

Town of Whitby Public Meeting Report

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Report Title: Town Initiated Official Plan Amendment and Zoning By-law Amendments – Changes to Accessory Apartment (Additional Dwelling Unit) Policies and Regulations (OPA-2024-W4/01, Z-02-24)

Date of meeting: June 17, 2024

Report Number: PDP 37-24

Department(s) Responsible:
Planning and Development Department
(Planning Services)

Submitted by:

R. Saunders, Commissioner of Planning and Development

Acknowledged by M. Gaskell, Chief Administrative Officer

For additional information, contact:

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Principal Planner, Zoning & Regulation
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Planning Report **PDP 37-24** is presented for information purposes only, in accordance with the statutory public meeting requirements of the Planning Act R.S.O. 1990, c.P.13

Anyone who attends the public meeting may present an oral submission, and/or provide a written submission to the Planning and Development Department on the proposed application(s). Also, any person may make written submissions at any time before Council makes a decision.

Additional information regarding statutory public meetings under the Planning Act can be found on the [Town's website](#).

If a person or public body does not make oral submissions at a public meeting or make written submissions to the Town of Whitby before the by-law is passed, the person or public body is not entitled to appeal the decision of Whitby Council to the Ontario Land Tribunal (OLT) and may not be added as a party to the hearing of an appeal before the OLT unless, in the opinion of the Tribunal, there are reasonable grounds to add the person or public body as a party.

1. Highlights:

- In support of the CMHC Housing Accelerator Fund application, at the December 11, 2023, Special meeting of Council, Council passed the following resolution (Resolution # 222-23) - “As part of the Legal Additional Dwelling Unit program: Staff will complete work to permit 4 residential units as-of-right”.
- In January 2024, the Town of Whitby was allotted \$24.9 million in funding from the Federal Housing Accelerator Fund (HAF) in support of the National Housing Strategy administered by the Canadian Mortgage and Housing Corporation (CMHC). In part, this funding will support additional housing units (ADU’s) in Whitby through the permission for up to 4 dwelling units on parcels of urban residential land subject to zoning compliance.
- Amendments to the Town’s three Zoning By-laws and Official Plan will be required to reflect the legislative directives of Bill 108 and Bill 23 to permit up to 2 ADU’s on parcels of land occupied by ground related dwelling units. It is important to note that these “as-of-right” provisions are not appealable to the Ontario Land Tribunal (OLT).
- Notwithstanding any amendments to implement Bill 108 and Bill 23, additional zoning amendments will be required to permit 1 additional ADU (total of 4 dwelling units) on parcels of land containing a single detached dwelling, semi-detached dwelling or a townhouse dwelling, in accordance with the Federal Housing Accelerator Fund (HAF) commitment. The permission for an additional ADU (i.e. up to 4 total units) is subject to appeal to the OLT.

2. Purpose:

The purpose of this report is to present information and materials prepared in relation to the proposed amendments to the Town of Whitby Official Plan and Town of Whitby Zoning By-laws 1784, 2585, and 5581-05 to be consistent with Provincial legislation (Bill 108 and Bill 23), and to also reflect Council’s commitment to the Federal Housing Accelerator Fund (HAF) in support of the National Housing Strategy administered by the Canadian Mortgage and Housing Corporation (CMHC).

3. Background:

On November 28, 2022, Bill 23, the More Homes Built Faster Act received Royal Assent. Bill 23 builds upon legislation approved through Bill 108 and provides a framework for “as-of-right” zoning to meet envisioned Provincial housing targets. Municipalities are hereby required to:

- Permit “as-of-right”, two ADU’s, in addition to a primary dwelling on parcels of urban residential land containing a single detached dwelling, semi-detached dwelling or a townhouse. The ADU’s can be located within an existing residential structure or within an accessory structure;
- Prohibit municipalities from applying a development charge for ADUs (subject to restrictions noted in the Planning Act);
- Prohibit municipalities from requiring more than one parking space for each ADU in addition to the parking requirements for the principle dwelling unit;
- Prohibit municipalities from establishing minimum floor area requirements for ADU’s; and
- Prohibiting the appeal of any Official Plan policies or Zoning By-laws that authorize up to three residential units per lot in accordance with the legislation contained within Bill 23.

Bill 23 also provides the opportunity for local municipalities to permit up to two ADU’s on rural/un-serviced lands.

