

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 003-2019

BEING A BY-LAW TO CONSTITUTE A COMMITTEE OF ADJUSTMENT AND CONSENT AND DELEGATE CERTAIN AUTHORITY WITH RESPECT TO THE GIVING OF CONSENTS AND MINOR VARIANCES TO THE COMMITTEE AND/OR THE COMMISSIONER OF PLANNING AND DEVELOPMENT PURSUANT TO THE PLANNING ACT AND TO REPEAL BY-LAW 010-2015

WHEREAS pursuant to Subsection 53 of the Planning Act, R.S.O. 1990, c.P.13, as amended, Regional Council has authority to give consents to convey, mortgage or charge, grant, assign or exercise a power of appointment in respect to land, or enter into an agreement in respect to land, where the land is situated within the region of Halton;

AND WHEREAS pursuant to Section 54(1) of the Act, the authority of Regional Council may be delegated by by-law to a constituent local municipality, in respect of land situated in that local municipality;

AND WHEREAS on November 18, 1998 the Regional Municipality of Halton passed By-law 182-98 to delegate such authority to the Council of the Town of Milton;

AND WHEREAS pursuant to Sections 54(2) and 54(7) of the Act, the authority of Town Council may be delegated, by by-law, to a committee of Town Council, to an appointed officer identified in the by-law by name or position occupied or to a committee of adjustment, subject to such conditions as Town Council by by-law provides;

AND WHEREAS pursuant to Section 44(1) of the Act, Town Council may by by-law constitute and appoint a Committee of Adjustment composed of such persons as Council considers advisable;

AND WHEREAS Town Council considers it advisable to constitute and appoint a single committee, hereinafter referred to as the Committee of Adjustment and Consent, to carry out the responsibilities and duties of both the Committee of Adjustment and the former Land Division Committee;

AND WHEREAS the Council considers it advisable to delegate some of the powers vested in it pursuant to Sections 50 and 53 of the Act, to the Committee of Adjustment and Consent, and to certain appointed officers;

NOW THEREFORE the Council of the Corporation of the Town of Milton hereby enacts as follows:

1. Definitions

- (a) "Act" means the *Planning Act*, R.S.O. 1990, c.P13, as amended.
- (b) "Chair" means the person elected as Chair of the Committee of Adjustment and Consent in accordance with section 44(7) of the Act.
- (c) "Committee" means the Committee of Adjustment and Consent continued and constituted in accordance with section 44 of the Act.
- (d) "Consent" means the approval process or approval itself, as the context requires, as provided for in Sections 50 and 53 of the Act or any successor provisions thereto.
- (e) "Commissioner" means the position of the Commissioner, Planning and Development or, in his or her absence, the Director, Development Review of Planning and Development or, in his or her absence, the Director, Planning Policy and Urban Design.
- (f) "Meeting" means a gathering of the Committee where quorum is achieved and at which public hearings over which the Committee has jurisdiction.
- (g) "Member" means any member of the Committee and includes the Chair.
- (h) "Region of Halton" means the Regional Municipality of Halton.
- (i) "Regional Council" means the Council of the Regional Municipality of Halton.
- (j) "Secretary-Treasurer" means the position of Secretary-Treasurer of the Committee of Adjustment and Consent appointed under section 44(8) of the Act.
- (k) "Town" means the Corporation of the Town of Milton.
- (l) "Town Council" means the Council of the Corporation of the Town of Milton.
- (m) "Variance" means the approval process or approval itself, as the context requires, as provided for in Section 45 of the Act or any successor provision thereto.

2. **THAT** the Committee be constituted and appointed as set out in Schedule "A" to this By-law.
3. **THAT** the delegation of authority and procedures relating to Consents and Variances be as set out in Schedule "A" to this By-law.
4. **THAT** the remuneration of the Members of the Committee shall be in accordance with the rates established by resolution of Town council from time to time.
5. **THAT** the oath or affirmation referred to in Section 26 of Schedule "A" of this By-law shall be administered and in the form set out in Schedule "B" to this By-law.
6. **THAT** Schedules "A" and "B" attached hereto form part of this By-law.
7. **THAT** this By-law comes into full force and effect on the date it is passed.
8. **AND THAT** By-law 010-2015 is repealed.

PASSED IN OPEN COUNCIL ON JANUARY 21, 2019.

_____ Mayor
Gordon A. Krantz

_____ Acting Town Clerk
William Roberts

SCHEDULE "A"

A. DELEGATION OF POWERS

1. Delegation by Town Council to the Commissioner

1. Town Council hereby delegates to the Commissioner the authority to:

- a. Refuse to accept or further consider a Consent Application until the prescribed information and material have been submitted by the Applicant along with the required fee and all other information or material that the Commissioner considers he or she may need as also been submitted by the Applicant;
- b. Decide, without a hearing, in accordance with the Act and regulations thereunder, any Consent Application where there is no dispute or objection with respect to the granting of the Consent Application or where any dispute or objection is resolved without a hearing;
- c. Change the conditions of a provisional Consent at any time before a Consent is given, and to determine if a change to the conditions is minor or not, for the purposes of giving notice;
- d. Deny a Consent Application which has remained inactive for more than one year, after having given the Applicant sixty (60) days written notice of the intention to deny the Application and if the Applicant does not proceed with the Application prior to the expiry of the sixty (60) day notice period.

2. Delegation by Town Council to the Committee

Subject to the delegations contained in Section 1 of this Schedule, Town Council hereby delegates to the Committee the authority to hold any necessary hearings and decide whether to grant any Application for a Variance made to the Town, and any Consent Application where such Application is in dispute or subject to an objection, and all property standards appeals, and this authority set out in this section shall be exercised in accordance with the Act, any regulations thereunder and this By-law.

3. Power to Impose Conditions

Town Council hereby delegates to the Committee and the Commissioner, the authority to impose such conditions on the granting of a Consent or Variance as in their opinion are reasonable, which authority can only be exercised by the

Commissioner or Committee with respect to their respective decision-making authorities as set out in this By-law.

4. Authority to Appeal Decisions

1. Town Council hereby delegates to the Commissioner the authority:
 - a. To commence appeals of decisions made pursuant to Sections 1 or 2 of this Schedule, to the Local Planning Appeal Tribunal when in the opinion of the Commissioner, the decision in question is contrary to the Town's or Region of Halton's Official Plan or otherwise offends the principles of good planning. Prior to the date set for hearing of the appeal, the Commissioner shall submit a report to Council seeking direction to either continue or withdraw such appeal.
 - b. To defend decisions of the Committee which conform to the Town's or Region of Halton's Official Plan and support the principles of good planning which have been appealed by either the applicant or another party.
 - c. If the Town proceeds with an appeal of a decision of the Committee or the Commissioner made under this By-law, the Town's Corporate Counsel is authorized to interview and retain witnesses, obtain necessary evidence and do everything necessary in furtherance of such an appeal.
 - d. As a condition of the delegation to the Commissioner and to the Committee of the authority to grant Consents and/or Variances, notice of all decisions made pursuant to Sections 1 and 2 must be sent to Town Council by delivering a copy of same to the Town Clerk if so requested by Town Council.

5. Power of the Commissioner to Determine Whether a Plan of Subdivision is Required

1. Town Council delegates to the Commissioner, the authority to determine whether an Application for consent under the Act should be refused and not referred to the appropriate delegated authority on the basis that the Application requires a Plan of Subdivision for the proper and orderly development of the Town of Milton, or whether such an Application may be referred to the appropriate delegated authority for a decision, on the basis that the Application does not require a Plan of Subdivision.
2. Any determination by the Commissioner that an Application for Consent under the Act should be refused and not referred to the appropriate delegated authority, on the basis that the Application requires a Plan of Subdivision, shall

be confirmed by Town Council and if not confirmed, the Application shall be referred to the appropriate delegated authority for a decision on the understanding that a Plan of Subdivision is not required.

