



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Jay Fellingner
1110 Simcoe Street, Moose Jaw, SK
APPEAL NO. 12 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: Jay Fellingner

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lots 34 - 35, Block 33, Plan AD2083
1110 Simcoe Street

ZONING: R1 – Large Lot Density Residential District

NATURE OF APPEAL

THE APPELLANT, Jay Fellingner, 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 34 - 35, Block 33, Plan AD2083, civically known as 1110 Simcoe Street, Moose Jaw, SK with a proposed:

- Overall height from grade to peak of 5.73 meters (18.8 feet) contrary to the maximum height of 4.5 meters (14.76 feet) 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: Jay Fellingner
Adam Fellingner

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 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 **July 25, 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, Jay Fellingner, presented the following information:

- Mr. Fellingner advised he is proposing to construct a higher garage than what is permitted in the Zoning Bylaw in order to allow for a vehicle lift.

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 measures approximately 50 ft by 120 ft and contains a one-unit dwelling. 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 applicant applied for a building permit to construct a 26' x 32' detached garage in July 2019. The permit was approved with the condition that the garage would adhere to the maximum height of 14.6 feet from grade to peak. The applicant is appealing this condition to construct a higher garage to fit a vehicle lift.

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 July 25, 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 <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 is willing to grant the variance as the proposed development will not negatively affect the comfort and aesthetics of the neighbourhood. The Board also stated that they would be willing to grant a similar variance to anyone else 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, in their opinion, this proposed development will fit into the neighbourhood and not result excessive shadowing or cause visual disturbances. The Board felt the proposed development 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 the development complements neighbouring properties. The Board recognized that no objections were received from property owners within the 75 metre radius area. One property owner who lives in the 75 meter area was in attendance at the meeting and advised the Board he was in full support of the proposed garage.

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

[https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 10 - 2019 \(Jay Fellingner\).docx](https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 10 - 2019 (Jay Fellingner).docx)