

Control of Development

3.1. Control of Development

Subject to Section 3.2, no development shall be undertaken within the City unless an application has been approved and a development permit has been issued for it.

3.2. Development not Requiring a Development Permit

- (1) The following developments do not require a development permit:
 - (a) a development that is subject to a valid development agreement for:
 - (i) constructing, widening, altering, redesigning or maintaining a public roadway;
 - (ii) traffic management projects and devices;
 - (iii) vehicular and pedestrian bridges and walkways;
 - (iv) water reservoirs, water lines, storm and sanitary sewer installations;
 - (v) street furniture, tennis courts, playgrounds, public park landscaping, municipal recreation equipment and civic buildings with a gross floor area under 75 sq. m;
 - (vi) constructing and maintaining public utilities; and
 - (vii) stripping, grading or filling of land, including temporary storage and sale of topsoil in an area governed by a development agreement, but excluding topsoil processing or screening;
 - (b) a project listed in clauses (a)(i) to (vii) above undertaken by the City;
 - (c) construction and maintenance of that part of a public utility located in, on, over or under a public roadway, a public utility right-of-way or public utility lot;
 - (d) the use of a building or a part of it in connection with a federal, provincial, municipal or school election, referendum or census;
 - (e) in an R1 and R2 district, the parking of a recreation vehicle
 - (i) in a fenced rear or side yard, unless a development on an adjoining site has a window of a habitable room on the ground floor facing the recreation vehicle and this window is located less than 2.5 m from the recreation vehicle;
 - (ii) in a front yard, if the recreation vehicle is parked on a paved motor vehicle access and is set back 300 mm from a sidewalk or where there is no sidewalk, set back 2 m from a curb; and
 - (iii) notwithstanding subsection 3.2(1)(e)(ii), the parking of a recreation vehicle shall not be allowed if it interferes with safe traffic sight lines as determined by the Development Officer;

Control of Development

- (f) storage of recreation equipment in a screened side or rear yard;
- (g) in a residential district, the storage of recreation equipment 8 m or less in total length in a driveway in a front yard and located within the property lines and at least 2 m from a curb;
- (h) on a lot in a residential district:
 - (i) the parking of 1 commercial vehicle having a gross vehicle weight of between 3000 kg and 5000 kg; and
 - (ii) the parking of 1 commercial vehicle having a gross vehicle weight of more than 5000 kg, but less than 7000 kg, if it is parked or stored in a garage or it is being loaded or unloaded;
- (i) in a commercial or industrial land use district, parking of a commercial motor vehicle accessory to a use for which a development permit has been issued under this Bylaw;
- (j) landscaping on a residential lot for a single-detached or semi-detached house;
- (k) a temporary building such as a shed, office or storage building, used solely as an accessory use to the construction or renovation of a building or development subject to a valid development permit for a period of up to 12 months or as otherwise determined by the Development Officer;
- (l) routine maintenance of and repairs to a building not involving any structural changes;
- (m) in a residential district, construction of a garden shed or playhouse less than 10 sq. m in floor area if the development complies with this Bylaw;
- (n) in a residential district, construction of
 - (i) a deck, other than an enclosed deck, to a maximum of 0.6 m above finished grade;
 - (ii) a patio;
 - (iii) a firepit; or
 - (iv) a barbecue;
- (o) construction of a retaining wall less than 1 m in height if the slope of that portion of the site retained by the wall is less than 8%;
- (p) installation of a satellite dish antenna if the development complies with this Bylaw and it is
 - (i) not located in a front yard or a side yard adjoining a public roadway; or
 - (ii) not more than 4 m above finished grade at the site of installation;

