

## BOARD OF VARIANCE APPEAL PROCEDURES

Under the provisions of the *Local Government Act*, s. 540 the Council of the City of Kelowna has established a five (5) member Board of Variance that has the authority to order **MINOR** variances to certain provisions of City Bylaws.

The Board will hear appeals when a person feels that compliance with the City Bylaw respecting any of the following would cause them **UNDUE HARDSHIP**:

- a. the siting, dimension or size of a building or structure, or the siting of a manufactured home in a manufacture home park;
- b. tree protection bylaw;
- c. the prohibitions of a structural alteration or addition to a non-conforming structure; or
- d. servicing requirements in an area zoned for agricultural or industrial use.

On an application under (a), (b), (c) or (d) above, the Board may order that a **minor** variance be permitted from the requirements of the bylaw and the Board's decision is final.

The Board may also hear an appeal from an owner who feels the determination of a building inspector of the amount of damage to a non-conforming building or structure is incorrect and would cause **undue hardship**. If a building inspector determines that a non-conforming building is damaged or destroyed to the extent of 75% or more if its value about the foundation, the building cannot be repaired or constructed unless its use will conform to the zoning bylaw. A decision of the Board of Variance on the determination of a Building Inspector may be appealed to the Supreme Court.

Any person or body with interest in property within the City is entitled to be heard at a Board of Variance Hearing. If the appellant fails to appear at the hearing the Board may decide to hear the appeal in his absence.

The Board may grant **minor** variances once they have heard from the appellant and/or other adjacent property owners if it finds **undue hardship** and if the variance does not result in **inappropriate development** of the site, adversely affect the natural environment, **substantially affect** the use and enjoyment of adjacent land, **vary the permitted uses and densities or defeat the intent of the bylaw**.

**Undue hardship** limits the Board to considering only hardship that results from aspects of the site as opposed to those which are personal to, or generated by, the owner. Increased cost or loss of an amenity is **not** undue hardship. For example if a characteristic of the site is that bedrock protruding in the site's building area makes compliance with the siting provision difficult, the hardship created, though no fault of the property owner himself, is undue. If other properties in the zone do not have the protruding rock, they would not be subject to the same degree of hardship. The difficulty in determining what undue hardship is revolves around whether the hardship would have been a hardship for everyone. If compliance with the general setback regulations is difficult or expensive, but that is the case of all properties within the zone, there is **not** undue hardship. If a circumstance penalized on or only a few owners, it may be undue hardship.

**Minor variance** limits the scope of the variances that the Board may allow. Relaxation of a requirement of a bylaw cannot be substantial variation. This must be considered by the Board carefully as while the decision of the Board is final, the Courts may review a decision of a procedural or jurisdictional issue, including the degree of variance permitted.

**Inappropriate development** can be determined by comparing the proposed development with what exists on the surrounding properties. Appropriate development has been defined by the regulations in the zoning bylaw. If the surrounding development is appropriate under the zoning bylaw and the subject

of the appeal is comparable to the surrounding properties, the Board would have to determine why it would not be equally appropriate for subject property in order to rule it inappropriate.

**Substantially affect** means the Board must determine if the variance would have a significant impact on the surrounding properties. Simply having the approval of the surrounding property owners cannot be used solely to determine the impact. Ownership of property changes and what does not offend one person may offend another. The Board must determine the degree of impact.

**Vary uses and densities.** Variances to use or density are not permitted by the Board as they may only be made by Council through a zoning bylaw amendment which is subject to a public hearing. Variances that affect setbacks, the size and dimensions of a building, site coverage, or the floor space ratio could result in allowing the change in the density of a use. However, as long as any increase in density is within the limits in the zoning bylaw it is within the permitted density. For example, if relaxation of setbacks permits a larger apartment building to be constructed on a site, it must be clear in the Board's decision that the appellant is not permitted to increase the number of units over what is permitted in the bylaw as that would result in an increase in density.

