

CORPORATION OF THE CITY OF NEW WESTMINSTER

BYLAW NO. 7226, 2008

A Bylaw to provide for the establishment of a Board of Variance

WHEREAS the city Council has adopted a Zoning Bylaw;

AND WHEREAS pursuant to the “*Local Government Act*,” there shall be established by bylaw, a Board of Variance (hereinafter called the ‘Board’);

NOW, THEREFORE, the City Council of the City of New Westminster (hereinafter called ‘Council’) ENACTS AS FOLLOWS:

1. NAME OF BYLAW

This Bylaw may be cited for all purposes as “New Westminster Board of Variance Bylaw No. 7226, 2008”

2. ESTABLISHMENT

- a. The Board is hereby established and shall consist of five (5) members appointed by Council.
- b. Each member of the Board shall hold office for a term of three (3) years or until his or her successor is appointed, and members may be reappointed for further terms. However, the first term will be from June 30, 2008 to January 31, 2012. Council may rescind an appointment to the Board at any time.
- c. Quorum consists of three (3) members, subject to #d below.
- d. In the event of the death, resignation or removal from office of a member(s) of the Board, the remaining members shall constitute the Board until the appointment of a successor(s). In the event of the death, resignation or removal of a Board member(s), quorum shall consist of at least 50% of the remaining Board members.
- e. The members of the Board must elect one of their members as Chair. The Chair may appoint a member of the Board as acting chair to preside in the absence of the Chair.

3. ADMINISTRATIVE SUPPORT

The Corporate Officer shall appoint a Secretary (the “Secretary”) to the Board of Variance.

The Secretary shall:

- a. Receive applications for variances and present them to the Board.
- b. Arrange for all public notification required in accordance with this Bylaw.

- c. Prepare, maintain and preserve the records of the Board and all other business of the Board.
- d. Notify applicants and City officials, in writing, of the decisions of the Board within a maximum of 30 days from the hearing.
- e. Perform other duties as are customary to the office of the Secretary.

Technical support will be provided by the Development Services Department. The representative of the Development Services Department shall:

- a. Provide written comments to the Board on each application, addressing such matters as the intent of the Bylaw for which the variance is requested, site specific considerations, the degree of the proposed variance, other considerations under Section 901 (2) of the Local Government Act and changes in Planning matters or regulations which may affect the Boards consideration of the variance request.
- b. Attend the Board meeting and respond to any questions from the Board.
- c. Present the information and position taken by the City in respect of variance requests.

4. APPLICATION FOR A VARIANCE

All applications for a variance to be considered by the Board shall include:

- a. An up-to-date Statement of Title Certificate and copies of any Section 219 Covenants related to the property.
- b. A fully completed Application to the Board of Variance.
- c. The application fee, as required in the Development Approval Procedures Bylaw No. 5658, 1987.
- d. Sufficient development plans to fully show the effect of the proposed variance, the context of the proposed variance in terms of existing and proposed development on the subject site and adjacent properties; to the satisfaction of the Secretary and the representative of the Development Services Department.

5. PUBLIC NOTIFICATION AND PROCESSING OF APPLICATION

- a. All applications shall be processed in accordance with the schedule established by the Secretary, the representative of the Development Services Department, and as agreed to by the Chair.
- b. Notice of all applications to be heard by the Board will be sent out a minimum of 14 days prior to the date of the hearing. Notices will be sent to all owners and occupants of land that is the subject of the application and to all owners and occupants of land that is located within 100 feet of the subject site.

SCHEDULE A

PERTINENT SECTIONS OF LOCAL GOVERNMENT ACT

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.

Development variance permits

922 (1) On application by an owner of land, a local government may, by resolution, issue a development variance permit that varies, in respect of the land covered in the permit, the provisions of a bylaw under any of the following:

(a) section 694 (1) (j) [*construction and layout of trailer courts, etc.*];

(b) Division 7 [*Zoning and Other Development Regulation*], 8 [*Use of Land for Agricultural Operations*] or 11 [*Subdivision and Development Requirements*] of this Part;

(c) section 8 (3) (g) [*fundamental powers – protection of persons and property*] of the *Community Charter* in relation to matters referred to in section 63 (e) [*protection – trailer courts, manufactured home parks and camping grounds*] of that Act.

- (2) As a limit on subsection (1), a development variance permit must not vary
 - (a) the use or density of land from that specified in the bylaw,
 - (b) a flood plain specification under section 910 (2), or
 - (c) a phased development agreement under section 905.1.
- (3) In the event of conflict, the provisions of a development variance permit prevail over any provision of the bylaw.
- (4) If a local government proposes to pass a resolution to issue a permit under this section, it must give notice in accordance with subsections (5) and (6).
- (5) The notice under subsection (4) must state the following:
 - (a) in general terms, the purpose of the permit;
 - (b) the land or lands that are the subject of the permit;
 - (c) the place where and the times and dates when copies of the permit may be inspected.
- (6) The notice under subsection (4) must be mailed or otherwise delivered at least 10 days before adoption of the resolution to issue the permit
 - (a) to the owners, as shown on the assessment roll as at the date of application for the permit, and
 - (b) to any tenants in occupation, as at the date of the mailing or delivery of the notice, of each parcel, any part of which is the subject of the permit or is within a distance specified by bylaw from that part of the land that is subject to the permit.
- (7) The obligation to give notice under subsection (4) must be considered satisfied if the local government made a reasonable effort to mail or otherwise deliver the notice.
- (8) As a restriction on section 176 (1) (e) [*corporate powers – delegation*] of this Act and section 154 [*delegation of council authority*] of the *Community Charter*, a local government may not delegate the issuance of a development variance permit.