

# Provisions of Group Homes in the City-wide Zoning By-Law of the City of Toronto

Dr. Sandeep K. Agrawal, AICP, MCIP

Ryerson University

# Scope of work

- To present an objective review and analysis of issues related to the definition of group homes, as well as the mandatory separation distances to which these homes are subject.
- To provide an expert opinion supported by considerations of sound planning principles and the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

# Recommendations

1. Delete the phrase “by reason of their emotional, mental, social or physical condition or legal status”.
2. Remove the requirement for a separation distance for group homes
3. Use the following definition of group homes:
  - *Group home means premises used to provide supervised living accommodation as per the requirements of its residents, licensed or funded under the Province of Ontario or Government of Canada legislation, for a maximum of 10 persons, exclusive of staff, living together in a single housekeeping unit.*
4. Replace “3 to 10 residents” with “a maximum of 10 persons.”

# Recommendation #1: Definition

- Planning principles
  - The definition without people's characteristics seems to provide an adequate idea of what the use is.
  - The phrase describing the residents' characteristics does not serve any valid legal or zoning purpose.

# Recommendation #2: Separation distance

- Planning principle
  - Separation distances are a legitimate and valid zoning tool to mitigate the impacts, nuisances, and externalities generated by certain types of land use.
  - No documented evidence of any kind of negative externality generated by group homes.

# The *Human Rights Code*

- Three-part test:
  - Was the standard, requirement, factor or rule adopted for a purpose **rationaly connected** to the function being performed?
    - The definition of and separation distance applied to group homes in the zoning by-law **does not meet** the requirement of the first part.
  - Was the standard, requirement, factor or rule adopted in an honest and **good faith** belief that it was necessary to the fulfilment of that purpose or goal?
    - The definition of and separation distance applied to group homes in the zoning by-law **does meet** the requirement of the second part.
  - Is the standard, requirement, factor or rule reasonably necessary to the accomplishment of that purpose or goal? Is it possible to accommodate individuals sharing the characteristics of the claimant without imposing **undue hardship** on the City?
    - The definition of and separation distance applied to group homes in the zoning by-law **does not meet** the requirement of the third part of the test.

# The *Human Rights Code*

- Summary

- While the provisions for group homes in the City of Toronto's zoning by-law may (or may not) be rational and created in good faith, in the absence of evidence that a different approach would be an undue hardship on the City and its residents, it is difficult to regard the provisions as meeting the Ontario *Human Rights Code* test.

# The *Charter* – section 15

- Three-step test
  - Does the law impose, directly or indirectly, a disadvantage (in the form of a burden or withheld benefit) on the claimant in comparison with other comparable persons?
    - In the absence of clear evidence (or cited evidence) going to the *Charter* test, as well as the uncertainty created by the jurisprudence, there is **no straightforward answer**.
  - Is the disadvantage based on a ground listed in or analogous to a ground listed in section 15 of *the Charter*?
    - **Yes. Disability is a listed ground under section 15.**
  - Does the disadvantage constitute an impairment of the human dignity of the claimant?
    - The claimant could argue that provisions in the City's by-law **are prejudicial** towards them.



# The *Charter*

- Summary:
  - It is possible for a claimant to convincingly argue that the City's by-law provisions on group homes treat them differently, single them out, and discriminate against them by perpetuating disadvantage or by being prejudicial to them.
  - The section 1 test of the *Charter* analysis remains an open question.
  - In the absence of evidence from the City or a claimant, compounded by the uncertainty created by the jurisprudence, I would suggest that the City err on the side of caution and modify the definition of group homes and remove the separation distance.

# Number of residents

4. Replace “3 to 10 residents” with “a maximum of 10 persons.”

- A maximum number could be justified based on the *intensity of use*, impact, and compatibility.
- Hard to justify a minimum.

# Recommendations.....contd.

5. Before adopting the proposed City-wide Zoning By-law, review all its provisions in the context of the Ontario *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms*.

6. If the City has a reason to believe that a land use has an unwanted impact on its surroundings, then separation distances could be considered to alleviate such an impact. These distances, however, need to be appropriately rationalized based on the findings of a thorough study of facilities, activities, and functions associated with the specified land use and their impacts, along with public consultation.

7. Develop a Citizen's Guide to the proposed City-wide Zoning By-law, which could include, among other things, clarifications about and considerations respecting sensitive or incompatible uses and a brief rationale behind separation distances, if they are included.

8. Initiate a training program for the City's land use planners and policy makers to help them understand and apply the provisions of the Ontario *Human Rights Code*, the *Accessibility for Ontarians with Disabilities Act*, and the *Canadian Charter of Rights and Freedoms* in the context of municipal planning policies and practice.