



VOLUNTEER VACANCY

The District of Lantzville is seeking a volunteer to serve, without remuneration, to fill a vacancy on the **Board of Variance** for a three-year term.

The three-member Board is responsible to provide independent adjudication of appeals (applications by property owners), primarily for minor variances to the land use bylaw regarding siting, size and dimensions of structures if compliance would cause an undue hardship, and other issues (see *Local Government Act* (LGA) sections 536-544). The Board meets at the Municipal Hall at 4:00 pm on the second Thursday of the month, as necessary, if an application is received. (One meeting was held during 2014-2018, and one each year 2019, 2020, 2021 and 2023).

A copy of the Notice of Volunteer Vacancy and regulations that outline the structure, duties and responsibilities of the Board (Bylaw No. 10 & *Local Government Act* excerpt) and Council Committee System Policy No. 3000-12 (including volunteer application form) are available at the Municipal Hall or www.lantzville.ca.

To be considered for appointment by Council to the Board of Variance, please submit a Committee Volunteer Application form, **no later than 4:00 pm, Friday, June 30, 2023** to: Director of Corporate Administration, District of Lantzville, 7192 Lantzville Road, PO Box 100, Lantzville, BC V0R 2H0 or tcoates@lantzville.ca.

District Website, Bulletin Board: Thursday, June 8, 2023
Nanaimo News Bulletin: Wednesday, June 14 & 21, 2023

File: 3730.01

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Part 14: Division 15 – Board of Variance

Requirement for board of variance

536. (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.
- (2) A person is not eligible to be appointed to a board of variance if the person is
- (a) a member of the local government or the advisory planning commission, or
 - (b) an officer or employee of the local government.
- (3) Subject to subsections (4) and (5) and to the rules established under section 538 (2) (b) (i) *[rules for joint board of variance]*, an appointment to a board of variance is for a 3 year period.
- (4) If no successor has been appointed at the end of the 3 year period referred to in subsection (3), the appointment continues until the time that a successor is appointed.
- (5) A local government may rescind an appointment to a board of variance at any time.
- (6) If a member of a board of variance ceases to hold office, the person's successor is to be appointed in the same manner as the member who ceased to hold office, and, until the appointment of the successor, the remaining members constitute the board of variance.
- (7) Members of a board of variance must not receive compensation for their services as members, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties.
- (8) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

RS2015-1-536 (B.C. Reg. 257/2015).

Board of variance for municipality or regional district

537. (1) If the population of a municipality is 25 000 or less, the municipal board of variance is to consist of 3 persons appointed by the council.
- (2) If the population of a municipality is more than 25 000, the municipal board of variance is to consist of 5 persons appointed by the council.
- (3) A regional district board of variance is to consist of 3 persons appointed by the board.
- (4) The board of a regional district may establish one or more boards of variance for the regional district, but, if more than one board of variance is established, the bylaw establishing them must specify the area of the regional district over which each board of variance has jurisdiction and those areas must not overlap.

RS2015-1-537 (B.C. Reg. 257/2015).

Joint board of variance

538. (1) Two or more local governments may satisfy the obligation under section 536 (1) *[requirement for board of variance]* by jointly establishing a board of variance by bylaw adopted by all participating local governments.
- (2) A bylaw under subsection (1) must
- (a) specify the area of jurisdiction for the board of variance, which may be all or part of the participating local governments, but must not overlap with the area of jurisdiction of any other board of variance, and

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- (b) establish rules for the following that apply in place of those established by sections 536 *[requirement for board of variance]* and 539 *[chair and procedures]*:
 - (i) appointment and removal of members of the board of variance;
 - (ii) appointment and removal of a chair of the board of variance.
 - (3) As exceptions to section 537 *[local board of variance]*, the following apply to a board of variance established under this section:
 - (a) if a municipality is one of the participating local governments, the board of variance is to consist of
 - (i) 3 persons, if the population of the area of the jurisdiction of the board of variance is 25 000 or less, and
 - (ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25 000;
 - (b) if a municipality is not one of the participating local governments, the board of variance is to consist of 3 persons.
- RS2015-1-538 (B.C. Reg. 257/2015).

