

ISSUE DATE:

July 8, 2013



PL121177

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

Applicant and Appellant:	George & Molcy Arangattu
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	6356 Newcombe Drive
Municipality:	City of Mississauga
Municipal File No.:	A395/12
OMB Case No.:	PL121177
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APPEARANCES:

Parties

George and Molcy Arrangatu

Patricia and Sebastian Genova

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

[1] George and Molcy Arrangatu ("Applicants") have appealed under s. 45(12) of the *Planning Act* from the City of Mississauga ("City") Committee of Adjustment's ("COA") denial for a minor variance to permit an existing rear yard deck at their property at 6356 Newcombe Drive.

[2] Patricia and Sebastian Genova, the directly abutting rear neighbours at 6367 Ormindale Way, oppose the authorization of the minor variance. They state the Applicants' elevated back deck is very large and overlooks their backyard and that this impacts their privacy and their enjoyment of their backyard. Mr. and Mrs. Genova requested and were granted party status in this matter. Neither of the parties was represented, and there was no professional planning evidence provided.

[3] The City did not appear at the hearing, and no other persons appeared.

REQUESTED VARIANCE

[4] The requested variance is as follows:

By-law 0225-2007, as amended

1. Lot coverage of 48.8 % of the lot area WHEREAS the by-law permits a maximum lot coverage of 40.00 % of the lot in this instance.

[5] The COA decision also refers to a variance for driveway width, and a potential variance for side yard setback relief for a shed. These variances were not before the Board in this hearing.

ISSUE

[6] Section 45(1) of the *Planning Act* allows the Board to authorize variances to a zoning by-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the official plan; and maintains the general intent and purpose of the zoning by-law.

EVIDENCE

[7] Mrs. Arrangatu provided background to the matter. She testified that she and her husband purchased the property in 2006 and lived there with their two daughters who are now grown and have moved out. The lot slopes from the front of the house to the back and has a basement walkout. The deck in question is off of the main floor kitchen and dining room and it extends the length of the back of the house. The east portion of the deck is elevated in relation to the west portion, with steps connecting the two levels. Because of the lot being on a slope and the presence of basement walkout beneath the deck, the deck is quite elevated above ground level.

[8] Mrs. Arrangatu testified that when they first bought the house there was a small deck at the back that they were hopeful of enlarging similar to what their neighbours had done, once they had sufficient funds. Mrs. Arrangatu testified that she has health problems, and intends to use the deck for fresh air and walking about. She testified that the steps between the two levels on the deck are helpful to her exercise.

[9] In response to the concerns of loss of privacy by Mr. and Mrs. Genova, Mrs. Arrangatu testified that she had no interest in peering into the Genova's rear yard or their windows, and in any event, because her house is elevated relative to the Genova's house, she would be able to peer into the yard from the rear windows of her house, and did not need to be on the deck to do so.

[10] Mrs. Arrangatu testified that she and her husband hired contractors to construct the deck in 2011 and were not aware that permissions were required. Mrs. Arrangatu stated that the contractor told her that the rear yard setback of the deck was within the zoning by-law standard, and on that basis she was satisfied that the deck met the zoning by-law.

[11] Mrs. Arrangatu stated that as a condition of approval for the minor variance regarding the deck, the City requested that privacy screening in the form of a lattice be installed to screen the adjacent neighbours. The evidence shows that a lattice has been installed along the section of the deck that is adjacent to the Genova's property.

[12] Mrs. Genova testified that she and her husband purchased their home in 1996, and they have slowly been improving it over the years. Mrs. Genova testified that she objects to the Applicants' deck as it impacts on privacy to her back yard. She states that the deck is too deep, is an eyesore and is not appealing, and detracts from the value of her home. She provided a series of photos to show the view from the back of her house looking toward the Applicants' deck, from ground level in her backyard, and from her second-storey bedroom window. She stated that the lattice that was placed along the top of the wall of deck along the length of the deck has not helped, but has only served to make the wall of the deck that she looks at to be higher.

[13] Mr. Genova testified that when the deck was being constructed, he approached the workers and told them that he thought the deck was too large and should be reduced in size. He testified that he called the City, but construction was not halted. He also stated that there are two levels to the deck, and that this results in additional impact to their property. Mr. Genova testified that he and his wife have purchased and planted mature trees in their backyard to buffer the visual impact. He stated that many other houses have decks, but are not as large as the Applicants' and therefore are not problematic. He said that he had hoped that the Applicants would have come to the

hearing with a solution to the concerns that the Genova's have expressed. Mr. Genova testified that he thought the deck should be brought into compliance.

[14] In this situation, the Applicants have requested relief from the zoning by-law to permit the existing deck to remain, with lot coverage in excess of that permitted in the by-law. There are no other provisions of the zoning by-law that the deck offends. In particular, the deck meets the rear yard setback requirement.

[15] The Board is sympathetic to the claims of Mr. and Mrs. Genova that they are negatively impacted with respect to their feelings of privacy due to the elevated deck on the house to the rear of them. The existing topography results in an overlook condition from the Applicants' property to the Genova property and therefore a deck of any size would have some impact on the privacy to the Genova's rear yard and to their enjoyment of their property.

[16] However, the Applicants are permitted as-of-right to construct a deck in that location, to the rear yard setback distance at which the deck is currently constructed.

[17] The Board heard no planning evidence regarding the requested relief for lot coverage. The review of the file indicates that the City planning department had no concerns regarding the requested lot coverage. The planning report notes:

".... Though this Department has no objection to the existing deck proposing a lot coverage of 48.80 %, we recommend that the applicant consider constructing a privacy fence on the north side of the deck to lessen the overlook condition created on the adjacent property. While we recognize that there is mature vegetation within the rear yard, we feel that additional measures need to be considered for screening, as a result of the height of the deck."

[18] The Board is required to evaluate whether the requested variances meet the four tests of the *Planning Act*. On the basis of the review of the file and the evidence provided by the parties, the Board finds that the requested relief for lot coverage from the as-of-right permission is minor in this circumstance. The Genova's have taken steps to mitigate the impact to their property by planting trees to provide visual screening and are commended for doing so. As requested by the City planning department, as a condition of approval, the Applicants are required to install screening to mitigate the overlook to the adjacent neighbours. The Applicants have done so along the section of the deck that is adjacent to the Genova's property, and therefore this

condition has been met. The Board finds the development of the deck is a desirable and appropriate development of the subject property, and meets the general intent and purpose of the official plan and zoning by-law.

[19] The Board finds that the variance requested is minor, is desirable for the appropriate development of the subject property, and meet the general intent and purpose of both the City of Mississauga zoning by-law and official plan.

ORDER

[20] The Board orders the appeal is allowed and the requested variance to By-law 0225-2007, as amended, is authorized, subject to the condition imposed by the decision of the Committee of Adjustment, which requires the Applicants to install a privacy screen (a lattice) to lessen the overlook condition created on the adjacent property. The Board notes that this condition has been met.

“H. Jackson”

H. JACKSON
MEMBER