

Issue date: July 6, 2001  
Decision/Order No. 1078

**Ontario Municipal Board**

**PLO10092**

Franzis Papadakis has appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, .S.O. 1990, c.P.13, as amended, from a decision of the Committee of Adjustment of the City of Toronto which dismissed his application numbered A-640/OONY for variance from the provisions of By-law 7625, as amended, respecting 7 Lailey Crescent

O.M.B. File No. V010042

**APPEARANCES:**

**Parties**

**Counsel**

Franzis Papadakis & MariaTeresa Palandra

R. Arblaster

City of Toronto

Mark Flowers

**DECISION DELIVERED BY N. A. CRAWFORD**

This is an application for variances from the provisions of North York Zoning Bylaw 7625, as amended. The variance to the Bylaw relates to the following:

1. An east side yard setback of 1.2 metres (4 feet) to a proposed bay window, whereas 1.8 metres (6 feet) is required;
2. A west side yard setback of 1.2 metres (4 feet) to the garage portion of the dwelling, whereas 1.8 metres (6 feet) is required;
3. The length of the dwelling 19.84 metres (65 feet) whereas 6.8 metres (55 feet) is permitted;
4. The lot coverage of 38%, 271.7 m<sup>2</sup> (2,924.65 square feet), whereas 30%, 214.5 m<sup>2</sup> (2,308.93 square feet) is permitted;
5. Canopy projection of 3.05 metres (10 feet), whereas 1.8 metres (6 feet) is permitted; and
6. A canopy area of 19 m<sup>2</sup> (304.5 square feet) whereas 2.3 m<sup>2</sup> (24.75 square feet) is permitted.

The general provisions of the By-law provide for a maximum building length of 55 feet, side yards of 6 feet and lot coverage of 30%. These are the issues before the Board.

The subject property, 7 Lailey Crescent is located within the Willowdale area of the former

City of North York and located within (the block) area bounded by Dunview Avenue, Highgate Avenue, Mckee Avenue and Wilfred Avenue.

Mr. William J. Dolan a qualified land use planner informed the Board the area had been the subject of considerable single detached “infill” housing. The 7 Lailey Crescent property, located on the south side of the crescent was defined as a key lot (55.5 feet x 139 feet) totalling 7,696 square feet. The east side yard abuts the rear yard lots of 164 and 162 Highgate Avenue. The west side yard abuts the side lot of 5 Lailey Crescent and the south lot line of 256 McKee Avenue. Lailey Crescent is characterized by mostly older dwellings but there are a number of new infill single and two-storey dwellings, three of which are relatively large structures. The cul-de-sac area contains 9 dwellings, one of which, to the west, is under a major expansion/renovation and one is a new dwelling presently under construction. Mr. Dolan informed the Board from a land use planning perspective the property is being developed in keeping with the existing and emerging characteristics of the Willowdale community environs. He submitted that it represented a desirable and appropriate development and use of the land that does not generate an unacceptable adverse impact on the abutting neighbours, considering the principals of compatibility and appropriateness of the final development with the neighbouring properties.

The Exhibits “5”, “6” and “7” illustrated the canopy roof cover, basement level cold storage and garage extension together with, the front, left and right elevations to 7 Lailey Crescent. Exhibit “4” provided the Board with photographs of the streetscape view of the subject property, illustrating a relatively large separation distance between adjacent dwellings, together with a rear yardscape view of the subject property setting out the proposed deck area, cold storage foundation wall, stairwell area and canopy roof area. Exhibit “9” presented to the Board photographs of the construction area.

Mr. Dolan stated the increase of 6 feet to the garage portion was to facilitate convenient vehicle door opening and plus wall storage. This necessitates the west side yard variance. The abutting dwelling to the west is separated from the subject dwelling/garage by some 17.5 plus feet which represents an unusually and very high separation by Toronto urban standards and the mature Cedar hedge on the subject property will provide a visual buffer to the neighbour on the west. The variance requested for the east side yard setback to 4 from 6 feet is to permit the installation of a bay window within the east wall at the main level dining room area. He noted and all parties agreed that a window was permitted as of right and the bay window would simply add an architectural feature to the east wall and provide visual relief compared to a conventional (as of right) flat window treatment. The east side of the subject property abuts the neighbour’s rear yard and has a spatial separation distance of some 100 plus feet between dwellings. The subject two-storey building was built within the maximum length of 55 feet. A 14 by 14 foot stairwell at the corner of the dwelling was built in

compliance with a previously issued building permit. This stairwell is intended to provide access to the proposed basement storage area. Section 13.2.5A(2)(f) of the By-law permits a canopy projection into the rear of the yard up to 6 feet. However, a canopy projection greater than 6 feet and attached to the dwelling would be included in the overall dwelling length calculation, hence the variance to the building length is necessary. The canopy is intended to cover and provide weather protection to the permitted below grade stairwell. The canopy area is some 100 plus feet distance from the nearest eastern dwelling's outdoor leisure focal point. The canopy area would not have a floor and would be an open cavity with protective railings and not an outdoor entertainment gathering focal point. However, it is included by Section 2.28 of the Bylaw in the calculation of lot coverage. The primary dwelling house was built with the allowed 30% lot coverage. The requested increase in coverage from 30 to 38% is generated in two (2) ways:

- (a) 1% for the increase in the size of the garage connected to the requested side yard variance; and
- (b) 7% attributed to the excavated area below the permitted first floor level deck and the canopy.

Ms Jennifer Stark, Assistant Planner for the City of Toronto, agreed and confirmed that the character of the area is a stable residential mixture of older and newer homes and informed the Board, the appellant/applicant had not complied with the building permit as it issued. In particular, she expressed concerns that the rear porch was now excavated where it was not originally and should now be included in the lot coverage. The proposed canopy over the rear stairwell would be larger than the By-law permits. Now the lot coverage is proposed at 38%. Her main concern was the cumulative impact of the variances. She agreed that each variance on its own was not a concern.

Under cross-examination, Ms Stark had no idea of how many other excavated properties were in the area and agreed that had the porch not been excavated it would be permitted by the By-law. She also agreed that an aerial view of the subject property would look the same as other homes in the area. The character of the neighbourhood could vary anywhere from 8% to 30% in lot coverage. Ms Stark felt the applicant/appellant was trying to put more house on the lot than would be permitted by the By-law, the stairwell should be made smaller and the canopy smaller and thus comply more closely with the By-law. The storage should be in the basement of the house and the proposed bay window should be a flat window.

Ms Stark agreed under cross-examination that the variances relating to the garage, canopy, and storage individually were no problem, but in combination were in her opinion not acceptable. She did agree the canopy would have no adverse impact on the adjacent neighbours. Visually these changes were acceptable from a planning perspective. However, she maintained her concern with the

excess lot coverage over 30% which is contrary to the By-law. Ms Stark felt that a precedent could be created because the area is subject to redevelopment. Ms Stark felt the purpose of the application was to enhance the applicant's use of the property and there was no reasonable planning justification as to why the By-law requirements could not be met. She felt the planning tests could not be met and there was no justification to grant the variances.

The planners agreed the issue of maintaining the general intent and purpose of the Official Plan was not an issue. The issues clearly became the extent to which the variances if allowed would still maintain the general intent and purpose of the By-law. Both planners reviewed the possible impacts as to whether the variances were minor or desirable and then reviewed the issue of general intent and purpose of the By-law.

Concerned citizens in the person of Mr. Hatcher, Mr. Winter and Mr. Raiczwk appeared before the Board. Their objections while strongly held were not supported by planning evidence. Nevertheless, the Board will impose certain conditions to address the concern with adverse impact.

The Board must be governed by the tests under Section 45(1) of the *Planning Act*. Each case must be judged on its own particular facts and merits. The Board must find the variances to be minor, desirable and maintain the general intent and purpose of the By-law and Official Plan.

The Board finds on the evidence presented and subject to the conditions imposed that:

1. The west side yard setback of 4 feet for the garage portion only is minor in nature and does not generate an unacceptable adverse impact;
2. The east side yard setback of 4 feet to a bay window is minor and does not generate unacceptable adverse impacts;
3. That the length of the dwelling calculated as 65 feet will not generate an unacceptable adverse impact, but this increase in length pertains only and specifically to the proposed stairwell canopy, and does not permit any increase to the actual dwelling house. The enclosed canopy projection is to specifically cover and only cover the permitted below grade stairwell. This canopy projection is intended only to provide weather protection for the below grade stairwell and will not create a visual eyesore to the adjacent neighbours. The subject canopy shall not have a floor, it will be an open cavity with protective railings only and not be used as an outdoor entertainment gathering focal point. The variances sought will therefore not generate an unacceptable adverse impact when framed only to apply to the unenclosed canopy roof.
4. The Board finds the lot coverage increase to 38% from the permitted 30% coverage is

acceptable as 1 % is the increase in the size of the garage connected to the side yard variance and 7% is attributed to the excavated area below the rear first floor level deck. The Board finds the variance to be minor in nature and not generating unacceptable impacts.

5. The Board further finds that the variances do not result in a development that is incompatible with the character of the neighbourhood and the intent of the Official Plan is therefore met.

The Board concurs and agrees with the evidence as presented by Mr. Dolan that the intent of the By-law is maintained, the variances are reasonable, practical and do not detract from the established character or amenities of the adjacent and nearby properties. Individually and collectively the variances are minor.

It is the Board's finding the variances will not add any habitable space to the home, and the variances will result in desirable and appropriate use of the land.

The Board on the evidence presented allows the appeal and authorizes the variances on the following conditions:

1. The rear porch remain open on three sides, not be covered, not to be used as habitable space, and no heater or insulation installed or provided;
2. The exterior stairwell remain open and attached to the dwelling;
3. The applicant is to construct a board on board fence 1.8 metres in height along the east and west property line of this property; and
4. Neither the deck or canopy area is to be enclosed.

The Board so orders.

“N. A. Crawford”

**N. A. CRAWFORD**  
MEMBER