TOWN OF WHITE CITY

DEVELOPMENT APPEALS BOARD

February 16, 2012

Minutes of the Thursday, February 16, 2012 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #01-12 [redacted], Lot 5, Block 7, Plan 95R02449, 9 Rosewood Bay.

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

Development Officer: Debi Breuer
Professional Building Inspector: Bill Hudema

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.

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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 #01-12:

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.
- Letter from [redacted] – received February 16, 2012.
- Two photographs and attic truss drawing submitted by Bill Hudema on Feburary 16, 2012.
- Further 11 page submission along with 9 photographs received from [redacted] on February 16, 2012.
- The Appellant's written submission – received February 9, 2012.
- Development Officer's Report
- The Town of White City refused Development Permit.
- Professional Building Inspections Inc. Permit #11-161
- Site Plan and garage drawings.
- Order to Correct.
- Copy of correspondence from Cloudesley J.C. Rook-Hobbs dated December 19, 2011.
- Copy of correspondence from Development Officer dated December 21, 2011.
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated January 9, 2012.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated January 9, 2012.
- Notice of the appeal sent to 9 adjacent property owners.

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- A copy of Bylaw 541-10.
- A copy of Part **XI**, Division1, 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 nine property owners within 75 metres were notified of the appeal application and hearing and that one objection has 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. [redacted] presented further submissions to the board members. Page 1 is a site plan that his wife took in to the Town office and was told it looked o.k. Page 2 is a copy of Section 4.2.4 (i) of the Bylaw re: floor area coverage, Page 3 the definition of floor area and gross floor area, Page 4 original submitted plan for the slab which as he has said in statement didn't work out for reasons of grade and so forth. Page 5 is what he planned on doing with the grade which still would have been the same height of wall from grade in original plan. Page 6 is exactly what it is at the moment. Page 7 – 8 measurements around perimeter of building. Bottom of wood wall bottom plate to existing grade = average 292.5 mm. Page 8 – random measurement from perimeter of garage grade around the garage. Page 9 - slope of yard that show the way the water runs off. Page 10 that with grade brought up around garage the water would run off in the same way. Page 11 diagram with grade brought up.

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2. [redacted] passed pictures around of before and after when he bought lot and constructed the residential dwelling and where water runs off around it. He indicated the low spots. He said he talked to the Development Officer before he started this project and he was told why he couldn't put up steel building. He said others have done so.

3. His opinion is that the outside aesthetics of the garage would be the same as the house and that counts. He said that yes building is large but it will be his only building on the lot. He has a large truck and would like to put it in garage.

4. He further stated that all his neighbours drive quads and snowmobiles and he has no issues with that. Also one of the neighbours has a hairdressing salon in home and he was not opposed to it.

5. He said he was not going to work out of his garage. He would be doing just hobby work.

Town Development Officer: Debi Breuer

The Development Officer referred to her report. As a Development Officer her main purpose is that she upholds the zoning bylaw for permits that come in. As a Development Officer she would really like to stress that the Zoning bylaw regulates the use of land in White City. If you have a residential area everything that is constructed on that lot has to have a permit and the construction needs to be in compliance of that zone. When [redacted] purchased the property it was residential area even though it is close to industrial. Stating her opinion from the Town's standpoint of view, residents need to follow the intent of the Bylaw as it relates to accessory buildings.

Professional Building Inspector: Bill Hudema

Mr. Hudema was out to site a couple of time and also the information that was provided in the original application for construction and have confirmed with the truss manufacturers the dimensions of them and the dimension of the height of truss 10 8' from the top of plate to top of peak so basically 10' 9'. He provided a photograph of the structure and the indicated 8 - 12 pitch on roof and its 10' 9" from top plate. The walls are 12 feet in height. The other picture is that of the

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house and that is a 4-12 pitch on that roof. The dimensions of the pad which he checked on site were 30 x 40 feet with a 16" high ICF perimeter around it which raised the building another 16 inches. It's like a footing put on top of the slab. The walls measured out to be 13' 4" from the floor and then you add 10' 9" for the truss. They were attic trusses for additional storage space. Two photographs were submitted and a copy of the engineer truss design.

Question:

Q: In the information that was provided to us that there was note in there dated Nov. 28 that Bill had talked to you if you reduced the size of the building 30' x 40' to 26' x 38' as Dave Kashmere said was the maximum size, and you apparently reduced it to 28' x 38'. Why was the information given to Mr. Hudema inaccurate?

A: It says in the bylaw floor and floor area is inside of dimension.

Q. What is thickness of pony wall?

A. 12 inches.

Q: Were you aware of the roof pitch requirements of an accessory building before you built it?

A: I was aware that height was an issue when I submitted the plans. When they stated pitch they described pitch to me as height of house.

Q: One of the papers the Professional Building Inspection report which is attached to the site plan, attached is front view of building with a fairly low pitch or in line with house and then the truss design with fairly large pitch. When submitted which roof pitch was submitted to town?

A. The higher roof pitch.

Q. Was the roof truss designed for storage? Are you going to use it?

A. Yes. I originally asked for a 6-12 pitch and the truss manufacturer said it would not go with the attic truss as it was too low.

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Q. Bill Hudema is there any restrictions on grade height on this lot?

A. There should be an 8 inch separation from soil grade material and wood material.

Q. On package provided regarding the elevation of the SW corner of garage which has negative elevation 575 and the elevation garage 600. What's stopping the water from running into garage?

A. I was going to slope it further away to the north. In previous years, as the grade is so steep, the water runs to buffer strip.

Q. On page 11 of your material you show grade being brought up to garage. What are you doing with side door?

A. It is going to be raised up and I haven't gotten around to it as yet. The only thing that has not been raised up is the driving vehicle access door. I read National Building Code and in there their grade around building excludes driveways and walkways. So essentially to have a little slope at door….but as it stand at the moment the water already run towards the buffer strip.

Q. Would you say that water does run to the lowest levels?

A. Yes.

Q. You had ordered the building before you decided to have pony walls?

A. I originally thought to bring grade down.

Q. When you put pony walls was the building already ordered?

A. Yes.

Q. Did you talk to the building manufacturer about making walls shorter?

A. They were already complete.

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Q. When did you realize that the height of building would be taller than your house?

A. After it is was up. It is 3 feet higher than house. I measured it. The house 22 feet high and thought the trusses were 10' but the walls were 12'. I guess it was a rough calculation and it didn't work out.

