

ISSUE DATE:

Jan. 09, 2013



PL120687

Ontario
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

Appellant:	Kathy Bolletta
Appellant (jointly):	Rick Bolletta
Applicant:	Greg Yaroff, Sandra Yaroff
Subject:	Minor Variance
Variance from By-law No.:	0225-2001
Property Address/Description:	6192 Kisby Dr.
Municipality:	City of Mississauga
Municipal File No.:	A192/12
OMB Case No.:	PL120687
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APPEARANCES:

Parties

Agent

Greg Yaroff and Sandra Yaroff

Greg Yaroff

Rick Bolletta and Kathy Bolletta

Kevin Webster

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

[1] Greg Yaroff and Sandra Yaroff (“Applicants”) reside at 6192 Kisby Drive in the City of Mississauga (“City”). Their lot has a large back yard that overlooks Credit Valley open space lands under the jurisdiction of Credit Valley Conservation (“CVC”). These lands are also zoned Greenbelt with a 5 m setback from the zone required to any accessory building or structure.

[2] Neither the City nor CVC appeared at these proceedings.

[3] Rick Bolletta and Kathy Bolletta (“Appellants”) are immediate neighbours to the west. They live at 1550 Estes Crescent. The Bolletta lot is pie-shaped, with the tip of the pie at the far end of their rear yard. Kisby Drive and Estes Crescent meet at an irregular intersection, with both streets curving away from the meeting point. As a result, the houses are not parallel. The Bolletta house is sited to front on Estes Crescent. Because

of the curve, the house is angled toward the rear pie tip and rear portion of the Yaroff rear yard.

[4] The Appellants appear in opposition to the application for variance. No other interest appeared at these proceedings.

[5] The Applicants have made a number of improvements to their backyard, adding an eating area, pool, a pergola and pump area for the pool. The pool is offset to the west side of their rear yard. There is an existing accessory building at the rear of the property located in the northwest corner of the rear yard. A privacy fence and line of cedars separates the Applicants' property from that of the Appellants to the west.

[6] The rear of the property is also fenced. This is a metal fence that is very open in design, allowing for views both into and from the public open space lands at the rear of the property.

[7] The Applicants wish to build a pool cabana, changing and sitting area at the far end of the pool in the rear yard, in front of the existing accessory structure. The variances initially sought are:

1. A floor area of 16.70 sq m where the by-law limit is 10.00 sq. m;
2. A height of 3.69 m where the by-law limit is 3.00 m;
3. A setback of 3.19 m to the Greenbelt zone where the by-law requires a minimum setback of 5.00 m; and
4. Two accessory structures on the lot where the by-law permits a maximum of one accessory structure.

[8] At the outset of the hearing the Applicants indicated their wish to amend their application for variance by reducing the height of the proposed cabana from 3.69 m to 3.29 m.

[9] Having regard to s. 45(18.1.1) of the *Planning Act*, R.S.O. 1990, c. P.13, the Board is of the opinion that this amendment to the original application is minor and no further notice is necessary.

[10] On consent of the parties, the Board heard from Mr. Yaroff who testified regarding the rear yard improvements and the Applicants' intentions regarding the cabana and additional proposed cedar plantings along the west side of his property. When asked why the proposed cabana could not be built within the by-law height limit Mr. Yaroff acknowledged that the additional height being sought was a question of design preference.

[11] Ms. Bolletta testified for the Appellants. Ms. Bolletta acknowledged that she and her husband bought their home knowing that the lot is pie-shaped and that, as a result, there is very little opportunity to view the public open space lands directly from her property. She further acknowledged that the view of these lands is across the rear of the Applicants rear yard.

[12] Her principal concerns focussed on what she described as a loss of view of the public open space lands as a result of the height of the proposed cabana. Ms. Bolletta acknowledged that there is a deciduous apple tree that blocks this view when the tree is in leaf. She noted that when the leaves fall, she currently has a good view. She felt that additional cedar planting would not deal with her concern in that these coniferous trees would block her view to the public open space lands year round. The fact that they might screen a cabana that would also block her view did not improve the obstructed sight lines.

