



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Greg R. Fysh
138 Hochelaga Street East, Moose Jaw, SK
APPEAL NO. 7 of 2019**

IN THE MATTER OF AN APPEAL TO THE DEVELOPMENT APPEALS BOARD, of the City of Moose Jaw, in the Province of Saskatchewan, heard in Committee Room B, City Hall, Moose Jaw, on Tuesday, July 16, 2019 pursuant to the provisions of *The Planning and Development Act, 2007*.

APPELLANT: Greg R. Fysh

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lot 5, Block 11, Plan No. OLD96 Ext. 0
138 Hochelaga Street East

ZONING: R1 – Large Lot Density Residential District

NATURE OF APPEAL

THE APPELLANT, Greg R. Fysh, is requesting a variance to the City of Moose Jaw's Zoning Bylaw No. 5346, as amended.

REQUESTED VARIANCE

The appellant is requesting a variance to the City of Moose Jaw's Zoning Bylaw No. 5346, to permit the construction of an addition to an accessory building on the property described as Lot 5, Block 11, Plan No. OLD96 Ext. 0, civically known as 138 Hochelaga Street East, Moose Jaw, SK with a proposed:

- Accessory building floor area of 101.45 m² (1,092 ft²), contrary to the 83.61 m² (900 ft²) prescribed by the City of Moose Jaw's Zoning Bylaw.

HEARD ON

Tuesday, July 16, 2019 in Committee Room B, 2nd Floor, City Hall.

IN ATTENDANCE

The Board: Terrence Wallace, Chairperson
Rece Allen, Vice Chairperson
Fred Anderson, Member
Warren Brisbin, Member

Appeared for the Appellant: No One Present

Appeared for the Respondent: Eric Bjorge, Assistant City Planner

LEGISLATIVE PROVISIONS

The DAB is guided by the principles expressed in Section 221 of *The Planning and Development Act, 2007*, which reads as follows:

- 221 In determining an appeal, the board hearing the appeal:
- (a) is bound by any official community plan in effect;
 - (b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;
 - (c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
 - (d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:
 - (i.) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;
 - (ii.) amount to a relaxation so as to defeat the intent of the zoning bylaw; or
 - (iii.) injuriously affect the neighbouring properties.

PRELIMINARY MATTERS

The parties agreed that the appeal was properly brought before the Board and that all parties have received the following information:

- Exhibit A The Application for Appeal before the Development Appeals Board which was submitted to the Office of the City Clerk on **May 30, 2019**.
- Exhibit B Names & Addresses of Assessed Property Owners within 75 metre radius of Applicant's property.
- Exhibit C Notice of Hearing, Development Appeals Board.
- Exhibit D Affidavit of Service, verifying the letters to residents within a 75 metre radius were sent by regular mail on **July 2, 2019**.
- Exhibit E Report dated **June 25, 2019** from the City of Moose Jaw's Department of Planning & Development Services which includes facts and information pertinent to the appeal and their response to the applicable sections of *The Planning and Development Act, 2007*.

APPELLANT

The Appellant, Greg R. Fysh, was not present.

NEIGHBOURING PROPERTY OWNER(S)

The Chairperson confirmed that no correspondence had been received by the Office of the City Clerk with respect to the matter.

RESPONDENT

The Respondent provided the following information as provided in Exhibit E:

BACKGROUND

The subject property is composed of a single large lot with a site area of 772.6 m² (8,315.8 ft²). The lot is considered a through site since it abuts two legal streets, Hochelaga Street East and Caribou Street East. This area is zoned R-1 Large Lot Low Density Residential District, which is intended to provide for large lot residential development in the form of one-unit dwellings as well as complementary community uses.

The applicant has requested to construct a 14 ft by 26 ft addition to the rear detached garage for the purposes of vehicle and boat storage. The existing garage is 28 ft by 26 ft, with a size of 67.6 m² (728 ft²). The proposed addition will cause the garage to be over the size limit for accessory buildings in this zoning district.

MATERIAL BEFORE THE BOARD

The material filed with the Board in accordance with Section 223 of *The Planning and Development Act, 2007* with respect to this matter (i.e., filed at least five (5) days prior to the hearing) included the following:

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| Exhibit A | The Application for Appeal before the Development Appeals Board which was submitted to the Office of the City Clerk on May 30, 2019 . |
| Exhibit B | Names & Addresses of Assessed Property Owners within 75 metre radius of Applicant's property. |
| Exhibit C | Notice of Hearing, Development Appeals Board. |
| Exhibit D | Affidavit of Service, verifying the letters to residents within a 75 metre radius were sent by regular mail on July 2, 2019 . |
| Exhibit E | Report dated June 25, 2019 from the City of Moose Jaw's Department of Planning & Development Services which includes facts and information pertinent to the appeal and their response to the applicable sections of <i>The Planning and Development Act, 2007</i> . |

DECISION OF THE BOARD:

The Planning and Development Act, 2007, Section 221(d) states there are three (3) bars to entitlement, which must be cleared for the appeal to be granted by the Board. To fail on any one means that the appeal cannot be granted.

Based on the evidence presented, the Board concludes that the requested relaxation will not:

a) Be a special privilege for the following reasons:

When the test with respect to a special privilege is applied, the Development Appeals Board deems that due to the size and location of the lot they would be willing to grant the variance. The lot in question is considered a through site as it abuts two legal streets – Hochelaga Street East and Caribou Street East. The Board also stated that they would be willing to grant a similar variance to anyone in the same circumstances.

b) Be contrary to the purpose and intent of the Bylaw for the following reasons:

When the test for the variance to be contrary to the purpose and intent of the Bylaw is applied, the Development Appeals Board noted that the relaxation in this case does not impede the intent of the Bylaw. The Board noted that the lot size at this location exceeds the standard City lot size to which this Bylaw is based on. The Board also noted that as the lot is considered a through site abutting two legal streets, the variance being requested is not contrary to the purpose and intent of the City's Zoning Bylaw.

c) Injurious affect the neighbouring properties for the following reasons:

The Development Appeals Board noted that granting this variance will not injuriously affect the neighbouring properties as the lot is considered a through site, therefore, neighbouring properties will not be affected. The Board recognized that no objections were received from property owners within the 75 metre radius area.

It is the decision of the Development Appeals Board that the appeal be **GRANTED**.

RIGHT OF APPEAL:

Any person wishing to appeal the decision of the Board may do so within twenty (20) days after the date on which a copy of this decision is received and upon written notice to the Saskatchewan Municipal Board, Planning Appeals Committee, Room 480, 2151 Scarth Street, Regina, Saskatchewan, S4P 2H8. A fee of \$50 per appeal will be assessed. A copy of any appeal should also be forwarded to the Secretary, Development Appeals Board, c/o City Clerk's Office, 228 Main Street North, Moose Jaw, Saskatchewan, S6H 3J8.

DATED at the City of Moose Jaw, this 22nd day of July, 2019.

Terrence Wallace
Terrence Wallace, Chairperson

Pearl Anderson
Pearl Anderson, Secretary