Q. Your house is shorter than accessory and clearly in violation of the bylaw and I haven't heard how you would remedy about.

A. I don't know what to do about it. I submitted it and thought it was o.k. and now I don't know what to do. Feels garage just stands out in relation to yard.

Q. Do you have any intent to rectify problem?

A, I'm open to suggestions.

Q. The second violation is that you are exceeding 5% floor area coverage of the lot. Quite clearly the bylaw states that the measurements are taken from outside walls.

A. The regulations on page 2 say floor area – the definition in bylaw states floor area as follows: the maximum habitable area contained within the outside walls of a building, excluding in the case of a dwelling, any private garage, porch, veranda, sunroom, unfinished attic or unfinished basement.

Q. Question to the Development Officer. We had a letter submitted from the Appellant's lawyer just for clarification it says that the grade definition should be interpreted as finished ground. It the lawyers position that grade is the lowest average levels of finished ground adjoining the exterior wall of a building, etc. The lawyer states that the proper measurement should be made from the finished average ground level adjacent to the building excluding any depressions for entrances, etc. Could you clarify?

A. You need 8 inches between grade and where wood starts.

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Q. So is the lawyer's interpretation incorrect?

A. What he means there for example if you have a walkout the ground slopes at the end of rear house are low. Take average height. The height of building is not taken from grade, height of wall. Applicant has graded up 16 inch pony.

Q. If lawyer is correct what would be measurement factor be?

At this point Bill Hudema went into extensive explanation with respect to grade and there was a general discussion with Bill Hudema, the Board Members and [redacted].

The Development Officer advised that you can't mix zoning with building code. She also advised that they hire Professional Building Inspections to make sure that all construction is to code.

Also the Development Officer had no idea that the Appellant was putting in an ICF wall as it was not in the building application. She thought the walls were 12 feet in height.

Q. Your neighbor that sent in a response to the Appeal, what side was he on?

A. West side.

Q. When White City or Building Inspector said building was too big were you ever told that the pitch was too high.

A. They didn't know about the pony wall.

Bill Hudema informed the Board that he was aware there was an issue with the file. He always review file before inspection. He measured exterior size of building and it was 30' x 40' so he stopped the inspection and contacted the Development Officer and said that there was a problem with the building. He said that [redacted] called him once or twice about inspecting the framing. He didn't respond because the Development Officer was working on problem with respect to sizing. He briefly looked at the framing but didn't write on report. He saw the pony wall was which was not indicated in the original plan. That was end of his involvement other than double checking the measurements.

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[redacted]

Q. To the Development Officer: Referring to the lawyer's interpretation of Floor Area. Please clarify what Zoning Bylaws interpretation regarding floor area.

A. The Development Officer advised that she called person who assisted with drafting the new bylaw and he advised that this definition refers to apartments with underground garages.

Bill Hudema clarified that at the initial framing inspection because he noticed that there was contravention of bylaw and he stepped away from the construction and left in Town's hand to deal with. He confirmed that he does his inspections based on the National Code and that the Zoning Bylaw was not in his scope.

[redacted] said that the trusses were approved by the town and yes the pony wall was not in the original plan and it is from grade of building height and if the grade was finished it would comply. The Zoning Bylaw does not clarify gross floor area and floor area.

Q. The plan you submitted indicated a wall height to be 12 feet and your height is 13' 4'

A. Yes. It is purely esthetics.

Final comments:

[redacted] - no final comments.

The Town Development Officer – no final comments.

The Appellant left at 8:00 PM.

The Town Representative left at 8:00 PM.

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

1) The subject lands are legally described as Lot 5, Block 9, Plan 95R02449 in the Town of White City.
2) The subject lands are zoned R-1 as set out in the Town of White City Zoning Bylaw 541-10.
3) The development permit was denied because the proposed detached garage exceeded the 5% total maximum allowed floor area for accessory buildings and the wall height exceeded the maximum of 3.66 meters.

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.

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

1. The [redacted]'s lot is Zoned R1, which are smaller lots than in the majority of other Zones in White City. The maximum size for an accessory building in R1 is 5% of the lot size, and for the Appellant's lot that amount is 92 square meters.

2. The main reasons presented by the Appellant, in support of his request for the relaxation, were events caused by changes in what was applied for on his permit application and what was actually built.

   The permit application was for a concrete pad 12.19m by 9.144m, or 40 feet by 30 feet, amounting to 111.47 square meters. The building inspector informed the Appellant that the maximum size that would be approved was 38 feet by 26 feet, or 91.78 square meters. The appellant however, amended the permit application to 11.58m by 8.54m, or 38 feet by 28 feet, amounting to 98.89 square meters. The measurement of 38 feet by 28 feet is the area one foot in from each side and each end of the concrete pad, and is the measurement inside of a one foot thick pony wall.

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3. The walls on the accessory building are higher than allowed in the Bylaw. To accommodate desired grade elevation changes the Appellant installed a 16 inch pony wall which was clearly not reflected on the permit application. His solution to solving the height restriction was to bring the grade around the building up to the top of the pony wall, thus leaving the wooden wall structure to be 12 feet high and could be approved under the Municipal Bylaw. However, the building inspector pointed out that under the Building Code, the grade around the building must be at least 8 inches below any wooden structure. This restriction under the Building Code will prevent the Appellant from raising the grade to meet the "wall height restriction" allowed under the Municipal Bylaw.

   In addition to the above, the elevation measurements provided by the Appellant at the appeal hearing, page 7 of his 11 page submission, show that runoff water may well run into the West door of the accessory building as the grade elevation at the South West corner is -575mm and the concrete pad is situated lower at -600mm.

The Board must consider three bars in their decision, and they are:

-Special privilege
-Intent
-Injurious affection

Special Privilege:

During general discussion the Board indicated that they were not prepared to grant a relaxation, in this case nor to others in Zone R1 who would have similar circumstances, to exceed the 5% floor area allowed by the Bylaw, nor a relaxation to the wall height restriction of 12 feet.

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

Intent:

In its documentation the Town provided the intent of the bylaw. The Board considers the request for relaxation on size and height of the building to be excessive for Zone R1 and, as such, defeats the intent of the bylaw.

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

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[redacted]

Injurious affection:

One neighbor adjacent to the Appellant has expressed their opposition to the size of this accessory building. Therefore the Board believes there would be an "injurious affection" to neighbouring properties if the requested relaxation were approved.

