NEIGHBOURHOOD
LEGAL SERVICES
(LONDON & MIDDLESEX) INC.

November 26, 2015

Chair and Members
Planning Committee
of London City Council
300 Dufferin Avenue
London, ON N6A 4L9 Dear Sirs & Mesdames,

Re: "Grandfathering" "Granny Flats" – Update from May 1994 Submission

We are the legal clinic in London owned by the Ontario government and mandated to urge compliance with, among other things, Ontario's rental housing laws, and to promote the protection and safety of Ontario tenants.

We are deeply concerned about the City of London Planning Services' recommendation to refuse to provide amnesty (commonly called "grandfathering") for existing "second residential units" (commonly called granny flats) which comply with all applicable health and safety Codes. This is of special concern in the Near Campus area – where a complete ban is proposed and where most existing granny flats appear to be located.

Units built prior to November 15, 1995, (or for which a building permit had been applied prior to Bill 20 coming into force in the spring of 1996) are already grandfathered per s.76 of the Planning Act. We recommend that units built between now and 1995 be grandfathered in the same way.

Planning Services has proposed an amendment to its recommendation which would provide grandfathering for units built between 1995 and present provided the owner had obtained a building permit permitting the erection of the secondary dwelling unit in an area zoned for single family use. The difficulty with this is that the City issued no such building permits - because they would have contravened the City Zoning By-Law. So the total number of granny flats which would appear capable of being grandfathered under this amendment is zero.

We attach a draft of the sort of language which could be used to achieve a treatment of all existing granny flats in London in the same way.

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All units would be required per the Landlord Licensing By-Law to comply with all health and safety Codes – and are subject to inspections by City By-Law Enforcement Officers to ensure this. Any that don't meet Code would be unable to be licensed and therefore would be required to be shut down.

This approach ensures the safety of tenants living in existing granny flats, and that safe, low-cost housing (of which London has a severe shortage) is not shut down, and the tenants needlessly evicted from their homes. London has committed to significantly increasing rather than decreasing, its low-cost housing stock. This approach supports that commitment.

I would respectfully urge your Committee to seek further advice from the City Solicitor about the option of mirroring the language of s. 76 in London's Zoning By-Law, and that your Committee seek the advice of London's Housing Division with respect to the likely impact on London's low-cost housing targets if a complete ban on existing units in the Near Campus area is implemented.

Ultimately I would urge this Committee to direct staff to amend the draft proposal in order to ensure that safe low-cost granny flats are not needlessly shut down.

Respectfully submitted.

Jeff Schlemmer

Planning Act

R.S.O. 1990, CHAPTER P.13

Consolidation Period: From January 1, 2012 to the e-Laws currency date.

Last amendment: 2011, c. 6, Sched. 2.

Transition – residential units

76. (1) If on November 16, 1995, a detached house, semi-detached house or row house was used or occupied as two residential units, section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of this Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to that house.

Same

(2) Section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of this Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to a detached house, a semi-detached house or a row house if on or before the day on which subsection 20 (1) of the *Land Use Planning and Protection Act, 1996* comes into force,

(a) a permit has been issued under section 8 or 10 of the *Building Code Act* permitting the erection, alteration, occupancy or use of the house for two residential units; and

(b) the building permit has not been revoked under section 8 of the *Building Code Act*. 1996, c. 4, s. 42.

Proposed Grandfathering Addition to Proposed Official Plan Policy Amendments for Secondary Dwelling Units

xiv. A secondary dwelling unit built between November 15, 1995 and the date this amendment is passed by Council shall, for the purposes of this policy, be treated in the same manner as a secondary dwelling unit built prior to November 15, 1995.

Proposed Grandfathering Addition to Proposed Zoning By-Law Regulation for Secondary Dwelling Units

s. 4 (10) If, on the date this by-law amendment is passed by Council, a detached house, semi-detached house or row house was used or occupied as two residential units, it shall, for the purposes of this by-law, be treated in the same manner as a house to which s.76 of the Planning Act, R.S.O. 1990, CHAPTER P.13, as amended, applies.

Second Residential Unit "Granny Flats" Backgrounder

Summary:

London, like many university towns, has many houses in which a second residential unit (popularly called a "granny flat") has been retrofitted and rented out. Technically these units were illegal, as they were located in areas zoned by the City of London for single family houses. If these "illegal" units were all shut down, however, it would be difficult for the tenants to find housing - given London's very low vacancy rate for low-cost housing, and its long waiting list for subsidized housing.

Recognizing the impracticality of evicting these tenants, the Ontario legislature, with the unanimous support of all three parties, passed Bill 140, the "***Strong Communities through Affordable Housing Act, 2011***". It requires municipalities to authorize these second units notwithstanding their zoning bylaws. The Ontario governments of Bob Rae and Mike Harris passed similar legislation in 1994 and 1995 which "grandfathered" ie. "legalized" all granny flats existing as of November 16, 1995. They remain legal. So the present legislation deals only with granny flats created since then.

Municipalities are required to authorize granny flats by amending their Official Plans and zoning bylaws.

This provides the opportunity to "legalize" granny flats built since 1995, and to encourage the future creation of granny flats – as one affordable way to keep pace with increasing demand for low-cost housing.

As required by Bill 140, London's Planning Department has created draft Official Plan and zoning bylaw amendments. The amendments, however, significantly restrict where and in what form granny flats will be permitted. They would be banned outright, for example, in an area of almost 11 by 6 kilometres where it appears that most of London's granny flats are located.

It is respectfully submitted that the bylaw should treat ***existing*** (ie, built since 1995) second units differently than future units which might be built. This is because it is undesirable and unnecessary that any tenants living in existing units should be evicted from their homes.

It is respectfully submitted that the amendment to the Official Plan and zoning bylaw should state that units existing as of the date the amendments are passed are "grandfathered" in the same way as are granny flats built prior to November 16, 1995.

If this is not done, then as landlords come forward to apply for licenses under London's new residential landlord licensing bylaw, these granny flats will be shut down and their tenants evicted.

While some restrictions may be appropriate for the building of ***future*** granny flat construction (since no one will be evicted because a unit wasn't built), such construction would be significantly restricted under the proposed Official Plan and zoning bylaw amendments. The Ontario government has directed that the Official Plan and zoning bylaw amendment may restrict the creation of future second units only where "inherent constraints" make the creation of second units "inappropriate".[1]

It is respectfully submitted that the proposed amendments to the Official Plan and zoning bylaw would ban granny flats locations, and restrict the form they may take, much more restrictively than the Ontario government intends. The proposed amendments should only limit granny flats and their form to the extent that inherent constraints make them inappropriate. This would be consistent with the City of London's Housing Division's, and its Homelessness department's, provincially mandated goals for private sector participation in providing low-cost housing.

But, we respectfully submit, the principal requirement for the amendments to the Official Plan and zoning bylaw is that they must be written so as to avoid resulting in the needless eviction of tenants from ***existing*** granny flats.

History:

The Government of Ontario traditionally delegated complete authority to municipalities to decide where granny flats should, and should not, be permitted (under property zoning authority). Some municipalities, including London, applied this authority by significantly restricting where granny flats would be allowed.[2]

In spite of this, over the years many homeowners, especially in "college towns", built granny flats. These "grey market" units apparently provide a great deal of existing low-cost housing for London tenants of modest means. Many built since November 16, 1995, however, are likely "illegal" in the sense that they do not comply with zoning bylaws because they are located in areas zoned for single family housing only.

Recognizing that it would not serve the public interest for these granny flats to be shut down and their tenants evicted, the Ontario government has twice removed from municipalities the authority to refuse to authorize these granny flats. This measure was especially important given chronic and increasing shortages in low-cost housing.

The province first limited the authority of municipalities to selectively prohibit granny flats by passing Bill 120 in 1994.[3] The Harris government repealed Bill 120 in 1995 (through Bill 20), but "grandfathered" (ie. granted amnesty to) all existing granny flats (which had been "legalized" by Bill 120).[4] The province next did so by passing Bill 140 in 2011 (passed unanimously by all parties, including the Progressive Conservatives).[5]

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1 Appendix pg. 4

2 See London's existing policy respecting granny flats: Appendix pg. 17

3 Appendix pg. 34

4 Planning Act s.76: Appendix pg. 30; as applied by London: Appendix pg. 27

5 Appendix pg. 1

London passed a bylaw in 2009 requiring all landlords with fewer than four units to obtain a license from the City[6]. Thus all owners of granny flat rental units were, for the first time, required to disclose the location of their units. This makes it simple for the City Bylaw Enforcement office to determine whether the unit complies with the zoning bylaw, and if the landlord can't comply with the City's onerous and expensive requirements,[7] to shut it down and evict the tenant. Prior to 2009 granny flats were only investigated where a complaint was received by the City's Bylaw Enforcement Office.

City of London Housing and Homelessness Plan:

The Ontario government requires all municipalities to have a strategy "to generate municipal support for an active and vital private ownership and rental market, ***including second units and garden suites... . Second units and garden suites are promoted and supported***."[8]

The vacancy rate for low-cost housing in London is very low. The City Housing Division reports many Londoners on waiting lists for low-cost housing.

By definition it is unknown how many granny flats exist in London. Anecdotally there appear to be many. Those in existence on November 16, 1995 were "grandfathered" by Premier Mike Harris, and are therefore legal (subject to compliance with residential health and safety laws), and should receive licenses regardless of the City's zoning bylaw.[9] The present debate therefore relates to granny flats built since November 16, 1995.

Bill 140:

Bill 140, the "*Strong Communities Through Affordable Housing Act*" provides that:

> s.16 (3) Without limiting what an official plan is required to or may contain under subsection (1) or (2), an official plan ***shall contain policies that authorize the use of a second residential unit...*** [Emphasis added]

Bill 140 requires municipalities to authorize granny flats. It uses the word "shall" rather than the word "may". In law this means that the City's authorizing of granny flats is mandatory, not discretionary.

Bill 140 says nothing about permitting municipalities to refuse to authorize particular granny flats.

(The municipality does retain full authority to enforce residential health and safety laws. Thus granny flats, like any housing, rented or owned, may be shut down for violation of

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6 Residential Rental Units Licensing Bylaw CP-19 *http://www.london.ca/city-hall/by-laws/Documents/rentalunitsCP19.pdf*

7 Appendix pg. 17

8 Provincial Policy Statement 4.2 and 4.3 under s.5 of the Housing Services Act: Appendix pg. 12

9 Planning Act s. 76: Appendix pg. 30

those laws.)

The Ministry's website on secondary units[10] outlines the circumstances in which the province is content that municipalities retain discretion respecting the location of, and minimum standards for, granny flats as follows:

> *While the Act requires municipalities to permit second units, the government recognizes there may be* ***inherent constraints*** *within portions of a municipality or community* ***which would make those areas inappropriate for second units (such as flood-prone areas or those with inadequate servicing).*** *Municipalities should consider any such constraints in developing or reviewing second unit policies.*

Thus the only circumstances in which granny flats should be restricted or limited in form would be where they are impractical – such as where they are likely to be flooded or where services, such as hydro, water and sewers, would be genuinely unable to cope with the addition of granny flats.

London's Proposed amendments to Official Plan and Zoning Bylaw:

Bill 140 requires municipalities to amend their Official Plans and zoning bylaws to authorize granny flats. The City of London's Planning Department has prepared draft amendments as required. They propose authorizing granny flats in London, subject to a number of restrictions, including a ban on granny flats in an area of almost 11 x 6 kilometres in the area of the City[11] where it appears that most existing granny flats are located.

The draft amendments also set out a number of significant additional restrictions with respect to where, and in what form, granny flats may be located.[12]

The restrictions in London's draft bylaw amendment appear to go far beyond "inherent constraints" such as "flood-prone areas or those with inadequate servicing". It apparently does little to address the problem of evicting tenants from existing granny flats, and purports to restrict future development of granny flats significantly.

Conclusion:

Our principal concern is the effect of evicting tenants from London's ***existing*** granny flats. Bill 140 is especially timely in London because its new landlord licensing bylaw dictates, for the first time, that landlords must come forward and self-identify their granny flat locations. Thus the City is faced with the problem of whether to "legalize" these units or shut them down.

It appears that all provincial political parties shared this general concern, and that by

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10 Appendix pg. 4

11 The "Great Near Campus Neighbourhood Area" Bordered by Fanshawe Park Road, Clarke Road, Dundas Street and Aldersbrook Road: Appendix pgs. 21 & pg. 26

12 Appendix pgs. 20 - 26

unanimously passing Bill 140 they strongly demonstrated a preference for "legalizing" granny flats rather than shutting them down.

Existing granny flats by definition will not increase intensification in their neighbourhoods, and have not been the subject of complaints (or the City would have already investigated and shut the offending unit down). They are quietly and efficiently providing much needed low-cost housing.

Premier Mike Harris grandfathered (ie. legalized) ***all*** granny flats existing in November of 1995. The Planning Department's proposal, grandfathers ***no*** units created between then and now – unless they can meet the significant new restrictions, which it appears, most won't.

If even Mike Harris agreed that existing granny flats should be legalized rather than shut down, and given that all three provincial parties passed Bill 140 to require that it be done again for units built since then, it is respectfully submitted that the City of London should do so as well.

Respectfully submitted:

Jeff Schlemmer

Neighbourhood Legal Services (London & Middlesex)

November 26, 2015

NEIGHBOURHOOD
LEGAL SERVICES
(LONDON & MIDDLESEX) INC

May 7, 2014

Chair and Members
Town & Gown Committee
300 Dufferin Avenue
London, ON N6A 4L9

Dear Sirs & Mesdames,

Re: "Grandfathering" "Granny Flats"

The City of London is required, pursuant to Ontario statute Bill 140, the ***Strong Communities Through Affordable Housing Act 2011***, to amend its Official Plan and zoning bylaw to contain "***policies that authorize the use of a second residential unit...*** ".

"Second residential unit", refers to a house containing a second residential unit (commonly called a "granny flat").[1]

In accordance with Bill 140 the City's Planning Department has created draft amendments, but they contain a number of significant restrictions on where, and in what form, granny flats can be located.

These restrictions, in concert with the City's landlord licensing bylaw, may place many of London's existing granny flats in jeopardy of being shut down, and their tenants evicted.

By definition it is unknown how many of these "gray market" rental units exist. Anecdotally there appear to be many. By definition, as well, no one has complained about them[2] and they pose no risk of increasing neighbourhood intensification – as they are already there (and are often in neighbourhoods which have become de-intensified as children have grown up and moved away).

We are concerned about where the low-income tenants presently living in these units would go if evicted. We know that the vacancy rate for low-cost housing is very low, and that waiting lists for affordable housing remain long.

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1 This debate does not apply to any building with more than two residential units. See Appendix pg. 1
2 The City Bylaw Enforcement Office traditionally shut down these units only where a complaint was made about one, and it could not be brought into compliance with the zoning bylaw. See Appendix pg. 17

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The debate over granny flats relates only to planning and zoning principles. No one questions the fact that all residential health and safety laws must apply equally to granny flats as to all other housing.

In 1995 Premier Mike Harris required all Ontario municipalities to "grandfather" all granny flats existing as of November 16, 1995 – that is he "legalized" them for the purposes of municipal zoning bylaws.[3]

We respectfully urge you to recommend to London City Council that it extend this grandfathering to the date the new bylaw amendment is passed, as part of its required Bill 140 amendments. This will "legalize" all ***existing*** granny flats built since 1995.

We also urge that the amendments only prohibit the building of ***future*** granny flats where inherent constraints make their creation, in whatever form the landlord thinks best, inappropriate.

This will ensure that Londoners living in existing granny flats will not be needlessly evicted – adding to London's serious shortage of low-cost housing.

Respectfully submitted:

Jeff Schlemmer

3 Bill 20. Appendix pg. 30

APPENDIX TO NEIGHBOURHOOD LEGAL SERVICES' SUBMISSION TO TOWN & GOWN COMMITTEE

INDEX

Planning Act

R.S.O. 1990, CHAPTER P.13

Contents of official plan

16. (1) An official plan shall contain,

(a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it, or an area that is without municipal organization; and

(b) such other matters as may be prescribed.

Same

(2) An official plan may contain,

(a) a description of the measures and procedures proposed to attain the objectives of the plan;

(b) a description of the measures and procedures for informing and obtaining the views of the public in respect of a proposed amendment to the official plan or proposed revision of the plan or in respecf of a proposed zoning by-law; and

(c) such other matters as may be prescribed.

Second unit policies

(3) Without limiting what an official plan is required to or may contain under subsection (1) or (2), an official plan shall contain policies that authorize the use of a second residential unit by authorizing,

(a) the use of two residential units in a detached house, semi-detached house or rowhouse if no building or structure ancillary to the detached house, semi-detached house or rowhouse contains a residential unit; and

(b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse if the detached house, semi-detached house or rowhouse contains a single residential unit.

Zoning by-laws

34. (1) Zoning by-laws may be passed by the councils oflocal municipalities:

Restricting use of land

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.

By-laws to give effect to second unit policies

35.1 (I) The council of each local municipality shall ensure that the by-laws passed under section 34 give effect to the policies described in subsection 16 (3).

Regulations

ill The Minister may make regulations,

(a) authorizing the use of residential units referred to in subsection 16 (3);

(b) establishing requirements and standards with respect to residential units referred to in subsection 16 (3).

Regulation applies as zoning by-law

ill A regulation under subsection (2) applies as though it is a by-law passed under section 34.

Regulation prevails

ffi A regulation under subsection (2) prevails over a by-law passed under section 34 to the extent of any inconsistency, unless the regulation provides otherwise.

Exception

ill A regulation under subsection (2) may provide that a by-law passed under section 34 prevails over the regulation.

Regulation may be general or particular

® A regulation under subsection (2) may be general or particular in its application and may be restricted to those municipalities or parts of municipalities set out in the regulation.

Secondary Units

Changes to the Planning Act

The *Strong Communities through Affordable Housing Act, 2011* amended various sections of the *Planning Act* to facilitate the creation of second units by:

- requiring municipalities to establish official plan policies and zoning by-law provisions allowing second units in detached, semi-detached and row houses, as well as in ancillary structures
- removing the ability to appeal the establishment of these official plan policies and zoning by-law provisions except where such official plan policies are included in five- year updates of municipal official plans
- providing authority for the Minister of Municipal Affairs and Housing to make regulations authorizing the use of, and prescribing standards for, second units

What are second units?

Second units - also known as accessory or basement apartments, secondary suites and inlaw flats - are self-contained residential units with kitchen and bathroom facilities within dwellings or within structures accessory to dwellings (such as above laneway garages).

Second units must comply with any applicable laws and standards. This includes the Building Code, the Fire Code and property standards bylaws.

Benefits of second units

h addition to increasing the stock of affordable rental accommodation in an area, second units benefit the wider community in a number of other ways. They:

- provide homeowners with an opportunity to earn additional income to help meet the costs of homeownership
- support changing demographics by providing more housing options for extended families or elderly parents, or for a live-in caregiver
- maximize densities and help create income-integrated communities, which support and enhance public transit, local businesses and the local labour markets, as well as make more efficient use of infrastructure
- create jobs in the construction/renovation industry

Municipal Considerations

The *Strong Communities through Affordable Housing Act, 2011* requires municipalities to authorize

second units in detached, semi-detached and row houses, as well as in ancillary structures. However, there is a need for municipalities to assess several considerations in developing new official plan policies and zoning provisions, or in reviewing their existing policies and provisions, if they already allow second units:

- Second units should be permitted in both existing residential communities and in newly developing areas. Newly developing areas offer the opportunity to plan proactively for second units. This includes the design of the actual houses and in the lot fabric or neighbourhood layout where ancillary structures like laneway garages could be integrally incorporated into the design. Municipalities and development proponents should specifically consider second units in the planning of new neighbourhoods.
- While the Act requires municipalities to permit second units, the government recognizes there may be inherent constraints within portions of a municipality or community which would make those areas inappropriate for second units (such as flood-prone areas or those with inadequate servicing). Municipalities should consider any such constraints in developing or reviewing second unit policies.
- While the Act requires municipalities to permit second units in detached, semi-detached and row housing, and in ancillary structures, the provisions permit one additional unit (i.e., a second unit) either in a house (e.g., basement) or in an ancillary structure (e.g., above laneway garage) on the same lot. Municipalities should assess where second units may be appropriate in the primary dwelling versus the ancillary structure. n some instances, municipalities may conclude it is appropriate to allow a second unit in both. However, in these situations, the sheltering of appeals does not extend to the third unit. Any party would be able to appeal the authorization of the third unit to the Ontario Municipal Board.
- Municipalities that currently permit second units will need to review their official plans and zoning by-laws to assess whether they are permitted in the range of housing types listed in the Act.
- While the Act introduced a regulation-making ability for the Minister of Municipal Affairs and Housing to prescribe minimum standards for second units, a regulation has not been issued under this authority. As such, municipalities are responsible for determining what standards or zoning provisions should apply to second units in relation to matters such as minimum unit size or parking requirements. Standards should support the creation of second units.

Grandfathering of Second Units

Second units must comply with any applicable laws, which could include the Building Code, the Fire Code and property standards by-laws. The changes do not "grandfather" any existing second units that do not meet applicable laws.

Do I need a building permit?

A building permit may be required to establish a second unit depending on whether alterations to the house are needed. As such, homeowners considering establishing a second unit should contact their municipality prior to doing so.

Effective Date of Changes for Second Units and Impact on Official Plan Policies

The changes to the *Planning Act* for second units came into effect on January 1, 2012.

Municipalities that have already implemented second unit policies should review their policies in light of the changes made through the *Strong Communities through Affordable Housing Act, 2011* to determine whether any changes are required.

Municipalities that do not currently have second unit policies should review the new requirement in the *Planning Act* related to second units and determine what amendments are required to their official plans and zoning bylaws. They should then begin amending their planning documents prior to the second unit provisions coming into effect to be in compliance with the new legislative provisions once they are proclaimed in force.

Changes to the Planning Act: Before and After

	Before Changes Made Through *Strong Communities through Affordable Housing Act, 201.1.*	Today (With Changes Made Through *Strong Communities through Affordable Housing Act,* 201.1.)
Second units	Municipalities voluntarily establish second unit official plan policies and provisions.	Municipalities are required to establish official plan policies and zoning by-law zoning by-law provisions allowing secorid units in single, semi and row houses, as well as in accessory structures (e.g. above laneway garages).
	Planning Act shelters the municipal establishment of official plan permitting second units in single, semi and row houses from appeal to the Ontario Municipal Board; municipalities may permit second unit year in accessory structure but these policies for accessory structures are not sheltered from appeal.	Municipal establishment of official plan policies and zoning by-law provisions permitting second units in single, semi, row houses, and in accessory structures, are sheltered from appeal to the Ontario Municipal Board, except during five review periods. Sheltering of appeals extends to municipally-determined standards for second units.
	No standards for second units in legislation (municipalities currently units, establish their own standards); n standards for ability for MMAH Minister to prescribe standards.	Municipalities continue to have ability to identify appropriate areas for second o and to establish appropriate second units; Minister has regulation-making authority to prescribe standards for second units.

for More nformation

For more information and assistance, please contact one of the Municipal Services Offices. If you are considering establishing a garden suite or a second unit, be sure to contact your municipality to understand any processes, permits or policies.

Ontario Housing Policy Statement

Ontario

Ontario.ca/housing

Preamble

Ontario's vision for affordable housing is to improve access to adequate, suitable and affordable housing, and provide a solid foundation on which to secure employment, raise families and build strong communities.

The housing system in Ontario includes market and non-market housing options, and related services, which can support Ontario's objectives of economic prosperity and social and environmental well-being. Housing initiatives should be planned and implemented with a view to these broader goals.

The province's Long-Term Affordable Housing Strategy focuses on transforming the way housing and homelessness services are delivered in order to achieve better outcomes for people. The goal of integrated local planning is to create opportunities for people that foster independence and enable participation in the community and economy.

Since 2000, Ontario's 47 Service Managers have been responsible for delivering and administering social and affordable housing, other social services programs such as Ontario Works and childcare, and in many cases also deliver homelessness initiatives. The term Service Manager includes Municipal Service Managers that may be regional governments, counties or separated cities, and District Social Services Administration Boards, which are boards established in each of the 10 districts in Northern Ontario.

The province recognises that Ontario's Service Managers serve communities with diverse needs, resources and capacities. The province also recognises that Ontario's municipalities are the largest contributors to funding for housing and homelessness services and that the future of affordable housing depends on sustained funding. An affordable housing framework with a long-term funding commitment from the federal government that is fair to Ontarians is vital to help Ontario's Service Managers and housing providers to plan and develop more cost effective and efficient housing programs and open the door to better futures for Ontarians.

In 2008, the consensus report of the Provincial-Municipal Fiscal and Service Delivery Review observed that the province and municipalities would achieve better results for people by working together to build locally-managed housing services, simplify the delivery of income assistance supports, and better focus on positive results for people. In 2010 the province set out a strategy to transform the provincially controlled social housing system to a flexible, community–centred system, addressing the entire housing continuum, in partnership with Service Managers and municipalities.

The Housing Services Act, 2011 ("the Act") requires that Service Managers prepare local housing and homelessness plans that address matters of provincial interest and are consistent with policy statements issued under the Act. The Act also provides that

the Minister of Municipal Affairs and Housing ("the Minister") may be able to exercise remedies in certain situations.

Under the Act, there are provincial interests in a system of housing and homelessness that:

(a) is focussed on achieving positive outcomes for individuals and families;
(b) addresses the housing needs of individuals and families in order to help address other challenges they face;
(c) has a role for non-profit corporations and non-profit housing cooperatives;
(d) has a role for the private market in meeting housing needs;
(e) provides for partnerships among governments and others in the community;
(f) treats individuals and families with respect and dignity;
(g) is co-ordinated with other community services;
(h) is relevant to local circumstances;
(i) allows for a range of housing options to meet a broad range of needs;
(j) ensures appropriate accountability for public funding;
(k) supports economic prosperity; and
(l) is delivered in a manner that promotes environmental sustainability and energy conservation.

It is also a matter of provincial interest that the Service Manager's housing and homelessness plans be consistent with other plans that may be prescribed under the Act.

The province recognises that Service Managers and stakeholders in the delivery of housing and homelessness services share these interests and the understanding that an improved system will result in better outcomes related to health, education, and community building and will contribute to Ontario's long-term economic prosperity.

The Ontario Housing Policy Statement is intended to provide additional policy context and direction to Service Managers to support the development of locally relevant plans. Strong partnerships and collaboration between the province, Service Managers, municipalities, housing providers and other stakeholders are essential to its successful implementation.

Policy Direction

1. ACCOUNTABILITY AND OUTCOMES

1.1 Background

Responsibility for housing and homelessness is shared among multiple partners including federal, provincial and local governments, as well as not-for-profit service

providers, the private sector, volunteers, individuals and families. The Act sets out certain responsibilities for Service Managers and the province. The Act provides Service Managers with the flexibility to use funding, tools and other resources to better address the unique housing needs of their community across the housing continuum. While the province will review local housing and homelessness plans, the Service Manager will approve the plan and the accountability for identifying and addressing need is between the Service Manager and the public it serves. Both the province and Service Managers will provide annual progress reports to the public. The Long-Term Affordable Housing Strategy committed to a series of performance measures, including the Ontario Housing Measure and the Rental Affordability Indicator which will be reported on by the province, as well as Social Housing Tenant Satisfaction Surveys and local metrics, reported on by Service Managers in order to track progress in meeting local needs.

1.2 Policy Direction

Service Managers will ensure that local housing and homelessness plans:

a. demonstrate a system of coordinated housing and homelessness services to assist families and individuals to move toward a level of self-sufficiency;
b. include services, supported by housing and homelessness research and forecasts, that are designed to improve outcomes for individuals and families;
c. are coordinated and integrated with all municipalities in the service area;
d. contain strategies to increase awareness of, and improve access to, affordable and safe housing that is linked to supports, homelessness prevention and social programs and services;
e. contain strategies to identify and reduce gaps in programs, services and supports and focus on achieving positive outcomes for individuals and families;
f. contain local housing policies and short and long-term housing targets;
g. provide for public consultation, progress measurement, and reporting.

1.3 Anticipated Results

Measurable, improved outcomes for individuals and families will be achieved through increased access to locally relevant programs, services, and supports that are coordinated and address identified needs. Service Managers will be able to demonstrate accountability for achieving these results in a fiscally responsible manner.

2. GOAL OF ENDING HOMELESSNESS

2.1 Background

The province's policy for ending homelessness puts a primary focus on helping people who are homeless, or at-risk of homelessness, to quickly access safe, affordable and stable housing. This approach, referred to as Housing First, is linked to the provision of a variety of flexible supports based on clients' needs that can assist people in sustaining their housing, and with re-housing when necessary. A Housing First approach also

assists people who are homeless, or at-risk of homelessness, to address other challenges and needs, with a goal of connecting them to community supports and improving social inclusion.

2.2 Policy Direction

Service Managers will ensure that housing and homelessness plans:

a. provide measures to prevent homelessness by supporting people to stay in their homes including eviction prevention measures and the provision of supports appropriate to clients' needs;
b. are based on a Housing First philosophy and developed in consultation with a broad range of local stakeholders including those who have experienced homelessness;
c. support innovative strategies to address homelessness;
d. include the provision of supports prior to and after obtaining housing to facilitate transitioning people from the street and shelters to safe, adequate and stable housing.

2.3 Anticipated Results

Communities will have strategies to prevent and to reduce homelessness and assist people who are homeless to find and keep housing and be able to demonstrate that these strategies have a measurable impact on at-risk and homeless individuals and families.

3. NON-PROFIT HOUSING CORPORATIONS AND NON-PROFIT HOUSING CO-OPERATIVES

3.1 Background

Non-profit housing corporations and non-profit housing co-operatives have an important role in helping to deliver effective housing services and fostering inclusive communities. They provide a significant amount of affordable housing and play a key role in developing and managing housing and homelessness solutions. This includes non-profit housing organizations owned by community groups, municipal non-profits and local housing corporations controlled by Service Managers. Through active tenant involvement, they engage in community-building and create a pride of place that can serve as a foundation for every person to achieve his or her full potential, and contribute to and participate in a prosperous and healthy Ontario. Non-profit housing corporations and non-profit housing co-operatives play a significant role in the housing continuum.

3.2 Policy Direction

Service Managers will ensure that their housing and homelessness plans:

a. reflect the active engagement of non-profit housing corporations and non-profit housing co-operatives in current and future needs planning;
b. include strategies to support non-profit housing corporations and non-profit housing co-operatives in the delivery of affordable housing;
c. include strategies to support ongoing access to affordable housing by preserving existing social housing capacity.

3.3 Anticipated Results

Community-based approaches to social housing are maintained through the continuous engagement and support of non-profit housing corporations and non-profit housing co-operatives, so that affordable options that exist today will continue to be available in the future.

4. THE PRIVATE MARKET

4.1 Background

In Ontario, most of the housing need and demand is met by the private market, through private home ownership and private market rental. This includes a role for the private market in preventing and addressing homelessness, where private market capacity is present. When combined with housing allowances, rent supplements and rent supports, private market capacity can prevent the marginally housed from becoming homeless. Service Managers have employed a variety of strategies and programs to assist people in affordable home ownership. Through careful land use planning, municipalities can regulate their private market housing growth and development while satisfying important social, economic and environmental concerns. The legislative framework under the Planning Act includes processes and tools to help municipalities plan and control private development or redevelopment.

4.2 Policy Direction

Service Manager housing and homelessness plans will set out a strategy to generate municipal support for an active and vital private ownership and rental market, including second units and garden suites, as a necessary part of the housing continuum including affordable home ownership, where appropriate.

4.3 Anticipated Results

Current and future housing needs within the service area that can be addressed by the private market are identified, targets are established, and progress is measured. Second units and garden suites are promoted and supported.

5. CO-ORDINATION WITH OTHER COMMUNITY SERVICES

5.1 Background

A human service system includes the organizations, groups and individuals involved in administering and delivering a set of interdependent supports and services that meets the defined needs of people. Service Managers occupy a unique position as system managers and major service providers in the areas of income support and allied employment services, early learning and child care services, social housing, and homelessness initiatives. While the level of system integration varies across the province, there are opportunities to build on existing strategic planning for housing, homelessness and other human services that many Service Managers have already undertaken. The particular form taken by a community's human services system depends upon the services available in that community, the local needs and the local commitment to the integration of human services. Improved integration of human services planning and delivery would enhance administrative efficiency and provide for the more effective coordination of services. As a result, people would be better able to access the range of services they need.

5.2 Policy Direction

Service Manager housing and homelessness plans will demonstrate how progress will be made in moving toward integrated human services planning and delivery.

5.3 Anticipated Results

Improved integration of housing and homelessness plans and services with other human services planning and delivery will result in better outcomes for the people accessing services.

6. A BROAD RANGE OF COMMUNITY NEEDS

6.1 Background

The province remains committed to its Special Priority Policy that helps victims of domestic violence and their families escape unsafe and abusive situations, and to improving accessibility for people with disabilities in key areas of daily living. The regulations under the Act include a requirement that these matters be addressed in local housing and homelessness plans. The province is committed to building stronger, more positive relationships with Aboriginal people in Ontario and to improving their quality of life. The identification of a broad range of community needs, and working to develop services, supports, programs and protections that address these needs, will

result in a better experience for people who require assistance. This will satisfy the broader goal of allowing people to live with respect and dignity in their homes and thrive in their communities.

6.2 Policy Direction

a. Accessibility

Service Manager housing and homelessness plans will contain an assessment of needs that identifies and sets local requirements for accessible housing and homelessness services for people with disabilities, including those who have mental health needs or illness and/or substance use issues.

b. Special Priority Policy

Service Manager housing and homelessness plans will include a strategy setting out how the housing needs for victims of domestic violence will be addressed and managed at the local level, in coordination with other community-based services and supports.

c. Aboriginal Peoples Living Off-Reserve

Service Manager housing and homelessness plans will identify and consider the housing needs of Aboriginal Peoples living off-reserve.

d. Community Needs

Service Manager housing and homelessness plans reflect the evolving demographics of their community and address the needs of specific local groups. Local groups might include: seniors, youth, women, immigrants, persons released from custody or under community supervision, Crown Wards, and Franco-Ontarians.

6.3 Anticipated Results

Community integration and diversity will be reflected through meeting the needs of people with disabilities, victims of domestic violence, Aboriginal Peoples living off-reserve, and those in other locally defined groups.

7. ENVIRONMENTAL SUSTAINABILITY AND ENERGY CONSERVATION

7.1 Background

Across Ontario there is increased awareness of the importance of developing sustainable and energy efficient housing. The province is committed to being a leader in building renewable energy, encouraging energy and water conservation and creating green jobs by supporting investment that builds a stronger, cleaner economy. Energy

efficient housing is less expensive to operate, less vulnerable to increased energy costs, and provides for higher quality living environments. Housing located near public and community transit options can provide access to schools, health services and employment centres which would improve social inclusion, build economic prosperity, and further reduce energy consumption and cost.

7.2 Policy Direction

Service Manager housing and homelessness plans will demonstrate a commitment to improve the energy efficiency of existing and future publicly funded housing stock. This includes support for energy conservation and energy efficiency through operating programs, tenant engagement, housing located near transportation choices, and innovative investment decisions such as the installation of renewable energy and low carbon technologies.

7.3 Anticipated Results

Service Managers will provide specific strategies to build a more energy efficient publicly funded housing portfolio while helping create a stronger, cleaner economy that better protects our environment.

Secondary Dwelling Units

Affordable Housing Committee

Committee Room

Wednesday, November 13, 2013

London
CANADA

Our Existing Framework

Existing policies for secondary dwelling units currently include:

- Requires a Zoning By-law amendment ($5,000 application fee)
- Only within singles or semis;
- Max. 2 units per dwelling;
- Gross floor area < principle dwelling;
- Principle dwelling unit shall be owner occupied;
- Not located accessory building or attached garages;
- Minimum +1 parking space;
- Meets regulations of zone (setbacks, frontage);
- No more than 5 bedrooms between principle and secondary dwellings;
- May be licensed;
- Residential intensification policies apply (character/urban design studies, site plan, agreements, etc.)

DO

OZ-8053

Planner: Eric Lalande

TO:	CHAIR AND MEMBERS · PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	CITY OF LONDON CITY WIDE OFFICIAL PLAN AND ZONING BY-LAW AMENDMENTS · SECONDARY DWELLING UNITS MEETING ON NOVEMBER 26, 2013

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, with respect to the application of the City of London relating to an Official Plan Amendment to introduce new city-wide policies related to secondary dwelling units and for a Zoning By-law Amendment to introduce regulations related to secondary dwelling units, the following actions **BE TAKEN:**

a) The proposed by-law attached hereto as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting on December 3, 2013 to amend the City of London Official Plan to update secondary dwelling unit polices in accordance with changes to the *Planning Act.*

b) The proposed by-law attached hereto as Appendix "8" **BE INTRODUCED** at the Municipal Council meeting on December 3, 2013 to amend the City of London Zoning By-law Z.-1 to update secondary dwelling unit polices in accordance with changes to the *Planning Act.*

c) Staff **BE DIRECTED** to evaluate required changes to the Residential Rental Unit Licensing By-law to address Secondary Dwelling Unit uses.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Secondary Dwelling Unit Policies and Provisions - PEC June 18, 2012
Secondary Dwelling Units - PEC April 9, 2013
Secondary Dwelling Units - PEC August 20, 2013

SUMMARY OF REPORT

The *Planning Act,* through changes made by Bill 140 *Strong Communities through Affordable Housing Act, 2011,* requires municipalities to update their Official Plan policies and regulations related to secondary dwelling units. The City of London Official Plan currently provides for secondary dwelling units within single and semi-detached dwellings subject to conditions. Now with changes made by *Strong Communities through Affordable Housing Act, 2011,* the Official Plan must include polices for secondary dwelling units as-of-right within townhouse and accessory structures in addition to single and semi-detached dwellings.

Secondary dwelling units provide residential intensification through "invisible density", and are considered a viable affordable housing option. These units are self-contained units within existing buildings, or they may be integrated into new residential development. Secondary dwelling units are intended to be ancillary and subordinate to the primary dwelling unit and should not be readily visible from the street. Secondary dwelling units have been identified by the Province through these legislative changes to the *Planning Act* as a way to increase the supply of affordable housing. The intent is that this form of residential intensification will

minimize land use impacts and retain neighbourhood character.

Secondary dwelling units provide an additional tool in providing for a range and mix of affordable housing within the City of London. The current policies of the Official Plan provide for a broad range of residential dwelling types. The proposed policies are intended to facilitate the establishment of, and increase the opportunities for, secondary dwellings as affordable housing options in London. This type of housing will provide homeowners with the opportunity to create a secondary dwelling to assist in the costs of homeownership.

BACKGROUND 11

Provincial Direction on Affordable Housing

The Ministry of Municipal Affairs and Housing, released a handbook in 2011 to outline the tools designed to implement address affordable housing issues in Ontario, including changes made by the *Strong Communities through Affordable Housing Act, 2011* to the *Planning Act.*

The Ministry identifies affordable housing as a "fundamental need" and providing access to safe, affordable and adequate housing is essential in developing complete communities. Ontario's commitment to affordable housing extends to a broad range of types of housing and is intended to provide access to housing. Specifically, secondary dwelling units represent one subset of tools available to municipalities in providing affordable housing.

