

**BY-LAW NUMBER XX-23**

**- of -**

**THE CORPORATION OF THE COUNTY OF BRANT**

To Amend By-Law Number 16-99, which established the Committee of Adjustment for the County of Brant.

**WHEREAS** By-law Number 16-99 of the Corporation of the County of Brant constituted a Committee of Adjustment from the County of Brant;

**AND WHEREAS** the Council of the County of Brant has approved the Terms of Reference for the Committee of Adjustment.

**NOW THEREFORE THE COUNCIL OF THE COUNTY OF BRANT HEREBY ENACTS** as follows:

1. That the attached terms of reference be adopted as Schedule A to by-law 16-99.

**READ** a first and second time, this 28th day of March 2023.

**READ** a third time and finally passed in Council, this 28th day of March 2023.

**THE CORPORATION OF THE COUNTY OF BRANT**

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David Bailey, Mayor

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Alysha Dyjach, Clerk

## COMMITTEE OF ADJUSTMENT

### TERMS OF REFERENCE 2023

#### The County of Brant

##### 1. DEFINITIONS

a) **"COMMITTEE"** refers to a group of seven individuals appointed to the Committee of Adjustment by By-law of the Council at the County of Brant pursuant to the provisions of the Planning Act, R.S.O., as amended C.P. 13 (Sec. 44(1)).

b) **"CHAIR"** refers to the chair of the Committee of Adjustment, Brant County, elected by members of the Committee at a regular meeting of the Committee; members may appoint another member to act as Acting Chair in his/her absence (Sec. 44 (7)). The Chair ensures that decorum is maintained at each hearing and meeting and that the rules of procedure and conduct are observed.

c) **"MEMBER"** refers to an individual appointed by by-law of the Council of the County of Brant to the Committee of Adjustment (Sec. 44(1)).

d) **"TERM OF OFFICE"** refers to the length of time a Committee of Adjustment member shall be in office; this term corresponds with the term served by the Council of the Corporation of Brant County((Sec. 44(3)).

e) **"SECRETARY-TREASURER"** refers to the Secretary-Treasurer of the Committee of Adjustment of the County of Brant.

f) **"ASSISTANT SECRETARY-TREASURER"** refers to the Acting Secretary-Treasurer of the Committee of Adjustment, Brant County, appointed by the Director of Development Planning department of the County of Brant and responsible for the duties of the Secretary-Treasurer in his/her absence and such further duties as assigned by the Committee of Adjustment.

g) **"PUBLIC HEARING"** hereinafter called "meeting(s)"; refers to the proceeding of the Committee of Adjustment as a whole. Committee meetings should be held within thirty days of the County confirming receipt of the application and should be open to the public. The Committee may adjourn the hearing or reserve its decision (Sec. 45(6).

h) **"APPLICATION"** refers to an application made under the Planning Act, R.S.O. 1990, C.P. 13, for minor variances ((Sec. 45 (1, 2 and 3)), or an application for consent ((Sec. 53(1)), or an application for validation of title ((Sec. 57(1)).

i) **"REMUNERATION"** refers to the compensation paid to Committee of Adjustment members as per the Brant County By-law (Sec. 44(9)).

## 2. MANDATE

The Committee of Adjustment is a quasi-judicial body, operating independently from the Corporation of the County of Brant, which must comply with rules of procedures as prescribed in the *Planning Act*, R.S.O. 1990, as amended and several regulations thereunder. The Committee of Adjustment is guided by applicable legislation, Provincial Policy, the Official Plan and appropriate Zoning By-Laws and Codes.

The Committee of Adjustment is empowered to exercise authority under Sections 44, 45 and 53 of the *Planning Act* R.S. O. 1990.

Section 44 (1) authorizes the municipality to appoint a Committee of Adjustment provided the municipality has passed a by-law under Section 34, the Council of the Municipality may by by-law constitute and appoint a Committee of Adjustment for the Municipality composed of such persons not fewer than three.

Section 45 (1) of the *Planning Act*, R.S.O. 1990, as amended identifies the powers of Committee, including:

- The power to authorize such minor variances in respect of the land, building or structure or the use thereof, provided it is the opinion of the committee that the variance is desirable for the appropriate development or use of the land, building or structure, and that the general intent and purpose of the by-law and of the official plan are maintained.
- Permit the enlargement or extension of an existing legal non-conforming building or structure.
- Permit the use of land, building or structure for a purpose that is similar to the existing legal non-conforming use or is more compatible with the uses permitted by the Zoning By-Law.
- Give consent to convey or divide land when a plan of subdivision is not necessary, mortgage or charge land or grant an interest in land for 21 years or more, for example by easement, right-of-way, lease, or agreements.
- Permit the use of land, building or structure for any purpose that conforms with the uses defined in general terms in the Zoning By-Law.

Section 54 (5), authorizes the Council of a single tier municipality to delegate authority to give consent under Section 53 to a Committee of Adjustment.

Committee of Adjustment members consider minor variances from the Zoning By-law and determine the viability of applications for consent (land division). These decisions are made by:

- Reviewing, in the case of minor variances, the four tests as stipulated by s. 45(1) of the Planning Act as:
  - Being minor in nature;
  - Being desirable for the appropriate development of use of the land, building or structure;
  - Maintaining the general intent and purpose of the zoning by-law; and
  - Maintaining the general intent and purpose of the official plan;
- Having regard, in the case of consents, to matters under Section 51 (24) of the Planning Act;
- Reviewing Council decisions and by adhering to the Official Plan policies and any other applicable municipal or provincial policy; and

- Being consistent with the Provincial Policy Statement and matters of provincial interest.
- 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”).

### **3. COMPOSITION OF THE COMMITTEE OF ADJUSTMENT**

The Committee of Adjustment is composed of seven(7) appointed representatives. Members should have a demonstrated commitment and interest in the community, and the committee membership should reflect a balanced representation from the areas of planning, construction and lay people. Members should collectively have the ability to understand and apply the provisions of the County’s Official Plan and Zoning By-Law and should be considered impartial with respect to their ability to fulfill their responsibilities. .

It is recommended that appointments to the Committee of Adjustment be based upon potential Members meeting the following criteria:

- Resident of Brant County;
- Knowledge and understanding of the land use planning process including minor variance and consent process;
- having a balanced perspective between rural and urban interests;
- Be objective, possess relevant education component or equivalent experience and have strong analytical skills in order to fully consider all information provided;
- Excellent communication skills;
- Be available and able to conduct site inspections on subject properties;
- Be organized, available and committed to attend all Committee meetings; and
- Ability to commit the time for servicing on the Committee.

The Committee of Adjustment at its inaugural meetings shall appoint from its members a Chair and when the Chair is absent through illness or otherwise, the Committee shall appoint another member as Acting Chair.

### **4. TERMS OF APPOINTMENT**

Appointed Committee of Adjustment members are appointed for a four-year term which coincides and runs concurrently with the term of office of the Council of Brant County.

### **5. ROLE OF COMMITTEE OF ADJUSTMENT MEMBERS**

Committee of Adjustment members are responsible to conduct a site visit to the respective property prior to holding a hearing. During the meeting, Members listen to the planning evidence being presented by County of Brant Planning staff, the agent/applicant and have the opportunity to ask questions should any outstanding information still remain. The Members listen to submissions and discuss any issues or concerns regarding applications, prior to making a decision. Once all the information is presented, each Member votes on the proposal.

## **6. LOCATION, CALENDAR DATE AND TIME OF MEETINGS**

All meetings of the Committee shall be heard in-person at the County of Brant Council Chambers or virtually through the use of video conference software, unless alternate public meeting room arrangements have been made. Committee of Adjustment meetings shall be digitally streamed through the County of Brant's social media channels, such as YouTube.

The room assigned for the Committee of Adjustment meetings shall be identified on the Notice of Hearing for Minor Variance and Consent applications that is circulated by the Secretary-Treasurer or designate of the Committee. Should alternate arrangements be required after the Notice of Hearing has been issued and time does not allow for re-notification by mail, a sign shall be posted at the original meeting room location indicating the alternate meeting room arrangement.

All meetings will be scheduled on the third Thursday of each month. The meetings will begin at 6:00 PM and close no later than 9:00 PM, unless a time extension is approved by the Committee. Members of the public who wish to speak to an application should arrive at 5:45 PM.

## **7. CALL OF MEETINGS**

All meetings of the Committee of Adjustment, shall be called by the Chair of the Committee.

In consultation with the Chair, the Secretary-Treasurer may cancel or reschedule a meeting.

The Chair will ask if any Member of the Committee wishes to declare a pecuniary interest. This must be noted in the meeting minutes.

