

**THE CORPORATION OF THE DISTRICT OF COLDSTREAM
BYLAW NO. 1639, 2013**

A BYLAW TO ESTABLISH A BOARD OF VARIANCE AND
SET OUT THE PROCEDURES FOR THE BOARD OF VARIANCE

WHEREAS the Council of the Corporation of the District of Coldstream has adopted a Zoning Bylaw;

AND WHEREAS the *Local Government Act* provides that, where a Council has adopted a Zoning Bylaw, there shall be established, by bylaw, a Board of Variance;

AND WHEREAS the *Local Government Act* provides that, in a bylaw establishing a Board of Variance, there shall be set out the procedures to be followed by the Board of Variance, including the manner in which appeals are to be brought to the Board of Variance and how notices to the Board of Variance are to be given;

NOW THEREFORE, the Council of the Corporation of the District of Coldstream, in open meeting assembled, enacts as follows:

TITLE

1. This bylaw may be cited for all purposes as the “District of Coldstream Board of Variance Bylaw No. 1639, 2013”.

REPEAL

2. The “District of Coldstream Board of Variance Bylaw No. 1067, 1992” and all amendments made thereto, are hereby repealed in their entirety.

INTERPRETATION

3. In this bylaw, unless the context otherwise requires, the following definitions shall apply:

“**Chief Administrative Officer**” means the person duly appointed to that position from time to time, by the Council of the District, and their designate;

“**Board**” means the persons duly appointed to the Board of Variance established under this bylaw pursuant to the provisions of the *Local Government Act*;

“**Building Official**” means the person duly appointed to that position from time to time by the Council of the District, and their designate;

“**Chair**” means that person who is elected to Chair the Board of Variance;

“**Corporate Officer**” means the person duly appointed to that position from time to time by the Council of the District, and their designate;

“Council” means the Council of the Corporation of the District of Coldstream;

“Director of Development Services” means the person duly appointed to that position from time to time by the District, and their designate;

“District” means the Corporation of the District of Coldstream;

“Municipal Hall” means the municipal office of the District of Coldstream, located at 9901 Kalamalka Lake Road, Coldstream, British Columbia;

“Secretary” means the person duly appointed to that position from time to time by the Corporate Officer, and their designate.

ESTABLISHMENT OF THE BOARD

4. The Board is established in accordance with the provisions of the *Local Government Act* and shall consist of three (3) members appointed by Council.
5. Each Board member shall hold office for a term of three (3) years or until a successor is appointed, but a person may be reappointed for a further term(s).
6. The Council may rescind an appointment to the Board at any time.
7. A member of the Board shall not receive compensation for their services as a member, but shall be paid reasonable and necessary expenses that arise directly from the performance of their duties, as determined from time to time by the Council.
8. The Board shall elect one of their members as Chair who may, from time to time, appoint a member of the Board as Acting Chair to preside in the absence of the Chair.
9. A quorum of the Board shall be any two (2) members, one of whom may be the Chair or Acting Chair.
10. The Corporate Officer shall designate a staff member to act as Secretary to the Board. The responsibilities of the Secretary are:
 - a. to receive notices of appeal;
 - b. to notify the Chair of the receipt of a notice of appeal;
 - c. to ensure that proper notification is given in compliance with this bylaw and relevant legislation;
 - d. to prepare an agenda for the hearings, and distribute said agenda in accordance with the provisions in this bylaw; and

- e. to attend the hearings, record the minutes, and attend to the processing of any correspondence arising therefrom.

JURISDICTION OF THE BOARD

- 11. The Board shall hear and determine appeals to the Board on the grounds and to the extent authorized under the applicable provisions of the *Local Government Act* or any successor legislation.

PROCEDURES OF THE BOARD

- 12. 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:

- a. Meetings

- i. Upon receipt of an appeal to the Board, the Secretary shall, in consultation with the Chair, establish a date for the Board to meet to consider the appeal.
- ii. A special meeting of the Board may be held at any time as determined by the Chair, in consultation with the Secretary and the other members of the Board.

