



The Corporation of the TOWN OF MILTON

Report To: Committee of the Whole

From: Barbara Koopmans, Director of Planning and Development

Date: January 26, 2015

Report No: PD-001-15

Subject: Appeal to the Ontario Municipal Board of Decisions of the Committee of Adjustment and Consent (Files: A1-14/035/M & A1-14/036//M – Social Betterment Properties International)

Recommendation: THAT Milton Council authorize legal counsel and Town staff to attend the Ontario Municipal Board hearing to defend the decision of the Town of Milton Committee of Adjustment and Consent with respect to Minor Variance Applications A1-14/035/M & A1-14/036/M for the property known municipally as 7651 Milborough Line (Social Betterment Properties International).

REPORT

Background

In September 2014, Social Betterment Properties International, the owner of 7651 Milborough Line, filed two applications (A-14/035/M and A-14/036/M) under Section 45 of the Planning Act to facilitate the proposed conversion of an existing 1,924 m² (20,000 sq. ft.) single detached dwelling into a privately-operated drug and alcohol rehabilitation centre.

The Applicant submitted an application under Section 45 (2) (b) of the Planning Act (A-14/035/M) seeking the Committee's opinion on whether or not the definition of a Group Home Type 2 use was general in nature and whether the Committee would interpret the proposed use as being contemplated within the scope of that definition. The aforementioned application was submitted concurrently and in conjunction with another Minor Variance Application (A1-14/036/M) submitted under Section 45 (1) of the Planning Act that sought permission for locating a Group Home Type 2 on a lot with frontage onto a Local Road, whereas Section 4.7 of Zoning By-law 144-2003, as amended, requires that a Group Home Type 2 be located on a Major Arterial, Arterial or Collector Road.

A description of the applications together with a detailed analysis of the applicable legislative policy and regulatory framework is attached as Appendices 1 and 2 to this report.



Discussion

Planning staff reviewed Committee of Adjustment Applications A-14/035/M and A-14/036/M, filed concurrently and in conjunction with one another, and recommended that both applications be denied. It was the opinion of staff that Application A-14/035/M, filed under Section 45 (2) (b) of the Planning Act, failed on the basis that the Group Home Type 2 definition was not defined in general terms, rather in specific terms, that the privately-operated rehabilitation centre was not contemplated within that definition, and that the proposed use did not conform to the uses permitted in the Rural (A2) Zone of the Zoning By-law. As a result of staff's recommendation to deny Application A-14/035/M, it was staff's opinion that Application A-14/036/M, filed under Section 45 (1) of the Planning Act was premature in nature as it was contingent upon the approval of the related Committee of Adjustment Application A1-14/035/M.

On October 23, 2014 the Committee of Adjustment and Consent considered evidence on both applications from the Applicant, various members of the public, Town and Regional staff, and supported staff's recommendation to deny them. For the same reasons as noted above, the Committee denied Application A-14/035/M. The decision to deny the proposed use from being considered a Group Home Type 2 rendered the second application under Section 45 (1) premature and not applicable in the Committee's opinion. The Committee asked the Applicant if they would like to adjourn Application A-14/036/M for this reason, but the Applicant declined the opportunity for the adjournment and requested the Committee to make a decision. The Committee denied Application A-14/036/M, as it was their opinion that the application did not meet the four tests of minor variance as set out in the Planning Act.

The decisions of the Committee of Adjustment were subsequently appealed by the Applicant to the Ontario Municipal Board and a four day hearing has been scheduled for March 30 – April 2, 2015. Staff does not anticipate that mediation will be of assistance in this case as, in staff's opinion, the proposed use is not appropriate in this location and does not conform to the uses permitted in the Zoning By-law.

Based on the foregoing, staff is seeking the authorization of Council for staff and legal counsel to attend the Ontario Municipal Board hearing and defend the decision of the Committee of Adjustment.

Relationship to the Strategic Plan

This application relates to the following goals of the Strategic Plan:

- "Well managed growth, well planned spaces"; and,
- "A safe, liveable and healthy community".

