



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chairs and Members Planning Committee
COMMITTEE DATE:	September 21, 2021
SUBJECT/REPORT NO:	Modifications and Updates to Existing Secondary Dwelling Unit Regulations (PED20093(b)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Timothy Lee (905) 546-2424 Ext. 1249
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

That City Initiative CI-20-E respecting amendments to Hamilton Zoning By-law No. 05-200 and the Zoning By-laws applicable to the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek, for modifications and updates to existing Secondary Dwelling Unit Regulations, be approved on the following basis:

- (a) That the Draft By-law to amend Zoning By-law No. 05-200, the Town of Ancaster Zoning By-law No. 87-57, Town of Dundas Zoning By-law No. 3581-86, the Town of Flamborough Zoning By-law No. 90- 145-Z, the Township of Glanbrook Zoning By-law No. 464, City of Hamilton Zoning By-law No. 6593, and the City of Stoney Creek Zoning By-law No. 3692-92, attached as Appendix “A” to Report PED20093(b), which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council;
- (b) That the proposed changes in zoning are consistent with the Provincial Policy Statement (2020), conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) and comply with the Rural and Urban Hamilton Official Plans.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

On May 12, 2021, Council approved By-law Nos. 21-071 to 21-077 (inclusive) permitting Secondary Dwelling Units (SDU) in the Urban and Rural Areas. As the By-laws have been in effect since June 2021, building permits have been submitted to facilitate SDUs across the City. As of early-August 2021, ten Minor Variance Applications have been submitted (and some approved) to modify certain regulations. The new regulations are being applied to actual applications and tested and further evaluated through 'real world' situations. After consulting with Committee of Adjustment and Building Services staff, it was determined that a Housekeeping Amendment is needed to address certain issues and provide clarity to the regulations, which is the basis of Report PED20093(b).

The purpose of this report is to recommend a series of Housekeeping amendments to Hamilton Zoning By-law No. 05-200 and the Zoning By-laws applicable to the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek which will provide technical amendments to improve By-law interpretation (See Appendix "A" to PED20093(b)). A summary of the amendments to the SDU regulations include:

- Removing a regulation in Hamilton Zoning By-law No. 6593 to allow SDUs to be established in a cellar **and** basement;
- New parking regulations in all Zoning By-laws clarifying parking requirements for existing principal dwellings;
- Permitting ground covers in addition to sod within the side and rear yard setback between the side and rear lot lines and the detached SDU in all Zoning By-laws;
- Allowing SDU entrances to face the front yard where the entrance of the principal dwelling is in the exterior/flankage yard; and,
- Other technical and cross-referencing updates to provide consistency in all Zoning By-laws.

In addition to this Report PED20093(b), additional work is in progress and will be brought forward in Q4 2021 to address Rural Area matters such as Farm Labour Residences and permissions for detached SDUs (whereas currently only SDUs internal to the principal dwelling are permitted).

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: As required by the *Planning Act*, Council shall hold at least one Public Meeting to consider amendments to the Zoning By-laws.

Notice of the Public Meeting was placed in the Hamilton Spectator and the Community Newspapers on September 2, 2021.

The Rural Hamilton Official Plan and the Urban Hamilton Official Plan contain polices to permit SDUs in accordance with the provisions of Bill 108. Therefore, in accordance with Section 34(19.1) of the *Planning Act*, third party appeals of the proposed Zoning By-law Amendments, attached as Appendix “A” to Report PED20093(a), are not permitted because the City’s Official Plan contains policies permitting Secondary Dwelling Units.

HISTORICAL BACKGROUND

On May 12, 2021, City Council approved By-law Nos. 21-071 to 21-077 (inclusive) permitting SDUs in the Urban and Rural Area to Zoning By-law No. 05-200 and the Zoning By-laws applicable to the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek. These regulations included:

- General Regulations for the Urban and Rural Areas:
 - New Definitions;
 - Parking Requirements;
 - Design Regulations;
 - Other technical regulations to ensure consistency and interpretation of SDU requirements; and,
 - Repeal of the Laneway Housing Pilot Project (By-law No. 18-299) and the Temporary Use By-law (By-law No. 19-307) as these By-laws are no longer necessary.

- Urban Area Specific Regulations:
 - SDU within a principal dwelling:
 - Design regulations ensuring consistent appearance from the street; and,
 - Parent zone regulations that apply to additions to the principal dwelling.

