

VILLAGE OF PEMBERTON

BYLAW No. 678, 2011

A BYLAW TO ESTABLISH A BOARD OF VARIANCE

WHEREAS the Council of the Village of Pemberton 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 of applications to the Board of Variance are to be given;

NOW THEREFORE the Council of the Village of Pemberton, in open meeting assembled, enacts as follows:

1. CITATION

- 1.1 This Bylaw may be cited for all purposes as the “Board of Variance Bylaw, No. 678, 2011”.

2. ESTABLISHMENT

- 2.1 The Board of Variance is hereby established in accordance with the provisions of the *Local Government Act*.

3. INTERPRETATION

- 3.1. In this Bylaw:

“Board” means the Village of Pemberton Board of Variance.

“Chair” means the Chair of the Board of Variance.

“Village” means the Village of Pemberton.

“Council” means the Municipal Council of the Village of Pemberton.

“Secretary” means the Secretary to the Board of Variance appointed under this bylaw.

4. APPOINTMENT OF BOARD MEMBERS

- 4.1 The Board shall consist of three (3) members appointed by the Village of Pemberton Council.
- 4.2 The Board shall elect one of their members as Chair, who may appoint an acting Chair to preside in the absence of the Chair.
- 4.3 Each Board member shall hold office for a term of three (3) years or until a successor is appointed, but a member may be re-appointed for a further term(s).

5. SECRETARY OF THE BOARD

- 5.1 The Council shall appoint a Secretary to the Board of Variance.
- 5.2 The Secretary, in addition to receiving applications and preparing agendas on behalf of the Board, shall:
 - (a) establish with the Manager of Development Services the dates for meetings of the Board;
 - (b) circulate notices of applications in accordance with the requirements of the *Local Government Act*;
 - (c) attend meetings of the Board, record minutes of meetings and attend to the processing of any correspondence arising from Board meetings, including notification of Board decisions to applicants and Village staff; and
 - (d) maintain a record of all decisions and orders of the Board and ensure that the record is available for public viewing at the Municipal Hall during regular business hours.

6. MEETINGS

- 6.1 The Chair shall determine the meeting schedule for the Board.
- 6.2 A meeting of the Board shall be held within forty (40) days after the date of receipt of the notice of appeal unless an extension is allowed by written consent by the appellant.
- 6.3 The Board shall be convened by the Chair on the date of the hearing and at the time set out in the notice.
- 6.4 The Board of Variance shall hear representation made to the Board.

- 6.5 All meetings and deliberations of the Board shall be open to the public.

7. NOTICE OF APPEAL

- 7.1 The Board shall hear and determine applications as specified under Section 901 and Section 902 of the *Local Government Act*.

- 7.2 Any person desiring to be heard by the Board shall complete the application for an appeal to the Board of Variance and submit it to the Secretary using a Form attached hereto as Schedule "A". The application shall:

- a) state clearly the grounds upon which the appeal is based and relief sought;
- b) include such plans and technical information as the appellant or Secretary deems necessary to support the appeal including, but not limited to, the following:

- i) The location of all buildings and structures on the subject property (site plan);

- ii) A survey plan certified by a BC Land Surveyor;

- iii) A building elevation plan certified by a BC Land Surveyor;

- iv) Professional Engineer's report with respect to drainage, topography, geotechnical considerations, or other pertinent matters;

- v) In an appeal under Section 901(1) of the *Local Government Act*, that portion of the proposed work that does not comply with a bylaw respecting the siting, dimensions or size of a building structure;

- vi) A site plan showing the location of all trees for which a cutting or removal permit has been denied;

- vii) A subdivision servicing requirement under Section 938(1).

- c) Be accompanied by a non-refundable application fee in the sum of Two Hundred and Fifty Dollars (\$250.00).

- 7.3 A notice of appeal under Sections 901(1) (a), 901(1)(b), 901(1)(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 Inspector of the Village; or
 - b) the denial of a tree cutting or removal permit by the Village.
- 7.4 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 (30) days after the appellant has been advised in writing of such determination.

8. NOTICE OF HEARING

- 8.1 The Secretary shall, not less than seven (7) calendar days before the hearing of an appeal under Section 901 of the *Local Government Act*, mail or otherwise deliver notice of the hearing to:
- i) the members of the Board;
 - ii) the Applicant;
 - iii) the registered owner(s), as shown on the last revised assessment roll, and all occupiers of the subject property and all real property located immediately adjacent to the parcel which is subject to the appeal; and
 - iv) if an appeal is under Section 962(1)(b) of the *Local Government Act*, the Building Inspector whose determination is being appealed.
- 8.2 The notice of the hearing shall state the date, place, and time of the hearing and shall state the subject matter of the application.
- 8.3 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 (3) days nor more than ten (10) days before the date of the hearing.
- 8.4 The Secretary shall upon receipt of any notice of application or of any written evidence entered before the hearing including staff reports,

permit the same to be inspected at the Secretary's office during regular office hours.

