

**BY-LAW NO. 1997-1
of the Red Bank Band**

**A By-law Dividing the Reserve into Zones
and Regulating the Use of Land**

WHEREAS the Council of the Red Bank Band desires to make a by-law dividing the reserve into zones and regulating the use of land;

AND WHEREAS the Council of the Red Bank Band is empowered to make such by-law pursuant to paragraphs 81(1)(g), (q) and (r) of the Indian Act;

AND WHEREAS it is considered necessary for the development of the reserve lands of the Red Bank Band to regulate the use of reserve lands;

NOW THEREFORE the Council of the Red Bank Band hereby makes the following by-law:

PART I - GENERAL

Short Title

1. This by-law may be cited as the "Red Bank Band Zoning By-law".

Interpretation

2. In this by-law,

"accessory building or structure" means a detached building or structure, the use of which is incidental or secondary to that of the main building;

"accessory use" means a use customarily incidental and subordinate to the principal use;

"attached" means a building otherwise complete in itself, which depends for structural support, or complete enclosure, upon a division wall or walls shared in common with adjacent building or buildings;

"Band" means the Red Bank Band;

"building" means any structure used or designed to be used for shelter, accommodation or enclosure of persons, animals, or chattels;

"business and professional office" means an office in which any business is carried on or any profession is practised;

"convenience store" means a retail commercial establishment supplying groceries, sundries and other daily household necessities to the immediate surrounding area;

"cottage industry" means a use accessory to a single family dwelling, and includes a carpentry shop, a craft shop, a plumbing shop, a metal working shop, an electrical shop, a welding shop, a storage building for school buses, boats or snowmobiles, a repair shop for farm equipment, or any similar use;

"Council" means the Council, as defined in the *Indian Act*, of the Red Bank Band;

"apartment dwelling house" means the whole of a building not otherwise defined herein, which contains four or more dwelling units served by a common entrance, in which the occupants have the right to use in common any corridors, stairs or elevators contained therein, and the land appurtenant thereto;

"duplex" means a building that is divided horizontally into two dwelling units, each of which has an independent entrance;

"one family" means a separate building containing only one dwelling unit;

"two family" means a separate building containing only two dwelling units;

"triplex" means the whole of a building that is divided horizontally into three separate dwelling units, each of which has an independent entrance, either directly from the outside, or through a common vestibule;

"semi-detached" means a building that is divided vertically into two dwelling units;

"dwelling unit" means one or more habitable rooms designed for use by and occupied by not more than one family and in which separate kitchen and sanitary facilities are provided for the exclusive use of such a family, with a private entrance from outside the building or from a common hallway or stairway inside the building;

"dwelling unit area" means the floor area of a dwelling unit measured between the exterior faces of the exterior walls of the dwelling unit;

"eating establishment" means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, and includes a restaurant, cafe, tea or lunch room, dairy bar, and refreshment room or stand, but does not include a boarding or lodging house;

"erect" means build, construct, reconstruct, or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filling or draining, and any altering of an existing building by an addition, extension or other structural change;

"garage, commercial" means a building, structure or lot where commercial vehicles are stored or where vehicles are repaired or maintained;

"height" means, when used with reference to a building, the vertical distance between the average elevation of the finished surface of the ground at the front of the building and

- (a) in the case of a flat roof, the highest point of the roof surface or the parapet, whichever is the greater,
- (b) in the case of a mansard roof, the deck roof line, and
- (c) in the case of a gable, hip or gambrel roof, the mean height between the eaves and ridge;

"home occupation" means an occupation, trade, business profession or craft carried on as an accessory use to the use of a dwelling that is the private residence of the person carrying on the occupation, trade, business, profession or craft;

"mobile home" means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed, and does not include a modular home;

"non-conforming" means that which does not conform, comply or agree with the provisions of this by-law as of the date it was made;

"noxious use" means any use which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter;

"nursery" means land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail trade;

"official plan" means a document that sets out proposals for future development on the reserve and is accompanied by maps and charts;

"owner" means any person lawfully in possession of land, buildings or structures;

"person" includes an individual, an association, a chartered organization, a firm, a partnership and a corporation;

"place of entertainment" means a motion picture or other theatre, arena, auditorium, public hall, billiard or pool room, bowling alley, ice or roller skating rink,

dance hall, music hall, bingo hall, amusement arcades, but does not include any place of entertainment or amusement otherwise defined or classified herein.

