



June 30, 2022

Concerns about COA

To whom it may concern:

Cliffcrest Scarborough Village SW Residents Association (CSWSWRA) is an incorporated not-for-profit association working to preserve the unique nature of our neighbourhoods. Because our neighbourhood is targeted by developers, CSVSWRA appears almost monthly at Committee of Adjustment hearings to oppose applications to demolish modest, affordable houses and replace them with enormous houses that often require multiple minor variances.

The following are our concerns with the Scarborough Committee of Adjustment:

1. Panel members seem to lack training. In making a decision, some panel members do not cite any of the four tests. The panel does not appear to be aware of the DeGasparis decision of the Ontario Divisional Court in 2005 where the Judge ruled that if even one of the four tests fails, the application must be refused. There is a lack of transparency both at the meeting and in the written decisions because no justification of how an application meets/does not meet the 4 tests is provided. The very low refusal rate of applications at the Scarborough Committee of Adjustment supports our concerns.
2. Lack of consistency in what is approved – CSVSWRA expects that the hearing will be fair and impartial and that the four tests will be used as the criteria in decision making. However, if neighbours do not object, applications are approved with little discussion and no reference to the four tests. The current residents of a community know their neighbourhoods and this is not considered by the members of the Scarborough Committee of Adjustment. It is not clear whether the members undertake site visits or whether Community Planning is aware of the character of our neighbourhoods. In TLAB cases, expert witnesses describe the character of our neighbourhoods as modest, low-rise houses surrounded by generous front, back and side-yards. We are supportive of development that respects the built form of the existing homes but strenuously oppose overdevelopment which removes the healthy tree canopy and reduces privacy.
3. The lack of a definition of minor variance means that some applications requesting variances of over 20% are approved. The Ontario Divisional Court in the DeGasparis decision noted that the definition of “minor” is something that is “lesser or comparatively small in size or importance”. The impact of approvals like this are changing the character of our neighbourhood in violation of the Official Plan, which is one of the four tests which must be met for an application to be approved.
4. There is a lack of coordination between City departments to which applications are circulated. For example, the Area 52 Basement flooding study is not yet completed (CSVSWRA represents

residents living in Area 52) yet COA continues to approve basement excavations of 10 feet or more. Unfortunately, there is nothing in the zoning bylaws to address the depths of basements. Cliffcrest and Scarborough Village are very close to the Scarborough Bluffs, where erosion and basement flooding are of serious concern. The lack of comments on applications from Urban Forestry, Community Planning, Water and Transportation is taken by the Scarborough COA to mean there are no objections, when in fact it might mean these divisions are seriously under-resourced and lack the capacity to adequately review applications.

5. The City's climate action plan, Transform TO needs to be part of the COA decision-making process. The present COA process and the City of Toronto are at odds with respect to climate change. (Reduction of permeable land, permission to destroy mature trees, etc.)
6. Agents of applicants amend applications during their presentations at the meeting, which provides an appearance of co-operation from applicants, and is often praised. This also puts those registered to speak in opposition at a disadvantage because they are lay people who are generally not experts in zoning bylaws. In addition, agents/applicants are permitted to rebut the deputations of neighbours. This is undemocratic. CSVSWRA has witnessed agents rebutting the statements of neighbours with inaccurate information, with no recourse for opponents of applications.
7. Property owners, who are developers or builders, hire agents to speak for them at Committee of Adjustment hearings and do not speak. If neighbours do not appear in opposition to an application, Committee members interpret this as support. This is a double standard. It should be mandatory for property owners to participate in the hearing and listen to the concerns of those who will be most impacted by the building proposal.
8. Certain developers in our neighbourhoods continually go back to COA to ask for approval of additional variances once the dwelling is completed. In general, COA approves these applications. If the variance wasn't appropriate before the dwelling was built, why is it appropriate when the dwelling is completed? The current process encourages builders to build what they want and not what has been approved. This also indicates a lack of oversight from other City divisions, once an application is approved by the Committee of Adjustment. CSVSWRA is aware of houses that remain vacant for significant periods of time before rebuilding is undertaken and situations where houses are partially completed and then neglected.
9. Earlier this year, following particularly egregious behaviour from an agent, CSVSWRA wrote a letter of concern to Planning Staff at the City of Toronto. The letter and response from the City of Toronto are attached, as Appendix One.
10. At the June 23, 2022 Committee of Adjustment hearing, CSVSWRA noted the following during the P.M. session:
 - Once the Chair took the application for 35 Duncombe Blvd into committee, one member introduced a motion. The Chair vigorously convinced the member to amend his motion before it was voted on;
 - During the committee discussion of 62 Allister Avenue, one of the members admonished CSVSWRA for opposing the application because it is not egregious. According to FSI and GFA data for the street, the F.S.I. is 26% larger than allowed under the zoning bylaws. Several neighbours opposed this application because minor approvals are rapidly changing the character of this part of the neighbourhood which does not maintain the intent and purpose of the Official Plan (4.4). Neighbours and

