section 9;
- c) Call for confirmation of Minutes of the previous Committee meeting;
- d) Call for any requests for deferral of an application;
- e) Direct the Secretary-Treasurer to call each application in the order in which it appears on the agenda, or in any other order, at the Committee's discretion.

6.3 The Chair shall ask the applicant, the authorized agent, or the owner's representative (the "Applicant") to identify their name and address and present the application. The Applicant shall be provided with a maximum of ten (10) minutes to present information respecting the application to the Committee. Any presentation beyond the maximum time period shall be at the discretion of the Chair.

6.4 The Chair will address the public and invite comments from the public with respect to the application being heard. The Committee may limit the length of a public submission to ensure that all members of the public may be heard. Members of the public shall confine their remarks to the subject application.

6.5 The Committee may ask questions of the Applicant at this time, during or after the presentation.

6.6 At any time, the Chair or Committee members may ask the Secretary-Treasurer to:

- a) Read aloud any comments received from agencies who responded to the circulation of the notice of the application;
- b) Read aloud any comments received from persons expressing an interest in the application;
- c) At the direction of the Chair, summarize the nature of the interest being expressed;
- d) Read aloud any proposed conditions of approval. The Committee may delete from, add to or revise such proposed conditions.

6.7 Following public input, the Committee may give the Applicant an opportunity to respond to any comments received from commenting agencies or interested parties, and to provide a summary of the substance of the application (the "Applicant's Reply").

6.8 The Chair and Committee may ask additional questions at this time.

6.9 Following the Applicant's Reply, the Committee shall consider the issues raised by the application and the evidence heard by the Committee. The Chair shall:

- a) Ask whether the members of the Committee wish to conduct further discussions on the merits of the application;
- b) Ask the members of the Committee for a motion to either approve or deny the application;

- c) Upon a receipt of a motion from a member of the Committee, ask for a remaining member of the Committee to second the motion;
- d) Permit discussions on the motion;
- e) Call for a vote by the Committee on the motion in accordance with section 7.1; and
- f) Announce the decision of the Committee, as determined in accordance with section 7.3.

Following satisfaction of the requirements of sections 6.9(a) to (f), the Chair may, in his or her sole discretion, summarize any dissenting decisions orally.

6.10 A request for deferral of a matter on the scheduled hearing date by the Applicant, City Staff or any commenting agency, must be for reasonable cause and must be made at the hearing. If granted, the Committee, in consultation with the Secretary-Treasurer, shall either:

- a) set a new meeting date at the meeting, in which case no further notice will be provided; or,
- b) adjourn the hearing sine die, in which case notice of the new meeting date shall be provided to all persons who provide the Secretary-Treasurer with a written request for such notice.

6.11 A request for withdrawal of a matter on the scheduled hearing date by the Applicant shall be recorded by the Secretary-Treasurer, and the Committee will take no further action on the matter.

## **7. Voting**

- 7.1 Each member of the Committee, when requested by the Chair to vote in accordance with section 6.9(e) on a motion seconded in accordance with section 6.9(c), shall indicate by show of hands, or any other form of acknowledgement, his or her position on such motion,.
- 7.2 In the event that the initial motion tabled in accordance with section 6.9(c) is defeated, the Chair shall ask the members of the Committee for a new motion, in accordance with the following:
  - a) if the defeated motion was a motion to approve, the Chair shall request a motion to deny; or
  - b) if the defeated motion was a motion to deny, the Chair shall request a motion to approve, and sections 6.9(c) to (f) shall apply to such new motion.
- 7.3 The majority decision of the Committee on a motion voted on under section 7.1 or 7.2 shall constitute the decision of the Committee, and shall be announced in accordance with section 6.9(f).
- 7.4 The Chair is entitled to all rights of a Committee member, including voting. The Chair is required to vote in the event that it is required in order to break a tie vote.

## 8. Decisions of the Committee of Adjustment

- 8.1 No decision of the Committee on an application is valid unless it is approved by the Committee in accordance with section 7, and the decision of the Committee, whether granting or refusing an application, shall be in writing and shall set out the reasons for the decisions, and shall be signed by the members who concurred in the decision.
- 8.2 A copy of the Committee's written decision will be prepared and issued in accordance with the provisions of the *Planning Act*.
- 8.3 A copy of the Committee's written decision shall be sent to each Applicant, and any other person who requests a copy of the decision by providing a written request to the Secretary-Treasurer.

