

## SUMMARY

Under the provisions of the *Local Government Act*, if a municipality has adopted a zoning bylaw, the municipality must also have a Board of Variance. The Board of Variance bylaw establishes the five-member Board and sets out the procedures for the submission of an appeal to the Board and for the conduct of its meetings.

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# **CITY OF KELOWNA**

## **BYLAW NO. 9817**

***REVISED: April 6, 2009***

<b>CONSOLIDATED FOR CONVENIENCE TO INCLUDE BYLAW NO. 10136</b>
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**A bylaw pursuant to Section 899 of the Local Government Act to  
Establish a Board of Variance and to set out the Procedures for the  
Board of Variance**

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NOW THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. In this Bylaw the following definitions apply:
  - “Board” means Board of Variance;
  - “Chairperson” means the Chairperson of the Board of Variance;
  - “Secretary” means the Secretary to the Board of Variance.
2. Pursuant to Section 899 of the Local Government Act, a Board of Variance for the City of Kelowna, consisting of 5 members, is hereby established.
3. The members of the Board shall elect one of their members as Chairperson and the Chairperson may appoint a member of the Board as Acting-Chairperson to preside in his absence.
4. A quorum of the Board for all hearings, pursuant to the provisions of this bylaw, shall be three (3) or more members.
5. A decision of all or a majority of the board members present and voting at any hearing, pursuant to the provisions of this bylaw, shall be the decision of the board.
6. A member of the Board shall not receive compensation for his services as a member, but shall be paid reasonable and necessary expenses that arise directly out of the performance of his duties.
7. The City Clerk shall appoint a member of his or her staff, to act as Secretary to the Board of Variance. The responsibilities of the Secretary are:
  - (a) To receive notices of appeal;
  - (b) To notify the Chairperson of the Board of Variance of the receipt of a notice of appeal;
  - (c) To ensure that proper notification is given in compliance with this bylaw and relevant legislation;

**BL10136 amended paragraph (d):**

- (d) To prepare an agenda for the hearings, and distribute said agenda to the members of the Board, and to the Chief Building Official and Director of Development Services for the City of Kelowna; and
  - (e) To attend the hearings, record the minutes, and attend to the processing of any correspondence arising therefrom.
8. The procedures to be followed by the Board of Variance, including the manner in which appeals are to be brought and notices are to be given, are hereby established as follows:

**BL10136 amended section A:**

A. Meetings

- 1. A meeting of the Board of Variance shall be called when a complete notice of appeal is deposited with the Secretary to the Board.
- 2. A special meeting of the Board of Variance may be held at any time as determined by the Chairperson of the Board in consultation with the Secretary and all available members of the Board of Variance.

B. Notice of Appeal

- 1. Any person desiring to appeal to the Board shall file a written notice of appeal with the Secretary of the Board. The application shall include the following documents:
  - (i) the notice of appeal signed by the property owner, setting out in detail the grounds upon which the appeal is based and the relief sought. If the appeal is submitted by an agent, written authorization from the owner must accompany the appeal;
  - (ii) one complete set of construction drawings for presentation at the Board of Variance hearing plus one copy of each relevant page of the construction drawings reduced to 8½ inch by 11 inch size for circulation to the Board of Variance members prior to the hearing. The Secretary to the Board of Variance shall determine which page(s) are relevant to the appeal.
  - (iii) a site plan, 8½ inch by 11 inch in size, drawn to scale and detailing the proposed development with the siting distances from the respective property lines, as well as the location of all existing structures on the property with the siting distances from the respective property lines.
- 2. At the time of filing a notice of appeal, the applicant shall pay to the City of Kelowna an application fee as outlined in Development Application Fees Bylaw No. 8034, as amended or replaced from time to time.

Appeals withdrawn prior to the Secretary preparing the application for advertising and circulating to City staff and Board of Variance Members are eligible for a \$50.00 refund.

**BL10136 replaced section 3:**

- 3. Upon filing a complete notice of appeal with the Secretary, the Secretary shall set a date and time to meet with the applicant and the Chief Building

Official to review the appeal. The Chief Building Official and Secretary shall set the date and time for the Board to convene based on the nature of the application and the extent of internal circulation required of the application.

