

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

March 13, 2017

Minutes of the Tuesday, March 13, 2017 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #02-17 [REDACTED], Lot 4, Block 37, Plan 102095692, 8 Princeton Drive.

Present: Chairman: Dennis Gould
Board Members: 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 #02-17:**

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.
- 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".
- Site Plan.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated February 15, 2017.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated February 15, 2017.
- Notice of the appeal sent to 8 adjacent property owners.
- A copy of Bylaw 581-14.
- 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 eight (8) 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.

The Appellant stated:

1. The house was designed by Kelly Nadler and I think we're 3 feet too long. It was designed 5 months ago before zoning bylaw changed.
2. I guess that's pretty much. It's pretty straight forward.

Town Development Officer: Debi Breuer

The Development Officer stated that she had nothing further to add to her report. It's unfortunate that the 10% variance at the time of you designing this house it was in and then we amended the bylaw and it was taken out. I have to abide by bylaw and I had to deny the permit.

Question:

Q: So you designed the house about 5 months ago?

A: Yes we've been working with him for about 5 months. He's designed a lot of houses out here and he knew about it.

Q: Can I assume then that when you designed the house you knew it would not fit within the setbacks?

A: Well at first he was quite a bit over and then we redesigned the whole house again. He said that he usually got the 10% before. I just approved the drawing and I didn't know the setback or anything. I left that up to him.

Q: Who told you about the 10%?

A: The designer, Kelly Nadler.

Q: Do you remember just what he told you.

A: I guess I made a mistake on their end and they were already 8 feet over and that it would never get approved so he redesigned the whole house and that took another month or so. Then he designed it for the 10% minor variance because I guess he's got it approved a couple of times.

Comment from Debi: No that's not true.

That's just what I thought. I'm just a client.

Q: You were saying something Debi?

A: Kelly has never come in with a drawing that was into the 10% variance. His have all been in the proper setbacks. And he didn't phone and ask me about the 10% so I don't even know. Probably just from looking at the bylaw thinking that he would be able to use the 10%. He never contacted me at all about the 10%.

Q. Approximately how wide is that part of the back of the house sitting in relation to the setback?

A. 16 feet and then the rest is a covered deck.

Final comments:

The Appellant had nothing further to add.

The Town Development Officer had no further comments.

The Appellant left at 7:10 PM.

The Town Representative left at 7:45 PM.

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

- 1) The subject lands are legally described as Lot 4, Block 37, Plan 102095692 in the Town of White City.
- 2) The subject lands are zoned R-4 as set out in the Town of White City Zoning Bylaw 581-14.
- 3) The development permit was denied because the proposed single detached dwelling encroached into the required 12 meter 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 stated that the original design was 8 feet too long to fit within the Town's setback requirements, so they had to revise the plan. It is still 4 feet too long and he indicated that Kelly, from KRN Design, told him the Town would approve this as it is only a 10% encroachment and they can approve that. The Town representative clarified that Kelly from KRN Design has never, till now, provided her with a design that didn't fit within the Town setback requirements. She also said Kelly had not talked to her about any 10% relaxation. She said there have been Developers who had advised their clients that she (the Development Officer) could allow up to a 10% relaxation into the setback requirements. That authority has since been reversed due to those expectations being abused by Developers or property owners.
2. The Chairman clarified that what the Development Officer has stated is true, the intent of giving her that authority was for situations where the 10% relaxation may be allowed to accommodate cases of odd shaped lots and small corners of a building would not fit the lot. Too many cases arose where people wanted 10% across the board and this was being abused.
3. The appellant applied for a permit knowing that a 16-foot-wide portion of the building would protrude into the rear yard setback by 1.2 M, or 10%. This is not a case of difficulty placing a building on an irregular shaped lot, this lot is rectangular.

The Board feels the appellant has some alternatives to adjust the house/garage design to make it fit within the Town's setback requirements. Or there may be a larger lot available on which the current design could fit.

Special Privilege

During discussion, the Board members were unanimous that the 10% rear yard relaxation requested, if allowed, would constitute a special privilege that we are not prepared to grant to others who might have similar circumstances.

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

Intent

The Board believes that a 10% relaxation of the rear yard setback in this case, would defeat the intent of the bylaw.

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

Injurious affection

There was no injurious affection noted in this case.

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

**Appeal #02-17
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 March 13, 2017 at the Town of White City Municipal Office.

Dale Struckwick: Moved/Seconded: Glenn Weir: That Appeal #02-17 made by [REDACTED] for a relaxation of the Zoning Bylaw 581-14, to permit a single detached dwelling to encroach into required 12 meter 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:

Dennis Gould: Moved/Seconded: Cory Schill: That the hearing adjourn at 7:55 PM.

Carried



Dennis Gould, Board Chair