

# The Corporation of the Municipality of Leamington Committee of Adjustment

## By-law 01-24 (Consolidated)

By-law to establish the rules governing the calling, place,  
and proceedings of the Committee of Adjustment

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**Whereas** the Council of The Corporation of the Municipality of Leamington, did establish a Committee of Adjustment pursuant to section 44 of the Planning Act;

**And Whereas** subsection 238(2) of the Municipal Act, 2021, S.O. 2001, c. 25, as amended requires that every municipality and local board adopt a procedural by-law for governing the calling place and proceedings of hearings; and

**And Whereas** the Committee deems it necessary and expedient that there be rules governing the order and proceedings of Hearings.

**Now therefore** the Committee hereby enacts as follows:

### Part 1 - Interpretation

#### Definitions

1. In this by-law:

- a) **"Administration"** means municipal staff;
- b) **"Applicant"** means:
  - i) the owner(s) of any land, building or structure for which an Application is made;
  - ii) any person authorized, in writing, by the owner(s) of any land, building or structure for which an Application is made to act as agent on behalf of the owner(s); and/or
  - iii) in the case of an Application under section 53 of the Planning Act, a purchaser of land who:
    - 1) has entered into an agreement of purchase and sale to acquire the land;
    - 2) is authorized in the agreement of purchase and sale to make

the application; and

- 3) has provided Administration with evidence of such authorization.
- c) **"Application"** means an Application made to the Committee under section 45, 53, or 57 of the Planning Act;
- d) **"Chair"** means the Chair of the Committee elected under section 44(7) of the Planning Act;
- e) **"Clerk"** means the Clerk of Municipality and shall include a Deputy Clerk or anyone designated by the Clerk to carry out duties of the Clerk;
- f) **"Committee"** means the Committee of Adjustment established by Council in accordance with section 44(1) of the Act;
- g) **"Council"** means the Council of the Municipality;
- h) **"Hearing"** means the public meeting of the Committee held for the purpose of considering an Application;
- i) **"Hybrid Hearing"** means a Hearing where the Applicant and/or the public may participate Virtually or in-person;
- j) **"In-Person Hearing"** means a Hearing where Members, the Applicant and the public participate in person;
- k) **"Member"** means any Member of the Committee and includes the Chair and Vice-Chair;
- l) **"Motion"** means a proposal by a Member that is moved by that Member and seconded by another Member;
- m) **"Municipality"** means The Corporation of the Municipality of Leamington;
- n) **"Notice"** means the giving of notice of an Application and/or the Hearing to the public and other agencies and entities as may be prescribed by the Planning Act;
- o) **"Pecuniary Interest"** means a pecuniary interest as defined in the Municipal Conflict of Interest Act, R.S.O. 1990, Chapter **M**. 50;
- p) **"Planning Act"** means the Planning Act, R.S.O. 1990, c. P. 13, as amended or replaced from time to time, including any Regulations thereunder;
- q) **"Quorum"** means the minimum number of Members required to be present to conduct a Hearing;

- r) **"Secretary-Treasurer"** means the Secretary-Treasurer appointed by the Committee under subsection 44(8) of the Planning Act;
- s) **"Vice-Chair"** means the Vice-Chair of the Committee appointed to act as Vice- Chair pursuant to subsection 44(7) of the Planning Act; and
- t) **"Virtual Hearing"** means a Hearing where Members, Applicants and/or the public participate via electronic means including but not limited to audio teleconference, video teleconference, or via the internet and "participate", "participated" or "participating" "Virtually" has a corresponding meaning.

## **Part 2 - General Application**

### **Rules of Procedure**

- 2. The procedures contained in this by-law shall be observed in all proceedings of the Committee and shall be the procedures for the order and dispatch of Hearings.

### **Issues Not Addressed**

- 3. If an issue is raised that is not expressly addressed in this by-law, the issue shall be decided by the Chair, subject to an appeal to the Committee of Adjustment, as the case may be.
- 4. Procedural matters not governed by the provisions of this by-law shall be governed by the provisions of the Corporation of the Municipality of Leamington Procedural By-law 49-23, or its successor and by applicable law.

### **Planning Act Prevails**

- 5. In the event of a conflict between this by-law and the Planning Act, the Planning Act shall prevail.

### **Gender**

- 6. Unless a contrary intention appears herein, the provisions of this by-law are intended to be gender neutral and gender inclusive and the singular to include the plural.

## **Part 3 - Hearings**

### **Hearing Format**

- 7. Hearings may be In-Person Hearings, Virtual Hearings or Hybrid Hearings.

