

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



**ISSUE DATE:** June 2, 2015

**CASE NO(S):** PL141325

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Social Betterment Properties International
Subject:	Minor Variance
Variance from By-law No.:	144-2003
Property Address/Description:	7651 Milbrough Line
Municipality:	Town of Milton
Municipal File No.:	D13 (A1-14/035/M)
OMB Case No.:	PL141325
OMB File No.:	PL141325
OMB Case Name:	Social Betterment Properties International v. Milton (Town)

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Social Betterment Properties International
Subject:	Minor Variance
Variance from By-law No.:	144-2003
Property Address/Description:	7651 Milbrough Line
Municipality:	Town of Milton
Municipal File No.:	D13 (A1-14/036/M)
OMB Case No.:	PL141325
OMB File No.:	PL141326

**Heard:** March 30 – April 2, 2015 in Milton, Ontario

**APPEARANCES:**

**Parties**

Social Betterment Properties  
International

**Counsel\*/Representative**

D. Tang\*

Town of Milton

H. Watson\*

Neighbours Working with Neighbours Inc.  
G. Flint

## **DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER OF THE BOARD**

---

[1] Social Betterment Properties International (“Proponent”) has appealed against decisions of the Town of Milton (“Town”) Committee of Adjustment (“COA”) that held against the Proponent’s applications regarding the property known municipally as 7651 Milborough Line.

[2] Milborough Line is the border between the Region of Halton (“Region”) and the City of Hamilton (“City”). At this location, Milborough Line is also the border between the City and the Town. The Town is on the east side of Milborough Line and the City is on the west side.

[3] The City did not appear in these proceedings.

[4] As described by the Proponent, the proposal is to convert a large single-family dwelling into a drug and alcohol addiction treatment and rehabilitation centre to be operated by Narconon Inc.

### **PRELIMINARY MATTERS**

#### **Addition of Parties**

[5] Neighbours Working with Neighbours Inc. (“Neighbours”) is a local group of residents and property owners who live and/or work in the area surrounding the subject site.

[6] The Board added Neighbours as a party to these proceedings.

## Amended Application

[7] The Proponent made two applications.

[8] One application was made under s. 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13 (“Act”). This section deals with applications for variance from the provisions of a zoning by-law, in this case By-law No. 144-2003 (“By-law”). The Proponent’s application under this section of the Act was:

to permit a ‘Group Home Type 2’ on a lot with frontage on a Local Road, WHEREAS Section 4.7(iv) of Comprehensive Zoning By-law 144-2003, as amended, stipulates that a Group Home Type 2 shall only be located on a lot having frontage on a Major Arterial, Arterial or Collector Road on Part Lot 14, Concession 1 NS (Nelson), municipally known as Milborough Line in the Town of Milton, Regional Municipality of Halton.

[9] A second application was made under s. 45(2)(b) of the Act. This section enables a use to be permitted where the by-law definition is general. The section states:

(2) In addition to its powers under subsection (1), the committee, upon any such application...

(b) where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).

[10] Under this section, the Proponent requested:

... the opinion of the Milton Committee of Adjustment as to whether or not the proposed privately-operated drug and alcohol rehabilitation centre conforms with the uses permitted by Comprehensive Zoning By-law 144-2003, as amended specifically the use defined as ‘Group Home Type 2’ on Part Lot 14, Concession 1 NS (Nelson), municipally known as 7651 Milborough Line in the Town of Milton, Regional Municipality of Halton.

[11] At the outset of the hearing, the Board was advised that the Proponent wished to amend its application under s. 45(1) to add an additional variance:

... to permit a group home for persons requiring treatment and rehabilitation for addiction to drugs or alcohol to be located at 7651 Milborough Line despite it not being “licensed, approved or supervised, or funded by the Province of Ontario

under any general or specialized Act”, as required by [the definition of Group Home Type 2 in] section 3 of the Town of Milton... [Comprehensive Zoning By-law No. 144-2003, as amended].

