

**BOARD OF VARIANCE MEETING
AGENDA**

DATE: August 6, 2020
TIME: 1:30 p.m.
LOCATION: Enderby City Hall

1. CALL TO ORDER

THAT in accordance with Ministerial Order No. M192/20, Local Government Meetings and Bylaw Process (COVID-19) Order No. 3, the City of Enderby Board of Variance resolves that this meeting shall be held without members of the public in attendance due to an inability to safely provide physical distancing given the size of Council Chambers;

AND THAT the Board of Variance shall ensure openness, transparency, accessibility, and accountability in respect of the meeting by providing teleconference access for the public to hear and, during question period, be heard, by providing two seats reserved for media to attend in person, and by hearing written submissions from the public.

2. APPROVAL OF AGENDA

3. ELECTION OF CHAIR AND APPOINTMENT OF ACTING CHAIR

Memo prepared by Planner and Deputy Corporate Officer dated August 5, 2020

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4. CONSIDERATION OF JURISDICTION AND SETTING OF HEARING DATE (IF APPLICABLE) - BOARD OF VARIANCE APPLICATION FOR 1908 GEORGE STREET

Memo prepared by Planner and Deputy Corporate Officer dated August 5, 2020

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5. ADJOURNMENT

THE CORPORATION OF THE CITY OF ENDERBY

MEMO

To: Tate Bengtson, Chief Administrative Officer
From: Kurt Inglis, Planner and Deputy Corporate Officer
Date: August 5, 2020
Subject: Election of Board of Variance Chair and Appointment of Acting Chair

RECOMMENDATION

THAT the Board of Variance elects a Chair;

AND THAT the Board of Variance Chair appoints an Acting Chair.

BACKGROUND

As per the *Local Government Act*, any community which has enacted a Zoning Bylaw is required to establish and appoint a Board of Variance (BOV), which is an independent body that has the power to grant minor variances and exemptions in situations where compliance with particular Bylaws or legislation would cause a person undue hardship.

The jurisdiction of the BOV is to:

1. Grant minor variances to a bylaw respecting the siting, size or dimensions of a building or other structure, or the siting of a manufactured home in a manufactured home park;
2. Grant minor variances to tree protection bylaws established under section 8(3)(c) [fundamental powers - trees] of the *Community Charter*;
3. Grant an exemption to a prohibition of a structural alteration or addition under section 531 (1) [restrictions on alteration or addition to building or other structure] of the *Local Government Act*;
4. Grant minor variances to subdivision servicing requirements under section 506(1)(c) [provision of water, sewer and other systems] of the *Local Government Act* in areas zoned for agricultural or industrial use;
5. Set aside a Building Inspector's determination of the percentage of destruction of a non-conforming building or structure under section 532(1) [restrictions on repair or reconstruction of non-conforming structures] of the *Local Government Act*, in which case the Board would make their own determination in its place; and
6. Order that the provisions of a terminated land use contract may continue to apply for a specified period of time ending no later than June 30, 2024.


The City of Enderby established its BOV through the *Board of Variance Bylaw No. 1373, 2005*. Under *Board of Variance Bylaw No. 1373, 2005*, the BOV is to be comprised of three members, with each member to be appointed for a period of three years, or longer if no new appointments are made.

At its Regular Meeting of July 13, 2020, Enderby City Council appointed the following individuals to serve on the BOV:

1. Bettyann Kennedy;
2. John Brennan; and
3. Pat Doorn.

Section 6 of *Board of Variance Bylaw No. 1373, 2005* states that the BOV members shall elect one of their numbers as Chair, while Section 7 of the Bylaw states that the Chair may appoint a member of the BOV as Acting Chair to preside in the absence of the Chair.

Respectfully Submitted,



Kurt Inglis
Planner and Deputy Corporate Officer

THE CORPORATION OF THE CITY OF ENDERBY

MEMO

To: Tate Bengtson, Chief Administrative Officer

From: Kurt Inglis, Planner and Deputy Corporate Officer

Date: August 5, 2020

Subject: Consideration of Jurisdiction and Setting of Hearing Date - Board of Variance Application for 1908 George Street

RECOMMENDATION

THAT the Board of Variance considers whether the attached Board of Variance application for 1908 George Street, Enderby is within the Board's jurisdiction;

AND THAT, should the Board of Variance decide that the attached Board of Variance application is within its jurisdiction, it set a hearing date for the consideration of the application and direct Staff to provide notice to the applicant and adjacent property owners.

BACKGROUND

The property located at 1908 George Street is zoned Highway and Tourist Commercial (C.2) and has historically been used for residential purposes. Although single-family dwellings are not a permitted use in the C.2 zone, the residential use of the property pre-dated the C.2 zone and thus the use is "grandfathered" under Section 528 of the *Local Government Act* as a legally non-conforming use.

