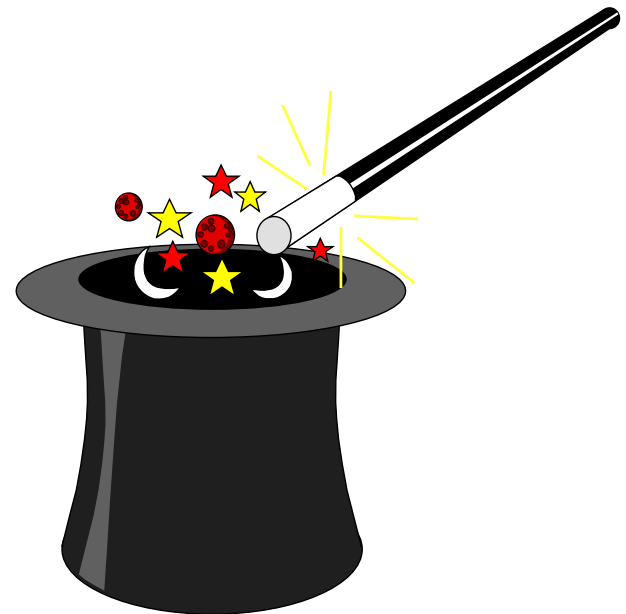


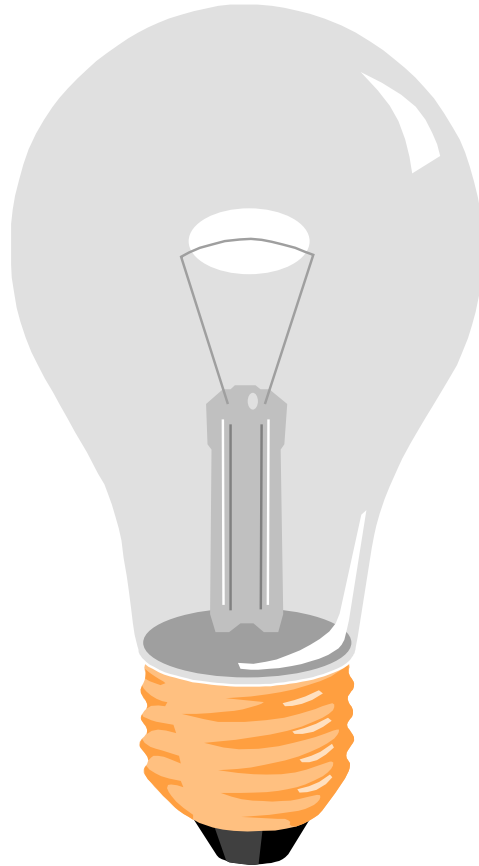
Water Setbacks, The Committee of Adjustment, and You. . . .

Some things this is NOT about

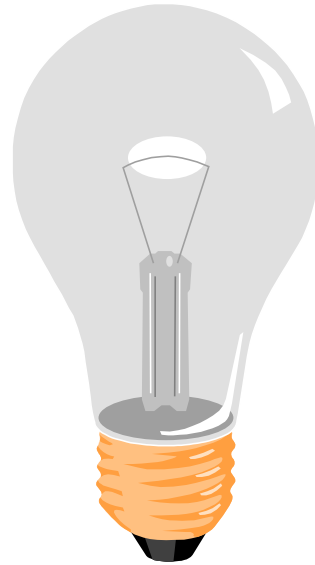
- NOT Snakes and Ladders
- NOT Magic
- NOT Witchcraft
- NOT Trivial pursuit



**This is the sign of
a simple idea**



**Each section of the
Planning Act
is based on a simple idea**



Where does the Committee of Adjustment come from?

