

Decision - Development Appeals Board Hearing

RECORD OF DECISION

SASKATOON DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2022 - 7

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

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

DANIEL GUENTHER

respecting the property located at:

Lot: 63	Block: 184	Plan: 99SA24455
Civic Address: 301 Queen Street		

IN ATTENDANCE:

Before

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

**Appeared for
the Appellant**

Daniel Guenther, Bastion Holdings Ltd./ Prairie West Project Management

**Appeared for
the Respondent**

Darryl Dawson, Development Review Manager,
Planning and Development, Community Services Division,
City of Saskatoon

The appeal was heard in Committee Room E, Ground Floor, City Hall in the City of Saskatoon on April 5, 2022.

PRELIMINARY ISSUES:

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

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

GROUND AND ISSUES:

An appeal has been filed by Daniel Guenther, Prairie West Project Management, under Subsection 219(1)(b) of *The Planning and Development Act, 2007*, regarding a refusal to issue a development permit for the construction of a parking station located at 301 Queen Street. The property is zoned RM5 - High Density Multiple-Unit Dwelling District under Zoning Bylaw No. 8770, and the development permit was denied due to the following deficiencies:

1. Requirement: Section 7.7.1 states a landscaping strip of not less than 4.5 metres in depth throughout lying parallel to and abutting the front site line shall be provided on every site and shall be used for no purpose except landscaping and necessary driveway access to the site.

Proposed: Based on the information provided, the proposed parking station has a 0.7 metres landscaping strip abutting the north property line.

Deficiency: This results in a landscaping deficiency of 3.8 metres on the north property line.
2. Requirement: Section 6.4(3)(b) states when a parking station is located within or adjacent to a residential district or a residential land use without the intervention of a street or lane, that portion of the parking station boundary that is adjacent to a residential district or use shall have a strip of land at least 1.5 metres in width running parallel to the common site boundary, landscaped and planted to the satisfaction of the Development Officer.

Proposed: Based on the information provided, the proposed parking station has a 1.1 metres landscaping strip abutting the south and east property lines.

Deficiency: This results in a landscaping deficiency of 0.4 metres on the south and east property lines.

EXHIBITS:

- Exhibit A.1 Notice of Appeal received March 8, 2022.
- Exhibit A.2 Summary letter and presentation document submitted by the Appellant, received March 31, 2022.
- Exhibit A.3 Copy of the Alternate Development Plan as referenced in the Summary Statement, submitted by the Applicant, received March 31, 2022.
- Exhibit A.4 Support letter from Brad Laidlaw submitted by the Appellant on March 31, 2022.
- Exhibit A.5 Support letter from Mike Levine submitted by the Appellant on March 31, 2022.
- Exhibit A.6 Support letter from Sharon and Doug Cooper submitted by the Appellant on March 31, 2022.
- Exhibit R.1 Letter dated February 14, 2022, from the Community Services Division, Planning and Development Department, to Daniel Guenther.
- Exhibit R.2 Location Plan and Site Plan from the Community Services Division, Planning and Development Department, received March 25, 2022.
- Exhibit B.1 Notice of Hearing dated March 10, 2022.
- Exhibit B.2 Email from Vanessa Amy opposing the appeal, received March 18, 2022.
- Exhibit B.3 Email from Jake Neufeld, Sunrise Foods International, supporting the appeal, received March 30, 2022.
- Exhibit B.4 Email from Chris Wall supporting the appeal, received March 31, 2022.
- Exhibit B.5 Email from Sherry Tarasoff opposing the appeal, received March 31, 2022.
- Exhibit B.6 Email from Mark Loeppky supporting the appeal, received March 31, 2022.

EVIDENCE AND ARGUMENT OF THE APPELLANT:

The Appellant representative, Daniel Guenther presented the evidence and arguments below.

The Appellant advised the Board that a number of different options were reviewed by a local appraisal firm for utilizing the subject property appropriately. The site has some constraints that make it difficult to utilize as described for the RM5 zoning district. Sunrise Foods International approached Bastion Holdings Ltd. to utilize the site for parking. There has been informal encouragement that the highest and best use of the property would be for parking.

The size of the subject site (about 40' X 100') is too small to properly accommodate a dwelling and not ideal for a residential use. The dwellings along Queen Street have for the most part been converted to a commercial or office use.

