

	<p align="center">POLICY</p>	<p><u>Policy No:</u> Click here to enter text.</p>
<p><u>Policy Title:</u> COMMITTEE OF ADJUSTMENT - TERMS OF REFERENCE</p> <p><u>Policy Type:</u> COUNCIL</p> <p><u>Category:</u> Governance</p> <p><u>Sub-Category:</u> Board & Committee</p> <p><u>Author:</u> D. Saunderson, M. Mills</p> <p><u>Dept/Div:</u> Corporate Services/Legislated Services/Council/Committee Services</p>		<p><u>Approval Date:</u> Click here to enter a date.</p> <p><u>Reviewed Date:</u> Click here to enter text.</p> <p><u>Next Review Date:</u> Click here to enter text.</p> <p><u>Reviewed Date:</u> Click here to enter text.</p> <p><u>Last Amended:</u> Click here to enter a date.</p> <p><u>Replaces:</u> Click here to enter text.</p> <p><u>Repealed:</u> Click here to enter a date.</p> <p><u>Replaced by:</u> Click here to enter text.</p>
<p><u>Related Policies, Procedures and/or Guidelines:</u> Appointments to Boards & Committees Policy - GOV-BOA-063 Municipal Act Municipal Conflict of Interest Act Planning Act</p>		

1. POLICY PURPOSE:

The purpose of the Policy is to establish the Terms of Reference for the Committee of Adjustment. The Committee of Adjustment considers applications for minor variance to the City's zoning requirements, and provisional consent applications as per the authority granted under the under the [Planning Act](#).

2. DEFINITIONS:

Chair: The Chair moves forward business outlined on the meeting agenda, ensures decorum is maintained at meetings, and the rules of procedure and conduct are observed.

Vice-Chair: The Vice-Chair acts in the absence of the Chair and assumes the roles and responsibilities of the Chair.

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Secretary-Treasurer: The Secretary-Treasurer is a staff member appointed by the Committee and is a non-voting member. They provide administrative support to the Committee as legislated by the Planning Act and, procedural advice within hearings. In the absence of the Secretary Treasurer, an Acting Secretary Treasurer appointed by the Committee will act in their place.

Planning Coordinator: The Planning Coordinator is a staff member of the Development Services Division. They provide planning advice and attend meetings to assist the Committee in reaching decisions.

Transportation Representative: The Transportation Representative is a staff member of the Development Services Division. They provide advice related to traffic and transportation planning and attend meetings to assist the Committee in reaching decisions.

Quorum: Section 44(5) of the Planning Act, as amended, governs the number of members that constitute a quorum, which is the minimum number of Committee members that must be in attendance in order to conduct hearings.

3. **SCOPE:**

POLICY APPLIES TO THE FOLLOWING:	
<input type="checkbox"/> All Employees	
<input type="checkbox"/> All Full-Time Employees	<input type="checkbox"/> All Union
<input type="checkbox"/> Management	<input type="checkbox"/> C.U.P.E. 68 Civic
<input type="checkbox"/> Non Union	<input type="checkbox"/> C.U.P.E. 68 Mechanics
<input type="checkbox"/> Temporary	<input type="checkbox"/> C.U.P.E. 791
<input type="checkbox"/> Student	<input type="checkbox"/> I.B.E.W. 636
<input type="checkbox"/> Part-Time Employees	<input type="checkbox"/> K.P.F.F.A.
<input type="checkbox"/> Specified Positions only:	<input type="checkbox"/> Other:
<input type="checkbox"/> Council	<input checked="" type="checkbox"/> Local Boards & Advisory Committees

4. **POLICY CONTENT:**

4.1. **Purpose of the Committee**

The Committee of Adjustment is a statutory tribunal with authority delegated to it by the Council of the City of Kitchener under the provisions of the Planning Act to hold public hearings to make decisions on applications submitted to the City for minor variances, changes in legal non-conforming uses, consents for severances, long-term leases and other decisions as prescribed by the Planning Act.

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The Committee operates independently from Council and its decisions may be appealed to the Ontario Land Tribunal (OLT).

The Committee's powers with respect to rendering decisions are contained in Section 45 and Section 53 of the Planning Act.

