

## BOARD OF VARIANCE TERMS OF REFERENCE

The Board of Variance (BOV/"the Board") is a legislative committee comprised of 3 to 5 volunteer delegates appointed by Council. They meet once per month. The Board grants minor variances from the Zoning Bylaw in circumstances where compliance relating to the siting, dimension, or size of a building or structure would affect a person undue hardship. A variance may not vary the density or use of land, and if awarded, expires two years from the approval date.

### AUTHORITY

#### Three Board Authority Categories:

1. Hardship and Minor Variances from Various Bylaws and Prohibition of Structural Alterations or Additions to a Building with Non-Conforming Use
  - "siting, size or dimensions" of building or other structure
  - "siting" of manufactured home in a manufactured home park
  - exemption to prohibition on structural alteration or additions to non-conforming use buildings
  - subdivision servicing for agricultural or industrial lands

#### Undue hardship:

- configuration of the land;
- dimensions of the lot (irregular shape etc.);
- topography;
- physical limitations on the property that would appear to restrict the siting of the building (existing trees, rocks, watercourses, steep slopes etc.);
- a builder's error in the placement of a foundation; and
- other factors that would make it impossible or would affect compliance with the bylaw (for example, rights of way).

#### Minor Variance Considerations

- Judgment and common-sense approach after evidence analysis
- Decision by the Board made in relation to the surrounding conditions
- Should be "no more than what is required for this purpose" (i.e., of relieving undue hardship)

2. Hardship from Early Termination of Land Use Contracts
3. 75% Extent of Damage Appeals of Building Inspector

## **BOARD MEMBERS**

- 3 to 5 members appointed by Council.
- The Board elects one of their members as Chair.
- Appointments are for a three-year period.
- Board members do not receive compensation for their work as members; they volunteer their time.

## **BOARD MEMBER ELIGIBILITY**

- There are no eligibility conditions to become a Board member.
- Individuals who have knowledge and/or experience related to land development are given preference to, because that is the activity that is regulated by the bylaws for which variance applications are made. Retired building contractors, land surveyors, realtors, architects, and civil engineers are typical candidates for appointment.
- Generally, preference is given to the local government residents.
- Local elected officials and staff members, and members of any advisory planning commission are not eligible unless they are residents of a different local government. For example, a CAO from Nelson can be appointed to the Grand Forks Board.

## **BOARD SECRETARY**

The City of Grand Forks Planner or designate will act as the Secretary to the Board and the responsibilities of the Secretary are:

- To determine whether the appeal seeks to vary a matter covered in a land use contract, a permit and or, a flood plain specification under the Act or a registered covenant under the Land Title Act or of the Land Registry Act and to notify the applicant that the appeal is outside the jurisdiction of the Board and will not proceed further; or
- To determine whether the appeal seeks a variance or exemption to relieve hardship with respect to compliance with the Zoning Bylaw, Mobile Home Park Bylaw or Subdivision Control Bylaw requirements or with respect to the prohibition of an alteration or addition to an existing non-conforming structure or the Building Inspector's determination of the amount of damage to a non-conforming structure, which are within the jurisdiction of the Board;
- To notify the Chair of the Board of the receipt of the appeal if it is within the Board's jurisdiction;
- To ensure that proper notification is given to all the Board members, the local government Building Inspector, the appellant and the surrounding property owners, affected by the appeal, in compliance with this bylaw;
- To keep proper records of the Board of Variance proceedings, and
- To maintain a record of all decisions of the Board and make them available to the public in the municipal office, during normal business hours.

## HEARING

- Following the receipt of a notice of appeal, the Chair sets the date for the hearing of the appeal.
- The Board is assembled by the Chair on the date of the hearing and at the time and place set out in the notice.
- The Board hears all representation made to the board.
- The deliberations of the Board are open to the public.
- A quorum for the hearing is two (2) members of the Board. If the Chairman is absent for a hearing, those present may appoint an acting chair for the duration of that hearing.
- 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.
- Evidence at the hearing may be given orally or in writing.
- The Board must not hear oral evidence or discuss the facts of the appeal with anyone who is not a member of the Board or the Secretary, except at a regularly scheduled hearing on the subject matter of that evidence.
- The appellant is given the first opportunity to present evidence and arguments, and thereafter, evidence and arguments are presented in such order as the Chair directs the meeting until all parties to the appeal are given an opportunity to present their evidence and arguments.
- The Board may view the property affected by the appeal and surrounding properties.
- The Board may adjourn the hearing and may reconvene without further published notice if the time, date, and place of reconvening is announced.
- If the appellant or other persons notified do not appear at the hearing or any adjournment and have not advised the Secretary in advance that they need to be heard at another time, the Board may decide on the appeal in their absence.

## NOTICE OF APPEAL AND APPLICATION FEE

- Any person desiring to appeal to the Board must file a written letter attached to a Board of Variance application, with the Secretary of the Board. The Notice must say clearly, the grounds upon which the appeal is based, and the relief sought.
- An application fee must be paid to the Corporation of the City of Grand Forks as set out in the "Planning Procedures and Fees Bylaw".
- The application must be filed with the Secretary of the Board within thirty (30) days from the date of the determination made by the Secretary and/or the Building Inspector
- After filing the appeal, the Secretary, will notify the Chair of the Board of the appeal and determine a meeting date and time at which to hear the appeal.
- After establishing the hearing date, the Secretary will notify, not less than ten (10) days prior to the date of the Hearing, notice of the Hearing to:
  - the members of the Board;
  - the appellant;
  - the registered owners as shown on the last revised assessment roll and all occupiers of all real property located adjacent to the parcel which is the subject of the appeal, including those separated by private or public rights-of-ways;
  - the City's Building Inspection and Bylaw Services.

- The notice will state the date, place and time of the appeal hearing and the appeal's details.
- After the Notice of Appeal is received by the Secretary, any written evidence entered before the Hearing, including Staff reports, will be available for review at the Secretary's office during regular office hours.

## DECISION

- The decision is made by the majority of those members present and made within seven (7) days of the hearing.
- Within seven (7) days of the decision, the Secretary notifies the written decision to the appellant, all people who made representation at the hearing and the City's Building Inspector.
- Within seven (7) days of the decision, the Secretary enters the decision in the records maintained at the City's records management system.
- The decision is final.
- The appellant or the local government may appeal a decision under the provisions of the Act to the Supreme Court.

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