Control of Development

- (q) in a residential district, one radio antenna less than 12 m above finished grade at its highest point and otherwise complies with this Bylaw;
 - (r) installation of telecommunication towers that are not added to or mounted to a building.
 - (s) construction of a fence, wall or gate
 - (i) less than 2 m in height above finished grade; or
 - (ii) in the case of a corner lot less than 1 m above finished grade provided that the development otherwise complies with this Bylaw;
 - (t) in a residential district, hard surfacing of any yard for the purposes of providing vehicular access from a public roadway to a garage or carport, provided that such hard surfacing does not exceed 7.5 m in width;
 - (u) in a residential district, holding a garage sale up to 3 times per calendar year, each for a duration of not more than 3 consecutive days;
 - (v) a home office, provided that:
 - (i) no individual other than the permanent resident of the dwelling unit operates the home office;
 - (ii) no client or customer is received in the dwelling unit for business purposes;
 - (iii) the home office does not generate any pedestrian or vehicular traffic;
 - (iv) there are no on-site exterior displays or advertisements of the home office;
 - (v) no equipment, materials, goods or finished products for business purposes are stored on-site; and
 - (vi) the home office is operated as an accessory use only and must not change the residential character or external appearance of the dwelling unit;
 - (w) in a residential district, the habitation within a dwelling unit of a family, plus a maximum of two lodgers; and
 - (x) construction of a private pool or a decorative pond 600 mm or less in depth.
- (2) Developments listed in subsection (1) must otherwise comply with the requirements of this Bylaw.

3.3. **Application for a Development Permit**

- (1) An application for a development permit shall be made by the registered owner of the land on which the development is proposed, by a person having a registered interest in the land on which the development is proposed, or by some other person

Control of Development

with the written consent of the owner to the Development Officer by submitting the following:

- (a) information required by subsection (3) and Sections 3.4, 3.5, 3.6 and 3.7;
 - (b) such fee as is prescribed by Council from time to time; and
 - (c) such other information as may be required by the Development Officer under subsection (4).
- (2) An application is incomplete until the information and fees required under subsection (1) are submitted to the Development Officer.
- (3) Plans and Information Required

Unless the Development Officer or this Bylaw specifies otherwise, the following information must be submitted to the Development Officer when an application for a development permit is made:

- (a) 6 copies of a site plan showing the following information:
 - (i) north arrow;
 - (ii) scale of plan (in metric, minimum 1:100);
 - (iii) legal description of property;
 - (iv) municipal address;
 - (v) labeled property line and setback requirements in accordance with the Bylaw;
 - (vi) outline of all building and/or structures on the site;
 - (vii) total gross floor area, and, where applicable, gross floor of each individual unit within a building;
 - (viii) easements;
 - (ix) location of all existing and proposed utility rights-of-way;
 - (x) distance from back of walk and lip of gutter (existing and proposed) to the property lines;
 - (xi) medians and/or breaks in medians on public streets adjacent to the site;
 - (xii) existing and proposed site grades, contours, the designated flood line (where applicable) and any special topographical features or site conditions; **(BL25/2011)**
 - (xiii) location of all existing and proposed utilities;
 - (xiv) location of all lighting and light standards, catch basins, utilities poles, hydrants and utility fixtures;
 - (xv) location and dimension of driveway accesses;

Control of Development

- (xvi) adjoining streets, avenues and lanes, all shown and labeled;
 - (xvii) layout of existing and proposed parking areas showing dimensioned depth and width of stalls, barrier-free stalls, aisle dimensions, angle of stalls and number of stalls;
 - (xviii) parking area grades including any driveways and ramps;
 - (xix) identification of surface treatment for all areas;
 - (xx) location of all existing and proposed fencing;
 - (xxi) location of garbage and recycling receptacles and loading areas; and
 - (xxii) existing and proposed sign locations.
- (b) landscaping plans as required by the Development Officer showing
- (i) the existing topography and clearly identifying the vegetation that is to be retained or removed;
 - (ii) the layout of the soft and hard landscaping, pedestrian circulation and open space systems, screening, berms, slopes, and retaining walls;
 - (iii) the types, sizes and numbers of plant material, caliper of trees and the types of hard landscaping; and
 - (iv) municipal address, north arrow and scale, and property lines;
- (c) a certified copy of title of the site indicating ownership, interest and encumbrances accompanied by a written authorization for the Development Officer or his representative to enter upon the site; and
- (d) an address for any subsequent notification.
- (4) Additional Plans and Information