- b. Notice of Appeal

- i. Any person desiring to appeal to the Board shall file a written "Notice of Appeal" with the Secretary. The appeal shall:
 - 1) be signed by the property owner, and set 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. At the time of filing a Notice of Appeal, the applicant shall pay to the District of Coldstream the applicable processing fee as outlined in the District's Miscellaneous Fees and Charges Bylaw, as amended or replaced from time to time.
- iii. A complete Notice of Appeal must be in the hands of the Secretary no later than twelve (12) days prior to the hearing date.
- iv. The Secretary, upon receiving a Notice of Appeal and having notified the Chair of the appeal, shall prepare an agenda. The agenda shall state the subject matter of the appeal and the time, date and place where the appeal will be heard.

- v. 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 agenda to the following:
 - 1) the members of the Board of Variance;
 - 2) the appellant and, if applicable, the agent for the appellant;
 - 3) the registered owners, as shown on the last revised assessment roll, and all occupants of all real property located adjacent to the parcel about which the appeal is being heard;
 - 4) and to each the Chief Administrative Officer, the Director of Development Services, the Building Official, and the Corporate Officer, and posted on the notice board at the Municipal Hall.
 - vi. Where the Board considers an appeal to be of broader community interest, it may, at its discretion, cause a wider public notice of the appeal to be given, in such a manner and to such an extent as the Board considers appropriate.
 - vii. The Secretary shall copy and circulate to Board members any correspondence submitted towards an appeal. The Secretary shall permit appeals and related correspondence to be available for viewing at the Municipal Hall during regular office hours up to and including the date of the hearing.
- c. Conduct of Hearing
- i. The Board of Variance shall be convened by the Chair on the date of the hearing and at the time and place set out in the agenda.
 - ii. The Board, in conducting the hearing of the appeal, shall:
 - 1) allow any person or body with interest in property within the District to be heard at the hearing and such person or body is entitled to be represented by an agent duly appointed in writing;
 - 2) allow submissions at a hearing which may be given orally or in writing;
 - 3) give the appellant the first opportunity to present submissions and arguments, and thereafter, submissions 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 submissions and arguments;

- 4) be entitled to adjourn the hearing from time to time and may review the property affected by the appeal and surrounding properties;
 - 5) be entitled to, on failure of the appellant to appear at the hearing or any adjournment thereof, proceed to decide the appeal in the appellant's absence;
 - 6) not 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;
 - 7) keep open to the public, meetings of the Board of Variance. A Board meeting or part of a Board meeting may or must 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*;
 - 8) prior to a meeting, or part of a meeting, being closed to the public, 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; and
 - 9) have the Secretary, within seven (7) days of a hearing, send by mail or otherwise deliver, the written decision of the Board to the appellant, and the Chief Administrative Officer, the Director of Development Services, the Building Official and the Corporate Officer, and such other person(s) as the Board considers appropriate.
- iii. The Chair may exclude from the place of the hearing of the appeal, after due warning, any person, including the applicant or his solicitor or agent, whose behaviour interferes with the conduct of the hearing.
 - iv. Any member who abstains from voting is deemed to have voted in favour of the motion.
 - v. 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 and shall be final.
 - vi. In all un-provided for cases in the conduct of a hearing of the Board, the laws and rules of "Robert's Rules of Order" shall be followed, except in such cases where its use would be inconsistent with this bylaw or any other enactment.

- d. Conflict of Interest
- i. In accordance with section 100 of the *Community Charter*, 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.
 - ii. After making the declaration, the Board member:
 - 1) must not take part in the discussion of the matter and is not entitled to vote on any question in respect of the matter;
 - 2) must immediately leave the meeting or that part of the meeting during which the matter is under consideration; and
 - 3) 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.
 - iii. When the Board member's declaration is made:
 - 1) the Secretary 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 member's return; and
 - 2) the Chair must ensure that the member is not present at the meeting at the time of any vote on the matter.

