

# Minor Variance Information Guide

Municipalities in the Province of Ontario establish standards to achieve orderly and safe development within their communities that are set out in Zoning By-laws. A Zoning By-law governs the types of uses permitted on a property and includes (but is not limited to) minimum development requirements such as setbacks, lot coverage, building height, gross floor area etc. The Minor Variance application process is a means to seek relief through the Committee of Adjustment when a building or structure cannot conform exactly to the requirements of the Zoning By-law. This process may also be used to rectify an existing non-compliant situation.

## Step 1: Pre-Application Consultation

Pre-Application Consultation is a separate application process where staff review your proposal, identify areas of non-compliance, determine the appropriate *Planning Act* application, and identify materials, studies, etc., required to form a complete application. More information and the application form are available on our Planning and Zoning webpage.

## Step 2: Prepare & Submit Complete Application

Complete the entirety of the application form and provide any additional information staff identified as being required through your Pre-Application Consultation (if applicable). Submit to [planning@gbtownship.ca](mailto:planning@gbtownship.ca) and pay the associated fee. Payment instructions are located at the bottom of the Planning & Zoning webpage.

## Step 3: Circulation of Notice

In accordance with the *Planning Act* a Public Hearing must be held. Staff will issue Notice of your application to surrounding property owners and you are also required to post a Notice sign on the subject lands. Depending on your lot type, you may be required to post more than 1 sign. Staff will provide you with the notice sign and Posting Notice Guideline with instructions approximately 1 month in advance of your hearing date.

## Step 4: Public Hearing

You may attend the hearing in Council Chambers or online via Zoom, for which a link to attend the meeting will be provided to you the day prior. At the hearing, a Township Planner will present an overview of your application. The Chair will then provide you or your agent the opportunity to add additional information or make a presentation. Any person having an interest in your application will be given the opportunity to make their views known. The Committee may ask questions of the applicant and/or members of the public and once satisfied that all available evidence has been heard, it will render a Decision to approve, deny or defer the application which may include conditions.

## Step 5: Decision & Appeal Period

The *Planning Act* provides for a 20-day appeal period following the Decision of the Committee. An appeal may be filed to the Ontario Land Tribunal by the applicant, a specified person (i.e., Hydro One Inc.) or a public body against the decision during this period. If no appeal is filed, the Committee's decision is final and binding.

## Step 6: Clearance of Conditions

Once the appeal period ends, you will receive a Notice of No Appeal and you should begin fulfilling all conditions attached to the Decision. Once you have provided the Township with the documentation to satisfy all conditions, you can provide such to the Planner who worked with you throughout the process. The Planner will confirm accuracy and advise on next steps (i.e., obtaining a building permit).

## Minor Variance Tests

The powers of a committee of adjustment are set out in subsections 45(1) and 45(2) of the *Planning Act* which are to: grant a minor variance from the provisions of a by-law; permit the enlargement or extension of a legal non-conforming use; or permit the use of any land, building or structure which, in the opinion of the committee, conforms with the uses in the by-law.

An application for a minor variance from the provisions of the by-law is subject to a four-fold test which requires consideration of whether:

1. The general intent and purpose of the Township's Official Plan is maintained.
2. The general intent and purpose of the Township's Zoning By-law is maintained.
3. The application is appropriate for the development of the land and/or building.
4. The variance is minor in nature.

The committee must consider whether all four requirements under subsection 45(1) have been met.

For applications to extend a legal non-conforming use under subsection 45(2), the consideration is to be based upon the following tests:

1. whether the application is desirable for appropriate development of the subject property; and,
2. whether the application will result in undue adverse impacts on the surrounding properties and neighbourhood.

There is no basis for distinguishing at law between nonconforming land, buildings or structures (where the use is no longer permitted) and noncomplying land, buildings or structures (where the performance standards are no longer met). Both are equally protected under subsection 34(9) of the *Planning Act* and the common law. Note that it is the applicant's responsibility to prove that the building/structure subject to the application was established legally.

## What if the Committee of Adjustment denies my minor variance application?

In accordance with Section 45 of the Planning Act, you can appeal the decision and/or conditions to the Ontario Land Tribunal (OLT). The last day for filing an appeal will be identified on the Notice of Decision. A "Notice of Appeal" may be filed with the Secretary-Treasurer of the Township of Georgian Bay or via the Ontario Land Tribunal e-file service (first-time users will need to register for a My Ontario Account) at <https://olt.gov.on.ca/e-file-service> by selecting Township of Georgian Bay as the Approval Authority or by mail. The appeal must set out the reasons for the appeal and be accompanied by the fee required by the Ontario Land Tribunal payable to the Minister of Finance.

## Additional Information:

- The Committee of Adjustment meets once per month and the schedule is available on our [Agendas and Minutes webpage](#).
- The application fee is non-refundable. Refer to the User Fees & Charges By-law.
- You may wish to notify your neighbours of your application well in advance of the hearing and you may request that they submit a letter of support for Committee to consider.
- It is beneficial (especially during periods of hazardous access conditions) to provide staff with site photos in case staff or Committee members are unable to conduct a site visit.
- Without disturbing the area, you may wish to identify where the proposed building or structure will be located on the property using markers, stakes, or a chalk line.
- Please note that if you are present while Committee members are conducting their individual site visits, they will not be able to give advice or discuss the potential outcome of your application.
- Notice sign(s) can be removed from your property after the appeal period.