In support of the CMHC Housing Accelerator Fund application, on December 11, 2023, Council passed the following resolution (Resolution # 222-23), “As part of the Legal Additional Dwelling Unit program: Staff will complete work to permit 4 residential units as-of-right”.

In January 2024, the Town of Whitby was allocated \$24.9 million in funding from the Federal Housing Accelerator Fund (HAF) in support of the National Housing Strategy administered by the Canadian Mortgage and Housing Corporation (CMHC). This funding will support additional housing units in Whitby through nine (9) local HAF initiatives and other associated projects; including but not limited to the permission for up to 4 dwelling units on parcels of urban residential land containing a single detached dwelling, semi-detached dwelling or a townhouse dwelling unit.

The HAF initiative to permit up to 4 dwelling units on parcels of urban residential land builds on the Provincial legislative requirements stemming from Bill 108 and Bill 23 to permit up to 3 ADU’s on parcels of urban residential land as-of-right.

The Town of Whitby Official Plan (OP) currently permits accessory apartments in single detached and other forms of ground related dwellings, and within accessory structures thereto, in all designations that permit residential uses throughout the Municipality.

The Town of Whitby has three Zoning By-laws (1784, 2585, and 5581-05) that regulate where and how Accessory Apartments are permitted within the Town. Moving forward, Accessory Apartments will be referred to as Additional Dwelling Units (ADU's).

The Town's existing Zoning By-laws (1784 and 2585) permit a maximum of one ADU within a primary dwelling, and not within an accessory structure (i.e. detached garage or outbuilding). Additionally, ADU's are not permitted within any zone subject to the Town's Oak Ridges Moraine Zoning By-law 5581-05.

An amendment to the Town's OP and three Zoning By-laws will be required to reflect the legislative requirements of Bill 108 and Bill 23, including but not limited to, permitting up to three ADU's per property and requiring no more than one parking space for each ADU. Included within Bill 23 is a policy that restricts appeal rights associated with ADU enabling Zoning or Official Plan policies.

Building upon Bill 108 and Bill 23, additional amendments to the Town's Zoning By-laws and Official Plan will be required to permit 1 additional ADU (total of 4 dwelling units) on parcels of residential land containing a single detached dwelling, semi-detached dwelling or a townhouse dwelling.

4. Discussion:

4.1. What is an Accessory Dwelling Unit (ADU)

An ADU is a self-contained dwelling unit which may be located in a single detached dwelling, semi-detached dwelling, townhouse dwelling, and other forms of permitted ground related dwelling units. An ADU may also be constructed as a standalone accessory structure, located on the same lot as the principal dwelling.

ADU's generally consist of one or more rooms that are designed for human habitation, including occupancy, by one or more persons, and include cooking facilities, sleeping facilities and sanitary facilities.

Currently, ADU's are referred to as "Accessory Apartments" within the Town of Whitby Zoning By-laws.

Figure 1 provides an overview of how ADU's may be implemented within a principal dwelling and/or accessory structure.

