

ISSUE DATE:

June 3, 2009



PL081578

Ontario
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

Applicant and Appellant: Allied Properties REIT
Subject: Minor Variance
Variance from By-law No.: 438-86
Property Address/Description: 544 King Street West And 1-9 Morrison Street
Municipality: City of Toronto
OMB Case No.: PL081578
OMB File No.: PL081578
Municipal No. A-0907/08TEY

APPEARANCES:

Parties

Allied Properties REIT

City of Toronto

Counsel

K. Kovar

A. Platt

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. CHEE-HING AND
G. C. O'CONNOR ON MAY 26, 2009 AND ORDER OF THE BOARD**

CONTEXT:

Allied Properties REIT (the "Applicant") proposes to construct two office buildings on the property located at 544 King Street West and 1-9 Morrison Street, in the City of Toronto (the "City"). The proposal contemplates two buildings, one at eight storeys, and the other at nine storeys. The ground floor of both buildings will contain retail space, loading and parking spaces. The two buildings are separated by an outdoor courtyard on the third floor and will be linked by a bridge (Ex. 7). The site contains an existing warehousing type structure, which will be demolished. In order to give effect to the proposal, the Applicant sought multiple variances to the Zoning By-law ("ZBL") relating to height, loading spaces, and setbacks. The variance application was refused by the

City's Committee of Adjustment (the "COA") and the matter is now before the Board on appeal.

At the onset of the hearing, Counsel for the Applicant (Ms Kovar) advised the Board that the variances have been amended and that a settlement was reached on the amended variances. Counsel for the City (Mr. Platt) confirmed that they have settled with the Applicant and the City is not opposed to the amended variances and the proposal as revised. Ms Kovar also advised the Board that her client had reached a settlement with the Toronto District School Board who is party of record to this appeal. The Toronto District School Board had advised the Board, in writing, that they would no longer be participating in the hearing. In light of the settlement, the Board proceeded to hear professional planning evidence from the Applicant's planner into the merits of the application and the settlement.

Also in attendance at today's hearing were the representatives of 2157626 Ontario Limited ("King Investments"). King Investments own the abutting property to the west (548 King Street West). King Investments advised the Board that they requested a change to their status from Party to Participant. As a Participant to these proceedings, they advised the Board that while they are not opposed to the redevelopment of the subject site, they are opposed to some of the amended variances, which in their view would adversely impact the future development potential of their property.

THE AMENDED VARIANCES:

Mr. Stagl, planner for the Applicant advised the Board that the variances were amended as follows:

1. Section 12(2) 246 (a), By-law 438-86

The portion of a building exceeding a height of 20 metres shall be set back at least three metres from the main wall of such building that faces a lot line that abuts a street other than a public lane.

The 1.38 metre portion of the proposed eight storey building exceeding a height of 20 metres will be set back 0.0 metres from the King Street West street line (the remaining height above 21.38 metres will be set back 3.0 metres).

The 12.45 metre portion of the proposed eight storey building exceeding a height of 20 metres will be set back 0.0 metres from the Morrison Street line (the remaining height above 32.45 metres will be set back 3.0 metres).

2. Section 12(2) 246 (f), By-law 438-86

One type A loading space and three type B loading spaces are required to be provided on site.

In this case, one type G loading space and two type C loading spaces will be provided.

3. Section 7(3) Part II 1(i) & 3, By-law 438-86

A building located beyond 25 metres of the street or Public Park shall have a minimum distance of 7.5 metres from the side and rear lot lines.

The middle of the proposed building located beyond 25 metres from Morrison Street and from King Street West is set back 0.0 metres from the east and the west lot lines.

4. Section 4(2), By-law 438-86

The maximum permitted height of a building is 23.0 metres.

The eight storey building will be 32.45 metres in height to the main roof and 33.6 metres in height to the south elevator overrun, measured from King Street West, and 36.8 metres in height to the north mechanical penthouse roof, measured from Morrison Street.

5. Section 7(3) Part II 1 (ii), By-law 438-86

No portion of a building may be closer than 11.0 metres to a wall of a building on the same lot.

A separation distance of 9.0 metres exists between two proposed walls facing the landscaped courtyard.

The Board determined that the amendments to the variances were minor and pursuant to subsection 45(18.1.1) of the *Planning Act* (the “Act”), no further notice is required.

THE PLANNING EVIDENCE:

Mr. Stagl testified that the proposal before the Board has been revised to decrease the height of the north building from nine to eight storeys. It was his evidence that the two proposed buildings at eight storeys and an overall height of 33.6 and 36.8 metres are consistent with the height of other buildings in the immediate area. The site is located in a RA (Reinvestment Area) zone within the King-Spadina area of the City’s downtown. The Board heard that within the RA zone, the City guides development through design and built form criteria rather than the normal density performance standards. The intent being to promote built forms whose design characteristics contribute to the design aesthetic of an area while at the same time promoting reinvestment and intensification. It was his evidence that the unique design of the proposal on a deep and narrow lot triggered variances to the built form controls of the Zoning By-law.