4.2. Roles and Responsibilities

The Committee of Adjustment may:

- Authorize minor variances from the provisions of the Zoning By-Law for land, buildings or structures or their use;
- Permit the enlargement or extension of an existing legal non-conforming building or structure;
- Permit the use of land, building or structure for a purpose that is similar to the existing legal non-conforming use or is more compatible with the uses permitted by the Zoning By-Law; and,
- Give consent to convey or divide land when a plan of subdivision is not necessary, consent to grant an easement or right-of-way, consent to mortgage or charge land or grant an interest in land for 21 years or more, for example by long-term lease or agreements and consent to validate title.
- Perform any further duties as required by the Planning Act or other applicable law.

4.3. Governance

The Committee of Adjustment is governed by procedures detailed in the Planning Act, the Municipal Act, the Statutory Powers Procedure Act, the Municipal Conflict of Interest Act, the City's Code of Conduct, and any other legislation, by-law, or City policy which may be applicable from time-to-time.

The Committee of Adjustment is guided by planning policies and controls established by the Council of the City of Kitchener through the Official Plan, Zoning By-law(s) and other by-laws for controlling development, the Regional Official Policies Plan of the Region of Waterloo and planning policies and legislation of the Province of Ontario, including the Planning Act, statements of Provincial interest as defined in policy statements, implementation guidelines and Provincial plans.

5. GENERAL

5.1. Committee Composition

The Committee of Adjustment is composed of 5 representatives appointed by Council. A Chair and Vice-Chair will be elected from the Committee on an annual basis for the following year.

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5.2 Member Qualifications

Consideration to the following criteria will be given for appointments to the Committee of Adjustment:

- Will comply with the criteria outlined in Council Policy GOV-BOA-063 (Appointment to Boards & Committees);
- Availability to attend meetings shall also be considered;
- Demonstrated background and knowledge related to the function of the Committee of Adjustment;
- Knowledge and understanding of the land use planning process including minor variance and consent process;
- Ensuring a balance between experience and new membership;
- Knowledge in one or more areas: law, planning, architecture, government, engineering, real estate, economic development, community development or land development;
- Demonstrated decision-making, communication, and mediation skills to facilitate an open and fair hearing process.

5.3. Term of Appointment

The Committee shall serve for a four-year term or, another term determined by the Council that appointed them and, they shall remain members of the Committee until their successors are appointed. Where a member ceases to be a member before the expiration of their term, Council will appoint another person for the unexpired term.

5.4. Remuneration

Committee members shall be compensated \$100 for every meeting they attend, and the Chair will be compensated \$125 for every meeting. Honorariums will be paid bi-annually, and will not be subject to income tax deductions by the City.

5.5. Code of Conduct

The Committee of Adjustment shall comply with any applicable legislation and regulations under the Planning Act and Statutory Powers of Procedure Act and shall abide by the Code of Conduct adopted by Council.

5.6 Conflict of Interest

The Municipal Conflict of Interest Act outlines a primary set of ethical rules for Council, Committee and local board members. These rules apply if members have a pecuniary (financial) interest in a matter that is before them at a meeting. The legislation requires a member with a pecuniary interest to:

- disclose the interest and its general nature before the matter is considered at the meeting;

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- complete any required form (s) to necessary by the municipal conflict of interest act;
- not take part in the discussion or voting on any question in respect of the matter;
- not attempt to influence the voting, during or after the meeting; and
- immediately leave the meeting if the meeting is closed to the public.

Regarding procedural fairness, members of the Committee of Adjustment should consider taking the above-noted steps where they believe they have an actual bias or where a reasonable apprehension of bias may exist which could impact their ability to decide fairly on a particular matter before them at a meeting.

In determining whether there is a reasonable apprehension of bias, the member should consider whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the member, whether consciously or not, would not decide the matter fairly.

5.7 Resources to the Committee

The Secretary-Treasurer is a City of Kitchener staff member appointed by the Committee and is a non-voting member. They provide administrative support to the Committee as legislated by the Planning Act and, procedural advice within hearings. In the absence of the Secretary Treasurer, an Acting Secretary Treasurer appointed by the Committee will act in their place.

The Secretary-Treasurer will provide or arrange for the provision of orientation and training to Committee members following their appointments relating to the role of the Committee of Adjustment, the applicable provincial and regional policy framework, the Planning Act and related jurisprudence, the City's Official Plan, Zoning By-law(s) and related policies and procedures. The Secretary-Treasurer will arrange for additional training and educational sessions for the Committee or individual members as required or requested by the Committee or a member of the Committee.

The Planning Coordinator and Transportation Representative provide subject matter information and attend meetings to assist the Committee in reaching decisions.

The Committee may obtain legal advice from the City's Legal Services Division on their ability to dispense of their decisions.