The [redacted]'s application does not clear this bar.

Appeal #01-12
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 February 16, 2012 at the Town of White City Municipal Office.

GLENN WEIR: **Moved/Seconded**: **DENNIS GOULD**: That Appeal **#**01-12 made by [redacted] for a relaxation of the Zoning Bylaw 541-10, to permit a detached garage to exceed the 5% total maximum allowed floor area for accessory buildings and the wall height to exceed the maximum of 3.66 metres is denied for the reasons that:

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:

WES MEMORY: Moved/Seconded: BILL WOOD: That the hearing adjourn at 8:30 PM.

Carried

D Gould

Dennis Gould, Board Chair

Saskatchewan
Municipal
Board

2151 Scarth Street
Regina, Canada
S4P 2H8

(306) 787-6221 General Inquiry
(306) 787-2658 Assessment Appeal Inquiry
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www.smb.gov.sk.ca

July 25, 2012

Planning Appeals Committee
File No. PAC 04/2012

Mr. Matthew Park
Olive Waller Zinkhan & Waller LLP
Barristers and Solicitors
1000 – 2002 Victoria Ave.
REGINA, SK S4P 0R7

Dear Mr. Park:

Re: DECISION – Development
Lot 5, Block 7, Plan 95R02449
9 Rosewood Bay – Town of White City
Appeal No. PAC 04/2012

Enclosed is a copy of the Decision of the Planning Appeals Committee, Saskatchewan Municipal Board following the hearing of the above appeal.

Also enclosed for your information is a copy of Section 33.1 of *The Municipal Board Act*.

Yours truly,

C Moberly

Cathy Moberly
Director

/sr
Enclosures

C: [redacted]
Bonnie Stanley, Secretary, Town of White City DAB
Mark F. Mulatz, LL.B., Gerrand Rath Johnson LLP
Cloudesley J. C. Rook-Hobbs, Willows Tulloch
Shauna Bzdel, Manager
Debi Breuer, Development Officer
[redacted]

Saskatchewan Municipal Board
Planning Appeals Committee

Appeal: 04/2012

RESPONDENT: Town of White City

In the matter of an appeal to the Planning Appeals Committee (the Committee), Saskatchewan Municipal Board by:

[redacted]
White City, Saskatchewan S4L 5B1

against a decision of the Town of White City Development Appeals Board, respecting a matter of an existing development at:

Lot 5, Block 7, Plan 95R02449
9 Rosewood Bay
Town of White City, Saskatchewan

BEFORE:

Gordon Hubbard, Chairman
Jodi Vaughan, Member
Randy Markewich, Member

Barry Fry, Secretary

APPEARED FOR THE APPELLANTS:

Matthew Park, Barrister and Solicitor
[redacted]

APPEARED FOR THE RESPONDENT:

Mark Mulatz, Barrister and Solicitor
Shauna Bzdel, Manager
Debi Breuer, Development Officer

This appeal was heard in Room 460, 4th Floor Hearing Room, 2151 Scarth Street, Regina, Saskatchewan on June 19, 2012.

This appeal arises pursuant to Section 226 of *The Planning and Development Act, 2007* (the Act) against a decision of the Development Appeals Board (the Board) for the Town of White City (the Town). In its decision, the Board denied the appeal against the order issued to the appellants by the Town pursuant to Section 242 of the Act.

ISSUE:

Did the Board err when it denied the appeal of the Town order on the basis that granting the appeal would grant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district, defeat the intent of the Bylaw relating to a maximum floor coverage of 5% of the lot area and a maximum wall height of 3.66 meters for the detached garage and would injuriously affect the neighbouring property owners?

FACTS:

(1) The subject property is legally described as Lot 5, Block 7, Registered Plan No. 95R02449, in the Town of White City, Saskatchewan, with a civic address of 9 Rosewood Bay. The property is zoned R1 – smaller lot residential development and related uses. The appellants are the owners of the property. The property is improved with a one-storey single detached dwelling. A detached garage is being developed by the owners as an accessory building on the lot. The use being made of the property is a permitted use under the Town's Zoning Bylaw No. 541-10 (the Bylaw).

(2) Section 4.2.4 of the Bylaw states that for Accessory buildings in a R1 Zone, the floor area coverage maximum is 5% of the lot area and the height maximum is 3.66 meters (12 feet) (to top of the wall plate).

(3) An Order to Correct dated December 5, 2011 was issued by Shauna Bzdel, Town Manager and Debi Breuer, Development Officer to [redacted] for the subject property. The Order indicated that he was in contravention of the Bylaw because the floor coverage of his detached garage exceeds the maximum of 5% of the lot area and because the wall height for the garage exceeds the maximum wall height of 3.66 meters.

(4) On December 19, 2011 the appellants filed an appeal of the Order with the Board. An appeal hearing was held on February 16, 2012. In the minutes for the hearing it is noted that nine property owners within 75 metres were notified of the appeal application and that one letter of objection was received. The Board rendered its decision on February 27, 2012 in which it upheld the Town's Order. The decision provides 3 findings, as follows;

> " 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."

(5) The record of the Board, as provided to the Committee pursuant to the requirements of Section 227 of the Act, consists of the following:

a) Letter dated April 7, 2012 from Bonnie Stanley, Secretary, Town of White City Development Appeals Board, to the Saskatchewan Municipal Board attaching relevant materials of the Board.
b) Board Minutes and Decision (12 pages) dated February 16, 2012; plus Agenda (1-page).
c) Drawings reviewed by Professional Building Inspection Inc. dated October 14, 2011 with 2 photographs attached.
d) 11-page submission starting with "Site Plan [Lot 5 Block 7 Plan 95R02449 – 9 Rosewood Bay, White City, Sask]", with 9 photographs attached.
e) Letter from [redacted] to Town of White City marked "rec'd Feb. 16, 2012".
f) 3-page development appeal report via Gmail dated February 9, 2012 to Board Secretary from [redacted].
g) 6-page Planning Report from Town's Development Officer, dated February 16, 2012 with attachments "A", "B" and "C".
h) Town of White City – ORDER TO CORRECT dated December 5, 2011.
i) Letter dated December 19, 2011, from Cloudesley J.C. Rook-Hobbs of Willows Tulloch, Barristers & Solicitors, to Town of White City.
j) Letter dated December 21, 2011 from Town's Development Officer to Mr. Rook-Hobbs.
k) (Green Tab) Notice of Hearing dated January 9, 2012, from the Board Secretary to:
   - [redacted],
   - Board members,
   - Council members,
   - Development Officer, and
   - property owners within 75 metre radius of the subject property (9).
l) - Pages 114-120 from *The Planning and Development Act 2007*;
   - the Board Secretary's Statutory Declaration of service of notices of hearing dated February 16, 2012.
m) Official Community Plan Bylaw No. 375-02 – Town of White City.
n) Zoning Bylaw No. 541-10 – Town of White City.

