



Ontario Human
Rights Commission

Commission ontarienne
des droits de la personne

Office of the Chief Commissioner

Cabinet de la commissaire en chef

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January 24, 2012

Mayor Bob Bratina and Members of City Council
City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, ON L8P 4Y5

Your Worship and Councillors,

Re: Zoning Application ZAR-11-034

I am concerned about the human rights implications of the zoning application by the Lynwood Charlton Centre, to be considered at your Council meeting on January 25, 2012.

Over the past few years, the Ontario Human Rights Commission (OHRC) has done much work on human rights and housing. This includes a province-wide consultation and the resulting *Right at Home* report in 2008, an extensive *Policy on Human Rights and Rental Housing*, and a range of other steps to connect human rights and housing. One goal has been to make sure that zoning and other municipal bylaws, even unintentionally, do not create barriers and discrimination in housing for vulnerable people who are protected under the grounds of the *Ontario Human Rights Code* (the *Code*).

This is also my goal for commenting on Application ZAR-11-034, about which the OHRC has several concerns. The following sections outline some key concerns.

People planning, not land use planning

Zoning bylaws must be based on legitimate planning rationales, and not on the people who will live there. Under the *Planning Act* [section 3(5)] and also the *Ontario Human Rights Code*, it is illegal to make planning decisions based on people, instead of on land use and other legitimate planning principles. We are concerned that the recommendation to deny this application does not appear to have considered the potential impact on vulnerable people who can be connected with the *Code* grounds of both disability and age.

Creating barriers through radial separation distances

The recommendation to not approve the application because adding the proposed home would “over-saturate” the area is inconsistent with human rights obligations and recent legal decisions. This is especially the case when considering a facility that is moving from an adjacent area with an even greater number of residential care sites. The recommendation to deny the application was made because another four-bed residential care facility exists within a 300-metre radial separation distance of the proposed housing site.

Arbitrary separation distances can lead to contraventions of the *Human Rights Code*. Many municipalities try to use minimum separation distances as a way to manage “overconcentration” of some types of housing within one neighbourhood. Minimum separation distances limit housing options and can have a negative impact on the people who rely on these options.

Instead, look at the broader issues and consider incentives and ways to encourage and facilitate affordable housing in the other parts of the municipality. This is a positive approach, instead of the punitive one that minimum separation distances often suggest.

We have heard many comments that zoning has long been used to limit group homes and other supportive housing. However, emerging decisions in the courts and at the Human Rights Tribunal of Ontario tell us that this approach does not incorporate the required human rights principles.

OMB decision focuses on people zoning, separation distances

All Ontario municipalities are bound by the *Code*. An Ontario Municipal Board (OMB) decision from January 2010 makes it clear that municipalities have to consider the needs of everyone when enacting bylaws. In *Advocacy Centre for Tenants Ontario v. Kitchener (City)*, the OMB stated that when restricting prospects for housing for persons with disabilities or receiving social assistance, a sufficient planning analysis was required. This planning analysis should have included consideration of the *Code* and whether or not the City had engaged in “people zoning,” which is prohibited. This decision stated:

[T]he City and Region would need to *plan*:

- If they wish to restrict prospects for housing persons with disabilities and/or in receipt of public assistance, then they will need to do the **preparation** required by the *Planning Act* and other relevant legislation, for the underlying rationale in light of statutory requirements.
- This means the City and Region will need to supply the relevant planning analysis (including applicable PPS provisions, authority for “placeholder” By-laws, consideration of “people zoning,” and *Code/Charter* dimensions) – commensurate with the thrust of the measures which today’s municipal authorities wish to pursue. (page 5)

The OMB ordered that:

- v) Restrictive measures targeting the accommodation of persons with a **disability, or in receipt of public assistance**, would require analysis of how they comply with the *Code* and *Charter*.

The OMB decision also stated that a municipality that wanted to justify a discriminatory bylaw must be able to show that the bylaw was established in good faith, was reasonable, and that real and substantial efforts were made to accommodate the needs of persons who were adversely affected.

These are broad general principles that may affect any *Code*-protected group, including newcomers, young people, older persons, people from racialized and Aboriginal communities, single people, women, people with children, and people on social assistance.

It is not apparent from the bylaw or the accompanying report that the City of Hamilton has done such assessments or analysis.

Not dealing with neighbourhood opposition

There seems to be unchecked neighbourhood opposition to the proposal that is based on who will live in the housing, and not on legitimate planning issues as the *Zoning Act* requires. Terms such as “undesirables,” as reported in public meetings, reinforced with the use of terms like “undesirable activities” in the Planning Report, are the type of stereotypes based on age and mental health that the OHRC is working hard to eliminate.

Under the *Code*, municipalities have an obligation to make sure public meetings and discussions do not discriminate or subject *Code*-protected groups to unwarranted scrutiny or personal attack.

Continuing the focus on housing

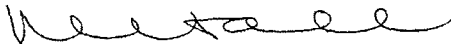
The OHRC is continuing its work at the OMB with an appeal of a City of Guelph zoning bylaw. As well, it is intervening in applications to the Human Rights Tribunal of Ontario that involve complaints about minimum separation distances and other zoning issues in the cities of Toronto, Smiths Falls and Kitchener. Each of these cases involves concerns that municipal bylaws create housing barriers for people with mental health issues – which is also our concern in the City of Hamilton.

Using legal forums is not the first choice for the OHRC to overcome discriminatory barriers to housing. This is because by the time a case goes to a tribunal or court, the damage to the people wanting to live in a neighbourhood or community is already done. Instead, our goal is to prevent the damage from happening in the first place, by working with municipalities to arrive at systemic solutions that make communities welcoming to all residents.

As you consider this zoning application, I urge you to consider the human rights impacts on the vulnerable people who already live and use services in that very community, whose lives will be affected by the decision you make. It's the law in Ontario, but more than that, it's simply the right thing to do.

The OHRC is available to assist you with this issue. For more information on human rights and housing, please contact Jacquelin Pegg at 416-326-9501 or via email at Jacquelin.Pegg@ohrc.on.ca. As well, watch for the OHRC's new guide to human rights and municipal planning, "In the Zone," which will be released February 17.

Yours truly,

A handwritten signature in cursive script, appearing to read "Barbara Hall".

Barbara Hall, B.A, LL.B, Ph.D (hon.)
Chief Commissioner

CCM file # MGT2012-000011