

THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 4183  
(\*\*amended by Bylaw No. 4212)

A Bylaw to establish a Board of Variance

The Municipal Council of The Corporation of the District of Oak Bay, in open meeting assembled, enacts as follows:

**ESTABLISHMENT**

1. The Board of Variance established by Bylaw No. 3156 ("*Oak Bay Board of Variance Bylaw, 1976*") is hereby continued pursuant to Section 899 of the *Local Government Act, R.S.B.C., 1996, c.323*, as amended.

**INTERPRETATION**

2. In this Bylaw

"BOARD" means the Oak Bay Board of Variance;

"CHAIRMAN" means the Chairman of the Board of Variance;

"CORPORATION" means The Corporation of the District of Oak Bay;

"COUNCIL" means the Municipal Council of The Corporation of the District of Oak Bay;

"SECRETARY" means the Secretary to the Board of Variance appointed under this Bylaw.

**APPOINTMENTS**

3. The Board shall be constituted as follows:

- (a) one member appointed by Council to serve a term expiring December 31, 2003;
- (b) one member appointed by Council to serve a term expiring December 31, 2004;
- (c) one member appointed by Council to serve a term expiring December 31, 2005.

4. All subsequent appointments to the Board shall be for three year terms.

5. A vacancy on the Board arising from a cause other than the expiration of the term for which the member was appointed shall be filled by appointment of the Municipal Council for the un-expired portion of the term.

Transitional

6. Despite Section 3, all members of the Board who hold office at the time this Bylaw comes into force continue to be members of the Board until
- (a) the end of their term; or
  - (b) Council rescinds their appointment.

**SECRETARY**

7. Council shall appoint a Secretary to the Board of Variance who shall
- (a) receive notices of appeal;
  - (b) determine whether an appeal falls within the jurisdiction of the Board; and
  - (c) keep a record of all decisions of the Board.

**NOTICE OF APPEAL**

8. Any person desiring to appeal to the Board shall file a written notice of appeal with the Corporation. The notice shall
- (a) state the grounds upon which the appeal is based and the relief sought;
  - (b) where applicable, include scale drawings depicting the following:
    - (i) the location of all buildings and structures on the subject property (site plan);
    - (ii) all pertinent exterior building elevations;
    - (iii) the use of floor space; and
    - (iv) in an appeal under Section 901(1) of the *Local Government Act*, the portion of the proposed work that does not comply with a bylaw respecting the siting, dimensions or size of a building or structure;or, in the case of an appeal of a bylaw under Division 2 of Part 22 of the *Local Government Act*
    - (v) a site plan showing the location of all trees for which a cutting or removal permit has been denied; and
  - (c) be accompanied by a non-refundable application fee of Two Hundred Fifty Dollars (\$250.00).

(\*\*Bylaw 4212, adopted Jan.26, 2004)

9. A notice of appeal under Sections 901(1)(a), 901(1)(b), 901(1)(c), or 901(2) of the *Local Government Act* shall be filed only after
- (a) the denial of a formal application for a building permit by the Building Department of the Corporation; or

- (b) the denial of a tree cutting or removal permit by the Parks Department of the Corporation.
10. Where an appeal is based on a determination of value made pursuant to Section 911(8) of the *Local Government Act*, notice of appeal shall be filed no later than thirty days after the appellant has been advised in writing of such determination.
  11. The Secretary shall notify the Chairman and members of all appeals within the jurisdiction of the Board and shall arrange for a convenient date, time and place for the hearing of the appeal, which shall be convened not later than sixty days after receipt of notice of same.

### **NOTICE OF HEARING**

12. The Secretary shall, not less than five days before the hearing of an appeal under Section 901 of the *Local Government Act*, mail notice of the hearing to all owners and occupiers of land that is
  - (a) the subject of the appeal; or
  - (b) adjacent to the land that is the subject of the appeal.
13. Notice under Section 12 shall state the subject matter of the appeal and the date, time and place where the appeal will be heard.
14. Public notice of a hearing may be given where the Board so orders. Where ordered, such notice shall be given by publishing the date, time and place of the hearing, along with a statement of the subject matter of the appeal, in a newspaper or local periodical distributed at least weekly for circulation in the Municipality and containing both news items and advertising, with such publication to appear not less than three days nor more than ten days before the date of the hearing.

### **CONDUCT OF HEARING**

15. A quorum of the Board shall be two members. In the absence of the Chairman, and provided that he has not appointed an acting Chairman, the remaining members may appoint one or the other as an Acting Chairman for the duration of a hearing.
16. Any person with an interest in property within the Municipality is entitled to be heard at a hearing and may be represented by a solicitor or other agent duly appointed in writing.
17. Any person represented in accordance with Section 12, whether or not also attending in person, shall be deemed to be a party attending the hearing.
18. The Corporation, through an official appointed by the Municipal Council, is entitled to be heard as a party attending the hearing.

19. Evidence at a hearing may be given orally or in writing, but the Board shall not hear oral evidence except at a regularly constituted hearing of the subject matter of that evidence.
20. The appellant shall be afforded the first opportunity to present his evidence and arguments; thereafter evidence and arguments shall be presented in such sequence as the Chairman may direct until all interested parties have been afforded a reasonable opportunity to be heard.
21. The Board may adjourn a hearing and no further notice of the hearing is required if the date, time and place for its resumption are stated to those present at the time of adjournment.
22. If the appellant, having failed to notify the Secretary at least three days in advance that neither he nor a representative is able to attend, does not appear at the hearing, the Board may proceed to decide the appeal in his absence.

### **DECISION**

23. The decision of the majority shall be the decision of the Board, provided that where the votes of the members present, including the vote of the Chairman or Acting Chairman, are equal for and against allowing an appeal, the appeal shall be denied.
24. The Secretary shall send by mail or otherwise deliver to the appellant and the Building Department of the Corporation notice of the decision of the Board within seven days after that decision.
25. A decision of the Board may contain such conditions as it deems advisable under the circumstances.

### **TIME FOR RE-APPLICATION**

26. Where an appeal has been denied by the Board, no like appeal in respect of the same parcel or parcels of land shall be heard by the Board without leave within six months after the date of such denial, provided however that this Section shall not apply in the case of an order made pursuant to the *Judicial Review Procedure Act*, R.S.B.C., 1996, c.241.

### **GENERAL**

27. Subject to the provisions of this bylaw, the Board shall determine its own procedure.
28. Wherever the singular or masculine is used in this bylaw the same shall be construed to mean the plural or feminine or body corporate as the context may require.
29. The following Bylaws are hereby repealed:
  - (a) Bylaw No. 3539, "*Board of Variance Bylaw, 1986*";

- (b) Bylaw No. 3576, "*Board of Variance Bylaw Amendment Bylaw, 1987*"
- (c) Bylaw No. 3722, "*Board of Variance Bylaw Amendment Bylaw, 1992*"

30. This Bylaw may be cited as the "**BOARD OF VARIANCE BYLAW, 2003**".

READ a first, second and third time by the Municipal Council on

ADOPTED AND FINALLY PASSED by the Municipal Council on

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Mayor

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Municipal Clerk

Sealed with the Seal of The  
Corporation of the District of  
Oak Bay.