The parties agreed that the record was complete; therefore, the Committee directed that the appeal would go forward on the basis of the record.

(6) On March 12, 2012, the Committee received an appeal of the decision of the Board. The grounds of appeal are:

> "…the bylaw was misinterpreted. The size floor area that was approved, 8.54 x 11.58 = 98.9msq and according to the lot size from the town of White City when the lot apprailsal (sic) was done, was 2087msq 5% OF (sic) that value is 104.35msq.
>
> The wall height according to the bylaw also states that building height is from grade."

(7) The Committee received written submissions as follows:

- A 25-page submission from Matthew Park of Olive Waller Zinkhan & Waller, Barrister and Solicitors on behalf the appellants on May 22, 2012, which was labeled Exhibit A1;
- A 30-page submission from Kyle P. Vermette of Gerrand Rath Johnson, Barristers and Solicitors on behalf of the Town of White City on June 4, 2012 which was labeled Exhibit R1.

(8) The parties indicated that they were in agreement that the Board erred in its decision related to the floor area of the garage being in contravention of the Bylaw. Upon review of appraisal and land records the Town confirmed that the floor area of the garage development is within the 5% of lot area required by the Bylaw. The remaining issue before the Committee for review is related to the wall height of the garage being in contravention of the Bylaw.

(9) The appellant read a statement into the record at the Committee's hearing and provided a written copy to the Committee.

THE LAW:

Legislation

The Planning and Development Act, 2007:

Minor variances

60(1) If a zoning bylaw authorizes a procedure for making and processing applications for minor variances pursuant to clause 49(h), the zoning bylaw may authorize the council or the development officer to vary the requirements of the zoning bylaw, subject to the following conditions:

(a) a minor variance may be granted for variation only of:

(i) the minimum required distance of a building from the lot line; and

(ii) the minimum required distance of a building to any other building on the lot;

(b) the maximum amount of minor variance must be established in the zoning bylaw and must not exceed a 10% variation of the bylaw requirements;

(c) the development must conform to the zoning bylaw with respect to the use of land;

(d) the relaxation of the bylaw must not injuriously affect neighbouring properties; and

(e) a minor variance must not be granted:

(i) in connection with an agreement entered into pursuant to section 69 respecting the rezoning of land; or

(ii) if it would be inconsistent with any provincial land use policies or statements of provincial interest.

(2) On receipt of an application for a minor variance, the council or development officer may:

(a) approve the minor variance;

(b) approve the minor variance and impose terms and conditions on the approval; or

(c) refuse the minor variance.

(3) If the council or development officer imposes terms or conditions on an approval pursuant to subsection (2), the terms and conditions must be consistent with the general development standards made applicable to minor variances by the zoning bylaw.

(4) If an application for a minor variance is refused, the council or development officer shall notify the applicant in writing of the refusal and provide reasons for the refusal.

(5) If an application for a minor variance is approved, with or without terms and conditions being imposed, the council or development officer shall provide written notice to:

(a) the applicant; and

(b) the assessed owners of property having a common boundary with the applicant's land that is the subject of the application.

(6) The written notice required pursuant to subsection (5) must:

(a) contain a summary of the application for minor variance;

(b) provide reasons for and an effective date of the decision;

(c) indicate that an adjoining assessed owner may, within 20 days after receipt of the notice provided pursuant to subsection (5), lodge a written objection with the council or development officer; and

(d) if there is an objection described in clause (c), advise that the applicant will be notified of the right of appeal to the Development Appeals Board.

(7) The written notice required pursuant to subsection (5) must be delivered:

(a) by registered mail; or

(b) by personal service.

(8) A decision approving a minor variance, with or without terms and conditions, does not take effect:

(a) in the case of a notice sent by registered mail, until 23 days from the date the notice was mailed; or

(b) in the case of a notice that is delivered by personal service, until 20 days from the date the notice was served.

(9) If an assessed owner of property having a common boundary with the applicant's land that is the subject of the application objects, in writing, to the municipality respecting the approval of the minor variance within the periods prescribed in subsection (8), the approval is deemed to be revoked and the council or development officer shall notify the applicant in writing:

(a) of the revocation of the approval; and

(b) of the applicant's right to appeal the revocation to the Development Appeals Board within 30 days after receiving the notice.

(10) If an application for a minor variance is refused or approved with terms and conditions, the applicant may appeal to the Development Appeals Board within 30 days after the date of that decision.

(11) A decision of the Development Appeals Board may be appealed to the Saskatchewan Municipal Board in accordance with section 226.

(12) Pursuant to section 20, clauses (1)(a) and (b) and subsections (5) to (9) do not apply if an approving authority has included these matters in its zoning bylaw.

Right of appeal on zoning bylaw

219(1) In addition to any other right of appeal provided by this or any other Act, a person affected may appeal to the board if there is:

(a) an alleged misapplication of a zoning bylaw in the issuance of a development permit;

(b) a refusal to issue a development permit because it would contravene the zoning bylaw; or

(c) an order issued pursuant to subsection 242(4).

(2) Not withstanding subsection (1), there is no appeal pursuant to clause (1)(b) if a development permit was refused on the basis that the use in the zoning district for which the development permit was sought:

(a) is not a permitted use or a permitted intensity of use;

(b) is a discretionary use or a discretionary intensity of use that has not been approved by resolution of council; or

(c) is a prohibited use.

(3) In addition to the right of appeal provided by section 58, there is the same right of appeal from a discretionary use as from a permitted use.

(4) An appellant shall make the appeal pursuant to subsection (1) within 30 days after the date of the issuance of or refusal to issue a development permit, or of the issuance of the order, as the case may be.

(5) Nothing in this section authorizes a person to appeal a decision of the council:

(a) refusing to rezone the person's land; or

(b) rejecting an application for approval of a discretionary use.

