



Development Appeals Board
Appeal Decision

**DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD REGARDING
APPEAL NO. 06-19 PERTAINING TO 361 FAIRWAY ROAD, WHITE CITY, SK
JULY 31, 2019**

Panel: Dennis Gould, Chair
Bill Wood, Board Member
Cory Schill, Board Member
Dale Strudwick, Board Member
Glen Weir, Board Member

Secretary: Chazlyn Lambie

Appellant: [REDACTED], Property Owner

Respondent: Delainee Behrns, Development Officer, Town of White City

Introduction:

- 1) The Appellant wants to build a second driveway onto Fairway Road to allow for parking and for direct access to the street from a parking pad at the end of the principal residence.
- 2) Space for parking is significant for two reasons: The Town bylaw that prohibits on-street parking; and this home faces the “side yard” which means the present driveway is much shorter than if the home had faced the typical “front” of the lot.
- 3) Street access from the parking pad at the end of the house is only feasible if a driveway goes straight ahead to Fairway Road. They tried to install a culvert and make it a level access with grass but that did not work well. This culvert with grass would have gotten around the technicalities of the Driveway Bylaw, but it did not work.
- 4) Making a driveway onto the adjacent side street, Fairway Place, would not accommodate access to the parking pad.
- 5) This home was built in 2009, and the bylaw to allow only “one driveway access” to a road was passed in 2015. Enforcing such a bylaw retroactively becomes problematic when building design and lot layouts are completed well before bylaw implementation. At this point, it’s too late to redesign the home or lot to consider things like allowed parking space.
- 6) There are many homes built in this area, prior to 2015, that have 2 driveways onto the roadway. The Appellants pointed out 7 such homes with 2 driveways onto a roadway, and Board

members, driving by these homes, noticed 3 more homes on Fairway Crescent that had 2 driveways onto the roadway. These are at #2 Fairway Crescent, #21 Fairway Crescent and #5 Fairway Crescent.

- 7) It is obvious that many homeowners have opted to have 2 driveways onto a roadway, and some of those who are on corner lots even have a 3rd driveway onto the side road.
- 8) Six nearby property owners have expressed their support of the Appellant's driveway plans.
- 9) 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.
- 10) The Board cannot make a decision that:
 - a. would create a special privilege;
 - b. is injurious to neighbouring properties; and
 - c. defeats the intent and purpose of the Zoning Bylaw.

Appellant's Position:

- 11) Appellants are needing to put a driveway to allow access to their trailer that is placed in a spot beside the house to keep there for the summer. They tried to extend the culvert, putting grass/sod in but those options did not work. When the area is wet, the trailer sinks into the area, up to the axels and got stuck. They decided they would need to put down concrete.
- 12) Appellant's neighbours have 2 driveways on their properties and in the bylaw it states that you are allowed 2 driveways but they need to have access on different streets (Fairway Road and Fairway Place). They would like the second driveway to access the same street (Fairway Road) since their house is set up differently, it sits sideways on the lot.
- 13) Appellant's driveway is built small due to it being on the sideyard, they are only able to get one extra vehicle (2 vehicles in total) on the driveway therefore they have no room to have visitors over since on street parking is not allowed. They were not aware of the no on-street parking rule when they were purchasing the property.
- 14) In the notice of decision, it mentions they would be permitted a second driveway accessing Fairway Place and it says in the bylaw. The Bylaw does not state that the second driveway has to be from a different street. Examples from 42 Bower Drive, 56 Fairway Crescent both have 2 driveway accesses on the same street.

Respondent's Position:

- 15) This is unique situation; we have explored a lot of options. There are no other related appeals regarding driveways as a point of comparison. Orientation of the house poses a challenge for driveway purposes. We are just trying to enforce the driveway bylaw, which was adopted in 2015 which states we need to regulate the driveway and property accesses to and from a highway or a street. A lot of driveways exist that were not regulated, as they were all completed before 2015. I am unable to speak to why some of these driveways exist without proper documentation. As for Princeton, the developer gave special privilege for that driveway loop because the shape of the lot is a reverse pie and the lot frontage is a much greater than a typical rectangular shaped lot.
- 16) These driveways were completed at the discretion of the builder. The driveways at 56 Fairway Crescent is allowed because it accesses a garage. At 42 Bower Drive, they got approved because they indicated a garage would eventually be built, but a detached garage has not been built to date. Another example was the developer approved a driveway extension in 2012, but resident did not submit the permit application until 2015 and the developer suggested we deny that application since we implemented the driveway bylaw by that point, but the Town gave permission since the developer's permission was granted prior to the bylaw being implemented.

