

DISTRICT OF UCLUELET

BYLAW NO. 1163, 2014

A Bylaw to establish the Board of Variance

WHEREAS the Council of the District of Ucluelet has adopted a Zoning Bylaw and is required to establish a Board of Variance;

AND WHEREAS the population of the District of Ucluelet is twenty-five thousand (25,000) or less;

AND WHEREAS the District can define the procedures for applications to and the conduct of the Board of Variance;

AND WHEREAS Council has authority to delegate matters to staff;

AND WHEREAS this table of contents is inserted for purposes of ease of reference only:

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NOW THEREFORE the Council of the District of Ucluelet in open meeting assembled hereby enacts as follows:

PART 1 – ADMINISTRATION AND INTERPRETATION

1. TITLE

1.1. This Bylaw may be cited for all purposes as "District of Ucluelet Board of Variance Bylaw No. 1163, 2014" or the "Board of Variance Bylaw".

- 1.2. All previous bylaws concerning the establishment of a board of variance, or zoning board of appeal, including the relevant portions of the District's Zoning Bylaw, are hereby repealed.

2. INTERPRETATION AND DEFINITIONS

- 2.1. In this Bylaw, the following terms have the following meanings:
 - (a) **"Board"** means the Board of Variance established under this bylaw;
 - (b) **"Council"** means the Council of the District of Ucluelet;
 - (c) **"District"** means the District of Ucluelet;
 - (d) **"District Office"** means the District of Ucluelet local government administration office, located at 200 Main Street, Ucluelet, British Columbia;
 - (e) **"Manager of Planning"** means the person employed or contracted in that capacity by the District and, in their absence, the Director of Corporate Administration for the District; and
 - (f) **"Regular Board Meeting Place"** means the District of Ucluelet Community Centre, located at 500 Matterson Drive, Ucluelet, British Columbia.
- 2.2. Any enactment referred to in this Bylaw is a reference to an enactment of British Columbia and its regulations, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to in this Bylaw is a reference to an enactment of the Council of the District of Ucluelet as amended, revised, consolidated or replaced from time to time.
- 2.3. Any section, subsection, sentence, clause or phrase of this Bylaw, which is for any reason held to be invalid by the decision of any Court of competent jurisdiction, may be severed from the balance of this Bylaw without affecting the validity of the remaining portions of this Bylaw.
- 2.4. Nothing contained within this Bylaw shall relieve any person from the responsibility to seek and comply with other applicable legislation.
- 2.5. The failure of Council or staff to observe the provisions of this Bylaw does not affect the validity of resolutions passed or decisions by Council or the Board otherwise in compliance with statutory requirements.

3. ADDITIONAL & ALTERNATE PROCEDURAL RULES

- 3.1. The following sections of the Council Procedure Bylaw No. 1166, 2014 apply to meetings of the Board of Variance with references to the presiding member, the body and other provisions modified as appropriate:
 - (a) Section 11 [Council Meetings by Electronic Means], at the discretion of the presiding member noting the cost and availability of electronic meeting facilities,
 - (b) Section 15 [Open Meeting Rule],

- (c) Section 16 [Minutes], except certification is by the Chair if the Corporate Officer is not in attendance,
- (d) Section 20 [Authority and Responsibility of the Mayor],
- (e) Section 32 [Notice of Committee Meetings], and
- (f) Section 33 [Committee Procedures].

For convenience only, the above sections are excerpted and adapted to the Board, in Schedule "A" to this Bylaw.

- 3.2. In circumstances not provided for under this Bylaw or applicable legislation, the most recent edition of Robert's Rules of Order, Newly Revised applies to the extent that those rules are:
 - (a) applicable in the circumstances; and
 - (b) not inconsistent with provisions of this Bylaw, the *Local Government Act*, or the *Community Charter*.
- 3.3. Any one or more of the procedures in this Bylaw, except those that are governed by statutory provisions, may be temporarily suspended by unanimous vote of the Board.

PART 2 – ESTABLISHMENT AND MEMBERS

4. ESTABLISHMENT OF THE BOARD OF VARIANCE

- 4.1. A Board of Variance having jurisdiction over the entire jurisdictional area of the District of Ucluelet is hereby established.