The Development Officer may require the following additional plans and information:

- (a) photographic prints showing the site in its existing state;
- (b) data to show
 - (i) how the form, mass and character of the proposed development will relate to neighbouring developments; and
 - (ii) how the design, materials and finish of the principal facades of the proposed development will relate to existing or planned facades of neighbouring buildings including photographs of existing building facades;
- (c) a parking or transportation study prepared by a professional engineer;

Control of Development

- (d) a noise evaluation study or attenuation proposal prepared by a professional engineer;
- (e) for a retaining wall, the design prepared by a professional engineer;
- (f) a Real Property Report;
- (g) a detailed report prepared to show the effect of additional traffic resulting from the proposed development;
- (h) good quality drawings, overheads or electronic copies of drawings when required for presentations to Council;
- (i) site topography, trees, landscaping or other physical conditions;
- (j) copies of plans in such number as specified by the Development Officer showing the elevations, floor plan and a perspective of the proposed development, including a description of the exterior finishing materials;
- (k) a vicinity map of appropriate scale, indicating the location of the proposed development in relation to nearby access streets and other significant physical features which may have a bearing on the proposed project;
- (l) copies of any permit, license, approval, application for any permit, license or approval, any environmental assessment, environmental impact assessment, emergency response plan, baseline environmental study, environmental audit and any other report, study or analysis that the applicant or owner has, is, or will be required or requested to obtain or prepare pursuant to any federal, provincial or municipal enactment or any other law that the Development Officer deems necessary to properly assess the application;
- (m) such environmental assessment, environmental impact assessment, emergency response plan, baseline environmental study, environmental audit, report, study or analysis that the Development Officer deems necessary to properly assess the application;
- (n) information confirming that the applicant has discussed the proposed development with any person affected by the proposed development; and
- (o) other information required by the Development Officer to determine how a proposed development may affect land uses in the vicinity.

3.4. **Excavation, Stripping, Grading and Topsoil Applications**

In addition to the requirements of Section 3.3, an application for a development permit for the excavation, stripping or grading of land, whether with or without other development on the same site, must include the following information:

- (a) the specific location and area of the site proposed for excavation, stripping or grading;
- (b) the type of excavation, stripping or grading proposed;

Control of Development

- (c) the quantity of soil to be removed, the depth of topsoil to be removed, the total depth of excavating and depth of topsoil to remain;
- (d) a detailed timing and phasing program covering the length of the proposed operation including any processing or sales operations; and
- (e) a plan showing the final site conditions following completion of the operation and any land reclamation proposals.

3.5. **Show Home and Residential Sales Centre Application**

In addition to the requirements of Section 3.3, an application for a development permit for a show home or residential sales centre shall include the following information:

- (a) the specific location and area intended as a show home site;
- (b) parking provisions;
- (c) lighting provisions; and
- (d) signage.

3.6. **Home Occupation Application**

In addition to the requirements of Section 3.3, an application for a home occupation shall include detailed information regarding the scope and nature of the proposed home occupation, using a City-supplied questionnaire.

3.7. **Applications for Demolitions**

In addition to the requirements of Section 3.3, an application for a development permit that includes demolition of a commercial building shall include the following information:

- (a) the historic or architectural background of the building;
- (b) the value of the building;
- (c) the alternatives to demolition if the building is of historic or architectural value;
- (d) the effect the demolition will have on the streetscape;
- (e) the purpose for the building demolition and the type of structure to replace the demolished building;
- (f) a work schedule of the demolition and site cleanup; and
- (g) the length of time before the site is to be redeveloped and treatment of the site after demolition but prior to development.

