
RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2020 - 33

RESPONDENT: City of Saskatoon, Community Services Department, Planning and Development

In the matter of an appeal to the City of Saskatoon, Development Appeals Board by:

RONALD MCDONALD HOUSE CHARITIES – SK

respecting the property located at:

Lot: 14 - 22	Block: 14	Plan: F5527
Civic Address: 1011 University Drive		

IN ATTENDANCE:

Before

Asit Sarkar, Chair
Len Kowalko, Vice-Chair
June Bold, Member
Lois Lamon, Member

**Appeared for
the Appellant**

Marcelline Zimmer, Director of Operations, Ronald McDonald House Charities Saskatchewan
Tammy Forrester, CEO, Ronald McDonald House Charities Saskatchewan
Ann March, March Schaffel Architects

**Appeared for
the Respondent**

Catherine Kambeitz, Senior Planner, Planning & Development, Community Services, City of Saskatoon

The appeal was heard in the City of Saskatoon on December 15, 2020, via Skype teleconference.

PRELIMINARY ISSUES:

The parties were advised of the procedural instructions for the teleconference appeal.

Exhibits were entered into the record as no objections were put forth.

The Appellants and Respondent affirmed their testimonies would be the truth.

GROUND AND ISSUES:

Ronald McDonald House Charities Saskatchewan filed an appeal under Section 219(1)(b) of *The Planning and Development Act, 2007* regarding a proposed addition to Ronald McDonald House located at 1011 University Drive.

The property is zoned RM3 under Zoning Bylaw No. 8770, and the development permit was denied due to the following deficiencies:

1. **Requirement:** Section 8.12.2(7) states that boarding apartments shall have a minimum front yard building setback of at least 6 metres.

Proposed: Based on the information and site plans provided, a 4.435 metres front yard building setback is proposed to the addition.

Deficiency: The proposed front yard building setback results in a 1.565 metres deficiency.

EXHIBITS:

- | | |
|-------------|--|
| Exhibit A.1 | Notice of Appeal received November 19, 2020. |
| Exhibit R.1 | Letter dated November 6, 2020, from the Community Services Department, Planning & Development Division, to Ann March, March Schaffel Architects Ltd. |
| Exhibit R.2 | Location Plan and Site Plan from Planning & Development Division, Community Services Department, received December 9, 2020. |
| Exhibit B.1 | Notice of Hearing dated November 26, 2020. |
| Exhibit B.2 | Email from Andrew Williams supporting the appeal, received December 2, 2020. |

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representative, Marcelline Zimmer, along with Tammy Forrester and Ann March, presented the evidence and argument below.

In an effort to better serve the families, a small addition to expand the dining room area is being proposed. The Ronald McDonald House Charities Saskatchewan applied for federal funding, for this planned addition, through the COVID-19 infrastructure stream.

The existing deck space is being reconfigured to create more dining space for social distancing. Typical occupancy is between 85 to 90 percent. The second highest need is home cooked meals, including dinners and breakfasts. The pandemic has lowered the amount of families who need this service; however the need for consumption of home cooked meals in a safe manner with adequate social distancing has never been more important.

The Appellant stated that the 1.65 metre deficiency is minimal and would be constructed behind the existing wheel chair ramp and within the limits of the existing deck. No part of the addition will extend into the setback. The exterior design will be in keeping with the existing building.

The Respondent did not put forward questions of the Appellant.

The Board put forward questions of the Appellants and the following further information was provided:

- The east side of the building has a parking lot and garden space.
- The existing dining room is located on the west side of the building.
- The building and its entrance face University Drive, which is actually the side yard; the front yard faces Clarence Avenue.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

Senior Planner Kambeitz, Planning and Development, Community Services Department presented the evidence and arguments below.

The application for an addition to a boarding apartment was denied due to a front yard setback deficiency. This site is located in the RM3 – Medium Density Multiple-Unit Dwelling District in the neighbourhood of Varsity View. The purpose of the RM3 District is to provide for a variety of residential developments in a medium density form as well as related community uses. The existing boarding apartment was originally constructed in 1984 with several additions since that time.

Based on the information submitted by the applicant, the following deficiency was noted:

Section 8.12.2(7) states that boarding apartments shall have a minimum front yard building setback of at least 6 metres. Note that the front yard of this site is along the West property line, adjacent to Clarence Avenue North. The addition proposes a 4.435 metre front building setback resulting in a 1.565 metre building setback deficiency.

The City's position on the three tests of entitlement is as follows:

1. It is not felt that granting this appeal would be granting the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same district. The deficiency is minimal in nature considering the size of the addition. It is our opinion that it is important to maintain neighbourhood community uses that add to the vitality of the neighbourhood and serve the community. The City would support an appeal where the same needs and conditions exist.
2. It is not felt that granting this appeal would amount to a relaxation so as to defeat the purpose intent of the Zoning Bylaw which is to ensure that there is a consistent front yard setback across a block-face. This is a minor addition that will result in very minimal impact on the maintenance of a consistent block face along Clarence Avenue. Further, the front yard which faces University Drive, is technically considered the side yard; however, it functions as the front yard. The entrance to the building is located here and the area is landscaped.
3. In regards to injurious affection, the City noted that one letter from the immediately adjacent neighbouring property owner has been received in support of the appeal.

