

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 of adjustment" or **"board"** means the board of adjustment established by Part 20 of The City of Winnipeg Act.

"conditional use order" means an order of the board of adjustment approving a conditional use as defined in Part 20 of The City of Winnipeg Act.

"council" means the Council of The City of Winnipeg.

"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, other than a change of use, by a variance order.

"variance order" means an order made by the board of adjustment or the director of planning making or refusing a variance.

"zoning by-law" means a development by-law under Part 20 of The City of Winnipeg Act.

2. The board shall be made up of 6 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.

C.W. Act section 650(2)

3. (1) The members of the board shall be appointed for the following initial terms of office

- (i) 2 members for 3 years;
 - (ii) 2 members for 2 years;
 - (iii) 2 members for 1 year.
 - (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. (1) The board shall:
- (a) subject to section 5, hear and determine applications for all conditional use approvals and applications for those zoning variances not decided by the Director of Planning and shall issue conditional use orders and variance orders accordingly.
 - (b) report and make recommendations to Council on any proposed secondary plan by-law, zoning by-law or application for approval of a plan of subdivision referred to it by Council for that purpose.
 - (c) report and make recommendations to Council on any planning or development matter referred to it by Council.
- (2) The board of adjustment may approve an application for a variance order subject to any condition the board considers necessary to ensure that the proposed development conforms with subsection 608(1) of The City of Winnipeg Act.
5. Where under section 641 of The City of Winnipeg Act a committee of Council conducts a combined public hearing to consider an amendment or application for a plan, zoning by-law or subdivision approval plus a variance order or conditional use order that committee shall make the variance order or conditional use order as provided in The Development Procedures By-laws.

6. Members of the board shall be paid the following remuneration by the City:

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| (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 City Development Fees By-law No. 5675/91.

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. 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, record 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.

12. The board shall conduct public hearings on applications in the community offices, 300 Assiniboine Avenue, once a week during the evening or at such other locations and times as the chairperson of the board determines from time to time.

13. The board shall sit in panels of 3 members selected by the Chairperson.

C.W. Act section 650(3)

14. A panel has the powers of the board and a decision of the panel is a decision of the board.

C.W. Act section 650(4)

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

16. The rules of practice and procedure of the board are as set out in 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.

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

18. The board shall give notice of its decision on an application in accordance with The Development Procedures By-law.

Note: The Development Procedures By-law provides that:

"Notice of Board of Adjustment order and right to appeal

13. (1) When the Board of Adjustment makes a conditional use order or variance order the secretary of the board shall as soon as practicable send notice by certified mail to the applicant and subject to subsection (2) to every person who made representations at the public hearing.

- (2) Where a written representation was received by the board at a public hearing on an application, by mail or other means, without the attendance of the person making it the notice referred to in subsection (1) shall be mailed to any single address set out thereon for receipt of notice, if any, or if none to any single address given on the filing of the representation or if none to any one of the addresses contained therein and in the absence of such address or any legible address to whatever address the secretary of the board determines.
- (3) The notice referred to in subsection (1) shall include a copy of the order made, notice of the right of any person who made representations at the public hearing to appeal against the order or any condition therein, and the method of doing so.
- (4) Any person including the director of planning of the City on behalf of the City who made representations at the public hearing may appeal to the appeal committee against the order made or any condition therein by causing a letter of appeal to be received at the office of the city clerk at the described address by not later than 4:30 p.m. of the day 14 days following (but excluding) the date of the notice; i.e. notice date plus 14 = appeal deadline date at 4:30 p.m."

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

SCHEDULE A TO BY-LAW NO. 5894/92

RULES OF PRACTICE AND PROCEDURE

1. A panel of the board conducting a public hearing shall be chaired by the chairperson or the vice-chairperson or if both are absent or unavailable by one of the members of the panel chosen by the panel.

2. Where a member of a panel is not available to sit the chairperson or vice-chairperson may name any other member of the board to sit but where neither the chairperson or vice-chairperson does so the secretary of the board shall arrange the attendance of another member of the board to complete the panel.

3 The chairperson shall at the commencement or during a public hearing notify the applicant and all persons intending to make representations to record their name and address with the secretary for the purpose of receiving notice of the decision and the 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.

C.W. Act section 638(1)

5. Prior to receiving representations on an application any member of the City Planning Department present shall briefly explain the nature of the application and read out the report and any recommendations of that Department on the application; unless otherwise directed by the board.

6. Unless otherwise directed by the panel the applicant shall make his/her/its representations first, followed in order by others in support and others opposed; after which the applicant shall be heard in rebuttal.

7. The board may restrict the nature and length of representations at a public hearing.

8. The board may question persons making representations at a public hearing and shall allow opportunity to reply to the applicant and supporters and to rebut those in opposition as provided in rule 6 but the board shall not allow cross-examination.

9. After completion of all representations the board shall not receive further representations unless the chairperson re-opens representations on one or more issues to all persons wishing to be heard applying the process described in section 5 as closely as practical, subject to the direction of the chairperson.