
RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2019 - 37

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:

EVERMORE HOMES INC.

respecting the property located at:

Lot: 22	Block: 2	Plan: F5527
Lot: 35	Block: 2	Plan: 101434283

Civic Address: 312 Arthur Avenue

IN ATTENDANCE:

Before

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

**Appeared for
the Appellant**

Roger Bell, CEO, Evermore Homes

**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 Appellant and Respondent affirmed their testimonies would be the truth.

GROUNDINGS AND ISSUES:

Evermore Homes 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 regarding the provision of hard surface parking as per the approved June 8, 2017 site plan. The property is zoned R2 under *Zoning Bylaw No. 8770* and the appellant is appealing the following deficiencies:

Requirement: Section 5.30(1)(h) states secondary suites shall conform to the following regulations one-off street parking space is required for a secondary suite in addition to at least one off-street parking space for the principal dwelling. The parking space for the principal dwelling may be located in a required front yard. The parking space required for the secondary suite shall not be located in a required front yard unless the subject site has no access to a rear lane, and shall be paved, sited and screened to the satisfaction of the Development Officer.

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, 312 Arthur Avenue has not been developed with the required hard surfaced parking area as per the approved site plan dated June 8, 2017.

Deficiency: One off-street hard surfaced parking space is required for the secondary suite and at least one off-street hard surfaced parking space is required for the principal dwelling.

EXHIBITS:

Exhibit A.1	Notice of Appeal received November 29, 2019.
Exhibit A.2	Photographs submitted by the Appellant, received December 16, 2019.
Exhibit R.1	Letter dated October 30, 2019 from the Community Services Department, Planning & Development Division, to Evermore Homes, Tamara and Roger Bell.
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 December 2, 2019.
Exhibit B.2	Email from Bryce Reiter supporting the appeal, received December 15, 2019.

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representative presented the evidence and arguments below.

The Appellant asked the Board to support the alternative hard-surfaced parking area that has been provided in an effort to keep the large trees in the rear yard. Unfortunately, there is no placement for an accessory building and a third off-street parking space in the rear without removing trees.

Through a separate permit process a sidewalk crossing has been installed for two parking spaces in front of the home. The Appellant would like to allow the trees to live out their lifespan and had consulted an arborist regarding this. The arborist acknowledged the trees were older and there would be a possibility of constructing a garage in 5 years.

The Board put forward questions to the Appellant and were further informed that the existing trees provide privacy from the condo structure across the rear lane. The Appellant also advised that no parking is currently available in the rear yard due to the large grade separation from the rear yard and the rear lane. This grade separation create a safety hazard.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

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

The property located at 312 Arthur Avenue is zoned R2 District (one and two-unit dwelling district) and currently contains a one-unit dwelling and a secondary suite which was constructed in 2017.

Section 5.30(h) of the Zoning Bylaw requires a total of two off-street parking spaces for the one-unit dwelling and secondary suite. Additionally, the parking space required for the suite must not be located in the front yard, where the site has access to a rear lane. The initial site plan submitted in support of the building permit application identified a total of three off-street parking spaces accessible off the rear lane. This included a two-car detached garage and one surface parking space.

The parking area in the rear-yard has not been developed, though two hard-surfaced tandem parking spaces have been provided in the front-yard. However, since this property has rear lane access, the parking space for the suite is required to be in the rear yard. As a result, this results in a deficiency of one off-street parking space.

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 one outstanding parking space.

The Community Services Department does not object to 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. The lane bordering this property is at a significantly higher elevation than the subject property and there are a number of large mature trees located adjacent to the property's fence line. Both of which, make the installation of an additional parking space very difficult. This lane also experiences a high degree of traffic as it serves a large multi-family site on the west side of the lane, with the lane providing direct access to many of the multi-family site's off-street parking spaces.
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 residents of the site. The City noted that there are two tandem spaces available off of the fronting street.

Additionally, the development pattern on the subject block primarily consists of large lot single family homes, with ample room for street parking.

3. It is not felt that granting this appeal would injuriously affect the neighbouring property owners. The City noted that one letter of support for this appeal has been 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 5.30(1)(h) of the Zoning Bylaw No. 8770 states secondary suites shall conform to the following regulations one-off street parking space is required for a secondary suite in addition to at least one off-street parking space for the principal dwelling. The parking space for the principal dwelling may be located in a required front yard. The parking space required for the secondary suite shall not be located in a required front yard unless the subject site has no access to a rear lane, and shall be paved, sited and screened to the satisfaction of the Development Officer.

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?

The Board is of the opinion this property is unique because of the grade level from the rear lane to the rear yard. The grade level does not provide access to parking in the rear yard. As a result, the Appellant has provided hard surfaced off-street parking in the front yard. The Board feels that granting the appeal would not amount to a special privilege because off-street parking that has been demarcated has been provided.

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 Respondent indicated that the purpose of the parking regulations in the Zoning Bylaw was to ensure the provision of adequate off-street parking. The purpose of the hard surfacing requirement is to ensure the provision of a durable and undisturbed parking space. The Board concurred with the Respondent's interpretation of the purpose for both

the parking and hard surfacing regulations in the bylaw, however, the Board believes that demarcated off-street parking has been provided and the intent of the bylaw has been met. According to Section 5.30(1)(h) of the Zoning Bylaw No. 8770 the required parking space for the secondary suite shall not be located in a required front yard unless the subject site has no access to a rear lane. Parking in the rear is difficult due to the site grade from the rear lane to the rear yard. For this reason the Appellant is unable to provide off-street parking in the rear yard. As an alternative, off-street parking has been providing in the front yard and is demarcated. The Board is of the opinion this serves the intent of the Bylaw. For these reasons, the Board concludes that 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 heard that parking in the rear yard is not possible due to the grade level creating a downward slope from the rear lane into the rear yard. The Board notes that one letter of support was received for the appeal and no letters of objection were received. The Board is of the opinion that no evidence was provided to prove that the proposal would negatively affect the neighbouring properties.

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.