



March 3, 2023

John Gavinchuk, acting on behalf of Lila Gavinchuk
61, 23061 TWP RD 543
Fort Saskatchewan, Alberta T8L 4P9

**NOTICE OF DECISION OF THE
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

FILE NO: **1325-20/PLVAR20220853**

APPEAL: **Appeal of Development Permit Approval**

LAND USE DESIGNATION: **RE – Residential Estate Lot District**

LEGAL DESCRIPTION: **Lot 5, Block C, Plan 752 1001**

CIVIC ADDRESS: **49, 23061 TWP RD 543, Fort Saskatchewan**

IN THE MATTER OF AN APPEAL filed with the City of Fort Saskatchewan (the “City”) Subdivision and Development Appeal Board (the “Board”) pursuant to Section 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 (the “MGA”). The Appeal Hearing was held on February 17, 2023 in Council Chambers of City Hall.

It is the decision of the Board that the Appeal is GRANTED, and Development Permit PLVAR20220853 is VARIED as specified below.

BEFORE:

Board Members:

Barb Aitken – Chair
John Mather
Stew Hennig

Administration:

Andrew Kaiser - Clerk for the Subdivision and Development Appeal Board
Jennifer Chapman– Alternate Clerk for the Subdivision and Development Appeal Board

PARTIES PRESENT AND PRELIMINARY MATTERS:

For the Appellant:

Sophia Gavinchuk – Presenting on behalf of the Agent of the Appellant Lila Gavinchuk (the “Appellant”)

For the Respondent:

Dean McCartney – Manager, Development Planning
Patricia Brummet - Development Technician } (the “Development Authority”)

For the Applicant:

Patricia Turanich (the “Applicant”)

Speaking in support of the appeal:

Vuksan “Victor” Obradovich (#37)

Speaking in opposition to the appeal:

Patrick Noyen (resides at the Property)

1. The Appellant filed a Notice of Appeal to the Board following the Development Authority’s issuance of a Development Permit to the applicant for the property legally described as Lot 5, Block C, Plan 752 1001 and municipally described as 49, 23061 TWP RD 543, Fort Saskatchewan, Alberta (the “Property”).
2. At the start of the Hearing, a motion was made by Stew Hennig to appoint Barb Aitken as Chair. The motion was passed unanimously.
3. At the start of the hearing, the Chair provided an overview of the hearing process to all parties present. There were no objections to the proposed Hearing process.
4. The Chair requested confirmation from all parties in attendance that there was no opposition to the composition of the Board hearing the Appeal. None of the persons in attendance had any objection to the members of the Board hearing the Appeal.
5. Based on the information provided by the Development Authority, the Appeal appears to have been filed on time, in accordance with Section 686(1) of the MGA.
6. The Board was satisfied it had jurisdiction to deal with this matter. There were no objections raised at the Hearing regarding the Board’s jurisdiction to deal with this matter.
7. The Clerk confirmed there were no changes to the agenda package.

SUMMARY OF EVIDENCE AND ARGUMENT:

8. The following is a brief summary of the oral evidence presented to the Board.

Development Authority Presentation:

