

ADMINISTRATIVE REPORT



TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: May 19, 2022

RE: Delegated Development Variance Permits (DVPs)

Administrative Recommendation:

THAT the Chief Administrative Officer Delegation Bylaw and the Development Procedures Bylaw be amended to provide options in relation to the approval of development variance permits (DVPs).

Background:

On November 25, 2021, Bill 26, being the provincial *Municipal Affairs Statutes Amendment Act (No. 2), 2021*, received Royal Assent and came into effect.

Amongst other things, this Bill amended the *Local Government Act* to provide local governments with the authority to delegate, by bylaw, the issuance of a “minor” development variance permit (see Attachment No. 1).

DVP Overview (2013-2021)

At its meeting of June 20, 2013, the Regional District began using a “Consent Agenda” for land use applications deemed “of a generic nature or that need no discussion” (i.e. “minor”). Land use applications “that were controversial or of wide interest” continued to be listed separately on the Board’s Regular Agenda. Any DVP with a negative recommendation or that seems controversial in the neighbourhood is always submitted for discussion.

From the introduction of the “Consent Agenda” to December 31, 2021, the Regional District has received approximately 275 DVP applications. The following is a summary overview of these applications (NOTE: the Regional District does not maintain detailed statistics regarding DVPs and the information presented below was manually compiled by staff from available records):

- 78.2% of DVPs are being placed on the “Consent Agenda”. Of this number, 91.8% are being approved while 8.2% are removed and decided on the “Regular” Agenda;
- 21.8% of DVPs are being placed on the “Regular” Agenda due to either a negative administrative recommendation or negative representation(s) from the public;
- representations for and/or against a DVP were received for 16.3% of applications. On these applications, 177 total representations were received, with those for and against a DVP application evenly split with 89 opposing (50.3%) and 88 supporting (49.7%);
- 86.7% of DVPs for which representations opposing the variance were submitted were subsequently approved by the Board; and
- Overall, 96.7% of the DVP applications submitted between 2013 and 2021 were approved by the Board;

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- 89.7% of these DVP applications were supported by Administration; and
 - 0.4% of these DVPs applications were supported by Administration but denied by the Board (e.g. 1 of 275).

Analysis:

The amendment of the *Local Government Act* to allow for delegated DVPs is seen to be a positive innovation with the potential to reduce application processing times as well as the volume of land use applications that the Board must consider.

Establishing a “Minor” Variance:

The following criteria could be used to establish a “minor” variance:

... the development to be authorized by the variance would, relative to development in accordance with the bylaw, be minor and would have no significant negative impact on the use of immediately adjacent or nearby properties. In making this determination the Chief Administrative Officer (CAO), or their delegate, may have regard to the:

- i) *degree or scope of the variance relative to the regulation from which a variance is sought;*
- ii) *proximity of the building or structure to neighbouring properties; and*
- iii) *character of development in the vicinity of the subject property.*

This decision-making criteria would allow an appropriate level of professional judgement when making a determination of “minor” based on a suite of land use planning considerations and site characteristics.

Delegate Guidelines:

If a variance is determined to be “minor” in nature, the following guidelines could be used by a delegate when considering “whether to issue a development variance permit”:

- i) *if the proposed variance is consistent with the general purpose and intent of the zone;*
- ii) *if the proposed variance addresses a physical or legal constraint associated with the site (e.g. unusual parcel shape, topographical feature, statutory right-of-way, etc.);*
- iii) *if strict compliance with the zoning regulation would be unreasonable or un-necessary; and*
- iv) *if the proposed variance would unduly impact the character of the streetscape or surrounding neighbourhood.*

This is typical criteria used by other jurisdictions in which variance permits are delegated and is similar to the criteria under the *Local Government Act* that a Board of Variance (BoV) must consider.

Further, a review of DVPs received in 2022 was conducted using this criteria, the results of which indicated that approximately 65% of DVP applications received could be issued under delegation, while the remaining 35% would be considered by the Board due to a negative representation from the public or recommendation to deny the application. This is generally consistent with the current split of applications on the Consent Agenda compared to the Regular Agenda.