**BL10136 amended section 4:**

4. The Secretary shall forthwith notify the Chairperson of the Board of the appeal and shall prepare a public notice of appeal; such notice shall state the subject matter of the application and the time, date and place where the application will be heard.
5. The public notice of appeal to be published once, in a newspaper circulating in the municipality, at least five (5) days before the date of the hearing.

**BL10136 amended section 6:**

6. At least seven (7) days prior to the date of the hearing, the Secretary shall send by mail or otherwise deliver a copy of the aforesaid public notice to the following:
  - (i) the members of the Board of Variance;
  - (ii) the appellant;
  - (iii) agent for the appellant;
  - (iv) the registered owners, as shown on the last revised assessment roll and all tenants in occupation of all real property located adjacent to the parcel about which the appeal is being heard;
  - (v) the City Clerk;
  - (vi) the Chief Building Official; and
  - (vii) the Director of Development Services.
7. The Secretary, shall copy and circulate to Board members any correspondence submitted towards an appeal. The appeals and correspondence are available for viewing at the office of the City Clerk during regular office hours up to and including the date of the hearing.

**C. Conduct of Hearing**

1. The Board shall be convened by the Chairperson on the date of the hearing and at the time and place set out in the public notice of hearing.
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 an agent duly appointed in writing.
3. Any person represented, in accordance with subsection 8.C(2) above, whether or not also attending in person, shall be deemed to be a party attending the hearing.
4. Submissions at a hearing may be given orally or in writing.
5. The appellant shall be afforded the first opportunity to present his submissions and arguments, and thereafter, submissions and arguments shall be presented in such sequence as the chairperson may direct until all parties to the appeal have been afforded an opportunity to present their submissions and arguments.
6. The Board may adjourn the hearing from time to time and may review the property affected by the appeal and surrounding properties.

7. If the appellant fails to appear at the hearing or any adjournment thereof, the Board may proceed to decide the appeal in his absence.
8. 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. Except as otherwise provided for in this bylaw, meetings of the Board of Variance must be open to the public. A Board meeting or part of a Board meeting may be closed to the public if the subject matter being considered relates to one or more of the matters referred to in section 90 of the *Community Charter*.
10. Before a meeting or part of a meeting is closed to the public, the Board must state, by resolution, the fact that the meeting is to be closed, and the basis under Section 90 of the *Community Charter* on which the meeting or that portion of the meeting is to be closed.
11. The Secretary shall within seven (7) days of a hearing, send by mail or otherwise deliver the written decision of the Board to the appellant, and the Manager of Inspection Services, and Director of Planning and Development Services for the City of Kelowna.

D. Conflict of Interest

1. If a Board member attending a meeting of the Board considers that he or she is not entitled to participate in the discussion of a matter or to vote on a question in respect of a matter because the Board Member has a direct or indirect pecuniary interest in the matter or for any other reason, the member must declare this and state the general nature of why the member considers this to be the case.
2. After making the declaration, the Board member:
  - (i) must not take part in the discussion of the matter and is not entitled to vote on any question in respect of the matter;
  - (ii) must immediately leave the meeting or that part of the meeting during which the matter is under consideration; and
  - (iii) must not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter.
3. When the Board Member's declaration is made:
  - (i) the person recording the minutes of the meeting must record the member's declaration, the reasons given for it, and the times of the member's departure from the meeting room, and if applicable, the members return, and
  - (ii) the person presiding at the meeting must ensure that the member is not present at the meeting at the time of any vote on the matter.

4. In accordance with section 100(1) of the *Community Charter*, Sections 4.5.4 through 4.5.9 of Council Bylaw No. 9200, as amended from time to time, apply to meetings of the Board of Variance.

9. "Board of Variance Bylaw No. 5944-88" is hereby repealed.
10. This bylaw shall be cited for all purposes as "City of Kelowna Board of Variance Bylaw No. 9817".
11. This bylaw shall come into full force and effect and be binding on all persons as from the date of adoption.

Read a first time by the Municipal Council this 25<sup>th</sup> day of June, 2007.

Read a second time by the Municipal Council this 25<sup>th</sup> day of June, 2007.

Read a third time by the Municipal Council this 25<sup>th</sup> day of June, 2007.

Reconsidered, finally passed and adopted by the Municipal Council of the City of Kelowna this 9<sup>th</sup> day of July, 2007.

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Mayor

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City Clerk