

**TOWN OF WHITE CITY**  
**DEVELOPMENT APPEALS BOARD**

**May 31, 2011**

Minutes of the Tuesday, May 31, 2011 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #01-11 [REDACTED], Lot 12, Block 8, Plan 101857855, 54 Fernwood Place.

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

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

**Appellant:** [REDACTED]

**Introductions:**

Chairman Dennis Gould stated that the board had come to order at 6:30 PM. The Chairman introduced the members of the Board, the Development Officer 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 #01-11:**

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.
- The Appellant's proposed development (2 drawings). Support of neighbouring properties – received May 24, 2011.
- Report submitted by Development Officer.
- Refused Development Permit
- Professional Building Inspections Inc. Plan Review Check List.
- Residential Development Permit and Site Plan.
- Application for Building Permit (Form A).
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated May 11, 2011.
- Notice of the date for the Development Appeals Board hearing sent to Board, Council Members and the Development Officer dated May 11, 2011.
- Notice of the appeal sent to 5 adjacent property owners.
- A copy of Zoning 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 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 Appellant referred to the drawing of the back yard (Hungle #1). He advised that he wants to place garage in the northwest (back corner) as indicated in the drawing. There are geothermal lines in back yard as indicated in drawing. He would like to minimize overlap on the geothermal ground loop. The geothermal line is eight feet deep. He plans to centre garage in geothermal loop.
2. He stated that wants to leave access to roadway to the back yard. There are native trees on the back of the property and he doesn't want to cut them down.
3. He spoke with his neighbours, Trevor & Shauna Piluk and they have no issues with the placement of the garage. The Appellant also stated that the neighbours will not be able to see garage due to neighbours trees.
4. The garage will be on a slab and not piles.
5. The garage would also be on the high end of the yard. Water pools on southwest corner. Doesn't want to have issues with water.

**Town Development Officer: Debi Breuer**

Debi Breuer stated that the purpose of the side and rear yard setback regulations is to provide sufficient space abutting the neighbouring lot, and public right-of-way, to ensure that the building envelope is located entirely on the lot and to provide for building maintenance and drainage accommodation and for public safety conditions.

**Question:**

Q: How was the geothermal installed?

A: Trenched with ¾ inch poly line.

Q: Is it 8 feet down?

A: Yes.

Q: Can you share with me the distance between geothermal and proposed garage?

A: Approximately 10 feet north and south.

Q: Could you move the garage forward?

A: Probably. Would have to move sprinklers and sod in order to do this.

Q: If you did that and you moved the proposed garage closer to the geothermal on the south side would five feet be ok?

A: Would lose the roadway and would have to cut down the trees. The play structure is permanent.

Q: What is the roadway constructed out of?

A: A light skim of base gravel on clay.

Q: How much space is from geothermal to back of property line?

A: About 75 - 100 feet.

**Final comments:**

The appellant stated that the neighbours do not have any issues. As for public safety, the location of garage does not pose a public safety issue as far as he is concerned. He will address the issue of water drainage and ensure that all water drains to the southwest corner. The garage will be well within the lot and still be accessible to the north and east. He does not want to knock down native trees and he has no intention to run a business out the garage.

The Development Officer had no closing comments.

The Appellant left at 7:00 PM.

The Development Officer left at 7:00 PM.

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

- 1) The subject lands are legally described as Lot 12, Block 8, Plan 101857855 in the Town of White City.
- 2) The subject lands are zoned R-3 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 10 meter 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

Special Privilege:

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

██████████

1. The ██████████'s lot is a large rectangular lot.
2. The main concern presented by the Appellant is the desire to construct the building so it will not interfere with the underground piping of their Geothermal System.
3. The other concern noted was the established playground area and the need for roadway access to the rear of the yard.

The location for the proposed accessory building is a preference. The Board felt that the ██████████'s do have options to position the accessory building to allow roadway access to the rear of their yard, avoid building over the Geothermal System and still abide with the setback requirements.

During general discussion the Board indicated that they were not prepared to grant this relaxation in this case nor to others who would have similar circumstances.

Therefore the application does not clear this bar.

Intent:

In its documentation and presentation, the Town representative provided the intent of the bylaw.

The appellant is requesting a relaxation of 2.38 Meters, or a 23.8% relaxation into the required side yard setback. The Board felt that White City has an appeal to its residents because of the large lot size and the resulting feeling of space and country living.

The Board considers such a request as excessive and, as such, defeats the intent of the bylaw.

Therefore the application does not clear this bar.

Injurious affection:

There was no "injurious affection" demonstrated or posed during the appeal hearing.

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

**Appeal #01-11  
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 31, 2011 at the Town of White City Municipal Office.

**Glenn Weir: Moved/Seconded: Dennis Gould:** That Appeal #01-11, made by [REDACTED] for a relaxation of the Zoning Bylaw #541-10, to permit a detached garage to encroach into required 10 meter side yard setback be denied for the following reasons:

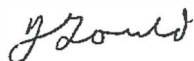
- 1) The requested relaxation is excessive and if allowed would constitute a special privilege.
- 2) The requested relaxation of the side yard setbacks would defeat the intent of the zoning bylaw to require compatible setbacks.

**Carried.**

**Adjournment:**

**Bill Wood: Moved/Seconded: Dennis Gould:** That the hearing adjourn at 7:35PM.

**Carried**



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**Dennis Gould, Board Chair**