



REPORT

Report Date: February 14, 2022
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VanRIMS No.: 08-2000-20
Meeting Date: March 1, 2022
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TO: Vancouver City Council
FROM: City Clerk
SUBJECT: Board of Variance By-law Update

RECOMMENDATION

- A. THAT Council approve, in principle, the proposed changes to the Board of Variance By-law generally as shown in Appendix A and described in this report.
- B. THAT Council instruct the Director of Legal Services to bring forward for enactment the necessary amendments to the Board of Variance By-law, generally as set out in Appendix A.

REPORT SUMMARY

The last review of the Board of Variance By-law was conducted in 2011. Since that time the number of appeals per meeting has decreased. This report recommends several amendments to the Board of Variance By-law including reducing the number of minimum Board meetings per month from two meetings to one meeting per month. Other minor amendment recommendations are outlined in this report.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The Board of Variance is a statutory tribunal established by Council in accordance with the requirements in section 572 of the *Vancouver Charter*.

The Board of Variance By-law No. 10200 was adopted by Council January 8, 2011, with a minor renumbering amendment June 28, 2011.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

REPORT

Background/Context

Under Section 572(9) of the *Vancouver Charter*, Council is required to establish, by by-law, the procedures to be followed by the Board of Variance. The current Board of Variance By-law sets out the specific procedures governing the filing of appeals and giving notice of the hearing of appeals that are followed by the Board. The By-law also includes provisions relating to the procedure to be followed by the Board when it hears appeals. The Board is comprised of five members appointed by Council. The Board hears appeals from persons seeking “variances” of zoning regulations on the basis of site hardships, and also hears appeals of decisions on a question of zoning by city officials.

Strategic Analysis

Table 1 below provides a summary of the recommended amendments to the Board of Variance By-law along with rationale.

Table 1. Board of Variance By-law Updates

Section number	Current language	Proposed language	Rationale
2.5 (b) Duties of secretary	The secretary must: (b) prepare a record of the reasons of each member for his or her decision	Delete	The Supreme Court of Canada in <i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65 has re-visited the standard of review analysis that applies to statutory decisions, including those made by the Board. The Court indicated that a decision is reasonable if it is transparent, intelligible and justifiable. The Court specifically acknowledged that certain decision-making processes do not easily lend themselves to producing a single set of reasons such as when a municipality passes a by-law. In that context, the Court looks to the record and the outcome. This does not mean that reasonableness review is not robust. The <i>Vancouver Charter</i> does not require the Board to give reasons for its decisions and the Board’s decision-making process does not easily lend itself to producing reasons. This section along with s. 7.2 of the By-law has resulted in confusion and increased legal proceedings. The sections are unnecessary given the analysis directed by the Court to be performed in relation to the Board’s decisions. The Secretary will continue to prepare a summary set of reasons for the minutes.

Section number	Current language	Proposed language	Rationale
2.5 (g) Duties of secretary	The secretary must: (g) Perform other duties customary to the office of a secretary or set out in this By-law, including an annual report to Council summarizing the issues heard by the board.	The secretary must: (f) Perform other duties customary to the office of a secretary or set out in this By-law.	The Board Secretary has never produced a report to Council as the Board of Variance operates independently with a quasi-judicial function. Any issues are reported to the City Clerk and managed accordingly. Should a matter require the attention of Council, a memo would be distributed.
2.6. Meetings of the Board	In each calendar year, the Board must meet at least twice each month except that the Board need only meet once in December and in one other month chosen by the Chair.	In each calendar year, the Board must meet at least once each month.	The last comprehensive review of the Board of Variance By-law was presented to Council in 2011. Since that time the number of appeals per meeting has been reduced from 20-25 appeals per meeting in 2011, to 6-8 appeals per meeting estimated for 2022 with each meeting lasting approximately 4-5 hours. This decrease in the number of appeals per meeting (in 2021 and 2022) is due to the Director of Planning's authority to relax the Zoning and Development By-law whereby fewer zoning variances are required by the Board of Variance. As a result, the Board does not need to meet as frequently. Should Council adopt this recommended change to the Board of Variance By-law, the number of Board meetings will be reduced from 24-26 meetings per year to 12-14 per year. If needed, more than one meeting can be scheduled per month.
7.2 Reasons for decision	The Board must give reasons for its decision concerning the appeal.	Delete	Same rationale as for s. 2.5 (b) above. The Secretary will continue to prepare a summary set of reasons for the minutes.

Public/Civic Agency Input

The Board of Variance’s legal counsel has reviewed and approved the amendments to the Board of Variance By-law proposed in this report. In addition, the Board Chair has reviewed and approved the proposed amendments.

Implications/Related Issues/Risk

Financial

There are no financial implications.

CONCLUSION

This report recommends update to the Board of Variance By-law, which has not been reviewed since 2011. The recommended amendments will bring the by-law in line with Board practices and are a reflection of the reduction in the number of appeals.

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BY-LAW NO. _____

**A By-law to amend the Board of Variance By-law No. 10200
regarding miscellaneous matters**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Board of Variance By-law.
2. Council strikes sections 2.5 and 2.6 and replaces them as follows:

“Duties of Secretary

2.5 The secretary must:

- (a) prepare a record of each decision of the Board;
- (b) prepare a record of the minutes of each meeting of the Board that include the disposition of each appeal;
- (c) arrange for publication or service of each notice of appeal and each meeting of the Board as directed by the Board or its Chair;
- (d) give written notice of each decision of the Board to the appellant, any applicant for a development permit for the property, and the Director of Planning;
- (e) keep custody of the records and minutes of the Board; and
- (f) perform other duties customary to the office of a secretary or set out in this By-law.

Meetings of Board

2.6 In each calendar year, the Board must meet at least once each month.”

3. Council strikes section 7.2.
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2022

Mayor

City Clerk