

TOWN OF WHITE CITY
DEVELOPMENT APPEALS BOARD

August 21, 2013

Minutes of the Wednesday, August 21, 2013 Development Appeals Board Hearing held in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal #02-13 [REDACTED], Lot 7, Block 7, Plan 95R02449, 8 Rosewood Bay.

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

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

Appellants: [REDACTED]

Introductions:

Chairman Dennis Gould stated that the board had come to order at 7:10 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 #02-13:**

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 submissions along with site plan, received via email July 31, 2013.
- Development Officer's Report.
- Application for Building Permit
- Engineering specifications
- Sample site plan & Plan of Survey
- Notice of the date for the Development Appeals Board hearing sent to the Appellant dated July 26, 2013.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated July 26, 2013.
- Notice of the appeal sent to 9 adjacent property owners.
- A copy of 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 nine (9) 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. They have no neighbours behind them. The solarium is being added to an existing deck that is in compliance. The only location with access to the south side of the house is off the kitchen onto the existing deck. The solarium does not pose a fire hazard. This addition will add value to home. Neighbours have told them that they are in favour of the construction.
2. The closest the solarium will be to the rear of the property is 8.5 meters.

Town Development Officer: Debi Breuer

The Development Officer stated that she had nothing further to add to her report. The deck is grandfathered in and they have no neighbours behind them. The Town has no issue with the relaxation of bylaw in this case.

Question:

There were no questions from the Board members.

Final comments:

The Appellant had no further comments.

The Town Development Officer had no further comments.

The Appellant left at 7:14 PM.

The Town Representative left at 7:14 PM.

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

- 1) The subject lands are legally described as Lot 7, Block 7, 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 covered deck would protrude into the required minimum 12 meter rear 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: During general discussion the Board indicated that they were prepared to grant this application. In this case there are no neighbouring properties to the rear of the ██████████’s home, their property backs onto Gregory Ave East. Their deck currently protrudes into the backyard setback as allowed by clause 4.2.1(2)(b) of bylaw # 541-10 and enclosing this deck won’t change that allowed encroachment. If others in this zone requested a similar relaxation under similar circumstances, the Board would be prepared to grant their request also.

Therefore the application does clear this bar.

Intent: The requested relaxation does not change the amount that the current deck protrudes into the back yard setback and the Town clearly does not oppose the request in this case. The Board does not see this relaxation defeating the intent of the bylaw and are prepared to approve this relaxation.

Therefore the application does clear this bar.

Injurious affection:

There was no issues raised by any of the neighbouring property owners contacted and the Town has no reservations regarding this requested relaxation. It is also significant that this backyard is next to Gregory Avenue East, therefore there will not ever be any neighbours to the rear of this yard.

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

The ██████████’s application therefore clears this bar.

██████████
Appeal #02-13
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 August 21, 2013 at the Town of White City Municipal Office.

BILL WOOD: Moved/Seconded: WES MEMORY: That Appeal #02-13 made by ██████████ ██████████ for a relaxation of the Zoning Bylaw 541-10, to permit a covered deck to protrude into the required minimum 12 meter rear yard setback be granted, for the following reasons:

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

Carried.

Adjournment:

DENNIS GOULD: Moved/Seconded: WES MEMORY: That the hearing adjourn at 7:15 PM.

Carried



Dennis Gould, Board Chair