SEVERABILITY

13. If any section, subsection, paragraph, clause or phrase of this bylaw is, for any reason, held to be invalid by the decision of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this bylaw.

FORCE AND EFFECT

14. 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 this	12 th	day of	November	2013
READ A SECOND TIME this	12 th	day of	November	2013
READ A THIRD TIME this	12 th	day of	November	2013
ADOPTED this	25 th	day of	November	2013

Corporate Officer

Mayor

Local Government Act
Part 14 – Planning and Land Use Management

Division 15 — Board of Variance

Requirement for board of variance

- 536** (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.
- (2) A person is not eligible to be appointed to a board of variance if the person is
- (a) a member of the local government or the advisory planning commission, or
 - (b) an officer or employee of the local government.
- (3) Subject to subsections (4) and (5) and to the rules established under section 538 (2) (b) (i) [*rules for joint board of variance*], an appointment to a board of variance is for a 3 year period.
- (4) If no successor has been appointed at the end of the 3 year period referred to in subsection (3), the appointment continues until the time that a successor is appointed.
- (5) A local government may rescind an appointment to a board of variance at any time.
- (6) If a member of a board of variance ceases to hold office, the person's successor is to be appointed in the same manner as the member who ceased to hold office, and, until the appointment of the successor, the remaining members constitute the board of variance.
- (7) Members of a board of variance must not receive compensation for their services as members, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties.
- (8) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

Board of variance for municipality or regional district

- 537** (1) If the population of a municipality is 25 000 or less, the municipal board of variance is to consist of 3 persons appointed by the council.
- (2) If the population of a municipality is more than 25 000, the municipal board of variance is to consist of 5 persons appointed by the council.
- (3) A regional district board of variance is to consist of 3 persons appointed by the board.
- (4) The board of a regional district may establish one or more boards of variance for the regional district, but, if more than one board of variance is established, the bylaw establishing them must specify the area of the regional district over which each board of variance has jurisdiction and those areas must not overlap.

Joint board of variance

- 538** (1) Two or more local governments may satisfy the obligation under section 536 (1) [requirement for board of *variance*] by jointly establishing a board of variance by bylaw adopted by all participating local governments.
- (2) A bylaw under subsection (1) must
- (a) specify the area of jurisdiction for the board of variance, which may be all or part of the participating local governments, but must not overlap with the area of jurisdiction of any other board of variance, and
 - (b) establish rules for the following that apply in place of those established by sections 536 [*requirement for board of variance*] and 539 [*chair and procedures*]:
 - (i) appointment and removal of members of the board of variance;
 - (ii) appointment and removal of a chair of the board of variance.
- (3) As exceptions to section 537 [*local board of variance*], the following apply to a board of variance established under this section:
- (a) if a municipality is one of the participating local governments, the board of variance is to consist of
 - (i) 3 persons, if the population of the area of the jurisdiction of the board of variance is 25 000 or less, and
 - (ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25 000;
 - (b) if a municipality is not one of the participating local governments, the board of variance is to consist of 3 persons.

Chair and procedures for board of variance

- 539** (1) The members of a board of variance must elect one of their number as chair.
- (2) The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.
- (3) A bylaw establishing a board of variance must set out the procedures to be followed by the board of variance, including the manner in which appeals are to be brought and notices under section 541 [*notice of application for variance*] or 543 (2) [*notice of application in relation to early termination of land use contract*] are to be given.
- (4) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during regular office hours.

