

**CITY OF PITT MEADOWS
BOARD OF VARIANCE BYLAW
Bylaw No. 2861, 2020**

A bylaw to establish and set the procedures for the Board of Variance

WHEREAS the Council of the City of Pitt Meadows has adopted a Zoning Bylaw; and

WHEREAS pursuant to the Local Government Act, a local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance;

NOW THEREFORE the Council of the City of Pitt Meadows enacts as follows:

Citation/Title

1. This Bylaw may be cited as the "Board of Variance Bylaw No. 2861, 2020."

Repeal

2. The Board of Variance Bylaw No. 1447, 1992 is hereby repealed.

Continuation and Jurisdiction

3. The Board of Variance for the City of Pitt Meadows, established by previous bylaws of the City, is continued and will operate in the manner and to the extent set out in the *Local Government Act* and this Bylaw.

Definitions

4. In this bylaw,
 - a) **Board** means the Board of Variance;
 - b) **City** means the City of Pitt Meadows;
 - c) **Committee Clerk** means the City's Corporate Officer or their designate.
 - d) **Hearing** means a Board meeting where an application to the Board is considered;
 - e) **Staff Liaison** means the *City* employee responsible for supporting the Board with its administrative functions;

Staff Liaison

5. The Manager responsible for Planning and Development is the *Staff Liaison* to the *Board* and will carry out the responsibilities as assigned under this bylaw.

Application Process

6. A person wishing to make an application to the *Board* must:
 - (a) file a completed application with the *Staff Liaison*, consisting of
 - i. an application form, as prescribed by and available from the *Staff Liaison*, which
 - a. is signed by the property owner, and
 - b. sets out in detail the grounds upon which the application is based and the relief sought; and
 - ii. the required attachments specified in the application form; and
 - (b) pay the non-refundable application fee as outlined in the City's Development Application Fee Bylaw.
7. The *Staff Liaison* will:
 - (a) receive all submitted applications;
 - (b) determine the completeness of an application;
 - (c) determine whether an application involves a matter within the jurisdiction of the *Board* as outlined in Division 15 of the *Local Government Act*, a copy of which is attached hereto as Appendix A, for reference purposes only and not forming a part of this Bylaw;
 - (d) notify the applicant if the application is outside the jurisdiction of the *Board*; and
 - (e) if the application is within the jurisdiction of the *Board*, notify the *Board* of the receipt of the application and work with the *Board* to set the date for the *hearing*.

Withdrawal

8. An applicant may, at any time prior to the *hearing* date, apply to the *Staff Liaison* to withdraw their application.

Scheduling Hearings

9. The *Staff Liaison* will schedule a *hearing* within 45 days of receiving a complete application, unless an extension is agreed to by the written consent of the applicant.
10. The *Staff Liaison* may call a meeting with the applicant and the Director responsible for Planning and Development to review the application in advance of the *hearing*.

Notice of Hearing

11. At least ten days before the date set for a *hearing*, the *Staff Liaison* will mail or otherwise deliver a notice of the *hearing* to the last known address of the following persons:
 - (a) the applicant;
 - (b) the agent of the applicant, if applicable;
 - (c) the owners and tenants occupying the land that is the subject of the application;
 - (d) the owners and occupants of the land that is adjacent to the land that is the subject of the application, including those separated by private or public rights-of-way;
 - (e) the City's director who is responsible for Planning and Development;
 - (f) each member of the *Board*;
 - (g) the *Committee Clerk*; and
 - (h) if an application under Section 544 of the *Local Government Act* [extent of damage to non-conforming use property], as amended from time to time, the building inspector whose interpretation is being appealed.
12. The *Staff Liaison* will include the following information in the notice:
 - (a) the street address of the land which is the subject of the application;
 - (b) the subject matter of the application;
 - (c) the date, time, and place where the application will be heard;
 - (d) the place where, and the times and dates when, copies of the application package may be inspected; and
 - (e) instructions for submitting written comments regarding the application.
13. The *Committee Clerk* will post a copy of the notice at the City's public notice posting places.

Inspection of Application

14. Starting on the date that notice is given of a *hearing*, the *Staff Liaison* will make available for public inspection the application package and any written comments submitted regarding the application, during regular office hours, up to and including the date of the *hearing*.

Board Agenda

15. Not less than 7 days before the date of a *hearing*, the *Committee Clerk* will:
 - (a) prepare an agenda package of all applications to be considered at the *hearing*, including
 - i. the complete application packages, and
 - ii. any written comments submitted regarding the applications;
 - (b) email or otherwise make available a copy of the agenda to
 - i. each *Board* member,
 - ii. the *Staff Liaison*,
 - iii. the applicants whose applications will be heard at the *hearing*, and
 - iv. the director responsible for Planning and Development; and
 - (c) post a copy of the agenda at the City's public posting places.
16. Any written comments received after the publication of the agenda, up until the date of the *hearing*, will be forwarded to those persons identified in subsection 15(b).

