

ISSUE DATE:

Aug. 11, 2000

DECISION/ORDER NO:

1163



PL000337

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Chris Kidd and Michelle Loewen 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) which dismissed an application numbered A074/00TO for variance from the provisions of By-law 438-86, as amended, respecting 101 Kenilworth Avenue
O.M.B. File No. V000142

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

Parties

Counsel*/or Agents

Chris Kidd & Michelle Loewen

Richard Arblaster*

Michael Easson
Anthony Grange

DECISION DELIVERED BY RONALD J. EMO AND ORDER OF THE BOARD

In 1998, Mr. Kidd and Ms Loewen (appellants) purchased a three storey home at #101 Kenilworth Avenue in the "Beaches" area of the old City of Toronto. Over the years, their home has had at least one addition, including a third storey in 1980. They now seek permission to construct a one storey, (260 sq ft) addition to the rear of their home. As a prerequisite for their building permit, two variances were required. These are: (1) an increase in the floor space index (fsi) from 0.69 to 0.75 (times lot area) and (2) an increase of 1.8 feet in the maximum permitted dwelling 'depth' from 55.8 feet (By-law 438-86) to 57.6 feet. Their application to the Toronto Committee of Adjustment was denied and they have appealed that decision to this Board. Mr. Easson, the abutting owner (north) at # 103, and Mr. Grange, the abutting owner(south) at # 99 Kenilworth, attended to register their opposition to the two variances. They also submitted several letters (exhibit 14) from other neighbours also in opposition.

The appellants were represented by legal counsel and brought William Dolan, an experienced land-use planner to present their case. Mr. Grange and Mr. Easson, a lawyer

by training but no longer in practice, owing to illness, represented themselves. After a careful consideration of the evidence (oral and exhibits) in relation to the four 'tests' of subsection 45 (1) of the *Planning Act* (Act), I find for the appellants. The setting, evidence and reasons for this decision follow:

The subject property is located on the east side of Kenilworth to the south of Queen Street, which is the main street of the "Beaches". Exhibit 13, the City's property data map, shows Kenilworth and Waverley, the parallel street to the east, as an enclave of residential development between Kew Gardens, the Pantry Park athletic field and the extensive lake front park that is the *raison d'être* of the "Beaches". Mr. Dolan's extensive photo panel (exhibit 4) shows an interesting streetscape with a variety of house forms in a mixture of singles and semi-detached, including some apartment conversions. The Board was advised that this stretch of Kenilworth developed originally as 'worker homes' and summer cottages. The subject dwelling (#101) was built in 1909.

The appellants' home has an area, on three floors, of some 1895 sq ft which, combined with the lot area (25 ft by 115 ft) of 2875 sq ft, results in a 0.66 fsi. The proposed addition of 260 sq ft bumps this to 0.75 fsi. The second variance arises as a result of one of the more technical vagaries of By-law 438-86 requiring that dwelling 'depth' be measured from a line joining the front of the dwellings on either side. Thus, although the applicants' present dwelling is only 38.8 feet deep, its by-law 'depth' is 43.1 feet because the opponents' dwellings at #s 99 & 103 are closer to the street. The appellants' proposed 14.5 foot addition brings the by-law 'depth' to 57.6 feet (43.1 plus 14.5), 1.8 feet more than the maximum by-law 'depth' of 55.8 feet. Mr. Dolan told the Board that had Mr. Easson's front porch not been partially enclosed, the defined front line would have been a more realistic by-law 'depth', avoiding the second variance.

From discussions with two real estate agents, Mr. Easson believes that the value of his home will be reduced if the appellants' addition proceeds. It is also Mr. Easson's perception that a loss of sunlight on his rear walls and windows will result in additional heating costs of \$250 which, owing to limited financial resources, will be a major impact. He went on to tell the Board that the proposed 14.5 foot addition together with an existing 9 foot (single storey) addition will place the rear of # 101 some 21 feet further east than his rear wall. Neither Mr. Dolan or Mr. Easson brought a shadow study to support their respective opinions as to impact, although Mr. Dolan's photo panel of the rear of the three homes in question (#s 99, 101 & 103) shows a summer shadow (at 11:00 am) on Mr. Easson's home.

I have carefully considered the evidence of Mr. Easson and Mr. Dolan as to impact on the Easson property and while there will be some shadowing, I do not find that it is beyond an unacceptable level for a compact inner city neighbourhood such as this section of the "Beaches". Although Mr. Easson spoke to a 21 foot difference in the depths of the two homes, 'as of right' zoning permits the appellants' extension (ignoring fsi) to 19.2 feet (21 less 1.8 feet).

Mr. Grange's concern, and that of some of his neighbours as indicated in their letters, is a fear of 'precedent'. Given the eclectic nature of Kenilworth as well as the wide range of fsi and dwelling locations, this is an elusive target to grasp. Mr. Dolan selected a small study area including # 107, an admittedly large dwelling. Mr. Grange's analysis (exhibit 15) dealt only with the number of storeys and (estimated) floor area, which he agreed was only "one piece of the jigsaw". Although 'openness' of rear yards was suggested as something to be protected, the dwellings at #s 75, 77, 79, 81 and 83 are all positioned right up against their rear (east) boundary. There was no disagreement that there have been many additions to the homes on Kenilworth and while the opponents tend to support vertical extensions, I find that increases in fsi of 0.06 (171 sq ft) and 1.8 feet in by-law 'depth' are minor in relation to the 'tests' of subsection 45(1).

Despite the Board's admonition as to inherent difficulties in quantifying the old chestnut of property devaluation, Mr. Easson led two real estate sales reports (exhibits 8 & 12) which show that # 101 sold for \$385,000 in December of 1996 and resold at \$459,500 in April of 1998. This is an increase of \$74,500 in a span of 16 months. Nothing turns on this evidence other than proof of a buoyant real estate market which suggests that Mr. Easson's fears may not be justified.

With regard to the four 'tests', I find that there is no problem with the Official Plan as it encourages reinvestment and provides for fsi up to one (1.0) times lot area in low density areas such as Kenilworth. It was generally agreed that the intent and purpose of zoning standards is to preserve openness and neighbourhood character. Owing to by-law 'depth', the appellants are (inadvertently) providing 5 feet more of open space in their front yard than their opponents. Open space is open space whether in the back yard or the front yard! Given the diversity of house form and locations, I find that the variances sought meet the zoning 'test'.

Although Mr. Easson questions the appellants' need for a ground floor family room, such aspirations are a realistic expression of the rights of ownership as long as the impact