COMMUNITY LIVING London

Inspiring Possibilities

July 25, 2017

Attention: Heather Lysynski, Committee Secretary

Public Meeting Submission Re: Amend Section 4.8 (Group Homes) and Section 2 (Definitions) of Zoning By-law No.Z.-1.

Community Living London (CLL), in collaboration with families and the community, is a registered charity dedicated to supporting people with developmental disabilities to live inclusive, fulfilled lives. We are writing today to speak against the discriminatory provisions in the City's Zoning By-law which are designed to defeat community inclusion for persons with developmental disabilities.

The definition of "Group Home Type 1" and "Supervised Residence" profiles the characteristics of residents: "who, by reason of their intellectual, mental health, social, or physical condition or legal status, require a group living arrangement for their well-being". Section 4.8 of the City's Zoning By-law sets minimum distance separations ("MDS") and minimum gross floor areas for Type 1 Group Homes and Supervised Residences. This section also requires Supervised Residences to be restricted to specified uses. These provisions are inherently discriminatory and are not supported by any land use planning justification.

CLL has provided City staff with information related to successful challenges to similar discriminatory practices in other municipalities, namely, in Toronto, Sarnia, Kitchener and Smith Falls. These municipalities have now removed the discriminatory MDS criteria for group homes like those operated by CLL.

The Ontario *Human Rights Code* and the Canadian *Charter of Rights and Freedoms* enshrine the right of all Ontarians to equal treatment with respect to the occupancy of accommodation without discrimination based on disability.

In 2013, the City of Toronto commissioned a report by Dr. Sandeep Agrawal, a land use planning expert with knowledge of the interaction between planning and human rights issues. His report concluded that the definitions and MDS applicable to group homes were not supportable on land use planning and human rights grounds and recommended their removal. Dr. Agrawal's report specifically references the phrase "by reason of their intellectual, mental health, social, or physical condition or legal status" and a 250 metre MDS between group homes. These reports and recommendations do not apply to group homes or residential care homes used for correctional purposes.

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Toronto then directed its own staff to review the matter further, in consultation with Provincial Ministry representatives. City Staff reached the same conclusion as Dr. Agrawal: there is no land use planning justification to include a MDS for Group Homes in a zoning by-law. As for increased zoning restrictions and a larger MDS for Supervised Residences, which are "Group Home Type 1" designations with more than eight residents, the Report notes that this would be like imposing MDS on residential apartment buildings.

Ultimately, Toronto's Council agreed with the experts and voluntarily removed the zoning restrictions. The City of Toronto's decision to voluntarily remove these provisions resolved the legal dispute, but not before the City (and its taxpayers) incurred significant legal costs. The City of Toronto incurred substantial legal expense to fight this battle at the Ontario Human Rights Tribunal; Divisional Court; in retaining Dr. Agrawal to prepare an expert report; and, considerable municipal staff resources.

Now it is time for London to decide whether it wants to incur similar costs to defend a minimum distance separation requirement when ***"there is no planning evidence that exists in support of the need for a 250 metre separation distance between group homes."***

In addition to lacking planning justification, these restrictions are discriminatory and result in unequal treatment of persons with disabilities in respect of their right to live in the location of their choice while accessing the housing accommodations that they require to live independently and inclusively in the community.

Examples of Adverse Effects

These discriminatory effects are not theoretical. CLL and its members have experienced ongoing discrimination as a direct result of the MDS. As a result of the rapidly escalating housing market in 2016, CLL and its members have several clear illustrations of the discriminatory effect of London's land use restrictions on group homes. For one example, an investor submitted an offer to purchase a home for people supported by CLL. The offer was necessarily subject to zoning approval from the City of London and the request for approval went to the City on October 27, 2016. The property was then sold to another bidder where no condition for zoning approval was a factor, and the CLL request had to be withdrawn on November 1, 2016. The discriminatory zoning condition was the regulatory obstacle which made CLL's offer less attractive than competing offers. With the housing market in London at its peak in 2016, requiring any offer to be conditional on zoning is effectively preventing CLL and its members from acquiring new properties.

In addition to preventing the purchase of existing properties, the MDS has also had an adverse impact on properties developed by CLL. In 2016, CLL worked with Habitat for Humanity and built two homes on Forbes Street. Although it would have made more sense from a financial and resource perspective for CLL to build two 3-bedroom houses on Forbes Street, this could not be done without first obtaining a minor variance. CLL has participated in the minor variance process in the past and the experience was extremely difficult due to the sort of profiling that the By-law actually fosters. Community meetings were dominated by expressions of quintessential NIMBY-ism and the people supported by CLL were forced to listen to offensive, discriminatory and unfounded statements by their potential neighbours. But for their disability, these people would not need to seek approval of the neighbourhood or the City before they moved into a home. Section 4.8 of the Zoning By-law was the only reason CLL was not able to build two 3-bedroom houses on Forbes Street as of right.

Conclusion

CLL has had a long, respectful and professional relationship with the City of London over many years. CLL intends to maintain that relationship while this matter is being determined by Council and, if necessary, adjudicated by the Ontario Human Rights Tribunal. While it is prepared to work with the City to resolve this issue co-operatively, CLL has an obligation to the people it supports and their families to ensure that they are treated fairly and that they do not face continuing discriminatory treatment by the City in which they live.

It is important to note that all of Community Living London's group living homes are inspected by employees of the Provincial Government, our funder. We are required to have homes well maintained, to provide adequate supervision to meet the individual needs of the residents, we are required to have annual fire inspections and must comply with any orders made immediately.

Our direct support professionals are qualified and trained. They focus on positive neighbour relations, and assisting the people we support to form lifelong relationships within their community.

We trust City Council to make the right decision – the only legal decision – to abolish this discriminatory practice which negatively impacts people with a disability from having the same right to choose where they live as all other citizens.

Aileen Watt, Manager of Accommodation Services