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## RECORD OF DECISION

### SASKATOON DEVELOPMENT APPEALS BOARD

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<b>APPEAL NO.: 2019 - 14</b>
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**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:

**MARK KINDRACHUK**

respecting the property located at:

<b>Lot: 25</b>	<b>Block: 40</b>	<b>Plan: B1858, Ext 29</b>
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<b>Civic Address: 221 10<sup>th</sup> Street East</b>
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#### IN ATTENDANCE:

<b>Before</b>	Mr. Asit Sarkar, Chair Mr. Len Kowalko, Member Ms. Lois Lamon, Member Ms. Tonii Lerat, Member
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<b>Appeared for the Appellant</b>	Mr. Mark Kindrachuk
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<b>Appeared for the Respondent</b>	Ms. Paula Kotasek-Toth, Senior Planner, Planning & Development, Community Services, City of Saskatoon
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The appeal was heard in Committee Room "E", Ground Floor, City Hall in the City of Saskatoon on May 21, 2019

**PRELIMINARY ISSUES:**

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

**GROUND AND ISSUES:**

THE APPELLANT, Mark Kindrachuk has filed an appeal under section 219(1)(b) of *The Planning and Development Act, 2007*, in connection with the City's refusal to issue a Development Permit for a new one-unit dwelling. The property is zoned R2 under *Zoning Bylaw No. 8770* and the appellant is appealing the following deficiencies:

1. **Requirement:** Section 8.4.2(1) states that the minimum front yard setback for a one-unit dwelling is 6 metres.

**Proposed:** Based on the information provided, the proposed one-unit dwelling has a front yard setback of 5.182 metres.

**Deficiency:** This results in a front yard setback deficiency of 0.818 metres.

**EXHIBITS:**

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| Exhibit A.1 | Notice of Appeal received May 3, 2019.  |
| Exhibit R.1 | Letter dated May 3, 2019 from the Community Services Department, Planning & Development Division, to Mark Kindrachuk.   |
| Exhibit R.2 | Location Plan and Site Plan from Planning & Development Division, Community Services Department, received May 14, 2019. |
| Exhibit B.1 | Notice of Hearing dated May 6, 2019.  |
| Exhibit B.2 | Email from William Dueck supporting the appeal, received on May 10, 2019.   |
| Exhibit B.3 | Email from Sandra Maxwell on behalf of Lynn Short opposing the appeal, received on May 14, 2019.                        |
| Exhibit B.4 | Email from Kyle Christopherson supporting the appeal, received on May 15, 2019.   |

**EVIDENCE AND ARGUMENT OF THE APPELLANT:**

The Appellant, Mr. Kindrachuk presented the evidence and argument below.

The current bylaw states that a dwelling must be setback a minimum of 6 metres from the property line. The proposed setback of 5.182 metres will place the dwelling in line with the neighbouring site and be aesthetically pleasing. Mr. Kindrachuk noted the letter of support submitted as Exhibit B.2 was from the neighbouring property owner.

Mr. Kindrachuk referenced the letter submitted as Exhibit B.3 and stated that the existing dwelling on the site is currently not in compliance and is closer to the property line. The proposal would place the new dwelling back to be in line with the neighbouring dwelling. In his opinion, this circumstance will not create a dangerous situation nor will it negatively affect anyone for future development.

**EVIDENCE AND ARGUMENT OF THE RESPONDENT:**

The Respondent representative from the City of Saskatoon, Senior Planner Kotasek-Toth, Planning and Development Division presented the evidence and arguments below.

The application for a development permit for a new one-unit dwelling at 221 10<sup>th</sup> Street East was denied due to a deficient front yard setback. There is an existing one-unit dwelling on the site that will be demolished and a new dwelling will be constructed. This site is located in the R2 Zoning District and is located in the Nutana neighbourhood. Based on the information submitted by the applicant, the following deficiency was noted.

Section 8.4.2 (1) of the City's Zoning Bylaw requires a front yard setback of 6.0 meters for a one-unit dwelling. Based on the plans submitted by the applicant, a front yard setback of 5.182 metres was provided, resulting in a deficiency of 0.818 metres.

The City's position on the three tests of entitlement are 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 site only has one adjacent neighbour facing 10<sup>th</sup> Street East. The approximate front yard setback of 219 10<sup>th</sup> Street East is 5.7 metres. The new dwelling will fit into the existing character along this block face. Planning and Development would see the merits in a similar circumstance where a front yard addition would fit in with the existing character of the neighbourhood.
2. It is felt not that granting this appeal would amount to a relaxation so as to defeat the purpose and intent of the Zoning Bylaw which is to ensure that there are consistent front yard setbacks. The front yards along this block face are not consistent and the new dwelling will not impact the streetscape. Planning and Development is currently undertaking a review of the Zoning Bylaw. In the established neighbourhoods the Board

has heard and granted several appeals regarding front yard setback and the desire to locate the new dwelling in line with the existing dwellings on the blockface. Planning and Development has included this item to be considered in the review.

3. In regard to injurious affection the City notes that two letters of support have been received and one opposed. It is the City's opinion that this development will not have an impact on adjacent property owners.

### **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 8.4.2(1) of the Zoning Bylaw states that the minimum front yard setback for a one-unit dwelling is 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?**

Based on the information presented to the Board, this is a unique situation due to the existing character of the block face. The existing dwelling on the property is closer to the front yard property line than what is being proposed. The proposed front yard setback of 5.182 metres will place the new dwelling in line with the dwelling on the neighbouring property. This will create consistency along the block face and be aesthetically pleasing. The Board concludes granting the appeal would not grant a special privilege.

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's interpretation of the purpose and intent of the Zoning Bylaw is to provide appropriate separation from front property lines to ensure a sense of uniformity of development in the neighbourhood. The proposal will place the new dwelling in line with the existing dwelling on the block face creating consistency. The Board believes the dwelling would not impede site lines, would not be a safety concern and would be aesthetically pleasing for the neighbourhood. For these reasons, the Board concludes granting the appeal would not amount to a relaxation of the provisions of the Zoning Bylaw.

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

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

One letter of objection and two letters of support were filed for this appeal. The proposed dwelling will be setback from the front property line in order to line up with the neighbouring dwelling. The Board does not find this would create a precedent for future development nor would it affect the sightline on this blockface. Furthermore, 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 appeal, therefore, passes the third bar of entitlement.

**DECISION:**

THAT the appeal be GRANTED.

**DATED AT SASKATOON, SASKATCHEWAN, THIS            DAY OF            , 2019.**

**CITY OF SASKATOON DEVELOPMENT APPEALS BOARD**

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**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](http://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  
4<sup>th</sup> Floor, Room 480  
2151 Scarth Street  
Regina, SK S4P 2H8  
(Telephone: 306-787-6221; FAX: 306-787-1610; [info@smb.gov.sk.ca](mailto: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.