

ISSUE DATE:

**May 17, 2002**

DECISION/ORDER NO:

**0606**



Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL010050

Palmerston Gates Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto (Toronto) to rezone lands respecting 490 College Street and 307 and 311 Palmerston Boulevard to permit mixed retail and residential infill development

**OMB File No. Z010010**

Palmerston Gates Inc. has appealed to the Ontario Municipal Board under subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the Committee of Adjustment failure to make a decision on an application numbered B0137/00TO for consent to convey part of the lands composed of 307 Palmerston Boulevard, 490, 492 and 500 College Street, in the City of Toronto (Toronto)

**OMB File No. C010218**

Palmerston Gates Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands municipally known as 490 College Street and 307 and 311 Palmerston Boulevard, in the City of Toronto (Toronto)

**OMB File No. M010004**

## **A P P E A R A N C E S :**

### **Parties**

### **Counsel\*/Agent**

City of Toronto (City)

B. O'Callaghan\*

Palmerston Gates Inc.  
(Palmerston)

S. Longo\*

Palmerston Area Residents'  
Association (participant status)  
(PARA)

M. Kainer

## **DECISION DELIVERED BY C. A. BEACH**

This is a continuation of a hearing originally heard on November 26, 2001. Decision/Order No. 2008 issued on December 10, 2001 indicates that the hearing was

adjourned to allow for further discussions between the parties. These discussions took place and as a result, the Board is satisfied that many outstanding issues were settled.

Palmerston, the applicant/appellant proposes a mixed-use residential and retail infill development at the northeast corner of the College Street and Palmerston Boulevard intersection. The proposal requires among other requirements, a complicated land assembly, a consent to convey application, a rezoning from the R2 Z0.6 zone to the MCR T3.0 C1.0 R2.5 zone and the approval of a site plan.

The land assembly brings together the following municipal addresses – 490 College Street and 307 (500 College Street) and 311 Palmerston Boulevard. The consent to convey application creates five “severable” parts that are merged on title. The parts that comprise the consent parcels, and the actual consent parcels are indicated on Exhibit 10, Exhibit 11 which is the Reference Plan and, Exhibit 14 - Drawing No. A-1, of the Site Plan.

The land assembly and consent to convey application were not at issue at this hearing. The land assembly has been completed and Mr. Paul Stagl, a land use planner who appeared on behalf of Palmerston, told the Board that with respect to sections 53(12) and 51(24) of the *Planning Act*, R.S.O. 1990, c. P.13 (the *Act*) he was satisfied that the consent to convey application represents good planning and that all the relevant tests of the *Act* are met. The Board accepts his testimony.

In their preliminary remarks to the Board, first, counsel for Palmerston told the Board that density, height, built-form, zoning and official plan conformity were all settled and were not at issue. Counsel for the City agreed. However, his single exception is the issue of official plan conformity with respect to the de-stabilisation of the mature and settled community on Palmerston Boulevard. They both agreed that the restaurant use included in the proposal is the central issue. The main concern, as the Board understands it, is the intrusion of a commercial use into the Palmerston Boulevard frontage.

The Board explains here, that the site has frontages on both College Street and Palmerston Boulevard. Three existing buildings are affected by the proposal. There is a 2 storey commercial residential property at 490 College Street; a 2.5 storey residential building at 307 Palmerston Boulevard, and a 3 storey residential building at 311

Palmerston Boulevard. The 311 Palmerston building will be retained and the other two buildings will be altered and added to.

The proposal is to develop a commercial/residential re-development largely on the 409 College Street and 307 Palmerston Boulevard sites, the maintenance of the 311 Palmerston Boulevard residential building, parking and access. As explained earlier the proposal also includes a complicated land severance arrangement that was not contested at this hearing.

The Board finds that there are two issues to be considered, the restaurant use and protecting the residential character of Palmerston Boulevard, that is conformity with the Official Plan. However, before it considers these two issues, it sets out the land use planning context into which this application falls.

College Street between Bathurst Street on the east and Ossington Avenue to the west has been described in a report prepared by City Staff dated February 10, 1997 and submitted to the City of Toronto Land Use Committee. The proposal at College Street/Palmerston Boulevard falls within the boundaries addressed by this report. Relevant excerpts of this report that provide a flavour of the land use along the corridor just described are set out below:

The College Street commercial strip has become one of the most successful retail strips in the City of Toronto. Its success is a result of its existing character and the mix of local shops, restaurants and cafes serving the needs of the local community.

....

In response to area residents' concerns regarding impact that large facilities with regional appeal could have on the adjacent residential community, the Ward Councillor suggested a study of these matters and an Interim Control By-law to temporarily restrict the size of large restaurants along College Street between Bathurst Street and Grace Street. (Board's emphasis)

....

