

ISSUE DATE:

**Mar. 10, 2010**



PL090956

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Lori Ann Simpson & Paul Roman  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1201 Mount Vernon Street  
Municipality: City of Mississauga  
OMB Case No.: PL090956  
OMB File No.: PL090956  
Municipal No. A306/09

**APPEARANCES:**

**Parties**

**Agent**

Lori Ann Simpson and Paul Roman

Lori Ann Simpson

Haeng-Sook Han and Jong Soo Kwak

Marilyn Kwak and Marina Kwak

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD**

At the outset of the hearing, the Board was advised that Ms Haeng-Sook Han and Mr. Jong Soo Kwak spoke Korean as their mother tongue and did not feel they were sufficiently proficient in English to provide their evidence in English and to follow the proceedings properly. With the consent of Ms Lori Ann Simpson and Mr. Paul Roman, the Board agreed to have Ms Marilyn Kwak and Ms Marina Kwak act as the agents and interpreters for their parents. The Board placed both Ms Marilyn Kwak and Ms Marina Kwak under oath that they would faithfully and truthfully interpret their parents' testimony and any questions in cross-examination from Ms Simpson, as well as any questions, rulings or directions from the Board. The Board also stressed the importance of not adding thoughts of their own when they were acting as interpreters.

Ms Simpson and Mr. Roman, the applicant/appellants, have built a playhouse in their rear yard for their daughters. The playhouse was built without benefit of a building permit. The playhouse is located adjacent to the side lot line shared by their immediate neighbours, Ms Han and Mr. Kwak. The evidence before the Board is that this raised playhouse was custom designed and built to a high standard of construction.

A review by appropriate City of Mississauga staff identified three variances from the requirements of Zoning By-law 225-2007, as amended:

1. a side yard setback of 0.53 metres where the By-law requires 1.20 metres;
2. a height of 4.06 metres where the By-law permits a maximum height of 3.0 metres; and
3. a deck projecting from the accessory structure where the By-law does not permit a deck and/or balcony on top, above or projecting from any part of an accessory structure in this instance.

The City of Mississauga Committee of Adjustment did not authorize the requested variances. Ms Simpson and Mr. Roman appealed the decision of the Committee to this Board.

Ms Han and Mr. Kwak are the immediate side yard neighbours to Ms Simpson and Mr. Roman. Ms Han and Mr. Kwak oppose these requested variances. They cite, in particular, the loss of privacy as a result of the playhouse being placed too close to their side lot line and being too tall. The balcony of the playhouse extends away from their side lot line but Ms Han and Mr. Kwak feel there is still a sight line back to their second floor bedrooms from this balcony. They also state that Mr. Roman has occasionally been on the balcony, not just the children using the playhouse. Ms Han and Mr. Kwak also note that the playhouse has windows that face back toward the main house and also have sight lines back to their house and bedrooms. Finally, they feel the playhouse and its sight lines cannot be adequately screened because the location of the playhouse leaves insufficient room between the structure and their side lot line to plant proper screening materials.

Ms Simpson and Mr. Roman advised the Board that the height of the playhouse was a deliberate consideration in order to provide a custom designed tube slide and swing. The raised playhouse is on four posts, thus providing both shade and air circulation under the playhouse. The balcony was designed to provide additional protected exterior play space; the windows in the playhouse have been situated and designed to ensure cross breezes within the playhouse. Ms Simpson and Mr. Roman have consulted landscape experts and acknowledge that the playhouse has been built too close to the side lot line to permit large bushes or trees to be planted between the playhouse and the side lot line. They further acknowledge that the limit of any screening that could be planted in this location would be some vines that would be trained to climb up the posts and then along the playhouse.

Ms Simpson and Mr. Roman were clear that they would not consider moving the playhouse to a location further away from the side lot line, citing the extensive work that went into the footings for the supporting posts. They were equally clear that they would not consider reducing the height of the playhouse, citing the custom design for the tube slide. Similarly, they were not prepared to remove the window that faced back to their house and provided the sight line to their neighbour's house, nor were they prepared to remove the balcony. In short, Ms Simpson and Mr. Roman took the position that the playhouse must remain as it is, where it is, and they would ameliorate any impact by planting vines between the playhouse and the side lot line shared with Ms Han and Mr. Kwak.

In support of this position, Ms Simpson and Mr. Roman ask the Board to consider Decision/Order 0693, issued May 28, 2003, before a panel of this Board differently constituted. That Decision allowed a requested variance for height of an accessory structure, subject to conditions. One of the conditions was the planting of several trees of a minimum 10 feet in height to screen the structure from the objecting neighbour.

The Board distinguishes this Decision from the present application for variances now before this Board. The accessory structure in the referenced Decision was sited far enough from the neighbouring property to allow several trees to be planted to screen the structure. That is not the case in the matter at hand, where there is only room to plant some vines. There is no indication in the referenced Decision to any windows or balconies at the second storey level of the accessory structure. There are both a

window and a balcony at the upper level of the playhouse in the matter at hand, and sight lines from neither the window nor the balcony are screened by existing or proposed planting.

Setback, height and balcony restrictions all speak to the Zoning By-law intention to ensure a reasonable protection of privacy between neighbours. While the playhouse is nicely designed and doubtless well built, its height and features create a significant intrusion on privacy. Its location leaves a side yard that is so constrained that appropriate landscaping to screen the playhouse – specifically trees -- have no room to be planted and grow.

While an accessory structure that is a playhouse is a reasonable and appropriate use that maintains the general intent and purpose of the Official Plan's residential designation of the subject lands, the Board finds that the height, fenestration, balcony and side yard intrusion fail to maintain the general intent and purpose of the Zoning By-law, are not desirable for the appropriate use of the land and are not minor.

The appeal is dismissed.

The variances sought are not authorized.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER  
MEMBER