

VILLAGE OF PEMBERTON

BYLAW No. 893, 2021

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A BYLAW TO ESTABLISH A BOARD OF VARIANCE

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**WHEREAS** the Council of the Village of Pemberton has adopted a Zoning Bylaw:

**AND WHEREAS** the *Local Government Act*, provides that where a Council has adopted a Zoning Bylaw, there shall be established, by bylaw, a Board of Variance.

**AND WHEREAS** the *Local Government Act* provides that in a bylaw establishing a Board of Variance there shall be set out the procedures to be followed by the Board of Variance, including the manner in which appeals are to be brought to the Board of Variance and how notices of applications to the Board of Variance are to be given;

**NOW THEREFORE** the Council of the Village of Pemberton, in open meeting assembled, enacts as follows:

**1. CITATION**

- 1.1 This Bylaw may be cited for all purposes as the “Board of Variance Bylaw, No. 893, 2021”.

**2. ESTABLISHMENT**

- 2.1 The Board of Variance is hereby established in accordance with the provisions of the *Local Government Act*.

**3. INTERPRETATION**

- 3.1. In this Bylaw:

“ <b>Board</b> ”	means the Village of Pemberton Board of Variance;
“ <b>Chair</b> ”	means the Chair of the Board of Variance;
“ <b>Council</b> ”	means the Council of the <i>Village</i> ;
“ <b>Manager of Development Services</b> ”	means the person appointed by the Chief Administrative Officer for the Village as the Manager of Development Services and

includes any person temporarily appointed or designated to act in their place;

**“Village”**

means the Village of Pemberton;

3.2 Unless otherwise defined herein, words and phrases in this Bylaw have the same meanings as in the Local Government Act, Community Charter, or Interpretation Act (British Columbia), as the context required. A reference to a statute, regulations or bylaw refers to that enactment as amended or replaced from time to time.

3.3 A reference contained within this Bylaw to any enactment of British Columbia or the Village of Pemberton is a reference to the enactment amended, revised, consolidated, or replaced from time to time.

#### **4. APPOINTMENT OF BOARD MEMBERS**

4.1 The *Board* shall consist of three (3) members appointed by *Council*.

4.2 The *Board* shall elect one of their members as *Chair*, who may appoint an acting *Chair* to preside in the absence of the *Chair*.

4.3 Each *Board* member shall hold office for a term of three (3) years or until a successor is appointed, but a member may be re-appointed for a further term(s).

#### **5. MEETINGS**

5.1 The *Board* shall determine the meeting schedule with a minimum of one meeting scheduled per month, except for December.

5.2 In the event that no application of appeal to the *Board* is submitted at least twenty-nine (29) calendar days prior to the date of the next meeting, then no meeting shall be held.

5.3 The *Board* shall be convened by the *Chair* on the date of the hearing and at the time set out in the notice.

5.4 The *Board* shall hear representation made to the *Board*.

5.5 All meetings and deliberations of the *Board* shall be open to the public.

#### **6. PROCESS AND FEES**

- 6.1 The *Board* shall hear and determine applications as specified under Section 542, 543 and 544 of the *Local Government Act*.
- 6.2 The *Manager of Development Services* may prescribe:
- a) the form and content of application forms; and
  - b) whether or not an application is complete.
- 6.3 Any person desiring to be heard by the Board of Variance must submit an application as follows:
- a) Completed application form and accompanied by supporting documents as indicated on the form;
  - b) Filed with the Village of Pemberton Development Services Department;
  - c) Signed by either the applicant or by a person authorized to sign on behalf of the applicant; and
  - d) Accompanied by the non-refundable application fee of \$400.00
- 6.4 Where an appeal is based on a determination of value made pursuant to Section 544(1) of the *Local Government Act*, notice of appeal shall be filed no later than thirty (30) days after the appellant has been advised in writing of such determination.

## **7. NOTICE OF HEARING**

- 7.1 The Village shall not less than seven (7) calendar days before the hearing of an appeal under Section 540 of the *Local Government Act*, mail or otherwise deliver notice of the hearing to all owners and occupiers of land that are at a distance no greater than 100 meters from the property line of the lands subject to the application.
- 7.2 The notice of the hearing shall state the date, place, and time of the hearing and shall state the subject matter of the application.
- 7.3 *The Village* shall upon receipt of any notice of application or of any written evidence entered before the hearing including staff reports, permit the same to be inspected at the *Village* office during regular office hours.

## **8. CONDUCT OF HEARING**

- 8.1 A quorum for the Board shall be two (2) members. In the absence of the Chair, and provided that they have not appointed an Acting Chair, the remaining members may appoint one or the other as an Action Chair for the duration of the hearing.

- 8.2 The *Chair* is a member and is entitled to vote on all matters coming before the *Board*.
- 8.3 Any person or body with interest in property within the Municipality of Pemberton 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.
- 8.4 Any person represented in accordance with Section 8.3, whether or not also attending in person, shall be deemed to be a party attending the hearing.
- 8.5 The *Village*, through an official appointed by *Council*, is entitled to be heard as a party attending the hearing.
- 8.6 Evidence at a hearing may be given orally or in writing, but the *Board* shall not hear oral evidence except at a regularly constituted hearing of the subject matter of that evidence.
- 8.7 No member of the *Board* shall discuss the merits of the appeal with any person who is not a member of the *Board* or *Village* staff, before the *Board* has reached a decision.
- 8.8 The applicant shall be afforded the first opportunity to present their evidence and arguments, thereafter evidence and arguments shall be presented in such sequence as the *Chair* may direct until all parties to the application have been afforded a reasonable opportunity to be heard.
- 8.9 The *Board* may view the property affected by the appeal and surrounding properties.
- 8.10 The *Board* may adjourn a hearing and no further notice of the hearing is required if the date, time and place for its resumption are stated to those present at the time of adjournment.
- 8.11 If the applicant, having failed to notify the *Village* at least three (3) days in advance that neither he nor a representative is able to attend, does not appear at the hearing, the *Board* may proceed to decide the appeal in their absence.

## **9 DECISION**

- 9.1 The decision of the majority shall be the decision of the *Board*, provided that where the votes of the members present, including the vote of the *Chair* or *Acting Chair*, are equal for and against allowing an appeal, the appeal shall be denied.

- 9.2 The *Village* shall, within seven (7) days of a decision, send by mail or otherwise deliver the written decision of the *Board* to the applicant and the *Village* Building Inspector.
- 9.3 The *Village* shall, within seven (7) days of the decision, enter that decision in the record maintained at the local government office.
- 9.4 A decision of the *Board* may contain such conditions as it deems advisable under the circumstances.
- 9.5 A decision of the *Board* is final.

## **10 GENERAL**

- 10.1 Subject to the provisions of this bylaw, the *Board* shall determine its own procedure.
- 10.2 Wherever the singular is used in this bylaw, the same shall be construed to mean the plural or body corporate as the context may require.

## **11 REPEAL**

- 11.1 “The Corporation of the Village of Pemberton Board of Variance Bylaw, No. 678, 2011” and its amendments are hereby repealed.

**READ A FIRST TIME** this 2 day of March 2021.

**READ A SECOND TIME** this 2 day of March 2021.

**READ A THIRD TIME** this 2 day of March 2021.

**READ A FOURTH TIME AND FINALLY ADOPTED** this 16<sup>th</sup> day of March, 2021.

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Mike Richman  
Mayor

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Sheena Fraser  
Corporate Officer