## 9. Conflict of Interest

- 9.1 Any member of the Committee required to do so by the provisions of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c.M. 50, as amended, shall disclose any direct or indirect pecuniary interest for themselves or a family member respecting any application(s) listed on the agenda referred to in section 2.2 (a "Conflict of Interest") and shall state the general nature of such interest, and it shall be recorded by the Secretary-Treasurer accordingly. Any member of the Committee who declares a Conflict of Interest shall leave the hearing room for the duration of the hearing of any application(s) for which he or she has declared a Conflict of Interest, and shall not be entitled to vote on the matter.


READ A FIRST, SECOND, AND THIRD TIME AND PASSED ON

\_\_\_\_\_, 2014.

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KIMBERLEY KITTERINGHAM  
CITY CLERK

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FRANK SCARPITTI  
MAYOR



	<b>Committee of Adjustment</b> <b>Policy Directives</b>	
	<b>Policy Category: Change of Conditions</b>	
	<b>Policy No.: 14-01</b>	<b>Implementing By-law No.: 2014-</b>
<b>Approving Authority:</b> Committee of Adjustment		<b>Effective Date:</b> October 1, 2014
<b>Approved or Last Reviewed Date:</b> N/A		<b>Next Review Year:</b> October 1, 2019
<b>Area(s) this policy applies to:</b> Committee of Adjustment		<b>Owner Department:</b> Planning and Urban Design
<b>Related Policy(ies):</b> <ul style="list-style-type: none"> <li>Committee of Adjustment Rules of Procedure By-law</li> </ul>		

## 1. Policy Statements

In accordance with Section 53(23) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended ("*The Planning Act*"), the Committee of Adjustment ("*Committee*") is permitted to consider a Change to Conditions of a Provisional Consent at any time before final consent is given, and the *Committee* shall comply with such regulations as prescribed.

## 2. Roles and Responsibilities

- a) An application for Change to Conditions of a Provisional Consent shall be accompanied by the fee prescribed by City of Markham Fee By-law 211-83, as amended.
- b) Upon receipt of such application, the item shall be placed on the next available agenda under "Other Business", and shall be circulated to any applicable City Staff.
- c) The *Committee* shall consider a memo prepared by Development Services Staff indicating concurrence/non-concurrence with the Change to Condition, and an indication of whether or not, in Development Services Staff's opinion, the change is considered "major" or "minor".
- d) The *Committee* shall consider the request at its meeting, and shall either approve, deny or defer the request.
- e) In accordance with Section 53(26) of the *Planning Act*, if the *Committee* approves the request, the *Committee* shall also make a determination as to whether or not the Change to Condition is considered "major" or "minor".
- f) In accordance with Section 53(26) of the *Planning Act*, if the Change to Condition is considered "minor", the *Committee* is not required to provide any written notice of the decision, however, the Secretary-Treasurer shall notify the applicant and/or agent, as well as any applicable internal Staff of the Change to Conditions.
- g) In accordance with Section 53(24) of the *Planning Act*, if the Change to Condition is considered "major", the *Committee* shall direct the Secretary/Treasurer to provide written notice of the Change to Conditions, containing the prescribed information in accordance with PART 1, Sections 7(1) of Ontario Regulation 197/96 of *The Planning Act*, to the applicant, each person or public body that made a written request to be notified of changes to the conditions, and any other person or public body prescribed per PART 1, Section 7(2) of Regulation 197/96 of the *Planning Act*.



*Committee of Adjustment  
Policy Directives*


Policy No.: 14-01

Implementing By-law No.: 2014-

- h) In accordance with Section 53(27) of the the *Planning Act*, any person or public body may, not later than 20 days after the giving of notice of the Change to Conditions decision is complete, appeal any Change to Conditions approved by the *Committee* by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the prescribed fee, and the City Clerk's fee in accordance with By-law 211-83, as amended.
- i) If the Change to Conditions is determined by the *Committee* to be "major", and notice is required to be given in accordance with g) above, then the one-year limit for the fulfilling of conditions of provisional consent begins on the day notice of the Change to Conditions is given in accordance with h) above.

**NOTE RESPECTING CONDITIONS ATTACHED TO MINOR VARIANCE OR PERMISSION APPROVALS:**

The *Planning Act* contains no provisions with respect to changes to conditions associated with approval of an application for Minor Variance or Permission. Any such request for a change to conditions shall require the submission of a new full application to the *Committee of Adjustment*.

