

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

December 3, 2014

Minutes of the Wednesday, December 3, 2014 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #02-14 [REDACTED], Lot 13, Block 10, Plan 101879433, 17 Aspen Place.

Present: Chairman: Dennis Gould
Board Members: Wes Memory, Bill Wood and Amanda Sutton

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

Appellants: [REDACTED]

Introductions:

Chairman Dennis Gould stated that the board had come to order at 7:10 PM. The Chairman introduced the members of the Board, the Town Representative and the Secretary. The Chairman acknowledged the Appellant [REDACTED].

Conflicts:

Board members indicated they did not have a conflict of interest.

Chairman's Comments:

The Chairman explained that Development Appeal Hearings are open to the public and those who are affected by the out come of the appeal can make a presentation to the Board. Written materials received within 5 days of the hearing will be considered by the Board.

Authorized by *The Planning and Development Act, 2007*, the Board can allow, allow with conditions, vary or refuse the appeal.

The Board must be certain that any decision it makes about the matter under appeal does not constitute a special privilege inconsistent with the restrictions on, or injurious to neighbouring properties and the amount of the requested relaxation of the zoning bylaw does not defeat its intent and purpose.

Once those who can be heard have made their presentations the Board will reserve its decision. Appellants receive the Board's written decision by registered letter within 30 days of the hearing. Board decisions do not take effect for 30 days to allow interested parties to appeal to the Saskatchewan Municipal Board which must take place within 20 days of receiving the decision.

**Official Record
Development
Appeal #01-13:**

The documents which form the record of the appeal were inspected by the Appellant prior to the commencement of the hearing and included:

- The agenda for the hearing.
- Appellant's 18 page submission dated November 29, 2014 and received on December 3, 2014.
- Development Officer's Report.
- Email from [REDACTED] sent November 23, 2014.
- Refused Development Permit, Development Permit Application, Building Permit Application, Site Plan.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated November 10, 2014.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated November 10, 2014.
- Notice of the appeal sent to 16 adjacent property owners.
- A copy of Bylaw 541-10.
- A copy of Part XI, Division 1, of *The Planning and Development Act, 2007*; the duties and responsibilities of the Development Appeal Board.
- The signed commissioned Statutory Declaration for service of notice.

**Resident
Submissions:**

The Secretary advised that sixteen (16) property owners within 75 metres were notified of the appeal application and hearing and that one (1) objection has been received.

Procedure:

The procedure was explained for presentations. To begin the board will hear the appellant present their position with respect to the requested relaxation. Once their presentation is completed the town representative presents the town's position. The Appellant is then allowed to respond after which the town responds. Once the appellant and respondent have made their presentations board members will ask questions about the requested relaxation.

Prior to the Appellant's oral presentation to the Board, the Board Chair and Board Members had a number of questions with regards to the drawings and photographs in the submission as there were no explanation or descriptions on them. The Appellant and Board Members then went through each of the drawings and photographs at which time the Appellant clarified and provided a description for each of the drawings and photographs.

Referring to his written submission the Appellant stated:

1. The Appellant is requesting to build a double garage in back yard that would encroach into the side yard setback. Because of the irregular shape of lot, the rear property line is on a 25 degree angle to the side yard, if the Appellant followed guidelines set out in the zoning bylaw it would push the garage forward and center. Because the back of the lot is irregular shape there would be a lot of wasted and unused space. There would also be permanent landscaping that would be impacted.
2. The only neighbour that shares property line with his is the [REDACTED] to the west and they have no objections to the position of the garage.

Town Development Officer: Debi Breuer

The Development Officer stated that she had nothing further to add to her report.

Question:

Q: How close is the current shed to the current plans?

A: It would be 2 ½ to 3 feet from the side fence line and 4 feet from the back fence line.

Q: Is that shed going to be removed?

A: Yes. It had storm damage on it and it is easier to replace the shed than rebuild.

Q: What size is that temporary shed?

A. 12' x 14'

Q. It can be there because it is not on a permanent foundation?

A. Yes.

Q. Clarification – Bill Wood. Your proposed garage is 24' x 24' correct. And you're saying in your document that by moving garage 1.15 metres to the side you would have more space in the yard. That you want to move closer to shared fence line and the garage would be still 1 metre off the back of the property line? How can you pick up 303 sq ft of wasted space?

A. The garage space and space in the back. When you move the garage closer to the shared fence you save 120 sq.ft. on side yard alone. That square footage is for the side yard and the triangle at the back of the garage.