Residents Associations who oppose applications should not be held accountable because decision-making by the Scarborough Committee of Adjustment lacks consistency, transparency and application of the four tests.

- Technical difficulties at the COA end prevented CSVSWRA from making a presentation in opposition to 66 Colonial. The Chair initially did not call the third speaker and was about to request rebuttal from the applicant, but was corrected by staff that there was a third speaker in opposition. The Chair claimed the third speaker was not logged in. This was untrue as the speaker was logged on all afternoon and had already participated for the application at 35 Duncombe earlier in the afternoon without issues. When the third speaker heard the issues of being able to speak, she immediately logged out and back in and sent an email to staff, as there was no live chat available for Webex session. After the hearing a staff member emailed back that they saw the speaker logged in and they were already in rebuttal of applicant so could not be called to speak. The speaker then replied to staff that this was incorrect as they were logged in all afternoon and that not allowing a registered speaker to speak was unacceptable.

In conclusion, CSVSWRA supports transformation of the Committee of Adjustment to ensure that decisions on minor variance applications are fair, consistent, transparent and adhere to the four tests under subsection 45(1) of the Planning Act

Yours sincerely,

Alan Burt, Director

Janet May, Director

Appendix One
Letter of Concern about the Scarborough Committee of Adjustment and the reply from
City Planning

March 22, 2022

Gregg Lintern, Chief Planner and Executive Director
Toronto City Hall
12th fl. E., 100 Queen St. W.
Toronto ON M5H 2N2

Re: Committee of Adjustment Concerns

Dear Mr. Lintern,

We are writing to you to voice our concerns regarding the decision-making process of the Scarborough Committee of Adjustment and, in particular, the actions of the Chair, Hena Kabir.

We are concerned that in making their decisions the Scarborough Committee of Adjustment (COA) is not adhering to procedural fairness, ethical integrity, and is using criteria in their decision making which is outside of their scope of authority and jurisdiction. (See Appendix One for a description of roles of the Committee of Adjustment). We have liaised with several other Residents Associations in Scarborough who share our concerns and observations of the COA's conduct. The members of the Residents Association live in the neighbourhoods of Cliffcrest and Scarborough Village. We expect that the Committee of Adjustment will review minor variance applications in a fair and impartial manner and will not condone inappropriate or disingenuous behaviour from participants in the process.

To make informed decisions, each panel member is expected to:

- review materials filed with each application;
- conduct individual site inspections of the subject property to assess the impacts the proposal may have on the surrounding area;
- attend and participate at all public hearings scheduled for their respective panels, including a briefing session prior to the actual hearing.

In addition to the applicant's compulsory requirements, the City of Toronto website also provides direction to applicants for other recommended requirements that will assist in the review of all minor variance and consent applications. This list includes letters of support or opposition from adjacent neighbours, tenants and the surrounding neighbourhood.

The website also notes what cannot be considered by the COA. This includes personal comments about neighbours, agents, applicants.

The Cliffcrest Scarborough Village SW Residents Association has represented residents at COA Hearings since our formation in late 2020. From July 10, 2020 until August 31, 2021, a total of 32 applications from our neighbourhoods were discussed at COA. Of these we actively opposed 27 due to concerns from local residents, of which only 9 were refused by the COA. Among other concerns, these applications were all representative of an evolving trend in our neighbourhoods of investor-developers seeking to create excessively large homes using multiple variances in disregard to the existing character of the neighbourhood. See Appendix Two for charts which depict the number of applications reviewed by the COA in the M1M postal code and the number of applications refused. There has been a marked increase in the number of applications submitted since 2015 and a corresponding decline in the refusal rate. There has been a slight increase in refusals in 2020 and 2021 when our Association began participating in the COA hearings.

