



**DEVELOPMENT APPEALS BOARD
RECORD OF DECISION
Roy Krueger
833 Ominica Street West, Moose Jaw, SK
APPEAL NO. 6 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 the Scoop Lewry Room, City Hall, Moose Jaw, on Tuesday, June 18, 2019 pursuant to the provisions of *The Planning and Development Act, 2007*.

APPELLANT: Roy Krueger

RESPONDENT: City of Moose Jaw
Planning and Development Services Department

RESPECTING THE PROPERTY Lots 10 – 14, Block 70, Plan OLD96 Ext 0
833 Ominica Street West

ZONING: M2f2 – Heavy Industrial District

NATURE OF APPEAL

THE APPELLANT, Roy Krueger, is requesting two variances to the City of Moose Jaw's Zoning Bylaw No. 5346, as amended.

REQUESTED VARIANCE

The appellant is requesting two variances from the City of Moose Jaw's Zoning Bylaw No. 5346, to permit the construction of an industrial addition on the property described as Lots 10 – 14, Block 70, Plan OLD96 Ext. 0, civically known as 833 Ominica Street West, Moose Jaw, SK.

- Rear Yard setback of 5.13 metres (17 feet) contrary to the 7.5 metres (24.6 feet) prescribed by the City of Moose Jaw Zoning Bylaw; and
- Overall site coverage of 65.7%, contrary to the 60 % prescribed by the City of Moose Jaw Zoning Bylaw.

HEARD ON

Tuesday, June 18, 2019 in the Scoop Lewry Room, 2nd Floor, City Hall.

IN ATTENDANCE

The Board: Terrence Wallace, Chairperson
Rece Allen, Vice Chairperson
Fred Anderson, Member

Appeared for the Appellant: Roy Krueger
Cristina Hasapis

Appeared for the Respondent: Michelle Sanson, Director of Planning & Development

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 defeat 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 **May 13, 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 **June 3, 2019**.
- Exhibit E Report dated **May 23, 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, Roy Krueger, was present.

NEIGHBOURING PROPERTY OWNER(S)

The Chairperson confirmed that no correspondence 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 five industrial lots with total property dimensions of 125 feet x 125 feet. The property is zoned M2f2 – Heavy Industrial District and is occupied by an autobody shop.

Akura Autobody has requested to build at 520 ft² addition, onto the south side of the existing building, in the required rear yard of the property. The proposed addition will be used for storage space. Since the existing buildings on the property have a site coverage of 62.3%, any additions must go through development appeals to vary the maximum 60% requirement.

For the purposes of the rear addition, the rear yard setback must be measured from the property line and cannot include the lane. At the time when this area was developed, there was no requirement for a rear yard setback. Many industrial buildings in this area do not have a rear yard setback and are built to the property line.

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 May 13, 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 June 3, 2019 . |

Exhibit E Report dated **May 23, 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 any one 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 would be willing to grant the variance due to the lot size. The Board also stated that they would be willing to grant a similar variance to anyone 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 relaxation in this case is not in an amount to impede the intent of the Bylaw. The Board also noted that the lot size at this location exceeds the standard City lot size to which this Bylaw is based on.

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 the development complements neighbouring properties. The Board recognized that no objections were received from property owners within the 75 metre radius area.

It is the decision of the Development Appeals Board that the appeal be **Approved**.

RIGHT OF APPEAL:

Any person wishing to appeal the decision of the Board may do so within twenty (20) 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 24th day of June, 2019.

Terry Wallace

Terrence Wallace, Chairperson

Trish Mayor

Trish Mayor, Acting Secretary