



City of Vernon

***BOARD OF
VARIANCE
BYLAW
5914***

THE CORPORATION OF THE CITY OF VERNON

BYLAW NUMBER 5914

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 it shall establish 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;

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

1. REPEAL

Bylaw Number 4875, 2004 is hereby repealed.

2. CITATION

This bylaw may be cited for all purposes as "**Board of Variance Bylaw Number 5914, 2022**".

3. DEFINITIONS

3.01 In this bylaw, unless the context otherwise requires:

"**Adjacent**" means any parcel bordering on the property subject to the application;

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

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

"**Council**" means the duly elected members of the Council of the City of Vernon;

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

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“Party” includes an applicant to the Board, the owner(s) and occupier(s) of the land that is the subject of the application, and the owner(s) and occupant(s) of land that is adjacent to the land that is the subject of the application.

4. BOARD PROCEDURES

ESTABLISHMENT OF THE BOARD

- 4.01 Council establishes the Board of Variance in accordance with the provisions of the *Local Government Act*.
- 4.02 The Board shall consist of five (5) members appointed by Council.
- 4.03 Subject to sections 4.04 to 4.07, each Board member shall hold office for a term of three (3) years or until a successor is appointed.
- 4.04 Council may remove a member from the Board at any time.
- 4.05 Council may appoint a successor to finish the remainder of a term of office of a member that resigns, is removed from the Board by Council, or is otherwise unable to complete a term of office.
- 4.06 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 an advisory planning commission of the City.
- 4.07 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.
- 4.08 A quorum of the Board shall be any three members, one of whom shall be the Chair or the Acting Chair.
- 4.09 Members of the Board who are not the Chair or Acting Chair and who are unable to attend a Board meeting in person may be invited by the Chair or Acting Chair to participate in the meeting by means of electronic or other communication facilities for the purpose of preserving quorum.
- 4.10 Members of the Board shall not receive compensation for their services other than allowances for actual expenses reasonably and necessarily incurred in the performance of their duties. Council shall include in its annual budget the funds necessary to pay for the costs of the Board

4.11

CHAIR OF THE BOARD

- 4.12 The Board must elect one of their members as Chair by a resolution passed by a majority of the members, to preside at the Board's meetings and hearings.
- 4.13 The Chair may appoint a member of the Board as Acting Chair to preside in the absence of the Chair.
- 4.14 The Chair shall hold their position as Chair for a one-year term. Members of the Board may re-elect that individual as Chair for one or more further terms.

JURISDICTION OF THE BOARD

- 4.15 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.

ADMINISTRATION OF THE BOARD

- 4.16 There shall be a designated Clerk to carry out the functions and duties of sections 4.17 to 4.18 of this bylaw.
- 4.17 The Clerk to the Board shall be an employee of the City of Vernon.
- 4.18 The Clerk to the Board, in consultation with the Board, shall:
- (a) receive applications to the Board;
 - (b) establish meeting dates of the Board;
 - (c) prepare agendas for Board meetings;
 - (d) circulate public notices of Board meetings and applications;
 - (e) record minutes of Board meetings and ensure minutes are submitted to the Chair of the Board for signature;

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- (f) process correspondence arising from Board meetings, including notification of Board decisions to applicants; and
- (g) maintain a record of all decisions and orders of the Board on the City of Vernon website and ensure it is available for public inspection during the City's normal business hours.

APPLICATIONS TO THE BOARD

- 4.19 Every person applying to the Board must complete the designated application form and provide information on the following items:
- (a) the legal description and civic address of the subject property;
 - (b) the name(s) and address(es) of the registered owner(s) of the property;
 - (c) the name and address of the applicant, if not the owner, and their relationship to the registered owner(s);
 - (d) the physical or electronic mail address to which all notices and correspondence to the owner(s) and/or applicant may be sent;
 - (e) the description of the type of variance being sought and the rationale for the variance sought;
 - (f) one copy of plans and/or documents in support of the application, including:
 - i. construction drawings;
 - ii. a site plan, drawn to scale and detailing the proposed development with the siting distances from the respective property lines; the location of all existing structures on the property with the siting distances from the respective property lines; site coverage, including by impermeable surfaces; and, heights of buildings and structures; and
 - iii. supporting reports or studies as needed;
 - (g) the particular section(s) of the applicable City bylaw(s) to be varied and/or the specific determination of damage by the Building Inspector which is being appealed; and
 - (h) any other information that the applicant intends to present to the Board at the hearing of the application.

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- 4.20 Every person applying to the Board shall include with the application the prescribed application fee set forth in the City of Vernon's Fees and Charges Bylaw 3909, as amended from time to time. With respect to the application fee:
- (a) applications withdrawn prior to public notification are eligible for a \$50.00 refund.
 - (b) no refunds will be provided for applications withdrawn after public notification has been initiated.
 - (c) no refunds will be provided for applications that the Board determines are not within its jurisdiction to consider.
- 4.21 Upon receiving an application to the Board, the Clerk will ensure that the application is complete before it is scheduled to be heard by the Board.
- 4.22 Once a complete application is received, the Clerk shall circulate the application to City staff for interdepartmental and agency comments.
- 4.23 Upon review of an application to the Board, City staff may:
- (a) prepare a City staff report respecting the application;
 - (b) prepare a summary of referral comments on the application; and
 - (c) send by mail or otherwise deliver a copy of any staff report and referral comments to the Board and the applicant prior to the hearing.

