



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Angus Wilson
1027 Wolfe Avenue, Moose Jaw, SK
APPEAL NO. 13 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, September 25, 2019 pursuant to the provisions of *The Planning and Development Act, 2007*.

APPELLANT: Angus Wilson

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lot 19A, Block 32, Plan 101957564
1027 Wolfe Avenue

ZONING: R1 – Large Lot Density Residential District

NATURE OF APPEAL

THE APPELLANT, Angus Wilson, 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 keep accessory buildings on the property described as Lot 19A, Block 32, Plan 101957564, civically known as 1027 Wolfe Avenue, Moose Jaw, SK with a proposed:

- Combined accessory building floor area of 112.7 m² (1,213 ft²), contrary to the 83.61 m² (900 ft²) prescribed by the City of Moose Jaw Zoning Bylaw.

HEARD ON

Wednesday, September 25, 2019 in Committee Room B, 2nd Floor, City Hall.

IN ATTENDANCE

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

Appeared for the Appellant: Angus Wilson

Appeared for the Respondent: Veronica Blair, Planner 1

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 **July 28, 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 **September 3, 2019**.
- Exhibit E Report dated **August 27, 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, Angus Wilson, presented the following information:

- Mr. Wilson stated that the size of the variance noted in the report dated August 27, 2019 from the City's Planning and Development Department is incorrect. He further stated that the actual size of the combined accessory building floor area will be 112.7 m² (1,213 ft.²). The corrected size of the variance is noted in this Decision.
- Mr. Wilson circulated copies of photos of the sheds for the Board's review.
- Mr. Wilson has had the property surveyed and paid to have the three 25 ft. lots combined into one 75 ft. x 125 ft. lot.
- Mr. Wilson is requesting to be able to keep the three sheds currently located on the lot in addition to the garage (the application for a Development Permit for the garage was previously approved subject to removal of two of the sheds).

NEIGHBOURING PROPERTY OWNER(S)

The Chairperson confirmed that no letters 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 is composed of a single large lot, with an approximate area of 871 m² (9,375 ft²). 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.

An application for a Development Permit was received on July 15th to construct a 720 ft² garage on the property. At the time, the applicant's intention was to remove the existing sheds on the property once construction of the garage was complete. The applicant would now like to keep the existing sheds on the property and is appealing 2 conditions of the Development Permit. The conditions state:

"2. Approval of this permit is conditional upon the removal of all other accessory buildings and structures prior to the completion of the garage. One shed measuring 3.12 metres by 3.73 metres may be permitted to remain.

3. The combined floor area of all accessory buildings and structures (garage, sheds, etc.) must not exceed 83.61 m² (900 ft²)."

The combined floor area of all accessory buildings if the sheds remain is 112.7 m² (1,213 ft²).

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 28, 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 **September 3, 2019**.
- Exhibit E Report dated **August 27, 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 as it appears the proposal will not interfere with health, safety and general welfare of the inhabitants of the City. The Board deemed that the lot is large enough that the proposal will not impact the residential nature of the area. 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 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. Upon review of the photos circulated by the Appellant, the Board noted that the existing accessory buildings appear well kept and blend well into the yard. The Board deemed the proposed accessory buildings 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) Injuriouly affect the neighbouring properties for the following reasons:

The Development Appeals Board noted that granting this variance will not injuriouly affect the neighbouring properties. No letters of concern were received from neighbouring property owners. The Board deemed that due to the size of the lot, approving of the proposal to keep the accessory buildings will not injuriouly 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 thirty (30) 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 27th day of September, 2019.

"Rece Allen"
Rece Allen, Vice-Chairperson

"Pearl Anderson"
Pearl Anderson, Secretary