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6. Hearings:

6.1. Conduct of Hearings

The Committee of Adjustment shall adhere to City policies and procedures, the Statutory Powers Procedure Act, Municipal Conflict of Interest Act and Planning Act and use the guidance of the Procedural By-law to ensure a fair and unbiased hearing. Where the above noted laws and policies do not speak to an issue, Robert's Rules of Order will be the default guide for meeting procedures.

The Committee of Adjustment Committee shall provide and conduct fair hearings by:

- Allowing anyone wishing to speak to an application an opportunity to do so;
- Giving due diligence to the consideration of each application;
- Openly having all discussions about each application and making all decisions in public at the hearing;
- Reviewing the application and its merits, Regional and Agency comments, Planning Staff's report and recommendation; and, rendering decisions on applications, in accordance with the requirements of the Planning Act;
- The Planning Coordinator and Transportation Representative will attend the meeting to provide subject matter information within their professional ethics on questions arising from the Committee and Delegations.
- Making rational decisions with appropriate, well-thought-out conditions; and,
 - Each member including the Chair clearly identifying support or opposition when voting; and,
 - Clearly stating the reasons for their decisions.

6.2. Meeting Schedule and Location

The Committee of Adjustment shall meet once a month in the Council Chamber unless otherwise advertised. The Secretary-Treasurer shall prepare a schedule of hearings on an annual basis which will be advertised on the City's website. Generally, the meetings are held on the third Tuesday of the month. The date, time, and location of meetings can be modified at the discretion of the Secretary-Treasurer and Planning Coordinator. Notice of any modified meeting details shall be published on the City's website.

6.3. Open Meetings

All meetings shall be open to the public save and except reasons outlined under the Section 239 of the Municipal Act, as amended. No person shall be excluded from meetings except for improper conduct, as defined in Chapter 25 of the City of Kitchener Procedural By-law.

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6.4. Quorum

Section 44(5) of the Planning Act, as amended, governs the number of members that constitute a quorum. At the time of this policy, three members shall constitute a quorum. All members are requested to attend every scheduled meeting. Members of Committee shall notify the Secretary-Treasurer when they will be absent from any meeting.

6.5. Voting

Every Committee of Adjustment member is required to vote, including the Chair. Those members who are present at a Committee meeting when a decision is rendered shall vote by show of hands, except where they are disqualified from voting by reason of a pecuniary interest or is absent from the meeting during the vote. Any member who refuses to vote will be recorded as voting in the negative (opposed). In the event of equality of votes, the motion being voted on is deemed to be lost.

6.6 Hearing Procedures

Where possible, the hearing procedure should abide by the following:

- The Chair shall call the meeting to order;
- Minutes of the Previous Hearing shall be adopted;
- Committee members shall declare any pecuniary interests that they may have in applications before the Committee, and the provisions of the Municipal Conflict Interest Act shall apply.
 - If a conflict of interest is declared, the member shall leave the meeting room for the duration of the hearing of the application and until a decision is rendered.
 - In determining whether there is a reasonable apprehension of bias, the Committee member should consider whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the member, whether consciously or not, would not decide the matter fairly.
 - Where members of the Committee believe they have an actual bias or a reasonable apprehension of bias which could impact their ability to decide fairly on a particular matter before them at a meeting, members should consider taking the steps outlined under "Conflict of Interest."
- The Chair shall welcome those in attendance and provide an explanation of the procedures:
 - The Planning Coordinator shall introduce the application for Committee consideration, and the Staff Recommendation outlined in

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- the Staff report, which is posted on the City of Kitchener website the Friday prior to the meeting.
- Everyone having an interest(s)/concern(s) with respect to an application(s) shall be given an opportunity to comment on the applications being heard;
 - Members of the Public shall be encouraged not to:
 - speak disrespectfully of any person;
 - use offensive words;
 - disobey the decision of the Chair or Committee; and,
 - enter into cross debate with other persons present, City staff, Members, or the Chair.
 - Members of the public providing oral submissions to the Committee shall be encouraged to provide succinct and relevant comments on the subject application within a maximum of five-minutes.
 - Comments and questions of the applicant/agent, members of the Public or Planning Coordinator are to be addressed through the Chair;
 - Committee members shall bring forward a motion to approve, refuse or defer the application. Motions must be seconded by a Committee member. Following discussion and consideration of the motion on the floor, the Committee shall vote upon the motion;
 - Decisions shall be communicated verbally in the meeting and notice of the decision shall be sent to the anyone who expressed interest in the subject application;
 - Reminder of the Planning Act appeal period and Section 45 (12) of the Planning Act which permits only the applicant, Minister, specified person or public body to appeal Committee decisions;
 - Discussion and Decisions on the application, including addressing requests for deferrals and adjournments; and,
 - Adjournment of the meeting.