Chair and procedures for board of variance

- 539.** (1) The members of a board of variance must elect one of their number as chair.
- (2) The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.
 - (3) A bylaw establishing a board of variance must set out the procedures to be followed by the board of variance, including the manner in which appeals are to be brought and notices under section 541 *[notice of application for variance]* or 543 (2) *[notice of application in relation to early termination of land use contract]* are to be given.
 - (4) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during regular office hours.
- RS2015-1-539 (B.C. Reg. 257/2015).

Application for variance or exemption to relieve hardship

- 540.** A person may apply to a board of variance for an order under section 542 *[board powers on application]* if the person alleges that compliance with any of the following would cause the person hardship:
- (a) a bylaw respecting
 - (i) the siting, size or dimensions of a building or other structure, or
 - (ii) the siting of a manufactured home in a manufactured home park;
 - (b) a subdivision servicing requirement under section 506 (1) (c) *[provision of water, sewer and other systems]* in an area zoned for agricultural or industrial use;
 - (c) the prohibition of a structural alteration or addition under section 531 (1) *[restrictions on alteration or addition while non-conforming use continued]*;
 - (d) a bylaw under section 8 (3) (c) *[fundamental powers – trees]* of the *Community Charter*, other than a bylaw that has an effect referred to in section 50 (2) *[restrictions on authority – preventing all uses]* of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person.

RS2015-1-540 (B.C. Reg. 257/2015).

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Notice of application for variance

541. (1) If a person makes an application under section 540, the board of variance must notify all owners and tenants in occupation of

- (a) the land that is the subject of the application, and
- (b) the land that is adjacent to land that is the subject of the application.

(SUB)
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29/21

(2) A notice under subsection (1) must state the following:

- (a) the subject matter of the application;
- (b) the time and date when and, if applicable, the place where the application will be heard;
- (c) if the meeting at which the application is heard is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.

(3) The obligation to give notice under subsection (1) is satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

RS2015-1-541 (B.C. Reg. 257/2015); 2021-16-12 (B.C. Reg. 236/2021).

Board powers on application

542. (1) On an application under section 540, the board of variance may order that a minor variance be permitted from the requirements of the applicable bylaw, or that the applicant be exempted from section 531 (1) [*alteration or addition while non-conforming use continued*], if the board of variance

- (a) has heard the applicant and any person notified under section 541,
- (b) finds that undue hardship would be caused to the applicant if the bylaw or section 531 (1) is complied with, and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

(ADD)
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(2) The board of variance must not make an order under subsection (1) that would do any of the following:

- (a) be in conflict with a covenant registered under section 219 of the *Land Title Act* or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;
- (b) deal with a matter that is covered in a land use permit or covered in a land use contract;
- (c) deal with a matter that is covered by a phased development agreement under Division 12 [*Phased Development Agreements*];
- (d) deal with a flood plain specification under section 524 (3);
- (e) apply to a property
 - (i) for which an authorization for alterations is required under Part 15 [*Heritage Conservation*],
 - (ii) for which a heritage revitalization agreement under section 610 is in effect, or
 - (iii) that is scheduled under section 614 (3) (b) [*protected heritage property*] or contains a feature or characteristic identified under section 614 (3) (c) [*heritage value or character*].

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- (3) In relation to an order under subsection (1),
 - (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
 - (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,the permission or exemption terminates and the bylaw or section 531 (1), as the case may be, applies.
- (4) A decision of the board of variance under subsection (1) is final.
RS2015-1-542 (B.C. Reg. 257/2015); 2018-26-9.

