

Town of Whitby

Staff 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 (File: OPA-2024-W/01; Z-02-24)

Report to: Committee of the Whole

Date of meeting: November 25, 2024

Report Number: PDP 55-24

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:

John Taylor, Director of Planning
Services, ext. 2908

Justin Malfara, MCIP RPP
Principal Planner, Zoning & Regulation
ext. 2930

1. Recommendation:

1. That Council approve Amendment 143 to the Whitby Official Plan to permit up to 3 additional residential dwelling units on ground related residential properties in accordance with Attachment #1 to Planning and Development Report PDP 55-24, and that a By-law to adopt Amendment 143 be brought forward for Council's consideration;
2. That the Clerk forward a copy of Planning and Development Report PDP 55-24, two (2) copies of the adopted Amendment, and a copy of the By-law to adopt Amendments 143 to the Whitby Official Plan, to the Region of Durham's Commissioner of Planning and Economic Development;

3. That Zoning By-law Amendments to implement legislative directives of Bill 108 and Bill 23, as well as Council Resolution #222-23 with respect to the Federal Housing Accelerator Fund (HAF) to permit up to 3 additional dwelling units on parcels of land occupied by ground related dwelling units as shown on Attachments 2, 3, and 4 to Planning and Development Report PDP 55-24 be brought forward for consideration by Council; and,
4. That the Clerk forward a Notice of Council's decision to those parties and agencies, including the Region of Durham's Commissioner of Planning, that requested to be notified of Council's decision.

2. 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.
- In March 2023, Whitby Council pledged to facilitate the development of 18,000 new dwelling units by 2031. Permitting up to 4 dwelling units on parcels of urban residential land subject to zoning compliance will assist the Town in meeting the target of 18,000 dwelling units by 2031;
- Amendments to the Town's three Zoning By-laws and Official Plan are required to implement the legislative directives of Bill 108 and Bill 23, as well as to support Council's resolution on the Federal Housing Accelerator Fund (HAF). The Zoning By-law Amendments would establish provisions for ADU's that would provide minimum standards for development.
- On June 17, 2024 a Statutory Public Meeting regarding the Proposed Official Plan and Zoning By-law Amendments was conducted. Based on public, stakeholder, and agency feedback provided to date, final recommended Official Plan and Zoning By-law Amendments have been prepared.
- It is recommended that Council approve the Town initiated Official Plan Amendment as outlined in Attachment # 1 and Zoning By-law Amendments regarding changes to Accessory Apartment (Additional Dwelling Unit) policies and regulations, as outlined in Attachments 2, 3, and 4.

3. Background:

On June 6, 2019, Bill 108, the More Homes, More Choice Act received Royal Assent. Bill 108 included changes to the Planning Act to support the construction of Additional Dwelling Units (ADU's) within the Province, as well as other changes related to the planning and appeal process, municipal revenue generation tools and environmental protection. Key changes included:

- Requiring Official Plans and Zoning By-laws to permit two ADU's in a house and by authorizing a residential unit in a building or structure ancillary to a house;
- Requiring Official Plans and Zoning By-laws to permit ADU's in a detached house, semi-detached house, rowhouse, or ancillary building;
- Exempting ADU's in prescribed classes of proposed new residential buildings, including structures ancillary to dwellings, from development charges up to two additional ADU's;
- A maximum of one parking space for each of the ADU's must be provided, which may be provided through tandem parking;
- An ADU, where permitted in the Zoning By-law, may be occupied by any person, regardless of whether the primary unit is occupied by the owner of the property.

On November 28, 2022, Bill 23, the More Homes Built Faster Act received Royal Assent. Bill 23 builds upon legislation approved through Bill 108 More Homes, More Choices Act 2024 and provides a framework for "as-of-right" zoning to meet envisioned Provincial housing targets. Municipalities are 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 municipalities to permit up to two ADU's on rural/un-serviced lands.

On April 10, 2024, the Province introduced Bill 185: Cutting Red Tape to Build More Homes Act, 2024. Legislative changes related to ADU's included the removal of vehicle parking requirements on lands located within Protected Major Transit Station Areas (PMTSA). The Town of Whitby has a designated PMTSA, generally situated around the Whitby Go Station.

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".

The HAF initiative to permit up to 3 ADU's on parcels of urban residential land builds on the Provincial legislative requirements stemming from Bill 108 and Bill 23 to permit up to 2 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) and does not permit ADU's within the Oak Ridges Moraine (governed by Zoning By-law 5581-05).

