Saskatchewan Municipal Board

Planning Appeals Committee

DETERMINATION OF AN APPEAL UNDER
Section 226 of *The Planning and Development Act, 2007* and
Section 17 of *The Municipal Board Act*

Appeal Number: PAC 2017-0021
Date and Location: January 9, 2018 – Regina, SK

Sammual K. Morrison

Appellant

- and -

City of Moose Jaw

Respondent

APPEARED FOR:

The Appellant: Sammual K. Morrison, Property Owner
Nicole Morrison, Property Owner

The Respondent: Eric Bjorge, Development Officer/Assistant City Planner
Katelyn Soltys, Assistant City Solicitor

HEARD BEFORE: Paul McIntyre, Panel Chair
Holly McFarlane, Member
Don Molesky, Member

INTRODUCTION:

[1] The property under appeal is as follows:

Civic Address	Legal Description	Zoning District
459 Lillooet Street West	Lots 1 & 2, Block 188, Plan Old 96	R1 – Large Lot Low Density Residential District

[2] On June 21, 2017, Mr. Sammual Morrison applied to the City of Moose Jaw (City) for a Building Permit to construct a new 156.08 m^2 (1680 ft^2) detached garage. At the time of the application, there was an existing garage measuring 27.4 m^2 (295 ft^2). The total area for the current and proposed accessory buildings would be 183.48 m^2 (1975 ft^2).

[3] The City refused the application on June 29, 2017, because the size of the proposed garage would be greater than the maximum (83.61 m^2 or 900 ft^2) permitted in section 4.2.1 of Zoning Bylaw No. 5346 (Bylaw).

[4] Mr. Morrison appealed the City's decision to the Development Appeals Board (Board). The Board dismissed the appeal because the variance requested would be a relaxation of the maximum accessory building coverage in residential districts. The proposed coverage does not meet the standard prescribed in the Bylaw.

[5] Mr. Morrison asks the Planning Appeals Committee (Committee) to change the Board's decision.

ISSUES:

[6] a) Did the Board provide sufficient reasons for its decision?
b) Did the Board properly apply section 221 of *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [*Act*], when it dismissed the appeal?

DECISION:

[7] The Committee finds the Board failed to provide sufficient reasons for its decision. We also determined the Board did not make a mistake when it dismissed the appeal.

ANALYSIS:

Issue a): Did the Board provide sufficient reasons for its decision?

[8] Subsection 225(1) of the *Act* requires the Board to render its decision "in writing … with reasons." As recognized by the Supreme Court of Canada in *Northwestern Utilities Ltd. and al. v Edmonton*, [1979] 1 SCR 684 at 706:

> … This obligation … reduces to a considerable degree the chances of arbitrary or capricious decisions, reinforces public confidence in the judgment and fairness of administrative tribunals, and affords parties to administrative proceedings an opportunity to assess the question of appeal …

[9] Written reasons are in keeping with procedural fairness. Decision makers are more accountable when decisions are in writing. Written reasons promote transparency and show people how decision makers made their decisions (*Baker v Canada (Minister of Citizenship and Immigration*), [1999] 2 SCR 817 at paras 38-40).

[10] The Board's decision lacks sufficient reasons and analysis.

Issue b): Did the Board properly apply section 221 of the *Act* when it dismissed the appeal?

[11] There is an existing accessory building (garage) on the property measuring 27.4 m^2. Mr. Morrison wishes to keep his existing garage and build a new one. His application was denied because the total accessory building coverage would be greater than the maximum allowed for R1 residential zones.

[12] Section 4.2 of the Bylaw prescribes rules for accessory buildings. Section 4.2.1(b) reads as follows:

> In all residential districts, no garage, carport or similar accessory structure or any such combination of same shall have a combined floor area greater than the total floor area of the principal dwelling or 83.61m^2 or 35% of the rear yard area of the specific site (whichever is less) ...

[13] The Board had evidence of four properties that were granted variances to the Bylaw in the same zoning district. The largest variance for total accessory buildings was 119.7 m^2 (1288 ft^2).

Requirements under the *Act*

[14] Under the *Act*, the Board "is bound by any official community plan … the uses of land … [and] … provincial land use policies …" [ss. 221(a), (b) and (c)].

[15] The Board's decision must also be in keeping with subsections 221(d)(i), (ii) and (iii) of the *Act*. When making its decision, an appeal body must consider whether or not the grant of a variance would:

a) give an appellant a special privilege;
b) defeat the intent of the Bylaw; or
c) negatively impact neighbouring properties.