	<b>Committee of Adjustment Policy Directives</b>	
	<b>Policy Category: Lapsing of Provisional Consent – One Year Period</b>	
	<b>Policy No.: 14-02</b>	<b>Implementing By-law No.: 2014-</b>
<b>Approving Authority:</b> <i>Committee of Adjustment</i>	<b>Effective Date:</b> <i>October 1, 2014</i>	
<b>Approved or Last Reviewed Date:</b> <i>N/A</i>	<b>Next Review Year:</b> <i>October 1, 2019</i>	
<b>Area(s) this policy applies to:</b> <i>Committee of Adjustment</i>	<b>Owner Department:</b> <i>Planning and Urban Design</i>	
<b>Related Policy(ies):</b> <ul style="list-style-type: none"><li><i>Committee of Adjustment Rules of Procedure By-law</i></li></ul>		

## 1. Policy Statements

In accordance with Section 53(41) of the Planning Act, R.S.O. 1990, c.P. 13, as amended (*"The Planning Act"*), if conditions have been imposed and the applicant has not fulfilled the conditions within a period of one year after notice was given, the application for consent shall be deemed to be refused.

## 2. Roles and Responsibilities

- i) Notice of provisional consent under Section 53(17) or 53(24) of *The Planning Act*, whichever is later, shall be deemed to have been given at the end of the business day on the day notice was given. The applicant therefore must fulfill the conditions of provisional consent by the end of the business day one year from the date notice was given (i.e. Notice given on December 31, 2014 requires fulfillment of conditions by the end of the business day on December 31, 2015).
- ii) In the case where an application has been appealed to the Ontario Municipal Board under Section 53(14), 53(19), or 53(27) of *The Planning Act*, the one-year period to fulfill conditions of provisional consent shall begin on the date of the order of the Ontario Municipal Board issued in respect of the appeal or from the date of a notice issued by the Ontario Municipal Board under Section 53(29) or 53(33) of *The Planning Act*. Such order or notice shall be deemed to have been given at the end of the business day on the applicable date. The applicant therefore must fulfill the conditions of provisional consent by the end of the business day one year from that date (i.e. Order or Notice given on December 31, 2014 requires fulfillment of conditions by the end of the business day on December 31, 2015).



## Committee of Adjustment Policy Directives

Policy Category: Consents for Boundary Adjustments and Lot Additions

Policy No.: 14-03

Implementing By-law No.: 2014-

**Approving Authority:**  
*Committee of Adjustment*

**Effective Date:**  
*October 1, 2014*

**Approved or Last Reviewed Date:**  
*N/A*

**Next Review Year:**  
*October 1, 2019*

**Area(s) this policy applies to:**  
*Committee of Adjustment*

**Owner Department:**  
*Planning and Urban Design*

**Related Policy(ies):**

- *Committee of Adjustment Rules of Procedure By-law*

### 1. Policy Statements

In accordance with Section 50(12) of the Planning Act, R.S.O. 1990, c.P. 13, as amended (*"The Planning Act"*), the Committee of Adjustment (*"Committee"*) may stipulate that the provisions of Section 50(3) or 50(5) are applicable to any newly created parcel.

### 2. Roles and Responsibilities

- i) In the case of a consent approval respecting a parcel of land that is intended to be joined to an adjacent parcel of land, the *Committee* shall ensure that any further conveyance of such parcel of land is subject to Subdivision Control in accordance with Section 50(3) or 50(5) of the *Planning Act* by imposing on approval of any such application, a condition of consent stipulating that the further conveyance of the subject parcel after the original conveyance shall be subject to the provisions of Section 50(3) or 50(5) of *The Planning Act*.
- ii) In addition to the requirements of i) above, the *Committee* shall also, through a condition of consent, require submission of a *Solicitor's Certificate*, certifying that upon registration of the required transfer to effect the consent, that the subject parcel will merge in title with *the adjoining lands*.



## Committee of Adjustment Resolution

Rules and Procedure and Policy Directives for the City of Markham Committee of Adjustment

Moved by G.M. [Signature]  
Seconded by P.G. [Signature]

THAT the Committee of Adjustment endorse the Draft Procedural By-law attached as Appendix 1, and the Policy Directives attached as Appendix 2, in order to provide for the orderly conduct of the business of the Committee of Adjustment.

September 17, 2014