

Date: 2020-12-18

Subject: **Information Report**

Secondary Title: **City-Initiated Amendments to the Official Plan (Second Unit Policies) and Zoning By-law (Above Grade Side Entrances Provision)**

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Report Number: Planning, Building and Economic Development-2021-007

Recommendations:

1. That the report titled: **Information Report – City-Initiated Amendments to the Official Plan (Second Unit Policies) and Zoning By-law (Above Grade Side Entrances Provision)**, to the Planning and Development Committee Meeting of January 18, 2021, be received; and
2. That Planning, Building and Economic Development Department staff be directed to report back to Planning & Development Committee with the results of the Public Meeting and final recommendations.

Overview:

- On April 22, 2015, Council adopted a framework for regulating second units including official plan policies, zoning standards and a registration by-law.
- One of the Second Unit Official Plan policies states “*Where an application for a second unit fails to conform to any of the requirements of the implementing zoning by-law, a zoning by-law amendment shall be required.*” The intent of this policy, is that any variation from the two-unit dwelling Zoning By-law provisions, regardless of how minor it may be, shall be addressed by way of a site specific amendment to the Zoning By-law.

- The Zoning By-law permits an above grade door in the 0.6 metre (2 foot) side yard where the door is recessed 1.2 metres (4 feet) from the property line. This scenario does not meet the requirements of the Ontario Building Code or the Zoning By-law for use as a primary entrance and therefore; cannot be used as the entrance to a two-unit dwelling.
- On October 28, 2020, Council directed staff to review amending the Official Plan Policies for second units to enable the Committee of Adjustment to consider and approve, where appropriate, minor variance applications involving the implementing provisions for two-unit dwellings set out in the Zoning By-law. Council also directed staff to review amending the Zoning By-law to only allow an above grade door in the side yard where there is a minimum 1.2 metre continuous path of travel leading up to and including an above grade side entrance door.
- The purpose of the statutory public meeting is to present a proposed amendment to the Official Plan to delete a prescriptive second unit policy and to present a proposed amendment to the above grade side entrances provision in the Zoning By-law.
- Section 34(19.1) of the *Planning Act* provides that there is no appeal available to the Local Planning Appeal Tribunal (LPAT) from the decision of municipal Council with respect to second unit policies. The proposed Zoning By-law amendment to the above grade side door entrances provisions are subject to a right to appeal to LPAT since these provisions are not specific to the creation of a two-unit dwelling.
- This Information Report and the associated public meeting facilitate compliance with the Term of Council “A Well-run City (Good Government)” priority with respect to encouraging public participation by actively engaging the community.

Background:

April 22, 2015 - Council Approval of Second Units

On April 22, 2015, in compliance with Provincial legislative direction (*Strong Communities Through Affordable Housing Act, 2011* (Bill 140)), Council approved Official Plan policies that would permit second units in detached, semi-detached and townhouse dwellings City-wide, provided that they are on full municipal services, are in accordance with the Zoning By-Law and meet a number of criteria as outlined in Section 3.2.8.2 of the Official Plan. At the same Council meeting, zoning standards were adopted through By-law 86-2015 to give effect to the official plan policies that authorize second units in Brampton. By-law 86-2015 also included an amendment to Section 10.24 (Above Grade Side Door

Entrance) of the Comprehensive Zoning By-law to regulate side yard setbacks City-wide for all residential above grade side entrances. Since this provision was broader than the intended purpose of By-law 86-2015 (second units) and was subject to a right of appeal, Council repealed the above grade side door entrance provision from By-law 86-2015 in June 2015.

Since 2011, the Province of Ontario has updated and introduced new legislative and policy changes to encourage and promote the creation of second units across the Province. In the summer of 2019, the Province passed Bill 108, the *More Homes, More Choice Act*, which amended parts of the *Planning Act* to require municipal Official Plans and Zoning By-laws to contain provisions permitting an additional residential dwelling unit (ADU) within a detached dwelling, semi-detached dwelling, or rowhouse and within an accessory structure on the same property. This has the effect of potentially allowing a total of three dwelling units on the same property – subject to applicable provisions in the Ontario Fire Code, Building Code and Zoning By-law. A separate report will be brought forward to Planning and Development Committee with respect to the proposed implementation of additional residential units.

October 28, 2020 - Council Direction

A report entitled “Review of Regulatory Model Governing Two-Unit Dwellings”, by Rick Conard, Chief Building Official, Director, Building Division was approved by Council on October 28, 2020 (Resolution PDC122-2020). The purpose of this report was to provide recommendations on improving the process related to enforcement and code compliance for two-unit dwellings. The report included the following two recommendations:

- 1) That staff be directed to review amending the Official Plan policies for second units to enable the Committee of Adjustment to consider and approve, where appropriate, minor variance applications involving the Two-Unit Dwelling Zoning By-law provisions; and
- 2) That staff be directed to review amending the Zoning By-law to only allow an above grade door in the side yard where there is a minimum 1.2 metre continuous path of travel leading up to and including an above grade side entrance door.

