



Corporate NO: R268

Report COUNCIL DATE: December 11, 2000_

REGULAR COUNCIL			
TO:	Mayor & Council	DATE:	December 7, 2000
FROM:	General Manager, Planning & Development	FILE:	0022-002
SUBJECT:	Legislative Changes to the Board of Variance Provisions in the Local Government Act		

RECOMMENDATION

It is recommended that Council receive this report as information.

INTENT

The intent of this report is to apprise Council of the legislative changes to the Local Government Act related to the Board of Variance provisions and the implications of these changes on the processing of certain types of variances.

BACKGROUND

Bill 14, the *Local Government Statutes Amendment Act*, was introduced on May 10, 2000 and received Royal Assent on June 12, 2000. The Bill puts forward a number of significant changes to the former *Municipal Act*, including the name of the Act itself, now changed to *Local Government Act*. One of the significant amendments is related to the Board of Variance provisions in the *Local Government Act*. Under Section 901 in the Act, a person may apply to the Board of Variance for an order to allow a minor variance from the requirements of certain by-laws or Sections in the *Local Government Act* for the following matters:

1. The siting, dimensions or size of a building or structure;
2. A subdivision servicing requirement in an area zoned for agricultural or industrial use;
3. The prohibition of a structural alteration or addition in or to a building or structure being used for a legal non-conforming use;

4. The siting of a manufactured home in a manufactured home park; and
5. The Tree Preservation By-law.

DISCUSSION

The Board of Variance is limited to considering variances exclusively on the basis of whether “undue hardship” is caused by the strict application of the by-law or legislation to the circumstance in question. Where the Board is satisfied that “undue hardship” exists, it may grant the requested variance.

Both City Council and the Board of Variance have authority to deal with variances related to the first two categories of variances listed above. Bill 14 attempts to clarify the overlapping jurisdiction by adding a new requirement under Section 901 (1.1). For either of these first two categories, the new provisions require that at least 45 days prior to applying to the Board of Variance, a person must first have applied to the local government for a development variance permit for the variance.

Before these new provisions related to the Board of Variance become effective, it is necessary for the Provincial government to adopt a set of regulations in support of the new provisions. These regulations are currently being developed by the Ministry of Municipal Affairs and were originally scheduled to take effect on January 1, 2001. However, over the past few months since Bill 14 received Royal Assent, several local municipalities have raised relatively strong concerns with the Ministry regarding the conflict of decision making, time delay and increase in application costs associated with the new provisions. These concerns are currently under review by the staff of the Ministry. For this reason the Ministry has decided to defer the adoption of the regulations related to the new Board of Variance provisions to a later date. Ministry staff has also advised that further legislative amendments may be considered relative to the Board of Variance provisions. City staff will continue to monitor the progress of the Ministry on this matter and will provide further reports to Council as new information becomes available. Based on comments from the Ministry it is considered unlikely that regulations related to the Board of Variance provisions will be adopted before the summer of 2001.

Implications of the New Legislation:

The new legislative requirements relating to the Board of Variance have implications in the following areas:

1. Board of Variance Applications

The number of Board of Variance applications under the first two categories listed above was 51 in 1999 and 30 to the end of November 2000. They constituted 93% and 100% of all variance applications considered by the Board of Variance in 1999 and 2000, respectively. When the new provisions, of the *Local Government Act* come into effect, these types of applications will need to be considered by City Council first in form of a development variance permit application. Unless the development variance permit is denied by Council and the applicant chooses to apply again for the variance to the Board under Section 901 of the *Local Government Act*, these types of variances will not be considered by the Board of Variance. As a result, it is expected that there will be a significant decrease in the number of applications submitted to the Board of Variance, and an increase in the number of development variance permit applications considered by Council.

Currently, staff of the Building Division and of the Area Planning Division are present at each Board of Variance meeting to provide the Board with background and technical information regarding each application. This includes information about the site such as zoning requirements and relevant zoning and permitting history, a description of the variance being sought, technical requirements and any other information specifically requested by the Board.

When the new Section 901 (1.1) comes into effect, a person may apply to the Board of Variance if Council denies their development variance permit application. Council's decision and the associated planning report regarding the site and the proposed variance will be provided to the Board as information. The Board will still have the autonomy to make whatever decision they determine to be appropriate regarding each application.

2. Processing of Development Variance Permit Applications

Under the new provisions of the *Act*, any person who wishes to seek a variance on the first two categories of variances listed above (i.e. Zoning By-law requirements regarding building setback, site coverage, or building height, or the subdivision servicing requirements in an area zoned for agricultural or industrial use) will need to first apply to the City for a development variance permit. The applicant may not apply to the Board of Variance unless they have applied for a development variance permit at least 45 days prior. This 45-day timeline suggests that a decision on the development variance permit occur within 45 days of the application. Otherwise, the applicant could apply to the Board of Variance while the development variance permit application is still in process which is not the intent of the new provision in the *Local Government Act* based on discussions with Ministry staff.

To meet the 45 day timeline, staff will need to manage the processing of each development variance permit application to ensure that a planning report is submitted to Council for consideration within 4 weeks of receipt of the application which will allow 2 weeks for public notification and referral back to Council for a final decision within the 45 day timeframe.¹

The 45-day timeline will apply to development variance permit applications on the first two categories of variances only. The other categories of variances listed above and those associated with rezoning, development permit or other development applications will follow the existing review and approval process.

3. Application Fees

The Board of Variance application fee is \$200 and the development variance permit application fee is \$840 as of January 2, 2001. The City's applications fees are structured generally to cover the average costs of processing the type of application to which the fee is applied. Development variance permit applications are more cumbersome (i.e., departmental referral, preparation of a planning report, public notification, etc.) and therefore more costly to the City to process than Board of Variance applications. The result of the new legislation will be to increase the costs to individuals who will now be required to proceed through a development variance permit process in place of the Board of Variance process for certain types of variances, and if unsuccessful will have to pay additional fees to proceed to the Board of Variance process.

CONCLUSION

If the new provisions of the *Local Government Act* related to the Board of Variance come into effect in 2001 unamended, they will result in a significant decrease in the number of applications submitted to the Board of Variance, and an increase in the number of development variance permit applications considered by City Council. Staff will process these types of development variance permit applications expeditiously in order to meet the 45-day timeline prescribed in the Act. Should a person apply to the Board after his/her development variance permit application has been denied by Council, Council's decision and the associated planning report on the application site should be provided to the Board of Variance as information.

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