

LOCAL GOVERNMENT ACT

[RSBC 1996] CHAPTER 323

Part 26 — Planning and Land Use Management

Division 6 — Board of Variance

Establishment of board of variance

899 (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.

(2) If the population of a municipality is 25 000 or less, the board of variance for the municipality is to consist of 3 persons appointed by the council.

(3) If the population of a municipality is more than 25 000, the board of variance for the municipality is to consist of 5 persons appointed by the council.

(4) A board may establish one or more boards of variance, but, if more than one board of variance is established, the bylaw establishing them must specify the area of the regional district over which each board of variance is to have jurisdiction and those areas must not overlap.

(5) Each board of variance in a regional district is to consist of 3 persons appointed by the board.

(5.1) Two or more local governments may satisfy the obligation under subsection (1) by jointly establishing a board of variance by bylaw adopted by all participating local governments.

(5.2) The bylaw in subsection (5.1) must

(a) specify the area of jurisdiction for the board of variance, which may be all or part of the participating local governments, but must not overlap with the area of jurisdiction of any other board of variance, and

(b) establish rules for

(i) appointment and removal of members of the board of variance, and

(ii) appointment and removal of a chair of the board of variance,

which apply in place of those established by this section and section 900.

(5.3) As an exception to subsections (2) to (5) in relation to a board of variance established under subsection (5.1),

(a) if a municipality is one of the participating local governments, the board of variance is to consist of

(i) 3 persons, if the population of the area of the jurisdiction of the board of variance is 25 000 or less, or

(ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25 000,

and

(b) if a municipality is not one of the participating local governments, a board of variance is to consist of 3 persons.

(6) Subject to subsection (9) and to the rules established under subsection (5.2)

(b) (i), an appointment to a board of variance is for the later of

(a) 3 years, and

(b) if no successor has been appointed at the end of the 3 year period, until the time that a successor is appointed.

(7) A person who is

(a) a member of the advisory planning commission or of the local government, or

(b) an officer or employee of the local government

is not eligible to be appointed to a board of variance.

(8) If a member of a board of variance ceases to hold office, the person's successor is to 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 of variance.

(9) A local government may rescind an appointment to a board of variance at any time.

(10) [Repealed 2003-15-15.]

(11) Members of a board of variance 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.

(12) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board.

Chair and procedures

900 (1) The members of a board of variance must elect one of their number as chair.

(2) The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.

(3) A bylaw establishing a board of variance must set out the procedures to be followed by the board of variance, including the manner by which appeals are to be brought and notices under section 901 (4) are to be given.

(4) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during normal business hours.

Variance or exemption to relieve hardship

901 (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that compliance with any of the following would cause the person hardship:

(a) a bylaw respecting the siting, dimensions or size of a building or structure, or the siting of a manufactured home in a manufactured home park;

(b) a bylaw under section 8 (3) (c) [*fundamental powers — trees*] of the *Community Charter*, other than a bylaw that has an effect

referred to in section 50 (2) [*restrictions on authority — preventing all uses*] of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person;

(c) the prohibition of a structural alteration or addition under section 911 (5);

(d) a subdivision servicing requirement under section 938 (1) (c) in an area zoned for agricultural or industrial use.

(2) On an application under subsection (1), the board of variance may order that a minor variance be permitted from the requirements of the bylaw, or that the applicant be exempted from section 911 (5), if the board of variance

(a) has heard the applicant and any person notified under subsection (4),

(b) finds that undue hardship would be caused to the applicant if the bylaw or section 911 (5) is complied with, and

(c) is of the opinion that the variance or exemption does not

- (i) result in inappropriate development of the site,
- (i.1) adversely affect the natural environment,
- (ii) substantially affect the use and enjoyment of adjacent land,
- (iii) vary permitted uses and densities under the applicable bylaw, or
- (iv) defeat the intent of the bylaw.

(3) The board of variance must not make an order under subsection (2) that would do any of the following:

(a) be in conflict with a covenant registered under section 219 of the *Land Title Act* or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;

(b) deal with a matter that is covered in a permit under Division 9 of this Part or covered in a land use contract;

(b.1) deal with a matter that is covered by a phased development agreement under section 905.1 [*phased development agreements*];

(c) deal with a flood plain specification under section 910 (2);

(d) apply to a property

- (i) for which an authorization for alterations is required under Part 27,
- (ii) that is scheduled under section 970.1 (3) (b) or contains a feature or characteristic identified under section 970.1 (3) (c), or
- (iii) for which a heritage revitalization agreement under section 966 is in effect.

(4) If a person makes an application under subsection (1), the board of variance must notify all owners and tenants in occupation of

(a) the land that is the subject of the application, and

(b) the land that is adjacent to land that is the subject of the application.

(5) A notice under subsection (4) must state the subject matter of the application and the time and place where the application will be heard.

(6) The obligation to give notice under subsection (4) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

(7) In relation to an order under subsection (2),

(a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or

(b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,

the permission or exemption terminates and the bylaw or section 911 (5), as the case may be, applies.

(8) A decision of the board of variance under subsection (2) is final.

Extent of damage preventing reconstruction as non-conforming use

902 (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 911 (8) is in error.

(2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 911 (8) in its place.

(3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.