



**NOTICE OF DECISION**  
**City of Moose Jaw Development Appeals Board**

**1. Introduction**

IN THE MATTER OF AN APPEAL under section 219 of *The Planning and Development Act, 2007*, to the City of Moose Jaw Development Appeals Board (DAB) by:

<b>Appellant:</b>	Ken Quan						
<b>Respondent:</b>	City of Moose Jaw Planning and Development Services Department						
<b>Appeal Number:</b>	16 - 2019						
<b>Date of Hearing:</b>	Tuesday, November 19, 2019						
<b>Time:</b>	5:00 p.m.						
<b>Place:</b>	Committee Room B, 2 <sup>nd</sup> Floor, City Hall 228 Main Street North, Moose Jaw, SK						
<b>Reason:</b>	Refusal to Issue Development Permit (PDA, s. 291(1)(b) Proposed Front Porch with an Overall Site Coverage of 42.6% Lot 7, Block 16, Plan K2802, (R1 – Large Lot Low Density Residential Zoning District)						
<b>Relief Sought:</b>	<b>The Appellant is seeking the Board's approval of the Development Permit.</b>						
<b>In Attendance:</b>	<table><tr><td><b>Board:</b></td><td>Rece Allen, Chairperson Fred Anderson, Member David Danchilla, Member Warren Brisbin, Member</td></tr><tr><td><b>Appellant:</b></td><td>Ken Quan, Appellant Bert Gasper, Contractor for the Appellant</td></tr><tr><td><b>Respondent:</b></td><td>Eric Bjorge, Assistant City Planner Planning and Development Department City of Moose Jaw</td></tr></table>	<b>Board:</b>	Rece Allen, Chairperson Fred Anderson, Member David Danchilla, Member Warren Brisbin, Member	<b>Appellant:</b>	Ken Quan, Appellant Bert Gasper, Contractor for the Appellant	<b>Respondent:</b>	Eric Bjorge, Assistant City Planner Planning and Development Department City of Moose Jaw
<b>Board:</b>	Rece Allen, Chairperson Fred Anderson, Member David Danchilla, Member Warren Brisbin, Member						
<b>Appellant:</b>	Ken Quan, Appellant Bert Gasper, Contractor for the Appellant						
<b>Respondent:</b>	Eric Bjorge, Assistant City Planner Planning and Development Department City of Moose Jaw						

## **Rules:**

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;
  - (c) intensity of use and density of development in the zoning bylaw;
  - (d) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and
  - (e) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or conditions, 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 defeat the intent of the Zoning Bylaw; or
    - (iii.) injuriously affect the neighbouring properties."

## **2. Issue**

The Appellant is requesting approval to construct a 3-season sunroom on his property that would result in a site coverage of 42.6%, contrary to the 40% prescribed by the City of Moose Jaw Zoning Bylaw.

## **3. Facts**

The subject property is a single lot measuring approximately 36.5m by 15.5 m, for a lot area of 568.6m<sup>2</sup>. 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 with an attached garage measuring approximately 202.3m<sup>2</sup>. There is also an existing shed in the rear yard measuring 5.2m<sup>2</sup>. The applicant is requesting to construct a sunroom addition and deck which will cause the site coverage of the property to be 42.6%. This is contrary to the 40% prescribed in the Zoning Bylaw. The application meets all other requirements of the Zoning Bylaw.

The permit denial letter shown as Attachment 3 (in the Planning and Development Department report) states that the proposed site coverage would be 45.8%. This value was calculated to include a temporary vehicle storage structure in the rear yard. The applicant has since indicated that this structure will be removed as a part of the addition project and that the variance requested is 42.6%.

The application for appeal describes several miscommunications between the applicant and City Administration. As a result of the miscommunication, the applicant has begun construction of the addition and deck. As stated in the appeal application, work has

started on the pile installation, deck framing and structural beam installation. This information may not be relevant to the appeal, however, it is unfortunate that the permit review procedures caused an issue for the applicant. Attachment 5 to the report from the Planning and Development Department explains to the applicant that Administration does not review permit applications until a review fee is received.

#### **4. Arguments**

Appellant Argument:

Mr. Gasper, contractor for the Appellant, addressed members of the Development Appeals Board and stated as follows:

- The new deck will be the same size as the existing deck using the same footprint.
- The property owner thought the building permit had been approved, therefore, the contractor was approved to start the building process for the project.
- The property owner will be removing the existing out building – weather permitting.

Respondent Argument:

The building permit application was denied as the proposed development would contravene the site coverage requirements for the R1 District under the City of Moose Jaw Zoning Bylaw.

Section 6.4 of the Zoning Bylaw prescribes development standards for the R1 – Large Lot Low Density Residential District. The purpose of the site coverage requirement in the Zoning Bylaw is to protect amenity space and prevent over-building in low density areas.

The City stated that removal of the existing out building will be addressed in the building permit.

#### **5. Analysis**

Section 1.2 of the City of Moose Jaw's Zoning Bylaw states that the purpose of the Bylaw is to "regulate development in the City of Moose Jaw to provide for the amenity of the area and for the health, safety and general welfare of the inhabitants in the City, in accordance with the provisions of the City's Official Community Plan (OCP)."

The intent of the Bylaw as stated in Section 1.4 is "to implement the objectives, policies and strategies of the City's Official Community Plan".

#### **6. Conclusion**

After consideration of all presentations at the hearing, and review of the material submitted, the Board, by majority, voted that the appeal be **GRANTED**.

The Appeal has been granted and a development permit is to be issued.

**Reasons:**

The Development Appeal 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 because as noted in the report from the City of Moose Jaw similar variances to site coverage have been granted to properties in the R1 District. The Board 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 that the 2.6% overage in site coverage is not enough to cause the project to be a detriment to the neighbourhood. The Board stated that the project is being completed by a contractor with complete blueprints of the construction. In addition, the Board noted that, in their opinion, the variance does not appear to be against the general goals of the City of Moose Jaw's Official Community Plan.

**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. Further, no concerns were brought forward by neighbouring property owners.

**7, Rights to Further Appeal**

The Minister, the municipal council, the appellant or any other person may, within 30 days after receipt of a copy of the Notice of Decision, appeal a decision of the board, by written notice to:

**Planning Appeals Committee  
Saskatchewan Municipal Board  
480 – 2151 Scarth Street  
Regina, SK S4P 2H8**

If no such appeal is made, this decision becomes effective after December 30, 2019.

Dated this 26<sup>th</sup> day of November, 2019.

Rece Allen  
Rece Allen, Chairperson  
Development Appeals Board