

CITY OF NANAIMO

BYLAW NO. 7213

A BYLAW TO ESTABLISH A BOARD OF VARIANCE AND TO SET OUT THE PROCEDURES
FOR THE BOARD OF VARIANCE

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

The Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title

This Bylaw may be cited as “Board of Variance Bylaw 2015 No. 7213”.

2. Definitions

“Board” means the City of Nanaimo Board of Variance.

“Chair” means the Chair of the Board of Variance.

“City” means the City of Nanaimo.

“Council” means the Municipal Council of the City of Nanaimo.

3. Establishment

(1) The Board, established by previous bylaws of the City, is continued and shall consist of five (5) members appointed by Council for a three (3) year term each.

(2) The Board shall elect one (1) of their members as Chair, who will appoint an Acting Chair to preside in the absence of the Chair.

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

(4) Despite Section 3(3), all members of the Board who hold office at the time that this Bylaw comes into force, continue to be members of the Boards until:

(a) the end of their term; or,

(b) Council rescinds their appointment.

4. Meetings

- (1) A meeting of the Board of Variance shall be held on the third Thursday of each month, unless otherwise determined by the Chair of the Board in consultation with City staff.
- (2) In the event that no application of appeal to the Board is submitted at least ten (10) calendar days prior to the date of the next meeting, then no meeting shall be held.
- (3) A meeting of the Board on a particular appeal shall be held not more than sixty (60) days after the date of receipt of the notice of appeal unless an extension is allowed by written consent of the appellant.
- (4) The Board shall be convened by the Chair on the date of the hearing and at the time set out in the notice.
- (5) The Board of Variance shall hear representation made to the Board.
- (6) The deliberations of the Board of Variance shall be open to the public.

5. Process and Fees

- (1) Any person desiring to be heard by the Board shall complete the application for an appeal to the Board of Variance and submit it to the City.
- (2) Prior to the processing of a Board of Variance appeal, the applicant shall pay to the City of Nanaimo the amount set out in "Development Services Department Fees and Charges Bylaw 2005 No. 7016".
- (3) Where an appeal is based on a determination of value made pursuant to Section 911(8) of the *Local Government Act*, notice of appeal shall be filed no later than 30 days after the appellant has been advised in writing of such determination.

6. Notice of Hearing

- (1) Not less than seven (7) days before the hearing of an appeal under Section 901 of the *Local Government Act*, notice of the hearing to all owners and occupiers of land that is:
 - (a) the subject of an appeal; or
 - (b) within a distance of ten (10) meters or the width of an abutting road plus ten (10) metres adjacent to the land that is subject of the appeal.
- (2) Notice under Section 6.1 shall state the subject matter of the appeal, the date, time and place where the appeal will be heard, and the contact information for City staff.

- (3) The City shall upon receipt of any notice of appeal, permit the same to be inspected at the City Hall during regular business hours.

7. Conduct of Hearing

- (1) A quorum for the Board shall be three (3) members. In the absence of the Chair, and provided that the Chair has not appointed an Acting Chair, the remaining members may appoint another present member as an Acting Chair for the duration of the hearing.
- (2) Any person or body with interest in property within the city is entitled to be heard at the hearing, and is entitled to be represented by a solicitor or by an agent duly appointed in writing.
- (3) Any person represented in accordance with Section 7(2), whether or not also attending in person, shall be deemed to be a party attending the hearing.
- (4) Evidence at a hearing may be given orally or in writing, but the Board shall not hear oral evidence except at a regularly constituted hearing of the subject matter of that evidence.
- (5) No member of the Board shall discuss the merits of the appeal with any person who is not a member of the Board or City staff, before the Board has reached a decision.
- (6) The appellant shall be afforded the first opportunity to present his evidence and arguments; thereafter, evidence and arguments shall be presented in such sequence as the Chair may direct until all interested parties have been afforded a reasonable opportunity to be heard.
- (7) The Board may view the property affected by the appeal and surrounding properties.
- (8) The Board may adjourn a hearing and no further notice of the hearing is required if the date, time and place for its resumption are stated to those present at the time of the adjournment.
- (9) If the appellant, having failed to notify the Board at least three (3) days in advance that neither he nor a representative is able to attend, does not appear at the hearing, the Board may proceed to decide the appeal in his absence.

8. Decision

- (1) The decision of the majority shall be the decision of the Board, provided that where the votes of the members present, including the vote of the Chair or Acting Chair, are equal for or against allowing an appeal, the motion shall be defeated.
- (2) The City shall send by mail or otherwise deliver the written decision of the Board to the applicant and to the local government building official.

- (3) The City shall enter the decision of the Board in the record maintained at the local government office.
- (4) A decision of the Board may contain such conditions as it deems advisable under the circumstances.
- (5) A decision of the Board is final.

9. General

- (1) Subject to the provisions of this bylaw, the Board shall determine its own procedure.
- (2) Wherever the singular or masculine is used in this bylaw, the same shall be construed to mean the plural or feminine or body corporate as the context may require.

10. Repeal

“Board of Variance Bylaw 1988 No. 3152” and all amendments thereto, is hereby repealed.

PASSED FIRST READING 2015-OCT-05
PASSED SECOND READING 2015-OCT-05
PASSED THIRD READING 2015-OCT-05
ADOPTED 2015-OCT-19

W. B. MCKAY

MAYOR

C. JACKSON

CORPORATE OFFICER