

City of Toronto Committee of Adjustment Benchmarking Study

Independent Real Estate Intelligence

July 21, 2023

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City of Toronto
Committee of Adjustment Benchmarking
Study

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BILD

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EXECUTIVE SUMMARY

Altus Group Economic Consulting was retained by BILD to undertake a study of the City of Toronto’s Committee of Adjustment (“COA”) timelines for decisions on minor variances as part of a broader examination of the factors that may be contributing to housing affordability issues.

The study looks at the last eight (8) years (2015-2022) of minor variance application timelines using data from the City of Toronto’s Open Data Catalog. This time range was chosen to overlap with the last two terms of COA appointments.

According to the City:

Every year, the Committee considers between 3000 and 4500 applications at over 90 hearings... The Committee of Adjustment is also often the first and only touchpoint many Torontonians will have with a development approval process...

Application volumes have increased from around 2,000 to 3,000 applications a year before 2010, to around 4,000 applications or more in recent years.

The COA is structured into four (4) districts that follow the former lower-tier municipal boundaries of the pre-amalgamated city. Generally, this report found that most of COA district timelines are around or slightly above the city-wide average that was reported in budgetary notes, except for the Toronto East York (“TEY”) district. TEY has consistently had the longest timelines when compared to the City’s other districts.

The total average decision timelines for typical applications between 2015 and 2022, irrespective of COA district, was 95 days across the entirety of the 8-year period. This is 65 days longer than the 30-day service standard required by section 45(4) of the *Planning Act* and 32 days longer than the 63-day (9 week) target for service standards set by the City. According to both this report’s analysis and the City’s own review and budgetary note statements, COA applications are neither meeting the City’s target for service standard nor the standard set by the *Planning Act*.

Generally, the average approval rate has risen precipitously for all applications over the time period examined, however, new residential minor variances were roughly 3.1% below the overall average over the 2015-2022

period and Order to Comply (“OTC”) applications were 7.9% below the total average.

These results intuitively match expected decision-making outcomes given the sometimes-political nature of new housing and legalizing existing illegal homes or home features (decks, porches, garages, etc.) that OTC applications represent.

However, a high approval rate also shows that most intended minor variance requests conform to the City’s Official Plan and the overall intent of the zoning by-law, but there are specific provisions in the zoning by-law that are leading to a high degree of unnecessarily discretionary approvals rather than as-of-right allowances.

It should be kept in mind that the observed approval rates are only applicable to minor variances and do not include consent applications, which are not a subject of this report.

Based on qualitative interviews with land-use experts that have a long-standing familiarity with the COA, the high rate of approval was also reported to mirror their perceptions of decision-making results. The improving trend in approvals was attributed to better training of COA members and improved direction from staff. Unfortunately, without better records of COA decision making and staff direction or recommendations, it is not possible to verify this quantitatively.

Long timelines are not just an issue for the COA. Applications that are also appealed can significantly add to delays due to extensive timelines for decision making by appeal boards.

The average timeline for a minor variance application to receive a decision by the OLT/TLAB was 333 days (47.5 weeks) compared to 96 days (13.7 weeks) when a decision was solely rendered by the COA. Pursuing a decision by the OLT/TLAB represented a 247% increase in timelines compared to a decision being solely rendered by a COA panel.

Delays from Toronto’s COA and TLAB can add significant costs to the final price of a home. Based on Altus Group Cost Consulting insights, delays can add 8% to 14% to costs annually, or 2.7% to 3.5% on a quarterly (3 month) basis in additional construction related costs. These additional costs equate to about \$9 per square foot to \$19 per square foot annually, or approximately

\$21,000 to \$58,000. These additional construction costs exclude land and related financing costs.

To successfully improve decision timelines for minor variances, this report provides six (6) major recommendations that require action by both the Province and City:

1. **Require Staff to Approve Minor Variances** (Province);
2. **Fix Underlying Zoning Issues to Deal with Volume of Applications** (City);
3. **Make Cross Appointments to COA Panels** (City);
4. **Make Zoning By-laws Available Online** (City, although province should require this for all municipalities);
5. **Improve Data Transparency and Reporting** (City, although province should set terms of reference for this); and
6. **Monitor Parties to an Appeal** (City and Province);

It is evident by the City's own reporting - through budgetary notes, staff reports, and the TLAB Chair's Annual Report - that the COA has been experiencing an overwhelming volume of applications and application timelines are not meeting expectations. While the COVID-19 pandemic exacerbated decision making timelines, the COA and TLAB were both failing to meet application and appeal timelines well before the pandemic.

There is a high degree of risk that as the City implements housing reforms to allow more permissible built forms, this could create a flood of minor variances if sufficient attention is not given to development envelopes and other zoning matters. If pre-existing zoning issues are not fixed, the city could find itself in a scenario where it is committing additional resources just to maintain COA service levels, jeopardizing their efforts at improving them.

Without improving the efficiency of COA decision making timelines or adopting more as-of-right measures that would fix the need for a minor variance application in the first place, the City is seriously jeopardizing its future housing goals to see 285,000 homes built by 2031. Long-timelines act as a chokepoint for both homebuilding and renovations, which could become serious enough that it dissuades builders from constructing new homes, negatively affecting the affordability crisis.

Finally, everyday homeowners trying to add simple additions, such as decks, garages, additions, etc, will likewise be thwarted or find the process to be

overwhelming, taking away their confidence in City's delivery of planning services.

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	i
1 INTRODUCTION	6
1.1 Scope of Study.....	6
1.2 Legislative Background	6
1.3 Background to The Coa	8
2 ESTIMATES OF TIMELINES AND APPROVAL RATE.....	12
2.1 City Self-Reported Data and Remarks.....	12
2.2 Estimates of Minor Variance Timelines	15
2.3 Estimates Of Minor Variance Approval Rates	22
3 ANALYSIS AND COMMENTARY	25
3.1 Local Appeal Bodies and Third-Party Appeals	25
3.2 Bill 23 Changes to Third-Party Appeal Rights.....	30
3.3 Cost of Delay	34
3.4 Application Pre-Submission Timelines.....	35
3.5 End-To-End Review	37
3.6 Zoning Reform.....	41
4 RECOMMENDATIONS AND CONCLUSION	44
4.1 Recommendations	44
4.2 Conclusion.....	48
5 APPENDIX.....	50
5.1 Data management.....	50
5.2 Applitcation Type Explanation.....	52

1 INTRODUCTION

This section provides information on the scope of study, background on legislative policies, municipal regulations and procedures, composition of the Committee of Adjustment (“COA”), and outlines what a minor variance is for readers less familiar with planning practices in Ontario and at the City of Toronto.

1.1 SCOPE OF STUDY

Altus Group Economic Consulting was retained by BILD to undertake a study of the City of Toronto’s COA timelines for decisions on minor variances as part of a broader examination of the factors that may be contributing to housing affordability issues.

The study looks at the last eight years (2015-2022) of minor variance application timelines using data from the City of Toronto’s Open Data Catalog. This period of examination was chosen to overlap with the last two terms of COA appointments.

1.2 LEGISLATIVE BACKGROUND

The *Planning Act* (the “Act”) policies in relation to minor variance applications, such as those about creating a COA, what constitutes allowable appeals, etc., are extensive. The overview here represents a high-level review of the major policy elements and their importance to the minor variance application process.

A minor variance is a permission from a municipality for a property owner to obtain a building permit even though their plans do not exactly conform with the zoning by-law. For example, many homeowners have to seek a minor variance to be allowed to build a deck, alter a garage, etc., because the zoning either does not permit it or does not make it feasible to build (e.g. the development envelope is too small to allow for the deck).

A minor variance is different from a ‘rezoning’, which seeks to change either the designation of the land (e.g. from R1 single-detached only to R3 townhouses), or to make significant revisions to policies within the zoning by-law (e.g. increasing the allowable floor space index or height permission by a substantial amount). Section 45(1) outlines the four ‘tests’ a minor variance must meet, they are:

1. Is the application minor;
2. Is the application desirable for the appropriate development or use of the land, building or structure;
3. Does the application conform to the general intent and purpose of the Zoning By-law; and
4. Does the application conform to the general intent and purpose of the Official Plan.

It is important to note that an application must pass all four tests. In determining if an application is minor, the COA is required to look at both the proposed change in terms of size and impact in determining if it is 'minor'.¹ There are no specific thresholds to determine what is minor, rather it is a subjective determination that must be made by the COA in coming to a decision.

Given its contextual nature, a common complaint among land use planning experts about the first test is its subjective nature that can cause decisions to have a significant range of interpretation depending on the COA members overseeing the case or city staff members assigned with reviewing the application. However, without better data on decision making, more quantitatively based insights into this issue are not possible at the present.

It should be noted that a minor variance is not a 'special privilege' that requires an applicant to justify the relief being sought based on need or hardship², which is an issue that had been extensively litigated both within the Ontario Municipal Board ("OMB") and judicial appeals courts. As well, these factors cannot be used to justify overcoming a failure in any of the four tests. There have been notable cases of the COA rejecting minor variance applications despite it creating great hardship to individuals and potentially undesirable outcomes to society, such as the failure to legalize an existing illegal rooming house, which leads to residents of that home being evicted.

Section 44 of the Act empowers municipalities to create a COA comprised of at least three (3) or more people. This section of the Act also sets out the basic structure that the committee shall have, how appointments are made, who can be appointed, the requirement for a chair, etc.

¹ Vincent v. Degasperis, 2005 CanLII 24263 (ON SCDC)

² http://www.arblasterlaw.com/uploads/1/1/7/8/117887279/what_is_or_is_not_a_minor_variance_-_principles_and_cases_2017.pdf (page 5)

Section 45 outlines the Powers of Committee. Section 45(3) provides the statutory authority for a COA to grant minor variances, section 45(4) requires that a hearing on an application be held within 30 days after it has been received and section 45(12) of the Act allows for appeals of a COA within 20 days after the decision notice has been given. However, the ability for ‘third parties’ to make an appeal was recently limited by Bill 23 (see section 3.2 in this report for more details and discussion on this topic).

1.3 BACKGROUND TO THE COA

According to City Planning staff, the COA is:

... is an independent, quasi-judicial administrative tribunal that hears and decides on applications for minor variance, consent, and the extension or enlargement of legal non-conforming uses under the Planning Act. It is administered by the City Planning Division but is independent from City staff and City Council.

Although the Committee of Adjustment makes decisions on planning approvals for what are generally smaller scale development projects, it plays an important role in the redevelopment and renewal of Toronto's housing stock and facilitates a wide variety of commercial, institutional and industrial developments.

Every year, the Committee considers between 3000 and 4500 applications at over 90 hearings. The approvals granted by the Committee allow residents to accommodate changing household needs through renovations or new construction, facilitate gentle intensification in neighbourhoods, enable investment and the evolution of the city in other ways. The Committee of Adjustment is also often the first and only touchpoint many Torontonians will have with a development approval process, and allows applicants of all levels of experience to have small projects receive the necessary approvals for zoning compliance in a relatively quick and cost-effective manner.

Given the diversity of stakeholders and the sometimes conflictual nature of applications, there will always be some users unhappy with Committee decisions. While not everyone will get the outcome they want from the Committee, the public should generally have confidence in, and satisfaction with how the decision was reached. Stakeholders should walk away from their experience with the Committee of Adjustment confident that the process was fair, transparent, accessible, efficient, and adhered to the principles of natural justice.³

³ Planning and Housing Committee, Item - 2023.PH2.5, February 6th 2023, Report from the Chief Planner and Executive Director, City Planning on Committee of Adjustment - Consultant Review

The COA in Toronto is governed by Chapter 4 of the Toronto Municipal Code, which came into effect in June 2001 through By-law 569-2001, which has been amended as recently as September 2021. Chapter 4 sets out the creation, composition, authority, and other provisions governing the COA. As well, the COA has its own *Rules of Procedure*, which sets out specifics on how agendas are created, how hearings are to be conducted, etc.

Toronto's COA is comprised of 35 members structured into four (4) districts that follow the former lower-tier municipal boundaries of the pre-amalgamated city. Each district is comprised of one (1) or more panels that include five (5) members. Each panel is responsible to oversee appeals at hearings schedule for it.

Members of a COA, who are not members of a municipal council, hold office for the same term of the Council that appointed them. COA members who are also members of City Council (i.e., ward councillors) must be appointed annually.⁴

Three (3) members are required to achieve quorum. If one (1) member of a five (5) member panel is absent for any reason (i.e., sick, injured, etc.) and thus a panel consists of four (4) members, the chair of the panel is required to avoid voting where it would create a tie unless another member cannot vote due to a declared conflict of interest.