5. MEMBERSHIP & APPOINTMENT

- 5.1. The Board shall consist of three (3) members.
- 5.2. In accordance with the *Local Government Act*, employees, officers, Council members or members of an advisory planning commission may not be appointed as a member of the Board, but they may attend meetings in a resource capacity.
- 5.3. Board members shall be residents of the District of Ucluelet and/or a land owner within the District of Ucluelet.
- 5.4. The appointment of members to the Board shall be by resolution of the District Council in its sole and unfettered discretion.
- 5.5. Members of the Board shall be appointed for a three-year term; such term beginning on the date of appointment and ending on the third anniversary.
- 5.6. Members of the Board may or may not be reappointed for a further term or terms.
- 5.7. Upon resignation, death or removal of a member during his or her term of office, the District Council may by resolution appoint a successor who shall hold office during the remainder of the term of the former member.
- 5.8. Board members serve at the will of Council and may be removed, individually or collectively, without notice or cause.

6. CHAIR & SECRETARY

- 6.1. The Board shall choose, at the first meeting in each and every year, a Chair from among its appointed members.
- 6.2. In the event the Chair is not in attendance within 15 minutes after the time appointed for a meeting, and has not previously appointed another member acting chair to preside in the absence of the Chair, the Board shall appoint an Acting Chair for the duration of the meeting.
- 6.3. The Chair may be removed from the position as Chair by a majority vote of the District Council.
- 6.4. The Manager of Planning or, another person designated by him or her, shall act as Secretary to the Board.
- 6.5. The Secretary shall be responsible for:
 - (a) Receiving applications to the Board;
 - (b) Establishing the date of Board meetings;
 - (c) Issuing written notice of Board meetings;
 - (d) Giving written notice of any decision of the Board to the Applicant; and
 - (e) Advising District Council of the Board's decisions.

7. EXPENSES

- 7.1. Members of the Board shall serve without remuneration except for any reasonable and necessary expenses that arise directly out of the performance of their duties and paid at rates:
 - (a) provided for in the District remuneration and expenses bylaw, or
 - (b) at the discretion of the Corporate Officer, if not addressed by bylaw.
- 7.2. Members may be reimbursed for necessary travel expenses within District boundaries only, but are not reimbursed for travel to or from the District.

PART 3 – APPLICATIONS

8. APPLICATIONS

- 8.1. An owner of land interested in a variance or other decision within the jurisdiction of the Board of Variance must make written application in accordance with this Bylaw.
- 8.2. All applications must:
 - (a) be made by the owner of land affected, or by a person authorized in writing by the owner;
 - (b) be made in the form:

- (i) attached in a Schedule to this Bylaw, or
 - (ii) where no form is attached, on the form prescribed by the Manager of Planning who is hereby delegated authority to prescribe such forms;
 - (c) be made in writing to the Manager of Planning;
 - (d) be accompanied by an application fee of \$250, or other greater or lesser amount specified in a fees bylaw; and
 - (e) be accompanied by the information requested:
 - (i) on the form;
 - (ii) in this Bylaw; and
 - (iii) in Appendix A of the Official Community Plan, where the land contains a riparian area.
- 8.3. An applicant must provide the following information, but only insofar as relevant to the variance or other decision requested:
- (a) a written statement outlining the proposal in full including description of:
 - (i) the purpose of and reasons in support of the requested variance or other decision;
 - (ii) an explanation of the undue hardship that would be caused if the variance or other decision is not granted;
 - (iii) the existing and proposed use(s) of the land, including its building and structures, and the impact of the variance or other decision on those uses and the existing uses of adjacent land;
 - (iv) the existing and proposed Works and Services for the land, including its buildings and structures; and
 - (v) any consultations the Applicant has undertaken or proposes to undertake with neighbours and the community.
 - (b) title search made within 15 days of the date of Application, along with copies of all non-financial encumbrances (e.g. covenants, statutory rights of way, easements, etc);
 - (c) three (3) full sized copies and one clearly legible 8.5 x 11" reduction of a Site Plan, drawn to scale, showing:
 - (i) the variance or other decision;
 - (ii) site context;
 - (iii) topographical and geographical features on the site;
 - (iv) all buildings and structures, including roof structures;
 - (v) density, floor area ratio, lot coverage and other regulations of applicable OCP designation and Zoning Bylaw zones;
 - (vi) parking and loading areas;

- (vii) Works and Services, and street lighting;
 - (viii) areas subject to covenants, statutory rights of way and easements;
 - (ix) sidewalks, streets, lanes, highways and adjacent land uses where affected;
 - (x) existing and proposed landscaping including all sizes, species and planting locations on the site plan; and
- 8.4. If there is a change of ownership of a parcel of land that is the subject of an application pursuant to this Bylaw, the Applicant must provide an updated title search and written authorization from the new owner prior to proceeding further with the Application.

