

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** March 08, 2018

**CASE NO(S):** PL171209

**PROCEEDING COMMENCED UNDER** subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by:	CSH (Montgomery Village) Inc.
Subject:	Site Plan
Property Address/Description:	155 Riddell Road
Municipality:	Town of Orangeville
OMB Case No.:	PL171209
OMB File No.:	PL171209
OMB Case Name:	CSH (Montgomery Village) Inc. v. Orangeville (Town)

**PROCEEDING COMMENCED UNDER** section 37 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28, as amended, and Rule 33 of the Board's *Rules of Practice and Procedure*

Request by:	CHS (Montgomery Village) Inc.
Request for:	Request for Directions

**Heard:** February 22, 2018 in Orangeville, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

CHS (Montgomery Village) Inc.  
("Appellant")

Stephen D'Agostino

Town of Orangeville ("Town")

Christina Kapelos

**DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE BOARD**

## **INTRODUCTION**

[1] The Appellant operates a 139-bed retirement home at 155 Riddell Road (the “property”) in the Town and proposes to construct a substantial addition to the building containing a further 159 beds. After submitting an application for site plan approval, the Appellant filed an appeal for the failure of the Town to approve the plans within the statutory time limit.

[2] This proceeding was a Motion Hearing initiated by the Appellant requesting the Board to order that the site plan complies with the Town’s Zoning By-law No. 22-90 (the “ZBL”), as amended by Zoning By-law Amendment No. 14-2007 (the “ZBA”) which affects the property. Within the Motion Records, both parties filed affidavits from Registered Professional Planners (“RPP”).

[3] On consent, the only matter before the Board is whether the site plan complies with the parking requirements of the ZBL and ZBA. To arrive at a conclusion, three questions must be answered: What uses are permitted on the property? What is the proposed use? And, how much parking is required?

[4] The Board finds that the site plan does comply with the parking requirements of the ZBL and ZBA for the reasons that follow.

## **FINDINGS**

[5] Both parties agree that the question must be determined through a proper interpretation of the ZBL and ZBA.

[6] The Appellant argues that it operates a retirement home which is a permitted use on the property under the ZBL, and that the site plan for a building expansion complies with the parking requirements for a retirement home. The Appellant argues that the principles of statutory interpretation require a plain and unambiguous reading of the ZBL

and ZBA as enunciated in *Bell Expressvu Limited Partnership v. Rex*, 2002 SCC 42 (“SCC”) and in *Metropolitan Toronto Condominium Corp. 626 v. Bloor/Avenue Road Investment Inc.*, 2009 Carswell Ont 1556.

[7] The Town argues that the proposed building, with its self-contained dwelling units, constitutes a multiple dwelling and not a retirement home, and that the higher parking standard for a multiple dwelling is required. The Town argues that the proposed building is an expansion of the existing building which was considered an apartment building in the original ZBA. The Town argues that the full context of the ZBL and ZBA must be taken into account when making a determination in accordance with the same cases noted above.

[8] The principles of statutory interpretation enunciated by the SCC, as cited above, call for a reading of the instruments “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (para. 26). In the present case, the approval authority for the ZBL and ZBA was Town Council as “parliament.” An enactment “shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects” (para. 26). Interpretation must presume “a harmony, coherence, and consistency between statutes dealing with the same subject matter” (para. 27). Moreover, ambiguity is not considered “real” unless within the “entire context” the words of the provision are “reasonably capable of more than one meaning” (para. 29).

[9] Justice Lederer, as cited above, states “when there are two answers to a problem, one which is complicated and complex and another which is simple and direct, the preferable choice is usually the latter” (para. 1). The starting point is to give words “their plain and ordinary meaning” (para. 5). In addition, “it is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids” (para. 37).

[10] In 2006, the previous owner of the property had applied to the Town for amendments to the Official Plan (“OP”) and ZBL to permit “a multi-unit apartment and row house senior’s [sic] retirement complex” as noted in the preamble to the Official Plan Amendment. Both documents were approved by the Town, placing the property in the OP land use designation of Medium Density Residential, and in the ZBL zone of Multiple Residential Medium Density (RM1).

[11] The ZBA placed a “Special Provision” on the property which reads as follows:

**24.176** Notwithstanding the provisions of Section 5.17 (Parking Area Regulations) **the minimum number of required parking spaces** on the lands comprising Blocks 129 and 137 on Plan 7M-6 zoned RM1 Special Provision 24.176 **shall be 73 for the apartment building** and 2 each for the row house units. Notwithstanding the provisions of Section 12.3(5), the minimum setback from the southerly property line shall be 7 metres.  
(Emphasis added)

[12] The row house units were not built and are not proposed by the Appellant. The southerly setback is not in issue in these proceedings. These matters are therefore not reviewed in this Decision.