Secondary dwelling units are one of the least expensive ways of increasing affordable rental housing options throughout the municipality, while maintaining neighborhood character. Some of the key community benefits from secondary dwelling units identified by the Ministry include:

- Providing homeowners an opportunity to earn additional income to help meet the cost of home ownership
- Supporting changing demographics by providing more housing options for extended family or elderly parents, or for a live-in caregiver
- Increasing stock of rental units in an area;
- Maximizing densities and helping create income-integrated communities, which can support and enhance public transit, local businesses and the local labour market, as well as make more efficient use of infrastructure
- Creating jobs in the construction/renovation industry

The Ministry further acknowledges that municipalities are responsible for determining where secondary dwelling units shall be located. Municipalities could account for any inherent constraints, which may tnean that it would not be appropriate to allow second units in some areas.

The approach recommended by staff in this report is consistent with these legislative changes introduced by the Province. Secondary dwellings represent a type of affordable housing not currently provided for in London.

Provincial Legislation

The Provincial government adopted legislation under Bill 140 *Strong Communities through Affordable Housing Act, 2011* requiring municipalities to develop or enhance policies in their Official Plans to provide for secondary dwelling units. The changes are intended to improve access to adequate, suitable and affordable housing, and provide a solid foundation to secure employment, raise families and build strong communities. The Official Plan must allow for secondary dwelling units within single detached, semi-detached, and townhouse dwellings as well as in ancillary structures such as a detached garage. Additionally, the municipality may regulate criteria related to location, form, and intensity.

housekeeping units located entirely within another dwelling or an accessory structure. The primary and secondary dwelling unit could function as a single dwelling unit with the exception of internally locked doors and common hallways. Further, the secondary dwelling unit is clearly intended as accessory and ancillary to the primary dwelling unit. Accessory and ancillary in this circumstance would be considered as being an income generator or to provide assistance to other individuals in close proximity to the owner.

In contrast, a duplex or semi-detached dwelling unit are two-unit dwellings, which operate as independent and separate housekeeping units, whereby there is no reliance among units. The owner of land is not required be located on site and may be used for income generating purposes. Duplex and semi-detached are visibly separate units from the street and both operate independently and equally as primary dwelling units. The proposed secondary dwelling unit policies and regulations address the expected form and intensity of the use, and that this use is separate and distinct from other forms of residential dwelling types.

Owner Occupancy

As part of the proposed framework, secondary dwelling units are recommended to be established only as an accessory use to a dwelling unit (single detached, semi-detached or townhouse) that is owner occupied.

Secondary dwelling units represent a subset of affordable housing that provide additional available housing options. Secondary dwelling units are one of many tools available to the municipality in addressing affordable housing issues. As noted specifically by the Ministry of Municipal Affairs, the benefits secondary units may be used for:

- Providing homeowners an opportunity to earn additional income to help meet the cost of home ownership; or,
- Providing more housing options for extended family or elderly parents, or for a live-in caregiver

These two benefits listed above relate to types of uses that exist as a causal relationship to the primary use. The primary unit may rely on financial support from the secondary unit, or there may be a need based on care and services delivered. In both cases, a homeowner is looking to reduce costs The accessory and ancillary nature of the secondary dwelling unit does not distinguish between persons who are related and persons who are unrelated.

The proposed framework does not restrict the occupancy of dwelling units, the policies would require that owner occupancy be required to establish a secondary unit. Otherwise, a second dwelling unit would be considered a separate use as defined by the zoning by-law and would be subject to a separate review. The City of London permits several multi-unit dwelling types (such as duplexes, triplexes, fourplexes, converted dwellings) which are defined separately in the zoning by-law, and permit these uses to be established in appropriate zones across the city. These types of dwelling types may also be considered examples of affordable housing and would capture the goals of non-owner occupied dwellings of serving as investment opportunities.

The City of London as adopted an affordable housing strategy and implementation plan, along with providing incentives to develop larger scale affordable housing project.

PROPOSED OFFICIAL PLAN AMENDMENTS

Based on the review noted in this report Planning staff recommend that the following amendments be made as follows:

1. *Delete the last paragraph in Section 3.2.3.8 Zoning By-law and add a new section 3.2.3.9 Secondary Dwelling Units as follows:*

Secondary dwelling units may be permitted within a single detached dwelling, semi-detached dwelling or a townhouse dwelling. The secondary dwelling unit must be clearly ancillary and subordinate to the primary residential use and may be permitted where all of the following criteria are met:

2. *Establish the following criteria for the establishment of Secondary Dwelling Unit:*

   i. Secondary dwelling units shall be permitted where the primary unit is owner occupied;

The intent of Secondary Dwelling Units is that they are clearly accessory and ancillary to the primary residential unit. Further, they provide a direct benefit to the owner as a primary resident on the lot, either through receiving financial assistance or providing assistance to an individual in close proximity. Where this is not the case, a dwelling containing a second unit may be considered a different form of dwelling unit (i.e. duplex, converted dwelling) which may not be permitted by the zone. Owner occupancy is recommended to be verified and maintained through the residential rental unit license as recommended in this report.

   ii. A maximum of one (1) secondary dwelling unit per primary dwelling unit is permitted, and must be located on the same lot as the primary dwelling unit;

This policy caps the number of secondary dwelling units per lot to limit the potential of over development of an area. Secondary dwelling units are intended to serve assistance to the property owner

   iii. Secondary dwelling units shall not be permitted within the Great Near-Campus Neighbourhood Area as defined by Figure 3-1 of this Plan;

Secondary dwelling units will not be permitted within the Great Near-Campus Neighbourhood Area. This area has recently undergone a comprehensive planning study and contains a number of areas that are zoned to permit additional dwellings as-of-right.

   iv. A Secondary dwelling unit shall be limited to a maximum of one (1) bedroom, and the total number of bedrooms of both the primary dwelling unit and secondary dwelling unit shall not be greater than five (5)

Secondary dwelling units are intended to provide either assistance to the owner by providing additional income to support the ability for home ownership or by providing assistance to individuals the ability to live independently. Multi-bedrooms are considered a separate a.nd distinct dwelling unit and represent infill and intensification beyond the intent of the secondary dwelling unit polices.

   v. Secondary dwelling units shall be required to be licensed pursuant to the Residential Rental Unit Licensing By-law;

The City has an approved Residential Rental Unit Licensing By-law. Secondary dwelling units would be subject to receiving a license and maintaining its annual renewal.

   vi. The gross floor area of a secondary dwelling unit shall not be greater than 40% of the combined total gross floor area of both the primary residential dwelling unit and secondary dwelling unit;

This policy will maintain that a secondary dwelling unit remains accessory and ancillary to the primary dwelling unit.

vii. A secondary dwelling shall comply with all regulations of the associated zone;

This policy will ensure that the lot requirements such as lot area, coverage, setbacks, landscaped areas are maintained. These requirement are established to protect the form and massing of an area and will assist in maintaining the character of the area.

viii. Exterior alterations to the primary dwelling unit to provide for secondary dwelling units shall not be permitted for front or exterior side yards. To protect neighbourhood character, access to secondary dwelling units may be through existing entrances or new entrances located in rear or side yards.

This policy is to ensure that alterations made to provide secondary dwelling units do not affect the appearance and character of a neighbourhood. Entrances to secondary units will be handled internally or to the side and rear of buildings as established in the zoning by-law. Front facades will not indicate the presence of a second unit.

ix. In addition to the parking requirement for the primary residential unit one additional parking space will be required and maintained in accordance with the zoning by-law. A second driveway is not permitted;

This policy requires one additional parking space to serve the needs of the secondary dwelling without creating visual impacts to the neighborhood.

x. Secondary dwelling units may be permitted within a legally established accessory structure that:
   a. is located on the same lot as the primary dwelling unit, associated therewith;
   b. meets the requirements of the zone;
   c. where the primary dwelling unit does not contain a secondary unit;
   d. is located in the rear yard;

Changes to the *Planning Act* require that secondary dwelling units may be permitted in accessory structures. This policy is to ensure that an owner may either locate the secondary dwelling unit in the primary structure (such as a house) or an accessory structure (e.g. coach house). This does not permit the establishment of both units. A policy permitting one secondary dwelling unit continues to apply.

xi. Secondary dwelling units located within a primary dwelling unit shall not require Site Plan Approval. Secondary dwelling units within an accessory structure shall require Site Plan Approval.

Secondary dwellings are intended to be wholly contained within an existing dwelling or within an accessory structure. As such, there would be minor to no changes anticipated to the site and therefore, should not necessitate the requirement for Site Plan Approval.

xii. A secondary dwelling unit shall not be located within a basement within a dwelling located in a flood plain as regulated by the Conservation Authority having jurisdiction for that area.

Concerns were raised related to the health and safety of occupants. located in basements. As such, secondary dwelling units shall not be permitted in locations where there is an identified potential for flooding.

Additional amendments are proposed to properly integrate the changes recommended above into the existing Official Plan.

PROPOSEDZONINGBY-LAWAMENDMENTS

The City of London Zoning By-law Z.-1 performs the regulatory function of controlling land use within the City of London. However, the Zoning By-law does not currently provide for secondary dwelling units within permitted residential dwelling types except where implemented through a site-specific zoning by-law amendment, as noted in the Official Plan. To better implement secondary dwelling uses, the following provisions are recommended to facilitate the establishment the use.

It should be noted that the recommended framework would not require a planning application prior to the establishment of secondary dwellings unit provided that the requirements of the Zoning By-law are maintained.

Zoning By-law Provisions

In order to implement Secondary Dwelling Units it is recommended that Section 4 General Provisions of the City of London's Zoning By-law be amended to include the following:

1. Section "2" Definitions to By-law No. Z-1 is amended by adding the following definitions following directly after the definition for Accessory Dwelling Unit;

   SECONDARY DWELLING UNIT means a dwelling unit ancillary and subordinate to an owner-occupied primary dwelling unit, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupants thereof.

2. Section "4" General Provisions to By-law No. Z-1 is amended by adding the following subsection;

4._ Secondary Dwelling Units

The provisions of this section shall apply to all secondary dwelling units, unless specified herein.

1) Permitted Zones

A Secondary DweUing Unit, shall be permitted within any zone, only in association with the following uses:

a) Single detached dwellings;
b) Semi-detached dwellings;
c) Street townhouse dwellings;

2) Number of Secondary Dwelling Units Per Lot

A maximum of one (1) secondary dwelling unit shall be permitted per bt; in the case of a condominium, only one (1) secondary dwelling unit, shall be permitted per condominium unit.

3) Location of Secondary Dwelling Units

A secondary dwelling unit shall not be permitted on a separate lot from which it is accessory to.

A secondary dwelling unit shall not be permitted on any lot located within the Near-Campus Neighbourhoods Area as delineated by Figure 4.36 of this By-law

A secondary dwelling unit or part thereof is permitted in a basement provided the finished floor level of such basement is not below the level of any sanitary sewer servicing the building or structure in which such basement is located.

4) Location of Secondary Dwelling Units within Accessory Structures

A secondary dwelling unit may be permitted within an accessory structure on the same lot as the primary dwelling, but no more than one (1) secondary dwelling unit shall be permitted per lot.

A secondary dwelling unit in an accessory structure shall be required to meet the regulations of the zone.

A secondary dwelling unit may only be permitted in an accessory structure located in the rear yard or interior side yard.

5) Floor Area Requirements

No secondary dwelling unit shall be erected or used unless it has the a minimum gross floor area of 25 square meters.

The gross floor area of a secondary dwelling unit shall not be greater than 40% of the combined total gross floor area of the primary dwelling unit and the secondary dwelling unit. For the purposes of calculating gross floor area requirements for secondary dwelling units the following shall not be included:

a) additions to dwelling units completed after the date of passage of this by-law; and
b) the gross floor area of accessory structures.

6) Parking

A secondary dwelling unit shall require a maximum of one (1) parking space.

7) Total bedrooms

A Secondary dwelling unit shall be limited to a maximum of one (1) bedroom, and the total number of bedrooms of both the primary dwelling unit and secondary dwelling unit is not greater than five (5).

8) Exterior Alterations

Exterior alterations shall not be permitted to the front or exterior side yard elevations of a primary dwelling to provide for entrance to the secondary dwelling unit.

Exterior alterations to provide for entrance to the secondary dwelling unit within interior side yard and rear yard elevations of the primary dwelling may be permitted provided that the interior side yard elevation does not contain more than one entrance.

Exterior alterations to accessory structures that permit secondary dwelling units

may be permitted.

9) Code Requirements

Secondary dwelling units shall be required to conform to all Ontario Building Code and Ontario Fire Code regulations.

10J Licensing

A secondary dwelling unit shall be required to obtain a license under the City of London Residential Rental Unit Licensing By-law.

Licensing Requirements

On August 30, 2011 the City of London adopted a Residential Rental Units Licensing By-law. This by-Jaw requires that all rental units, unless explicitly exempt, shall obtain a licence to operate.

The Licensing by-law provides the municipality to:

(a) receive and process all applications for all licenses and renewals of licences under this By-law;
(b) issue licenses in accordance with the provisions of this By-law;
(c) impose terms and conditions on licences in accordance with this By-law; and,
(d) refuse to issue or renew a licence or revoke or suspend a licence in accordance with this By-law.

Additional conditions on the licence may be included as prescribed by the License Manager.

Updates to the Residential Rental Unit Licensing By-Jaw may be required, where appropriate, to reflect the secondary dwelling unit use.

This report recommends that Council direct staff to include owner occupancy as a requirement for Residential Rental Unit Licenses related to secondary dwelling units.

Enforcement and Compliance Issues

The provisions of the Residential Rental Unit Licensing By-law provides the enforcement tool to inspect licensed premises. Further, the concerns regarding property standards, maintenance issues, and parking violations are impacts that can be addressed without requiring access to the secondary dwelling unit.

Offenses may result in the suspension or revocation of the residential rental unit license or fines to the property owner.

FINANCIAL CONSIDERATIONS

Development Charges

The City collects development charges for growth related infrastructure and services. Under the Development Charges By-Jaw certain developments are exempt including, among others:

(a) creates one or two additional dwelling units in an existing single detached dwelling if the total gross floor area of the additional dwelling unit or units does not exceed the gross

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M. Tomazincic
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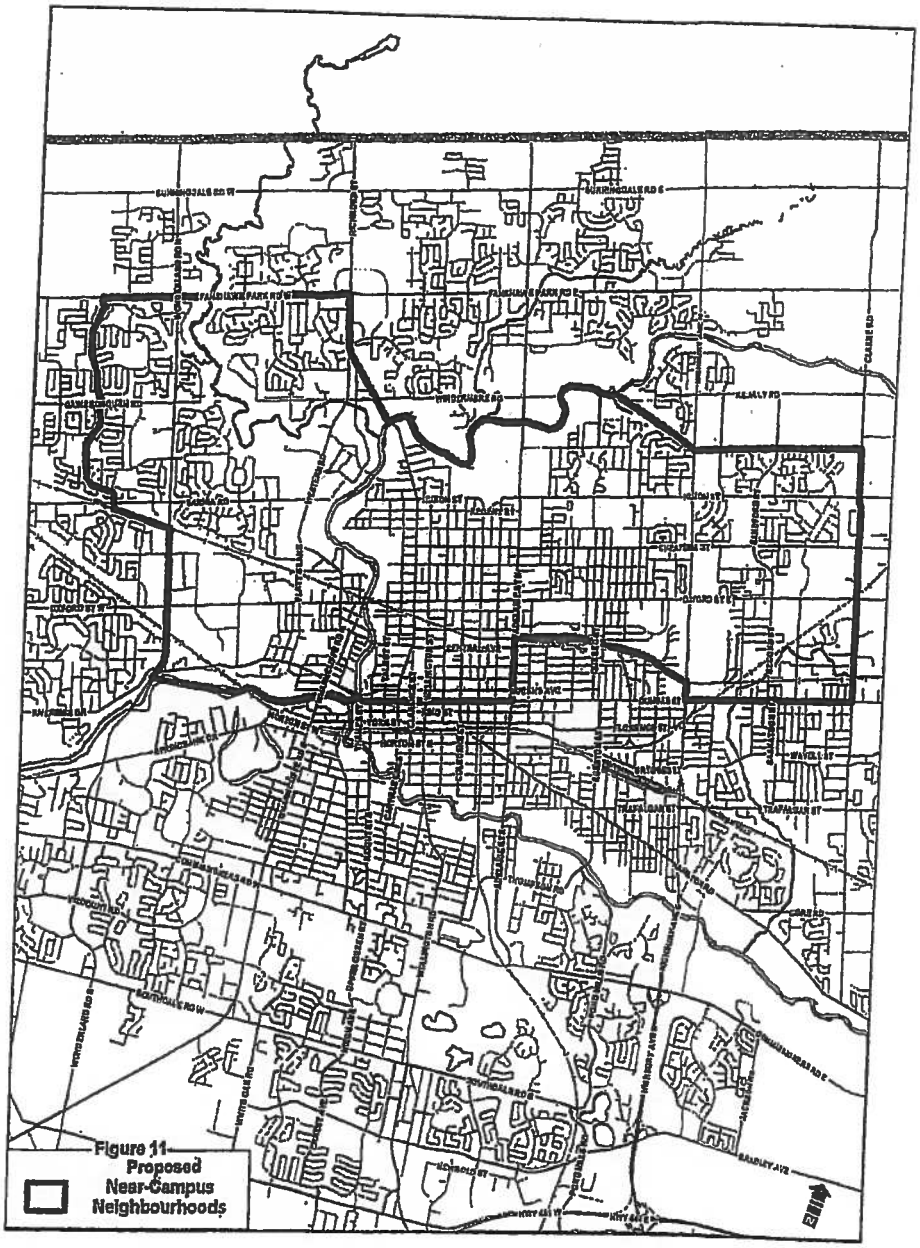

