



Committee of Adjustment Mandate Statement & Terms of Reference

Mission Statement

The Committee of Adjustment is a statutory tribunal with authority delegated to it by the Council of the Municipality of Kincardine under the provisions of the Planning Act, R.S.O. 1990, c. P.13.

The Committee is responsible for holding public hearings to make decisions on minor variance and consent applications submitted, pursuant to Section 44 of the Planning Act.

Mandate

The goal of the Committee of Adjustment is to provide for and conduct a fair hearing by:

- Allowing the applicant and every other person who desires to be heard regarding 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;
- Making rational decisions with appropriate, well thought out conditions;
- Clearly stating the reasons for their decisions.

The Committee of Adjustment may:

- Approve a minor variance to the Municipality of Kincardine Zoning By-laws passed under s.34 of the Planning Act (or a predecessor of this section) in respect of the land, buildings or structure, or the use thereof.
- Approve one or more applications for enlargement or extension to any existing legal non-conforming building or structure provided that the use continued from the date that the by-law was passed until the date of the application to the Committee.
- Approve one or more applications for a use that is either similar to or that is more compatible with the uses permitted in the by-law.

Any responsibilities not clearly identified within the Terms of Reference shall be in accordance with the *Planning Act, R.S.O. 1990, c. P.13.*

Structure

- 1.0 The Committee of Adjustment is a quasi-judicial body, charged with observance and protection of applicable planning law and with protecting the rights of the individuals affected by the decisions made.
- 2.0 The Committee operates independently from Council and its decisions may be appealed to the Ontario Land Tribunal (OLT).
- 3.0 Staff support will be provided by the Clerk or designate acting as the Secretary-Treasurer.
- 4.0 The Secretary-Treasurer of the Committee or designate with the assistance of the Planning Staff, shall perform all administrative duties related to the referral of all Applications to the Committee, the processing of all Applications, both before and after decision, and the forwarding of appeals to the Ontario Land Tribunal (OLT).
- 5.0 The Committee shall consist of 4 public members and 1 Council member, each having an equal vote. Per Section 44 (5) of the Planning Act, to have quorum, three members must be in attendance at anytime.
- 6.0 Applicants for appointment to the Committee of Adjustment must be:
 - A Canadian Citizen;
 - 18 years of age and over, and
 - Either the owner or tenant of land, or the spouse of an owner or tenant of land, within the municipality.

Committee Positions & Roles

- 1.0 Chair: One member of the Committee will be chosen by majority vote at the first meeting of the year to Chair the meetings and oversee the business of the Committee for that year. The vote will be in accordance with the Municipality of Kincardine Procedural By-law.
- 2.0 Vice/Acting Chair: A Vice-Chair for the same duration will be chosen by majority vote of the Committee, as needed. When the Chairperson is absent, the Acting-Chair will assume the role of Chair.
- 3.0 All Members:
 - Review applications in advance of the meetings;
 - Attend the Committee of Adjustment hearings, consider applicant, agency and public comments and make decisions in public regarding applications;
 - Contribute time, knowledge, skill and expertise to the fulfillment of the Committee's mandate.

- 4.0 The Committee shall also be composed of the following as non-voting staff resources:
 - County of Bruce Planning Department Staff
 - Secretary-Treasurer
- 5.0 Resignations from the Committee must be in writing to the Committee Chair and Clerk.
- 6.0 Other parties, with interest, such as subject matter experts, may be invited to the meetings, as required, but without voting privileges.

Meetings

- 1.0 Meetings shall be conducted with an agenda that is prepared by the Secretary Treasurer. The Committee shall follow the Municipality of Kincardine Procedure By-law and all meetings shall be open to the public, except as provided in the Municipality's Procedure By-law and/or the Municipal Act, 2001 and any other applicable legislation.
- 2.0 The Committee hearings are attended by Committee of Adjustment members, Planning/Development Staff, the Secretary-Treasurer of the Committee, applicants and/or their representatives and any member of the public who wishes to speak regarding an application or observe the proceedings.
- 3.0 County Planning Staff will provide the Secretary Treasurer with applications to be included on the agenda on or before the Wednesday preceding the meeting.
- 4.0 Notice of meetings shall be issued via circulation of agenda to Committee members on the Friday preceding the meeting except in the event of extenuating circumstances.
- 5.0 The Committee shall maintain open communication with staff to ensure rules and procedures of the Municipality of Kincardine are being followed.
- 6.0 Minutes shall be kept of all meetings and shall be posted to all members within 10 business days of the meeting. Adoption of meeting minutes will be included on the agenda of next meeting and then posted on the Municipality of Kincardine website as well as included on Council consent agenda.
- 7.0 The Committee shall meet on an as needed basis when applications are received by County Planning Staff, to fulfill their mandate as set out in this Terms of Reference. Committee of Adjustment meetings will take place in the Council Chambers at the Municipality of Kincardine or by electronic means per the Municipality of Kincardine Procedure By-law.