Amendments to the Town's OP and three Zoning By-laws will be required to reflect the legislative requirements of Bill 108, Bill 23, and Council's resolution regarding the Federal Housing Accelerator Fund (HAF) including but not limited to, permitting up to three ADU's per property, for a total of 4 dwelling units, and requiring no more than one parking space for each ADU.

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.

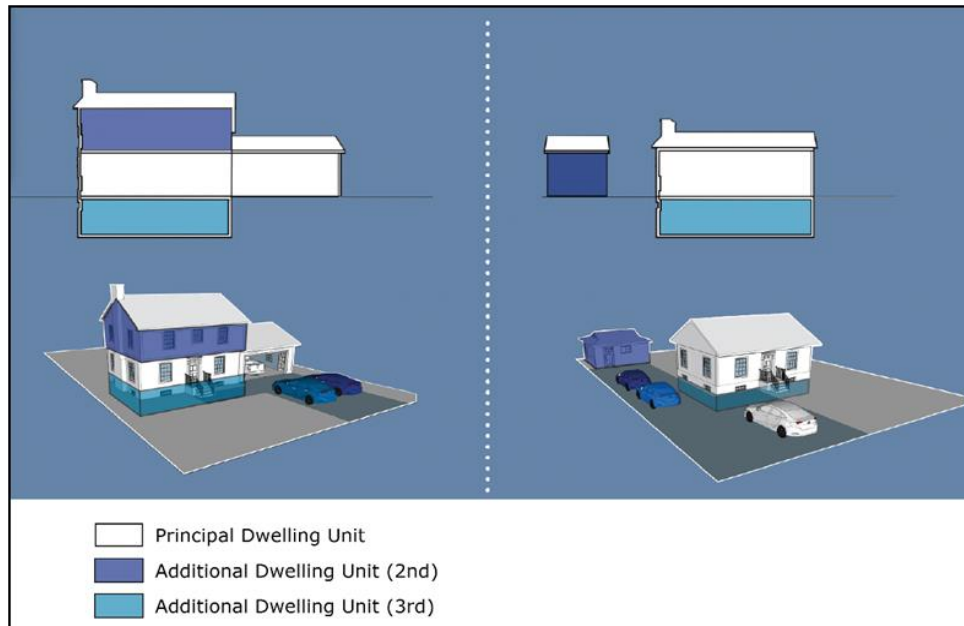


Figure 1: ADU Configuration Options

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 6 years.

Table 1 – Approved ADU's by Year

Year	Registered ADU's
2024 (YTD)	249
2023	261
2022	200
2021	138
2020	87
2019	45

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 directives of Bill 108, Bill 23, and Council's resolution regarding the Federal Housing Accelerator Fund (HAF) in support of the National Housing Strategy, the above policy must be amended to allow permissions for additional ADU's.

4.3.1 Proposed Official Plan Amendments

The draft proposed Amendment to the Official Plan can be found in Attachment 1. Proposed policy amendments include:

- Deleting and replacing the definition of Apartments in Houses with a new definition for "Additional Dwelling Unit" for consistency with the Zoning By-law;
- Providing clarity on where ADU's are permitted and clarifying that they shall be permitted within any ground-oriented dwelling unit, including, single detached, semi-detached, townhouse dwelling, and/or any other forms of ground related dwellings, and within accessory structures thereto, in all designations that permit residential uses within the Urban Area Boundary throughout the Municipality;
- Increasing the maximum number of ADU's within a principal dwelling from one to three, or a maximum of two ADU's within a principal dwelling and one ADU within an Accessory Building on the same lot;
- Including appropriate provisions for parking within the implementing Zoning By-law;

- Restricting the number of ADU's within the Protected Countryside of the Greenbelt Plan to one;
- Restricting the number of ADU's in the Oak Ridges Moraine Agricultural or Rural Settlement designation to one, and that the ADU may only be located within an existing residential dwelling or Accessory Building; and
- Prohibiting ADU's within a building or structure that is located in a Natural Heritage feature or any hazard lands as determined by the Conservation Authority.

4.3.2 Proposed Zoning By-law Amendments

The Town of Whitby is governed by three Zoning By-laws: 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 currently include any provisions related to ADU's.

As part of the Zoning review and technical provision formulation, a review of other proposed ADU By-law Amendments was undertaken. This included a review of Draft By-laws from the Town of Scugog, City of Oshawa, Town of Ajax, and City of Pickering.

