



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Holy Trinity Catholic School Division
330 Oxford Street West, Moose Jaw, SK
APPEAL NO. 15 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 Tuesday, October 15, 2019 pursuant to the provisions of *The Planning and Development Act, 2007*.

APPELLANT: Holy Trinity Catholic School Division

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lots 5 – 19; 24, Block 17, Plan N3925
330 Oxford Street West, Moose Jaw, SK

ZONING: CS – Community Service/Institutional District

NATURE OF APPEAL

THE APPELLANT, Holy Trinity Catholic School Division, 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 addition to an elementary school on the property described as Lots 5 – 19; 24, Block 17, Plan N3925, civically known as 330 Oxford Street West, Moose Jaw, SK with:

- No additional parking on-site parking spaces provided (21 regular stalls existing), contrary to the required on-site parking of 21 spaces, including two barrier-free parking stalls, plus one loading space as prescribed by the City of Moose Jaw Zoning Bylaw.

HEARD ON

Tuesday, October 15, 2019 in Committee Room B, 2nd Floor, City Hall.

IN ATTENDANCE

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

Appeared for the Appellant: Doug Sears, Representative of Holy Trinity Catholic School Division

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 Application for Appeal before the Development Appeals Board which was submitted to the Office of the City Clerk on **September 19, 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 **October 1, 2019**.
- Exhibit E Report dated **September 26, 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

Doug Sears, representative of the Appellant, Holy Trinity Catholic School Division, presented the following information:

- Mr. Sears advised that the school is over 100% capacity for students
- One relocable (portable) classroom is being added to help manage classroom sizes within the school.
- With the addition, the City's Zoning Bylaw requires on-site parking with 21 regular stalls including two barrier free parking stalls plus one loading space.
- Mr. Sears advised that nothing inside the school is barrier free and that all loading is done on Oxford Street.
- HTCSD currently has 21 regular on-site parking stalls and is requesting a variance to permit the parking to remain as is.

NEIGHBOURING PROPERTY OWNER(S)

The Vice-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

Holy Trinity Catholic School Division applied for a permit to construct an addition to St. Agnes Elementary School in June 2019. As part of the permit review, on-site parking requirements were evaluated. It was determined that in order to meet the requirements of the Zoning Bylaw, that two of the existing parking stalls must be enlarged to meet barrier-free requirements, and one on-site loading stall must be provided. The building permit was issued with the condition that the school division re-submit plans to meet on-site parking requirements. They have chosen to appeal this condition to the Development Appeals Board instead.

The City's representative advised that the City has no issues with the loading zone, however, human rights could appeal the barrier-free parking exemption (should the appeal be granted.)

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 Application for Appeal before the Development Appeals Board which was submitted to the Office of the City Clerk on **September 19, 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 **October 1, 2019**.
- Exhibit E Report dated **September 26, 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 they would be willing to grant a similar variance to any other school division or business 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 as the representative from Holy Trinity School Division stated, there will be no increase in staff due to the addition, therefore no additional staff parking will be required. It was also noted that the Holy Trinity School (St. Agnes School) is operating as a non-barrier free school and will continue to do so. In addition, the school does not require a loading area as the school seldom receives large deliveries. The Board deemed that due to the facts that no additional staff parking is required, the school is not barrier free and deliveries are seldom received, the proposed variance 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 as there will be no increase in staffing, therefore the surrounding area street parking will not be affected. The Board also noted no letters with concerns were received from property owners within the 75 meter area. The Board felt that due to no area street parking being affected and no letters with concerns being received that the proposed variance will not injuriously affect neighbouring property owners.

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 18th day of October, 2019.

"Rece Allen"
Rece Allen, Vice-Chairperson

"Pearl Andeson"
Pearl Anderson, Secretary