



Development Appeals Board
Appeal Hearing

**DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD REGARDING
APPEAL NO. 01-23 PERTAINING TO 20 GREGORY AVENUE, WHITE CITY, SK**

Panel: Dennis Gould, Chair
Bill Wood, Board Member
Cory Schill, Board Member
Larry Grant, Board Member
Glenn Weir, Board Member
Ryan Fletcher, Board Member
Christine Enmark, Board Member

Secretary: Cassandra Virgin

Appellant: [REDACTED] Property Owner

Respondent: Chace Kozack, Development Officer, Town of White City

Introduction:

- 1) This appeal pertains to a development permit refusal for three accessory buildings at 20 Gregory Avenue. The development permit application was refused by the Development Officer as he does not have the authority to grant minor variances as per section 2.21 of *The Zoning Bylaw* and does not have the ability to approve a permit that does not conform with *The Zoning Bylaw*. The Appellant is appealing to the Development Appeals Board to overturn the Development Officer's refusal and direct the issuance of a development permit.
- 2) Specifically, the Appellant is requesting a variance over the 5% permitted maximum area allowed for accessory buildings.
- 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) There is only one violation of *The Zoning Bylaw* restrictions in this case. The Board cannot make a decision for this request that:
 - a. would create a special privilege;
 - b. is injurious to neighbouring properties; or
 - c. defeats the intent and purpose of *The Zoning Bylaw*.

- 5) Notice of this appeal has been provided to property owners within a 75m radius of the subject property to allow them the opportunity to assess whether they will be injuriously affected by the proposed zoning variance. Three email submissions were received. One in support and two against.

Appellant's Position:

- 6) The Appellant seeks a variance to exceed the 5% maximum area allowance for accessory buildings with the intention to erect three additional accessory structures.
- 7) The proposed structures consist of a shed for patio furniture storage, a garden shed to house a riding lawn mower, rotor tiller, and similar equipment, and a greenhouse.
- 8) Each of these sheds will be color-coordinated to match with the principal house.
- 9) The sheds will be located in the backyard. Pending approval, the Appellant intends to erect a fence the following year to ensure the sheds are not visible from the road.
- 10) The Appellant noted, the installation of the sheds will further enhance the property's appearance. Previous efforts into elevating the property's visual appeal involved removing hazardous dead trees, with future plans to strategically replant trees for additional screening from road traffic.
- 11) The Appellant does not believe the sheds will have an adverse impact on neighbouring property values.

Respondent's Position:

- 12) The Respondent does not have the authority to approve any minor variance or approve a permit that does not comply with *The Zoning Bylaw*.
- 13) The Respondent provided clarification regarding his Planning Report where he referred to analogous appeals within the zoning district. Specifically, he noted an error in the second reference, stating that Appeal No. 02-20 should be identified as Appeal No. 01-20.
- 14) The Respondent had no further information to share outside of the Planning Report.

Reasons and Conclusions:

- 15) The Appellant's property is 44431.2 square feet, and the Town's bylaw restricts accessory buildings to 5% of the lot size, that would be 2222 square feet available. The existing shop on the property is 2160 square feet in size, leaving only 62 square feet for additional accessory buildings. The Appellant indicated that they need more building space to store tools/equipment and lawn/patio furniture. Also required is a new green house to start plants.
- 16) The proposed development is for a greenhouse and two storage sheds with a total size of 768 square feet. These three structures bring the total area of accessory buildings to 2928 square feet, which is 706 square feet over the 5% allowed by the Town's Zoning Bylaw.
- 17) This excess amounts to 32% over the allowed area.

- 18) In this case there have been submissions from three White City residents. Two of the submissions have stated their strong opposition to the proposed development. The third submission supported the development but expressed frustration with the Town bylaws claiming them to be overreaching.

Issues:

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

- 19) During discussion the board unanimously agreed that they were not prepared to grant the 32% requested relaxation, in this case nor to others in Zone R2 who would have similar circumstances.
- 20) Therefore, the proposed development would constitute a special privilege.

