



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Sam Shaw
(on behalf of the property owner, Sammual Morrison)
459 Lillooet Street West, Moose Jaw, SK
APPEAL NO. 10 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 Wednesday, August 28, 2019 pursuant to the provisions of *The Planning and Development Act, 2007*.

APPELLANT: Sam Shaw (on behalf of the property owner, Sammual Morrison)

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lots 1 & 2, Block 188, Plan OLD96
459 Lillooet Street West

ZONING: R1 – Large Lot Density Residential District

NATURE OF APPEAL

THE APPELLANT, Sam Shaw (on behalf of the property owner, Sammual Morrison), 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 accessory building on the property described as Lots 1 & 2, Block 188, Plan OLD96, civically known as 459 Lillooet Street West, Moose Jaw, SK with a proposed:

- Combined accessory structure floor area of 179 m² (1,927 ft²), contrary to the 83.6 m² (900 ft²) prescribed by the City of Moose Jaw Zoning Bylaw.

HEARD ON

Wednesday, August 28, 2019 in Committee Room B, 2nd Floor, City Hall.

IN ATTENDANCE

The Board: Terrence Wallace, Chairperson
Rece Allen, Vice-Chairperson
Fred Anderson, Member
David Danchilla, Member

Appeared for the Appellant: Sam Shaw (on behalf of the Property Owner, Sammual Morrison)

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 contradict the purpose and 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 26, 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 26, 2019**.
- Exhibit E Report dated **July 31, 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, Sam Shaw (on behalf of the property owner, Sammual Morrison), presented the following information:

- Mr. Shaw advised that the property owner wishes to build a large garage on his double wide lot.
- Mr. Shaw notes that there is ample space on the property for the proposed garage.
- The purpose of the garage is to provide vehicle storage space for the property owner's collector/restored vehicles.
- Mr. Shaw also stated that he believes that large similar sized garages have been approved by the Development Appeals Board.

NEIGHBOURING PROPERTY OWNER(S)

The Chairperson confirmed that two (2) letters had been received by the Office of the City Clerk with respect to the matter. Tracey Lennox, owner of the property located at 428 Iroquois Street West, forwarded a letter dated August 10, 2019 advising she has no concerns regarding the proposed garage. Wanda Schnor, owner of the property located at 467 Iroquois Street West, also forwarded a letter dated August 19, 2019 advising she has no concerns with the proposed garage.

RESPONDENT

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

BACKGROUND

The subject property is larger than average and is composed of two legal lots. The property has dimensions of approximately 100 ft by 125 ft and contains a one-unit dwelling and a detached garage. It is located on the corner of Lillooet Street West and 5th Avenue S.W. The property is zoned R1 - Large Lot Low Density Residential District. The purpose of the District is 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 detached accessory building for the purpose of vehicle storage. The proposed building will measure 24 ft by 68 ft, for a total floor area of 1,632 ft². The property already contains a detached accessory building with a floor area 295 ft². The one-unit dwelling has a total floor area of 2,030 ft² and would be a slightly larger than the proposed floor area of the accessory buildings.

A similar appeal for this property was heard before the Development Appeals Board on August 15, 2017 and was denied on August 21, 2017. The application at that time was for a detached accessory building measuring 24 ft by 70 ft, for a total floor area of 1,680 ft². The decision of the Appeals Board was appealed to the Saskatchewan Municipal Board who upheld the decision. It was stated that granting this appeal would provide a special privilege to the applicant, be contrary to the intent of the Bylaw and would cause injurious affect to neighbouring properties.

The applicant has proposed that this accessory building have a length of 68 ft. instead of 70 ft. proposed in the previous appeal. The change to the size of the proposed building allows for the development standard to be appealed again.

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 26, 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 26, 2019**.
- Exhibit E Report dated **July 31, 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 anyone 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 is willing to grant the variance due to the size of the lot. The property is larger than average and is composed of two legal lots. The Board noted that they would be willing to grant a similar variance to anyone else in similar 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 due to the size and location of the lot, the proposed development will not cause visual obstructions or concerns for the health, safety and general welfare of inhabitants in the City. The Board deemed the proposed garage will not alter the residential character of the neighbourhood and will not be 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. Letters were received from two neighbouring property owners stating they have no concerns with the proposed development. The Board deemed that due to the size and location of the lot, the proposed garage will not injuriously 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 30th day of August, 2019.

Rece Allen
Rece Allen, Vice-Chairperson

Pearl Anderson
Pearl Anderson, Secretary