



Development Appeals Board
Appeal Hearing

**DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD REGARDING
APPEAL NO. 02-22 PERTAINING TO 21 DAWN BAY, WHITE CITY, SK**

Panel: Dennis Gould, Chair
Bill Wood, Board Member
Cory Schill, Board Member
Dale Strudwick, Board Member
Glenn Weir, 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 an attached deck at 21 Dawn Bay. 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 overturn the Development Officer's refusal and direct the issuance of a development permit.
- 2) The Appellant is requesting a relaxation of the rear yard setback by 0.936m.
- 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 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 only one response received and that person supported the development.

Appellant's Position:

- 6) The Appellant is requesting a relaxation of the Town's Zoning Bylaw setback regulations to permit the deck to encroach into the rear yard setback by 0.936m.
- 7) The Appellant's house sits further back on the property in comparison to neighbouring houses, leaving less flexibility for the arrangement of the deck.
- 8) The platform of the deck is within the setback requirements. Only the bottom stair encroaches into the rear yard setback.
- 9) The stairs are unable to be build alongside the house as the home has a cantilever which would obstruct the stairs placement.

Respondent's Position:

- 10) The Respondent does not have the authority to approve any minor variance or approve a permit that does not comply with The Zoning Bylaw.
- 11) The Respondent noted, the Appellant constructed the deck before obtaining a development permit.

Key Circumstances:

It is important to point out key circumstances of this application:

- 12) The Appellant's home is on the inside of a bay with the front yard being narrower than the rear yard property line. Due to the front yard being narrower the home is set back a little more than the neighbors' homes. This leaves less depth to build a deck on the back of the home.
- 13) The deck is 5.79m (19ft) wide and 3.65m (12ft) deep. The deck is well within the Town's setback requirements. However, the steps encroach 0.936m into the rear yard setback requirements.
- 14) The steps are 1.8m (6ft) wide, but the width is not the issue. The issue is the bottom 1.5 steps that encroach into the setback requirements. If the home could have been positioned a little closer to the front yard property line, like the neighbouring homes, the situation of this rear yard encroachment would not exist.
- 15) The encroachment is only 1/3 of the width of the deck, not the entire width.
- 16) The deck and stairs were built before the application for a permit was submitted, therefore the Appellant was unaware of the setback requirements.
- 17) There was only one response from the neighbours, and that was a positive support for the Appellant's setback issue.

Issues:

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

18) The Board considers a rear yard relaxation request of 0.936m, or approximately 1.5 steps of the deck, to be minimal and the Board is prepared to grant this relaxation under the circumstances of this case. Granting this request under these circumstances would not be a "special privilege" that the Board would not grant to others.

19) Therefore, the proposed development would not constitute a special privilege.

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

20) The Board considers this relaxation request to be minimal under these circumstances and would not defeat the intent of the zoning bylaws.

21) Therefore, the proposed development does not defeat the intent of the bylaw.

Would issuing a development permit cause injury to neighbouring properties?

22) There was no "injurious affection" demonstrated or posed during the appeal hearing. One neighbour did respond to the setback issue expressing full support of the development.

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

Conclusion:

The board finds that allowing the appeal:

- 1) Would not give Special Privilege.
- 2) Would not defeat the intent of the Zoning Bylaw.
- 3) Would not negatively impact neighbouring properties.

Motion:

Wood/Schill: THAT Appeal 02-22 requesting a rear yard setback relaxation of 0.936m be approved.

CARRIED UNANIMOUSLY.

24) For these reasons, the appeal is allowed. The appeal fee shall be refunded to the Appellant and Town of White City shall issue a development permit 30 days from the date of this decision.



Dennis Gould, Board Chair