Key zoning amendments are focused on the following topics:

Defining Additional Dwelling Unit's (ADU's)

The Town's three Zoning By-laws do not include any references or definitions for ADU's. In accordance with the proposed Zoning By-law Amendments a new definition for Additional Dwelling Unit (ADU) is proposed as follows:

Additional Dwelling Unit: means a self-contained dwelling unit located within a detached dwelling, semi-detached dwelling, link dwelling, street townhouse dwelling unit, or located within an accessory building to a detached dwelling, semi-detached dwelling, link dwelling, and street townhouse dwelling unit on the same lot. The additional dwelling unit shall consist of one or more rooms that are intended for residential occupancy and shall be accessory and subordinate to the principal residential dwelling (on the subject property).

Maximum Number of Permitted ADU's and Configuration Options within the Urban Area

As of right, the Town's Zoning By-laws 1784 and 2585 currently only permit a maximum of one ADU on most parcels of urban residential land, subject to complying with other zoning requirements.

In order to implement the directives of Bill 108, Bill 23, and Council's resolution regarding the Federal Housing Accelerator Fund in support of the National Housing Strategy a maximum of three additional dwelling units are proposed to be permitted on a parcel of residential urban land that permits a detached dwelling, semi-detached dwelling, link dwelling, street townhouse dwelling unit, street townhouse dwelling unit located on a Parcel of Tied Land, or in an accessory structure related to a detached dwelling, semi-detached dwelling, or street townhouse dwelling unit.

Additional Dwelling Units may be configured in the following way:

- i) A maximum of two additional dwelling units shall be permitted within a legally permitted principal dwelling, and a maximum of one additional dwelling unit shall be permitted within a related accessory structure; or,
- ii) A maximum of three additional dwelling units shall be permitted within a legally permitted principal dwelling where there is no additional dwelling unit located within an accessory structure; and,
- iii) No more than one additional dwelling unit shall be permitted within an accessory structure.

Home Based Businesses in Additional Dwelling Unit's (ADU's)

The Town's three Zoning By-laws do not permit home based businesses on parcels of land that contain an ADU. This is an outdated standard that does not accurately reflect current trends whereby individuals are conducting limited and small-scale business uses and offering personal services from their dwellings.

As a result, the proposed Zoning By-law Amendments are seeking to permit home based business uses within ADU's. Notwithstanding, the home based business general provisions (i.e. parking, number of employees, types of permitted business uses, and prohibited uses) will continue to apply.

ADU's within the Greenbelt, Oak Ridges Moraine, and Outside of the Urban Area

For lands located within the Greenbelt Plan area, it is proposed that a maximum of one ADU shall be permitted within a legally existing dwelling or accessory structure that was constructed on or prior to July 1, 2017. In any other instance, an ADU would not be permitted.

For lands located within the Oak Ridges Moraine Agricultural designation or Oak Ridges Moraine Rural Settlement designation of the Town of Whitby Official Plan, a maximum of one ADU is permitted within a legally permitted principal dwelling per lot.

Lastly, for lands situated outside of the Town's Urban Area and which are zoned Agriculture (A), one ADU shall be permitted per lot, and no more than one ADU shall be permitted within an accessory structure. Notwithstanding, in the absence of municipal services (water and sewage), confirmation of sufficient private servicing shall be required from the Durham Region Health Department.

ADU's within Hazard Lands and Environmental Protections Areas

For lands designated Environmental Protection, Natural Heritage System or Hazard in the Town of Whitby Official Plan, as well as within regulatory flood limits, erosion hazard limits or areas without safe access in the event of a natural hazard emergency as determined by the Conservation Authority, new additional dwelling units shall be prohibited.

Accessibility Considerations for ADU's

With regards to accessibility, it is proposed that an ADU shall be accessible by an unobstructed path of travel measuring a minimum of 1.2 metres in width and minimum 2.1 metres in height to a street or lane. The path may be shared and used collectively where more than one additional dwelling unit exists on a lot.

This provision will ensure that ADU's are accessible to occupants and can be maneuvered without difficulty by emergency services (police, fire, EMS) personnel in the event of an emergency.

ADU's within Accessory Structures

Where an ADU is located within an accessory building/structure the following provisions are proposed:

Minimum Interior Side Yard Setback:	1.2 metres
Minimum Rear Yard Setback:	1.2 metres
Minimum Exterior Yard Setback:	3.0m
Maximum Building Height:	4.5 metres
Maximum Ground Floor Area:	75 sq. m.

The proposed setback provisions will allow for an appropriate buffer to abutting uses and will also allow for ease of access around the perimeter of the structure in the event that maintenance or emergency service access is required.

Further, a maximum ground floor area of 75 square meters is proposed. The maximum ground floor area does not include any floor space within a basement that includes a portion of the ADU.

Parking Provisions and Driveway Widening's

A minimum of two parking spaces shall be provided for the principal dwelling unit in accordance with the existing Zoning By-law requirements.

