

SAANICH BOARD OF VARIANCE PUBLIC INFORMATION

Introduction

Boards of Variance are intended to provide a measure of flexibility and discretion in the application of by-laws and other regulations related to land use, specifically where zoning by-laws have produced “legal non-conforming” status, or otherwise created hardship where land, and its use and development, is concerned.

Composition

Currently the Saanich Board of Variance is composed of five members who are appointed by Saanich Council, pursuant to the provisions of the *Local Government Act*.

Mandate

The Saanich by-law establishing the Board of Variance requires the Board to hear and determine any application with respect to matters mentioned in the *Local Government Act*.

The Act empowers Boards to conduct hearings and when justified order that a minor variance be permitted where the applicant alleges that compliance with a bylaw would cause hardship with respect to the siting, dimensions, or size of a building or structure*, or the siting of a manufactured home in a manufactured home park. The Board can also allow minor variances under the Tree Preservation Bylaw.

* “Structure” includes, but is not limited to, such things as garages, carports, decks, balconies, workshops, sheds, barns, outbuildings and free-standing signs.

The Board may also allow a structural alteration or addition to a building or structure housing a legal non-conforming use, or which would otherwise be prohibited under subdivision servicing requirements. In addition, the Board may allow a minor variance from the requirements of the Subdivision Servicing Bylaw for properties zoned industrial or agricultural where compliance with the Bylaw would cause undue hardship.

Procedures

Procedures legally required

Certain Board procedures are set out in the *Local Government Act* as follows:

- The Board is required to give notice to and to hear the applicant, and any owners and tenants adjacent to land that is subject to the application.
- It is further required to determine that undue hardship would be caused to the applicant if the bylaw is complied with; and is of the opinion that the variance or exception does not:
 - result in inappropriate development of the site;
 - adversely affect the natural environment;
 - substantially affect the use and enjoyment of adjacent land;
 - vary permitted uses and densities under the applicable by-law; or
 - defeat the intent of the by-law.

Terms such as “inappropriate”, “minor variance”, “hardship” or “undue hardship”, “substantially” (as in “*substantially affect the use and enjoyment of adjacent land*”) are not further defined and these interpretations are flexible. A variance of, say, 4 m may be minor in one case, whereas a variance of 0.5 m might be excessive in another. The same argument applies to the other terms; for example, what is appropriate on one property - say a stable - may be entirely inappropriate on another.

The Board does not set precedents. Each application is judged on its own merits, and it is not open to applicants to claim that a neighbour was allowed a variance and that therefore they are entitled to a variance as well, although applicants can, and do, refer to other decisions. Approval is based upon the plans as submitted to the Board.

A decision of the Board is **final**, except under limited, defined circumstances.

Other Procedures

The Board of Variance normally meets once a month in the evening of the second Wednesday. All applications must be received 21 calendar days prior to the meeting, and a fee paid, which is established by Council. Occasionally, the Board may hold a special meeting with proper notification to applicants and neighbours.

Applications are heard in the order they are received by the Clerk’s Office. If the meeting continues past 9:30 p.m., the Board may decide to adjourn any unheard applications to the following Wednesday at 7:00 p.m. All meetings of the Board are open to the public except under limited circumstances. All members of the Board visit the sites of all applications; the members may inspect the site at any reasonable daylight time from the morning of the Thursday preceding the hearing to the day of the hearing.

They cannot make advance appointments to view a site. It is up to applicants to ensure that the site is safely accessible during daylight hours, and that the required variance is clearly marked on the property. Applications for sites which are either inaccessible or where the markings are inadequate or non-existent will be tabled to a later hearing.

It is recommended that applicants discuss their proposal with adjacent neighbours before the hearing in order to address or alleviate concerns that may affect the disposition of their application.

Plans

In considering an application, the Board has to consider the criteria (*see Procedures Legally Required, page 2*). This means that the Board usually needs more detail than simply that of the variance itself. For example, if the variance requested is to erect a structure closer to a lot line than the zoning allows, the Board (and the neighbours) want assurance that it will not unduly block sunlight or views, etc. Therefore, the Board may wish to see elevations, even though a height variance may not be required. Similar situations arise all the time.

The Board recognizes that applicants do not always want the expense of full architectural blueprints if it is possible a variance may be rejected. While such blueprints are often necessary, and always desirable, a scale drawing may be sufficient, provided the dimensions are accurately marked. What is *not* sufficient is a rough sketch, with only partial measurements and not drawn to scale.

Approval is based upon the plans as submitted to the Board.

With this in mind, the applicant is required to include with the application the following documentation:

1. A site plan in a reproducible format (maximum size 11 x 17"), including:
 - (i) the north point and scale
 - (ii) dimensions and area of the site
 - (iii) size, shape and siting (including setbacks) of all existing and proposed buildings and additions, with dimensions
 - (iv) existing trees
2. Floor plans in a reproducible format (maximum size 11 x 17") with dimensions and use of rooms, including all outside balconies and decks, and whether enclosed or not; and proposed additions.
3. Elevations at the same scale as floor plans, showing front, rear and side elevations, with decks and balconies, and proposed additions.
4. Applicants are required to submit any other information necessary to support their application when it is submitted. For example:

- (a) If protected trees may suffer damage, particularly root damage, and the application is approved, a professional arborist's report will be required. The applicant may be required to have the arborist present when construction is undertaken.
- (b) If the application involves septic fields or drainage, then a topographical survey may be required, together with a professional engineer's report.
- (c) Where height variances are requested, a Letter of Assurance from a registered BC Land Surveyor is required. Elevations must be provided to scale, showing the relationship to any adjacent properties, natural grade, and roof sections, together with some visual/physical evidence on site that will indicate the anticipated height.

Failure to submit any relevant documents with the application may result in the application being tabled until such time as the documentation is made available.

5. It is the applicants' responsibility to use their best judgment in deciding what documentation best supports their application, and that documentation must be included with the application so that the Board and any neighbours affected have time to study it before the hearing.
6. Applicants may bring larger scale plans, elevations and/or models to the hearing, and are encouraged to do so.
7. Where required for the application, calculations of the allowable floor space ratio in non-basement areas appropriate to the zoning are necessary.
8. It is the applicant's responsibility to submit all the required relevant information in a clear and concise manner so that the Board can make an informed decision.

Hearings

Hearings are informal; applicants and interested persons are required to give their names and addresses to the Secretary, who then reads the details of the application.

- Applicants may be represented by an agent or a person authorized by them.
- The Chair asks the applicant (or representative) if they have any material evidence they wish to add that is not included in their application.
- The Chair gives members of the Board the opportunity to ask questions.
- The Chair asks any interested persons to come forward to make their case, for or against.
- The applicant is given the opportunity to respond.
- The Board members may ask further questions.
- All questions and statements are made through, and to, the Chair.

- The application is then set aside until all applications have been heard.
- After all the applications have been heard, the Board considers each in turn. At this stage no further interventions from applicants or interested persons are allowed, and the Board renders its decision, which is by a simple majority vote of the members.
- The Board may allow or disallow the application in part or in its entirety.
- It may attach conditions or restrictions to the granting of the application.
- The Board may modify an application, or recommend that modifications be made, and may table an application until the next (or later) meeting of the Board to allow time for such modifications to be considered by the applicant.
- Applicants may also request that a hearing be tabled, which the Board may grant.
- If the applicant or a representative does not appear, the Board may table the application.
- If, in the Board's opinion, insufficient information is provided, the application may be tabled.
- No additional fees are payable if an application is tabled.
- The same application will not be reheard by the Board, but it may reconsider a revised application if different grounds are established, or if the proposal is amended.

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