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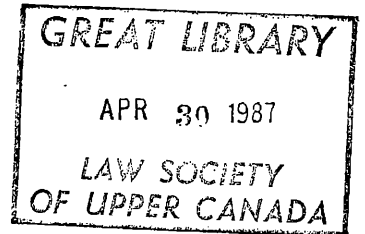
Ontario Municipal Board

Z 860051
O 860134

IN THE MATTER OF Section 34(11) of The Planning Act, 1983

- and -

IN THE MATTER OF an appeal to this Board by Weston Presbyterian Church for an order directing an amendment to By-law 1-83 of the Corporation of the City of York, to change from "R2" to Site Specific, the permitted use of lands situate at 5-19 Cross Street and 10-18 King George Road, to permit the use of the church lands for a three storey senior citizens' apartment building, four storey senior citizens' health care facility, a semi-detached dwelling house, a single-family home to be used as a manse and the continued use of the existing church
O.M.B. File No. Z 860051



- and -

IN THE MATTER OF Section 22 of The Planning Act, 1983

- and -

IN THE MATTER OF a referral to this Board by the Honourable Bernard Grandmaitre, Ministry of Municipal Affairs, on a request by Weston Presbyterian Church for consideration of an application to amend the City of York Official Plan to redesignate "Low Density Residential" to Site Specific policy on lands situate at 5-19 Cross Street and 10-18 King George Road to permit the use of church lands for a three storey senior citizens' apartment building, a four storey senior citizens' health care facility, a semi-detached dwelling house, a single-family home to be used as a manse and the continued use of the existing church
Ministry's File No. 20-OP-0002-A03
O.M.B. File No. O 860134

C O U N S E L :

- Mary L. Flynn-Guglietti - for Weston Presbyterian Church
- Richard R. Arblaster - for Weston Ratepayers Association and A. Pietersma et al
- Gae V. Mackenzie - for the City of York

DECISION OF THE BOARD delivered by D. L. SANTO

Weston Presbyterian Church appeals to this Board due to the refusal of the Council of the City of York to amend its Official Plan and zoning

by-law to allow for a redevelopment of its property known as 5-19 Cross Street and 10-18 King George Road for uses specified in the style of cause. The record shows that the municipal staff supported the application.

The subject site is located within a well established residential area that formed a part of the old Town of Weston. The site is located one block northeast of Weston Road and south of the municipal boundary with North York. In close proximity to the northern boundary of the site is the main line for both C.N.R. and C.P.R. Notwithstanding this close proximity to the railroad the planner for the municipality considered it unnecessary to consult the Ministry of the Environment before recommending in favour of the proposed amendments.

The subject property has a lot frontage on the north side of Cross Street of some 206 feet. Its lot frontage on the south side of King George Road is approximately 150 feet. The total lot area is 62,110 square feet or 1.43 acres.

Presently the property is occupied by the Presbyterian Church which was constructed in 1880, the church hall which was constructed about 1951, a parking lot that the evidence indicated could accommodate about 55 cars "shoe-horned" in by a church official, and five single-family dwellings. Over the years the church purchased the single-family dwellings as they became available on the open market. Access to the church parking lot, which in reality is the rear yards of the dwellings, is via a driveway between 21 Cross Street (Mr. Pietersma's dwelling) and 19 Cross Street (a church owned property), and another driveway between 16 and 20 King George Road.

Cross Street and King George Road were former Town of Weston roads. They are described as "structurally deficient" by the Deputy Commissioner of Public Works in that their right-of-way widths are 33 feet instead of the typical 66 feet allowance requirements of today. Therefore, their paved width is 20 feet, except a portion of King George Road where it curves from Coulter Avenue where the pavement width has been reduced to 14 feet. As a

consequence, Cross Street is a one way street in a northerly direction and King George Road is a one way in a southerly direction. Parking is permitted on one side only.

The subject site is designated "Low Density Residential" in the City's Official Plan and zoned R2 in By-law 1-83 which permits single-family, semi-detached, duplex and converted dwelling houses, parks, schools and churches.

The application that is before the Board is a Site Specific Official Plan amendment and by-law amendment to permit the redevelopment of the 1.43 acre site for the following uses:-

- 1) maintain the existing church and the continued use by the Weston Presbyterian congregation;
- 2) construct a single-family residence facing Cross Street for a manse;
- 3) construct a semi-detached dwelling fronting onto King George Road for the possible use by families connected to the church;
- 4) construct a 3 storey apartment building flanking the length of the property at 21 Cross Street containing 26 units for use by senior citizens. The ground floor will be depressed so that the building will be 2½ storeys above-grade;
- 5) construct a 4 storey 100 bed health care facility to serve senior citizens. This facility would also be depressed resulting in 3½ storeys above-grade. It would be located immediately behind the semi-detached dwelling fronting King George Road, positioned east-west the full width of the property and connected with the church to the south and the 3 storey apartment building to the north. In addition, this facility would contain a swimming pool, whirlpool, auditorium, offices, classrooms, kitchen and dining facilities which are intended to replace the church hall functions. It is proposed that these amenities are to be shared by the church, the health care facility and the seniors as well. All of these details are shown on Exhibit 9, a proposed site plan;

The Board was also advised that it is intended that the pool facilities will be made available to the community as a whole;

6) provide a total of 73 parking stalls as follows:-

- two spaces in front of the semi-detached units for their exclusive use;
- eight surface stalls located between the truck access route and in front of the loading bays which serve the health care facility and south of the semi-detached dwellings with access only to King George Road;
- twelve surface stalls located on the bulb-shaped main entrance route to the complex which has been designed as somewhat of an inverted "U" shape with access onto Cross Street;
- fifty-one underground stalls with access onto Cross Street.

The Board was advised that the apartment and health care facility were originally designed at 3 and 4 storeys respectively. However, to reduce their height the buildings are proposed to be sunk by one-half storey with the same intensity of use just described.

The evidence is that the project evolved through the "Outreach" program carried on by the church and its members. The Board heard from a number of very sincere church members who give their time freely as volunteers in numerous community sponsored programs. Many of them work with and care for the elderly and are therefore well aware of their special needs.

The concept of a "continuum of care" or "intergenerational community" as this project is described, was developed by the architect Mr. Victor J. Henricks. He designed a very successful complex at St. Clair and O'Connor Road on a 10 acre site for a Mennonite group. It is his approach to mix a wide range of housing forms so that a cross-section of a community's population can be housed and integrated within one complex.

Families with children are proposed for the semi-detached dwellings, healthy seniors for the apartment units and seniors who need some nursing care in the larger facility. The church activities would include programs to involve the residents of both facilities and the Outreach programs would continue. This would bring together a wealthy resource of care and help for all age groups to the benefit of all.

The pool is featured to become a draw for the young members of the community and to encourage a rapport with the seniors. Mr. Henricks advised the Board with regard to the previously mentioned project that the "pool encourages the children to visit granny".

The concept is one that promotes activity and involvement especially for seniors who can often suffer from loneliness. The concept is one the Board believes should be encouraged. From the evidence of Reverend Ronald Campbell, who impressed the Board considerably, the Board is convinced that he and the members of his church would operate very successful and meaningful programs. It is for these reasons that the Board finds it has a very difficult decision to make.

Also, the need is evident. Approximately 26 per cent of York's population are senior citizens. No one disagreed with the need for a facility such as this.

However, when the Official Plan is examined and the impacts on the surrounding residents weighed, the Board finds itself in agreement with the position taken by David Sala, President of the Weston Ratepayers Association, "the proposal is admirable, the concerns sincere, it's just the wrong site".

The Board heard evidence over eight days from three professional planners, two traffic engineers, municipal staff, the Pastor of the church, the architect of the project, and many residents of the neighbourhood. All agreed there was a need for senior citizen accommodation and agreed with the concept of development. Two of the planners were of the opinion that the

major determining factor, from a planning point of view, was social need. It was their view that the social need to provide accommodation for senior citizens overrides all other considerations and tends to "soften" the land use impacts created by the development. It was their view that the diminution of the enjoyment and privacy experienced by the adjoining property owners was far outweighed by the social need. For this reason they found the impacts "acceptable" and the style of the proposed Official Plan amendment that is basically a "notwithstanding any of the policies of the Official Plan, the following is permitted" type of provision to represent good planning.

However, the municipality planner who was in support, indicated that he could render such an opinion only because the proposal is non-profit. If a development of a similar density had been proposed by a private developer on a "profit" basis, he indicated that he then would have recommended against it. The Board has great difficulty in following that logic. If the massing and intensity of use is the same, how can a planner determine that the profit oriented development would have adverse impacts on the neighbourhood whereas the non-profit one would have no adverse impact and be in keeping with the neighbourhood?

The Board is of the view that need is a valid planning consideration to weigh, especially when determining the merits of a change to both the Official Plan and by-law. The Board recognizes that need is an underlying principle for determining the various types and size of designations in an Official Plan. However, the assessment of land use impacts is a separate and important determination. The impacts must be clearly weighed and considered as in any land use decision. The impacts cannot and should not be assessed under a cloud of need. One must come to grips with the reality of what is proposed and the relationship and interaction of it with existing development. Then, having weighed the need issue and having determined the real impacts, a decision or opinion can be made. Impacts cannot be given a secondary place to need in evaluating a land use change.

The Board finds itself in agreement with the opinion of the consultant planner called for the City in opposition when he said, "we must look at the church as a developer in this instance and assess the proposal on its merits and not on the merits of the applicant". It is in this regard that the two planners called in favour failed to give an objective planning opinion on the land use impacts of the proposal and its implications with regard to Official Plan policies. In addition, the staff planner for the City while relying so intensely on the issue of need, did not turn his mind to the question of whether there were alternate sites available in the City on lands better suited for intense development that could accommodate the need for senior citizen facilities. If in the final analysis the decision maker is put in a position of balancing or weighing need and impacts, then the Board is of the opinion that an alternate site analysis would be essential.

A review of some of the policies is essential to determine how the Official Plan envisaged this neighbourhood and the character it intends to preserve into the future. As stated earlier, the area is designated Low Density Residential. The following are some of the policies that the Official Plan amendment before the Board would waive:-

"Housing Objectives

4.11

To encourage the development of a variety of housing types to meet the full range of housing needs of the citizens and to provide day care centres for children of working mothers.

To encourage production of well-integrated low income housing in line with the demand for such housing and in ways and amounts that will be compatible with the character of an area.

To ensure that infill sites for housing are carefully integrated into the community; that such housing is compatible with adjacent residential areas, and that the adequacy of community services and facilities are fully considered."

"Low Density Residential

8.11

No dwelling houses other than single-family detached, semi-detached, duplex and converted dwelling houses shall be permitted on lands designated Low Density Residential.

8.12

Apartments and dwellings other than single-family detached, semi-detached, duplex and converted dwelling houses are prohibited on lands designated Low Density Residential."

"Residential Land Use Policies

9.4

Areas designated as Single-Family Residential and Low Density Residential will be regarded as stable. No changes will be made through zoning or other public actions which are out of keeping with the character of such areas."

"Existing Apartments

9.12

Existing apartments within areas designated for apartments are indicated on the District Plans; existing apartments not within areas designated for apartments are not indicated on the District Plans in order to make it clear that redevelopment of these existing apartments or adjacent lands for high density residential use is not permitted."
(Underlining by the Board).

The Board heard extensive evidence with regard to the character of the area in relation to the above-noted policies. It was argued that the area is a mixed use area and as such the proposal is in keeping with the character. To support that premise the Board was taken on many "walks" through the neighbourhood. Weston Road, one block away, is a major arterial road that has the Humber River Ravine as a backdrop, therefore, it is lined with high-rise apartments, mostly on the ravine side, and retail commercial uses. The railroad lines cut through the predominantly residential community and most significantly, there are two apartment buildings some 25 years old that front onto Church Street immediately to the south of the subject site. The apartment that abuts a portion of the subject site is 5 storeys high and the other on the opposite side of Church Street is 9 storeys (Exhibit 67).

On the other hand the Board was provided with density figures of the existing developed area excluding the Weston Road frontage. The information was calculated from data obtained from assessment mapping and filed as Exhibit 71. The following average floor space indices were calculated:-

Cross Street	- average f.s.i.	0.29
Rectory Road	- average f.s.i.	0.43
Coulter Avenue	- average f.s.i.	0.42
King George Road	- average f.s.i.	0.44
Church Street	- average f.s.i.	0.38

If the subject proposal with an f.s.i. of about 1.0 is compared to the above, it can be argued that it is at least $2\frac{1}{2}$ times the density of the existing development within the Low Density Residential designation. Therefore, it was argued that it cannot possibly fit into the character of the area.

When the Board evaluates the previously quoted sections of the Official Plan, it is abundantly clear, at least to the Board, that those approved policies anticipate some redevelopment of properties and that some of that redevelopment will be for various forms of assisted housing (Section 4.11). However, the Plan gives direction that any redevelopment must fit into the character of the area. In addition, the policies are abundantly clear that any form of high density development is prohibited in areas such as this that are designated Low Density Residential (Sections 8.12 and 9.4). Also, Section 9.12 tells the Board that the Official Plan directs that any existing apartment buildings that are not recognized by an apartment designation are not to be redeveloped for high density residential purposes and clearly not to be used as a precedent or argument to so develop adjacent lands. The two neighbouring apartment buildings are designated Low Density Residential. Therefore, the Board concludes that the Official Plan amendment before the Board would classify as a high density residential use and would represent too great of a radical departure from the approved policies to waive with a simple "notwithstanding" clause.

Although there was considerable evidence on the details of the site plan and the resultant impacts on specific properties, given the above finding, the Board will not discuss these in great detail. Although the site plan was not before the Board it was used, as is often the case in

proceedings of this nature, to assess specific impacts on adjoining properties.

The site plan shows the senior citizens' apartment building of some 131 feet in length placed along almost the full length of the neighbouring property to the north at 21 Cross Street owned by Mr. Pietersma. Twelve apartment units would face onto his property. Compare that to what he presently has - one residential dwelling, a use that is fully expected by the Official Plan. The Board then finds itself in agreement with the staff planner of the municipality who, when pressed under cross-examination, said that for Mr. Pietersma "the quality of the residential experience would be dramatically different".

Mr. Macallion is the owner of 8 King George Road. If the proposal were to proceed his property would back onto the 100 bed health care facility and in particular to the area designed for two loading bays, one of which was designed for the garbage disposal. In addition, the existing house to the north would be replaced by the truck access route. There was contradicting evidence on the frequency of truck deliveries and pick-ups. It varied from 6 per week, including garbage collection, to 3 to 5 per day. The Board prefers the evidence of Mr. Ross in that regard and finds it more realistic to consider 3 to 5 truck trips per week day. The evidence was that given the narrowness of King George Road, the probability of cars parked on the east side of the street, and the location of Mr. Macallion's verandah to the property line, typical 30 to 35 feet delivery and garbage trucks would have to manoeuvre forward and backward at least two to three times before entering or leaving the site. The sidewalk is only 2½ feet wide and with the expectation of children playing and adults of all ages walking on the sidewalk, this situation would be a safety hazard, to say the least. The Board agrees with Mr. Macallion when he said that the "proposed use is not a use that he could ever have envisaged when he purchased in the heart of a residential area".

The issue of parking also consumed a great deal of evidence. Parking stalls were subtracted then added and moved to different locations

throughout the course of the hearing. The Board has no intention of reviewing all of that evidence. The evidence is clear that the Weston Presbyterian Church is very active and has a high level of community involvement with numerous events throughout the week, daytime and evenings, and weekends. Sunday morning service attracts sufficient membership that the 55 cramped spaces generally are not enough and therefore there is some spillage onto the local street. On Sunday afternoons the church rents out space to a Formosian community of worshippers. Generally from 3:00 to 5:00 p.m. about 30 to 40 cars are accommodated in the parking lot.

The subject proposal, as put to the Board, acknowledges that the church use alone should be assigned 55 to 60 spaces. If the standard requirement for the other uses were added on, 90 to 95 spaces would represent a bare minimum. The proposal shows 73 spaces in various locations on the site. Notwithstanding this the proponent argues that the one major peak period of the church is Sunday morning until noon and it is expected that there would be minimal visitation to the nursing home during that time. The proposal then is to share the parking requirements for all uses.

The City of York, through its counsel, argued that nowhere in York's by-law is shared parking provided for and no developments to date have proceeded on that basis. Therefore, there is no experience to determine if 73 spaces will be adequate. Also, if the concept works as hoped, the apartment and health care facility should generate activity levels not found at traditional nursing homes for the aged and therefore difficult to use as a measure for this concept. The known activity generated by the Weston Presbyterian Church and the Formosian congregation would use a great proportion of the proposed parking Sunday morning and afternoon, which are traditional times to visit.

The City, through the witnesses it called, was skeptical that 73 spaces could in fact be provided, and provided in such a manner to encourage safe use. The design of the underground parking and the steepness of the ramp was questioned. Again the evidence of Mr. Ross is preferred. The site is just too tight to accommodate all of the activity proposed and just too

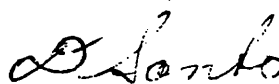
tight to build in any margin for error in calculating the number of spaces that will be required.

All of the planning and traffic evidence pointed to the fact that this site was "locationally atypical". All of the examples put to the Board of other complexes were on arterial road or major collector road locations. They were traditionally on larger sites or within existing high density areas. No one could find an example of such a density for the proposed uses located snugly between two undersized one way streets generally surrounded by single-family homes.

Although the need for senior citizen accommodation is greatly appreciated by the Board and the proposed concept of accommodation highly endorsed, for the above reasons the Board finds that the subject site is inappropriate for the intensity of development proposed. To allow the Official Plan amendment and by-law as proposed would not be good and sound planning.

For all of the reasons expressed, the appeals are hereby dismissed.

DATED at TORONTO this 21st day of April 1987.



D. L. SANTO
MEMBER



E. F. CROSSLAND
MEMBER