It is the Appellant's intention to work with the Planning and Development Department to develop the parking lot; however, the development will require a relaxation with regard to the landscaping requirements. The relaxation for the landscaping requirements on the south and east sides are relatively small. The north side has the most variance.

There are a few sites in the area that have similar variances. The apartment building adjacent to the subject site and the City Hospital parking area have been built to the property line with no landscaping.

The plans submitted in the Appellant's exhibits show the intention for landscaping improvements for the property including shrubs and pyramid cedars along the south side of the subject site similar to the cedars on the neighbouring property.

The Appellant also advised that the parking lot would not be a public lot and would only be utilized by Sunrise Foods International employees.

The residential neighbours to the south have said they are relieved that the property would finally be developed, as it is currently not well-maintained and an eye sore. The Appellant indicated a commitment to keeping the parking lot well-maintained.

The Appellant provided an alternate development option (Exhibit A.3) that would reduce the relaxation request to 1.5 metres leaving a landscaping strip of 3.0 metres adjacent to the front site line. In addition, this would lower the amount of parking spaces from 12 to 11.

No questions were put forth from the Respondent.

The Board put forward questions to the Appellant and were further informed of the following:

- The Appellant is requesting a variance of 1.5 metres for the width of the landscaping strip on the north side of the property as shown on the Alternative Development Plan in place of the original site plan; this will result in a reduction of one parking space and the Appellant is fine with that; and
- Access to the site will be from 3rd Avenue North which is acceptable to the City's Transportation Department.

EVIDENCE AND ARGUMENT OF THE RESPONDENT:

Darryl Dawson, Development Review Manager, Planning and Development, Community Services, City of Saskatoon, presented the evidence and arguments below.

The subject property, 301 Queen Street, is located in the RM5 – High Density Multiple-Unit Dwelling District in the City Park neighbourhood. The purpose of the RM5 District is to provide for a variety of residential developments, including those in a high-density form, as well as related community uses, and certain limited commercial development.

Parking Stations are considered a discretionary use in the RM5 District and are subject to City Council's consideration. This appeal is proceeding prior to discretionary use review of a proposed parking station and relates only to the landscaping deficiencies on the site.

Section 7.7.1 of the Zoning Bylaw states a landscaping strip of not less than 4.5 metres in depth throughout lying parallel to and abutting the front site line shall be provided on every site in the RM5 District and shall be used for no purpose except landscaping and necessary driveway access to the site. Based on the plans submitted by the Applicant, the site plan shows a 0.7 metres landscaping strip abutting the front property line located adjacent to Queen Street. This results in a front yard landscaping deficiency of 3.8 metres.

Section 6.4(3)(b) of the Zoning Bylaw states when a parking station is located within or adjacent to a residential district or a residential land use without the intervention of a street or lane, that portion of the parking station boundary that is adjacent to a residential district or use shall "have a strip of land at least 1.5 metres in width running parallel to the common site boundary, landscaped and planted to the satisfaction of the Development Officer". Based on the plans submitted by the applicant, the site plans show a 1.1 metres landscaping strip abutting the east and south property lines. This results in a landscaping deficiency of 0.4 metres.

The City's position on the three tests 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 neighbouring properties in the same district. This is new development that is being proposed for the site and the reduction in landscaping is a design choice. Furthermore, the appellant has provided information in their submission that they could reduce parking spaces in their design for the proposed parking station to provide for a 3 metres landscaping strip as shown on Exhibit A.3. As this is a proposed development, all efforts should be made to ensure required front yard landscaping is provided.

Regarding the 1.5 metres landscaping strip required adjacent to the residential properties abutting the east and south property lines, the proposed 1.1 metres landscaping may be acceptable, provided that the appellant could demonstrate or commit that this is sufficient width to accommodate fencing and trees or shrubs.

2. It is felt that granting this appeal would amount to a relaxation so as to defeat the purpose and intent of the Zoning Bylaw for the landscaping in the front yard. The landscaping provisions of the Zoning Bylaw are provided to promote the establishment, maintenance and enhancement of the natural environment in the City.

As noted, the appellant has indicated that they have options to reduce the number of parking spaces in their future discretionary use application to provide additional landscaping.