**Defeat the intent of the bylaw.** When making their decision, the Board must, by reading the bylaw, try to determine what the Council intended to be the type of neighborhood established by the zoning bylaw regulations. Any variance granted by the Board cannot disrupt the basic harmony with other developments within a zone.

### **REQUIRED DOCUMENTS**

The Board of Variance meetings will convene once a meeting date is determined by the Chair and Secretary after a complete application is approved by the Office of the City Clerk.

Every notice of appeal MUST be accompanied by the following documents: See Board of Variance Bylaw No. 9817 on the City of Kelowna website, [www.kelowna.ca](http://www.kelowna.ca)

- Copy of the City of Kelowna Building Permit Application (If applicable).  
*Local Government Act, s.540;*
- Notice of Appeal Signed by the property owner (BL9817);
- Letter signed by the property owner if being represented by another agent (BL9817);
- One complete set of Construction Drawings (for presentation at the BOV meeting) (BL9817);
- One complete set of Construction Drawings reduced to 8½ inch by 11 inch in size for circulation to the Board Members (BL9817); and
- 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 location of all existing structures on the property with the siting distances from the respective property lines. (BL9817)

The owners and occupants of all properties surrounding the appeal will be notified, in writing, of the appeal and hearing date.

Any clarification of the procedures for processing an appeal to the Board of Variance should be directed to the Office of the City Clerk.

## BOARD OF VARIANCE APPLICATION FORM

### APPLICANT INFORMATION:

NAME: \_\_\_\_\_  
 FULL MAILING ADDRESS: \_\_\_\_\_  
 HOME PHONE: \_\_\_\_\_ WORK/CELL PHONE: \_\_\_\_\_  
 CONTACT PERSON (if applicable): \_\_\_\_\_

### OWNER INFORMATION (if different then Applicant Information):

NAME: \_\_\_\_\_  
 FULL MAILING ADDRESS: \_\_\_\_\_  
 HOME PHONE: \_\_\_\_\_ WORK/CELL PHONE: \_\_\_\_\_  
 CONTACT PERSON (if applicable): \_\_\_\_\_

Legal Description of Property:

Street Address of Property:

Existing Zone Designation:

I have attached the following to this application form:

- Application Fee \$1050.00
- Copy of the City of Kelowna Building Permit Application (If applicable). *Local Government Act*, s.540 (a) or (c)
- Plans and specifications of the proposed development as required by the City of Kelowna's Board of Variance Bylaw No.9817 (This bylaw can be found on the City of Kelowna website, [www.kelowna.ca](http://www.kelowna.ca))

Should there be any change in ownership or legal description of the property, I undertake to notify the Land Use Management Department and the City Clerks Legislative Coordinator immediately to avoid any unnecessary delay in processing the application.

I ACCEPT RESPONSIBILITY FOR DELAY CAUSED BY INCORRECT OR INSUFFICIENT SUBMISSION MATERIALS. PROCESSING BEGINS ONLY WHEN AN APPLICATION IS CERTIFIED AS COMPLETE BY THE LEGISLATIVE COORIDNATOR AND THE MANAGER OF INSPECTION SERVICES.

\_\_\_\_\_  
 Signature of Applicant

\_\_\_\_\_  
 Date

**OFFICE USE ONLY**

**Staff Checklist for Complete Applications:**

<input type="checkbox"/>	Copy of the City of Kelowna Building Permit Application (If applicable <i>Local Government Act, s.540</i> )
<input type="checkbox"/>	Notice of Appeal Signed by the property owner (BL9817)
<input type="checkbox"/>	Letter signed by the property owner if being represented by another agent (BL9817)
<input type="checkbox"/>	One complete set of Construction Drawings (for presentation at the BOV meeting) (BL9817)
<input type="checkbox"/>	One complete set of Construction Drawings reduced to 8½ inch by 11 inch in size for circulation to the Board Members (BL9817)
<input type="checkbox"/>	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 location of all existing structures on the property with the siting distances from the respective property lines (BL9817)

Application is:

Complete

Incomplete

Certified as Complete  
and Accepted By:

\_\_\_\_\_ Staff Person

\_\_\_\_\_ Date: