TORONTO

SUPPLEMENTRAY STAFF REPORT

Application for Fence Exemption 29 Church Street

Date:	January 18, 2016
To:	Etobicoke York Community Council
From:	Kimberley Kilburn, District Manager, Municipal Licensing and Standards
Wards:	Ward 11 – York South – Weston
Reference Number:	Municipal Licensing and Standards Folder # 15 240404 FEN 00 IR

SUMMARY

This supplementary staff report is in regards to a matter for which the Etobicoke York Community Council has delegated authority from City Council to make a final decision.

The purpose of this supplementary report is to supply additional information in relation to the application submitted by the owner of 29 Church Street to maintain a hedge fence in excess of the height requirements and contrary to the open fence construction requirement specified in City of Toronto Municipal Code, Chapter 447, Fences.

RECOMMENDATIONS

Municipal Licensing and Standards recommends that the Etobicoke York Community Council give consideration to the exemption application and decide to:

1. Refuse the application for an exemption submitted by the owner of 29 Church Street to maintain a hedge fence, which does not comply with provisions of City of Toronto Municipal Code, Chapter 447, Fences, and direct that a second unappealable Notice of Violation be issued under City of Toronto Municipal Code, Chapter 447, Fences; or

2. Grant the exemption to permit the hedge fence be maintained at a max height of 1.53m on the condition that the owner complies with the Ontario Municipal Board

(OMB) decision for a 1.53m (5 feet) wooden fence to be installed to enclose the garbage containers. Both fences are to be maintained in good repair without alteration. At such time as replacement of the fence is required that the replacement fence will comply with Municipal Code Chapter 447, or its successor by-law.

BACKGROUND

In its decision dated, February 24, 2005, The Ontario Municipal Board (OMB) approved a variance for the building at 29 Church Street to permit the increase of the number of units from 60 to 63 provided certain conditions were met. One of the conditions required by the Board's decision is the construction of a garbage containment area, which was approved in accordance with drawings provided by the applicant showing the location of the containment area and the enclosure (fence) information. On the approved drawings the containment area was to be enclosed by a wood fence, 5 feet in height and was to be located on the north side of the property. The current containment area is correctly located; however it is enclosed by a hedge, the required wood fence has not been installed. (Attachment 1)

Municipal Licensing & Standards is currently perusing the matter and will take all enforcement measures needed to ensure the owners to comply with the require Ontario Municipal Board (OMB) decision from 2005.

The following chart indicates the violations and relevant sections of Toronto Municipal Code Chapter 447, Fences:

LOCATION	ORIENTATION	DEFECT	SECTION
Front yard	The hedge around the containment area is located on the north side of the property	Height of the hedge fence exceeds the height permitted by the Chapter, namely the hedge fence exceeds maximum height of 1.2 metres. The dimensions of the hedge measures 12.5 m long, 5.9 m deep and 1.6m in height.	2B.(1)
Front yard	The hedge around the containment area is located on the north side of the property	Any fence within 2.4 metres of any driveway shall be an open mesh chain-link fence or of an equivalent open-fence construction for at least 2.4 metres from the lot line at which the driveway begins so as not to obstruct the view of the boulevard or highway The portion of the hedge fence/enclosure in violation is along the east side of the driveway and north sides of the property.	2C.(1)

COMMENTS

The subject hedge fence is in violation of City of Toronto Municipal Code Chapter 447-Fences, and as a result staff recommends the application be refused due to the noncompliant features associated with the installation.

However, should Etobicoke York Community Council decide to grant the owner the exemption, the owner will be subject to the conditions for compliance as set out in the Recommendation.