9. CONDUCT OF HEARING

- 9.1 A quorum for the Board shall be two (2) members. In the absence of the Chair, and provided that he has not appointed an Acting Chair, the remaining members may appoint one or the other as an Acting Chair for the duration of the hearing.
- 9.2 Any person or body with interest in property within the Municipality is entitled to be heard at the hearing, and is entitled to be represented by a solicitor or by an agent duly appointed in writing.
- 9.3 Any person represented in accordance with Section 9.2, whether or not also attending in person, shall be deemed to be a party attending the hearing.
- 9.4 The Village, through an official appointed by the Municipal Council, is entitled to be heard as a party attending the hearing.
- 9.5 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.
- 9.6 No member of the Board shall 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.
- 9.7 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 Chair may direct until all parties to the application have been afforded a reasonable opportunity to be heard.
- 9.8 The Board may view the property affected by the appeal and surrounding properties.
- 9.9 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.
- 9.10 If the appellant, having failed to notify the Secretary at least three (3) 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.

10. DECISION

- 10.1 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 Chair or Acting Chair, are equal for and against allowing an appeal, the appeal shall be denied.
- 10.2 The Secretary shall, within seven (7) days of a decision, send by mail or otherwise deliver the written decision of the Board to the applicant, all persons who made representation at the hearing, and the local government Building Inspector.
- 10.3 The Secretary shall, within seven (7) days of the decision, enter that decision in the record maintained at the local government office.
- 10.4 A decision of the Board may contain such conditions as it deems advisable under the circumstances.

11. GENERAL

- 11.1 Subject to the provisions of this bylaw, the Board shall determine its own procedure.
- 11.2 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.

12. REPEAL

- 12.1 "The Corporation of the Village of Pemberton Board of Variance By-law, No. 308, 1991" and its amendments are hereby repealed.

READ A FIRST TIME this 1st day of November 2011.

READ A SECOND TIME this 1st day of November 2011.

READ A THIRD TIME this 1st day of November 2011.

RESCIND THIRD READING this 15th day of November, 2011

RE-READ A THIRD TIME this 15th day of November, 2011

RECONSIDERED AND FINALLY ADOPTED this 20th day of December, 2011.

MAYOR

CORPORATE OFFICER

BOARD OF VARIANCE APPLICATION CHEKLIST

Pre-Application

- Meet with the Manager of Development Services to review: bylaws, policies, regulations, and any special restrictions (Land Use Contract, development permits, restrictive covenants, etc.)
- Review driveway access, road widening, service connection, etc. with a Certified Professional Engineer.
- Have a clear understanding of the required variance being appealed to the Board.

Application

- Complete Board of Variance Application form (can be obtained from the Village office or online (www.pemberton.ca))
- Letter addressed to the Board (photos optional)
- Floor plan (for existing and proposed) showing space uses and door and window locations
- Elevation plans
- Certificate of Title (not older than 30 days) – may be obtained from the Village office for a \$20.00 fee
- Any documents registered on the title, covenants, easements, rights-of-ways, building schemes, or design guidelines
- Letter of Authorization (if required)
- Copy of the Strata Council's approval for the proposed structure (for strata-owned properties)
- A non-refundable application fee of \$250.00, payable to the Village of Pemberton
- Site Plan, showing requested variance
 - Lot measurements, width, length and area of lot
 - Building envelope (based on the zoning bylaw required setbacks)
 - Identify adjacent roads, lanes streets, etc.
 - Identify all tree locations, size and species
 - North arrow indicator

For All Existing Buildings

- Detailed dimensions of exterior width and length
- Area of each floor and number of floors

For All Proposed Buildings

- Detailed dimensions of exterior width and length
- Area of each floor and number of floors
- Exterior stairs
- Heights (showing requested variance, if height variance is requested)
- Area of accessory buildings
- Include distance from any buildings, decks, garages, carports and sheds to all lot lines

Lot Coverage (in percentages)

- Lot coverage allowed
- Lot coverage required for existing structure
- Lot coverage required for proposed structure
- Total lot coverage