9. PROCESSING OF APPLICATION

- 9.1. The Manager of Planning may, but is not obligated to:
- (a) circulate the Application for comment, whether internally or to outside agencies as deemed appropriate; and
 - (b) prepare a report to the Board regarding the variance or decision requested.
- 9.2. The Secretary shall schedule a meeting of the Board of Variance as soon as is practicable, and in no event later than forty-five (45) days, after receipt of a complete Application, accompanied by required information and application fee.
- 9.3. The Secretary shall give Notice of the Board meeting date in accordance with statutory requirements. [See Schedule A.]

10. ABANDONED & EXPIRED APPLICATIONS

- 10.1. Every Application that has outstanding information requirements for a period greater than nine (9) months is deemed to have been abandoned, with fees forfeited.
- 10.2. Every Application not decided within eighteen (18) months of the date of Application is deemed to have expired, with fees forfeited.
- 10.3. All Applications abandoned or expired shall be considered closed, and shall require a new Application, with new fee.

11. RE-APPLICATION

- 11.1. A Board decision is final and cannot be reconsidered or considered anew.
- 11.2. No application shall be made for the same variance or other decision within twelve (12) months of a previous decision.

PART 4 – BOARD MEETINGS AND DECISIONS

12. MEETINGS

- 12.1. Meetings of the Board shall be called by the Secretary of the Board as reasonably required to deal with variance applications.
- 12.2. Unless notice is otherwise given, the Board shall meet at the Regular Board Meeting Place.
- 12.3. A majority of the Board shall be deemed to be a quorum.
- 12.4. In the event that a quorum is not present within 30 minutes after the time appointed for a meeting, the names of those present will be recorded and the meeting shall be adjourned to the same time on the following day or to such other date and time as determined by the Secretary.

13. PROCEDURE AT MEETINGS

- 13.1. The Chair, or in the Chair's absence, the Acting Chair, shall preside at the Hearing and decide all questions of procedure and order, in accordance with this Bylaw, and other District Bylaws as appropriate.
- 13.2. Any person or body with an interest in the Application within the District is entitled to be heard at the meeting and is entitled to be represented by an agent duly appointed in writing.
- 13.3. Oral evidence shall only be given at the hearing of the subject matter of the Application.
- 13.4. The applicant shall be afforded the first opportunity to present the Application for a variance or other decision and his/her evidence and arguments.
- 13.5. Thereafter, evidence and arguments shall be presented in such sequence as the Chair may direct until all interested persons have been afforded an opportunity to be heard.
- 13.6. If the applicant or other person notified does not appear at the Board meeting and has not advised the Secretary in advance that they wish to be heard at another date, the Board may proceed to decide the application in his or her absence.
- 13.7. The Board may adjourn the meeting from time to time and may reconvene without further notification if the time, date and place of reconvening is announced at the adjournment.

14. VOTING & DECISIONS

- 14.1. In accordance with the *Local Government Act*, the Board may impose conditions on its orders, including:
 - (a) setting a time within which construction must be substantially started;
 - (b) setting a time within which the construction of the building, structure or

manufactured home park must be completed.

- 14.2. A member present at the meeting at the time of the vote who abstains from voting is deemed to have voted in the affirmative.
- 14.3. If the votes of the members present at the meeting at the time of the vote are equal for and against, the question is defeated and the Chair must declare the application denied. A tie-vote means the application is denied.
- 14.4. Board decisions shall be recorded in the minutes of Board meetings.
- 14.5. The Secretary shall provide written notice of a Board decision to:
 - (a) the Applicant; and
 - (b) District Council.


READ A FIRST TIME this 11th day of March, 2014.

READ A SECOND TIME this 11th day of March, 2014.


READ A THIRD TIME this 11th day of March, 2014.

ADOPTED this 8th day of April, 2014.

A TRUE AND CORRECT COPY of "District of Ucluelet Board of Variance Bylaw No. 1163, 2014".




Bill Irving
Mayor



Andrew Yeates
Corporate Officer

THE CORPORATE SEAL of the
District of Ucluelet was hereto affixed
in the presence of:



Andrew Yeates
Corporate Officer

SCHEDULE "A"
EXCERPTS FROM COUNCIL PROCEDURE BYLAW
[Adapted for use by Board of Variance]

11. COUNCIL [*BOARD*] MEETINGS BY ELECTRONIC MEANS

- 11.1. In accordance with section 128 of the *Community Charter*, Council [*Board*] is hereby authorized to:
- (a) conduct Council [*Board*] meetings by electronic means, including via teleconference or video-conference;
 - (b) permit the participation of a member of Council [*the Board*] by electronic means, including via teleconference or video-conference, provided the member is unable to attend in person.
- 11.2. Such participation by Council [*Board*] members is only available:
- (a) if the member is too ill to attend in person or is outside the District's municipal boundaries,
 - (b) for up to two (2) members per meeting, and
 - (c) for up to four (4) meetings per year, per member.
- 11.3. If the Mayor [*Chair*] participates electronically in a manner that does not include visual means to watch all members of Council [*the Board*], the meeting must be chaired by the member designated to act in place of the Mayor [*Chair*] for that meeting.
- 11.4. In the event of a failure of technology, the member(s) participating electronically will be deemed to have left the meeting.

