

## 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 suitable for all properties. In some situations, a landowner may need 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 a Local Trust Committee's 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, to allow a building to be sited to protect a sensitive ecosystem or to provide room for a well and/or septic system on the property. In some cases, errors during construction requires a variance to be considered after construction to "legalise" 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.

### 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.

#### BOARD OF VARIANCE

The Board of Variance is a three person board appointed by the Local Trust Committee. Individuals are invited to put their names forward to serve on the Board of Variance, and after considering the applications, the Local Trust Committee appoints the individuals who then serve a three year term on the Board. The Board of Variance can consider variances to siting, dimensions or size of buildings or structures, or siting of manufactured homes in a manufactured home park, or subdivision servicing requirements in industrial or agricultural zones. The Board can also consider allowing structural alterations to legal non-conforming

uses. There are limitations on what the Board can order. In making a decision, 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 <https://islandstrust.bc.ca/document/application-form-bov/> 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 title.

## **DEVELOPMENT VARIANCE PERMIT**

A Development Variance Permit (DVP) 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 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 DVP, 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. The DVP application form can be found here:

<https://islandstrust.bc.ca/document/application-form-dvp/>

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 the title at 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. The Fees Bylaws can be found here:

<https://islandstrust.bc.ca/island-planning/north-pender/application-fees/>

## 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 months from the date of receipt of a complete 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.

## How long is a Permit valid for?

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 time frame 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.



**Islands Trust**

Preserving **island** communities, culture and environment

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