

To: Chief Administrative Officer
From: Jennifer Russell, Corporate Officer
Subject: **Board of Variance Procedures**

Date: May 2, 2022

Recommendation(s)

1. That Board of Variance Establishment Bylaw 5390-2013 be amended by adding the following new section 13 and that all remaining sections be renumbered accordingly:
The Board, in its discretion, may:
 - a) inspect the property that is the subject of the application,
 - b) confer with a member of the City's Development Services Department when considering an application at a hearing,
 - c) hear from any witness or other persons whose evidence may assist the Board in reaching a decision, and said witnesses or other persons may be required to produce books, papers, documents or writings in their possession or under their control relating to the appeal,
 - d) request additional information from the applicant, at the applicant's expense.
2. That Board of Variance Establishment Bylaw 5390-2013 be amended by replacing all instances of "District of Mission" with "City of Mission".
3. That the amending bylaw be considered for first, second and third reading.

Purpose

The purpose of this report is to present additional information about the Board of Variance application process, and to propose an amendment to Board of Variance Establishment Bylaw 5390-2013 (the "Bylaw") to empower the Board to request additional information to aid in the decision-making process.

Background

The Legislative Services Division and Planning Division have been working together in recent months to establish a functioning Board of Variance as required under the *Local Government Act*. On March 7, 2022 Council adopted a Terms of Reference for the Board. Additional informational materials were to come forward once developed.

On April 4, 2022 Council appointed the required five volunteers to serve on the Board of Variance, and instructed staff to provide additional details regarding Board hearing procedures and application fees.

Discussion and Analysis

Variance Application Options

There are two approval processes available to property owners when a development application does not meet the requirements of a City bylaw and needs a variance to that bylaw to proceed: applying for a variance through Council, and applying for a variance through the Board of Variance. Each approval stream has a separate application and hearing process and each has a separate fee. An applicant has the option to go through one stream or the other.

It is important to note that the Board of Variance has limited authority on the type of applications it can rule on. To be heard by the Board of Variance an applicant must first only require a minor variance regarding the siting, size and dimensions of a building, and second must be able to demonstrate that complying with the bylaw would cause “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.

Additional details about the Board of Variance application and hearing process can be found in the Board of Variance Guide (Attachment A) appended to this report. This guide will be posted to the City’s new Board of Variance webpage and provided at front-counter inquiries.

Limits on Re-application

Both approval processes have limits on re-application (meaning re-submission of the same application), however there is always the option to submit a **new** application (meaning there is a difference in the details of the proposal) and pay the applicable fee.

The Board of Variance Establishment Bylaw states that 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.

An application denied by the Board cannot be brought before Council to be appealed or overturned. An applicant in this situation has the option to submit a new (different) variance application to Council and pay the applicable fee, or to seek a judicial review or apply to the Supreme Court for an appeal of the Board decision, depending on which section under the *Local Government Act* the application was initially brought.

Application Fees

The Board of Variance application fee is \$525 and is non-refundable.

Development variance application fees (the Council approval process) are as follows:

for Bylaw variance request, or to facilitate a subdivision, or	
for construction initiated without building permit issuance	\$1,985
for single family residential zones on an existing lot	\$1,035
for all other zones	\$1,265
for any second and subsequent requests	\$264

Development variance application fees are partially refundable at 90%, 50%, 20% and zero, depending on how far along in the process the application has progressed.

The fees for both application streams are meant to cover the administrative costs of the application (paper supplies and postage for mailing out notifications, staff time to prepare reports, notices, meeting support, etc.) The mailing costs would be similar for both application streams. The notification radius for the Council approval stream is 10 metres (30 feet) of the subject property. The notifications for the Board approval stream are sent to all the adjacent properties, rear, sides, corners and directly across a street. The work to liaise with applicants, collect fees and prepare reports would also be similar. The notable difference would be in the

review of the application documents themselves; Board applications are for minor variances due to hardship conditions and accordingly could be much smaller in scope.

It is recommended that the fees already established for each of the applications described above remain as is for now. Once the City has held a few Board meetings staff will have a better idea of the actual administrative costs, and will review the fee. It states in the Board of Variance Establishment Bylaw that the Secretary to the Board (the Corporate Officer) will annually review the application fee to ensure expected administrative costs are adequately covered.

Bylaw Amendments

Two important procedural questions arose during this project for which the City obtained legal advice:

- whether the Board could receive and consider information related to any previous application(s) brought before Council for the same property, and vice-versa,
- whether the Board was permitted under legislation to request additional information, such as professional reports, from an applicant as part of its decision-making process.

While the *Local Government Act* does not specifically mention what information a Board may consider, it does stipulate that a bylaw establishing a Board must set out the procedures to be followed. Mission's Bylaw does describe the procedures to be followed, however the wording is rather general regarding "further information" as noted in section 13 (see also the complete Bylaw in Schedule C to the attached Guide):

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.

The legal advice received in response to both of the questions noted above was to amend the Bylaw to empower the Board to request additional information as required. The following proposed amendment is based on the advice provided and on examples of other municipalities' Board of Variance bylaws.

That the following new section be added after existing section 12, and that all remaining sections be renumbered accordingly:

13. The Board, in its discretion, may:

- a) inspect the property that is the subject of the application,*
- b) confer with a member of the City's Development Services Department when considering an application at a hearing,*
- c) hear from any witness or other persons whose evidence may assist the Board in reaching a decision, and said witnesses or other persons may be required to produce books, papers, documents or writings in their possession or under their control relating to the appeal,*
- d) request additional information from the applicant, at the applicant's expense.*

One final note with respect to the Board requesting and receiving any additional information such as previous application documents or professional reports, is that the principles of natural justice and procedural fairness apply to any decision-making body. Accordingly, applicants will be made aware in advance of all the information that is being considered, be provided with

copies of all pertinent information, and be provided an opportunity to respond to the information supplied.

Financial Implications

There are no financial implications associated with this report. The administrative costs to support the Board of Variance functions are intended to be covered by the application fee. As noted above, it is entrenched in the Bylaw that staff will annually review the fee to ensure the costs are adequately covered.

Communication

The new guidance documents will be posted to the City's website and will become part of the initial intake and information provided to prospective developers by the Development Services staff.

Summary and Conclusion

The purpose of this report is to present additional information about the Board of Variance application process, and to propose an amendment to Board of Variance Establishment Bylaw 5390-2013 (the "Bylaw") to empower the Board to request additional information to aid in the decision-making process. Council has now appointed five volunteer members to the Board. A Board of Variance Guide has been developed and will be posted to the City's new Board of Variance webpage and provided at front-counter inquiries.

Report Prepared by: Jennifer Russell, Corporate Officer
Reviewed by: Barclay Pitkethly, Deputy Chief Administrative Officer
Approved for Inclusion: Mike Younie, Chief Administrative Officer

Attachment(s)

Attachment A: Board of Variance Guide