Minimum Separation Distance Bylaws for Group Homes: The Negative Side of Planning Regulation

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Abstract
Disputes related to group homes in Ontario reveal ways that planning tools can facilitate discrimination and limit housing opportunities for some populations. Using a mixed methods approach, the research examines minimum separation distance bylaws applied to group home location: it finds that ostensibly neutral zoning instruments such as separation distance bylaws may generate adverse impacts upon disabled persons and thus limit access to housing.

Keywords: group home, disabled, zoning, minimum separation distance, discrimination
Résumé
Les litiges relatifs aux foyers de groupe en Ontario révèlent que certains d'outils de planification peuvent faciliter la discrimination et limiter les possibilités de logement pour certaines populations. Utilisant des méthodes mixtes, cette recherche porte sur le règlement de distance de séparation minimum appliqué à un foyer de groupe. Elle constate que des instruments apparemment neutres tels que les réglementations de zonage distance de séparation peuvent générer des impacts négatifs sur les personnes handicapées et limiter l'accès au logement.

Mots clés: foyer de groupe, personnes handicapées, zonage, distance minimale de séparation, discrimination

Integration in Theory and Practice
The theory that influences contemporary community planning policy values diversity and embraces the idea of social mix and community integration. Reviewing planning practice in communities across Ontario (Canada), however, reveals that zoning instruments can be used to discriminate even in a context where planners and policy-makers emphasize the benefits of integration. In this paper, we examine planning and adjudicative treatment of an identifiable form of housing—group homes—before the Ontario Municipal Board (OMB) as we address aspects of systemic discrimination in housing for disabled persons¹. Although the OMB—the administrative tribunal that adjudicates land use disputes in Ontario—has overwhelmingly supported disabled persons' right to live in residential areas (Finkler 2006), community resistance generates development delays, increased housing costs, and lengthier waiting lists for supports and services (OHRC 2008). We contend that planning policies and practitioners across the province engage the rhetoric of community integration and social mix to justify imposing otherwise unnecessary restrictions upon housing for disabled persons. Efforts to meet the housing needs of particular categories of tenants reveal the “dark side” (Yiftachel 1998) of a planning practice that seeks to be socially progressive.

In recent decades planning scholars have paid increasing attention to issues of gender (Rahder and Altilia 2004; Fenster 1999), class (Harvey 1996), race (Sen 2005; Umemoto 2005; Sandercock 2003), age (Rosenberg and Everitt 2001), sexual orientation (Dubrow 2003), and physical disability (Gleeson 2001). Historically, much has been written about exclusionary zoning (Dear 1992; Dear and Wolch 1987; Dear and Laws 1986). The planning literature has addressed disability-related housing issues primarily (although not exclusively) in the context of the NIMBY (not-in-my-back-yard) phenomenon (Sullivan 2007; Schivelly 2007; Gleeson 1997; Takahashi and Dear 1997; Dear 1992). Less is known about
how planning and tribunal processes manage applications for housing projects for populations who may not be welcomed in communities.

Here we focus on disputes around permitting group homes for disabled persons. We emphasize one form of housing—group homes for disabled persons—to the exclusion of others (such as open custody facilities, women's shelters, transition housing, homeless shelters) to emphasize long-term housing rather than temporary accommodations: for disabled persons, group homes often become permanent housing. Our focus on group homes does not suggest uncritical support for this type of housing: disabled persons have indicated they prefer independent apartments rather than communal settings (Forchuk et al. 2006; Johnson 2001). Consequently, there has been a philosophical, if not practical, move away from congregate housing (Walker and Seasons 2002). Nonetheless, group homes remain significant housing options for some disabled persons, and the processes by which homes are permitted prove worthy of study.

Unlike other forms of congregate housing, such as half way houses, the group home is defined in detail in provincial law, with specific parameters governing number of inhabitants and required physical arrangements. It therefore receives particular treatment under planning processes. Group homes often house disabled tenants—i.e., persons with physical or developmental disabilities or psychiatric survivors (persons who have or had a psychiatric disability)—although some may accommodate youths or other populations. In contrast to boarding homes, rooming houses, or lodging houses, group homes are a readily identifiable form of long-term housing whose adjudicative treatment has a somewhat chequered legislative history (Finkler 2009).

