

Overview

This guide is intended to provide information about the Board of Variance application and meeting process. The information is provided for convenience only and is not in substitution of applicable City bylaws or provincial or federal laws and regulations.

What is the Board of Variance?

The Board of Variance is an independent appeal body which consists of five persons appointed by Council in accordance with the British Columbia *Local Government Act* (the “Act”). The Board, which deals primarily with matters pertaining to the City’s Zoning Bylaw, hears and makes decisions on **minor** variances only regarding the siting, size and dimensions of buildings if compliance with the Bylaw will cause an “undue hardship”.

The Board cannot grant relaxations to land use, density limits, on-site parking or landscaping provisions of the Zoning Bylaw, nor does it replace the Building Permit process. Other technical requirements beyond the Board’s authority such as the BC Building Code regulations and standards will also need to be satisfied before a building permit is approved and issued.

Decisions made by the Board of Variance are final and cannot be appealed.

What is an “undue hardship”?

The Board’s authority is limited to hearing cases and granting minor variances based on undue hardship. There is no singular definition of undue hardship because each application has its own unique set of circumstances. The hardship must be one that would affect any owner of the property in question, and not related to the personal circumstances of the applicant.

Typically speaking, the hardship is a result of specific site and/or building characteristics or aspects (i.e. irregular shape or slope), as opposed to those which are personal or generated by the owner, such as a financial hardship. It is the applicant’s responsibility to clearly state the basis for the appeal in their application submission and demonstrate the “hardship” that would result from full compliance with the City’s Zoning Bylaw regulations.

How do I apply?

Before an application to the Board is made, you should review your plans and drawings with the City’s Planning Division staff, located at **7337 Welton Street**. Staff will inform you if a variance is required for building permit approval. Board of Variance application forms and other related materials, including a submission checklist, are available at the front service counter. We encourage you to engage the services of a building design professional to assist you in preparing your plan submission if you are unfamiliar with building permit processes and construction matters. It is critical to submit as much detailed relevant information as possible to assist staff and the Board in completing its review of your application.

To apply to the Board of Variance, you will be required to:

- a) submit a completed application form;
- b) submit a completed checklist with all the applicable documents; and
- c) pay the required non-refundable fee.

Applications must be signed by the property owner or a person authorized by the property owner. If the owner cannot attend the meeting and would like to appoint a person to represent them in their place, the owner must provide a document authorizing the representation. This authorization should be submitted to the Corporate Officer (info@mission.ca) as soon as possible after the application has been submitted.

What happens after I submit my application?

Each submitted application undergoes a technical review by Planning staff to confirm the requested variances. A brief report on each application is submitted to the Board and provided to the applicant prior to the meeting date.

Once the review is complete, notification is mailed to all owners and tenants of adjacent properties approximately 10 days in advance of the next available meeting. Adjacent properties include properties that are directly across the street as well as those at the rear, sides and corners of the subject property. The adjacent neighbours are invited to attend the public meeting of the Board or to submit written comments about the application. The Board encourages applicants to discuss their proposal with adjacent neighbours, as this allows for constructive input and identification of any concerns.

How often does the Board of Variance meet?

The Board meets on a monthly basis, except for August and December. If applications are not received, the Board does not meet. There must be a quorum of Board Members (3) for a meeting to proceed, therefore meeting dates and times may vary based on members' availability. Please contact the Legislative Services Division at 604.820.3700 if you have questions regarding the meeting schedule.

What happens at a Board of Variance meeting?

At an appointed time, the Board will meet to consider the application and receive verbal and written presentations from the applicant and neighbouring residents.

The Board meeting is open to the public, and must be conducted in accordance with the rules for procedural fairness. The meeting will cover each item listed on the Agenda and will be conducted according to the following procedures:

- The Chair will provide introductory remarks including an overview of the process to be used at the meeting.
- The Chair will read out the property address and the name of the owner(s) or representative(s).
- Any submission that has not been provided to the Board in advance of the hearing will be read into the record.
- The applicant will be asked to step forward and state their name and address and then provide an overview of the variance they are requesting, their undue hardship and the reasons they require the Board's approval.

- After the applicant has completed their presentations, the Board Members may seek clarification on the details of their application.
- Board members may seek clarification from City staff present at the meeting.
- The Chair will invite notified adjacent property owners/occupants to present any comments or questions about the proposal. All comments are to be addressed through the Chair, and all persons who wish to be heard will be asked to provide their name and address for the record.
- After all persons wanting to speak to the application have been heard, the open public discussion portion of the meeting will end. The Board will then deliberate the proposal. The applicant and notified adjacent property owners may remain in the meeting room and listen to the deliberations but cannot participate in any discussion at this stage.
- Once the Board has completed its deliberations, a motion will be made by a Board member and voted on by all Board members. A motion requires a majority vote to be passed. A tie vote results in the defeat of the motion. Please note, the Board may adjourn consideration of an application to another date/time should they feel that there is insufficient information provided to make a decision.
- Once a motion is passed, the decision is final and cannot be appealed. However, if the proposed construction is not substantially started within 2 years of the date the relaxation was granted by the Board, permission would be terminated, and a new approval would be required.

Is there any other information about the Board of Variance process?

Schedule A: Board of Variance + Development Variance Process Flowchart

Schedule B: Board of Variance Terms of Reference

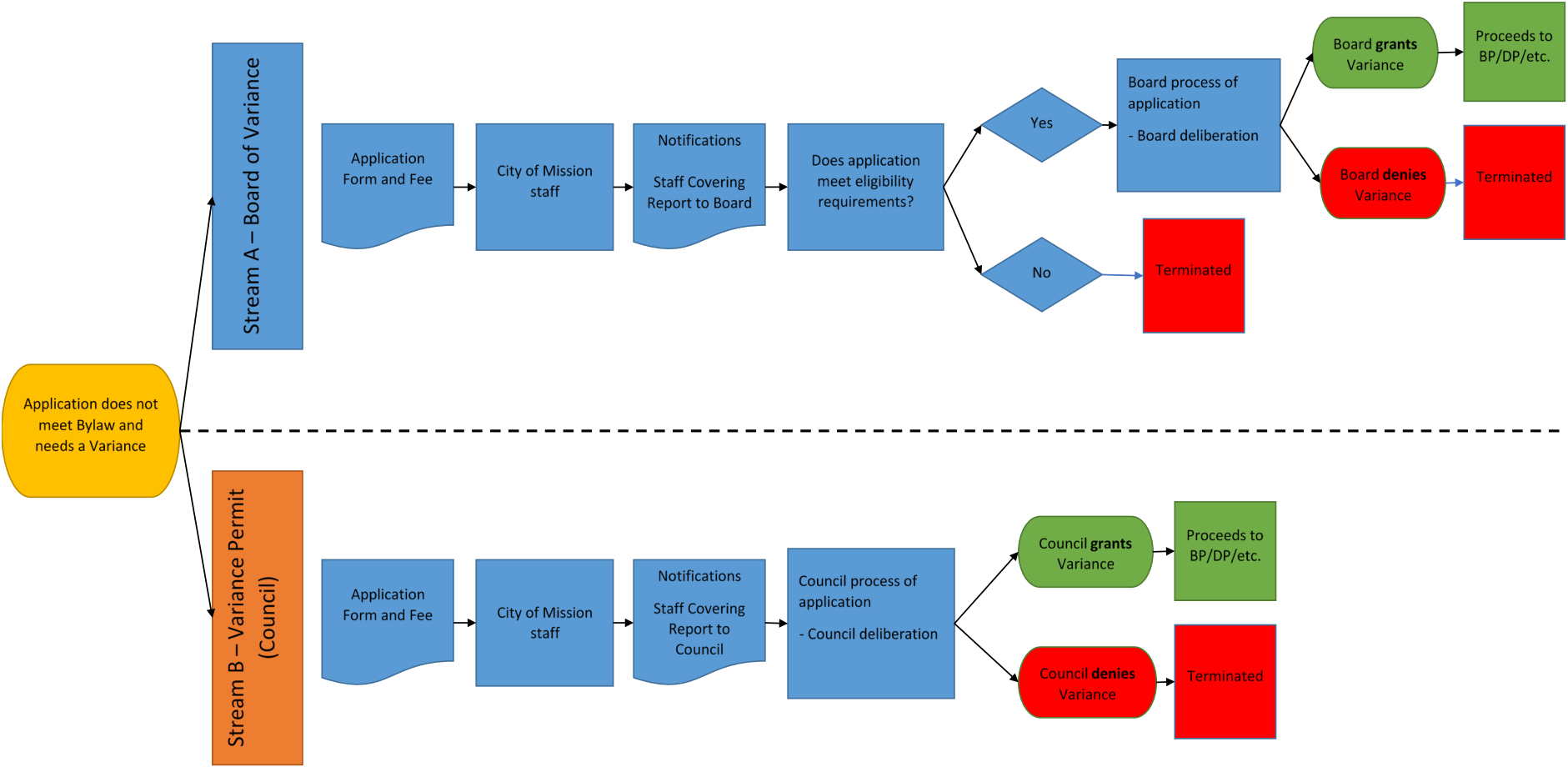
Schedule C: Board of Variance Establishment Bylaw

