Development Appeals Board
Appeal Hearing

DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD REGARDING APPEAL NO. 04-21 PERTAINING TO 6 CAPITOL PLACE, WHITE CITY, SK

Panel:	Dennis Gould, Chair
	Bill Wood, Board Member
	Cory Schill, Board Member
	Dale Strudwick, Board Member
	Glen Weir, Board Member
Secretary:	Cassandra Virgin
Appellant:	[redacted], Property Owner
Respondent:	Chace Kozack, Development Officer, Town of White City
	Delainee Berhns, Junior Planner, Town of White Ctiy

Introduction:

1) This appeal pertains to a development permit refusal for an addition of an attached garage with a carport/breezeway at 6 Capitol Place. 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 (Board) overturn the Development Officer's refusal and direct the issuance of a development permit.

2) The Appellent is requesting a relaxation of the rear yard setback from 15.0 meters to 11.0 meters. The relaxation requested is 27% variance.

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 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 75 metre radius of the subject property to allow them the opportunity to assess whether they will be injuriously affected by the proposed zoning variance, there was two electronic responses and one individual that attended the hearing in person in support the development.

Appellant's Position:

6) The Appellant are proposing to build an attached garage and breezeway/carport using the existing concrete footing on the property. The footing exceeds into the permissible maximum of 15.0 meters from the rear of the property line and therefore, the Appellant requests a variance from 15.0 meters to 11.0 meters.

7) The Appellant submitted renderings of the proposed breezeway/carport and attached garage for the board's consideration.

8) The main purpose of the proposed attached garage is for the storage of several vehicles and assorted landscaping equipment. Currently, the aforementioned items are stored in the yard. The Appellant stated, a structure of the proposed scale will help clean up the yard and improve the overall appearance of the property.

Respondent's Position:

9) The Respondent does not have the authority to approve any minor variance or approve a permit that does not comply with *The Zoning Bylaw*.

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:

10) This appeal pertains to a development permit refusal for an addition (garage) to the principal building (house) at 6 Capitol Place, where the new structure will be connected to the house by a roof over a car port or breezeway. If constructed as planned, the new structure will encroach into the rear yard setback by 4.0 meters, thus the building permit refusal by the Development Officer.

11) The first issue is a matter for the Town to determine. When the design of the adjoining roof is provided, the town needs to determine if that design constitutes a "substantial roof structure" as required by paragraph 3.1.27 of Bylaw No. 581-14, *The Zoning Bylaw*. If they deem it to be a "substantial roof structure", the garage will then be considered as forming part of the main building and the rear yard setback requirements for the main building come into play. The planned garage will encroach 4.0 meters into the 15.0 meters rear yard setback.

12) The Board now needs to consider the issue of the 4.0 meter rear yard setback encroachment of the garage addition.

13) A number of neighbours have provided support for the Appellants building plans, no negative submissions have been received.

14) The Appellant indicated that the top plate of the addition will not be higher than the top plate of the house main floor, the roof pitch will be the same as the house or lower, definitely not steeper, and the building finishing will match the house.

15) The main reason for having the addition encroach 4.0 meters into the rear yard setback seems to be to take advantage of the foundation previously poured by a previous owner in 1983. There doesn't seem to be any reason why a new foundation can't be constructed for the rear of the building to comply with the setback requirements.

16) The Town's Development Officer pointed out that the Development Appeal Board had denied an appeal for a 1.2 meters setback encroachment (10%) for a new home permit application in 2017. This appeal was on a property in the R4 Zoning District but is relevant to setback relaxations in residential districts.

17) The Town representatives have pointed out the "intent" of the zoning bylaws.

Issues:

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

During general discussion the Board unanimously agreed that they were not prepared to grant this requested relaxation of 4.0 meters, or a 27% encroachment. The Board has not allowed other homeowners similar relaxations in similar circumstances and considers such a relaxation request to be excessive and would constitute a special privilege if allowed.

Therefore, the proposed development would constitute a special privilege.

Would issuing a development permit defeat the Zoning Bylaw?

In its documentation the Town provided the intent of the bylaw. The Board considers the requested relaxation to be excessive for Zone R2 and would therefore defeat the intent of the bylaw.

Therefore, the proposed development does defeat the intent of the zoning bylaw.

Would issuing a development permit cause injury to neighbouring properties?

There were a number of neighbours that showed support for the homeowner's development and had no objections to it.

Therefore, the proposed development would not cause injury to current neighbouring properties.

Conclusion:

The Board finds that allowing the appeal:

A. Would give a Special Privilege.
B. Would defeat the intent of the Zoning bylaw.
C. Would not negatively impact neighbouring properties.

a. For reasons "A." and "B." stated above, the appeal is denied.