Regarding the landscaping to the east and south adjacent to the residential properties, the purpose and intent of that landscaping is also to provide screening. Provided the appellant can commit to ensuring this area can be appropriately landscaped, granting this appeal would not amount to a relaxation so as to defeat the purpose and intent of the Zoning Bylaw for the east and south landscaping strips.

3. Lastly, in regard to injurious affection, granting the appeal would likely have minimal injurious affect on neighbouring properties. It is noted that letters of support and objection have been received. The City noted that both the letters of support and objection appear to comment on the addition to parking in the area which will be reviewed through the discretionary use application but do not specifically address the subject of this appeal which is the reduction in required landscaping.

No questions were put forth from the Appellant.

The Board put forward questions to the Respondent and were further informed of the following:

- The appeal is for the landscaping requirements only, not for approval of a parking station/lot;
- The Alternate Development Plan identified as Exhibit A.3 was discussed with the City and could be considered by the Board;
- The plant species selected need to be reasonably contained within the proposed landscaping strips;
- The possible use of the lot for a parking station will be adjudicated through the discretionary use review process;
- The appeal documents from the hearing will be included with the file for the discretionary use application;
- The use of a parking station in the RM5 zoning district is a discretionary use. In order for an application to move forward to City Council the use is required to conform to the Zoning Bylaw regulations first;
- It was identified that the parking station would not meet the provisions in the Zoning Bylaw regarding the minimum width for the landscaping strips and the Administration does not have the ability to waive the requirements;
- Section 6.4.3(a) of the Zoning Bylaw states that a solid boundary wall or fence of at least 1.0 metres in height and landscaping is required for a parking station located within or adjacent to a residential district;

- A fence on the property would mitigate head lights and sound and could be a requirement of the discretionary use approval; and
- A fence height higher than 1.0 metres could be required as part of the discretionary use review process.

The Appellant was provided the opportunity for final comments and stated there is a large demand for off-street parking in the area and the concerns with the use of the lot for parking were taken into consideration. The Alternative Development Plan was provided to address some of those concerns.

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 6.4(3)(b) of the Zoning Bylaw states when a parking station is located within or adjacent to a residential district or a residential land use without the intervention of a street or lane, that portion of the parking station boundary that is adjacent to a residential district or use shall have a strip of land at least 1.5 metres in width running parallel to the common site boundary, landscaped and planted to the satisfaction of the Development Officer.

Section 7.7.1 of the Zoning Bylaw states a landscaping strip of not less than 4.5 metres in depth throughout lying parallel to and abutting the front site line shall be provided on every site and shall be used for no purpose except landscaping and necessary driveway access to the site.

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 appeal before the Board from the Appellant relates to varying the minimum required width of the landscaping strips for the proposed parking station. The Board heard that in the RM5 zoning district a parking station is a discretionary use and requires approval of the City Council. The established City review process requires that the site adhere to the Zoning Bylaw requirements prior to City Council considering the discretionary use application.

In reviewing the evidence, the Board noted that two site plans showing landscaping strips were submitted as Exhibits A.3 and R.1. The Appellant confirmed for the Board that the Alternate Development Plan submitted as Exhibit A.3 which includes a 3 metres landscaping strip abutting the front site line on the north side was to be considered in place of the original site plan. This plan reduced the landscaping strip deficiency on the north side to 1.5 metres. The original site plan had a 3.8 metres landscaping strip width

deficiency. In both plans, the east and south landscaping strips were 1.1 metres in width, a 0.4 metres deficiency.

The Board determined they would not support an appeal for the original submission noting the substituted development plan. The Board further determined that it would consider a variance related to the Alternate Development Plan showing the revised landscaping strip as extenuating circumstances exist. The site is located on a corner lot with adjacent residential development to the east and south. Consequently, the proposed parking station is to be located within a confined space and constrained by the site size with no opportunity to expand the site through the subdivision process. Also, in order to effectively facilitate the proposed parking station, there is a need to maximize the east-west space of the site for the safe maneuvering of vehicles into the individual parking spaces and for entering and exiting from 3rd Avenue North.