The four (4) districts are each constituted with the following number of members:

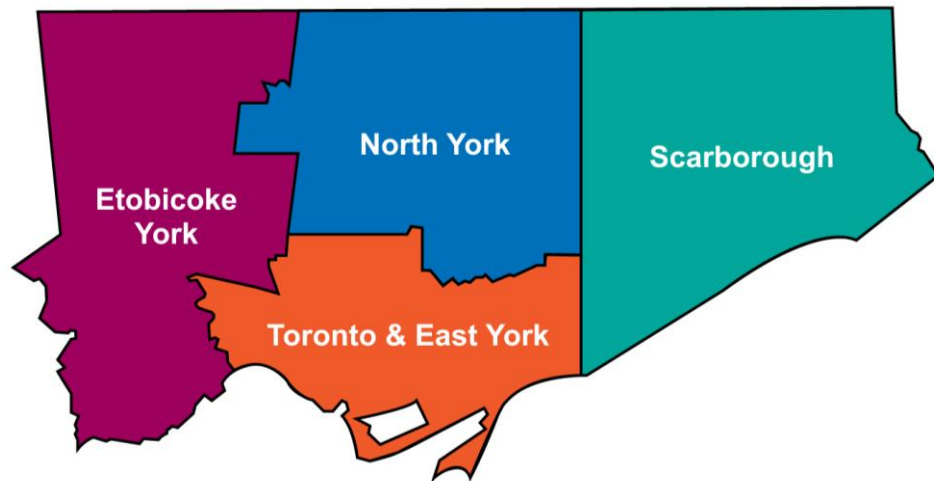
- 8 members on the Etobicoke York district;
- 10 members on the North York district;
- 5 members on the Scarborough district; and
- 12 members on the Toronto and East York district

Figure 1 provides a map with the boundaries of the four (4) districts.

⁴ See section 44 (3) of the Planning Act

Figure 1

City of Toronto Committee of Adjustment District Boundaries

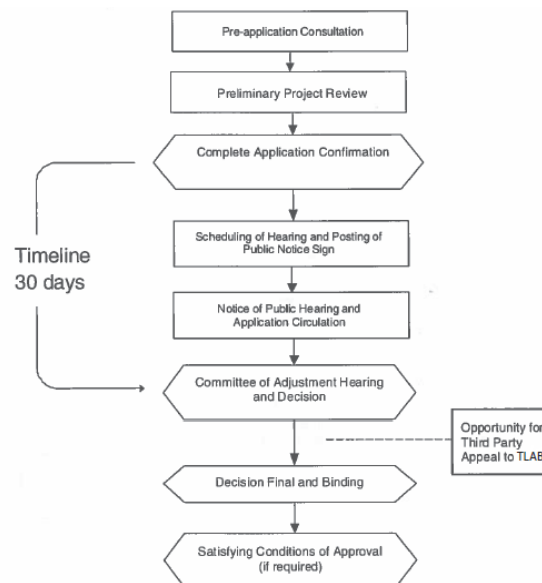


Source: City of Toronto

Figure 2 provides a process map for minor variance applications. It is taken from the City’s guidance documents for minor variances. Note that third party appeals, which are displayed on the process map, are now restricted to specific persons (see section 3.2 for more details).

Figure 2

Minor Variance Development Guide



Source: City of Toronto

This report reviews aspects of the efficiency of the COA’s operations - including an examination of how long a ‘typical’ application takes (see

Appendix Section 5.2 for more details on typical applications) and the rate at which they are approved to help inform recommendations for future improvements that are both specific to the City of Toronto and potentially adaptable for other municipal jurisdictions.

This report depends on both quantitative and qualitative investigations to provide a picture of the existing state of COA operations and outcomes. It depends on information made publicly available by the City, including open data, meeting minutes, staff reports, third-party reports, and other material sources. As well, this report depends on the knowledge and experience provided through interview of several land-use planning experts that have first-hand experience with the COA and its processes.

2 ESTIMATES OF TIMELINES AND APPROVAL RATE

This section provides City reported timelines as extracted from budget documents, as well as estimates of hearing timelines and approval rates based on the data provided by the City through its Open Data Portal.

2.1 CITY SELF-REPORTED DATA AND REMARKS

Through its budget documents, the City of Toronto has for numerous years reported COA timeline data. The City's annual reporting on COA matters stipulates that its measurement of timelines is based on the timeframe from the receipt of COA application to the hearing date.⁵

Although the City does not specify, it is likely their measurement is inclusive of all application types (consents, minor variances, etc) and all types of development (residential, non-residential, renovations, net new units, etc.). As well, the City presents its data as a City-wide aggregate and does not provide cross-tabulated breakdowns by COA district.

The City of Toronto should generally be commended for the level of transparency into COA operations that its budget notes provide in comparison with other municipal jurisdictions. A number of other major municipalities within the GTA budgets, and/or business plans, were reviewed as part of the background research for this report and it was found that they provided little to no information on key performance indicators ("KPIs") for their own COAs.

It is noted though that the City of Mississauga did provide the total volume of COA applications per year and the City of Vaughan provides percentages of COA application that were within prescribed timelines, although it makes no specific mention as to what those timelines are. Most other municipalities provided no guidance or assessment of COA performance.

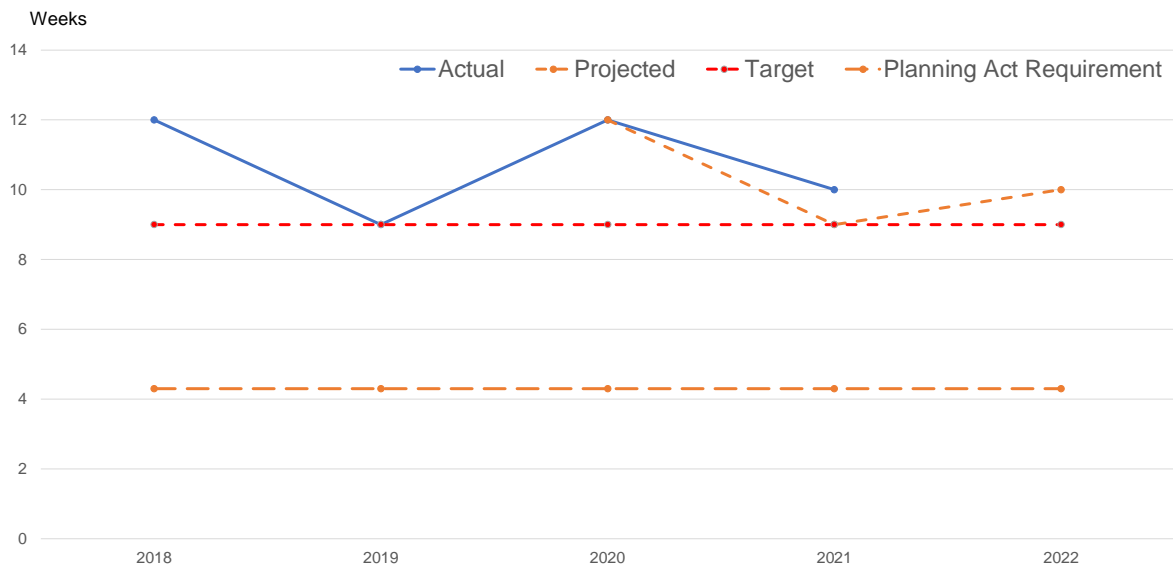
Figure 3 provides a time-series of actual, projected, and targeted timelines between 2018 and 2022 as extracted from the City's recent budgets.

The City only met its target timelines once (2019) but otherwise timelines for COA applications have been longer than the target or projected timelines. The target timelines are based on performance expectations set by the City,

⁵ City of Toronto Budgets 2020-2022

while projected timelines are forecasts of how the City expected to finish the year - the budgets provide data from Year-to-Date through October with projections being based on extending the prevailing trends at the time to end of the year.

Figure 3 **Reported Committee of Adjustment Timelines, City of Toronto, 2018-2022**



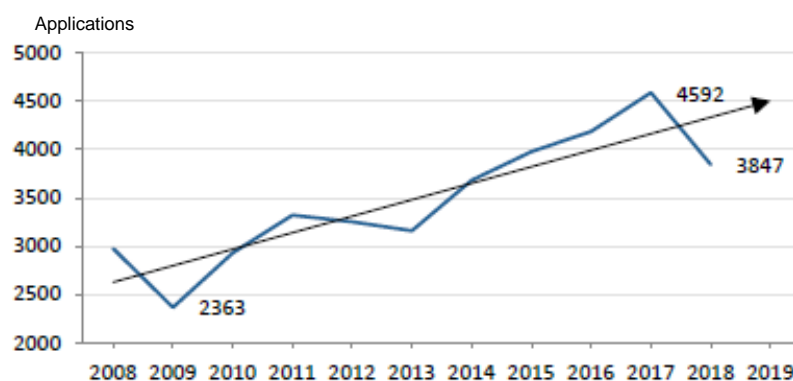
Source: Altus Group based on City of Toronto Budgets 2021-2023

It is important to emphasize that section 45 (4) of the *Planning Act* governing the Powers of Committee requires that a hearing on an application be held within 30 days after it has been received. A nine (9) week target is 63 days long, or 33 days longer than the service level required by the Act.

Much of the recent rise and then fall in timelines for COA applications, as reported by the City, can be attributable to the impacts of the COVID-19 pandemic and the disruptions involved in changes to work patterns. However, much of the longer-term issues with decision timelines exceeding both targeted and prescribed timelines can be attributed to the overall increase in the volume of COA Applications.

Figure 4 is an extracted chart from the City of Toronto's 2020 Budget and displays the total number of applications the COA received from 2008 to 2018. Total application volumes have risen from 2,000 to 3,000 applications in the late 2000s to 3,500 to 4,500 applications in more recent years.

Figure 4 Number of CoA Applications per year, City of Toronto, 2008-2019



Source: City of Toronto, Budget 2020

Figure 5 provides a breakdown of COA application by district for all application types between 2018 and 2021. The information from this chart was extracted from the Toronto Local Appeal Board (“TLAB”) Chairs Annual Report and provides more recent application volume data, as opposed to the City Budget that the previous chart was taken from.

The average annual volume of COA applications between 2018 to 2021 was just under 4,000 applications, with about 45% of them occurring on average in the Toronto East York district over the four (4) year period.

Figure 5 CoA Applications Per Year, by CoA District, all Application Types, City of Toronto, 2018-2021

District	2018	2019	2020	2021	Average 2018-2021
<i>Applications</i>					
Toronto East York	1,377	1,353	2,402	2,062	1,799
North York	940	845	798	1,029	903
Etobicoke York	1,038	788	636	756	805
Scarborough	492	406	461	541	475
Total	3,847	3,392	4,297	4,388	3,981
<i>Percent of Total</i>					
Toronto East York	35.8	39.9	55.9	47.0	44.6
North York	24.4	24.9	18.6	23.5	22.8
Etobicoke York	27.0	23.2	14.8	17.2	20.6
Scarborough	12.8	12.0	10.7	12.3	12.0
Total	100.0	100.0	100.0	100.0	100.0

Source: Altus Group Economic Consulting based TLAB Chair's Annual Report 2018-2021

The budgets from 2018 to 2023 have continuously highlighted the volume level of COA applications as an important issue and warned about the

effectiveness and efficiency of the Committee of Adjustment and Community Planning under their 'Key Challenges and Risks' section within the budgetary notes. Below are excerpts of these statements from the various years.

High volume of Committee of Adjustment and Community Planning applications being received in past years with applications becoming increasingly complex. (2018 Budget)

High volume and complexity of Committee of Adjustment applications driving workload and operational challenges. (Budget 2019)

The number of CoA applications received in the last ten years has increased steadily, resulting in processing back-log issues. (Budget 2020)

Improve the effectiveness and efficiency of the Committee of Adjustment and Community Planning; harmonizing policies and practices. (Budget 2021)

Less effectiveness and efficiency of the Committee of Adjustment and Community Planning; harmonizing policies and practices (Budget 2022)

Effectiveness and efficiency in the Committee of Adjustment and Community Planning; harmonizing policies and practices. (Budgets, 2023)

The City's own data analysis and budget statements indicate that the effectiveness and efficiency of the COA have been an on-going issue.

2.2 ESTIMATES OF MINOR VARIANCE TIMELINES

2.2.1 Overview and Approach

Generally, the City's analysis presented in its budget documents does provide a good indication of service levels at the COA and largely corresponds to the observations found in our review of trends evident from the City's open data set. The findings in this report are within 2 to 4 weeks of the City's own reported average, with results showing the same directional indicators (i.e. application timelines are getting worse or better in the same years).

