



**DEVELOPMENT APPEALS BOARD  
RECORD OF DECISION  
Jarrod Jones  
1 Flax Road, Moose Jaw, SK  
APPEAL NO. 9 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:** Jarrod Jones

**RESPONDENT:** City of Moose Jaw  
Planning and Development Services Department

**RESPECTING THE  
PROPERTY** Lot 43, Block 12, Plan 102101937  
1 Flax Road

**ZONING:** R1 – Large Lot Density Residential District

**NATURE OF APPEAL**

THE APPELLANT, Jarrod Jones, 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 a residential fence on the property described as Lot 43, Block 12, Plan 102101937, civically known as 1 Flax Road, Moose Jaw, SK with a proposed:

- Height of 1.8 meters (6.0 ft) in the front yard, greater than the maximum height of 1 meter (3.3 ft) as stated in the City of Moose Jaw's Zoning Bylaw.

**HEARD ON**

Tuesday, July 16, 2019 in Committee Room B, 2<sup>nd</sup> 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 2, 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, Jarrod Jones, was not present.

## **NEIGHBOURING PROPERTY OWNER(S)**

The Chairperson confirmed that three letters had been received by the Office of the City Clerk with respect to the matter. One property owner was in favour and two property owners were opposed to the variance.

## **RESPONDENT**

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

## **BACKGROUND**

The property owner inquired with Planning and Development Services regarding the possibility of building a fence at 1 Flax Road in April of 2019. The property owner was notified that the proposed height of the front yard fence would contravene the Zoning Bylaw. The owner was told that they may appeal this requirement through the Development Appeals Board.

The subject property is on a corner lot measuring approximately 88 ft x 130 ft. the property is zoned R1 – 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 legal “front yard” of a property is defined as the narrowest portion of a lot fronting a street. In this situation, the front yard is along Woodlily Drive, even though the house is facing Flax Road. Under the Zoning Bylaw, the maximum allowed fence height is 1 meter (3.3 ft) spanning from the house to the North property line.

## **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:

- |           |   |
|-----------|---|
| Exhibit A | The Application for Appeal before the Development Appeals Board which was submitted to the Office of the City Clerk on <b>May 2, 2019</b> . |
| 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 <b>July 2, 2019</b> .        |

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*.

**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 would be willing to grant the variance due to the orientation of the house. The Zoning Bylaw states that the legal front yard of a property is defined as the narrowest portion of a lot fronting a street. In this situation, the front yard is along Woodlily Drive, even though the house is facing Flax Road. With consideration to the orientation of the house, the Board deemed granting this variance would not result in a special privilege. 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 will not impede the intent of the Bylaw. The Board deemed that as the house is facing Flax Road, approval of this variance would not be contrary to the purpose and intent of the Bylaw.

**c)      Injuriiously affect the neighbouring properties for the following reasons:**

The Development Appeals Board noted that granting this variance will not injuriiously affect the neighbouring properties. The Board deemed that the proposed fence will not hinder sight lines and traffic visibility. The Board recognized that three letters were received from property owners in the 75 metre radius. One property owner was in favour of the variance and two property owners expressed concerns regarding the proposed variance. Upon the Board's review of the concerns brought forward, it was deemed that site lines and traffic visibility will not be hindered and that the variance will not injuriiously affect neighbouring properties.

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 22<sup>nd</sup> day of July, 2019.

Terrence Wallace  
Terrence Wallace, Chairperson

Pearl Anderson  
Pearl Anderson, Secretary