Contact Us

If you have additional questions about the nature of hardships, the Board of Variance application process, payment of fees or development applications in general, please contact the Planning Division at planning@mission.ca or **604.820.3748**

If you have questions about the Board of Variance administrative process, meeting schedules, agendas, and notifications, please contact the Legislative Services Division at info@mission.ca or **604.820.3700**

Schedule A: Board of Variance + Development Variance Process Flowchart



Schedule B: Board of Variance Terms of Reference

CITY OF MISSION

BOARD OF VARIANCE TERMS OF REFERENCE

Purpose

The purpose of these Terms of Reference is to briefly explain the purpose and responsibilities of the City of Mission's Board of Variance ("Board").

Establishment

Part 14, Division 15 of the *Local Government Act* ("Act") provides the establishment, procedures, and authority of a municipal Board of Variance.

Section 536 states that a local government that has adopted a zoning bylaw must, by bylaw, establish a Board of Variance. "District of Mission Board of Variance Establishment Bylaw 5390-2013" provides for the establishment of a Mission Board of Variance and sets out, in general terms, the procedures to be followed.

Board members cannot be members of an advisory planning commission, elected officials, or employees of the local government that appoints them. Board members are volunteer members; they do not receive remuneration for their work.

Procedures

Section 539 of the Act provides for the election of a chair, and vice-chair, and states that a procedures bylaw must set out the procedures to be followed by the Board. Mission's bylaw sets out the Board's procedures for the appeal process, application process (including notice) and the decision process. The Board must maintain a record of all its decisions available for public inspection. Board hearings are open to the public.

Authority

Section 540 provides the circumstances under which a person may apply to the Board for a variance or exemption to relieve hardship. A person may apply to the Board under this section if the person alleges that compliance with any of the following would cause the person hardship:

- a) a bylaw respecting the siting, size or dimensions of a building/structure or the siting of a manufactured home in a manufactured home park,
- b) a subdivision servicing requirement (provision of water, sewer or other system) in an area zoned for agricultural or industrial use,
- c) the prohibition of a structural alteration or addition while a non-conforming use is continued, or
- d) variance of certain tree protection requirements.

A Board may also hear appeals for an exemption to relieve hardship from early termination of a land use contract (section 543) or for an order to set aside the determination of a building inspector of the extent of structural damage to a non-conforming use property (section 544).

Section 542 sets out the powers of the Board. Upon hearing the applicant and any other persons notified, the Board may order that a minor variance be permitted, if it finds undue hardship, and the Board is of the opinion that 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 permitted uses and densities under the applicable bylaw or defeat the intent of the bylaw
- vary the application of an applicable bylaw in relation to residential rental tenure

The Board must not make order that would:

- a) be in conflict with covenant registered under section 219 of the *Land Title Act*,
- b) deal with a matter that is covered in a land use permit or a land use contract,
- c) deal with a flood plan specification, or
- d) apply to a property for which an authorization for heritage conservation alterations are required, a heritage revitalization is in effect, or that is a protected heritage property or contains a feature or characteristic identified to have heritage value.

If the Board grants an order they may also set a time within which the construction must be completed. If construction is not completed within the time limit stipulated in the order, the permission or exemption expires.

Decisions of the Board are final.

Schedule C: Board of Variance Establishment Bylaw

(Consolidated Bylaw as at April 22, 2022 – to be updated with new amendment before posting and public distribution)

DISTRICT OF MISSION BYLAW 5390-2013

A bylaw to establish a Board of Variance
for the District of Mission

WHEREAS it is deemed necessary and desirable to create, by bylaw, a Board of Variance as required under the *Local Government Act*; and

WHEREAS the Council for the District of Mission has adopted a Zoning Bylaw, being “District of Mission Zoning Bylaw 5050-2009” and amendments thereto; and

WHEREAS pursuant to Section 899 of the *Local Government Act*, there shall be established, by bylaw, a Board of Variance (the “Board”);

NOW THEREFORE, the Council for the District of Mission, in open meeting assembled, ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as “District of Mission Board of Variance Establishment Bylaw 5390-2013”.
2. “District of Mission Board of Variance No. 1351-1983” is hereby repealed.

