

VILLAGE OF PORT CLEMENTS

BYLAW NO. 186

A BYLAW TO ESTABLISH

A BOARD OF VARIANCE

THE VILLAGE OF PORT CLEMENTS

BYLAW NO. 186

Being a Bylaw to establish a Board of Variance  
for the Village of Port Clements

WHEREAS the Council of the Village of Port Clements wishes to establish a Board of Variance pursuant to Section 961 of the Municipal Act.

NOW THEREFORE the Council of the Village of Port Clements in open meeting, lawfully assembled hereby establishes a Board of Variance and ENACTS AS FOLLOWS:

TITLE

This Bylaw may be cited for all purposes as "The Village of Port Clements Board of Variance Jurisdiction and Procedure Bylaw No. 186, 1990".

ESTABLISHMENT

- (1) Pursuant to Section 961 of the Municipal Act, a Board of Variance is hereby established.
- (2) Secretary  
The Council hereby appoints the Clerk of the Village of Port Clements as Secretary to the Board of Variance. The responsibilities of the Secretary are:
  - a) to receive notices of appeal;
  - b) to determine whether the appeal seeks to vary a matter covered in a land use contract, a permit under Division 5 of Part 29, a floodplain specification under Section 969 of the Municipal Act or a registered covenant, which are outside the jurisdiction of the Board of Variance or whether the appeal involves a matter within the jurisdiction of the Board of Variance;
  - c) if the appeal is outside the jurisdiction of the Board of Variance to notify the appellant;
  - d) if it is within the Board's jurisdiction to notify the chairperson of the Board of Variance of the receipt of appeal;
  - e) to ensure that proper notification is given in compliance with this bylaw;
  - f) to keep proper records of the Board of Variance proceedings; and
  - g) to maintain a record of all decisions of the Board and make it available to the public in the Municipal office during normal business hours.
- (3) Meetings
  - a) A meeting of the Board of Variance shall be held on the first Wednesday of each month, unless otherwise determined by the chairperson of the Board of Variance in consultation with the Secretary and all other members of the Board of Variance;
  - b) In the event that no notice of appeal is deposited with the Secretary to the Board of Variance at least 7 calendar days prior to the date of the next meeting, then no meeting need to be held;
  - c) A meeting of the Board of Variance on a particular appeal shall be held not more than 40 days after the date of receipt of the notice of appeal unless an extension is allowed by the written consent of appellant;
  - d) 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;
  - e) The Board of Variance shall hear all representations made to the Board; and
  - f) The deliberations of the Board of Variance shall not be open to the public.

(4) Notice of Appeal

- d) Any person desiring to appeal to the Board shall file a written notice of appeal with the Secretary of the Board. The notice shall state clearly the grounds upon which the appeal is based and the relief sought, and shall give an address to which all notices respecting an appeal hearing may be mailed;
- b) Where the appeal is based upon a determination of value made pursuant to subsection 8 of Section 970 of the Municipal Act, the notice of appeal shall be filed with the Secretary of the Board within 30 days of the making of the determination;
- c) The Secretary, upon the filing of an appeal, shall notify the chairperson of the Board of the appeal and determine whether or not the hearing is to be held in public. The Chairperson may consult other members of the Board in determining if the hearing should be public;
- d) Upon receipt of the decision of the Chairperson on whether there should be a public notice and the determination of a hearing date, the Secretary shall send by registered mail or otherwise deliver, not less than 7 days prior to the date of the hearing, notice of the hearing to:
  - i) the members of the Board of Variance;
  - ii) the appellant;
  - iii) the registered owners as shown on the last revised assessment roll and all occupiers of the subject property and all real property located adjacent to the parcel which is the subject of the appeal, including those separated by private or public rights-of-way;
  - iv) if an appeal under 962(1)(b), the ~~Officer~~ <sup>PERSON</sup> whose interpretation is being appealed;
- e) The notice of the hearing shall state the date, place and time of the appeal hearing and shall include a copy of the notice of appeal;
- f) Public notice of the hearing, if ordered by the Board, shall be given by publication of a notice stating the time and place of the hearing and the general nature of the appeal in not less than 2 consecutive issues of a newspaper published or circulating in the Municipality, with the last publication appearing not less than 3 days nor more than 10 days before the date of the hearing; and

- g) The Secretary shall upon receipt of any notice of appeal, or of any written evidence entered before the hearing, including staff reports, permit the same to be inspected at the Secretary's office during regular office hours.

(5) Fee

Every notice of appeal to the Board of Variance shall be accompanied by an application fee of ~~\$50.00~~ <sup>\$25.00</sup> for the purpose of processing, inspecting and reporting on the appeal.