3.8. **Decision Process Permitted and Discretionary Uses**

- (1) The Development Officer shall receive all applications for development permits and shall determine whether or not the submitted applications are complete.

Control of Development

- (2) The Development Officer shall review each application for a development permit to determine what type of use the development constitutes.
- (3) Where a proposed use does not conform to the wording of any land use definition or generally conforms to the wording of two or more land use definitions, the Development Officer may determine that the use is similar to the land use definition that the Development Officer considers to be the most appropriate in character, purpose, and potential impact. In such instances, the Development Officer may allow the proposed use as a discretionary use. **(BL 31/2013)**
- (4) Subject to Section 3.14 and any other variance provisions contained in this Bylaw, a Development Officer shall refuse an application which does not conform to this Bylaw.
- (5) The Development Officer shall issue a development permit for a permitted use with or without conditions if the application conforms to this Bylaw.
- (6) The Development Officer may issue a development permit for a discretionary use, with or without conditions, if the application conforms to this Bylaw.
- (7) The Development Officer may refuse a development permit application for a discretionary use on its merits even though it conforms to this Bylaw.
- (8) A decision on an application for a development permit for a permitted or discretionary use shall be in writing and a copy shall be sent to the applicant.
- (9) If the Development Officer refuses an application for a development permit, the decision shall contain the reasons for the refusal.
- (10) An application for a development permit shall, at the option of the applicant, be deemed to be refused when a decision is not made within 40 days of receipt of the complete application unless the applicant has entered into a written agreement with the Development Officer to extend the time period beyond the 40-day period.

3.9. **Direct Control**

Except for those uses that may be approved by the Development Officer under subsections 10.5(4), 10.6(4), 10.6(5), 10.7(4) and 10.7(5), Council may issue a development permit for any use in a Direct Control District and impose such conditions as it considers appropriate. **(BL42/2005, BL32/2006)**

3.10. **Notification**

- (1) Notification of an application to Council for a Direct Control Permit shall be
 - (a) published in 2 consecutive issues of a newspaper circulating in the City; and
 - (b) mailed by ordinary mail to each owner of land within 60 m from the boundary of the site of the proposed development, as shown on the assessment roll of the City at the date of application for the permit.
- (2) Notification of the issuance of a permit for a discretionary use, or for a development permit for a permitted use involving a variance, by a Development Officer shall be provided as follows:

Control of Development

- (a) within 15 days of the issuance of the permit, notice shall be published in 1 issue of a newspaper circulating in the City; or
 - (b) within 5 days of the issuance of the permit, notice shall be mailed by ordinary mail to each owner of land within 30 m of the site as shown on the assessment roll of the City at the date of the application.
- (3) The Development Officer may notify property owners in an area greater than that required under subsection (1) or (2)(b).

3.11. Development Permit Conditions

- (1) The Development Officer may, with respect to any use:
- (a) require the applicant to make satisfactory arrangements for the supply of utilities including, but not limited to, natural gas, cable, water, electric power, sewer service, vehicular and pedestrian access, or any one or more of them, including payment of the cost of installation or construction of any such utility or facility by the applicant;
 - (b) require that an applicant enter into an agreement or interim agreement, which shall form part of such development permit, to do any or all of the following:
 - (i) construct, or pay for the construction of, a public roadway required to give access to the development;
 - (ii) construct, or pay for the construction of:
 - (A) a pedestrian walkway system to serve the development;
 - (B) pedestrian walkways that will connect the pedestrian walkway system serving the development with a pedestrian walkway system that serves or is proposed to serve an adjacent development,or both;
 - (iii) install, or pay for the installation of, utilities that are necessary to serve the development;
 - (iv) pay an off-site levy, redevelopment levy or both, imposed by the Off-Site Levy Bylaw unless otherwise stated in this Bylaw;
 - (v) specify the location and number of vehicular and pedestrian access points to the development from public roadways;
 - (vi) construct or pay for the construction of off-street or off-site parking facilities or loading or unloading facilities;
 - (vii) repair, reinstate or pay for the repair or reinstatement to original condition of any street furniture, curbing, sidewalk, boulevard landscaping and tree planting which may be damaged or destroyed or otherwise harmed by development or building operations upon the site;
 - (viii) install or construct or pay for the installation or construction of landscaping berming and fencing on the development, public roadways and public lands adjacent to the development; and
 - (ix) re-establish or restore all survey monuments including Alberta Survey Control monuments which may be damaged or destroyed

