

ISSUE DATE:

Jun. 10, 2005

DECISION/ORDER NO:

1514



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL050209

Hing Lien Wu, Maggie Wu, Michael Wu, and others 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 Toronto (Toronto and East York Panel) which granted an application by Mark Egit and Susan Caldwell numbered A-333/04T for variance from the provisions of By-law 438-86, as amended, respecting 342 Palmerston Boulevard

OMB File No. V050130

APPEARANCES:

Parties

Agent

Mark Egit and Susan Caldwell

M. Egit

Maggie Wu, Hing Lien Wu and others

D. Ensoll

MEMORANDUM OF ORAL DECISION DELIVERED BY N.C. JACKSON AND S. STEFANKO ON JUNE 7, 2005 AND ORDER OF THE BOARD

The Applicants, Mark Egit and Susan Caldwell, own the premises known municipally as 342 Palmerston Boulevard in the City of Toronto. They applied to the Toronto Committee of Adjustment for two variances. Their application was to amend the Gross Floor Area from the required 291.63 square metres (.6 x lot area) to 433.03 square metres and to increase the height from the maximum of 10 metres to 10.71 metres. Their application is to regularize the physical characteristics of the third floor bedroom. The bedroom is now used but the slope of the roof makes the space confining and not useable at the edges. Their original plans showed an increase in floor area of 46 square feet, a turret at the south, and an extended deck to the west and south.

The Appellants live next door to the south at 340 Palmerston Boulevard, a property which was the subject matter of variance relief approximately 15 years ago. At that time objection was taken by the current Applicants to the relief sought but the matter ultimately resolved on a reduced basis by mutual agreement.

Insofar as this application is concerned, the Appellants contend that the changes proposed create over development and impact negatively on the natural light affecting 340 Palmerston.

As a preliminary matter, Mr. Egit wished to bring a motion to dismiss the appeal. However, since notice thereof had not been communicated to the Appellants and no materials had been filed in relation thereto, the Board was not prepared to entertain the motion. The Board did appreciate, however, that Mr. Egit was advancing the proposition that the appeal was simply a mirror of the variance dealt with 15 years ago but in reverse.

The subject property is located in a an older, yet impressive, area in the City of Toronto. The evidence was that homes in this area were generally 70-100 years old and had living space in excess of 3000 square feet. Although the Egit property had a building larger the building at 340 Palmerston, its size was in keeping with the general size and character of the area. It is to be noted that the subject variance had been approved by the City of Toronto Committee of Adjustment without attendance at the hearing by the Appellants. The City of Toronto did not appear in this Appeal hearing.

Once the Applicants became aware of the concerns of the Appellants, the Applicants amended their plans in anticipation of reaching a settlement. Regrettably, the parties were unable to conclude a satisfactory resolution. The changes proposed included the elimination of the turret, a significant reduction in the size of the deck to the south and the elimination of any new floor area. The Board amended the Application accordingly and specifically to delete the inclusion of 46 square feet of new floor area. No further notice is required since the Board finds the amendment to be minor, pursuant to section 45(1) (18.1.1) of the *Planning Act*.

The four tests under the *Planning Act*, section 45(1) were, in the Board's view, met. The Board considered the evidence of Mr. Pinkney, a design consultant, and finds that amended application conforms to the general intent of the Zoning By-Law and Official Plan, is appropriate for the development of the site, and is minor in nature. In determining whether the application was minor, the Board has carefully considered the evidence of David Ensoll, agent for the Appellants. Mr. Ensoll was content with the changes made but wanted a reduction in the height of the south wall immediately

adjacent to 340 Palmerston. His reasoning was to maintain the existing natural light to the Appellant's kitchen window. He could not specify the duration of the light, his analysis having been by his own non-empirical observations. The Board prefers the evidence of Mr. Pinkney who estimated the reduction at 20 percent, an acceptable level in urban surroundings.

The Board will impose conditions requiring that the Applicants not proceed with deck to the south and the turret to the south. The development shall be in general conformity with the amended plans submitted as Exhibit 9. To this limited extent, the Appeal is allowed.

Based on the foregoing, the appeal is, otherwise dismissed, and the two variances for Gross Floor Area and height are authorized. The Board so Orders.

N.C. JACKSON
MEMBER

S. STEFANKO
MEMBER