8. The Clerk may, from time to time, establish and/or amend procedures related to Hybrid Hearings and/or Virtual Hearings, provided that such procedures do not conflict with the provisions of this by-law.

#### **Attendance at In-Person Hearing**

9. Members, Applicants and members of the public who attend at an In- Person Hearing shall participate in-person.

#### **Attendance at Virtual Hearing**

10. Members, Applicants and members of the public who attend at a Virtual Hearing shall participate Virtually.

#### **Attendance at Hybrid Hearing**

11. Members who attend at a Hybrid Hearing shall attend in-person.
12. An Applicant or a member of the public may participate in-person at a Hybrid Hearing; or if the Applicant or the member of the public has advised the Clerk that they wish to participate Virtually, the Applicant or the member of the public may participate Virtually at the Hybrid Hearing.

#### **Member Participating Virtually**

13. A Member participating at a Virtual Hearing shall:
  - a) log into the Virtual Hearing in advance of the start time to establish the necessary electronic connection before the Virtual Hearing is scheduled to begin;
  - b) ensure that their camera is on, as may be applicable;
  - c) mute their device when they are not speaking;
  - d) inform the Chair about their intention to leave the Virtual Hearing either on a temporary or permanent basis; and,
  - e) have the same voting rights as if they were participating in at an In- Person Hearing.

#### **Applicant or Member of the Public Participating Virtually**

14. An Applicant or a member of the public participating Virtually at a Hearing shall:
  - a) log into the Hearing in advance of the start time to establish the necessary electronic connection before the Hearing is scheduled to begin;

- b) ensure that their camera is on, as may be applicable; and
- c) mute their device when they are not speaking.

### **Hearing Dates and Location**

- 15. The Clerk shall prepare a schedule of Hearing dates on an annual basis.
- 16. The Clerk shall post on the municipal website all Hearing dates and location of the Hearing.

### **Additional Dates**

- 17. Notwithstanding section 15, the Secretary-Treasurer, in consultation with the Clerk may schedule additional Hearing dates when necessary.

### **Notice**

- 18. The Secretary-Treasurer shall provide Notice.

### **Canceling Hearing**

- 19. Where it is determined by the Secretary-Treasurer, in consultation with the Clerk, that there are no Applications to be heard on a scheduled Hearing date, the Clerk shall cancel the Hearing date.

### **Quorum**

- 20. If the Committee is composed of three (3) Members, two (2) Members constitute Quorum, and if the Committee is composed of more than three (3) Members, three (3) Members constitute Quorum.
- 21. A Member participating in-person or participating Virtually shall be counted in determining whether or not Quorum is present at any point in time.
- 22. If no Quorum is present fifteen (15) minutes after the time appointed for the start of the Hearing, the Clerk shall record the names of the Members present and the Hearing shall be Adjourned to the next scheduled Hearing date, unless another Hearing Date is scheduled for such purpose.

### **Lost Quorum**

- 23. If Quorum is lost during a Hearing, the Clerk will advise the Chair that Quorum is lost and the Hearing will Recess for up to fifteen (15) minutes to allow Members to return. Following the Recess, if Quorum is not regained, the Hearing shall be Adjourned and remaining Applications shall be considered at

the next Hearing Date, unless a Hearing is scheduled for such purpose prior to the next Hearing date.

### **Disclosure of Pecuniary Interest and Quorum**

24. When a majority of Members have disclosed a Pecuniary Interest, the remaining Members at that Meeting shall be deemed to constitute the Quorum, provided such number is not less than two (2).

### **Part 4 - Agenda, Minutes and By-laws**

#### **Preparation and Distribution of the Agenda and Applications**

25. The Clerk shall prepare an agenda for the Hearing and shall distribute the following to the Members:

- a) the Agenda;
- b) any reports of Administration; and
- c) the Application(s),

at the earliest possible opportunity prior to the Hearing.

26. The Clerk shall distribute correspondence from agencies and the public who have provided comments in connection with the Application to Members prior to the Hearing, whenever possible.

#### **Minutes of Hearing**

27. The Clerk shall record the minutes of each Hearing.
28. A copy of the minutes of each Hearing shall be circulated to the Committee.
29. The Clerk shall be authorized to make minor corrections to minutes of each Hearing to eliminate technical or typographical errors.
30. The Secretary-Treasurer and the Chair shall sign the minutes of each Hearing.
31. The Secretary-Treasurer shall keep on file the minutes of each Hearing and records of all Applications and the decisions thereof and of all other official business of the Committee.