### **What uses are permitted?**

[13] The Board finds that a retirement home is permitted on the property by the ZBL and ZBA.

[14] Zoning By-laws, as in the case of the Town’s ZBL, operate with reference to zones on a series of maps under s. 34(7) of the *Planning Act* (the “Act”). When attempting to understand the zoning provisions applicable to a property, one finds the property on the relevant map, notes the zoning category affecting the property, and then turns to the text of the ZBL to understand the provisions applicable to that zone.

[15] A tailoring of the ZBL is often required to accommodate a development on a specific site, such as exempting the property from certain standard ZBL requirements or

imposing additional limitations on a property. The Town's ZBL applies such "Special Provisions" by referencing a section number under the zoning category on the map. In this case, the map indicates "RM1 24.176" and the special provision is spelled out in s. 24 of the ZBL as quoted above.

[16] The special provision in question was not well crafted. It begins clearly enough, by exempting the property from the standard parking requirements and establishing special parking requirements. However, it then becomes unclear by referencing "the apartment building" which, as argued by the Town, implies that the use of the land is limited to an apartment building or "the" apartment building proposed at that time. The lack of clarity is exacerbated by the fact that the ZBL has no definition for an apartment building.

[17] The Town has extensive experience in crafting special provisions. The office consolidation of the ZBL provided to the Board contains 206 special provisions as of 2015. Where the list of permitted uses for a property is being constrained or expanded, the special provisions will typically utilize such phraseology as "notwithstanding the provisions of the (relevant) zone, the permitted uses shall be ..." or "permitted uses are limited to ..." or "the following uses are not permitted ..." (ZBL, s. 24).

[18] In this case, the only exemption specified in s. 24.176 is to the parking regulations. The reference to "the apartment building" is presumed to refer to the use proposed by the applicant at the time of the ZBA. The result is that if "the apartment building" is constructed, it must have 73 parking spaces associated with it.

[19] The provision in question does not apply the long-standing practice of the Town to specifically reference the permitted uses of the zone and limit those uses to an apartment building. If the Town intended to limit the use, it would have provided a special provision referencing the permitted uses of the RM1 zone. It did not, and the absence of that terminology results in the conclusion that the special provision addresses parking only, and does not restrict the property from being used for other

uses permitted in the RM1 zone.

[20] The RM1 zone permits several types of medium density residential uses, including “a multiple dwelling” and “a retirement home.” These uses are defined by the ZBL as follows:

**Dwelling, Multiple** means a free-standing building which contains four or more dwelling units to which access is provided by a common entrance at street level and common corridors, stairs or elevators but does not include a row house dwelling.

**Retirement Home** means a residence for persons generally aged 65 years and older. A retirement home may or may not include facilities for medical assistance, communal dining and other activities and programs directed at the residents of the building, but does not include a nursing home.

[21] “Dwelling Unit” is also defined to essentially mean a self-contained living space with kitchen and sanitary facilities.

[22] For the purpose here, the Board accepts the Town’s submission that, in the ZBA, it had used the term “apartment building” to mean “multiple dwelling.”

[23] Despite the Town’s assertion that only an apartment building is permitted, that is not what it allowed to be constructed on the property. The existing building, operated as a retirement home since it opened in 2013, contains 136 suites of which only three suites qualify as dwelling units. The other 133 suites do not contain kitchen facilities, are not dwelling units, and thus the building is not an apartment building. The Town’s own actions support the Board’s finding that the special provision 24.176 does not limit the uses on the property, but instead, permits the full range of RM1 uses. There can be no other explanation for how the Town permitted a retirement home to be built and operated.

[24] The Town argues that the original application was for a seniors’ apartment building, and that this context is paramount in the interpretation of the special provision. The Board disagrees. When implementing their statutory authority to pass by-laws,

municipalities have an obligation to be clear and forthright in the structure and wording of the language employed. An onus rests with the municipality to craft its by-laws in a manner which would allow a reasonably informed citizen to understand the by-law's purpose and effect. In this case, a reader would not know the details of the original application, could not ascertain readily what the developer intended several years prior, and may well recognize the incongruence between the ZBA wording and what was actually permitted on the property.

[25] Town Council indeed knew that a seniors' apartment was proposed, and given the intended occupants, allowed a reduction in the number of required parking spaces below what was normally required for a multiple dwelling. Council did not, however, specify that the property could be used for no other purpose, as it has done on many occasions with other applications. Using the "plain and ordinary meaning" of the words, and within the "entire context" of the instrument, it is clear that Council granted an exception to parking requirements for the intended use, but did not bar other permitted uses from the property.

### **What is the proposed use?**

[26] The Board finds that the proposed use is a retirement home and not a multiple dwelling.

[27] The proposed building will be physically attached to the existing building and operated as a single entity. Within the existing building, the Appellant operates a retirement home licenced under the *Retirement Homes Act* and satisfies every aspect of the ZBL definition of a retirement home. The facility caters to older persons, offers medical services, provides meals and communal dining, and delivers a range of activities and programs for the interest and benefit of its residents.

[28] Although the proposed 122 units will each contain a kitchen and meet the definition of a dwelling unit, they are not in conflict with the definition for a retirement home. The definition stipulates that it "may or may not include facilities for ... communal

dining.” The Board finds that a reasonable conclusion from this provision is that if communal dining is not provided, then the residents would require facilities in their own units to prepare meals. Thus, the definition does not prohibit kitchens but rather anticipates their possible inclusion. Even though each of the proposed units will contain a kitchen, an optional meal plan and communal dining will also be provided to residents of the new building, and based on industry experience, the Appellant expects that at least half of the residents are likely to purchase a meal plan.

[29] The Board finds that it is possible for a use of land to satisfy the definitions of two different uses simultaneously. As described above, the proposed building will contain self-contained dwelling units and thus qualify as a multiple dwelling. However, it will also qualify as a retirement home by virtue of the clientele, organizational structure and services offered. The Board agrees with the Appellant that on a plain reading of the ZBL, where a more specific use such as a retirement home is defined in contrast to a more general use, the specific use should apply if its provisions are satisfied. Otherwise, the more specifically defined use would have no purpose in the ZBL.

[30] The Board also agrees that certain forms of housing are promoted in the Provincial Policy Statement to address special needs, and that the Town’s provision for retirement homes, as a separate entity, implements the legislative scheme intended by the province.

[31] The Town has ample tools and recourse to address its concern that these dwelling units could purport to be a retirement home but could be leased to the general public without sufficient onsite parking. Clauses can be articulated in the development agreement related to the nature of the use and compliance with the applicable zoning requirements. Building and occupancy permits can specify the use authorized. The ZBL can be enforced if the property is used in a manner that does not conform with the zoning requirements.

[32] By-law enforcement is an authority available to the Town for any property where



a use is established that is either not permitted on a property or does not comply with zoning provisions applicable to it. For the same reasons, there is no basis for the Town's assertion that others will use this application as a precedent and purport to build a retirement home, with a lower parking standard, but in fact operate a rental multiple dwelling. The operation of a retirement home is a question of fact and can be determined on a case by case basis.

### **How much parking is required?**

[33] The Board finds that the parking shown on the site plan complies with the parking requirements of the ZBL and ZBA. There are two ways to calculate the required parking.

[34] The existing building contains 136 suites comprising 139 beds. The proposed building will contain 122 suites comprising 159 beds. Using the retirement home parking rate of 1 space/3 beds, the total of 298 beds requires 99.3 parking spaces, or effectively 100 spaces. The proposed 136 parking spaces exceed this requirement.

[35] Using the ZBA requirement of 73 spaces for "the apartment building" (despite that it wasn't built), plus 53 spaces for the 159 proposed beds at the retirement home rate, a total of 126 spaces is required. Again, the proposed 136 parking spaces exceed this requirement.

[36] The Board prefers the latter calculation. Although the 73 spaces for the existing building exceeds the retirement home parking rate, that was the number required by the Town and agreed to by the developer under the original site plan application. The Board does not wish to tamper with that agreement, nor can it. The Board can deal only with the site plan in the present application. In addition to the existing 73 required spaces, a further 53 spaces are required for the proposed beds, for a total of 126 spaces.

[37] The Town argues that, in addition to the existing 73 parking spaces, a further 183

parking spaces are required for the proposed 122 units, at the rate of 1.5 parking spaces/dwelling unit for a multiple dwelling. The Town's interpretation results in a total parking requirement of 256 parking spaces, where 136 are proposed. Based on the analysis of the three questions in this Decision, the Board does not accept the Town's interpretation.

## **ORDER**

[38] The Board orders that the appeal is allowed and the site plan is to provide for a minimum of 126 parking spaces.

[39] The Board will withhold its final Order until advised by the Town that the site plan process is completed.

*"S. Tousaw"*

S. TOUSAW  
MEMBER

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### **Ontario Municipal Board**

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