

ISSUE DATE:

**Aug. 01, 2008**



PL080156

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: Linda Helson  
Applicant: 1233735 Ontario Inc.  
Subject: Minor Variance  
Variance from By-law No.: 6581-86 (Town of Dundas)  
Property: 35-37 Ogilvie Street  
Address/Description:  
Municipality: City of Hamilton  
Municipal No: A-235/04  
OMB Case No: PL080156  
OMB File No: PL080156

**APPEARANCES:**

**Parties**

**Agent**

Linda Helson

1233735 Ontario Inc.

Tony Sciara

**DECISION DELIVERED BY D. BARBIR AND ORDER OF THE BOARD**

The matter before the Board is an appeal by Linda Anne Helson (the Appellant) from a decision of the Committee of Adjustment (COA) that granted the application by 1233735 Ontario Inc. (the Applicant) for variances to By-Law 05-200, as amended. The proposal is to to permit an existing sixteen resident Retirement Home to be converted to a residential Care Facility containing a total of twenty-four residents and to expand the facility from 37 Ogilvie Street to 35 Ogilvie Street.

The variances requested are:

1. To permit a minimum lot width of 20.1 metres instead of 30.0 metres.
2. To permit a minimum front yard of 2.4 metres instead of 3.0 metres.

3. To permit a minimum northerly and easterly side yard of 0.0 metres instead of 6.0 metres.
4. That the parking lot shall provide for ingress and egress in a forward and backward motion instead of ingress and ingress in a forward motion only.
5. That no visual barrier shall be provided along the northerly and easterly lot lines (21.85 metres and 3.51 metres, lot lines) which abuts a residential (R.C.C.) zone.
6. That the residential care facility shall not be within a fully detached building.

Mr. Fletcher, planner for the City, testified under subpoena in support of the application. Mr. Glass, a neighbour living in an apartment building close by, gave evidence in opposition. Ms Helson, the Appellant, gave evidence in opposition.

Mr. Fletcher stated that the planning staff had made an error in the calculation of the variances. The error was noticed and the application was amended prior to the COA's meeting held on January 10, 2008. The variances in front of the Board are as they were in front of the COA. Mr. Fletcher stated that the variances had to be considered under the new By-Law 05-200 and not under the old Town Of Dundas By-Law 6581-86.

Mr. Fletcher further stated that the property is designated "Downtown Mixed Use" in the Town of Dundas Official Plan, and is zoned "Community Institutional I2 Zone" in the City of Hamilton By-Law 05-200 that permits the proposed use. The properties at 37 Ogilvie Street and 35 Ogilvie Street merged in title and lost their legal non-conforming status, and resulted in the variances requested. The proposed 20.1 metre lot frontage will maintain the street character because the existing buildings will remain. The proposed building is currently set back 2.4 metres from the front lot line; the proposed variance is to legalize the existing situation. The structure on 35 Ogilvie Street is currently located on the property line and granting the variance will not negatively impact access, maintenance and drainage. Also, 35 Ogilvie Street is attached to 33 Ogilvie Street and so the incompatibility caused by the reduction of northerly and easterly side yard will be negligible. The proposed parking spaces enter and exit onto Kerr Street. Kerr Street is acting as a laneway for the few lots that back into it. The proposed variance to allow the ingress and egress of the parking spaces to be both in a

forward and backward motion will not significantly increase the traffic conflicts on Kerr Street. The proposed variance 5 is addressed in the conditions, which are part of this decision. The proposed variance 6 will recreate a similar situation between 33 and 35 Ogilvie Street. There will not be any internal connection between 33 and 35 Ogilvie Street as individuals cannot move between 33 and 35 Ogilvie Street within the building. The residential care facility will not straddle the property line, as the property line between 33 and 35 Ogilvie Street will run through the party wall. Mr. Fletcher proposed that the conditions imposed in the COA's decision remain.

For each of the variances requested, Mr. Fletcher reviewed the four tests required under subsection 45(1) of the *Planning Act*, and in each case, concluded that the test was met.

Mr. Glass, a neighbour, stated that there are too many uses of this type in the neighbourhood and this makes the area unsafe for living and lowers the value of the surrounding properties.

Ms Helson stated that the City has treated her unfairly, and especially Mr. Fletcher. The City had rezoned the subject property, which is part of row housing and two units are now zoned "Community Institutional I2 Zone" and two remaining units, including her property, are now zoned "Residential". Ms Helson stated that the variances were not defined properly but did not provide any evidence in support of the statement.

She further stated that her own safety would be jeopardized by the approval of this application, as she was approached and asked for money several times by the residents from the subject property. Privacy is also an issue as there is a window at the back of the building on 35 Ogilvie Street that is looking straight into her backyard. There is no extra sound insulation between her unit and the subject property.

The Board accepts uncontested planning evidence from Mr. Fletcher, and finds that the application for variances meets the four tests required under section 45(1) of the *Planning Act* and represents good planning.

The Board finds that the circumstances created by the rezoning of the subject property may have created a hardship for Ms Nelson, but the rezoning of the subject property is not in front of the Board.

The Board finds that Ms Helson did not provide planning evidence to convince the Board that the application does not meet the requirements under the *Planning Act*.

The issue of privacy is addressed in the conditions, which are part of this application.

Accordingly, the appeal is allowed and the variances requested are authorized subject to the following conditions:

1. The applicant shall construct a 6' high board on board privacy fence along the Northerly property line from the back of the existing building to the rear lot line, to the satisfaction of the Planning and Economic Development Department (Building Services Division).
2. The applicant shall cover the existing window, which overlooks the backyard of 33 Ogilvie Street with frosted glass, to the satisfaction of the Planning and Economic Development Department (Building Services Division).

The Board so Orders.

"D. Barbir"

D. BARBIR  
MEMBER