On April 30, 2019, a fire originated in an electrical panel in the basement of the single-family dwelling at 1908 George Street and damaged the building. Section 532 (1) [Restrictions on repair or reconstruction of non-conforming structures] of the *Local Government Act* states:

If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

The City of Enderby Building Inspector provided a report (attached) in which he states that, in his opinion, more than 75% of the value of the structure above the building's foundations was damaged or destroyed as a result of the fire. Given this, and subject to a decision by the Board of Variance (BOV) setting aside the determination of the Building Inspector, the City is unable to issue a building permit unless it is for a legally conforming use (i.e. a use that is permitted under the property's C.2 zoning designation).

The property owner for 1908 George Street has made an application to the BOV alleging that the Building Inspector's determination of the amount of damage to the building is in error, and requesting that the BOV set aside the Building Inspector's determination and make a determination in its place. The request is consistent with Section 544 of the *Local Government Act* which states:

Extent of damage to non-conforming use property

(1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 532 (1) [end of non-conforming use protection if building of other structure is seriously damaged] is in error.

(2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 532 (1) in its place.

(3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.

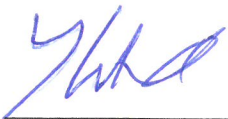
Pursuant to Section 12 of *Board of Variance Bylaw No. 1373, 2005*, BOV applications shall be referred to the Board to determine if the application is within the BOV's jurisdiction. Given that Section 544 of the *Local Government Act* clearly states that a person may apply to the BOV alleging that a Building Inspector's determination of the amount of damage under Section 532 (1) is in error, and that a BOV may set aside the determination of the Building Inspector and make the determination under section 532 (1) in its place, it is Staff's opinion that the attached application is within the BOV's jurisdiction.

Should the BOV confirm that the attached BOV application is within its jurisdiction, it is recommended that the BOV set a hearing date for the consideration of the application and direct Staff to provide notice to the applicant and adjacent property owners.

Public notice to adjacent property owners will advise that only written submissions will be accepted and that only matters relevant to the extent of the damage are relevant to the hearing.

Once a hearing date has been set, the application and reports will be advanced along with a Staff memo detailing the range of options for resolutions. The Building Inspector will be invited to attend, as well, the applicant will be advised that they may wish to invite their legal and technical representatives to attend.

Respectfully Submitted,



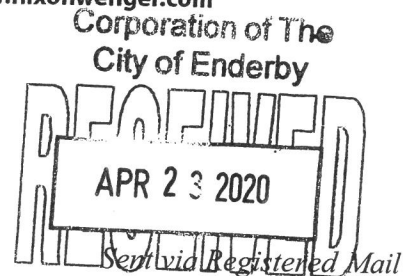
Kurt Inglis
Planner and Deputy Corporate Officer

NIXON WENGER LLP

LAWYERS

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April 17, 2020

City of Enderby
Box 400, 619 Cliff Avenue
Enderby, BC V0E 1V0

Attention: Chief Administrative Officer, Tate Bengtson

Dear Sir:

Re: Notice of Appeal

Please accept this correspondence as an application pursuant to section 544 of the *Local Government Act*, RSBC 2015, c. 1, for an order from the Board of Variance for the Corporation of the City of Enderby (the "City") to set aside the determination of the Chief Building Inspector dated December 23, 2019, a copy of which is attached hereto as Schedule "A". Additionally, please find enclosed a cheque in the amount of \$225.00 representing payment for the application fee.

This application should be considered a notice of appeal pursuant to the City's Board of Variance Bylaw No. 1373, 2005. This notice of appeal and application pursuant to section 544 of the *Local Government Act*, is made on behalf of Jasbinder Singh Purewal, Jaswinder Kaur Purewal, Hardial Singh Chahal, and Jatinder Kaur Chahal, who are the registered owners of the property located at 1908 George Street, Enderby, British Columbia bearing the following legal description:

PID: 010-218-564
LOT A DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION
YALE DISTRICT PLAN 5784
(the "Property")

On or around April 30, 2019, the residence located on the Property was damaged by fire. On December 23, 2019, the Chief Building Instructor provided a memorandum to the City enclosing an opinion relating to the Property and damage to the residence.

According to the Chief Building Inspector, the residence located on the Property has been damaged to the extent of 75% or more of its value above the foundation. The Chief Building Inspector appears to suggest that repair would require demolition of all the construction above the foundation and reconstruction, or, alternatively, repair of the residence would require that the residence be gutted down to the frame and that very little would be salvageable.

