



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 19, 2024
SUBJECT/REPORT NO:	City of Hamilton's Response to the Proposed Regulation under the <i>Planning Act</i> to Facilitate the Creation of Additional Residential Units - Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units (PED24208) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Alana Fulford (905) 546-2424 Ext. 4771
SUBMITTED BY:	Anita Fabac Acting Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council receive Report PED24208 as the basis for written comments on Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units, including the attached submission to the Province, attached as Appendix "A" to Report PED24208.
- (b) That Council adopts the submission and recommendations as provided in Report PED24208 on Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units.
- (c) That the Director of Planning and Chief Planner be authorized and directed to confirm the submission made to the Province, attached as Appendix "A" to Report PED240208.
- (d) That should Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units, made under the *Planning Act*, come into force, staff be directed and authorized to prepare the necessary draft amendments to the City's

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.

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Official Plans and Zoning By-laws and schedule a Statutory Public Meeting for Council’s consideration at a future Planning Committee.

EXECUTIVE SUMMARY

Since release of the Government of Ontario “More Homes for Everyone Plan” in March 2022, the Province has brought forward many legislative amendments that have impacted the municipal planning approvals processes which are meant to help achieve the projection of 1.5 million new homes by 2031. Most recently on June 6, 2024, Bill 185, *Cutting Red Tape to Build More Homes Act, 2024* received Royal Assent. Bill 185 represents the latest legislative amendments addressing matters of land use planning, development, and municipal regulatory powers.

Ontario Regulation 299/19: Additional Residential Units came into effect in 2019, introducing requirements and standards for Additional Residential Units. Accompanying proposed Bill 185 was Environment Registry of Ontario Posting #019-8369 which posed two discussion questions for comment on Additional Residential Units related to the proposal to provide the Minister with broader authority to remove municipal zoning by-law barriers that may be limiting development of Additional Residential Units. The City’s comments on this posting can be found in the City’s response to Bill 185 (Report PED24097).

The province has now posted proposed amendments to Ontario Regulation 299/19 for comment. The proposed amendments introduce performance standards that would apply to all lands across the province that permit Additional Residential Units.

The deadline for comments on Proposed Amendment to Ontario Regulation 299/19 was October 23, 2024. Given the timing, staff level comments have been submitted to the Province and are contained in Appendix “A” to Report PED24208. If the recommendations of this Report are approved by Council, the Director of Planning and Chief Planner will notify the Province that the submissions that were made have been adopted by Council for the City of Hamilton and any modifications.

Regarding terminology, Additional Residential Units are referred to as Additional Dwelling Units in the City’s Official Plans and Zoning By-laws. The terms are used interchangeably in this Report.

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FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

In 2022, through the *More Homes Built Faster Act, 2022*, changes were made to the *Planning Act* to accelerate implementation of the Province’s Additional Residential Unit framework. A municipality cannot pass a by-law that would prohibit up to three residential units per lot on urban residential land.

Bill 185, *Cutting Red Tape to Build More Homes Act, 2024* received Royal Assent on June 6, 2024. Bill 185 enacted the following change to the *Planning Act* affecting Additional Residential Units:

- **Subsection 35.1 (2)** authorizes the Minister to make regulations establishing requirements and standards with respect to a second or third residential unit in a detached house, semi-detached house or rowhouse and with respect to a residential unit in a building or structure ancillary to such a house, a parcel of land where such residential units are located or a building or structure within which such residential units are located.

Accompanying Bill 185, Environmental Regulatory of Ontario Posting #019-8366 - Removing Barriers for Additional Residential Units, proposed an enhanced regulation-making authority providing the Minister with broader authority to remove municipal zoning by-law barriers that may be limiting development of Additional Residential Units.

The City expressed opposition to the proposed unilateral decision-making authority, advising that while staff are supportive of the promotion of Additional Residential Units as a means to providing infill and intensification opportunities, mandating specific development regulations that do not consider appropriate integration into an existing community and which are intended to mitigate potential impacts does not represent good planning. Where the Province could support municipalities and those interested in building Additional Dwelling Units is by creating stock building plans that may reduce approval timelines, and financial incentives to assist with costs associated with developing an Additional Residential Unit. The City’s full response can be found in Appendix “A” and “A1” attached to Report PED24097.

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The Province is now seeking comments on proposed amendments to Ontario Regulation 299/19 Additional Residential Units, made under the *Planning Act*, which introduces specific performance standards for Additional Residential Units that would apply province-wide to lands that permit Additional Residential Units.

