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The
 Case
 of
 Minimum
 Separation
 Distances

BY LILITH
 FINKLER, PHD

SUMMARY *Municipal planners and persons with disabilities sometimes disagree about the use of minimum separation distance by-laws. This article briefly discusses current Ontario litigation and critiques the use of by-laws to disperse housing for persons with disabilities. Planners interested in building cities in accordance with human rights principles will uncover new ground by considering disability perspectives.*

RÉSUMÉ *Les planificateurs municipaux et les personnes handicapées sont parfois en désaccord avec la juste application des règlements de zonage sur la distance minimale de séparation. Cet article propose une brève analyse du contexte actuel en matière de contentieux de l'Ontario et jette un œil critique sur l'utilisation de ces règlements afin d'éparpiller l'hébergement des personnes handicapées. En tenant compte des points de vue des personnes handicapées, les urbanistes soucieux d'aménager des villes conformes aux principes des droits de l'homme feront œuvre de pionniers.*

Municipal by-laws, written 30 years ago by progressive planners, can be viewed as discriminatory today. For example, municipalities enacted by-laws to ensure group homes and other forms of housing for persons with disabilities could be located in their jurisdiction. In the 1970s and '80s, as provinces implemented deinstitutionalization, by-laws regulating group homes were seen as positive developments by disability advocates. Today, 30 years later, these same by-laws can cause consternation and conflict between persons with disabilities and planners.

We see this tension between the past and the present in a human rights case currently before the courts. The Dream Team, a housing advocacy group comprised of psychiatric survivors (persons with a psychiatric disability), insists minimum separation distance by-laws discriminate against persons with disabilities. The City of Toronto denies that claim. Separation distance by-laws, a common planning instrument, are typically applied to separate incompatible land uses. Distance by-laws, used in Ontario and (in some, but not all, other Canadian provinces), also state that group homes, residential care facilities and other forms of housing for persons with disabilities must be a specific distance away from housing of a similar function. The Dream Team argues that this second type of separation

distance by-law discriminates against persons with disabilities. Homes for non-disabled persons are not subject to a separation distance.

In January 2012, the Human Rights Tribunal of Ontario (HRTO) issued an interim decision and ruled that the Dream Team could present the substance of their human rights complaint. However, in March, the City of Toronto filed an application for judicial review in Divisional Court. The City argues there is no evidence that persons with disabilities have experienced discrimination as a result of the by-laws and further, that the HRTO does not have jurisdiction to hear the case. Rather, Toronto lawyers assert arguments should be heard before the Ontario Municipal Board (OMB), the provincial tribunal adjudicating land use disputes. The City asks the courts to declare that the complaint should be heard not by the HRTO, but by the OMB. If the



courts concur with this assertion, the Dream Team could be forced to present their arguments anew. The prospect of lengthy and expensive litigation looms large on the horizon.

TWO PERSPECTIVES

Municipalities typically justify the use of separation distances by describing design considerations such as the need to separate incompatible uses and the benefits of community integration for persons with disabilities. Separating manure storage facilities from residential developments in rural areas protects homeowners from noxious odors. Separation of land uses in the agricultural context supports farming sustainability and improves health of local citizens. Similarly, some planners assert municipalities separate single family dwellings from group homes as the two uses may also be incompatible. For example, small families typically shop at local groceries. Group homes may receive bulk food supplies from delivery trucks, causing excessive noise.

Planners may also support separation distance by-laws in the belief they facilitate community integration. Planners argue that dispersing group homes encourages relationships between tenants with disabilities and non-disabled neighbours. In the latter argument, separation distances are good for persons

with disabilities. In the former, separation distances are good for everyone else.

In contrast, the Dream Team asserts that persons with disabilities want to live in residential areas, like non-disabled persons. By imposing separation distance requirements on disability-specific forms of housing, the City effectively restricts the location and number of persons with disabilities who can live in any one neighbourhood. The Dream Team also argues that separation distance by-laws make it difficult for housing providers to locate an appropriate development site, particularly in central locations, close to public amenities and social services. Housing providers may be forced to appeal denial of a development permit to an appellate body such as the OMB, leading to increased legal costs and lengthier development timelines. Government funds initially allocated to bricks and mortar may be diverted to pay legal fees. Ultimately, litigation can result in decreased housing for persons with disabilities. The Dream Team argues then, that minimum separation distances constitute a barrier for persons with disabilities and cause economic difficulty for housing providers.

A DISABILITY-CENTRED RESPONSE

In assessing the arguments, we must examine underlying assumptions. First, the legal definition of “group home” in Ontario permits between three and 10

Example of affordable housing project that went to the OMB because homeowners next door thought tenants who would live in the building would be able to see in their windows. Photo credit: Lilith Finkler



ABOVE: An illustration of the ways in which non-disabled neighbours wish to create distance from prospective tenants. Photo credit: Lilith Finkler

BELOW: A window inverted specifically so that psychiatric survivor tenants would not be able to look down at non-disabled neighbours. Photo credit: Lilith Finkler



inhabitants. Shopping patterns may depend on size. Group home tenants may shop locally. There does not appear to be empirical evidence that group home tenants buy in bulk disproportionate to the general population.

Second, “community integration” is perceived to facilitate relationships between persons with disabilities and non-disabled persons. However, some research suggests that being in “community” has resulted in social isolation for persons with disabilities as they are no longer in contact with one another and are either overtly rejected or ignored by non-disabled neighbours. Indeed, non-disabled homeowners have constructed high fences, double layered trellises or even frosted their windows specifically to block sightlines with adjoining disability-related housing. Non-disabled homeowners sometimes wish to avoid seeing persons with disabilities.

Favouring community integration over social solidarity also assumes that non-disabled persons know better what is best for persons with disabilities than persons with disabilities know themselves. This “I know what’s good for you” attitude suggests condescension.

Using community integration to justify dispersal of group homes also negates the importance of relationships between persons with disabilities. The dramatic increase in peer support groups provides a persuasive reply to planners’ dispersal recommendations. Peer support facilitates community organizing—and can lower rates of re-hospitalization.

Finally, the concept of community integration incorporates the idea of normalcy, the idea that some persons embody conventional behaviours and others do not. In that analytical framework, persons with disabilities integrating with non-disabled others would learn, as if by osmosis, socially accepted behaviour. However, as sociologist, Erving Goffman, states, “the normal and the stigmatized are not persons, but rather perspectives.” The suggestion that community integration of persons with disabilities with non-disabled persons will lead to social betterment for the former group belies a lack of acceptance of the unique contributions persons with disabilities can offer.

As a result of a lower labour force participation rate and the corresponding higher poverty rate, persons with disabilities are disproportionately likely to live in subsidized housing or in “affordable” private market accommodation. Group homes and boarding homes, (housing in which tenants share a bedroom with

others and pay for both food and rent) are common forms of accommodation for psychiatric survivors or persons with developmental disabilities, especially those discharged from institutional settings.

This article does not claim that group homes are an ideal form of housing. Tenants with disabilities have indicated a strong preference for privacy, a wish to control who enters their home and from whom they receive support services. Scholars whose research investigates housing preferences note that the majority of persons with disabilities wish to reside in their own apartments rather than in congregate settings.

However, persons with disabilities, like members of various ethno-specific groups also often prefer to live in proximity to others who share their disability experience. They do not necessarily wish to live in the same house but rather, want to be within walking distance of one another. For example, some psychiatric survivors in Toronto prefer to live in Parkdale (an area known for its psychiatric survivor population) because of the sense of community they find amongst peers and because of the proximity to social services. Implementation of minimum separation distance requirements may mean psychiatric survivor friends living in boarding homes cannot be close to one another. If persons of similar cultural heritage, sexual orientation or religious practice can live in the same vicinity, persons with disabilities ought to be able to do so as well.

As planners, we must regulate the land use, rather than the users. Housing for persons with disabilities may be structurally no different than housing for non-disabled persons. While group homes may house up to 10 inhabitants, extended families may also live together. Minimum separation distances can be helpful in separating incompatible uses but applying the planning instrument to disperse concentrations of persons with disabilities suggests discriminatory intent. ■

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LILITH “CHAVA” FINKLER, PHD, is a planner, former Trudeau Scholar and Postdoctoral Fellow at Memorial University. Lilith is the author of many articles regarding disability, law and town planning, and researched the use of minimum separation distances for six years. She can be reached at: lilith.finkler@med.mun.ca