#### **By-laws of the Committee**

32. The Secretary-Treasurer and the Chair shall sign any by-laws of the Committee.

## **Part 5 - Disclosures of Pecuniary Interest**

### **Disclosure of Pecuniary Interest**

33. When a Member present at a Hearing has a Pecuniary Interest, the Member shall, prior to any consideration or discussion of the matter, disclose the Pecuniary Interest and the general nature thereof and refrain from discussing, debating or voting on the Application.

### **Disclosure of Pecuniary Interest by Chair**

34. When a Member present at a Hearing has a Pecuniary Interest, the Member shall, prior to any consideration or discussion of the matter, disclose the Pecuniary Interest and the general nature thereof, withdraw from the chair, and refrain from discussing, debating or voting on the Application.

### **Disclosure When Absent from Hearing**

35. Where the interest of a Member has not been disclosed, by reason of absence from the particular Hearing, the Member shall disclose the Pecuniary Interest at the first Hearing attended by the Member after the particular Hearing.

### **File Written Statement**

36. At a Hearing at which a Member discloses a Pecuniary Interest, or as soon as possible afterwards, the Member shall file a written statement of the Pecuniary Interest and its general nature with the Clerk.

### **Registry of Statements**

37. The Clerk shall establish and maintain a registry of statements and declarations of Pecuniary Interest of Members and the registry will be available for public inspection on the municipal website.

## **Part 6 - New Term of Committee and Duty of Chair**

### **Election of Chair**

38. The Clerk shall call the first meeting of the Committee in a new term to order and shall conduct the election of a Chair
39. Following the election of the Chair, the Chair will then assume the duties as such.

### **Appointment of Vice-Chair**

40. The Members, at the first meeting of the new term of the Committee shall appoint one Member as Vice-Chair who shall act as Chair in the absence of

the Chair.

### **Duty of the Chair**

41. It shall be the duty of the Chair to:

- a) call the Hearing to order;
- b) ensure that Quorum is established and maintained throughout the course of the Hearing;
- c) put to vote all Motions that arise in the course of the proceedings and announce the result of each vote; and
- d) uphold the observance of order and decorum amongst the Members, Applicants and members of the public in accordance with this by-law.

### **Part 7 - Absence of Member, Conduct of Members and Rules of Debate at a Hearing**

#### **Absence of Member**

42. A Member who is unable to attend at a Hearing or otherwise carry out their duties as a result of illness or otherwise shall advise the Clerk in writing and shall provide an anticipated date of return.

#### **Code of Conduct**

43. Members shall act in accordance with the Code of Conduct - Members of Council and Local Boards.

#### **No Discussion**

44. Except at a Hearing, a Member shall not discuss, either in person, in writing, by telephone or by any electronic means, the details or merits of an Application except with:
- a) Administration; or
  - b) another Member, but not more than one (1) other Member at any given time.

#### **(Amended as per By-law 01-25)**

#### **View Lands, Building or Structure**

45. ~~Subject to section 43, a Member may attend and enter upon the lands to view the lands, building or structure that is the subject of an Application for the purpose of evaluating the merits of the Application.~~

45. Subject to section 43, a Member, with consent of the owner(s), may attend and enter upon the lands to view the lands, building or structure that is the subject of an Application for the purpose of evaluating the merits of the application.

### **Electronic Devices**

46. Electronic devices shall be turned to silent or vibrate during the Hearing and are not used to record any aspect of the Hearing unless the Clerk has given consent prior to the commencement of the Hearing.
47. A Member shall not allow an electronic device to distract the Member from the Hearing proceedings.

### **Part 8 - Conduct of Applicants and Members of the Public at a Hearing**

48. Applicants and members of the public shall not:
- a) speak disrespectfully of any person;
  - b) use offensive words;
  - c) speak on any subject other than the Application;
  - d) disobey a decision of the Chair; or
  - e) enter into cross debate with Administration, Members or the Chair; or an Applicant or member of the public as the case may be.

### **Part 9 - Hearing Proceedings Open to the Public**

49. In accordance with the provisions of the Municipal Act, 2001, S.O. 2001, c.25, all Hearings shall be open to the public.

### **Call to Order and Routine Matters**

50. The Hearing shall be called to order by the Chair.
51. The Chair shall call for disclosure of any Pecuniary Interest of the Committee Members.
52. The Committee shall adopt the minutes of the previous Hearings.