It was noted that the Appellant had reduced the parking spaces by one space to 11 spaces in the alternate plan in order to maximize the landscaping strip abutting the front site line on the north side of the property. It was also noted the properties along Queen Street have little to no landscaping. The Appellant will be providing landscaping on the property including shrubs and cedar plants depicted in the pictures in Exhibit A.2 which will enhance the streetscape at the 3rd Avenue and Queen Street intersection. These factors support consideration of allowing the 33.3% variance on the north landscaping strip and a variance of 26.6% variance on the east and south landscaping strips. Authorizing the said landscaping strip variances identified in the Alternate Development Plan would not grant the applicant 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 heard that the landscaping requirements in the Zoning Bylaw promote the establishment, maintenance and enhancement of the natural environment in the City. The Board accepted the City's interpretation of the Zoning Bylaw which is to ensure landscaping strips are of an adequate width to accommodate the selected plant species. The Board recognized that an approval of the parking station as a discretionary use would be required. The Board did not determine whether the proposed use is appropriate for the site; rather it considered whether the landscaping strips adequately conform to the intent of the Zoning Bylaw provisions.

It was also noted the Appellant is providing alternative landscaping options including shrubs and cedars. The Appellant's willingness to consider different types of trees and shrubs will ensure that the species selected can be reasonably accommodated within the proposed landscaping strips. This will provide for screening and enhancement of the natural environment.

The Board finds the Alternate Development Plan showing the proposed landscaping strips on the site to be adequate to accommodate the trees, shrubs and fence. A variance of the landscaping strips is considered reasonable and appropriate for the location given the circumstances, and it will not compromise the intent of the Zoning Bylaw. The Board concluded that granting the appeal that varies the minimum site width of the landscaping strips would not amount to a relaxation of the provisions of the Zoning Bylaw so as to 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?

Two letters of objection and three letters in support were received for this appeal as a part of the notice given by the Board to neighbouring property owners identified in Exhibit B.1. The main concern from the neighbouring property owners was that the subject site would become a parking lot. In addition, the Appellant provided three letters from individuals supporting the need for parking in the area. These letters did not address any impact of a variance to the proposed landscaping strips.

The Board heard from the Respondent that the parking station is a discretionary use matter and subject to City Council approval. The appeal before the Board dealt with the landscaping requirement only. The Alternative Development Plan will provide for landscaping spaces on the required three sides of the site intended for the planting of trees and shrubs. The landscaping strips will enhance the aesthetic appearance of the site and streetscape if the parking station is approved by City Council for the site.

There was no evidence before the Board to prove that the landscaping strip variances would directly result in unreasonable interference in use and enjoyment of neighbouring properties.

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

DECISION:

In rendering a decision, the Board must consider its authority to rule on this appeal in accordance with Sections 219 and 221 of *The Planning and Development Act, 2007*. The evidence presented indicates that the proposed parking station is subject to receiving discretionary use approval and that a full Zoning Bylaw review had not been completed. Subsection 219(2) stipulates that there is no appeal when a development permit is refused where a discretionary use has not been approved by resolution of Council. This legislation contemplates a requirement for a decision being made on the land use which then determines any right of appeal.

In this case, the acceptance of the land use had not been made prior to a request for appeal for the landscaping strip deficiencies. The Respondent advised that the

discretionary use review process requires that the Zoning Bylaw regulations be met or adjudicated through the development appeal process.

In determining the appeal, the Board considered in particular Subsection 221(d) which gives the Board the authority to impose a condition on its decision provided the action is consistent with the three tests of entitlement identified in the Application Analysis above. The Board is satisfied that the tests of entitlement have been met and the deficiencies in the required minimum width of the landscaping strips can be relaxed subject to the proposed parking station development receiving the necessary discretionary use approval.

Therefore, the appeal is hereby **GRANTED** for the landscaping strip width deficiencies shown on the Alternate Development Plan identified in Exhibit A.3 on condition the Appellant receives discretionary use approval from the City in accordance with the Zoning Bylaw. The Appellant is encouraged to discuss with the City Administration plant species that are suitable for the width of the proposed landscaping strips.

DATED AT SASKATOON, SASKATCHEWAN, THIS 13TH DAY OF APRIL, 2022.

CITY OF SASKATOON DEVELOPMENT APPEALS BOARD



Len Kowalko, Chair

TAKE NOTICE that in accordance with Subsection 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.