



Safety Codes Council

COUNCIL ORDER No. 0015480

BEFORE THE BUILDING SUB-COUNCIL

On November 15, 2017

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order Pursuant to Section 43 of the *Safety Codes Act*, and Division C, Article 2.2.10.8 of the Alberta Building Code 2014, issued August 16, 2017 by the Accredited Municipality (Respondent) against the Home Care Facility (Appellant).

UPON REVIEWING the Issued Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **VARIED**.

FROM:

Provide information that is adequate to determine compliance with the provisions of the *Safety Codes Act*, the Alberta Building Code 2014 and other legislation as per the Alberta Building Code 2014, Division C, Article 2.2.10.8.

TO:

Provide information that is adequate to determine compliance with the provisions of the *Safety Codes Act*, the Alberta Building Code 2014 and other legislation as per the Alberta Building Code 2014, Division C, Article 2.2.10.8., or as necessary, provide information that is adequate to allow the *authority having jurisdiction* to consider an application for a variance/alternative solution. The owner shall continue to ensure there is 24/7 awake staff monitoring the premises and addressing any safety concerns, at least until the Order is satisfied.

Compliance with this Order shall be achieved by February 5, 2018 or the Accredited Municipality may take all necessary steps to enforce this Order.

Issue:

1. The Appeal concerns an application to change the use of a single detached dwelling into a limited group home for six residents.

Appearances, Preliminary, Evidentiary, or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel (the Panel) heard from the Home Care Facility owner and two other individuals (parents of residents) who asked that their names not be released.
3. Appearing for the Respondent, the Appeal Panel heard from Building Safety Codes Officers (SCOs) with the Accredited Municipality.
4. Attending as observers were several individuals, supporting both the Appellant and the Respondent.
5. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the Appeal Panel, and that the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
6. The Appeal Panel Chair (the Chair) then explained the process to be followed in hearing this appeal, and read out a list of the written material before the Appeal Panel, consisting of the documents listed below in The Record, paragraph 7 as items 1) to 7). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.

The Record:

7. The Appeal Panel considered, or had available for reference, the following documentation:
 1. Notice of Appeal
 2. Request for a Stay of the Order
 3. Acknowledgment Letter dated September 26, 2017
 4. Stay of Order Letter dated September 26, 2017
 5. Appeal Hearing Brief Preparation Guide
 6. Appeal Hearing Brief submission from the Appellant
 7. Appeal Hearing Brief submission from the Respondent

Provisions of the Safety Codes Act:

8. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 3**Standards****Permits required**

43(1) If this Act requires a person to have a permit to sell, construct, control or operate any thing or supervise, operate or undertake any process or activity, no person shall do so unless the person has the proper permit.

(2) If any thing to which this Act applies is approved by the regulations for a certain use

or purpose, no person shall use that thing for any other use or purpose unless a safety codes officer issues a permit for that other use or purpose or it is an innocuous use or purpose.

(3) If the regulations require that any thing be approved before it is installed or operated, no person shall install or operate that thing unless a safety codes officer issues a permit for it.

(4) A permit under this Act does not authorize a person to do any thing, implement any process or engage in any activity that does not comply with any other enactment.

Provisions of the Alberta Building Code 2014 (ABC 2014):

9. The Alberta Building Code 2014 provides, *inter alia*:

Division C2.2.10. Permits

2.2.10.1. General

- 1) A *permit* is required for the construction, *alteration*, installation, repair, relocation, demolition, or change in *occupancy* or any *work* to which this Code applies in accordance with regulations made pursuant to the Safety Codes Act.
- 2) In addition to a *permit* that is required by sentence (1), other *permits* may be required for the installation of related *building services*.
- 3) An *owner* shall ensure that all *permits* required in connection with proposed *work* are obtained before starting the *work* to which they relate.

2.2.10.8. Refusal to Proceed

- 1) The *authority having jurisdiction* may refuse to allow any *building, project, work* or *occupancy* that would not be permitted by the Safety Codes Act, this Code or other legislation.
- 2) The *authority having jurisdiction* may refuse to allow any *building, project, work* or *occupancy* if
 - a) incorrect information is submitted, or
 - b) the information submitted is inadequate to determine compliance with the provisions of the Safety Codes Act, this Code or other legislation.
- 3) A person who is refused a *permit* may appeal the refusal in accordance with the Safety Codes Act and regulations made pursuant to the Act.

2.2.11. Occupancy

2.2.11.1. Occupancy Permit

- 1) If required by the *authority having jurisdiction*, an *owner* shall obtain an *occupancy*

permit or permission in writing to occupy from the *authority having jurisdiction*, before any

- a) *occupancy* of a *building* after
 - i) construction,
 - ii) relocation,
 - iii) partial demolition, or
 - iv) *alteration* of that *building*, and
 - b) change in the *occupancy* of a *building*.
- 2) An *occupancy permit* or permission to use a *building* issued under the Safety Codes Act shall not be construed to be a licence to operate or engage in any business.