(6) Conduct of Hearing

- a) A quorum for the hearing is 4 members if the Board numbers 5, and 2 if the Board numbers 3. If the Chairperson is absent for a hearing, those present may appoint an acting Chairperson for the duration of that hearing.
- b) Any person or body with interest in property within the Village is entitled to be heard at the hearing and is entitled to be represented by a solicitor or by an agent duly appointed in writing;
- c) Any person represented, in accordance with subsection 5(b), whether or not also attending in person, shall be deemed to be a party attending the hearing;
- d) Evidence at a hearing may be given orally or in writing;
- e) The Board shall not hear oral evidence except at a regularly constituted hearing;
- f) No member of the Board shall discuss the merits of the appeal with any person who is not a member of the Board or the Secretary before the Board has reached a decision;

- g) The appellant shall be afforded the first opportunity to present his evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the chairperson may direct until all parties to the appeal have been afforded an opportunity to present their evidence and arguments;
- h) The Board may view the property affected by the appeal and surrounding properties. 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; and
- i) If the appellant or other persons notified do not appear at the hearing or any other adjournment thereof, and have not advised the Secretary in advance that they wish to be heard at another date, the Board may proceed to decide the appeal in his absence.

(7) Decision

- a) The decision of the Board shall be by a majority of those members present and made within 7 days of the hearing;
- b) The Secretary shall:
  - i) Within 7 days of a decision, send by registered mail or otherwise deliver the written decision of the Board of Variance to the appellant, all persons who made representation at the hearing and the local government building inspector;
  - ii) Within 7 days of the decision, enter that decision in the record maintained at the local government office;

(8) Notice of Appeal


Notices for appeal described in Section 3 of this Bylaw shall be made to the Secretary of the Village of Port Clements on the applicable application form (Board of Variance Notice of Appeal) attached hereto as Schedule "A".

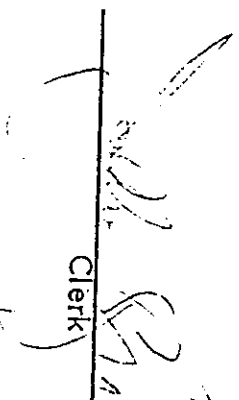
READ A FIRST TIME THIS 29th DAY OF FEBRUARY 1988

READ A SECOND TIME THIS 29th DAY OF FEBRUARY 1988

READ A THIRD TIME THIS 17th DAY OF OCTOBER 1988.

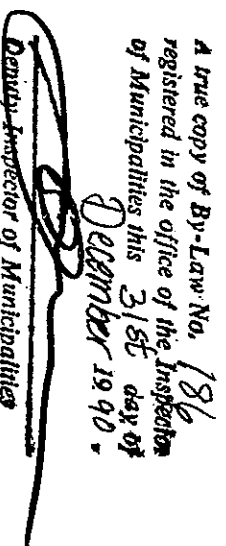
RECONSIDERED AND FINALLY ADOPTED THIS 25th DAY OF June 1990.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Clerk

CERTIFIED TO BE a true and correct copy of Bylaw No. 186, being the Village of Port Clements "Bylaw to establish a Board of Variance."

  
\_\_\_\_\_  
Municipal Clerk

A true copy of By-Law No. 186 registered in the office of the Inspector of Municipalities this 31st day of December 1990.  
  
\_\_\_\_\_  
Municipal Inspector of Municipalities

SCHEDULE A

As referred to in Section 3 of Bylaw No. 186  
of the Village of Port Clements

**BOARD OF VARIANCE NOTICE OF APPEAL**

Property Owner's Name: \_\_\_\_\_

Address of Owner: \_\_\_\_\_

Port Clements: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Legal Description of the  
site of the appeal: \_\_\_\_\_

I/We enclose the following:

- \_\_\_\_\_ A copy of the Certificate of Indefeasible Title of the site of the appeal.
- \_\_\_\_\_ A plot plan showing the location of buildings and structures involved.
- \_\_\_\_\_ An application fee of ~~\$50.00~~.
- \_\_\_\_\_ Other \$ 25.00

I/We, the registered owner(s) of the above noted property, hereby appeal to the Board of  
Variance for the following:

- \_\_\_\_\_ to determine a request for variance from strict compliance with Part \_\_\_\_\_, Section \_\_\_\_\_ of Bylaw No. \_\_\_\_\_ respecting the siting, dimensions, or size of a building or structure, or the siting of a mobile home in a mobile home park because compliance with the provisions would cause undue hardship; or
- \_\_\_\_\_ to determine a request for variance from strict compliance with the prohibition of a structural alternative or addition under Section 970 (5) of the Municipal Act because compliance with these provisions would cause undue hardship; or
- \_\_\_\_\_ to determine a request for variance from strict compliance with a subdivision servicing requirement under Section 989(1)(c) in an area zoned for agricultural or industrial use, would cause undue hardship; or
- \_\_\_\_\_ to review the decision of the building inspector in the amount of damage under Section 970 (8) because it is believed to be in error.

