

DISTRICT OF HIGHLANDS

BYLAW NO. 248

A BYLAW TO ESTABLISH A BOARD OF VARIANCE.

The Council of the District of Highlands, in open meeting assembled, Enacts As Follows:

1. ESTABLISHMENT:

1.1 A Board of Variance is established by bylaw in accordance with the provisions of the *Local Government Act*.

2. INTERPRETATION:

2.1 In this Bylaw:

“Board” means the District of Highlands Board of Variance

“Chairman” means the Chairman of the Board of Variance

“District” means the District of Highlands

“Council” means the Municipal Council of the District of Highlands

“Secretary” means the Secretary to the Board of Variance appointed under this bylaw.

3. APPOINTMENT of BOARD MEMBERS:

3.1 The Board shall consist of three members appointed by Council for a three year term each.

3.2 The Board of Variance must elect one of their members as Chair and the Chair may appoint an acting Chair to act in the absence of the Chair.

3.3 Despite Section 3.1, all members of the Board who hold office at the time that this Bylaw comes into force, continue to be members of the Board until:

- a) the end of their term; or
- b) Council rescinds their appointment.

4. SECRETARY TO THE BOARD:

4.1 The Council shall appoint a Secretary to the Board of Variance.

4.2 The Secretary, in addition to receiving applications and preparing agendas on behalf of the Board, must:

- (a) Maintain minutes of all proceedings and orders of the Board; and
- (b) After their adoption by the Board, ensure that such minutes:
 - i) Are submitted to the Chair and Secretary for signature;
 - ii) To ensure that proper notification is given in compliance with this bylaw; and
 - iii) Are forwarded to the Municipal Clerk for safekeeping and make a copy available for public inspection during the normal business hours of the District.

5. MEETINGS:

- 5.1 A meeting of the Board of Variance shall be held on the first Wednesday of each month, unless otherwise determined by the Chair of the Board of Variance in consultation with the Secretary and all other members of the Board of Variance.
- 5.2 In the event that no application of appeal to the Board of Variance is deposited with the Secretary to the Board of Variance at least ten (10) calendar days prior to the date of the next meeting, then no meeting need be held.
- 5.3 A meeting of the Board of Variance on a particular appeal shall be held not more than forty (40) days after the date of receipt of the notice of appeal unless an extension is allowed by written consent of the appellant.
- 5.4 The Board of Variance shall be convened by the Chair on the date of the hearing and at the time set out in the notice.
- 5.5 The Board of Variance shall hear representation made to the Board.
- 5.6 The deliberations of the Board of Variance shall be open to the public.

6. NOTICE OF APPEAL:

- 6.1 Any person desiring to appeal to the Board shall complete the application for an appeal to the Board of Variance and submit to the Secretary to the Board. The application shall:
 - a) State clearly the grounds upon which the appeal is based and relief sought.
 - b) Where applicable, include scale drawings depicting the following:
 - i) The location of all buildings and structures on the subject property (site plan);
 - ii) All pertinent exterior building elevations;
 - iii) The use of floor space.

- iv) In an appeal under Section 901(1) of the *Local Government Act*, the portion of the proposed work that does not comply with a bylaw respecting the siting, dimensions or size of a building or structure, or, in the case of an appeal of a bylaw under Division 2 of Part 22 of the *Local Government Act*, and
 - v) A site plan showing the location of all trees for which a cutting or removal permit has been denied.
 - c) Be accompanied by a non-refundable application fee of Two Hundred and Fifty Dollars (\$250.00).
- 6.2 A notice of appeal under Sections 901(1)(a), 901(1)(b), 901(1)(c), or 901(2) of the *Local Government Act* shall be filed only after:
- a) the denial of a formal application for a building permit by the Building Department of the District; or
 - b) the denial of a tree cutting or removal permit by the District.
- 6.3 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 thirty days (30) after the appellant has been advised in writing of such determination.

7. NOTICE OF HEARING:

- 7.1 The Secretary shall, not less than seven (7) days before the hearing of an appeal under Section 901 of the *Local Government Act*, mail notice of the hearing to all owners and occupiers of land that is:
- a) the subject of the appeal; or
 - b) adjacent to the land that is subject of the appeal.
- 7.2 Notice under Section 7.1 shall state the subject matter of the appeal and the date, time and place where the appeal will be heard.
- 7.3 Public Notice of a hearing may be given where the Board so orders. Where ordered, such notice shall be given by publishing the date, time and place of the hearing, along with a statement of the subject matter of the appeal, in a newspaper or local periodical distributed at least weekly for circulation in the Municipality and containing both news items and advertising, with such publication to appear not less than three days nor more than ten days before the date of the hearing.
- 7.4 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.

8. CONDUCT OF THE HEARING:

- 8.1 A quorum of the Board shall be two members. In the absence of the Chairman, and provided that he has not appointed an acting Chairman, the remaining members may appoint one or the other as an Acting Chairman for the duration of a hearing.
- 8.2 Any person with an interest in property within the Municipality is entitled to be heard at a hearing and may be presented by a solicitor or other agent duly appointed in writing.
- 8.3 Any person represented in accordance with Section 8.2, whether or not also attending in person, shall be deemed to be a party attending the hearing.
- 8.4 The District, through an official appointed by the Municipal Council, is entitled to be heard as a party attending the hearing.
- 8.5 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.
- 8.6 No member of the Board shall not discuss the merits of the appeal with any person who is not a member of the Board or the Secretary, before the Board has reached a decision.
- 8.7 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 Chairman may direct until all interested parties have been afforded a reasonable opportunity to be heard.
- 8.8 The Board may view the property affected by the appeal and surrounding properties.
- 8.9 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 adjournment.
- 8.10 If the appellant, having failed to notify the Secretary at least three 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.

9. DECISION:

- 9.1 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 Chairman or Acting Chairman, are equal for and against allowing an appeal, the appeal shall be denied.
- 9.2 The Secretary shall within seven (7) days of a decision send by mail or otherwise deliver the written decision of the Board to the appellant and the Building Department of the District.
- 9.3 The Secretary shall, within seven (7) days of the decision, enter that decision in the record maintained at the local government office.
- 9.4 A decision of the Board may contain such conditions as it deems advisable under the circumstances.

10. GENERAL:

- 10.1 Subject to the provisions of this bylaw, the Board shall determine its own procedure.
- 10.2 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.
- 10.3 "Board of Variance Bylaw No. 8, 1993" is hereby repealed.

11. CITATION:

11.1 This Bylaw may be cited as the "Board of Variance Bylaw No. 248, 2005".

READ A FIRST TIME this 4th day of APRIL , 2005.

READ A SECOND TIME this 4th day of APRIL , 2005.

READ A THIRD TIME this 4th day of APRIL , 2005.

ADOPTED this 18th day of APRIL , 2005.

MAYOR

MUNICIPAL CLERK