An important caveat to note is that the City's reported average is based on a City-wide measure for all application types, which includes consents, while this report specifically seeks to only look at minor variances.

As well, while this analysis uses data provided by the City, the way in which the City procedurally processes the raw data may differ from the procedures used in this report (see Appendix section 5.1 for further details).

The City may also not be using the exact same dataset it provides the public in its analysis, with its own data likely having more up-to-date information, on-going data maintenance to remove duplicates or erroneous entries, etc.

Finally, the 'in date' that the City provides in its open data is defined as "Date application received", which could be different than what it tracks as an actual 'complete application' date, which a legally when the 'clock' on applications begin per the requirements that are dictated in the *Planning Act*. This has the potential to skew results moderately by a few weeks.

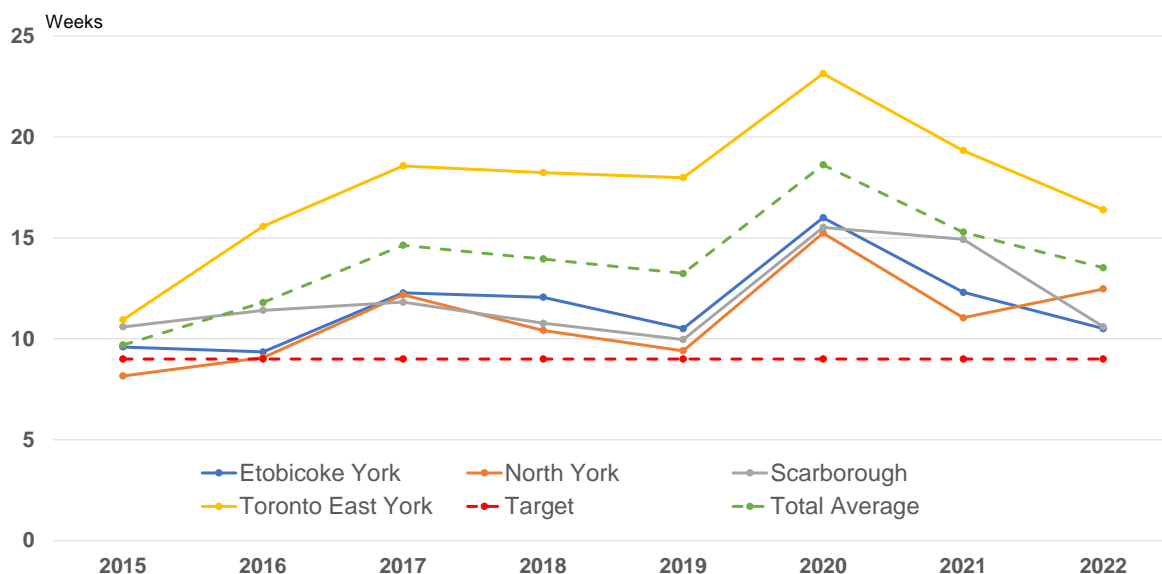
Despite cautionary note on the integrity of the data that is available, the value of the timeline analysis undertaken from this report includes the following:

- Confirming the City's findings regarding the direction the City's COA operations are going in;
- Highlight key trends in terms of geography, type of application, and other inefficiencies in how COA is used; and
- Assessing impacts of actions the City has taken to reform COA operations on the ability of the COA to become more efficient and promote more housing supply.

2.2.2 Timelines by District

Figure 6 shows timelines by COA district location for all application types between 2015 and 2022. Mirroring the same directional movement as reported in the City's budget, application timelines saw an improvement between 2018 and 2019, but timelines increased substantially with the onset of the COVID-19 in 2020.

Figure 6 Timelines for Minor Variances, all Application Types, by COA District, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

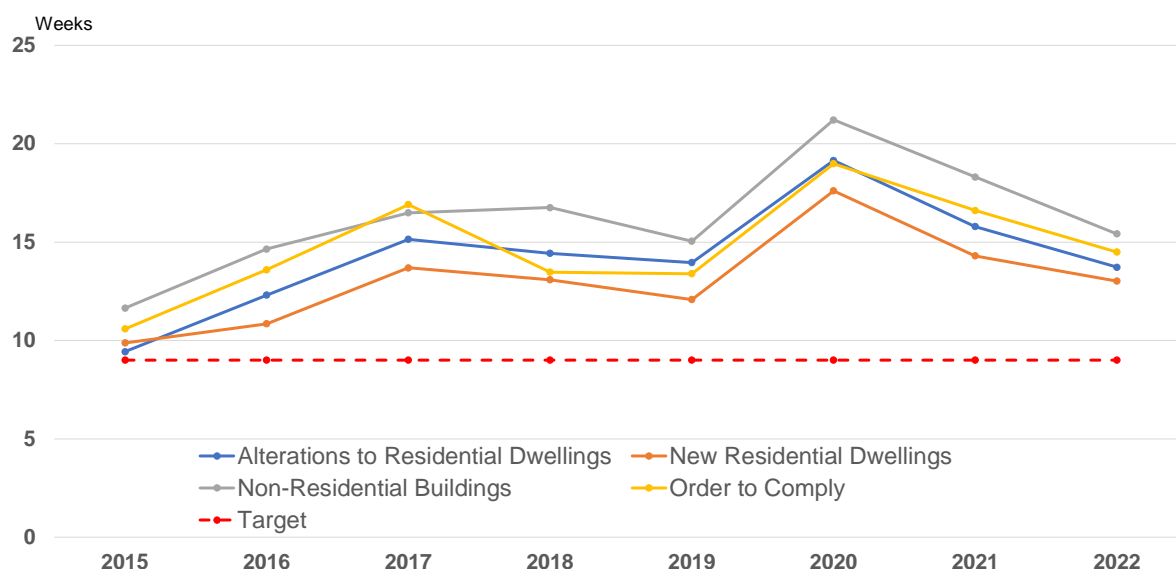
Generally, most of the COA district timelines are around or slightly above what the City reported in its budget notes, except for the Toronto East York (“TEY”) district. TEY has consistently had the longest timelines when compared to the City’s other districts. It should be noted that the City made major changes to the composition of COA between 2019 and 2021, such as adding additional members to the TEY district.

2.2.3 Minor Variance by Application Type

Figure 7 provides a timeline for minor variances by application types between 2015 and 2022 (see Appendix Section 5.2 for more information on definitions of application types and procedures used to create this data).

Processing times have improved since the peak achieved in the pandemic period of 2020, bringing timelines down to their previous levels seen in 2018. However, applications in 2022 still typically take 3-6 weeks longer than they did in 2015, the year with the shortest timelines in the dataset.

Figure 7 Timelines for Minor Variances, by Application Type, all COA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

The gap in timelines between application types is generally very small and may not represent statistically significant differences. The results from the previous two analyses show that generally the district in which an application is submitted for review has a greater weighting on the final timeline than the application type being reviewed.

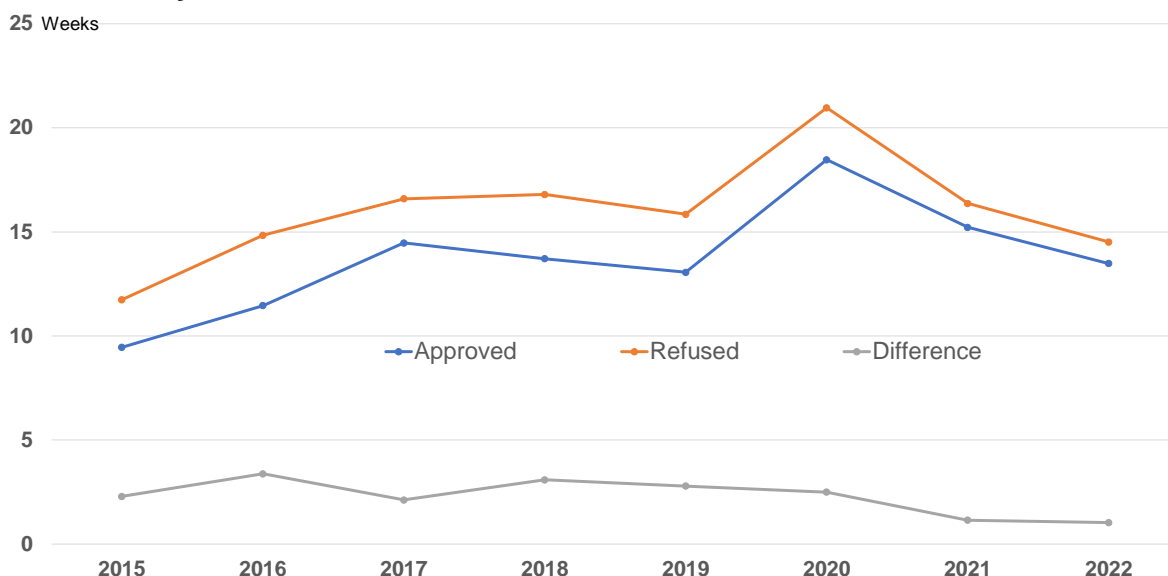
2.2.4 Minor Variance Timelines by Decision Outcomes

Figure 8 provides timelines for minor variances based on the decision rendered (approved or refused) for all application types and all COA districts between 2015 to 2022.

The timelines for applications to be approved or refused mirrors those established in previous analysis. However, applications that are refused consistently take between 1-to-3 weeks longer for a decision to be rendered by the COA, with the gap narrowing in more recent years.

However, the gap in timelines does not necessarily indicate a significant difference given its narrowness, and generally both approved and refused applications timelines take about the same amount of time to work through the process to a decision.

Figure 8 Timelines for Minor Variances, by Decision, all Application Types, all COA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

2.2.5 Timelines for Decisions Referred to OLT/TLAB

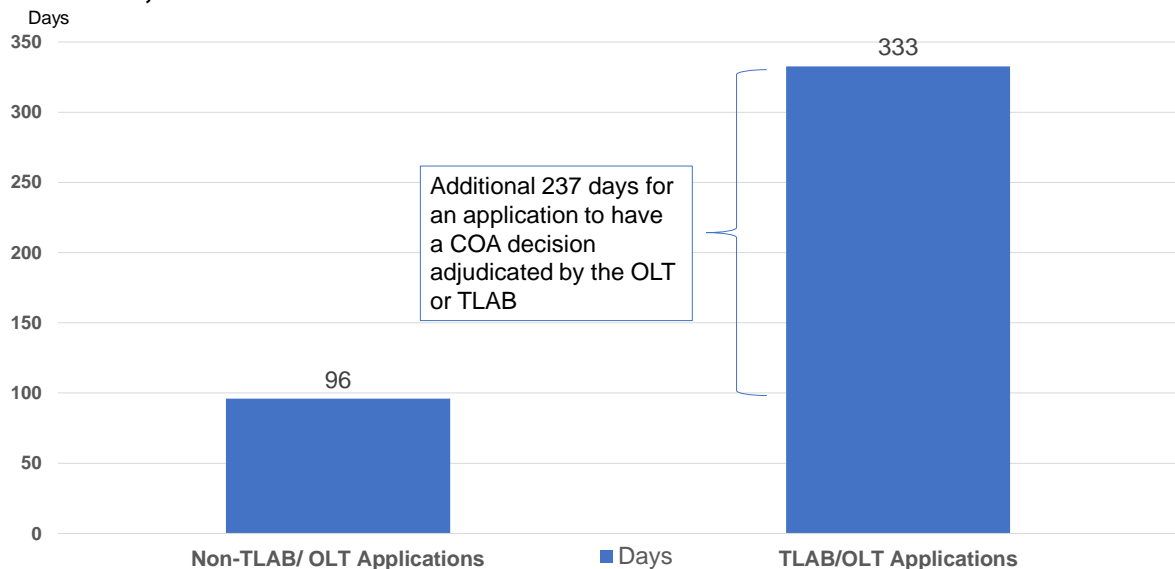
Figure 9 provides timelines for a decision to be rendered between applications that are referred to the Ontario Lands Tribunal (“OLT”, formerly OMB)/ Toronto Local Appeal Body (“TLAB”) compared to all other applications that did not have a decision rendered by the OLT/TLAB.

Most minor variance applications that are appealed in Toronto are adjudicated by TLAB, however, all minor variances appealed outside of Toronto are heard by the OLT. Typically, minor variances being adjudicated by the OLT for a matter located in Toronto only happens in exceptional circumstances, such as when a minor variance is part of an appeal of a site plan.

Prior to the establishment of the TLAB in 2017, the Ontario Municipal Board (“OMB” forerunner to the OLT) did hear minor variance and consent cases that were within the boundaries of the City of Toronto.