Michael Yawney, Q.C.*
Andrew Powell*
Derek Powers*
Daniel Draht

Chris Alveberg*
Steve Brandner*
Leanne Rutley
Allison Jaquish

Kent Burnham*
Allyson Edwards*
Tom Christensen, Q.C.
Darren Schmidt

James Cotter*
Ryan Irving*
Leah Volkens
Brent Parker**

Jonathan Jones*
Krystin Kempton*
Christopher Hart

Elise Allan*
Kylie Walman*
Cody Walker

*Personal Law Corporation

**Articled Student

Contrary to the opinion of the Chief Building Inspector, Mr. Rene Bourcet, Professional Engineer, attended at the Property to inspect the damage to the residence and has advised the property has not been damaged more than 75% of its value above the foundation. A copy of Mr. Bourcet's assessment is attached hereto as Schedule "B".

In the opinion of Mr. Bourcet, the damage to the residence has been limited to the floor and wall system in the mechanical and storage room in the basement area. The area of repair is only 20% of the floor area. Notably, according to Mr. Bourcet, the remainder of the house structure is in good condition and does not need to be demolished and replaced. Further, Mr. Bourcet states that 40% – 45% of the house value remains in place, and the value of the remaining construction is well above the required 25% value.

Based on the opinion of Mr. Bourcet, our clients, Jasbinder Singh Purewal, Jaswinder Kaur Purewal, Hardial Singh Chahal, and Jatinder Kaur Chahal, request that the Board of Variance make an order that the determination by the building inspector for the amount of damage under section 532(1) of the *Local Government Act* is in error. Our clients request that the Board of Variance make the determination under section 532(1) in its place.

We request the Chief Administrative Officer refer this application to the Board of Variance so that the Board of Variance determine whether this application is within the Board of Variance's jurisdiction.

We look forward to receiving the position of the Board of Variance as to whether the application will proceed and if the application is within the Board of Variance's jurisdiction at your earliest possible convenience.

Yours truly,

NIXON WENGER LLP

Per:



CHRISTOPHER T. HART

CTH/rkm

Enclosures

Schedule "A"



MEMORANDUM

File No: 19-0355-END-NT
Date: December 23, 2019

TO: CHIEF ADMINISTRATIVE OFFICER – CITY OF ENDERBY
FROM: BUILDING DEPARTMENT – CHIEF BUILDING INSPECTOR
SUBJECT: 1908 GEORGE STREET – CHAHAL / PUREWAL

Please be advised that I have inspected the fire damaged building located at 1908 George Street shortly after the fire occurred on May 8, 2019. It is my opinion that it has been damaged more than 75% of its value above the foundation in accordance with the Local Government Act that states:

Restrictions on repair or reconstruction of non-conforming structures

532 (1) If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

This is due to the extensive fire, water and smoke damage. Repair would require demolition of all the construction above the foundation and reconstruction. Alternatively, the building could be gutted down to the frame, fire damaged framing replaced and smoke sealed, and exterior finishes, drywall, flooring, siding, roofing, windows, doors, cabinets, insulation, electrical, plumbing, and heating systems would need replacement. In short, little is salvageable. In either case the cost would be more than 75% of the buildings value above the foundation.

The BC Assessment Authority has put a value on all improvements on this lot at \$140,000. Taking into consideration the other building on the lot, the value of this house would be about \$120,000. The value above the foundation would be less than \$100,000. This building could not be repaired for less than \$75,000 or 75% of its value.

Submitted by:

Dave Gardner
Chief Building Inspector

Schedule "B"

b BOURCET
ENGINEERING LETTER

FROM:	Rene Bourcet, P.Eng.	DATE:	March 17, 2020
PROJECT:	1908 George Street	FILE:	19-444
ATTENTION:	Purewal, Jasbinder and Jaswinder/Chahal, Hardial and Jatinder	PAGES:	

Structural Assessment of 1908 George Street Property

Bourcet Engineering performed a site visit at 1908 George Street to inspect the fire damaged building.

It is my professional opinion that the building has not been damaged more than 75% of its value above the foundation in accordance with the Local Government Act that states:

- **Restrictions on repair or construction of non-conforming structures**
532 (1) If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for the a conforming use in accordance with the bylaw.

The damage has been limited to the floor and wall system in the mechanical and storage room in the basement that can be removed and replaced. The area of repair is approximately 20% of the floor area. The remainder of the house structure is in good condition and does not need to be demolished and replaced. A large part of a house is taken by kitchen and bathroom finishing which, in this house, would be low cost. A house of this size & quality of finishing at or near lockup, (roof on, doors & windows in place) has 40 to 45% of the house value in place. The value of the remaining construction is well above the required 25% value.

Rene Bourcet, P. Eng.
rene@bourcetengineering.com

