



**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>	Cynthia Watson
<b>Respondent:</b>	City of Moose Jaw Planning and Development Services Department
<b>Appeal Number:</b>	18 - 2019
<b>Date of Hearing:</b>	Tuesday, December 3, 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 Construction of Two Decks (Front and Rear) Lot 5, Block 24, Plan C4006, (CS – Community Service and Institutional District)
<b>Relief Sought:</b>	<b>The Appellant is seeking the Board's approval of the Development Permit.</b>
<b>In Attendance:</b>	<b>Board:</b> Rece Allen, Chairperson Fred Anderson, Member David Danchilla, Member  <b>Appellant:</b> Cynthia Watson  <b>Respondent:</b> Veronica Blair, Planner 1 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. Issues**

The Appellant is requesting a variance from the City of Moose Jaw Zoning Bylaw to construct two decks (front and rear) with a proposed side yard setback of 0 metres that is contrary to the 1.8 metres prescribed by the City of Moose Jaw Zoning Bylaw.

## **3. Facts**

The subject property is located on the 1000 block of Main Street North, within the CS – Community Service and Institutional District. The existing building is used as a one-unit dwelling and has always been used for residential purposes.

The applicant submitted a Development Permit application on July 25, 2019 to construct a front and rear deck. A Surveyor's Certificate from 1989 shows that the house encroaches on the property to the south. The proposed location of the front deck would align with the wall of the house and encroach on the property to the south. The location of the rear deck would extend past the wall of the house and encroach further onto the neighbouring property. The only way to construct the decks in these locations would be to appeal the setback requirement and sign an encroachment agreement with the neighbouring property owner.

If the appeal is granted, it will be a requirement of the Development Permit to register an encroachment agreement on the property title to inform future purchasers of the property. From a National Building Code perspective, it is possible for the decks to be constructed in this location. Additional fire protections can be used to meet the fire safety requirements.

## 4. Arguments

### Appellant Argument:

The Appellant, Cynthia Watson, stated that when she purchased the house, the existing deck butted up against her neighbour's fence. She also advised that when she purchased the house in 2012, she did not realize the house was right on her neighbour's property line. Ms. Watson advised that the neighbouring property owner is aware of the proposed development and has provided a letter of consent. The Appellant stated that she has cleared the side yard of shrubs and bushes and will keep it clear to ensure access to the back yard. The Appellant is aware that an encroachment agreement must be registered on the property title for future purchasers and is in full agreement with it.

### Respondent Argument:

The proposed development will contravene the side yard setback requirement for the CS District under the City of Moose Jaw Zoning Bylaw. No similar side yard setbacks have been granted in the CS District under the current Zoning Bylaw.

The side yard setback requirement has several purposes:

- Allows for sunlight to reach neighbouring properties;
- Provides for greater privacy;
- Allows easier access to rear yard by utility and other services;
- Provides space for landscaping between developments;
- Allows windows to exist on the side of the building; and
- Provides a transitional space between buildings of different heights.

The onus is on the applicant, with or without the assistance of City staff, to tender such evidence as may be necessary to satisfy the Board's statutory duty in considering the appeal.

## 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, votes that the appeal be **GRANTED**.

The City of Moose Jaw has granted the appeal 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 as the requested variance will not deter from the neighbourhood aesthetics. 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 this is an unusual situation as the house is already located on the property line of the neighbouring property to the south. In addition, it was noted by the Board that the neighbouring property owner is aware of the development proposal and has provided a letter of consent. In addition, the Appellant noted that the side yard will be kept clear to provide easier access to the rear yard.

**c) Injuringly affect the neighbouring properties for the following reasons:**

The Development Appeals Board stated that granting this variance will not injuringly affect the neighbouring properties. The neighbouring property owner (to the south of the subject property) provided a letter dated November 8, 2019 advising of his permission to construct the deck in line with the house (that is located on his property line). No letters with concerns were received from property owners in the 75 metre area.

**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 January 5, 2020.

Dated this 5<sup>th</sup> day of December, 2019.

Rece Allen  
Chairperson, Development Appeals Board

[https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 18 - 2019 \(Cynthia Watson\).docx](https://citymj.sharepoint.com/sites/Depts/clerks/Shared Documents/5. Boards & Committees/BOARDS & COMMITTEES - 2000/-04 Development Appeals Board/Decisions/2019/Appeal No. 18 - 2019 (Cynthia Watson).docx)