The average timeline for a minor variance application to receive a decision by the TLAB was 333 days (47.5 weeks) compared to 96 days (13.7 weeks) when a decision was solely rendered by the COA. Pursuing a decision by the TLAB represented a 247% increase in timelines compared to a decision being solely rendered by a COA panel.

Figure 9 Average Timelines for Minor Variances, Appealed Application Comparison, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

2.2.6 Use of and Benefits of Virtual Hearings for COA Matters

Figure 10 shows the percentage of virtual hearings carried out for minor variance applications between 2015-2022. Before 2020, only a small fraction of hearings were held virtually, with no virtual hearings in 2018, and only 3.3% of hearings in 2019 being virtual. The pandemic induced a massive shift in the way the COA operates, with 100% of hearings being held virtually in 2021 for typical applications.

As work patterns have returned to ‘normal’ in 2022, there is little to no discernible difference when comparing to prevailing trends seen in pre-pandemic timelines as exemplified by timelines seen in 2018. While the application timeline benefits from virtual hearings may be moot, it is possible to conclude that they at least are not detrimental.

Figure 10

**COA Virtual Hearing Statistics,
City of Toronto, 2018-2022**

Year	Hearings Held Virtually	Decision Timelines
	Percent	Days
2018	0.0	98
2019	3.3	93
2020	97.1	130
2021	100.0	107

Source: Altus Group Economic Consulting
based on City of Toronto Open
Data

Through a qualitative investigation, based on interviews with land-use professionals, it has been noted that many expert witnesses and other regular participants of TLAB/OLT prefer virtual hearings over in-person hearings. Common themes about why virtual hearings were preferable included the convenience and time-savings of not having to travel to specific locations and avoidance of unproductive time spent waiting at the hearing location to await a case to be called by a panel. The time savings associated with virtual hearings also results in time-savings for those retaining experts, as well as frees up expert 'capacity' to be spent on other files.

An additional benefit for virtual hearings to COA members, and the COA's functionality in general, is the ability to have COA members work in multiple districts and multiple panels. Traditionally COA members were assigned to specific panels within specific districts. Later reforms in Toronto allowed members to be assigned to multiple panels within districts, allowing for the statutory quorum to be more easily met and hearing delays to be avoided.

Unfortunately, the data provided by the City on COA applications does not provide any insights on quorum issues and hearing delays to assess if virtual hearings have had a discernible positive impact.

The total average decision timelines for typical applications between 2015 and 2022, irrespective of COA district location, decision made, or application type, was 96 days across the entirety of the 8-year period. This is 66 days longer than the 30-day service standard required by section 45(4) of the *Planning Act* and 33 days longer than the 63-day (9 week) target for service standards set by the City. According to both this report's analysis and the City's own review and budgetary note statements, COA applications are

neither meeting the City’s target for service standard nor the standard set by the *Planning Act*.

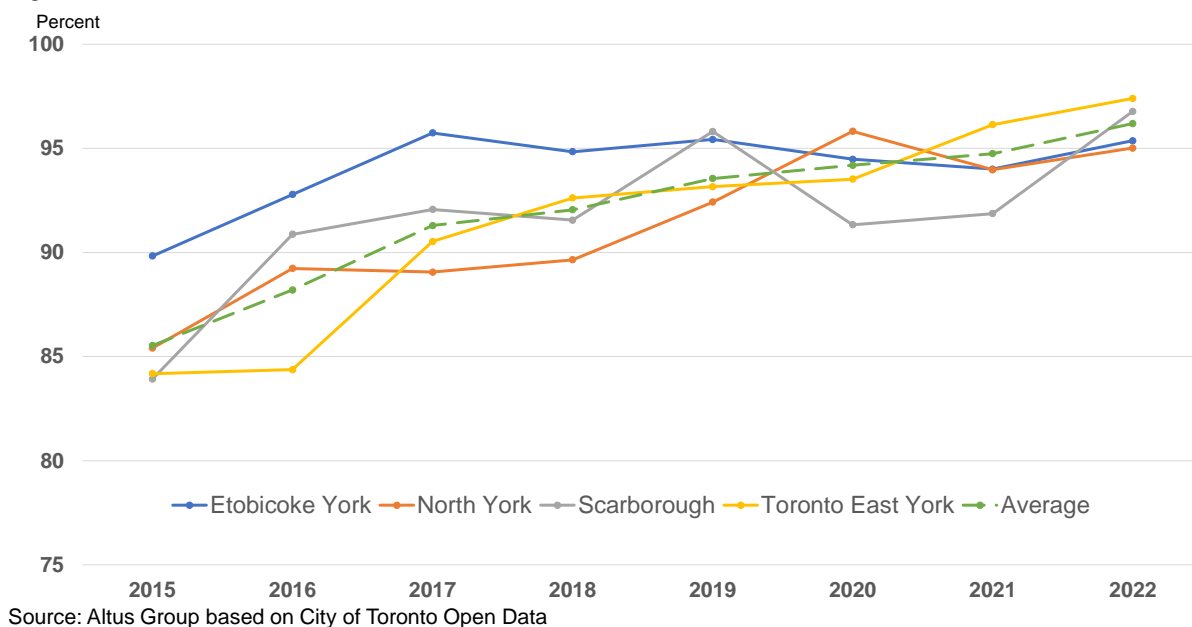
2.3 ESTIMATES OF MINOR VARIANCE APPROVAL RATES

This section of the report examines various cross tabulations of the approval rate, which is inclusive of applications that were approved with or without conditions but excludes applications where a decision was rendered by the OLT/TLAB.

2.3.1 Approval Rate by District

Figure 11 shows the approval rate by COA district. Etobicoke York led with the highest approval rate among all the districts until 2019, after which the gap between districts narrowed towards the overall average 96% in 2022. Without better data on reasoning behind COA decisions, it is not possible to definitively explain the increasing trend of approvals.

Figure 11 **Approval Rate, all Application Types, by COA Districts, City of Toronto, 2015-2022**



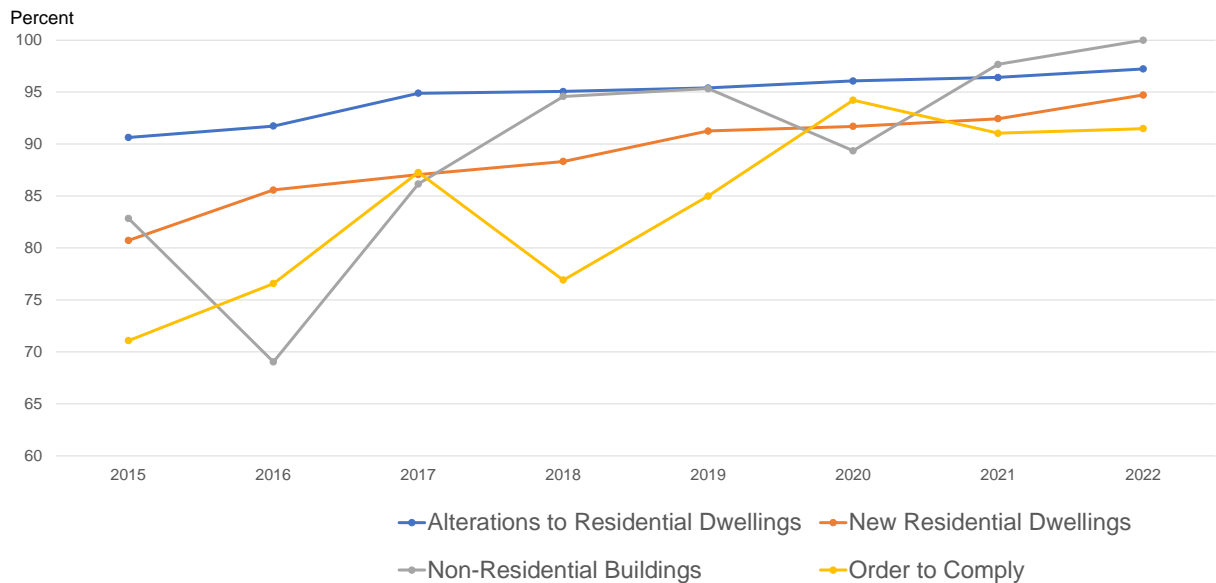
2.3.2 Approval Rate by Application Type

Figure 12 provides the approval rate by application type City-wide between 2015 and 2022. Generally, the approval rate for new residential minor variances was on average around 3.1% below the total average over the 2015-

2022 period and Order to Comply (“OTC”) minor variance applications were on average 7.9% below the total average.

These results intuitively match expected decision-making outcomes given the sometimes-political nature of new housing and legalizing existing illegal homes or home features (decks, porches, garages, etc.) that OTC applications represent.

Figure 12 Approval Rate, by Application Types, all CoA Districts, City of Toronto, 2015-2022



Source: Altus Group based on City of Toronto Open Data

It should be kept in mind that the observed approval rates are only applicable to minor variances and do not include consent applications, which are not a subject of this report.

2.3.3 Discussion Regarding Approval Rates

Based on qualitative interviews with land-use experts that have a long-standing familiarity with the COA, the high rate of approval was also reported to mirror their perceptions of decision-making results. The improving trend in approvals was attributed to better training of COA members and improved direction from staff. Unfortunately, without better records of COA decision making and staff direction or recommendations, it is not possible to verify this quantitatively.

While the data presented in this report indicates that most minor variance applications are eventually approved, it also indicates that policies within the zoning by-law may also be overly rigid.

A high approval rate shows that most intended minor variance requests conform to the City's official plan and the overall intent of the zoning by-law, but the zoning by-law's specific provisions lead to a high degree of unnecessarily discretionary approvals rather than as-of-right allowances.

Given the high approval rating for new residential dwellings by the COA, it would be beneficial for the City to explore how to replace certain minor variance approvals where decisions follow a consistent pattern on a certain subject matter. If such types of appeals could be fixed with changes to the underlying zoning, such that fewer minor variances would be required (or less often), it could help avoid both costly expenses for applicants and tying-up staff resources and expert capacity.

Analysing whether changes to zoning by-law provisions can create a smoother home building process is not unprecedented, with the City having undertaken such an exercise in 2021 as part of its laneway suite review (see section 3.6.3 for more details).

3 ANALYSIS AND COMMENTARY

This section provides commentary on observations on the COA from supplementary research conducted for this report.

3.1 LOCAL APPEAL BODIES AND THIRD-PARTY APPEALS

3.1.1 Overview

Toronto is unique in Ontario as the only municipality that has adopted a Local Appeal Body (“LAB”) to date, which a municipality is authorized to do under section 8.1 of the *Planning Act*. Regulations O. Reg. 551/06 set out the conditions for establishing a local appeal body, such as passing a specific by-law for the purpose, etc.

The City of Toronto’s Local Appeal Body formal existence began in May 2017 and is called the Toronto Local Appeal Body (“TLAB”). It hears cases related to both minor variances and consents (subdivision or aggregations of two or fewer parcels of land).

One advantage for a municipality in creating a LAB is that it can appoint members and arbitrators to oversee cases and appeals that are related to lands within its jurisdictional boundaries. A disadvantage is that the expenses occurred in running the board accrue to the municipality, which then must either recover the cost through appeal fees or make up the difference through the tax base. By contrast, cases heard by the Ontario Land Tribunal⁶ (“OLT”) are overseen by appointees made by the Province, with costs incurred to the Province to operate that entity.

With a high volume of minor variance applications, even small percentages of appeals can create a large volume of cases that takes up the TLABs time, staff resources, and additional expenses to the applicant and City.

3.1.2 Share of COA Applications Appealed to the Toronto Local Appeal Body (TLAB)

Figure 13 shows the percentage of appeal files between 2018 and 2021. Note, the figures being displayed includes appeals for both minor variances and consents.

