

NO: **R231**

COUNCIL DATE: **November 15, 2010**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **November 8, 2010**

FROM: **City Clerk**

FILE: **0360-20**

SUBJECT: **Board of Variance By-law**

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## RECOMMENDATION

The Legislative Services Division recommends that Council:

1. Receive this report as information
2. Approve a new “Board of Variance By-law”, a copy of which is attached as Appendix I to this report, to replace the current Board of Variance By-law No. 15317; and
3. Authorize the City Clerk to bring forward the new Board of Variance By-law for the required readings and adoption.

## BACKGROUND

Board of Variance By-law, 2004, No. 15317 (‘By-law No. 15317’) which acted to establish a Board of Variance pursuant to Section 899, of the *Local Government Act* was last amended in 2008. By-law No. 15317 needs to be updated to bring it into conformity with current legislation and to reflect current practices and procedures in relation to the conduct of the business of the Board. Staff has reviewed how best to approach the updating of the By-law and has determined, given the number of amendments that are required, that it would be better to replace the current by-law with a new By-law, rather than amending the current By-law.

## DISCUSSION

Changes have been incorporated into the proposed By-law in comparison to the current By-law to address the following matters:

- (1) That the meetings of the Board will be subject to the open meeting rules as set out in the *Community Charter*;
- (2) Terms of appointment of Board members consistent with the provisions of the *Local Government Act*, which limit the term of any member on the Board to a maximum of two consecutive three year terms;
- (3) Applications to the Board may only be deferred a maximum of twice before the applicant must pay a new application fee;

- (4) Application fees are not refundable once the application has been heard by the Board;
- (5) Clarification of the conditions under which a partial refund of application fees is available;
- (6) Clarification on the process for withdrawing an application;
- (7) Inclusion in the By-law of the condition that if construction related to a permission or exemption granted by the Board is not substantially started within the timeframe set by the Board, or within 2 years, whichever is greater, then the permission or exemption granted by the Board shall be terminated and the provisions of the applicable by-law or section of the *Local Government Act*, as the case may be, shall apply; and
- (8) A provision that the Board is to provide reasons for their decision in respect of each application it considers.

The proposed "Board of Variance By-law" is attached as Appendix I to this report. Subject to the proposed By-law being adopted the current Board of Variance By-law No. 15317 will be repealed.

Legal Services has reviewed this report and the related By-law and has no concerns.

## CONCLUSION

The current Board of Variance By-Law requires fairly substantial amendments to bring it up to date in relation to legislative requirements and current practices and procedures. Rather than undertaking significant amendments to the current by-law, it is more expedient to introduce a new by-law that includes the necessary changes. Based on the above discussion, it is recommended that Council

- Approve a new "Board of Variance By-law", a copy of which is attached as Appendix I to this report, to replace the current Board of Variance By-law No. 15317; and
- Authorize the City Clerk to bring forward the new Board of Variance By-law for the required readings and final adoption.

Jane Sullivan  
City Clerk

Attachment:  
Appendix I: Proposed Board of Variance By-law

CITY OF SURREY

BY-LAW NO.17282



A by-law to provide for the establishment  
of a Board of Variance.

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WHEREAS the City Council of the City of Surrey has adopted Zoning By-laws, being "Surrey Zoning By-law, 1979, No. 5942" and "Surrey Zoning By-law, 1993, No. 12000";

AND WHEREAS pursuant to Section 899 of the *Local Government Act* there shall be established, by bylaw, a Board of Variance (the "Board");

NOW, THEREFORE, the City Council of the City of Surrey ("Council"), in open meeting assembled, ENACTS AS FOLLOWS:

**ESTABLISHMENT**

1. The Board, established by previous by-laws of the City, is continued and shall consist of five (5) members appointed by Council.
2. Subject to Section 3, each member of the Board shall hold office for a term of three (3) years or until the member's successor is appointed. A member shall not serve more than two consecutive three (3) year terms provided, however, that after at least one three (3) year term out of office that member may be re-appointed.
3. Council may rescind an appointment to the Board at any time.
4. A majority of the Board is a quorum.
5. In the event of the death, resignation or removal from office of a member of the Board, the remaining members shall constitute the Board until the appointment of a successor.

6. Members of the Board shall not receive compensation for their services other than allowances for actual expenses reasonably and necessarily incurred in the performance of their duties. Council shall include in its annual budget the funds necessary to pay for the costs of the Board.
7. The members of the Board must elect one of their members as Chair on an annual basis. The Chair may appoint a member of the Board as acting chair to preside in the absence of the Chair.