RELEVANT CONSULTATION

A request for comment on the proposed amendment to Ontario Regulation 299/19 was circulated by staff to sections within the Planning Division, Growth Management, Hamilton Water, and the Housing Secretariat.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

As the City has consistently communicated, staff support the general intent of the Province to streamline processes to assist in increasing the supply of housing and meeting the Province’s goal of building 1.5 million homes. The City has demonstrated its commitment to meeting these targets through the Housing Pledge (PED23056) signed in March 2023, the City meeting 2023 new building targets, and implementing policy and regulatory changes to provide more flexibility for infill and intensification options.

The City has been a leader in the advancement of Additional Dwelling Unit permissions and in doing so, has demonstrated a commitment to this form of development in achieving the City’s housing goals. While the *Planning Act* establishes province-wide, as-of-right permissions for up to three residential units on a lot where residential uses are permitted, the City has gone beyond the Provincial requirement by permitting up to four dwelling units on most residential properties in the urban area of Hamilton.

1.0 Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units

The Province has indicated that based on feedback received through Environmental Registry of Ontario posting #019-8369, a series of performance standards are proposed to be contained in a future Minister’s regulation that would apply to the same lands as the current Additional Residential Unit framework (urban residential land permitting up to three units per lot). The proposed performance standards would not apply to rural areas, or settlement areas without full municipal servicing.

1.1 General Comments

The City does not support province-wide performance standards for Additional Residential Units as they are unable to address context specific conditions. Staff developed permissions and performance standards for Additional Dwelling Units and Detached Additional Dwelling Units after extensive evaluation and consultation and have subsequently refined the regulations through ongoing monitoring. The regulatory framework for Additional Dwelling Units and Detached Additional Dwelling Units supports their compatible integration into urban neighbourhoods and in the rural area and rural settlement areas of Hamilton.

Even in a geographic area the size of Hamilton, applying a standard set of regulations can be challenging given differences in context like lot size variability and differences in built form patterns due to age of development. The concept of a one size fits all approach to a geography as vast and varied as Ontario does not in the opinion of staff, represent good planning.

1.2 Proposed Performance Standards for Urban Residential Land

The following performance standards are proposed through the amendment to Ontario Regulation 299/19:

1. Angular Plane

Proposal	Override all angular plane requirements in zoning by-laws for buildings with ARUs.
Rationale	Removing this requirement for buildings with ARUs would make it easier to build structures with more livable space, including ancillary buildings and laneway suites on existing lots.

Impact: No amendments are required to Zoning By-law No. 05-200 or the former Community Zoning By-laws as the Zoning By-laws do not contain angular plane requirements for dwellings containing Additional Dwelling Units or Detached Additional Dwelling Units.

Staff’s Response

Dwellings permitting Additional Dwelling Units and Detached Additional Dwelling Units are not subject to an angular plane requirement in Zoning By-law No. 05-200. For

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Detached Additional Dwelling Units, the maximum height permission of 6.0 metres is intended to address scale and massing. The regulation for maximum height, combined with setback requirements and a maximum permitted Gross Floor Area for the Detached Additional Dwelling Unit, are in place to collectively regulate the size and location of a Detached Additional Dwelling Unit vis-à-vis the principal dwelling and dwellings on adjoining properties. These regulations reflect Hamilton’s approach to integrating Additional Dwelling Units into neighbourhoods.

2. Lot Coverage

Proposal	Allow at least 45% lot coverage for all buildings and structures on parcels with Additional Residential Units.
Rationale	Setting out a provincial standard of 45% lot coverage for buildings and structures on a lot that includes at least one ARU would make it easier to build ancillary buildings like garden and laneway suites on existing lots, as well as rear additions to the primary building. Zoning could still regulate building location through setbacks.

Impact: If implemented, Zoning By-law No. 05-200 and the former Community Zoning By-laws would have to be amended to add this regulation. Staff would also have to re-evaluate the collective set of Additional Dwelling Unit and Detached Additional Dwelling Unit regulations to identify any impacts a lot coverage requirement may have on existing performance standards.

Staff’s Response

Further clarification is requested to confirm the intent of this performance standard. Does the Province intend to establish a minimum lot coverage requirement of 45% for all lots, even in those areas where site specific zoning has been enacted to reflect servicing capacity constraints? Lot coverage is typically regulated through a maximum percentage of building coverage on a property to manage scale, intensity of use, and constraints like servicing capacity.