15.OPEN MEETING RULE

- 15.1. Council [*Board*] meetings must be open to the public, except as provided for under section 90 of the *Community Charter*.
- 15.2. Before holding a meeting or part of a meeting that is to be closed to the public, Council [*the Board*] must state, by resolution passed in open meeting,
- (a) the fact that the meeting or part is to be closed, and
 - (b) the basis under the applicable subsection of section 90 of the *Community Charter* on which the meeting or part is to be closed.

32.MINUTES

- 32.1. Minutes of Council [*Board*] meetings must be:
- (a) legibly recorded,
 - (b) certified as correct by the Corporate Officer [*Chair, or Secretary*], and
 - (c) signed by the Mayor [*Chair*] at the meeting at which they are adopted.

- 32.2. The minutes of a previous meeting may be corrected, but not debated or reflected upon, at the time they are considered for adoption.
- 32.3. Once adopted, minutes of the open portion of Council [*Board*] meetings must be made available for public inspection at the District Office during its regular office hours.
- 32.4. Minutes of the portion of Council [*Board*] meetings closed pursuant to Section 90 of the *Community Charter* must not be made available to the public unless:
 - (a) resolved by Council, where such resolution is not inconsistent with applicable legislation;
 - (b) released pursuant to the *Freedom of Information and Protection of Privacy Act*; or
 - (c) otherwise required to be released by an enactment or Court of competent jurisdiction.
- 32.5. Minutes of the portion of Council [*Board*] meetings closed pursuant to Section 90 of the *Community Charter* that are released further to the previous section must be received for information, without debate, at a subsequent Council [*Board*] meeting.

32. POWERS & DUTIES OF THE MAYOR [*CHAIR*]

- 32.1. The Mayor [*Chair*] must recognize members desiring to speak in the order in which the members indicate their request, preference being given to the mover and to the seconder should either or both wish to speak.
- 32.2. When the Mayor [*Chair*] desires to speak any member desiring to speak at the same time shall cede to the Mayor [*Chair*].
- 32.3. Debate is closed by the Mayor [*Chair*] when in the Mayor's [*Chair's*] opinion there has been adequate debate.
- 32.4. The Mayor [*Chair*] must preserve order and decide points of order and questions of privilege that may arise, subject to an appeal under section 132 of the *Community Charter*.

32. NOTICE OF COMMITTEE [*BOARD*] MEETINGS

Regular Committee [*BOARD*] Meetings

- 32.1. At least seventy-two (72) hours before a regular meeting of a Committee [*Board*], the Committee [*Board*] Chair must give notice of the time, place and date of the meeting by posting a notice at the Public Notice Posting Place. [*NOTE: Modified to be the responsibility of the Secretary.*]
- 32.2. At least twenty-four (24) hours before a regular meeting of a Committee [*Board*], the Committee [*Board*] Chair must make the agenda available by [*NOTE: Modified to be the responsibility of the Secretary.*]:
 - (a) leaving copies of the agenda at the reception counter at the District Office for the purpose of making them available to members of the public; and

- (b) leaving one copy for each Committee [*Board*] member at the place to which the member has directed notices be sent.

Special Committee Meetings

- 32.3. At least twenty-four (24) hours before a special meeting of a Committee [*Board*], the Committee [*Board*] Chair must give notice of the time, place and date of the meeting by posting a notice at the Public Notice Posting Place.

33.COMMITTEE PROCEDURES

- 33.1. The rules of the Council [*Board*] procedure must generally be observed during committee [*Board*] meetings,
 - (a) so far as is possible in the determination of the Chair recognizing the more informal nature of such committee,
 - (b) except strict compliance is required for sections specifically referenced in this Part.
- ~~33.2. Council members attending a meeting of a committee, of which they are not a member, may participate in the discussion only with the permission of a majority of the committee members present. [Not applicable]~~
- 33.3. A motion made at a meeting of a committee [*Board*] is not required to be seconded.