

ISSUE DATE:

DEC. 3, 2010



PL091070

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: GE Capital Real Estate
Applicant: Board of Regents of Victoria University
Subject: Minor Variance
Variance from By-law Number: 438-86
Property Address / Description: 150 Charles Street West
Municipality: City of Toronto
Municipal File No.: A0643/09TEY
OMB Case No.: PL091070
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APPEARANCES:

Parties

Counsel*/Agent

Board of Regents of Victoria University

S. Mahadevan*

GE Capital Real Estate

J. Dawson*

City of Toronto

G. Whicher*, R. Coburn Student-at-Law

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
ON NOVEMBER 17, 2010, AND ORDER OF THE BOARD**

This dispute has been settled. Victoria University (the University) proposed renovation and expansion of its Wymilwood Building, to create a new student centre at 150 Charles Street West (Goldring Student Centre), in the City of Toronto (the City). The proposal involved three variances, and the University applied to the Committee of Adjustment (COA). City planning staff had no objection, and the variances were authorized by the COA.

However, GE Capital Real Estate (the Appellant) had leased abutting property from the University. It appeared the project's driveway (i.e. access to the Goldring Student Centre) would be across lands it had leased; it appealed to the Board.

Prior to the hearing, the Parties reached consensus on access. This would involve changes in Site Plan layout – but not to the proposed variances themselves.

The Board has carefully considered all the evidence, including the expert opinion of the University's Planner Mr. P. DiMascio, as well as the submissions of Counsel for the University, the Appellant, and the City. The Board concludes, as City staff and the Parties did, that the variances meet the four tests of the *Planning Act*. They are authorized accordingly, subject to a Condition on which the Parties have agreed, and which the Board finds satisfactory. The details and reasons are set out below.

The University has been seeking three variances to By-law 438-86:

- a) Whereas By-law Section 12(2)310(a) said a building fronting Charles Street, east of Queen's Park, should not be closer than 4.0 metres from the street, this building would be 0.0 metres from Charles Street.
- b) Whereas Section 12(2)309(i) said the enlargement to Gross Floor Area (GFA) of an existing building should be within 5% (558.6 square metres of what existed on June 3, 1997, this GFA enlargement would be 18% (2000 square metres of the existing building).
- c) Whereas Section 4(11)(c) said a building is not permitted in front of a residential building, this proposed building would be in front of a residential building.

As mentioned, the application also indicated access to the Goldring Student Centre from Bloor Street West, via lands north of the subject property, currently leased by the University to the Appellant. The property is under Site Plan control. Following discussions with City planning staff, the University provided revised Site Plans. They indicated new access to the Goldring Student Centre via a new driveway on Charles Street West, some 12 metres east of the existing driveway – and not from Bloor Street West over lands currently leased to the Appellant. This new driveway appeared acceptable to City planning staff. Though Site Plan approval has not been issued by the City, the Site Plan application is being processed by City staff on the basis of the new

driveway location. The Parties therefore asked the Board to authorize the variances subject to a Condition to that effect.

For variances, the criteria (often called “the four tests”) are set out at Section 45(1), namely that a variance from the applicable By-law may be authorized if it is minor, desirable for the appropriate development or use of the property, and maintains the general intent and purpose of both the Zoning By-law and of the Official Plan.

The University’s Planner, Mr. DiMascio, provided sworn expert opinion addressing each of the four tests. It was his conclusion that, subject to the Condition concerning access, the proposal before the Board met all statutory requirements.

The Board finds no dispute.

THE BOARD THEREFORE ORDERS:

1. The three variances are authorized, as they were by the Committee of Adjustment.
2. The above authorization is subject to the Condition that access to the Goldring Student Centre, at 150 Charles Street West, shall be from a new driveway on Charles Street West east of the existing driveway, and not from Bloor Street West over lands currently leased by GE Capital Real Estate from Victoria University.

It is so Ordered.

“M. C. Denhez”

M. C. DENHEZ
MEMBER