

**THE CORPORATION
OF THE
TOWN OF NIAGARA-ON-THE-LAKE
BY-LAW NO.5499-23**

A BY-LAW TO CONSTITUTE A COMMITTEE OF ADJUSTMENT UNDER
THE PROVISIONS OF THE PLANNING ACT AND TO REPEAL BY-LAW
5132-19

WHEREAS Section 44(1) of the Planning Act R.S. O. 1990, c. P.13 provides that if a municipality has passed a by-law under section 34 or a predecessor of such section, the council of the municipality may by by-law constitute and appoint a committee of adjustment for the municipality composed of such persons, not fewer than three, as the council considers advisable. R.S.O. 1990, c. P.13, s. 44 (1);

AND WHEREAS Section 45(3) of the Planning Act R.S.O. 1990 c. P.13 provides that a council that has constituted a committee of adjustment may by by-law empower the committee of adjustment to grant minor variances from the provision of any by-law of the municipality that implements an official plan, or from such by-laws of the municipality as are specified and that implement an official plan, and when a committee of adjustment is so empowered, that subsection (1) applies with necessary modifications;

AND WHEREAS the Regional Municipality of Niagara by By-law No. 183-1999 has delegated to the Council of the Town of Niagara-on-the-Lake the authority for the giving of consents under Section 53 of the Planning Act R.S.O. 1990, Chapter P.13, as amended, which is deemed to include the giving of approvals to the foreclosure of or exercise of a power of sale in a mortgage or charge and the issuing of certificates of validation;

AND WHEREAS the Council of the Town of Niagara-on-the-Lake deems it appropriate for the Committee of Adjustment to administer variances in accordance with the Town's fence and sign by-laws, pursuant to section 45(3) of the Planning Act R.S.O. 1990 c. P.13;

NOW THEREFORE THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE enacts as follows:

1. That the Committee of Adjustment (hereinafter referred to as the "Committee") is hereby constituted.
2. That the members of the Committee shall be appointed by resolution of Council for the term of Council and until their successors are appointed. Where a member ceases to be a member before the expiration of their term, Council shall appoint another eligible person for the unexpired portion of the term.
3. That the authority for the giving of consents under Section 53 of the Planning Act, R.S.O. 1990, Chapter p. 13, as amended (hereinafter referred to as the "Act"), which is deemed to include the giving of approvals to the foreclosure of or exercise of a power of sale in a mortgage or charge (subsection 50(18) of the Act) and the issuing of certificates of validation (Section 57) is hereby delegated to the Committee.
4. That the Committee is hereby empowered to make decisions on fence variance applications in accordance with the Town Fence By-law No. 4778-14.
5. That the Committee is hereby empowered to make decisions on sign variance applications in accordance with the Town Sign By-law.

6. That where a committee is composed of three members, two members constitute a quorum, and where a committee is composed of more than three members, three members constitute a quorum. (Planning Act, Section 44(5))
7. That the members of the Committee of Adjustment shall also constitute the membership of the Property Standards Appeals Committee.
8. That the Committee shall elect a chair and vice-chair. When both the chair and vice-chair are absent the Committee shall appoint another member as acting chair.
9. That the Committee shall be governed, including with regard to remuneration for the members of the Committee, by the Terms of Reference of the Committee of Adjustment, as set out in Schedule "A" attached hereto and forming part of this By-law.
10. That By-law No. 5132-19 is hereby repealed in its entirety.
11. That this by-law shall come into force and take effect immediately upon the passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 28TH DAY OF MARCH 2023


LORD MAYOR GARY ZALEPA


TOWN CLERK, DONNA DELVECCHIO



Terms of Reference

Committee of Adjustment

1.0 MANDATE

1.1 The Committee of Adjustment/Property Standards Order Appeals Committee (Committee) is a statutory tribunal which operates independently from Council. Authority is delegated to the Committee by the Town of Niagara-on-the-Lake Council (Council), under the provisions of the *Planning Act, R.S.O. 1990, c. P.13* (Planning Act) and the *Building Code Act, 1992, S.O. 1992, c.23* (Building Code Act) to hold public hearings for the purposes of making decisions with respect to applications for: Minor Variances; Legal Non-Conforming Uses (extension/enlargement/similar use); Consents; Fence Variances; Sign Variances; and Property Standard Order Appeals.