Application for variance or exemption to relieve hardship

540 A person may apply to a board of variance for an order under section 542 [*board powers on application*] if the person alleges that compliance with any of the following would cause the person hardship:

- (a) a bylaw respecting
 - (i) the siting, size or dimensions of a building or other structure, or
 - (ii) the siting of a manufactured home in a manufactured home park;
- (b) a subdivision servicing requirement under section 506 (1) (c) [*provision of water, sewer and other systems*] in an area zoned for agricultural or industrial use;
- (c) the prohibition of a structural alteration or addition under section 531 (1) [*restrictions on alteration or addition while non-conforming use continued*];
- (d) a bylaw under section 8 (3) (c) [*fundamental powers — trees*] of the [Community Charter](#), other than a bylaw that has an effect referred to in section 50 (2) [*restrictions on authority — preventing all uses*] of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person.

Notice of application for variance

- 541** (1) If a person makes an application under section 540, the board of variance must notify all owners and tenants in occupation of
- (a) the land that is the subject of the application, and
 - (b) the land that is adjacent to land that is the subject of the application.
- (2) A notice under subsection (1) must state the subject matter of the application and the time and place where the application will be heard.
- (3) The obligation to give notice under subsection (1) is satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

Board powers on application

- 542** (1) On an application under section 540, the board of variance may order that a minor variance be permitted from the requirements of the applicable bylaw, or that the applicant be exempted from section 531 (1) [*alteration or addition while non-conforming use continued*], if the board of variance
- (a) has heard the applicant and any person notified under section 541,
 - (b) finds that undue hardship would be caused to the applicant if the bylaw or section 531 (1) is complied with, and
 - (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;

- (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw.
- (2) The board of variance must not make an order under subsection (1) that would do any of the following:
- (a) 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;
 - (b) deal with a matter that is covered in a land use permit or covered in a land use contract;
 - (c) deal with a matter that is covered by a phased development agreement under Division 12 [*Phased Development Agreements*];
 - (d) deal with a flood plain specification under section 524 (3);
 - (e) apply to a property
 - (i) for which an authorization for alterations is required under Part 15 [*Heritage Conservation*],
 - (ii) for which a heritage revitalization agreement under section 610 is in effect, or
 - (iii) that is scheduled under section 614 (3) (b) [*protected heritage property*] or contains a feature or characteristic identified under section 614 (3) (c) [*heritage value or character*].
- (3) In relation to an order under subsection (1),
- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
 - (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,
- the permission or exemption terminates and the bylaw or section 531 (1), as the case may be, applies.
- (4) A decision of the board of variance under subsection (1) is final.

Exemption to relieve hardship from early termination of land use contract

- 543** (1) The owner of land subject to a land use contract that will be terminated by a bylaw adopted under section 548 [*early termination of land use contracts*] may apply to a board of variance for an order under subsection (5) of this section if
- (a) the owner alleges that the timing of the termination of the land use contract by the bylaw would cause the owner hardship, and
 - (b) the application is received by the board of variance within 6 months after the adoption of the bylaw.

- (2) If an application is made under subsection (1), the board of variance must notify all owners and tenants in occupation of
 - (a) the land that is the subject of the application, and
 - (b) the land that is adjacent to land that is the subject of the application.
- (3) A notice under subsection (2) must state the subject matter of the application and the time and place where the application will be heard.
- (4) The obligation to give notice under subsection (2) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.
- (5) On an application under subsection (1), the board of variance may order that, despite the termination of the land use contract and despite any zoning bylaw, the provisions of that land use contract continue to apply in relation to the applicant for a specified period of time ending no later than June 30, 2024, if the board of variance
 - (a) has heard the applicant, and
 - (b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.
- (6) An order under subsection (5) does not run with the land.
- (7) The board of variance must make a decision on an application under subsection (1) within 6 months after the application is received by the board of variance.
- (8) A decision of the board of variance under subsection (5) is final.

Extent of damage to non-conforming use property

- 544**
- (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 532 (1) [*end of non-conforming use protection if building of other structure is seriously damaged*] is in error.
 - (2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 532 (1) in its place.
 - (3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.