Q. You've got two different sizes for the proposed building.

A. I did that in order to work with the Town Zoning Bylaw. I wanted a 24' x 24' garage and now if I can't get my request I could build a 16' x 24' but is still going to make access to the garage impossible and I will have to tear out some of the permanent landscaping.

Final comments:

█'s final comments were that he was hoping for anything that he could get because of the irregular shape of the lot. His only immediate neighbor is the █ and they have no objections. Visually the garage would not affect any of the neighbours. Visually it would look better closer to the fence further back in the yard rather than half of it sticking out from the side of the house. Also by building the garage closer to the fence it would then maximize yard space.

The Town Development Officer had no further comments.

The Appellant left at 7:35 PM.

The Town Representative left at 7:35 PM.

Facts: The facts in this appeal, as presented to the Board are:

- 1) The subject lands are legally described as Lot 13, Block 10, Plan 101879433 in the Town of White City.
- 2) The subject lands are zoned R-1 as set out in the Town of White City Zoning Bylaw 541-10.
- 3) The development permit was denied because the proposed detached garage encroached into the required 3 meter side yard setback.

Conclusions and Reasons:

In an appeal of a development permit refusal, the Act places the onus on the appellant to make a case to the development appeals board that, even though the development violated a municipal zoning bylaw, it should be allowed to proceed because it clears all three "bars to variance relief" as set out in clause 221(d) of the Act.

The three bars are:

- Special privilege
- Intent
- Injurious affection

Special Privilege: During general discussion the Board indicated they were not prepared to grant the same privilege to another applicant for the same circumstances.

It is important to point out key circumstances of this application:

1. The [REDACTED]'s lot is an irregular shape, in that the rear lot line is not square, it is angled.
2. The positioning of the proposed accessory building is near to an area surrounded by contoured concrete curbing, but the trees that this curbing surrounded are no longer present and do not pose an obstacle to accessing the big door of the building. This curbing is low and there is no evidence that it would be a significant obstacle to a vehicle accessing the building.
3. The appellant would like to reduce the square footage, of what he referred to as "wasted unusable space" between the garage and the side & rear fence lines. If the Board allowed the requested relaxation the appellant indicated that this "wasted space" would be reduced by 303 square feet.

The Board feels the Appellants' proposed location for the accessory building is a preference. Positioning the building within the Town's setback requirements will still allow reasonable access to the building with a minor inconvenience of the concrete curbing. The Appellant's desire to reduce the so-called "wasted space" behind the building is not a significant justification to allow this relaxation.

The Board is not willing to allow a relaxation in this case, nor to others in the same Zone who would have similar circumstances.

Therefore the application does not clear this bar.

Intent:

In its documentation the Town representative provided the intent of the bylaw. The requested relaxation is 1.15M into the 3M side yard setback. This request amounts to a 38% reduction in the setback required.

The Board considers such a request as excessive and, as such, defeats the intent of the bylaw regarding sufficient space abutting a neighbouring lot.

Therefore the application does not clear this bar.

Injurious affection:

██████████ expressed concern with the requested relaxation in this case. Their home is the second home South of #1 Willow Bay. The homeowner at #1 Willow Bay appealed to this Board in 2010 for a relaxation of the side yard setback and this Board had denied that appeal. The ██████████'s home is only 2 houses to the East of #1 Willow Bay and the ██████████'s are requesting that the appeal in this case be denied and that the bylaws be applied uniformly.

The ██████████'s application does not clear this bar.

**Appeal #02-14
Decision**

In accordance with the requirements of the *Planning and Development Act, 2007* the following is the decision of the Development Appeals Board hearing on December 3, 2014 at the Town of White City Municipal Office.

AMANDA SUTTON: Moved/Seconded: BILL WOOD: That Appeal #02-14 made by ██████████ for a relaxation of the Zoning Bylaw 541-10, to permit a detached garage to encroach into required 3 meter side yard setback be denied, for the following reasons:


- 1) The relaxation does contravene the Town's Basic Planning Statement and intent of the Zoning Bylaw.
- 2) The relaxation does encroach upon or injuriously affect neighbouring properties.
- 3) The requested relaxation is a special privilege as others have not been granted a similar relaxation.

Carried.

Adjournment:

WES MEMORY: Moved/Seconded: AMANDA SUTTON: That the hearing adjourn at 8:10 PM.

Carried.



Dennis Gould, Board Chair