



SUBJECT: Bill 73 amendments to Planning Act regarding process change for variance applications

TO: Development and Infrastructure Committee

FROM: Planning and Building Department

Report Number: PB-76-16

Wards Affected: All

File Numbers: 540-03-1/16

Date to Committee: September 13, 2016

Date to Council: October 3, 2016

Recommendation:

Delegate to the Director of Planning and Building, pursuant to subsection 45(1.4) of the *Planning Act*, the authority and discretion to permit applications for minor variance to the zoning of properties that have been the subject of a site specific amendment within two years of the by-law being amended; and

Direct the Director of Planning and Building to work with the Clerks Department to include the amendment in the City's Delegated Authority By-law to grant the Director of Planning and Building the authority and discretion to permit minor variance applications to the zoning of properties that have been the subject of a site specific amendment within two years of the by-law being amended.

Purpose:

An Engaging City

- Good Governance

To keep the City of Burlington planning application processes up-to-date with the latest changes to planning legislation.

Background and Discussion:

On December 3rd, 2015, the Province of Ontario enacted Bill 73 “Smart Growth For Our Communities Act 2015”, which among other things made changes to the *Planning Act*. Bill 73 aims to make planning approvals more predictable for municipalities, stakeholders, and residents. The *Planning Act* changes came into effect on July 1, 2016.

The purpose of this report is to address the change that removes the ability to apply for a minor variance for two years following the passing on an applicant initiated zoning by-law amendment unless permitted by Council resolution. The intent of this change is to give greater control to municipalities; prevent zoning provisions that council determines to be important from being reversed through the minor variance process for two years; and increase stability by affording municipalities ability to implement site specific zoning by-laws (Section 45 (1.3) of the Act). However, the Act also allows Council to determine a process where minor variance applications can proceed within the two year time period (Section 45 (1.4) of the Act). The ability for the City to deal with variance applications in this situation ranges from Council having to decide if a minor variance application can proceed to the Committee of Adjustment on a case by case basis, or give exemptions class or area, right through to an outright permission to not utilize the two year restriction. Council may also delegate this authority.

Staff reviewed this change in relation to our current site specific rezoning development application model. This process requires two specific but different reviews before the development can proceed to construction. The first step is a site specific rezoning application (note: may also include an Official Plan Amendment) with the second step being site plan approval.

The rezoning process (Section 34 of the Act) deals with matters at a higher level (hierarchy of review exercised) than the site plan process. The rezoning process considers matters of the suitability and compatibility of the development in relation to surrounding uses, planning principles, policies and other technical matters. If a rezoning is supported, regulations are put in place to ensure that development is suitable and compatible.

The site plan process (Section 41 of the Act) by comparison is very detail oriented. The review is more specific in terms of what is being reviewed and ensures that the principles of the approved specific rezoning are implemented. This process deals with development matters such as exact placement and orientation of buildings and building elements, how the development interacts with the public realm, the location of parking, landscaping, fencing, etc.

The *Planning Act* is specific in how it recognizes the difference between the levels of review that occurs at the rezoning versus site plan stage. The powers and controls given to municipalities under Sections 34 and 41 of the Act are quite different and relate directly to the hierarchy of review that occurs through each process.

Occasionally, when reviewing a site plan based on a site specific zoning by-law a variance application to the Committee of Adjustment is needed to “fine tune” the development proposal. Some examples of this are:

- LJM /Davies Smith Developments 16 storey development at Appleby Ln., and Ironstone Dr.;
- The Mayrose Tycon/Waterbridge development Lakeshore Rd., and Elizabeth St.;
- Medica One/Carriage Gate development between John St and Maria St;
- Molinaro Group development on Brock Ave.
- Caloway REIT (Burlington North) developments at the northwest and northeast corners of Appleby Ln., and Dundas St.

The minor variance process is a public process with mandatory public circulation to affected owners in close proximity to the subject property and includes an open public meeting to the application. The ability of a developer to significantly change what was approved by Council is somewhat controlled by the limited powers given to the Committee of Adjustment to grant a minor variance under Section 45 (1) of the Act. All applications for minor variance must be considered and evaluated against the four tests of the Act (and must meet all of the tests):

- I. meets the general intent and purpose of the Official Plan,
- II. meets the general intent and purpose of the zoning by-law,
- III. must be desirable for the appropriate development or use of the property, and
- IV. must be minor.

The process utilized by the city provides adequate flexibility to ensure development meets the standards and expectations set by the rezoning approval and it provides for public consultation if a variance application is ultimately required.

Other municipalities in the GTHA have found that some developers use the variance process to make significant changes to the approved development concept. This is likely the reason the Province made this specific change to allow municipalities to control this. Although Burlington has not seen this to date, there is a risk we could find ourselves in the situation other GTHA municipalities have faced with someone trying to abuse the process.

In an effort to ensure developments proceed in a timely manner, it is recommended that Council delegate authority to the Director of Planning and Building to determine if a minor variance be contemplated on a site with a recent site specific zoning approval is appropriate. However, the timing of the new delegated authority by-law and the need to deal with this issue do not align. Accordingly, the first recommendation is a stop gap measure that will allow our site specific development model to proceed without having

to wait for the Delegated Authority By-law update. Section 45 (1.4) allows Council to waive or change how it deals with this provision through a resolution.

Staff's recommendation is a balanced approach that allows the Director of Planning and Building to determine if a variance application is appropriate within the two year time frame. This will ensure that the current system remains flexible yet has a further control if a development is not meeting the concept envisioned by Council.

Options considered

Staff considered three options:

Option 1 (Not recommended) anyone seeking an exemption from the two year restriction would have to obtain permission directly from Council.

It was felt that this recommendation would complicate the process and present unnecessary delays. Anyone wanting or needing to make a variance application would have to obtain the necessary permission. This could add several months onto the development approval process.

Option 2 (Not recommended) Pass a resolution that the two year restriction not apply to any site specific rezoning.

There is some inherent risk in maintaining the status-quo. In that applicants could seek to add height or density or other permissions outside of the original Council approval through the minor variance process.

Option 3 (Recommended) Delegate the decision of allowing a minor variance application within two years of a site specific rezoning if it is within the public interest to the Director of Planning and Building.

This is a balanced approach that will meet the needs of the development community, public interest and Council's vision of the rezoning.

Financial Matters:

N/A

Conclusion:

Staff recommends Council delegate to the Director of Planning and Building the discretion to determine if a minor variance application is suitable within the allowed for two year restriction for applicant initiated site specific zoning by-law amendments. This

will ensure that our current site specific development approval process is both managed and flexible to meet the needs of everyone.

Respectfully submitted,

Sean Kenney

Secretary Treasurer, Committee of Adjustment

905-335-7600, ext. 7930

Report Approval:

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.