

NO. 07-097

**BOARD OF VARIANCE BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to consolidate and update provisions for the Board of Variance.

***Contents***

**PART 1 - INTRODUCTION**

- 1 Title
- 2 Definition

**PART 2 –THE BOARD**

- 3 Continuation of Board
- 4 Membership on the Board
- 5 Chair to preside at meetings & hearings
- 6 Quorum
- 7 Reimbursement of members

**PART 3 – PROCEEDINGS AT THE BOARD**

- 8 Secretary of the Board
- 9 Variance or exemption to relieve hardship
- 10 Order concerning damage of non-conforming use
- 11 Procedure for applications
- 12 Notices
- 13 Attendance at hearings
- 14 Parties and agents at a hearing
- 15 Evidence at hearings
- 16 Deliberations of the Board
- 17 Decisions of the Board
- 18 Appeals
- 19 Record of Board's proceedings

**PART 4 – GENERAL**

- 20 Repeal

Under its statutory powers, including sections 899 to 902 of the *Local Government Act*, the Council of The Corporation of the City of Victoria enacts the following provisions:

**PART 1 - INTRODUCTION**

**Title**

1 This Bylaw may be cited as the "Board of Variance Bylaw".

**Definitions**

2 In this Bylaw,

“Board”

means the Board of Variance for the City of Victoria;

“Chair”

means the chair of the Board as approved under section 5 of this Bylaw.

“Secretary”

means the secretary of the Board.

**PART 2 –THE BOARD**

**Continuation of Board**

3 The Board, established by previous bylaw of the City, is continued.

**Membership on the Board**

- 4
- (1) The Board consists of 5 members appointed by Council.
  - (2) Subject to subsections (3) to (7), the term of office for members of the Board is 3 years.
  - (3) Council may appoint a successor to finish the remainder of a term of office of a member that resigns, is removed from office by Council, or is otherwise unable to complete that term of office.
  - (4) If Council has not approved a successor before or at the end of a member's term of office, that member's term of office continues until Council appoints a successor for that member.
  - (5) A person is not eligible to be appointed to the Board if that person is
    - (a) a member of City Council,
    - (b) an officer or employee of the City, or
    - (c) a member of the City's Advisory Planning Commission.
  - (6) If a member of the Board ceases to hold office, the person's successor must be appointed in the same manner as the member who ceased to hold office, and,

until the appointment of the successor, the remaining members constitute the Board.

- (7) The Council may remove a member from the Board at any time.

#### **Chair to preside at meetings & hearings**

- 5 (1) The members of the Board must elect one of their members as Chair to preside at the Board's meetings and hearings.
- (2) The Chair may appoint another member to preside while the Chair is absent.

#### **Quorum**

- 6 The quorum for the Board is a majority of its members.

#### **Reimbursement of members**

- 7 Members of the Board must not receive compensation for their services as members, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties.

### **PART 3 – PROCEEDINGS AT THE BOARD**

#### **Secretary of the Board**

- 8 (1) The City will provide the Board with a Secretary.
- (2) The Board's Secretary will carry out the duties assigned under this Bylaw and by the Board.

#### **Variance or exemption to relieve hardship**

- 9 A person may apply to the Board, in accordance with section 901(1) of the *Local Government Act*, for an order for a minor variance from:
- (a) the requirements of a bylaw respecting the siting, dimensions or size of a building or structure;
  - (b) the provisions of the Tree Preservation Bylaw;
  - (c) the prohibition of a structural alteration or addition under section 911(5) of the *Local Government Act*;
  - (d) a subdivision servicing requirement under section 938(1)(c) of the *Local Government Act* in an area zoned for industrial use.

#### **Order concerning damage of non-conforming use**

- 10 A person may apply to the Board, in accordance with section 902(1) of the *Local Government Act*, for an order to set aside the determination of a building inspector of the

City under section 911(8) of the *Local Government Act* in relation to the extent of damage or destruction of a non-conforming use.

### **Procedure for applications**

- 11** (1) A person may apply to the Board by paying to the City the application fee prescribed under Schedule A of the Land Use Procedures Bylaw, and by filing a written application with the Secretary in the form that is determined by the Board.
- (2) An application must contain the following information:
- (a) written notice of the grounds of the application, including specific reference to the bylaw from which the variance is sought, and a description of how compliance with that bylaw would cause undue hardship to the applicant;
  - (b) accurate site plans of the property that is the subject of the application, including elevation plans if the requested variance concerns a height-related issue;
  - (c) the address to which notices may be mailed to the applicant;
  - (d) any other information that the applicant intends to present to the Board at a hearing.
- (3) Immediately after receiving an application, the Secretary must notify the Chair, and
- (4) The Chair must appoint a time and place for the hearing of the application by the Board.

### **Notices**

- 12** (1) At least 10 clear days before the date set for a hearing, the Secretary must mail or deliver a notice of the hearing to the last known address of the following persons:
- (a) the applicant;
  - (b) the owners and occupants of the land that is adjacent to the land that is the subject of the application; and
  - (c) the City's Director of Planning and Development, or his or her designate.
- (2) A notice given in relation to an application must state the subject matter of the application and the time and place where the application will be heard.

