
RECORD OF DECISION

CITY OF PRINCE ALBERT DEVELOPMENT APPEALS BOARD

APPEAL NO.: 2021-02
Hearing Date/Time: August 11, 2021 at 3:00 p.m.
Location: Main Boardroom, 2nd Floor, City Hall, City of Prince Albert

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

Minto Rec Centre

respecting the property located at:

Civic Address: 201 – 13th Street East
Legal Address: Parcel G, Plan No. 101835907, Ext. 0

IN ATTENDANCE:

Before the Board: Wes Moore, Chair
Melissa Isbister, Member
Marilyn Peterson, Member
Jean-Laurent Fournier, Member

Appeared for the Appellant: Derek Hlewka and Mark Hlewka, Minto Rec Centre

Appeared for the Respondent: Kristina Karpluk, Planning Manager, Planning and Development Services, City of Prince Albert

PRELIMINARY ISSUES

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

Exhibits

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

- a) Exhibit A-1 – Development Appeal Application and Supporting documentation received July 16, 2021.
- b) Exhibit A-2 – Supplementary Information received
- c) Exhibit R-1 – Submission by Respondent received
- d) Exhibit B-1 – Statutory Declaration dated, with Exhibits noted as 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 as no objections were declared.

GROUND AND ISSUES

An appeal has been filed by Derek Hlewka, on behalf of the Minto Rec Centre, under Section 219 (1)(b) of The Planning and Development Act, 2007, with respect to providing a relaxation of Section 8.3 of the City's Zoning Bylaw in order to construct an addition to existing building up to the south property line of 201 13th Street East to develop an indoor go-cart track.

The property is located in the M2 – Small Lot Light Industrial Zoning District.

The Applicant's reason for appeal and summary of supporting facts as noted in Exhibit A-1, as follows:

"There are practical difficulties in the way of carrying out the provision of the Zoning Bylaw and do request the Board to grant a relaxation of Section 8.3 of the Zoning Bylaw.

Amend Section 8.3 to have construction of new build to go right to the end of our South property line."

The City's Zoning Bylaw No. 1 of 2019 outlines the applicable legislation as follows:

3.8 Development Permit Review Procedure – Discretionary Use - Council

- 1. Applicants shall submit a complete development permit application to the Development Officer, in accordance with Section 3.5 of this Bylaw.*
- 2. The application shall be reviewed by the Development Officer, and any other party deemed necessary, for conformity to the OCP, this Bylaw and any other applicable bylaws and legislation.*
- 3. Once the application has met the necessary requirements, public notice shall be issued in accordance with the Public Notice Bylaw.*
- 4. Upon completion of the public notice, City Council shall consider the application along*

with any written submissions or verbal presentations, and render a decision. City Council may approve the application, and impose additional conditions as part of the approval, or deny the application.

5. If an applicant disagrees with the additional conditions imposed by City Council, the applicant may appeal the decision to the Development Appeals Board, in accordance with Section 58 of the Planning and Development Act, 2007. The applicant shall not have the right to appeal an application that has been denied by City Council.

6. The Development Officer shall notify the applicant in writing of the decision, which shall include the applicant's right to appeal, in accordance with the Public Notice Bylaw.

Section 8.1(4) - Exceptions to Setbacks

a) In the M1 – Heavy Industrial, M3 – Large Lot Light Industrial and M4 – Airport Industrial Zoning Districts, one (1) side yard setback may be waived.

b) At the discretion of the Development Officer, the minimum front, side or rear yard setback may be amended to match the established visual setback or common line.

c) In the M1 – Heavy Industrial and M3 – Large Lot Light Industrial Zoning Districts, where a legal lane exists, the rear yard setback may be reduced to 3 metres.

Section 8.3(2) - Development and Parking Standards

In addition to the General Provisions and the regulations contained in Section 8.1 of this Bylaw, the development and parking standards for the M2 – Small Lot Light Industrial Zoning District are in accordance with the following:

- Licensed Commercial Entertainment Establishment – 3 metres rear yard.

EVIDENCE AND ARGUMENT OF THE APPELLANT

The Appellant, Derek Hlewka, presented the evidence and argument below.

- 14th Street does not exist from 1st Street East to 15th Street East
- No back alley behind the property
- Will never be a street due to established businesses
- Building right to the property line will help with walking traffic behind the building
- Currently have issues with people sleeping on property, garbage and destruction of property, namely the fence has been cut several times
- Gave up trying to fix the fence as it is too expensive.
- Build as soon as possible – winter build is expensive
- Preliminary plans have been drawn up, but haven't been finalized due to uncertainty of being able to build to the rear
- Option to build to the setback line and extend the addition eastward along the south wall of the existing building, but would be more costly and slightly smaller than the original proposal.

EVIDENCE AND ARGUMENT OF THE RESPONDENT

The Respondent, Kristina Karpluk, presented the evidence and argument below.

- The proposed addition encroaches into the entire rear yard setback.
- The M2 Zoning district requires a minimum 3 metre rear yard setback
- A minor variance is not an option as it only provides 10% of 3 metres encroachment into the rear yard setback
- Amending the Zoning Bylaw is not an option as a reduction or elimination of the rear yard setback could have a negative impact on any residential property that abuts this zoning district
- Advises that if the Board waives the rear yard setback requirement, the impact to the abutting property would be minimal and would not undermine the intent of the setback requirements within this zoning district
- The primary reason for a setback is to provide a buffer between industrial and residential development.
- There are several reasons for a rear setback, which serve as buffer strips, utility corridors, protective and emergency service access, aesthetics and other purposes.

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 grant the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district. The reasons being:

All of the adjacent zoning districts have the same 3m Rear Yard setback requirement. The risk for land use conflict is greater at the interface of different zoning districts and the purpose of setbacks to provide separation at the margins between disparate uses remains, especially where no other separation, such as road, or lane right of way, or utility easement, exists.

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 to a relaxation of the provisions of Section 8.3 of the Zoning Bylaw would defeat the intent of the Zoning Bylaw. The reasons being:

The setback is established to allow for separation between neighbouring uses, which may be in a different zoning district. The separation provides a spatial buffer and permits accessibility for utilities, emergency services, etc. If this relaxation were to be granted, the rear abutting property owners would bear the burden to provide access for those emergency services.

While the impact in allowing the setback is likely minimal to neighbouring properties, there is still inequity in the intent of the Zoning Bylaw.

Sets a precedent for future requests and inconsistency in the application of the setback requirements.

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 the granting of this appeal may negatively affect the neighbouring properties. The rear property line of the subject property directly abuts a property in a different zoning district that has the same rear yard setback requirement. It was felt that if the setback requirement was removed on one side, the burden of the intent and benefit of the separation created by the setbacks would fall solely to the abutting property and could negatively impact future development of that property.

DECISION

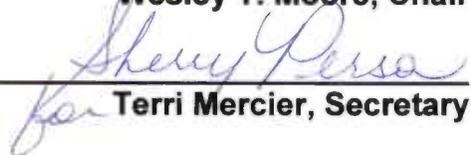
That pursuant to the provisions of Section 221 of *The Planning and Development Act, 2007*, the appeal for the property located at 201 13th Street East for a relaxation of Section 8.3 of The City's Zoning Bylaw, be denied.

DATED AT PRINCE ALBERT, SASKATCHEWAN THIS 19th DAY OF AUGUST, 2021.

**CITY OF PRINCE ALBERT DEVELOPMENT
APPEALS BOARD**



Wesley T. Moore, Chair



for 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.