Signature of Registered Owner(s) \_\_\_\_\_ Date \_\_\_\_\_

SCHEDULE A (CONTINUED)

BOARD OF VARIANCE NOTICE OF APPEAL

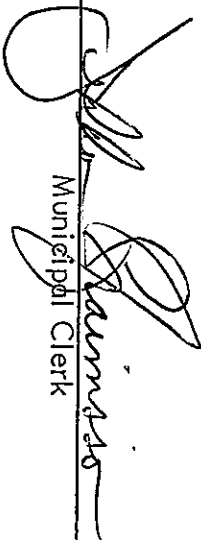
FOR OFFICE USE ONLY

APPLICATION FEE \$ \_\_\_\_\_ RECEIVED RECEIPT NO. \_\_\_\_\_

Signature of Official \_\_\_\_\_

Date \_\_\_\_\_

CERTIFIED TO BE A TRUE AND CORRECT COPY  
OF SCHEDULE A OF BYLAW NO. 186,  
BEING THE VILLAGE OF PORT CLEMENTS "BYLAW  
TO ESTABLISH A BOARD OF VARIANCE".

  
Municipal Clerk

- (3) Where the population of the municipality is more than 25 000, the board of variance shall consist of 2 persons appointed by the local government, 2 persons appointed by the minister and one person appointed by the other 4 appointees.
- (3.1) A board may establish one or more boards of variance, but where they establish more than one board of variance, the bylaw establishing them shall specify the area of the regional district over which each board of variance is to have jurisdiction and those areas shall not overlap.
- (4) Each board of variance in a regional district shall consist of one person appointed by the board, one person appointed by the minister and one person appointed by the other 2 appointees.
- (5) An appointment under subsections (2) to (4) is for the later of
- (a) 3 years, or
  - (b) where no successor has been appointed at the end of the 3 year period, until the time that a successor is appointed.
- (6) A person who is
- (a) a member of the advisory planning commission or of the local government, or
  - (b) an officer or employee of the local government
- is not eligible to be appointed to a board of variance.
- (7) The members of the board of variance shall elect one of their number as chairman.
- (8) The chairman may appoint a member of the board of variance as acting chairman to preside in his absence.
- (9) Where a member of a board of variance ceases to hold office, his successor shall 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.
- (10) A local government may remove its appointee at any time.
- (11) The Lieutenant Governor in Council may
- (a) remove the minister's appointee at any time, and
  - (b) on the recommendation of a local government, remove the person appointed by the other appointees.
- (12) The bylaw establishing a board of variance shall set out the procedures to be followed by the board of variance, including the manner by which appeals are to be brought and notices under section 962 (5) are to be given.
- (13) A member of a board of variance shall not receive compensation for his services as a member, but he shall be paid reasonable and necessary expenses that arise directly out of the performance of his duties.
- (14) The local government shall, in its annual budget, provide for the necessary funds to pay for the costs of the board.

1985-79-8; 1987-14-25.

#### Jurisdiction of board of variance

- 962.** (1) Where a person alleges that
- (a) compliance with
    - (i) a bylaw respecting the siting, dimensions or size of a building or structure, or the siting of a mobile home in a mobile home park,
    - (ii) the prohibition of a structural alteration or addition under section 970 (5), or

Nov. 2, 1987

(iii) a subdivision servicing requirement under section 989 (1) (c) in an area zoned for agricultural or industrial use, would cause him undue hardship, or

(b) the determination by a building inspector of the amount of damage under section 970 (8) is in error,

that person may make application to a board of variance for an order under subsection (2) or (3).

(2) On an application under subsection (1) (a), the board of variance may, after hearing the applicant and any person notified under subsection (5), and on finding that undue hardship would be caused to the applicant if the bylaw or section 970 (5) is complied with, order that a minor variance be permitted from the requirements of the bylaw, or that the applicant be exempted from section 970 (5), so long as the variance or exemption does not, in the board's opinion,

- (a) result in inappropriate development of the site,
- (b) substantially affect the use and enjoyment of adjacent land,
- (c) vary permitted uses and densities under the applicable bylaw, or
- (d) defeat the intent of the bylaw.

(3) On an application under subsection (1) (b), the board of variance may set aside the determination of the building inspector and make the determination under section 970 (8) in its place.

(4) The board of variance shall not make an order under subsection (2) where the order would

- (a) be in conflict with
  - (i) a covenant registered under section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208, before the repeal of that Act, or section 215 of the *Land Title Act*, or
  - (ii) section 27 of the *Heritage Conservation Act*,
- (b) deal with a matter that is covered in a land use contract, or a permit under Division (5), or
- (c) deal with a flood plain specification under section 969 (2).

(5) Where a person makes an application under subsection (1) (a), the board of variance shall notify all owners and tenants in occupation of the land that is

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

(6) The notice shall state the subject matter of the application and the time and place where the application will be heard.

(7) Where a board of variance, in respect of an application under subsection (1) (a), orders that a minor variance be permitted or an exemption from section 970 (5) be allowed, it may order that, unless the construction of the building structure or mobile home park is completed within a time fixed in the order, the permission or exemption terminates and the bylaw or section 970 (5), as the case may be, applies.

(8) The applicant or the local government may appeal a decision of the board of variance under subsection (3) to the Supreme Court.

(9) A decision of the board of variance under subsection (2) is final.

(10) A board of variance shall maintain a record of all its decisions and shall ensure that the record is available for public inspection during normal business hours.

1985-79-8; 1987-14-26.



subsection (3) to the Supreme Court.