Staff reserve the right to amend hearing procedures as they are administrative in nature and are required to reflect legislative changes. Please see Appendix 'A', Administrative Hearing Procedures for comprehensive hearing procedures for the Committee of Adjustment.

6.7 Notice of Decision

In accordance with Section 45 and Section 53 of the Planning Act, decisions of the Committee regarding minor variance and consent applications will be issued no more than 10 days following the hearing or as otherwise specified by the Planning Act.

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The decision of the Committee can be appealed to the Ontario Land Tribunal (OLT).

7. HISTORY OF POLICY CHANGES

None at this time.

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Appendix A

Committee of Adjustment Administrative Hearing Procedures

Where possible, the Committee of Adjustment hearing procedures will abide by this document. Staff reserve the right to amend hearing procedures as they are administrative in nature and are required to reflect legislative changes.

START OF THE MEETING

The **Chair shall** call the meeting to order.

The **Chair shall** advise:

*“This meeting of the Committee of Adjustment is being called to hear applications under the Planning Act for Minor Variance and/or Consent. This is a statutory public meeting, anyone having an interest in any of these applications may make oral or written submission for the Committee’s consideration. The Committee will render a verbal decision this date and the Agent/Applicant **will receive** a copy of the Committee’s decision in writing by email 10 days after the meeting.”*

The minutes of the Previous Hearing shall be adopted.

The **Chair shall** advise Committee Members to declare any pecuniary interests that they may have in applications before the Committee, and the provisions of the Municipal Conflict Interest Act shall apply.

- If a conflict of interest is declared, the member shall leave the meeting room for the duration of the hearing of the application and until a decision is rendered.
- In determining whether there is a reasonable apprehension of bias, the Committee member should consider whether a reasonable and informed person, with knowledge of all relevant circumstances, viewing the matter realistically and practically, would think that it is more likely than not that the member, whether consciously or not, would not decide the matter fairly.
- Where members of the Committee believe they have an actual bias or a reasonable apprehension of bias which could impact their ability to decide fairly on a particular matter before them at a meeting, members should consider taking the steps outlined under “Conflict of Interest.”

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THE HEARING PROCESS

The **Chair shall** review the Committee's powers & ability to render a decision and the hearing process:

COMMITTEE'S POWERS & ABILITY TO RENDER A DECISION

The **Chair shall** advise that the Committee has the **authority** to do 1 of 3 things:

1. Approve the Application (the Committee may add, remove or amend conditions for approval)
2. Reject the Application
3. Defer the application/Committee decision to a later meeting

The Agent/Applicant **will receive** the Committee's **decision in writing** 10 days after the meeting.

PROCESS FOR HANDLING EACH APPLICATION:

- i) The Planning Coordinator shall introduce the application for Committee consideration, and the Staff Recommendation outlined in the Staff report, which is posted on the City of Kitchener website the Friday prior to the meeting.
- ii) Everyone having an interest(s)/concern(s) with respect to an application(s) shall be given an opportunity to comment on the applications being heard;
- iii) Members of the Public shall be encouraged not to:
 - o speak disrespectfully of any person;
 - o use offensive words;
 - o disobey the decision of the Chair or Committee; and,
 - o enter into cross debate with other persons present, City staff, Members, or the Chair.
- iv) Members of the public providing oral submissions to the Committee shall be encouraged to provide succinct and relevant comments on the subject application within a maximum of five-minutes.
- v) Comments and questions of the applicant/agent, members of the Public or Planning Coordinator are to be addressed through the Chair;
- vi) Committee members shall bring forward a motion to approve, refuse or defer the application. Motions must be seconded by a Committee member. Following discussion and consideration of the motion on the floor, the Committee shall vote upon the motion;
- vii) Decisions shall be communicated verbally in the meeting and notice of the decision shall be sent to the anyone who expressed interest in the subject application;

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- viii) Reminder of the Planning Act appeal period and Section 45 (12) of the Planning Act which permits only the applicant, Minister, specified person or public body to appeal Committee decisions;
- ix) Discussion and Decisions on the application, including addressing requests for deferrals and adjournments

AJOURNMENT OF THE MEETING

The **Chair shall** request a motion to adjourn the meeting.