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- Detached SDU (new construction):
 - Locational requirements such as setbacks and lot coverage;
 - Health and safety regulations; and,
 - Design requirements such as height and maximum Gross Floor Area.
- Detached SDU (conversion of existing accessory structure):
 - To permit within an existing building provided it meets the health and safety requirements in accordance with the Ontario Building Code; and,
 - Additions over 10% of the floor area of the existing building must meet the size and height requirements of a detached SDU.
- Rural Area Specific Regulations:
 - SDU within a principal dwelling only:
 - Minimum lot area and adequate servicing requirements;
 - Prohibition of SDUs in certain Rural Settlement Areas and areas between Highway 8 and the Niagara Escarpment in Stoney Creek; and,
 - Technical amendments to Farm Labour Residence regulations.

Subsequent to Council adoption of By-law Nos. 21-071 to 21-077 (inclusive), the new regulations permit SDUs internal to the principal dwelling and detached SDUs (newly constructed and converted) in the Urban Area, but permit only SDUs internal to the principal dwelling in the Rural Area where private servicing is available (detached SDUs are currently not permitted).

Phase 2 of the SDU project focuses on proposing regulations to permit detached SDUs in the Rural Area, where appropriate. To ensure that issues related to sustainable private servicing are addressed in future zoning regulations, a servicing study is being undertaken in collaboration with Hamilton Water staff. The findings of the servicing study will assist in informing future zoning regulations such as the minimum lot size to be eligible to establish a detached SDU. The project is being completed in concert with a future report to address matters respecting Farm Labour Residences. Both of these reports are scheduled to be brought forward to Council in 4th quarter-2021.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

1.0 Provincial Legislation and Policy Framework

Bill 108 (More Homes, More Choice Act, 2019) received Royal Assent on June 6, 2019 for a broad change to various pieces of legislation such as the *Planning Act*, *Ontario Heritage Act*, and the *Development Charges Act*, amongst others. By-law Nos. 21-071 to 21-077 (inclusive) approved by Hamilton Council on May 12, 2021 implement these provincial policy requirements.

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Further, By-law Nos. 21-071 to 21-077 (inclusive) were approved by Hamilton Council on the basis that they were consistent with the Provincial Policy Statement (2020) and conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended). The proposed Zoning By-law modifications and updates to existing SDU regulations for the Urban and Rural Area to Zoning By-law No. 05-200 and the Zoning By-laws applicable to the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek conform to and are consistent with Provincial legislation and policy.

2.0 Urban and Rural Hamilton Official Plans

In December 2020, Hamilton Council approved City Initiative CI-19-F – Housekeeping Amendments to the Urban Hamilton Official Plan and Rural Hamilton Official Plan which included proposed policy changes to implement Bill 108 (More Homes, More Choice Act, 2019) such as permitting SDUs within street townhouses and within the Rural Area (internal to the principal dwelling).

Based on the foregoing, the proposed housekeeping and updated amendments to existing SDU regulations for the Urban and Rural Area to Zoning By-law No. 05-200 and the Zoning By-laws applicable to the former municipalities conform to the above mentioned amendments to the Urban and Rural Hamilton Official Plans.

3.0 Zoning By-laws

The approval by Council of By-law Nos. 21-071 to 21-077 (inclusive) expanded existing permissions and regulations for SDUs across all existing in-force Zoning By-laws city wide, and also implemented Provincial directions and corporate goals and objectives at the property level. Subsequent to becoming in force and effect, Minor Variance applications have been submitted as regulations are being tested through the review of proposed SDUs. After consultations with staff, it was determined that a Housekeeping Amendment to By-law Nos. 21-071 to 21-077 (inclusive) is needed to provide clarity to the in-effect regulations, and to improve by-law interpretation and implementation on a go-forward basis. More information can be found in the Analysis and Rationale for Consideration Section on Page 6 to Report PED20093(b).

RELEVANT CONSULTATION

Committee of Adjustment staff and Zoning staff in the Building Services Division of the Planning and Economic Development Department were consulted throughout the process to identify interpretation or implementation related issues respecting the SDU regulations. The interpretation and implementation issues have been addressed in the draft Zoning By-law (See Appendix “A” to Report PED20093(b)) and the rationale for each amendment can be found in Appendices “A” to “G” within the draft Zoning By-law.

