

ISSUE DATE:

Sept. 28, 2006

DECISION/ORDER NO:

2744



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL060396

Natale Chilelli has 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 which dismissed an application numbered A0848/05TEY for variance from the provisions of By-law 438-86, as amended, respecting 361 Palmerston Boulevard

OMB File No. V060212

APPEARANCES:

Parties

Natale Chilelli

Rami Tabello

Counsel

J. Park

J. Rosenberg

DECISION DELIVERED BY J. R. AKER AND ORDER OF THE BOARD

Natale Chilelli (appellant) is the owner of a residential property known municipally as 361 Palmerston Boulevard in the City of Toronto. He is seeking to maintain and complete additions at the rear of the detached dwelling. The plans presented at this hearing (Exhibit 3, Tab 3) indicate a first floor addition with an enclosed porch, a second floor addition with a balcony and a third floor addition with a Juliette balcony.

Mr. Chilelli applied to the Committee of Adjustment of the City of Toronto for two variances to permit the completion of the dwelling. On April 27, 2006, the Committee of Adjustment refused the variance application. Mr. Chilelli appealed the decision to this Board.

At the outset of the hearing, counsel for the appellant requested that the application be amended. His submission is that the dwelling has a built form and upon examination a larger density variance and building depth are required. He further states that the changes are minor and simply corrects the application. This request was not opposed by counsel for Mr. Tabello. Pursuant to subsection 45(18.1) of the *Planning Act* the application is amended and pursuant to subsection 45(18.1.1) of the *Planning Act*

Act, the Board finds the amendment to the original application to be minor. No further notice is required. The amended variances are as follows:

1. The By-law requires that any addition to a detached house erected before October 15th, 1953, cannot exceed 0.69 times the area of the lot: 336.50 square metres. The applicant/appellant is requesting a residential gross floor area of 378.35 square metres (0.776 times the area of the lot);
2. The By-law provides that any addition to the rear of a detached house erected before October 15th, 1953, is permitted provided that the building depth does not exceed 17.0 metres. The applicant/appellant is requesting a building depth of 19.93 metres.

Mr. David McKay, a qualified planner, provided professional land use planning evidence in support of the two amended variances. Mr. Rami Tabetello, a neighbour who resides at 359 Palmerston Boulevard, retained legal counsel and provided evidence in opposition to the two variances. Two other neighbours, Mr. William Rewenko and Mr. Fernand Lino, spoke in opposition to the two amended variances.

Mr. James Choi, a member of the steering committee of the Palmerston Area Residents' Association (PARA), spoke to the procedure followed by the owner of the dwelling. PARA's concern is that the owner constructed the addition first and applied for the variances later and if Mr. Chilelli had followed proper procedure PARA would not be at this hearing. The Board understands the comments of Mr. Choi but the process is not before the Board for adjudication.

The subject property is located on the east side of Palmerston Boulevard facing west. The immediate neighbourhood is essentially both sides of Palmerston Boulevard from College Street to Ulster Street. The area contains low density residential uses including detached dwellings, semi-detached dwellings and duplexes. Many of the detached dwellings have been converted to apartments. The photographic evidence of planner McKay (Exhibit 7, Tab 1) depicts large well-maintained three storey dwellings in the immediate area with large mature trees.

Mr. McKay reviewed the application as it relates to the 2005 Provincial Policy and in particular Sections 1.1.3.3 and 1.1.3.4 which promotes opportunities for intensification

and redevelopment. In his opinion, the amended variances would allow for the intensification of the existing lot at 361 Palmerston Boulevard and the proposal is consistent with the applicable policies of the 2005 Provincial Policy Statement.