3.2.2.45. Group B, Division 3, up to 2 Storeys Sprinklered

- 1) A *building* classified as Group B, Division 3 is permitted to conform to Sentence (2) provided
- a) except as permitted by Sentences 3.2.2.7.(1) and 3.2.2.18.(2), the *building* is sprinklered throughout,
 - b) it is not more than 2 *storeys* in *building* height, and
 - c) it has a *building area* not more than
 - i) 2 400 m² if 1 *storey* in *building* height, or
 - ii) 1 600 m² if 2 *storeys* in *building* height.
- 2) The *building* referred to in Sentence (1) is permitted to be of *combustible construction* or *noncombustible construction*, used singly or in combination, and
- a) floor assemblies shall be *fire separations* with a *fire-resistance rating* not less than 45 min, and
 - b) *mezzanines* shall have, if of *combustible construction*, a *fire-resistance rating* not less than 45 min, and
 - c) *loadbearing* walls, columns and arches shall have a *fire-resistance rating* not less than required for the supported assembly.

Division A of the ABC 2014

1.4.1.2. Defined Terms

- 1) The words and terms in italics in this Code shall have the following meanings:

Care means the provision of services other than *treatment* by or through *care* facility management to residents who require these services because of cognitive, physical or behavioural limitations.

Care occupancy (Group B, Division 3) means the *occupancy* or use of a *building* or part thereof where *care* is provided to residents. (See Appendix A.)

Appendix A

Explanatory Material

A-1.4.1.2.(1) Defined Terms.

Care Occupancy

Support services rendered by or through care facility management refer to services provided by the organization that is responsible for the care for a period exceeding 24 consecutive hours. They do not refer to services provided by residents of *dwelling units* or *suites*, or to services arranged directly by residents of *dwelling units* or *suites* with outside agencies.

In the context of *care occupancies*, these services may include a daily assessment of the resident's functioning, awareness of their whereabouts, the making of appointments for residents and reminding them of those appointments, the ability and readiness to intervene if a crisis arises for a resident, supervision in areas of nutrition or medication, and provision of transient medical services. Services may also include activities of daily living such as bathing, dressing, feeding, and assistance in the use of washroom facilities, etc. No actual treatment is provided by or through care facility management.

Supportive Living Accommodation Licencing Act,

Definitions

1) In this Act,

(g) "supportive living accommodation" means buildings or units in buildings that are intended for permanent residential living where an operator also provides or arranges for services in order to assist residents to live as independently as possible.

Position of the Parties

Appellants

From the Appellants' submissions and testimony, and in response to questions posed by the Panel, the Appellants' position may be summarized as follows:

- 10.** The application is for 6 bedrooms in a two-storey residential house which will follow and comply with Alberta Health Accommodation Standards & Licensing requirements.
- 11.** The appellant claims that there are numerous examples within the Accredited Municipality and elsewhere, of existing group homes of 6 clients, for which sprinkler systems, fire alarm systems and fire separations are not required.

- 12.** The Panel was asked to reconsider the need for mandatory sprinkler and fire alarm systems, and fire separation in a New group home classified as B3 Occupancy type, or at least consider the kind of individuals who may reside there; to ensure group homes such as the one being proposed, remain residential and affordable for individuals who might otherwise require institutionalization.
- 13.** The residents of the proposed group home will all be over the age of eighteen, all ambulatory, and although they may have development disabilities or diagnosed mental health concerns, they have all been deemed by Alberta Health Services to be eligible to live on their own with access to the additional supports available through community housing projects such as the Appellant can provide, along with the assistance of interdisciplinary outreach teams.
- 14.** The residents are all capable of self-preservation, recognizing and responding to an emergency given his or her physical, cognitive and behavioural abilities. They are able to arise and walk, or transfer from a bed or chair to a means of mobility, and leave the building or move to a safe location on his or her own without the assistance of another person.
- 15.** The proposed group home will have monthly and as needed fire drills; will always have at least one awake, Health Care Aide on duty 24/7, and more staff when needed.
- 16.** Both Alberta Health Services and the Municipality's Fire Department conduct scheduled and random inspections, during which they speak with the residents and staff. Each resident has a Case Manager with Alberta Health Services and it is the Case Manager who prepares the Care Plan for the resident, which plan the staff follow. The Case Managers also meet with the family, at least annually and adjust plans accordingly.
- 17.** There are smoke detectors in all the rooms and fire extinguishers located on each level of the residence. Their operation is checked monthly.
- 18.** The residents are capable of going, on their own, to off-site programs, school, work, vacations or other regular home settings. Most clients take public transport.
- 19.** The Appellant receives funding for staff only. The clients pay a maximum of \$800.00 per month.
- 20.** The Appellant claims that sprinkler system installation would cost approximately \$30,000.00, although they said they had not obtained an actual quote. While the property is currently being used in accordance with the terms of the Stay of Order, any requirements of the Safety Codes Council Order would significantly disrupt the clients.
- 21.** The Appellant was aware of the change in the 2014 Alberta Building Code, which references and defines the terms "*Care*" and "*Care Occupancy*", and that the residence in question is classified as Care (B3).
- 22.** The appellant understands that the building construction of a B3 occupancy is a maximum of 3 storeys, necessitating a sprinkler and fire alarm system, plus fire separation. Since the residence in question has only 2 storeys, the Appellant questions the need for these measures.