In our analysis, we examine the language that frames planning disputes about group homes in Ontario. While cases are often resolved short of an OMB hearing, we explore well documented applications where local officials refused permissions and appeals ensued. Using mixed methods, we illustrate how planning policies and bylaws contribute to discrimination against one of the least powerful groups in society. We begin by describing minimum separation distances, a planning tool commonly used in Ontario. We articulate the strategies and rationales employed by participants in the planning process. Although the research is part of a larger study investigating the way that notions of disability are socially constructed in Ontario planning processes, here we focus specifically on the way minimum separation distances regulate the location and number of group homes. Evidence suggests that planning instruments can systematically undermine opportunities for developing group homes for disabled persons. Moreover, we demonstrate how planning principles that promote progressive notions of social mix and community integration may simultaneously be used to legitimate reduced housing opportunities for particular categories of residents.
Minimum Separation Distances and Restrictive Zoning

Minimum separation distances are typically used to limit the impact of noise, odour or dust on others (e.g., Alberta 2006). Over time, municipalities have adapted the concept to regulate other uses like day care centres and group homes. Minimum separation distance bylaws typically dictate that group homes must be a specified minimum distance apart to prevent a concentration of such uses. If a new group home were too close to an existing one, then the bylaw would prevent the second proposed home from being established at the desired location. Separation distance bylaws take zoning restrictions a step further by adding distancing requirements to particular permitted uses.

Since the 1980s, studies have suggested that restrictive zoning makes discriminatory sentiments manifest. For instance, The Obstacles Report, a federally funded government report that described systemic barriers facing disabled persons, noted that:

Municipalities make it very difficult for disabled persons to lead independent lifestyles. Some municipal by-laws prohibit the establishment of group homes. Others reflect a very negative attitude toward any presence of disabled organizations. These short sighted policies do not belong in the twentieth century (Special Committee on the Disabled and Handicapped 1981, p. 77).

A study initiated by the City of Toronto in 1984 described discriminatory sentiment expressed towards psychiatric survivors in the metropolitan area and advocated community integration.

There are sincere people who believe in community mental health care, yet continue to insist “not on our street”. We view this attitude as misguided and firmly maintain that these fears can only be allayed by the continued successful integration into the community of caring environments for the psychiatrically disabled (Mayor’s Taskforce on Discharged Psychiatric Patients 1984, p.126-127).

The Kirby Report (Standing Senate Committee on Social Affairs, Science and Technology 2006) and the Ontario Human Rights Commission Report on Discrimination in Rental Housing (2008) discussed, among other issues, disproportionate and unfairly imposed requirements for public consultation as well as use of exclusionary zoning to restrict disability-related housing. The reports acknowledged that municipal governments create systemic barriers to establishing group homes and supportive housing, but neither federal nor provincial reports recommended municipal bylaw changes.
Planners increasingly advocate de-concentration (Goetz 2003), the idea that affordable housing should be distributed throughout a municipality to avoid excessive local impacts (Galster et al. 2003). In a context where community design models like new urbanism advocate mixed use and mixed housing types at a fine grain level (Duany et al. 2000), the notion of de-concentrating housing for disabled persons in order to facilitate community integration resonates with progressive planners. The model presumes that disadvantaged households scattered through the city will integrate with their neighbours, while larger clusters of them would be socially isolated from non-disabled society. Planners increasingly promote strategies to integrate disabled persons: for instance, in an effort to respond to concerns about accommodating wheelchair users, new urbanism developments have made recent efforts to alter architectural design standards and incorporate elements of physical accessibility (Langdon 2009).

In contrast to the planning approach, lawyers and housing advocates approach restrictive zoning from a human rights perspective and challenge exclusionary bylaws. They argue that anti-discrimination laws such as the Ontario Human Rights Code cover disabled persons, including psychiatric survivors (Homecoming 2005). Municipalities are subject to the Code. Some suggest that zoning that restricts group home location discriminates on the basis of disability as group homes so often house disabled persons. Advocates acknowledge, however, that exorbitant legal expenses generally preclude protracted court battles to assert rights: housing providers find it less expensive to compromise with the opposition than to fight them (Connelly 2005). Consequently, explicit human rights challenges to planning processes or outcomes prove rare.

Sometimes the planning system faces legal challenges to planning outcomes that project proposers or community members find objectionable. As a context to understanding the way that group home location is regulated and sometimes contested, the next section briefly introduces the process for making land use decisions.

