

Appendix D
Board of Variance By-law No. 10200

(Consolidated for convenience only, amended to By-law No. 10303, effective June 28, 2011)

(Amended 2011 06 28 - No. 10303)

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Section 1

Interpretation

1.1 Name of By-law

The name of this By-law, for citation, is the “Board of Variance By-law”.

1.2 Definitions

In this By-law:

Appellant means a person who has filed a notice of appeal under section 3.1;

Board means the Board of Variance established under section 2.1, consisting of 5 members appointed by Council;

Chair means the chair of the Board elected by its members;

Material means information recorded graphically, mechanically, electronically, digitally, or otherwise;

Record means a record, regardless of physical form or characteristics, recorded or stored graphically, mechanically, electronically, digitally, or otherwise; and

Secretary means the secretary to the Board.

1.3 Table of Contents

The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

1.4 Schedules

Schedules to this By-law form part of this By-law.

1.5 Severability

A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

Section 2

Administration

2.1 Establishment of Board

Council establishes the Board of Variance.

2.2 Election of Chair by Majority

The members of the Board must elect the Chair by resolution passed by a majority of the members.

2.3 Term of Chair

The Chair is to hold that position for a one year term, and the members of the Board may re-elect that individual as Chair for one or more further terms.

2.4 Qualification of Secretary and Other Officials

The secretary and other officials appointed by the Board must be employees of the city.

2.5 Duties of Secretary

The secretary must:

- (a) prepare a record of each decision of the Board;
- (b) prepare a record of the reasons of each member for his or her decision;
- (c) prepare a record of the minutes of each meeting of the Board that include the disposition of each appeal;
- (d) arrange for publication or service of each notice of appeal and each meeting of the Board as directed by the Board or its Chair;
- (e) give written notice of each decision of the Board to the appellant, any applicant for a development permit for the property, and the Director of Planning;
- (f) keep custody of the records and minutes of the Board; and
- (g) Perform other duties customary to the office of a secretary or set out in this By-law, including an annual report to Council summarizing the issues heard by the board.

2.6 Meetings of Board

In each calendar year, the Board must meet at least twice each month except that the Board need only meet once in December and in one other month chosen by the Chair.

2.7 Expenses

Board members are to receive reimbursement for expenses they incur necessarily in the conduct of their duties including the cost of transportation between their homes or offices and Board meetings, or for inspection trips to view sites that are the subject of appeals.

2.8 Procedures of Board

Subject to this By-law, the Board may determine its own procedures.

Section 3

Notice of Appeal

3.1 Filing Notice of Appeal

A person who wishes the Board to hear and determine an appeal must submit concurrently to the secretary:

- (a) the notice of appeal;
- (b) all written material such person intends to submit to the Board at the hearing; and
- (c) the fee established under the Miscellaneous Fees By-law for filing the notice of appeal.

3.2 Deadline for Filing Certain Notices of Appeal

A person who wishes to appeal a decision under section 573(1)(a), (e), or (f)(i) of the Vancouver Charter must file the notice of appeal, in accordance with section 3.1, within 30 days after the date of the decision, except that if:

- (a) the Board is satisfied as to the good faith of such person, and the sufficiency of public notice; and
- (b) such person files the notice of appeal, and all such material, within 75 days after the date of that decision;

the Board may hear the appeal.

3.3 Contents of Notice of Appeal

A notice of appeal must state, in a simple manner, the grounds of appeal, and must be in substantially the form attached to this By-law as Schedule A.

3.4 Examination of Notice of Appeal

The secretary must examine each filed notice of appeal, and may request the appellant to submit such further material as the secretary may deem necessary for the Board to understand the nature of the appeal.

Section 4

Prerequisites To Hearing

4.1 Time and Place of Hearing

The Chair must fix a convenient time and place for the hearing of an appeal.

4.2 Notice of Hearing

At least five days before the date of a hearing of an appeal, the secretary must give written notice of the time and place of the hearing:

- (a) by mail to the appellant;
- (b) by mail to any applicant for a development permit for the property; and
- (c) to the Director of Planning, and such other city officials as the Chair directs.

4.3 Advertisement of Notice of Hearing

If required by the Board, the secretary must arrange for publication of notice of the time and place of a hearing in not less than two consecutive issues of a newspaper circulating in the city not less than three days nor more than 10 days before the date of the hearing.

Section 5

The Hearing

5.1 Proceedings at Hearing

Proceedings at a hearing are to be informal.