Control of Development

or otherwise harmed by development or building operations upon or adjacent to the site;

- (c) require that the applicant provide security to ensure the applicant complies with this Bylaw, a development permit, an agreement under this clause or a statutory plan enacted by the City, which security may include, but is not limited to an irrevocable letter of credit or charge against the title to the site; and
 - (d) require the applicant to obtain or maintain insurance coverage naming the City as an additional insured under terms and with carriers as required by the Development Officer including but not limited to comprehensive general liability coverage and automotive accident coverage.
- (2) The Development Officer may require that an agreement entered into under subsection (1) be registered by caveat against title to the land at the Land Titles Office.
 - (3) The agreement under subsection (1) may include provisions contemplated by the Act in respect of oversized improvements.
 - (4) In addition to subsection (1), the Development Officer may, with respect to a permitted use, impose such conditions as are required to ensure compliance with this Bylaw or the Act.
 - (5) The applicant shall be responsible for compliance with all federal, provincial and municipal enactments and any other law applicable to the use and development of the land and buildings. It is hereby deemed a condition of every development permit, whether or not expressly stated therein that the applicant is responsible for ascertaining and shall comply with all applicable federal, provincial and municipal enactments and any other law with respect to the use and development of the land and buildings and shall as and when required thereunder obtain any and all permits, licenses and approvals.
 - (6) In addition to subsection (1), the Development Officer may, with respect to a discretionary use or development permit in a Direct Control District, impose such conditions as he deems appropriate, having regard to the regulations of this Bylaw and the provisions of any statutory plan including, but not limited to the following conditions:
 - (a) limiting hours of operation;
 - (b) limiting number of patrons;
 - (c) establishing landscaping requirements;
 - (d) requiring noise attenuation;
 - (e) requiring special provisions be made for parking;
 - (f) regarding the location, character and appearance of a building;
 - (g) regarding the grading of a site or such other procedures as are necessary to protect the site from other developments or to protect other developments from the site;

Control of Development

- (h) establishing the period of time during which a development may continue;
 - (i) ensuring the development is compatible with surrounding development; and
 - (j) ensuring the development complies and is compatible with the general development regulations or the land use district regulations of this Bylaw.
- (7) In addition to subsection (1) and Section 6.10, where the development of buildings is proposed on land which, in the opinion of the Development Officer, may be subject to flooding or subsidence or that is low-lying, marshy or unstable, or is adjacent to or includes the designated floodline, or within 100 m of the bed and shore of any lake, river, stream or other body of water, the Development Officer may impose such conditions as he deems appropriate, having regard to the condition of the land, the provisions of this Bylaw, and the provision of any statutory plan, including, but not limited to the following conditions: **(BL25/2011)**
- (a) requiring soils and geotechnical reports to be completed prior to or concurrently with the construction of any development;
 - (b) requiring foundations, footings, drainage and any other aspects of the building to be designed and certified by a professional engineer;
 - (c) requiring the development to be constructed in accordance with the plans and recommendations of a professional engineer;
 - (d) requiring that a professional engineer inspect all or part of the proposed development;
 - (e) requiring compliance with specified design criteria; and
 - (f) requiring a certificate from a professional engineer that all inspections have been satisfactorily completed, that all design criteria have been complied with and that all conditions have been met.