Zoning By-law No. 05-200 does not regulate lot coverage except in a small number of cases. Instead, setback requirements and maximum height establish the buildable envelope and are implemented alongside additional performance standards like minimum landscaped area. The coverage of buildings on a lot varies, depending on the size of a lot, with the coverage of buildings (lot coverage) increasing as lot area

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decreases. Thus, the impact of lot coverage on the potential development of a lot can vary. As well, differences in built form characteristics across neighbourhoods due to age of development can result in variability in ‘typical’ lot coverages across the City. Finally, a set lot coverage standard cannot respond to individual municipal requirements for maintaining pervious surface on a lot to manage impacts on stormwater infrastructure. This is one of the many considerations that are specific to a municipality. Hamilton’s approach is to employ setback requirements, a maximum height permission, a maximum Gross Floor Area permission for a Detached Additional Dwelling Unit, along with a lot coverage maximum applied specifically to all accessory buildings plus the Detached Additional Dwelling Unit. These performance standards are collectively in place to manage scale and the intensity of use.

For the reasons noted, establishing a Province-wide standard lot coverage is not considered a reasonable and implementable approach to supporting Additional Dwelling Units across the province.

3. Floor Space Index (FSI)

Proposal	Override all Floor Space Index requirements in zoning by-laws that apply to parcels with Additional Residential Units.
Rationale	<p>Floor Space Index is the gross floor areas of all buildings on a lot, divided by the lot area.</p> <p>Removing this requirement would make it easier to build structures with more livable space, including ancillary buildings and laneway suites on existing lots.</p>

Impact: No amendments are required to Zoning By-law No. 05-200 which does not employ floor space index requirements. Staff will have to evaluate whether amendments may be required to the former Community Zoning By-laws or where site specific zoning has been enacted to respond to unique circumstances such as servicing constraints.

Staff’s Response

Floor space index represents the ratio of a building’s total floor area to the size of the lot on which the building is located. It can be employed in a zoning by-law to regulate the intensity of the use of lands and the scale of the development permitted. Zoning By-law No. 05-200 does not employ floor space index to regulate scale of development (or the

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similar floor area ratio). Hamilton’s approach is to employ a series of tested performance standards to regulate the scale of development. Hamilton’s performance standards for Additional Dwelling Units demonstrates how zoning regulations are developed specifically for a municipality based on a comprehensive evaluation of the municipality’s neighbourhoods, lot fabric, and other local conditions and considerations, as well as the regulatory framework already established in the zoning by-law.

4. Minimum Lot Size

Proposal	Override all minimum lot size/lot area requirements that are specific to parcels with ARUs.
Rationale	Removing minimum lot size requirements for ARUs would ensure that the same lot size standards that apply to a house also apply to a house with an ARU.

Impact: No amendments are required to Zoning By-law No. 05-200 or the former Community Zoning By-laws. The proposed minimum lot area does not apply to rural areas, or settlement areas without full municipal servicing.

Staff’s Response

In the urban area of Hamilton, there are no minimum lot size requirements for Additional Dwelling Units or Detached Additional Dwelling Units. Internal Additional Dwelling Units are subject to the zoning provisions of the principal dwelling. For Detached Additional Dwelling Units, the collective set of zoning regulations that apply dictate whether a property is of sufficient size to accommodate a Detached Additional Dwelling Unit in the rear or side yard of a property.

In the rural area, both Additional Dwelling Units and Detached Additional Dwelling Units are subject to minimum lot size requirements to ensure sufficient area for private servicing. The requirements are:

- Additional Dwelling Units in Agriculture (A1), Rural (A2) and Settlement Residential (S1) Zones: greater than 0.6 hectares; and,
- Additional Dwelling Units in Agriculture (A1), Rural (A2) and Settlement Residential (S1) Zones: greater than or equal to 1.5 hectares.

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According to the details of the proposal provided on the Environmental Registry of Ontario, the proposed amendments to Ontario Regulation 299/19 will not apply to rural areas or settlement areas without full municipal servicing. None of Hamilton’s Rural Settlement Areas are fully serviced. Accordingly, it is staff’s understanding that the performance standards proposed will not apply to the Rural Settlement Areas or the rural area of Hamilton where minimum lot size requirements are in place.

5. Building Distance Separation

Proposal	Restrict building distance separation requirements associated with any building containing ARUs to a maximum of 4 metres.
Rationale	<p>Building separation distances set out the minimum distance between a primary building and any ancillary structure.</p> <p>Reducing the minimum building separation distance to a maximum of 4 metres would make it easier to build laneway suites on existing lots.</p>

Impact: If implemented, Zoning By-law No. 05-200 and the former Community Zoning By-laws would have to be amended to modify the existing minimum building separation requirement. Staff would also have to re-evaluate the collective set of Additional Dwelling Unit and Detached Additional Dwelling Unit regulations to identify any impacts of this change on existing performance standards.

