
RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2019 - 26

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:

CHRISTOPHER AND AMANDA ROSLINSKY

respecting the property located at:

Lot: 16	Block: 19	Plan: 63S19590, Ext. 60
Civic Address: 3212 Mountbatten Street		

IN ATTENDANCE:

Before

Mr. Asit Sarkar, Chair
Ms. Leanne DeLong, Vice-Chair
Mr. Len Kowalko, Member
Ms. Tonii Lerat, Member

**Appeared for
the Appellant**

Mr. Christopher Roslinsky
Ms. Amanda Roslinsky

**Appeared for
the Respondent**

Mr. Matt Grazier, Bylaw Compliance Manager, Community Standards, Community Services, City of Saskatoon

The appeal was heard in Committee Room "E", Ground Floor, City Hall in the City of Saskatoon on September 24, 2019

PRELIMINARY ISSUES:

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

GROUNDINGS AND ISSUES:

Chris and Amanda Roslinsky has filed an appeal under section 219(1)(b) of *The Planning and Development Act, 2007*, in connection with the City's Order to Remedy Contravention regarding the property located at 3212 Mountbatten Street. The Order to Remedy Contravention was issued for this property on July 30, 2019, pursuant to Section 242(4) of *The Planning and Development Act, 2007*, and the Order states as follows:

Contravention:

The detached accessory building has a floor located more than 1.2 metres above grade level.

You are hereby ordered to:

On or before August 31, 2019, you are required to remove the detached accessory building or modify it to ensure that the floor is not more than 1.2 metres above grade level.

EXHIBITS:

- | | |
|-------------|---|
| Exhibit A.1 | Notice of Appeal received August 26, 2019. |
| Exhibit R.1 | Letter dated July 30, 2019 from the Community Services Department, Planning & Development Division, to Christopher Roslinsky. |
| Exhibit R.2 | Location Plan and Site Plan from Planning & Development Division, Community Services Department, received September 20, 2019. |
| Exhibit B.1 | Notice of Hearing dated August 27, 2019. |
| Exhibit B.2 | Support letter from Blair, Michelle, Brennen and Sadie Welmer, received September 2, 2019. |
| Exhibit B.3 | Opposition letter from William and Maureen Ireland, received September 15, 2019 |
| Exhibit B.4 | Support letter from Scott and Bernice MacIntosh, received September 23, 2019. |

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representatives, Mr. and Ms. Roslinsky presented the evidence and arguments below.

Ms. Roslinsky advised the Board the accessory building is a playhouse that was built for their daughter. At the time of construction they did not realize a playhouse would be considered an accessory building. Windows were not placed at the back of the playhouse out of respect for the neighbours. The south-facing window is for airflow and light only as it is too high to look out of.

In Ms. Roslinsky's opinion the definition of an accessory building in the Zoning Bylaw is vague and she would not have considered a playhouse included in the definition. The size of the playhouse is to scale with the yard.

The fence will be raised to 6 feet in order to provide extra privacy. The adjacent property is also treed in. Ms. Roslinsky stated that the playhouse only obstructs the neighbors' view into the subject lot. She also noted that the height of the playhouse is under the maximum height requirement of accessory buildings and is similar to other playhouses in the area.

The playhouse will be aesthetically pleasing with a tin roof and vinyl siding. Neighbours lot is treed in completely and the property line extends 2 feet beyond the fence. There are trees planted there making the playhouse even further away from their yard than what appears on the pictures.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

The Respondent representative from the City of Saskatoon, Bylaw Compliance Manager Grazier, Community Standards Division presented the evidence and arguments below.

The property located at 3212 Mountbatten Street is located in the Montgomery Neighbourhood and is a one-unit dwelling site. This property is zoned R2 District in the City's Zoning Bylaw. This property includes a playhouse structure in the rear yard, which is presently under construction. A playhouse structure is defined as a detached accessory building/structure in the Zoning Bylaw.

Section 5.7.3(d) of the Zoning Bylaw states that no detached accessory building shall have a floor more than 1.2 metres above grade level.

A complaint was received on this property concerning the structure. It was inspected by the City and determined that the main floor of the structure is approximately 1.8 metres above grade. This exceeds the allowable floor height by approximately 0.6 metres (2 ft). Consequently, an Order was issued on July 30, 2019, which instructed the appellant to lower the structure.

