

REGIONAL DISTRICT OF CENTRAL KOOTENAY BOARD OF VARIANCE BYLAW NO. 2437, 2015

A bylaw to establish and regulate a Board of Variance pursuant to s899 (1) of the *Local Government Act*.

The Board of the Regional District of Central Kootenay, in open meeting assembled, enacts as follows:

PART ONE – TITLE, ESTABLISHMENT AND INTERPRETATION

Title

- 1.1 This bylaw may be cited as the “**REGIONAL DISTRICT OF CENTRAL KOOTENAY BOARD OF VARIANCE BYLAW, NO. 2437, 2015**”.

Establishment

- 2.1 The Board of Variance for Electoral Areas ‘A –Wynndel/East Shore – Kootenay Lake’, ‘B’, ‘C’, ‘D’, ‘E’, ‘F’, ‘G’, ‘H – The Slocan Valley’, ‘I’, ‘J – Lower Arrow/Columbia’ and ‘K – The Arrow Lakes’, herein referred to as the Board of Variance, is hereby established.

Interpretation

- 3.1 In this bylaw, unless the context otherwise requires:

BUILDING INSPECTOR has the same meaning as in the *Local Government Act*;
REGIONAL BOARD means the Board of the Regional District of Central Kootenay;
REGIONAL DISTRICT means the Regional District of Central Kootenay.

PART TWO – APPOINTMENT

Composition

- 4.1 The Board of Variance shall consist of three (3) members appointed in accordance with the *Local Government Act*.
- 4.2 A person who
- (a) is not: a member of the Regional Board, a Regional District employee, a Regional District Officer, an approving officer or a member of an Advisory Planning Commission; and
 - (b) is a resident of the Regional District

may be appointed a member.

- 4.3 The members shall be appointed for a term commencing from the date of appointment until noon of the thirty-first day of December following the completion of the tenure of the incumbent Directors (i.e. the term of appointment shall coincide to expire with the term of office of the members of the Board).
- 4.4 Every person appointed to the Board of Variance shall continue to hold office until a successor has been appointed, if the appointment of a successor has not been made at the expiration of the term of such member. A person may be re-appointed for a further term or terms.
- 4.5 The Chair may from time to time appoint a member of the Board of Variance as Acting Chair to preside in the absence of the Chair.
- 4.6 In the event of the death, resignation or removal of any member of the Board of Variance, a successor shall be appointed by the Regional Board. Until the appointment of the successor, the remaining members may constitute the Board of Variance.
- 4.7 The Regional District may remove any appointee from the Board of Variance at any time.

PART THREE – PROCEDURE

Secretary

- 5.1 The Secretary of the Regional District or his/her designate shall act as the Secretary to the Board of Variance. The responsibilities of the Secretary are:
 - (a) to receive notices of application;
 - (b) to determine whether the application seeks to vary a matter within the jurisdiction of the Board of Variance under the *Local Government Act*;
 - (c) if the appeal is outside the jurisdiction of the Board of Variance to notify the Applicant;
 - (d) if it is within the Regional Board's jurisdiction to notify the Chair of the Board of Variance of the receipt of the application;
 - (e) to ensure that proper notification is given to all the Board members, the Building Inspector, the appellant and the surrounding property owners affected by the appeal, in compliance with this bylaw;
 - (f) to keep proper records of the Board of Variance proceedings; and
 - (g) to maintain a record of all decisions of the Board of Variance and make it available to the public in the Regional District office during normal business hours.

Chair

- 5.2 The Board of Variance shall, at its first meeting in each calendar year, elect from amongst its appointed members a Chair. A majority of members may remove the Chair.

- 5.3 In case the Chair does not attend within thirty minutes after the time appointed for a meeting, an Acting Chair shall be selected from the members present and shall take the chair and call the members to order. The Acting Chair shall preside during the meeting or until the arrival of the Chair. Such person appointed as Acting Chair has all the powers and is subject to the same rules as the Chair.

Quorum

- 5.4 A majority of the Board of Variance is a quorum.
- 5.5 Should there be no quorum present within thirty minutes after the time appointed for the meeting, the Secretary shall record in the minute book the names of the members present at the expiration of such thirty minutes and the meeting shall stand adjourned until the next business day.

Rules of Procedure

- 5.6 The Board of Variance shall observe the following rules of procedure in the calling of and conduct in its meetings:

5.6.1 Meetings

- (a) The Board of Variance shall meet at such times determined by the Chair as the business of the Board of Variance may require.
- (b) The Board of Variance shall, at its first meeting in each calendar year, as the first order of business, call to order the meeting and select of a Chair from amongst the appointed members, during which the Secretary shall preside.
- (c) Except as otherwise provided, all meetings shall be held within the Electoral Area in which the subject property under application is located.
- (d) Meetings may be held beyond the boundaries of the said Electoral Area only upon adoption of a resolution at an earlier meeting or as may be determined by the Chair of the Board of Variance.
- (e) The Board of Variance shall be convened by the Chair on the date of Hearing and at the time and place set out in the notice.
- (f) Notice of a meeting, together with the agenda and available staff reports for the meeting, shall be delivered to each member with copies to the Regional District Assistant Board Secretary as soon as scheduled to allow posting of a notice in accordance with any applicable Regional District of Central Kootenay Procedures Bylaw.