## **8. DISCLOSURE OF PECUNIARY INTEREST**

If a Committee of Adjustment member has a pecuniary interest, direct or indirect, in any matter in which the Committee is concerned and is, or will be present at a meeting at any time at which the matter is the subject of consideration, the member:

- a) Shall, before any consideration of the matter, at the meeting verbally disclose the interest and its general nature.
- b) Shall not, at any time take part in the discussion of, or vote on, any question in respect to the matter; and
- c) Shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

If a Member is not present and has any pecuniary interest, he/she shall disclose his/her interest at the next meeting in attendance.

## **9. REMUNERATION PAID TO COMMITTEE OF ADJUSTMENT MEMBERS**

The members of the Committee of Adjustment for The County of Brant so appointed shall receive remuneration as the Council may provide for the exercise of their respective duties and responsibilities.

Mileage for site inspections shall be paid to each member of the Committee of Adjustment as determined annually by Council, however mileage to and from regular scheduled meetings is not eligible.

Mileage to pick up Committee of Adjustment packages will not be paid to members of the Committee of Adjustment. Members have the option of picking up their packages or receiving packages via courier. A form will be distributed at the beginning of each term asking members to sign to their decision with the understanding that they have the option to change their method of receiving their packages at any time.

#### **10. QUORUM**

Three members shall be deemed to constitute Quorum as per Section 44 (5) of the Planning Act. If no quorum is present thirty (30) minutes after the time appointed for a meeting, the Chair of the meeting or the Secretary-Treasurer may discharge the members present and may cancel or reschedule the meeting.

The Chair shall be counted in determining quorum and shall be entitled to all the rights of a member on the Committee, including voting.

#### **11. VOTING OF MEMBERS**

Every Committee of Adjustment member, including the Chair, who is present at a Committee Meeting when a question is put shall vote thereon, except where he/she is disqualified to vote by reason of a pecuniary interest or is absent from the meeting when the question is put. Should the motion result in a tie said motion is defeated. If a motion is defeated a new motion must be brought forward and voted on.

Every Committee member who is not disqualified from voting by reasons of a declared pecuniary interest shall be deemed to be voting against the motion if he/she declines or abstains from voting.

#### **12. CONDUCT OF MEETINGS**

- a) The meeting shall be called to order by the Chair. The meeting shall commence at the time given in the Notice of Hearing and will continue until a motion is passed to adjourn the meeting.
- b) The Chair shall ask the Committee of Adjustment Members to declare any pecuniary interests that they may have in applications before the Committee, and the provisions of the Municipal Conflict of Interest Act shall apply. If an interest is declared, the member will not participate in any discussion, vote or any question with respect to the application.

Decisions are to be made by those members present at all hearings regarding the application. The Secretary-Treasurer will inform members of the Committee via the meeting agenda whether he/she was absent when the application was first heard. This rule does not apply if the application was deferred at the applicant/agent's request provided no formal discussion took place.

- d) All meetings shall be open to the public and no person shall be excluded except for improper conduct, except as indicated in part (e) hereunder.
- e) Meetings shall be closed only in the manner and circumstances identified by the Municipal Act.

- f) The Committee can choose to defer an application if the applicant and/or agent are absent from the meeting.
- g) The Chair shall also call for any requests for deferral of an application or for any request for withdrawal of an application.
- h) All requests for deferrals of the hearing of an application to a later meeting as noted above must be for reasonable cause.
- i) The Chair of the meeting shall ask the applicant, authorized agent or the applicant's representative to introduce themselves.
- j) The Chair of the meeting shall invite anyone else having an interest/concern, with respect to the application to come forward and introduce themselves. All Delegates shall have a maximum ten minutes to speak to the application and shall be focused solely on the application at hand, the Secretary Treasurer or Staff will provide 2-minute warning.
- k) The Planner will present the application to the Committee of Adjustment, including his/her recommendation.
- l) The Committee shall give the applicant, authorized agent or the applicant's representative opportunity to respond to any comments received from commenting agencies or interested parties.
- m) The Committee members, through the Chair, may ask questions of the applicant, agent, Planning staff, or those parties expressing an interest or concern.
- n) After having considered the issues raised by the applicant, authorized agent, applicant's representative, any respondents and the evidence heard at the meeting by the Committee, the Chair shall ask the members of the Committee for a motion with respect to the disposition of the application. The Chair of the meeting upon receipt of a motion from the Committee member shall ask for a seconder to the motion. The Chair of the meeting shall call for a vote by the Committee on the motion and the Chair shall announce whether the motion is carried or defeated. A defeated motion is not a decision. A new motion should then be presented until one is carried by a majority of the members. The chair shall announce at the meeting, the decision of the Committee.
- o) Committee members may ask the Secretary-Treasurer for any assistance they require related to the matters at hand.
- p) Committee members concurring with the decision of the Committee shall sign the decision at the meeting or electronically if the meeting is being held virtually. Should the Committee's decision differ from the recommendation made by Planning Staff, Committee shall provide their written reason on the decision.
- q) The conduct of the meetings and members, with respect to matters not specifically addressed, shall be in accordance with the Statutory Powers Procedure Act R.S.O. 1990, CS. 22 as amended, the Municipal Conflict of Interest Act R.S.O. 1990, C.M 50 as amended and The Municipal Act

2001, S.O. as amended. Conduct not covered by these acts will be in accordance with Robert's Rules of Order.