5.2 Opportunity to be Heard

At a hearing, the Board must afford the opportunity to be heard to:

- (a) the appellant;
- (b) the Director of Planning;
- (c) if the appeal is under section 573(1)(e) of the Vancouver Charter, the Development Permit Board; and
- (d) any witnesses or other persons whose information may assist the Board in deciding the appeal.

5.3 Other Requirements of Board

Before deciding an appeal, the Board may:

- (a) view the site; and
- (b) require the submission of further information to:
 - (i) corroborate statements made by the appellant or other witnesses,
 - (ii) explain the wording or intent of any by-law relevant to the appeal, or
 - (iii) determine more fully the effect upon neighbouring properties affected by the appeal.

5.4 Non-stated Ground of Appeal

Subject to section 6.1(c), the Board must not hear or consider a ground of appeal that the appellant has not stated in the notice of appeal.

5.5 Absence of Appellant

If the appellant has requested the Board to proceed with a hearing in the absence of the appellant, the Board may do so, may hear any other interested persons, and may decide the appeal.

Section 6

Adjournment and Withdrawal

6.1 Adjournment

The Board may adjourn a hearing:

- (a) if the appellant has given the secretary written notice requesting such adjournment;
- (b) if the appellant fails to appear at the hearing, and has not requested an adjournment;
- (c) to allow the appellant to amend the notice of appeal to include one or more new grounds of appeal; or
- (d) as the Board may deem advisable, and may require the secretary to mail notice of the adjourned hearing to such owners of real property as the Board deems affected by the appeal.

6.2 Withdrawal

An appellant may:

- (a) before a hearing, file with the secretary a written request withdrawing the appeal; or
- (b) before the Chair polls the members of the Board for their decision on an appeal, orally withdraw the appeal at a hearing.

Section 7

Decision of the Board

7.1 Decision

At the conclusion of a hearing, the Board may render its decision, or may adjourn the appeal and render its decision at a later meeting.

7.2 Reasons for Decision

The Board must give reasons for its decision concerning the appeal.

7.3 No Re-hearing of Appeal

The Board must not re-hear an appeal covering the identical grounds or principles upon which the Board has previously rendered a decision.

Section 8
Repeal and Enactment

8.1 Repeal

This By-law repeals By-law No. 3844.

8.2 Force and effect

This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this 18th day of January, 2011

Schedule A

Notice of Appeal

To: The Secretary
Board of Variance/Parking Variance Board
Vancouver City Hall
453 West 12th Avenue
Vancouver, B.C. V5Y 1V4
(604) 873-7723

I/We file an Appeal to the Board of Variance/Parking Variance Board.

The Property

Address: _____

Legal Description: _____

Type of Appeal

BOARD OF VARIANCE

Appeal for Variance

<input type="checkbox"/> <i>Vancouver Charter</i> , Section 573(1)(b)	Zoning and Development By-law, Section(s): _____ _____
<input type="checkbox"/> <i>Vancouver Charter</i> , Section 573(1)(f)(ii)	Sign By-law, Section(s): _____ Private Property Tree By-law, Section(s): _____

(See attached Vancouver Charter Provisions)

Appeal of Decision

<input type="checkbox"/> Decision of Director of Planning <i>Vancouver Charter</i> , Section 573(1)(a)	Development Application No. _____ <input type="checkbox"/> Appealing refusal <input type="checkbox"/> Appealing approval <input type="checkbox"/> Appealing condition(s) of approval
<input type="checkbox"/> Decision of Development Permit Board <i>Vancouver Charter</i> , Section 573(1)(e)	Development Application No. _____ <input type="checkbox"/> Appealing refusal <input type="checkbox"/> Appealing approval <input type="checkbox"/> Appealing condition(s) of approval
<input type="checkbox"/> Refusal of Tree Cutting/Removal Permit <i>Vancouver Charter</i> , Section 573(1)(f)(i)	

(See attached Vancouver Charter Provisions)

NOTE: All written material you intend to submit to the board of variance must be attached to this notice of appeal. You may produce other supporting materials, including photographs, plans or diagrams at the appeal hearing.

I/WE declare that the statements contained in this Notice of Appeal and all attachments are, to the best of my/our belief, true and correct in all respects.

I/WE acknowledge that this Notice of Appeal and all attachments are available to the public.

