



DISTRICT OF PORT HARDY

BYLAW NO. 1032-2014

A Bylaw to Establish a Board of Variance and Procedures

WHEREAS the *Local Government Act* requires that where a local government has adopted a zoning bylaw, it must establish a Board of Variance;

AND WHEREAS the Council of the District of Port Hardy has adopted a zoning bylaw;

NOW THEREFORE, the Council of the District of Port Hardy, in open meeting assembled, enacts as follows:

PART 1 CITATION

1.1 This Bylaw shall be cited as "District of Port Hardy Board of Variance Bylaw No. 1032-2014".

PART 2 REPEAL

2.1 District of Port Hardy Board of Variance Bylaw No. 09-2006 is hereby repealed.

PART 3 DEFINITIONS

3.1 In this Bylaw, the following definitions apply:

Applicant means the registered owner of property, or an agent acting on behalf of the registered owner of property who has been authorized in writing by the registered owner to act as the owner's agent.

Application means an Application for Minor Variance or Exemption submitted to the District of Port Hardy to request an order for a minor variance by the District of Port Hardy Board of Variance in accordance with the provisions of the *Local Government Act*.

Board means the District of Port Hardy Board of Variance.

Council means the Council of the District of Port Hardy.

District means the District of Port Hardy.

Exemption means an exemption granted by the District of Port Hardy Board of Variance from compliance with section 911(5) of the *Local Government Act*, that prohibits a structural alteration or addition to a building or structure in which a non-conforming use is continued in all or any part of it. An exemption must only be granted on the basis that compliance with such prohibition would cause undue hardship.

Member means a person appointed to the Board of Variance by Council.

Minor Variance means the granting of approval by the District of Port Hardy Board of Variance to allow a deviation from a requirement associated with a regulation enacted by bylaw, of no more than twenty-five percent (e.g. reduction in the front yard setback from 10 metres to 7.5 metres). A minor variance must only be approved on the basis that compliance with the regulation would cause undue hardship.

Secretary or Secretary of the Board means the Corporate Officer of the District of Port Hardy, or person designated by the Corporate Officer to act in this capacity.

PART 4 ESTABLISHMENT OF BOARD AND APPOINTMENT OF MEMBERS

- 4.1 The District of Port Hardy Board of Variance is hereby established. The Board shall consist of three (3) members appointed by Council.
- 4.2 The term of office for members is three (3) years, however members may be reappointed for further terms by Council.
- 4.3 Council may appoint a member as successor to complete the remainder of a term of office of a member that resigns, whose appointment is rescinded by Council, or who is otherwise unable to complete their term of office. Alternatively, Council may appoint a new member and term of office to rectify a member vacancy.
- 4.4 No person who is a member of Council or is an officer or employee of the District is eligible to be appointed as a member of the Board.
- 4.5 If a member ceases to hold office, the remaining members constitute the Board until a new member can be appointed by Council.
- 4.6 Council may rescind the appointment of a member of the Board at any time.

PART 5 MEETINGS OF THE BOARD

- 5.1 The Board shall meet on an as needed basis to deal with requests for an order as provided for by the Local Government Act. Meetings of the Board will be coordinated by the Secretary in this regard.
- 5.2 A quorum is required to conduct a meeting of the Board. A quorum of the Board is a majority of its members which is therefore constituted by two (2) members. If a meeting of the Board is attended by only two members and matter is voted upon that results in a tie vote, then the matter that was voted upon is deemed to be defeated.
- 5.3 If a quorum is not present within fifteen minutes after the scheduled time of the meeting, the Secretary shall record the names of those present, and such meeting is deemed to have been cancelled. The Secretary shall reschedule the Board meeting accordingly.

PART 6 CHAIR TO PRESIDE AT MEETINGS

- 6.1 The members of the Board shall elect one of their members as Chair to preside at the Board's meetings.
- 6.2 The Chair may appoint a member of the Board to act as Acting Chair to preside in the absence of the Chair.

PART 7 SECRETARY OF THE BOARD

- 7.1 The Secretary shall:
 - 7.1.1 receive applications;
 - 7.1.2 notify the members upon receipt of an application and coordinate a meeting of the Board to consider such application;
 - 7.1.3 prepare, maintain and preserve the agendas, minutes and other business of the Board;
 - 7.1.4 ensure proper notification is given to all owners and tenants in accordance with the *Local Government Act* and this Bylaw; and
 - 7.1.5 maintain a record of all Board decisions and ensure the record is available for public inspection during the District's normal business hours.