Questions from the Development Appeals Board:

The proposed construction from the end of the driveway that your proposing, do you know the distance, it is not on your drawings?

17) The Appellant responded: Probably 6 meters 20 feet by probably 40 feet.

What mentioned regulations from the developer for granting these exceptions? I understand that it's in the bylaw, but with the developer, do they go ahead and approve these exceptions, or do they need the Town's approval beforehand?

18) Delainee responded: They are supposed to go through Great Plains Leaseholds first. Any of the Great Plains Leaseholds subdivisions: Emerald Creek, Fairway, Bower West Phase 1, 2, 3, any new subdivisions have a restrictive covenant that states they must get developer approval for their driveways before they bring them to the Town of White City. What they should do is take a drawing of their driveway to Great Plains Leaseholds for a stamp of approval, then bring it to the Town for an actual permit application that we sign off on to authorize the permit. It is a two-step approval process.

A case like Princeton drive, if the construction is done without the Town's approval and the Town becomes aware of that, what is the repercussions of the owner?

19) Delainee replied: That's a very good question, the only instance that I have dealt with this is the Princeton one and I was informed before the house was built that this driveway construction was to take place. As I was preparing for this hearing, I was trying to look at examples that have been approved, because I know that there are many out there. I have looked through the files

and I am unable find any documentation on what has happened with these properties, so I don't know if they slipped through the cracks. There was one example where the permit had the town's approval but no developer approval. I checked with Great Plains Leaseholds on some of these properties because they should have record of all these approvals, and they had copies of a site plan with no stamp on it and that was all they had on file. I think that's why the driveway bylaw came into effect is that we can have a proper process for these approvals, and proper regulations to follow instead la de da kind of thing, where there were no basis to the approvals or no records for reference.

Implies to me though that is there is some softness here with the developers, if that is allowed to occur with the Towns blessing, the repercussions should be to the developer that they need to fix this. Does not put any weight on the developer continuing to do with the things that are stressed to be done. Needs to be dealt with to the developer in the firm manner, before any continuation happens.

20) Delainee responded: Eventually the developer is not part of the process anymore. I think the issue here is the Fairway subdivision, where most of these examples are, has now been taken over by the Town. The developer is out of the equation and the Town handles all these approvals. What about all the ones from 7-8 years ago that have only been half approved, where the developer approved them but now, he is out of the equation.

You did not have to have a driveway permit requirement prior to 2015, is what I am understanding?

21) Delainee replied: Yes.

The residents supporting documents here of other driveways may have been done prior to 2015, before there was an expectation that you needed a permit, except for Princeton?

22) Delainee responded: Yes.

The exception of Princeton drive?

23) Delainee responded: Princeton has a reversed pie shape, it's about 30 feet larger than the lot next door. Given the odd shape and the fact that if you wanted to put a straight driveway off the garage you would like meters and meters of front yard with nothing to do with it, the developer trying to sell that lot, said hey I'll offer the fact that you can put a u shaped driveway to make it look nicer, to use the space, to improve the selling features. There is no plan to put a garage in the back, they do not have a lot of rear yard to work with.

Do you know when the house was built?

24) The Appellant replied: 2009.

Issues:

25) During general discussion the Board indicated that they were prepared to grant this requested relaxation even though the second driveway is contrary to the technical wording of the By-Law. The Board would consider such a relaxation for others in Zone R4 if they had similar circumstances.

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

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

27) In its documentation the Town provided the intent of the bylaw. In this case it is a matter of a By-Law being applied retroactively, which becomes problematic when buildings are already constructed, and lots design are complete. The Board is prepared to allow this relaxation for this property in Zone R4 due to the circumstances in this case and other cases in Zone 4 that have similar circumstances.

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

Would issuing a development permit cause injury to neighbouring properties?

29) There was no "injurious affection" to neighbouring properties presented at the hearing. Six adjacent homeowners showed support for the development.

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

Conclusion:

31) The Board finds the following appeal:

- a. Would not give a special privilege;
- b. Would not defeat the intent of the Bylaw; and
- c. Would not negatively impact neighbouring properties.

32) For these reasons, the appeal is allowed.



Dennis Gould, Board Chair