

STAFF REPORT

THE CORPORATION OF THE TOWN OF COBOURG



Report to:	Mayor and Council Members	Priority:	<input type="checkbox"/> High <input checked="" type="checkbox"/> Low
Submitted by:	Vanessa Reusser, MCIP RPP Manager of Development Review & Secretary-Treasurer to the Committee of Adjustment vreusser@cobourg.ca	Meeting Type:	Open Session <input checked="" type="checkbox"/> Closed Session <input type="checkbox"/>
Meeting Date:	August 21, 2023		
Report No.:	Planning and Development-157-23		
Submit comments to Council			

Subject/Title: Direction on Municipal Staff Involvement respecting an Appeal to the Ontario Land Tribunal (OLT) of a Committee of Adjustment Decision for 48 Park Street, Cobourg

RECOMMENDATION:

THAT Council receive this staff report for information purposes;

FURTHER THAT Council approve and endorse one of the following Options:

Option 1. That Council defend the Committee of Adjustment Decision to deny the application at 48 Park Street by retaining a professional land use planner to support the Committee's decision to deny the application.

OR

Option 2. That Council take a participatory role in the appeal process for 48 Park Street by endorsing attendance by the Town's Solicitor and Planning Staff at the hearing to monitor and support the hearing process.

1. STRATEGIC PLAN

N/A

2. PUBLIC ENGAGEMENT

The minor variance application was heard in an open and public hearing by the Committee of Adjustment on July 18, 2023. The application was subject to public process, including notification requirements under the *Planning Act*. This report was posted on the Town's website, available to the public.

3. PURPOSE

To seek Council direction on municipal staff involvement respecting an appeal to the Ontario Land Tribunal (OLT) regarding a Committee of Adjustment decision on 48 Park Street, Cobourg.

4. ORIGIN AND LEGISLATION

The Committee of Adjustment is a quasi-judicial decision-making body consisting of five (5) members appointed by Council to consider applications for consent and minor variances under the *Planning Act*, R.S.O. 1990. Minor Variance applications to the Committee of Adjustment are processed in accordance with the requirements of Section 45 of the *Planning Act*, applicable regulations (O.Reg 200/96, as amended), the *Statutory Powers and Procedures Act* and applicable provincial and municipal policies (i.e., Official Plan, etc.). The Committee is also subject to the Town's Committee of Adjustment Procedural By-law No. 018-2023. The Committee has the same powers as Council in considering and approving requests for minor variances. The goals and purpose of the Committee are to: hear presentations from property owners, applicants or authorized agents; hear and consider public input; and, make informed decisions on *Planning Act* matters. All decisions are subject to notice of the decision and all decisions made under the *Planning Act* are subject to appeal to the Ontario Land Tribunal (OLT).

5. BACKGROUND

The subject property known as 48 Park Street is the location of a semi-detached dwelling in addition to a coach house (detached accessory dwelling unit). The Coach House, in its current form, was permitted through a previous approval of Minor Variance Application A-15-2022 that:

- Increased the permitted lot coverage of the accessory structure in Zoning By-law 85-2003 to 14.4% (from the maximum of 8%); and,
- Increased in total livable area of the coach house as a percentage of the principal dwelling from 40% to 42.4%.

The 2022 decision of the Committee of Adjustment was not appealed by the applicant or third parties.

Please refer to Recommendation Report (**Attachment 1**) which includes further Background Details on the matter.

The Coach House is currently being constructed (fully enclosed and near completion) as proposed in the 2022 Minor Variance Application that was supported by staff based on the variances applied for and agreed to by the Owner.

Based on further discussions with the Owner, the Owner's architectural plans for the Coach House have since changed.

The Owner submitted a new minor variance application to the Committee of Adjustment (File No. A-05-23) for the purposes of:

1. Amending Condition 1 from the decision of application No. A-15-2022 to read "The existing basement of the Coach House (east unit) to be used solely for storage and servicing uses."
2. Permitting a total livable area in the Coach House of no more than 112 square metres (less than 71% of the living area of the principal dwelling) contained entirely on the ground floor and second floor.

The Town's Planning Department retained a third-party professional planning consultant from SGL Planning & Design Inc. to assist in reviewing the application due to lack of staff resources. The planning consultant recommended approval of the application with conditions. Refer to Recommendation Report included as **Attachment 1**.

6. ANALYSIS

The Committee of Adjustment heard from the planning consultant, the owner/applicant, and neighbours at the meeting on July 18, 2023, and considered all oral and written submissions received.

The Committee denied the minor variance application.

The Applicant/Owner appealed the decision to the Ontario Land Tribunal (OLT) (formerly known as the Ontario Municipal Board (OMB) and Local Planning Appeal Tribunal (LPAT)).

The Committee of Adjustment is an independent and quasi-judicial committee appointed by Municipal Council to make decisions on minor variances and land division applications. The Committee of Adjustment decided the application did not meet the four tests of a minor variance and denied the application. Refer to Notice of Decision included as **Attachment 2**.

In consultation with the Town Solicitor, the following are options as to how the Municipality can participate in the appeal process:

1. Defend the Committee of Adjustment Decision to deny the requested minor variance. To best do this, Council should consider finding a professional land use planner to support the Committee of Adjustment's decision to refuse the requested variance. This would involve calling evidence and cross-examining the appellant's witnesses. It would be difficult to defend the decision without calling any expert witnesses.
2. Take a participatory and supportive role through sending legal representation and/or staff to the hearing to monitor but not call evidence or cross-examine

witnesses. By participating the Town would be able to comment on and/or reaffirm details of the Town's planning role and conditions that might be imposed by the Tribunal.

If Municipal Council were to opt to support the Committee of Adjustment decision (Option 1), and the Town seeks party status at the OLT Hearing, the Town will be required to retain external expert witness(es) to support Council's position. This would be necessary since the planning consultant who provided the recommendation report on behalf of the Town is on record as supporting the application, subject to conditions. There will be certain costs associated with hiring outside expert witness(es) and the Town's Solicitor to prepare for and attend the OLT Hearing at the expense of the general taxpayer.

The Ontario Land Tribunal (OLT) has the authority, pursuant to the *Ontario Land Tribunal Act*, to require certain individuals, such as Planning Staff, to give evidence and/or attend the Hearing, notwithstanding Council's direction.

7. FINANCIAL IMPLICATIONS/BUDGET IMPACTS

Depending on Council's direction for how to participate in the appeal process, there may be additional costs.

If Council were to support the Committee's decision and seek party status, Council would need to provide funding to cover costs of external experts and Solicitor participation in the OLT Hearing.

8. CONCLUSION

Municipal Staff have provided options for Council to consider for how to participate in the appeal process regarding 48 Park Street minor variance application. Staff are seeking Council direction for how the Town wishes to participate in the appeal process.

Planning Staff will continue to provide updates to Town Council as the appeal process evolves, and further direction from Town Council may be required at a later date.