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KPMG Review: Committee of Adjustment Issues

The Lytton Park Residents' Organization has been engaged in the Committee of Adjustment process since the Spring of 2021, and has attended more than a dozen hearings. Variances are not minor for most cases within the Lytton Park Area. This is because most cases involve speculators replacing original homes with much larger ones, which are then flipped at a profit. For this reason, the goal of most applicants is to receive permission for the largest structure possible on the subject lot. The Committee, therefore, has an important role to play in regulating the development of the neighbourhood.

The North York Panel Committee approves nearly all cases, and has approved the last 19 consecutive applications for new houses or major rebuilds within the neighbourhood, representing 100% of cases heard over the last 7 months. For this and several additional reasons outlined below, residents have begun to view the process as unfair and biased towards the applicants.

Section A: Public Hearing Notice

1. Lay persons often do not understand the language in the public hearing notice.
2. The hearing notice does not contain elevations of the proposed dwelling. This makes it difficult to visualize what is proposed. Elevations should be included in the mailing.
3. The hearing notice does not include the agenda for the hearing day nor the item number of the subject application. The item number or agenda should be more easily accessible to the public so they are aware of where on the agenda the subject item is.

Section B: Staff Reports

4. Staff reports are released the same day as letters are due. As a result, comments are submitted without knowing the position of City Staff on the application nor whether the City will be submitting a report at all.
5. In many cases the City Staff and the applicant discuss revisions to a proposal, and City Staff agree to support (or not oppose) the application. These discussions happen without any involvement of the impacted neighbours. When neighbours attempt to contact City Staff to provide input about the applications, they are often told that an agreement has already been reached with the applicant. This is not a transparent process nor one that benefits residents. The City should not be making compromises in private without input from residents.

The Lytton Park Residents' Organization ("LPRO") is an incorporated non-profit association, representing residents living in the area bounded by Lawrence Avenue West to Roselawn and Briar Hill Avenues, Yonge Street to Saguenay and Proudfoot Avenue.

<https://lyttonparkro.ca/>

Section C: Committee Hearing

6. Residents are often not available to remain on the call for up to 5 hours. Shorter time slots or more hearing dates could help to shorten the length of time residents have to wait on the call.
7. The applicant is able to speak twice while everyone else can speak only once, creating an immediate feeling of unfairness, because the applicant can speak for twice as long as any resident. In their rebuttal, the applicant dismisses all the concerns of the residents, attacks or degrades them, or introduces new arguments. The residents are unable to respond to anything the applicant says in the second round, which is procedurally unfair. The applicant and residents should be allocated equal time.
8. Applicants frequently modify the plans during the Committee Hearing. These last-minute revisions cannot be reviewed by neighbours, by City Planning, or even by the zoning examiner. Sometimes variances are changed on the fly without a revised set of plans, leaving the residents with no indication of what the proposal will look like.

Section D: Decisions

9. Section 45(1) of the Ontario Planning Act lays out the four criteria for a minor variance. In most cases, the Committee fails to apply the "four tests." For example, on several occasions, applications have been shown to exceed the size of every building on the street and have been approved regardless. In other cases, houses were approved although they greatly exceeded the zoning permissions and they compromised the usability of the backyards of adjacent properties. These issues were pointed out to the Committee. If the Committee had applied the four tests, applications such as these would have been refused. The Ontario Planning Act is clear about the Committee's obligation to apply the four tests, and anything less is a dereliction of duty.

The Committee members sometimes refer to the tests, even though they are not being applied. The Committee members require further training in order to fully understand not just the tests, but how to apply them to each application. Any Committee member who cannot apply the four tests should not be serving on the Committee.

Part of applying the tests must include the "cumulative impact" of combining numerous variances. The Committee needs to be trained on understanding cumulative impact. The applicant usually tries to argue that each variance on its own is minor. However, when an applicant is requesting variances for FSI, for building length, for building depth, for both side-yard setbacks, and for building height - the cumulative impact is not minor.

10. Applicants frequently refer to precedents, even though this is not a test and the Chair will remind the applicants not to do so. Regardless, this appears to factor into decisions, as Committee members will sometimes say "This proposal is in line with previous approvals" as a justification for moving a motion to approve. This represents a failure to apply 45(1) of the Ontario Planning Act. Furthermore, previous approvals are increasingly unrepresentative of the neighbourhood as the Committee is now approving 100% of applications in the neighbourhood, including those which do not meet the four tests. This allows applicants to refer to previous approvals resulting from the Committee's failure to apply the four tests. Precedent is an increasing issue in that every year applications are moving farther away from the intent of the By-law due to the Committee approving increasingly large and numerous variances.
11. If there is no refusal report from Planning Staff, the Committee member who moves the approval will often use this as the reason for moving approval. This is another example of the Committee failing to apply the four tests. The lack of a staff report is not one of the four tests prescribed in 45(1) of the Ontario Planning Act and cannot be used as a proxy for such.
12. The Committee frequently disregards staff reports, most often those requesting refusal from the Forestry Department due to the destructive impact to the tree canopy. In most cases, the Chair and members do not address or even acknowledge the request from Forestry to refuse the application.

Section E: Examples of Issues Encountered at North York Committee of Adjustment

Below are just a few examples of process issues encountered by our Organization at the North York Panel Committee of Adjustment:

In the case of 258 Cortleigh Boulevard, the applicant agreed to reduce the building length and FSI, but did not revise the architectural drawings. The Committee approved the application with a reduced length and FSI subject to the original architectural drawings. The original drawings did not reflect the revised proposal with the reduced length and FSI. As such it will not be possible to legally construct the house while complying with both the elevations and the revised list variances, because the two do not match.

In the case of 38 Alexandra Wood, Heritage Preservation Services requested a deferral. When a Committee member attempted to move the deferral requested by Staff, the Chair refused to even allow the motion, stating that "only the applicant can request a deferral." This is not a rule. The Chair cannot unilaterally decide to block other member from moving motions that are not prohibited by the rules, especially when requested by staff. As a result of procedures not being followed, a historic house will be demolished against the wishes of Staff. Committee members (and more specifically the Committee Chairs) need to

be trained on the procedures of the meeting and be immediately informed by the Deputy Secretary Treasurer during the meeting when procedures are not being adhered to.

In the Lytton Park Area, there is increasingly an issue of applicants returning to the Committee several times to increase the size of the proposed or approved building. It is easier to obtain approval when the variances are broken into two or more applications because the cumulative impact is often not considered. The worst two offenders, 83 Glengrove Avenue and 56 Caribou Road, have each been adjudicated 5 times (4 Committee hearings and once at the Ontario Municipal Board). Each time the applicant returns with a proposal that moves slightly farther away from the intent of the By-law, leading to an enormous cumulative impact. Repeat applications are usually approved. It is also unfair to make residents participate in the process 3 or 4 times for the same property. Restrictions need to be put in place to prevent applications from returning to the Committee over and over again to continually increase the size of the structure.

Thank you for your consideration of our submission.

Sincerely,

Maureen Kapral
President, Lytton Park Residents' Organization