Exemption to relieve hardship from early termination of land use contract

543. (1) The owner of land subject to a land use contract that will be terminated by a bylaw adopted under section 548 [*early termination of land use contracts*] may apply to a board of variance for an order under subsection (5) of this section if
 - (a) the owner alleges that the timing of the termination of the land use contract by the bylaw would cause the owner hardship, and
 - (b) the application is received by the board of variance within 6 months after the adoption of the bylaw.
- (2) If an application is made under subsection (1), the board of variance must notify all owners and tenants in occupation of
 - (a) the land that is the subject of the application, and
 - (b) the land that is adjacent to land that is the subject of the application.
- (3) A notice under subsection (2) must state the following:
 - (a) the subject matter of the application;
 - (b) the time and date when and, if applicable, the place where the application will be heard;
 - (c) if the meeting at which the application is heard is conducted by means of electronic or other communication facilities, the way in which the meeting is to be conducted by those means.
- (4) The obligation to give notice under subsection (2) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.
- (5) On an application under subsection (1), the board of variance may order that, despite the termination of the land use contract and despite any zoning bylaw, the provisions of that land use contract continue to apply in relation to the applicant for a specified period of time ending no later than June 30, 2024, if the board of variance
 - (a) has heard the applicant, and
 - (b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.
- (6) An order under subsection (5) does not run with the land.
- (7) The board of variance must make a decision on an application under subsection (1) within 6 months after the application is received by the board of variance.
- (8) A decision of the board of variance under subsection (5) is final.
RS2015-1-543 (B.C. Reg. 257/2015); 2021-16-13 (B.C. Reg. 236/2021).

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Extent of damage to non-conforming use property

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544. (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 532 (1) [*end of non-conforming use protection if building of other structure is seriously damaged*] is in error.
- (2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 532 (1) in its place.
- (3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.

RS2015-1-544 (B.C. Reg. 257/2015).

Part 14: Division 16 – Discharge and Termination of Land Use Contracts

Application to land use contracts under previous legislation

545. This Division applies to land use contracts within the meaning of section 702A of the *Municipal Act*, R.S.B.C. 1960, c. 255, before that section was repealed under section 13 of the *Municipal Amendment Act*, 1977.

RS2015-1-545 (B.C. Reg. 257/2015).

Amendment and discharge of land use contract

546. (1) In this section, "amend" means modify, vary or discharge.
- (2) Subject to subsection (4), a land use contract that is registered in a land title office may be amended as follows:
- (a) by bylaw, with the agreement of
- (i) the local government, and
- (ii) the owner of any parcel that is described in the bylaw as being covered by the amendment;
- (b) subject to subsection (3), by a development permit or a development variance permit, if the amendment does not affect the permitted use or density of use of any parcel against which the contract is registered;
- (c) in the manner specified in the land use contract.
- (3) A land use contract must not be discharged in the manner provided for in subsection (2) (b).
- (4) Unless exempted by regulation under section 505 (4) [*controlled access highways*], if a parcel affected by an amendment under this section is subject to section 52 (3) [*approval required for development near controlled access highway*] of the *Transportation Act*,
- (a) a bylaw under subsection (2) (a) must not be adopted, or
- (b) a development permit or development variance permit under subsection (2) (b) must not be issued
- until it has been approved by the minister responsible for the administration of the *Transportation Act*.
- (5) If a local government proposes to amend a land use contract under subsection (2) (a) respecting any matter in it relating to density or use of an area covered by the contract, Division 3 [*Public Hearings on Planning and Land Use Bylaws*] applies.



DISTRICT OF LANTZVILLE

BOARD OF VARIANCE BYLAW NO. 10, 2003

CONSOLIDATED FOR CONVENIENCE ONLY

This is a consolidation of Bylaw No. 10, 2003 with the bylaws listed below. The amending bylaw has been combined with the original bylaw for convenience only. This consolidation is not a legal document. The Corporation does not warrant that the information contained in this consolidation is current. Certified copies of the original bylaws should be consulted to ensure accurate, current bylaw provisions.

Date of Adoption	Amending Bylaw	Bylaw Citation
April 28, 2008	Bylaw No. 10.1	District of Lantzville Board of Variance Bylaw No. 10, 2003 Amendment Bylaw No. 10.1, 2008

The bylaw numbers in bold in the margin of this consolidation refer to the last bylaw that amended each section of the principal bylaw: District of Lantzville Board of Variance Bylaw No. 10, 2003.