3.12. Development Permit Rules

- (1) When an application for a Development Permit has been approved by the Development Officer, the Development Permit shall not be valid unless and until:
- (a) any conditions of approval, save those of a continuing nature, have been fulfilled; and
 - (b) no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in this Bylaw.
- (2) When an application for a Development Permit has been approved by the Subdivision and Development Appeal Board, it shall not be valid unless and until:
- (a) the Board has adopted the minutes of its meeting at which the application was approved; and
 - (b) any conditions of approval, save those of a continuing nature, have been fulfilled.

Control of Development

- (3) Upon service on the City of St. Albert of an application for leave to appeal the decision of the Subdivision and Development Appeal Board, under the Municipal Government Act, the Development Officer shall suspend the Development Permit issued by the Subdivision and Development Appeal Board.
- (4) The Development Permit issued by the Subdivision and Development Appeal Board and suspended pursuant to the Municipal Government Act, remains suspended until:
 - (a) the Alberta Court of Appeal denies leave to appeal and any appeal from that denial has been finally determined; or
 - (b) the Alberta Court of Appeal has granted leave to appeal, heard the appeal on the merits, made its decision, and any appeal to the Supreme Court of Canada from that determination by the Alberta Court of Appeal has been finally determined.
- (5) Unless otherwise provided by this Bylaw, a development permit remains in effect unless:
 - (a) the development permit is suspended or cancelled; or
 - (b) the development for which the permit is issued has not commenced within 12 months of the date the permit is issued.
- (6) Notwithstanding clause (5)(b), if a building permit is issued for the development within the 12 month period, the development permit shall not lapse unless and until the building permit so issued is cancelled or lapses.
- (7) The validity of a development permit may be extended once for a period not exceeding 12 months by the authority that approved it.
- (8) Where a development permit is issued for a site for which any other valid development permit has been issued, all previous development permits shall be invalid if the physical aspects of the development conflict, or both **developments** could not occur simultaneously upon the site, in conformity with the regulations of this Bylaw. In the event that the latter permit is appealed and **overturned the decision is reversed**, the former permit is valid, unless otherwise provided in this Bylaw.
- (9) Notwithstanding subsection (5), time shall not run during an appeal of the Development Permit to the Subdivision and Development Appeal Board and any consequent court proceedings until:
 - (a) the Subdivision and Development Appeal Board has issued a written decision of its approval of the Development Permit and there is no appeal from this decision of the Subdivision and Development Appeal Board; or
 - (b) the Alberta Court of Appeal denies leave to appeal and any appeal from that denial has been fully determined; or
 - (c) the Alberta Court of Appeal has granted leave to appeal, heard the appeal on the merits, made its decision, and any appeal to the Supreme Court of Canada from that determination by the Alberta Court of Appeal has been finally determined.

Control of Development

- (10) An application for a Development Permit for the same or similar use shall not be accepted by the Development Officer from the same or any other applicant for the same site:
- (a) within six months of the date of a refusal by the Development Officer; or
 - (b) within six months of the date of a written decision of the Subdivision and Development Appeal Board on a previous application, if the previous application was appealed to, and subsequently refused by, the Subdivision and Development Appeal Board; or
 - (c) within six months of the date of a written decision of the Alberta Court of Appeal on the previous application if the application has been appealed to the Alberta Court of Appeal; or
 - (d) during the time prior to the decision of the Subdivision and Development Appeal Board or the Alberta Court of Appeal, if the application has been appealed to the Subdivision and Development Appeal Board or the Alberta Court of Appeal.
- (11) Subsection (10) shall not apply in the case of an Application for a Development Permit for a Permitted Use if the Application complies with all the regulations of this Bylaw.
- (12) If upon review of any application for a Development Permit, the Development Officer determines that subsection (10) applies, then the application shall be returned to the applicant, along with any fees that have been submitted. The application shall not be considered as having been refused, but shall be deemed not to have been submitted.
- (13) Notwithstanding subsection (10) above, if two or more Development Permit Applications for the same or similar use on the same site have been refused by the Development Officer, the Subdivision and Development Appeal Board, the Alberta Court of Appeal, or any combination of the above, the third and any subsequent development permit application for that use on that site shall not be accepted by the Development Officer until one year from the date of the most recent refusal, unless that application is for a permitted use and complies in all respects with the requirements of this Bylaw.
- (14) If after the issue of a development permit, it becomes known to the Development Officer that:
- (a) the application for the development permit contains a misrepresentation;
 - (b) facts have not been disclosed which should have been disclosed at the time of consideration of the application for the development permit; or
 - (c) the development permit was issued in error,
- the development permit may be suspended or cancelled by notice in writing, issued by the Development Officer, to the applicant at the address given in the development permit application.
- (15) (a) If a use to which a building, or a portion of a building, is put ceases for 6 months or less, the re-establishment of the same or similar use in the