Consultation on Delegated DVPs:

While the *Local Government Act* does not require a DVP delegated to staff to be advertised to surrounding residents and property owners, the procedure includes notification of all DVP applications (delegated and non-delegated) be continued in the following forms:

- a) written notice to property owners and tenants of land within a radius of 30.0 metres of the boundaries of the subject property; and
- b) posting of application materials on the Regional District's web-site.

A period of 15 working days from the date of the letter to property owners and tenants would be provided for comments from the public to be submitted electronically or in-person to the Regional District.

By requiring the submission of electronic or in-person submissions, delays associated with the postal delivery of representations would be avoided, allowing a delegated DVP to be processed more quickly.

Reconsideration by the Board:

In the interests of transparency, procedural fairness and to ensure that delegated DVPs proceed in a timely and efficient manner, any delegated DVP not approved could, within 30 days as set out in the Regional District's Development Procedures Bylaw, be appealed to the Board.

Alternatives:

Other delegation options are available to the Board and could include the following:

- by **zoning** (e.g. all variances in the Industrial zones are deemed "minor");
- by **type** (e.g. all parcel coverage variances are deemed "minor");
- by **percentage** (e.g. < 25% of the regulation is deemed to be "minor");
- a combination and/or variation of the options outlined above; or
- to not delegate the issuance of a DVP.

Of these, the "percentage" option is the least desirable as it reinforces the incorrect idea that zoning regulations are equal in all circumstances, and would prevent Administration from applying professional expertise and understanding to the assessment of a variance request. In other words, this approach would not leave room for unusual circumstances as are consistent with the Board of Variance (BoV) approach.

For instance, if the maximum building height in a zone is 10.0 metres and delegation has been granted for all variances < 25% of the regulation, a variance to 12.5 metres would be delegated but a variance to 12.6 metres would have to be considered by the Board. This approach would not allow for any consideration of the unique context of a property and whether a greater variance than < 25% of the regulation could still be "minor".

Summary:

Since 2013, approximately 75% of DVP applications have been decided via the “Consent Agenda” due to being of “a generic nature or that need no discussion”, suggesting that they are of a “minor” nature.

In this same period, the Board and Administration have been in agreement on approximately 89.3% of the variances requested and there has only been one instance, representing 0.4% of all applications, where Administration supported the approval of a DVP that the Board subsequently denied.

These trends as well as the proposed guidelines and assessment criteria are seen to support the delegation of DVPs while ensuring the Board’s interests are represented and providing an effective mechanism for Board oversight in relation to the concerns of applicant’s, surrounding residents and property owners. Delegation also has the potential to reduce the processing time required for DVP applications.

Alternatives:

1. Status Quo

Respectfully submitted:



C. Garrish, Planning Manager

Attachments: No. 1 – *Local Government Act Section 498.1 & 499(1) & (1.1)*

Delegation of power to issue development variance permit

- 498.1** (1) A local government may, by bylaw, delegate to an officer or employee of the local government the power under section 498 to issue a development variance permit if the proposed variance
- a) is a minor variance, and
 - b) varies the provisions of a bylaw under any of the following:
 - i) section 479 (1) (c) (iii) [*zoning bylaws respecting siting, size and dimensions of buildings, structures and permitted uses*];
 - ii) section 525 [*off-street parking and loading space requirements*];
 - iii) section 526 [*regulation of signs*];
 - iv) section 527 (1) (a) or (b) [*screening and landscaping to mask or separate uses or to preserve, protect, restore and enhance natural environment*];
 - v) a provision of this Act prescribed by regulation of the Lieutenant Governor in Council.
- (2) A bylaw delegating the power to issue a development variance permit under this section must include
- a) criteria for determining whether a proposed variance is minor for the purposes of subsection (1) (a), and
 - b) guidelines the delegate must consider in deciding whether to issue a development variance permit.
- (3) The bylaw may also include any terms and conditions the local government considers appropriate.
- (4) If a local government delegates the power to issue a development variance permit, an owner of land that is subject to a decision of the delegate is entitled to have the local government reconsider the matter.

Notice to affected property owners and tenants

- 499** (1) If a local government proposes to pass a resolution to issue a development variance permit, it must give notice in accordance with this section.
- (1.1) For certainty, the obligation to give notice under this section does not apply if a delegate, under section 498.1, exercises the power to issue the development variance permit.