Financial Impact

Should Council direct legal counsel and staff to defend the decision of the Committee of Adjustment and Consent at the Ontario Municipal Board hearing, costs will be incurred.



The Corporation of the TOWN OF MILTON

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Respectfully submitted,
Barbara Koopmans, BES, MCIP, RPP, CMO
Director, Planning and Development

For questions, please contact: Angela Janzen 905-878-7252 x2310

Attachments
Figure 1 – Location Map Appendix 1 – Staff Memorandum to Committee for Application A1-14/035/M Appendix 2 – Staff Memorandum to Committee for Application A1-14/036/M

CAO Approval
William Mann, MCIP, RPP, OALA, CSLA, MCIF, RPF
Chief Administrative Officer



FIGURE 1 LOCATION MAP



Public Meeting Date:
January 26, 2015

Scale: 1:10,000

File:A-14/035/M & A-14-036/M

Planning & Development Department



Subject Properties

Report: PD-001-15

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**MEMO TO
COMMITTEE OF ADJUSTMENT AND CONSENT MEMBERS
REGARDING**

Minor Variance Application: A1-14/035/M (Social Betterment Properties)

General Description of Application:

The applicant has filed an application under Section 45 (2)(b) of the Planning Act and is asking the Committee of Adjustment to determine that the definition of a Group Home Type 2 in the Zoning By-law is general in nature and to interpret that a privately-operated drug and alcohol rehabilitation centre is contemplated within the scope of that definition.

The applicant proposes to convert an existing 1,924 square metre (20, 705 square foot) single detached dwelling to accommodate the privately-operated treatment and rehabilitation centre. It is not anticipated that the building envelope will be altered in any way and building permits would be obtained as necessary.

The subject lands, municipally known as 7651 Milborough Line, are located on the east side of Milborough Line, about half way between Conservation Road and the CP Rail crossing at Milborough Line. The subject property has a frontage of 246.26 metres (808 feet) and an area of approximately 16.77 hectares (42 acres). The lands are significantly wooded and abut the CP Rail line along the eastern property line. Surrounding land uses are predominantly private rural residential uses. Milborough Line is also the boundary between the Town of Milton and the City of Hamilton in the area of the subject lands.

This application has been submitted concurrently and in conjunction with another Minor Variance Application (A1-14/036/M) submitted under Section 45 (1) of the Planning Act that seeks permission for a locating a Group Home Type 2 on a lot with frontage onto a Local Road.

Official Plan Designation (including any applicable Secondary Plan designations):

The subject lands are designated 'Rural Area' as shown on Schedule A – Land Use Plan of the Town of Milton Official Plan. The schedule also shows a watercourse traversing the property from the north to the south. The main permitted uses in the rural area include agricultural operations as the primary

activity and land use, single family dwellings, and uses that protect, maintain and enhance environmental features. Additional uses such as home occupations, cottage industries and home industries, veterinary clinics that service the agricultural community, and special needs housing including Group Home Type 1 and Group Home Type 2 may be permitted subject to other relevant sections of the Official Plan and the applicable Zoning By-laws.

Section 3.2.3.3 of the Official Plan outlines that the Town recognizes the need for special housing forms and will continue to improve access to special needs housing, in accordance with the following criteria:

- a) *Group Homes Type 1 and Group Homes Type 2, with the exception of Correctional Group Homes, shall be permitted in any designation on Schedules "A" and "B" to this Plan, where a single detached dwelling is permitted provided that such facilities shall comply with the relevant zoning requirements including a minimum separation distance of 500 metres. Residential Care Facilities with more than 8 persons shall be permitted only within an Institutional Designation.*

Section 5.10.6 of the Official Plan specifically defines Group Home Type 2 as follows:

GROUP HOME TYPE 2 means a single detached dwelling occupied by not less than 3 and not more than 8 residents within the Urban or Hamlet Areas and not more than 10 residents in the Agricultural and Rural Areas, exclusive of staff or receiving family, who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis, and which is licensed, approved, supervised or funded by the Province under any general or specialized Act and which shall be maintained and operated primarily for:

- *Persons who require temporary care and transient or homeless persons; or*
- *Persons requiring treatment and rehabilitation for addiction to drugs or alcohol.*

Official Plan Amendment No. 31, adopted by Council in June 2010, proposes to combine the former rural and agricultural area designations to be more in conformity with the Region's ROPA 38 policies. In addition to the revised designation, as of right permissions for secondary uses not related to the agricultural industry were removed, including special needs housing and home industries. These changes were proposed to implement the direction of ROPA 38 for the agricultural and rural areas, which is to maintain a permanently secure, economically viable agricultural industry and to preserve the open-space character and landscape of Halton's non-urbanized areas.

Zoning By-law:

Under Comprehensive Zoning By-law 144.-2003, as amended, the subject property is zoned Rural (A2) and Greenlands A (GA). The A2 Zone permits agricultural operations and buildings associated with these operations, detached dwellings and secondary uses within the dwelling including a Group Home Type 1 and Group Home Type 2, subject to specific provisions.

Section 3.0 of Zoning By-law 144-2003, as amended, specifically defines a Group Home Type 2 as follows:

GROUP HOME TYPE 2

Means a detached dwelling occupied by residents who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis, and which is licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act and which shall be maintained and operated primarily for:

- *Persons who require temporary care and transient or homeless persons; or*
- *Persons requiring treatment and rehabilitation for addiction to drugs and alcohol.*

Section 4.7 of Comprehensive Zoning By-law 144-2003, as amended, sets out the following provisions with respect to a Group Home Type 2:

- Only permitted within a detached dwelling;
- 3-10 residents are permitted in an A2 Zone;
- A separation distance of 500 m from any other Group Home Type 1 or Group Home Type 2 shall be maintained; and,
- A Group Home Type 2 shall only be located on a lot having a frontage on a Major Arterial, Arterial or Collector Road.

The GA Zone permits existing and conservation uses. Development within the GA Zone is subject to the review and approval of the Conservation Authority.

Planning and Development Department Comments:

The subject application has been made under Section 45 (2) (b) of the Planning Act. This section reads as follows:

"45 (2) In addition to its powers under subsection (1), the committee, upon any such application,

- (b) *where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law."*

It is staff's interpretation that this section of the Act provides an applicant with an opportunity to request an opinion from the Committee as to whether the by-law defines uses in general terms and whether the proposed use, building or structure fits within the scope of the definition. As an example, the Committee considered a minor variance application in August 2010 (File A-10/038/M) for the establishment of a photographic studio within the C1-C Zone located within the Central Business District. While the C1-C Zone allowed a number of commercial uses including retail and personal service shops, a photographic studio was not listed as a specific permitted use. As such, the applicant requested permission from the Committee to determine that a photographic studio use conformed to the uses permitted in the By-law, as it was similar to the generally defined retail and personal service shop uses. Consistent with staff's recommendation, the Committee was of opinion that a photographic studio was in keeping with the uses permitted on the lands as per the C1-C Zone (i.e. retail, personal service shop, fitness centre, and commercial school – skill). In fact, if the applicant was teaching photography classes to students it would have been permitted as of right on the subject property under the commercial school – skill use.

With respect to the application currently being considered by the Committee under Section 45 (2) (b), staff is of the opinion that the circumstances for the proposed privately-operated treatment and rehabilitation centre is different than the example provided above, in the following ways:

- The definition of Group Home Type 2 is specifically defined, not generally defined in both the Official Plan and the Zoning By-law which is consistent with the Group Home Study adopted by Council in April 2002 and related Official Plan and Zoning By-law amendments (through the Comprehensive Zoning By-law Review),
- The definition of a Group Home Type 2 is specific in the requirement that the group home must be "*licensed, approved, supervised or funded by the Province under any general or specialized Act*". The purpose of this requirement is to ensure that group homes are being established in accordance with required Provincial regulations and laws and that oversight of the group home continues to rest with the Province;
- The proposed use is not in conformity with the uses permitted in the Rural (A2) Zone as the main permitted uses include agricultural operations and buildings associated with these operations, detached dwellings, conservation uses, and secondary uses subject to specific definitions and requirements; and,

- There are other definitions in the By-law (e.g. Long-Term Care Facility) which more closely match the proposed use in that it does not require residents to live as a single housekeeping unit and which is not licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act.

Recently, the City of Toronto prepared a series of staff reports relating to their new Zoning By-law 569-2013 (enacted on May 9, 2013) and the issue of group homes. More specifically, the reports related to the following: PG 13020 (Human Rights Challenge to Group Home Zoning Regulations), PG13080 (Review of Zoning Provisions Pertaining to Group Homes) and PG14048 (Group Home Separation and Occupant Numbers) and included information on the origins of group homes in Ontario and current Provincial regulation of group homes. One of the most important and distinguishing aspects of group homes in Ontario, is the requirement that a group home must be licensed, approved or supervised, or funded by the Province under any general or specialized Act. This has been applied consistently in many municipal by-laws. As outlined in Report PG13080, "provincially licensed and funded group homes are designed for individuals who need supervision, support and encouragement in order to develop or regain a measure of self-sufficiency. Today each Ministry engaged in group home programs either licenses them or regulates them as a condition of their funding." Group homes have also been specifically defined for the purposes of distinguishing them from other residential dwelling types.

Where proposed facilities and their operators are not licensed or funded by a Provincial Ministry under a general or specialized Act, it is the opinion of staff that the proposed use would not meet the definition of a group home, nor be subject to the provisions relating to group homes within the Zoning By-law. Furthermore, if the proposed use does not meet the definition of group home, it would have to be identified as another use. In this case, the proposed use does not fit within the realm of special needs housing, rather it appears to act as a private clinic. It was never the Town's intent to permit private clinics as of right in the rural or urban areas of the Town.

The variance application was circulated to various Town Departments and external agencies including the Region of Halton, Conservation Halton, the City of Hamilton (adjacent municipality) and CP Rail. Planning policy staff provided their opinion that the application does not meet or fit the definition of Group Home Type 2 given that the definition in the Official Plan specifically requires that a Group Home Type 2 must be licensed, approved, supervised or funded by the Province under any general or specialized Act.

The following agencies and departments also provided the comments summarized below:

Region of Halton:

Although Regional staff cannot provide an opinion regarding the interpretation of the Town's Zoning By-law, as it is solely the responsibility of the local municipality to do so, they did provide comments that focused on matters of Regional and Provincial interest. Regional staff has determined the following in their review:

- the proposal would be considered "development" under the Provincial Policy Statement and Greenbelt Plan as it is a "change in use" (i.e. from a residential use to a private treatment facility).
- Policies relating to prime agricultural areas and the natural environment are applicable to the subject property, and it is the opinion of the Region that sufficient information has not been provided to address the PPS requirements. In addition, it is Regional staff's opinion that this proposal is not in conformity with the policies of the Greenbelt Plan.
- It was determined through the review of the Regional Official Plan that the proposed use would not fall under one of the permitted uses of the Agricultural Rural Area designation or the Agricultural Area designation, but instead would be directed to Hamlets, Rural Clusters or Urban Areas. The direction of Regional policy would not support the proposed use on the subject property.

Given the policy direction at both the Regional and Provincial level, Regional staff recommend refusal of the subject application.

Conservation Halton:

Conservation Halton staff has identified that the only access to the property is flood susceptible. As a result, Conservation Halton has recommended deferral of the Committee of Adjustment's decision with respect to this application until such a time that the applicant can address Conservation Halton's requirements regarding the provision of dry or flood free access for the new proposed use on the subject property.