PUBLIC NOTIFICATION

- 4.24 The Clerk, in consultation with the Board, shall be responsible for ensuring that the public notification requirements under the applicable provisions of the *Local Government Act* or any successor legislation are met.
- 4.25 The Clerk shall prepare a notice package for each application, which shall include:
- (a) a description of the subject matter of the application;
 - (b) the street address or other description of the subject property;
 - (c) the date, time and place the application will be heard, including, if the meeting at which the application is heard is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.

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4.26 The Clerk shall mail or otherwise deliver the notice package not less than ten (10) days prior to the date scheduled for the hearing of the application, to:

- (a) the applicant;
- (b) all owners and tenants in occupation of the subject property; and
- (c) all owners and tenants in occupation of properties that are adjacent to the subject property.

4.27 Where the Board or the City 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 it considers appropriate.

ATTENDANCE AT HEARINGS

4.28 Subject to section 4.29, Board of Variance meetings are open to the public and any member of the public may attend.

4.29 The Board may close a meeting to the public to deliberate or as otherwise provided for in this Bylaw.

4.30 Any party has a right to be heard at a Board hearing.

4.31 Any party may be represented by that party's solicitor, or by an agent who is appointed in writing by the party.

4.32 The Board may, at its discretion, permit a person or organization, other than a party, that deems their interest in property affected by the application, to make submissions in relation to an application.

CONDUCT OF HEARING

4.33 As soon after the scheduled time of a meeting as there is a quorum present, the meeting shall be convened by the Chair or Acting Chair.

4.34 Where neither the Chair nor Acting Chair are present, the remaining members must elect a Chair for that meeting.

4.35 If a quorum is not present within fifteen minutes after the scheduled time of the meeting, the Clerk must record the names of the members present, and such meeting is deemed to have been cancelled.

4.36 Where a meeting of the Board has been cancelled due to the lack of a quorum, the Clerk must:

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- (a) reschedule any pending applications to a future meeting of the Board; and
 - (b) provide notice of such rescheduling to the parties.
- 4.37 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.
- 4.38 The Board then must permit evidence and arguments to be presented at a hearing in the following order:
- (a) the City;
 - (b) the applicant;
 - (c) any other parties; and
 - (d) any other persons or organizations who the Board has permitted to make submissions;
- until all parties and other persons described in this section have been given an opportunity to present their evidence and arguments.
- 4.39 If the applicant or other party fails to appear at the hearing, the Board may proceed to decide the application in their absence.
- 4.40 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.
- 4.41 The Board may, at its discretion, view the land which is the subject of the application or lands which may be affected by an application.
- 4.42 If a Board member attending a meeting of the Board considers that they are not entitled to participate in the discussion of a matter or to vote on a question in respect of a matter because the Board Member has a conflict of interest, the member must declare this and state the general nature of why the member considers themselves to have a conflict. After making the declaration, the Board member:
- (a) must not take part in the discussion of the matter and is not entitled to vote on any question in respect of the matter;
 - (b) must immediately leave the meeting or that part of the meeting during which the matter is under consideration; and
 - (c) must not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter.

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- 4.43 Board member declarations as outlined in section 4.42 must be recorded by the Clerk in the minutes of the meeting.
- 4.44 The Chair may exclude from the place of hearing of the application, after due warning, any person, including a party, whose behaviour interferes with the conduct of the hearing.
- 4.45 Subject to this Bylaw, the Board may determine the procedure to be adopted at a Board meeting.

DECISIONS OF THE BOARD

- 4.46 The Board may defer a decision on an application or adjourn the hearing of an application if a determination is made that the application is not complete and/or further information is required, until such time as the Board is satisfied with the information provided.
- 4.47 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.
- 4.48 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 staff.
- 4.49 If the Board adjourns the hearing, the Clerk shall cause notice of the hearing so adjourned to be delivered to the parties and to persons the Board may deem affected by the application.
- 4.50 At the conclusion of a hearing, the Board may render its decision or may adjourn the appeal and render its decision at a subsequent date.
- 4.51 Decisions of the Board of Variance must be made by a resolution adopted by not less than three (3) members.
- 4.52 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 resolution is defeated.
- 4.53 The Board shall provide a statement of reasons supporting its decision, however it is not required to provide written reasons for a decision.
- 4.54 The Board may determine that an application is not within its jurisdiction and decline to decide on the application.
- 4.55 A decision of the Board is final.

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- 4.56 The Clerk shall, within seven (7) days of a Board decision, send by mail or otherwise deliver the decision of the Board to the applicant and the City.
- 4.57 A record of the Board's decisions and orders shall be maintained on the City of Vernon website by the Clerk and shall be additionally made available for public inspection during normal business hours of the City.

SEVERABILITY

- 4.58 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 15th day of August, 2022.

READ A SECOND TIME this 15th day of August, 2022.

READ A THIRD TIME this 15th day of August, 2022.

ADOPTED this 6th day of September, 2022.

Mayor:

Corporate Officer: