

# TOWN OF GIBSONS

Bylaw No. 1051, 2006

A bylaw to establish a Board of Variance

**WHEREAS** the Town of Gibsons, having adopted a Zoning Bylaw, is required pursuant to Section 899(1) of the *Local Government Act* to establish, by bylaw, a Board of Variance;

**NOW THEREFORE** the Council of the Town of Gibsons, in open meeting assembled, enacts as follows:

## 1. CITATION

1.1 This bylaw may be cited as “Board of Variance Bylaw No. 1051, 2006”.

## 2. REPEAL

2.1 Town of Gibsons “Board of Variance Bylaw No. 657” is hereby repealed.

## 3. INTERPRETATION

3.1 In this Bylaw:

“Board” means the Town of Gibsons Board of Variance

“Chair” means the Chair of the Board of Variance

“Town” means the Town of Gibsons

“Council” means the Municipal Council of the Town of Gibsons

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

## 4. APPOINTMENT OF BOARD MEMBERS

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

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

- 4.3 Despite Section 4.1, 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:
- 4.3.1 The end of their term and a replacement Board member has been appointed; or,
  - 4.3.2 Council rescinds their appointment.
- 4.4 A person who is a Councillor, a member of the Planning Committee, or an officer or employee of the local government is not eligible to be appointed to the Board.

## **5. SECRETARY TO THE BOARD**

- 5.1 The Director of Planning shall be the Secretary to the Board.
- 5.2 The Secretary, in addition to receiving applications and preparing agendas on behalf of the Board, must:
- 5.2.1 Determine whether the appeal seeks to do any of the following, all of which are outside of the jurisdiction of the Board:
    - 5.2.1.1 Be in conflict with a covenant registered under section 219 of the *Land Title Act* or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;
    - 5.2.1.2 Deal with a matter that is covered in a permit under Division 9 of this Part or covered in a land use contract;
    - 5.2.1.3 Deal with a flood plain specification under section 910 (2); or,
    - 5.2.1.4 apply to a property:
      - 5.2.1.4.1 For which an authorization for alterations is required under Part 27 (Heritage Conservation),
      - 5.2.1.4.2 That is scheduled under section 970.1 (3) (b) or contains a feature or characteristic identified under section 970.1 (3) (c), or
      - 5.2.1.4.3 For which a heritage revitalization agreement under section 966 is in effect;

- 5.2.2 Notify the appellant if the appeal is outside the jurisdiction of the Board.
- 5.2.3 Notify the Chair of receipt of a Notice of Appeal if the appeal is within the Board's jurisdiction.
- 5.2.4 Ensure that proper notification is given in compliance with this bylaw.
- 5.2.5 Maintain minutes of all proceedings and orders of the Board.
- 5.2.6 After their adoption by the Board, ensure that such minutes:
  - 5.2.6.1 Are submitted to the Chair and Secretary for signature, and,
  - 5.2.6.2 Are forwarded to the Municipal Clerk for safekeeping and a copy made available for public inspection during the normal business hours of the Town.

## **6. MEETINGS**

- 6.1 A meeting of the Board shall be scheduled following receipt of a Notice of Appeal and completed application.
- 6.2 The Board shall be convened by the Chair on the date of the hearing and at the time and place set out in the Notice of Hearing.
- 6.3 The Board shall hear representation made to the Board.
- 6.4 All meetings and deliberations of the Board shall be open to the public.

## **7. NOTICE OF APPEAL**

- 7.1 Any person desiring to appeal to the Board shall file a written Notice of Appeal and completed application form, including required attachments, with the Secretary.
- 7.2 The Board shall hear and determine an appeal by a person who alleges that
  - 7.2.1 Compliance with:
    - 7.2.1.1 A by-law respecting the siting, dimension or size of a building or structure, or the siting of a manufactured home in a manufactured home park;

7.2.1.2 A by-law under Section 8(3)(c) of the Community Charter (trees), except where Council has compensated or mitigated hardship;

7.2.1.3 The prohibition of a structural alteration or addition under section 911(5) of the Local Government Act; or,

7.2.1.4 A subdivision servicing requirement under section 938(1)(c) of the Local Government Act in an area zoned for agricultural or industrial use;

would cause undue hardship, or,

7.2.2 The determination by a building inspector of the amount of damage under Section 911(8) of the Local Government Act is in error.

7.3 On an application under 7.2.1 herein, where the Board has heard the applicant and any person notified under section 8.1 and finds that undue hardship would be caused to the applicant if the bylaw or section 911(5) of the Local Government Act is complied with, the Board may authorize a minor variance from the applicable provisions of the by-law or from Section 911(5) of the Local Government Act that it believes:

7.3.1 Does not result in inappropriate development of the site;

7.3.2 Does not adversely affect the natural environment;

7.3.3 Does not substantially affect the use and enjoyment of adjacent land;

7.3.4 Does not vary permitted uses or densities under the applicable by-law; or,

7.3.5 Does not defeat the intent of the bylaw.

7.4 On an application under section 7.2.2 herein, the Board may set aside the determination of the Building Inspector and make the determination itself as to the amount of damage.

7.5 Where the Board orders a minor variance, it may also order that unless the construction of the building, structure or mobile home is completed within a time fixed in the order, the exemption or allowance, as the case may be, terminates and the relevant by-law applies. If no fixed time is established by the order, this time period will be considered to be two (2) years.

- 7.6 A variance issued by the Board applies to the appellant and subsequent owners of the land.
- 7.7 Where the appeal is based upon a determination of value made pursuant to subsection (8) of the section 911 of the Local Government Act, the Notice of Appeal shall be filed with the Secretary within 30 days of the making of the determination.

## **8. NOTICE OF HEARING**

- 8.1 At least ten (10) days before the hearing date the Secretary shall send by registered mail or otherwise deliver notification of the hearing, including the date, place, time, and subject matter of the appeal hearing to:
  - 8.1.1 The members of the Board of Variance;
  - 8.1.2 All owners and tenants in occupation of the land that is the subject of the application;
  - 8.1.3 The registered owners as shown on the last revised assessment roll and the tenants in occupation of all property located within 50 metres of the parcel which is the subject of the appeal; and,
  - 8.1.4 If an appeal under subsection (1) of the section 902 of the Local Government Act, the official whose interpretation is being appealed.
- 8.2 The Secretary shall ensure that the Notice of Appeal, or any written evidence entered before the hearing date, including staff reports, are available for public inspection during the normal business hours of the Town.

## **9. CONDUCT OF THE HEARING**

- 9.1 A quorum for the hearing is two members. If the Chair is absent for a hearing, those present may appoint an Acting Chair for the duration of that hearing if one has not been appointed in advance of the meeting.
- 9.2 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.
- 9.3 Any person represented, in accordance with subsection 9.2, whether or not also attending in person, shall be deemed to be a party attending the hearing.

- 9.4 Evidence at a hearing may be given orally or in writing.
- 9.5 The Board shall not hear oral evidence except at the regularly constituted hearing for the subject matter of that evidence.
- 9.6 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 has reached a decision.
- 9.7 The appellant shall be afforded the first opportunity to present evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the Chair may direct until all parties to the appeal have been afforded an opportunity to present their evidence and arguments.
- 9.8 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 the reconvening are announced at adjournment.
- 9.9 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 her or his absence.

## **10. DECISION**

- 10.1 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 Chair or Acting Chair, are equal for and against allowing an appeal, the appeal shall be denied.
- 10.2 The decision of the Board shall be by a majority of those members present, and shall be made within 7 days of the hearing.
- 10.3 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 Town Building Inspector.
- 10.4 The Secretary shall, within 7 days of the decision, enter that decision in the record maintained at the local government office.
- 10.5 A decision of the Board may contain certain conditions as it deems advisable under the circumstances.

10.6 The Board shall not re-hear an appeal covering the identical grounds or principles upon which the Board has already rendered a decision for a period of one year from the date of decision.

## 11. GENERAL

11.1 Subject to the provisions of the *Local Government Act* and this bylaw, Robert's Rules of Order Newly Revised (10<sup>th</sup> ed.) shall be the parliamentary authority in questions of procedure.

<b>READ A FIRST TIME</b>	this the	21 <sup>st</sup>	day of	November	2006
<b>READ A SECOND TIME</b>	this the	5 <sup>th</sup>	day of	December	2006
<b>READ A THIRD TIME</b>	this the	5 <sup>th</sup>	day of	December	2006
<b>ADOPTED</b>	this the	19 <sup>th</sup>	day of	December	2006

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Barry J. Janyk, Mayor

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James A. Gordon, Corporate Officer

Certified a true copy of  
"Board of Variance Bylaw No. 1051, 2006"

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James A. Gordon, Corporate Officer