

THE COMMITTEE OF ADJUSTMENT (COA) AND YOU

Resource prepared by the Moore Park Residents Association (MPRA) May 2018

Purpose of the COA

Toronto has a City-wide Zoning Bylaw (ZB) which lays out in great detail for each area of the City, the maximum allowed dimensions of structures built in the City. In the case of Moore Park, we are zoned for single family homes, mostly detached. While there are a few apartment buildings, built many years ago, it is unlikely that there will be any new ones or any commercial buildings allowed. This greatly simplifies our efforts to protect Moore Park from undue development. A City-wide ZB was enacted in 2013 but there are still parts of it that are under appeal at the OMB.

The COA was set up many years ago to allow property owners the flexibility of requesting “minor variances” to the ZB. This is particularly important in the older neighbourhoods, built long before the ZB existed, because many of the houses in these areas do not conform to the ZB and could not be renovated without being granted variances. Unfortunately, in the last 15 to 20 years, there has been increasing pressure to build larger and larger houses and the COA has become a vehicle for small scale developers to build the largest possible house they can get away with, frequently 50% or more larger than the ZB allows. This behavior was encouraged by the OMB which appeared to favour development over stable neighbourhoods.

In 2017, thanks to pressure from the public, the Ontario Government disbanded the OMB and replaced it with an appeal body with much reduced powers. In addition, the City of Toronto was allowed to introduce its own appeal body (the Toronto Local Appeal Body or TLAB) to hear any appeals to decisions by the COA; the OMB and its successor may no longer hear appeals to COA decisions. This is a

major step forward although we still have a number of serious concerns about the operation of the TLAB.

How does the COA Operate?

The COA is an independent tribunal of the City with a set of rules of procedure but still fairly informal and user-friendly:

- The COA operates in 4 sectors of the City: Toronto/East York, North York, Etobicoke and Scarborough. Moore Park is under Toronto/East York which has 2 Panels each of 4 members which usually hear about 40 applications every 3 weeks.
- The Panel members are chosen from the general public but most have some planning experience.
- The homeowner wishing to build or renovate a home which will not conform to the ZB, must fill in a detailed application, pay a fee and submit the application to the COA where, in nearly all cases, it will be reviewed by a Zoning Examiner who determines the number and extent of the variances requested. Normally the homeowner's architect will handle all of this.
- Each of the applications are reviewed by the local City Planner who will occasionally write a letter of objection. Unfortunately, it has become very rare that a Planner will object and we are in the process of taking this up with City Planning.
- Under the current system, it is taking from 4 to 6 months for an application to be heard. If a deferral is requested and granted, at the moment, it will take up to 6 months for a new hearing.
- 20 days before a hearing, the COA distributes a short version of the application and a Zoning Notice to neighbours within 60 metres of the subject house. There are instructions on the letter on how to object and a deadline (usually a week before

the hearing) for when written submissions should be emailed to the COA.

- In addition to a written objection, the COA encourages those objecting to go to the meeting and speak to their reasons for objecting.
- At the hearing, the Chair of the Panel will quickly review each application to determine if there are objectors present. Those applications without objectors are then heard first while the others are encouraged to leave the hearing room to see if they can reach a compromise acceptable to all the parties. (this is not mandatory but does sometimes result in a compromise being reached).
- For each application, the applicant is given 5 minutes to make his/her case. The opposers each have 5 minutes to make their case, though the Chair will normally request that a spokesperson be appointed to avoid repetition. The proposer then has 5 minutes for rebuttal. Visuals are really helpful for both the proposer and the opposition and can be easily displayed on a large screen.
- The panel then makes its decision which will also be mailed to each of the participants.

Right of Appeal

COA decisions may be appealed to the TLAB within 30 days of the hearing. This can be an expensive process for both parties because you generally require a Lawyer and a Planner to represent you.

How does the MPRA work within this system?

Currently (May, 2018) the MPRA has a Planning Committee with 5 members. It includes a practicing architect, an ex-City Planner, a lawyer, a Construction Manager and an engineer, all with long experience of dealing with the COA. However, it must be emphasized

that all of these are volunteers with full-time jobs, except for one retiree.

