

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

November 15, 2012

Minutes of the Thursday, November 15, 2012 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #06-12, [REDACTED], Lot 26, Block 13, Plan 102049635, 55 Lott Road East.

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

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

Appellants: [REDACTED] ([REDACTED])

Property Owner of 53 Lott Road East: [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 #06-12:**

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.
- Development Officer's Report and Appendix "A".
- Background information from Development Officer regarding proposed building.
- Email from [REDACTED] to Debi Breuer dated October 11, 2012.
- Real Property Report dated October 5, 2012.
- Professional Building Inspections, Inc. Plan Review Checklist and Permit Information Form.
- Development Permit – Form "A".
- Residential Development Permit R12-093
- Exhibit "A" to Bylaw No. 534-09 Agreement dated May 25, 2012.
- Application for Building Permit & Site Plan.
- Notice of the date for the Development Appeals Board hearing mailed to the Appellant dated October 21, 2012.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated October 21, 2012.
- Notice of the appeal sent to 8 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 eight (8) property owners within 75 metres were notified of the appeal application and hearing and that no objections have been received. The property owner directly east of the dwelling called to inquire which side of the dwelling encroached the side yard setback. She had no objections.

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 and any other interested parties who wish to make a presentation. 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. That prior to construction, Focus staked the property. After excavation was done the elevation was checked at that time and it was determined that they were good. They did all checks before pouring the foundation. Emerald Park Homes started the house next to his pretty much at the same time. After the foundation and basement walls were poured they proceeded with the framing. The construction was very quick on the house. The appellant stated that he had let it slip to order new survey. When air conditioner was being installed he noticed that it was very close to the other house. The house was 90% complete when error was caught.
2. The error in this instance falls on Focus. Focus has sent it to Risk Assessment.
3. The appellant also stated that once error was found he notified [REDACTED] and Debi from the town office.

Town Development Officer: Debi Breuer

The Development Officer stated that in last year the town has had some very unique appeals. The majority of home builders only provide surveys once the home is complete. They are going to change things regarding the surveyors certificate. Once foundation is poured they are going to request surveyors

certificate in order to make sure that the dwelling is within the side yard setbacks. This way if there is a problem it can be corrected before actual construction begins on the house.

██████████:

██████████ stated that he needs to put a fence down on both property as he has pets. He feels that it might be a bit tight on the appellant's side and will constrict access for the new owners.

The closest point to the property line is the rear corner of the house. He is concerned that the fence may not look right when viewing the property from the roadway and would this possibly affect his property value.

Question:

Q: To Mr. ██████████: Are you looking for something in this case with respect to compensation.

A: Not sure what he's looking for. He's more concerned about long term view of it. Is it going to affect the value of property. That he needs to put a fence up and on the right property line. He thinks that the future neighbor might be not happy about the fence being so close to their house.

Q: Observation from Wes Memory: He drove down that road lots of time but once we got paperwork he looked at it again. The angle of house matches the curve of road, but you do notice it is closer to the west house i.e. 53 Lott Rd. E. Also there are no windows facing each other.

It was also observed that in any case the fence is normally built right on the property line, so Mr. Cooper shouldn't be concerned with "where to put the fence".

A: Mr. ██████████ seemed to accept the above observations of Wes Memory.

Q: You said that Focus realized it was their error?

- A. When they do a set up they use a total station GPS. It was initial human error in what they put into the total station. They never set up the proper side yard stakes. When they went in to do their checks everything checked out.
- Q. Has the fault clearly been established by focus?
- A. They have sent it to the risk assessment.
- Q. Is the rear property line correct? The property pins.
- A. Yes.
- Q. If the basement had been poured and you had then asked for the surveyors certificate and found the error what would you have done?
- A. I would have stopped construction immediately and then tried to find a solution to the problem.

Final comments:

No final comments from the appellant.

The Appellant left at 7:30 PM.

The Town Representative left at 7:30PM.

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

- 1) The subject lands are legally described as Lot 26, Block 13, Plan 102049635 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 single detached dwelling encroached into the required 2.5 meter side yard setback.

Conclusions and Reasons:

In this case the appeal has resulted from an incorrect “placement of stakes” for the positioning of the home, and this work was performed by Focus Corporation, a Land and Surveyors company. The appellant hired this company to perform this staking to accommodate the digging of the basement and ultimately the placement of the footings and the basement walls. The Board was advised that the error by Focus occurred as a

result of incorrect positioning of the GPS unit used to place the stakes for this project. There apparently is no problem with the “survey stakes” that are in place for the 4 corners of the lot.

The only reason that this appeal is before the Development Appeals Board is because of a “staking” error by Focus Corporation. The Board therefore considers Focus to be responsible for causing this appeal hearing to be conducted but are powerless to enforce cost recovery directly from Focus, but must therefore recommend that the Town of White City hold the appellant responsible for the costs of this unnecessary appeal hearing.

The Town representative has advised the Board that their procedures have already been amended to ensure that this type of situation does not happen again.

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. The Town representative has assured the Board that this type of error will not happen again as the town’s procedures have already been amended to ensure that the positioning of the building is correct before the basement walls are erected. [REDACTED] acted in good faith by using a reputable survey company to perform work which ultimately resulted in one corner of the home being built .94 meters into the required side yard setback. The Board considers this to be a case of “human error” and is prepared to allow the appeal in this case.

Therefore the application does clear this bar.

Intent: In this case there was no intent to contravene the by-law. There is adequate space between the home and the west side yard property line to allow access for maintenance. If more space is required to gain access to the rear yard from the front yard, there is 3.32 meters of space on the East side of the yard.

Therefore the application does clear this bar.

Injurious affection:

██████████, the property owner to the West of the appellant's property made a presentation at this hearing. His primary concern seemed to be the positioning of the fence between the two properties but was assured that irrespective of the positioning of the home on the appellant's property, the fence between the two homes should still be "on the property line". He didn't seem to have any other concerns with respect to the encroachment, and there were no other concerns expressed by any other nearby property owners.

The application therefore clears this bar.

Appeal #06-12 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 November 15, 2012 at the Town of White City Municipal Office.

Glenn Weir: Moved/Seconded: Wes Memory: That Appeal #06-12 made by ██████████ ██████████ for a relaxation of the Zoning Bylaw 541-10, to permit a single detached dwelling to encroach into required 2.5 meter side 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:

Bill Wood: Moved/Seconded: Dennis Gould: That the hearing adjourn at 7:45 PM.

Carried



Dennis Gould, Board Chair