



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Richard MacGillivray
1011 Lillooet Street West, Moose Jaw, SK
APPEAL NO. 14 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: Richard MacGillivray

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lot 21, Block 50, Plan L2799
1011 Lillooet Street West

ZONING: R1 – Large Lot Density Residential District

NATURE OF APPEAL

THE APPELLANT, Richard MacGillivray, 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 construct an accessory building on the property described as Lot 21, Block 50, Plan L2799, civically known as 1011 Lillooet Street West, Moose Jaw, SK with a proposed:

- Overall site coverage of 42%, contrary to the 40% 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: Richard MacGillivray

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 **August 21, 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, Richard MacGillivray, presented the following information:

- he wants to build a two-car garage in the rear yard of his property that will result in an overall site coverage contrary to what is prescribed by the Zoning Bylaw
- there are no accessory buildings on the property

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 a single lot measuring approximately 33 ft by 110 ft. 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 subject property contains a one-unit dwelling measuring approximately 1,100 ft². The applicant is requesting to construct a 432 ft² garage at the rear of the property which would increase the overall site coverage to 42%. This is contrary to the 40% prescribed in the Zoning Bylaw. The application meets all other requirements in the Zoning Bylaw.

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 **August 21, 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 the applicant is requesting to construct a small garage that, in their opinion, will not alter the residential nature of the neighbourhood. 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 proposed garage, it will not cause visual obstructions or concerns for the health, safety and general welfare of inhabitants in the area. 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. No letters with concerns were received from property owners within the 75 meter area. The Board deemed that the proposed garage will enhance the neighbourhood and will not result in over-building in a low density area as the proposed garage will only be 432 ft².

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

[https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 14 - 2019 \(Richard MacGillivray\).docx](https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 14 - 2019 (Richard MacGillivray).docx)