"restaurant" means a building or part of a building where food is offered for sale or sold to the public for immediate consumption therein, but does not include a boarding or lodging home;

"reserve" means the reserve of the Big Hole Tract Indian Reserves No. 8, commonly referred to as the north side of the "Big Hole Tract";

"retail store" means a building or part of a building in which goods, wares, merchandise, substance, articles or things are offered or kept for sale at retail;

"roadside stand" means a retail store not exceeding nineteen square metres in floor area, in which the goods displayed or offered for sale are produced on the same land from agricultural uses;

"structure" means anything constructed or erected, the use of which requires location on or in the ground or attached to something having location on or in the ground;

"water setback" means the straight line horizontal distance from the high water mark of a watercourse, bay or lake to the nearest part of any excavation, building, structure or open storage use on the land;

"zone" means a designated area of land use shown on Schedule "A" hereto;

"Zoning Administrator" means the person appointed or designated by the Council under this by-law and charged with the duty of administering and enforcing the provisions of this by-law.

Application of By-law

- 3.(1) The provisions of this by-law apply to all lands of the reserve of the Red Bank Band as shown on Schedule "A".
- (2) Schedule "A", which is attached hereto, is a part of this by-law as fully and to all intents and purposes as though recited in full herein.

PART II - ADMINISTRATION

Zoning Administrator

- 4.(1) The Council may, by resolution, appoint or designate a person as Zoning Administrator whose duty it shall be to administer and enforce this by-law.

(2) The Council may, in the resolution, provide for reasonable remuneration to be paid to the Zoning Administrator.

PART III - GENERAL ZONING PROVISIONS

Prohibition

5.(1) No building or structure shall hereafter be erected or altered, nor shall the use of any land, building or structure hereafter be changed, in whole or in part, except in conformity with the provisions of this by-law.

(2) Notwithstanding any other by-law of the Council, no building permit shall be issued where the proposed building, structure or use would be in violation of any provision of this by-law.

Non-Conforming Uses

6.(1) Subject to subsection (2), nothing in this by-law prevents the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day this by-law was made, so long as it continues to be used for that purpose.

(2) If a building or structure which does not conform with the requirements of this By-law with respect to use, lot occupancy, or height is destroyed, said building or structure may be restored to its original dimensions and strengthened to a safe condition, provided that such restoration or strengthening does not further increase the extent of non-conformity of such building or structure, and provided that all other applicable provisions of this By-law are complied with and the use is not a noxious use.

Prior Building Permits

7. Nothing in this by-law prohibits the erection of a building or structure for which a building permit was issued prior to the date this by-law was made.

Exceptions to Height Limitations

8. The height limitations of this by-law do not apply to chimneys, church spires, public buildings, water tanks, elevator enclosures, flag poles, television or radio antennae, electrical transmission facilities, ventilators or skylights.

Accessory Buildings and Structures

9. Accessory uses, buildings and structures, including private garages, are permitted in any zone within the reserve, but shall not

- (a) be used for human habitation, except where a dwelling is a permitted accessory use;
- (b) exceed four metres in height in any residential zone;
- (c) be built within two metres of the main building; or
- (d) be considered an accessory building attached to the main building in any way.

Temporary Construction Uses Permitted

10. Nothing in this by-law prevents uses incidental to construction, such as a construction camp or other such temporary work camp, a tool shed, scaffold or other building or structure incidental to the construction, or a sign not more than four and one-half (4.5) square metres in area incidental to the construction, if these uses are permitted only for so long as they are necessary for work in progress which has neither been finished nor abandoned.

Occupancy of Incomplete Buildings

11. In any zone, no new buildings shall be occupied before the main side walls and roof have been erected and roofing has been completed and, in the case of a dwelling, kitchen, heating and sanitary conveniences have been installed and rendered useful.

Setbacks

12. Buildings and structures erected in any zone shall conform to the following setback requirements from road centre lines and high water marks of any water course, bay or lake:

- (a) Provincial highway - 18 metres
- (b) Road other than a provincial highway - 13 metres
- (c) Reserve road - 10 metres
- (d) Other road - 8 metres
- (e) Water setback - a minimum water setback of 15 metres shall be provided, but accessory boathouses and boat decks are not required to meet the water setback.

Occupation of Vehicles

13. No car, truck, coach or streetcar body shall be used for permanent human habitation in any zone, whether or not mounted on wheels.

Mobile Homes

14. Mobile homes are permitted on the reserve, except in a commercial zone.

Home Occupations

- 15.** A home occupation is permitted in any zone if
- (a) only members of the family are employed in the home occupation;
 - (b) there is no external display or advertising other than a non-illuminated sign, not more than three tenths of a square metre (.3m²) in area, to indicate to persons outside that any part of the dwelling unit or lot is being used for a purpose other than residential;
 - (c) not more than 25% of the dwelling unit area is used for the purpose of the home occupation;
 - (d) the home occupation is secondary to the main residential use and does not change the residential character of the dwelling home or dwelling unit;
 - (e) there are no goods, wares or merchandise, other than arts and crafts produced on the premises, offered or exposed for sale or rent on the premises;
 - (f) the home occupation does not create or become a nuisance, in particular, in regard to noise, traffic or parking;
 - (g) the home occupation does not interfere with television or radio reception; and
 - (h) a private garage is not used for the home occupation.