9. The Board first heard from the Development Authority of the City.
10. The Property (# 49, 23061 TWP RD 543) is located within the Point Aux Pins Estates neighborhood (PAPE) which is identified as low density residential, and could be described as “established country residential” property. The Property contains a single detached dwelling with a detached garage.
11. On December 22, 2022, a variance application for the construction of a fence at the Property was received by the Development Authority. On January 3, 2023, the Development Authority approved the application for a variance and issued development permit PLVAR20220853 (the “Permit”).
12. Notifications were sent to adjacent properties in accordance with section 3.5.1 of the Land Use Bylaw. The final date for filing an appeal to the Board, as specified on the notification letters, was January 24, 2023. A notice of appeal was received by the Board on January 24, 2023.
13. The Development Authority stated that a development permit is not required for the construction of a fence, so long as that fence complies with the specific regulations contained in the Land Use Bylaw. The Applicant requested a variance to these regulations for the purpose of limiting wildlife entering the Property.
14. The Development Authority explained that when a development application for a variance to the Land Use Bylaw is received the Development Authority must consider if there would be any adverse impacts to adjacent properties or the neighbourhood. In reviewing the Permit application the Development Authority determined that the proposed height of the fence (being 8ft/2.44m) would not adversely effect the neighbouring properties as there is a substantial amount of mature vegetation on and around the Property, which screen visibility from the roadway and adjacent properties.
15. The area of the Property is 0.47 hectares (1.15 acres), while the typical residential lot within Fort Saskatchewan is 12 x 35m; as such, the Property is larger than most residential lots.
16. Alternate conditions were presented for the Board’s consideration, including that the Board can establish:
 - a. Maximum fence heights for the side and rear yards;
 - b. Maximum fence heights for the front property line; and
 - c. Construction standards (e.g. fence material and colour).
17. In response to Board questions, the Development Authority advised that:
 - a. The materials to be used in the construction of the fence were not specified in the

Permit. Materials could be specified by the Board, if required.

- b. The exact location of the fence (in relation to the property lines or trees located on the Property) was not determined by the Development Authority, nor specified by the Applicant, when reviewing or approving the Permit.
- c. The Development Authority is of the opinion that the “front yard property line” (as referenced in section 6.6 of the Land Use Bylaw) of the Property is only that which runs parallel to the roadway, as the “front” of a parcel is that which is beside the roadway. Therefore, the 0.91m height restriction only applies to the front yard property line.

Appellant Presentation:

- 18. Sophia Gavinchuk spoke on behalf of the appellant Lila Gavinchuk, who is the south-adjacent neighbour adjacent to the Property. Ms. Gavinchuk indicated that her presentation was intended to reflect the comments of the residents who signed the petition supporting the appeal. Ms. Gavinchuk read from the Appellant’s written statement, included in the agenda package as exhibit C-1, as her presentation.
- 19. Ms. Gavinchuk stated that the PAPE is an estate acreage development, and the construction of an 8ft perimeter fence is not consistent with the characteristics of the neighbourhood. During the presentation (and included in exhibit C-1) Ms. Gavinchuk provided comments from neighbouring property owners to the effect that an 8ft fence would affect the “natural beauty” and “openness” of PAPE.
- 20. The adjacent property owners are not willing to participate in the construction or maintenance of the proposed fence, and are concerned that the Permit makes no mention of the standards to which the fence is to be constructed. It is the hope of the Appellant that the fence be constructed in accordance with the recommendations of the Alberta Land Surveyors Association.
- 21. The City’s Land Use Bylaw allows for the construction of a fence in the front yard of a residential property to a height of 0.91m/3ft, but does not specify the height of a fence in the side yard of a residential property beyond the front line of the homes/dwellings. Ms. Gavinchuk explained that since the house on the Property (like many in PAPE) is set back approximately 20m from the roadway, any fence above the prescribed 0.91m/3ft would be inconsistent with the character of PAPE.
- 22. Ms. Gavinchuk read into record additional comments that were provided by neighbouring property owners which stated, in essence, that the proposed fence on the Property would be inconsistent with the characteristics of PAPE, “be oppressive”, and would compromise the “open concept” of the area.

Applicant Presentation:

- 23. Ms. Turanich explained that she has intended to construct a fence around the Property for approximately 20 years, as the approximately fifteen (15) fruit trees on the Property are frequently fed upon by moose and deer, which has resulted in replacement costs.

