
RECORD OF DECISION

CITY OF PRINCE ALBERT DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2020-01
Hearing Date/Time: October 5, 2020 at 1:00 p.m.
Location: City Council Chambers, City Hall, City of Prince Albert

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

Bryan LeBlanc

respecting the property located at:

Civic Address: 772 10th Street North West

Legal Address: Lots 39-50, Block 13, Plan 03872, Ext. 0 and Lot 54, Block 13, Plan 101311063, Ext. 36)

IN ATTENDANCE:

Before the Board: Wes Moore, Chair
Martin Kiffiak, Member
Melissa Isbister, Member
Jean-Laurent Fournier, Member

Appeared for the Appellant: Bryan LeBlanc and Larissa LeBlanc

Appeared for the Respondent: Craig Guidinger, Director, City of Prince Albert
Planning & Development Services,

**Appeared as Affected
Property Owner:** Tim Bettger

Observers: Councillor Evert Botha, Ward 3

PRELIMINARY ISSUES

The parties were advised of the procedural instructions for the hearing.

The Appellant, Respondent and Affected Property Owner affirmed their testimonies would be truth prior to each being provided an opportunity to speak to the Board.

Exhibits

The following material was filed with the Secretary of the Board of Revision:

- a) Exhibit A-1 — Appeal Application from Bryan LeBlanc received on August 25, 2020
- b) Exhibit A-2 — Supplementary Information to Appeal Application from Bryan LeBlanc received on September 14, 2020
- c) Exhibit R-1 — Order to Remedy Contravention and Letter addressed to Bryan LeBlanc dated August 18, 2020
- d) Exhibit R-2 — Respondent Submission to Board received September 30, 2020
- e) Exhibit B-1 — Request for Clarification of Appeal Application dated August 27, 2020
- f) Exhibit B-2 — Statutory Declaration dated September 23, 2020 from Secretary and includes all required notices sent to the Appellant, City Council and all assessed owners of property within 75 meters of the subject property.

Exhibits were entered into the record with no objections from any party.

GROUND AND ISSUES

An appeal has been filed by Bryan LeBlanc, under Section 219 (1)(b) of *The Planning and Development Act, 2007*, in connection with an Order to Remedy Contravention dated August 18, 2020, for the property located at 772 10th Street NW.

The Order to Remedy Contravention outlined the following contravention:

“The two shipping containers that have been identified are not permitted on the property and will have to be removed.

You are hereby ordered on or before September 21, 2020 to remove the two shipping containers from the property.”

The following applicable sections of the City’s Zoning Bylaw No. 1 of 2019 apply to the above noted contravention which states:

Section 1.4

“The regulations contained in this Bylaw shall apply to all development and land

located within the corporate limits of the City of Prince Albert. All approved development shall conform to the provisions of this Bylaw, OCP and The Planning and Development Act, 2007."

Section 3.3(1)

"Except for developments identified in Section 3.4 of this Bylaw, no person shall undertake a development without having first obtained the necessary permit."

Section 4.2.7

"Shipping containers shall be permitted in the specified zoning districts, and the regulations contained within this section shall apply."

The property is currently zoned CR2-High Density Country Residential under the City's Zoning Bylaw No. 1 of 2019.

The Appellant outlined the grounds of appeal/reasons in support of appeal as noted in Exhibit A-2, as follows:

"...although I disagree with the application of said bylaw and the applicability in the country residential setting, I am asking for time to find a place for the sea cans. (6 months)

Rationale: I run a non profit organization and we had utilized city centres and other locations for storage of our engagement equipment supplies. Due to Covid-19 pandemic we have been displaced. I have needed to store our non profits equipment and with the limited resources and places, I cannot realistically, logistically, or financially comply with the order to remove. If the committee does not allow a reprieve, I will have to close our doors to the over 400 children and youth we provide service to across the City of Prince Albert....."

EVIDENCE AND ARGUMENT OF THE APPELLANT

The Appellant, Bryan LeBlanc, presented the evidence and argument below.

The Appellant advised that although he disagrees with the Zoning Bylaw which states he can't have the sea cans on his property, he simply wanted to ask for more time to find another suitable location to place the sea cans.

Prior to the pandemic, he had access to City centres, such as Midtown Hall; to store his equipment that he uses for his non-profit organization. However, due to buildings being closed and not operating as usual, he was unable to access/keep the equipment at these locations. In response to the health protocols and government regulations surrounding Covid-19, he advised that he since he still wanted to provide engagement for the children of the program, he purchased two sea cans and placed them on his property.

He advised that he stores various equipment, such as archery equipment, which is required for various programming.

He advised that as of this morning, there was a possible business owner within the City that potentially could store the sea cans, but this possibility was not yet reviewed. He needs to find a location that is secure and accessible for his staff.

