

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2831

A Bylaw to establish a Board of Variance

WHEREAS the Municipal Council of the Corporation of the Township of Esquimalt has adopted a Zoning Bylaw;

AND WHEREAS pursuant to section 899 of the *Local Government Act*, there shall be established by bylaw, a Board of Variance (hereinafter called the "Board");

NOW, THEREFORE, THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT, in open meeting assembled, enacts as follows:

1. **Citation**

This bylaw may be cited as the "Board of Variance Bylaw, 2014, No. 2831".

2. **Establishment**

2.1 The Board of Variance (the "Board") established by previous bylaws of the Township is continued and shall consist of 3 members appointed by Council.

2.2 Council may, by resolution, remove and appoint members to the Board at any time.

3. **Length of Tenure of Appointment**

3.1 Subject to subsections 2.2 and 3.2, the term of office for members of the Board is 3 years. Members may be reappointed for further terms, but a person may not serve as a member of the Board for a period longer than 6 consecutive years.

3.2 Council may appoint a successor to finish the remainder of a term of office of a member who resigns, is removed from office by Council, or is otherwise unable to complete the term of office.

3.3 If Council has not approved a successor before the end of a member's term of office, that member's term of office continues until Council appoints a successor for that member.

3.4 In the event of the death, resignation or removal from office of a member of the Board, the remaining members shall constitute the Board until the appointment of a successor. In the event of the death, resignation or removal of a Board member, quorum shall consist of at least 50% of the remaining Board members.

4. **Chair to Preside at Meetings**

4.1 At the first meeting each calendar year following the annual Council appointments, the members of the Board shall elect one of their number as chair.

4.2 The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.

- 4.3 The members of the Board may, by majority vote of all members present at a Board meeting, remove the Chair of the Board and elect a new Chair.

5. **Secretary**

5.1 Council shall appoint a Secretary to the Board.

5.2 The Secretary shall:

- a) receive applications for variances (“Applications”);
- b) notify the members of the Board of the receipt of Applications;
- c) advise the Board whether the Application for variance appears to be within the Board’s jurisdiction as set out in s. 901 of the *Local Government Act*;
- d) prepare, maintain and preserve the minutes and other business of the Board;
- e) ensure proper notification is given to all owners and tenants in accordance with the *Local Government Act* and this Bylaw; and
- f) maintain a record of all meeting minutes and decisions of the Board and make these records available to the public in the municipal office during normal business hours, with the exception of those meetings where provisions of s. 90 of the *Community Charter* apply.

6. **Meetings**

6.1 Subject to Section 6.2, a regular meeting of the Board shall be held each month as designated by the Board, unless otherwise determined by the Chair in consultation with the other members of the Board.

6.2 In the event that no Application is deposited with the Secretary at least 20 calendar days prior to the date of the next meeting, no regular meeting of the Board need be held for that month.

6.3 The Chair in consultation with the Secretary and other members of the Board shall determine whether a meeting shall be closed to the public pursuant to s. 90 of the *Community Charter*, or whether public notice of the meeting shall be published pursuant to subsection 7.4.

6.4 A meeting of the Board on a particular Application shall be held not more than 60 days after the date of receipt of the Application, unless an extension is allowed or requested in writing by the Applicant.

7. **Applications for Variance**

7.1 All Applications to be considered by the Board shall include:

- a) a fully completed Application to the Board in the form prescribed by the Development Services Director;

