

# BOARD OF VARIANCE BYLAW

## VILLAGE OF PEMBERTON

### BYLAW No. 893, 2021

#### CONSOLIDATED VERSION



#### LAST OFFICE CONSOLIDATION: November 1, 2021

This document is an office consolidation of the Village of Pemberton Board of Variance Bylaw No.893, 2021 (adopted March 16, 2021) and subsequent amendments adopted by Village Council.

All persons making use of this consolidation are reminded that it has no Council sanction, that amendments have been incorporated only for convenience of reference, and that for all purposes of interpretation and application that original bylaw should be consulted.

The Village of Pemberton will, in no event, be liable or responsible for damages of any kind arising out the use of this consolidation.

This is not the official version of the Village of Pemberton Business Licence Bylaw No. 855, 2019, nor is it admissible in a court of law. For such purposes, official certified copies can be obtained from the Village Office or by contacting us at: [admin@pemberton.ca](mailto:admin@pemberton.ca)

List of Amending Bylaws

<b>BYLAW NO.</b>	<b>SECTION</b>	<b>DESCRIPTION</b>	<b>ADOPTED</b>
<b>907, 2021</b>	3.1	Adds definitions	October 5, 2021
	3.2	Adds reference to Local Government Act, Community Charter, and Interpretation Act for terms not specifically defined.	
	6.2	Clarifies Manager's authority	
	6.3; 6.4	Clarifies application process	
	6.5	Adds reference to Fees and Charges Bylaw No. 905, 2021	
	6.6 – 6.9	Adds provision for cost recovery	
	8.3 – 8.5; 9.2	Text corrections	
<b>910, 2021</b>	5.6	Adds new section 5.6 Electronic Meetings, adding permission to hold fully electronic meetings	October 21, 2021
	5.7	Adds new section 5.7, authorizing electronic participation at in-person meetings.	

**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:

**“Application”** (*Amendment Bylaw No. 907, 2021*)

means an application of appeal to the Board of Variance.

**“Applicant”** (*Amendment Bylaw No. 907, 2021*)

means a person who has submitted an application of appeal to be heard by the Board of Variance, or their authorized agent.

**“Board”**

means the Village of Pemberton Board of Variance;

<b>“Building Official”</b>	means the person appointed to this role for the Village and their designate.
<b>“Chair”</b>	means the Chair of the Board of Variance;
<b>“Council”</b>	means the Council of the <i>Village</i> ;
<b>“Manager”</b> (Amendment Bylaw No. 907, 2021)	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;
<b>“Village”</b>	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.* (Amendment Bylaw No. 907, 2021)
- 3.3. A reference contained within this Bylaw to an enactment of British Columbia or the Village of Pemberton is a reference to the enactment as amended, revised, consolidated, or replaced from time to time. (Amendment Bylaw No. 907, 2021)

#### **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 reappointed 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.

5.6 **Electronic Meetings** (Amendment Bylaw No. 910, 2021)

a) A *Board* meeting may be conducted by means of electronic or other communication facilities, if:

- i. the *Chair*, or in the absence of the *Chair*, the Acting Chair, determines it is advisable; or
- ii. the electronic meeting format is necessitated by a health, safety, or environmental emergency or urgent *Village* business that prevents all members from attending in person.

b) Advance notice of a meeting to be conducted pursuant to section 5.6 a) will be provided advising that the meeting will be conducted by means of electronic or other communication a facilities, as follows:

- i. the agenda cover sheet will include that the meeting is being held electronically; and
- ii. details will be included on the agenda cover sheet and on the *Village's* website with instructions to participate electronically or by telephone.

5.7. **Electronic Participation at Meetings** (Amendment Bylaw No. 910, 2021)

a) A member of the *Board* who is unable to attend at a board of variance meeting may participate in the meeting by means of electronic or other communications facilities.

b) Members of the *Board* who are participating in a meeting under this section are deemed to be present at the meeting.

**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* may
- a) prescribe the form and content of an application form, and
  - b) determine if an *application* is complete. (Amendment Bylaw No. 907, 2021)
- 6.3. A person desiring to be heard by the *Board* must submit to the *Manager*
- a) a completed application, signed by the *applicant*,
  - b) all required supporting documents, and
  - c) the non-refundable application fee. (Amendment Bylaw No. 907, 2021)
- 6.4. A person desiring to be heard by the *Board* under section 544 of the *Local Government Act* based on a determination of value made pursuant to section 532 (1) of the *Local Government Act* must submit to the *Manager* an *application* to be heard by the *Board* no later than thirty (30) days after being advised in writing of such determination. (Amendment Bylaw No. 907, 2021)
- 6.5. Fees, charges, and deposits for services that are or may be provided under this Bylaw shall be charged as set out in Village of Pemberton Fees and Charges Bylaw No. 905, 2021. (Amendment Bylaw No. 907, 2021)
- 6.6. The non-refundable application fee is the minimum fee payable. (Amendment Bylaw No. 907, 2021)
- 6.7. If the *Manager* determines that the cost to process an *application* exceeds or may exceed the application fee, costs exceeding the application fee shall be recovered from the *applicant* based on actual staff and contractor costs incurred in processing the application. (Amendment Bylaw No. 907, 2021)
- 6.8. The *Manager* may, at any stage of the *application* review, require the *applicant* to pay a deposit based on the *Manager's* estimate of the cost of processing the application. (Amendment Bylaw No. 907, 2021)
- 6.9. The *Manager* may withhold review of an *application* if the *applicant's* account is in arrears. (Amendment Bylaw No. 907, 2021)

## **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.
- 8.2 The *Chair* is a member and is entitled to vote on all matters coming before the *Board*.
- 8.3 In the absence of the *Chair*, and if the *Chair* has not appointed an Acting Chair, the remaining members may appoint one or the other as an Acting Chair for the duration of the hearing. *(Amendment Bylaw No. 907, 2021)*
- 8.4 Any person or body with interest in property within the Village of Pemberton *(Amendment Bylaw No. 907, 2021)* 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.
- 8.5 Any person represented in accordance with section 8.4, whether or not also attending in person, shall be deemed to be a party attending the hearing.
- 8.6 The *Village*, through an official appointed by *Council*, is entitled to be heard as a party attending the hearing.
- 8.7 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.
- 8.8 No member of the *Board* shall discuss the merits of the appeal with any person who is not a member of the *Board* or Staff, before the *Board* has reached a decision.
- 8.9 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.
- 8.10 The *Board* may view the property affected by the appeal and surrounding properties.

- 8.11 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.
- 8.12 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 Official* (*Amendment Bylaw No. 907, 2021*) .
- 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