Noxious Uses

16. No use is permitted which is offensive or dangerous by reason of the emission of odour, smoke, dust, noise, gas, fumes, vibration or refuse matter, or which from its nature or the materials used therein is declared to be a noxious trade, business or manufacturer under the *Candain Environment Protection Act*, and the *Fisheries Act*, (Canada).

Cottage Industry

17. A cottage industry is permitted in a residential zone if

- (a) not more than 10% or ten square metres of the dwelling unit area, whichever is the lesser, is used for the purposes of the cottage industry;
- (b) not more than fifty square metres of the gross floor area of all accessory buildings are used for the purposes of the cottage industry; and
- (c) not more than five persons, other than those residing on the premises, are engaged on the premises in the cottage industry.

Railway Crossings

18. Where any road crosses a railway, no building or structure shall be erected closer to the point of intersection of the centreline of both the railway and the road than forty-six (46) metres.

Multiple Uses

19. Where any land or building is used for more than one purpose, all provisions of this by-law relating to each use shall be satisfied and, where there is a conflict, the higher or more stringent standard shall prevail.

PART IV - SPECIFIC ZONING PROVISIONS

Zones

20. The reserve is divided into the following zones, as shown on Schedule "A" (Zoning map).

<u>Zones</u>	<u>Zone Symbols</u>
Residential	Zone R
Commercial	Zone C

Residential (R) Zone Permitted Uses

21. Land may be used and buildings and structures erected, altered or used in a Residential (R) Zone only for

- (a) a single family dwelling;
- (b) a two family dwelling
- (c) a duplex dwelling;
- (d) a semi-detached dwelling;
- (e) an apartment dwelling;
- (f) a triplex dwelling;
- (g) a group home;
- (h) a mobile home dwelling;
- (i) a home occupation;
- (j) a park or playground;

- (k) a use accessory to any of the foregoing permitted uses.

Residential (R) Zone Specifications

22. Land may be used and buildings and structures may be erected, altered or used in a Residential (R) Zone only where the following specifications are complied with:

minimum lot area	2,025 square metres
minimum lot frontage	30 metres
minimum front yard depth	7.5 metres
minimum side yard width	3 metres or half the height of building, whichever is greater
minimum rear yard depth	7.5 metres
minimum dwelling unit area	55 square metres
maximum lot coverage	33%
maximum building height	13.5 metres
minimum number of parking spaces	1 per dwelling unit

Commercial (C) Zone Permitted Uses

23. Land may be used and buildings and structures may be erected, altered or used in a Commercial (C) Zone only for

- (a) an automobile service station, commercial garage or automobile business, including sales and rentals;
- (b) a car wash;
- (c) a bank or other financial institution;
- (d) a personal service shop;
- (e) a boat, snowmobile, trailer or cycle business, including sales and rentals;
- (f) a business or professional office;
- (g) a convenience store;
- (h) a laundry or dry cleaning establishment;
- (i) a restaurant or other eating establishment;
- (j) a hotel;
- (k) a parking lot;
- (l) a place of entertainment;
- (m) a post office;
- (n) a recreational use;
- (o) a taxi stand;
- (p) a retail store; or
- (q) a use accessory to any of the foregoing permitted uses.

Commercial (C) Zone Specifications

24. minimum lot area	2,025 square metres
minimum lot frontage	30 metres
minimum front yard depth	7.5 metres
minimum side yard width	3 metres or half the height of building, whichever is greater
minimum rear yard depth	7.5 metres
minimum dwelling unit area	55 square metres
maximum lot coverage	33%
maximum building height	13.5 metres
minimum number of parking spaces	Restaurants, theatres, arenas: one (1) space for one hundred (100) square feet of floor area devoted to public use; Hotels and motels: one (1) parking space per suite or cabin, plus one (1) additional space per one hundred (100) square feet of floor area which is open to the general public; Bowling alleys and curling clubs: three (3) spaces per alley and four (4) spaces per curling sheet: Medical clinics and medical practitioner's offices: four (4) spaces per practitioner; All other uses, except convenience stores and home occupations: one (1) space per three hundred twenty-five (325) square feet of floor area.

PART V - OWNER APPLICATIONS**Minor Variance**

25. The owner of any land, building or structure affected by this by-law may apply to the Council for a minor variance from the provisions of this by-law, in respect of the land, building or structure, or use thereof.