The conditions of the order being appealed by the appellant and the City's comments in light of the three bars of entitlement are as follows:

1. It is felt that granting this appeal would be granting the applicant a special privilege inconsistent with the restrictions on the neighboring properties in the same district.

There is nothing unique about this property that would warrant a height exception. The structure could be lowered and brought in compliance with the Zoning Bylaw. The appellant's desire to adhere to a set design does not constitute a unique situation.

2. It is felt that granting this appeal would amount to a relaxation so as to defeat the intent of the Zoning Bylaw.

The intent of this provision is to ensure that accessory structures do not impact the privacy of adjacent properties. It is noted that a complaint has been received in this regard. However, the City notes that the complaint still might be evident even if the structure is lowered.

3. It is felt that granting this appeal may injuriously affect the neighbouring property owners.

The City notes that the two letters on this matter have been received, one for and against the structure, with the one letter of concern citing privacy impacts.

It should also be noted that the City does not actively police infractions on playhouses, but acts on them upon receipt of a complaint. The City does not support this appeal as it does not meet the criteria outlined in *The Planning and Development Act*.

The City also noted that a similar appeal in Montgomery was approved by the Development Appeals Board, but later reversed by the Saskatchewan Municipal Board in 2013. However, this was for a much larger structure.

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.*

Sections 2.0 of the Zoning Bylaw No. 8770 provides definitions relevant to this appeal as follows:

2.0 Definitions

"accessory building or use" means a building or use which:

- (i) *is subordinate to and serves the principal building or principal use;*
- (ii) *is subordinate in area, extent, and purpose to the principal building or principal use served;*
- (iii) *contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served;*
- (iv) *is located on the same site as the principal building or principal use served.*

Section 5.7 of the Zoning Bylaw No. 8770 governs the regulations relevant to this appeal as follows:

5.7 Accessory Buildings and Structures

- (3) *in any R or M District, no detached accessory buildings or structures shall:*
- (a) *exceed 4 metres in height from grade level to the underside of the eaves;*
 - (d) *have a floor located more than 1.2 metres above grade level.*

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 notes that removing or modifying the floor so that it is not more than 1.2 metres above grade level would not affect the exterior of the building in any way. The height of the existing building is lower than the maximum height allowed in the Zoning Bylaw for accessory buildings and does not pose any safety issues to neighbouring properties. Furthermore, if another accessory building was constructed in the same area at the same height it would be permitted. Based on the information before it, that Board is of the opinion granting the appeal would not grant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district.

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 accepted the Respondent's interpretation of the Zoning Bylaw which is to ensure that accessory structures do not impact the privacy of adjacent properties. Based on the above information modifying or removing the floor would not change the exterior of the building. The accessory building is currently within all other guidelines in the Zoning Bylaw including the height provision. As a result, the building could be a regular accessory building and be permitted, therefore would not impact the privacy of adjacent properties. The Board heard from the Appellants that the windows are only used for light and airflow and cannot be seen out of. For these reasons, the Board concludes granting the appeal would not amount to a relaxation of the provisions of the Zoning Bylaw so as to defeat the intent.

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

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

The Board notes two letters of support and one letter in opposition were received. The factors outlined in the opposition letter, Exhibit B.3 included height and location as impacting the neighbouring property. As stated above, removing the floor would not

change the exterior of the building. The accessory building meets all other requirements as set out in the Zoning Bylaw for accessory buildings including height and location. The Board heard that the current height is lower than the maximum allowed for accessory buildings in the Zoning Bylaw. The Appellants have informed the Board that the intent is to raise the fence to 6 feet and keep the trees along the property line in order to protect the privacy of their own yard and the neighbours. The Board heard from the Appellants that the windows are only used for light and airflow and cannot be seen out of. The Board is of the opinion that the accessory building as it currently sits does not pose any safety risks and will be aesthetically pleasing. Therefore, the Board determined that granting the appeal would not injuriously affect the neighbouring property owners.

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

DECISION:

That the appeal be GRANTED and the accessory building remain as is.

DATED AT SASKATOON, SASKATCHEWAN, THIS 18th DAY OF October, 2019.

CITY OF SASKATOON DEVELOPMENT APPEALS BOARD



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 20 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.