

ISSUE DATE:

Nov. 25, 2003

DECISION/ORDER NO:

1578



PL020497

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Stratford and Area Hotel Motel Operators have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from a decision of the City of Stratford to approve Proposed Amendment No. 7 to the Official Plan of the City of Stratford to redesignate lands bounded by West Gore, Cambria, John and St. Vincent Streets to permit a hostel on the subject lands

O.M.B. File No. O020081

Stratford and Area Hotel Motel Operators have appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 60-2002 of the City of Stratford

O.M.B. File No. R020120

APPEARANCES:

Parties

Stratford and Area Hotel Motel
Operators Association

The City of Stratford

Stratford General Hospital

Counsel

Michael E. Mitchell
Anne-Marie Tymec

Patricia A. Foran

John M. Skinner

DECISION DELIVERED BY R. A. BECCAREA AND ORDER OF THE BOARD

The Stratford General Hospital applied on November 22, 2001 to the City of Stratford for permission to use its former nurse's residence that contains 165 rooms, as a hostel.

The City of Stratford on April 29, 2002 approved proposed Official Plan Amendment No. 7 to its official plan and the accompanying By-law 60-2002 which have the effect of adding permission for a hostel use to the uses already permitted on a 5.5 hectare parcel of the hospital's property bounded by Cambria Street, John Street, West Gore Street and St. Vincent Street, within the existing 3,888 square metre former nurses residence building only.

The Stratford and Area Hotel Motel Operator's Association, which at May 2003, was an association of 17 hotel, motel and innkeeper establishments appealed both planning instruments to the Board.

Background

The Stratford General Hospital is made up of two sites, a 2.43 hectare site and a 5.5 hectare site. The main hospital is located on the 5.5 hectare site, as is the original nursing school and residence building. The residence, as mentioned, contains 165 dormitory style rooms within three storeys and a one-storey school area that is currently being used mainly by Conestoga College as a satellite campus. The nursing school ceased operations in 1993 and was closed in 1996.

Since 1996, the nurses' residence has been put to a variety of accommodation uses, including renting rooms to the public and to students of the hospital, to students of the Stratford's chef school, to the City's co-op students and to students from the Nancy Campbell Collegiate Institute, who typically rent 60 to 90 rooms during its school year.

As a result of an agreement reached with the appellants until the Board determines these appeals, the hospital has since 2002 restricted the non-Nancy Campbell and non-hospital uses of the rooms to Stratford Festival visitors who arrange for their accommodation through the Festival.

The hospital does however wish to be able to rent rooms directly to the travelling public needing overnight sleeping accommodation, in addition to those who attend the Stratford Festival. The hospital also does not wish to be restricted to providing accommodation to those who need it solely for the purposes of attending or performing school or hospital functions or activities.

On November 9, 2000 the City's new comprehensive zoning by-law, By-law 201-2000, was adopted by Council and approved by the Board on February 4, 2002.

By-law 201-2000 introduced "hostel" as an additional form of accommodation use. The use, as defined, does not provide for specific limitations on the type of patrons who can use a hostel or the size of a particular structure that it can locate within. The Board was advised that the appellants did not appeal this inclusion or any

provision of By-law 201-2000. Hostel is defined in Section 2.78 of By-law 201-2000 as meaning:

a building accredited by Hostelling International Canada or other recognized associations or operated by a non-profit organization in which rooms intended for sleeping accommodation only are offered for a fee, and which contains common washrooms and which may contain accessory rooms for dining, recreational, educational or other similar purposes and may include one (1) accessory dwelling unit for the owner or operator thereof.

The subject property is designated "Residential Area" in City's Official Plan and is zoned Institutional by Zoning By-law 201-2000. In order to permit the hostel use, it is necessary to add a special policy to the residential designation of the subject property contained in the Official Plan and also to add a site-specific provision to By-law 201-2000. Currently, hostels are only permitted by By-law 201-2000 in the Mixed Use Residential (MUR) and Central Commercial (C3) zones.

Mr. Andrew Williams, chief executive officer of the Huron Perth Health Alliance advised the Board that there have been internal discussions about using the nurse's residences for other uses than a hostel, including physician's offices. He indicated that the Stratford General Hospital is not in an expansion mode and does not expect it to be for sometime. He did indicate that anything that was done to the nurse's residence to accommodate expanded hospital uses would require a significant amount of money that the hospital does not have. He indicated that if the hospital had the money, it would want to renovate other areas of the hospital.