S. 44 - municipality can set up a Committee of Adjustment

S. 45 - what a Committee of Adjustment can do

The job of any Committee of Adjustment is to turn the simple ideas into fair and valid decisions

**If something
is *not* permitted,
there are four choices**

1. Just do it - but this is not lawful
2. Apply for a re-zoning
3. Visit the Committee of Adjustment
4. Forget it

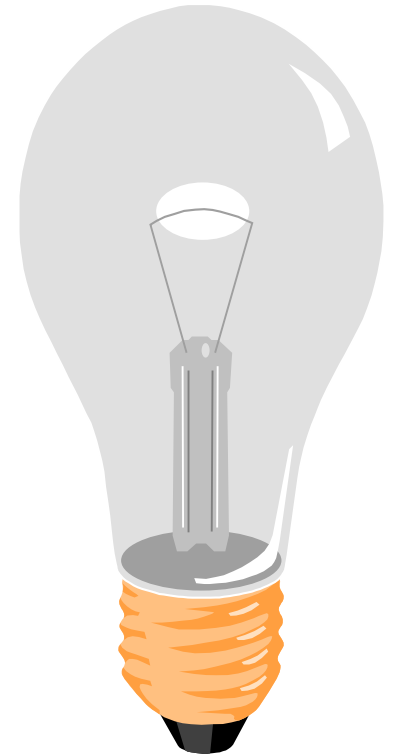
What can a Committee of Adjustment do?

Two things (s. 45):

- 1. Approve a minor variance to the zoning by-law for a specific site**
- 2. Permit a change or an extension of a non-conforming use**

What is the idea of a minor variance?

- S 45(1)
- No zoning can foresee everything
- Uses are infinitely variable
- Some changes must be so insignificant that a complete re-zoning is not required



Minor variance tests

s. 45(1)

- **Minor**
- **Desirable for appropriate development**
- **Maintain general intent and purpose of zoning by-law**
- **Maintain general intent and purpose of Official Plan**

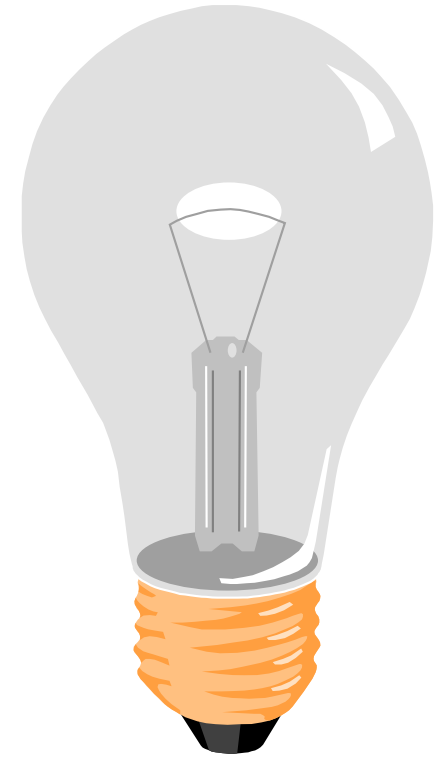
Minor: how big is that?

Minor is a matter of impact:

- On policy
- On neighbours
- On water quality
- On future planning
- On zoning

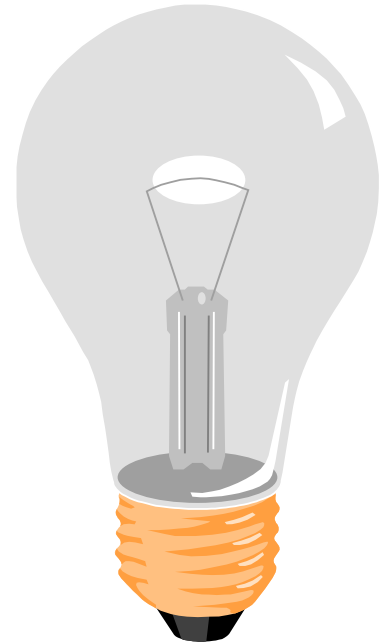
What is the idea of a non-conforming use?

- S. 34(9)(a)
- Municipality gets to plan ahead, and to change zoning.
- Municipality cannot force someone to change their use as long as it was lawfully established and continues.

