

**TOWN OF WHITE CITY**  
**DEVELOPMENT APPEALS BOARD**

October 22, 2015

Minutes of the Wednesday, October 22, 2015 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #05-15 October 22, Lot 2, Block 4, Plan 101978668, 24 Stardust Bay.

**Present:** Chairman: Dennis Gould  
Board Members: Bill Wood, Amanda Sutton, Dale Strudwick and Cory Schill

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

**Appellants:** [REDACTED]

**Introductions:**

Chairman Dennis Gould stated that the board had come to order at 7:09 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 #05-15:**

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 1 page submission received October 19, 2015.
- Development Officer's Report.
- Objection from Schwartz Homes Ltd. received on October 20, 2015.
- Refused Development Permit Application, drawing of deck, letter from Town of White City dated September 15, 2015, 3 photographs of the deck.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated September 30, 2015.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated September 30, 2015.
- Notice of the appeal sent to 19 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 nineteen (19) property owners within 75 metres were notified of the appeal application and hearing and there was one (1) objection received on October 20, 2015.

**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.

Referring to his written submission the Appellant stated:

1. This was his wife's first endeavour and that sometimes people don't know about requiring a permit to build a deck.
2. In grand scheme of things and space they would like some mercy/leniency on this matter. We are requesting the additional 16 inches.
3. They pay their taxes and haven't been a loud neighbour.

**Town Development Officer: Debi Breuer**

The Development Officer stated that the Town already has an allowance to let a deck encumber 3 meters into the rear yard setback. The Appellant has already exceeded the 3 meter encroachment by another 16 inches.

████████████████████

**Question:**

- Q: To the Development Officer: Does this not fall within your discretionary power to allow a 10% encroachment?
- A: No. This is not just a corner of a house that is being built on an irregular, pie shaped lots. This is for a deck.
- Q: In your submission it is indicated "██████████ was approached by one of our neighbors regarding the development meeting".
- A: Yes one of the neighbours was at the meeting at the church and his situation was discussed. Don't know what meeting this was.

**Final comments:**

Appellant had no further comments.

The Development Officer had no further comments.

The Appellant left at 7:25 PM.

The Town Representative left at 7:25 PM.

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

- 1) The subject lands are legally described as Lot 2, Block 4, Plan 101978668 in the Town of White City.
- 2) The subject lands are zoned R-5 as set out in the Town of White City Zoning Bylaw 581-14.
- 3) The development permit was denied because the proposed unenclosed deck encroached beyond the maximum projection of 3 meters into the rear 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 that the Board must consider in their decision are:

- Special privilege
- Intent
- Injurious affection

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

1. The appellant had the deck built without obtaining a permit from the Town, and was unaware of all the regulations regarding buildings and decks. If a permit had been applied for before constructing the deck, it could have been built to comply with the by-laws.
2. The intent of the by-law for District R5 is to provide for smaller lot single detached housing with attached garages in an urban setting and provides the opportunity for higher density single detached development than that provided for in Zoning District R4.
3. The rear yard setback requirement for Zone 5 is 8 Meters. Decks are allowed to encroach into that “rear yard setback” by 3 Meters, however in this case the deck protrudes past that allowed encroachment amount by .42M or 16 inches. This may seem like a small amount, however the encroachment is for the entire width of the deck and it protrudes into a back yard that is already limited in size.
4. Schwartz Homes LTD/Garden of Eden Estates, submitted a letter of concern regarding an appeal for property at 18 Stardust Bay. This letter has been acknowledged but does not seem to pertain to this appeal for 24 Stardust Bay.

Special Privilege:

- The Board considers a rear yard relaxation request of .42M, or 16 inches, to be excessive and is not prepared to grant such a relaxation in this case nor in other cases that might have the same circumstances. Granting this request would be a “special privilege” that the Board would not grant to others.

Therefore the ██████’s application does not clear this bar.

Intent:

- The Board considers this relaxation request to be excessive, and would defeat the intent of the zoning bylaws.

Therefore the [REDACTED]'s application does not clear this bar.

Injurious affection:

There was no "injurious affection" demonstrated or posed during the appeal hearing.

Therefore the [REDACTED]'s application does clear this bar.

**Appeal #05-15  
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 October 22, 2015 at the Town of White City Municipal Office.

**DENNIS GOULD: Moved/Seconded: DALE STRUDWICK:** That Appeal #05-15 made by [REDACTED] for a relaxation of the Zoning Bylaw 581-14, to permit an unenclosed deck to encroach beyond the maximum projection of 3 meters into the rear 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 requested relaxation is a special privilege as others have not been granted a similar relaxation.

**Carried.**

**Adjournment:**

**BILL WOOD: Moved/Seconded: AMANDA SUTTON:** That the hearing adjourn at 7:45 PM.

  
\_\_\_\_\_  
**Dennis Gould, Board Chair**

**Carried**