- 8.0 Members having a pecuniary interest in any issue under consideration by the Committee shall declare the pecuniary interest at the beginning of the meeting or at the earliest time known.
- 9.0 Voting is by simple majority on the application, a tie vote means the application is refused. Votes must be made verbally.
- 10.0 The Planner assigned to the Municipality of Kincardine will provide a planning report to the Committee for every application brought forward to the Committee.
- 11.0 For consistency of messages, media inquiries should be directed to the Secretary Treasurer.
- 12.0 The Committee is encouraged to hold meetings commencing no later than 4:00 p.m. to reduce the financial implications for the Municipality.

Term of Office

The members of the committee who are not members of Municipal council shall hold office for the term of the Council that appointed them and the members of the committee who are members of Council shall be appointed annually.

Public Hearing Process

The Committee will follow the Order of Business during the Public Meeting:

- 1.0 Call to Order & Call for Declaration of Pecuniary Interest of Members
- 2.0 Application(s) – Presentation of Report by Bruce County Planning Staff
 - 2.1 Opportunity to Comment on Application by Applicant and/or Agent
 - 2.2 Opportunity to Comment by those in Attendance
 - 2.3 Opportunity to Comment by Committee Members
 - 2.4 Summary of Comments by Planning Staff, including reminder of Appeal Period
 - 2.5 Decision on the Application(s) by Committee and effect of comments received on the Committee's decision
- 3.0 Adjournment of the Meeting.

Decisions

- 1.0 The Municipality of Kincardine Zoning By-law regulates how land and buildings are used and where buildings and structures can be located. The By-law also specifies lot sizes, dimensions, parking requirements, building heights, and other regulations necessary to ensure proper and orderly development.

- 2.0 In certain situations, it is not possible or desirable to meet all the requirements of the Zoning By-law provisions. In the situations, a property owner may make an application for a Minor Variance. A Minor Variance provides relief from a specific zoning requirement, and if approved, excuses the property owner from meeting the exact requirements of the by-law.
- 3.0 For the Committee to approve of an application for a minor variance, the Planning Act requires that the Members must be satisfied that the Application meets all of the following four tests:
 - Is considered to be a minor change from the Zoning requirements (an evaluation of impact rather than a numerical value);
 - Is desirable for the appropriate development or use of the land, building or structure;
 - Maintains the general intent and purpose of the Official Plan; and
 - Maintains the general intent and purpose of the Zoning By-law.
- 4.0 Reasons for approval or denial of an application shall be included in the Committee's decisions, including how public input impacted the decision and the decisions shall include appropriate and enforceable conditions. The Committee shall defer decisions when appropriate, with reasons and a time frame for re-hearing of the application.
- 5.0 No decision of the Committee (on an application) is valid unless it is concurred by majority of the Members that hear the Application. The decision of the Committee shall be in writing and shall set out the reasons. The decision shall state the effect that any public comment (written or verbally at the Hearing) had on their decision. The decision shall be signed by the Members of the Committee that concur with the decision.
- 6.0 A copy of the Committee's written decision shall be prepared and issued in accordance with the provisions of the Planning Act.

Municipality of Kincardine Policies and Procedures

The Committee and its members are governed by all applicable municipal by-laws and policies and all provincial legislation and regulation including:

- Municipality of Kincardine Zoning By-law
- Municipality of Kincardine Official Plan
- Municipality of Kincardine Procedural By-law

- Planning Act, R.S.O. 1990 c.P.13
- Ontario Provincial Policy Statement
- Ontario Municipal Act, 2001, S.O. 2001, c.25
- Ontario Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50
- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56