124. Legal Systems and Applications of Variance in the City of Toronto, Canada
— A Study on Special or Exceptional Permit System under the North American Zoning Control —

National Institute for Land and Infrastructure Management
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Background and Purpose of Research

Building control under the Japanese Use Zoning System

- **“Lax”**
  - possible under the loose framework without detailed regulations
    - the limited items and values that can be adopted as criteria
    - the limited use zone types/ the limited lists of prohibited uses
  - “lawful non-conforming uses” is obstacle to strengthening of regulation

- **“Rigid”**
  - prohibits a slight excess of standards set up in advance
  - complicated procedures of permit as a special case

- **“Flexible” Use Zoning System** (Ref: AIJ recommendation)
  - more detailed and strict regulation + applying special or exceptional permit systems
  - cases excess or unexpected are individually dealt

Existing research

- the special or exceptional permission in Japan
  - Irregular cases under the rigid application according to codes and standards

- special or exceptional permit system in U.S.
  - general Introduction for Variance/Special Permit
  - actual situations or cases of the system are not indicated

Research purposes

Consider the concepts of special permit systems

- overview the special permit systems of North America
- Variance, taking the City of Toronto of Canada
- look at the legal system, criteria for application and actual cases of variances

Methods of research

visit Toronto • observe • interview, etc. (’04,’06)
- the staffs of the Committee, the Toronto City Office, and a staff of the Municipal Board

Literature • provided Information • internet

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<th>Regulatory level</th>
<th>Actual level</th>
<th>Existing</th>
<th>No choice</th>
<th>No problem</th>
<th>Allowed individual decision</th>
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<td>moderate</td>
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<td>Generally desirable level</td>
<td>Allowed individual decision</td>
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Two special permit systems of North America

- **Special Permit**: individual inspection and allowance concerning specified zoning and use
  
  *ex) Bed & Breakfast in a residential of town house (simple accommodation)*

- **Variance**: small modification of the Zoning by-law (form + use)

Inhibitory operation of Variance in North America

- approved to sites basically under the “unnecessary hardship” situations
  
  (mainly relax restriction on a form)

  
  (i) **there are practical difficulties** to make use of and gain reasonable return from the land by satisfying the present regulation

  (ii) **the difficulties raised by applicant is unique to the site, and there are no similar difficulties adjacent to the site**

  (iii) **approval of variance will not affect the public welfare and the characteristics of the neighborhood**

  (iv) **the applicant him/herself is not the main cause of the difficulties unique to the site**

**Typical example 1**

difficult to set back from a boundary because of constraints on regulatory setback from the waterways

**Typical example 2**

difficult to set back from a boundary of adjacent land because of constraints on land form
4. Application for Variances and Judgments in the City of Toronto 3. Actual Judgment Procedures and Decision 4. Conclusion and Considerations

Variance and Zoning in the City of Toronto

- The City of Toronto is a capital city of the Province of Ontario  
  (population: 2.48 million, Greater Toronto Area: 5.08 million)
- The Ontario Planning Act is the enabling act for city zoning
- 7 of the municipalities were amalgamated
  → a project to consolidate diverse zoning by-laws to a single by-law is still taking place

“Minor Variance” in the Ontario Planning Act

“4 tests” are conditions for permit
1. Formal Plan meets the overall purpose and intent
2. the intent and purpose of the City’s Zoning By-law is maintained
3. As for local development, whether Variance is suitable
4. whether the variance requested is minor

- “Unnecessary Hardship” is not necessarily required
- Both area and use variances may be granted

Fig: The Zoning in the former City of Toronto
Examining Authorities and Procedures for Variances

- CoA (City) and OMB (State) of the two-tier configuration
- If the appeal is dissatisfied by the CoA, OMB reexamines the application on a clean slate

<table>
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<tr>
<th>Installers</th>
<th>CoA Committee of Adjustment</th>
<th>OMB Ontario Municipal Board</th>
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<tbody>
<tr>
<td>City</td>
<td>CoA</td>
<td>State</td>
</tr>
<tr>
<td>Function</td>
<td>Permit Minor Variances</td>
<td>deal with the issues not settled within a municipality</td>
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<tr>
<td></td>
<td>Application for changes to the land configuration</td>
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<td>Designation</td>
<td>the municipal council</td>
<td>the Provincial Government</td>
</tr>
<tr>
<td>Number</td>
<td>5 members × 4 panels (Toronto)</td>
<td>30</td>
</tr>
<tr>
<td>Professional</td>
<td>planners, lawyers, citizen</td>
<td>lawyers, planners, appraisers</td>
</tr>
<tr>
<td>Decision</td>
<td>majority of the panel members</td>
<td>1 or 2 member(s) make decision</td>
</tr>
<tr>
<td>Appearance</td>
<td>![Image of a CoA meeting]</td>
<td>![Image of an OMB meeting]</td>
</tr>
</tbody>
</table>
Examining Authorities and Procedures for CoA

- Deadline set for each stage of every process from application
- OMB is such judicial procedures as mediation meetings and swearing

### Deadline
- **within 30 days**
- **at least 10 days**
- **within 20 days**
- **Appeal possible after 90 days**

### Step
- (i) Pre-application Consultation
- (ii) Preliminary Project Review
- (iii) Submission of Application
- (iv) Scheduling of Hearing
- (v) Notice of Public Hearing & Application Circulation
- (vi) Public Hearing
- (vii) Decision
- (viii) Notice of Decision
- (ix) Appeal or Decision Final

