

Board of Variance general process information**File: 3730-01**

The CVRD bylaw establishing the board of variance (BoV) (Bylaw No. 8) sets out the procedures to be followed by the BoV and requires that a record of all of its decisions be maintained and available for public review.

Mandate

The BoV may consider an application for a *minor* variance if the applicant alleges that compliance with any of the following would cause the applicant *undue hardship*:

1. A bylaw respecting the siting, dimensions or size of a building or structure, including the siting of a manufactured home in a manufactured home park; or
2. A prohibition on a structural alteration or addition to a building housing a non-conforming use; or
3. A requirement of a subdivision servicing bylaw; or
4. A requirement pertaining to an agricultural use or industrial use zone.

Note that the *Local Government Act* (LGA) does not define “minor” or “undue hardship”. Case law, however, has indicated that “hardship” is related to qualities of a particular site (i.e. topography) as opposed to general hardships in a given area, or hardships generated by the property owner. The determination of both “minor” and “hardship” ultimately reside with the BoV. The determination is application-specific: for example, a 4.0 meter reduction in required setback may be minor in one situation, but not in another.

Consideration

A BoV may order that a minor variance be permitted if the BoV has heard the applicant and any person notified under the statutory notice provisions of the LGA; has found that “undue hardship” would be caused to the applicant if compliance was required; and is of the opinion that the minor variance would not:

1. Result in inappropriate development of the site;
2. Adversely affect the natural environment;
3. Substantially affect the use and enjoyment of adjacent land;
4. Vary permitted uses and densities under the applicable bylaw;
5. Defeat the intent of the bylaw.

The BoV is restricted from making any order that would:

1. Be in conflict with a covenant registered on the property;
2. Deal with a matter addressed in a land use contract or a development permit, temporary use permit or tree cutting permit affecting the property;
3. Deal with a matter addressed in a phased development agreement;
4. Deal with a floodplain specification;
5. Apply to a property to which alterations are subject to heritage conservation permits or heritage revitalization agreements.

Orders

Note that a BoV is not empowered under the LGA to impose conditions on variances except in relation to the time in which construction of the affected building or structure must be completed, or “substantially started”. Orders of a BoV are not precedent setting. A decision of the BoV is final. There is no record in the Land Title Office of BoV decisions.

Date: August 2013