

Committee: Committee of Adjustment

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Approval: Council

Committee Resource: Planning Technician/Secretary Treasurer

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 *Planning Act*, R.S.O. 1990, c. P.13 (*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*.



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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

- 4.1 The COA shall consist of five voting members made up of the following:
 - 4.1.1 Three (3) members 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.
 - 4.1.2 Two (2) members from the public at large. The Members of the public shall serve a term that ends at the same time as the term of the Council that appoints them.



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- 4.2 The COA shall have one non-voting member of staff who acts as a resource person, recording secretary, and provides administrative support to the Committee.
- 4.3 Additional members of staff 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/partner 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 hearings as possible.

6. Recruitment of Members of the Public

- 6.1 Membership recruitment will be conducted in accordance with the City's Appointments to Boards and Committees Policy.
- 6.2 The membership on the Committee shall consist of appointments by Resolution of Council.

7. Term Expiration

In accordance with Section 44(4) of the *Planning Act*, the COA term shall be the same term as Council. Each COA member shall hold membership until a successor is



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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 he/she absents himself/herself from three successive scheduled hearings of the Committee without being authorized to do so by a resolution of the COA entered in its minutes.

9. Appointment of Chair and Vice-Chair

At the first hearing of a new COA term, the members shall appoint a Chair and Vice-Chair.

10. Role of the Chair

The role of the COA Chair is to:

- 10.1 Preside at all COA hearings in accordance with the City's Procedural By-law and keep discussion on topic;
- 10.2 Provide guidance and leadership to the COA, as required;
- 10.3 Liaise with other COA members; and
- 10.4 Ensure that decorum is maintained at each COA hearing.

11. Role of the Vice-Chair

In the absence of the Chair, the Vice-Chair will chair meetings and assume all functions of the Chair as necessary.

12. Role of Committee Members

All COA Members shall:



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- 12.1 Review applications in advance of hearings;
- 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 to process applications.

13. Hearings

- 13.1 All COA hearings shall be open, and no person shall be excluded therefrom, except in the case of improper conduct or for matters 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 on a set day and time as may be determined by the COA. Additional hearings may be held through a special hearing request to the Secretary-Treasurer and dependent on availability of COA members. The COA will establish a hearing schedule, taking into account the business needs and the schedule of Council.
- 13.4 The location of the COA hearings will be set at a City facility.
- 13.5 All matters pertaining to a closed hearing 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 hearings shall be recorded and distributed to COA Members.



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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 hearing to order as soon as a quorum is present. In accordance with Section 44(5) of the *Planning Act*, quorum is achieved when three members are present. If quorum for a hearing is not present within fifteen (15) minutes of the designated time of commencing the hearing, the Secretary-Treasurer shall record the names of the Members present and the hearing shall stand adjourned until the date of the next Regular Hearing or Special Hearing.

16. Conflict of Interest

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.

Where a Member has any pecuniary interest, direct or indirect, in any matter and is present at a hearing 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 hearing;
- 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 hearing to influence the vote on the matter.

Where a hearing 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 hearing for the part during which the matter is under consideration.

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



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17. Procedures

Procedures for the proceedings of hearings shall be governed by the *Planning Act*, the City's 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 in accordance with the payment amounts set out in By-law No. 5719/150/11 Being a By-law to Establish Remuneration of Committee of Adjustment Members, and any amendments thereto.

19. Staff Liaisons

The Secretary-Treasurer of the Committee of Adjustment shall be the Staff Liaison. The Secretary-Treasurer/Staff Liaison shall keep record of: COA minutes, all COA applications and the decisions thereon, and all other official business of the COA. The Secretary-Treasurer/Staff Liaison will provide administrative, procedural, and technical support to the COA. Departmental Representatives / Planners will act as subject matter experts and provide information to assist the COA in reaching decisions.

20. Terms of Reference

Any responsibilities not clearly identified within these Terms of Reference shall be the responsibility of the City of Port Colborne staff. Any changes proposed to these Terms of Reference by the COA shall be recommended to Council via the City Clerk through a report.

21. Resources

- 21.1 City of Port Colborne Procedural By-Law
- 21.2 *Municipal Act, 2001, S.O. 2001, c. 25*
- 21.3 *Planning Act, R.S.O. 1990*
- 21.4 City of Port Colborne Code of Conduct
- 21.5 City of Port Colborne Appointment to Boards/Committees Policy
- 21.6 *Municipal Conflict of Interest Act, R.S.O.1990, c.M. 50*
- 21.7 Robert's Rules of Order
- 21.8 *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
- 21.9 *Statutory Powers Procedure Act*