[12] The Proponent, with the assistance of the Town, gave notice of its intention to amend its application under s. 45(1) to all those who received the initial notice.

[13] As a result of a typographical error in the municipal address, a correcting notice was then also sent. The typographical error cited the municipal address initially as “765” Milborough Line when the correct municipal address is “7651” Milborough line.

[14] The Board questioned those in attendance and was satisfied that no one was under the misapprehension that the subject site was other than 7651 Milborough Line.

[15] In the particular circumstances of this case, where the initial application under s. 45(2)(b) dealt with the related question and the same definition, the Board was of the opinion that the amendment to the s. 45(1) application was minor.

[16] In addition, in light of the notice that was given of the Proponent’s intention to amend the s. 45(1) application in this fashion, the Board was of the opinion that no further notice was necessary.

[17] At the outset of the hearing, the Board was also advised that the request in the initial application under s. 45(1) was no longer needed since the parties now agreed that Milborough Line met the requirement of being a category of road specified in the By-law on which a Group Home Type 2 must front.

## **ISSUES, ANALYSIS AND FINDINGS**

### **Understanding the Definition of Group Home Type 2**

[18] The core of this dispute turns on the meaning of the definition of Group Home Type 2 in the By-law. The By-law definition is:

**GROUP HOME TYPE 2**

Means a *detached dwelling* occupied by residents who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis and which is licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act and which shall be maintained and operated primarily for:

- Persons who require temporary care and transient or homeless persons; or
- Persons requiring treatment and rehabilitation for addiction to drugs or alcohol.

[19] There is disagreement between the parties as to whether the proposal may be described fairly as “a *detached dwelling* occupied by residents who live as a single housekeeping unit requiring specialized or group care, supervised on a daily basis” or whether this is a drug and alcohol addiction treatment and rehabilitation centre not contemplated by this language in the definition of a Group Home Type 2.

[20] There is no dispute between the parties that Narconon Inc. is not “licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act”.

[21] The Board will deal first with the question of whether the centre to be operated by Narconon Inc. can be a Group Home Type 2 as contemplated by the language of the definition.

*The Narconon Program*

[22] The non-expert witnesses appearing in support of the proposal are:

1. Derek Lee: a former Member of Parliament for a Scarborough riding.
2. Arda Froese: the mother of an addict who entered the Narconon program in the United States.

3. Gerri Pagliuso: a Narconon program graduate.
4. Luria Dion: Ms. Dion is the Executive Director of Narconon International responsible for the Western United States.

[23] Mr. Lee, Ms. Froese and Ms. Pagliuso spoke glowingly of the Narconon program. The Narconon program, however, is not the matter that is before the Board in these proceedings. None of these witnesses addressed the land use planning matters or any of the planning instruments against which the applications for variance must be tested.

[24] While the Board appreciates the time and effort these three individuals took to travel some distance to appear at this hearing, the Board attaches no weight to their evidence.

*Is the general intent and purpose of the By-law maintained?*

[25] An application under s. 45(1) of the Act for a variance to the provisions of a zoning by-law must meet four tests.

[26] These four tests require the applicant to satisfy the Board that the variance sought:

1. Maintains the general intent and purpose of the official plan;
2. Maintains the general intent and purpose of the zoning by-law;
3. Is desirable for the appropriate development or use of the land building or structure; and
4. Is minor.

[27] All four tests must be met or the variance is not authorized.

[28] Since the core of this dispute centres on the By-law, the Board begins with the test of whether the variance maintains the general intent and purpose of the By-law.

[29] The Board heard from four witnesses the Board qualified to provide independent expert opinion evidence in land use planning matters in these proceedings. All four are full Members of the Canadian Institute of Planners and are Registered Professional Planners in Ontario.

[30] Rule 21.01 of the Board's *Rules of Practice and Procedure* requires those wishing to be qualified as experts to acknowledge that they are to:

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to the matters that are within the expert's area of expertise; and
- (c) provide such additional assistance as the Board may reasonably require to determine a matter in issue.

These duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

[31] All four of these witnesses acknowledged the expert's duty in compliance with Board Rule 21.01.

[32] These expert witnesses are:

1. Colin Chung, retained by the Proponent, testified in support of the proposal;
2. Angela Janzen, a planner with the Town, testified in opposition to the proposal;
3. John Ariens, retained by Neighbours, testified in opposition to the proposal;  
and

4. Rachelle Partridge, a planner with the Region who specializes in rural applications, testified in opposition to the proposal.

[33] The Region is a commenting agency for applications. Ms. Partridge confined her evidence to the matters on which the Region is engaged as a commenting agency. Her analysis considered the question of whether the proposal would conform to higher order planning instruments and did not deal with the general intent and purpose of the By-law.

[34] Mr. Chung, Ms. Janzen and Mr. Ariens all agreed that the intent and purpose of the language in the definition that specified “licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act” is to ensure appropriate oversight of the facility.

[35] Ms. Janzen and Mr. Ariens were emphatic that this intention is tied to the specific requirement that the oversight be provided by the Province. Both experts agreed that specific provincial oversight is important to balance what they characterized as the generous permission for these group homes to locate broadly across the municipality and to recognize that the municipality does not have the expertise to assess the particulars of an individual group home’s program.

[36] Mr. Chung took quite a different approach.

[37] He testified that the intention was simply to have some oversight and that it is unnecessary to have provincial oversight if there is a reasonable and appropriate alternative. In this regard, he referred to two items.

[38] The first item he cited to support his opinion that provincial oversight is not needed is what he described as a non-typical treatment and rehabilitation program to be provided by Narconon Inc. and that the provincial oversight only applies with traditional treatment and rehabilitation programs.

[39] The Board is not persuaded by this line of reasoning. If the requirements of the



definition of Group Home Type 2 cannot be met because the Narconon program is not contemplated by “any general or specialized Act” thus removing the possibility of the proposal being licensed, approved, supervised or funded by the Province this raises the question of whether the proposal is for a Group Home Type 2 or for some other category of use.

[40] The second item Mr. Chung cited to support his opinion that provincial oversight is not needed is a license agreement between Narconon International and Narconon Inc., filed in these proceedings as Exhibit 7(a), Tab 10, in the document book he prepared for the hearing.

[41] Mr. Chung deferred to Ms. Dion for the explanation of the agreement. Neither Mr. Chung nor Ms. Dion was able to point the Board to any other alternative oversight mechanism.

[42] Ms. Dion testified extensively on the Narconon program including treatment and rehabilitation phases, the emphasis on education and characterization of those enrolled in the program as students. This part of her testimony lent support to the later expert opinions offered by Ms. Janzen and Ms. Partridge that the proposed use is institutional and not special needs housing, as suggested by Mr. Chung.

[43] Since Mr. Chung deferred to Ms. Dion on the details of the question of the oversight of the proposed operation, the Board examines that part of Ms. Dion’s evidence that dealt with the relationship between Narconon International and Narconon Inc.

[44] Ms. Dion took the Board to the license agreement between Narconon International and Narconon Inc., referred to above, that she testified would stand as the oversight and enforcement mechanism. She referenced right of entry and inspection to ensure standards are maintained.

[45] The Board understood that the purpose of this evidence was to demonstrate that

an alternative to the provincial oversight would be provided by Narconon International over Narconon Inc. and that this oversight would be an equivalent operational oversight to that which might otherwise be given by the Province, as contemplated by the purpose and intent of the By-law definition of Group Home Type 2.

[46] What Ms. Dion failed to make clear, until pressed in cross-examination, is that the entire agreement and the purpose of the right of entry and inspection is to ensure that Narconon Inc. is using properly the Narconon trademarks.

[47] While enforcement regarding the use of trademarks may be of considerable concern to Narconon International, the Board finds that this license agreement respecting the use of trademarks does not rise to the standard of an operational oversight that could reasonably be construed as being the purpose or intent of By-law.

[48] The Board finds that the amended variance sought under s. 45(1) of the Act does not maintain the general intent and purpose of the By-law.

*Does the By-law Define Group Home Type 2 in General Terms?*

[49] As noted above, the application under s. 45(2)(b) of the Act enables the Board to permit the proposed use if two requirements are met. The first requirement is that the use, in this case a Group Home Type 2, must be found to be defined generally. If this requirement is met, then the Board must find that the proposed use conforms to the general definition.

[50] The Proponent takes the position that the definition is general, particularly as it relates to the question of the provincial involvement. This is the basis for the Proponent's assertion that reasonable and appropriate alternative oversight would conform to the definition's requirement of provincial involvement.

[51] The Board has already disposed of the suggestion that the proposal includes reasonable and appropriate alternative oversight. The Board now turns to whether the

language in the definition is general.

[52] For ease of reference, the language at issue requires a Group Home Type 2 to be “licensed, approved or supervised, or funded by the Province of Ontario under any general or specialized Act”.

[53] The definition sets out several possible options for provincial involvement and oversight. Each option is specific: licensed, approved, supervised, funded. The fact that there is an array of options cited does not lessen the specificity of any of the options. Rather, it means that the definition affords a proponent the opportunity to qualify under different, specific categories.

[54] Although there are alternative categories, each category has a clear, specific and unchanged requirement: that the licensing, approval, supervision or funding is by the Province of Ontario.

[55] The Board finds that Group Home Type 2 is defined in the By-law in specific terms and not in general terms.

[56] Since the proposed drug and alcohol addiction treatment and rehabilitation centre is not licensed, approved, supervised or funded by the Province on Ontario it does not conform to the specific requirements of the By-law definition.

### **Other Matters Raised**

[57] For completeness, the Board now deals with other matters raised that are associated with the appropriateness of the proposed drug and alcohol addiction treatment and rehabilitation centre at 7651 Milborough Line.

[58] Section 3(5) of the Act requires:

**Policy statements and provincial plans**

(5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be...

*Provincial Policy Statement*

[59] The proposal is for a change of use. While the exterior of the structure appears to remain largely unchanged the interior has been renovated to suit the new use. The previous use was single family housing. As described by the Proponent in the applications, the proposed use is for a drug and alcohol addiction treatment and rehabilitation centre.

[60] Development is a defined term in the Provincial Policy Statement 2014 ("PPS") and includes a change in land use.

[61] Rural areas are defined in the PPS as including rural settlement area, prime agricultural areas and natural heritage features and areas.

[62] The PPS directs growth and development within rural areas to rural settlement areas. The subject site is not within a rural settlement area.

[63] The subject site is on private services. There are no municipal water or sanitary services available or planned for the area.

[64] Ms. Partridge testified that the site was identified in an approved Assessment Report for the Halton Region Source Protection Area as being within a significant groundwater recharge area and within a highly vulnerable aquifer.

[65] There has been no assessment of the existing private services to determine if they are adequate and appropriate for the proposed drug and alcohol addiction treatment and rehabilitation centre.

[66] The subject site is within an area identified by the Region as being a prime agricultural area. The uses in such areas, as set out in the PPS, do not include the proposed addiction treatment and rehabilitation centre.

[67] The Board finds that the proposed use is not consistent with the PPS.

#### *Greenbelt Plan*

[68] The subject site is designated Protected Countryside with a Natural Heritage System overlay in the Greenbelt Plan. The site is also identified as being within the Greenbelt Plan's Agricultural System and within the Natural Heritage System.

[69] Like the PPS, the Greenbelt Plan includes a change in land use in its definition of development.

[70] There is no dispute that the proposal is for a non-agricultural use.

[71] Policy 4.1.1 sets out the general non-agricultural use policies for the Protected Countryside:

4.1.1(2) Proposals for non-agricultural uses must demonstrate that:

- (a) The use is appropriate for location in a rural area;
- (b) The type of water and sewer servicing proposed is appropriate for the type of use;

- (c) There are no *negative impacts* on *key natural heritage features* or *key hydrologic features* or their functions; and
- (d) There are no *negative impacts* on the biodiversity or *connectivity* of the Natural Heritage System.

[72] No evidence was before the Board to satisfy these requirements.

[73] The Board finds that the proposed drug and alcohol addiction treatment and rehabilitation centre does not conform to the Greenbelt Plan.

#### *Emergency Services and Flood-free Access*

[74] William Caldwell is a resident adjacent to the subject site. Mr. Caldwell appeared in opposition to the proposal. He addressed questions of security for fire and other emergency vehicles being able to reach the subject site unobstructed and within appropriate response times.

[75] As a result of wetlands and tributaries on the subject site, most of the site is under the jurisdiction of Conservation Halton. The concern expressed by Mr. Caldwell is similar to a concern noted by Conservation Halton.

[76] Conservation Halton, in commenting on the original applications, expressed concern about what it considered to an institutional use where the existing access to the site appears to be flood susceptible.

[77] The evidence before the Board is that this issue has not been addressed.

#### *Impact on Agricultural Vehicles Using Milborough Line*

[78] Daniel Curran-Blaney farms 40 hectares (“ha”) on the west side Milborough Line across from the subject site.

[79] Mr. Curran-Blaney expressed concerns about delivery trucks, moving vans and

traffic generated generally by the subject site conflicting with slow-moving farm vehicles that use Milborough Line in this agricultural area.

[80] The Proponent called John Barrington in reply to the concerns raised regarding traffic conflicts with slow-moving farm vehicles using Milborough Line.

[81] Mr. Barrington is a traffic engineer whom the Proponent sought to qualify for expert opinion evidence in traffic engineering and transportation planning.

[82] Mr. Barrington acknowledged his expert's duty in accordance with Board Rule 21.01.

[83] Mr. Barrington's witness statement was prepared substantially in advance of the evidence regarding farm vehicles and dealt with several broader topics within the area of traffic and capacity on Milborough Line. Mr. Barrington acknowledged that his witness statement was prepared at a time when the Proponent anticipated calling evidence on the question of whether Milborough Line meets the requirement of being a category of road required by the By-law for a Group Home Type 2.

[84] Since Mr. Barrington was being called to reply to evidence dealing with traffic impacts of the proposed use on agricultural vehicles using Milborough Line, the Board qualified Mr. Barrington to provide independent expert opinion evidence limited to traffic impacts of the proposed use on agricultural vehicles using Milborough Line.

[85] Mr. Barrington acknowledged that the use of Milborough Line by agricultural vehicles is largely seasonal, with the majority of use occurring spring through fall.

[86] Mr. Barrington further acknowledged that his on-site traffic surveys were conducted over a couple of days in early March of 2015. He agreed that this period would not reflect the appropriate time of year to capture the traffic impact on agricultural vehicles. Mr. Barrington was clear that to capture this impact properly the on-site surveys would have to occur during peak periods of road use by agricultural vehicles.

Mr. Barrington also noted that he did not specifically address the impact on agricultural vehicles in the analysis he prepared since this issue was not the one he was retained to address at the time the on-site survey work was being done.

[87] Policy 2.3.6.2 of the PPS states:

Impacts from any new or expanding non-agricultural uses on surrounding agricultural operations and lands are to be mitigated to the extent feasible.

[88] A traffic impact of the proposed use on slow-moving agricultural vehicles using Milborough Line may impact surrounding agricultural operations.

[89] Without a proper analysis on the possible traffic impact from the proposed use on agricultural vehicles, the extent of the impact, if any, cannot be determined. Similarly, no determination is possible on whether any mitigation is either necessary or feasible.

[90] Under these circumstances, the Board cannot conclude that there would be no traffic impact from the proposed use on agricultural vehicles using Milborough Line.

## **ORDER**

[91] The Board orders that the appeals by Social Betterment Properties International are dismissed and the amended variance sought under s. 45(1) is not authorized.

*“Susan de Avellar Schiller”*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR



If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248