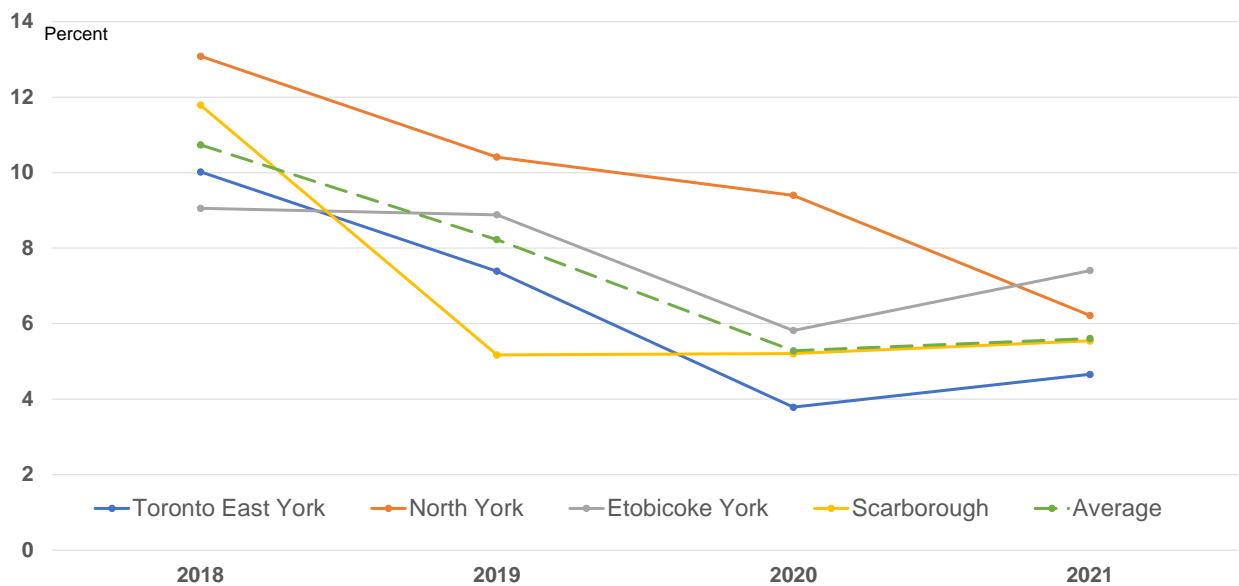
⁶ Formerly the Ontario Municipal Board “OMB” and Land Planning Appeal Tribunal “LPAT”

The percentage of appeal filings has dropped for two reasons. First, the volume of applications per year (denominator) has increased between 2018 and 2021. Second, the total number of appeals (numerator) has decreased substantially.

From 2018 to 2021, the average rate of appeal for total application filings dropped from 10.7% to 5.6%. These results generally track with the increasing approval rate for minor variances, which was found previously in this report, as a higher approval rate would be expected to lead to a lower number of appeals by applicants.

In 2018, the TLAB reported a total of 413 appeals, but by 2021 it reported only 246 appeals, a 40.4% drop in the number of appeals.⁷ The North York COA district has the highest proportion of TLAB appeals relative to the number of COA application for most years, although the proportion has fallen each year since 2018. The districts with the lowest rate of appeal are Toronto East York and Scarborough, which have remained below the average for all years within the time-series analysis.

Figure 13 TLAB Appeals as % of Filed Applications, by District, City of Toronto, 2018-2021



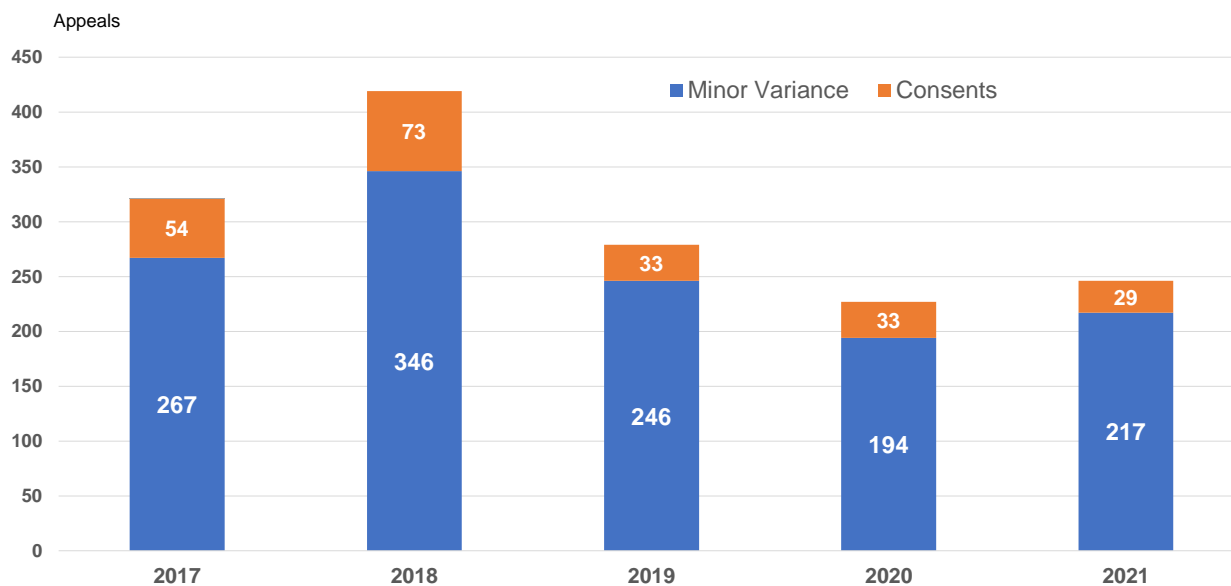
Source: Altus Group based on TLAB Chair's Report 2018-2021

⁷ The TLAB Chairs report for 2018 shows a minor discrepancy in its report with total of 419 appeals city-wide but only 413 appeals by district

3.1.3 Total Number of TLAB Appeals

Figure 14 shows the total number of appeals the TLAB received between 2018 and 2021 by application type (minor variance or consents). On average, minor variance applications made up around 85% of all appeals filed with the COA over the timespan examined.

Figure 14 **TLAB Appeals, by Application Type, all Districts, City of Toronto, 2018-2021**



Source: Altus Group based on TLAB Chair's Report 2018-2021

Despite the total number of appeals dropping between 2018 and 2021, the TLAB has reported that disposition time (the date an appeal is received by TLAB to the date that a decision is issued) has increased substantially. This is a recognized issue by the TLAB as noted in numerous annual reports:

...while the TLAB goal of disposition remains about one-third the time of the former provincial adjudication process, some slight slippage has occurred in TLAB's own 2018 service level. There were a number of factors at work in 2018 that contributed to this: Member departure; lengthy new appointments and training periods (6 months); increased workloads; variable Member availability; facilities disruption to permanent space; and, booking constraints for larger Hearing rooms. It is expected that in 2019 many of these issues will be resolved with Council's increase in the Member complement. (TLAB Chair's Annual Report 2018)

...while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has

occurred in TLAB's service level. There were a number of factors at work in 2019 that contributed: a Member departure; a replacement appointment and lengthy training period; increased workloads; long hearings, adjournments, variable Member availability; and, to a lesser extent, competing demands for hearing dates. (TLAB Chair's Annual Report 2019)

...while the TLAB goal for disposition remains about one-third the time of the former provincial adjudication process, some slippage has occurred in the Tribunal's service levels. There were several factors that contributed to the disruption in service levels, the most significant and detrimental being the COVID-19 pandemic and the unprecedented impact of the virus on City services. (TLAB Chair's Annual Report 2020)

...while the TLAB's goal for disposition remains about one-third of the time of the provincial adjudication process, some slippage has occurred in the Tribunal's service levels

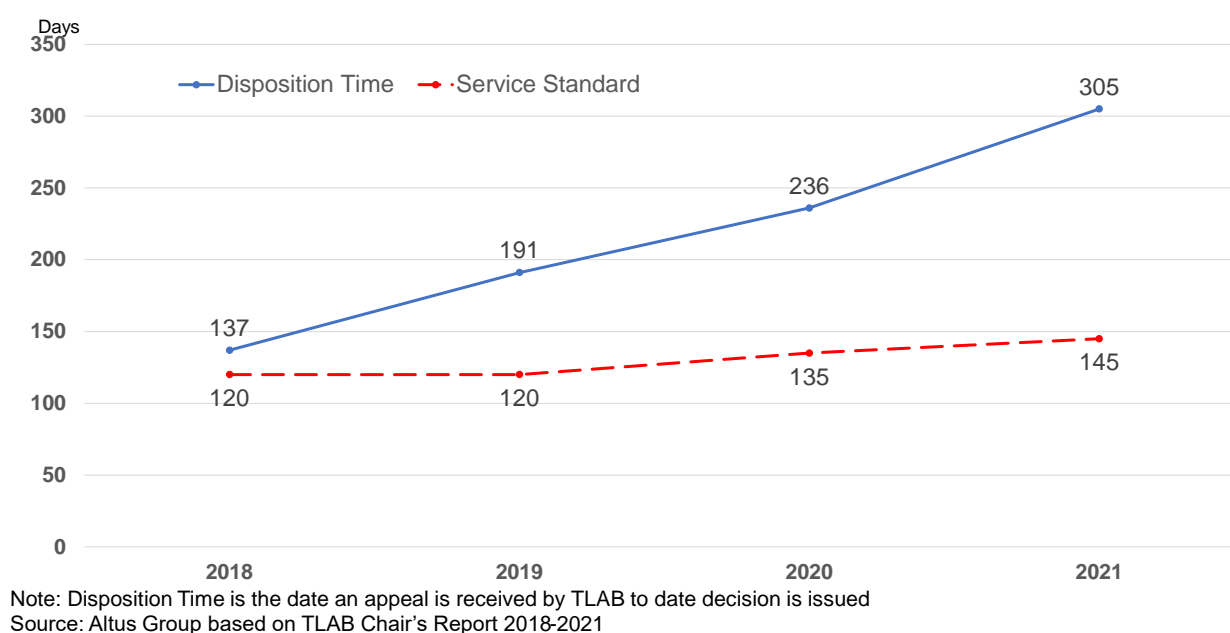
Several factors contributed to the disruption in the TLAB's service levels, the most significant and detrimental being the COVID-19 pandemic and the unprecedented impact of the virus on City services.

Other factors have contributed as well: a lengthy suspension of all Hearing matters in 2020; multiple extensions of that suspension period; a backlog of suspended Hearings and adjournments; resultant increased workload; variable Member and Court Services Tribunal staff availability; technological challenges related to virtual Hearing events; competing demands for Hearing dates on resumption of TLAB Hearings; and, to a lesser extent, a replacement appointment and lengthy training period. (TLAB Chair's Annual Report 2021)

3.1.4 Average Disposition Time

Figure 15 provides the average disposition time between 2018 to 2021. The average disposition time in 2018 was 137 days, increasing to 305 days by 2021 or 123%. The service standard expectation that the TLAB set for itself also increased from 120 days in 2018 to 135 days in 2020 and then 145 days in 2021, a 25-day increase between 2018 to 2021.

Figure 15 **TLAB Disposition Time, all Application Types, all Districts, City of Toronto, 2018-2021**



3.1.5 Appeals by Type of Appellant

The TLAB also only reported on 'Appellant Type' in its first two annual reports (2018 and 2019) for the years 2017 to 2019, after which this variable stopped being presented.

Figure 16 provides the percentage of appellant types out of the total number of appeals based on the TLAB's Chairs Report 2019. While it is not possible to know exactly how many appeals were committed by third parties (a subject matter to be discussed later in this section), the variables 'not applicant/owner' and 'multiple appellant types' likely are inclusive of these types of appeals, which will be referred to as 'third-party appeals' for the purposes of this analysis. Third parties are generally considered to be anyone who is not the applicant, or the City/Province.

The number of third-party appeals can fluctuate year-to-year, for the years where data is available, however, they made up between 40% to 67% of all appellants filing appeals to the TLAB. Richer data would help narrow exactly what kind of third parties are inclusive of this group, nevertheless, it is evident that a significant amount of the casework that the TLAB deals with originates from this class of appellant.

Figure 16

TLAB Appellant Type, all Application Types, all Districts, City of Toronto, 2017-2019

Appellant Type	2017	2018	2019
	<i>Percent</i>		
A. City of Toronto	6.9	9.9	4.7
B. Applicant/Appellant	30.3	49.3	28.7
C. Not Applicant/Owner	59.5	37.7	63.8
D. Multiple Appellant Types	3.3	3.1	2.9
Total	100.0	100.0	100.0
Third Party Share of Appeals (C+D)	62.8	40.8	66.7

Source: Altus Group Economic Consulting based on TLAB's Chair's Annual Report 2019

In addition to appeals by applicant type being dropped from recent TLAB Chair's annual reports, the TLAB also changed its reporting standards for its tracking of 'Appeal Outcomes' and 'Application Outcomes' variables between annual reports.

This change has limited the analysis in this report to volumetric examinations of TLAB operations, such as the number of appeals, how long do appeals take, who is appealing, etc., it is unfortunately not possible to quantitatively assess decision making. Had there been consistency in reporting, it could have shed light on decision making trends over the last four to five years. This makes it difficult to assess any trends beyond a period of two years with how decision-making outcomes may or may not have changed.