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Notice of these amendments was posted in the Hamilton Spectator on September 2, 2021.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1.0 Recent Building Permit and Minor Variances for SDUs

By-law Nos. 21-071 to 21-077 (inclusive) have been in effect since June 4, 2021. Due to the interest by homeowners to establish SDUs on their own property, Building Services have been processing building permit applications to facilitate the construction of SDUs (either on its own or in conjunction with renovations / construction of the principal dwelling).

Further, a total of ten Minor Variance applications have been submitted as of August 2021 to facilitate SDUs internal to the principal building and detached SDUs. All Minor Variance applications to date are for SDUs within the former City of Hamilton (lower part of the City and in the Mountain), with equal representation across all Hamilton Wards. No variances have been requested to date within the other former municipalities. Variances requested for SDUs include:

SDU internal to the Principal Dwelling:

- Entrance location.

Detached SDU:

- Maximum height;
- Maximum GFA;
- Maximum number of bedrooms permitted; and,
- Setback from rear or side lot lines.

Parking:

- Manoeuvring spaces (to allow parking in tandem);
- Parking requirements; and,
- Parking stall size (Principal dwelling and SDU).

Based on the foregoing, the draft Zoning By-law to amend By-law Nos. 21-071 to 21-077 (inclusive) (Appendix "A" to Report PED20093(b)) addresses a few of the variances such as entrance location for SDUs internal to the principal dwelling and parking requirements for SDUs. Staff will continue to monitor future Minor Variance Applications to determine if additional amendments are required to provide clarity to the in-effect regulations, to improve by-law interpretation and implementation on a go-forward basis and therefore minimize the number of future Minor Variance Applications required.

However, there are certain regulations that will not be amended at this time despite repeated variances such as the maximum GFA for detached SDUs due to the potential impacts on abutting neighbours with respect to scale, massing, and overlook, and more research would be required to determine and appropriate amendment.

2.0 Proposed Housekeeping Changes

To address modifications and updates to Zoning By-law No. 05-200 and the six Zoning By-laws applicable to the former municipalities, a draft Zoning By-law is included in this Report (See Appendix “A”). Most of the amendments are identical across all seven Zoning By-laws to provide consistency in regulations city wide. The list of amendments are arranged by the following themes:

- Parking;
- Amendments to performance standards, including side and rear yard setbacks and SDU location in a cellar; and,
- Other technical and cross-referencing amendments.

1.1 Parking Requirements for the Principal Dwelling and SDU

An update to the parking regulations for Zoning By-law No. 05-200 and the six Zoning By-laws applicable to the former municipalities provides clarity and consistency respecting parking requirements for existing dwellings. These recommended changes (see Appendix “A” to Report PED20093(b)) are based on discussions with Building Services staff. Amendments to parking regulations include:

- Introduce a new regulation for all seven in-effect Zoning By-laws where no additional parking spaces shall be required for any dwelling on a lot (for the principal dwelling and the SDU), provided that the number of legally established parking spaces that existed prior to the effective date of By-law Nos. 21-071 to 21-077 (being May 12, 2021) continue to be maintained and provided. For example, if two parking spaces have been legally established, then no additional spaces shall be required provided the two parking spaces continue to be legally provided. This regulation **only** applies to existing single detached dwellings (which includes renovated dwellings), and not newly constructed dwellings.

Providing SDU parking spaces on existing lots may be difficult to accommodate in older homes when considering lot width and a minimum front yard landscaping requirement. Introducing this regulation ensures additional requirements do not inadvertently affect the existing dwelling and SDU. Based on the foregoing, the new regulation prevents additional parking spaces from being required, potentially reducing Minor Variance Applications.

The amendment also addresses climate change by reducing the need to provide additional parking or to accommodate additional parking within an existing parking pad or driveway. Eliminating SDU parking can preserve existing landscaping especially where mature trees and enhanced landscaping are already present.

Hamilton Zoning By-law No. 6593

Parking requirements for single detached dwellings are based on the age of construction due to historical use patterns of the automobile and therefore driveways might not have been provided. For dwellings built before 1950, no parking is required under Section 18(A) of the Zoning By-law, and based on the amendment, no additional parking is required with the presence of an SDU. The rationale is parking requirements for accessory uses cannot exceed the requirements of the principal dwelling.