### **Attendance at hearings**

- 13** (1) Subject to subsection (2), proceedings of the Board are open to the public.

- (2) The Board may close to the public all or part of a hearing in accordance with Division 3 of Part 4 of the *Community Charter*.

### **Parties and agents at a hearing**

- 14** (1) The following persons have a right to be heard, give evidence, and cross-examine others who give evidence at a Board's hearing:
- (a) the applicant;
  - (b) the owners and occupants of the land that is adjacent to the land that is the subject of the application.
- (2) Any person who is entitled to be heard at a hearing of the Board may be represented by that person's solicitor, or by an agent who is appointed in writing by the person entitled to be heard.

### **Evidence at hearings**

- 15** (1) Proceedings of the Board may be informal.
- (2) The Board, in its discretion, may:
- (a) administer an oath for oral evidence;
  - (b) accept evidence that is unsworn, written, or hearsay evidence;
  - (c) before evidence is presented at a hearing, direct that
    - (i) no oral evidence will be allowed to be given unless all of the witnesses first take an oath or affirmation in the same manner as witnesses at a civil trial in the Supreme Court of British Columbia;
    - (ii) that no written evidence will be allowed to be given unless it is verified by affidavit;
  - (d) inspect the property that is the subject of the hearing.
- (3) At the beginning of a hearing, the Secretary must read aloud written evidence submitted in advance of the hearing by any party unless that requirement is waived by the parties to the application.
- (4) The Board must permit evidence and arguments to be presented at a hearing in the following order:
- (a) first, the hearing of evidence and arguments from the applicant;
  - (b) second, the hearing of evidence and arguments of all other parties in the sequence directed by the Chair until all parties have been given an opportunity to present their evidence and arguments.
- (5) The Board may hear oral evidence only during a regularly constituted hearing.

### **Deliberations of the Board**

- 16**
- (1) The Board may confer with a member of the City's Planning Department when considering an application at a hearing.
  - (2) The Board may request the City to obtain a legal opinion on any point of law arising in connection with an application and may receive and discuss the opinion at a meeting or portion of a meeting that is closed to the public.
  - (3) The Board is not required to adopt or to act upon any legal opinion obtained by the City or upon any evidence given by a member of the City's Planning Department.
  - (4) After a hearing is closed, and except as provided in subsections (1) and (2), a member of the Board must not, before the Board has made a decision about an application, discuss the merits of the application with any person who is not a member of the Board.
  - (5) The Board may proceed to decide an application if the applicant fails to appear at a hearing.

### **Decisions of the Board**

- 17**
- (1) After hearing an application the Board may
    - (a) accept the application
      - (i) by ordering a minor variance from the requirements of a bylaw, or an exemption from the statutory prohibition against a structural alteration or addition in relation to a non-conforming use, in accordance with section 901 of the *Local Government Act*, or
      - (ii) by setting aside the determination of the City's building inspector under section 911(8) of the *Local Government Act* in relation to the extent of damage or destruction of a non-conforming use, and making the determination in the building inspector's place, in accordance with section 902 of the *Local Government Act*;
    - (b) deny the application;
    - (c) permit the applicant to amend his or her application by reducing the extent of the variance sought and accept that amended application;
    - (d) adjourn the application to another time for hearing.
  - (2) The decision in writing of a majority of the members of the Board is the decision of the Board.
  - (3) Decisions of the Board must be filed with its Secretary.
  - (4) The Secretary must forward a copy of the Board's decision to the applicant, the City's Planning Department, and all other persons indicated by the Board.

- (5) A decision of the Board is final.

**Appeals**

- 18 In accordance with section 902(3) of the *Local Government Act*, an applicant or the City may appeal a decision of the Board under section 17(1)(a)(ii) to the Supreme Court.

**Records of Board’s proceedings**

- 19 (1) The Secretary must legibly record and keep minutes of the Board’s proceedings.
- (2) The minutes of Board’s proceedings must be signed by the Chair.
- (3) A person may, during the Board’s normal business hours, inspect and make copies of the Board’s minutes and decisions.

**PART 4 - GENERAL**

**Repeal**

- 20 Bylaw No. 86-15, the Board of Variance Bylaw, is repealed.

READ A FIRST TIME on the	<b>22<sup>nd</sup></b>	day of	<b>November,</b>	2007
READ A SECOND TIME on the	<b>22<sup>nd</sup></b>	day of	<b>November,</b>	2007
READ A THIRD TIME on the	<b>22<sup>nd</sup></b>	day of	<b>November,</b>	2007
ADOPTED on the	<b>13<sup>th</sup></b>	day of	<b>December,</b>	2007

**“ROBERT G. WOODLAND”**  
CORPORATE ADMINISTRATOR

**“ALAN LOWE”**  
MAYOR