Staff’s Response

Zoning By-law No. 05-200 requires a minimum separation distance of 7.5 metres between the principal dwelling and the Detached Additional Dwelling Unit when it is located in the rear yard, and a minimum building separation distance of 4.0 metres when it is located in the interior side yard. These regulations were established with the introduction of Additional Dwelling Unit permissions in 2021. These building separation distances were implemented for several reasons:

- To preserve outdoor amenity space in the rear or side yard of a property containing a Detached Additional Dwelling Unit;
- To contribute to a clear delineation between the principal dwelling and the secondary Detached Additional Dwelling Unit; and,

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- To maintain landscaped area on the lot for drainage purposes and to provide space for tree protection and/or tree planting.

As discussed previously in this Report, since introduced, Additional Dwelling Unit and Detached Additional Dwelling Unit regulations have been closely monitored through minor variance and building permit activity. As a result of this ongoing monitoring, the regulations were updated in June 2022, and subject to minor updates in February 2024 with the implementation of Phase 2 of the Low Density Residential Zones project. Staff continue to monitor minor variance and building permit activity to track development across the City and by Ward, the characteristics of Detached Additional Dwelling Units being built, and the nature of the variances being requested. Evaluating regulations through ongoing monitoring enables staff to identify where possible updates may be required to the regulatory framework.

The most recent changes to low density residential permissions in the City's neighbourhoods saw the introduction of triplex and fourplex dwellings as permitted uses. With the expansion of permitted uses and potential changes to the form and function of development on a lot, an evaluation of the existing building separation requirements could be undertaken. This would require an evaluation of the updated zoning framework, regulations, and local conditions to inform a recommendation. Without the benefit of that evaluation, staff cannot support the Province's proposed provision. Further, as noted, any recommendations would be a made in Hamilton response, based on local conditions and City priorities. These reasons again demonstrate that province-wide standards are not appropriate or constructive measures to prioritize and promote Additional Dwelling Units in Ontario's municipalities.

1.3 Cultural Heritage

Staff have noted that the proposed amendments could impact how changes are regulated in existing and new Heritage Conservation Districts designated under the Ontario Heritage Act, as well as considerations for compatibility in Hamilton's identified Established Historical Neighbourhoods. In particular, it is not clear how potential conflicts between existing Heritage District Plan guidelines and the proposed performance standards would be addressed. Specifically, how is change to be managed when zoning permits a built form that does not align with the district guidelines? Section 41.2 (2) of the Ontario Heritage Act states that in the event of a conflict between a heritage conservation district plan and a municipal by-law that affects the designated district, the heritage conservation district plan prevails to the extent of the conflict. Clarity is requested on this matter.

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1.4 Implementation

Staff have requested further information on how the Province will support implementation. Most importantly, how does the Province intend to monitor the regulations once in effect? Zoning by-laws are living documents and as such, ongoing monitoring is integral when implementing a new set of regulations. Staff have asked how the Province intends to undertake monitoring to ensure the regulations are having the desired effect and to ensure that if changes to the regulations are required, the changes occur in a timely fashion.

While the City of Hamilton supports the Province’s aim to remove barriers to the creation of Additional Dwelling Units, providing the Minister with regulation-making authority and creating specific performance standards to support the building of more Additional Dwelling Units is an ineffective approach that has the potential to create opposition in the community due to incompatible performance standards. Requiring province-wide, as-of-right permissions for up to three units on a lot where residential uses are permitted has had a significant positive impact on the uptake of Additional Dwelling Units. The City recommends that the Province’s authority be directed to further supporting a municipalities’ implementation of Additional Dwelling Unit policies and regulations by preparing guidelines for Additional Dwelling Units, stock building plans that may reduce approval timelines, and financial measures to assist their development. Regulations to implement conditional zoning would also provide additional resources for municipalities to incorporate greater flexibility for all residential land uses.

ALTERNATIVES FOR CONSIDERATION

Council may amend the staff-level comments attached as Appendix “A” to Report PED24208 or supplement the staff-level comments with additional comments.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report PED24208 – City of Hamilton comments on Proposed Amendment to Ontario Regulation 299/19 Additional Residential Units

AF:mb