

ISSUE DATE:

Mar. 17, 2010



PL091112

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:	Ron and Marlene Watts
Appellant:	Lorraine Giroux
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1199 Whiteoaks Avenue
Municipality:	City of Mississauga
OMB Case No.:	PL091112
OMB File No.:	PL091112
Municipal No.:	A-333/09

APPEARANCES:

Parties

Counsel

Ron Watts

Lorraine Giroux

B. Forth

DECISION DELIVERED BY J. P. ATCHESON AND ORDER OF THE BOARD

This was a hearing in the matter of an appeal by Lorraine Giroux (the Appellant) from a decision of the Committee of Adjustment for the City of Mississauga (File A-333/09) that authorized the following minor variances, for a property known municipally as 1199 Whiteoaks Avenue, in the City of Mississauga. The variances sought are from Zoning By-law No. 0225-2007 of the City of Mississauga to permit an existing accessory structure and attached gazebo to remain on the site and are as follows:

1. A floor area of 17.84 m² (191.96 ft²) for the accessory structure; whereas By-law 0225 -2007 as amended permits a maximum floor area of 10 m² (107.60 ft²) in this instance;

2. A height of 3.2 m (10.49 ft) for the accessory structure and attached gazebo; whereas By-law 0225-2007, as amended permits a maximum height of 3 m (9.84 ft) for both structures in this instance;
3. A site yard of 0.90 m (2.95 ft); whereas By-law 0225-2007, as amended, requires a minimum side yard of 1.2 m (3.94 ft) in this instance; and
4. A gazebo to be attached to the accessory structure; whereas By-law 0225-2007, as amended, defines a gazebo to be a free-standing (unattached) structure.

The variances authorized by the Committee of Adjustment were subject to the following conditions:

1. The Applicant is to proceed in accordance with the plans reviewed and approved by the Committee.
2. A screen hedge is to be planted between the gazebo structure and the side property line adjoining 1518 Spring Road for the entire length of the easterly wall of the gazebo structure.

The Context and Evidence

The subject property is a 90 ft x 184 ft corner lot located at the southeast corner of Whiteoaks Avenue and Spring Road, in the City of Mississauga. The Appellant's property abuts the subject lands to the immediate east. The lands are designated Residential Low Density 1 by the Official Plan for the City of Mississauga and are Zoned R2-4 Residential by Zoning By-law 0225 - 2007. By all accounts, this is a stable single-family neighbourhood consisting of larger treed lots that is undergoing some redevelopment. Mr. Watts, the Applicant, recently constructed on the property a new 5,200 ft² home, and as part of this construction he had installed a swimming pool in the yard to the immediate south of his new home. As part of the swimming pool's construction, his contractor constructed a concrete pad for the structure that is now the subject of this appeal. Mr. Watts freely admitted that he commenced construction of the pump house, change room and gazebo structure without the benefit of a building permit.

Mr. Giroux, the abutting neighbour, has appealed the Committee of Adjustment's decision and spoke on his own behalf and that of his wife. Mr. Giroux through a series of photographs found at Exhibit 4 provided the Board with the view of the proposed structure from his back porch. It was Mr. Giroux's opinion that the proposed new structure would obstruct his view and would set a precedent for similar structures being permitted on either side of his property. It is on this basis he finds the variances not to be minor and not desirable for the orderly development of the area.

Mr. Watts, on the other hand, suggested to the Board that the structure in question was an improvement over the previous single-family dwelling that was located on the property as shown on a site plan filed as Exhibit 8, which he contends totally blocked the views of Mr. Giroux to the west. Mr. Watts, in his evidence, suggested that the proposed structure was consistent with and in keeping with the size of dwellings found in the area. He noted though that the planning staff of the Municipality had no concerns with the variances as proposed and that the concerns raised by Mr. Giroux were known and considered by the Committee of Adjustment in arriving at its decision. He proffered that in his opinion the variances, both individually and collectively, met the intent and purpose of the Official Plan and the Zoning By-law governing the area and that in his opinion, the structure was consistent with similar structures in the area and in particular similar to structures found in Mr. Giroux's rear yard as shown on photographs (Exhibit 5-8 and 5-9). It was his contention that the variances, both individually and collectively, were minor in nature, would result in no negative impacts and reflected an appropriate development for this part of the City of Mississauga.

He confirmed on questioning from the Board that he agreed with the conditions imposed by the Committee of Adjustment.

Findings and Conclusions

The Board, after carefully reviewing the evidence, the exhibits filed, and the submissions made by the Parties, makes the following findings.

The Board finds that there are no consistency issues with Provincial Planning policies resulting from the variance application and that the matter is truly local in nature.

Subsection 45(1) of the *Planning Act* sets out the four tests for which the Board must have regard in considering whether a variance should be authorized. The Board, for the purpose of clarity, will reproduce the applicable Section of the *Planning Act*:

Powers of committee:

45. (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1).

The Board understands the concerns raised by the Appellants that the proposal is a change from the current built form that has existed and that change of this nature can be disconcerting. However that being said, the Board must consider the impacts that could result from the variances requested in relation to what could occur as a matter of right under the regulations of the Zoning By-law now in place. The Board finds, after a careful review of all of the evidence presented by both Parties, that there would be no negative impacts resulting from the relief being requested beyond what one would anticipate from a structure built in full compliance with the Zoning By-law's regulations.

Nor does the Board find that granting the variances as requested would set any precedent for the area. It is a well held planning proposition that all applications for variance relief must be viewed and determined on their individual merits.

Counsel for the Appellant in his submissions suggested that the change in floor area from 10 m² (107.60 ft²) to the now proposed 17.84 m² (191.96 ft²) was numerically too large and that on this basis alone the Board should deny the application.

The Board has carefully considered the size of the structure in relation to the other structures on the property and finds the built form as shown on the drawing at Exhibit 6 and on the site plan (Exhibit 8) to be in keeping with the development found in the immediate area and that in this case, while the increase in permitted floor area for this accessory building may seem large in numerical terms, it fits into the character of the area, has limited impact and should in this case be considered minor in nature.

It is the finding of the Board that the variances, both individually and collectively, required to permit the completion of the proposed structure are minor in nature and would be a desirable development for this area. The Board is also satisfied that the intent and purpose of the Official Plan and Zoning By-law governing this part of the City of Mississauga would be maintained if this development were to proceed.

Accordingly and for the reasons contained in this decision:

THE BOARD ORDERS that the appeal is dismissed and the variances to Zoning By-law No. 0225-2007 of the City of Mississauga as set out in this decision are authorized subject to the conditions imposed by the Committee of Adjustment and identified in this decision.

This is the Order of the Board.

“J. P. Atcheson”

J. P. ATCHESON
MEMBER