- b) a title search print for the subject land dated no more than 10 days prior to the date of Application. Where the land is owned by a corporation, a Corporate Search which shows the company's principals must be included;
 - c) a Surveyor's Certificate prepared by BCLS, where the requested variance is for existing development on the subject land;
 - d) a site plan which contains the following minimum information about the subject property:
 - i) location map, including neighbouring land uses;
 - ii) existing and proposed buildings in relation to legal property boundaries with dimensions and areas;
 - iii) significant physical features and topographic information, all existing watercourses and wetlands, and all Sensitive Ecosystem Information;
 - iv) north arrow and drawing scale;
 - v) geodetic elevation;
 - vi) roads and access.
 - e) an application fee in the appropriate amount:
 - i) for siting, size or dimensions of a building or structure: \$350
 - ii) for subdivision servicing requirements: \$500
 - iii) for structural alteration or addition for a non-conforming use: \$350
 - iv) for extent of damage as determined by the Building Inspector: \$450
- 7.2 The notice of the meeting shall state the subject matter of the Application and the date, place and time of the meeting and shall include a copy of the completed Application form.
- 7.3 Notice of all Applications to be heard by the Board will be sent out a minimum of 14 days prior to the date of the meeting at which the Application will be heard. Notices will be sent to:
- a) the individual applying for the variance (the "Applicant");
 - b) all other owners and occupants of the land that is the subject of the Application;
 - c) all owners and occupants of land that is adjacent to the subject land; and
 - d) if the Application is an appeal under s. 902 of the *Local Government Act*, the official whose interpretation is being appealed.
- 7.4 Public notice of the meeting, if ordered by the Board, shall be given by publication of a notice stating the time and place of the meeting and the general nature of the

Application in not less than 2 consecutive issues of a newspaper published or circulating in the Township, with the last such publication appearing not less than 3 days nor more than 10 days before the date of the meeting.

8. Conduct of Meeting

- 8.1 All meetings of the Board dealing with an Application shall be open to the public except those meetings or portions of meetings that are closed to the public under the provisions of Section 90 of the *Community Charter*.
- 8.2 Subject to s. 3.4, quorum for the meeting is any 2 members of the Board.
- 8.3 If a quorum is not present within 15 minutes after the scheduled time of the meeting, the Secretary must record the name of the member present, and such meeting is deemed to be cancelled.
- 8.4 Where a meeting has been cancelled due to lack of a quorum, the Secretary must so advise all Applicants and other persons in attendance, and must reschedule any pending Applications to a future meeting of the Board and provide notice of such rescheduling to the persons identified in subsection 7.3.
- 8.5 Any person or party with interest in property within the Township is entitled to be heard at the meeting and is entitled to be represented by a solicitor or by an agent duly appointed in writing.
- 8.6 Evidence at a meeting may be given orally or in writing.
- 8.7 The Board shall not hear representations or evidence except at a regularly constituted meeting.
- 8.8 No member of the Board shall discuss the merits of the Application with any person who is not a member of the Board, other than the Secretary, before the Board has reached a decision.
- 8.9 As each Application is heard, the Applicant shall have the first opportunity to present his or her evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the Chair may direct until all parties to the Application have been afforded an opportunity to present their evidence and arguments.
- 8.10 The Board is not bound by the legal or technical rules of evidence.
- 8.11 The Board may adjourn a meeting from time to time as the Board may deem advisable, to view the land or obtain additional information, and may reconvene the meeting without further notice if the time, date and location of the reconvened meeting is announced at adjournment.
- 8.12 If the Applicant or other persons notified do not appear at the meeting or any adjournment thereof, and have not advised the Secretary in advance that they wish to be heard at another date, the Board may proceed to decide the Application in their absence.

8.13 The Chair may exclude from a meeting, after due warning, any person, including an Applicant or his or her solicitor or agent, whose behaviour interferes with the conduct of the meeting.

9. **Decision**

9.1 The decision of the Board shall be by a majority of those members present.

9.2 The Secretary shall send by mail or otherwise deliver the written decision of the Board to the Applicant.

9.3 If an Application is allowed by the Board, and if a permit is required by a bylaw of the Township, the Applicant shall, within 180 days of the date of the decision, obtain the permit. If the Applicant does not obtain the permit within this period, the decision of the Board shall expire and be void.

9.4 If construction is not substantially started within 2 years of the Board decision date, the decision of the Board shall expire and be void.

10. **Repeal**

Bylaw No. 1885, cited as the "Corporation of the Township of Esquimalt Board of Variance Bylaw, 1988" and all amendments thereto are hereby REPEALED.

Read a first time by the Municipal Council on the 26th day of May, 2014.

Read a second time by the Municipal Council on the 26th day of May, 2014.

Read a third time by the Municipal Council on the 26th day of May, 2014.

RECONSIDERED, ADOPTED and FINALLY PASSED by the Municipal Council on the 9th day of June, 2014.

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER