



## GRANGE

June 22, 2018

**Re: TE34.115**

To the Chair and Members of the Toronto and East York Community Council:

The Grange Community Association took part in the Committee of Adjustment and the subsequent Ontario Municipal Board appeals (A0468/13TEY and PL140130) that gave rise to the Memorandum of Understanding referenced in this item

If the construction drawings for this modest mixed-use residential/commercial structure are satisfactory to Toronto Buildings with respect to the matters we first raised at the Committee of Adjustment and subsequently at the Board, then we support the payment-in-lieu-of-parking solution described here.

**For greater clarity the Board's decision in PL140130 is attached to this letter.**

*Max Allen*

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Copied:  
Councillor Cressy  
Kyle Abdo for 2348613 Ontario Inc.  
George Pantazis and Kirk Hatcher, City Planning

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



**ISSUE DATE:** June 11, 2014

**CASE NO(S):** PL140130

Applicant and Appellant: 2348613 Ontario Inc.  
Subject: Minor Variance  
Legislative Authority: Subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended  
Variance from By-law No.: 438-86  
Property Address/Description: 399 Dundas Street West  
Municipality: City of Toronto  
Municipal File No.: A0468/13TEY  
OMB Case No.: PL140130  
OMB File No.: PL140130

**APPEARANCES:**

**Parties**

**Counsel**

2348613 Ontario Inc.

A. Stewart

City of Toronto

A. Hill

Grange Community Association

## **HEARING EVENT INFORMATION:**

Hearing:

Held in Toronto, Ontario on May 22, 2014

## **DECISION OF THE BOARD DELIVERED BY JASON CHEE-HING**

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### **INTRODUCTION**

[1] 2348613 Ontario Inc. (“Applicant/Appellant” and “Proponent”) has appealed the decision of the City of Toronto (“City”) Committee of Adjustment (“COA”) to not approve the minor variance application for the property located at 399 Dundas Street West in the City. The registered owner of the subject property is 2348613 Ontario Inc. however, the appeal was filed by David Chan who according to counsel for the Proponent has a relationship with the numbered company.

[2] The Proponent desired to demolish the existing structure and replace it with a four-storey mixed use building with commercial on Floors 1 and 2 and residential (four 1-bedroom apartments) on Floors 3 and 4. Three minor variances to the Zoning By-law 438-86 (“ZBL”) were required in order to permit this proposed development. The subject property is located in the City’s downtown core and fronts onto Dundas Street.

[3] At the onset of the hearing, counsels for the Proponent and the City advised the Board that a settlement had been reached and that a Memorandum of Understanding (“MOU”) had been drafted (Exhibit 3). Amanda Hill, counsel for the City advised that certain clarifications to the proposal were made to the satisfaction of the City and it now had no planning concerns with the proposal. Ms. Hill advised that if the Board allowed the appeal and approved the settlement she will be presenting the terms of the settlement for approval at a future meeting of City Council.

[4] The proposed settlement as detailed in the MOU has resulted in the withdrawal of the variance for retail parking spaces by the Proponent. As such, the only variances are to residential and non-residential gross floor area (“GFA”). Both parties requested that should the Board allow the appeal, the Order be withheld pending fulfillment of certain conditions.

[5] The Grange Community Association (“GCA”) an active residents’ association within the area requested party status at the hearing. The GCA made presentations at the COA hearings in opposition to the proposal. The Board granted party standing to the GCA. Max Allen, spokesperson for the GCA advised the Board that they remain opposed to the settlement and requested an adjournment of this hearing. The Board denied the adjournment request.

### **Amended Variance Application**

[6] One variance has been withdrawn. The remaining variances are:

1. The maximum permitted residential gross floor area is 1.5 times the area of the lot (340.19 sq. m). The new building will have a residential gross floor area of 1.73 times the area of the lot (393.59 sq m).
2. The maximum permitted combined non-residential gross floor area and residential gross floor area is 3.0 times the area of the lot (680.73 sq. m). The new building will have a combined gross floor area of 3.52 times the area of the lot (393.59 sq m).

[7] Pursuant to s. 45 (18.1) and s. (18.1.1) of the *Planning Act* (“Act”) the Board determined that the amendment is minor and no notice is required.

### **EVIDENCE AND SUBMISSIONS**

[8] Tony Evangelista, a qualified planner for the Proponent provided expert testimony in support of the minor variances and the MOU. He testified that the proposal is a modest form of infill residential intensification. The subject property fronts onto Dundas Street and is within the downtown core which makes it well suited for this mix-use development. Both the Official Plan (“OP”) and the ZBL permit the mixed use. The parking variance has been withdrawn as the Proponent has agreed to make a cash-in-lieu payment of \$15,000 for the non-provision of retail parking.

