



FACT SHEET

Applying for a Variance

Islands Trust

What is the purpose of a variance?

The purpose of a variance is to allow you to build in a way that is not permitted by the general zoning regulations. Regulations, such as setback, height, floor area, to name a few, are applied generally and may not be easily adhered to for all properties. In some situations, a landowner may want to build closer to a lot line, or higher than the permitted height, or in some other way not envisioned by the general zoning regulation for the property.

What kind of situation may require a variance?

Pretty well any regulation in an Islands Trust land use bylaw, other than use or density, can be considered for variance. Some examples, in addition to those listed above, are to allow certain features of a house to be built closer to the lot line, to allow water storage tanks in the setback area, to build a garage a little higher to accommodate a larger vehicle, to allow an increase in the floor area of an accessory building or to provide room for a well and/or septic system on the property. In some cases, errors made during construction require a variance to be considered after construction, to “legalize” the structure, or in other situations, old buildings were sited incorrectly due to poor surveying techniques or other legitimate reasons. These are just a few examples, but there are many other circumstances where a person may request a variance. **To find out if you need a variance, you should contact Islands Trust planning staff (T: 250.405.5151; Toll-free: 1.800.663.7867).**

When do I apply for the variance?

Ideally, you should apply as soon as you become aware that your construction or proposed construction does not meet the existing local bylaws. In most cases, this would take place at the planning stage, prior to any clearing or construction on the lot. It may also be when you are reviewing your site for future construction and discover that existing structures do not meet current bylaws.

What are the processes available to me if I am in a situation requiring a variance?

There are two ways to obtain a variance:

1. Board of Variance

The Board of Variance is a three-person board appointed by the local trust committee. The Board of Variance can generally consider variances to siting, building or structure dimensions, or subdivision servicing requirements in industrial or agricultural zones. The Board can also consider allowing structural alterations while legal non-conforming uses are continued.

TIP: A "legal non-conforming use" is a use of land or structure which was legally established according to the applicable zoning and building regulations of the time, but which does not meet current zoning and building regulations.

Zoning laws are forward-looking and regulate future uses of a land or property site rather than the existing ones. Zoning laws are not retroactive. Take, for example, an industrial property used for recycling. The use may have been established lawfully but the property has since been zoned residential. The existing use may be "grandfathered" as legal non-conforming as long as the use persists, although any new use must meet existing zoning.

In making a decision to issue a variance order, the Board must find that the variance is minor and that not granting the variance would cause hardship. What constitutes a hardship or what is considered minor is defined by the Board of Variance during consideration of each application; as a result, the Board may determine hardship and minor variance differently depending on the particulars of the application.

It is important to note that the Courts have determined that the cost of removing something built without permits is not to be considered a hardship. Common examples of hardship include situations where the lot size or shape, combined with the general regulations such as setback, render it next to impossible to build anything without encroaching into a setback; the need to modify a building for a disability; or the need to add another room to accommodate children. All of these could be considered hardships and minor variances, but it is up to the Board to make that determination.

To apply for a Board of Variance Order, you fill out an [application](#) and submit it, with the fee, to the Islands Trust Office. Staff will review your application and provide some preliminary planning information to the Board of Variance members for their consideration. Staff does not take a position on whether or not the Board should issue the variance order.

Notice of the proposed variance is circulated to adjacent landowners and they, as well as the applicant, will have the opportunity to speak for or against the variance request at a Board of Variance hearing. If you can't attend a hearing, you can write to the Board of Variance or have a representative attend and provide your submission for you.

The Board of Variance will consider the information received and make a decision. It takes two of the three members to vote in favour for the variance to be granted. If the variance is granted, called a Board of Variance Order, you will be provided with a copy of the order and a copy will be retained in the Islands Trust files. Board of Variance Orders are not registered against or on any property title.

2. Development Variance Permit

A Development Variance Permit is an approval a local trust committee can issue by resolution to vary regulations in the land use bylaw, except those regulations governing use or density. Unlike the Board of Variance, the local trust committee is not limited to considering hardship or minor variance. There is no set criteria for determining whether a variance will be granted, rather each decision is based on the particular circumstances, an evaluation of relevant official community plan policies, and the impact on the neighbouring lots and the island generally. The decisions of the local trust committee are not precedent setting: a decision on one variance will not determine the decision reached on another application.

To apply for a Development Variance Permit, you fill out an application form and submit it, with the required fee, to the Islands Trust Office. Staff will review your application and draft a Staff Report which includes a recommendation to **the** local trust committee on whether or not the variance should be issued.

Notice of the proposed variance is circulated to landowners and residents within a specified distance of the property (the distance is set by a bylaw of each local trust committee) and they, as well as the applicant, will have

the opportunity to comment on the variance request. If you can't attend the meeting when the variance is considered, you can write to the local trust committee or have a representative attend and make your presentation for you.

The local trust committee will consider the information received from the applicant and any other interested parties and make a decision. That decision may be to issue the permit, to deny the permit, to request more information from the applicant or staff, or to refer the application to its Advisory Planning Commission for comment and recommendations. If the variance is granted, you will be provided with a copy of the issued permit and notice of the permit will be registered against or on the property title via the Land Title Office.

What does it cost to process a variance?

The cost for a variance is established by each local trust committee in a Fees Bylaw. At the time of writing, the fee for a residential development variance permit is \$715, except on Saturna Island where the fee is \$572; the fee for a commercial, industrial, or institutional development variance permit is \$935; and the fee for a Board of Variance Order is \$990. The fees are subject to change, so please check with planning staff for the actual fee.

What is the normal amount of time required for each process?

The normal timeframe for a decision on a Board of Variance Order or a Development Variance Permit is two to four months from the date of receipt of a completed application. Timing is affected by receipt of complete information, time required to circulate the notice to neighbours for comment, and timing of the local trust committee meetings or time required to bring the Board of Variance together for a meeting. The local trust committee meets on a set schedule, whereas the Board of Variance meets on demand.

For how long is a Permit valid?

Work authorized by a Development Variance Permit or a Board of Variance Order must commence within two years of the date of issuance, unless the permit or order establishes a lesser timeframe for work to commence. If work does not commence by that date, the permit or order lapses and the zoning regulations that were varied are once again in effect.

Can I appeal?

The decision of the local trust committee on a Development Variance Permit application is final. The decision of a Board of Variance on a Board of Variance Order is final. If you are denied a Board of Variance Order, you may apply to the local trust committee for a Development Variance Permit for the same variance request. If you are denied a Development Variance Permit, you may apply to the Board of Variance for an order – if you believe there is a hardship and the variance is minor. Note that being turned down by the local trust committee for a Development Variance Permit is not a valid hardship.