- 23.** The Appellant understands that *Care Occupancy* services include assessment. They employ Health Care Aides (HCA) who do not do assessments. The AHS Case Managers perform the assessments and direct the Appellant's staff accordingly. Their clients are free to go anywhere they wish and only if they are not able to return home before 11:00 p.m. do the staff need to be informed.
- 24.** *Care Occupancy* Group B3 is considered a Group Home. There are many kinds of Group Homes and there is no clear definition of what this means. Some Group Homes house individuals with physical impairment, non-ambulatory, who need assistance with evacuation even though their cognition is good. The residents of the building in question do not need such assistance, and may visit other residences for social leave without professional care or supervision, which residences may not have sprinkler and fire alarm systems or fire separations. The Appellant claims that this new regulation will deprive clients of their right to live in the community, in homes of their choosing, which may be a human rights issue.
- 25.** The Appellant currently operates 6 other similar facilities and only this one has been subject to the fire alarm and sprinkler system requirement.
- 26.** There is no expectation that resident's physicians will visit them on site as they are all capable of travelling to their doctors' offices. In the event of an emergency, either 911 would be called or a Crisis Team would be asked to intervene. While the residents' doctors and pharmacies assure the appropriate medications are prescribed, staff at the Group Home carefully supervise its use.

Respondent

From the Respondent's submissions and testimony, and in response to questions posed by the Panel, the Respondent's position may be summarized as follows:

- 27.** In response to an application for a development permit to change the use of a single detached house into a Limited Group Home to house 6 residents, a Minor Development Permit was issued June 27, 2017. Based on the information provided in the application it was determined the proposed use of the single family residence was to be a *B3 Care Occupancy* facility as described in the Alberta Building Code 2014. The application confirmed the proposed residents would need continuous care. All Group Homes are classified as either B1, B2 or B3 and the proposed use matched the definition of a *B3 Care Occupancy*.
- 28.** The matter was then referred to a Building SCO who contacted the Appellant to advise of the need for a building permit and additional information, given the change of occupancy classification and the resulting need for installation of a sprinkler and fire alarm system.
- 29.** When the requested information was not forthcoming, an Order was prepared and served to ensure compliance with the Alberta Building Code, specifically Refusal to Proceed, cited above.
- 30.** Following a complaint that the single family dwelling was being used as a Group Home

residence, and a request that the Order be cancelled (which was refused) it was agreed the matter should proceed to appeal. A Stay of the Order was granted to allow the Appellant to continue to operate the Group Home for 3 residents, pending the outcome of the appeal, with the assurance there would be 24/7 awake staff monitoring the premises and addressing any safety concerns.

- 31.** The Panel asked whether a variance/alternative solution to the need for a fire alarm and sprinkler system was ever discussed and were told it was not.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

- 32.** The 2014 Alberta Building Code (ABC) introduced the concept of *Care Occupancy*. The previously adopted 2006 ABC, did not recognize the level of *care* provided.
- 33.** Where medication has been prescribed, the Appellant confirmed staff at the group home monitor and dispense these prescription medications, to ensure residents take their medication as prescribed.
- 34.** The residents are ambulatory and cognitive and able to self-evacuate.
- 35.** It was noted that the Guardians of the residents have provided consent, and commissioned supportive services for the residents beyond the care that would be provided by a parent were they living at home; that is not solely under the control of the residents.
- 36.** The Panel recognizes that under the previous ABC (2006) a sprinkler and fire alarm system would not have been required but the 2014 ABC changed Care and Detention Occupancy to Care Occupancy, which recognizes three levels of Care (B1, B2 and B3) and based on information provided at the hearing and in the May 15, 2017 application for a Development Permit, the residence in question as proposed does belong under the classification B3 care facility, and as such requires a fire alarm and sprinkler system or equivalent.
- 37.** The Panel is satisfied the residence in question and as proposed, does conform to the definition of *care occupancy* found in Appendix A of the 2014 ABC and quoted above.
- 38.** The Appellant is encouraged to contact the Building Safety Codes Officer, to gain an understanding of the meaning of variance/alternative solution, as there may be a means by which the appellant can address the Municipality's concerns regarding the fire alarm and sprinkler systems and fire separation. Professional assistance may have to be sought to assist the Appellant in finding an *alternative solution*.
- 39.** There did seem to be a willingness on the part of the Appellant, to work with the Municipality to explore whether an *alternative solution*/variance is possible. The Panel would encourage both parties to pursue this further.
- 40.** This residence could not be considered a boarding house and the Panel is satisfied it is supportive living accommodation as defined under the Supportive Living Accommodation Licensing Act quoted above.

- 41.** The residents and their families expect a certain level of care/supervision, including 24/7 awake staff, something that would not be available in a boarding house.
- 42.** Care at the Home Care Facility is commissioned by the family or other person, and overseen by Alberta Health Services.

Signed at the City Edmonton)
in the Province of Alberta)
this 1st Day of December A.D. 2017)

Chair, Building Sub-Council Appeal Panel