City of Hamilton:

Although the City of Hamilton did not provide a position on the proposed use as it relates to the Town's Zoning By-law, they did provide a list of general provisions from the Town of Flamborough Zoning By-law 90-145-Z that must be met to establish a group home in any zone with the exception of an industrial zone. The provisions require that the group home is licensed or approved under Provincial Statute, in the rural area shall not be located within 1 kilometre of any other group home or settlement boundary, and that group homes shall be listed on a Municipal Register. City of Hamilton Planning Staff confirmed that there are no group homes or Rural Settlement Areas within 1 kilometre of the proposed group home.

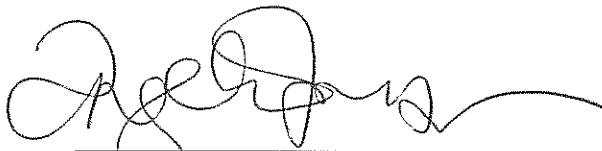
Town Building Department:

Building department staff reviewed the application and noted that in their opinion, the proposed use does not appear to fall within the definition of a residential occupancy, rather a care and treatment occupancy under the Ontario Building Code. Building staff also indicated that a change in use permit will be required to convert the single detached dwelling into a care facility and building permits will be required prior to any construction/alterations. In addition, a number of Building Code standards were provided as a reminder to the applicant.

Based on the foregoing, it is staff's opinion that the application does not satisfy the considerations outlined in Section 45 (2) (b) as the specific criteria outlined in the definition for Group Home Type 2 has not been met and the proposed use does not conform to the permitted uses in the Rural (A2) Zone in the Zoning By-As a result, Planning staff objects to the approval of the requested application.

Recommendation:

That the application for minor variance **BE DENIED.**



Angela Janzen, MCIP, RPP
Planner – Development Review

October 16, 2014

**MEMO TO
COMMITTEE OF ADJUSTMENT AND CONSENT MEMBERS
REGARDING**

Minor Variance Application: A1-14/036/M (Social Betterment Properties)

General Description of Application:

Under Section 45(1) of the Planning Act, a minor variance to Zoning By-law 144-2003, as amended, has been requested for the purposes of permitting a Group Home Type 2 on a lot with frontage onto a Local Road whereas the Zoning By-law requires that a Group Home Type 2 shall only be located on a lot having frontage on a Major Arterial Road, Arterial or Collector Road. This application has been submitted in conjunction with another Minor Variance Application (A1-14/035/M).

The subject lands, municipally known as 7651 Milborough Line, are located on the east side of Milborough Line, about half way between Conservation Road and the CP Rail crossing at Milborough Line. The subject property has a frontage of 246.26 metres (808 feet) and an area of approximately 16.77 hectares (42 acres). The lands are significantly wooded and abut the CP Rail line along the eastern property line. Surrounding land uses are predominantly private rural residential uses. Milborough Line is also the boundary between the Town of Milton and the City of Hamilton in the area of the subject lands.

Planning and Development Department Comments:

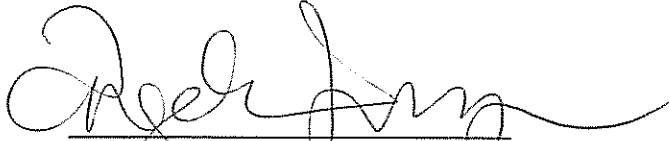
This application has been submitted concurrently and in conjunction with another application (A1-14/035/M) submitted under Section 45 (2) (b) of the Planning Act, whereby the applicant is asking the Committee of Adjustment to determine that the definition of a Group Home Type 2 in the Zoning By-law is general in nature and to interpret that a proposed privately-operated drug and alcohol rehabilitation centre is contemplated within the scope of that definition.

Planning staff have reviewed the subject application and is of the opinion that the application is premature in nature as it is contingent on the approval of related Committee of Adjustment Application A1-14/035/M, which staff does not support.

Based on the foregoing, staff recommends that the requested variance be denied.

Recommendation:

That the application for minor variance **BE DENIED.**

A handwritten signature in black ink, appearing to read 'Angela Janzen', written over a horizontal line.

Angela Janzen, MCIP, RPP
Planner – Development Review

October 16, 2014