Motion:

- **GOULD/STRUDWICK:** Motion to deny the appeal for 4.0 meter relaxation into the rear yard setback as it would be a special privilege not allowed to others and would defeat the intent of *The Zoning Bylaw.*

CARRIED.

Dennis Gould, Board Chair

Planning Appeals Committee

Citation: [redacted] *v White City (Town)*, 2022 SKMB 58 **Date:** 2022-05-20

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 2021-0018
Date of Hearing: April 19, 2022
Location of Hearing: Regina, SK

BETWEEN:

[redacted]

Appellant

- and -

Town of White City

Respondent

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

The Appellant: [redacted], Property Owner

The Respondent: Candice D. Grant, Legal Counsel, Robertson Stromberg

HEARD BEFORE: Paul McIntyre, Panel Chair
Chad Boyko, Member

INTRODUCTION:

[1] The property under appeal is:

DAB Appeal Number	Civic Address	Legal Description	Zoning District
04-21	6 Capitol Place	Lot 10, Block 2, Plan 76R05619	R2

[2] This appeal arises out of the Town of White City's (Town) refusal to issue a Development Permit to [redacted] (Owner) in relation to a proposed garage and breezeway. The Town refused the application because the proposed building setback would exceed the maximum allowed under Zoning Bylaw No. 581-14 (Bylaw).

[3] The design for the building and its location was to reduce construction costs by utilizing an existing foundation on the site, believed to have been constructed in 1983. The Town has been unable to provide records pertaining to this foundation; therefore, it is unknown as to the reasons why construction of the proposed structure never proceeded beyond the completed foundation.

[4] The minimum rear yard setback for a Single Detached Dwelling/Attached Garage in the R2 Zoning District is 15 metres pursuant to the Bylaw. The existing concrete foundation is 11 metres from the rear property line. This would be an encroachment of four metres on the rear yard setback requirements.

[5] The Owner appealed the Town's decision to the Development Appeals Board (Board) seeking a variance to the Bylaw, which would reduce the rear yard setback required from 15 metres (as required in the R2 Zoning District) to 11 metres. The Board dismissed the appeal because the requested variance did not satisfy the requirements set out under subsection 221(d) of *The Planning and Development Act, 2007*, SS 2007, c P-13.2 [*Act*].

[6] The Owner asks the Planning Appeals Committee (Committee) to change the Board's decision.

ISSUES:

[7] a) Did the Board provide sufficient reasons in its decision?

b) Did the Board err when it did not grant the variance to the Bylaw requirements?

DECISION:

[8] The Committee finds the Board erred when it did not grant the requested variance.

Issue a): Did the Board provide sufficient reasons in its decision?

ANALYSIS:

[9] Whether a decision is reasonable is an inquiry of the Committee in determining justification, transparency and intelligibility of those reasons. The reasons must permit the parties to understand why the tribunal made the decision it did and to enable review of that decision. It allows a review to determine whether the decision falls within a range of possible, acceptable outcomes, which are defensible in fact and law. If the reasons allow the reviewing tribunal to understand why the Board made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the decision is justifiable, transparent and intelligible.

[10] Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not dispute the validity of either the reasons or the result under the analysis. A decision maker is not required to make a finding on each element, however basic, leading to its final conclusion. In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the acceptable outcomes, the *Dunsmuir* criteria are met [*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708].

[11] The Town does not dispute the basic proposition that administrative tribunals must provide sufficient reasons for its decisions and that this proposition applies to the Board. Indeed, this is codified at subsection 225(1) of the *Act*. However, the Town submitted that the Owner's complaint that the Board's reasons were insufficient, even if proven, does not form the basis of an appeal. During general discussion, the Board unanimously agreed that it was not prepared to grant this requested relaxation of four metres, or a 27% encroachment. The Board has not allowed other homeowners similar relaxations in similar circumstances and considers such a relaxation request to be excessive and would constitute a special privilege if allowed. Accordingly, the Town asserted that there is nothing unclear about how the Board came to its decision.

[12] Similarly, with respect to the question of whether the proposed variance would defeat the intent of the Bylaw, the Board stated the requested relaxation was excessive for Zone R2 and would, therefore, defeat the intent of the Bylaw. The clear inference from this passage is that the Board accepted and endorsed the evidence presented by the Town in relation to the intent of the Bylaw.

[13] Based on our review, we find the Board gave sufficient reasons in its decision.

Issue b): Did the Board err when it did not grant the variance to the Bylaw requirements?

Requirements Under the *Act*

[14] Under subsections 221(a), (b) and (c) of the *Act*, the Board "is bound by any official community plan … the uses of land … [and] … provincial land use policies …."

[15] The Board's decision must also be in keeping with subsection 221(d)(i), (ii) and (iii) of the *Act*. When making its decision, an appeal body must consider whether or not the granting of a variance would:

a) give an appellant a special privilege;
b) defeat the intent of the Bylaw; or
c) negatively impact neighbouring properties.

