

**Date:** 2021-04-16

**Subject:** City-initiated Official Plan Amendment (Second Units) and Zoning By-law Amendment (Above Grade Side Entrance)

**Secondary Title:** Recommendation Report  
City-initiated Official Plan Amendment (Second Units) and Zoning By-law Amendment (Above Grade Side Entrances) – City-wide

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**Report Number:** Planning, Bld & Ec Dev-2021-298

**Recommendations:**

1. **THAT** the report titled “**Recommendation Report: City-initiated Official Plan Amendment (Second Units) and Zoning By-law Amendment (Above Grade Side Entrances) – City-Wide**”, to the Planning and Development Committee meeting of May 10, 2021, be received; and
2. **THAT** the Official Plan Amendment and Zoning By-law Amendment attached hereto as Appendices 1 and 2 be adopted, on the basis that they represent good planning, including that they are consistent with the Provincial Policy Statement, conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, the Region of Peel Official Plan and the City’s Official Plan for the reasons set out in the Planning Recommendation Report dated April 16, 2021; and
3. **THAT** Council hereby determines that no further public notice is to be given pursuant to Section 34(17) of the *Planning Act*.

**Overview:**

- This report presents final recommendations for an amendment to the second unit policies in the Official Plan and an amendment to the above grade side entrances provisions in the Zoning By-law.

- **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 report recommends that the second unit Official Plan policy that requires a Zoning By-law amendment if an owner cannot comply with the two-unit dwelling Zoning By-law provisions be deleted. The deletion of this policy will provide the opportunity for the Committee of Adjustment to grant a variance from the two-unit dwelling Zoning By-law provisions, where it is determined that the variance meets the four tests of a minor variance.**
- **The proposed Official Plan amendment assists in promoting the registration of second units, which will help to provide safe affordable housing options in Brampton.**
- **The above grade side entrances provisions in the Zoning By-law are intended to permit an above grade door as a secondary means of egress only to the principal dwelling. The provisions allow for a 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 report recommends that the above grade side entrances provisions be amended to ensure that any new above grade door in the side yard is only permitted where there is a minimum interior side yard width of 1.2 metres up to and including the door, regardless of whether it is used as a primary or secondary entrance for the principal dwelling or used as a primary entrance to a two-unit dwelling.**
- **The proposed amendment to the above grade side door entrances provision will ensure that there is adequate space to access a side door, without the potential of trespassing on the neighbouring property.**
- **The proposed Official Plan amendment and Zoning By-law amendment were presented at a virtual statutory public meeting on January 18, 2021.**

## **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 Entrances) 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 entrances provision from By-law 86-2015 in June 2015.

### *October 28, 2020 - Council Direction*

Council approved a report entitled “Review of Regulatory Model Governing Two-Unit Dwellings”, by Rick Conard, Chief Building Official, Director, Building Division 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.

## **Current Situation:**

This report presents final recommendations for amendments to both the Official Plan and the Zoning By-law. Specifically, the amendments propose the following:

1. To amend the second unit Official Plan policies by deleting 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.

2. To amend the Above Grade Side Entrances Zoning By-law provisions (Section 10.24) as follows:
  - a) To only allow an above grade door in the side yard where there is a minimum interior side yard width of 1.2 metres up to and including the door; and
  - b) 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 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 recommended that Second Unit Official Plan Policy 3.2.8.2 d) be deleted.

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 is 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 principal 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.

In addition, 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.

To alleviate these concerns, 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 interior side yard width of 1.2 metres 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.

The proposed amendment does not alter the following two-unit dwelling Zoning By-law requirement (Section 10.16 (g)):

“Where access to a second unit is provided through a door located in the side yard or rear yard, permitted encroachments, structures, utilities, or mechanical equipment shall not be permitted within 1.2 metres of the side lot line for the portion of the side yard between the access and the front wall of the dwelling.”

The above noted path of travel is required to allow fire-fighting crews and emergency response teams to enter each dwelling, if necessary, through the primary entrance of each dwelling.

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 included 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 is found in Appendix 2.

## *Planning Analysis*

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. Brampton's Second Unit Official Plan policy (Section 3.2.8.2 d)) that requires a Zoning By-law amendment to be approved by Council when a second unit fails to conform to any of the requirements of two-unit dwelling Zoning By-law provisions can be viewed as a deterrent in promoting the creation of second units, which is not consistent with Provincial policy direction that encourages the development of affordable housing.

Since the second unit policies were adopted, there have been no site-specific applications submitted to the City to request an amendment the two-unit dwelling Zoning By-law provisions. This is most likely attributed to the length of time (minimum one year) and the costs (over \$12,000) associated with obtaining a Zoning By-law amendment. By requiring property owners to go through a lengthy and costly rezoning process when a second unit does not comply with the two-unit dwelling Zoning By-law provisions, may discourage owners from obtaining the necessary requirements to register their second unit.