**Land Use Law Processes**

Land use in Canada is governed by provincial legislation that mandates public participation and efforts at consensus building. Absent community agreement, provincial statutes may permit an appeal to an administrative tribunal. In Ontario, local residents or housing providers may, under specific conditions, appeal municipal decisions to the Ontario Municipal Board (OMB). The OMB addresses various disability-related issues that may be involved in planning cases. Analysis of OMB cases shows that group homes have often been the subject of appeals. Individuals or citizens’ groups opposed to the siting of group homes in their neighbourhood, or housing providers whose development applications have
been refused, may challenge a municipality’s decision. A preliminary investigation of OMB disability-related decisions identified community integration as a common theme raised by participants in the cases (Finkler 2006). Minimum separation distances also figured prominently, often described as supportive planning policy for integration. In one OMB case (OMB 548 [2004]), an organization supporting developmentally disabled individuals operated a group home in three units of a housing co-operative. Because of the minimum separation distance by-law, the non-profit provider was forced to apply for a variance, which was denied. On appeal to the OMB, the adjudicator stated that there, “was no basis on which (the Committee of Adjustment) could reach this conclusion” that group homes in neighbouring units could not be approved (OMB 548 [2004] par 10). The adjudicator overturned the Committee of Adjustment decision and permitted the group homes in the co-op to coexist.

**Bylaws Regulating Group Homes**

Given the prominence of minimum separation distances in the OMB decisions, we wished to determine whether use of such bylaws was common across the province. In April 2007, we developed a list of Ontario cities as determined on the Ministry of Municipal Affairs and Housing web site. We then contacted planners for each of the 45 cities to obtain their current group home bylaws. We analyzed the bylaws to provide a useful snapshot of planning practice in the province. At the time, 42 of 45 Ontario cities surveyed had enacted group home bylaws. Thirty-five cities had separation distance requirements to further regulate group homes (see Table 1): the shortest separation distance required was 75 metres (St. Thomas), the longest 800 metres, with an average of 301 metres. Both Mississauga with its 2006 census population of 668,549 and Quinte West with 42,697 people employed 800 metre separation distances. Port Colborne with 18,599 and Hamilton with 504,559 people set distances of 300 metres. The City of Toronto, which harmonized its post amalgamation bylaws in August 2010, requires a minimum separation of 250 metres between group homes. The inconsistency in distance requirements illustrated a measure of arbitrariness that defied simple explanations.

Sometimes bylaws stipulated different separation distances for varying types of group homes. For example, in the City of Vaughan, “Group Home Type 1” which housed disabled persons, was subject to a separation distance of 300 metres. “Group Home Type 2” subjected housing within a corrections context to a separation distance of 1000 metres. The City of Vaughan used separation distance requirements to regulate particular people by limiting housing permitted. Vaughan bylaws did not mention structural differences. Inhabitants and regulatory regimes under which group homes were administered differentiated the housing types and local regulatory response. Although bylaws framed their lan-
## Table 1: Minimum Separation Distance Bylaws for Group Homes in Ontario

Municipalities (April 2007)