[16] In other words, in order for this appeal to succeed, Mr. Morrison must prove the requested variances will not give him a special privilege, defeat the intent of the Bylaw, or have negative effects on his neighbours.

[17] The granting of a variance request by a board or the Committee is not the same as setting a binding precedent. The board and the Committee must decide each appeal independently, based on its own merits.

Special Privilege [s. 221(d)(i)]

[18] Would allowing the appeal result in a special privilege for Mr. Morrison?

[19] The legal test for whether or not granting a variance is a special privilege can be found in *St. Andrew's Presbyterian Church v Saskatoon (City)* (1987), 63 Sask R 140 (CA) at para 13:

> … would [the Board or the Committee] grant this same privilege to another property owner subject to the same bylaw restrictions where the same need and conditions existed.

[20] Mr. Morrison wishes to keep his existing garage and add a new 156.08 m^2 building.

[21] Variances to the Bylaw in the same zoning district have been previously granted. The largest variance approved was 119.7 m^2.

[22] The City's position is the proposed garage and existing garage would be over twice the maximum size permitted by the Bylaw in an R1 – Large Lot Low Density Residential District. In fact, R5 (Acreage Residential District) and R7 (City Fringe Residential District) are both permitted to have larger combined accessory buildings limits (up to 150 m^2 or 1614 ft^2). Mr. Morrison's proposed garage would extend beyond the accessory building limits in these districts by 33.48 m^2 (361 ft^2). As such, to allow this variance would be inequitable and violate section 2.1(d) of the City's Official Community Plan.

[23] At the hearing, Mr. Morrison verbally acknowledged he was applying for a special privilege.

[24] We applied the facts of this case to the legal test and found allowing the appeal would result in a special privilege for Mr. Morrison.

Intent [s. 221(d)(ii)]

[25] Would allowing the appeal defeat the intent of the Bylaw?

[26] Mr. Morrison believes the focus of the Board was on his proposed development's potential future use as a commercial enterprise. The Board's decision about intent is not based on fact. Mr. Morrison submitted the structure will have eight feet walls. Eight feet walls restrict the use of the building to storage; they are not high enough for commercial use. There is no intention to use the building for commercial purposes, as Mr. Morrison already has two business locations.

[27] The Board's decision was the requested relaxation would be contrary to the purpose and intent of the Bylaw for the following reasons (at page 4):

> When the test for the variance to be contrary to the purpose and intent of the Bylaw is applied, the Development Appeals Board felt that the relaxation, in their opinion, would not preserve the residential character of the neighbourhood. In addition, the Board felt that the purpose of the Bylaw is to promote neighbourhood aesthetics and safety and ensure consistency in neighbourhoods. The Board stated they would not be able to grant the proposed variance as it would be contrary to the purpose and intent of the Bylaw.

[28] The City representatives submitted the City is concerned about safety – crime prevention through environmental design.

[29] We find allowing the appeal would not defeat the intent of the Bylaw.

Negative Impact [s. 221(d)(iii)]

[30] Would allowing the appeal negatively impact neighbouring properties?

[31] Under subsection 222(3)(d) of the *Act*, the Board issued letters to neighbouring property owners within 75 metres of Mr. Morrison's property. The Board's decision indicates they did not receive any concerns from neighbouring property owners.

[32] The Board's reasoning was not based on evidence about injury to neighbouring properties.

[33] As the third factor was not applicable, the Board correctly did not turn its mind to this factor in its decision.

[34] We find allowing the appeal would not negatively impact neighbouring properties.

CONCLUSION:

[35] The Board properly applied section 221 of the *Act* to arrive at its decision to deny Mr. Morrison's appeal of the City's refusal to issue a Building Permit for 459 Lillooet Street West, Moose Jaw.

[36] The Board could have articulated its decision on special privilege with more clarity; however, the essence of the decision was clear. The Board was not prepared to allow a variance over double the current maximum allowable size for accessory buildings.

[37] The Committee finds allowing the appeal:

a) would give a special privilege to Mr. Morrison;
b) would not defeat the intent of the Bylaw; and
c) would not negatively impact neighbouring properties.

[38] The Committee dismisses the appeal.

Dated at REGINA, Saskatchewan this 15th day of February, 2018.

Per: _____
Paul McIntyre, Panel Chair

Per: _____
Jessica Sentes, Director