Condition critical: Ontario Land Tribunal confirms limits of conditions on minor variance approvals

May 20, 2025

**The article was originally published on the Ontario Bar Association's website.*

Committees of Adjustment in Ontario routinely impose conditions on minor variance approvals. More often than not, successful applicants for minor variances to applicable zoning by-laws agree with the conditions or are otherwise willing to accept a disagreeable condition in order to obtain an approval. However, that is not always the case and, occasionally, applicants challenge proposed or imposed conditions of minor variance approval.

While Committees have broad statutory authority to impose such conditions, their powers are not unlimited. In *Newstrom Investments Inc. v Richmond Hill (City)*, 2024 CanLII 102780 (ON LT), the Ontario Land Tribunal confirmed the long-standing principle that minor variance conditions must be "reasonably related" to the variance(s) applied for, and specifically, as it applies to the municipality's authority to require road widenings.

Background

In *Newstrom*, the applicant sought six variances from the City of Richmond Hill's Zoning By-law 2523 to legalize the existing condition of the two-storey detached dwelling, as well as the accessory structures and swimming pool in the rear yard.

The City's Committee of Adjustment approved the minor variances, subject to three conditions. One of the conditions required the applicant to convey, at no cost to the City, a 3.0 metre strip of land along the approximately 22 metre frontage of the subject property abutting Garden Avenue for the purpose of a road widening (the Road Widening Condition).

The applicant appealed the conditional approval to the Ontario Land Tribunal, taking issue with the Road Widening Condition. Specifically, the applicant alleged the City did not have the authority to compel a gratuitous conveyance of land for a road widening as

a condition of minor variance approval where there was no reasonable relationship between the variances and the road widening.

The City's evidence confirmed that Garden Avenue was identified as a "Collector Street" with a 26 metre right of way in the City's Official Plan. In addition, the City's experts opined the property is located approximately 300 m away from the Richmond Hill Centre Transit Oriented Community and that the area was planned to experience significant growth in support of the Yonge North Subway Extension. Thus, the City argued the Tribunal had authority to impose the Road Widening Condition in this case.

Minor variance conditions must have a reasonable relationship to the requested variances

On its face, subsection 45(9) of the *Planning Act* provides broad authority to a committee of adjustment or the Tribunal to impose such conditions on a minor variance approval that it considers "advisable".

Referring to a line of past decisions, dating back to the 1979 decision of the former Ontario Municipal Board in *Texaco Canada v Guelph (City) Committee of Adjustment*, 1979 CarswellOnt 547, the Tribunal confirmed that conditions of a minor variance approval must be reasonably related to the variance(s) at issue. Interestingly, the legislative provision that enables committees of adjustment to impose conditions on minor variance approvals has remained relatively unchanged during the 40+ years since the Board's decision in *Texaco*.

The Tribunal in *Newstrom* determined that the evidence presented did not support the conveyance of the applicant's land at no cost to the City for the purposes of future road widening as the Road Widening Condition had no reasonable relationship to any of the requested variances. The Tribunal approved the requested variances but refused to impose the Road Widening Condition.

Key takeaways

The key takeaways from *Newstrom* include:

- There must be a reasonable relationship between a condition of minor variance approval and the requested variance(s);
- The municipality must provide evidence that a reasonable relationship exists between the variance(s) and the condition;
- The fact that lands subject to a minor variance application are along a road shown in an official plan to be widened does not, in and of itself, empower a municipality to compel a gratuitous land conveyance for a road widening as a condition of minor variance approval – the municipality must still establish a reasonable relationship between the road widening and the variances requested to lawfully impose such a condition; and,
- There are numerous opportunities where conditions can be imposed on *Planning Act* approvals (*e.g*. site plan, draft plan of subdivision, consents and minor variances), each with different statutory requirements and provisions that set out the authority upon which such conditions can be imposed. Care must be taken to

ensure the conditions are imposed in accordance with the applicable legislative framework for the type of approval at issue.

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