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

- 21) In its documentation the Town provided the intent of *The Zoning Bylaw*. The Board considers the requested relaxation of 32% to be excessive for Zoning District 2 and, as such, would defeat the intent of the Bylaw.
- 22) Therefore, the proposed development would defeat the intent of *The Zoning Bylaw*.

Would issuing a development permit cause injury to neighbouring properties?

- 23) Two of the Appellant's nearby neighbours submitted their opinions on the proposed development. One neighbour was against the development and the other supported the development and expressed frustration with the Town's bylaws. The third of the submissions was another White City resident who cited support for the Town's *Zoning Bylaw*, and indicated they were against the proposed development.
- 24) Therefore, the proposed development would injuriously affect the neighbouring properties.

Conclusion:

The board finds that allowing the appeal:

- 25) Would give Special Privilege.
- 26) Would defeat the intent of the Zoning Bylaw.
- 27) Would negatively impact neighbouring properties.

Motion:

Enmark/Wood: THAT Appeal 01-23 requesting the development of three accessory buildings be denied.

CARRIED UNANIMOUSLY.

28) For these reasons, the appeal is denied. The appellant shall have 20 days from issuance of this decision to appeal to the Saskatchewan Municipal Board, if desired.



Dennis Gould, Board Chair

Citation: [REDACTED] v *White City (Town)*, 2024 SKMB 15

Date: 2024-03-21

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 2023-0012
Date of Hearing: February 12, 2024
Location of Hearing: Regina, SK

BETWEEN:

[REDACTED]

Appellant

- and -

Town of White City
(as represented by Robertson Stromberg LLP)

Respondent

WRITTEN SUBMISSIONS BY: (no one appeared for either party)

The Appellant: [REDACTED], Property Owner

The Respondent: Candice Grant, Legal Counsel

HEARD BEFORE: John Eberl, Panel Chair
Chad Boyko, Member

INTRODUCTION:

- [1] The property under appeal (Property) is:

DAB Appeal Number	Civic Address	Legal Description	Zoning District
01-23	20 Gregory Avenue	Lot 5A, Block 4, Plan 83R28543	R2 – Residential District

- [2] [REDACTED] (Owner) is appealing a decision of the Town of White City's (Town) Development Appeals Board (Board) with respect to a request for a variance from Town Zoning Bylaw 581-14 (Bylaw). Subsection 5.2.4(9) of the Bylaw states that in Residential 2 District - R2, accessory buildings are limited to a maximum of 5% of the total lot area. This appeal pertains to a development permit refusal for three proposed accessory buildings to be situated on the Property.
- [3] The Owner appealed the Town's decision to the Board, requesting it overturn the Development Officer's refusal and direct the issuance of a development permit. Specifically, the Owner was requesting a variance to allow for over 5% of the Property to be covered by accessory buildings.
- [4] The Board dismissed the appeal on the basis that the proposed accessory buildings exceeded a maximum of 5% of the total lot area - in contravention of the Bylaw.
- [5] The Owner asks the Planning Appeals Committee (Committee) to change the Board's decision.

ISSUE:

- [6] Did the Board err when it found the proposed variance did not meet the requirements for relief found in subsection 221(d) of *The Planning and Development Act, 2007, SS 2007, c P-13.2 [Act]*?

DECISION:

- [7] The Committee finds the Board did not err when it found the proposed variance did not meet the *Act's* requirements.

PRELIMINARY MATTER:**Standard of Review**

- [8] The Court of Appeal (Court) considered the standard of review to be applied by this Committee when reviewing decisions in paragraphs [91] to [94] and [98] of *E.Z. Automotive Ltd. v Regina (City)*, 2021 SKCA 109, [2022] 4 WWR 55. The Court found that

in accordance with the appellate structure in the *Act* and the Committee's purpose, the Committee should review questions of law on a standard of correctness. For similar reasons, when reviewing questions of fact or questions of mixed fact and law where there is no extricable question of law, the appropriate standard of review is reasonableness.