After participating in numerous hearings, in addition to the extremely low refusal rate, we have several concerns regarding the conduct of the COA chair and some panel members. In our view, their conduct does not adhere to procedural fairness, as their conduct and statements raise a reasonable apprehension of bias, and do not reflect the actions of a fair and impartial decision-making body. As well, on occasion, certain COA Panel members are using criteria to make decisions which exceed their scope of authority (the four tests).

We also question whether all members of the COA are doing their due diligence to make informed decisions by reviewing all materials filed with each application and conducting site inspections of the subject property to assess the impacts the proposal may have on the surrounding area. It is apparent that some committee members undertake due diligence and conduct site visits. However, it is evident that other members do not conduct site visits. The most recent Scarborough Panel COA Hearing Agenda was February 10, 2022 and addressed 27 applications in one day. This erodes confidence that the process involves a thorough, thoughtful, rational review of applications that impact residents and the environment.

At the February 10, 2022 COA Meeting, ([Committee of Adjustment, Public Hearing, Scarborough, February 10, 2022 \(PM\) - YouTube](#)) CSVSWRA observed the following:

Item 20, 234 Oakridge Avenue, A0410/215C

- As you will see from reviewing the application documentation, the agent of the applicant provided documentary evidence that indicated the neighbouring residents were in support of the development. CSVSWRA provided signed letters confirming the agent of the applicant provided false and misleading information to the COA. The Chair failed to address the disingenuous actions and false documentary evidence provided by the agent of the applicant, which led the Panel to believe that the neighbours were in support of their application. This was not addressed by the Chair and there was no recourse to this action. (View at 25:50 of YouTube link) This is in direct contradiction to the rules of procedural fairness and principles of

Administrative Law. The Chair went on to applaud the agent of the applicant for his attempts to reach out to the community.

- The Chair permitted the agent for the applicant broad scope in response to community concerns. He was allowed to malign presentations as cut and pasted and provide personal comment instead of focusing on the variances. Of grave concern to CSVSWRA and community members are the slanderous accusations made by the Applicant at (view starting at 37:03 of the YouTube link) accusing the neighbourhood of racism and hatred. The Chair allowed the Applicant to continue and validated this accusation by saying "I hear you but this may not be the right place to talk about it". These slanderous comments and the Chair's response were unprovoked, untrue, unsubstantiated, and extremely insulting to our multicultural neighbourhood. The Chair should have immediately cautioned the applicant's agent to restrict their statements to the variance application.
- The Chair asked the agent of the applicant whether new developments in the area are larger or within the zoning bylaw (view at 39:50 of the YouTube link). This is neither impartial or appropriate, since most of the minor variance applications in our neighbourhoods are submitted by this agent. Due diligence in the form of a site visit on the part of the Chair would provide this information.
- Once the item was brought into Committee, the Chair argued with COA members who felt the application was "massive" and tried to minimize their concerns. (view at 46.25 of the YouTube link)
- The vote was 3 – 1 for refusal of the application by the Panel members. The vote was not tied, yet the Chair found it necessary to cast her vote for approval, resulting in a final 3-2 vote. This demonstrates bias on the part of the Chair.

Agenda Item #24 B0031/19SC, A0149/20SC, A0150/20SC – 57 Eastville Ave.

This application involved "minor variances" to two proposed houses, and a consent application for approval of a severance of the existing lot to build these two houses.

- CSVSWRA provided a detailed breakdown of the character of the existing neighbourhood and lot frontage, a petition signed by 76 residents, input from neighbours, and water drainage issues. The Panel voted 2 – 2 and the Chair voted to approve the application to break the tie, resulting in a 3 -2 vote. In reaching their conclusion, some Panel members opined that this would create another house when housing is needed, and also speculated that in future other lots in the area may be severed. This decision went beyond the four tests that panel members are expected to use in making decisions. (https://www.youtube.com/watch?v=rFf_exHtVc at 2:10:28)
- There is also the issue of transparency in how the decisions of the Panel are reached. According to the Planning Act, these decisions are supposed to be recorded in writing. However, after appealing to City Legal, this requirement was ruled unnecessary. That means that there is no oversight or review of these decisions and very little way to ensure that the four tests are applied, as required and reiterated in the DeGasperi (2005) decision, that it is the legal

responsibility of these tribunals to appropriately apply all of the four tests, not just those of their choosing.

