

Processing a Discretionary Use Application Guide

2024

Introduction

The Planning and Development Act, 2007 (Act) provides authority to municipalities to adopt planning documents, which help guide development within their jurisdiction. An official community plan (OCP) is the keystone of the planning process and is essential in managing the future growth and development of the community. A zoning bylaw is the primary tool for implementing the OCP. It organizes land uses and development to meet broader community objectives.

A zoning bylaw will organize development into zoning districts, as shown on the map attached to the bylaw. Each zoning district will include a list of permitted land uses that can be established in the zone provided it meets all other zoning bylaw requirements. The zone may also include a list of discretionary land uses that may be established with council approval.

What is a Discretionary Use?

Each zoning district established in a zoning bylaw will have a purpose or intent guiding the type of land use allowed in that zone. A use is classified as discretionary when it aligns with the broader purpose or objective of a zoning district but may not be suitable at every location. Section 54 of the Act requires that if a zoning bylaw provides for a discretionary use, the bylaw shall contain provisions:

- Prescribing the procedures for making and processing an application for a discretionary use.
- Prescribing criteria that council will use in evaluating the suitability of a proposed discretionary use application.

Establishing these procedures and criteria in the zoning bylaw and ensuring a consistent approach to their implementation in council's decision-making can protect council from accusations of favouritism, bias, or prejudicial treatment. Common discretionary uses such as commercial daycares, secondary suites, or gravel pits may prescribe specific development standards in the zoning bylaw unique to each use. These development standards help council address aspects of the use that may affect the wider area.

Processing a Discretionary Use Application

When a development permit application is submitted to a municipality, the development officer should confirm that all necessary information has been provided. The necessary information to review the application will depend on the land use type. For example, if the application is for a commercial daycare, council may want to know how many children are in care at one time due to the impacts this can cause on traffic and noise. If an application fee has been established, it should be paid at the time the application is submitted. Since these types of applications typically take more administrative time to review, most municipalities will have a higher application fee for discretionary uses.

Section 55 of the Act requires that a zoning bylaw prescribe procedures for notifying the public of a discretionary use application. The minimum public notice period is seven days before council considers a discretionary use. However, council can extend this period in the municipality's zoning bylaw if it is in the community's best interest.

In accordance with section 55 of the Act, all assessed property owners within 75 metres of the boundary of the applicant's land must be notified. The zoning bylaw may require that other owners of property be notified and may increase the notification distance. For example, a council of a rural municipality may

determine that notice should be provided to property owners within one kilometre of the proposed discretionary use due to the low-density nature of the community.

Council's Consideration and Decision

The development officer will be responsible for reviewing the development permit application and providing a report to council on the application. The review and report to council may address the following:

- Background information on the proposed location, such as the orientation of the block and historical uses.
- An analysis of how the proposal aligns with the discretionary use criteria in the zoning bylaw (e.g., can the property be serviced to appropriate levels?).
- A summary of public comments received as of the date of the report.
- If there are any recommended conditions or standards to mitigate potential conflicts with adjacent uses.

When reviewing an application for a discretionary use, council may find it useful to consider what aspects of the proposed use are likely to affect the surrounding area and whether the proposal location is suitable for the proposed use. Other important considerations include whether the proposal aligns with zoning bylaw requirements and any public comments related to the proposal.

Once council has considered the application and relevant information, they may:

- Reject the application.
- Approve the application.
- Approve the application subject to development standards and conditions identified in the zoning bylaw.
- Approve the discretionary use for a limited time, if a time limit is authorized in the zoning bylaw.

Once an application for a discretionary use has been approved, the applicant must be provided written notice of the approval, including any standards and conditions or time limits, the effective date of the decision, and the applicant's right to appeal in accordance with section 58 of the Act. If the permit has been refused, the notice of decision must contain reasons for refusal.

The Act provides a limited right of appeal on discretionary use decisions. The applicant may appeal development standards or conditions attached to an approval on grounds that the standards exceed what is necessary to meet the objectives of the zoning bylaw. For example, if the council imposes landscaping requirements that are not authorized in the zoning bylaw, this condition may be appealed. The refusal of an application due to the land use cannot be appealed.

Standards or Conditions of Approval

To minimize the impact of a discretionary use or development, council, in its approval, can specify development standards or conditions concerning that use pursuant to subsection 56(3) of the Act. These standards or conditions must be consistent with those contained in the zoning bylaw. In addition, council must deem them necessary to secure the objectives of the bylaw regarding the following:

- The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of buildings.
- The accessibility and traffic patterns for persons and vehicles, the type and volume of that traffic and the adequacy of proposed off-street parking and loading.
- The safeguards afforded to minimize noxious or offensive emissions, including noise, glare, dust and odour.
- Any treatment given, as determined by the council, to aspects including landscaping, screening, open spaces, parking and loading areas, lighting and signs, but not including the colour, texture or type of materials and architectural detail.

As part of the approval, council may require a development agreement (see section 235 for the Act) to secure the development standards in the zoning bylaw for the use.

Common Discretionary Use Myths

There are several myths and misconceptions related to discretionary uses and their review, such as:

1. All uses can be discretionary in a zoning district.

There is a misconception that council can have greater control over development by listing all land uses in a zoning district as discretionary. However, under section 49 of the Act, at least one use must be listed as permitted in each zone. If council would like to regulate development in an area more closely, other tools, such as direct control districts, may be more appropriate.

2. Discretion means council can make any decision they want.

The term “discretionary” is often associated with the ability to make decisions on a case-by-case basis. While discretionary uses are reviewed individually, the review and decision of each application should be based on the criteria and conditions established within the zoning bylaw.

3. Council needs to know who will be using the property to make decisions.

Discretionary uses must be reviewed by council based on use, not people. For example, the consideration of a discretionary use for a group home or care facility must be based on the appropriateness of the use, respecting the discretionary use procedures and criteria and any prescribed development standards for the use set out by the zoning bylaw – not based on the type of end-user.

For more information about zoning bylaw content or how discretionary uses can be addressed in a zoning bylaw under the Act, please get in touch with the Ministry of Government Relations, Community Planning branch.

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