

DISTRICT OF MACKENZIE

Bylaw No. 1494

A bylaw to provide for the establishment of a Board of Variance.

WHEREAS having adopted a Zoning Bylaw, is required pursuant to Section 536 (1) of the *Local Government Act* to establish, by bylaw, a Board of Variance;

AND WHEREAS pursuant to section 539 (3) of the *Local Government Act* a bylaw establishing a Board of Variance must 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 541 are to be given.

NOW THEREFORE BE IT RESOLVED, the Council of the District of Mackenzie in open meeting assembled hereby enacts as follows:

1. Citation

This Bylaw may be cited as "Board of Variance Bylaw No. 1494, 2023".

2. Interpretation

(1) In this Bylaw:

- i. "Board" means the District of Mackenzie Board of Variance
- ii. "Chair" means the Chair of the Board of Variance
- iii. "District" means the District of Mackenzie
- iv. "Council" means the Municipal Council of the District of Mackenzie
- v. "Secretary" means the Secretary to the Board of Variance appointed under this bylaw.
- vi. "Corporate Officer" means the Corporate Officer of the District of Mackenzie
- vii. "Building Inspector" means the Building Inspector of the District of Mackenzie

3. Repeal

- (1) Bylaw No. 559, "Board of Variance By-law No. 559, 1986" and all amendments to that bylaw are repealed upon adoption of this Bylaw.

4. Appointment of Board Members

- (1) The Board shall consist of three members appointed by Council for a three-year term each.
- (2) The Board must elect one of their members as Chair and the Chair may appoint an acting Chair in absence of the Chair.
- (3) A person who is a Councillor, a member of the planning committee, or an officer or employee of the local government is not eligible to be appointed to the Board.

5. Vacancies

- (1) In the event of the death, resignation or removal from office of any member of the Board, his successor shall be appointed by Council, and until his or her appointment the remaining members constitute the Board of Variance.

6. Secretary

- (1) The Corporate Officer or their designate will be Secretary of the Board of Variance.
- (2) The Secretary will carry out the duties assigned under this Bylaw and by the Board of Variance.

7. Applications to the Board

- (1) A person may apply to the Board of Variance by:
 - (a) submitting to the Secretary a written application that is signed by the applicant and that contains:
 - i. the legal description and civic address that is the subject of the application;
 - ii. a site plan indicating the requested variance;
 - iii. the evidence and arguments on which the application is based;

- iv. the relief sought;
- v. the address to which the notice of the hearing should be mailed;
- vi. any other information that the applicant intends to present to the Board at the hearing; and
- vii. paying the applicable fee prescribed in the "District of Mackenzie General Fees Amendment Bylaw No. 1351, 2016" as amended or substituted from time to time.
- viii. Upon receiving an application, the Secretary of the Board of Variance must notify the Chair of the Board of Variance of the application as soon as practicable.
- ix. The Chair must set a time, date, and place for the Board of Variance to conduct a hearing of the application.

8. Notices

(1) At least 10 days before the date set for a hearing, the Board of Variance, through the Secretary, will mail or deliver a notice of the hearing to the last known address of the following persons:

- i. the applicant;
- ii. the owners and tenants occupying the land that is the subject of the application;
- iii. the owners and tenants occupying land that is adjacent to the land that is the subject of the application;
- iv. the District of Mackenzie's Corporate Services department;
- v. the Building Inspector or their designate; and
- vi. each member of the Board of Variance.

(2) A notice of hearing must state:

- i. the subject matter of the application;
- ii. the time, date and place the application will be heard; and

- iii. 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.

9. Conduct of Hearing

- (1) The quorum of the Board of Variance is two (2) of its members, one of whom may be the Chair.
- (2) If quorum is not present within 15 minutes after the scheduled time of a hearing, then the hearing will be deemed to have been cancelled and the Chair must set a new time, date, and place for the Board of Variance to conduct a hearing of the application.
- (3) The Board of Variance, in its discretion, may:
 - i. accept evidence that is unsworn, oral, written or hearsay; or
 - ii. before evidence is presented at a hearing, direct that:
 - (a) oral evidence must be given under oath or solemn affirmation administered by the Board of Variance; and
 - (b) written evidence must be verified by affidavit or statutory declaration.
- (4) The Board of Variance may receive written submissions and hear oral submissions with respect to an application only during the hearing at which the application is considered.
- (5) The Board of Variance will permit submissions to be presented at a hearing in the following order:
 - i. the applicant;
 - ii. the Corporate Officer or their designate;
 - iii. the Building Inspector or their designate; and
 - iv. all other parties with an interest in the application in the sequence directed by the Chair until all such parties have been given a reasonable opportunity to present their submissions.

- (6) The Board of Variance may view the land that is the subject of the application and any land that is adjacent to it.
- (7) The applicant may request an adjournment of the hearing, provided that the applicant notifies the Secretary of such request prior to the hearing.
- (8) The Board of Variance may adjourn a hearing from time to time at the applicant's request or if the Board of Variance requires further information or otherwise as the Board of Variance may deem advisable and the Board of Variance may reconvene the hearing without further published notice if the time, date, and place of reconvening are announced at the hearing before it is adjourned.
- (9) A person appearing before the Board of Variance may be represented by legal counsel.
 - i. The Secretary must record and keep minutes of the Board of Variance's proceedings.
 - ii. The minutes of the Board of Variance's proceedings must be signed by the Chair.

10. Decisions

- (1) The Board of Variance may proceed to decide an application if the applicant fails to appear at the hearing.
- (2) The decision of the Board of Variance to either grant or deny an order must be made by a motion adopted by the majority of the Board of Variance members present at the hearing.
- (3) All members of the Board of Variance are voting members and any member of the Board of Variance who abstains from voting will be deemed to have voted in favour of the motion.
- (4) In the event that the members of the Board of Variance are equally divided in their votes for and against a motion, it will be disposed of in the negative.
- (5) Decisions of the Board of Variance will be filed with the Secretary and available for public inspection at the District of Mackenzie office located at 1 Mackenzie Boulevard, Mackenzie, during normal business hours.
- (6) The Secretary will mail or deliver a copy of the Board of Variance's decision to the last known address of those persons who were entitled to notice of the hearing

under section 5 (1) of this Bylaw and to any other person indicated by the Board of Variance.

11. Expenses

- (1) No member of a Board of Variance shall receive compensation for his or her services other than allowances for actual expenses necessarily incurred in the discharge of official duties.
- (2) The Council will include in its annual budget such sums that are necessary to cover the expenses of the Board.

12. Severability

- (1) If any part of this Bylaw is for any reason held to be invalid by a court of competent jurisdiction, the invalid portion will be severed, and the severance will not affect the validity of the remaining portions of the Bylaw.

READ a first time this 23 day of January, 2023.

READ a second time this 23 day of January, 2023.

READ a third time this 23 day of January, 2023.

ADOPTED this _____ day of _____, 2023.

I hereby certify the foregoing
to be a true and correct copy
of District of Mackenzie Bylaw
No. 1494 cited as "Board of
Variance Bylaw No.1494, 2023".

Mayor

Corporate Officer

Corporate Officer