Mr. Williams indicated that the hospital prefers to use the nurse's residence for what it was designed for, namely overnight accommodation, which would generate income for the hospital and at the same time, in his opinion, fill a void for hostel type accommodation that is lacking in the City of Stratford.

Mr. Williams made it clear that if the hospital's application was approved, it wished to be able, as part of its proposed use, to make available the supply of laundry facilities, sleeping material, food, including breakfasts, and parking, either as part of the room rate or as an extra cost.

The Nurse's Residence Building

Photographs provided to the Board show that the building was built in 1968, contains three storeys and has an outdoor swimming pool located within an inner courtyard.

The building has a total of 165 rooms with a window that have a total of 221 beds. Some rooms are single rooms, are about 100 square feet in size, and contain a single bed, a built in desk and closet, a sink and a small desk height refrigerator. The twin rooms have two single beds with no desk or chair but do contain the other amenities. The rooms have no television, telephone, air-conditioning or stereo facilities. A communal washroom is located on each wing, across from the lounge areas, which has sinks, bath tubs, standing showers and toilet compartments.

Each floor has washrooms for either men or women, but not both. Each wing has a lounge area for a total of six lounge areas which contain chairs, a television, a microwave and minor kitchen facilities.

The rooms access a common corridor and each of the three floors has two separate wings, that permit the floors to be segregated by sex if desired. The building is heated by a radiator from a central boiler.

The hospital currently has varying room rate charges. The single room rents for \$55.00 a night and the twin room rents for \$65.00. A seven night stay for the single room is \$245.00 and the double is \$315.00. The hospital charges \$350.00 plus, \$18.50 for parking, with no breakfast for a three-week seminar type booking per bed. Medical students are charged \$1,000.00 for a four-month term stay and \$1,500.00 for a six-month term stay. Non-student hospital staff are charged \$330.00 per month.

In 2002 the nurse's residence booked 7,561 bed nights for visitors coming to the Stratford Festival and 21,900 bed nights for non related Stratford Festival visitors. The non-related Stratford Festival guest nights include the travelling public, non-festival groups, students, parents visiting students, families of hospital guests and hospital staff.

Position of the Appellants

Mr. Victor Hayter, the owner and operator of the Arden Park Hotel, was called as the spokesperson for the association.

The Arden Park Hotel is the largest hotel in the city, having 144 rooms. Mr. Hayter, from a physical perspective, sees the nurse's residence as a commercial hotel and not a hostel. He views the amenities of separate room, a central kitchen and games room, and a swimming pool as more closely resembling a hotel.

Unlike the hospital, Mr. Hayter's hotel pays realty taxes and is subject to sewer surcharges. The hospital, with its own well, is not subject to the same debt servicing costs that he and his association members are and as such have what Mr. Hayter termed an "unfair advantage". He advised the Board that this was the reason he is against the proposed by-law and official plan amendment.

The Board heard from the association's planner, Gary Davidson, who was retained in April, 2003. Mr. Davidson expressed concern that the definition of hostel, as contained in Section 2.78 of By-law 201-2000 is very open and from the perspective of use has little to distinguish a hostel from a hotel or motel.

Mr. Davidson acknowledged that the association did not appeal the provisions of By-law 201-2000 which introduced the definition of hostel that is contained in Section 2.78 as another category of accommodation use within the City, in addition to hotels, motels, bed and breakfast establishments and guest houses.

In an attempt to resolve the concerns of his client, the association, Mr. Davidson provided the Board with a planning appeal resolution that would propose to further define the specific use of the nurse's residence to that of a "dormitory hostel" that would restrict the types and classes of people who could use the residence to visiting health care professionals, people visiting hospital patients, to students and to specific types of groups that visit the Stratford Festival.

As mentioned earlier, the hospital opposes this type of restriction and wants to rely on the uses permitted by the approved definition of hostel that is contained in By-law 201-2000, in its operation of the nurse's residence.

Mr. Davidson did conclude, in the absence of agreement, that the use of a site specific amendment approach was inappropriate and contrary to site specific amendment policy contained in Section 15.1.11 of the official plan, and rather should have proceeded either as a special study as provided in Section 15.2 or preferably as part of a five-year official plan review.

The proposed by-law, in particular, according to Mr. Davidson provides “too much flexibility into the future” and is a proposed use that could evolve into a commercial hotel, which is not a compatible use for the existing hospital or the neighbourhood.

Position of the Hospital and the City

The Board heard from the hospital's planner, Laverne Kirkness, and the City's planner, Barbara Dembek. Both Ms Dembek and Mr. Kirkness were of the opinion that the proposed change in designation of the subject lands described in Proposed Official Plan Amendment No. 7 is compatible with the existing residential designation and established uses in the residential designation. They were further of the opinion that Official Plan Amendment No. 7 conforms to the Official Plan and in particular with Sections 1.3, 1.5, 15.1.2, 15.1.10, 15.1.11, 15.2 and 6.3.

Both Ms Dembek and Mr. Kirkness were of the opinion that the regulations contained in the proposed Zoning By-law 60-2002 are sufficient to regulate the proposed use and further that the proposed use is compatible with the existing hospital uses.

Neither Mr. Kirkness nor Ms Dembek was of the opinion that the proposed hostel use was a commercial hotel, and further were of the opinion that the proposed use was compatible with all of the other surrounding land uses.

Ms Dembek advised the Board that the City of Stratford is trying to provide for a variety of accommodations for tourists. She directed the Board to Section 4.2 of the City's Official Plan which provides that tourism in Stratford is unquestionably a major industry currently accounting for an estimated \$100 million annually in expenditures in the City.

Section 4.2.3 of the Official Plan provides that the City will encourage the upgrading of existing accommodation establishments and promote the establishment of new ones in order to provide the widest variety possible to meet the needs of all visitors to the City.

Ms Dembek advised the Board that the proposed hostel use at the nurse's residence will provide a form of tourist accommodation not available now, and at the same time observe the goals and objectives of maintaining the existing neighbourhood qualities and neighbourhood compatibility.

Ms Dembek and Mr. Kirkness advised the Board that the proposed by-law provides for 370 spaces, well in excess of the requirements of the hospital uses, Conestoga College and the hostel, so that there be no parking on neighbouring side streets. The proposed hostel uses was written to permit the hostel only in the existing nurse's residence but the designated area extended beyond the building in order to ensure that the existing landscape open space is maintained without the encroachment of parking on it.

Both Mr. Kirkness and Ms Dembek did not agree that the proposed use was equivalent to a hotel. Ms Dembek reviewed for the Board that four categories of accommodation were contained in By-law 201-2000. A bed and breakfast establishment or guest house is defined in Section 2.15, an inn is defined in Section 2.82, a hotel in Section 2.79 and a hostel in Section 2.78. She pointed out that the City's 1979 comprehensive zoning by-law did not contain these distinct definitions. The City believed tourism to be so important to its economy that it decided as part of its review of its comprehensive zoning by-law, to expand the types of accommodation that it would permit in By-law 201-2000. The 1979 by-law for instance had a definition of a "youth hostel" in it which the City decided to change in the new By-law 201-2000.

Both Ms Dembek and Mr. Kirkness consider the four categories of accommodation as distinct of each other and view the "hotel" use as being broader than the "hostel" use.

Mr. Kirkness did not agree with Mr. Davidson that a special study as contemplated by Section 15.2 of the Official Plan was required. He did not view this

change to a specific land use area to be a city wide land use issue, but rather a response to a specific localized situation.

Section 15.1.11 does discourage numerous site specific amendments that would have the potential to undermine the objectives and weaken the integrity of the Official Plan. The section provides that the merits of site specific amendments should be substantial. Ms Dembek advised the Board that the merits of the hospital's official plan amendment was substantial in that:

- (a) There are no existing or proposed hostel facilities in the City.
- (b) The amendment would further the tourism policies of Section 4.2.1 of the Official Plan.
- (c) The nursing residence would add to the mix of accommodation facilities and provide visitors with a choice between hotels, motels, bed and breakfast establishments, guest houses and camp grounds.
- (d) With the closing of the nursing school, it is desirable that the building be used rather than remain vacant.
- (e) There appeared to be no unacceptable or adverse impact on the neighbourhood or the hospital.

Findings

The Board does not share the opinion of Mr. Davidson that the proposed planning instruments could permit the subject site to become a location for a large hotel, which all planners agree would not be appropriate.

The Board is satisfied that Official Plan Amendment No. 7 and Zoning By-law 60-2002 have more than sufficient provisions in them to regulate the proposed hostel use to ensure that it will not become a commercial hotel, and to ensure the use will be compatible with the existing residential designation, the established uses in the residential designation and the uses of the existing Stratford General Hospital.

The Board further finds that the merits of a site specific official plan amendment has more than sufficiently been demonstrated, does not find the applications to be premature and does not consider a special study as contemplated by Section 15.2 to be applicable or warranted. The Board prefers the opinion of both Mr. Kirkness and Ms Dembek to that of Mr. Davidson that the applications conform to the Provincial Policy Statement, the City's Official Plan and By-law 201-2000 and constitutes good land use planning.

The Board in preferring the evidence of Ms Dembek and Mr. Kirkness notes that Mr. Davidson, in arriving at his opinion, admitted that he did not consider the Tourism Policies contained in Section 4.2 of the Official Plan. He further admitted that he did not know if his proposed definition of a "dormitory hostel" would be acceptable to the association. Mr. Davidson, in researching hostels, admitted that he had not looked at the accredited Hostelling International Canada sites in Ottawa and Kingston that have swimming pools or in Toronto where breakfast meal plans are available. Mr. Davidson having never entered the nursing residence could not have been able to dispute Mr. William's evidence that it would cost about \$100,000.00 alone to add washrooms and air conditioning that a hotel room would normally have.

The Board finds that the proposed use is not a hotel. While the nurse's residence in terms of size and the number of rooms, is similar to a hotel in that it intends to provide for overnight accommodation to the travelling public, its physical layout is different, as is the physical layout of a hotel, to that of an inn and to that of a bed and breakfast establishment. The Board agrees that there are similarities between certain types of hostels and certain types of hotels but does not agree that the overlap in definitions is as severe as Mr. Davidson suggests.

The City of Stratford has chosen these definitions and is satisfied that they are suitable for its purposes. Presumably a conscious decision was made not to restrict the size or the type of patrons or the number of rooms that a hostel may house or contain.

The fact that there may be common elements to both a hostel and a hotel does not in the Board's view make them the same. The Board has also reviewed the Mixed Use Residential and the Central Commercial C3 Zones where hostels are permitted and

notes that there are no small scale size restrictions contained in these zone provisions. The size is generally regulated by the size of the existing built structure or by a site specific by-law which is what is being proposed by By-law 60-2002.

Much has been made out of the decision of my colleague, Mr. Harron, in Decision/Order 0131 issued on January 26, 1999 which pertained to the association's appeal of the City's earlier approval of the hospital's hostel use of the subject site permitted by way of a temporary use by-law.

The Board has carefully reviewed the decision of Mr. Harron and finds it to be distinguishable from the matter before the Board. By-law 201-2000 which was passed by Council on November 9, 2000, was not before Mr. Harron. Mr. Harron did not make a finding that the proposed use was a hotel, nor did he determine that the proposed use was not a hostel.

Mr. Harron furthermore stated that his decision was not to be construed as a bar to an application by the hospital for an official plan amendment or for a zone change which the hospital did do, and which applications are the subject matter before this Board.

No serious issues were raised by the association pertaining to parking, traffic, noise, site planning or landscaping. No evidence was advanced to contradict the opinions of the hospital's traffic consultants, F. R. Berry and Associates and the municipal services consulting engineers, R. J. Burnside and Associates, that such issues of traffic and infrastructure have been satisfactorily addressed by the hospital.

While the proposed use of the nurse's residence may become, as Mr. Mitchell suggests, the largest tourist facility for sleeping accommodation in the City of Stratford, the Board is more than satisfied, after reviewing all of the evidence, that the proposed use at the nurse's residence is not "the duck" he suggests it is or will become.

Order

The Board Orders

1. The appeal against Amendment No. 7 to the Official Plan of the City of Stratford is hereby dismissed and the Amendment No. 7 is approved.
2. The appeal against By-law 60-2002 of the City of Stratford is hereby dismissed.

Costs

Both the City and the hospital reserved their right to seek costs before the Board rendered this decision at the end of the hearing.

The Board directs that if those parties still wish to pursue the matter, that the provisions of Rules 100.1 (iii), 101 and 102 of the Board's Rule of Practice and Procedure be followed.

The Board So Orders.

"R.A. Beccarea"

R. A. BECCAREA
MEMBER