CONTACT

James Wenger
Municipal Licensing and Standards
Etobicoke York District
Tel: 416-395-7058 Fax: 416-394-2904
E-mail: jwenger@toronto.ca

SIGNATURE

_____

Kimberley Kilburn, District Manager
Municipal Licensing and Standards
Etobicoke York District

ATTACHMENTS

Attachment 1: Ontario Municipal Board (OMB) Decision

Attachment 1:
Ontario Municipal Board (OMB) Decision

ISSUE DATE:
Feb. 24, 2005
DECISION/ORDER NO:
0408

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

PL030542

Korce Group Ltd. 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 A253/02HY for variance from the provisions of By-law 1-83, as amended, respecting 29 Church Street
O.M.B. File No. V030270

APPEARANCES:

Parties	Counsel
Korce Group Ltd.	L. Bleta
City of Toronto	D. Jubb

DECISION DELIVERED BY M. F. V. EGER AND ORDER OF THE BOARD

The Board issued an Interim Decision on this matter on February 16, 2004 (Decision/Order No: 0332). The Board withheld its final decision and order pending the receipt of the following:

1. That the Owner shall submit a proper site plan and underground parking plan to the satisfaction of the Works and Emergency Services Department, Transportation Services Division, which identifies the following:

   a) The location, dimensions, proper functional relationship and delineation of all outdoor and indoor parking spaces including visitor spaces; and

   b) The location of proper and adequate waste storage facilities, including appropriate screening of any such outdoor facilities; and,

2. That if it is determined that additional variances are required, the parties are to advise the Board and the Board will resume the hearing to determine the extent of the amendments and whether they are minor pursuant to subsection 18.1 of the *Act*.

Two further Telephone conferences were held with the parties. In addition to the original variances to increase the number of dwelling units from 60 to 63 units and to address compliance issues with the width of 46 parking spaces, the parties now agree that additional variances are required as follows:

1. Driveway/Aisle Width

   The By-law requirement is a minimum width of 6 metres. The minimum width of the north-south surface driveway is 4.52 metres. Portions of the driving aisle width in the garage are also substandard with the minimum width being 3.17 metres. These deficiencies are conditions that have existed for many years.

2. Dimensions of Parking Spaces

   One additional under-sized parking space has been identified. This increases the number of undersized spaces from 19 to 20 spaces.

3. Refuse Handling Facilities

   The By-law requires that there be no outside storage of garbage or garbage containers. A garbage container is proposed to be located on the north side of the building within a screened area.