Determining an appeal

221 In determining an appeal, the board hearing the appeal:

(a) is bound by any official community plan in effect;

(b) must ensure that its decisions conform to the uses of land, intensity of use and density of development in the zoning bylaw;

(c) must ensure that its decisions are consistent with any provincial land use policies and statements of provincial interest; and

(d) may, subject to clauses (a) to (c), confirm, revoke or vary the approval, decision, any development standard or condition, or order imposed by the approving authority, the council or the development officer, as the case may be, or make or substitute any approval, decision or condition that it considers advisable if, in its opinion, the action would not:

(i) grant to the applicant a special privilege inconsistent with the restrictions on the neighbouring properties in the same zoning district;

(ii) amount to a relaxation so as to defeat the intent of the zoning bylaw; or

(iii) injuriously affect the neighbouring properties.

Appeal from decision of board

226(1) The minister, the council, the appellant or any other person may, within 20 days after the date of receipt of a copy of the decision, appeal a decision of the board, by written notice, to the Saskatchewan Municipal Board, with a copy of the notice to the board.

(2) If a decision of the board is appealed pursuant to subsection (1), that decision has no effect pending determination of the appeal by the Saskatchewan Municipal Board.

(3) In determining an appeal pursuant to this section, the Saskatchewan Municipal Board may:

(a) dismiss the appeal; or

(b) make any decision with respect to the appeal that the board could have made.

(4) The terms and conditions set out in subsection 225(2) apply, with any necessary modification, to a decision of the Saskatchewan Municipal Board made pursuant to clause (3)(b):

Enforcement

...

242(4) If, After inspection, the development officer determines that the development or form of development contravenes any provision of this Act, any regulations, any bylaw or any order made pursuant to this Act, the development officer may issue a written order to the owner, operator or occupant of the land, building or premises on or in which the development or form of development is located.

(5) In a written order made pursuant to subsection (4), the development officer:

(a) shall specify the contravention;

(b) may direct the person to whom the order is issued to do all or any of the following:

(i) discontinue the development or form of development;

(ii) alter the development or form of development so as to remove the contravention;

(iii) restore the land, building or premises to its condition immediately before the undertaking of the development or form of development;

(iv) complete all work necessary to comply with the zoning bylaw;

(c) shall set a time in which a direction made pursuant to clause (b) is to be complied with; and

(d) shall advise of the right to appeal the order to the Development Appeals Board.

(6) An order made pursuant to subsection (4) may be delivered by:

(a) registered mail; or

(b) personal service."

The Town of White City Zoning Bylaw No. 541-10

4.2.4 Accessory Regulations

Table 4.2

Accessory Building Regulations (Residential)

		R1	R2	R3	R4	R5	R6	R7	R8
i)	Floor area coverage (maximum)	5% of lot area	5% of lot area	5% of lot area	5% of lot area	5% of lot area	5% of lot area	5% of lot area	5% of lot area
ii)	Height (Maximum)*	3.66m **	3.66m **	3.66m **	3.66m **	3.66m **	3.66m **	3m **	3.66m **
iii)	Side Yard setback (minimum)	4.8m	4.8m	10m***	4.8m	1.5m	2.5m	2.5m	4.8m
	If located no closer than 10.5m from the rear of the building line of the principal building	3m	3m	7.5m	3m	1m	2.5m	1m	3m
iv)	Rear Yard setback (minimum)	1m	3m	6m	1m	1m	1m	1m	3m

*roof pitch must be the same or lower than the principal building on the lot
**to the top of the wall plate
***this setback must a minimum of 15 m if it is used to shelter horses

CASE LAW:

Dolman v Royal West Equities Corp. (1990), 87 Sask. R. 277, 2M.P.L.R. (2d) 49 (C.A.)

St. Andrew's Presbyterian Church v. Saskatoon (City) (1987), 63 Sask. R. 140.

CONCLUSIONS AND REASONS:

[1] In considering this appeal, the Committee is bound by the provisions of section 221 of the Act, as was the Board. In an appeal of a Section 242 order, the Act places an onus on the appellant to make a case to the development appeals board that, even though the development violates a municipal zoning bylaw, it should be allowed to proceed because it clears all three "bars to variance relief" set out in clause 221(d) of the Act. In layman's terms, the three bars may be described as follows:

> *Special privilege* – would the Board (or this Committee) grant the same privilege to another applicant where the same circumstances (need and conditions) in the same zoning district (subject to the same bylaw standards) exist?

> *Intent* – would the requested variance contradict, defeat, compromise or be offensive to the purposes and intent of the provisions of the bylaw seeking to be avoided? (The purpose and intent of the specific provisions should be clearly expressed in the bylaw or in some other learned statement of opinion.)
>
> *Injurious affection* – would the requested variance directly result in unreasonable interference in the immediate, rather than potential or future, use and enjoyment of neighbouring properties? In particular, the affects on aesthetic appearance of the neighbourhood, uniformity of the streetscape, access for maintenance, fire separation, privacy, view, and natural light that would result from a major relaxation of the bylaw's standards. The Board or the Committee would consider the extent of the objections raised by neighbours. If no objections are raised, it does not mean injurious affection is not-existent; however, it would be a significant factor in the decision.

[2] The Act requires that, in order for the appeal to succeed, it must clear all three of these bars. To fail on any one results in the entire appeal failing.

[3] In an appeal to the Committee of a development appeals board decision that upholds a Section 242 order, the Committee generally does not re-hear the matter that was before the board. Instead, the Committee must review the board's decision for error and the appellant must focus his or her arguments and submissions on how the board erred in coming to its decision, based on the information and evidence that was before the board. If the Committee finds that the board erred, we must then do what the board ought to have done.

[4] For the reasons that follow, the Committee finds that, based on the evidence and the law that was before the Board, it erred in its decision to deny the appellants' appeal. Consequently, the Committee must do what the Board ought to have done.

[5] The Board's decision contains much detail on the positions taken by the parties but it lacks in analysis of the issues in this appeal and offers no support for its conclusions. The reasons for a development appeals board decision must show why or how or on what evidence the board reached its conclusions.

[6] The parties to the appeal submitted that, since the Board hearing, new evidence had come forward which establishes that the Board erred in its decision related to the garage floor area exceeding the maximum floor coverage of 5% of the lot area. Paragraphs 29 to 34 of the respondent's submission to the Committee summarize their position on the new evidence.