- 7.2 Upon submission of an application, the Secretary shall examine it for completeness and may request the applicant provide additional information in order to facilitate a thorough understanding and proper consideration of the application.

PART 8 APPLICATIONS

- 8.1 An applicant must complete an application in the form prescribed by the District and submit same to the Secretary, together with:
- 8.1.1 the application fee as set out in the District's User Rates and Fees Bylaw;
 - 8.1.2 A copy of a Certificate of Title or title search, with a date not more than thirty (30) days from the date of application with respect to the property subject to the application;
 - 8.1.3 One copy of plans and specifications which must include metric measurements, of the subject property and buildings or structures thereon, showing all applicable information; and,
 - 8.1.4 Any other information deemed necessary by the Secretary.
- 8.2 Should the Secretary determine that the application is complete in that it includes the information necessary to facilitate a thorough understanding and proper consideration of the application, the Secretary shall proceed to process the application as described herein.

PART 9 NOTIFICATION AND AGENDA

- 9.1 Not less than 10 days before the date set for a meeting of the Board to consider an application, the Secretary shall mail or otherwise deliver notice of the application and meeting to:
- 9.1.1 the applicant;
 - 9.1.2 the owner(s) and tenants(s) in occupation of the property that is the subject of the application; and,
 - 9.1.3 the owner(s) and tenant(s) in occupation of any property that is adjacent to the property that is the subject of the application.
- 9.2 A notice given in relation to an application shall state the subject matter of the application and the time, date and location of the meeting where the application will be heard by the Board.
- 9.3 The obligation to give notice under section 9.1 must be considered satisfied if a reasonable effort to mail or otherwise deliver the notice was made.
- 9.4 At least 10 days prior to the date set for the meeting of the Board, the Secretary shall prepare an agenda of all applications to be considered at the meeting and mail or otherwise deliver (by email, facsimile or by hand) such agenda to the Board members.

PART 10 CONDUCT OF BOARD MEETING

- 10.1 A meeting of the Board to consider an application shall be open to the public except those meetings or portions of meetings that are closed to the public under the provisions of Section 90 of the *Community Charter*.
- 10.2 As each application is heard, the Chair shall provide the applicant with the first opportunity to present input, and thereafter, the Chair shall permit the owner(s) and tenant(s) in occupation of any property that is adjacent to the property that is the subject of the application, to present input in such sequence as the Chair may direct, until all parties have been afforded an opportunity to present their input. The Chair may also call upon District staff to provide input or information as necessary.

- 10.3 The Chair shall call upon the Secretary to provide the Board with copies of any correspondence that has been received with respect to an application.
- 10.4 The Board may adjourn a meeting from time to time as the Board may deem advisable in order to view the property subject to the application and surrounding lands or to obtain additional information, and may reconvene the meeting without further notice if the time, date and location of the reconvened meeting is announced at the time of adjournment of the meeting.
- 10.5 Input at a Board meeting may be given verbally or in writing.
- 10.6 If an applicant does not appear at a meeting or at a reconvened meeting after an adjournment of a meeting, the Board may proceed to make its decision with respect to the application in the applicant's absence.
- 10.7 The Chair may exclude any person from a Board meeting whose behaviour interferes with the proper conduct of the meeting

PART 12 DECISION OF THE BOARD

- 12.1 The decision of the Board shall be by a majority of those members present at the meeting.
- 12.2 The Secretary shall send by mail or otherwise deliver (by email, facsimile or by hand) the decision of the Board to the applicant within 10 days of the meeting at which the Board rendered its decision.
- 12.3 A decision of the Board is final.
- 12.4 If a minor variance or exemption is approved by the Board and the applicant is required to obtain a Building Permit as per the District's Building Bylaw to implement the requested minor variance or exemption, a completed Application for Building Permit must be submitted to the District within one (1) year of the date of the Board's decision to approve the minor variance or exemption. Failure to do so shall mean the Board's decision with respect to the minor variance or exemption shall expire and no longer be in force and effect.

PART 13 SEVERABILITY

- 13.1 If any portion of this Bylaw is for any reason held invalid by the decision of a court of competent jurisdiction, then the invalid portion shall be severed from this Bylaw and such decision does not affect the validity of the remaining portion of this Bylaw.

Read a first, second and third time on the 9th day of September, 2014.

Adopted on the 14TH day of October, 2014.



Director of Corporate &
Development Services



Deputy Mayor

Certified a true copy of Bylaw No. 1032-2014 as adopted.

Director of Corporate & Development Services

