

COMMITTEE OF THE WHOLE MAY 20, 2003

REQUEST FOR FENCE HEIGHT EXEMPTION 6 FREEMONT STREET

Recommendation

The City Clerk in consultation with Director of Legal Services recommends:

That direction be provided on this matter.

Purpose

To consider the granting of a fence height exemption pursuant to Section 3.5 of By-Law 80-90.

Background - Analysis and Options

The owner of the above noted property is requesting an exemption to the existing fence height restrictions pursuant to Section 3.5 of By-Law 80-90 to permit the maintenance of an existing rear yard fence. The by-law permits a fence height of six feet.

The owner of the subject property has constructed a deck at the back of the property that does not meet the setback requirements of 0.6 meters (2 feet) from the lot line. An application to the Committee of Adjustment for a reduction in the setback to zero feet (0.0 meters) was refused by the Committee. The decision was appealed to the Ontario Municipal Board (hereinafter referred to as the OMB) which held that the Official Plan and Zoning By-law permitted the construction of the deck as an accessory use to the single family dwelling. A copy of the decision is attached hereto.

However, the OMB stated the issue was not the construction of the deck but the lack of privacy afforded to the neighbour to the south (10 Freemont Street) when people are standing on the deck. The overlook from the deck is into the principal rooms at the rear of the neighbours property and onto the neighbours rear yard which affects the neighbours privacy. An existing fence on the property with a height of seven feet measured from grade and approximately 5 feet 3 inches from the deck does not afford privacy to the neighbour at 10 Freemont St.

The Board was of the opinion that if a fence is constructed to an acceptable height to prevent overlook then the development would be appropriate to the residential situation and therefore minor in nature.

Accordingly, the Board order provides that if the property owner can obtain permission from the City of Vaughan to construct a solid privacy fence not less than 7 feet in height measured from the floor of the deck along the full length of the deck adjacent to 10 Freemont Street then the Board would consider the appeal and authorize the application for a minor variance subject to proper permits being obtained under the Ontario Building Code and other municipal by-laws. Should Council approve the applicants' request, the existing fence of 6' 10" would have to be modified to a height of 9 feet 4 inches from grade in order to provide a fence height at the deck of 7 feet as suggested by the OMB. If Council refuses permission for the fence the appeal will be dismissed and the minor variance will not be authorized.

Pictures of the subject fencing and deck will be available at the meeting.

Conclusion

Council direction is required on the fence height exemption request.

Attachments

OMB Report

Report prepared by:

Joseph A.V. Chiarelli
Manager Special Projects, Licensing & Permits

Respectfully submitted,

John D. Leach
City Clerk

ISSUE DATE:
Jan. 22, 2003
DECISION/ORDER NO:
0096



Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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PL020890

FILE COPY

Gerald Ridge and Leslie Ridge have appealed to the Ontario Municipal Board under subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Vaughan which dismissed their application numbered A352/02 for variance from the provisions of By-law 1-88 respecting 6 Freemont Street
OMB File No: V020442

APPEARANCES:

Parties

G. and L. Ridge
P. Magno
City of Vaughan

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CLERKS DEPARTMENT

Counsel*/Agent

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DECISION DELIVERED BY J. L. O'BRIEN

Mr. and Mrs. Ridge ("appellants") own a single-family dwelling at 6 Freemont Street within the City of Vaughan. Without the benefit of a building permit they constructed a deck at the side/rear of their dwelling, extending to the side lot line. The Zoning By-law requires a minimum side yard setback of 0.6 metres for the deck.

The old adage applies in this case – good fences make good neighbours. While an approximately 7-8 foot fence exists adjacent to the deck (measured from ground level) the height of the fence is apparently not sufficient to prevent overlook of the neighbour's property at 10 Freemont Street, owned by Mr. P. Magno, when people stand on the deck.

An application to reduce the side yard from two feet (0.6 metres) to zero feet (0.0 metres) was refused by the Committee of Adjustment. Mr. Magno opposes the variance application.

The City of Vaughan, although represented by counsel at the hearing, took no position on the application, but requested a condition if the variance is authorized.

Neither the appellants nor the adjacent neighbour were represented by counsel or agents. This created certain problems for the parties understanding their respective roles and obligations at the hearing. The Board adjourned to allow the parties to review the extracts of the planning documents on the file and to formulate responses to address the statutory requirements under Section 45(1) of the *Planning Act*.

The Board is satisfied the Official Plan (Exhibit 1) and the Zoning By-law (Exhibit 3) do allow the construction of a deck as accessory to the single-family dwelling. The general intent and purpose of both those documents will be maintained, in the Board's view.

The real issue between the neighbours, after the vitriolic rhetoric is eliminated, is the overlook from the deck to the principal rooms at the rear of the adjacent neighbour's home, and the use of his rear yard. The current fence does not prevent overlook and reduces privacy on the Magno property.

The Board was assured the deck was not attached to the fence and access for repairs/maintenance can be gained without intruding onto the neighbour's property. The appellants claimed the City officials had advised that provided the deck did not exceed 200 square feet and was not more than 2 feet above the ground, it could be located anywhere in the rear yard. This may be true, but the deck is located in the side yard, which does require a set back from the property line for structures. The Board finds that it strains credulity to assert the Building Department officials would intentionally mis-inform the appellants about the zoning restrictions when advice was sought.

The Board has considered the application as though the deck was not in existence, as it is required to do as a matter of law.

The critical issue is overlook/privacy. A deck, with a fence 6 feet above the floor of the deck, located in close proximity to the adjacent property is not appropriate for the development of the subject land. The proposal set out in the application, to eliminate the side yard, is not minor. The result will be that the location of the deck and the low fence will create an unacceptable adverse impact on the neighbouring property.

However, if the fence is constructed to a suitable height to prevent the overlook problem, then the impact, in the Board's opinion would not be unacceptable. If the fence was more than 6 feet in height from the floor of the deck, the Board would consider the development to be appropriate for this residential situation and in that circumstance would be minor.

Counsel for the City advised there is a by-law which limits the height of fences between residential properties to 6 feet. That height can be increased upon application to the Council.

Accordingly, if the appellants can obtain the permission of the Council to allow a solid privacy fence not less than 7 feet in height, measured from the floor of the deck, and for the full width of the deck adjacent to 10 Freemont Street, then the Board will allow the appeal and will authorize the application for the minor variance, subject to the appellants obtaining the necessary permit for the deck under the *Ontario Building Code* and other municipal by-laws. If the Council refuses permission for the fence, the appeal will be dismissed and the minor variance will not be authorized.

The Board is to be notified in writing by the appellants not later than **May 31, 2003** whether the permission from Council has been obtained, at which time the appropriate order will be finalized to implement the Board's Decision.


J. L. O'BRIEN
VICE-CHAIR