The proposal would be a zero lot line development, which is permitted under the ZBL. Zero lot line developments are not uncommon in this area and Mr. Stagl gave examples of such developments either approved or already built within the immediate area (Ex. 12). It was Mr. Stagl’s professional opinion that the amended variances both singularly and cumulatively meet the four statutory tests required under subsection 45(1) of the *Act*. Specifically, the variances meet the general intent of both the City’s OP and the in-force ZBL; they are appropriate for the development of the property and will not create unacceptable adverse impact to the immediate area.

King Investments appeared as a Participant to these proceedings and own the abutting property to the west of the site. This abutting landowner’s principal objection to the proposal is that the south building will contain windows on its west wall. The west

wall of the proposed south building will be located on the mutual property line. It is the Participant's position that these windows will have a direct adverse impact on his building and compromise the future development of their property. The Participant is concerned that the future development of his property may attract opposition to it by the current or future owners of the subject site. It is their position that it would be more appropriate to remove these windows from the proposed design thus avoiding future problems. Failing that, the Participant is requesting that the Board impose a condition to be registered on title that would bind the current and future owners from opposing the development of his property. Such development may contain windows facing directly east. The Participant also had concerns related to the demolition and construction at the subject site and its impacts on their property and ongoing business operations (Ex.1).

In responding to the Participant's concerns, Mr. Stagl testified that the ZBL performance standards do not place restrictions on locating windows on walls of zero lot line developments that are for commercial and retail use. No variances are required for the windows in the proposed development. He further testified that should the Participant decide to proceed with a development on his property based on zero lot line then the building code regulations will require the Applicant or future owner of the subject property to fill in the windows on the proposed building. It is his planning opinion that the development potential of the Participant's property would not be affected by the proposed design for the subject site.

With respect to the Participant's concerns, it is the finding of the Board that windows on the west wall of the proposal will not create an unacceptable impact to the abutting property at 548 King St. West. The Participant's concern in this regard relate to the future development of its property. The Participant has not yet made any applications to the City to develop his site. If and when they do, their proposal will be subject to the same planning regulatory process as the Applicant. That planning process would include meeting the applicable zoning standards. The Board finds that since no variance is required for the proposed windows that the Participant cannot seek to curtail the development rights of the Applicant on the basis that the future development potential of their property may be adversely impacted. The Participant's concerns with respect to demolition and construction can and should be resolved through the City's site plan approval process and third party agreements in the event that the Applicant requires access to the Participant's property.

Having heard the professional planning evidence of Mr. Stagl on the terms of the settlement, the amended variances, and the revised proposal, the Board is satisfied that the amended variances meet the four statutory tests under subsection 45(1) of the *Act* both singularly and cumulatively. The Board finds that the proposal will not create unacceptable adverse impact to the abutting property owner at 548 King Street. It is the Board's finding that the proposal will make a positive contribution towards intensification and regeneration within the area and as such represents good planning. The Board is also satisfied that the amended variances are consistent with the relevant policies of the Provincial policy Statement and the Growth Plan.

Therefore, the **BOARD ORDERS** that the appeal is allowed and the variances as amended to By-Law 438-86 are authorized subject to the conditions found in Attachment "1" to this Order.

So Orders the Board.

"J. Chee-Hing"

J. CHEE-HING
MEMBER

"G. C. O'Connor"

G. O'CONNOR
MEMBER

ATTACHMENT 1Conditions of Approval

1. The use of any structure constructed on the site pursuant to the subject minor variances shall be limited to non-residential uses; for clarity the building to be constructed pursuant to the minor variances shall not be used for residential uses. Notwithstanding the previous sentence, the use of any structure constructed on the site pursuant to the subject minor variances for an "Entertainment Facility – Nightclub" as such use is defined in the Zoning By-law No. 438-86 as of the date of hereof is strictly prohibited.
2. Prior to the issuance of the first above-grade building permit for any building constructed at the site for which the subject variances are required, the owner of the lands shall make a contribution to the City of Toronto in the amount of \$100,000 for streetscape improvements to those parts of King Street West; and Morrison Street in the vicinity of the site. Notwithstanding the previous sentence, 10% of the above-noted contribution may, at the sole discretion of the Director of Community Planning for Toronto and East York in consultation with the local Councilor, be used for capital improvements to social housing in Ward 20 of City of Toronto.
3. Prior to occupancy of the building, the Owner shall convey to the City, at nominal cost, for public highway purposes, a 1.475 metre wide strip of land to the full extent of the site abutting the south limit of the east-west public lane, such lands to be free and clear of all encumbrances, save and except utility poles, and subject to a right-of-way for access purposes in favour of the Grantor until such time as said lands have been laid out and dedicated for public highway purposes. ✓
4. The structure constructed on the site pursuant to the subject minor variances shall be constructed substantially in accordance with the plans dated May 20, 2009 prepared by Sweeny, Sterling, Finlayson & Co. Architects Inc. contained in OMB File No. PL081578 as Exhibit 7. *Ex 7*
5. Prior to final site plan approval, the owner shall enter into an agreement pursuant to section 45 (9.1) of the *Planning Act* R.S.O. 1990, c. P.13, as amended, to the satisfaction of the solicitor for the City of Toronto, securing the above-noted conditions and such agreement shall be registered on title to the property at the owner's expense. For greater clarity, the provisions of such agreement may be subsumed within a site plan agreement made pursuant to section 114 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11 Schedule A.