The College Street commercial strip extends from Bathurst Street on the east to Ossington Avenue to the west on both sides of the street. It is located between two stable residential neighbourhoods. Like most strips outside the Central Core, College Street evolved within a neighbourhood context, primarily serving the daily and weekly shopping needs of those who live in the area. The number and variety of eating establishments on the College Street strip also contributes (to) its diversity and vitality. The contribution of these establishments is what gives this

community its distinctive flavour and contributes to its economic success. Over the years, College Street or “Little Italy” as it has become known, has increased in popularity as a shopping and meeting place for Torontonians and as a point of interest for many tourists.

Following the expressed concerns of the area residents and the intervention of the Ward Councillor, Interim Control By-law No. 1995-0644 was passed in October 1995 and extended in February 1996 effective up to April 1997. Its effect was to prohibit restaurants and places of amusement and similar uses over 250 square metres in the MCR district along College Street between Bathurst Street and Grace Street and to allow City staff enough time to study and pass the By-laws for a permanent zoning amendment.

The commercial strip along the subject area of College Street generally extends for about one block on the north and south sides of College Street. This strip is designated “Low Density Mixed Commercial-Residential Area” (LDMCRA). The LDMCRA strip is sandwiched between low density residential areas on both sides of College Street. The subject strip in the vicinity of the proposal is also contained within a “Main Streets” area. It was explained that “Main Streets” areas are arterial roads served by transit, with contiguous buildings having a mix of commercial and residential uses.

It is worth noting that the LDMCRA designation encourages new retail facilities subject to compatibility with adjacent Low Density Residence areas. (Board’s emphasis)

Generally, the areas north and south of the LDMCRA strip along College Street are zoned R2 Z0.6 which allows residential uses with densities up to 0.6 times the area of the lot. The LDMCRA strip, in the vicinity of the proposal is zoned MCR T3.0 R3.0 with an exception that the Board will explain later. This zoning permits a range of commercial and residential uses up to 3.0 times the area of the lot. Although this area along College Street is designated LDMCRA, there is a difference respecting the zoning. Along the strip, a Mixed Commercial-Residential (MCR) zoning overlays the LDMCRA designation. This compatible overlay of zoning over designation does not extend to the subject site. There is what can be described as a “cut out” in the zoning, where the R2 Z0.6 zoning on the north penetrates both the LDMCRA designation and MCR zoning up to the north property line of College Street. As a consequence, there is a split zoning on the site. A southeast portion of the site is zoned MCR T3.0 R3.0 that

permits commercial-residential uses, and the remainder is zoned R2 Z0.6 that permits residential uses.

This land use planning anomaly is explained in a report from the Toronto Community Council to the Commissioner of Urban Development Services (July 4, 2000). It explains in part on page 10 of this report that :

...Notwithstanding the presence of a retail use (now vacant) on the ground floor of 307 Palmerston Boulevard and a previous commercial zoning that ceased several years ago, the last city-wide planning review left the residential zoning in place so that redevelopment for commercial purposes would be subject to public review and an assessment of possible impacts on nearby residential areas.

This hearing is a continuation of the public review process.

The table below indicates the existing zoning and the proposed zoning required to implement the proposal.

<b>Location</b>	<b>Existing Zoning</b>	<b>Proposed Zoning</b>
490 A & B College St. – Parcel 1	MCR T3.0 C3.0 R3.0	MCR T3.0 C3.0 R3.0
494 College St. – Parcel 2A	R2 Z0.6	MCR T3.0 C1.0 R2.5
307 Palmerston Blvd. – Parcel 2B	R2 Z0.6	MCR T3.0 C1.0 R2.5
309 Palmerston Blvd. - Parcel 2C	R2 Z0.6	R2 Z0.6
311 Palmerston Blvd. - Parcel 3	R2 Z0.6	R2 Z0.6

Ms Catherine Cieply, a land use planner testified on behalf of the City. She confirmed the City’s support for the development respecting its built form, height, density and zoning. She is opposed to a restaurant use on the site that she concludes would be incompatible with the existing low density residential development on the north. Mr. Michael Kainer is the chair of PARA. He supports the position taken by Ms

Cieply. Additionally, Mr. Kainer is opposed to the reduced parking standards attributable to the proposal, that would be below the requirement generally required by the By-law.

Both Ms Cieply and Mr. Kainer raised the uniqueness of Palmerston Boulevard north of College Street relative to south of College Street. Although the word “uniqueness” may be an over-statement, Palmerston Boulevard north of College Street is different in many details to Palmerston Boulevard south of College Street. Based on their collective testimonies and the photographs exhibited, it was clear to the Board that the ambience of Palmerston Boulevard north of College Street, because of its streetscape defined by the mature trees in the Boulevard, the architecture of its buildings, the stylized street lamps and the larger buildings on larger lots define that difference. It is also clear to the Board, that the granite stone gates and what appears to be wrought iron railings that adorn the entrance to Palmerston Boulevard on the north side of College Street, speak to the significance of this Boulevard in earlier times. The gate feature is a feature that is uncommon within the City. To the developer’s credit it will participate in the cost of the restoration of these gates. The Board finds that this participation is a tacit recognition of the history of what must have been a gated-community.