3.2 BILL 23 CHANGES TO THIRD-PARTY APPEAL RIGHTS

Regarding third-party appeals, pre-Bill 23, the *Planning Act* section 45(12) used to stipulate:

The applicant, the Minister or any other person or public body who has an interest in the matter may within 20 days of the making of the decision appeal to the Tribunal against the decision of the committee...[emphasis added]

The section now reads:

The applicant, the Minister or a specified person or public body that has an interest in the matter may within 20 days of the making of the decision appeal to the Tribunal against the decision of the committee... [emphasis added]

The *Planning Act* defines 'specified person' under section 1, which provides various legalistic descriptions of entities. In plainer language, the range of 'specified persons' includes:

- Utility companies (electricity, oil, and natural gas) that operate within a municipality, including Hydro One and Ontario Power Generation (“OPG”);
- Railway companies;
- Telecommunications infrastructure providers; and
- Fossil fuel storage companies.

Bill 23 did not remove third-party appeals for COA applications but did narrow the class of third parties to exclude members of the general public.

The reconsideration of third-party appeals was part of the Province’s *Housing Affordability Task Force Report* (2022). As well, the Human Rights Tribunal of Ontario noted that delays caused by appeals add costs to development and divert public funds away from other uses such as funding affordable and supportive housing:

The Commission heard that discriminatory NIMBY opposition delays or discourages affordable housing development, increases its costs and diverts public funds to costly appeals to the Ontario Municipal Board, when these funds could instead be used to create more affordable and supportive housing. It may cause housing providers to feel they need to make compromises to get affordable housing built, even when these compromises undermine the dignity or well-being of their residents. For example, the Commission heard that housing providers may be asked to install windows that cannot be opened by tenants, or that are frosted so that tenants cannot look at their neighbours. In some cases, people are exposed to harassment throughout the planning process, and end up feeling unwelcome once they move into their new neighbourhood for reasons relating to grounds listed in the Code.⁸

Without knowing the specific kind of non-owner or multiple appellants examined in the previous section of this report (e.g., electrical companies or a private citizen), it is not possible to estimate the impacts from Bill 23 on the TLABs caseload. Likely there will be some beneficial outcomes in terms of caseload and possibly disposition timelines, however, this will not be fully visible in the data until the 2023 TLAB Chair’s Annual Report is made public, likely to be released in 2024, and only if it reintroduces the appellant type data.

It is advisable for the TLAB to provide the appeals data underlying its Chair’s Annual Report in disaggregate form through the City’s Open Data

⁸ *Human rights and not-in-my-back-yard (NIMBY)*. Ontario Human Rights Tribunal

Portal so that members of the public may undertake additional analysis not presented in the report. This is also critical to understand how policies may be affecting various planning outcomes.

While the TLAB is specifically constituted to hear minor variance and consent applications, the OLT adjudicates land-use planning cases that can span issues from official plans and rezonings to development charges and more.

Figure 17 provides a breakdown of the LPATs caseload by application type from 2017 to 2021 before the tribunal was reconstituted into the OLT in late 2021. Minor variances and consents made up between 30% to 43% of all cases between 2017 and 2021, while cases dealing with consents were a smaller proportion of total cases as compared to minor variances, mirroring the results found in the examination of the TLAB.

Figure 17

LPAT Cases, by Application Type, by Fiscal Year, Province of Ontario, 2017-2021

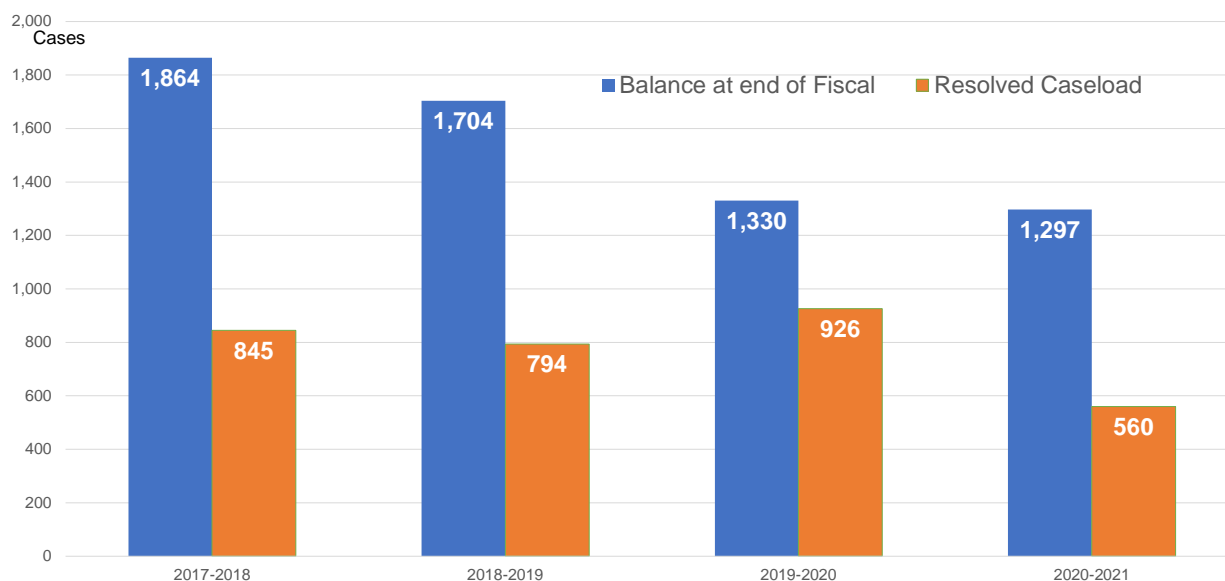
	<u>2017-2018</u>	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>
	<i>Percent of Total</i>			
Minor Variances	20.3	23.4	25.1	20.1
Consents	<u>9.9</u>	<u>14.1</u>	<u>17.8</u>	<u>15.9</u>
Variances and Consents	30.2	37.5	42.9	36.0
All Others	69.8	62.5	57.1	64.0
Total	100.0	100.0	100.0	100.0

Source: Altus Group Economic Consulting based on OLT Annual Report 2020-2021

Figure 18 shows the caseload for the LPAT at the end of each of its fiscal years and the number resolved between 2017 to 2021. Before the LPAT was reconstituted in June 2021 into the OLT (a topic outside of this reports purview) there was a significant backlog of cases.

Like the TLAB and the COA, the LPAT efficiency decreased significantly in 2020-2021 due to impacts from COVID. Unfortunately, it is not possible to analyse any trend recovery as the OLT changed its reporting standards in its 2021-2022 Annual Report to better reflect its new organizational structure. As well, the OLT also did not report disposition times in a manner that allows for comparisons with the TLAB.

Figure 18

LPAT Caseload, Province of Ontario, 2017-2021

Source: Altus Group based on OLT Annual Report 2020-2021

Minor variances represent a substantial amount of work and resourcing expenses for all participants in the land-use planning process – City staff, land-use experts, appellants, and applicants. Bill 23’s narrowing of third-party appeals will likely bring much needed relief to the caseload burden for both the TLAB and the OLT, which should help improve disposition times for the remaining cases and allow for each entity to focus efforts on cases of a complex nature to reach decisions more quickly.

Unfortunately, the data necessary to track changes in trends from policy inducements is opaque at best, or non-existent at worse, with both the TLAB and OLT changing how they report aspects of their caseload from year-to-year. It is unlikely that the full scope of effects from Bill 23 will be possible to detect until 2024 or later.

One facet that should be explored in future reviews of TLAB operations is ‘parties to an appeal’. While third-party appeals have been narrowed to specific persons, persons who are not specified can still request to be a party of an appeal initiated by authorized persons (the applicant, City/Province, or specified persons). Persons or organizations granted the ability to be a party to an appeal have the ability raise issues and cross-examine expert witnesses.

While members of the public should have the ability to become a party to an appeal to raise legitimate land-use planning issues, this avenue of involvement should also not be allowed to be exploited for other purposes beyond legitimate and reasonable grounds. Parties to an appeal have been noted to not always raise substantive issues, fail to retain their own expert witnesses, and have attempted to use cross-examination as an opportunity to ask questions that are not related strictly to land-use planning, which delays or extends proceedings.

It is advisable that the TLAB monitor and provide regular reporting on parties to appeals to ensure that this avenue to address the tribunal is not exploited for purposes other than to address land-use planning issues. Should a substantive trend arise that demonstrates that persons wishing to be parties to an appeal has become more frequently used for non-land use planning purposes, then reforms to party status should be considered.

3.3 COST OF DELAY

Building on the cost of delay analysis that was previously reported in the 2nd Edition BILD Municipal Benchmarking Study, which focused on high-rise construction, Altus Group Cost Consulting has provided new insights for low-rise housing for this report.

Based on a model that incorporates various generic detached homes, which ranged in size between 1,850 square feet to 3,100 square feet, delays are estimated to add between 8% to 14% to home costs annually, or 2.7% to 3.5% on a quarterly (3 month) basis in additional construction related costs. These additional costs equate to \$9 per square foot to \$19 per square foot annually, or approximately \$21,000 to \$58,000. These additional construction costs exclude land and related financing costs.

Statistics Canada data shows that between Q1 2022 to Q1 2023 construction, the last twelve-months of most recently available data, costs for residential construction has increased in the Toronto Census Metropolitan Area by an average of 17.6%, including:

- 16.2% for high-rise apartments (more than five-storeys);
- 19.2% for low-rise apartment (less than five-storeys);
- 18.5% for townhouses; and
- 17.8% for single detached.

Statistics Canada data also shows that the highest increases in cost components for residential construction were:

- 17.6% Exterior improvements;
- 18.7% for masonry;
- 18.9% for metal fabrication;
- 21.5% for thermal and moisture protection;
- 22.1% for finishes;
- 22.9% for equipment;
- 25.0% for concrete;
- 26.3% for wood, plastics and composites; and
- 26.9% for Earthwork 26.9%.

3.4 APPLICATION PRE-SUBMISSION TIMELINES

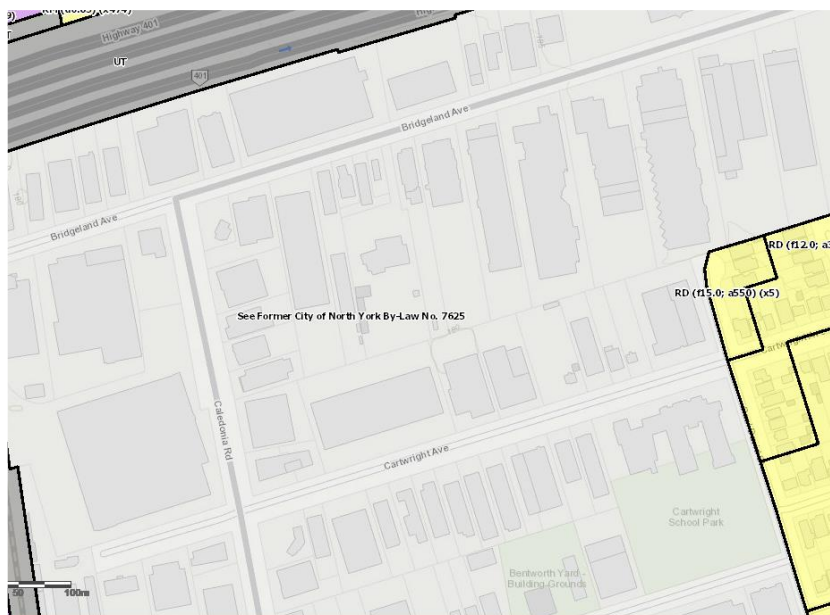
While this report's core focus is on timelines between an initial application submission and a COA hearing, this leaves out consideration for how long applications take to create. Providing some attention to this part of the application process has the potential to reveal additional frustrations applicants experience.

Unfortunately, there is no dataset that is able to track how long an application takes to create beyond polling land-use planning experts on their anecdotal estimates. However, it is possible to make some general observations of the application creation process and pinpoint sources of difficulties, such as the lack of access to zoning by-laws.

The City of Toronto makes its Zoning By-law 569-2013 available to be reviewed online by both text and an interactive map. However, this is not the only zoning by-law in effect in the City, with many of the former pre-amalgamation zoning by-laws concurrently still in effect.

Figure 19 is an extract from the City's Interactive Zoning By-law map hosted on their website. It shows a section of the City east of Keele St and south of Highway 401 where the City's Interactive Zoning By-law map stipulates that a person "see former City of North York By-law No. 7625", which is not available to be reviewed in its entirety anywhere online.

Figure 19 **Example of Missing Zoning By-law Information**



Source: Altus Group based on City of Toronto Zoning By-law Interactive Online Map

The City of Toronto only makes available former municipal by-laws through physical visits to one of its branch office locations. By not making pertinent information easily accessible, a person seeking to build a new home or to make alterations/renovations to an existing home has to physically appear before a City representative in order to get the information they require.