After 1950 to 1997, private parking spaces on a lot containing a dwelling were being provided, and therefore one parking space was required. Single detached dwellings built after 1997 require two parking spaces as vehicles have become the dominant method of private transportation. As mentioned above, for all cases, parking spaces that are legally provided prior to the effective date of the By-law shall continue to be provided.

- A general restructuring of the parking regulation sections to provide greater clarity and ease of use, and deleting certain parking regulations as the amendment renders some regulations redundant.

1.2 Side and Rear Yard Setbacks for Detached SDUs

A minimum 1.2 metres side and rear yard setback applies to detached SDUs. To avoid impermeable surfaces and obstructions due to tree and shrub root systems, only sod is permitted. However, grass requires regular maintenance such as mowing and fertilizing, and might not withstand prolonged drought conditions.

An amendment to the regulation allows for ground cover in addition to sod (see Appendix "A" to Report PED20093(b)). Although not generally defined, ground cover is a type of vegetation that grows low to the ground and can be an annual or perennial. Examples of ground cover include certain types of sedum, lavender, mosses, lily of the valley, creeping phlox, dianthus, and chamomile. Many species, of which some are native, are low maintenance. Some species are also more drought and heat tolerant.

Allowing alternative forms of vegetation can also address climate change by reducing the need for watering and by promoting Low Impact Development (LID) by allowing natural vegetation to soak up excess water but also tolerate drought conditions. Some

ground cover may also be native to Hamilton which supports biodiversity and the ability to tolerate local climate conditions.

1.3 SDUs permitted in Cellars

In 2015, an amendment to Section 19: Residential Conversions in Hamilton Zoning By-law No. 6593 removed a regulation prohibiting dwelling units to be located in a cellar (which is defined as a portion of a building which is partly below ground but has more than one-half of the clear height below adjacent ground). The removal of this regulation allowed older homes especially in Lower Hamilton to establish an accessory apartment in the lowest level of the dwelling with a lower ceiling height. However, through the approval of By-law No. 21-076, the regulation was inadvertently added back in.

To rectify the error, an amendment includes the removal of this regulation to allow SDUs to be located in both the cellar and basement (See Appendix “A” to Report PED20093(b)).

1.4 Other Technical Amendments

In addition to the above amendments, there are other technical amendments that are included as part of the Housekeeping amendment:

- Entrance on a corner lot: Where the entrance to the principal dwelling is located on the exterior/flankage yard, an amendment to the regulation allows the SDU entrance to be located facing the front yard as long as there is only one entrance per façade that faces the street;
- In Hamilton Zoning By-law No. 6593, an amendment allowing SDUs to be constructed not only in existing single detached, semi-detached, and street townhouses, an SDU(s) can also be built at the same time as a newly constructed principal dwelling. This amendment does not impact other former municipal zoning by-laws as an SDU(s) can already be constructed at the same time as a newly constructed principal dwelling; and,
- Technical numbering corrections and grammatical corrections to ensure a consistent flow of numbering and language within all the Zoning By-laws.

2.0 Next Steps

Phase 2 of the SDU project focuses on developing new regulations to permit detached SDUs in the Rural Area, where appropriate. To ensure that issues related to sustainable private servicing are addressed in future zoning regulations, a servicing study is being undertaken in collaboration with Hamilton Water staff. The findings of the servicing

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study will assist in informing future zoning regulations such as the minimum lot size to be eligible to establish a detached SDU. The project is being completed following an upcoming report to address matters respecting Farm Labour Residences, which is scheduled to be brought forward to Council in 4th quarter-2021.

ALTERNATIVES FOR CONSIDERATION

If the proposed Housekeeping Amendment By-law is not approved, inconsistencies in the interpretation and application of the regulations for Secondary Dwelling Units in Hamilton Zoning By-law No. 05-200 and the six Zoning By-laws applicable to the former municipalities will continue to occur which may lead to additional requirements for Minor Variance applications and delays in approvals for some SDUs.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED20093(b) – Draft By-law to incorporate Housekeeping Amendments to Hamilton Zoning By-law No. 05-200 and the Zoning By-laws applicable to the Town of Ancaster, Town of Dundas, Town of Flamborough, Township of Glanbrook, City of Hamilton, and City of Stoney Creek