

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 10, 2015

CASE NO(S): PL140851

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

Applicant and Appellant:	Peter Wrona and Anna Wrona
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	864 Willowbank Trail
Municipality:	City of Mississauga
Municipal File No.:	A 217/14
OMB Case No.:	PL140851
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Heard: January 22, 2015 in Mississauga, Ontario

APPEARANCES:

Parties

Representative

Peter Wrona

Self-represented

DECISION OF THE BOARD DELIVERED BY W. ROMAN WINNICKI AND SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD

[1] Peter and Anna Wrona ("Applicants") are the owners of Lot 32, Registered Plan M-361, located and known as 864 Willowbank Trail ("Subject Site") in the City of Mississauga ("City"). The Subject Site is zoned R3 Residential.

[2] This is an established neighborhood of single family residences, predominately detached as well as semi-detached dwellings. The R3 zone is one of the categories that pertains specifically to detached residential dwellings. Consistent with this zoning designation, there is on the Subject Site a two storey detached single family dwelling with an attached two-car garage. The properties immediately adjacent to the Subject Site, as well those immediately across the road, are similarly zoned R3.

[3] The Applicants filed with the Board the following materials:

Exhibit 1 zoning map of the neighbourhood bounded on the westerly side by Cawthra Road, Eastgate Parkway on the northerly side, Tomken Road in the east and Rathburn Road East on the south. The subject property is shown to be in a R3 zone.

Exhibit 2 partial Table 4.1.2.2 of the applicable Zoning By-law No. 0225-2007, pertaining to listed criteria for accessory buildings and structures in such a R3 Zone.

Exhibit 3 partial Table 4.2.1 of the applicable Zoning By-law No. 0225-2007, pertaining to Permitted uses and Zone Regulations in Residential Zones.

Exhibit 4 survey sketch of Subject Site illustrating the position of the subject accessory building (“Shed”) as is located with specific reference of its separation from the property boundary, though noted by Mr. Wrona that the drawing of the Shed has been added to the survey sketch and is not to scale.

Exhibit 5 a drawing illustrating the ground floor dimensions of the subject Shed as being 18 feet (“ft”) long and 5 ft. 10 inches wide.

Exhibit 6 comprising of eight photographs that have been individually marked from 6 (a) to 6 (h) respectively, showing the subject Shed and the residential building from different view angles.

Exhibit 7 a property plan showing the Subject Site and the location of the property of Surjit Pharawaha who appeared in support of the variance. The plan also showed the location of the properties of the two neighbours who appeared at the Hearing in opposition to the variance. The map was also coloured to show the properties of other neighbours that Mr. Wrona indicated were in support of the variance as expressed in letters that Mr.

Wrona provided the Board. However, since these other neighbours were not in attendance at this hearing and thus were not available to answer any questions in respect of such correspondence, the Board accepted the documents but attaches no weight to the claim that these other neighbours are in support of the sought variance.

[4] The Applicants advised the Board that pursuant to the applicable zoning by-law standards, the building set-back requirements from the respective side yard lot lines for an interior lot such as the Subject Site, is 1.81 meters ("m") (Exhibit 3). However, the side yard lot line set-back requirement from an accessory structure were it to be situated in such side yard, is 1.2 m.

[5] The Applicants had recently constructed the Shed within the easterly side yard of the Subject Property. The Applicants described the Shed as being a stand-alone structure notwithstanding that it is positioned against the wall of the dwelling. As depicted on Exhibit 5, the floor dimensions of the Shed are 18 ft. (5.49 m) long and 5 ft. 10 in. (1.78 m) wide. The Applicants described the purposes of the Shed as being necessary to accommodate the property water filtration and sterilization equipment, water distribution valves and control system, and to store various children's toys and swimming pool equipment. The Applicants claimed that due to various improvements and installations that have been placed in the rear yard, there is no room to accommodate such an accessory structure within the rear yard. The particular details of the shed are depicted on the various photographs presented to the Board (Exhibits 6(a) to 6(h)).

[6] With only a remaining side yard width of 0.18 m (7 inches), the related side yard requirements of the applicable zoning by-law are not maintained i.e. required 1.2 m (3.94 ft.). Accordingly, the Applicant applied to the City's Committee of Adjustment ("COA") for a minor variance so as to permit the Shed to remain as constructed in the side yard. On July 3, 2014 the COA held a hearing to consider such application and upon reviewing the submissions of the Applicants as well as submissions from various other interested parties, denied the application. This COA's decision was filed with the Board as Exhibit 8 by Serge Brochu a Participant to this Hearing.

[7] The Applicants have appealed against this decision of the COA that refused to authorize a variance so as to permit this accessory structure to remain in the side yard of the subject property in the configuration that it has been constructed.