This arrangement not only expends an individual's time and efforts, or that of their representative (builder, planner, lawyer, real estate agent, etc.), but also staff resources necessary to fulfill each request.

The City of Toronto is not unique in lacking the availability of complete zoning information online. Other major municipalities in the GTA, such as the City of Markham, also do not provide complete zoning by-law information for lands within their jurisdiction. This is a situation that should be address by both individual municipalities and by the province to ensure that both builders and the public have readily available information on the laws and regulations that apply to their property.

3.5 END-TO-END REVIEW

3.5.1 Background and Summary of KPMG Report and Recommendations

In June 2020, the City Council directed City Planning to conduct an “End-to-End Review of the Development Review Process” in order to increase the capacity of the COA to clear up a backlog of applications caused by the COVID-19 service disruptions. To complete this task, the City retained the services of KPMG, a consultancy firm, in February of 2022, resulting in a report that was released in January 2023.

The report noted 16 challenges that the COA currently faces, broken up into the two categories of ‘challenges impacting public and applicant participation’ and ‘challenges impacting the overarching performance of the COA’. Figure 20 outlines 16 challenges that were identified in the KPMG report.

Figure 20

#	Challenges
1	Stakeholder misalignment on the purpose of the COA
2	Hearing lengths and unstructured agendas
3	Inconsistencies within and across public hearings
4	Technical challenges related to virtual hearing platform and associated procedures
5	Late-stage application revisions
6	Limited or technical public-facing information
7	One-size-fits-all speaking structure
8	No tenant notification
9	Unbalanced district workloads
10	Unmet legislative timelines and non-adherence to commenting deadlines
11	Unclear, inconsistent commenting practices
12	Notices of Decision

13	Staff turnover
14	Limited information and performance management
15	Disconnect between CoA and broader City objectives
16	Errors in zoning reviews.

KPMG's COA End-to-End Review Report provided 15 recommendations to improve the public hearing process for applicants and members of the public. They are summarized in the table below.

Figure 21

#	Recommendation
1	Develop and communicate a clear purpose statement to align stakeholders around a shared understanding of the COA
2	Improve existing and develop new public-facing communications and resources to enhance participation
3	Develop and promote an effective participation guide to empower applicants and members of the public
4	Regularly engage with applicants and members of the public outside of the public hearing process
5	Support equitable tenant participation in the public hearing process
6	Consider refreshing application requirements for minor variance and consent applications
7	Evaluate opportunities to provide more detailed reasons for COA decisions
8	Consider eliminating substantive revisions to applications following the distribution of the public notice
9	Address the technical challenges of the virtual public hearing process
10	Standardize hearing practices to improve transparency and predictability
11	Implement quarterly members' meetings for panelist training and professional development
12	Implement guidance directions to increase consistency within and across panels

13	Implement commenting guidelines to improve consistency and enable more effective participation
14	Establish KPIs to enable continuous improvement
15	Conduct a comprehensive review of the COA's service delivery model

In response to the release of the KPMG Report, staff noted that:

Some of KPMG's recommendations can be implemented relatively quickly, while others will take more time and significant further work. There are also recommendations that instruct staff to explore or investigate the feasibility and/or advisability of a potential improvement. For those recommendations, City Planning will undertake this exploratory work and will then determine whether and how to move forward. Staff will report back to the Planning and Housing Committee in Q1 2024 on the status and results of this work.⁹

In late February 2023, BILD submitted a memo to the City regarding Item 'PH.2.5 - Committee of Adjustment - Consultants Review' that noted focus should be given to recommendations 9 (technical challenges) and 13 (commenting guidelines to improve consistency and enable more effective participation).

3.5.2 Assessment of KPMG Report

The KPMG Report recommendations are very well-grounded and should substantively improve operational efficiency of the COA, if implemented. This will have positive impacts on decision timelines, but only at current application volume levels.

As well, the KPMG report noted several facets that this reported also highlighted previously, such as the uneven application timelines between COA districts, the lack of meeting prescribed timelines, and the need for better data to back key performance indicators ("KPIs").

However, the efficacy of KPMG's recommendations depends on how successfully the City is in ultimately implementing all its suggested recommendations, which will depend in part on what public oversight procedures it chooses to include in tandem.

⁹ Planning and Housing Committee, Item - 2023.PH2.5, February 6th 2023, Report from the Chief Planner and Executive Director, City Planning on Committee of Adjustment - Consultant Review

Staff should produce and communicate with the public specific deadlines for each recommendation and provide regular updates to council if they are off-track to meeting them. It is noted that staff already plan to report to council in Q1 2024 on the status of the work plan to implement the KPMG report recommendations, however, this work plan update should also include specified target implementation dates.

As well, its not sufficient for the COA to just incorporate KPIs without providing the public regular insights into them. The City should consider creating a COA Chair's Annual Report as a method to establish, track, and report on the KPIs so that the public has some insights it's operational efficiency trends.

In addition, the City should consider posting the underlying data behind the COA's KPIs to its Open Data Catalogue where it could benefit from additional analysis and insights provided to it from members of the public or professional planners outside of the public service.

Without accountability measure like public oversight working in tandem with KPIs, having KPIs in-into-themselves will not necessarily help lead to improvements. As the KPMG report also noted, staff should setup a process to test and review the effectiveness of KPIs as part of a continuous improvement process. The testing of effectiveness should include public input from major stakeholders like the development industry.

One major risk to the success of improving COA decision timelines that the KPMG report did not assume as part of its analysis was the potential for substantially increasing application volumes in the near future. While many of the recommendations may improve the efficiency of the COA as it operates today with existing application volume levels, the COA could see little to no actual improvement in future reviews despite implementation of the recommended improvements because of potentially higher application volumes stemming from policy programs that the City is currently undertaking to increase permissibility for various housing forms.

The City must tackle both the speed at which it processes applications, which the KPMG report provided many noteworthy ideas for, and the ultimately the number of applications it receives, which is reflection of it's zoning by-law structure.

3.6 ZONING REFORM

3.6.1 Housing Action Plan

In December 2022, City Council adopted the Housing Action Plan for the 2022-2026 term of council. This included several adopted items instructing City Planning to begin working on Official Plan and Zoning By-law amendments to facilitate more permissible built forms.¹⁰ In March 2023, the Executive Council received the *Priorities and Work Plan* (the “Work Plan”) for the Housing Action Plan from City Planning. The Work Plan included several deliverable items, including city-wide zoning performance standards reviews for mid-rises, multiplexes, and other items.

While many of the required studies and reports have not yet been presented, the City initiated Housing Action Plan is an opportunity to both provide more housing opportunities to help address the affordability crisis and address chronic issues related to the COA’s operational efficiency.

3.6.2 The Case for Zoning Reform to Reduce Need for Commonly Requested Variances

While challenging to implement because it requires a great deal of planning work upfront, one of the most impactful ways that the City could address the issue of COA application volumes, and by connection decision timelines, is to focus on updating its zoning by-laws to eliminate commonly requested variances. Given the high approval rate of the COA, a great deal of work is created for both city staff and applicants simply by not having a zoning by-law that provides as-of-right permissions and instead requires discretionary reviews.

Figure 22 shows the units added through as-of-right building permits by zone type in the City of Toronto between 2011 and 2020. While the data presented only shows the units built by zone type, it is deducible to state that at least 67.2% (8,501) of the 12,641 homes built were of a single-detached form as this is the only housing type permitted in RD Zones.

While RD zoning takes up the most geographic space within the boundaries of the City, single-detached homes are only 23.3% of the total housing stock within Toronto according to the most recent 2021 census. Yet this housing

¹⁰ CC2.1 - 2023 Housing Action Plan

type is also the most common one to be built as-of-right compared to all the others.

Figure 22 **Units Added through As-Of-Right Building Permits by Zone Type, City of Toronto, 2011-2020**

Zone Type	Replacement Units		Intensification Unit		Total Units	% of Total Units that are Intensification
	Total	Percent	Total	Percent		
Residential Detached (RD)	7,414	83%	1,087	29%	8,501	13%
Residential Semi-Detached (RS)	158	2%	117	3%	275	43%
Less Permissive Subtotal	7,572	85%	1,204	32%	8,776	14%
Residential Townhouse (RT)	3	0%	11	0%	14	79%
Residential Multiple Dwelling (RM)	407	5%	368	10%	775	47%
Residential (R)	898	10%	2,178	58%	3,076	71%
More Permissive Subtotal	1,308	15%	2,557	68%	3,865	66%
Combined Total	8,880	100%	3,761	100%	12,641	30%

Source: City of Toronto Neighbourhood Change and Intensification Oct 2021

As the City seeks to update the permissible types of homes that can be built, if it does not ensure that the development envelopes are sufficient to facilitate as-of-right construction then there is a serious risk that it could cause a significant expansion of COA application volumes. The city is not without precedent in reviewing its zoning by-law to help alleviate COA Applications.

3.6.3 Implications from Laneway Suites for Multiplex Housing

In December 2021, City Council adopted zoning by-law amendments to help smooth the facilitation of laneway suites, which had been previously legalized in July 2019. The proposed changes came after a review from consultants Gladki Planning Associates, which were retained by the City. In the staff report on the proposed laneway changes, it was noted that:

The amendments are also being proposed to help facilitate as-of-right development and induce by-law compliance. Generally speaking, if by-law standards are more achievable, land owners are incentivized to avoid seeking excessive variances at the Committee of Adjustment.¹¹

Without providing an exhaustive list of specific zoning provision changes, Gladki Planning Associates noted in their report:

Generally, we find that the industry views the By-law as being well suited to allowing laneway housing in Toronto. While respondents

¹¹ Item - 2021.PH29.2

generally find the By-law to be supportive of the construction of laneway suites, they mention other factors including review times for building permit and Committee of Adjustment applications and interdepartmental processes as slowing the development of new laneway housing and contributing to uncertainty about the process on the part of property owners...

The zoning By-law generally allows for as-of-right development of laneway housing. The majority of building permit applications received (74%) do not require a minor variance for the same property...

Interviews conducted with expert respondents generally find inconsistent interpretations of the zoning By-law on the part of zoning examiners. Further, in reviewing matters with Toronto Building, Urban Forestry and Community Planning, respondents identify different levels of familiarity of the By-law and the laneway suite typology among staff as contributing to delays in the process...

Our review of Committee of Adjustment application identified five of the most common minor variance applications sought before the committee of adjustment.

The variances most often sought was relief from the 85% minimum landscaping requirement... Other variances included relief from rear yard setback, angular plane and height requirements...

The respondents note significant amounts of time required to process applications for minor variance and building permit. They note that it can be difficult for their clients to understand the approvals process and often do not fully comprehend the time or expense required to obtain full approvals at the outset of a project.

As noted by the Gladki report, most (74%) laneway homes could be built as-of-right without requiring a COA application. The number of COA applications and TLAB appeals generated by laneway suites was noted to be low, however, the overall number of laneways being proposed to be built was also small. For those laneway suites that did require a minor variance, it was noted to be a long and arduous process by applicants.

If multiplexes and other built-forms that the City is seeking to permit are built at the scale necessary to overcoming the housing affordability crisis, then achieving a similar 74% rate of as-of-right permissibility as laneway suites could result in an overwhelming amount of work directed at the COA and TLAB.

4 RECOMMENDATIONS AND CONCLUSION

This section provides specific steps that the Province, City, and agency's such as the CoA, TLAB, and OLT can take to improve outcomes on minor variance applications. Many of the recommendations are also applicable to other municipalities in many cases. Finally, this section provides concluding thoughts and reflections for this report.

4.1 RECOMMENDATIONS

The following recommendations are presented in a hierarchical order, with recommendations that have the potential to provide greatest benefits presented first.

4.1.1 Require Staff to Approve Minor Variances

The province should look to amend the *Planning Act* to allow/require municipalities to delegate to staff the approval of minor variance applications.

Under Bill 13 – *Supporting People and Business Act*, the province created Section 39.2 of the *Planning Act* to allow for delegation of minor approvals under Section 34 (Zoning by-laws) to “an individual who is an officer, employee or agent of the municipality”. This would allow staff to be the approval authority for such matters as the removal of holding symbols, temporary use by-laws, and/or minor textual changes that require a zoning by-law amendment.

However, because minor variances are not minor textual changes that require amendments to the zoning by-law but rather relief from the zoning by-law provisions, the minor variance process itself may not be able to be substitute using these provisions.

The province should provide additional clarity on allowances for minor variance delegation to staff and potentially requiring it. This proposed change would be similar to changes made to site plan approval delegation to staff, which were previously available as an option to municipalities but became mandatory under Bill 109 – *More Homes for Everyone Act*.

To date there has been no uptake on delegating minor variance approvals to staff using Section 39.2, with major municipalities such as Toronto, Mississauga, Vaughan, Markham, Oakville, Pickering, and others, continuing

to rely on COAs for minor variance approvals. It is not clear if the lack of uptake is due to a lack of clarity in the law, a lack of willingness, or both.

Providing and requiring staff to approve minor variances would help lower the caseload work for both the COA and the TLAB/OLT, while providing municipalities with more flexible land-use planning structural arrangements. A staff lead structure of planning approval could improve decision timelines significantly, removing a serious bottleneck in the current home construction process.

4.1.2 Fix Underlying Zoning Issues to Deal With Application Volume

While the KPMG Report provided many good recommendations, these will only be addressing the existing volume of applications. Without dealing with the reasons why there is such a high inflow of COA applications, it is unlikely the City will be able to meet the legally required timelines without spending more on staff resources, adding more panel members, and adding additional hearings times.

The City must ensure that it takes a two-pronged approach to zoning reform. First, it should examine the existing batches of COA applications to determine what it can do to eliminate ones that are unnecessary and repetitive. Second, it must ensure that any proposed reforms for additional built forms includes sufficient development envelopes that avoids triggering minor variances by working closely with stakeholders like the development industry.

There is a high risk that the City initiated Housing Action Plan could create an overwhelming amount of new work for the COA if sufficient development envelopes and other zoning considerations are not given. With a high approval rate for minor variances, there are clearly opportunities for improvements to the zoning by-law to create more as-of-right permissions and fewer discretionary decisions.

4.1.3 Make Cross Appointments to COA Panels

The City should consider making the ability for COA members to sit on panels between districts for the new COA term of office permanent. There is no provincial legislative requirement that COA members need to be assigned to a panel to live within the district that they work in. This is an arbitrary

policy created by the City with little to no evidence demonstrating that removing the requirement will adversely affect outcomes.

Based on the publicly available profiles, many COA members have listed experience moving between districts over subsequent terms with little to no issue. As well, pandemic response measures that were implemented to allow for more flexibility over member panel participation demonstrates that this policy is both feasible and has potential to improve the efficiency of the CoA's operations.

The City could continue the provision that a COA panel maintain a majority of assigned members who are appointed within the district. However, this policy should also be reconsidered in light of current decision timelines that neither meet the City set targets or legally prescribed requirements.

Finally, the City should consider right-sizing district panel sizes and resources to account for the lop-sided work loads that the Toronto East York district faces in comparison to the others, which was a challenge that was noted in the KPMG Report.

4.1.4 Make Zoning By-laws Available Online

While the City of Toronto has had a harmonized zoning by-law since 2013, this by-law does not cover all areas of the City. With the former amalgamated municipalities by-laws still in effect, those by-laws should be made available to the public in a way that meet modern accessibility expectations.

Not having all the zoning by-laws easily available can frustrate applicants and lead to poorer quality applications submitted to the City. As well, it raises the expense, time, and effort required to make otherwise simple requests to the COA for minor variances.

Although many of the former by-laws may not be in machine readable formats (i.e., CSV, JSON, etc.) having electronic documents (e.g. PDFs) is superior to the current total absence of availability. Long-term, the City should either consider finding ways to fully harmonize its zoning by-laws so there is only a single by-law in effect that is simple to understand and adhere to.

4.1.5 Improve Data Transparency and Reporting

The City should encourage the Chair of the COA to produce regular annual reports in a similar manner as the TLAB Chair's Annual Report. As well, both the COA and TLAB should make the disaggregate data that underpins their own analysis available to the public through the City's Open Data Catalogue.

The Province should potentially consider requiring municipal COAs to provide yearly reporting. It could assist in this endeavour by creating a term of references for COA report, specifying what needs to be reported and how. Additionally, the Province should encourage the OLT to provide better reporting on its own operations, such as on disposition timelines and providing at least 5-years of information in each yearly report so that trends can be easily identified.

4.1.6 Monitor Parties to an Appeal

Both the TLAB and OLT annual reports should, on a go-forward basis, provide data and analysis on the issue of parties to an appeal. While third-party appeals have been narrowed to specified persons by Bill 23 for minor variances, which is likely to help lessen the caseload burden on both tribunals, no changes have been made to persons wishing to be granted party status to an appeal filed by either the City, Minister, applicant, public body, or specified persons.

The TLAB allows for individuals outside of the appellant to be a party to an appeal or to be a participant. A party to an appeal is required to provide an issues list, expert witnesses, etc and in return is given the ability to cross-examine other expert witnesses. A participant to an appeal is able to simply address the tribunal.

Unfortunately, there are cases where a person applies to be a party to an appeal that wishes to raise issues that fall outside of land-use planning. This can lead to delays to proceedings, additional motions, more standby time as parties seek to come up with proper reasoning, all leading to longer disposition timelines and additional costs to both the tribunal (and ultimately taxpayers), as well as other participants in the hearing.

Should abuses of party to appeals be evident in trending data, then the Province should consider empowering the tribunal to be better equipped in

its authority to dismiss a party to an appeal that it finds is trying to participate on frivolous grounds.

4.2 CONCLUSION

It is evident by the City's own reporting - through budgetary notes, staff reports, and the TLAB Chair's Annual Report - that the COA has been experiencing an overwhelming volume of applications and application timelines are not meeting expectations. While the COVID-19 pandemic exacerbated decision making timelines, the COA and TLAB were both failing to meet application and appeal timelines well before the pandemic.

The analysis done in this report largely confirms the City's own examination of timelines, but with the additional observation that the COA is approving minor variance applications at a very high rate.

There is a high degree of risk that as the City implements housing reforms to allow more permissible built forms, this could create a flood of minor variances if sufficient attention to development envelopes and other zoning matters is not given. This could require the City to have to commit additional resources just to maintain COA service levels, jeopardizing the City's efforts at improving them.

Without improving the efficiency of COA decision making timelines or adopting more as-of-right measures that would fix the need for a minor variance application in the first place, the City is seriously jeopardizing its future housing goals. Long-timelines will throttle homebuilding or could create a serious chokepoint that dissuades builders from constructing new homes, all adding to expenses that negatively affect the affordability crisis.

Finally, everyday homeowners trying to add simple additions such as decks will likewise be thwarted or find the process to be overwhelming, taking away confidence in the City and increasing frustration with service level standards.

Appendix

5 APPENDIX

5.1 DATA MANAGEMENT

The analysis provided in this report depends on the City of Toronto Open Data Catalogue datasets for Committee of Adjustment Applications. The datasets that are available to the public include applications that were closed between 2001-2023, as well as active applications in the current year (March 7th 2023 as the last day the data was refreshed during the writing of this report). Each year of a closed application (e.g. 2015, 2016, 2017...) is provided with its own separate file, including a separate active applications file.

Closed application data includes all applications that were last updated within the specified year as denoted by the 'FINALDATE' column, including applications that appear outside of the base year of the file. For example, the 2015 closed application file includes data from applications with intake dates between 1999 to 2015.

It appears that any time City Planning updates an application within their database it triggers data to appear in a closed application year despite potentially being many years old. It is unclear why this is happening. It could potentially be a result of data migration from one system to another or for other reasons.

For the purposes of the analysis in this report, only applications with an intake date from 2015 to 2022 and where a decision has been rendered are included in the analysis for this report. This includes both active and closed applications, with active applications comprising of 3.4% of all observations in the final analysis dataset.

The datasets provided by the City include additional observations, such as for consent applications and blank applications, which were removed because the analysis in this report is solely focused on confirmed minor variances. As well, duplicates and other data hygiene issues resulted in a number of additional applications also being removed.

For active applications, only those that had a hearing date scheduled in the past and have a status of "Approved", "Approved with Conditions", "Closed", "Refused", "OMB Appeal", and "TLAB Appeal" were included in the final analysis.

It is not clear why these active applications had not been transferred to the closed dataset for 2023. In total, approximately 1,200 applications from the active list were highlighted for further analysis before additional reductions were applied to account for previously stated data organization and hygiene issues. This reduced the overall quantity of active applications in the analysis to 614 data points, which had intake dates that spanned 2015 to 2022.

Applications within the 'long-tail' of the distribution of observations were also removed because these typically represent applications with either had data integrity issues or reflect an unlikely circumstance that most applicant would face. For example, the long-tail applications that were removed had both extremely short decision hearing timelines (15 days) and extremely long (1,547 days) ones compared to the average or median application.

The raw data of minor variances with a positive timeline for hearings and an intake between 2015-2022 had a timeline average of 113 days (16.14 weeks). After removing duplicates and applications that did not have definitive decisions, the average application timeline fell to 106 days (15.1 weeks). Finally, removing the 'long-tails' of the distribution of observations lead to further reductions in the average timeline to 95 days (13.6 weeks) within the dataset, which represents the 'typical' minor variance application that was examined in this report.

In summary, the following steps were made when processing the data and removing applications from the initial unfiltered database provided by the city:

- Data that wasn't related to a minor variance type application (e.g. consents, etc) was removed;
- Applications that had an intake data which wasn't within the specified time period (e.g. those before 2015 or after 2022) were removed,
- Where the COA didn't make a definitive decision or no decision was listed the data was removed;
- Where the application was withdrawn, cancelled, or deferred the data was removed;
- Where there were duplicate applications (approximately 1,500) that had the same intake date, with the same address, and same hearing date, the duplicates were removed and replaced with a single record;

- Where there was anomalous data with negative days between the intake day and the hearing date were removed; and
- 5% of applications at each tail-end of the distribution of records was removed to produce a more “typical” sample average.
 - Applications in the extreme tails of the distribution are those that are abnormally long or short compared to all other applications.

Table 1 provides a breakdown of the 17,857 applications used in the final analysis by intake year.

Table 1

Final Dataset for Minor Variances	
Intake Year	Applications (n =)
2022	1,811
2021	2,418
2020	1,719
2019	1,813
2018	2,202
2017	2,780
2016	2,619
2015	2,495
Total	17,857

5.2 APPLICATION TYPE EXPLANATION

All best efforts were taken to interpret the data made available by City correctly. Unfortunately, they do not provide descriptions on their Open Data Portal for the data included within the dataset beyond those for column headings.

For example, the column heading ‘SUB_TYPE’ is defined by the city as simply ‘Application Sub Type’. However, the sub type column heading had six (6) different parameters in the cleaned up database but with no additional descriptive information provided, which includes:

1. Add/Alt to Existing Res \leq 3 units;
2. AddAlt to Res \leq 3 units with OTC;
3. All Other;
4. All other with OTC;
5. New Res dwellings \leq 3 units; and
6. New Res dwellings \leq 3 units OTC;

To better bucket the data for analysis, each parameter was examined to see what common application descriptions they included. From this, four (4) aggregated application groups were created, which includes:

- Order to Comply;
- New Residential Dwellings
- Alternations to Residential Dwellings; and
- Non-Residential Buildings;

The acronym ‘OTC’ means “Order to Comply”, which is when an existing structure was built before obtaining zoning permission from the City. This is not the same as a legal non-conform use, which is a use that pre-dates a new zoning designation and is permissible to remain. The *Order to Comply* application type was created by bucketing the three (3) OTC sub types - All other with OTC, AddAlt to Res \leq 3 units with OTC, and New Res dwellings \leq 3 units OTC.

Unsurprisingly, the most frequent general description of for an ‘OTC’ application is “to legalize...” an existing home or non-residential buildings and/or features (i.e. additions such as a porch, parking pad, etc to either residential or non-residential buildings). The OTC application type includes both residential and non-residential structures, although the bulk of these applications was for residential permissions. With only 494 observations within this application type, further refinement between residential and non-residential OTC applications would have created sample size issues.

New Residential Dwelling application type was created by using the ‘New Res dwellings \leq 3 units’ parameter. Generally, the descriptions for this block of

applications begins with “to construct a new...” residential building of some kind.

The *Alterations to Residential Dwellings* application type was created using the ‘Add/Alt to Existing Res <= 3 units’ sub type parameter. Generally, the description included for applications had “to construction a new...addition to an existing dwelling” or “to alter...to an existing dwelling”.

Finally, the *Non-Residential Buildings* application type was created using the ‘All Other’ sub type parameter. Generally, the description applications include “to construct...” or “to alter...” some form of non-residential buildings. Examples include childcare facilities, gas stations, office buildings, etc.

No distinction was made between new construction and alteration of non-residential buildings as the data is not easily separable. As well, with only 430 applications within the dataset for this application type, further bucketing would have created sample size issues.