6. Delegation of Requisite Authority

The Committee and the Commissioner are hereby authorized and vested with all authority necessary to do all acts required to carry out the authority delegated to each of them under this By-law.

7. Authority to Execute Agreements

The Mayor and the Town Clerk are hereby authorized to execute any agreement prepared in accordance with a condition imposed by the Commissioner or the Committee in granting provisional consent to a consent and/or minor variance application pursuant to Section 41 and/or 53 of the Act.

B. COMPOSITION, TERM AND COMPENSATION OF THE COMMITTEE

8. Membership

1. The Committee shall be composed of three (3) Members appointed by Town Council.
2. Appointed citizen members shall have the following qualifications:
 - a. resident of the Town of Milton or is the owner or tenant of land in Milton, or the spouse of such owner or tenant;
 - b. a strong interest in the complexities and challenges of municipal growth;
 - c. an understanding of the diverse neighbourhoods and communities across the Town;
 - d. have knowledge in one or more areas of: law, planning, architecture, government, economic development, community development, land development, environmental planning, or citizen advocacy;
 - e. demonstrate decision-making, communication, and mediation skills to facilitate an open and fair hearing process.
3. The Members of the Committee shall hold office for the term of the Council that appointed them, or until such time as they resign, are disqualified, or their successors are appointed.
4. A member may be appointed for no more than two (2) consecutive terms of Council. Any interim appointments are not included as a term of Council.

5. In the event of a vacancy on the Committee, Town Council may appoint another eligible person for the unexpired portion of the term, as soon as reasonably possible after the vacancy occurs.
6. Should a member miss either three (3) successive meetings or meetings equal to or more than thirty-three (33) per cent of the meetings held in the immediately preceding twelve (12) months and a motion is passed by the committee recommending termination, Council may terminate the member at its full and final discretion.
7. Members of the committee serve at the pleasure of Council and as such, Council may terminate the membership of any member at any time at its full and final discretion.

9. Quorum

Where the Committee is composed of three Members, two Members constitute a quorum, and where the Committee is composed of more than three Members, three Members constitute a quorum.

10. Vacancy

Subject to Section 9 of this Schedule, a vacancy in the membership or the absence or inability of a member to act does not impair the powers of the Committee or of the remaining Members of the Committee.

11. Chair

The members shall elect one of themselves as Chair, who shall hold the position until a successor is elected.
When the Chair is absent, the Committee shall appoint another Member to sit as acting Chair.

12. Secretary-Treasurer

1. The Committee shall appoint a Secretary-Treasurer and an Acting Secretary-Treasurer to act in the place and stead of the Secretary-Treasurer, should the Secretary-Treasurer be absent, unavailable, or should the office be vacated before Town Council has the opportunity to fill the position.
2. The Secretary-Treasurer of the Committee or the Acting Secretary-Treasurer, as the case may be, with the assistance of the Town's Planning and Development staff and under the direction and supervision of the Commissioner, shall perform all administrative duties related to the referral of all Applications for Consent and/or Variance to the Commissioner and/or the Committee, the processing of all Applications for Consent and/or Variance,

both before and after decision, the issuance of Certificates of Consent and the forwarding of appeals to the Local Planning Appeal Tribunal.

13. Remuneration

The Members of the Committee shall be paid compensation and mileage allowance as may be established from time to time by Council.

14. General

1. The Secretary-Treasurer shall file a copy of the minutes of each meeting (draft or otherwise) with the Town Clerk's office, no later than 21 days after each meeting.
2. The committee shall submit an annual report to Council on the activities of the committee during the past calendar year.
3. The non-statutory provisions of this Terms of Reference may be eliminated or amended in any way by Council at its full and final discretion. Any non-statutory provisions of this Terms of Reference may be waived by Council at its full and final discretion.
4. The Town Clerk or designate is delegated the authority to make administrative changes to this Terms of Reference that may be required from time to time due to legislative changes or if, in the opinion of the Town Clerk, the amendments do not change the intent of the Terms of Reference.
5. Members' terms that have been fulfilled without disqualification or early termination by Council shall receive recognition of appreciation from the Town.
6. Citizen members shall sign and submit to staff the "Citizen Member Board/Committee Code of Conduct", attached as Schedule C, as a condition of being appointed as a member of the committee. Any breach of this Code will be grounds for removal from the committee.