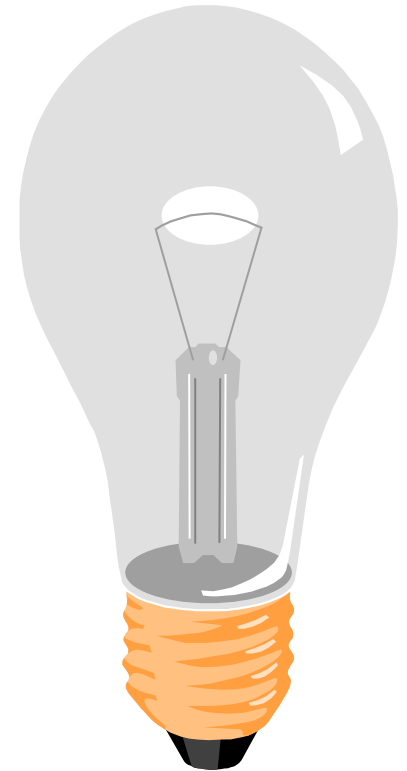


What is the idea of a change in use or extension (for non-conforming use only)?

- S 45(2)(a)
- The use is no longer permitted
- The use is not part of future municipal plans, and is expected to “peter out”.
- But some changes may be of little significance . . .



- Especially if the proposed use is similar to the existing non-conforming use
- Or if the proposed use is more compatible with the new zoning
- ***BUT there are very specific conditions which must be met.***



If use is non-conforming, **Committee of Adjustment** **can permit three things**

1. *Enlargement* or extension of building or structure [S45(2)(a)]
2. A change to a use that is *similar* to existing non-conforming uses [S45(2)(a)(i)]
3. A change to a use that is *more compatible* with a use permitted by the zoning by-law [S45(2)(a)(ii)]

But only under these circumstances:

- Existing use must have been *lawfully established*
- Use must have been *continued* up to date of application
- Can only be on the *property owned and used* at time of change in by-law

How do you know if conditions are met?

Ask the applicant to provide evidence

- Of *existing use*
- Of *date zoning changed* to make use non-conforming
- That existing use was *lawful* at that date
- That existing use has *continued* to present

And for extension of a building

Ask the applicant to provide

- *Limits of property* that was used for the existing use at time it became non-conforming.

“Tests” for permission to extend a building or change a use

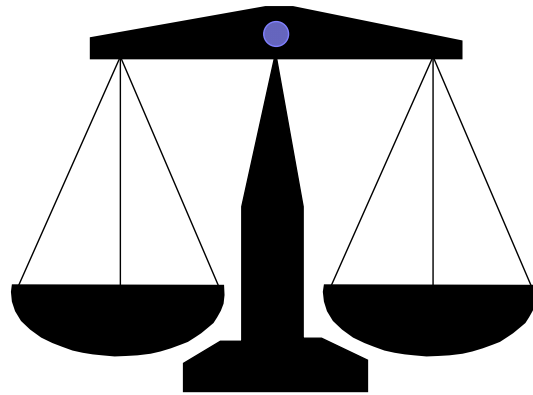
- Is it good planning?
- Is it in the public interest?
- Is it desirable for the development of the property?
- Is there unacceptable impact on other properties, neighbours, policies, future?

Additional “tests” for permission to change use

- Proposed use must be *similar* to existing use, OR
- Proposed use must be *more compatible* with a use permitted by the [new] zoning by-law [going in the right direction]

A few last words. . .

**The Planning Act requires
a balancing act
between public interest
and private interest**



Remember

- If proposal was permitted, the applicant would not be at the Committee
- A variance or permission is a privilege, not a right
- Committee has obligation to make a fair and valid decision
- Must work within the authority given by the Planning Act

And keep in mind. . .

- **Committee cannot vary an Official Plan (s.16 to s.27).**
- **Committee cannot lift holding by-laws (s.36).**
- **Committee cannot grant severances or approve plans of subdivisions (s. 51 & 53)**