



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Randy and Debra Hahn and Trisha German
605 and 607 4th Avenue N.W., Moose Jaw, SK
APPEAL NO. 8 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*.

APPELLANTS: Randy and Debra Hahn and Trisha German

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lot 24, Block 31, Plan 99MJ08500
605 and 607 4th Avenue N.W.

ZONING: Contract Zone

NATURE OF APPEAL

THE APPELLANTS, Randy and Debra Hahn and Trisha German, are 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 24, Block 31, Plan 99MJ08500, civically known as 605 and 607 4th Avenue N.W., Moose Jaw, SK with a proposed:

- Height of 2.0 meters (6.5 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, 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: Debra Hahn
Trisha German

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 **June 11, 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 Appellants, Debra Hahn and Trisha German, were present and provided the following information:

- they want to build a fence to secure the property
- they have had individuals wondering through their yard
- would like more privacy to enjoy their property
- planning to build a low maintenance vinyl fence
- the fence will be low enough at the corner so as not to cause site line and visibility issues
- proposed new fence will match existing fence
- fence will be built on the Athabasca Street side of the property
- planning to build a patio on Athabasca Street side of property and fence will give privacy

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 Department of Planning and Development Services received an enquiry from the subject property owner regarding the proposed fence. The applicant was advised that the proposal exceeded the required fence height for the front yard.

The subject property is on a corner lot measuring approximately 60 ft x 125 ft and is occupied by a two unit dwelling. The property is part of a Contract Zone which establishes specific development standards for the site. This Contract Zone is subject to the applicable Zoning Bylaw requirements for residential districts.

The legal "front yard" of the property is determined by the narrowest portion of a lot fronting a street. In this situation, the front yard is along Athabasca Street West and is not dependent on the orientation of the building. Under the Zoning Bylaw, the maximum allowed fence height in any residential district is 1 meter (3.3 ft), spanning from the house to the South 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 **June 11, 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*.

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 on the lot. As per the City's Zoning Bylaw, the legal "front yard" of a property is determined by the narrowest portion of a lot fronting a street. In this situation, the front yard is deemed to be along Athabasca Street and as per the City's Zoning Bylaw, it is not dependent on the orientation of the house. The Board noted 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 noted that due to the orientation of the lot, building the fence on the Athabasca Street part of the yard will not be contrary to the purpose and intent of the 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 site lines and visibility will not be hindered by the proposed fence. 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.



Terence Wallace, Chairperson

Pearl Anderson, Secretary