2.0 QUALIFICATIONS

- 2.1 Members shall have access to a computer and an email address to receive meeting invitations and agenda packages with large files.
- 2.2 Members shall be residents of the Town of Niagara-on-the-Lake (Town), work in the municipality or have a place of business in the municipality.
- 2.3 Members shall have a demonstrated commitment to, and interest in, the Community.
- 2.4 An understanding of the planning framework and applicable planning documents, including Provincial, Regional and Town land use planning policy and legislation.
- 2.5 An understanding of property standard regulations, including the Building Code Act, Town Official Plan and Property Standards By-law.
- 2.6 An understanding of fence regulations, including Municipal Act, 2001, S.O. 2001, c.25 (Municipal Act) and Town Fence By-law No. 4774-14.
- 2.7 An understanding of sign regulations in accordance with the Town Sign By-law No.4568-12
- 2.8 Organized, available and committed to conducting site inspections of all subject properties and attending all Committee meetings and training sessions.
- 2.9 Objective and have an open mind in order to fully consider the recommendations of Staff and the evidence provided.

3.0 ORGANIZATION

3.1 The committee is established by The Town of Niagara-on-the-Lake Council (Council) in

accordance with these Terms of Reference. Members are guided by these Terms of Reference.

- 3.2 Applications for the Committee of Adjustment/Property Standards Order Appeals Committee appointments are requested at the beginning of the term of Council. Members will be appointed by resolution of Council for the current four (4) year term until and until their successors are appointed.
- 3.3 This committee will consist of no more than nine (9) members.
- 3.4 The Committee is a quasi-judicial body, somewhat court-like in its operation, charged with observance and protection of applicable law and also with protecting the rights of the individuals affected by the decisions made.
- 3.5 The common law principles of natural justice require the Committee of Adjustment to ensure that individuals affected by their decisions have their equivalent of "a day in court".
- 3.6 Review of Property Standards Order Appeals will be guided by By-law No. 4779-14 and shall not follow the requirements of the Planning Act.
- 3.7 The Committee must also satisfy requirements concerning statutory notice, public hearings, calling of witnesses, and recording of proceedings.
- 3.8 The goal of the Committee of Adjustment is to provide for and conduct a fair hearing by:
 - a) Allowing anyone wishing to speak to an application an opportunity to do so;
 - b) Giving due diligence to the consideration of each application;
 - c) Openly having all discussions about each application and making all decisions in public at the hearing;
 - d) Making rational decisions with appropriate, well-thought-out conditions; and
 - e) Clearly stating the reasons for their decisions.
- 3.9 Requests to the Committee for withdrawal or adjournment must be in writing and submitted to the Secretary-Treasurer no later than one (1) day prior to the hearing of that application. Requests will be disposed of in accordance with the following:
 - a) Requests for withdrawal or adjournment prior to public notice will not require a vote from the Committee and applicants need not attend the hearing;
 - b) Requests for withdrawal or adjournment after public notice will require a vote from the Committee and the applicant must attend the hearing; and
 - c) The decision of the Committee, whether granting or refusing an application, shall be in writing and shall be signed by only those members who concur in the decision.
- 3.10 Decisions on minor variance, legal non-conforming use, and consent applications may be appealed to the Ontario Land Tribunal.

- 3.11 Decisions on fence variance and sign variance applications may be appealed to Council.
- 3.12 Decisions on property standards order appeals may be appealed to the Superior Court of Justice.
- 3.13 The Committee may make recommendations on issues within their mandate that warrant Council's consideration.
- 3.14 An ad-hoc committee will be considered disbanded after its' mandate has been fulfilled.

4.0 DUTIES & RESPONSIBILITIES

4.1 First Meeting of the Committee

- a) The members will elect a Chair and a Vice Chair at the first meeting.

4.2 Chair

- a) Chair all regular meetings of the committee and exercises authority and performs duties as required.
- b) Ensure that decorum is maintained at each meeting and that the rules of procedure and conduct are observed in accordance with By-law No. 5125-19 (Procedure by-law for the Town).
- c) Ensure that all committee members are provided an opportunity to comment.
- d) If applicable, assure that all applications are provided an opportunity to present and comment
- e) If applicable, assure that all members of the public are provided an opportunity to speak
- f) Provides guidance and leadership to the committee in the completion of its mandate.

4.3 Vice Chair

- a) Assume all functions of the Chair in the Chair's absence.

4.4 Members

- a) Attend meeting of the committee (if unable to attend notification should be sent the staff liaison as soon as possible prior to the meeting).
- b) Review agendas and reports sent prior to the meeting.
- c) Conduct site visits for upcoming applications.
- d) Contribute time, knowledge, skill and expertise to the fulfillment of the committee mandate.
- e) Are cognizant of any conflict of interest or perceived conflict in terms of issues that may service to benefit them personally.
- f) Act to protect the privacy of individuals with respect to personal information contained in reports and information circulated to the committee.
- g) Any committee member missing three (3) consecutive meetings without reasonable cause

or explanation will be deemed to have resigned from the advisory committee, filling of vacancies for the committee will be considered by Council.