"29. Therefore, the total lot area from the three new sources of evidence are as follows:

a. Appraisal - 2,087.00 square meters;
b. SAMA - 2,026.215 square meters; and
c. ISC Parcel Picture - 2,030.00 square meters (being 0.203 hectares)

30. The Town respectfully submits that the SAMA Property Information should be followed, as it is supported by the ISC parcel picture, and submits that the total lot area of the Property is 2,026.215 square meters.

iii. Did the DAB err in applying "gross floor area" rather than "floor area" under to section 4.2.4 of the Bylaw?

31. The Town concedes that the appropriate definition to be applied is Floor Area and not Gross Floor Area, as was mistakenly referred to in paragraph 2 of the Notice and page 2, part 2 of the Planning Report dated February 16, 2011.

32. The maximum Floor Area of the Garage is calculated using the three new sources of evidence as follows;

a. Appraisal - 104.35 square meters
b. SAMA - 101.31 square meters
c. ISC Parcel Picture - 101.50 square meters

33. The uncontroverted evidence in front of the DAB on page 10 of the Minutes is that the Floor Area of the Garage is 98.89 square meters. This is lower than the maximum Floor Area permitted under the Bylaw regardless of whether the evidence from the DAB, the Town or the [redacted]s is accepted.

> 34. Given the uncontroverted evidence before the DAB and the new evidence in front of the Committee, the Town concedes that the evidence does not support a finding that the Garage exceeds 5% of the lot area and therefore the Town concedes that the [redacted];
>
> a. are not in breach of the Building Permit with respect to the 5% lot area; and
> b. are not in contravention of the Bylaw with respect to the Garage exceeding the maximum 5% of the lot area."

[7] The Committee notes in the last paragraph on page 10 of the Board decision that the garage floor area based on an amended building permit is 98.89 square meters. The measurement of 38 feet by 28 feet is the area one foot in from each side and each end of the concrete pad, and is the measurement inside of a one-foot-thick pony wall. The respondent indicated that they agree with the manner in which this was calculated.

[8] Section 4.2.4 of the Bylaw indicates that the floor area coverage maximum (emphasis added) for an accessory building in an R1 Zone is 5% of the lot area. Floor area is defined, in the Bylaw as "the maximum habitable area contained within the outside walls of a building …". Given the provisions in the Bylaw regarding floor area the Committee accepts the interpretation of the respondent regarding the calculation of the floor area for the garage as being 98.89 square meters.

[9] The appellant accepted the position of the respondent regarding the garage floor area and indicated that it is also not clear from the record of the Board what the lot area is on which they based their decision that the area of the garage was too large. The Committee notes at Tab C in the Board's record which includes drawings reviewed by Professional Building Inspections Inc. a site plan with hand written notes on it which indicate that the lot area is 2088.178 square meters and that 5% of the lot area would be 104.4089 square meters. No other references to the size of the lot area appear in the Board's record (including the Order to Correct and the Development Officer's report).

[10] Given that the floor area of the garage is 98.89 square meters and the various authorities submitted in evidence by the appellant and the respondent indicate that the lot area exceeds 2000 square meters, the floor area of the garage does not in fact exceed

the maximum 5% of the lot area required by the Bylaw. The Committee finds that given the information in the record of the Board and the new evidence in the submissions to the Committee from the appellant and the respondent on the area of the lot at 9 Rosewood Bay that the Board erred in its decision that the garage area is in contravention of the Bylaw and the order to correct on this issue should be vacated.

[11] The Committee will deal with the remaining issue of the contravention related to the height of the walls of the garage based on each of the three bars provided for in clause 221(d) in turn.

SPECIAL PRIVILEGE

[12] As previously indicated, the test to be applied in a determination of special privilege is whether the Committee (or the Board) would be prepared to grant the same privilege, to another party, where the same needs and conditions existed and the same bylaw standards applied.

[13] In its decision, the Board concludes that granting the requested relaxation would grant the appellant a special privilege and others have not been granted a similar relaxation. The Board's minutes state that they were not prepared to grant a relaxation, in this case nor to others in Zone R1 who would have similar circumstances, to exceed the wall height of 12 feet. In the Committee's view, the Board erred in this determination.

[14] The Committee finds that the Board takes too narrow a view when it speaks only to the circumstances of the property. The Committee believes that the procedural circumstances that led to the wall height being in contravention of the Bylaw must also be considered. We believe that this approach necessarily varies from that used in a variance relief request for a proposed development where property circumstances are generally all that is at issue. In this case, the development exists, creating a need for the appeal body to consider how the development came to exist.

[15] The Committee finds support for its position here in the Saskatchewan Court of Appeal decisions for both *Dolman* and *St. Andrew's* (cited above). Both cases speak to

"circumstances" and "same need and conditions" in determining the granting of "special privilege". Neither case limits the application of these words to the property at issue. In fact, in *Dolman*, the Court speaks to consideration being properly given to the "whole of the circumstances" of the appeal. Therefore, the Committee finds that, in addition to the property-related circumstances of this appeal, "circumstances" and "conditions" also apply to the process that led to the wall height being in contravention of the Bylaw. That is: the appellant's good faith in seeking information, the confusing information he received, the appellant's intent to comply, the timing of the information received from his contractor and the misunderstanding that resulted in over-height walls. Further, the Committee finds that another factor should be considered as "circumstances" and that is the cost to the appellant to remedy the contravention versus the harm caused by the contravention (proportionality; in other words, the "punishment" does not fit the "crime").

[16] The appellant advised that he wanted to build a garage to accommodate his large truck, do some hobby work and for the storage of other personal items. He had no intention of breaking the Bylaw. This was evident by the fact that he had talked to the Development Officer on numerous occasions to determine what was required before he began building his garage. Mr. Hudema (building inspector engaged by the Town to inspect the property) in his presentation to the Board indicated that [redacted] called him once or twice about inspecting the framing of the building. He said he didn't respond because the Development Officer was working on the problem with respect to sizing. Mr. [redacted] got a building permit and even pursued an amendment to the permit when he was told that the garage floor area was larger than the maximum allowed 5% of lot area. He does concede however that the height of the garage walls is higher than the maximum of 12 feet (3.66 meters) allowed by the Bylaw. It is his understanding that after the building is completed and the grade is brought to within 8 inches of the wood as required by the National Building Code that the walls will be 8 inches higher than allowed by the Bylaw. The solicitor for the appellant requested that this be considered a minor variance and that a relaxation be granted from the requirements of the Bylaw on wall height. The respondent argued that the walls are 12 feet high and that they are over height by 16 inches because of the use of the 16-inch ICF pony wall.