<table>
<thead>
<tr>
<th>City</th>
<th>Separation distance</th>
<th>Metres specified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barrie</td>
<td>yes</td>
<td>Not specified</td>
</tr>
<tr>
<td>Belleville</td>
<td>yes</td>
<td>250 m</td>
</tr>
<tr>
<td>Brampton</td>
<td>yes</td>
<td>120 m</td>
</tr>
<tr>
<td>Brantford</td>
<td>yes</td>
<td>180 m</td>
</tr>
<tr>
<td>Brockville</td>
<td>yes</td>
<td>215 m</td>
</tr>
<tr>
<td>Burlington</td>
<td>yes</td>
<td>400 m</td>
</tr>
<tr>
<td>Cambridge</td>
<td>yes</td>
<td>200 m</td>
</tr>
<tr>
<td>Clarence-Rockland</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>Cornwall</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>Dryden</td>
<td>yes</td>
<td>200 m</td>
</tr>
<tr>
<td>Elliot Lake</td>
<td>No group home bylaw</td>
<td></td>
</tr>
<tr>
<td>Guelph</td>
<td>yes</td>
<td>100 m</td>
</tr>
<tr>
<td>Hamilton</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Kawartha Lakes</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Kenora</td>
<td>yes</td>
<td>500 m</td>
</tr>
<tr>
<td>Kingston</td>
<td>yes</td>
<td>250 m</td>
</tr>
<tr>
<td>Kitchener</td>
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<td>400 m</td>
</tr>
<tr>
<td>London</td>
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<td>Not specified</td>
</tr>
<tr>
<td>Mississauga</td>
<td>yes</td>
<td>800 m</td>
</tr>
<tr>
<td>Niagara Falls</td>
<td>yes</td>
<td>350 m</td>
</tr>
<tr>
<td>North Bay</td>
<td>yes</td>
<td>200 m</td>
</tr>
<tr>
<td>Orillia</td>
<td>No group home bylaw</td>
<td></td>
</tr>
<tr>
<td>Oshawa</td>
<td>yes</td>
<td>500 m</td>
</tr>
<tr>
<td>Owen Sound</td>
<td>yes</td>
<td>Not specified</td>
</tr>
<tr>
<td>Pembroke</td>
<td>yes</td>
<td>365 m</td>
</tr>
<tr>
<td>Peterborough</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Pickering</td>
<td>No group home bylaw</td>
<td></td>
</tr>
<tr>
<td>Port Colborne</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Quinte West</td>
<td>yes</td>
<td>800 m</td>
</tr>
<tr>
<td>Sarnia</td>
<td>yes</td>
<td>200 m</td>
</tr>
<tr>
<td>Sault St Marie</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>St Catherines</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>St Thomas</td>
<td>yes</td>
<td>75 m</td>
</tr>
<tr>
<td>Stratford</td>
<td>yes</td>
<td>250 m</td>
</tr>
<tr>
<td>Sudbury</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>Thunder Bay</td>
<td>yes</td>
<td>240 m</td>
</tr>
<tr>
<td>Temiskaming Shores</td>
<td>yes</td>
<td>200 m</td>
</tr>
<tr>
<td>Thorold</td>
<td>yes</td>
<td>458 m</td>
</tr>
<tr>
<td>Timmins</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Toronto</td>
<td>yes</td>
<td>Varies by neighbourhood</td>
</tr>
<tr>
<td>Vaughan</td>
<td>yes</td>
<td>300 m</td>
</tr>
<tr>
<td>Welland</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>Windsor</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
<tr>
<td>Woodstock</td>
<td>No separation distance bylaw</td>
<td></td>
</tr>
</tbody>
</table>
guage in terms of the mandate of operating agencies or the nature of institutional uses, the effect of separation distances was to restrict the type and / or number of people who can live within residential neighbourhoods.

Bylaws of Elliot Lake, Orillia, and Pickering remained silent on group homes. These municipalities required site-specific amendments for group home applications. Orillia’s lack of policy on group homes seemed particularly surprising as it was the closest city to Huronia Regional Centre, an institution for developmentally disabled persons that closed in March 2009 (Ontario 2009). Despite the government’s intention to relocate disabled inhabitants to group homes, Orillia did not enact group home bylaws. Instead, it used its generic definition of “dwelling unit” to regulate and limit group homes. Orillia’s Bylaw part 2 (2005-72) stated that, “Within a dwelling unit no service or care shall be provided for monetary consideration to more than five persons.”

The vigour with which separation distance bylaws are applied may vary widely. Municipal councils have some latitude in determining the process by which the community manages rezoning applications. In situations where planning staff, municipal councillors, or local residents believe that a group home is not desired in a particular location, the separation distance bylaws provide a tool with which municipalities may justify refusing an application.

Use of Minimum Separation Distance Bylaws

The review of group home bylaws in Ontario revealed the potential for the systemic use of minimum separation distances to limit the number of group homes that could be established. By imposing distance requirements, municipalities prevented developers from opening homes in areas in which group homes already existed. For example, one community based non-profit organization received a donated property to be used as a group home; the organization could not accept the property because of a pre-existing group home in the vicinity (Monsebraaten 2010). In another case, a non-profit housing authority wished to use one of its properties as a group home but was not permitted (Moloney 2010). Despite the zoning pressure exerted by separation distances to disperse group homes, operators are unlikely to purchase properties far from central locations. Typically, group home tenants do not own vehicles and do not wish to rent out of walking distance from social services and amenities (Zippay and Thompson 2007; Wilton 2004). As Fillion (2000, p. 182), noted,

The land use-transportation dynamic of dispersion which is so accommodating to automobile users, makes it virtually impossible to function without a car. Transportation options are thus brought to a minimum with dire consequences for those who cannot use an automobile because of age, disability or insufficient financial resources.
The bylaws paid limited attention to issues of access to amenities or services for group home tenants. Within the bylaw documents, municipalities and the planners they employed made little effort to legitimate standards they set. Sometimes, municipalities imposed more rigid standards than those suggested by provincial authorities (Secretariat for Social Development 1983). Bylaws typically reduced opportunities to build group homes.

Textual review of the documents suggests that municipalities often borrowed group home separation distance standards and bylaw language both from one another and from provincial statute. Municipalities made limited efforts to justify the standards they set according to the need for accommodations or city size. To get a better sense of how municipalities handle applications for group homes and use separation distance bylaws we investigated appeals of two cases in a single Ontario municipality.