Non-Conforming Uses

26. Where any land, building or structure, on the day this by-law was made, was used for a purpose prohibited by the by-law, the owner of any land, building or structure may apply to the Council for authorization to

- (a) enlarge or extend the building or structure, if the land, building or structure continues to be used in the same manner and for the same purpose as it was used on the day this by-law was made; or

- (b) to use such land, building or structure for a purpose that is similar to the purpose for which it was used on the day this by-law was made, or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day this by-law was made.

Amendment

27.(1) The owner of any land, building or structure may apply to the Council for an amendment to this by-law.

(2) An owner who applies under subsection (1) must set out in the application the reasons for the amendment and submit detailed site plans, where applicable.

Hearing

28. Within ninety days of the filing of a properly completed application under section 34, 35 or 36, the Council shall hold a hearing with respect to the application.

Notice

- 29.** At least fourteen days prior to the hearing, the Zoning Administrator shall
- (a) give notice to the applicant of the date, time and place of the hearing and informing the applicant, and any other resident of the reserve, that they have the right to appear at the hearing and to be heard in respect of the application; and
 - (b) post in the Band Office a copy of the notice.

Hearing

- 30. .** At the hearing, the Council shall
- (a) provide the applicant with an opportunity to present evidence and to make oral or written submissions in support of the application; and
 - (b) provide any resident present at the hearing with an opportunity to be heard.

Rules of Procedure

31. The Council may make rules of procedure governing the hearing of applications and shall keep records of its proceedings.

Decision

32. After it has heard all of the evidence and submissions, the Council shall meet in private to consider the application.

Criteria - Minor Variance

33. In determining whether an application for a minor variance should be granted, the Council shall take into consideration

- (a) whether the minor variance is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

Criteria - Non-Conforming Use

34. In determining whether an application for an extension or modification of a non-conforming use should be granted the Council shall take into consideration

- (a) whether the extension or modification is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

Criteria - Amendment

35. In determining whether an application for an amendment to this by-law should be granted, the Council shall take into consideration

- (a) whether the amendment is desirable for the appropriate development or use of the land, building or structure;
- (b) whether the general intent and purpose of this by-law and the official plan, if any, will be maintained; and
- (c) [other].

Notice of Decision

36. Within ten days after the hearing, the Council shall render its decision on the application and shall give a written notice of its decision to the applicant which incorporates written reasons in support of its decision.

Posting Decision

37. Within five days after disposing of the application, the Council shall post a notice of its decision in the Band office.

PART VI - ENFORCEMENT

Inspection

38. The Zoning Administrator may, at all reasonable hours, enter and inspect any land, building, structure or other property for the purpose of determining whether this by-law is being complied with.

Offence

39. (1) A person who uses land, or who erects or uses any building or structure or any part of land or a building or structure, in a manner contrary to any provision of this by-law, or who causes or who permits such use or erection, or who otherwise violates any provision of this by-law or causes or permits any such violation, commits an offence.

(2) A person who interferes with or obstructs the Zoning Administrator in the administration and enforcement of this by-law commits an offence.

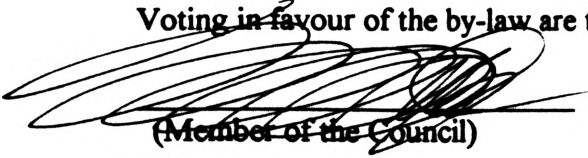
(3) Where an act or omission in contravention of this by-law continues for more than one day, such act or omission shall be deemed to be a separate offence committed on each day during which it continues, and may be punished as such.

Penalty

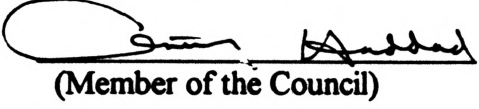
40. A person who commits an offence under section 48 is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 30 days , or to both.

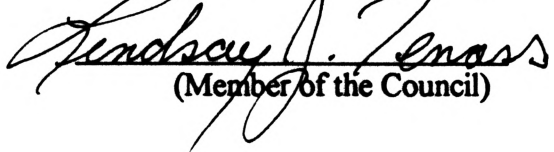
THIS BY-LAW IS HEREBY made at a duly convened meeting of the Council of the _____
Band this 22 day of May, 1997.

Voting in favour of the by-law are the following members of the Council.


(Member of the Council)


(Member of the Council)


(Member of the Council)


(Member of the Council)

(Member of the Council)

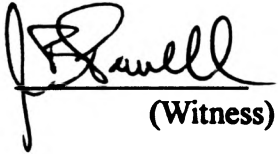
(Member of the Council)

being the majority of those members of the Council of the Red Bank Band present
at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 4.

I, Donald P. Ward, Chief/Councillor of the Band, do hereby certify that a true copy of
the foregoing by-law was mailed to the Minister of Indian Affairs and Northern
Development at the Red Bank office of the department pursuant to subsection 82(1)
of the Indian Act, this 22 day of May, 1997.


(Witness)


(Chief/Councillor)