

CARE HOME & NEIGHBOURHOOD REHABILITATION HOMES

Jessica Russell-Edmonds | Robert Kostiuik, MCIP, RPP, City of Winnipeg

ABSTRACT

In 2016, the Winnipeg Public Service initiated a review of the Winnipeg Zoning By-Law 200/2006. They identified 64 minor and 11 major amendments, one of which related to the regulations for care homes and neighbourhood rehabilitation homes. The rationale for the change was to shift the focus of the regulations from separation distances to the intensity of use and form in relation to the zoning district. These amendments, and the process it underwent prior to its approval by Winnipeg's City Council, reflects good planning practices in several ways. It rejects separation distances, a planning practice that have been found to not have a "sound, accepted planning rationale" as it relates to care homes and neighbourhood rehabilitation homes (Agrawal, n.d., 3). It corrects for the practice of exclusionary zoning, and ensures the regulations of care homes and neighbourhood rehabilitation homes could withstand a challenge under the Canadian Charter of Rights and Freedoms. Finally, in preparing the amendments for City Council's approval, the Public Service undertook thorough consultation. They spoke first to care home providers, provincial representative associated with supporting care home or care home programs, neighbourhood rehabilitation home providers, to understand how the regulations affected them and what they would like to see changed. Their comments and requests led to a few changes prior to being released to the public for comment. The final amendments, passed in January of 2017, will assist in reducing the barriers faced by providers and their residents

1.0 / INTRODUCTION

Zoning is a powerful tool at the municipality's disposal. They are empowered through their enabling provincial act to designate land for development in accordance with their development plan. One of the principle means municipalities do so is through zoning. Zoning specifies the uses which may occur on a parcel of land, and the size, type, and placement of buildings that may be placed upon it (Hodge, 2003). Zoning is, by its very definition, exclusionary. It forbids or excludes certain land uses on a given parcel of land, while permitting other. However, in practice, zoning can result in more than just non permitted uses being excluded.

2.0 / BACKGROUND

Exclusionary Zoning

While zoning seeks to regulate the use of space, it can transpire to act upon groups of people (Valverde, 2005). Known as 'exclusionary zoning', this is the collection of zoning practices that set "particularly high standards" for permitted residential uses, making these uses inaccessible to certain social groups (Skelton, 2012, 4). These practices could include minimum lot sizes, floor areas, and setbacks, restrictions on multiple dwellings, and minimum separation distances.

Canadian planning law has found this practice to be objectionable, and discriminatory under the Canadian Charter of Rights and Freedoms (Alcoholism Foundation of Manitoba v. Winnipeg [City]; Valverde, 2005). Despite this, it has been found to be a prevalent practice across Canada (Skelton, 2012).

Care Home and Neighbourhood Rehabilitation Homes

A shift in society's approaches to caring for people with mental or physical disabilities stimulated the idea of community-based care facilities, such as care homes and neighbourhood rehabilitation homes (Skelton, 2012).

In the 1970s, a belief developed that people with mental or physical disabilities living in institutional facilities should be integrated into communities, rather than segregated (Skelton, 2012). It was thought that if these individuals were placed in a residential setting and provided with appropriate supervision, supports and training, they could live happier and more satisfying lives (Agrawal, n.d.). As such, institutional facilities began a policy of deinstitutionalization. This transition from institutional facility to residential community living produced the idea of care homes and neighbourhood rehabilitation homes (Agrawal, n.d.; Skelton, 2012). They provided long-term, often permanent, housing for individuals with mental or physical disabilities who required support, care, or supervision in their daily lives.

In the following years, as the number of community-based care facilities increased. However, they were largely concentrated in the inner cities, due to the low value of land. Concern was expressed for the urban form and function of cities that were impacted by the concentrated use. Additionally, it was questioned whether community care had in fact replaced institutional care, given the high concentration of care facilities in one geographic location (Skelton, 2012).

Care homes and neighbourhood rehabilitation homes that established outside of inner cities were met with resistance by residents who opposed a facility in their neighbourhood. Opponents cited a variety of reasons, arguments which relied on prejudices and social fears, and have been described as NIMBY (Not In My Back Yard) in nature (Skelton, 2012). To appease opponents and address concerns related to overconcentration, municipalities began to utilize separation distances to regulate the siting of care homes and neighbourhood rehabilitation homes in their cities.

2.0 / BACKGROUND

Separation Distances

Separation distances are “intended to control the unwanted land-use impacts of specific type of property on the surrounding properties” (Agrawal, n.d., 12) (Figure 1). These land use impacts have typically included noise, odour, and dust (Finkler & Grant, 2011). Separation distances have also been used to manage the density of certain types of land uses in a neighbourhood, ensuring overconcentration does not occur (Agrawal, n.d.). Separation distances add a further level of regulation on land use. Not only must the land be zoned for a use that permits these facilities, but it also must be a certain distance away from the nearest care home or neighbourhood rehabilitation home.