[17] The appellant added that there were circumstances that led to the issue of the walls being higher than the maximum allowed under the Bylaw. When he bought the lot it was very low. He estimates that some 30 truck loads of fill were brought in to meet the required grade around his house. This resulted in his house being on a hill on the lot with water draining to the back of the lot. When he hired the contractor to do the work the building permit was applied for based on how they thought everything would go. The building permit which was issued on August 14, 2011, indicates that the height of the walls shall be 12 feet. Work commenced on the garage on September 18, 2011. When the contractor began to dig the foundation for the garage he found that he was required to dig down further than was originally expected in order to find stable soil for the footings. He advised that the grade was uneven and that it would cost $8,000 to make the necessary correction. As an alternative, the contractor recommended that a 16-inch ICF pony wall be used as the most economical method of addressing issues with the grade. By this time the 12-foot walls and roof trusses for the garage had already been built.

[18] The appellant is not a contractor and he relied on the recommendation of the contractor that building a pony wall was the most economical way to address the issues with the grade on the lot. At this point unfortunately the [redacted] did not turn their attention to the impact of the changes on the requirements of the Bylaw. At the Board hearing he indicated that he did not realize that the building was over height until after it had been built. The appellant estimates that it would cost $2,000. to $5,000. and take three to four months to lower the height of the walls. If a relaxation is allowed the appellant proposes to taper the grade around the garage to within 8 inches of the wood as provided by the National Building Code so that water will continue to drain to the same place as it had prior to the construction of the garage.

[19] The solicitor for the appellant included photographs in the appellant's submission to illustrate other situations where height violation was an issue. These photographs had not been submitted as evidence to the Board and it was acknowledged by the appellant that the photographs were not of situations located in the R1 Zoning District. The Committee accepted the photographs as Exhibit A2 on the condition that the decision on

the appeal would indicate the extent to which the photographs had been relied on in making its decision.

[20] The appellant needed a large garage to accommodate his large truck, hobbies and for the storage of other personal items. In the Committee's view the circumstances that the appellant went through in having the garage built are significant in this case. The grade on the lot was uneven. The otherwise straightforward process of constructing the garage according to the building permit and plans became complicated when the issue of soil stability on the unevenly graded lot arose and the walls and roof trusses had already been built. The prohibitive cost of $8,000 to correct resulted in the appellant needing to look for a more economical option. Acting on the recommendation of the contractor for addressing the soil stability and grade issue the appellant thought that he had resolved the situation in the most economical way possible. It was only after the building had been built that it was found that the height of the wall was too high.

[21] The Committee notes in the Board minutes that Mr. Hudema (the building inspector engaged by the town to inspect the property) in response to a question on grade height on the lot indicated that an 8-inch separation from soil grade material and wood material would be required. This comment supports the appellant's position that after the grade is brought up 8 inches and tapered so that the water will continue to drain to the same location as before the construction of the garage that the wall is over the maximum height by 8 inches.

[22] The Town has a natural drainage plan according to the Development Officer's report to the Board. The Committee notes in the Board minutes that the issue of drainage was raised but there is no evidence in the record of the Board that establishes that the appellant's plan for addressing the issue of drainage on the pre-existing unevenly graded lot at 9 Rosewood Bay by tapering the grade in such a manner that the lot will drain as it had prior to the construction of the garage will not work.

[23] Section 60 of the Act provides for a procedure which, if permitted by a zoning bylaw, would allow the Development Officer to allow a 10% variance for specific types of

bylaw provisions. Although not strictly applicable in this case, the Committee finds the notion of a reasonable variance of up to 10% compelling. In this situation, 8 inches on a 12-foot wall is a 5.5% variance; 16 inches on a 12-foot wall is an 8.2% variance.

[24] The Committee (and the Board) has no authority to grant an appellant a "special" privilege inconsistent with the restrictions placed on neighbouring properties in the same zone. The test for whether or not an appeal body should grant a "special" privilege has been provided by the Saskatchewan Court of Appeal in *St. Andrew's* at paragraph [13] and it is "whether [the Committee or Board] would grant this same privilege to another property owner subject to the same bylaw restrictions where the same need and conditions existed". The Committee finds that, if another property owner in the R1 Zoning District came to us with a request for the same variance relief being sought here and expressed the same need with the same conditions and circumstances as expressed here, we would also grant the same privilege.

[25] For these reasons the Committee finds that, based on the evidence that was before the Board, the appellant clears the special privilege bar to variance relief and the Board erred when it found to the contrary.

[26] With respect to the photographs submitted by the appellant the Committee finds that the photographs do not prove that the buildings/walls depicted are over height. On questioning from the Committee it was determined that the appellant had no other information on the situations depicted in the photographs. To the naked eye the accessory buildings are higher than the primary residence but this does not address the issue of whether or not the wall height in these situations is greater than 12 feet or if these buildings would have been allowed on appeal. In this case the Order to Correct issued by the Town specifically notes the violation as the height of the walls being too high. No issue was raised in the Order related to the height of the accessory building as compared to the principal residence. The respondent also noted that the Bylaw for the Town of White City is fairly new and that there may be a number of situations within the Town that were created before the Bylaw was passed that do not meet the requirements of the Bylaw. To the knowledge of the respondent there are no over height accessory buildings

in the RI Zoning District. The Committee acknowledges that there may be other situations in the Town that violate the Bylaw. If they are not appealed or allowed on appeal then they do not have any relevance to the decision here.

[27] The Committee further notes that granting variance relief is not the same as setting a binding precedent, as the Board's decision suggests. Not everyone asking for a wall height relaxation in this area of the Town can expect the same result if this appeal succeeds. By the same token, the existence of other over-height walls in accessory buildings does not, in and of itself, compel the Committee to allow the variance. Only those owners who appeal on the basis of the same needs, conditions and circumstances (including the same zoning district) as the appellant could expect to receive the same relief. Put another way, in order for a previous appeal decision, or a current non-conforming situation, to be relevant to a current appeal, it must be apparent to the Board (Committee) that the same needs, conditions and circumstances (including the same zoning district) existed in both cases.

INTENT

[28] The Committee notes the Board's incorrect focus in its conclusion respecting intent when it speaks of the Town providing the intent of the Bylaw and that the requested relaxation on height of the building is excessive for Zone R1. No reasons are provided as to why the Board is of the view that the contravention is excessive or how it undermines the intent of the Bylaw. One might think that the contravention is excessive because it violates the Bylaw requirements. As stated above, the Act clearly allows a board to grant a variance request, **notwithstanding** a bylaw contravention. Without the ability to grant a variance request, there would be no point in having appeal provisions in the Act.

[29] The respondent's position on intent is laid out on page 5, of the planning report. "The R1 zone is a residential zoning district, the accessory building constructed at 9 Rosewood Bay takes away from the character of the neighbourhood due to its size and height. By allowing a structure of this size in this neighbourhood will set precedence for other to construct buildings that are similar. This in turn will take away from the residential nature of our community, turning our community into zoning districts with massive shops

and garages." "The zoning bylaw regulates development and the use of land in a community. The zoning bylaw permits council to set local standards for the subdivision and the use of the land. Zoning bylaws provide a legal way of managing land use and future development and it protects from conflicting and possibly dangerous land uses in a community. Theoretically, the primary purpose of zoning is to segregate uses that are thought to be incompatible. In practice, zoning is used to prevent new development from interfering with existing residents or business and to preserve the "character" of a community."

[30] As established earlier it has now been determined that the size of the garage does not violate the provisions of the Bylaw. One can conclude as a result that the Bylaw does permit the construction of large garages in the R1 Zone. There is no evidence that walls that are 8 inches or 16 inches higher than the Bylaw requirements will have any significant impact on existing residents, businesses or the character of the neighbourhood or that a relaxation in this situation will result in a precedent that will serve to undermine the intent of the Bylaw should other situations arise concerning the height of accessory buildings in the Town. The Committee believes that if neighbours thought that the height of the garage was unsightly and negatively impacting on the character of the neighbourhood, more than one would likely have come forward to say so and to express their views in a manner in which consideration could be given to the weight that should be given to their concerns.

[31] In the Committee's view, based on the evidence that was before the Board, the appellant's development cannot be viewed as undermining the intent of the provisions of the Bylaw as identified by the respondent. The Committee finds that the appellant, therefore, clears the second bar to variance relief and the Board erred when it found to the contrary.

INJURIOUS AFFECTION

[32] In deciding that granting the appeal would injuriously affect neighbouring properties, the Board simply relied on a letter from one adjacent neighbour that expressed their opposition to the size of the accessory building. The Committee finds

that the neighbour objects to large garages and the potential they pose for the operation of a business, additional traffic and an unsightly mess. Based on the evidence before the Board and the Committee the size of the garage is within the Bylaw regulations and the contravention on the height of the wall is minor. The objection appears to be speculative and lacks evidence to support the claim. The Board erred in accepting the neighbour's position on injurious affection without considering the evidence.

[33] The Board sent notices of its appeal hearing, as required by the Act, to the owners of 9 properties situated within 75 meters of the subject property. No third parties appeared at the Board's hearing to voice opposition to the appeal. The respondent offered no comment to the Board on injurious affection.

[34] The fact that only one objection to the appeal was raised does not mean that injurious affection is non-existent and the appeal should therefore succeed. The significance of a lack of objections is magnified, however, by the fact that there was no evidence before the Board that any of the neighboring property owners would suffer direct unreasonable interference in the use and enjoyment of their property if this appeal were to succeed. The Committee (and the Board) must give this fact appropriate weight.

[35] Since there was no evidence before the Board to prove that granting the appeal will directly result in unreasonable interference in the use and enjoyment of neighbouring properties, the Board erred when it found that injurious affection exists. The appellant, therefore, clears the third bar to variance relief.

[36] Having cleared all three of the bars to variance relief, the appeal succeeds.

COMMITTEE COMMENTS:

[37] In this case, the Committee accepts the position of the appellant that the wall height in the Order to Correct is minor in nature and that a cost of $2,000 or more and three to four months to correct as a remedy does not suit the contravention.

DECISION:

For the foregoing reasons, the Committee finds that the appeal to the Committee is **SUSTAINED**, the Board's decision is set aside, and the Town's Order to Correct, dated December 5, 2011, is hereby vacated.

TAKE NOTICE THAT, subject to section 33.1 of *The Municipal Board Act*, this Decision of the Planning Appeals Committee, Saskatchewan Municipal Board is final.

DATED AT REGINA, Saskatchewan this

25th day of July, 2012.

SASKATCHEWAN MUNICIPAL BOARD
Planning Appeals Committee

Gordon Hubbard, Chairman

Barry Fry, Secretary

For the Committee:

Randy Markewich, Member

I concur:

Jodi Vaughan, Member

Other appeal

33.1 Any person affected by an order, decision or determination of the board may appeal to the Court of Appeal against the order, decision or determination on a question of law or on a question concerning the jurisdiction of the board:

(a) within:

(i) 30 days after the date on which the order, decision or determination is made; or

(ii) any further time, not exceeding 30 days, that a judge of the Court of Appeal may allow on an application made within 30 days after the date on which the order, decision or determination is made; and

(b) with leave of a judge of the Court of Appeal.

1996, c.51, s.7

Procedure

33.2(1) The appellant shall, within the period provided in subclause 33.1(a)(i), serve notice of the application for leave to appeal on all parties to the matter before the board giving rise to the appeal and on the board, and the board shall, within 20 days of being served with the notice, transmit to the registrar of the Court of Appeal a copy of the order, decision or determination appealed from, duly certified by the chairperson or secretary of the board, together with all documents filed with the board in connection with the subject-matter of the appeal.

(2) An order granting leave to appeal:

(a) for the purposes of any appeal pursuant to section 33.1 is deemed to be a notice of appeal;

(b) must state the grounds of the appeal; and

(c) must be served on the respondent or his or her solicitor within 15 days from the date of the order giving leave to appeal.

(3) Subject to the provisions of this section and sections 33.1 and 33.3, the rules of the Court of Appeal apply, with any necessary modification, to an appeal pursuant to section 33.1 as if it were an appeal from a judge of the Court of Queen's Bench, but no appeal books are required.

(4) The board may charge a reasonable fee for copying any documents required for the purposes of an appeal.

1996, c.51, s.7