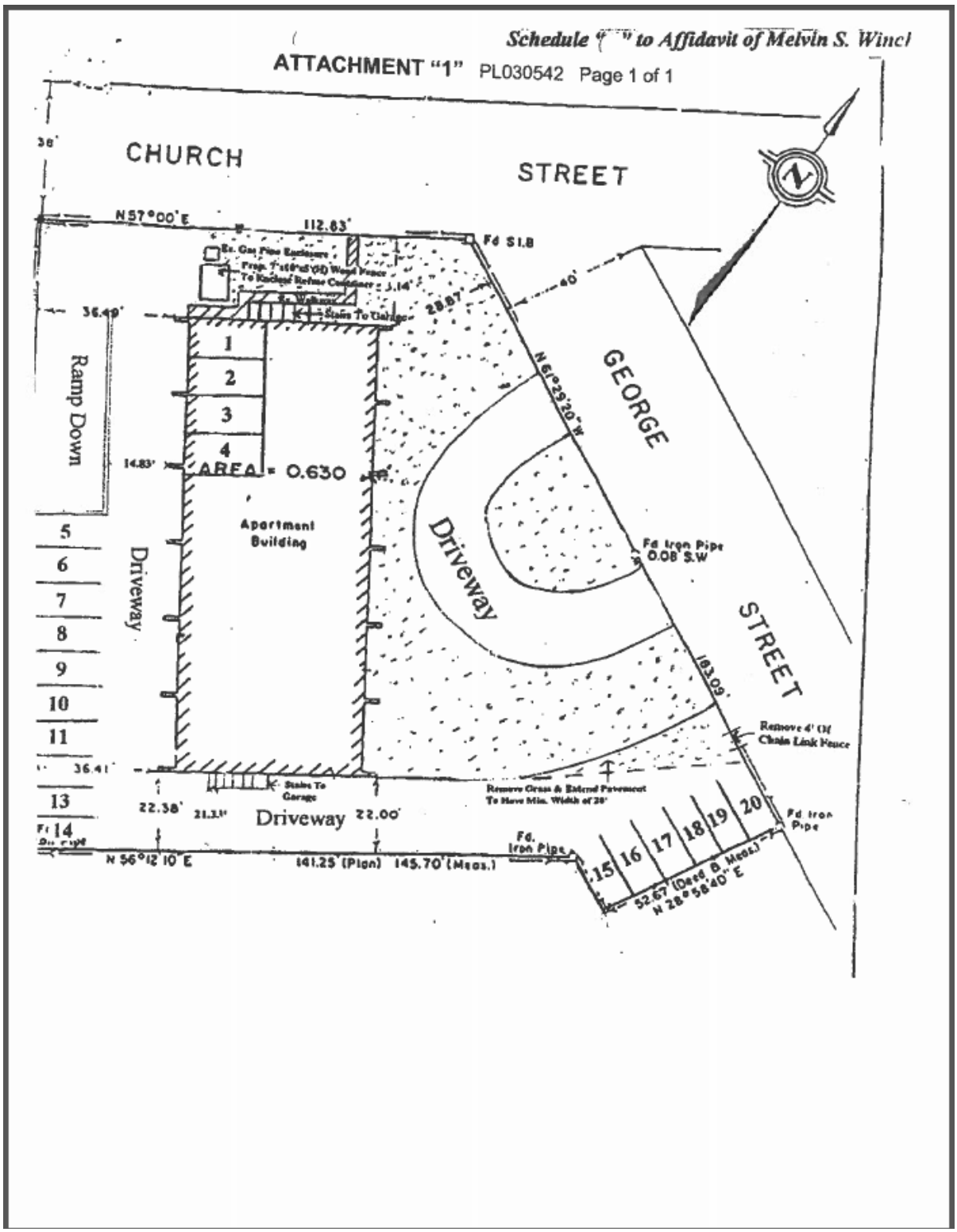
Pursuant to subsection 18.1 of the *Act*, the Board finds that these amendments to the original application are minor and no further notice is required. In fact these were matters canvassed at the earlier hearing.

Based on the evidence at the original hearing, as supplemented by Mr. Winch's affidavit evidence filed with the Board, the Board finds that the variances (amended application) individually and cumulatively meet the four tests set out by Section 45(1) of the *Planning Act*. The Board allows the appeal and authorizes the variances (as amended) subject to the layout of surface parking spaces and the location of the refuse container with screening in accordance with Attachment 1; and the layout of underground parking spaces being in accordance with Attachment 2.

This decision facilitates Korce Group Ltd. now proceeding with its plans to enter into an agreement with a private collection agency for garbage pickup. As the Board understands it, private garbage collection will result in more frequent garbage pickups that will further address waste management issues raised at the hearing.

So orders the Board.

M. F. V. EGER
VICE CHAIR


Schedule "1" to Affidavit of Melvin S. Wincl
ATTACHMENT "1" PL030542 Page 1 of 1
CHURCH
STREET
GEORGE
STREET
N57°00'E
112.63'
Fd S1.8
40'
28.87'
N61°29'20"W
36.49'
Ramp Down
1
2
3
4
14.83'
AREA = 0.630
Apartment Building
Driveway
Driveway
5
6
7
8
9
10
11
36.41'
13
14
Fd Iron Pipe 0.08' S.W
183.09'
Remove 4' (±) Chain Link Fence
Stairs To Garage
22.38'
21.31'
Driveway 22.00'
Remove Grass & Extend Pavement To Have Min. Width of 28'
Fd Iron Pipe
Fd. Iron Pipe
N 56°12'10" E
141.25' (Plan) 145.70' (Meas.)
15
16
17
18
19
20
52.67' (Deed & Meas.)
N 28°58'40" E

Schedule "C" to Affidavit of Melvin S. Winc

ATTACHMENT "2" PL030542 Page 1 of 1

