

CITY OF CASTLEGAR

BOARD OF VARIANCE BYLAW 739

A bylaw to establish a Board of Variance.

WHEREAS Section 961 of the Municipal Act authorizes a local government, that has adopted a zoning bylaw, to establish a Board of Variance;

AND WHEREAS the Council has adopted a zoning bylaw to regulate land use in the City;

NOW THEREFORE the Council of the City of Castlegar, in open meeting assembled, enacts as follows:

Citation

1. This bylaw may be cited as "Board of Variance Bylaw No. 739".

Establishment

2. Pursuant to Section 961 of the Municipal Act, a Board of Variance is hereby established.

Secretary

3. The Council shall appoint the City Clerk as Secretary to the Board of Variance. The responsibilities of the Secretary are:
  - (1) to receive notices of appeal;
  - (2) to determine whether the appeal seeks to vary a matter covered in a land use contract, a permit under Division 5 of Part 29, a flood plain specification under Section 969 of the Municipal Act or a registered covenant, which are outside the jurisdiction of the Board of Variance or whether the appeal involves a matter within the jurisdiction of the Board of Variance;
  - (3) if the appeal is outside the jurisdiction of the Board of Variance to notify the appellant;
  - (4) if it is within the Board's jurisdiction to notify the chairperson of the Board of Variance of the receipt of notice of appeal;
  - (5) to ensure that proper notification is given in compliance with this bylaw;
  - (6) to keep proper records of the Board of Variance proceedings; and
  - (7) to maintain a record of all decisions of the Board and make it available to the public in the municipal office during normal business hours.

### Meetings

4. (1) A meeting of the Board of Variance on a particular appeal shall be held not more than 40 days after the date of receipt of the notice of appeal unless an extension is allowed by the written consent of the appellant.
- (2) The Board of Variance shall be convened by the chairperson on the date of hearing and at the time and place set out in the notice.
- (3) The Board of Variance shall hear all representations made to the Board.
- (4) The deliberations of the Board of Variance shall not be open to the public.

### Application Fees

- 4.1 (1) Every applicant of a Board of Variance, upon submission of his/her application, shall pay a fee to the City of Castlegar in the amount of Three Hundred Dollars (\$300.00). (**Bylaw 1196**)
- (2) Subject to the conditions stated herein, a refund of the fee established by this bylaw, shall be granted without interest, to the applicant, provided the application does not proceed to the Board of Variance hearing.
- (3) No refund shall be granted following the hearing of an application by the Board of Variance.  
(**Bylaw 762**)

### Notice of Appeal

5. (1) Any person desiring to appeal to the Board shall file a written notice of appeal with the Secretary of the Board. The notice shall state clearly the grounds upon which the appeal is based and relief sought, and shall give an address to which all notices respecting an appeal hearing may be mailed.
- (2) Where the appeal is based upon a determination of value made pursuant to subsection (8) of Section 970 of the Municipal Act, the notice of appeal shall be filed with the Secretary of the Board within 30 days of the making of the determination.
- (3) The Secretary, upon the filing of an appeal, shall notify the chairperson of the Board of the appeal and determine whether or not the hearing is to be held in public. The chairperson may consult other members of the Board in determining if the hearing should be public.
- (4) Upon receipt of the decision of the chairperson on whether there should be public notice and the determination of a hearing date, the Secretary shall send by registered mail or otherwise deliver, not less than 7 days prior to the date of the hearing, notice of the hearing to:

- (a) the members of the Board of Variance;
  - (b) the appellant;
  - (c) the registered owners as shown on the last revised assessment roll and all occupiers of the subject property and all real property located adjacent to the parcel which is the subject of the appeal, including those separated by private or public rights-of-way;
  - (d) if an appeal under 962(1)(b), the official whose interpretation is being appealed.
- (5) The notice of the hearing, if ordered by the Board, shall be given by publication of a notice stating the time, place of the hearing and the general nature of the appeal in not less than 2 consecutive issues of a newspaper published or circulating in the municipality (or electoral area), with the last such publication appearing not less than 3 days nor more than 10 days before the date of the hearing.
  - (6) The Secretary shall upon receipt of any notice of appeal, 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.

#### Conduct of Hearing

6. (1) A quorum for the hearing is 2 members. If the Chairman is absent for a hearing, those present may appoint an acting chairperson for the duration of that hearing.
- (2) Any person or body with interest in property within the municipality 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 subsection 6(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.
- (5) The Board shall not hear oral evidence except at a regularly constituted hearing of the subject matter of that evidence.
- (6) No member of the Board shall discuss the merits of the appeal with any person who is not a member of the Board or the Secretary, before the Board reaches a decision.
- (7) The appellant shall be afforded the first opportunity to present his evidence and arguments shall be presented in such sequence as the chairperson may direct until all parties to the appeal have been afforded an opportunity to present their evidence and arguments.
- (8) The Board may view the property affected by the appeal and surrounding properties. The Board 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.
- (9) If the appellant 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 at another date, the Board may proceed to decide the appeal in his absence.

Decision

7. (1) The decision of the Board shall be by a majority of those members present and made within 7 days of the hearing.
- (2) The Secretary shall, within 7 days of a decision, send by registered mail or otherwise deliver the written decision of the Board of Variance to the appellant, all persons who made representation at the hearing and the local government building inspector.

General Provisions

8. Board of Variance Bylaw No. 300 is hereby repealed.
9. This Bylaw shall come into full force and effect upon adoption.

READ A FIRST TIME on the 16th day of May, 1995.

READ A SECOND TIME on the 16th day of May, 1995.

READ A THIRD TIME AND PASSED on the 16th day of May, 1995.

ADOPTED on the 6th day of June, 1995.

Mike O'Connor, MAYOR  
Dianne Hunter, CLERK

List of Amending Bylaws	
762	January 9, 1996
1196	June 23, 2014

Note to Users

This office consolidation is not an authoritative text of the law and is produced solely as a convenience to the user. The authoritative text of the law is in the original bylaw and the amending bylaw(s).