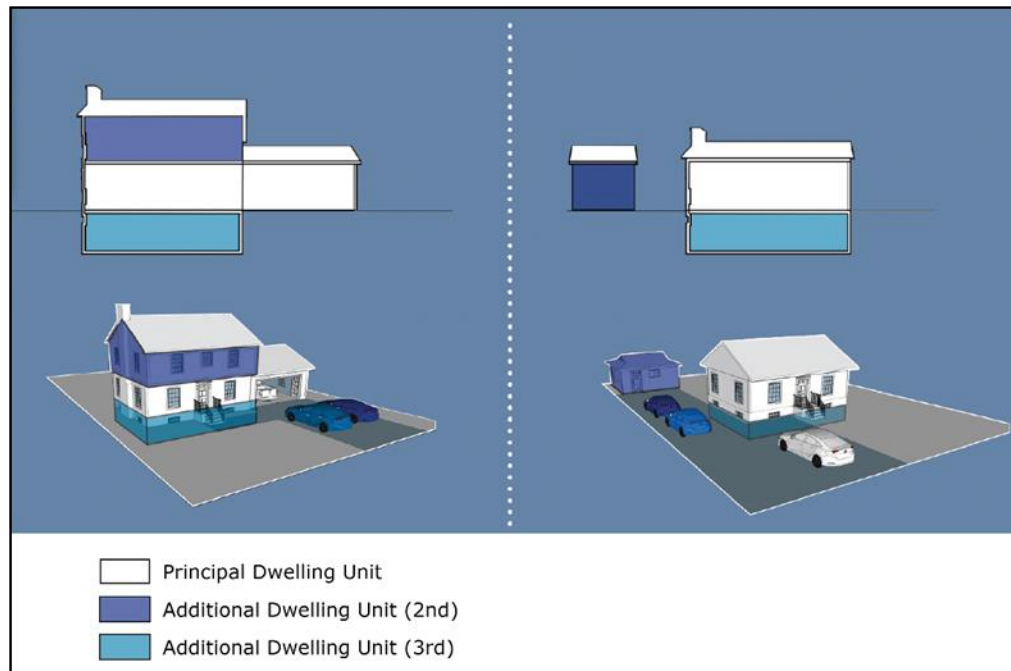


Figure 1: ADU Configuration Options

4.2. Existing ADU's and Trends in Whitby

Historically the Town of Whitby has permitted a maximum of one ADU within select dwelling typologies, including single detached dwellings and semi-detached dwellings. Table 1 provides a summary of approved ADU's within the Town of Whitby over the past 4 years.

Table 1 – Approved ADU's by Year

Year	Registered ADU's
2023	112
2022	160
2021	96
2020	82

4.3. Whitby Official Plan

The Town of Whitby Official Plan contains enabling policies related to ADU's.

Section 4.4.3.9.5 of the Official Plan states:

“Apartments in houses shall be permitted in single detached and other forms of ground related dwellings, and within accessory structures thereto, in all designations that permit residential uses throughout the Municipality subject to the following criteria:

- a) one apartment unit per dwelling;
- b) one additional parking space is required for the apartment unit;
- c) capacity of municipal sanitary sewer and water supply or the approval of the Durham Regional Health Unit for lots outside the fully serviced area; and,
- d) compliance with the provisions of the Zoning By-law and all other relevant municipal and Provincial standards.”

To implement the directive of Bill 108, Bill 23, and the Federal Housing Accelerator Fund in support of the National Housing Strategy, the above policy must be amended to allow permissions for additional ADU’s.

It is important to note that any amendment to the Official Plan to implement “as-of-right” provincial legislation contained within Bill 108, Bill 23, and the Planning Act is not subject to third party appeals.

4.4. Zoning By-law

The Town of Whitby is governed by three Zoning By-laws, which includes By-law 2585, By-law 1784, and By-law 5581-05.

Zoning By-law 5581-05 applies to lands situated within the Oak Ridges Moraine; Zoning By-law 2585 applies to lands within Downtown Whitby; and By-law 1784 applies to lands within the former Township of Whitby, Brooklin, West Whitby, and any other lands not covered by By-law 5581-05 and 2585.

As of right, ADU zone provisions are included within the general provisions section of Zoning By-laws 1784 and 2585. By-law 5581-05 does not include any provisions related to ADU’s. Table 2 provides an overview of the existing zone provisions related to ADU’s in By-laws 1784 and 2585.

Table 2 - Existing Zoning Provisions for ADU's

Zone Provision	Zoning By-law 1784	Zoning By-law 2585
Permitted Structures	Single Detached Dwelling Semi Detached Dwelling	Single Detached Dwelling Semi Detached Dwelling
Min. Lot Frontage	Singles (10.5m) Semis (10.0m)	Singles (10.5m) Semis (10.0m)
Max. Number of ADU's	1	1
Floor Area Restriction	The total floor area of an Accessory Apartment shall not be greater than 45% of the total floor area of the dwelling in which the ADU is situated.	The total floor area of an Accessory Apartment shall not be greater than 45% of the total floor area of the dwelling in which the ADU is situated.
Min. Front Yard Landscaping (%)	40%	40%
Servicing	Any lot with an Accessory Apartment shall be serviced by municipal water and sanitary sewer services.	Any lot with an Accessory Apartment shall be serviced by municipal water and sanitary sewer services.
Access to Parking Spaces	Notwithstanding any provisions of this By-law to the contrary, on any lot with an Accessory Apartment a minimum of two parking spaces shall be able to be accessed at all times and may be permitted in a front yard or exterior side yard.	Notwithstanding any provisions of this By-law to the contrary, on any lot with an Accessory Apartment a minimum of two parking spaces shall be able to be accessed at all times and may be permitted in a front yard or exterior side yard.
Min. Parking Requirements	2 spaces for the primary dwelling and 1 space for the ADU.	2 spaces for the primary dwelling and 1 space for the ADU.

