
RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2019 - 36

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:

SEPW ARCHITECTURE on behalf of AGRICULTURE AND AGRI FOOD CANADA

respecting the property located at:

ISC Surface Parcel 119028607; Plan No. NE 01-37-05-3

Civic Address: 410 Lowe Road

IN ATTENDANCE:

Before

Asit Sarkar, Chair
Len Kowalko, Member
Lois Lamon, Member

**Appeared for
the Appellant**

Justin Wotherspoon, Principal, SEPW Architecture Inc.
– via teleconference
Carla Davies, Agriculture and Agri-Food Canada, Agriculture
Canada – via teleconference
Ryan Luciuk, Agriculture and Agri-Food Canada, Agriculture
Canada – via teleconference
Steven Ambros, Agriculture and Agri-Food Canada,
Agriculture Canada – via teleconference
Paul Adekogbe, Project Manager, Public Services and
Procurement Canada, Government of Canada – via
teleconference

**Appeared for
the Respondent**

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 December 17, 2019

PRELIMINARY ISSUES:

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

GROUNDINGS AND ISSUES:

SEPW Architecture Inc. 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 requiring hard surface parking as per the September 7, 2017 approved site plan. The property is zoned AG under *Zoning Bylaw No. 8770* and the appellant is appealing the following deficiencies:

Requirement: Section 6.2.2 states required parking and loading facilities shall provide for and include an adequate, safe and convenient arrangement of vehicular points of ingress or egress, driveways, internal roadways, aisles and ramps, unloading and loading of motor vehicles all in relation to buildings and entry points to buildings on the site. Such facilities shall comply with the following design development and maintenance standards:

- a) All required parking and loading facilities shall be clearly demarcated, have adequate storm water drainage and storage facilities and be hard surfaced. Hard surfacing shall mean the provision of a durable, dust-free material constructed of concrete, asphalt or similar pavement capable of withstanding expected vehicle loads.

Proposed: The property, 410 Lowe Road has not been developed with the required hard surface parking area as per the approved site plan received on September 7, 2017.

Deficiency: Three additional off-street hard surface parking spaces are required.

EXHIBITS:

- Exhibit A.1 Notice of Appeal received November 25, 2019.
- Exhibit R.1 Order to Remedy Contravention dated November 22, 2019 from the Community Standards Department, Community Services Division, to SRDC.
- Exhibit R.2 Location Plan and Site Plan from Planning & Development Division, Community Services Department, received December 10, 2019.
- Exhibit B.1 Notice of Hearing dated November 27, 2018.

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representatives presented the evidence and arguments below.

Justin Wotherspoon gave background on the site and described the documents included within Exhibit A.1. The original project in 2018 was an expansion to the building. At that time it was indicated the existing parking would be maintained as gravel. This project is unique and can't be compared to anything else in the immediate vicinity.

Carla Davies explained that the area surrounding the building is gravel and will continued to be maintained to an excellent condition. The overall operations have not increased due to the expansion and do not include any additional staff.

Ryan Luciuk states that the building is primary used for harvest collection and spring seed set up. The overall structure of the new addition has not hindered any of the parking spaces of the building itself.

Steven Ambros informed the Board that completing an asphalt parking pad in amongst the gravel would create a significant risk with unstable groundwork and difficult to maintain.

Paul Adekogbe also informed the Board that the original site plan included gravel parking.

Upon questioning the Appellant advised the Board that two new parking spaces were added.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

The Respondent representative from the City of Saskatoon presented the evidence and arguments below.

The property located at 410 Lowe Road contains an agricultural research facility and is zoned AG (Agricultural District). The site includes a large warehouse and a number of accessory buildings.

The majority of development on this site occurred under Zoning Bylaw No. 6772. Under this bylaw, there were no off-street parking requirements in the AG district. An addition to this building was constructed in 2017, which required six hard-surfaced off-street parking spaces at a rate of 1 space per 93 square metres of floor area. An existing concrete area on site was deemed to count towards three off-street parking spaces. As a result, only three additional hard-surfaced spaces were required.

Section 6.2(2)(a) of the Zoning Bylaw No. 8770 defines hard surfacing as a durable dust free material constructed of concrete or asphalt or similar pavement capable of withstanding vehicle loads.

This site was last inspected on September 26, 2019 at which time the required parking had not been completed. As a consequence, an Order to Remedy Contravention document was issued to the property owner on November 22, 2019 which provided the property owner with a compliance date of June 3, 2020 to complete the remaining parking. The appellant has appealed the conditions of the order and is seeking a relaxation on the hard-surfacing requirement.

The Community Services Department supports this appeal:

1. It is not 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. This site was substantially developed when no off-street parking requirement existed in the AG District. It is also situated on a large 36 acre parcel that is well separated from any nearby land uses.
2. It is not felt that granting this appeal would amount to a relaxation so as to defeat the intent of the Zoning Bylaw. The purpose of the off-street parking requirement is to ensure that adequate parking exists on-site to accommodate anticipated customer/employee demand. The City noted that the site has ample room to accommodate parking on the existing gravel surface. The purpose of the hard-surfacing requirement is to ensure that durable long-term spaces are provided, which do not track dust or gravel into the nearby street. Due to the initial timing of development, this is a non-conforming site and providing three additional hard-surfaced spaces would do little to combat any concerns over tracking gravel or dust into the right-of-way, as the majority of the site's surface area exists as gravel.
3. It is not felt that granting this appeal would injuriously affect the neighbouring property owners. It was noted that no letters of objection were received.

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 6.2.2 of the Zoning Bylaw No. 8770 states required parking and loading facilities shall provide for and include an adequate, safe and convenient arrangement of vehicular points of ingress or egress, driveways, internal roadways, aisles and ramps, unloading and loading of motor vehicles all in relation to buildings and entry points to buildings on the site. Such facilities shall comply with the following design development and maintenance standards:

- a) All required parking and loading facilities shall be clearly demarcated, have adequate storm water drainage and storage facilities and be hard surfaced. Hard surfacing shall mean the provision of a durable, dust-free material constructed of concrete, asphalt or similar pavement capable of withstanding expected vehicle loads.

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?

Based on the information provided, the property was developed under Zoning Bylaw No. 6772. At that time, no parking requirements were in place for the AG zoning district. Furthermore, the site is unique given the larger size and use of the property. The Board has determined that granting the appeal would not be granting the applicant a special privilege inconsistent with the restrictions of 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 purpose and intent of the required parking requirements in the Zoning Bylaw is to ensure there is sufficient parking on-site and that it is easily maintained. Based on the information provided by the Appellant the addition to the existing building did not increase the overall operations or employees on the site. In addition, the site plans provided in Exhibit A.1 shows that ample parking has been provided. The purpose of the hard-surfacing requirement is to ensure that the parking surface is durable and dust-free. As a result of the agricultural use, the overall site area consists of gravel and providing a small area of hard-surfaced parking would not benefit the site. The Board concludes that ample parking has been provided and this situation would not defeat the intent of the bylaw.

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

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

No letters of objection were filed in opposition to this appeal from neighbouring property owners. There was no evidence before the Board to prove that the proposal would directly result in unreasonable interference in the use and enjoyment of neighbouring properties. The site is large and is not adjacent to a residential district.

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

DECISION:

THAT the appeal be GRANTED.

DATED AT SASKATOON, SASKATCHEWAN, THIS 7th DAY OF January, 2020.

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.