Mr. McKay provided planning evidence on the 1998 City of Toronto Official Plan. The evidence of Mr. McKay is that the subject property is designated Low Density Residence Areas and Section 12.1 states that Residence Areas shall be free of uses which are incompatible with good living conditions. In his opinion, the proposed addition to an existing detached residential dwelling is in keeping with the surrounding land uses of detached residential dwellings and multi-unit residential dwellings. Mr. McKay referred to Sections 12.5(a) and 12.5(b) which states that no changes will be made which are out of keeping with the physical character of the area and that Council may pass by-laws to permit residential buildings having a gross floor area up to 1.0 times the area of the lot. In his opinion, when looking at 361 Palmerston Boulevard from the street, there is no physical impact on the neighbourhood as the built form is consistent with the character of the street and area and the requested variance of 0.776 times the area of the lot is entirely at the rear and an extension of the former built form. In his opinion, the proposal meets the intent and purpose of the 1998 City of Toronto Official Plan.

Mr. McKay stated that since the subject application was filed prior to the approval of the 2002 Toronto Official Plan, the 1998 Official Plan is determinative but the 2002 Toronto Official Plan is relevant. He referred to Chapter 2.3.1 Policy 1 of the 2002 Toronto Official Plan which states that development within Neighbourhoods will reinforce the existing buildings, streetscapes and open space patterns. In his opinion, the proposed development is in keeping with the physical character of the neighbourhood as the proposal will maintain a single-detached residential dwelling and simply extends the rear portion of the existing dwelling to increase the amount of livable space.

Mr. McKay referred to Chapter 3.1.2 Policy 3 which states that new development will be massed to fit harmoniously into the existing context and will limit its impacts on neighbouring streets, open spaces and properties. His evidence is that the proposed additions are at the rear of the property and do not impact the existing Palmerston Boulevard nor impact the laneway at the rear of the properties along Palmerston

Boulevard. His further evidence is that the scale of the proposed additions are not out of character for the neighbourhood as there is no increased height as a result of the additions. His evidence is that privacy is being maintained for neighbours north and south of the subject property as there are no windows on the north and south walls of the additions above the first floor. Mr. McKay provided a shadow impact study (Exhibit 7 Tab 2) indicating some additional shadow to 363 Palmerston Boulevard but little if any additional impact occurs at 359 Palmerston from the result of the proposal. In his opinion, the shadow impact created by the proposal will not adversely impact adjacent properties. In their evidence, both Mr. Rewenko, the owner of 363 Palmerston Boulevard, and Mr. Tabetto, a tenant on the third floor of 359 Palmerston Boulevard, did refer to the loss of natural light at 363 Palmerston Boulevard but did not provide any evidence of shadow impact nor did they state that this is a primary concern. Based on the evidence, the Board finds that the shadow impact created by the proposal is an acceptable impact in this urban residential area in the City of Toronto.

Based on the evidence of Mr. McKay, they Board finds the proposal is consistent with the 2005 Provincial Policy Statement and the two amended variances maintain the general intent and purpose of the 1998 City of Toronto Official Plan and the 2002 City of Toronto Official Plan.

The evidence of Mr. McKay is that the subject property is zoned Residential R2.ZO.6 in the City of Toronto Zoning By-law 438-86. In this instance, Part VI(1) permits a residential gross floor area not to exceed 0.69 times the lot area as the dwelling was constructed prior to 1953. The proposal is for a 12.4% increase over the permitted density to 378.35 square metres. His evidence is that the intent of the 0.69 density is to provide for additions beyond that permitted for newly built homes. In his opinion the additional 0.09 density is to encourage the retention and improvement of existing housing. In his opinion the amended variance to increase the density to 0.776 is in keeping with the intent and purpose of this part of the Zoning By-law as it allows the addition to remain while maintaining the stability and character of the neighbourhood.

His evidence on the requested building depth of 19.93 is that the variance is mainly caused by the first floor enclosed porch addition otherwise the requested variance would be for a building depth of 17.52 metres. His evidence is that the

requested building depth of 19.93 metres is not required for the entire three storey addition.

The evidence of Mr. Tabello is that the third floor addition is out of keeping with the surrounding dwellings in terms of size, form and scale and interrupts the rhythm and pattern of the backyard-scape. Mr. Tabello provided the Board with photographs of the backyard-scape on Palmerston Boulevard between College Street and Ulster Street (Exhibit 13, pages 6-12 inclusive).