As noted earlier, the application of separation distances expanded over time to uses where the traditional impacts were not a concern, such as day care centres, care homes, and neighbourhood rehabilitation homes (Finkler & Grant, 2011). This was viewed positively by planners. They were seen as a mechanism that ensured the goal of integration occurred, rather than segregation and concentration (Finkler & Grant, 2011). Furthermore, they were also a mechanism to ensure neighbourhood character is maintained (e.g.: single family residential) (Finkler & Grant, 2011).

However, the problems posed by minimum separation distances are numerous. First, they are discriminatory. By requiring a minimum distance between another community-based care facility, they constrain the residential location choice of people with mental or physical disabilities, a constraint that is not experienced by other city residents. They are a form of exclusionary zoning, and thus are discriminatory, under the Canadian Charter of Rights and Freedoms. Second, the minimum distance required between community-based care facilities is arbitrary. This distance varies across municipalities, as Finkler and Grant (2011) found in their review of minimum separation distances for group homes in Ontario, where they ranged from 75 metres to 800 metres. As such, it is difficult to justify one distance when in the adjacent municipality, it is substantially different. Third, as noted earlier, there is no solid planning rationale for using separation distances as the regulatory tool for community-based care facilities (Agrawal, n.d.).

Finally, one of the principles behind separation distances, integration into the community, is conceptually problematic from a disability perspective in three respects (Finkler & Grant, 2011).



FIGURE 1 | Winnipeg's Separation Distances for Care Homes and Neighbourhood Rehabilitation Homes Pre-Amendment

2.0 / BACKGROUND

First, community integration assumes developing relationships with individuals who do not have mental or physical disabilities is a method of gaining social acceptance. It seems to prioritize this relationship over bonds with people with mental or physical disabilities. This keeps the power structure of the relationship between individuals with mental or physical disabilities and able-bodied people intact. Second, integration into the community is seen as accepting their role in that power structure, rather than fighting against systemic oppression. Finally, academics do not agree on the impact of community integration on people with mental or physical disabilities. Some studies have shown integration to be a positive experience, while others have found just the opposite. However, broadly, minimum separation distances portray community-based care facilities as problematic uses that require spatial regulating, rather than as homes for fellow citizens (Finkler & Grant, 2011).

3.0 / CASE STUDY

Introduction

As part of the implementation plan of OurWinnipeg, the Winnipeg Public Service periodically reviews Winnipeg's two zoning by-laws: Winnipeg Zoning By-Law No. 200/2006 and Downtown Zoning By-law 100/2004. This review is conducted to address errors, omissions, any issues of clarity, or issues requiring improved alignment with OurWinnipeg and Complete Communities (City of Winnipeg, 2016). The previous review of Winnipeg Zoning By-Law No. 200/2006 had occurred in 2014. In this most recent review, the Winnipeg Public Service identified 64 'minor' and 11 'major' amendments. One major amendment that was proposed was "amending regulations for care homes and neighbourhood rehabilitation homes, and changing the existing focus from separation distances to the intensity of each use and form in relation to the zoning district" (City of Winnipeg, 2016).

The Winnipeg Public Service identified several potential changes for consideration; they are as follows.

Relating to Neighbourhood Rehabilitation Homes:

- amend its definition
- create a use specific standard limiting the number of occupants per home in low-density zoning districts
- create a use specific standard limiting the number of occupants per home in multi-family, mixed use, educational and institutional, and commercial districts

Relating to Care Homes:

- amend its definition
- adjust the maximum number of occupants per home in low-density zoning districts
- change the maximum number of occupants in multi-family, mixed use, educational and institutional, and commercial districts

Relating to both Neighbourhood Rehabilitation Homes and Care Homes:

- review and potentially adjust the minimum parking requirements
- eliminate separation distances

On July 5, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development agreed with the recommendation of the Winnipeg Public Service to proceed with amending Winnipeg's Zoning By-Law 200/2006. They concurred with the Winnipeg Public Service, and directed them to proceed with public and stakeholder consultation for these amendments.

3.0 / CASE STUDY

Policy Context

The decision to amend the regulations for care homes and neighbourhood rehabilitation homes is supported by Winnipeg's development plan, OurWinnipeg, and its urban structure-focused Direction Strategy, Complete Communities. The first direction in OurWinnipeg's Housing section (01-4) is to "support diverse housing options in each neighbourhood or neighbourhood cluster throughout the city" (City of Winnipeg, 2012, 54). The direction also references Complete Communities, as a document that provides guidance to achieving this objective.