4.5 Quorum

- a) Where a committee is composed of three members, two members constitute a quorum, and where a committee is composed of more than three members, three members constitute a quorum. (Planning Act, Section 44(5)).
- b) If quorum is not attained within fifteen (15) minutes after the hour set for a meeting, the recording secretary shall call the roll and take down the names of the Members present and the meeting shall stand adjourned until the next meeting

4.6 Support Staff

- a) This committee shall be assisted by staff of Community & Development Services - Secretary-Treasurer and Planning Staff, who will provide expert advice, technical reports, background information and recommendations to the Committee.

5.0 ROLES

5.1 Committee of Adjustment may:

- a) Give consent to convey or divide land when a plan of subdivision is not necessary, mortgage or charge land or grant an interest in land for 21 years or more, for example by easement, right-of-way, lease, or agreements;
- b) Give approval to the foreclosure of or exercise of a power of sale in a mortgage or charge and to issue of certificates of validation;
- c) Authorize a minor variance from the provisions of the Town Zoning By-law in respect of land, buildings or structures or their use;
- d) Permit the enlargement or extension of a legal non-conforming use of any land, building or structure;
- e) Permit the use of any land, building or structure for a purpose that is similar a legal non-conforming use or is more compatible with the uses permitted by the Zoning By-law;
- f) Permit the use of any land, building or structure for any purpose that conforms with uses defined in general terms in the Zoning By-law;
- g) Grant or deny a variance with respect to Sections 3, 5 and 6 of the Town Fence By-law; and;
- h) Grant or deny a variance from the provisions of the Town Sign By-law.

5.2 Property Standards Order Appeals Committee may

- a) Confirm, modify, or rescind the order to demolish or repair; and
- b) Extend the time for complying with the order.

6.0 MANAGEMENT OF THE COMMITTEE

6.1 Meeting Schedule

- a) This committee shall meet on the third Thursday of each month.
- b) Established meeting dates and times will not be changed unless circumstances

warrant special consideration.

- c) The annual schedule will be provided at the beginning of each year.
- d) Meetings will be held virtually unless otherwise directed by Council.
- e) All notices of meetings will be posted on the Town's web-calendar.
- f) The meeting agenda and presentation packages for each Committee meeting will be sent electronically to members in accordance with the Procedure By-law.

6.2 Delegations

- a) Delegations are limited to anyone wishing to speak to the Committee about a particular application or appeal on the meeting agenda.
- b) Delegations will be limited to ten (10) minutes.

6.3 Conflict of Interest

- a) Members shall avoid conflicts of interest. Members shall take proactive steps to mitigate conflicts of interest in order to maintain public confidence in the Town and its elected officials. Members are encouraged to seek guidance from the Integrity Commissioner and/or legal advice when they become aware that they may have a conflict between their responsibilities to the public as a Member and any other interest.
- b) All members have the duty to advise of any conflict of interest with respect to all matters before the committee. Members should decline to participate in the disposal of a matter where a real or apparent conflict is present.
- c) If a member has any conflict of interest on any matter and is present at a meeting at which the matter is the subject of consideration, the member:
 - i) Should, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
 - ii) Should not take part in the discussion of any question in respect of the matter; and
 - iii) Should not attempt in any way whether before, during or after the meeting to influence the discussion of the application.

6.4 Application Fees

- a) Application fees are established by Council in the Planning Application Fees Schedule.
- b) Despite the fees established by Council, in processing an application, the Committee may reduce the amount of or waive the requirement for the payment of a fee in respect of the application where the Committee is satisfied that it would be unreasonable to require payment in accordance with the fee.
- c) Requests for the reduction or waiver of a fee must be in writing and submitted to the Secretary- Treasurer one week prior to the hearing date for that application.
- d) A refund of fees regarding the withdrawal or adjournment of an application are established by Council in the Planning Application Fees Schedule.

6.5 Reporting

- a) Minutes of this committee will be forwarded directly into the information package unless there are action items, then minutes will be forwarded directly to Council.

6.6 Remuneration

- a) \$75.00 for honorarium per meeting attended; and
- b) Travel allowance to be determined by a measurement of distance in kilometres in accordance with the Town's current rate for mileage reimbursement, and only to be paid in the event of a member attending site visit(s) in person.

7.0 Enabling Legislation and By-laws (as amended)

Municipal Act, 2001, S.O 2001, c. 25
Planning Act, R.S.O. 1990, c. P.13
Statutory Powers Procedure Act, R.S.O 1990, c. S.22
Committee of Adjustment By-law No. 5132-19
Procedural By-Law No. 5125-19
Fence By-law No. 4778-14
Property Standards By-law No. 4779-14
Sign By-law No. 4586-12
Comprehensive Zoning By-law No. 4316-09
Zoning By-law No. 500A-74