

CONSOLIDATION UPDATE: DECEMBER 14, 2011

THE CITY OF WINNIPEG

BOARD OF ADJUSTMENT BY-LAW
NO. 5894/92

**A By-law of The City of Winnipeg to provide for
appointment of members and the functions of
the board of adjustment.**

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

DEFINITIONS

1. In this by-law:

"board" means the Board of Adjustment established by this By-law.
amended 8162/2002

"conditional use" means a use of real property that might be approved under a zoning by-law.
added 8162/2002

"conditional use order" means an order of the board in respect of an application for a conditional use.
amended 8162/2002

"council" means the council of the city and, where a delegation of authority is permitted, includes its delegate.
amended 8162/2002

"director" means the Director and Planning, Property and Development and his/her delegates.
added 8162/2002

"representations" means information, material or argument presented orally or submitted in writing or other form at a public hearing including representations made in person or on behalf of another person.

"variance" means the modification of a provision of a zoning by-law.
added 8162/2002

"variance order" means an order of the board or the director, in respect of an application for a variance.
amended 8162/2002

"zoning by-law" has the same meaning as in *The City of Winnipeg Charter*.
amended 8162/2002

2. Effective January 1, 1998, the board shall be made up of 5 members appointed by resolution of Council including a chairperson and vice-chairperson and no member may hold a provincial or municipal office by appointment or election while a member of the board.
amended 6919/96

3. (1) The members of the board shall be appointed for the following initial terms of office
- (i) 2 members for terms expiring December 31, 1995
 - (ii) 2 members for terms expiring December 31, 1994
 - (iii) 2 members for terms expiring December 31, 1993.
amended 6026/92
- (2) Upon expiry of the initial term of office described in subsection (1) members of the board shall thereafter be appointed for terms of 3 years commencing from those respective expiry dates.
- (3) Where a member resigns or is otherwise unable to carry out and complete his or her term of office Council may appoint a person to complete the remainder of that term.
- (4) The Chairperson shall provide a performance evaluation on each of the board members to Selection Committee prior to its consideration of applications for re-appointment of citizen members to the board, and recommendation to Council in accordance with the selection process.
added 6919/96
amended 152/2011

4. (1) The board shall:

- (a) subject to sections 6 and 11.1 of The Development Procedures By-law, hear and determine applications for conditional uses and variances not decided by the director, and shall make conditional use orders and variance orders accordingly, in accordance with *The City of Winnipeg Charter*,
amended 68/2003; 126/2008 (effective January 1, 2009)
 - (b) report to council on any proposed secondary plan by-law or zoning by-law referred to it by council for that purpose, and give notice of its report and recommendations and the meeting where council is to consider its report, in accordance with *The City of Winnipeg Charter*;
 - (c) consider and make a decision in respect of any application for approval of a plan of subdivision referred to it by council for that purpose;
amended 116/2003
 - (d) report and make recommendations to council on any other planning or development matter referred to it by council.
- (2) The board may approve an application for a variance subject to conditions that will ensure that any development to be carried out under the variance meets the criteria set out in *The City of Winnipeg Charter*.
- (3) The board may approve an application for a conditional use subject to conditions that will ensure such use meets the criteria set out in *The City of Winnipeg Charter*.
amended 8162/2002

5. *repealed 8162/2002*

6. Members of the board who hear an application shall be paid the following remuneration by the City:

amended 6919/96

- (a) Chairperson
 - (i) \$150.00 for the first 4 hearing hours or portion thereof.
 - (ii) \$37.50 per hour for each subsequent hour or portion thereof.

- | | | | |
|-----|------------------|------|---|
| (b) | Vice-Chairperson | (i) | \$120.00 for the first 4 hearing hours or portion thereof. |
| | | (ii) | \$30.00 per hour for each subsequent hour or portion thereof. |
| (c) | other members | (i) | \$100.00 for the first 4 hearing hours or portion thereof. |
| | | (ii) | \$25.00 per hour for each subsequent hour or portion thereof. |

7. The vice-chairperson shall assist the chairperson in the operation of the board and shall carry out the duties of the chairperson whenever the chairperson is absent or unavailable.