### **Requests for Deferral and Withdrawals**

53. The Chair shall call for any requests for deferrals from the Applicant or Administration.

54. When considering a request for a deferral, the Committee shall have regard for the following:
  - a) if the reason for the request is reasonable;
  - b) if the deferral is for a period of six (6) months or less; and
  - c) that there shall be no more than three (3) deferrals per Application.
55. If the Committee grants the request for deferral, the Committee in consultation with the Clerk shall defer the Hearing to a fixed date or event as the point in time for a date of Hearing.
56. The Chair shall call for any withdrawal of Applications.
57. The Applicant may withdraw the Application at the Hearing. The Clerk shall record that the Application was withdrawn by the Applicant and the Committee shall take no further action in connection with the Application.

### **Order of Proceedings**

58. The Chair shall call each Application in an order determined by the agenda or in an order determined by the Chair.
59. The Chair shall call upon Administration to:
  - a) present the report; and
  - b) advise of any further correspondence from agencies or the public who have provided comments in connection with the Application.
60. The Committee may ask questions of Administration.
61. The Chair shall call upon the Applicant to:
  - a) identify themselves to the Committee; and
  - b) advise as to whether there is any additional information or submissions to be made regarding the Application.
62. The Committee may ask questions of the Applicant.
63. The Chair shall call upon from the members of the public present who have an interest in the Application to:
  - a) identify themselves; and
  - b) make submissions in respect of their interest.

64. The Committee may ask questions of the members of the public who made submissions.
65. The Chair shall call upon the Applicant to make any reply submissions to the Committee in connection with any submissions received from the members of the public.
66. The Committee may ask questions of the Applicant based on any reply submissions of the Applicant.
67. The Chair shall call upon Administration to make any reply submissions to the Committee in connection with any submissions received from the members of the public.
68. The Committee may ask questions of the Administration based on any reply submissions of the Applicant.
69. After having considered the issues raised and the submissions of the Applicant and Administration and any other persons and the evidence heard at the Hearing, the Committee shall make a decision to:
  - a) refuse the Application;
  - b) grant the Application;
  - c) grant the Application with conditions; or
  - d) defer the Application.
70. A decision to defer the Application shall include a fixed date or event as the point in time for a date of Hearing.

#### **Part 10 - Voting**

71. Every motion put to a vote shall have a mover and seconder.
72. The manner for determining the decision on a Motion shall be by a show of hands.
73. If a Member does not vote, the Member shall be deemed to have voted in the negative except where the Member has abstained from the vote as a result of declaring a Pecuniary Interest in the matter.
74. When the Committee is comprised of an even number, the Chair may refrain from voting to preclude a tie vote if Quorum is maintained.
75. A vote on a Motion will be carried if more than fifty percent (50%) of those eligible to vote are in favour.

76. A motion shall fail on the following two counts:
  - a) The motion does not receive a mover or a seconder; or
  - b) The motion does not receive a majority vote; or
  - c) The vote results in a tie.
77. A tie vote shall be deemed a refusal of the application as the majority of the members did not concur.
78. Any Motion on which there is a tie vote shall be deemed to be lost.

#### **Part 11 - Decision of the Committee with Reasons**

79. The Chair shall verbally confirm any Members opposed to the Motion and confirm that the Motion has passed by announcing the decision of the Committee.
80. No discussion shall be permitted after the Chair has announced the decision of the Committee.
81. No decision of the Committee on an Application is valid unless it is concurred by the majority of the Members that heard the Application.
82. The decision of the Committee shall be in writing and shall set out the reasons for the decision and shall be signed by the Members who concur in the decision.
83. Members of the Committee shall use electronic or wet signatures to sign decisions. All electronic signatures shall be in accordance with the applicable Municipality of Leamington electronic signatures policy.
84. The Secretary-Treasurer shall be permitted at any time and without prior notice to the parties to correct a technical or typographical error, error in calculation or similar minor error made in a decision.
85. The Secretary -Treasurer shall send a copy of the decision to those parties as prescribed by the Planning Act.

#### **Adjournment**

86. Hearings shall stand adjourned when the Committee has completed all business as listed on the agenda.

## **Repeal**

Committee of Adjustment By-law 01-23 is hereby repealed.

Read a first, second and final reading on this 30<sup>th</sup> day of October, 2024.

*(Signature on File)*

Tim Wilkinson, Chair

*(Signature on File)*

Michael Nelson, Secretary-Treasurer

*(Signature on File)*

Spencer Phillips, Secretary-Treasurer