

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

**May 18, 2016**

Minutes of the Tuesday, May 18, 2016 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #01-16 [REDACTED], Lot 42, Block 5, Plan 110903813, 22 Jade Place.

**Present:** Chairman: Dennis Gould  
Board Members: Bill Wood, Glenn Weir, Dale Strudwick, Cory Schill  
  
Development Officer: Debi Breuer  
  
Secretary: Bonnie Stanley

**Appellants:** [REDACTED]

**Introductions:**

Chairman Dennis Gould stated that the board had come to order at 7:00 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 #01-16:**

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 May 11, 2106.
- Development Officer's Report.
- The Town of White City Development Permit Form "A".
- The Town of White City Development Permit – Notice of Decision Form "B".
- Professional Building Inspections Inc. Roof Layout.
- Site Plan and google map.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated April 18, 2016.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated April 18, 2016.
- Notice of the appeal sent to 20 adjacent property owners.
- A copy of Bylaw 581-14.
- A copy of Part XI, Division1, 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 twenty (20) 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. As stated in his letter there is a number of issues that he has by abiding by zoning bylaw. Mainly if did abide by the zoning bylaw the location of a garage would not be aesthetically pleasing in backyard. Basically the proposed building fits yard better and the design they have for yard. The natural gas line is also an issue. SaskEnergy would require him to move the gas line if he was to build according to the zoning bylaw. They are possibly putting in a pool in the future. The garage would incorporate in design. Half of the garage would be used as an open patio for entertaining. Also the pool would interfere with west side of setbacks if adhered to bylaw. The Appellant has spoken to one neighbor to east, Mr. Paul Boesch, and he doesn't have any issues with it at all.
2. The type of building is pretty much solidified as to what they're going to do. At this time he was unsure as to size, it may be bigger may be smaller than proposed. He hasn't done the engineers drawings as yet due to cost, and wanted approval of relaxation. He would use the proper codes to build garage. It will not become a storage shed or an eye sore. He intends to build the garage to the same specifications as the house. It would look exactly as the house ie., matching stucco, shingle work, etc. A nice professionally built building.

**Town Development Officer: Debi Breuer**

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

**Question:**

Q: You're looking for 11 feet of relaxation?

A: Yes.

Q: I'm confused about the covered patio on the garage?

A: The patio will have stucco columns. We haven't gone to the designer as yet to get the drawings done.

Q: How wide would the walls be on the enclosed garage?

A: The garage would be 22' x 32' and the patio is 10' x 32'.

Q: Where about is the gas line located?

A: Straight back on the west side of the house.

Q: What was the cost of moving the gas line?

A: A rough estimate between \$2,000 and \$2,500. It all depends on how far I have to push it over. I believe the cost is \$90 per/meter.

**Final comments:**

The Appellant had nothing further to add.

The Town Development Officer had no further comments.

The Appellant left at 7:15 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 42, Block 5, Plan 110903813 in the Town of White City.
- 2) The subject lands are zoned R-3 as set out in the Town of White City Zoning Bylaw 581-14.
- 3) The development permit was denied because the proposed detached garage encroached into the required 4.8 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 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 positioning of the accessory building is the Appellant’s preferred location. There are other alternatives to its positioning, but that would involve moving a natural gas line and or infringing on a garden plot at the rear of the lot or a play structure.
- 2. The side yard setback requirement for Zone R3 is 4.8 Meters. The relaxation requested is 3.58 meters, approximately 11 feet, or 75%, and during discussion the Board members considered this amount of relaxation to be excessive in this case or other cases involving similar circumstances.

Special Privilege:

- The Board considers a side yard relaxation request of 3.58 M, or about 11 feet, 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 #01-16  
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 May 18, 2016 at the Town of White City Municipal Office.

**GLENN WEIR: Moved/Seconded: DENNIS GOULD:** That Appeal #01-16 made by [REDACTED] for a relaxation of the Zoning Bylaw 581-14, to permit a detached garage to encroach into required 4.8 meter side yard setback be denied, for the following reasons:

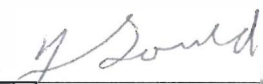
- 1) The relaxation does contravene the Town's Basic Planning Statement and intent of the Zoning Bylaw.
- 3) The requested relaxation is a special privilege and others have not been granted a similar relaxation.