Conduct of Hearing

17. All *hearings* are open to the public.
18. Despite section 17, the *Board* may close to the public all or part of a *hearing* in accordance with the *Community Charter*.
19. If a quorum is not present within fifteen minutes after the scheduled time of the meeting, the *Staff Liaison* will
 - (a) cancel the meeting; and
 - (b) reschedule the meeting to hear the applications as soon as practicable, either by
 - i. prior to cancelling the meeting, announcing the new *hearing* date, time, and location; or
 - ii. providing notice of the new *hearing* date as per sections 11 through 14.
20. A person or body with interest in property within the municipality is entitled to be:
 - (a) heard at the *hearing*, and
 - (b) represented by a solicitor or agent duly appointed in writing.

21. A person wishing to give evidence at a *hearing* may do so either orally or in writing.
22. A *Board* member will only hear oral evidence pertaining to an application during the *hearing* at which the application is considered.
23. A *Board* member will not discuss the merits of an application with any person who is not a member of the *Board* or the *Staff Liaison*, before the *Board* has reached a decision.
24. The *Board* will hear evidence and arguments during the *hearing* in the following order:
 - (a) The *Staff Liaison*, or their designate, will present the application package to the *Board* with introductory comments;
 - (b) The applicant, or their representative, will be given the opportunity to present their case and evidence;
 - (c) The Chair will then grant other attendees wishing to make comments the opportunity to speak, in such sequence as the Chair may direct, until all parties entitled to be heard have been given an opportunity to present their evidence and arguments.
25. The *Board* may adjourn a meeting from time to time, as the *Board* may deem appropriate, to view the property or obtain additional information, and may reconvene the meeting without further notice if the time, date, and location of the reconvened meeting is announced at adjournment.
26. If the applicant or other persons notified do not appear at the *hearing*, and have not advised the *Staff Liaison* in advance that they wish to be heard at another date, the *Board* may make their decision on the application in their absence.

Decisions

27. At the conclusion of the *hearing* of an application, the *Board* may:
 - (a) grant or deny the order requested by the applicant and may provide reasons for the grant or denial;
 - (b) request further information from the applicant, *City Staff* or any person who has made a submission to the *Board* in respect to the application and adjourn the *hearing* in accordance with section 25 of this bylaw; or
 - (c) reserve its decision and provide a written decision at a later date.
28. The decision of the *Board* will be by a majority of those members present and made within 7 days of the *hearing*.

29. The *Staff Liaison* will, within 7 days of a decision, send by mail or otherwise deliver the written decision of the *Board* to the applicant.
30. If an application is granted, the *Board* may set a time within which the lawful construction must be completed, failing which the exemption granted by the *Board* will terminate and the provisions of the applicable bylaw or the *Local Government Act*, as applicable, will apply.

Board Records

31. The *Committee Clerk* will legibly record and maintain custody of all *Board* minutes.
32. The minutes of the *Board* will
 - (a) be signed by the Chair, and
 - (b) serve as the official record of the decisions of the *Board*.

READ a FIRST, SECOND and THIRD time on September 22, 2020.

ADOPTED on October 6, 2020.

"Mayor Bill Dingwall"

Mayor

"Kate Barchard"

Corporate Officer

APPENDIX "A"

Excerpt of Local Government Act – Division 15 of Part 14 [RSBC 2015] Chapter 1

This schedule is for reference purposes only and does not form part of the Board of Variance Bylaw No. 2861, 2020 and will be updated from time to time as the provincial legislation is amended.

BOARD OF VARIANCE

Requirement for board of variance

- 536** (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.
- (2) A person is not eligible to be appointed to a board of variance if the person is
- (a) a member of the local government or the advisory planning commission,
 - or
 - (b) an officer or employee of the local government.
- (3) Subject to subsections (4) and (5) and to the rules established under section 538 (2) (b) (i) [*rules for joint board of variance*], an appointment to a board of variance is for a 3 year period.
- (4) If no successor has been appointed at the end of the 3 year period referred to in subsection (3), the appointment continues until the time that a successor is appointed.
- (5) A local government may rescind an appointment to a board of variance at any time.
- (6) 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.
- (7) 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.
- (8) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

Board of variance for municipality or regional district

- 537** (1) If the population of a municipality is 25 000 or less, the municipal board of variance is to consist of 3 persons appointed by the council.
- (2) If the population of a municipality is more than 25 000, the municipal board of variance is to consist of 5 persons appointed by the council.

