



THE MUNICIPALITY OF THE VILLAGE OF LIONS BAY



Board of Variance Bylaw No. 502, 2016

Office Consolidation

This document is an office consolidation of Board of Variance Bylaw No. 502, 2016 with subsequent amendments adopted by the Village of Lions Bay.

All persons making use of this consolidation are reminded that it has no Council sanction, that amendments have been incorporated only for convenience of reference, and that for all purposes of interpretation and application, the original bylaws should be consulted. The Village of Lions Bay will, in no event, be liable or responsible for damages of any kind arising out of the use of this consolidation.

This is not the official version of Board of Variance Bylaw No. 502, 2016, as amended, nor is it admissible in a court of law. For such purposes, official certified copies of the original bylaws can be obtained from the Village Office or by contacting us at: admin@lionsbay.ca

List of Amending Bylaws

| Bylaw No. | Section | Description | Adopted/In Force |
|-----------|----------|--|--|
| 497 | 5.1.13 | Amends reference to the previous Fee Bylaw | December 20, 2016 / January 1, 2017 |
| 519 | 2 | Corrects amended reference to previous Fee Bylaw | April 4, 2017 |
| 608 | 6, 7 & 9 | Enables conduct of meetings by electronic means | November 24, 2021 |

Bylaw No. 502, 2016

Board of Variance

A bylaw to establish and set the procedure for a Board of Variance.

The Council of the Village of Lions Bay, in open meeting assembled, enacts as follows:

1. CITATION

1.1 This bylaw may be cited for all purposes as “Board of Variance Bylaw No. 502, 2016”

2. REPEAL

2.1 “Board of Variance Bylaw No. 6” is hereby repealed and the appointments of the existing Board members are hereby rescinded.

3. ESTABLISHMENT

3.1 The Board of Variance is hereby established in accordance with the provisions of the *Local Government Act*.

4. INTERPRETATION

4.1 In this Bylaw:

“Adjacent Land” means land which is on either side of the subject property, as well as land touching the rear boundary of the subject property and land which is across the street from the subject property;

“Board” means the Village of Lions Bay Board of Variance;

“Building” has the same meaning as in Village of Lions Bay Building Bylaw No. 234, 1994, as amended;

“Building Inspector” has the same meaning as in Village of Lions Bay Building Bylaw No. 234, 1994, as amended;

“Chair” means the Chair of the Board of Variance;

“Council” means the Municipal Council of the Village of Lions Bay;

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

“Structure” has the same meaning as in Village of Lions Bay Building Bylaw No. 234, 1994, as amended;

5. APPOINTMENT OF BOARD MEMBERS

- 5.1 The Board shall consist of three (3) members appointed by the Village of Lions Bay Council.
- 5.2 The Board shall elect one of their members as Chair, who may appoint an acting Chair to preside in the absence of the Chair.
- 5.3 Each Board member shall hold office for a term of three (3) years or until a successor is appointed, but a member may be re-appointed for a further term or terms.

6. SECRETARY TO THE BOARD

- 6.1 The Council shall appoint a Secretary to the Board of Variance.
- 6.2 The Secretary shall:
 - (a) receive applications to the Board of Variance and prepare agendas on behalf of the Board;
 - (b) establish with the Board Chair the dates for meetings of the Board;
 - (c) circulate notices of applications in accordance with the requirements of the *Local Government Act* and this bylaw.

(d) attend, or appoint a designate to attend, meetings of the Board, enable meetings to be conducted by means of electronic or other communications facilities (when applicable), record minutes of meetings, and record the meetings on audio, attend to the processing of any correspondence arising from the Board meetings, including notification of Board decisions to applicants and Village of Lions Bay staff, and ensure adopted minutes are signed by the Secretary and the Chair;

[Amended by Bylaw No. 608]

(e) maintain a record of all decisions and orders of the Board and ensure that the record is available for public viewing at the Municipal Hall during regular business hours and on the Municipal website; and

(f) act as the Coordinator under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") with respect to the Board of Variance and the Corporate Officer of the Village of Lions Bay shall act as the FIPPA Head for the Board.

7. MEETINGS

7.1 A meeting of the Board shall be held within forty (40) days after the date of receipt of an application unless an extension is allowed by written consent by the applicant.

7.2 A meeting of the Board shall be convened by the Chair on the date of the hearing and at the time set out in the notice, provided a quorum of two (2) Board members is present.

7.3 If a quorum is not present within fifteen (15) minutes, or such longer time as the Chair of the meeting may determine, of the scheduled time for the hearing, the Secretary, or his or her designate, must:

[Amended by Bylaw No. 608]

(a) record the names of the member present;

(b) advise any applicants and persons in attendance that the hearing must adjourn due to lack of quorum and of the date, time and place to reconvene the hearing; and

(c) adjourn the hearing.

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- 7.4 All meetings and deliberations of the Board shall be open to the public, unless grounds are set out for closing the meeting in accordance with section 90 of the *Community Charter*.
- 7.5 Provided the conditions set out in the Community Charter, the *Local Government Act* and this bylaw, as amended, are met:
- (a) a Board of Variance Meeting may be conducted, in whole or in part, by means of electronic or other communication facilities which enable the public to hear, or watch and hear, the persons entitled to participate in the meeting if applicable;
 - (b) a Board of Variance Member who is unable to attend in person at a Board of Variance Meeting, may participate, including voting, in the Meeting by means of electronic or other communication facilities and are deemed to be present at the meeting.
- 7.6 The chair at a Board of Variance Meeting, may participate electronically and may establish procedural rules for the conduct of a meeting in accordance with this bylaw.
- 7.7 All Board of Variance members may participate simultaneously at a meeting under this section.
- 7.8 A Board of Variance Meeting will not be cancelled due to the unavailability, failure or malfunction of electronic or communications facilities, as long as a Quorum still exists. If Quorum is lost due to technical difficulties, the meeting shall be deemed to be in recess until the earlier of:
- (a) the re-establishment of Quorum, or
 - (b) the expiration of 15 minutes, or such longer time as the Chair may determine, after which time the meeting shall be deemed to be adjourned and the provisions of section 7.3 of this bylaw shall apply.
- 7.9 The applicant, affected owners, consultants or agents, other invited persons, and staff may participate by means of electronic or other communication facilities at a Board of Variance Meeting under this bylaw.

[Amended by Bylaw No. 608]

8. APPLICATIONS

- 8.1 The Board of Variance shall hear and determine applications to the Board in accordance with this bylaw and the *Local Government Act*.

8.2 A person seeking relief from the Board of Variance shall complete an application to the Board and submit it to the Secretary in substantial accordance with the form attached hereto as Schedule "A".

8.3 An application to the Board of Variance shall:

(a) state clearly the grounds upon which the application is based, including:

(i) the relief from the bylaw or from statutory compliance which is sought;

(ii) the hardship to the applicant if the relief is not granted;

(b) meet the requirements of subsections 8.3 (b) (i) and include such further plans and technical information as the applicant considers advisable or the Board deems necessary to support the application including, but not limited to, the following:

(i) a Title Search Print dated within 30 days of the application and copies of all registered non-financial encumbrances noted thereon (*required*);

(ii) a site plan showing the location of all Buildings and Structures, or proposed Buildings or Structures, on the subject property, preferably prepared and signed by a BC Land Surveyor;

(iii) A floor plan showing space uses and door and window locations, preferably signed by an architect or structural engineer;

(iv) a Building or Structure elevation plan for height variance applications, preferably certified by an architect or structural engineer;

(v) a geotechnical engineer's report with respect to drainage, topography, and other geotechnical considerations (*if required by the Board due to circumstances giving rise to potential geotechnical issues*);

provided that the Board may require surveys, plans or other documents be provided and to be certified by the appropriate registered professional;

(vi) an explanation as to that portion of the proposed work that:

- A. does not comply with a bylaw respecting the siting, dimensions or size of a Building or Structure; or
 - B. constitutes an alteration to a Building or Structure containing a non-conforming use, and the nature of that non-conforming use;
- (c) be accompanied by a non-refundable application fee in the sum specified in Fees Bylaw No. 497, 2016, as amended.

[Amended by Bylaw No. 497, 2016]

[Amended by Bylaw No. 519, 2017]

- 8.4 Where an application is based on a determination of value of a non-conforming property damaged or destroyed, made by a Building Inspector pursuant to the *Local Government Act*, the application shall be filed no later than thirty (30) days after the applicant has been advised in writing of such determination.

9. **NOTICE OF HEARING**

- 9.1 The Secretary shall, not less than ten (10) calendar days before the hearing of an application under this bylaw, mail or deliver via electronic transmission or otherwise, notice of the hearing to:
- (a) the members of the Board;
 - (b) the applicant;
 - (c) the registered owner(s), as shown on the last revised assessment roll, all occupiers of the subject property, and the owners and occupiers of all Adjacent Lands;
 - (d) the Building Inspector whose determination or denial is being appealed; and
 - (e) the Corporate Officer of the Village of Lions Bay.
- 9.2 The notice of the hearing shall state the date, place, and time of the hearing and shall state the subject matter of the application. All hearings shall take place at the Village of Lions Bay Council Chambers or the Village of Lions Bay Hall.

9.3 Public notice of a hearing shall be given by publishing the date, time and place of the hearing, along with a statement of the subject matter of the application, on the notice boards at the Village of Lions Bay Office and the post office, and on the Village of Lions Bay website not less than twenty-four (24) hours before the date and time of the hearing.

9.4 Where a Board of Variance Meeting is to be conducted by means of electronic or other communication facilities, the notice shall specify the means by which the meeting will be conducted, how the public can hear, or watch and hear, and the notice and other procedural requirements of this bylaw shall apply.

[Amended by Bylaw No. 608]

9.5 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.

10. CONDUCT OF HEARING

10.1 A quorum for the Board shall be two (2) members. In the absence of the Chair, and provided that he has not appointed an Acting Chair, the remaining members may appoint one or the other as an Acting Chair for the duration of the hearing.

10.2 Any owner or occupier of Adjacent Lands, who believes that their interest is affected by the application 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.

10.3 Any person represented in accordance with Section 10.2, whether or not also attending in person, shall be deemed to be a party attending the hearing.

10.4 The Village of Lions Bay, through any of its officers or employees, or by its solicitor, is entitled to be heard as a party attending the hearing.

10.5 The Board may elect, at their discretion, to hear any other person who maintains their interest in land is affected by the application.

10.6 If a Board member is a person described in section 9.1 (b) or (c), then he or she must declare a conflict of interest and recuse themselves from hearing and deciding the application.

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- 10.7 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.
- 10.8 The applicant shall be afforded the first opportunity to present his or her evidence and arguments, thereafter evidence and arguments shall be presented in such sequence as the Chair may direct until all parties to the application have been afforded a reasonable opportunity to be heard.
- 10.9 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, failing which notice must be given in accordance with section 9 of this bylaw.
- 10.10 The Board may view the property affected by the application and surrounding properties, but no member of the Board shall discuss the merits of the application with any person who is not a member of the Board other than the Secretary or a solicitor acting on behalf of the Board, outside of an open meeting duly constituted to consider the application.
- 10.11 If the applicant, or his or her representative:
- (a) is unable to attend on the scheduled meeting date, he or she must provide the Secretary with at least three (3) days notice in advance, whereupon the Secretary and the Board Chair will reschedule the meeting and provide notice accordingly;
 - (b) fails to provide the requisite notice in advance that neither he or she, nor a representative, is able to attend, the Board may proceed to decide the application in the absence of the applicant.

11. DECISION

- 11.1 Subject to section 90 of the *Community Charter*, all deliberations of the Board must be in open meeting.
- 11.2 The Chair is entitled to vote on all matters and any Board member who abstains from voting is deemed to have voted in favour of the motion.

- 11.3 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 Chair or Acting Chair, are equal for and against allowing an application, the application shall be denied.
- 11.4 The Secretary shall, within ten (10) days of a decision, enter that decision in the record maintained at the Village of Lions Bay Office, and shall send by mail or otherwise deliver the written decision of the Board to the applicant, to all persons who made representation at the hearing, and to the Village of Lions Bay Building Inspector.
- 11.5 A decision of the Board may contain such conditions as the Board deems advisable under the circumstances, including a time limit within which to complete the specified work.

12. GENERAL

- 12.1 Subject to the provisions of this bylaw, the Board may provide for such additional procedures as it considers necessary to ensure procedural fairness with respect to an application.
- 12.2 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.
- 12.3 If any word, phrase, clause, sentence, subsection or section in this bylaw is, for any reason, held to be invalid by a court of competent jurisdiction, the word, phrase, clause, sentence, subsection or section shall be severed from the bylaw and the remainder of the bylaw shall be deemed to have been adopted without the severed word, phrase, clause, sentence, subsection or section.

READ A FIRST TIME

May 17, 2016

READ A SECOND TIME

May 17, 2016

READ A THIRD TIME

June 7, 2016

ADOPTED

June 21, 2016

Mayor

Corporate Officer

**Certified a true copy of Board of Variance
Bylaw No. 502, 2016 as adopted.**

Corporate Officer

Schedule "A"

**Village of Lions Bay
Board of Variance Application Form**

I hereby apply for a hearing before the Board of Variance for:

| LAND SUBJECT OF THE APPLICATION |
|--|
| Street Address: |
| Legal Description: |
| Zoning: |
| OWNER/CONTACT INFORMATION |
| Full Name(s) of Property Owner(s): |
| Full Name of Owner's Authorized Representative (if applicable): |
| Address to Which Notices Should be Mailed: |
| Daytime Phone # of Owner or Authorized Representative: |
| Name of Person Who Will Represent Applicant at the Hearing: |
| TYPE OF APPLICATION (Complete Applicable Section) |
| A. VARIANCE OF BYLAW RESPECTING SITING, SIZE OR DIMENSION OF A BUILDING OR STRUCTURE [s.540(a)(i)] |
| Bylaw Name/Number & Section(s) from which relief is sought: |
| Variance From (current requirement): |
| To (new requirement requested): |

| |
|--|
| B. EXEMPTION FROM PROHIBITION OF A STRUCTURAL ALTERATION OR ADDITION TO A BUILDING OR STRUCTURE WITH A NON-CONFORMING USE [s.540(c) and s.531(1)] |
| Bylaw Name/Number & Section(s) Which Previously Permitted Use: |
| Bylaw Name/Number & Section(s) Which Resulted in Legal Non-Conforming Status: |
| Continuing Non-Conforming Use: |
| Structural Alteration or Addition Desired: |
| <i>Note: If alteration or addition will result in a structure contrary to current bylaw siting, size or dimension requirements, also complete Section A.</i> |
| C. APPEAL OF BUILDING INSPECTOR'S DETERMINATION OF DAMAGE TO NON-CONFORMING BUILDING [s.532(1) and s.544] |
| Date of Building Inspector's Determination (application must be filed within 30 days): |
| Summary of Building Inspector's Determination (copy attached): |
| Determination Requested of Board: |
| D. EXEMPTION TO RELIEVE HARDSHIP FROM EARLY TERMINATION OF LAND USE CONTRACT [s.543] |
| Bylaw Name(s)/Number(s) & Section(s) from which relief is sought: |
| Variance From (current requirement): |
| To (new requirement requested): |
| STATEMENT OF HARDSHIP (not required for Type C applicants) |
| I allege that compliance with either the bylaw or section 531(1) [strike one] would cause me hardship by: |

(attach additional pages if necessary)

TIME REQUIRED TO COMPLETE

Respecting Type A or B applications, the Board may specify a time for completion of the construction of the Building or Structure permitted by the minor variance or exemption, after which the permission or exemption would terminate. If your application is permitted, when do you expect to complete the work?

ADDITIONAL INFORMATION/REASONS SUPPORTING THE APPLICATION

(Attach additional pages if required)

ATTACHMENTS

Fee and Title Documents:

- A Non-refundable application fee of \$500.00 (cash or cheque), payable to the Village of Lions Bay.
- A Title Search Print dated within 30 days of the application and copies of all registered non-financial encumbrances noted thereon.

Drawings Which May be Required:

- A site plan showing the location of all Buildings and Structures, or proposed Buildings or Structures, on the subject property, preferably prepared and signed by a BC Land Surveyor A floor plan (for existing and proposed Buildings) showing space uses and door and window locations, preferably certified by an architect or structural engineer.
- A Building or Structure elevation plan preferably certified by an architect or structural engineer, including original and proposed alterations to site levels, if applicable.

Other Documents Which May be Required:

- A geotechnical engineer's report with respect to drainage, topography, and other geotechnical considerations.
- Explanatory materials and such other additional information as may be advisable in support of the application (eg: photographs, letters of support, etc.)

The Village Building Department may have some of the documents noted above – check first before ordering new. Further information may be required to enable the Board of Variance members to visualize the proposal and its relationship to the surrounding area. Approval, if given by the Board, is for the plans submitted. Changes to plans after the Board's decision will require a new application.

SIGNED BY ALL OWNERS ON TITLE ON _____, _____:
(month) (day) (year)

Note: Decisions of the Board of Variance regarding Type A, B or D applications are FINAL, other than an appeal to the BC Supreme Court in respect of procedure under the *Judicial Review Procedure Act*. Decisions regarding Type C applications may be appealed by the applicant or the Village of Lions Bay to the BC Supreme Court. Information in this application is subject to the *Freedom of Information and Protection of Privacy Act*.

IMPORTANT INFORMATION

On finding hardship, the Board may order a minor variance or exemption if it would not:

- (a) result in inappropriate development of the site;
- (b) adversely affect the natural environment;
- (c) substantially affect the use and enjoyment of adjacent land;
- (d) vary permitted uses and densities under the applicable bylaw; or
- (e) defeat the intent of the bylaw.

An order of the Board must not:

- (a) be in conflict with a registered *Land Title Act* Covenant;
- (b) deal with a matter covered in a land use contract or permit;
- (c) deal with a phased development agreement;
- (d) deal with a floodplain specification under the *Local Government Act*; or
- (e) apply to a heritage property.