- One member is the designated liaison with the COA. He receives an email from the COA every 3 weeks and reviews the list for Moore Park applications. On average, there is at least one application each month. He sends the detailed application to each of the members for comment.
- Details of each application may be found at www.toronto.ca/aic and then click on “Application Information Centre” and follow the links.
- Once we have reviewed the application, we may conclude that the variances requested are truly minor, particularly if they are within bylaw restrictions and there is no objection from Planning, Transportation, Councilor’s office or any other city official, and no further action will be taken.
- We frequently involve the Councilor’s office in an application, particularly if we want a deferral. The Councilor has been very helpful and supportive on a number of occasions. You should feel free to contact the Councilor’s office at any time.
- However, for most applications, 2 of us visit the site, try to talk to the applicant (often via the architect) and, most particularly, to the neighbours.
- We really try to be even-handed, favouring neither the applicant nor the neighbours. On occasion, there will be a situation where a neighbour is opposed and we, after careful consideration, are not. We will then take no position. On other occasions, neighbours have not objected but we believe that the application is not reasonable and we will object. In most cases, we work closely with the neighbours and jointly object at the hearing.
- We see our role as protecting the neighbourhood from inappropriate development. We live in a beautiful

neighbourhood which we want to preserve as much as possible. On the other hand, we do not want to stand in the way of reasonable renovations or new builds.

- We try to advise the neighbours on both the process, how to effectively object and on what grounds to object. We have reviewed many applications and have won a number of battles both at the COA and the OMB – and have also lost on a number of occasions! We have yet to appear at the TLAB.
- While a neighbour does not have to attend the COA hearing to object, our experience is that it makes a huge difference if people do attend; the Panel is only human, they have a large number of applications to deal with and they are going to take far more notice of someone who takes the time to attend the meeting than they are of a letter.

What are the Criteria to Determine if a Variance is Minor?

Unfortunately, the Planning Act has never defined the term “minor” in this context and there is a great reluctance on the part of the Planning Community to do so because, like many things, it is complicated. On the other hand, the more vague it is, the greater the opportunity for the development lawyers and planners to argue some of the most outrageous variances are minor.

The Four Tests

Some years ago, an appeal was heard in Divisional Court against an OMB approval in a suit known as the DeGasperis case in which the judge set forward “the four tests” which have since become the standard by which “minor” is supposed to be judged:

- Is the variance requested truly minor? The judge stated that to be minor, the variance should not have a *significant* effect on its surroundings.
- Is the proposal desirable for the appropriate development or use of the land and/or building?
- Is the general intent and purpose of the City's Zoning Bylaw maintained?
- Is the general intent and purpose of the City's Official Plan (OP) maintained? The OP speaks to the need to preserve the streetscapes in our old established neighbourhoods. Will this application achieve that or would it result in excessive massing?

The definition is still far from perfect but it is what we have to work with.

When writing a letter of opposition, it is essential that you address these tests, one by one, since they are the basis on which decisions are made by the COA Panel.

Other Issues

- **"As of Right"**: This is a term that means that, if the house is built in such a way that it meets all of the ZB regulations, a Building Permit will be granted "as of right" with no avenue for appeal for anyone objecting. For example, if the house meets the ZB regulation for height and length, even if neighbours believe it is too high or long, the owner of the house has the absolute right to build it and the COA cannot intervene.
- **Deferrals**: The COA will generally accept minor changes to a design at the hearing but if the changes are significant, a deferral may have to be requested; it will generally only be

granted if both parties agree. Applicants generally do not want a deferral because it can delay them by up to 6 months.

- **Communications**: if you are planning to renovate, it makes so much sense, once your plans are reasonably well defined, to discuss them with your neighbours so that, when the application is heard at the COA, the neighbours are not surprised and, hopefully, supportive. We suggest this all the time but so few actually do it, creating unnecessary antagonism between neighbours and unpleasantness all round.
- **Design**: We have virtually no say in terms of the design of a house that meets the ZB. The ZB does try to restrict certain designs such as 3 story flat-roofed houses, even if they meet the ZB. Otherwise, design is left to the owner and the architect. The only ways that we could control design is by being designated a Heritage District or by getting a Secondary Plan for the area. The MPRA has submitted application for Heritage status, and we have offered Moore Park to the City as a pilot project for a Secondary Plan; however neither are likely in the foreseeable future.

Design Guidelines or Residential Character Preservation Guidelines, such as those developed for Leaside, may be useful and the MPRA is looking for volunteer help to elaborate on our previous work in this area. However, these will not have any enforcement mechanism, as the City is still experimenting with them and is unsure how they could be enforced.