These two recommendations are addressed in this report by way of a proposed Official Plan Amendment and a Zoning By-law Amendment.

At the October 28, 2020 Council meeting, Council also requested staff to report back on the cost/benefit of moving to a licensing model versus a registration model for two-unit dwellings and to report back on the additional infrastructure strain, including traffic impact created by the establishment of two-unit dwellings in an existing subdivision and to consider whether the current modelling being used is sufficient for new development. This Council direction will be addressed in a separate report.

Current Situation:

The purpose of this report is to present an Official Plan Amendment that proposes:

1. To amend the Second Unit section of the Official Plan to delete Section 3.2.8.2 d) that requires a Zoning By-law amendment when an application for a second unit fails to conform to any of the Two-Unit Dwelling Zoning By-law provisions.

The purpose of this report is to also present a Zoning By-law Amendment that proposes to amend the Above Grade Side Entrances Regulation as follows:

1. To only allow an above grade door in the side yard where there is a minimum 1.2 metre continuous path of travel leading up to and including the door; and
2. To permit a landing that is less than 0.6 metres above ground level having a maximum length and width of 0.9 metres provided that steps are provided at both the front and rear of the landing to provide pedestrian access from the front yard to the rear yard.

Proposed Official Plan Amendment

Section 3.2.8.2 of the Brampton Official Plan permits second residential units within single-detached dwellings, semi-detached dwellings, and townhouses that are on full municipal services provided they are in accordance with the Zoning By-Law and subject to meeting criteria outlined in Section 3.2.8.2. When the second unit Official Plan policies were adopted by Council in 2014, it was the intent that second units would comply with all of the two-unit dwelling Zoning By-law regulations and that any request to amend the two-unit dwelling Zoning By-law regulations, regardless of how minor it may be, would be decided by Council by way of a site-specific amendment to the Zoning By-law. This intent is captured in Section 3.2.8.2 d) that states “*Where an application for a second unit fails to conform to any of the requirements of the implementing Zoning By-law, a Zoning By-law amendment shall be required.*”

The two-unit dwelling Zoning By-law regulations are in place to ensure the orderly and safe establishment of second units, however, these regulations cannot always anticipate all circumstances that may affect development or use of a particular property. With the current policy language in the Official Plan, if an owner cannot comply with the two-unit dwelling Zoning By-law provisions, they are expected to apply for a Zoning By-law amendment, which can be a long and costly process.

Usually, when site specific circumstances do not meet the prescriptive regulations listed in the Zoning By-law, an owner may seek relief by filing a minor variance application through the Committee of Adjustment. The Committee of Adjustment, under Section 45(1) of the *Planning Act* can vary By-law provisions providing it is of the opinion that the general intent and purpose of the Official Plan and Zoning By-law are maintained, it is desirable for the appropriate development or use of the land, building or structure and it

is minor in nature. A minor variance allows the owner to get a building permit even though the proposal does not comply precisely with the By-law requirements.

As noted above, in order to meet the four tests of a minor variance, the application must maintain the general intent and purpose of the Official Plan. The specific wording of Policy 3.2.8.2 d) within the Second Unit section of the Official Plan essentially prohibits the Committee of Adjustment from granting a variance to the two-unit dwelling Zoning By-law regulations, regardless of the circumstance or site-specific considerations involved.

Given that the Second Unit section of the Official Plan is clear on its goals and objectives and that its intent is implemented by way of the two-unit dwelling Zoning By-law provisions, it is proposed that the reference to a specific planning approval process not be explicitly prescribed in the Official Plan for those second unit applications that fail to conform to the requirements of the Zoning By-law. To address this, it is proposed that Policy 3.2.8.2 d) within the Second Unit section of the Official Plan be deleted.

If this prescriptive Official Plan policy was deleted, it would provide the opportunity for the Committee of Adjustment to grant a variance from the two-unit dwelling Zoning By-law regulations, where it is determined that the variance meets the four tests of a minor variance. The proposed deletion of this policy does not preclude staff from recommending that a site-specific amendment to the Zoning By-law be submitted, if deemed appropriate, for any requested amendment to the two-unit dwelling Zoning By-law regulations.

The draft Official Plan Amendment can be found in Appendix 1.