### **13. ACCESS TO MEETINGS - CLOSED MEETING PROVISIONS**

Except as provided in this section, all meetings shall be open to the public, media and Committee of Adjustment Minutes shall be available upon request. The Chair may expel any person for improper conduct at a Meeting. A meeting may be closed to the public if the subject matter being considered is:

- a) the security of the property of the municipality or local board;
- b) personal matters about an identifiable individual, including municipal employees or local board members;
- c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- d) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality.
- e) the receiving of advice that is subject to solicitor-client privilege; including communications necessary for that purpose;
- f) a matter in respect of which the board or committee may hold a closed meeting under the authority of another Act.
- g) for the purpose of educating or training the members, subject to the condition that no member discusses or otherwise deals with any matter in a way that materially advances the business or decision- making of the Committee.

Before holding a Meeting or part of a Meeting that is to be closed to the public, the Committee shall state by Resolution:

- a) the fact of the holding of the Closed Meeting;
- b) the general nature of the matter to be considered at the Closed Meeting.
- c) in the case of a meeting for educational or training purposes, that it is closed for that purpose as well.

All deliberations while in Closed Session shall remain confidential unless otherwise approved by Committee in Open Session. The Secretary-Treasurer shall record all Minutes of Closed Session without note or comment. These Minutes shall remain confidential.

### **14. PROVISION FOR ACCESSIBILITY AND DIVERSITY**

Adequate provision shall be made by the Chair of the Committee of Adjustment and relevant staff to ensure that meeting locations, agenda and minute formats, communications and conduct of meetings be accessible, to ensure maximum participation and quality customer service. Reference may be made



to the provisions of the Ontarians with Disabilities Act, and similar legislation, policies and guidelines.

## **15. NOTICE**

The notice of an application to be considered at a meeting shall be given in a manner that the Committee of Adjustment deems appropriate, in accordance with the provisions of the Planning Act, as amended, and any regulations passed there under, together with the Notice requirements contained in the conditions of delegation of the consent granting authority from the Corporation of the County of Brant.

## **16. APPLICATION INFORMATION**

A planning staff report including a recommendation for approval, approval with conditions, refusal or deferral shall be authored by a Planner and provided from the Secretary-Treasurer one week prior to the hearing to the Committee members, applicants, authorized agents, applicants representatives and anyone having an interest in an application. If the recommendation is subject to conditions, recommended conditions are to be included in the report. Committee members will receive his/her copy of the report in their applicable agenda packages.

## **17. DEFERRALS**

1. As indicated above, Committee may pass a motion to defer an application for any of the following reasons:
  - a) At the request of the applicant and/or agent;
  - b) If the applicant and/or agent are absent from the meeting;
  - c) At the recommendation of Planning Staff;
  - d) For other reasons as Committee deems necessary.
2. All requests for deferrals of the hearing of an application to a later meeting as noted above must be for reasonable cause.
3. A motion to defer an application must be carried by a majority of the members.
4. Deferral fees, as passed by Brant County Council By-law, may apply.
5. The Secretary-Treasurer will consult with Planning Staff to determine if a fee shall apply to each individual deferred application.
6. A deferral letter will be mailed to the applicant and/or authorized agent informing them of the deferral policy and the prescribed fee if applicable.
7. Once the applicant/agent has addressed the reason(s) for the deferral and resolved all outstanding issues, a request must be submitted to the Secretary-Treasurer to place their application on an upcoming agenda for Committee of Adjustment.
8. Such request must be submitted in writing to the attention of the Secretary-Treasurer and accompanied by the applicable fee as outlined in the deferral letter.

9. Requests and fees must be received by the Secretary-Treasurer a minimum of three weeks in advance of the Committee meeting.
10. Planning staff will do their best to accommodate the request but depending on the length of the Committee Agenda, may not always be able to reschedule the additional hearing on the meeting date requested.