DISTRICT OF LANTZVILLE

BYLAW NO. 2003 - 10

A BYLAW TO ESTABLISH A BOARD OF VARIANCE

WHEREAS:

- A.** Section 899 of the *Local Government Act* provides that where a local government has adopted a zoning bylaw, the local government must establish a board of variance; and
- B.** Pursuant to Section 900 of the *Local Government Act*, the bylaw establishing a board of variance must set out procedures to be followed by the board of variance;

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

Citation

- 1. This Bylaw may be cited for all purposes as "District of Lantzville Board of Variance Bylaw No. 10, 2003 Amendment Bylaw No. 10.1, 2008".

Establishment

- 2. A Board of Variance is hereby established for the municipality of the District of Lantzville.

Jurisdiction

- 3. The Board of Variance shall hear and determine appeals on the grounds and to the extent in accordance with the *Local Government Act*.

Secretary

- 4. The Council of the District of Lantzville shall appoint a Secretary to the Board of Variance.
- 5. The responsibilities of the Secretary shall be:
 - a) to receive completed notices of appeal;
 - b) to notify the Chairperson of the Board of Variance the receipt of notice of appeal;
 - c) to ensure that proper notification is given in compliance with this bylaw;
 - d) to keep proper records of the Board of Variance proceedings;
 - e) to appoint a representative to receive the notices of appeal when circumstances require an appointment; and
 - f) to determine whether the appellant seeks a decision of the Board which would be in conflict with a covenant registered pursuant to Section 219 of the *Land Title Act*, a Section 215 covenant registered before the repeal of that section, or a Section 24(a) covenant pursuant to the *Land Registry Act* before the repeal of that Act; a requirement for a permit under Part 26 of the *Local Government Act*, or a matter which is covered in a land use contract.

Notice of Appeal

6. An appellant, exercising the right of appeal, shall deliver to the Secretary of the Board of Variance or appointee, a completed Notice of Appeal as outlined in the sample of the Notice of Appeal form contained in Schedule "A", together with such plans and technical information as the appellant or Secretary deems necessary to support the appeal including, but not limited to, the following:
- a) survey plan certified by a BC Land Surveyor;
 - b) site plan to scale;
 - c) topographical survey plan certified by a BC Land Surveyor;
 - d) building elevation plan certified by a BC Land Surveyor;
 - e) Professional Engineer's report with respect to drainage, topography, geotechnical consideration, or other pertinent matters;
 - f) a letter outlining the details of the appeal; and

(Bylaw No. 10.1)

- g) an application fee of Three Hundred Dollars (\$300.00).

(Bylaw No. 10.1)

7. Prior to processing a Board of Variance Appeal, the applicant shall pay to the District of Lantzville an application fee of Three Hundred Dollars (\$300.00).
8. Upon receipt of a Notice of Appeal by the Secretary of the Board of Variance and determination of the Hearing date, the Secretary shall, not less than seven (7) calendar days prior to the date of the Hearing, give notice of the Hearing by way of registered mail or otherwise to:
- a) the members of the Board of Variance;
 - b) the appellant;
 - c) the Building Inspection Department of the Regional District of Nanaimo; and
 - d) the registered owners, as shown in the last revised assessment roll, and all tenants of occupation of the property under appeal and the land adjacent to the land that is the subject of the application.
9. The Notice of the Hearing shall state the date, time, and place of the Hearing and shall include a copy of the Notice of Appeal.

Hearings

10. A hearing of the Board of Variance shall be held on the second Thursday of each month, unless otherwise varied by the Chairperson of the Board of Variance in consultation with the Secretary and all other members of the Board of Variance.
11. In the event that no completed Notice of Appeal is deposited with the Secretary of the Board of Variance or their appointee within fourteen (14) calendar days prior to the date of the next Hearing, no Hearing shall be held.
12. A Hearing of the Board of Variance shall be held a maximum of 45 days after the date of receipt of a Notice of Appeal.