[13] Ms. Bolletta also noted that the existing accessory structure, coupled with the proposed cabana would exacerbate the obstructed sight lines.

[14] With sight lines to the public open space obstructed, Ms. Bolletta expressed the concern that the market value of her property would be negatively impacted.

[15] The application before the Board is to improve the amenity area of a single family home. The Official Plan ("OP") designates the subject lands for residential use

[16] The adjacent public open space is designated as a Greenbelt zone and identified as a Significant Natural Site in the 2009 Natural Area Survey.

[17] The by-law restrictions regarding floor area and the limit of one accessory structure are designed to prevent over building in rear yards. The Board finds that the

Applicants rear yard is large and no over building would occur with the requested variance for floor area or the second accessory structure.

[18] The Board finds that the variance to permit two accessory structures and the variance to permit a floor area of 16.70 sq m maintain the general intent and purpose of the OP and the zoning by-law, are minor and desirable for the appropriate development of the land.

[19] The by-law limit on height is designed to ensure that accessory structures do not dominate or negatively impact adjacent neighbours.

[20] The Board acknowledges that the neighbour to the east of the Applicants property submitted correspondence to indicate no objection to the requested variance. The Board notes that the neighbour to the east is not impacted by the proposed cabana since the proposed cabana is to be located on the far side of the rear yard away from the eastern neighbour's property.

[21] As a result of the proposed location of the cabana, the additional height being sought creates a negative impact on their neighbours to the west by reducing a sight line to the open space lands to the rear of both properties.

[22] The Board recognizes that a mature line of coniferous trees might also, once they achieve a certain height, impact the sight line as well. However, the zoning by-law does not govern the height the trees; it governs the height of structures. In addition, the Board observes that the additional height for the cabana that is being sought is a question of design preference.

[23] In weighing the balance between a design preference of one neighbour and the impact of that preference on another neighbour, the Board finds that the variance for height does not maintain the general intent and purpose of the zoning by-law, is not minor and is not desirable for the appropriate development of the land.

[24] The setback requirement of 5 m from the Greenbelt zone is designed to ensure that structures do not impinge on the Greenbelt zone, in this case located at the rear of the subject lands.

[25] Meeting this setback requirement would have the further effect of opening up the northwest corner of the Applicants' rear yard and would lessen the impact on the Bolletta property.

[26] Mr. Yaroff explained that the need for this variance arises from the design of the pool and preferred location of the cabana at the foot of the pool and farthest from the house. He further noted that the design of the pool and approximate location of the proposed cabana had been submitted to CVC, which issued a permit for the construction of the pool.

[27] CVC setback requirements are from the top of bank of the Credit Valley lands. CVC has no jurisdiction to waive zoning by-law setback provisions and CVC did not attend these proceedings.

[28] While the Applicants submitted a copy of the City Planning and Building Department comment on the application, no representative of the City attended at these proceedings.

[29] Although the comment indicates no objection to the reduced setback of 3.19 m where the by-law requires 5 m, the comment contains no analysis to explain or support the conclusion that a variance to permit a setback of 3.19 m is appropriate. The Board had no evidence before it that a variance to permit a setback of 3.19 m from the Greenbelt zone would maintain the general intent and purpose of the zoning by-law. As such, the Board cannot make the finding required by s. 45(1) of the Act that this variance to the setback maintains the general intent and purpose of the OP and the zoning by-law, is minor and desirable for the appropriate development of the land.

ORDER

[30] The Board orders:

1. The variance to permit two accessory structures is authorized;
2. The variance to permit a floor area of 16.70 sq m is authorized;
3. The variance to permit an increase in building height to 3.29 m is not authorized; and

4. The variance to permit a setback of 3.19 m from the Greenbelt zone is not authorized.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR