

ABOUT THE VARIANCE PROCESS

When is a Variance needed?

When a particular application by virtue of a site regulation such as a setback, site coverage, height, or other regulation will not comply with a development (i.e. Zoning Bylaw, Sign Bylaw etc.) bylaw a Variance may be pursued.

There are two different Variance procedures:

1. Board of Variance Application

The Board of Variance is formed pursuant to the provisions of the *Local Government Act* and deals with applications for minor variances in situations where compliance with a Bylaw will cause undue hardship. The Board may also allow additions and alterations to “non-conforming” buildings.

2. Development Variance Application

Development Variance Permits are *dealt with by City Council*. If an application does not fall within the jurisdiction of the Board of Variance or if the variance is required for a new or re-development in conjunction with a bylaw (i.e. Zoning Bylaw) amendment, a Development Variance Permit should be pursued.

A VARIANCE MUST NOT VARY THE USE OR THE DENSITY OF LAND OR A FLOODPLAIN SPECIFICATION. Please read each description to see which type of Variance Application applies to your situation!

3. The Board of Variance Process

A person may apply for a **Board of Variance Order** if;

- there is **Undue Hardship** caused by a Bylaw regulation as to the siting, size, or dimension of a building, the prohibition against structural additions or alterations to a legal non-conforming use or subdivision servicing requirements in an area zoned for agricultural or industrial use;
- the development is **minor** in nature;
- an individual feels there has been an error in judgement by the Building Inspector as to the extent of damage to a non-conforming structure.

What is Undue Hardship?

Hardship is related to aspects of the particular site (i.e. topography) as opposed to general hardships in the area, or hardships generated by the owner. Expense is not a hardship.

What is a Minor Variance?

Minor variances are determined by the Board and are not defined in legislation in British Columbia. Recently, courts have upheld Board decisions where considerable variances from the bylaw were granted. The Board may grant a minor variance provided, in the Board's opinion, the variance does not:

- a) result in inappropriate development of the site
- b) substantially affect the use and enjoyment of adjacent lands
- c) vary permitted uses or densities under the applicable Bylaw
- d) defeat the intent of the bylaw; or
- e) adversely affect the natural environment

Application Process and Fees

- Applicant should consult with the City Building Inspector to make an accurate determination of the Variance required.
- Applicant must file an application at City Hall. Application forms may be obtained from the Building department at City Hall. The application must be accompanied by:
 - **Application fee**
 - Current (within 30 days) copy of **Land Title**
 - Letter explaining **why there is hardship** in complying with the Zoning Bylaw
 - Detailed sketch or plans showing the lot and all existing structures with **appropriate measurements** (Site Survey if necessary) and which **clearly identifies the requested variance** (with elevation view if applicable)
 - A completed Site Profile if necessary
 - **Signatures of all Registered Owners of the property**

- All correspondence for the Board or Board Members should be directed to the Building Inspector. Notice of the application will be sent to adjacent landowners and occupants at least 7 days before a Board of Variance Hearing.
- Applicants should expect Board Members to visit the site and should ensure the property can be clearly identified from the road.

Board of Variance Decisions

The Board of Variance is usually able to give the applicant a decision approximately 30 days from the date the application is received. Decisions run with the land, are tied to plans submitted by the applicant, and expire if not acted upon within two years.

Procedure for Board Meetings

Meetings are at the call of the chair and are open to the public. They are usually attended by the applicant and any interested neighbours. Following the Meeting, the Board will deliberate a decision. Decisions can be obtained from the Building Inspector the day after the meeting.

Can decisions be Appealed?

Decisions of the Board are final and cannot be appealed, however a court of law can require a Board to re-hear an appeal on the basis of a “procedural error of law” under the Judicial Review Procedure Act. In the case of an appeal to the Board on the basis of an “error in judgment” by the Building Inspector, the decision of the Board can be appealed to the Supreme Court.

**For more information contact:
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Port Alberni, BC, V9Y 1V8
Phone (250) 720-2832
Fax (250) 723-3402
Email: Dave_Cappus@portalberni.ca**

2. The Development Variance Process

People apply for a **Development Variance Permit** if;

- a) the development is ***not considered minor*** in nature; and/or
- b) not undue hardship

A developer or individual who is applying to vary a regulation in a Bylaw should note the following explanation of the process:

Application Process and Fees

- Before submitting an application the applicant should consult with the City Planner to make an accurate determination of the Variance that will be required.
- The applicant must file an application for a Development Variance Permit at City Hall. The application must be accompanied by:
 - **Application fee**
 - Detailed **reasons for and description of the variance requested**
 - Current (within 30 days) copy of the **Land Title**
 - Detailed sketch or plans showing the lot and all existing structures with **appropriate measurements** (Site Survey if necessary) and the proposed Variance
 - A completed Site Profile if necessary
 - **Signatures of all Registered Owners of the property**
- The City Planner will prepare a report with recommendations to the Advisory Planning Commission. At a scheduled meeting the APC will discuss the proposed Variance. APC meetings are open to the public and the applicant may wish to be there to answer questions. The APC will provide a recommendation (including any specific conditions of approval) to City Council that the Development Variance Permit be issued or denied. The recommendations will be received by Council at a subsequent regular Council Meeting.

Applicants should expect members of the Advisory Planning Commission, City Council and the Public to visit the site and should ensure the property can be clearly identified from the road.

- Council will review the recommendations of the APC. Council **may** decide to adopt a resolution to direct staff to send a written “**Notice of intent to pass a resolution to grant a Development Variance Permit**” to owners and occupants of property within 75m of the subject property. The Notice will advise of the date and time of the Council meeting at which Council intends to approve or deny the Permit.

- The Notice is sent to properties within 75m of the subject property at least 10 days before the meeting of Council at which the decision will be made and invites comment and input from all interested persons.
- Prior to the Council meeting the City Planner prepares a report to Council summarizing the application and all comments and concerns received.
- The Meeting of Council is open to all members of the public who deem their interest in property to be affected by the proposed Variance. City Council will consider the application and any public input at the meeting and will adopt a resolution to either approve or deny the Development Variance Permit.
- If the Development Variance Permit is approved by Council, the applicant is notified and the Permit is registered on the Land Title.
- The application process may take six weeks or more from the time the application is submitted until the time a final decision is made.

**For more information contact:
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