#### **APPEAL PROCESS & FEES**

8. The Board shall hear and determine applications as specified under Section 901 and Section 902 of the *Local Government Act*.
9. Any person who wishes to exercise the right of application before the Board shall deposit with the City Clerk a notice of application which shall state the description of the property which is the subject of the application, the grounds of application, supporting documentation, and contact information of the applicant or applicant's agent.
10. A notice of application received less than twenty (20) days prior to the next scheduled hearing of the Board will be considered at the subsequent hearing of the Board.
11. Every person submitting a notice of application to the Board shall pay to the City, at the time of application, the application fee as set out in Schedule E of "Surrey Fee Setting By-law, 2001, No. 14577", as amended (the "Fee Setting By-law"). A notice of application will not be processed or referred to the Board unless and until proof of payment has been provided to the City Clerk.
12. An application may only be deferred at the request of the applicant twice without incurring additional fees. Subsequent hearings will require payment by the applicant of a second application fee as set out in Schedule E of the Fee-Setting By-law.
13. Rebates of a portion of the application fee shall be made according to the following conditions:

- (a) After a notice of application has been received, but prior to initiation of the public notification process, a 90% rebate shall be made to the person who paid the application fee if an appeal to the Board is unnecessary, or if an appeal is withdrawn.
  - (b) After a notice of application has been received, and following commencement of the public notification process, but prior to the hearing of an application by the Board, a 75% rebate shall be made to the person who paid the application fee if an appeal to the Board is unnecessary, or if an appeal is withdrawn.
  - (c) After the hearing of an application, the applicant is not entitled to a rebate of the application fee.
14. Upon a decision being made by the Board, the applicant may, within sixty (60) days of the decision, make a further application to the Board if the application relates to the same matter as the original appeal but varies the relaxation requested. This second application shall be accompanied by the fee set out in Schedule E of the Fee Setting By-law.

#### **SECRETARY DUTIES**

15. The Secretary to the Board (the "Secretary") shall be appointed by the City Clerk. In addition to recording the decisions of the Board at its meetings, the Secretary shall:
- (a) receive notices of application and present them to the Board;
  - (b) cause such notices of application or of meetings of the Board to be published or served as directed by the Board or its Chair;
  - (c) prepare, maintain and preserve the minute book and other business of the Board;
  - (d) notify applicants and City officials, in writing, of the decisions of the Board; and
  - (e) perform such other duties as are customary to the office of the Secretary.
16. The Secretary shall examine the notices of application as submitted and may request applicants to furnish further information as may be necessary for the proper understanding of the nature of the application.

17. The Secretary shall notify the Chair and Board members of a notice of application one week prior to the hearing of the application. Five business days notice of the hearing shall be mailed or otherwise delivered by the Secretary:
  - (a) to the applicant, directed to the contact information described in the notice of application; and
  - (b) to the owners and occupiers of the properties adjacent to the subject property, including those across dedicated rights-of-way and highways.

## CONDUCT OF HEARING

18. At the hearing of an application, the Board shall act in good faith and fairly listen to both sides before arriving at a decision. The parties shall be given a chance to correct any statement made at the hearing and contradict it if prejudicial to their view. All hearings and deliberations of the Board shall be open to the public except those hearings or portions of hearings that are closed to the public under the provisions of Section 90(i) of the *Community Charter*.
19. The Board shall make its decision based on the written application materials placed before the Board by the Secretary, as well as on the written and verbal submissions presented at the hearing.
20. Before reaching a decision on the application before it, the Board may require further information and may defer the hearing from time to time as the Board may deem advisable.
21. The applicant may request deferral of the hearing if the applicant notifies the Secretary of such request prior to the hearing and the Board may grant a deferral.
22. In the event of an applicant failing to appear at the hearing of the application and no deferral having been requested, or in the event of the applicant being present at the hearing and failing to proceed with the application when called upon by the Secretary to do so, the application may be considered or deferred at the discretion of the Board.

23. The applicant may withdraw the application appeal by a written request filed with the Secretary at any time prior to the hearing or may withdraw the application orally at the hearing.
24. An applicant appearing before the Board shall have the right to be represented by counsel.
25. The decision in writing of all or of a majority of the members of the Board is the decision of the Board.
26. The decision of the Board shall be mailed or otherwise delivered by the Secretary to the applicant, directed to the contact information described in the application, and shall be deemed good and sufficient notification of the Board's decision.
27. In the event of the Board members being equally divided, the application shall be disallowed.
28. At the conclusion of the hearing, the Board may render its decision or may adjourn the application and render its decision at a subsequent meeting.
29. The decision, and the reasons for the decision, of the Board shall be recorded in writing by the Secretary, and the Secretary shall provide the written decision and written reasons for the decision to the applicant and City officials.
30. If an application is allowed by the Board:
  - (a) the Board may set a time within which the lawful 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 two (2) years of the Board's decision, or within a longer or shorter time period established by the Board in its decision,then the permission or exemption granted by the Board shall terminate and the provisions of the applicable by-law or section of the *Local Government Act*, as the case may be, shall apply.

31. All decisions of the Board are final and binding except as provided for in Section 902(3) of the Local Government Act.
32. "Surrey Board of Variance By-law, 2004, No. 15317", as amended, is hereby repealed.
33. This By-law may be cited for all purposes as "Surrey Board of Variance Establishment By-law, 2010, No. 17282".

PASSED THREE READINGS on the    day of

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the

\_\_\_\_\_MAYOR

\_\_\_\_\_CLERK