The Board, in ruminating on the testimony received and the exhibits viewed regarding a restaurant use in the 307 Palmerston Boulevard building at the corner, takes two competing land use view points into its consideration. The thriving commercial activity on College Street and the residential character on Palmerston Boulevard north of the gates speak to these two competing view points.

Mr. Kainer filed a letter from Mr. Paul J. Bedford, Chief Planner and Executive Director, City of Toronto to Councillor Joe Pantalone, Ward 19, Trinity-Spadina (March 9, 2001). In this letter, Mr. Bedford stated in part:

The portion of College Street in and near the PARA neighbourhood is an active commercial Main Street located adjacent to low-density residential areas to the north and south. The character of the street generally consists of commercial uses at grade with residential or office uses above. Restaurants are permitted in the Main Streets Commercial-Residential (MCR) district, subject to certain restrictions. The character of the College Street commercial area is evolving, and has experienced growing success as a shopping area and popularity as a restaurant

and entertainment-type destination. It is one of the City's most thriving retail areas.  
(Board's emphasis)

The Board notes, however, that the very municipal address – 307 Palmerston Boulevard indicates that this building is seen to be and is related to the Palmerston Boulevard community and not the bustling commercial character of College Street. This view is cemented in the City's and community intent since 1974 as pointed out by Ms Cieply, the City's land use planner.

In the same report, Mr. Bedford also made these comments respecting parking:

...The College Street study considered the introduction of a parking requirement for restaurant uses, but did not recommend one, so that, like most of the rest of the (former) City of Toronto, restaurants in the area would not be required to provide parking. The study noted that the area is well-served by public transit, and has on-street and off-street public parking facilities....

The Board has taken Mr. Bedford's comment respecting parking into its consideration of Mr. Kainer's testimony. It accepts the comments made by Mr. Bedford and rejects those made by Mr. Kainer regarding parking.

Ms Cieply, drew the Board's attention to a report (Exhibit 5A, tab 18) from the Chief Planner to City Council regarding the Rezoning of lands on Palmerston Boulevard at intersections with College Street and Bloor Street (January 9, 1974). The tenor of that report and the addendum report dated July 11, 1974, filed as Exhibit 24 indicates a clear predilection on the part of community, staff and Council to adopt a R2 Z2 zoning at that time respecting the properties at the northeast corner of the College Street/Palmerston Boulevard intersection. It is clear that a retail use such as a restaurant use was not envisaged at this intersection that architecturally and functionally appears to be part of Palmerston Boulevard. Indeed, the "cut out" as I referred to it earlier, remains zoned R2 Z0.6 in order to maintain the corner property as part of the Palmerston Boulevard experience, and as stated in the planning report included in Exhibit 5A, tab 7, page 145 – "...left the zoning (R2 Z0.6) in place so that redevelopment for commercial purposes would be subject to public review and an assessment of possible impacts on nearby residential areas".

Counsel for the City drew the Board's attention to the fact that if a restaurant use is allowed that little can be done to determine whether the type of restaurant use can be

controlled. Could it be a Kentucky Fried Chicken outlet or a simple family high quality restaurant? Will there be garish lighting at the entrance to the community? Will there be patio dining on the Palmerston Boulevard frontage? Counsel suggested that the Board should not be an instrument of this risk. He also drew the Board's attention to likely impacts such as noise, late hour openings, garbage and so on which are similar to the impacts raised in the 1974 report.

The Board was invited to review Section 1 – The Structure and Quality of the City of the City's Official Plan, in particular, section 1.5 - The Central Core and the Neighbourhood. Part of this section is reproduced below:

...Both inside and outside the Central Core, council will give particular attention to the protection of the physical character of the City's stable low density residential neighbourhoods by ensuring that future land use changes are accommodated in a manner that is sensitive to and compatible with local conditions.

The Board with due regard to the land use planning intention since 1974 finds that a restaurant use would not be sensitive to and compatible with local conditions. The Board also finds that dating back to 1974, it was the intent of the community, City Staff and Council that the northeast corner of the Palmerston/College Street area should reflect the residential character of Palmerston Boulevard. Allowing a restaurant use with its possible negative impacts would be contrary to this long held land use planning view point. Therefore, a restaurant use is not allowed.

The further findings of the Board are:

1. Re: Z010010, the appeal is allowed in part. The draft By-law filed as Exhibit 16 is to be amended to preclude a restaurant use in Area 2B.
2. Re: C010218, the appeal is allowed in part, provisional consent is granted subject to the conditions filed as Exhibit 17 and attached as Attachment 1.
3. Re: M010004, the Site Plan is approved.
4. The Board will withhold its Order until it is informed in writing by the City that all agreements have been perfected and are in place.



5. All agreements and conditions must be submitted to the Board for attachment to its Order.

C. A. BEACH  
MEMBER

**NOTE: For Attachment please see original.**