

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 10, 2014

CASE NO(S): PL140441

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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|-------------------------------|-----------------------------------|
| Applicant and Appellant: | Kenneth Kumar and Charmaine Kumar |
| Subject: | Minor Variance |
| Variance from By-law No.: | 0225-2007 |
| Property Address/Description: | 1344 Woodeden Drive |
| Municipality: | City of Mississauga |
| Municipal File No.: | A 106/14 |
| OMB Case No.: | PL140441 |
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Heard: October 8, 2014 in Mississauga, Ontario

APPEARANCES:

Parties

Kenneth and Charmaine Kumar

City of Mississauga

Counsel

Alexander Suriano

Marcia Taggart

Participant

Barbara Foster

DECISION DELIVERED BY H. JACKSON AND INTERIM ORDER OF THE BOARD

INTRODUCTION

[1] Kenneth and Charmaine Kumar (the "Applicants") applied for minor variances to permit an existing accessory structure (a pool cabana) in the rear yard of their home at

1344 Woodeden Drive. The structure was built in 2013. The City of Mississauga (the "City") Committee of Adjustment (the "COA") denied the minor variance application on April 28, 2014, which led to this appeal.

[2] Prior to the commencement of the hearing, the Board was advised that the Applicants were in discussion with the City and Ms. Barbara Foster, the owner of the adjacent property at 1356 Woodeden Drive, in an attempt to resolve their concerns. The Board stood down to allow the discussions to continue, and was subsequently advised that an agreement had been reached to attach a Condition to the variances requiring that a landscaping plan be prepared. The agreed upon Condition was entered into evidence as Exhibit 3, and is provided below following the requested variances.

[3] Ms. Foster requested and was granted Participant status. Ms. Foster indicated she was satisfied with the settlement that consisted of a Condition being attached to the authorization of the minor variances. It is her position that the impact of the height and mass of the structure will be sufficiently mitigated with the addition of appropriate landscaping. The City was also satisfied that their concern regarding the height of the structure would be addressed with the appropriate landscaping. Scott Arbuckle, retained by the Applicants, provided land use planning evidence in support of the settlement reached. The City did not call any evidence.

REQUESTED VARIANCES

[4] The application requests relief from Zoning By-law 0225-2007, as amended, to permit an accessory structure (pool cabana) within the rear yard of the subject property proposing:

1. A gross floor area (GFA) - non-residential - of 18.12 square metres; whereas the by-law permits a maximum of 10 square metres in this instance;

2. A height of 4.62 metres (“m”); whereas the by-law permits a maximum height of 3.0 m for an accessory structure in this instance;
3. An interior side yard setback of 0.74 m; whereas the by-law requires a minimum of 1.2 m in this instance;
4. An external side yard setback of 4.67 m; whereas the by-law requires a minimum of 7.5 m in this instance; and
5. A rear yard setback of 1.05 m; whereas the by-law requires a minimum of 1.2 m in this instance.

New Condition

As a condition of the Board’s approval, the Applicant, at the Applicant’s expense, shall within six months (of the Board’s Decision) retain a landscape architect, satisfactory to both the Applicant and the owner of 1356 Woodeden Drive, to prepare a landscape plan for both properties mutually agreed upon by both parties and subject to review by the City of Mississauga to provide landscaping to screen the Accessory Structure at 1344 Woodeden Drive from view of 1356 Woodeden Drive.

[5] The Board is satisfied that the addition of the Condition is minor and no further notice is required.

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. The Board must be satisfied that all four tests are met in order to authorize the requested variances.

EVIDENCE AND FINDINGS

[7] Mr. Arbuckle testified regarding the background to the matter and the planning merits of the requested variances. He described the Lorne Park neighbourhood as an older, well-established neighbourhood where the lots are quite large and well-treed. The subject lot is an irregular shape and backs onto a Hydro easement. The structure fits in amongst the trees at the back of the lot. Mr. Arbuckle said that City staff had no concerns regarding the location and setbacks of the accessory structure. However, the City had concerns regarding the height of the structure, and Ms. Foster had concerns about the visual impact of the structure due to its height and mass, and that there is insufficient vegetative understory to block her view of the long wall of the structure.

[8] Ms. Foster indicated that she is satisfied that the Condition attached to the authorization of the minor variances that will entail additional landscaping on her property and the Applicants' property will sufficiently mitigate her view.

[9] Mr. Arbuckle's opinion is that the requested variances, subject to the Condition, result in a development that meets the four tests of the *Planning Act*. He testified that accessory structures are allowed in residential areas and, as such, the requested variances meet the intent and purpose of the official plan. He explained that the intent and purpose of the zoning by-law is to regulate the size and location of accessory structures in a residential zone. At this location the lot is very large, and therefore a larger accessory structure is appropriate, particularly since there is sufficient room to provide for additional landscaping to screen the structure. He said the variances are minor. There will be no undue impact to the streetscape or neighbours with the addition of landscaping. As such, the variances result in a desirable and appropriate

development of the lands.

[10] The Board is satisfied that the variances, subject to the Condition, are minor, are desirable for the appropriate development of the lands, and meet the general intent and purpose of both the official plan and the zoning by-law.

[11] The City requested that the Board withhold the final order until the landscape plan agreed to as described herein has been provided to the City. The Applicants and Ms. Foster consented to this request.

INTERIM ORDER

[12] The Board allows the appeal and authorizes the requested variances subject to the Condition related to the landscaping plan. The Board withholds this order until advised by the City that the Condition has been met to the satisfaction of the City.

"H. Jackson"

H. JACKSON
MEMBER

Ontario Municipal Board

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