[16] The granting of a variance request by a board or the Committee is not the same as setting a binding precedent. The Board and the Committee must decide each appeal independently, based on its own merits.

Special Privilege [s. 221(d)(i)]

[17] Would allowing the appeal result in a special privilege for the Owner?

[18] The legal test for whether or not granting a variance is a special privilege can be found in *St. Andrew's Presbyterian Church v Saskatoon (City)*, 1987 CanLII 4527 (SK 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.

[19] In its written submission, the Town argued there is no evidence on the record to suggest that a similar variance has been sought (let alone ruled upon) in the R2 Zoning District where the Owner resides. We are similarly unaware of any Committee decision with the same fact situation present of an unused foundation subject to a Development Permit application relating to new construction.

[20] The Town further referred to this Committee's decision in *Dion Hagen v White City (Town)*, 2016 SKMB 88, which considered this same issue in relation to the same Bylaw in support of its position to deny the requested variance. In that case, the appellant sought a variance (admittedly more significant on a percentage basis than the variance sought here) to allow him to construct a garage on his preferred location.

[21] The Town contended the Owner offered no evidence to demonstrate that he cannot build a garage in a location that complies with the Bylaw. The Town asserted the Board was presented evidence during the hearing that a similar application had been denied in a similar zoning district; therefore, granting him the variance requested would result in a special privilege.

[22] The Town contended the Owner's reliance on *Moose Jaw (City) v Stephanie Temple and Kristofer Temple*, 2016 SKMB 92, is distinguishable from the circumstances of this appeal. The Board and the Committee in that appeal had specific evidence of two previous occasions where similar variances had been granted (see paragraphs [27]- [30]). Therefore, the granting of the variance was not a special privilege because the Board would, and indeed had already, granted similar relief to other property owners in comparable circumstances.

[23] In adjudicating another variance request in PAC 01/2009, *Srdjan Arsic v Saskatoon (City)*, which was upheld by the Court of Appeal in *Saskatoon (City) v Arsic,* 2009 SKCA 122 [*Arsic*], this Committee determined at paragraph [13] that subsection 221(d)(i) does not require the establishment "of overwhelming need."

[24] As a result, when we apply the analysis in *Arsic* to the facts on the record, we find that the opportunity to utilize the existing foundation, together with the relatively minor nature of the Bylaw contravention, are sufficient to satisfy the requirement of need to clear the special privilege bar to variance relief.

[25] We applied the facts of this case to the legal test and find allowing the appeal would not result in a special privilege for the Owner.

Intent [s. 221(d)(ii)]

[26] Would allowing the appeal defeat the intent of the Bylaw?

[27] The Board's decision stated the intent of the rear yard setback regulations are to provide sufficient distance between neighbouring properties to maintain privacy and promote functional open space as well as to accommodate the Town's natural drainage system and to provide adequate separation to increase natural light, along with access for emergency services.

[28] The Owner argued in his written submission that the 12 metre difference of minimum rear yard setbacks between attached and detached garages set out in the Bylaw (15 metres vs three metres) is particularly noteworthy. We view the question of why detached garages can be constructed 12 metres closer to the rear lot line than an attached garage a legitimate line of inquiry. We agree with the Owner that determining what "the intent and purpose of the Zoning Bylaw" is becomes difficult when looking at anomalies such as those noted above.

[29] In response, the Town suggested it is entirely appropriate for a municipality to impose different setback requirements for different types of construction and that the Board accepted the evidence of the Town in relation to the intent of the Bylaw.

[30] While the Town contended the Owner did not address the policy objectives underpinning the Bylaw, we agree with the Owner that the inconsistent treatment of detached and attached garages undermine the Town's argument with respect to the necessity of ensuring compliance with the intent of the Bylaw.

[31] We find allowing the appeal would not defeat the intent of the Bylaw.

Negative Impact [s. 221(d)(iii)]

[32] Would allowing the appeal negatively impact neighbouring properties?

[33] As required under subsection 222(3)(d) of the *Act*, the Board issued letters to neighbouring property owners within 75 metres of the Owner's property. The Board record indicated the proposed garage construction received support from two neighbouring property owners, Donna Kovatch and Brian Fergusson, who both made persuasive arguments in favour of granting the Owner a variance to the Bylaw requirements.

[34] The Town did not address this issue in its written submission.

[35] We find allowing the appeal would not negatively impact neighbouring properties.

CONCLUSION:

[36] The Committee finds allowing the appeal:

a) would not give a special privilege to the Owner;
b) would not defeat the intent of the Bylaw; and
c) would not negatively impact neighbouring properties.

[37] The Committee allows the appeal.

Per: _____
Paul McIntyre, Panel Chair

Per: _____
Jessica Sentes, Director