

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

June 23, 2015

Minutes of the Tuesday, June 23, 2015 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #03-15 [REDACTED], Lot 10, Block 34, Plan 102095692, 91Motherwell Drive.

Present: Chairman: Dennis Gould
Board Members: Bill Wood, Amanda Sutton and Dale Strudwick

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 #03-15:**

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 1 page submission received June 12, 2015.
- Development Officer's Report.
- Refused Development Permit, Development Permit Application, Site Plan.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated June 3, 2015.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated June 3, 2015.
- Notice of the appeal sent to 6 adjacent property owners.
- A copy of Bylaw 581-14.
- 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 six (6) 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. Basically the only because the odd shape of the lot the way it curves. The houses to north of him will still maintain 10 meter setback. Because lot is going into corner it starts changing. Doesn't think it will infringe on any site lines.

If I do have to maintain 10 meter setback that would make it on 14 meter driveway on the other side 10 meter. Shrink the house up by substantial square footage. Wants to maintain the square footage going forward. Originally did start with garage on south and entry on north.

2. He has maintained all the other setbacks.
3. He was under impression with Ben Kuczmic (the Developer) it would be ok as when he revised the plan a second time. When he attended the town office he found out differently.

Town Development Officer: Debi Breuer

The Development Officer stated that she had nothing further to add to her report. That she is bound to follow zoning bylaw. What was submitted contravened the bylaw. As [REDACTED] said it is an odd shaped lot. There are several in subdivision that are odd shaped and it may create problems for future home builds. She stated that according to Ben's site line graph it would not affect the site lines.

Question:

Q: To the Town: Lot 14 on this diagram looks like the same size as Mr. [REDACTED]. Are we going to have the same request coming from that lot?

A: Not necessarily. It depends on house size. It's hard to say until another permit comes in. There are several lots like this that may come up.

Q: To the Town: The town has authority to approve 10% variance. Will you automatically approve it?

A: Not necessarily. It is my discretion to allow the 10% discrepancy. It is only for extreme cases where it might cut off the corner of the garage due to the odd shaped lot.

Q: To the Town: Regarding the developer, why is that happening and the developer knows these bylaws. Why isn't the lot development done in such a way that this wouldn't be an issue?

A. The town has talked to the developer about future subdivision design and lot shapes.

Q. In your submission you made reference to 10 meter setback being from the road. Is the road right on the property line?

A. I don't know. I am referring to my lot line.

Final comments:

Appellant has no further comments.

The Town Development Officer had no further comments regarding this appeal but did comment about meeting prior to hearing in future to discuss administrative questions.

The Appellant left at 7:15 PM.

The Town Representative left at 7:25 PM.

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

- 1) The subject lands are legally described as Lot 10, Block 34, Plan 102095692 in the Town of White City.
- 2) The subject lands are zoned R-4 as set out in the Town of White City Zoning Bylaw 581-14.
- 3) The development permit was denied because the proposed attached garage encroached into the required 10 meter front 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 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:

1. The requested relaxation request is for a portion of the front yard, where the proposed building (attached garage) will encroach into the front yard setback requirements by 4.15 Meters. If this lot was a rectangular lot the proposed structure would fit within the requirements of the bylaw. The Board acknowledges that the Appellant has modified the structure to try and make it fit the odd shaped lot, but a portion of the building would still encroach into the front yard setback by 4.15 meters.
2. There are a number of lots in this development in Zone 4, that have a similar front yard layout at the curve in the street.
3. The Developer has provided information that the front side of the proposed structure (the garage) is in line with the setback requirements of the buildings that will be built to the north of the Appellants home. It is the curve in the street that creates the setback problem for the Appellant.
4. Many of the nearby lots are owned by the Developer, so obviously the future owners would have no knowledge of this appeal and no way to express their concern, if they were to have a concern. The Board must therefore take responsibility for their interest and consider the impact that this relaxation request may have upon them.

Special Privilege:

- The Board considers a front yard relaxation request of 4.15 meters, or a relaxation request of 41.5%, to be excessive and are not prepared to grant such a relaxation in this case nor in other cases that might have the same circumstances. Granting this request would be a “special privilege” that the Board would not grant to others.

Therefore the [REDACTED]'s application does not clear this bar.

Intent:

- The Board considers such a large relaxation request to be excessive, and would defeat the intent of the zoning bylaws.

Therefore the [REDACTED]'s application does not clear this bar.

Injurious affection:

Fourteen of the properties within 75 meters of the [REDACTED]'s lot, are owned by Great Plains Leaseholds (the Developer), two are owned by Trademark Homes (builder), and four are presently owned by individuals. The Board must consider the interests of the homeowners who will eventually own these sixteen properties presently held by the Developer and Trademark homes. The Board is confident that approval of this request for a relaxation of 4.15 meters would create an injurious affection to some of the future owners of these 16 properties.

Therefore the [REDACTED]'s application does not clear this bar.

**Appeal #03-15
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 June 23, 2015 at the Town of White City Municipal Office.

DENNIS GOULD: Moved/Seconded: BILL WOOD That Appeal #03-15 made by [REDACTED] for a relaxation of the Zoning Bylaw 581-14, to permit an attached garage to encroach into required 10 meter front yard setback be denied, for the following reasons:

- 1) The relaxation does contravene the Town's Basic Planning Statement and intent of the Zoning Bylaw.
- 2) The relaxation does encroach upon or injuriously affect neighbouring properties.
- 3) The requested relaxation is a special privilege as others have not been granted a similar relaxation.

Carried.

Adjournment:

AMANDA SUTTON: Moved/Seconded: DENNIS GOULD: That the hearing adjourn at 7:30 PM.

Carried



Dennis Gould, Board Chair