



City of Vernon

***BOARD OF
VARIANCE
BYLAW***

#4875

THE CORPORATION OF THE CITY OF VERNON

BYLAW NUMBER 4875

A bylaw to establish a Board of Variance

WHEREAS the Council of The Corporation of the City of Vernon has adopted a Zoning Bylaw:

AND WHEREAS the *Local Government Act*, provides that where a Council has adopted a Zoning Bylaw, there shall be established, by bylaw, a Board of Variance.

AND WHEREAS the *Local Government Act* provides that in a bylaw establishing a Board of Variance there shall be set out the procedures to be followed by the Board of Variance, including the manner in which appeals are to be brought to the Board of Variance and how notices of applications to the Board of Variance are to be given;

NOW THEREFORE the Council of The Corporation of the City of Vernon, in open meeting assembled, enacts as follows:

1. REPEAL

Bylaw Number 2736, being a bylaw to establish a Board of Variance, is hereby repealed.

2. CITATION

This bylaw may be cited for all purposes as "Board of Variance Bylaw Number 4875, 2004".

3. DEFINITIONS

3.01 In this bylaw, unless the context otherwise requires:

"Board" means the Board of Variance established under this bylaw pursuant to the provisions of the *Local Government Act*;

"Building Inspector" means the person or persons duly appointed to that position from time to time by the City, and his or her designate;

"City" means The Corporation of the City of Vernon;

"City Hall" means the municipal offices of the City located at 3400 – 30th Street, Vernon, British Columbia;

"City Planner" means the person or persons duly appointed to that position from time to time by the City, and his or her designate.

"Secretary" means the person appointed by the City from time to time to carry out the functions and duties of the Secretary to the Board under this bylaw.

4. ESTABLISHMENT OF THE BOARD

4.1 The Board is established in accordance with the provisions of the *Local Government Act* and shall consist of five (5) members appointed by the Council of the City.

4.2 The Board shall elect one of their members as Chair who may, from time to time, appoint a member of the Board as acting Chair to preside in the absence of the Chair.

4.3 Each Board member shall hold office for a term of three (3) years or until a successor is appointed, but a person may be re-appointed for a further term(s).

4.4 A quorum of the Board shall be any three members, one of whom may be the Chair or the acting Chair.

4.5 The Board shall maintain a record of all of its decisions and orders and shall make such record available for public inspection during the City's normal business hours.

4.6 The Secretary to the Board, in addition to receiving applications and preparing agendas on behalf of the Board, shall:

(a) establish dates for meetings of the Board;

(b) circulate notices of applications in accordance with the requirements of the *Local Government Act*,

(c) attend meetings of the Board, record minutes of meetings and attend to the processing of any correspondence arising from Board meetings, including notification of Board decisions to applicants and City staff; and

(d) maintain a record of all decisions and orders of the Board.

5. JURISDICTION OF THE BOARD

5.1 The Board shall hear and determine applications to the Board on the grounds and to the extent authorized under the applicable provisions of the *Local Government Act* or any successor legislation.

6. APPLICATIONS TO THE BOARD

6.1 Every person applying to the Board for an order that a minor variance be permitted to a bylaw or that the determination of damage to a non-conforming building made by a Building Inspector be set aside, shall:

(a) complete and submit to the City Planner, an application, either on the prescribed form available at City Hall or otherwise in writing, marked with the heading "Application to Board of Variance" and composed of numbered paragraphs dealing separately with the following matters:

- (i) the legal description and civic address of the property which is the subject of the appeal;
- (ii) the name(s) and address(es) of the registered owner(s) of the property;
- (iii) the name and address of the applicant, if not the owner, and their relationship to the registered owner(s);
- (iv) an address to which all notices and correspondence to the owner or applicant may be sent;
- (v) a description of the variance being sought including references to the particular section or sections of the applicable bylaw to be relaxed, or to the specific determination of damage by the Building Inspector which is being appealed; and
- (vi) one copy of any sketch plans, elevations, specifications or other plans or documents in support of the application.

(b) include with the application, the prescribed application fee set forth in the City's Fees and Charges Bylaw, as amended from time to time.

6.2 Upon receiving an application to the Board, the City Planner shall first determine whether the application is within the jurisdiction of the Board and, if the application is considered beyond the jurisdiction of the Board, the City Planner must, within three (3) days of such determination, advise the applicant in writing that the application will not be processed further and that the application fee will be

refunded. If an applicant disagrees with the determination of the City Planner, he or she may, upon payment of the application fee, require that the application be processed and forwarded to the Board for a determination by the Board as to whether the application falls within its jurisdiction.

6.3 The City Planner, upon receiving an application which is determined to be within the jurisdiction of the Board, shall:

- (a) circulate the application for interdepartmental and agency comments;
- (b) where the City Planner considers it necessary and appropriate in the circumstances, cause a staff report to be prepared respecting the application; and
- (c) forward the application, including any plans or supporting documentation submitted by the applicant and the staff report, if any, to the Secretary, along with a list of the names and mailing addresses of all owners and tenants in occupation of the land that is the subject of the application and of land adjacent to the land that is the subject of the application.