In accordance with Bill 23, it is proposed that a minimum of one parking space shall be provided for each ADU located on a property. Parking spaces shall be permitted within a private garage or carport and/or located on a driveway within a front, rear, or exterior side yard.

To address the potential impacts of on-street parking where ADU's are located on properties served by a single car wide driveway (typical for semi-detached and street townhouse dwellings), driveways may be widened to a maximum width of 5.5m. Further, where a vehicle associated with an ADU is parked on a private driveway, a reduced parking space width of 2.5 m and reduced length of 5.0m will be permitted.

Lastly, in accordance with the legislative requirements of Bill 185, no Official Plan may contain any policy that has the effect of requiring an owner of a building to provide and maintain parking facilities, other than parking facilities for bicycles, on land that is located within a protected major transit station area (PMTSA). As such, the proposed Zoning By-law(s) will reflect a reduced parking rate for any lands located within the Town's designated PMTSA.

5. Financial Considerations:

There are no notable expenses to be incurred by the Town to implement the proposed amendments to the Town of Whitby Official Plan and Zoning By-laws.

Notwithstanding the above, through the implementation of the proposed amendments to the Town of Whitby Official Plan and Zoning By-laws, this will satisfy key HAF initiatives to increase the affordable housing supply.

6. Communication and Public Engagement:

A Statutory Public Meeting was held on June 17, 2024, providing the public and interested persons and agencies an opportunity to comment on the proposed amendments to the Town's Official Plan and Zoning By-laws. The meeting minutes are included in Attachment # 5.

One resident spoke support for the Town initiated changes to the accessory apartment policies and regulations.

No other public submissions were received at the Public Meeting, and any interested parties to this matter have been notified of this meeting.

7. Input from Departments/Sources:

The Draft Official Plan Amendment and Draft Zoning By-law Amendments as well as any applicable supporting documents have been circulated to the appropriate commenting agencies as well as internal Town of Whitby Departments for review and comment.

Internal Departments

The following internal departments have no comments/no objections to the Official Plan Amendments and Zoning By-law Amendments:

- Fire and Emergency Services Department;
- Accessibility;
- Building Services;
- Engineering Services Division; and,
- Finance and Treasury.

External Agencies

The following external agencies have no comments/objections to the Official Plan Amendments and Zoning By-law Amendments:

- Durham Region Planning Department;
- Durham District School Board;
- Durham Catholic District School Board;
- Durham French Public School Board;
- Durham French Catholic School Board;
- Hydro One;
- Enbridge;
- Trans Canada Energy;
- Central Lake Ontario Conservation Authority (CLOCA)
- CN Rail;
- CP Rail;
- Metrolinx;
- Ministry of Transportation Ontario;
- Town of Ajax;
- City of Pickering;
- Township of Scugog;
- Town of Uxbridge;
- City of Oshawa; and,
- Superior Propane.

The following external agencies have provided the following comments. Detailed comments are provided in Attachment #6.

Central Lake Ontario Conservation Authority (CLOCA) Comments

Regarding the proposed Official Plan Amendments, language should be included that prohibits additional dwelling units from being established within any hazard lands or within areas that do not have safe access appropriate to the nature of the development and the natural hazard. The Town of Whitby Official Plan already has a definition of hazard lands which is appropriate. This recommendation provides some consistency related to Natural Hazards of the Provincial Planning Statement (2024).

Regarding the proposed Zoning By-law Amendments, we suggest the following general wording to be included within the By-laws:

1. Additional dwelling units are not permitted within hazardous lands and/or lands that do not have safe access appropriate to the nature of the development and the natural hazard; or
2. Additional dwelling units are not permitted within any hazardous lands as determined by the applicable Conservation Authority including, but not limited to, the regulatory flood limits or erosion hazard limits and/or lands that do not have safe access appropriate to the nature of the development and the natural hazard.

8. Strategic Priorities:

The Amendments will support Strategic Pillar 4: Whitby's Government of the Community Strategic Plan. More specifically it will advance Objective 4.4 by responsibly planning for growth through the implementation of necessary amendments to the Town's Official Plan and Zoning By-law.

9. Attachments:

Attachment #1: Draft Proposed Official Plan Amendment Number 143

Attachment #2: Draft Recommended Zoning By-law Amendment to Zoning By-law 1784

Attachment #3: Draft Recommended Zoning By-law Amendment to Zoning By-law 2585

Attachment #4: Draft Recommended Zoning By-law Amendment to Zoning By-law 5581-05

Attachment #5: Public Meeting Minutes

Attachment #6: External Agency Comments