[9] Mr. Evangelista testified that Dundas Street at this location has many examples of multiple storey mixed use developments. The proposed built form is compatible with the developments that front onto Dundas Street in this area. The site is well served by public transit and is within a vibrant commercial area within the City's Chinatown. The proposed development is subject to site plan control and would require site plan approval by the City. The proposed building has been stepped back at the upper floors to meet the City's angular plane requirements at the rear.

[10] It is Mr. Evangelista's planning opinion that the proposed development satisfies the four statutory tests found in s. 45(1) of the Act and that there will be no adverse impacts to the surrounding area.

[11] The City's solicitor advised the Board that they had no planning concerns with the proposal and is recommending that that Board approve the settlement with the Proponent as detailed in the MOU.

[12] The GCA objected to the proposed development. Mr. Allen alleged that the proposed development will not meet the building and fire code requirements. It is his opinion that the proposal is not accessible to the physically handicapped and does not comply with the accessibility requirements under the *Ontario Disability Act*. He challenged the completeness of the Proponent's building elevations and drawings and asserted that the building stairways for the residential floors contravenes the building code and is a "fire trap".

[13] Mr. Allen expressed concerns over the lack of public participation in the site plan review process noting that this process will involve only the municipality and the Proponent. He described the proposal as having too much GFA and the building was poorly designed with no windows in the secondary rooms of the residential units. He noted that the building plans presented at this hearing were not in final form and that the Board was being asked to grant the minor variances in the absence of final plans and specifications.

[14] Mr. Allen also challenged the authority of the City solicitor to recommend the settlement with the Proponent when her instructions from City Council were to oppose the minor variance applications at this Board. On this point, Ms. Hill advised the Board that as the City's solicitor she has the authority to engage in settlement discussions on behalf of the City and recommend any settlement for approval by City Council. She

added that the Board has always accepted this authority.

## **BOARD FINDINGS AND REASONS**

[15] The Board considered all of the evidence and submissions made at this proceeding. The Board finds that the minor variances meet the four statutory tests found in the Act, in that they maintain the general intent of the OP and the ZBL, they are desirable for the appropriate development of the land and they are minor.

[16] The Board prefers the planning evidence of Mr. Evangelista which was given on consent with the City. Mr. Evangelista's evidence was the only expert planning evidence given and in the Board's view was uncontroverted. Additionally, the Board is satisfied with the clarifications given by the Proponent's architect on the stairway access. The Board notes that the City had no planning concerns with the proposal and was satisfied with the clarifications to the proposal (Exhibits 4-6).

[17] The Board finds that the mixed-use four-storey proposal is appropriate for this part of the City and notes that the property fronts onto Dundas Street which is a busy thoroughfare, and centrally located within the City's downtown.

[18] In response to the GCA concerns, the Proponent and the City will revise the conditions in the MOU and ask the Board to withhold its Order pending confirmation from the City solicitor that final plans which comply in all respects to the Ontario Building Code have been submitted to the satisfaction of the Building Department.

[19] With respect to the objections raised by the GCA, the Board finds that:

1. The concerns with respect to fire safety, windows in secondary rooms, stairways, and disability access are building code issues. A building permit will not be issued by the City's building department if there is non-compliance with the Ontario Building Code. The Proponent and the City have agreed to add a condition in the MOU that the Board withhold its Order pending confirmation that final plans have been submitted to the satisfaction of the Building Department.
2. The site plan review process involves the Proponent and the municipality. The site plan agreement is an agreement between these two parties. If the GCA has concerns during the site plan process it can make the City aware of them.
3. The City solicitor at a hearing is the legal representative for the municipality and

has the authority to settle with the Proponent subject to City Council's approval.

[20] Therefore it is the decision of the Board that the appeal is allowed and the variances to By-law No. 438-86 are authorized subject to the conditions found in the MOU as revised (Exhibit 3). The Board will withhold its Order pending confirmation from the City solicitor that:

1. The parking agreement has been executed and registered on title to the subject property;
2. Final plans for the purposes of obtaining a building permit have been submitted to the satisfaction of the Building Department; and
3. Site plan approval has been granted pursuant to s. 41 of the Act and s. 114 of the *City of Toronto Act 2006*.

[21] In the event that there are difficulties in executing the parking agreement the Board can be spoken to.

*"Jason Chee-Hing"*

JASON CHEE-HING  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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