

June 11, 2025

Ministry of Municipal Affairs and Housing
Provincial Planning Branch
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RE: Proposed Regulation– As-of-right Variations from Setback Requirements ([ERO 025-0463](#))

On behalf of the City of Toronto, I am pleased to submit the City's comments and recommendations regarding the proposed regulation under the *Planning Act* that would allow variations to be permitted "as-of-right" if a proposal is within 10% of setback requirements applicable to specific lands.

The City of Toronto appreciates the intent of simplifying planning permissions and reducing the need and timelines for minor variances. The City efficiently processes minor variance applications, with applicants typically receiving a decision by the Committee of Adjustment within 6 weeks of submitting a complete application. This often represents a minor variance being heard at the first available Committee of Adjustment hearing after completion of statutory notice requirements and meeting schedule dates.

The City is concerned that the proposed approach will have unintended consequences making the application of zoning standards to development unnecessarily complex, less transparent and understandable to the public, with less predictable and less certain results. Moreover, the proposed approach may not achieve the Province's objective of providing minor variance relief as the relationship between setbacks and other zoning standards means that a proposed reduction in a setback could trigger other minor variances (i.e., maximum lot coverage, maximum floor space index, minimum soft landscaping, etc.) that would require approval from the Committee of Adjustment.

The *Planning Act* and other existing legislation provide tools that could better support these objectives to improve or simplify the minor variance process, than introducing a new statutory power and regulation granting arbitrary relief from certain zoning standards in certain areas.

Complicating What a Minor Variance Is

The statutory approach and the “as-of-right” 10% reduction are inconsistent with the *Planning Act*’s test for a minor variance.

The *Planning Act* does not define “minor”; however, there is extensive case law on the topic, establishing that what is minor depends on the facts, circumstances, and context of the specific application. The nature of such applications is that they need to be considered in their context, including understanding the intent behind the specific standard being varied, and each requires an assessment of the significance of the variance(s) to the surrounding circumstances and in terms of the existing zoning by-law. The *Planning Act*’s test for minor is not intended as simply a numerical assessment; it is an assessment of the impact of a proposal. If the impacts associated with the requested variances are minor in nature from both a quantitative and qualitative perspective, and will not result in any undue adverse impacts, the Committee of Adjustment may find that the variance(s) is minor.

Given the lack of contextuality, any threshold numbers set out in this regulation will be inherently arbitrary, as setbacks can be required for a wide variety of purposes and a percentage variance to a setback (whether 10% or any number) may be of little concern on one property but highly impactful on a different property.

The Importance of Setbacks

Required building setbacks in zoning by-laws are generally formulated by considering multiple factors that can relate to both zoning and non-zoning standards. While setbacks are expressed as distances from parcel boundaries, they can be contextual to a specific property, especially when they are the outcome of a site-specific rezoning approval.

Examples of contextual factors include separation distances from:

- Overhead power lines
- Separations from industrial or transportation facilities for land use compatibility, noise/vibration and maintenance reasons (e.g. below-grade setback distances from TTC and Metrolinx infrastructure)
- Ravines and other potentially unstable slopes
- Natural heritage features

Some setbacks support specific objectives, which may or may not be addressed in other zoning provisions, such as:

- Protecting paths of travel through a side yard for Fire & EMS emergency access to garden suites
- Providing adequate driveway widths or maneuvering space for safe vehicle movement within a property
- Ensuring vehicles in parking spaces do not encroach beyond property boundaries

- Providing adequate space on-site to ensure doors do not encroach into rights-of-way or lanes
- Protecting for landscaped areas, site permeability and tree protection

The proposed 10% as-of-right setback reduction would not take these and other factors/objectives into consideration. As a result, it may provide a false sense of security for development proponents who design to the varied zoning setbacks but then face future compliance and operational challenges. Under the current minor variance process, these factors are considered through commenting partners involved during the review of a minor variance application.

Challenges in Applying the As-of-right Setback Variance

The proposed changes would complicate adjudication of the four tests in situations where applications vary beyond the regulated percentage, by creating two different baselines against which to assess variances.

Under the proposed regulation, a project that requires only a setback reduction would be subject to a single test—is the proposed setback within 10% of that required by the zoning by-law—while an otherwise similar project with multiple variances or in another area heard by the Committee of Adjustment would need to demonstrate that it satisfies the four tests.