**Carried**

**Adjournment:**

**BILL WOOD: Moved/Seconded: DENNIS GOULD:** That the hearing adjourn at 7:30 PM.

**Carried**

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

DETERMINATION OF AN APPEAL UNDER  
Section 226 of *The Planning and Development Act, 2007* and  
Section 17 of *The Municipal Board Act*

**Appeal Number:** PAC 2016-0018  
**Date and Location:** October 27, 2016 – Regina, SK

██████████

Appellant

- and -

Town of White City

Respondent

**APPEARED FOR:**

The Appellant: ██████████

The Respondent: Mark Mulatz, Solicitor, Gerrand Rath Johnson  
Debi Breuer, Development Officer

**HEARD BEFORE:** Lorna Cottenden, Panel Chair  
Lee Fuller, Member  
Don Molesky, Member

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**INTRODUCTION:**

[1] The property under appeal is:

Civic Address	Legal Description	Zoning District
22 Jade Place	Lot 42, Block 5, Plan 110903813	R-3

[2] On April 11, 2016, ██████ applied to the Town of White City (Town) for a relaxation of the zoning bylaw to construct a garage.

[3] The Town refused the application because it contravened section 5.3.4 of the Town’s Zoning Bylaw 54-14 (Bylaw), which requires a minimum 4.8 metre side yard in the R-3 Residential District Zone.

[4] Mr. ██████ appealed the Town’s decision to the Development Appeals Board (Board). The Board dismissed the appeal because Mr. ██████’s appeal did not meet the criteria in clause 221(d) of *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [the Act]. The Board ruled that granting the requested relaxation of 3.58 metres from the required minimum of 4.8 metres would be a special privilege and would be excessive in this case or other cases involving similar circumstances. The location for the garage is Mr. ██████’s preferred location; there are other alternatives to its positioning.

[5] Mr. ██████ asks the Committee to change the Board’s decision.

**ISSUE:**

[6] Did the Board make a mistake when it dismissed the appeal?

**DECISION:**

[7] The Committee finds the Board did not make a mistake when it dismissed the appeal; however, the Board did not follow the proper procedure for special privilege or intent of the Bylaw. For those reasons, the Committee overturns the decision of the Board and will do what the Board should have done.

**PRELIMINARY MATTERS:**

[8] The parties verified the Board’s record and agreed the issue is as stated in paragraph [6].

[9] The Committee, through the director, asked Mr. ██████ for a detailed site plan including measurements. The Board record was incomplete in this regard. This was provided.



**POSITIONS OF THE PARTIES:**

[10] Mr. [REDACTED]:

- a) The Board did not provide a written explanation of the Bylaw's intent.
- b) The Board did not clarify the size and dimensions of the lot.
- c) The Board did not provide previous decisions regarding special privilege.
- d) Neighbours expressed no concerns.
- e) He wants the 3.58 metre variance regardless of the size of the garage.

[11] Town:

- a) There are other alternatives to the placement of the garage but some alternatives may involve moving the gas line.
- b) The side yard setback is 4.8 metres and variance requested is 3.58 metres. The requested variance is excessive in this case or other similar cases.
- c) To allow the variance would be a special privilege.
- d) The amount of the variance is excessive and would defeat the intent of the Bylaw.
- e) There is no injury to neighbouring properties.

**ANALYSIS:****Requirements under section 221 of the Act**

[12] Under the Act, the Board "is bound by any official community plan ... the uses of land... [and] ... provincial land use policies ..." [s. 221(a)(b)(c)].

[13] The Board's decision must also be in keeping with subsections 221(d)(i-iii) of the Act. When making its decision, an appeal body must consider:

- a) special privilege;
- b) intent of the Bylaw; and
- c) impact on neighbouring properties.

[14] In order for an appeal to succeed, an appeal body's decision must not:

- a) give an appellant a special privilege;
- b) defeat the intent of the Bylaw; or
- c) negatively impact neighbouring properties.

- [15] The granting of a variance request by a board or the Committee is not the same as setting a binding precedent. The Board and Committee must decide each appeal independently, based on its own merits.

**Special Privilege [s. 221(d)(i)]**

- [16] Would allowing the appeal result in a special privilege for Mr. [REDACTED]?