24. The construction of an 8ft fence would be a necessity to meet the intent of restricting wildlife access to the Property, as a standard 6ft fence would not serve the purpose of preventing moose or deer from getting overtop the fence.
25. The Applicant referenced page 11 of the agenda package (context photo #3, forming part of exhibit B-1) and explained that the intent was to construct the fence between the trees in the photo, and have them form part of the fence. Ms. Turanich further explained that these same manner of trees extend down the south side of the Property, along with a portion of the north side, which would “dwarf” an 8ft fence.
26. According to the Permit, the 0.59m variance to the maximum height of the rear and side yard fencing is “... indistinguishable based on the merits of the development”. The variance has been granted in accordance with the regulations of the City, which PAPE is now a part of.
27. Ms. Turanich explained that some of the comments submitted for the Board’s consideration (forming part of exhibit C-1) were from individuals outside of the notification area prescribed by the Land Use Bylaw, and the consideration of these comments should not be considered.
28. In response to Board questions, Ms. Turanich stated:
 - a. There is one (1) row of trees along the north/northeast side of the Property and the intent is to incorporate these trees into the construction of the fence, with some pruning of the trees may be required in the construction of the fence. The intent is to build a freestanding fence on the other sides of the Property.
 - b. The 8ft fence allowed by the Permit was to be constructed around the entire Property in accordance with the Land Use Bylaw (except as varied) and would be located entirely within the Property. The fence would be constructed overtop the driveway access in the form of a gate, with the exact style/function of gate to be determined at the time of construction.
 - c. Maintenance of the fence would, ideally, be minimal due to the selection of materials used in the construction of the fence. Maintenance of the grounds surrounding the fence would also be minimal, as Ms. Turanich stated there would be clearing of plants at the time of construction.
 - d. For the construction of the fence along the south side of the property, Ms. Turanich explained that the debris and plant matter from the existing spruce trees would prevent construction on, or immediately beside, the property line and for ease of maintenance it would be her intention to set the fence back from that property line.
 - e. Ms. Turanich acknowledged that the construction of a fence could affect the view from the Property into the valley below.

Those Speaking in Favour of the Appeal:

Vuksan (Victor) Obradovich

29. Mr. Obradovich lives at #37, which is immediately north of the Property. Ms. Gavinchuk assisted Mr. Obradovich in his presentation, at his request.
30. Mr. Obradovich explained that he does not have any trees on the south side of his property which adjoins the Property aside from those at the east corner – these were removed July 2022. All that remains between the two dwellings are the raspberries.
31. Ms. Gavinchuk provided the remainder of Mr. Obradovich’s presentation. The remainder of the presentation centered around the SDAB appeal of June 7, 2022 (PLHOCC20220297) and the conduct on the Property since that SDAB hearing. The Board did not allow for further comments respecting the previous decision of the Board, asking that all comments be related to the appeal at hand. The presentation continued as follows.
32. The account of a dispute between Mr. Obradovich and the residents of the Property involving the escape of dust and airborne material from the Property onto lot #37 was provided to the Board for their consideration.
33. The trees along the south side of the Property are not located on the Property, but on #61. Mr. Obradovich stated that because of this, integrating the trees in the construction of the fence in these specific areas would be impossible.

Those Speaking in Opposition to the Appeal:

Patrick Noyen

34. Mr. Noyen stated that he supports the construction of the fence allowed by the Permit and that the proposed height would utilize standard-length fence board, which demonstrates this is not an uncommon manner of fence.
35. The development permit application was reviewed by the City’s Planning and Development department, who determined that it was consistent with the provisions of the Land Use Bylaw.
36. Fences are intended for privacy and can help maintain positive neighbourhood relationships. Mr. Noyen explained that there have been some strained relationships in the neighbourhood, as evident by presentations in this and previous hearings of the SDAB, and that the construction of a fence would be a positive in this regard.
37. The PAPE neighbourhood is subject to the City of Fort Saskatchewan Land Use Bylaw and other planning documents. Mr. Noyen stated that there will likely be other applications for variances to the provisions of the Land Use Bylaw as urbanization moves towards the PAPE, so that residents of PAPE can maintain their current lifestyle.
38. Mr. Noyen stated that the construction of the fence in accordance with the Permit is to maintain some degree of privacy on the property, and that the construction of the fence will be aesthetically pleasing.
39. The elevation of the adjacent property of the Appellant is approximately 2ft higher than

the Property, as such the 8ft fencing would be appropriate along this side to maintain privacy.

40. Mr. Noyen stated that some of the evidence presented was related to the previous matter heard by the SDAB and was intended to outline a perceived intention behind the construction of the fence on the Property; this is not relevant in the consideration of the matter before the Board.