Case Study Disputes

To understand municipal rationales for restrictive zoning, we conducted a detailed investigation of two related disputes about group home locations in a community we call Townville. The OMB adjudicated both disputes. In the first case, which we call OMB-1, the building owner applied for a permit to convert a large house to a group home for 16 psychiatric survivor tenants, people who had lived together at another location but were forced to move due to a fire. The same building had previously housed 16 members of an extended family; no exterior physical changes to the building were proposed. At the time, Townville did not have a group home bylaw. Planners considered the proposed use residential; however, citing the number of housing developments for disabled persons already in the downtown area, Townville council refused the group home permit. The developer appealed to the OMB and won approval for the group home. In the second case, OMB-2, the same group home operator appealed Townville’s adoption of a minimum separation distance bylaw for group homes. The operator lost that case at the OMB and the town bylaw survived the legal challenge.

While the cases hinged on several issues, minimum separation distances and tenant characteristics figured prominently in the discourse. In OMB-1, Townville planners testified at the OMB that the operator’s property could not be rezoned without exacerbating an “over-concentration” of group homes already situated in the downtown area. They noted that town council wished to establish minimum separation distances between group homes to distribute them evenly across districts.

When we interviewed Townville employees, a planner and a solicitor both emphasized that they viewed the purpose of separation distances as socially positive. Planner #1 explained the town’s position:
The Official Plan said that the town would provide appropriate special needs housing. We did not think that the site chosen was an appropriate location for a group home. “Appropriate” means integration not over-concentration. We were trying to help group home residents integrate into society. We didn’t think that would happen if they were concentrated in one area.

The planner elaborated upon the “best interests” of group home tenants and suggested that the goal of integration required spatial distribution of group homes. Townville’s solicitor used more provocative words to reinforce the point that clustering group homes was undesirable.

It is not in the interest of the residents of group homes to be—I’m using strong language here but—ghettoized by all finding themselves living in the same block on a particular street in town....The idea is integration into community, not isolation within part of the community....In order to achieve this objective of integration and belonging in a community, some distance separation was considered appropriate.

While stating that it was “not in their interests” to “be ghettoized,” Townville counsel did not elaborate upon the meaning of either phrase. The use of the second term implied that if group homes were visibly clustered, they might become a target for discrimination.

Planner #2 illustrated the belief that group homes constituted an intrusion into a neighbourhood. The planner privileged the interests of those living in single detached homes in the neighbourhood prior to the application for a group home while implying that group home tenants threatened neighbourhood character and “family values.”

[The land use implications of six or eight people unrelated living together with two staff persons may be different from land use implications of mom, dad, and four kids....There are people who believe we have these things called single-family residential neighbourhoods and that we are supposed to protect those from all other kinds of uses that may impact on the quietude of neighbourhoods.... The Planning Act does not provide us with the opportunity to protect single-family homes, but protecting the character of neighbourhoods is still something we need to do.

In a back-handed way, the planner acknowledged that the bylaw provided a mechanism whereby the town could exclude residents who might be perceived as threatening the “family” character of the neighbourhood.
Community Integration and Social Mix

On one hand, municipal staff members believed minimum separation distances promoted community integration. From that perspective, planners argued separation distances benefitted disabled persons, while offering no specifics on how social integration might occur. On the other hand, planners believed separation distances preserved neighbourhood character by limiting unwanted changes in residential areas. In that view, separation distances were good for everyone else as they maintained social homogeneity.

A town solicitor suggested that group homes generate particular kinds of effects that neighbourhoods may not be able to absorb. The concept of balancing competing interests featured strongly in the solicitor’s comments.

When people buy houses in residential neighbourhoods they have an expectation that the uses of that neighbourhood will be complementary ... We’re talking about... group homes: they are often quasi-institutional. There’s often a high degree of support provided, not in every case but in many cases a high degree of support is required and provided for the occupants, the residents....Because we permit up to eight, it’s a level of occupancy in density terms that’s higher than the typical residential neighbourhood. We have issues around parking, deliveries, and the ability of our neighbourhoods to accept and absorb those kinds of things that come with these uses. We did a generic approach. Some residents, based on the nature of their ability or disability...require a higher degree of supervision than others. We are trying to balance the competing interests and come up with something that would be respectful and permissive of the needs of the entire community.

In “balancing” interests, the town highlighted the interests of nondisabled residents opposed to the presence of disabled tenants who might “require a higher degree of supervision.”

The adjudicator who heard OMB-1 overturned Townville’s decision. The operator won on several counts, including the town’s attempt to enforce a minimum separation distance that it had not officially adopted. The decision explained:

The Board rejects the planning argument advanced by the planner called on behalf of the Town that if the application were approved it would create an over-concentration of group homes in the neighbourhood and that it does not support the Provincial and Municipal goals of integration within the broader community. No such Provincial goal was demonstrated and the Town had no policy.
with respect to separation distances or performance measures for "concentration" of group homes nor did the Town have a policy in effect at the time the application was submitted to the Town for approval…. There was no Town policy against which to measure this. The Board rejects the notion that it is "good planning" to impose such criteria in the absence of an approved Town policy that would guide applicants when making an application.

The location of this group home at the heart of the community is integral to the function and operation of this facility. Residents have opportunity, under supervision, to be properly integrated within the community fabric. The residents of this group home will have immediate access to transit, the regional hospital and the diversity of uses in the downtown core of [Townville] including retail, community facilities and recreational uses in this location. Finally, the physical location of this home is critical to integration within the community whose residents have opportunities for access and choice.

The decision revealed that the adjudicator accepted the goal of community integration, but challenged the way in which Townville planners and council claimed they could achieve it. In dismissing the planners’ claims that good planning meant avoiding concentrating group homes, the adjudicator reminded the town that in the absence of an adopted policy limiting group home location, the town must approve the project.

Ultimately, the group home received its permit. Subsequently, Townville council passed a group home bylaw to impose a minimum separation distance for new group homes. Given an ongoing commitment to enabling group homes to locate near the centre of Townville, the same operator appealed the new bylaw to the OMB, initiating case OMB-2.

In rendering the decision on OMB-2, the adjudicator succinctly described the operator's motivations for the second appeal.

The operator objects to the proposed separation distance of [XX] metres for group homes. It is the operator’s claim that this proposed separation distance is discriminatory.

Defending Townville’s actions, planners referred to the province’s manual recommending minimum separation distances which suggested linking the distance to the number of tenants in each home (Secretariat for Social Development 1983). They submitted the following excerpt from the provincial document:
A residential dwelling may be used for a group home provided there is no group home or similar facility within a minimum distance from the building... depending on the approved capacity, excluding staff, of the approved facility.

The town's submission suggested municipal planners were relying on provincial government policy, a policy that implicitly accepted the argument that a neighbourhood has a limited capacity to integrate group home tenants. In OMB-2, the town solicitor sought support of local non-profit agencies that administered group homes. A social worker who had been involved with group homes for more than two decades, argued at the hearing:

[R]esidents of group homes are more compatible with each other and the neighbourhood when the people are housed in smaller groups of approximately three to five. Smaller groups tend to fit better into neighborhoods than larger groups that are in close proximity to one another.

The issue of the compatibility of group homes with residential neighbourhoods was frequently discussed in the hearings. At times, concerns about compatibility referred to structures; more frequently, though, they referred to inhabitants. Adjudicators did not define "compatibility" in rendering their decisions. However, previous Board decisions offered some guidance on the matter. In one 1998 case, the adjudicator talked about the relationship of structures to each other.

The Board has often stated that compatibility need not be "sameness" of built form and density. It is achieved through providing a proper relationship between the new and the existing, especially at its interface ([1998] OMBD No. 153, par. 49).

Members of the OMB looked for precedents in other cases as they tried to resolve particular issues. An adjudicator in another case described compatibility in terms of limited impacts:

[T]he term "compatible" is defined in Cityplan as development or redevelopment which may not necessarily be the same or similar to the existing or desired development but nonetheless co-exists with existing development without unacceptable adverse impact on the surrounding area ([2000] OMBD No. 268, par. 21).

While adjudicators we interviewed insisted that they based their decisions on the use, rather than the user, the wording of OMB decisions sometimes suggested otherwise. In OMB-2, the adjudicator discussed compatibility in terms of the
relationship between individuals who would reside in the home and those already in neighbourhoods. The decision rendered demonstrated that the adjudicator in OMB-2 pondered the town’s concerns about over-saturation and integration.

It was the evidence of the [town’s planner] that the Province supports the setting of group homes in residentially designated areas. They stated that integration is best achieved for the residents in areas that do not have an over-saturation of group homes.