Control of Development

premises does not require a development permit, unless structural changes are made in the space. If structural changes are made, a new development permit is required.

- (b) If a use to which a building, or a portion of a building, is put ceases operation for more than 6 months, the re-establishment of a use in the building requires a new development permit.
- (c) Clauses (a) and (b) do not apply to the use of dwelling units for residential purposes.

3.13. **Compliance Certificates**

- (1) The registered owner, or a person with a legal or equitable interest in a site, may apply upon payment of such fee as may be prescribed by Council from time to time to the Development Officer for a Compliance Certificate.
- (2) The applicant for a Compliance Certificate shall submit an original Real Property Report for the site that has been produced no more than 5 years prior to the date of submittal.
- (3) The Development Officer may issue a Compliance Certificate when, in his opinion, the buildings as shown on the Real Property Report provided by the applicant are located on the site in accordance with the separation distance and yard and building setback regulations of this Bylaw or the yard or building setbacks specified in any development permit which may have been issued.
- (4) The Compliance Certificate shall only cover those buildings, or parts thereof, shown on the Real Property Report as provided by the applicant.
- (5) The Development Officer may refuse to issue a Compliance Certificate when, in his opinion, he does not have sufficient information from the applicant to determine if buildings as shown are located in accordance with the yard and building setback regulations of this Bylaw or the yard or building setbacks specified in any development permit which may have been issued for the site.
- (6) A Compliance Certificate is not a development permit.

3.14. **Variance**

- (1) In exercising his discretion pursuant to this section, the Development Officer may grant a variance if, in his opinion,
 - (a) the development would not
 - (i) unduly interfere with the amenities of the neighbourhood; or
 - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
 - (b) the development conforms with the use prescribed for that land or building in this Bylaw