Closing Comments of the Development Authority:

41. As their closing comments the Development Authority provided an outline of the authorities available to the Board (e.g. setbacks for the fence construction) as well as some relevant considerations in the Land Use Bylaw.

Closing Comments from the Applicant

42. Mr. Noyen provided closing comments on behalf of the Applicant. Mr. Noyen explained that he hopes the Board considers the merits of constructing a fence on the Property, being the additional privacy and protection of the trees on the Property. Mr. Noyen stated that some of the evidence presented to the Board was not relevant to the matter at-hand, and that the Board should exercise their discretion accordingly.

Closing Comments from the Appellant:

43. Ms. Gavinchuk stated that she opposed the construction of the fence. The Property is in a state of disrepair and the fence will likely fall into the same condition overtime, affecting the “stunning” aesthetic of PAPE. Ms. Gavinchuk explained that the comments made throughout her presentation accurately reflect and summarize her opposition to the construction of the fence.

At the close of the hearing the parties acknowledged that they felt they had been provided with adequate opportunity to state their case and felt that the hearing process was conducted in a fair and impartial manner.

DECISION:

44. It is the decision of the Board that the Appeal be granted, and the Development Permit be varied.

FINDINGS OF FACT:

The Board makes the findings of fact set out below:

45. The Property is located at Lot 5, Block C, Plan 752 1001, and is municipally described as 49, 23061 TWP RD 543, Fort Saskatchewan, Alberta.
46. Permit PLVAR20220853 authorizes a variance to the regulations of the Land Use Bylaw in respect to the height of a fence to be constructed within a residential district.

47. The Property is located within the Point Aux Pins Estates neighborhood (PAPE) which is identified as low density residential.
48. The Appellant and all of the persons speaking in favour or opposition to the appeal were affected persons.

REASONS FOR THE DECISION:

49. The Board's jurisdiction is found in section 687(3) of the *Municipal Government Act* (the "MGA"). In making this decision, the Board has examined the provisions of the *Land Use Bylaw*, all applicable statutory plans, and has considered the oral and written submissions made by the Development Authority, the Appellant, the Applicant and those speaking both in favour of the appeal and in opposition to the Appeal.

Affected Persons

50. In accordance with MGA section 687(1)(c), the Board must hear from those given notice and under section 687(1)(d), from those claiming to be affected. In this case, all of the persons speaking were either given notice of the hearing, or were affected due to proximity (while not a named recipient of a notice, they reside in the immediate proximity of the Property). Therefore, the Board finds as a fact that all of the speakers were affected and the Board was entitled to hear from them.

ALSA Regional Plan

51. There is no ALSA regional plan applicable to the Property. Therefore, the Board need not consider this plan.

Land Use Policies

52. The SDAB recognizes the Alberta Land Use Policies established as per Section 622 of the MGA, and has conducted the hearing to allow for meaningful participation from all parties. The Board noted there was no comment from the parties about the Land Use Policies and in the absence of any evidence that the matter before it was contradictory to the Land Use Policies, the Board finds there is compliance with the Land Use Policies.

Statutory Plans

53. The Board was not provided with evidence from the Development Authority about the City's statutory plans. There was no comment from the parties about the statutory plans and in the absence of any evidence that the matter before it was contradictory to the statutory plans, the Board finds there is compliance with the statutory plans.

Subdivision and Development Regulations

54. The Board must have regard for the Subdivision and Development Regulations in making its decision. Neither the Development Authority nor the Appellants raised the Subdivision and Development Regulations. The Board found no conflict between the Subdivision and Development Regulations and the subject of this permit.

Land Use Bylaw

55. The Board heard evidence from the Development Authority that the Land Use Bylaw provisions applicable to the construction of a fence within a residential district are contained in sections 5.5 and 6.6 and that the section considered, and varied, by the Development Authority was:

6.6.1. Fences, walls or hedges within Residential Land Use Districts on interior lots shall be no higher than:

- (a) 1.85m along a rear or side yard property line; and*
- (b) 0.91m along the front yard property line.*

56. The Board heard evidence from the Development Authority respecting the Land Use Bylaw definitions of “side yard property line” and “front yard property line”, being:

YARD, FRONT means:

- (a) In low-density residential districts, the portion of a site abutting the front lot line extending across the full width of the site, situated between the front lot line and the nearest wall of the principal building.*

...