- [17] The legal test for whether or not granting a variance is a special privilege is:

Would [the Board or the Committee] grant this same privilege to another property owner subject to the same Bylaw restrictions where the same need and conditions existed (*St. Andrew's Presbyterian Church v Saskatoon (City)* (1987), 63 Sask R 140 (CanLII 4527) (Sask CA) at para 13).

- [18] Mr. [REDACTED] expressed the need to position the garage such that it would minimize his cost and inconvenience.
- [19] The Board heard that Mr. [REDACTED] was reluctant to absorb extra costs and the imposition of moving the garden if an alternate location was selected for the garage. He felt that since the gas line was located before he took possession of the property, he does not feel that he should have to absorb the cost of relocating the line. In addition, the deck would have to be reconstructed to allow better access to the garage at the Board's alternative garage location. The deck was already there and Mr. [REDACTED] does not want to rebuild it.
- [20] Mr. [REDACTED] submitted Committee decision PAC 2015-0032 et al to advance his argument for a relaxation of the Bylaw. In that decision, the property owner received verbal approval for the proposed garage and had already poured the cement slab before the appeal was denied. The Committee determined the Appellant had no alternative location to place the garage and allowed the appeal.
- [21] Mr. [REDACTED] submitted that the Board did not provide previous decisions regarding special privilege to show consistency in its decisions. The Town provided a decision rendered on May 18, 2016, by the Board, to respond to any suggestion or claim that the Town had treated Mr. [REDACTED] in a different way than any other applicant.

- [22] The subject lot has a frontage on Jade Place of 26.12 metres and a minimum depth of 67.181 metres. The house is 4.98 metres from the west lot boundary and 6.98 metres from the east boundary. A proposed garage could be situated on the east or west sides of the lot, behind the house. In either location, there would be adequate side yard room to access the garage. If the garage is situated on the east side, there would be no need to move the gas line. Mr. [REDACTED] has other choices for location that do not require relaxation of the side yard requirement. The Committee finds allowing the requested variance would grant Mr. [REDACTED] a special privilege.

**Intent [s. 221(d)(ii)]**

- [23] Would allowing the requested variance defeat the intent of the Bylaw?

- [24] The stated intent of the Bylaw is very vague. Section 1.2 of the Bylaw states:

This Bylaw is to provide a clear and efficient system of land use regulation to implement the Official Community Plan by achieving a high quality of life, creating a Town Centre as the "Heart of the Community", providing employment and economic diversity, managing growth for the long term, engaging and communicating with the community, building strong neighborhoods, fulfilling social responsibilities, considering diverse community needs, promoting environmental stewardship, and building a beautiful community.

- [25] The intent for the R3 district where the subject property is located is "to provide for smaller lot single detached housing with attached garages in a suburban setting and serves as a transition to higher density single detached development" (s.5.3, Bylaw).

- [26] The Board's decision said nothing about the intent of the Bylaw. The Board considered the relaxation request to be excessive and would defeat the intent of the Bylaw. The wording of the Bylaw is so general that it is difficult to compare the requested variance to the intent. Because of this, it is not possible to state that the variance would defeat the intent of the Bylaw.

- [27] The Committee finds allowing the requested variance would not defeat the intent of the Bylaw.

**Injury [s. 221(d)(iii)]**

- [28] Would allowing the appeal negatively impact the use and enjoyment of neighbouring properties?

- [29] Under subsection 222(3) of the *Act*, the Board issued letters to 20 neighbouring property owners within 75 metres of Mr. ██████'s property. The Board's decision indicates no objections were received.
- [30] Mr. ██████ spoke to his neighbours to the west, Mr. and Mrs. Boesch, and they have no concerns with the location of the proposed garage.
- [31] The Committee finds allowing the appeal would not negatively impact the use and enjoyment of neighbouring properties.

**CONCLUSION:**

- [32] The Committee finds allowing the appeal:
  - a) would give a special privilege to Mr. ██████;
  - b) would not defeat the intent of the Bylaw; and
  - c) would not negatively impact neighbouring properties.
- [33] The Committee denies the appeal.

Dated at REGINA, Saskatchewan this 15<sup>th</sup> day of December, 2016.

Saskatchewan Municipal Board – Planning Appeals Committee

Per:   
Lorna Cottenden, Panel Chair

Per:   
Lise Gareau, Director