ESTABLISHMENT OF BOARD

3. The Board shall consist of five (5) members appointed by Council.
4. Subject to Section 3, each member of the Board shall hold office for a term of three (3) years or until the member’s successor is appointed.
5. Council may rescind an appointment to the Board at any time.
6. A majority of the Board is a quorum. If quorum is not present within fifteen (15) minutes after the scheduled time of the hearing, the Secretary must record the names of the members present, and advise those present that such hearing is deemed to have been cancelled. The Secretary must reschedule any pending applications to a future Board hearing and then proceed in accordance with section 15.
7. 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.
8. Members of the Board shall not receive compensation for their services other than allowances for actual expenses reasonably and necessarily incurred in the performance of their duties. Council shall include in its annual budget the funds necessary to pay for the costs of the Board.
9. The members of the Board must elect one of their members as Chair on an annual basis. The Chair may appoint a member of the Board as Acting Chair to preside in the absence of the Chair.

APPEAL PROCESS

10. The Board shall meet, as required, to hear and determine applications as specified under Sections 901 and 902 of the *Local Government Act*. All hearings shall be open to the public.
11. Any person or organization with interest in property within the District of Mission is entitled to make either an oral or written submission or both at a Board hearing, and is entitled to be represented by a solicitor or by an agent. Proceedings at the hearing shall be informal and evidence need not be given under oath unless the Board so requires.
12. The appeal may not be heard and determined by the Board unless the appellant or appointed agent is present. The appellant or appointed agent must be afforded the first opportunity to make a submission to the Board, after which other submissions may be presented in the order determined by the Chair, until all persons or organizations with an interest in such application have been given an opportunity to be heard. The Board must not consider any oral or written submissions on an application except at the board hearing at which that application is to be considered.
13. Before reaching a decision on the application before it, the Board may require further information and may defer the hearing from time to time as the Board may deem necessary.
14. At the conclusion of the hearing of an appeal by the Board, the Board may forthwith render its decision or may adjourn the appeal and render its decision subsequently.

APPLICATION PROCESS

15. An application to the Board of Variance shall be made to the Secretary for the Board and include the following:
 - a) six (6) sets of the pertinent drawing and information to graphically show the proposed development or construction as deemed necessary by the Secretary for the Board; and
 - b) a letter from the Property Owner outlining the description of the property which is the subject of the application, the reasons for the application, contact information of the appellant or appointed agent, and the hardships to be endured if the bylaw specifications must be complied with; and
 - c) the applicable fee.
16. The Board shall not re-hear an appeal previously denied covering the identical grounds or principles upon which the Board has already rendered a decision.
17. The Secretary shall notify the Chair and Board members of a notice of application not less than seven (7) days prior to the date of the hearing of the application; and
 - (a) mail or otherwise deliver, a notice of the Board hearing to:
 - (i) the appellant;
 - (ii) the agent of the appellant (if any); and
 - (iii) the owners of the land which is the subject of the application; and
 - (iv) the owners of the land which is adjacent to land which is the subject of the application, including those across dedicated rights-of-way and highways
 - (v) in the case of a mobile home park, the owner of the mobile home park who shall post the notice of the Board hearing at the administration office on the premise of the subject mobile home park.

- (b) the Secretary must prepare an agenda of all applications to be considered at that hearing and mail or otherwise deliver a copy to each member of the Board.
18. The Secretary for the Board shall annually review the application fee to ensure expected administrative costs for the next year are adequately recovered.
19. Any person who wishes to exercise the right of application before the Board shall pay an application fee in accordance with the District of Mission Fees and Charges Bylaw, as amended, to cover administrative expenses incurred for notifications, scheduling, and hearing of an application.

DECISION PROCESS

20. The decision in writing of a majority of the quorum of the Board of Variance shall be the decision of the Board. In the event of the members being equally divided, the application shall be disallowed.
21. The Board Chair shall inform the Secretary for the Board of all decisions and any conditions to be fulfilled to comply with a decision.
22. The Secretary shall provide written notification to the Appellant of the decision made by the Board.
23. Decisions of the Board of Variance shall be made available for viewing in the Development Services Department at the District offices during normal office hours.
24. If any section, subsection 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.

READ A FIRST TIME this 2nd day of December, 2013

READ A SECOND TIME this 2nd day of December, 2013

READ A THIRD TIME this 2nd day of December, 2013

ADOPTED this 16th day of December, 2013

(original signed by Ted Adlem)
WALTER (TED) ADLEM, MAYOR

(original signed by Ken Bjorgaard)
KEN BJORGAARD, CHIEF ADMINISTRATIVE
OFFICER (Interim Corporate Officer)