To implement the directive of Bill 108, Bill 23, and the Federal Housing Accelerator Fund in support of the National Housing Strategy, amendments to the Town's three Zoning By-laws are required. In preparation of the required Zoning By-law amendments, the following matters will be considered:

- **Defining Additional Dwelling Unit's (ADU's)**

Currently, the Town's Zoning By-laws do not have any references or definitions for ADU's; rather, there is a definition in reference to Accessory Apartments. Amendments to the Town's Zoning By-law's will be required to delete the existing Accessory Apartment definition and replace it with a new definition for ADU's which is consistent with the Planning Act, as amended.

- **Permitted and Prohibited Areas within the Town**

In accordance with the Planning Act, ADU's are to be permitted on parcels of urban residential land containing a single detached dwelling, semi-detached dwelling, or a townhouse, whereas up to two ADU's may be permitted on rural/un-serviced lands, at the discretion of the municipality.

Notwithstanding permitted urban and rural lands within the Town, ADU's should not be permitted within sensitive land use designations. This includes but is not limited to areas such as the Oak Ridges Moraine Natural Linkage Areas, Environmental Protection lands, the Natural Heritage System, and designated Hazard Lands.

- **ADU's in Accessory Structures (Building Size, Building Height, & Building Setbacks)**

Amendments will be required to regulate the size of accessory structures containing ADU's, maximum building heights, as well as minimum setbacks to lot lines and other structures located on the property. Currently the Town applies accessory structure provisions for any proposed ADU within a detached structure.

- **Minimum Parking Requirements**

Through Bill 108 and Bill 23, the Planning Act prohibits municipalities from requiring more than one parking space for each ADU. However, municipalities do have the authority to reduce parking rates or require zero parking where deemed appropriate.

- **Landscape Open Space**

The Town of Whitby has a variety of built-form typologies as well as a range of lot sizes containing single detached dwellings, semi-detached dwellings, and townhouse dwellings.

It is anticipated that driveway widening's will be required, especially for dwellings containing single vehicle garages and single vehicle driveway widths.

Best practices for front yard landscaped open space will be considered. This includes striking a balance of hard/paved surfaces and soft/hard landscaping, which is important in preserving a desirable streetscape as well as natural stormwater infiltration/snow storage.

- **Accessible Paths of Travel to ADU's**

Amendments to the Zoning By-law will consider paths of travel to ADU's. This includes the requirements for paths of travel that are accessible, free and clear of obstructions, wide enough for wheelchairs and other forms of mobility devices, and can be maneuvered without difficulty by emergency services (police, fire, EMS) personnel in the event of an emergency.

- **Home Based Businesses within ADU's**

Currently, the Town's Zoning By-laws restrict home-based businesses on any lot containing an ADU in either the principal dwelling unit or the ADU. This restriction will be reviewed based on best practices and other case studies to determine if Home Based Business shall be permitted within ADU's.

- **Servicing Connections**

Currently, ADU's are only permitted on properties that are connected to the municipal sanitary sewer and water supply, in accordance with the Town's Zoning By-laws.

The Town's Official Plan includes enabling policies that support ADU's without municipal services with the exception that adequate private servicing is provided, and the approval of the Durham Regional Health Unit for lots outside the fully serviced area is obtained.

The Town's Zoning By-laws will require an amendment to conform to the Official Plan.

5. Communication and Public Engagement:

Notice of the statutory public meeting was posted on the Town's website 20 days prior to the public meeting date.

6. Consultation with other Departments/Sources:

Applicable agencies and departments will be circulated a copy of the proposed Zoning By-law Amendments and Official Plan Amendment for review and comment in advance of a recommendation to the Committee of the Whole.

7. Conclusion:

All comments received at this statutory public meeting, as well as any subsequent written submissions, will be considered by the Planning and Development Department as part of its review and analysis of the development applications. A recommendation report will be brought forward to the Committee of the Whole at such time as input from the commenting agencies, departments and the public have been received and assessed.

All persons who make oral submissions, or have requested notification in writing, will be given written notice of the future meeting of the Committee of the Whole at which the applications will be considered.

8. Attachments:

Not applicable.