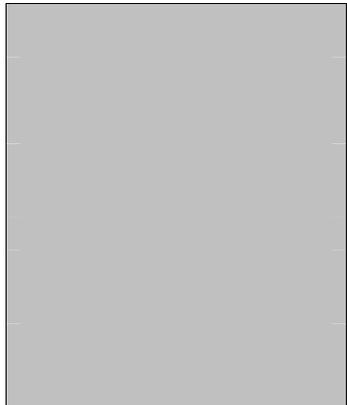
Signature(s) of Appellants: _____

Name(s) of Appellant(s) (*please print*): _____

Name of Company (*if applicable*): _____

Mailing Address: _____

Telephone: _____
Fax: _____
Email: _____



(To be completed by staff)		Date: _____
Appeal Number	Receipt Number	Signature

**VANCOUVER CHARTER
SBC 1953, CHAPTER 55
Part XXVII**

**Planning and Development
Zoning**

SECTION 568

Non-conforming Buildings

- (1) Non-conformity shall be divided into two types:
 - (a) non-conformity with respect to the use which is made of the premises; and
 - (b) non-conformity arising out of change in the regulations governing matters other than the use which may be made of the premises.
- (2) A building lawfully under construction at the time of coming into force of a zoning by-law shall for the purpose of that by-law be deemed to be a building existing at that time. For the purposes of this subsection, a building shall be deemed to be lawfully under construction if a development permit has been issued and such permit remains valid.
- (3) A lawful use of premises existing at the time of coming into force of a zoning by-law, although such use is not in accordance with the provisions of the by-law, may be continued; but, if such non-conforming use is discontinued for a period of ninety days, any future use of those premises shall be in conformity with the provisions of the by-law. The Board of Variance may extend the aforesaid period of 90 days to a maximum of 180 days.
- (4) No additions or structural alterations except those required by Statute or by-law shall be made to a non-conforming building without:
 - (a) the approval of the Board of Variance if the non-conformity is in respect of use; and
 - (b) the approval of the Director of Planning if the non-conformity is in respect of regulations only.

Fire Damage to Non-conforming Building

- (5) Where a non-conforming building is damaged or destroyed by fire to the extent of sixty per centum or more of its value above its foundations as determined by the City Building Inspector, whose decision shall be subject to review by the Board of Variance, it shall not be repaired or reconstructed without the approval of:
 - (a) the Board of Variance if the non-conformity is in respect of use; and
 - (b) the Director of Planning if the non-conformity is in respect of regulations only.

SECTION 573

Appeals to Board of Variance

- (1) The Board shall hear and determine appeals
 - (a) by any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;
 - (b) by any person who alleges that the enforcement of a zoning by-law with regard to siting, size, shape, or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;
 - (c) by any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of Section 568 will result in undue or unnecessary hardship to him;
 - (d) with respect to matters arising under subsections (4) and (5) of Section 568;
 - (e) by any person aggrieved by a decision by any board or tribunal to whom Council has delegated power to relax the provisions of a zoning by-law; and
 - (f) by any person who, by reason of Part XXIX [Protection of Trees], is:
 - (i) unable to obtain a permit authorizing tree cutting or removal, or
 - (ii) unable to comply with the requirements of a by-law or permit under that Part.
- (2) The Board shall not allow any appeal solely on the ground that if allowed the land or buildings in question can be put to a more profitable use nor unless the following conditions exist:
 - (a) the undue or unnecessary hardship arises from circumstances applying to the applicant's property only;
 - (b) the strict application of the provisions of the by-law would impose an unreasonable restraint or unnecessary hardship on the use of the property inconsistent with the general purpose and intent of the zoning by-law; and
 - (c) the allowance of the appeal will not disrupt the official development plan.
- (2.1) The Board shall not allow an appeal that would apply to a property for which an authorization for alterations is required under Part XXVIII.
- (3) The Board shall give notice to such owners of real property as the Board may deem to be affected by the appeal, and public notice of the hearing shall be given, if the matter is deemed by the Board to be of sufficient importance. For the purpose of determining the names of the owners deemed to be affected, reference shall be made to the records kept by the Assessor.
- (4) The Board shall conduct its hearings of appeals under this section in public.
- (5) The decision of a majority of the members of the Board present at a hearing shall constitute the decision of the Board, which shall be rendered in open meeting and shall be recorded in writing by the secretary. In the event of the members of the Board being equally divided, the appeal shall be disallowed.
- (6) No appeal shall lie from a decision of the Board.
- (7) In allowing an appeal, the Board may impose such restrictions, limitations, or conditions as may seem to it to be desirable and proper in the circumstances.
- (8) Council may by by-law provide that failure to comply with any restrictions, limitations, or conditions imposed by the Board pursuant to subsection (7) shall constitute an offence against the by-law.