### Applicant
- Concept
- Plan
- Application Site Plan/Floor Plan
- Public Notice
- Notice of Hearing
- Presentation of Proposal
- Accept/Refuse & Conditions
- Decision Notice
- Appellant Form

### CoA/City
- consultation
- submission
- screening
- confirmation
- posting
- send
- send

### People/Party Concerned
- Urban Development Services Customer Service office
- Urban Development Services Customer Service office
- adjacent residents
- property owners (within 60m)
- registered requesting parties
- City divisions & departments
- decisions are usually rendered at the hearing
- if no appeal is made, CoA decision is final

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**Location of Variance Applications**


3,120 cases (the majority of applications) equivalent to 5% of the City’s Building Permits issued in FY2005 (distribution see below)

- the majority locates in areas built up by 1952 when the basic zoning bylaw was established in the former City of Toronto
- Nearly 90% of applications locate in “R” zone categories (low density residential) of the zoning by-laws
### Statistical View of Variance Applications and Decision situation

**Statistical View**

- Nearly 90% is residential use, 81% is either of detached or of semi-detached houses.
- Type of construction of 48% is residential addition, and 26% is new residential building.
- Mostly, an application requests 1 variance, in average 2.7.
- Lot: 1/2, building: 1/3, floor area: 5%.

**Decision situation**

- CoA approved 86% of applications.
- 3% of approval and 39% of disapproval were appealed to OMB.
- As OMB approved 64% and refused 13% of the appeals, considerable number of decision has been turned over.
The Situation of Discussion in Committee of Adjustment

Toronto & East York Panel is in charge of areas including the former City of Toronto

- **About the panel (the one of the five panels)**
  - meetings held twice a month (except for summer), around 900 cases a year
  - Composition of the panel members is: a university professor (of city planning) as Chair, an Ex-councilor, a lawyer, and 2 general citizens

- **Judgment Procedure: 30 cases were discussed during 14-20 o’clock**
  - Materials were sent beforehand to the members. Carry out site visits for important cases, define issues during the 90 minutes’ prior meeting
  - Individually (i) Described by the applicant, (ii) Opinion of local residents, (iii) Description of the applicant to (ii)
  - Each member expressed their views after (i)-(iii), the decision was carried by a majority

- **Contents of the Applications**
  - Many of the cases are related to residential additions to existing detached and semi-detached houses in the low-rise residential use zones
    - building length, gloss floor area, and setback regulations when constructing an addition to a detached house towards backyard
    - building height and gloss floor area regulations when constructing an extension upwards

- **Decision (Table 2)**
  - granted 15 cases (granted on condition 5 cases), refused 7 cases, deferred 8 cases (timeout 3 cases, request 5 cases)
  - Tendency of refused cases
    (i) cases had many variance request items
    (ii) cases requested a large extent of variance from the regulation standard
    (iii) cases were opposed by adjacent residents
• The application is of a mixed commercial-residential 2-storey building to alter its basement as a warehouse (65-unit self-storage).

- storage warehouse not permitted
- excess of gross floor-area-ratio (the plan is 2.09 whereas regulation 2.0)
- excess of non-residential gross floor-area-ratio (the plan is 1.26 whereas regulation 1.0)
- 2 additional parking and loading spaces (3.5 × 4.5m) required not provided
Issues and Decision of Actual Judgment

**Issues**

- Trucks pass through the back street connecting to the loading area
- Residents complained of deteriorating living environment (noise, destroyed fences, parking) by truck traffic.

**CoA Decision**

- The application was refused by majority decision of 2 vs. 3
- Precise basis for denial was not expressed: the application meets none of previously described “4 tests”
  - local residents claim was incorporated

**The view and Decision of OMB (Appeal by landowner)**

- Approved on the following grounds:
  - *the property locates in the bustling central core area, where traffic is busy, and Parliament Street is considered “main street”. The residential on the back street will forced a little patience*
  - *The only planning issue is whether potential impacts of the storage use on the adjacent properties are appropriate*
  - *Complaints expressed to the existing traffic usage relate to the interfacing of the Low Density Mixed Commercial-Residential Use and the Residential uses, and cannot be always avoided*
  - *As-of-right usage such as restaurants would generate more intensity*
  - *Scale and dimension of the operation are unlikely to be an intrusion to the site and vicinity*

**OMB ordered CoA authorize the variances as applied**
Conclusion

The Variance in the City of Toronto are permitted widely

- Institutional: do not necessarily require “unnecessary hardships”
- Actually: many are for relief of lot-related regulations when constructing a residential addition to a detached

Considerations

- The comprehensive Zoning Bylaw amendment ceased after 1986, Variance works as a system to provide flexibility to zoning control and cope with the changes
- Zoning which is almost impossible to change frequently regulations and designation of zones application of special or exceptional permit systems would provide flexibility

Assessment Framework in the Examination Process and Discretional Operation

- Based on assessment framework (the 4 tests), and definite criteria such as in numbers are not established
- In a two-layer: CoA(city) / OMB(state)
- CoA making comparatively simple judgments by sense of citizens, and OMB making comparatively professional judgments

Locational and Normative Judgment

- OMB prioritizes normative judgments such as general intent of the institutions and relation to higher plan
- CoA prioritizes locational judgment such as appropriateness of development in the area

- Provided preliminarily with detailed criteria, tends to be a ministerial act
- Necessary to establish a clear assessment framework and give consider able range of discretionary zone to examining authorities to cope flexibly with a variety of preliminarily unexpected cases by use of special permits

- In general, zoning control is based on normative judgments, applying of special or exceptional permits would enable room for locational judgment
- Harmony of both judgments is one of the issues of institutional design