The Appellant did not put forward questions of the Respondent.

The Board put forward questions of the Respondent and the following further information was provided:

- The front yard faces Clarence Avenue and the side yard faces University Drive.
- The site that the building is on is a collection of properties under one ownership with their frontages being Clarence Avenue.

The Appellants were provided the opportunity for final comments.

The Appellant stated that the addition is due to a need identified when the pandemic started in order to meet the related special public health regulations. .

RULES AND STATUTES:

Section 219, Subsections (1) – (5) of *The Planning and Development Act, 2007* governs the right of appeal, as follows:

- 219 (1) *In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:*
- (a) *an alleged misapplication of a zoning bylaw in the issuance of a development permit;*
 - (b) *a refusal to issue a development permit because it would contravene the zoning bylaw; or*
 - (c) *an order issued pursuant to subsection 242(4).*
- (2) *Notwithstanding subsection (1), there is no appeal pursuant to clause (1)(b) where a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:*
- (a) *is not a permitted use or a permitted intensity of use;*
 - (b) *is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or*
 - (c) *is a prohibited use.*
- (3) *In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.*
- (4) *An appellant shall make his appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.*
- (5) *Nothing in this section authorizes a person to appeal a decision of the council:*
- (a) *refusing to rezone the person's land; or*
 - (b) *rejecting an application for approval of a discretionary use.*

Section 221 of *The Planning and Development Act, 2007*, governs the determination of an appeal 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.*

Section 8.12.2(7) of the Zoning Bylaw states that boarding apartments shall have a minimum front yard building setback of at least 6 metres.

APPLICATION/ANALYSIS:

In determining the appeal, the Board was governed by Section 221 of *The Planning and Development Act, 2007*.

1. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district?

The Board determined that the granting of this appeal would not be granting the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district. The site is unique due to the placement of the building on the property and the use of the front yard. Based on the evidence before it, the front yard is located adjacent to Clarence Avenue; however, the building faces University Drive and uses the side adjacent to Clarence Avenue as the side yard. The Board believes the front yard setback deficiency of 1.565 metres is relatively minor and the Respondents indicated they would be prepared to grant an appeal where the same needs and conditions existed.

The appeal, therefore, passes the first bar of entitlement.

2. Does the granting of this appeal amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent of the Zoning Bylaw?

The Board heard that the intent of the setback regulations in the Zoning Bylaw is to ensure that there is a consistent front yard setback across a block-face. According to the City, the front yard is located adjacent to Clarence Avenue; however, the building faces University Drive and uses the side adjacent to Clarence Avenue as the side yard. Regardless, the addition will be minimal and will be constructed behind the existing wheelchair ramp and within the limits of the existing deck. For these reasons, the Board is prepared to grant a variance for the development.

The appeal, therefore, passes the second bar of entitlement.

3. Does the granting of this appeal injuriously affect the neighbouring properties?

The Board notes that one letter in support was received. There was no evidence before the Board to prove that granting the appeal would negatively affect the neighbouring properties. The addition is minimal and will be constructed behind the existing wheelchair ramp and within limits of the deck. The exterior of the addition will also match the existing exterior of the building.

The appeal, therefore, passes the third bar of entitlement.

DECISION: THAT the appeal be **GRANTED**.

DATED AT SASKATOON, SASKATCHEWAN, THIS 14TH DAY OF JANUARY, 2021.

CITY OF SASKATOON DEVELOPMENT APPEALS BOARD

A handwritten signature in black ink, appearing to read 'Asit Sarkar', is written over a horizontal line.

Asit Sarkar, Chair

TAKE NOTICE that in accordance with Section 226(1) of *The Planning and Development Act, 2007*, the minister, the council, the appellant or any other person may appeal a decision of the Development Appeals Board to the Saskatchewan Municipal Board. In the event that no such appeal is made, this Decision becomes effective after the expiry of 30 days from the date of the Decision of the Development Appeals Board.

A notice of appeal form can be downloaded from **www.publications.gov.sk.ca** (select Saskatchewan Municipal Board from the Ministry list, and select Notice of Appeal to the Planning Appeals Committee). The notice of appeal must be filed, **within 30 days after being served with this Record of Decision**, to:

Planning Appeals Committee
Saskatchewan Municipal Board
4th Floor, Room 480
2151 Scarth Street
Regina, SK S4P 2H8
(Telephone: 306-787-6221; FAX: 306-787-1610; info@smb.gov.sk.ca)

An appeal fee of \$50 is also required by the Planning Appeals Committee. Cheques should be made payable to Minister of Finance. Your appeal will be considered received on the date the appeal fee and the notice of appeal have both been received.

Please note a copy of the notice of appeal must also be provided to the Saskatoon Development Appeals Board, c/o The Secretary, Development Appeals Board, City Clerk's Office, City Hall, Saskatoon, SK, S7K 0J5.

For additional information, please contact the Planning Appeals Committee, Saskatchewan Municipal Board, at the address and/or telephone number indicated above.