

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

May 14, 2014

Minutes of the Thursday, May 14, 2014 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #01-14 [REDACTED], Lot 7, Block 39, Plan 102095692, 15 Oxford Bay.

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

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 #01-14:**

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 44 page submission along with site plan, dated May 7, 2014.
- Development Officer's Report.
- Application for Building Permit, Refused Development Permit, Development Officer's summary, Site Plan, email from Appellant to the Development Officer dated April 15, 2014
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated April 24, 2014.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated April 24 2014.
- Notice of the appeal sent to 5 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 five (5) 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. First thing as part of record in Debi's report clarification on page 4 requested variance. It's an odd lot, and it's not out of convenience.
2. The appellant referred to Appendix B, the relaxation of 10.5 metre distance between garage and building. Not just based on side yard setback. Lot is .39 acres. The detached garage would have the same exterior finishes as the house. Intended uses – same as yard shed to store seasonal outdoor furniture, yard equipment, well pump and controls, boat storage.

(Page 1 of Appellant Submission)

3. The Appellant reasons for relaxation request were: 1. Unique shape of lot, 2. Utility and Easement constraints, 3. General Neighborhood and Park Aesthetics.

(Page 2 of Appellant's Submission)

4. The Appellant also referred to Appendix C – Park Perspective view with alternative garage placement – Park Perspective from East and Park Perspective

from West. The Appellant feels that the garage would be better located on side yard instead of the back of the lot.

5. The Appellant went to on explain the mitigation undertaken within the proposal. 1. Size; 2. Utility placement; 3. Orientation; 4. Architectural details.
6. The Appellant referred to Bar Clearance for Variance Relief. (Pages 3-4) 1. Special privilege relaxation of 10.5 metre and not the 2.5 side yard setback. Referred to SMB Appeal [REDACTED]. Comments #10, #11, & #12. He has similar arguments with respect to his lot in that it is irregular in shape and the 3 easements which make the lot unique in characteristics.
7. DAB – Perras. That appeal was a matter of convenience. The Appellant is before the Board because of his constraints. Re: 3 easements. Perras had no constraints only 1 easement at back of property. Perras was not a unique lot.
8. On Page 4 of his submission the Appellant spoke to the intent of bylaw.
9. As to Injurious affection. None of the adjacent property owners attended the hearing. The Appellant did speak to his neighbor with respect to the garage and there were no concerns.

Town Development Officer: Debi Breuer

The Development Officer commented that only thing to add is not all lots are normal. Regarding the setbacks, when you end up in bay areas that's when the normal is not there. Since she's been the Development Officer, any problems that have come up have been in bay areas. Unique pie shaped lots. Even though this is an approved subdivision, some lots do have constraints which make them unique.

Question:

Q: With respect to where you are proposing to build the garage is it beside 16 oxford bay?

A: Yes.

Q: You request SaskEnergy. What was it?

A: He advised them that he was planning to build a garage and wanted them to have the line as far as practically possible from property line. They were cooperative with it.

Q: The SaskPower line. Does it go into the corner or your house?

A: Yes, it has to be at the corner.

Q. The request to SaskEnergy, was that done before the house was built?

A. No after the house was built.

Q. Clarification from Board Member Memory – You were discussing 16 Oxford Bay and you keep saying that the garage will be facing their back yard. It looks to be like it's their side yard.

A. It's about the shape of the lot. He has point and adjacent lot has a flat back. [REDACTED] agreed it is the back side yard. He wasn't putting the garage next to the house on 16 Oxford Bay. Yes rear side yard it is beyond their principle building envelope.

Q. The relaxation is not for the side yard because if you have a relaxation on the 10.5 metre rear setback between main building and accessory then your side yard would be 1 metre. Is this correct? What is the amount you are asking for the 10.5

A. 4 to 5 metres.

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- Q. This means the distance between the garage and the main building instead of 10.5 it will be 4 or 5?
- A. Yes.
- Q. Comment from Board Member Wood – He was very impressed with the Appellant’s presentation. That it was well thought out. Regarding 16 Oxford Bay, is that property sold?
- A. Usonia homes have the property.
- Q. In that respect do they physically own it?
- A. They have a deposit on property.
- Q. Did Great Plains Leasehold get notice of the hearing?
- A. Yes
- Q. The 5 parties that were notified did you receive any objections?
- A. I’ve received no responses from any of the adjacent property owners – DAB secretary.

Final comments:

Board Member Memory had a final comment and it was with respect to protecting future property owners.

The Appellant commented with respect to the 10.5 metre rear yard setback relaxation and the unique shape of the lot. That the lot next to him, if the future owners were to build an accessory they would have to be build it on the side that ██████████’s garage would be. Both lots are bound by same constraints.

The Town Development Officer had no further comments.

The Appellant left at 7:45 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 7, Block 39, Plan 102095692 in the Town of White City.
- 2) The subject lands are zoned R-7 as set out in the Town of White City Zoning Bylaw 541-10.
- 3) The development permit was denied because the proposed detached garage encroached into the required 2.5 metre 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 are:

- Special privilege
- Intent
- Injurious affection

The accessory building will be located 5 metres from the rear of the house, therefore requiring a relaxation of the side yard setback from 2.5 metre to 1metre.

During general discussion there were a number of issues discussed that are significant to this case. The Ingenthron’s lot is a larger lot, however, there are numerous constraints that come into play when trying to design and position an accessory building on this particular lot.

- The lot is not rectangular, or anywhere close to rectangular, it is a 5 sided lot.
- Along the West Northwest side of the lot there is a 3 metre Sewer Easement.
- Along the North Northwest side of the lot, there is a 3 metre Utility Easement and outside that is the Trans Gas Right of Way. Near the property line is a walking path that leads to the School.
- On the East Northeast side of the lot, there is a 3 metre Utility Easement, Storm Water Detention area and the walking path that leads to the School.
- The entire Southeast side of the lot is adjacent to the property at 16 Oxford Bay.

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- One other constraint the homeowner is trying to work around is the SaskEnergy Natural Gas line to the home. The Appellant indicated that he had requested that SaskEnergy install the natural gas line as far as possible, to the West Northwest side of the lot. However, the placement of the gas line still remains as a significant constraint when trying to position an accessory building.
- The only other feasible position that the appellant offers as an acceptable position for the accessory building is in the far East Northeast end of the lot. However, this placement for the accessory building would be more obstructive to the view for themselves and the neighbours, and aesthetically would look out of place on this lot.

Special Privilege: During general discussion the Board indicated that due to the numerous constraints involved in this case they were prepared to grant the requested relaxation, and also to others who may have similar circumstances as those in this appeal case.

Therefore the application does clear this bar.

Intent: In the presentation the Town representative provided the intent of the bylaw, but also outlined that the majority of problems that arise in developing lots, are cases involving “odd shaped lots”. In this case there are more issues than with most lots, i.e. the 3 metre Utility Easement on the West Northwest side, the North Northwest side and the East Northeast side of the lot. The Town representative also acknowledged that the SaskEnergy Natural Gas line is another obstacle for the appellant. There does not appear to be a drainage or property maintenance issue in this case. The board is therefore prepared to allow this appeal under these circumstances

Therefore the ██████████'s application does clear this bar.

Injurious affection: There was no “injurious affection” demonstrated or posed during the appeal hearing.

The ██████████'s application therefore clears this bar.

Appeal #01-14
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 14, 2014 at the Town of White City Municipal Office.

Bill Wood: Moved/Seconded: Glenn Weir: That Appeal #01-14 made by [REDACTED] [REDACTED] for a relaxation of the Zoning Bylaw 541-10, to permit a detached garage to encroach into required 2.5 metre side yard setback be allowed, 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:

Dennis Gould: Moved/Seconded: Amanda Sutton: That the hearing adjourn at 8:00 PM.

Carried



Dennis Gould, Board Chair