- 13. A Hearing of the Board of Variance shall be convened by the Chairperson on the date of Hearing and at the time and place set out in the Notice of Hearing and the Board may adjourn the Hearing from time to time, and may reconvene without further published notice if the time, date, and place of reconvening is announced at adjournment.**
- 14. The members of the Board of Variance may view the property under application and the surrounding properties.**
- 15. The Board of Variance shall hear all representations made to the Board.**
- 16. The appellant shall be afforded the first opportunity to present evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the Chairperson may direct until all parties to the application have been afforded an opportunity to present their evidence and arguments.**

Decision

- 17. The decision of the Board shall be by a majority of those members present and made within seven (7) days of the hearing.**
- 18. The Secretary of the Board of Variance shall, within seven (7) days of the decision, send by registered mail, or otherwise, the written decision of the Board of Variance to the appellant, all persons who made representation at the Hearing, and the Regional District of Nanaimo's Building Inspection Department.**
- 19. The Secretary shall, within seven (7) days of the decision, enter that decision in the record maintained at the Lantzville municipal offices.**

READ A FIRST TIME this 25th day of June, 2003.

READ A SECOND TIME this 25th day of June, 2003.

READ A THIRD TIME this 25th day of June, 2003.

FINALLY ADOPTED this 14th day of July, 2003.

ORIGINAL SIGNED

**Colin Haime
Mayor**

ORIGINAL SIGNED

**David Gawley
CAO/Corporate Administrator**

(Bylaw No. 10.1)

SCHEDULE 'A'

**DISTRICT OF LANTZVILLE
 BOARD OF VARIANCE NOTICE OF APPEAL**

Name of Appellant: _____	
Mailing Address: _____	Postal Code: _____
Tel: _____	Fax: _____ Cell: _____
Name of Agent: _____	
Mailing Address: _____	Postal Code: _____
Tel: _____	Fax: _____ Cell: _____
Legal Description of Property of Notice of Appeal: _____	
Civic Address: _____	
Folio Number: _____	PID Number: _____
I/WE ENCLOSE THE FOLLOWING: <input type="checkbox"/> survey plan certified by a BC Land Surveyor; <input type="checkbox"/> site plan to scale; <input type="checkbox"/> topographical survey plan certified by a BC Land Surveyor; <input type="checkbox"/> building elevation plan certified by a BC Land Surveyor; <input type="checkbox"/> Professional Engineer's report with respect to drainage, topography, geotechnical consideration, or other pertinent matters; <input type="checkbox"/> a letter outlining the details of the appeal; and <input type="checkbox"/> \$300 application fee.	
I/WE, THE REGISTERED OWNER(S) OF THE ABOVE NOTED PROPERTY, HEREBY APPEAL TO THE BOARD OF VARIANCE FOR THE FOLLOWING:	
<input type="checkbox"/> To review a decision made by the Regional District of Nanaimo Manager of Building Inspection and Enforcement pursuant to Section 911(8) of the <i>Local Government Act</i> .	
To determine that compliance with the following will cause undue hardship: <input type="checkbox"/> Relating to siting, size and dimensions of a building or structure of the siting of a manufactured home in a manufactured mobile home park. (Note: use and density, including varying maximum building size provisions, will not be considered for variance.) <input type="checkbox"/> The prohibition of structural alteration or addition pursuant to Section 911(5) of the <i>Local Government Act</i> . <input type="checkbox"/> A subdivision servicing requirement pursuant to Section 938(1c) of the <i>Local Government Act</i> in an area zoned for agricultural or industrial uses.	
_____ Signature of Registered Owner(s)	_____ Date
_____ Signature of Registered Owner(s)	_____ Date
TO BE COMPLETED BY THE DISTRICT OF LANTZVILLE: Date Complete Appeal Received: _____ Application Fee: \$ _____ = Total Fee Paid: \$ _____	
Receipt Number: _____	File No: _____