Proposed Zoning By-law Amendment

Section 10.24.1 of the Comprehensive Zoning By-law regulates side yard setbacks for all residential above grade side entrances as follows:

“The front of an above grade door located on a side wall of a single detached, semi-detached, or street townhouse dwelling shall have a minimum distance of 1.2 metres to an interior side lot line. Any steps or landings for such a door shall have a minimum distance of the lesser of (a) 0.9 metres to an interior side lot line or (b) the required interior side yard setback.”

The above noted provision permits an above grade door in the 0.6 metre (2 feet) side yard where the door is recessed 1.2 metres (4 feet) from the interior side lot line. This scenario does not meet the requirements of the Ontario Building Code or the Zoning By-law for use as a primary entrance for a two-unit dwelling as the minimum 1.2m wide path of travel from the front yard to the entrance door is not provided on the subject property. These doors were intended and permitted as a secondary means of egress only to the single detached dwelling.

There are currently no warnings included on a Homebuyers Information Map or within a Subdivision Agreement to advise purchasers that a new residential dwelling with an above grade door in the 0.6 metre side yard, where the door is recessed 1.2 metres from the interior side lot line, does not meet the requirements of the Ontario Building Code or the Zoning By-law for use as a primary entrance for a two-unit dwelling. Purchasing a home with a recessed above grade side door with a side yard of 0.6 metres has caused purchasers to be confused and frustrated if they want to pursue the registration of a second unit using this door as the primary entrance.

To alleviate this concern, it is proposed that the above grade side entrances provision be amended to ensure that any new above grade door in the side yard is only permitted where there is a minimum 1.2 metre continuous path of travel leading up to and including the door, which can be provided on either side of the dwelling, regardless of whether it is used as a primary entrance to a two-unit dwelling or used as a primary or secondary entrance for the principal dwelling.

An above grade door in the 0.6 metre side yard where the door is recessed 1.2 metres from the interior side lot line also does not provide adequate space to access a side door, which can be used as both a secondary and primary entrance by residents of the principal dwelling, without the potential of trespassing on the neighbouring property.

Below is the proposed amendment to Section 10.24.1 – Above Grade Side Entrances of the Zoning By-law:

- “10.24.1 An at or above grade door located on a side wall of a single detached, semi-detached, or townhouse dwelling shall only be permitted when:
- (a) the side yard within which the door is located has a minimum width of 1.2 metres extending from the front wall of the dwelling up to and including the door; or
 - (b) the side yard within which the door is located has a minimum width of 1.2 metres extending from the rear wall of the dwelling up to and including the door, provided that a continuous side yard width of not less than 1.2 metres is provided on the opposite side of the dwelling.
- 10.24.2 Any steps or landings for such side entrance shall have a minimum setback of 0.9 metres to an interior side lot line or the required interior side yard setback, whichever is less.
- 10.24.3 Notwithstanding Section 10.24.2, a landing that is less than 0.6 metres above ground level having a maximum length and width of 0.9 metres shall be permitted provided that steps are provided at both the front and rear of the landing to provide pedestrian access from the front yard to the rear yard.”

The draft Zoning By-law Amendment can be found in Appendix 2.

Technical Considerations

A complete review of the technical planning and development implications of the proposed City-initiated Official Plan and Zoning By-law Amendment will be discussed within the Recommendation Report.

Public Meeting Notification Area:

Notice of the Public Meeting was provided by public notification in the Brampton Guardian. This report has been posted to the City's website.

Corporate Implications:

No corporate implications have been identified at this time.

Financial Implications:

No financial implications have been identified at this time.

Economic Development Implications:

No economic development implications have been identified at this time.

Term of Council Priorities (2019-2022)

The proposed Official Plan and Zoning By-law amendment will help to deliver the strategic directions outlined in the 2019-2022 Term of Council Priorities.

Living the Mosaic – Brampton 2040 Vision

This Report has been prepared in full consideration of the overall vision that the people of Brampton will 'Live the Mosaic.'

Next Steps:

Staff will report back to Planning & Development Committee with final recommendations that address consistency with Provincial, Regional and City policies and an Official Plan Amendment that proposes to delete a Second Unit Official Plan policy and a Zoning By-law Amendment that proposes to amend the Above Grade Side Entrances provision.

Conclusion:

In compliance with the requirements of the *Planning Act*, the City is holding a statutory public meeting to present a draft Official Plan and Zoning By-law amendment that proposes an amendment to the Second Unit Official Plan policies and the Above Grade Side Entrances Zoning By-law provision for public review and comment.

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Appendices:

Appendix 1: Second Units Draft Official Plan Amendment
Appendix 2: Above Grade Side Entrances Draft Zoning By-law Amendment