Based on the evidence, the Board finds the proposal is in conformity with side yard, rear yard, front yard and building height provisions of the Zoning By-law. Based on the evidence, the Board finds the proposed additions are similar in massing and scale to properties elsewhere in the neighbourhood as set out in the property data chart provided by planner McKay (Exhibit 9). Based on the evidence, the Board is satisfied that the amended variances maintain the general intent and purpose of Zoning By-law 438-86.

The opinion of Mr. McKay is that the proposal is appropriate development of the land. His evidence is that the proposal maintains an existing single detached dwelling and the addition does not change the streetscape or character of Palmerston Boulevard and in fact enhances the character of the neighbourhood. His evidence is that the addition's roofline matches that of the existing house and that the brick used for the addition is similar to the brick on the existing house. The previous evidence of Mr. McKay is that the shadow impacts created by the addition are only slightly increased beyond that of the existing house and the second and third storey additions do not have windows along the north and south facades and therefore there is no loss of privacy on the north and south properties.

Based on the evidence of planner McKay, the Board finds the amended variances will permit an addition that is desirable for the appropriate development of the subject property.

On the determination if the amended variances are minor, Mr. Rewenko stated that the addition protrudes past his building on the third floor level and the character of other rear yard additions are only to the first and second floors. He did state that his property at 363 Palmerston Boulevard is a legal rooming house and that the majority of

the rear yard is used for needed vehicular parking and an area for tenants to lock their bicycles.

Mr. Lino, who lives at 382 Palmerston Boulevard, stated that there are two private driveways between the subject property and 363 Palmerston Boulevard which in total are about 25 feet wide and that the rear addition is visible from the street and does affect the neighbourhood. He stated that he does not support the amended variances but that the upgrades to the front of the house and the overall improvements are positive. He stated in his evidence that "it is a beautiful house".

The evidence of Mr. Tabello is that the third floor addition causes him to lose access to the northern sky and decreases his enjoyment of his third floor deck. He did acknowledge that the addition did not affect his view to the south or to the east. His evidence is that the addition is not compatible and the loss of sky is the result of the incompatible nature of the third floor addition.

The evidence of planner McKay is that the proposal represents only a 12.4% increase in density over that currently permitted and that the majority of the requested building depth of 2.93 metres over the permitted 17.0 metres is caused by the enclosed porch on the first floor. The increased in depth is only marginally required for the balance of the addition. His evidence is that the built form and massing is compatible and in the same range as exists in the area surrounding the subject property. In his opinion, the impacts caused by the addition are acceptable impacts in an urban environment such as the City of Toronto.

Based on the evidence, the Board finds the impacts of the amended variances are acceptable in an urban environment. The wide double driveway between 361 and 363 Palmerston Boulevard is impacted by the shadow of the addition but the Board finds the impact to be acceptable as the driveway and rear yard of 363 Palmerston Boulevard are used for vehicles ingressing and egressing the property and the rear yard of 363 Palmerston Boulevard is used for parking in the majority. Based on the evidence of Mr. Lino, the Board finds the view of the rear addition from the street to be minor and accepts his opinion of the overall improvements to the property. Based on the evidence of Mr. Tabello, the Board finds that the backyard-scape has changed and Mr. Tabello has lost some view to the north. Mr. Tabello resides on the third floor and has an open

deck at this level and still has an open view to the south and to the east. Based on the photographic evidence presented in the hearing, the Board finds the change in backyard-scape to be acceptable and the loss of view also to be acceptable in an urban environment.

In conclusion, the Board finds that the amended variances individually and cumulatively satisfy the four tests of subsection 45(1) of the *Planning Act*.

The Board Orders that the appeal is allowed and the two amended variances are authorized subject to the following condition:

- 1) That the proposal is built substantially in accordance with the plans before the Ontario Municipal Board dated August 2006 and prepared by Jin Dodd.

The Board so Orders.

J. R. AKER
MEMBER