The concern implied that a large number of group home residents would preclude social integration. The adjudicator in OMB-2 did not define “over-saturation.” The metaphor, drawn from chemistry, suggests that a solution—the neighbourhood—can only absorb a particular amount of an admixture—group homes—before something undefined but potentially problematic precipitates. Six other OMB adjudicators utilized the same phrase in decisions, often with regard to waste management disputes (See, for example, [2008] OMBD No. 264).10

Interviews with participants in the Townville disputes exposed perceptions that the town could rightly worry about “too many” psychiatric survivors—the intended residents of the facility in question—in a neighbourhood. In response to a question about the minimum separation distance bylaw in OMB-2, town councillor #2 indicated agreement with the bylaw and explained, “I think you could have an unreasonable amount of those types of services.” Rather than explicitly acknowledging community opposition targeting residents of the home, the councillor depersonalized the problem and referred to “those types of services.”

In OMB-1, both town councillor #1 and town councillor #2 supported the group home operator, even at the OMB. However, in OMB-2, municipal officials did not testify on the operator’s behalf. Town councillor #2 explained why.

I do not have a problem with that [minimum separation distance bylaw]. We have a number of homes in [Townville] providing that type of service… People who are mentally handicapped in one way or another…they walk the streets continuously, which is good, and I do not have a problem with that, but I think a lot of people do have a problem with that. When I am looking at that, I have to put it in the context of the social atmosphere of the entire community not just what I think or what I may want to do ….I understood not the need, but rather the rationale for the bylaw.

The councillor justified the limitation on location of group homes because “a lot of people” have a problem with the behaviour of potential group home residents. Community members interviewed saw councillor #2 as an advocate for marginalized persons, yet the councillor’s comments reflected the belief that group home
residents could negatively affect the “social atmosphere of the entire community”. Other respondents put similar concerns in different terms. Social worker #1 said:

[Townville] has lots of homes for special care and domiciliary hostels. The tenants who live there have that homeless look. Everyone can tell they are [psychiatric] consumers. They wander through the stores downtown. Some store owners are fine. Others can’t get them out the door fast enough. There is not a groundswell of support for them in the community.

The planning rationale for the bylaw provided a legitimation that the respondent accepted and reiterated, but social reasons for excluding psychiatric survivors lingered close to the surface for most respondents.

Although the OMB adjudicator justified rejecting the operator’s appeal of the bylaw by citing the planning logic of integration and compatibility, town staff and council members revealed underlying community fears about the behaviour of group home residents. The planning rationale served as a persuasive argument before the tribunal, but expressions of hostility and fear emerged repeatedly through the personal interviews.

Socially Progressive Sentiments Justifying Discrimination

Provincial bodies such as the Ontario Ministry of Municipal Affairs and Housing (2005) and the Ontario Human Rights Commission (2009) have consistently encouraged municipalities to provide affordable housing for disabled persons in residential neighbourhoods. Municipalities responded by enacting bylaws that restrict group home location and maximum number of tenants. Implementation of minimum separation distances across Ontario demonstrates that ostensibly neutral and rational planning tools can marginalize disabled persons seeking community housing. Planners and municipal councillors advocated community integration while utilizing tools that buttressed discriminatory sentiments and limited housing options.

Minimum separation distance bylaws constitute a municipal response to potential clustering. Bylaws reveal sustained efforts to disperse group homes, and by definition, their inhabitants, across the urban fabric in sufficiently small numbers so as to render disabled persons—especially psychiatric survivors—invisible. Separation distance bylaws support local efforts to regulate unwanted groups via the social control functions of zoning and development permitting (Fischler 1998; Haar and Kayden 1989). Rather than acknowledge the discriminatory effects of the mechanisms they developed and enforced, planners described minimum separation distances as socially progressive. Planners pointed to the benefits of social integration for group home tenants. This insistence reflected planners’ concep-
tions that disabled persons could and should be assimilated within non-disabled society rather than located in areas where they may form their own communities.

Ontario planners have accepted the concept of "community integration" as evidenced by frequent use of the term in OMB decisions.
Those in power seek control over the less powerful, by force, if necessary, employing an “it’s for your own good” justification designed to elicit both compliance and gratitude and creating an invisible web of hegemonic control.