[8] The Applicants claim that other than the issue of not meeting the side yard setback requirements of the applicable Zoning By-law, the Shed otherwise complies with all other requirements of said By-law.

[9] The Applicants further asserted to the Board that:

- this Shed is not prominently visible from the street;
- does not inhibit access to the rear of the subject property because there is a door at each end of the Shed and when both doors are opened continuous access to the rear of the property would be maintained in this particular side yard;
- furthermore alternative access to the rear of the property is available from the other side of the house;
- the location of the Shed is not objected to by the immediately abutting neighbor; and
- there are a number of neighbours who do not have any objections to keeping this Shed as built.

[10] On the basis of such claims and assertions, the Applicants expressed the view that the reduction to the By-law side yard requirement is only a minor zoning by-law variance and accordingly requested the Board to approve such variance.

PARTICIPANTS SWORN IN AND HEARD

[11] The Board heard from Ms. Pharawaha who was granted status as a Participant to

this Hearing. Ms. Pharawaha is the immediate adjoining neighbor to the side yard within which the subject Shed is located. Ms. Pharawaha advised the Board that she and her spouse have no objection to the existing location and positioning of the subject Shed and, accordingly does not have any objections to the proposed By-law variance.

[12] The Board heard from Mr. Brochu who was granted status as a Participant to this hearing. Mr. Brochu who is a nearby resident, filed Exhibit 8, a copy of the written decision of the COA as dated on July 3, 2014 refusing Mr. Wrona's application for approval of a minor variance to accommodate the existing shed on the Subject Site. Mr. Brochu also filed with the Board Exhibit 9 being a letter dated June 25, 2014 which he sent to the COA stating particulars of his concerns and objections to the minor variance that was sought by the Applicant. Mr. Brochu highlighted his concerns as being primarily related to safety and emergency matters due to the blockage that the Shed creates for potential emergency access to the rear yard. Mr. Brochu also expressed his view that the subject Shed was an unsightly feature that was incongruous with the street-scape of the immediate neighbourhood. The third concern expressed by Mr. Brochu was that approval of such variance request would create an unwelcomed precedent which could be interpreted as to condone independent actions taken that are contrary to local by-laws and regulations, and only in subsequent fashion seek relief to accommodate such actions.

[13] The Board also heard from Bernard Quinn who was granted status as a Participant to this hearing. Mr. Quinn who resides near the subject property, filed with the Board Exhibit 10, being a copy of correspondence dated as received on June 25, 2014 that he had previously sent to the COA. Mr. Quinn drew the Board's attention to reasons cited in the correspondence that express his concerns and objections to the subject minor variance proposal:

- the Shed has a negative visual impact from the streetscape and is incongruous with the surrounding residential buildings;
- the structure is an obstacle to potential need for emergency access to the rear of the subject property; and

- approval of the requested variance would set an unacceptable precedent in accommodating actions taken contrary to applicable by-laws and regulations.

ANALYSIS AND FINDINGS

[14] The tests the Board must apply when considering an application for a variance are set out in s. 45(1) of the *Planning Act*, R.S.O. 1990, c. P. 13.

[15] The tests are that the variance:

1. maintains the general intent and purpose of the official plan
2. maintains the general intent and purpose of the zoning by-law
3. is desirable for the appropriate development or use of the land, building or structure
4. is minor.

[16] All four tests must be met.

[17] The Official Plan designation contemplates single family residential dwellings on the Subject Site and the variance sought does not affect that designation.

[18] The provisions of Zoning By-law No. 0225-2007 as applicable for such a R3 zone interior lot as is the Subject Site, are quite clear in having a stated reference that a side yard setback of 1.81 m is required on each side of a dwelling; however, if an accessory structure were to be situated in such side yard as is the circumstance on this Subject Site, the side yard setback from such an accessory structure is required to be 1.2 m. Such unimpeded access requirements on both sides of dwellings in this particular zone serve various purposes including maintenance and emergency access.

[19] The Applicants have informed the Board that the purpose of the subject Shed is to house various facilities and outdoor equipment (Paragraph 5) and that there is a door

placed at both the front and back of the Shed. The Board however is not persuaded by the Applicant's claim that these front and back doors of this multi storage Shed would maintain unimpeded access from the front to the rear of the property and ameliorate the requirement for such a side yard setback from an accessory structure.

[20] Accordingly, it is the Board's finding that the proposed variance does not maintain the general intent and purpose of the Zoning By-law.

[21] Having failed one of the mandatory tests, the variance sought is not authorized and accordingly the Board dismisses this appeal.

"W. Roman Winnicki"

W. ROMAN WINNICKI
MEMBER

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
VICE-CHAIR

Ontario Municipal Board

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