A project that requires minor variances for both a reduction in front yard setback and an associated reduction in parking space length, for example, would require the Committee of Adjustment to apply different considerations, despite the overlapping nature of the requested variances, creating uncertainty. Due to the location of the setback reduction provision in s34 of the *Planning Act*, it is also unclear whether the resulting “minimum setback distance” should be considered as having varied the required setback distance or as having established a new setback distance from which other minor variances should be measured.

The prescribed areas in the regulations under s41(1.2) of the *Planning Act* (Site Plan Control) provide that the as-of-right setback reduction would not apply within areas that are within 300 metres of certain railway lines, or 120 metres of certain natural heritage and hydrological features. These features can be irregular in shape and do not have a clear relationship to the setbacks that would benefit from the as-of-right reduction. For example, one residential property could qualify for an as-of-right front yard setback reduction from 6 metres to 5.4 metres, while its abutting neighbour requires a Committee of Adjustment variance for a lesser front yard setback reduction, due to the curves of a rail line located several blocks to their rear. In assessing the latter application, the Committee might come to a different conclusion based on the four tests than what had been permitted as-of-right on the adjacent property.

Subjecting similar applications to different processes and criteria would result in a development review process that is less predictable, transparent and understandable to the public.

Applicability

It is unclear whether the proposed as-of-right setback reductions are intended to apply only to projects with a residential component, or also to non-residential buildings and uses in areas where residential uses are permitted. References to Ontario Regulation 299/19: Additional Residential Units in ERO Posting 025-0463 imply that the variances may be intended to apply only to low-rise residential buildings.

Excluded Areas

Subsection 34 (1.5) is unclear about the areas excluded from this regulation. The title of s34(1.5) "Same, Greenbelt" implies that exclusions apply only to the Greenbelt Area, but (b) and (c) appear to list other non-Greenbelt excluded lands.

Provision (c) sets out prescribed areas indirectly, by reference to s41(1.2) of *Planning Act* (Site Plan Control), which could be read as excluding properties with fewer than 10 residential units but which we assume to mean the prescribed areas in [O. Reg. 254/23](#) without such limitation.

If taking this approach, we suggest including the corresponding reference to Site Plan Control authority in s114(1.2) of the City of Toronto Act and [O. Reg. 255/23](#). We would further suggest that as s34(1.4) operates through a regulation setting out the prescribed percentage for reduction, the prescribed areas could also be directly identified in this new regulation, rather than through reference to the Site Plan Control sections of the Acts

Transition

The intent of the subsection 34 (1.6) transition provisions is unclear. As written, it appears to exclude all lawfully existing buildings and structures from the as-of-right setback reductions, and to set the minimum setbacks for all buildings as those applicable on the date of the first building permit issued for the project.

This would not facilitate a reduced need for minor variances, as small-scale additions to existing buildings for additional residential units would appear to be excluded. This approach also creates uncertainty about the applicable minimum setback distance for a building, in situations where zoning by-law standards for an area are later amended to be more permissive.

Recommendation

The *Planning Act* and other existing legislation provide tools that could be used to improve or simplify the minor variance process that address many of the concerns above. Alternative approaches that could be explored include:

- The Minister could utilize their powers under s45(1.0.1) to prescribe criteria for Committees of Adjustment to consider in evaluating minor variances, or could exercise their powers under s70.1(1) to prescribe rules of procedure for Committees of Adjustment.
- The Minister could introduce regulations under s34(16) to prescribe criteria for Zoning with Conditions, that would provide municipalities and development proponents flexibility in the erection or location of buildings and structures.
- The Province could also empower municipalities to delegate to staff decisions on certain categories of minor variances, for example variances identified during Site Plan Control approval process, rather than requiring a Committee of Adjustment hearing. Such an approach would be consistent with delegated approvals for:
 - Minor Zoning By-laws [Delegation of Minor By-laws (s39.2)]
 - Variations from development standards in a community planning permit by-law [Community Planning Permit Systems (s70.2 & [O. Reg. 173/16](#))]

Such approaches would avoid the uncertainty and inequities raised by the proposed as-of-right setback variation approach, while streamlining processes and reducing the need for minor variances in a broader range of situations.

Contact

Should you have any questions regarding the City's submission or would like to arrange a meeting with City staff, please contact me directly or Kyle Knoeck, Director, Zoning & Secretary- Treasurer Committee of Adjustment (416-392-0871).

Sincerely,

Original signed by:

Jason Thorne, MCIP, RPP
Chief Planner and Executive Director
City Planning