6.4 Upon receipt of an application to the Board, the Secretary shall:

- (a) in consultation with the Board Chair, establish a date for the Board to meet to consider the application;
- (b) serve notice of the application, or cause such notice to be served, personally or by regular mail, not less than ten (10) days prior to the date scheduled for the hearing of the application, to the applicant, each Board member, the City Clerk, City Planner, Building Inspector and all owners and tenants in occupation of:
 - (i) the land which is the subject of the application; and

- (ii) lands that are adjacent to the land which is the subject of the application;
- (c) ensure that the notice referred to in (b) includes a description of the subject matter of the application, the street address or other description of the land which is the subject of the application and the scheduled date, time and place for hearing the application; and
- (d) where the City Planner has submitted a staff report with the application, deliver a copy of the staff report to the applicant along with the notice referred to in (b).

6.5 Where the Board considers an application to be of broader community interest, it may, at its discretion, cause a wider public notice of the application to be given, in such a manner and to such an extent as the Board considers appropriate.

7. BOARD PROCEDURES

- 7.1 Not less than seven (7) days before the date of each Board meeting, the Secretary must:
 - (a) prepare an agenda for the Board of all applications to be considered at that meeting; and
 - (b) mail or otherwise deliver a copy of the agenda for that meeting to each member of the Board and to the City Planner and Building Inspector.
- 7.2 Upon convening of a meeting of the Board, the first item of business must be the adoption, with the correction of errors or omissions, if any, of the minutes from the previous meeting of the Board.
- 7.3 As soon after the scheduled time of a meeting as there is a quorum present, the Chair, if present, must convene the meeting, provided that where the Chair is

absent, the acting Chair must convene the meeting.

- 7.4 Where neither the Chair nor acting Chair are present, the remaining members must elect a Chair for that meeting.
- 7.5 If a quorum is not present within fifteen minutes after the scheduled time of the meeting, the Secretary must record the names of the members present, and such meeting is deemed to have been cancelled.
- 7.6 Where a meeting of the Board has been cancelled due to the lack of a quorum, the Secretary must so advise any applicants and all persons in attendance and must:
 - (a) reschedule any pending applications to a future meeting of the Board; and
 - (b) provide notice of such rescheduling to the persons specified in Section 6.04.
- 7.7 Any person or organization with an interest in property in the City, including the City, is entitled, at a meeting of the Board, to make either oral or written submissions or both, or to express opinions, either in support of, or in opposition to, the application and is entitled to be represented by a solicitor or by an agent.
- 7.8 The applicant must be afforded the first opportunity to make a submission to the Board, after which other submissions may be presented in the order determined by the Chair of the Board, until all persons with an interest in such application have been given an opportunity to be heard.
- 7.9 The Board must not consider any oral or written submissions on an application except at the meeting of the Board at which that application is to be considered.
- 7.10 The proceedings before the Board shall be informal and, at the discretion of the

Board, evidence given need not be under oath.

- 7.11 The Board, at its discretion, may view the land which is the subject of the application or lands which may be affected by an application.
- 7.12 The Chair may exclude from the place of hearing of the application, after due warning, any person, including the applicant or his solicitor or agent, whose behaviour interferes with the conduct of the hearing.
- 7.13 The Board may adjourn the hearing of an application from time to time and reconvene without further notification provided that the time, date and place of reconvening is announced to those present at the time of adjournment.
- 7.14 The Secretary shall maintain minutes of the hearing of every application and any decision or order made by the Board and, after their adoption by the Board, ensure that such minutes are submitted to the Chair of the Board for signature and are made available for inspection by the public during the normal business hours of the City.
- 7.15 The decision of the Board to either grant or deny an order must be made by a motion adopted by not less than three (3) members.
- 7.16 Any member who abstains from voting is deemed to have voted in favour of the motion.
- 7.17 The Chair of the Board is entitled to vote on all matters coming before the Board and, in the event that the number of votes cast by the members is equally divided for and against a question, the motion is defeated.
- 7.18 The Secretary shall, not later than seven (7) days after issue of the Board's order in respect of an application, serve or cause to be served personally or by regular mail, a copy of the Board's order upon the applicant, the City Planner, the Building Inspector and such other person as the Board considers

appropriate.

- 7.19 A record of the Board's decisions and orders shall be maintained by the Secretary and shall be made available for public inspection during normal business hours of the City.

8. SEVERABILITY

- 8.1 If any section, subsection, paragraph, clause or phrase of this Bylaw is for any reason held to be invalid by the decision of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

READ A FIRST TIME this 8 day of November, 2004.

READ A SECOND TIME this 8 day of November, 2004.

READ A THIRD TIME this 8 day of November, 2004.

ADOPTED this 22 day of November, 2004.

“Sean Harvey “
Mayor:

“Karla Lanktree”
City Clerk: