

ISSUE DATE:  
**MAY 25, 2004**  
DECISION/ORDER NO:  
**0927**

64-342



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

**RECEIVED**

JUN 0 1 2004

**LAW DEPARTMENT** R031273

*Snider only*

Isabell  Cot  has appealed to the Ontario Municipal Board under section 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 03-304 of the City of Hamilton O.M.B. File No. R030288

*OMB TRACKING # 04-342*

**APPEARANCES:**

Parties

Counsel\*/Agent

City of Hamilton

N. Smith\*

Isabelle Cot 

R. Barch

Christ Unity Church

S. Snider\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY  
J. A. SMOUT ON MAY 6, 2004 WITH SUBSEQUENT  
WRITTEN REASONS AND ORDER OF THE BOARD**

Christ Unity Church is the owner (the "Owner") of the property known as 21 Rosedene Avenue (the "Property"). The Owner applied for a zoning amendment to permit the use of the Property for a thirty-nine (39) person-lodging house for the purpose of providing accommodation for patients while waiting for treatment at various hospitals in the City of Hamilton. The City of Hamilton approved the application and passed By-law 03-304. Area property owner and resident Isabelle Cot  appealed.

At the commencement of the hearing, the Parties advised that they had agreed to an amendment to By-law 03-304 that will satisfy all of the outstanding issues as between the Parties. The proposed revisions to By-law 03-304 were filed as Exhibit 4.

The Board heard evidence in support of the By-law and suggested revisions from Greg MacDonald, a professional land use planner employed with the City of Hamilton.

The Property is located in at the intersection of Rosedene Avenue and Upper James Street on the brow of the escarpment. The Property is approximately 0.82 hectares and is currently used as a church and religious retreat centre. All of the properties in the area are single-family residential homes.

The purpose of the amendment is to allow the Owner to operate a lodging house to provide accommodation for individuals waiting for treatment at various hospitals in Hamilton. No new development is proposed as the use can be accommodated within the existing building on the Property.

The Property is designated Major Institutional under the City of Hamilton Official Plan. Permitted uses include religious facilities. The Property is zoned "C" Urban Protected Residential, Etc., which permits primarily low-density residential uses. Church uses are permitted in any zone, including the "C" district.

Mr. MacDonald reviewed By-law 03-304 and the revisions as proposed by the Parties. He testified that the By-law, with revisions, has regard to the Provincial Policy Statement (PPS), conforms to the Official Plan and represents good land use planning. Further, he testified that the revisions address the concerns raised in the appeal. He noted that the By-law restricts the number of residents to 39, provides that the use is to be accessory to a church and that the use is to be operated on a "not for gain" basis. Further, he testified that the By-law does not permit a residential care facility. Finally, he noted that the use is to take place within the existing building and as such, any expansion will require further approvals.

The Board accepts the unchallenged and uncontradicted evidence of Mr. MacDonald and finds that By-law 03-304 with the proposed revisions, has regard to the PPS, conforms to the Official Plan and represents good land use planning.

Accordingly, the Board Orders that the appeal is allowed in part and that By-law 03-304 of the City of Hamilton is amended in the manner attached hereto as Attachment "1". In all other respect, the Board Orders the appeal is dismissed.

The Board so Orders.

"J. A. Smout"

J.A. SMOUT  
MEMBER

OFFICE OF THE CITY CLERK	
MAY 3 1 2004	
REC. BY <i>A. Rawlings</i>	DATE .....
REF'D TO <i>J. McCabe</i>	DATE .....
REF'D TO <i>N. Smith</i>	DATE .....
REF'D TO <i>L. Barros</i>	DATE .....
ACTION: _____	
_____	

**ATTACHMENT "1"**

**CITY OF HAMILTON**

**BY-LAW NO. 03-304**

**To Amend Zoning By-law No. 6593  
Respecting the Lands Located at 21 Rosedene Avenue**

**WHEREAS** the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

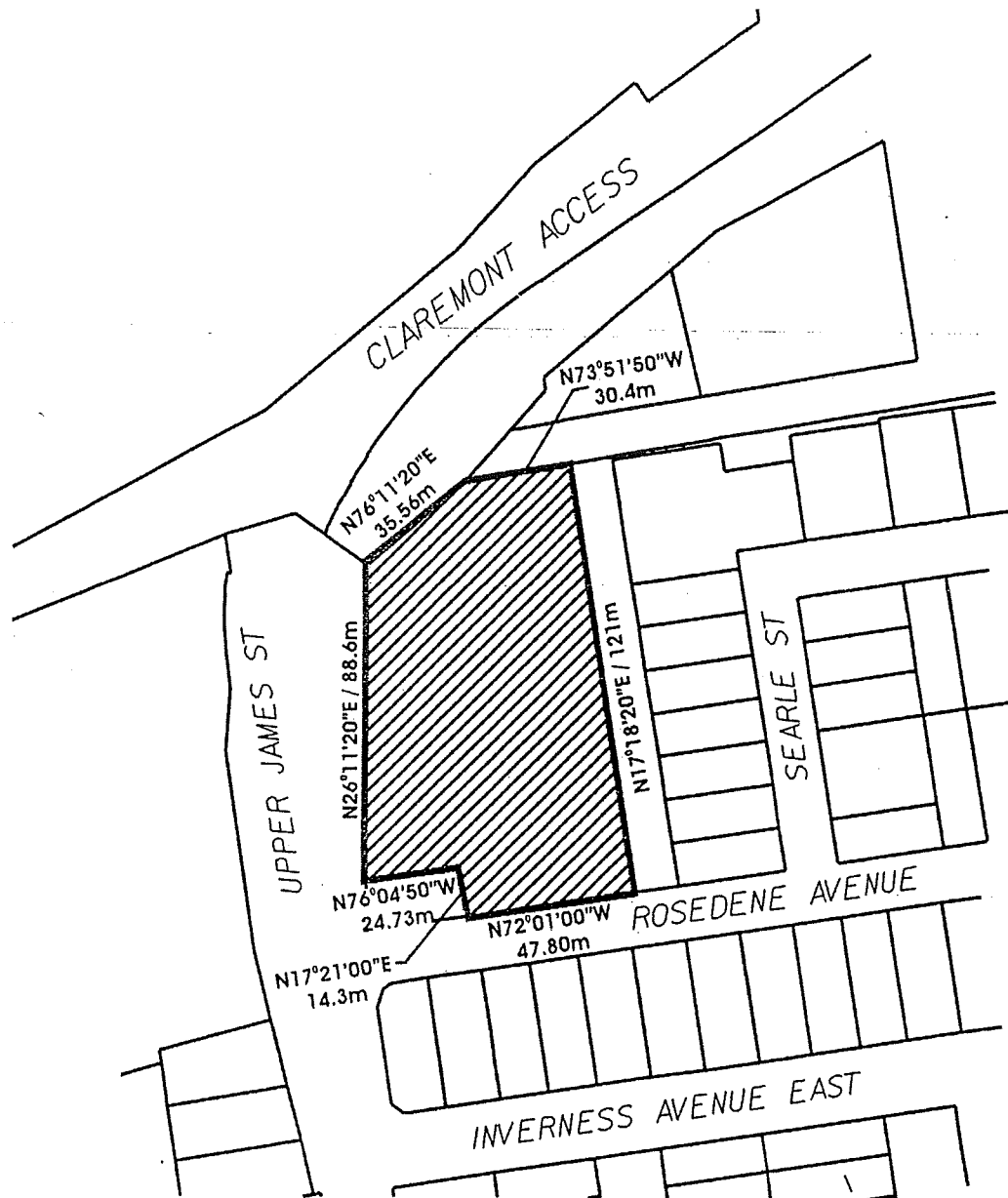
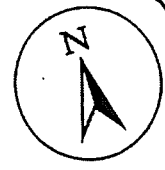
**AND WHEREAS** the Council of the City of Hamilton, in adopting Section 6 of Report 03-032 of the Hearings Sub-Committee at its meeting held on the 15<sup>th</sup> day of October, 2003, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

**AND WHEREAS** this by-law is in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.

**NOW THEREFORE** the Ontario Municipal Board orders as follows:

1. The "C" (Urban Protected Residential, Etc.) District provisions, as contained in Section 9 of Zoning By-law No. 6593, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A", are amended to the extent only of the special requirements that:

- (a) Notwithstanding Subsection 9.(1) of Zoning By-law No. 6593, the following accessory use shall be permitted but limited to:
- 1) a lodging house restricted to short term lodging only for patients not requiring on-site care, or individuals visiting patients, receiving medical treatment at hospitals or medical clinics located within the City of Hamilton, not for gain, within the building existing at the time of the passing of the By-law, with or without remuneration, for a maximum of thirty-nine (39) residents, accessory to a place of worship which is permanently maintained and being carried on by a Religious Organization which is an organization of persons or corporate body that is charitable according to the laws of Ontario and which association or corporation has, as its main object, the advancement of religion and the conduct of religious worship or religious services.
- (b) Subsection 9.(1)(iib) of Zoning By-law No. 6593 shall not apply to the subject lands.
2. No building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "C" (Urban Protected Residential, Etc.) District provisions, subject to the special requirements referred to in section 1.
  3. By-law No. 6593 (Hamilton) is amended by adding this by-law to section 19B as Schedule S-1491.
  4. Sheet No. E-6 of the District Maps is amended by marking the lands referred in Section 1 of this by-law as S-1491.



This is Schedule "A" to By-Law No. 03—

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Clerk

Passed the ..... day of ....., 2003

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Mayor

# Schedule "A"

Map Forming Part of  
By-Law No. 03-\_\_\_\_  
to Amend By-Law No. 6593

## Legend



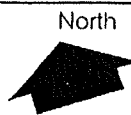
**Subject Property**  
**21 Rosedene Avenue**

Modification to the "C"  
(Urban Protected Residential, Etc.)  
District



Planning and Development Department

Hamilton



North

Scale  
**NOT TO SCALE**

Date  
**October 16, 2003**

Reference File No.  
**ZAR-03-68**

Drawn By  
**NB**