Instead of filing a Zoning By-law amendment application, when compliance with the two-unit dwelling provisions cannot be met, some owners have applied to the Committee of Adjustment for a minor variance. However, obtaining a minor variance has not proven to be a successful option for those owners who are seeking a relief from the two-unit dwelling Zoning By-law provisions. The Committee of Adjustment has refused the majority of the minor variance applications that are seeking a relief from the two-unit dwelling Zoning By-law provisions because they do not meet the *Planning Act* minor variance test of maintaining the general intent and purpose of the Official Plan. Specifically, the intent of the second unit Official Plan policy that requires a Zoning By-law amendment to be approved by Council when a second unit fails to conform to any of the requirements of two-unit dwelling Zoning By-law provisions.

In some instances, the requested variance from the two-unit dwelling Zoning By-law provisions may meet the other three tests of a minor variance under the *Planning Act*, but because of the prescriptive second unit Official Plan policy, the majority of the minor variance applications are being refused by the Committee of Adjustment. If a second unit does not comply with the Zoning By-law and the necessary approvals have not been received to obtain relief from the two-unit dwelling provisions, a second unit cannot be registered.

With the recommended deletion of the prescriptive second unit policy, this will provide an opportunity for the Committee of Adjustment to grant a variance from the two-unit dwelling Zoning By-law provisions, where it is determined that the variance meets the four tests of a minor variance. Allowing the opportunity for the Committee of Adjustment to consider a variance from the two-unit dwelling Zoning By-law provisions assists in providing an owner a more efficient and cost effective way of seeking the necessary approvals to register a second unit, which ultimately promotes the registration of second units and helps to provide safe affordable housing options in Brampton.

The Zoning By-law amendment that proposes a minimum interior side yard width of 1.2 metres up to and including the door, will appropriately regulating above grade side doors to support well-designed residential dwellings and to ensure that neighbouring properties are not adversely impacted.

The proposed Official Plan and Zoning By-law amendments are consistent with the Provincial Policy Statement and are in conformity with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, as well as the Region's Official Plan. The proposed Official Plan and Zoning By-law amendments are also generally consistent with Brampton's Official Plan, and appropriately consider matters of provincial interest as set out in Section 2 of the *Planning Act*. A summary of the relevant Provincial, Regional and City policies can be found in Appendix 3 – Planning Analysis.

#### *Statutory Public Meeting*

The proposed Official Plan and Zoning By-law amendments were published in the Brampton Guardian on December 17, 2020 as per *Planning Act* requirements. The virtual public meeting for this application was held on Monday, January 18, 2021. There was one (1) member of the public in attendance at the virtual public meeting (see Appendix 4) that spoke in support of the proposed amendments.

#### *Builder Bulletin*

A builder bulletin was emailed to the development industry on January 12, 2021 to advise of the proposed amendments to the above grade side entrance provisions in the Zoning By-law. The bulletin also advised that if the Zoning By-law amendment is approved by Council that the proposed amendment may impact some previously approved Certified Models and/or proposed sitings.

#### **Corporate Implications:**

##### Financial Implications:

There are no financial implications associated with the proposed Official Plan and Zoning By-law Amendments.

##### Economic Development Implications:

There are no economic development implications associated with the proposed Official Plan and Zoning By-law amendments.

##### Other Implications:

There are no corporate implications associated with the proposed Official Plan and Zoning By-law amendments.



## Term of Council Priorities (2019-2022)

The proposed Official Plan and Zoning By-law amendments will help to deliver the strategic directions outlined in the 2019-2022 Term of Council Priorities, in particular “A Well-Run City (Good Government)” priority. The statutory public meeting for these amendments encouraged City-wide public participation.

The proposed Official Plan amendment is consistent with the “City of Opportunities” strategic direction as it promotes the registration of second units and helps to provide safe affordable housing options in Brampton. The proposed Zoning By-law amendment will ensure that there is an appropriately sized interior side yard width to obtain access to a side door. This amendment supports well-designed dwellings to respect neighbouring properties.

## 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.’

### **Conclusion:**

This report presents for approval a City-initiated Official Plan amendment that will assist in promoting the registration of second units, which will help to provide safe affordable housing options in Brampton. It also presents for approval a City-initiated Zoning By-law amendment that will ensure that there is adequate space to access a side door, without the potential of trespassing on the neighbouring property.

Staff is satisfied that the proposed Official Plan amendment and Zoning By-law amendment represents good planning, including that they are consistent with the Provincial Policy Statement and conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, and the Region of Peel Official Plan and Brampton’s Official Plan.

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Appendices:

- Appendix 1: Second Unit Policies - Draft Official Plan Amendment
- Appendix 2: Above Grade Side Door Entrance Provision - Draft Zoning By-law Amendment
- Appendix 3: Planning Analysis
- Appendix 4: Public Meeting Minutes – January 18, 2021
- Appendix 5: Response to Public Correspondence
- Appendix 6: Correspondence Received