

Development Appeals Board
Appeal Decision

**DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD REGARDING
APPEAL NO. 03-18 PERTAINING TO 1 LOTT ROAD, WHITE CITY, SK
MAY 28, 2018**

Panel: Dennis Gould, Chair
Bill Wood, Board Member
Cory Schill, Board Member
Dale Strudwick, Board Member

Secretary: Voula Siourounis

Appellant: [REDACTED], Property Owner

Respondent: Delainee Behrns, Development Officer, Town of White City

Introduction:

- 1) This appeal pertains to a development permit refusal for an accessory building at 1 Lott Road, White City, SK. The development permit application was refused by the Town of White City as the Development Officer does not have the authority to grant a variance to the Zoning Bylaw. The Appellant is requesting the Development Appeals Board overturn the Development Officer's refusal and direct the issuance of a development permit.
- 2) The Appellant is proposing to build an accessory building near the west side of the back yard, but he wishes to have it protrude into the side yard set-back 1.8 meters. The required set-back in this zone is 4.8 meters. The requested relaxation amounts to a 37% relaxation.
- 3) Per subsection 221(d) of *The Planning and Development Act, 2007*, the Board can allow the appeal, allow the appeal with conditions, vary or refuse the appeal.
- 4) The Board cannot make a decision that:
 - a. would create a special privilege;
 - b. is injurious to neighbouring properties; and
 - c. defeats the intent and purpose of the Zoning Bylaw.

Appellant's Position:

- 5) The proposed location is better situated for easy access. The rear of the lot is too far away.
- 6) The proposed location would be financially beneficial for the appellant. Power and gas lines would not have to be extended as far from existing lines. Landscaping costs would be lower as less mature trees would have to be removed for the structure.

- 7) Other homes in the neighbourhood have the garage in a similar location and the proposed location would fit in with the other homes aesthetically. The appellant provided photos of some neighbouring properties where the sideyard setbacks may have been relaxed.
- 8) Property in question is a corner lot with a natural gas easement and Town pathway beside the property. Other corner lots have direct access to the road unlike his property. Therefore the proposed garage must be on the side or rear of the lot.
- 9) The Appellant added that there are power poles at the back of his lane. These do not impede construction at the back of the lot but would make it difficult for vehicles to enter and exit the garage.
- 10) The Appellant originally applied for a permit for a smaller garage. He stated if the current proposed location was too much of a variance he would be willing to build the smaller garage 3.75m from the property line to compromise.
- 11) The Appellant referenced four records from the DAB where corner lot properties on bays were granted relaxations.

Respondent's Position:

- 12) Provided minutes from two appeals, one March 28, 2018 and March 13, 2017, for similar variance requests in the same zoning area. One request was for 58% and the other for 24%. Both requests were considered excessive and both requests were denied.

Questions from the Development Appeals Board:

Approximately how far will the garage be from the rear of the lot?

- 13) The Appellant answered 27.21 meters.

Are you aware if the buildings at 5 Lott Road and 7 Lott Road have a relaxation of the setbacks

- 14) The Respondent replied that there is no record of these properties in the DAB records. These buildings could have been in compliance when the Development Officer was allowed to use discretion where there was a variance of 10% or less.

Does 3 Lott Road have a detached garage?

- 15) Appellant stated 3 Lott Road has no out building. He spoke with the resident at 3 Lott Road and the owner had no issues with the Appellant building a garage in the proposed location.

Is there anything restricting you from moving the garage further away from the home where the sideyard set back would then be 3 meters?

- 16) Appellant stated that cost, ease of building, and drainage were the reasons for the proposed location.

Does water currently drain through your yard?

17) Appellant stated yes. A channel would need to be installed to keep the yard draining properly.

Issues:

Would issuing a development permit grant the Appellant a special privilege in comparison to their neighbours?

- 18) The Appellant's requested relaxation is excessive as it constitutes a 37% relaxation. At the end of the hearing, the Appellant submitted a revised plot plan where the garage would only encroach 1.05M into the side yard setback. However, this 1.05M encroachment constitutes a relaxation of 21% and the Board considers 21% to be excessive as well.
- 19) The proposed site for the accessory building is the Appellants "preferred location". At the location proposed the cost of running services (electricity, gas & telephone) to the building would be less than if it was positioned further back from the house. Also, moving the building further back would require cutting down a tree or some trees. The Board believes the Appellant has other alternatives for positioning the building to comply with the setback requirements.
- 20) There have been two relaxations considered in the past for similar development permit applications in the same zoning district. These requests were 58% and 24%. Both side yard relaxations were denied as they were considered excessive.
- 21) Allowing this appeal would set the Appellant apart from similar property owners who have been denied in the past for similar proposed developments.
- 22) Therefore, the proposed development would constitute a special privilege.

Would issuing a development permit defeat the intent of the Zoning Bylaw?

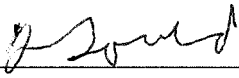
- 23) Because the distance from the lot line to the proposed building is greatly reduced, it would severely restrict access for building maintenance and emergency services.
- 24) The Board considers the requested relaxation excessively outside of the standard and intent set by the Zoning Bylaw.
- 25) Therefore, the proposed development would defeat the intent of the zoning bylaw.

Would issuing a development permit cause injury to neighbouring properties?

- 26) The Town of White City notified neighbouring property owners regarding the proposed relaxation and received no objections, and there were no objections presented at this hearing.
- 27) Therefore, the proposed development would not injuriously effect neighbouring property owners.

Conclusion:

- 28) The Board finds allowing the appeal:
- a. would give a special privilege;
 - b. would defeat the intent of the Bylaw; and
 - c. would not negatively impact neighbouring properties.
- 29) The Board denies the appeal.



Dennis Gould, Board Chair