Issue: Did the Board err when it found the proposed variance did not meet the requirements for relief found in subsection 221(d) of the *Act*?

ANALYSIS:

[9] The *Act* requires the Board to consider whether a variance request complies with subsections 221(d)(i), (ii) and (iii) of the *Act*. That is, the Board may only grant a variance if, in its opinion, doing so would not:

- i. **grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;**
- ii. **amount to a relaxation so as to defeat the intent of the zoning bylaw; or**
- iii. **injuriously affect the neighbouring properties.**

[10] The granting of a variance request by a board or the Committee is not the same as setting a binding precedent. Each appeal must be determined independently, based on its own merits.

Special Privilege

[11] The legal test for whether granting a variance is a special privilege can be found in *St. Andrew's Presbyterian Church v Saskatoon (City)* (1987), 63 Sask R 140 (Sask CA) at paragraph [13]:

... 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.

[12] At paragraph [108] in the more recent decision of *Big River (Rural Municipality) v Pettigrew*, 2021 SKCA 30, 13 MPLR (6th) 175, the Court acknowledged that:

St. Andrew's and *Dolman* have been widely and consistently cited in favour of a generous interpretation of a development appeals board's power to grant a variance under s. 221(d). We affirm those decisions....

[13] In making its determination in this instance, the Board concluded that the requested variance would grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district. A Planning Report prepared by the Town and submitted to the Board in relation to the Owner's appeal confirmed that

two other appeals of a similar nature had previously been denied (Committee Hearing Book (HB) p. 24). Based on the foregoing, the Board determined that allowing this appeal would grant the applicant a special privilege inconsistent with the restrictions found in the Bylaw.

- [14] In her written submission to us, the Owner contends that the proposed sheds to be situated on the Property are needed to store patio furniture, garden tools and small machinery (HB p. 232).
- [15] The Town argues in response that a review of the Owner's Notice of Appeal dated September 21, 2023 and written submission dated January 4, 2024 discloses no ground of appeal. The Owner simply indicates her wish that the decision was different. The Owner does not point to any error made by the Board.
- [16] We applied the facts of this case to the legal test and agree with the Board that allowing the appeal would result in a special privilege for the Owner.

Intent

- [17] The Board concluded that granting the appeal would amount to a relaxation that would defeat the intent of the Bylaw. The Planning Report prepared by the Town confirmed that the intent of the maximum lot coverage threshold was to ensure that accessory buildings are secondary, subordinate and lesser in extent to the principle permitted use found on the Property. As a result, in the event the Owner's appeal was granted, the accessory buildings would be greater in area than the dwelling (HB p. 24). The site plan filed in support of the initial application (HB p. 13) demonstrates the extensive existing lot coverage, based on the large shop already built on the property.
- [18] We concur with the Board's analysis that the significant nature of the Bylaw contravention defeats its intent.
- [19] We find allowing the appeal would defeat the intent of the Bylaw.

Negative Impact

- [20] Subsection 221(d)(iii) of the *Act* provides that the Board should not allow a variance if doing so would "injuriously affect the neighbouring properties."
- [21] The Board concluded that the requested variances would injuriously affect neighbouring properties. The Board stated that two of the Owner's nearby neighbours submitted their opinions on the proposed development. One neighbour was against the development and the other supported the development and expressed frustration with the Town's bylaws.

A third submission from another White City resident, who cited support for the Town's Bylaw, indicated they were against the proposed development.

[22] We find the Board's analysis relating to this third bar to entitlement lacking and unpersuasive. This determination has no influence on our adjudication of this appeal, however, as once the request for variance fails to satisfy one of the bars (in this appeal neither of the tests with respect to the first two bars were met) the appeal must fail. Accordingly, we are not required to determine whether allowing the appeal would negatively impact neighbouring properties.

CONCLUSION:

[23] The Committee denies the appeal.

Per: 
John Eberl, Panel Chair

Per: 
Jessica Sentes, Director