

DISTRICT OF WEST KELOWNA

BYLAW NO. 0056

A BYLAW TO AUTHORIZE THE ESTABLISHMENT OF A BOARD OF VARIANCE

WHEREAS the Council of the District of West Kelowna 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 District of West Kelowna, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited as the "DISTRICT OF WEST KELOWNA BOARD OF VARIANCE BYLAW 2009 NO. 0056".

2. **Definitions:**

"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 by the District, and his or her designate;

"District" means the District of West Kelowna;

"District Planner" means the person or persons duly appointed to that position by the District, and his or her designate;

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

3. **Establishment of the Board:**

3.1 The Board of Variance is established pursuant to Section 899 of the *Local Government Act* and shall consist of five (5) members appointed by the Council of the District.

- 3.2 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.
- 3.3 Each Board member shall hold office to coincide with the Council term or until a successor is appointed, but a person may be re-appointed for a further term(s).
- 3.4 A quorum of the Board shall be any three members, one of whom may be the Chair or the Acting Chair.
- 3.5 The Board shall maintain a record of all its decisions and orders and shall make such record available for public inspection during the District's normal business hours.
- 3.6 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 District staff; and
 - (d) maintain a record of all decisions and orders of the Board.

4. Jurisdiction of the Board:

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.

5. Applications to the Board:

- 5.1 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 District Planner, an application that includes:
 - (i) the legal description and civic address of the property which is the subject of 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 the 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(s) 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) submit the application fee as set forth in the District's Fees and Charges Bylaw.
- 5.2 Upon receiving an application to the Board, the District 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 District Planner must, within three (3) days, 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 District Planner, the applicant may, upon payment of the application fee, require that the application be processed and forwarded to the Board for a decision by the Board as to whether the application falls within its jurisdiction.
- 5.3 The District Planner, upon receiving an application which is determined to be within the jurisdiction of the Board shall:
- (a) forward the application, including any plans and supporting documentation submitted by the applicant, along with a staff report to the Secretary.
- 5.4 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 fourteen (14) days prior to the date scheduled for the hearing of the application, to the applicant, each Board member, the Director of Corporate Services, the District Planner, the Building Inspector(s), 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 5.4(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.

6. **Board Procedures**

- 6.1 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 District Planner and Building Inspector;
 - (c) post the agenda on the notice board in the Municipal Office and on the District website.
- 6.2 As soon after the scheduled time of a meeting as there is a quorum present, the Chair must convene the meeting; if the Chair is absent, the Acting Chair must convene the meeting.
- 6.3 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 the meeting is deemed to have been cancelled.
- 6.4 Where a meeting of the Board has been cancelled due to lack of a quorum, the Secretary must advise the 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 rescheduling to the persons specified in Section 5.4.
- 6.5 Upon convening of a meeting of the Board, the first item of business must be the adoption of the minutes from the previous Board meeting.
- 6.6 Any person or organization with an interest in the subject property, including the District, is entitled to make an oral or written submission to express opinions in support of or opposition to the application, and is entitled to be represented by a solicitor or by an agent.
- 6.7 The applicant must be afforded the first opportunity to make a submission to the Board, after which other submissions may be presented, until all persons with an interest in the application(s) have been given an opportunity to be heard.
- 6.8 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.
- 6.9 The Board may adjourn the hearing and reconvene without further notification provided that the time, date and place of reconvening is announced to those present at the time of adjournment.
- 6.10 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 the 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 District.
- 6.11 The decision of the Board to either grant or deny an order must be made in an open public meeting and by a motion adopted by not less than three (3) members.
- 6.12 Any member who abstains from voting is deemed to have voted in favour of the motion.

- 6.13 The Secretary shall, not later than seven (7) days after issue of the Board's decision respecting the application, mail or arrange to have personally served, a copy of the Board's order to the applicant, the District Planner, the Building Inspector and any other persons the Board considers appropriate.
- 6.14 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 District.

6. Severability

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.

PASSED FIRST READING 2009-FEB-24
PASSED SECOND READING 2009-FEB-24
PASSED THIRD READING 2009-FEB-24
ADOPTED 2009-MAR-10

MAYOR

DIRECTOR OF CORPORATE
SERVICES