C. PROCEDURE OF THE COMMITTEE OF ADJUSTMENT AND CONSENT

15. Application

Sections 15 through 39 of this Schedule shall apply to all matters delegated to the Committee by Town Council.

16. General Principle

1. These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every matter before the Committee.

2. The Committee shall hold a hearing for all Variance Applications and all Consent Applications delegated to the Committee, in accordance with this By-law.

17. Role of Chair at Hearing

The Chair shall conduct the hearing and make any rulings required related to procedure during the course of the hearing.

18. Setting Down for Hearing

No matter shall be set down for hearing unless the required Application for Consent or Variance Form has been completed and filed along with all required information, authorization and materials and the prescribed fee has been paid.

19. Fees

Subject to the provisions of Section 69 of the Act, persons making an Application to the Town for a Consent or Variance pursuant to the Act shall pay any fee prescribed by by-law of the Town of Milton from time to time.

20. Conflict of Interest

1. Where a member of the Committee, either on his or her own behalf or while acting for, by, with, or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the Committee at which the matter is the subject of consideration he or she shall:
 - a. Prior to any consideration at the meeting, disclose his or her pecuniary interest and the general nature thereof;
 - b. Not take part in the discussion of, or vote on, any question in respect of the matter, and shall leave the room in which the matter is being considered and voted upon; and
 - c. Not attempt in any way whether before, during or after the meeting to influence the voting on any such question.
2. Where the interest of a member of the Committee has not been disclosed as required by subsection (1) by reason of his or her absence from the meeting referred to therein, the member shall disclose his or her interest and otherwise comply with subsection (1) at the first meeting of the Committee attended by him or her after the meeting referred to in subsection (1).

21. Record of Disclosure

Every disclosure of pecuniary interest and the general nature thereof made under section 19 of this Schedule shall be recorded in the minutes of the meeting by the Secretary-Treasurer of the Committee.

22. Copies of Committee Documents

A person may examine any document(s) filed with the Committee in connection with an Application and upon payment of a reproduction fee, may obtain copies of such document(s) unless prohibited by applicable legislation, an order of a court, or any other order lawfully made.

23. Notice to be Given

1. Notice of Committee hearings shall be given by the Secretary-Treasurer in accordance with all applicable legislative requirements and shall include:
 - a. A statement of the time, place and purpose of the hearing;
 - b. A reference to the statutory authority under which the hearing will be held; and
 - c. A statement that if a party notified does not attend at the hearing, the Committee may proceed in his or her absence and he or she will not be entitled to any further notice of the proceedings.

24. Absence of a Party

Where Notice of Hearing had been given to a party and the party does not attend at the hearing, the Committee may proceed in his or her absence and he or she is not entitled to any further notice of proceedings.

25. Hearing to be Public

All Committee hearings shall be open to the public.

26. Right to Counsel

1. A party with an interest in a hearing before the Committee may:
 - a. Be represented by legal counsel or an agent;

- b. Call and examine witnesses and present arguments and submissions; and
- c. Conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of the facts in relation to which they have given evidence.

27. Evidence to be Given Under Oath

- 1. Any party giving evidence at a Committee hearing shall be required to give evidence under oath or by affirmation at the hearing in the form attached hereto as Schedule "B".
- 2. The oath shall be administered by the Chair of the Committee before the commencement of evidence.

28. Evidence that May be Admitted

The Committee may admit as evidence at the hearing (whether or not given or proven under oath or affirmation) any oral testimony, and any document or other thing relevant to the Application for Consent or Variance.

29. Evidence that May be Evaluated

The Committee may exclude any evidence which may be unduly repetitious or irrelevant.

30. Order of Evidence

The order of evidence to be presented and submissions made on each Application shall be determined by the Committee.

31. Persons Who Make Representations

Any person wishing to make representations to the Committee may call witnesses and present evidence and make argument and submissions at the hearing as is reasonably required for the full disclosure of the facts in relation to the Application for Consent or Variance.

32. Site Inspection by Committee

Any member of the Committee hearing an Application for Consent or Variance may make site inspections prior to the hearing.

33. Each Member Must Hear All Evidence

Subject to Section 21 of this Schedule, each member of the Committee must hear all of the evidence relating to each application.

34. Role of the Planning and Development Department

1. A representative of the staff from the Town's Planning and Development Department may be present at each hearing.

The Town's Planning and Development Department staff representative shall act as an advisor to the Committee and shall advise the Committee on the following matters:

- a. Conformity of the Application to the Regional and Local Official Plans and other appropriate Town, Regional and provincial policies;
- b. The results of the comments received from the agencies and departments to which the Application has been circulated;
- c. The position of the Commissioner with respect to the particular Application; and
- d. The conditions which the Commissioner wishes to attach, should the decision be made that the Consent or Variance be given.
- e. The representative from the Town's Planning and Development Department shall be fully entitled to ask any questions of any person making representations to the Committee in order to ascertain any further facts and obtain full disclosure of all information so as to fully advise the Committee.

35. Maintenance of Order at Hearings

The Chair of the Committee may give such directions at a hearing as he or she considers necessary for the maintenance of order at the hearing.

36. Record of Proceedings

1. The Secretary-Treasurer of the Committee shall compile a record of all proceedings in which a hearing has been held which shall include:

- a. Any Application, complaint, reference or other document if any, by which the proceedings were commenced;
- b. The notice of any hearing;

- c. Any directions given by the Committee;
- d. All documentary evidence filed with the Committee;
- e. Any written record of the oral evidence given at the hearing; and
- f. The decision of the Committee and the reasons therefor, where reasons have been given.

37. Adjournments

A hearing may be adjourned from time to time by the Committee of its own motion or where it is shown to the satisfaction of the Committee that the adjournment is required to permit a fair hearing to be held.

38. Deliberation

The hearing of all evidence, all deliberations and consideration of the evidence leading to a decision shall be conducted in public.

39. Decision

1. Decisions by the Committee at the hearing shall be made by a majority vote upon a motion proposed and seconded by the members present at the time of voting. The Chair shall be entitled to one vote as a member of the Committee. Where there is a tied vote, the Application shall fail.
2. The Committee may impose one or more conditions on the granting of a Consent or Variance. The conditions shall be certain, and indicate very clearly what is to be accomplished, and how a condition may be fulfilled. All conditions must be capable of fulfillment prior to the lapsing of the decision granting the Consent or Variance.

40. Parties' Right to Appeal

1. The Chair shall advise the Applicant and all those persons making representations on the Application, of the right to appeal and how such an appeal is to be filed.
2. In the absence of the Chair, the Acting Chair shall exercise all authority and fulfil all duties of the Chair under the Act and this By-law.

SCHEDULE "B"

D. OATH OR AFFIRMATION

1. The Chair at each Committee of Adjustment and Consent hearing shall administer an oath or affirmation as follows:
 - a. The witness shall be asked whether he or she prefers to swear an oath or affirm.
2. Where the witness indicates that he or she will swear an oath, he or she is to be handed a Bible by the Chair. The Chair shall then ask:

"Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?"
3. The witness shall then answer either in the affirmative or the negative.
4. Where the witness indicates that he or she would prefer to affirm, he or she is not handed a Bible. The Chair shall ask the witness the following question:

"Do you affirm to tell the truth, the whole truth and nothing but the truth?"
5. The witness shall then answer either in the affirmative or the negative.