

London Neighborhood Community Association Inc.

The LNCA is a not-for-profit corporation,
incorporated in 1995

Investor landlord rental properties are ruining
the integrity and harmony of residential
neighbourhoods in London and the existing
By-laws are contradictory and ineffective

30 years of Planning Studies and Initiatives have been futile

Summary of Planning Studies and Initiatives Related to Neighbourhoods, Residential Intensification, and Student Housing Including the University of Western Ontario and Richmond Street Corridor

- May 1985 St. George/Grosvenor Area Study Recommendations
- April 1988 Task Force on Student Housing Final Report
- October 1990 Richmond Corridor Policy Report (Oxford Street north to the Thames River)
- October 1994 Richmond Street Corridor Study
- March 1995 Residential Intensification in the Essex Street Area
- October 1995 Intensification and Bill 120 – Impact on the North London and Broughdale Communities - Final Report
- April 1996 Intensification and Bill 120 – Impact on the North London and Broughdale Communities - Expanded Area
- December 2001 Richmond Street/University Gates Corridor Review - Final Report
- December 2003 Regulating Dwelling Units and Student Housing – Report from the City Solicitor to Planning Committee
- January 2004 Interim Control By-law (By-law No. C.P.-1438-33)
Richmond Street corridor between Huron Street and Grosvenor Street to restrict land uses to existing uses and restrict the creation of bedrooms or sleeping areas.
- October 2004 North London Residential Study – Proposed Amendments to the Official Plan and Zoning By-law
- November 2004 By-law No. Z -1-041300
City-wide amendment to the zoning by-law to change the definition of "Dwelling Unit" to introduce a limit on the number of bedrooms to five (5) maximum.
- November 2004 Neighbourhoods Surrounding Fanshawe College - By-law Enforcement Report
- July 2006 Central Avenue/West Woodfield Area Zoning Review

Rental Housing

The number of ***BEDROOMS*** in a rental property is difficult to monitor

- this a lucrative business
- 5 – 8 tenants in R1 Zone Single Detached Dwelling = \$24,000 – \$38,000 year in revenue*

*\$400 per room x 12 months

Rental Housing

The number of ***PEOPLE*** in a house is difficult to monitor

- the maximum number of people in a rental home is not to exceed 1 person per 100 square feet (10ft x 10ft) of floor space

1 person per 100 sq. ft.

Feb. 4th, 2014

City of London, Development & Compliance Services – Building Division:

*“We don’t limit the number of people, the limit is on bedrooms. So **if more than one person wants to share a room you could end up with more people than bedrooms.** This doesn’t usually happen in student rentals.”*

Rental Housing

The existing by-laws regarding the number of **BEDROOMS** and/or **PEOPLE** in R1 Zone Single Detached Dwelling:

- confusing
- ineffective
- contradictory

Mr. Justice Howden's decision

In 2008, in Oshawa, Mr. Justice Howden (a former planning lawyer for 20 years) found that the maximum number of unrelated people, bound together only by the need for short-term housing in a R1 Zone Single Detached Dwelling was 3 people

The decision was in regard to the rental of some 33 reconfigured R1 Zone homes to students

Mr. Justice Howden's decision

Arguments about discrimination (Sec.35 of The Planning Act) were considered and dismissed

The rationale goes to usage: more than 3 unrelated people in a rental home constitutes a Class 2 Lodging House which is a different zoning designation than a R1 Zone Single Detached Dwelling and therefore, not a permitted use in a R1 Zone

Mr. Justice Howden's decision

In 2009, the losing investor landlords appealed to the **Ontario Court of Appeal**

Arguments about discrimination (Sec.35 of The Planning Act) were raised, but were unsuccessful

The Ontario Court of Appeal (three Judges) unanimously dismissed the Appeal and affirmed Mr. Justice Howden's decision in its entirety

Mr. Justice Howden's decision

The investor landlords sought leave to appeal to the **Supreme Court of Canada**, but leave was denied

As it applies to Oshawa, Howden is the landmark decision for the rental usage of R1 Zone Single Detached Dwellings to unrelated individuals with an absentee landlord

City of London - Intensification of Residential Units

April 2010, City Solicitor:

“If Municipal Council does consider proposed official plan amendments or zoning by-law amendments in relation to residential intensification, amendments could be considered based on the wording considered by the various courts in the Windfields* case.”

* Mr. Justice Howden / Windfields, is one in the same

City of London - Intensification of Residential Units

April 2010, City Solicitor:

“...the writer does not at this time recommend amending London's definitions to conform to the wording considered by the Courts in the Windfields* cases.”

* Mr. Justice Howden / Windfields, is one in the same

Goodmans LLP

In 2012, Goodman's LLP* conducted, on behalf of the LNCA, an exhaustive study of:

- Oshawa and London's Official Plans and Zoning By-Laws
- Planning Documents, Staff Reports and Court Decisions

Regarding the following question...

*Toronto Law Firm

Goodmans LLP

“Do four or more unrelated people renting an R1 Single Housekeeping Unit with an absentee landlord constitute a Lodging House under London's zoning by-law and therefore not R1?”

Goodmans LLP

“In our view, a house which is rented to four or more unrelated people, none of whom is the owner, and whose only common bond is the need for shared temporary rental accommodation, is properly characterized as a "class 2 lodging house" and is therefore not a permitted use in an R1 Zone in London".

City of London & Howden

The City of London has historically taken the position that it was precluded from limiting the number of people residing in a R1 Zone Single Detached Dwelling due to discrimination issues (specifically, Sec. 35 of The Planning Act)

Mr. Justice Howden's ruling clearly addressed Sec. 35 and dismissed it, **the Ontario Court Appeal agreed**

Near Campus Neighborhoods Planning Amendments

June 2012, City of London, approved:

- *residential intensification in the form of medium & high-density apartment buildings*
- *professionally managed and located along arterial roads serviced by transit*

Near Campus Neighborhoods Planning Amendments

June 2012, City of London, approved:

- *discouraging the continuation of ad-hoc residential intensification in low density forms of housing in the interior of low density residential neighborhoods*

Town and Gown Committee Meeting regarding Howden

June 2013, City Solicitor:

“...Injunctive proceedings are available under section 440 of the Municipal Act (2001) to restrain an illegal use and this municipality has used injunctive proceedings on occasion in the past to enforce compliance with its zoning by-law but not with respect to this type of occupancy. “

Town and Gown Committee Meeting regarding Howden

June 2013, City Solicitor:

“The decision to utilize or to become a party to statutory injunctive proceedings is **in the discretion of the municipal council** and **should be based on evidence demonstrating a breach of the zoning by-law**”.

Summary

Mr. Justice Howden's decision:

- does not contradict the existing Near Campus Neighborhoods Planning Amendments
- defines what constitutes a “family” in Ontario
- provides clear parameters regarding the number of people that can reside in a R1 Zone Single Detached Dwelling

Recommended Motion

A home rented to more than 3 unrelated people, none of whom is the owner, and whose only common bond is the need for shared temporary rental accommodation is considered a Class 2 Lodging House and therefore not a permitted use in an R1 Zone Single Detached Dwelling

Next Steps

The London Neighborhood Community Association Inc. is requesting that the Town & Gown support this motion so Municipal City Council can take a position on the issue

Appendices

- By-law definitions for London & Oshawa
- Mr. Justice Howden: Costs awards
- LNCA Inc: Mission Statement

City of London

Class 2 Lodging House A residential building which is used to provide lodging units for hire or gain directly or indirectly to more than three persons, with or without meals and only permitted in R8, R9, R10 and R11 Zones

R1 Zone Single Detached Dwelling A single dwelling which is freestanding, separate and detached from other main buildings or main structures. *The R1 Zone is the most restrictive zone in London and only permits single detached dwellings*

Comparison of By-Law Definitions:

Oshawa Zoning By-law 60-94 vs

London Zoning By-law Z-1

Lodging House

A building or a part of a building, containing three to ten lodging units, which does not appear to function as a dwelling unit, although one may be included with the lodging units. It includes, without limitation, a rooming house and a boarding house, a fraternity or sorority house. It does not include a hotel, a crisis care residence, a hospital, a group home, a correctional group home, a bed and breakfast establishment nor a nursing home. A lodging house may involve shared cooking or washroom facilities. Meals may or may not be provided to residents. Common areas, such as living rooms, may or may not be provided.

Class 1 – A residential building which is used to provide lodging units for hire or gain directly or indirectly to three or fewer persons with or without meals. A lodging house, class 1, shall not include a nursing home, hotel, motel, hostel, group home, bed and breakfast establishment, emergency care establishment, or a residence of an educational institution.

Class 2 – A residential building which is used to provide lodging units for hire or gain directly or indirectly to more than three persons, with or without meals. A lodging house, class 1, shall not include a nursing home, hotel, motel, hostel, group home, bed and breakfast establishment, emergency care establishment, or a residence of an educational institution.

Comparison of By-Law Definitions: Oshawa Zoning By-law 60-94 vs London Zoning By-law Z-1

Single Detached Dwelling	A building which is freestanding, separate and detached from other main buildings or main structures and which contains only a dwelling unit, but does not include a mobile home.	A single dwelling which is freestanding, separate and detached from other main buildings or main structures, including a split level dwelling, but does not include a mobile home.
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Howden – Costs Award

- Defined that a group of not more than three not so related, living together, as a single housekeeping unit
- City Council of Oshawa and its planning staff contributed to the abuse of the R1 provisions by a minority of owners who chose to fill the vacuum apparently available from municipal inaction in the Dalhousie/Niagara residential area

Howden – Costs Award

Entitlement to Costs: City of Oshawa

[60] In the case of Oshawa, I award no costs. The City contributed to creating the situation before me in the following ways, as I have found earlier:

- i. the drafting of the R1 provisions was lacking in definition, clarity and overall professional standards;
- ii. the City either accepted student housing in the R1 areas near the UOIT/Durham campuses, or failed to enforce the R1 provisions despite ongoing conflicts in usage in The Neighbourhoods and adjoining residential areas, and was lax in its permit practices in permitting renovations to accommodate the operation of lodging houses in the R1 zone
- iii. the City failed to address the rapidly growing need and pressure for student housing and accepted over-intensification without municipal permission of R1 properties near the university contrary to its own zoning-by-laws and Official Plan; and
- iv. the City, as the local planning authority, provided no evidence to explain its lack of action to enforce its own zoning by-law, much of which evidence is held in its own records and within its own officials' power.

London Neighborhood Community Association Inc.

The LNCA is a not-for-profit corporation, incorporated in 1995, that seeks to enhance and protect London neighborhoods from adverse elements that detract from the community of residential neighborhoods and quality of life.