8. Applicants for variances or conditional use approvals to be heard by the board shall pay to the City the fees required by the Development Fees By-law.
amended 8162/2002

9. The city clerk shall from time to time appoint and replace as required a secretary of the board.

10. The secretary of the board shall not be a member of the board.

11.(1) The secretary of the board with such support staff as is provided by the city clerk shall maintain the records of the board, carry out correspondence, attend, create an audio recording of, and process hearings and decisions of the board, prepare and issue orders setting out decisions of the board and perform generally all administrative functions required in the operation of the board.
amended 6919/96; 54/2005

11.(2) The recording referred to in (1) shall be retained by the Secretary of the Board until such time as the period in which to appeal the Order of the Board has expired, or until the matter has been considered and resolved by the Appeal Committee.
added 6919/96; 54/2005

12. The board shall conduct public hearings on applications at such locations and times as may be scheduled by the City Clerk.

amended 54/2005

13. The board shall sit in panels of three members selected by the Chairperson.

amended 8162/2002

14. (a) A panel has all the powers of the board.

(b) A hearing by a panel is a hearing by the board.

(c) A decision of a panel is a decision of the board.

amended 8162/2002

15. The decision of a majority of a panel of the board on an application is the decision of the board.

15.1 All members of a panel hearing an application shall vote on the application.

added 6919/96

16. The rules of practice and procedure of the board are as set out in revised Schedule "A" to this by-law and may if required be supplemented by additional rules not contrary to Schedule "A" made by a majority of the board.

amended 6919/96

17. The board shall give written reasons for its decisions on an application.

18. (a) The city must give notice of a hearing by the board respecting an application for a variance or a conditional use, in accordance with *The City of Winnipeg Charter*.

(b) The city shall give notice of any other hearing by the board in accordance with *The City of Winnipeg Charter*.

(c) The board shall give notice of its decision on an application for a variance or a conditional use, in accordance with *The City of Winnipeg Charter*.

- (d) The board shall give notice of any other decision in accordance with *The City of Winnipeg Charter*.
 - (e) Where service of a decision or notice of a hearing is to be done by sending a copy of the decision or notice, including by ordinary mail, and an address for service is required, one of the following shall be used:
 - (i) if the person to be served is the owner of real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property;
 - (ii) if the person to be served is the occupant of real property, the street address for that property; or
 - (iii) the address for service provided by the person to be served in an application to the board or the city under this By-law.
- 19.(1) In addition to English, every person is entitled, upon notice, to use French in a proceeding of or before the board with respect to a matter and, where notice is given, the proceeding with respect to that matter shall be conducted or simultaneously interpreted in French.
added 8162/2002
- 19.(2) The Notice referred to in subsection (1) shall be in writing, shall specify the matter and the proceeding and shall be given to the secretary of the board not less than 2 working days before the proceeding.
added 6919/96
20. This by-law shall be referred to as the "**Board of Adjustment By-law**".
added 8162/2002

DONE AND PASSED in Council assembled, this 4th day of March, 1992.

SCHEDULE A TO BY-LAW NO. 5894/92

amended 8162/2002

RULES OF PRACTICE AND PROCEDURE

1. In the absence of the chairperson, a panel of the board conducting a public hearing shall be chaired by the vice-chairperson, and in the absence of both, by a panel member chosen by majority vote of the panel.
2. If a panel member is absent, another member of the board may be named to sit by the chairperson, or in his absence, by the vice-chairperson, or in the absence of both, by the secretary of the board.
3. At the commencement of each public hearing, the chairperson shall require the secretary to record the names and addresses of all persons intending to make representations, including the applicant, in order that they may receive notice of the decision and of their right to appeal.
4. At a public hearing the board shall receive representations from any person, on his or her own behalf or on behalf of another person.
5. Unless otherwise directed by the board, the applicant, or any person speaking on his/her behalf, shall make representations first, followed by those in support and those opposed. The applicant, or his/her designate, shall then have the opportunity to speak in rebuttal to comments made, but shall not introduce new evidence.
6. The board may restrict the nature and length of representations at a public hearing.
7. The board may question persons making representations at a public hearing, and shall allow the applicant the opportunity to speak in rebuttal, as provided for in Rule 5, but the board shall not permit cross-examination.

amended 6919/96/ 8162/2002