The Negative Side of Separation Distances

Dispersal bylaws buttress local efforts to regulate and even exclude persons who are not welcomed in our communities. Minimum separation distance bylaws portray group home tenants not as citizens with rights or potential good neighbours but as social problems that require spatial solutions. While provincial law has tried to prevent discriminatory treatment by ensuring group homes are treated as residential uses, municipalities have found new mechanisms by which to maintain legal distinctions. Bylaws mediate tensions between group homes’ legal rights to locate in residential neighbourhoods and municipal efforts to constrain such entitlement through imposing additional planning requirements. Minimum separation distance bylaws reinforce the power of local authorities and group home opponents to restrict congregate housing, especially for groups they are reluctant to house (such as psychiatric survivors, former prisoners, persons with addictions, and youth in care). Proponents of affordable and temporary housing can point to similar regulatory and procedural hurdles. Municipal processes add to financial and legal burdens faced by affordable housing developers and reduce the likelihood new projects will be built.

This study illustrates the way in which socially progressive ideas like integration may be distorted and manipulated as mechanisms of exclusion: this is indeed the “dark” side of planning (Yiftachel 1998). Minimum separation distances represent a municipal response that tries to distribute tenants seeking affordable housing across the urban fabric in dilute quantities that render disabled persons innocuous or invisible. The progressive language of social integration masks an oppressive practice of social exclusion. A strategy for excluding unwanted residents then is justified through applying generic planning principles that advocate a particular version of integration.

In using minimum separation distance bylaws, municipalities attempt to enforce a delicate social equilibrium. Underlying the progressive language of community integration and OMB decisions that affirm the rights of disabled tenants to housing, however, we found repeated expressions of hostility towards group home inhabitants, especially those with psychiatric histories. Regulating the group home as a specific planning use camouflages community efforts to limit the amount and regulate the location of disability-related housing in residential communities.
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Notes

1 While we recognize that group homes provide housing for non-disabled persons such as youths and persons released from prisons, the wider project from which these data draw focussed on cases related to group homes for disabled persons. Hence our analysis generally deals with concerns about housing for disabled persons.

2 See Ontario Municipal Act, s. 163 (3); “group home” means a residence licensed or funded under a federal or provincial statute for the accommodation of three to 10 persons, exclusive of staff, living under supervision in a single housekeeping unit and who, by reason of their emotional, mental, social or physical condition or legal status, require a group living arrangement for their well being.

3 Neither municipalities nor the OMB may pay proper attention to the legal definition of group home, leading to subsequent confusion. For example, in the case study we discuss later, the contested form of housing which provided shelter for 16 psychiatric survivors was described as a “group home” by all parties, including the OMB adjudicator, despite the Municipal Act definition above. The tension between law and practice is clearly evident in both planning departments and at the OMB.

4 Methods included systematic review of Ontario Municipal Board case files, content analysis of bylaws from a large sample of Ontario municipalities, field visits, and 26 semi-structured interviews with participants in two case study disputes and with OMB adjudicators. Interviews were recorded and transcribed for content and discourse analysis (Fairclough 1995; Mason 2002). (Greater details on the methods are available in Finkler 2009.)

5 In February 2010, a group of psychiatric survivor housing advocates filed a human rights complaint alleging that mandatory distancing requirements in four Ontario municipalities constituted discrimination on the basis of disability (Monsebraaten 2010). The four targeted municipalities—Toronto, Smith Falls, Sarnia and Kitchener—responded differently to the formal complaint. Sarnia rapidly amended its bylaws. Smith Falls undertook a formal review of its bylaws (Pinder-Moss 2010). In contrast, both Toronto (Winsa 2010) and Kitchener (Pender 2010) refused to eliminate minimum separation distance bylaws for group homes. Despite extensive media coverage, presentations at public meetings and the current human rights complaint, it remains unclear whether separation
distances restricting group home location are considered justifiable in the context of Ontario law.

6 Ontario municipalities with over 10,000 inhabitants can request permission to be designated as cities by the provincial government. Not all municipalities with large populations have requested such a designation. Oakville, for example, with a population of 144,738 (Oakville 2009) still is considered a town. Being referred to as a “city” in Ontario does not necessarily indicate a large urbanized area.


8 Vaughan Bylaw 70 - 2001.

9 To protect the confidentiality of our participants we have chosen to avoid identifying the case study community; hence we cannot provide the specific case citations throughout this section.

10 Language creating analogies between psychiatric survivors and waste management proves fairly common in the literature. For instance Andrew (2006) described group homes and waste facilities as “contaminated” sites. During the initial period of deinstitutionalization, residents’ associations sometimes described psychiatric survivors as being “dumped” into the community: Linter (1979, p.415-416) linked the use of such terms to NIMBY sentiments.


12 New urbanism planners argue that integrating affordable housing in small doses—10% or less—provides for good integration (Duany et al. 2000). The idea of mixing uses and housing types in close proximity and avoiding large concentrations of a single type of housing has become conventional wisdom in planning.

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