YARD, SIDE means that portion of a site abutting a side lot line extending from the front yard to the rear yard. The side yard is situated between a side lot line and the nearest wall of the principal building.

The Development Authority explained that in their interpretation the maximum height for a fence along “...*the front yard property line*” [Land Use Bylaw section 6.6.1(b)] applies to that property line running parallel to the roadway.

57. The Board also heard evidence from the Development Authority that according to the Land Use Bylaw no development permit is required when constructing a fence, so long as the fence complies with the specific regulations (being those contained in sections 5.5 and 6.6, in this case).
58. The Appellant presented evidence that the construction of a fence on the Property in accordance with the Permit would impact the open and natural characteristics of the PAPE that the residents there enjoy, and that an 8ft fence would be inconsistent with the existing developments in the PAPE. The Board is of the opinion that the construction of an 8ft fence on the Property is not consistent with the existing developments within PAPE. However: The Board does acknowledge that according to the Land Use Bylaw a property owner may construct a fence without requiring a development permit, so long as the fence complies with the bylaw’s applicable regulations.
59. The Board heard evidence from the Applicant and the Appellant regarding the intent, or perceived intent, behind the construction of a fence on the Property. The Board did not feel this evidence was applicable to the appeal at hand.
60. Based on the evidence presented by the Appellant and those in support of the appeal, the Board is satisfied that the granting of a variance to the 1.85m height restriction of

Land Use Bylaw section 6.6.1(a) would materially interfere with the enjoyment of neighbouring parcels of land.

61. The Board heard evidence from the Development Authority that the “...*the front yard property line*” referred to in Land Use Bylaw section 6.6.1(b), which prescribes the maximum fence height of 0.91m applies to that property line running parallel to the roadway. The Board does not find that a variance to this height restriction would materially interfere with the enjoyment of neighbouring parcels of land, and is therefore satisfied in its authority to vary the Permit in accordance with MGA section 687(3)(d).

MERITS OF THE APPEAL:

62. For the above reasons it is the decision of the Board that the development, as proposed, is not compatible with neighbouring uses. Therefore, the appeal is granted and the Development Permit is varied.

Dated at the City of Fort Saskatchewan in the Province of Alberta, this 3rd day of March, 2023.

Clerk: _____



Signed by Andrew Kaiser – Clerk to the Subdivision and Development Appeal Board.

The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under Section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

**Development Permit
PLVAR20220853
Lot 05, Block C, Plan 752 1001
49 23061 TWP RD 543**

1. This Development Permit only authorizes a: **Fence at 6ft/1.85m – Front Yard Property Line**. All subsequent development requires development and/or building permits. Confirmation of permitting requirements may be obtained from the City of Fort Saskatchewan Planning and Development Department (780) 992-6198.
 - 1.1. Development shall proceed in accordance with the approved site plan attached hereto (subject to revisions noted below):
 - a) The attached site plan does not specify the exact location of the fence and is meant only to indicate the property line to which this permit applies.
 - 1.2. Except as varied by way of this Development Permit, development shall proceed in accordance with *LAND USE BYLAW C23-20, Section 5.5 – Fences, Walls and Hedges* and *Section 6.6 – Fences, Walls and Hedges in Residential Districts*.

ADVISEMENTS:

An approved Development Permit means that the proposed development has been reviewed against the provisions of the City of Fort Saskatchewan Land Use Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such and the Municipal Government Act, Building Codes, Safety Codes or any other caveat, covenants, easements, right of ways or access/crossing agreements that might be attached to the site.

**Development Permit
PLVAR20220853**

Variance granted to allow the construction of a fence along the front yard property line (area indicated in red) up to a maximum height of 1.85m / 6ft