5.6.2 Delegation

The Board of Variance shall hear all representations made to the Board of Variance.

5.6.3 Public Attendance

All meetings of the Board of Variance shall be open to the public.

5.6.4 Notice of Application

- (a) Any person desiring to apply to the Board of Variance shall file a written application with the Secretary of the Board of Variance in a form approved by the Secretary. The application shall state clearly the grounds on which the application is based and the relief sought and shall give an address to which all notices respecting the Hearing of the application (the "Hearing") may be mailed.
- (b) The application to the Board of Variance shall be accompanied by a non-refundable application fee, identified in Schedule 2 of the *Land Development Applications Procedures Bylaw No. 2238, 2011*.
- (c) Where the application is made pursuant to Section 902(1) of the *Local Government Act*, the application shall be filed with the Secretary of the Board of Variance within thirty (30) days from the date of the determination made under Section 911(8) of the *Local Government Act* by the Building Inspector.
- (d) The Secretary shall send by mail or otherwise deliver, not less than ten (10) days prior to the date of the Hearing, notice of the Hearing to:
 - i. the members of the Board of Variance;
 - ii. the Applicant;
 - iii. the registered owners as shown on the last revised assessment roll and all occupiers of the subject property and all real property located immediately adjacent to the parcel which is the subject of the application;
 - iv. if an application is under 902(1), the Building Inspector whose determination is being appealed; and
 - v. the Director(s) of the Electoral Area(s) in which the subject property is located.
- (e) The notice of the Hearing shall state the date, place and time of the Hearing and shall state the subject matter of the application.
- (f) The Secretary shall upon receipt of any notice of application or of any written evidence entered before the Hearing including staff reports, permit the same to be inspected at the Secretary's office during regular office hours.

5.6.5 Conduct of Hearing

- (a) The Chair or, in his/her absence, an Acting Chair selected from those present, shall preside at all meetings.
- (b) The Chair shall generally conduct the meeting in accordance with the Regional District of Central Kootenay Rules of Procedure applicable to the Regional Board.

- (c) Any person or body with interest in property within the Regional District 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.
- (d) Any person represented, in accordance with subsection (c), whether or not also attending in person, shall be deemed to be a party attending the Hearing.
- (e) Evidence at a Hearing may be given orally or in writing.
- (f) The Board of Variance shall not hear oral evidence, except at a regularly constituted Hearing of the subject matter of that evidence.
- (g) The Applicant shall be afforded the first opportunity to present his/her evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the Chair may direct until all parties to the application have been afforded an opportunity to present their evidence and arguments.
- (h) The Board of Variance may view the property affected by the application and surrounding properties. The Board of Variance may adjourn the Hearing from time to time, and may reconvene without further published notice if the time, date, and place of reconvening is announced at adjournment.
- (i) If the Applicant or other persons notified do not appear at the Hearing or any adjournment thereof, and have not advised the Secretary in advance that they wish to be heard on another date, the Board of Variance may proceed to decide the application in his absence.

5.6.6 Decision

- (a) The decision of the Board of Variance shall be by a majority of those members present and made within seven (7) days of the Hearing.
 - i. Each member shall have one (1) vote.
 - ii. A member who abstains from voting shall be deemed to have voted in the affirmative.
 - iii. Voting shall be conducted by a simple show of hands unless otherwise determined by a majority of the appointed members.
- (b) The Board of Variance may set a limit on the length of time an approved application is valid.
- (c) The decision of the Board of Variance is final and binding, except in those cases where an appeal is provided for in the *Local Government Act*.
- (d) The Secretary shall, within seven (7) days of a decision, send by mail or otherwise deliver the written decision of the Board of Variance to the Applicant, all persons who made representation at the Hearing, and the local government Building Inspector.

- 5.7 The members of a Board of Variance must serve without remuneration, but may be paid reasonable and necessary expenses that arise directly out of the performance of their duties.

- 5.8 The Regional District shall include in its annual budget such sums as are necessary in the discharge of the duties of the Board of Variance.

Conflict of Interest

- 6.1 Where any member of the Board of Variance or a member's family, employer or business associates has any conflict of interest with any matter being considered by the Board of Variance that member shall absent themselves from all aspects of that consideration.

Repealed Bylaw

- 7.1 "Regional District of Central Kootenay Board of Variance Bylaw No. 1786, 2005" is hereby repealed.

READ A FIRST TIME this 12th day of February 2015

READ A SECOND TIME this 12th day of February 2015

READ A THIRD TIME this 12th day of February 2015

ADOPTED this 12th day of February 2015

"K. Hamling"

Chair

"A. Winje"

Secretary