Support for amending the regulations for care homes and neighbourhood rehabilitation homes is found in Complete Communities for several types of communities in Winnipeg. In Section 03-4 'New Communities', Direction 3 states, "New Communities will increase opportunities to live, work, learn and play in the same neighbourhood" (City of Winnipeg, 2011, 76). One of the enabling strategies for this direction is to encourage a greater range of housing type, density, style and tenure choices (City of Winnipeg, 2011).

For communities that are designated as Areas of Stability, such as Mature and Recent Communities, Complete Communities states to support the completion of these communities through a variety of strategies. One such strategy which supports the zoning amendment is to promote a mixture of housing types and tenures to meet the full life-cycle housing needs of Winnipeggers (City of Winnipeg, 2011). A second strategy identified is to ensure a diverse and high quality housing stock (City of Winnipeg, 2011).

OurWinnipeg and Complete Communities provide consistent support for the amendment of regulations relating to care homes and neighbourhood rehabilitation homes. The directions and strategies noted above support citing these homes throughout Winnipeg as part of creating communities which provide "opportunities for people of all ages and abilities to live, work, shop, learn and play in close proximity to one another" (City of Winnipeg, 2011, 4).

Legislation

In Winnipeg, care homes and neighbourhood rehabilitation homes are regulated through provincial and municipal legislation. The Province of Manitoba regulates care homes and neighbourhood rehabilitation homes in Manitoba through the Social Services Administration Act, and its supporting regulation, the Residential Care Facilities Licensing Regulation. This act and regulation defines what is a residential care facility, who is eligible to live in these facilities, who can operate one and how, the standards under which facilities operate, and how they are licensed. No direction is provided on the siting of care homes and residential rehabilitation homes.

The municipal legislation that pertains to care homes and neighbourhood rehabilitation homes is the Winnipeg Zoning By-Law No. 200/2006. The by-law defines them, and regulates in what zoning districts they are permitted, the maximum number of persons permitted, and the number of parking spaces.

BOX 1 | Legislative Framework for Care Homes and Neighbourhood Rehabilitation Homes

Public Engagement

All the amendments proposed by the Winnipeg Public Service for Winnipeg Zoning By-Law No. 200/2006 were taken to stakeholders and the public for their review and comment. Public engagement took place between late July and the end of October 2016 (City of Winnipeg, 2017). Meetings were held in August 2016 with care home providers, provincial representatives associated with supporting care homes or care home programs, and neighbourhood rehabilitation home providers. This was followed by the creation of a project website, accompanied by a survey for the public to complete. Finally, a public open house was held. 65 members of the public attended the open house, of which 27 individuals completed surveys. Another 40 surveys were received through the project website, for a total of 67 surveys.

Through the stakeholder meetings, the Public Service learned that care home providers and provincial representatives sought to eliminate separation distances, as they posed a series of problems. Providers noted the required public hearing takes time, delaying the purchase of a home, and possibly losing the opportunity to purchase it altogether.

3.0 / CASE STUDY

Providers also indicated that confirming there is not another care home within the separation distance is cumbersome and challenging. At times, providers indicated they received incorrect information regarding the proximity of other facilities, which would result in the home not being in compliance with the zoning by-law. Finally, separation distances created barriers for providers attempting to locate in close proximity to residents' family members or schools with services and supports for care home residents if another care home is located with the required separation distance.

The desire to remove separation distances was reiterated during the stakeholder meetings held with neighbourhood rehabilitation home providers. These providers also found them to be cumbersome, creating difficulty during the purchase process. Both the care home and neighbourhood rehabilitation home providers expressed support for requiring the home to look like a typical single-family dwelling, and felt the parking requirement needed no changes.

The Public Service received a mix of responses regarding the use specific standards related to the maximum number of occupants in a home. Some felt that maximums were not required, while others felt the maximum should be based on the zoning district (City of Winnipeg, 2017). Neighbourhood rehabilitation home providers noted that the minimum number of people needed to operate a home was six. Therefore, the maximum number originally proposed by the Public Service (four for low-density areas, six for all others) would be restrictive. To resolve this, the Public Service agreed to a use specific standard that limits the number of occupants of neighbourhood rehabilitation homes to six in low-density zones only.

The information gathered through the stakeholder meetings was then used by the Public Service to draft a survey. It would be distributed to the public at the open house and through the project website. The results of the survey showed the majority of respondents were supportive of the changes to care home and neighbourhood rehabilitation home regulations.

"I agree with the proposed changes to the care home regulations."

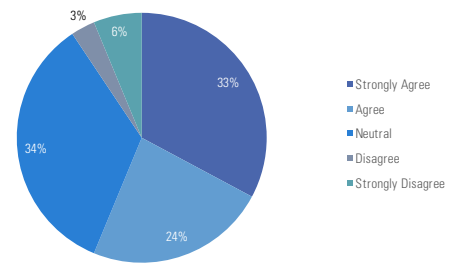


FIGURE 2 | Public Response to Proposed Amendment

"I agree with the proposed changes to the neighbourhood rehabilitation home regulations."

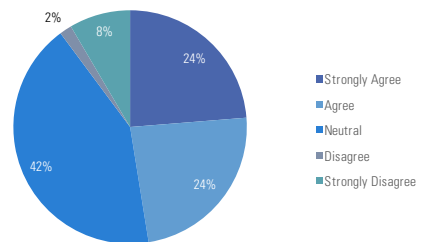


FIGURE 3 | Public Response to Proposed Amendment

Over half of the respondents agreed or strongly agreed with the proposed changes to the care home regulation (Figure 2), while just under half agreed or strongly agreed with the proposed change to the neighbourhood rehabilitation home regulations (Figure 3) (City of Winnipeg, 2017).

Conclusion

The final amendments to the regulations of care homes and neighbourhood rehabilitation homes that were put forth to City Council reflected the comments and concerns of care home and neighbourhood rehabilitation home providers, and were supported by the public. Winnipeg City Council passed these amendments into law by By-Law No. 148/2016 on January 25, 2017. Going forward, the Winnipeg Public Service will continue to monitor the issues regarding the intensity of use and use specific standards, and may make further amendments. There may come a time when regulating care homes and neighbourhood rehabilitation homes is not needed, and the regulations to those uses are removed entirely.

4.0 / CANADIAN CONTEXT

The City of Winnipeg is not alone in ensuring their zoning by-law regulations pertaining to care homes and neighbourhood rehabilitation homes are not discriminatory or exclusionary. As the City of Toronto was drafting a new citywide zoning by-law, the Dream Team, an advocacy organization representing people with mental health issues, brought a complaint to the Human Rights Tribunal of Ontario in 2010. They alleged that Toronto's zoning by-laws, those currently in force as well as the citywide by-law currently being drafted, were discriminatory. Specifically, they noted the separation distances for group homes and residential care homes discriminate against people with disabilities, and requested their removal from the by-laws (City of Toronto, 2013). This issue remains before the Tribunal.

In the meantime, the City Solicitor recommended to City Council that a planning expert should be retained to conduct a review of the land use planning and human rights issues related to group homes (City of Toronto, 2013). The planning expert hired Dr. Sandeep Agrawal, who found there was no "sound, accepted planning rationale" behind the use of separation distances for group homes, and recommended its removal, among other improvements (Agrawal, n.d.). This recommendation was accepted by the City, who, in 2014, amended Zoning By-Law 569-2013 to remove separation distances for group homes. The example serves as an alarm to other municipalities that separation distances are not acceptable, and result in a costly trip to human rights tribunals or provincial courts.

RESOURCES

Agrawal, S. (n.d.). Opinion on the Provisions of Group Homes in the City-wide Zoning By-Law of the City of Toronto. Retrieved on April 15, 2017 from <http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf>

Alcoholism Foundation of Manitoba v. Winnipeg (City), Manitoba Court of Appeal. (1990). Retrieved on April 8, 2017 from <http://canlii.ca/t/gb48v>

City of Toronto (2013). Final Report on the City-wide Zoning By-law: Supplementary Report on Human Rights Challenge to Group Home Zoning Regulations. Retrieved on April 15, 2017 from <http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf>

City of Winnipeg (2006). By-Law No. 200/2006.

City of Winnipeg (2011). Complete Communities. Retrieved on April 11, 2017 from <http://www.winnipeg.ca/interhom/CityHall/OurWinnipeg/>

City of Winnipeg (2012). OurWinnipeg. Retrieved on April 11, 2017 from <http://www.winnipeg.ca/interhom/CityHall/OurWinnipeg/>

Finkler, L. and Grant, J. L. (2011). Minimum Separation Distance Bylaws for Group Homes: The Negative Side of Planning Regulation. *Canadian Journal of Urban Research*, 20 (1), 33-56.

Hodge, G. (2003). *Planning Canadian Communities* (3rd ed.). Toronto: Nelson Thomson Learning.

Skelton, I. (2012). Keeping them at bay: Practices of Municipal Exclusion. *Canadian Centre for Policy Alternatives*. Retrieved on April 11, 2017 from https://www.policyalternatives.ca/sites/default/files/uploads/publications/Manitoba%20Office/2012/10/%20Full%20Report%20-%20Keeping%20them%20at%20bay%20FINAL_0.pdf

Social Services Administration Act, RSM, 1987. Retrieved on April 11, 2017 from <http://web2.gov.mb.ca/laws/statutes/ccsm/s165e.php>

Standing Policy Committee on Property and Development, Heritage and Downtown Development. (2016, July 5). Minutes.

Standing Policy Committee on Property and Development, Heritage and Downtown Development. (2017, January 17). Minutes

Valverde, M. (2005). Taking 'land use' seriously: towards an ontology of municipal law. *Law Text Culture*, 9, 34-59.