Control of Development

- (2) In exercising his discretion under section 3.14(1), the Development Officer shall consider the general purpose and intent of the appropriate land use district and the following:
 - (a) except as otherwise provided in this Bylaw, there shall be no variance from the regulations prescribing floor area, lot coverage or density;
 - (b) a variance from the provisions in this Bylaw shall not be granted when the variance will knowingly cause a structure or use to not comply with federal, provincial, or other municipal regulations, including Safety Codes Act, RSA 2000, c. S-1; and
 - (c) variance requests to height, setbacks, and other regulations that may affect the conformance of a structure with municipal, provincial, or federal regulations shall be circulated to affected departments for review and comment prior to a decision on the application for the development permit.
- (3) In the case of all other regulations found in this Bylaw, the Development Officer is limited to a maximum of a twenty-five (25) percent relaxation.
- (4) In the Mixed Commercial land use district, the Development Officer may vary any requirement in subsections 9.15(9), 9.15(11), 9.15(14), 9.15(15) and 9.15(19) if, in his opinion, the variance is proposed in order to accommodate urban design or architectural criteria consistent with the purpose and regulations of this district.
- (5) In the Boardwalk land use district, the Development Officer may vary any requirement under subsections 9.16(5) to 9.16(8) if, in his opinion, the variance is proposed in order to accommodate urban design or architectural criteria consistent with the purpose and regulations of this district.
- (6) In the Integrated Community Care land use district, the Development Officer may vary any requirement in clauses 9.19(10)(c) through 9.19(10)(h) and clauses 9.19(10)(k) and 9.19(10)(l) if, in his opinion:
 - (a) the variance is proposed in order to accommodate characteristics which are fundamental to the nature of the Urban Village concept and is in keeping with the purpose of the district; and
 - (b) the variance proposed for clauses 9.19(10)(c) and 9.19(10)(d) is in order to accommodate other design solutions which offer equivalent daylight, ventilation, quiet, visual privacy or views.
- (7) In the Direct Control Northwest Urban Village land use district, the Development Officer may vary any requirement in clauses 10.7(14)(a) and 10.7(14)(b) if, in his opinion, the variance proposes design solutions which offer equivalent weather protection for the pedestrian walkways. **(BL32/2006)**
- (8) The Development Officer may not vary building setback regulations for bare land condominium projects in the R1 District.
- (9) When considering a variance to parking requirements, the Development Officer may require a Parking Demand Study, which demonstrates to the satisfaction of the Development Officer that the parking needs of the development can be met on site.
- (10) The development bonuses in subsections 8.24(4), 8.24(11), 8.25(7), 8.25(13), 8.25(14), 9.15(9), and 9.16(5) are not considered variances. **(BL4/2008)**

Control of Development

- (11) Notwithstanding Section 3.14(3), in the case of a sign development, the Development Officer shall assess the merits of the comprehensive sign plan and may, at their discretion, vary the number of signs permitted per site if the comprehensive sign plan complies with the following requirements:
- (a) that the proposed sign types are permissible within the land use district of the site;
 - (b) that the proposed signs otherwise comply with the sign type regulations outlined in Section C.6 of Schedule C;
 - (c) that the comprehensive sign plan is consistent with the intended purpose of Schedule C; and
 - (d) that the comprehensive sign plan results in a greater degree of visual harmony and consistency between the proposed signs, the buildings, the site and adjacent lands.

3.15. **Non-Conforming Development**

- (1) When
- (a) on or before the day on which this Bylaw or any Bylaw for the amendment thereof comes into force, a development permit has been issued; and
 - (b) the enactment of this Bylaw or any Bylaw for the amendment thereof would render the development in respect of which the permit was issued, a non-conforming use or non-conforming building, the development permit continues in effect, notwithstanding the enactment of this Bylaw or any amending Bylaw.
- (2) A non-conforming use of land or a non-conforming use of a building may be continued, but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building shall conform with the provisions of this Bylaw.
- (3) A non-conforming use of part of a building may be extended throughout the building, but the building, whether or not it is a non-conforming building, shall not be enlarged or added to and no structural alterations shall be made to it or in it.
- (4) A non-conforming use of part of a lot shall not be extended or transferred in whole, or in part to any other part of the lot and no additional buildings shall be erected on the lot while the non-conforming use continues.
- (5) A non-conforming building may continue to be used, but the building shall not be enlarged, added to, rebuilt or structurally altered except:
- (a) as may be necessary to make it a conforming building; or
 - (b) as the Development Officer considers necessary for the routine maintenance of the building.
- (6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building shall not be repaired or rebuilt except in accordance with this Bylaw.

Control of Development

- (7) The use of land or the use of a building is not affected by reason only of a change of ownership, tenancy or occupancy of the land or building.
- (8) Notwithstanding subsection 3.15(5), the Development Officer may approve as a discretionary use in any district, an enlargement, alteration or addition to a legal non-conforming building if the non-conforming building complies with the uses prescribed for that district in this Bylaw and the proposed development would not, in the opinion of the Development Officer: **(BL13/2006)**
 - (a) unduly interfere with the amenities of the neighbourhood; or
 - (b) materially interfere with or affect the use, enjoyment or value of neighbouring properties.