

BYLAW NO. 1563

A bylaw to establish a Board of Variance.

WHEREAS the *Local Government Act* directs that a local government that has adopted a zoning bylaw, must, by bylaw, establish a Board of Variance;

AND WHEREAS the Council of the Town of Creston has adopted a zoning bylaw;

AND WHEREAS the bylaw establishing a Board of Variance, must set out the procedures to be followed, including the manner by which appeals are to be brought forward and notices given;

NOW THEREFORE the Council of the Town of Creston, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as "Board of Variance Bylaw No. 1563".
2. Regulations for the size and appointment of members to the Board of Variance, are governed by the *Local Government Act* and the members so appointed, must elect the Chair. **BL#1954**

3. SECRETARY

The Manager of Community Planning and Development or delegate, shall act as Secretary to the Board of Variance, and the duties of the Secretary are:

- (a) to receive notices of appeal;
- (b) to determine if the appeal falls within the jurisdiction of the Board of Variance; and to notify the applicant if it does not;
- (c) to notify the Chair of the Board of the receipt of the notice of appeal;
- (d) to ensure that proper notification is given in compliance with this Bylaw;
- (e) to keep proper records of the Board of Variance proceedings;
- (f) to maintain a record of all decisions of the Board and make it available to the public during regular office hours.

BL#1954

4. MEETINGS

- (a) A meeting of the Board 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 the applicant.
- (b) The Board shall be convened by the Chair on the date of hearing and at the time and place set out in the notice.
- (c) The Board shall hear all representations made to the Board, whether made in person or in writing.
- (d) In each Calendar year, the Board must meet once.

BL#1983

BL#1954

5. NOTICE OF APPEAL

- (a) Any person desiring to appeal to the Board of Variance 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.
- (b) Where the appeal is based upon a determination of value [extent of damage to a building or structure] made pursuant to Section 544 of the *Local Government Act*, the notice of appeal shall be filed with the Secretary of the Board within 30 days of the making of the determination by the Building Inspector.
- (c) Upon receiving notification of an appeal, the Secretary in consultation with the Chair of the Board, shall set a hearing date, and the Secretary shall cause notice of the hearing to be mailed or

otherwise delivered not less than 10 calendar days prior to the date of the hearing to:

- (i) the members of the Board of Variance;
 - (ii) the applicant;
 - (iii) the registered owners as shown on the last revised assessment roll and the occupiers of properties (where known) of the subject property and all real property located within a 60 metre (197 feet) radius of the subject property;
 - (iv) the official whose interpretations is being appealed, where the appeal falls under Section 544 of the *Local Government Act*.
- (d) The notice of the hearing shall state the date, place and time of the appeal hearing and include details outlining the request for the appeal.
 - (e) 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 a newspaper published or circulating in the municipality, the date of publication to be not less than 3 days nor more than 10 days before the date of the hearing.
 - (f) The Secretary shall permit the public inspection of any notice of appeal, or of any written evidence entered before the hearing, including municipal staff reports.

BL#1954

6. CONDUCT OF HEARING

- (a) A quorum for the hearing is 2 members. If the Chair is absent for a hearing, those present may appoint an acting Chair for the duration of that hearing.
- (b) Any person or body with interest in property within the municipality 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 so represented, in accordance with Section 6.(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 of the subject matter of that evidence.
- (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 applicant shall be afforded the first opportunity to present their evidence and arguments, and thereafter, evidence and arguments shall be presented in such sequence as the Chair 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.
- (i) If the applicant or other persons notified do not appear at the hearing or any 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 their absence.

BL#1954

7. DECISION

- (a) Decisions of a Board of Variance apply to land irrespective of ownership, and are lawful for the existing and subsequent owners unless the Board has limited the time period for initiation of the variance in the original order as provided for in Section 542.(3)(a)(b) of the *Local Government Act*.
- (b) Decisions of a Board of Variance must comply with Sections 542 of the *Local Government Act*, whereby compliance with the said bylaw or Section 544 of the *Local Government Act* would cause the applicant undue hardship.
- (c) The decision of the Board shall be by a majority of those members present; made within 7 days of the closing of the hearing, and is final (cannot be appealed).
- (d) The Secretary shall, within 7 days of a decision, send by mail or otherwise deliver the written

decision of the Board of Variance to the applicant, all persons who made representation at the hearing, and the local government Building Inspector.

- (e) The Secretary shall, within 7 days of the decision, enter that decision in the record maintained at the local government office.

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8. At the time of application for a Board of Variance appeal, the applicant shall pay a fee as specified in Fees and Charges Bylaw No. 1763, 2011. A refund of fees will only be permitted if the applicant withdraws the appeal prior to the required notices being mailed (10 days before the hearing), and no refund shall be granted following the hearing.

BL#1954

9. Board of Variance Bylaw No. 1091 and amendments thereto, are hereby repealed.

10. This bylaw shall come into full force and effect upon adoption.

READ A FIRST time by title and SECOND TIME by content this 24th day of February, 2003.

READ A THIRD TIME by title this 24th day of February, 2003.

ADOPTED this 10th day of March, 2003.

“Joe Snopek”
Mayor Joe Snopek

“Gwen Mason”
Director of Corporate Administration

INDEX OF AMENDING BYLAWS

Bylaw #1954 Adopted May 10, 2022
Bylaw #1983 Adopted December 5, 2023

NOTE TO USERS

"WHEREAS each bylaw consolidation shall be proof, in the absence of evidence to the contrary, of the original bylaw, of all bylaws amending it and of the fact of passage of the original and all amending bylaws", pursuant to 'Authority to Consolidate Municipal Bylaws No. 1533', which was adopted on the 11th day of June, 2001.