- (3) A regional district board of variance is to consist of 3 persons appointed by the board.
- (4) The board of a regional district may establish one or more boards of variance for the regional district, 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 has jurisdiction and those areas must not overlap.

Joint board of variance

- 538** (1) Two or more local governments may satisfy the obligation under section 536 (1) [requirement for board of variance] by jointly establishing a board of variance by bylaw adopted by all participating local governments.
- (2) A bylaw under subsection (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 the following that apply in place of those established by sections 536 [requirement for board of variance] and 539 [*chair and procedures*]:
 - (i) appointment and removal of members of the board of variance;
 - (ii) appointment and removal of a chair of the board of variance.
- (3) As exceptions to section 537 [local board of variance], the following apply to a board of variance established under this section:
- (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, and
 - (ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25 000;
 - (b) if a municipality is not one of the participating local governments, the board of variance is to consist of 3 persons.

Chair and procedures for board of variance

- 539** (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 in which appeals are to be brought and notices under section 541 [notice of application for variance] or

543 (2) [notice of application in relation to early termination of land use contract] 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 regular office hours.

Application for variance or exemption to relieve hardship

540 A person may apply to a board of variance for an order under section 542 [board powers on application] if the person alleges that compliance with any of the following would cause the person hardship:

- (a) a bylaw respecting
 - (i) the siting, size or dimensions of a building or other structure, or
 - (ii) the siting of a manufactured home in a manufactured home park;
- (b) a subdivision servicing requirement under section 506 (1) (c) [provision of water, sewer and other systems] in an area zoned for agricultural or industrial use;
- (c) the prohibition of a structural alteration or addition under section 531 (1) [restrictions on alteration or addition while non-conforming use continued];
- (d) 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.

Notice of application for variance

- 541** (1) If a person makes an application under section 540, 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.
- (2) A notice under subsection (1) must state the subject matter of the application and the time and place where the application will be heard.
- (3) The obligation to give notice under subsection (1) is satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

Board powers on application

- 542** (1) On an application under section 540, the board of variance may order that a minor variance be permitted from the requirements of the applicable bylaw, or

that the applicant be exempted from section 531 (1) [alteration or addition while non-conforming use continued], if the board of variance

- (a) has heard the applicant and any person notified under section 541,
 - (b) finds that undue hardship would be caused to the applicant if the bylaw or section 531 (1) is complied with, and
 - (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.
- (2) The board of variance must not make an order under subsection (1) 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 land use permit or covered in a land use contract;
 - (c) deal with a matter that is covered by a phased development agreement under Division 12 [Phased Development Agreements];
 - (d) deal with a flood plain specification under section 524 (3);
 - (e) apply to a property
 - (i) for which an authorization for alterations is required under Part 15 [Heritage Conservation],
 - (ii) for which a heritage revitalization agreement under section 610 is in effect, or
 - (iii) that is scheduled under section 614 (3) (b) [protected heritage property] or contains a feature or characteristic identified under section 614 (3) (c) [heritage value or character].
- (3) In relation to an order under subsection (1),
- (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 531 (1), as the case may be, applies.

- (4) A decision of the board of variance under subsection (1) is final.

Exemption to relieve hardship from early termination of land use contract

- 543** (1) The owner of land subject to a land use contract that will be terminated by a bylaw adopted under section 548 [early termination of land use contracts] may apply to a board of variance for an order under subsection (5) of this section if
- (a) the owner alleges that the timing of the termination of the land use contract by the bylaw would cause the owner hardship, and
 - (b) the application is received by the board of variance within 6 months after the adoption of the bylaw.
- (2) If an application is made 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.
- (3) A notice under subsection (2) must state the subject matter of the application and the time and place where the application will be heard.
- (4) The obligation to give notice under subsection (2) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.
- (5) On an application under subsection (1), the board of variance may order that, despite the termination of the land use contract and despite any zoning bylaw, the provisions of that land use contract continue to apply in relation to the applicant for a specified period of time ending no later than June 30, 2024, if the board of variance
- (a) has heard the applicant, and
 - (b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.
- (6) An order under subsection (5) does not run with the land.
- (7) The board of variance must make a decision on an application under subsection (1) within 6 months after the application is received by the board of variance.
- (8) A decision of the board of variance under subsection (5) is final.

Extent of damage to non-conforming use property

- 544** (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 532 (1) [end of non-conforming use protection if building of other structure is seriously damaged] 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 532 (1) 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.