The Board put forward questions of the Appellant and the following further information was provided:

- The Appellant clarified that he used multiple city centre facilities, such as the PAGC facilities and Parkland Community Hall.
- The Appellant advised that there is still some equipment stored in Midtown Hall, but this location is not accessible on a regular basis.
- The Appellant clarified that, as of this morning, he spoke to business owner in community, and there is a possibility of moving the sea cans to a compound in City limits. However, the Appellant did not have any further information on this possible location at this time.
- The Appellant clarified that the containers were purchased because of Covid-19 restricting access to certain facilities, and indicated that the containers were purchased by and belong to the non-profit organization.
- The Appellant indicated that continuation of the program has been mainly from their own pockets, as much of the funding and sponsorship received previously has been delayed due to Covid-19.

EVIDENCE AND ARGUMENT OF THE RESPONDENT

The Respondent, Craig Guidinger, presented the evidence and argument below:

He recognized the work that Mr. LeBlanc does with the youth in the City.

The Respondent indicated that zoning in the area was previously R6 Restricted Residential and the zoning bylaw was recently changed to CR2- High Density.

The Respondent confirmed that this issue dates back to May, when the City sent Mr. LeBlanc a warning letter, and provided extensions, as a result of the Covid-19 pandemic. He indicated that he communicated with Mr. LeBlanc, and that the Appellant was looking for another location at that time. The Order was issued on August 18, 2020.

He stated that the City has been accommodating as much as possible to Mr. LeBlanc's situation and the current pandemic. However, the City is careful in ensuring that special

consideration was not provided to Mr LeBlanc, as other property owners in other areas have been notified to move their shipping containers that were not in compliance with the Bylaw.

The Respondent indicated that he would not support an extension, unless he was provided with a plan that he would then consider. He indicated that with winter coming, shipping containers are difficult to move in winter. If the Board extends beyond six months, realistically, it would be closer to a nine month extension.

He also advised that two weeks ago, City Council approved an accommodation to allow the temporary holding of shipping containers in institutional zones.

There were no questions from Board to Respondent.

Mr. Tim Bettger, who identified himself as an affected property owner within the 75 meter radius of the subject property spoke in support of the Appellant.

He advised that he wasn't fully aware of the issues prior to coming to the hearing, but in listening to the issues, he is supportive to Mr. LeBlanc's request for an extension.

Mr. Bettger stated that he was disappointed that the City is unable to adjust their position on the shipping containers, and provide an exception to the rule until the Appellant can make appropriate arrangements.

He does not find the positioning of the containers to be unsightly in his neighbourhood, and acknowledged the good work of the non-profit organization for the children.

The Appellant further clarified that it will cost at least \$500 to move each sea can.

The Board reiterated that new information regarding the allowance of shipping containers in institutional zones may provide more opportunities for the Appellant to find an appropriate location.

RULES AND STATUTES

Section 219(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) if 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 the 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.*

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?

It is the Board's opinion that granting this appeal would be granting the appellant a special privilege inconsistent with the restrictions on the neighbouring properties in the same district.

The Board acknowledges that due the current pandemic, the Respondent has already granted the Appellant special privilege regarding time extensions to comply with the Order.

The Board notes that the Appellant has been aware of being non-compliant with the Zoning Bylaw since May 29, 2020. The Respondent sent two letters, one on May 29, 2020 requesting that the shipping containers be removed by June 30, 2020 and one on July 23, 2020 requesting that the shipping containers be removed by August 6, 2020.

The Board agrees that allowing a further extension of six months would grant the applicant a further privilege that has already been provided through the Respondent's above mentioned correspondences.

Therefore, the appeal does not pass 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?

It is the Board's opinion that granting this appeal would amount to a relaxation so as to defeat the intent of the Zoning Bylaw.

The Board notes that allowing an extension to November 1, 2020, as recommended by the Respondent does not amount to a relaxation so as to defeat the intent of the

Zoning Bylaw. However, allowing the extension of six months would relax the Bylaw too much and defeats the purpose of the Bylaw.

Therefore, the appeal does not pass the second bar of entitlement.

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

Based on the testimony and evidence presented, it is the Board's opinion that granting the appeal may have the potential to injuriously affect the neighbouring properties. However, the Board acknowledges the presentation provided by the affected property owner in support of the applicant's appeal, and finds that there is no other evidence to support that the appeal may injuriously affect the neighbouring properties.

DECISION

That pursuant to the provisions of Section 221 of *The Planning and Development Act, 2007*, the appeal for the property located at 772 10th Street NW, be varied as follows:

That compliance to the contraventions outlined in the Order to Remedy Contravention dated August 18, 2020 be completed 30 days after the date of this decision of the Board.

DATED AT PRINCE ALBERT, SASKATCHEWAN THIS 19th DAY OF OCTOBER, 2020.

CITY OF PRINCE ALBERT
DEVELOPMENT APPEALS BOARD



Wesley T. Moore, Chair



Terri Mercier, Secretary

TAKE NOTICE THAT, subject to Section 225 of *The Planning and Development Act, 2007*, this decision does not take effect until the expiration of 30 days from the date on which the decision was made.