

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

July 17, 2012

Minutes of the Tuesday, July 17, 2012 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #04-12 [REDACTED], Lot 14, Block 1, Plan 101893899, 51 Paradise Circle.

Present: Chairman: Dennis Gould
Board Members: Glenn Weir, Bill Wood

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

Appellants: [REDACTED]

Introductions:

Chairman Dennis Gould stated that the board had come to order at 7:15 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 #04-12:**

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.
- [REDACTED] submission – 11 pages
- Correspondence dated July 10, 2012 to Town of White City, Development Appeals Board re: Appeal #04-12
- Development Officer's Report.
- Reason for Appeal (undated and unsigned)
- Professional Building Inspections, Inc. Permit Information Form and Plan Review Check List.
- The Town of White City refused Development Permit.
- Exhibit "A" to Bylaw No. 534-09.
- Application for Building Permit.
- Site Plan.
- Email dated April 4 2012 from [REDACTED] to Town of White City & [REDACTED].
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated June 26, 2012.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated June 26, 2012.
- Notice of the appeal sent to 4 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 four (4) property owners within 75 metres were notified of the appeal application and hearing and that no objections have 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.

Referring to his written submission the Appellant stated:

1. [REDACTED] constructed a home at 51 Paradise Circle and in the process of it they made an initial application for construction of the home and then they were notified that the set back at rear was not sufficient and would require alteration. The lot is fairly small and the home on the lot is 1201 sq. ft. They did an amendment to the plan upon discovering that the setback was insufficient. In so doing they shortened up garage by 3 feet and that plan was approved. Engineering was contacted to inform him of changes. His comments were that it was not necessary to make new plans, simply make the measurement adjustment of the garage as per new plans. They then completed foundation work and framed home and in the process of framing the contractor said that there was a truss missing and they needed to order another one. The contractor had used original set of plans instead of the new ones. [REDACTED] noted that the house is actually further away from street than the house next door.

██████████ advised that the contractor has taken responsibility for the mistake and can be contacted if needed.

Essentially what ██████████ is asking for a leniency for the allowance of front setback on the home so that they can complete it. Work has been halted until a decision has been made.

Town Development Officer: Debi Breuer

The Development Officer stated that when this happened ██████████ came to the Town office and they went and looked at the property and noted that the house next door does protrude further into set back than the ██████████ home. The Town's position is that it has no problem with what has transpired. It does not ruin the aesthetics of the street because it is not protruding out further than the other homes on the street. You can't tell the difference. It looks better now than if it was actually within the front yard setback.

Question:

- Q: Your first drawing showed that there was not enough room in the rear setback of home.
- A: Yes, the house was too far back so we moved house ahead.
- Q: Was the garage built 3 feet bigger? What was original size of garage?
- A: The original size of the garage was 26' x 21' and in the second set of plans it was 23' x 21'.
- Q: The property beside house is vacant...what does circle mean on plan?
- A. The circle (Paradise Circle) is actually part of the whole street and it runs on a continuous basis including the property in question.

For the Record the Board Chair Looked at the Town map to identify the location and layout of the street.

Q. How far is that SE corner protruding from that line??

A. It doesn't. It is behind it.

Q. How much of the front of the garage do you see?

A. The face of the garage.

Q. The NE corner?

A. It would be in line with the house next to it.

Question for the Development Officer: Is the subject property further back from the house next door to it?

A. Because due to the old zoning by law. Now in R5 zone the setbacks are different from the old zoning bylaw.

Q. What was set back prior to new bylaw?

A. I would have to look.

Final comments:

[REDACTED]: The issue is fairly straightforward we caught our error and would like to rectify it without dismantling the home. Given the location of the home we are not going to cause any damage to the integrity of the development. [REDACTED] indicated he has no issues as well.

The Appellant left at 7:40 PM.

The Town Representative left at 7:40 PM.

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

- 1) The subject lands are legally described as Lot 14, Block 1, Plan 101893899 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 541-10.
- 3) The development permit was denied because the attached garage encroached into the required 6 meter front 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 that they were prepared to grant this application. There is no appearance that the building protrudes towards the street; in fact the building is more than a meter further back from the street than the next home to the East.

In this case the variance requested is a minor amount and the Board is therefore willing to allow a relaxation in this case as well as to others who would have similar circumstances in their appeal.

Therefore the application does clear this bar.

Intent: The requested relaxation is a very small amount and the Town clearly does not oppose the request in this case. The property is a “pie shaped” lot on the curve of the street and clearly does not look “out of place”. The Board does not see this relaxation as a material amount and are prepared to approve this relaxation.

Therefore the application does clear this bar.

Injurious affection:

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

The [REDACTED] application therefore clears this bar.

**Appeal #04-12
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 July 17, 2012 at the Town of White City Municipal Office.

BILL WOOD: Moved/Seconded:DENNIS GOULD: That Appeal #04-12 made by [REDACTED] [REDACTED] for a relaxation of the Zoning Bylaw 541-10, to permit an attached garage to encroach into required 6 meter front yard setback be granted, for the following reasons:

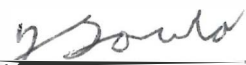
- 1) The relaxation does not contravene the Town’s Basic Planning Statement and intent of the Zoning Bylaw.
- 2) The relaxation does not encroach upon or injuriously affect neighbouring properties.
- 3) The requested relaxation is not a special privilege as others have been granted a similar relaxation.

Carried.

Adjournment:

DENNIS GOULD: Moved/Seconded: GLENN WEIR: That the hearing adjourn at 7:45 PM.

Carried



Dennis Gould, Board Chair