We are requesting a review of the Scarborough COA Chair and the way Panel members reach a decision, and a moratorium on Scarborough COA hearings and application approvals in our community until this review is complete. In Appendix Three, Code of Conduct, we have highlighted those specific codes that we believe have been violated. Thank you for considering our submission.

Yours sincerely,

Janet May
Alan Burt

Co-Chairs of Planning and Development Committee

On behalf of the Board of Directors
Cliffcrest Scarborough Village SW Residents Association

Cc. Councillor Gary Crawford
Paul Zuliani, Director Community Planning Scarborough District
Colin Ramdial, Deputy Secretary-Treasurer, Scarborough Committee of Adjustment

Appendix Two
Reply from Kyle Knoeck, City Planning Division

----- Original Message -----

On Friday, April 1, 2022 10:05 AM, Kyle Knoeck <Kyle.Knoeck@toronto.ca> wrote:

Dear Ms. May and Mr. Burt:

Gregg Lintern has forwarded to me your communication dated March 22, 2022 and asked me to review it and respond on behalf of the City Planning Division. Thank you for sharing your concerns resulting from the February 10, 2022 hearing of the Scarborough panel of the Committee of Adjustment, citing in particular the hearings for 234 Oakridge Avenue and 57 Eastville Avenue. From your communication, I have an understanding that you are frustrated with the Committee of Adjustment process and the ability of the CSVSWRA to participate impactfully in the decisions, and I understand that you feel that the hearing on 234 Oakridge allowed the applicant to malign the local community.

I have reviewed the YouTube recordings of the hearings regarding 234 Oakridge Avenue and 57 Eastville Avenue and I have discussed the your concerns with the Deputy-Secretary Treasurer who managed the hearing. I have to respectfully disagree with your complaint against Chair Kabir and the members of the panel. I find that the panel chair followed all Committee of Adjustment rules and procedures in the hearing on these applications. The hearing and the recorded discussion acknowledged the materials and documents before the Committee, including verbal and written submissions. The Committee discussion further clarified which information was relevant for the Committee's consideration and probed panel members' viewpoints in order to verify that members understood and weighed the available evidence. The Chair made clear that the applicant's comments about the local community were not relevant to the decision before the Committee. I saw nothing in her behaviour, or the behaviour of the other panel members, that was inappropriate or raised a reasonable apprehension of bias.

Your communication requests a review of the Scarborough COA Chair, the way panel members reach a decision, and proposes a moratorium on Scarborough Committee of Adjustment hearings and application approvals in your community until this review is complete. The City of Planning Division will not, and cannot, conduct a review of the Chair or of the way that members make decisions. The City Planning Division does not have the authority to review the way panel members, including a panel chair, make their decisions. The Committee of Adjustment members are independent of both the City Planning Division and City Council. The City Planning Division is responsible for the administration of the Committee and the processing of minor variance and consent applications. It cannot involve itself with the decision making of this independent, quasi-judicial administrative tribunal. City Council appoints Committee of Adjustment members, who are first vetted and interviewed by City Council's nominations panel.

With respect to a moratorium, the City has provincially legislated obligations to accept and process applications submitted under section 45 and 53 of the Planning Act and cannot interfere with the decision making powers of the Committee of Adjustment, which have been delegated by the Province.

I would like to make sure that you are aware that there is a general review of the Committee of Adjustment hearing process that is currently underway. At its meeting on May 5, 2021, through item PH22.7, City Council directed the Chief Planner and Executive Director, City Planning, to report back to the Planning and Housing Committee on a number of matters, including: promoting good conduct by applicant and general public participants; recommendations respecting the establishment of an advisory committee, and a review of the Committee of Adjustment procedures and processes based on tribunal best practices to ensure they support panel members in achieving procedural fairness and natural justice. See:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH22.7>

An independent external consultant, KPMG, has been retained for this review and it is underway. As part of the review, KPMG will be conducting stakeholder consultations and will be reaching out to various residents groups, including the Cliffside Scarborough Village SW Residents' Association, to gather their feedback and input on the Committee of Adjustment process. Given your engagement in Committee of Adjustment matters, I believe that this review will be of interest to you and I would encourage you to participate.

Regards,

Kyle Knoeck

Kyle Knoeck | [M.Sc.Pl.](#), MCIP, RPP

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