In general terms, near-campus neighbourhoods are defined as neighbourhoods whose proximity to the Western University of Canada (and its affiliated colleges) and Fanshawe College has had an influence, or has the potential to influence, the neighbourhoods' planned function. Planning Staff have identified the areas that they assess to represent Near-Campus Neighbourhoods most clearly. A response from the broader community has identified that the proposed boundary is adequate. Figure 11 illustrates the proposed area that is to be defined as Near-Campus Neighbourhoods.

TO:	CHAIR & MEMBERS PLANNING COMMITTEE
FROM:	R. PANZER, GENERAL MANAGER OF PLANNING AND DEVELOPMENT
SUBJECT:	1001 Waterloo Street Meeting on October 27, 2008

RECOMMENDATION

That, on the recommendation of the General Manager of Planning and Development this report **BE RECEIVED** for information purposes.

BACKGROUND

On June 16th, 2008 Planning Committee reported that in response to a delegation from Paul Beechey, D. Farquhar, F. Moretti and D. Pellarin with respect to concerns relating to the use of the property located at 1001 Waterloo Street staff be requested to review the material and provide a report at a future meeting of the Planning Committee.

The subject property located at 1001 Waterloo Street is located at the S/E corner of Regent Street and Waterloo Street. The property is zoned Residential R1-5 (3) permitting single detached dwellings. The By-law Enforcement Office received a complaint on March 1, 2007 that the subject property was being used for two residential units. By way of a conversation with an occupant, it did appear that a second unit did exist in the basement of the subject dwelling.

Subsequently, the property owners indicated that when they purchased the subject property, there were two units present including a kitchen in the basement. The property owners provided a real estate listing at the time of purchase indicating a "granny suite with separate entrance". A subsequent affidavit was submitted that on the date of purchase there was a separate entrance to the basement and the basement contained a granny suite with a kitchen, bathroom and separate living area.

When this information is received by the by-law enforcement office, the MLEO takes a neutral position and undertakes further research and investigations. The following additional research was undertaken:

- Discussions with former owner's family members who indicated that a basement apartment was installed in the 1960s for a disabled family member;
- Discussions with previous neighbour who attended the property in 1995 during an open house and recalled a second kitchen in the basement;
- Discussions with a the real estate agent who listed the property in 1995 and who indicated that the property was sold as a power of sale and that the property was on the market for approximately 8 months. The real estate agent also indicated that due to the power of sale, she was responsible for entering the building for security purposes three times per week. The agent recalls the lower level containing a "granny suite";

- The MLEO viewed the basement kitchen and it appeared to be dated and not a recent kitchen installation.

In 1994, the Residents Rights Act (Bill 120) amended the *Planning Act* to limit the authority of municipalities to prohibit second units in single detached, semi detached and row housing provided that building, fire and planning standards were met. Many municipalities, including London, were concerned that the provisions of Bill 120 would be an unwarranted intrusion into local decision making regarding planning matters. The provincial government responded to the concerns of municipalities and others and introduced Bill 20 on November 16, 1995. Bill 20 restored municipal authority in determining where new second units could be permitted and what standards should apply. However, Bill 20 also recognized that existing two unit houses be "grandfathered" and that these houses be recognized as permitted use for land use planning purposes.

The Apartments in Houses Municipal Guide Update published by the Ministry of Municipal Affairs and Housing provides guidance when examining facts related to grandfathering provisions under Bill 20. The guideline states that "the presence of a second unit on November 16, 1995 means that the house will always be permitted to have a second unit".

Section 76 of the *Planning Act* provides:

> **Transition – residential units**
>
> 76.(1) If on November 16, 1995, a detached house, semi-detached house or row house was used or occupied as two residential units, section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of this Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to that house.
>
> **Same**
>
> (2) Section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of this Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to a detached house, a semi-detached house or a row house if on or before the day on which subsection 20 (1) of the *Land Use Planning and Protection Act, 1996* comes into force,
>
> (a) a permit has been issued under section 8 or 10 of the *Building Code Act* permitting the erection, alteration, occupancy or use of the house for two residential units; and
>
> (b) the building permit has not been revoked under section 8 of the *Building Code Act*. 1996, c. 4, s. 42.

It would appear that the use or occupancy of a detached house, semi-detached house or row house as two residential units are protected or so-called "grandfathered" under subsection 76(1) of the *Planning Act*, if there is evidence that the detached house, semi-detached house or row house was "used or occupied" as two residential units on November 16, 1995. There does not appear to be any requirement by subsection 76(1) of evidence that the use or occupancy of the second residential unit continue after November 16, 1995 or a requirement of evidence of a continued intention to use or occupy the second residential unit after November 16, 1995. An alteration requiring a building permit (i.e. adding rooms) may be issued as long as it does not contravene the Building Code, or any other applicable law (i.e. the Zoning By-law).

It appears that subsection 76(2) of the Act extends "grandfathering" to situations where there is evidence that a building permitting the erection, alteration, occupancy or use of the house for two residential units had been issued on or before the date that the *Land Use Planning and Protection Act, 1996* came into force (April 3, 1996) and that the building permit had not been revoked under section 8 of the *Building Code Act*. It appears from a reading of subsection 76(2) that there is no requirement of evidence that the detached house, semi-detached house or row house had to be "used or occupied" on the applicable date.

Based on investigation undertaken by MLEO staff and information received from the property owner, including an affidavit, considering the test of whether there are reasonable and probable grounds, the preponderance of evidence does not support the laying of a charge for a zoning by-law contravention. Persons who do not agree with this assessment have the option of laying a private information (Part 3) through the courts.

ACKNOWLEDGEMENTS

This report was prepared with the assistance of Heather Chapman, MLEO and Janice Page and Lynn Marshall, Solicitor's Office.

CONCLUSION

The City's Municipal Law Enforcement Officers remain satisfied that the second unit within 1001 Waterloo Street as it existed on November 15, 1996 qualifies under the grandfathering provisions of Bill 20.

PREPARED BY:	SUBMITTED BY:
O. Katolyk	O. Katolyk
O. KATOLYK MANAGER OF BY-LAW ENFORCEMENT	R. CERMINARA, P.ENG. DIRECTOR OF BUILDING CONTROLS
RECOMMENDED BY:	
R. W. Panzer	
R. W. PANZER GENERAL MANAGER OF PLANNING AND DEVELOPMENT	

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Cc: Janice Page , City Solicitor's Office
Lynn Marshall, City Solicitor's Office

1. Introduction

1.1 New provincial legislation on apartments in houses

The Land Use Planning and Protection Act (Bill 20) was introduced on November 16, 1995, and was proclaimed on May 22, 1996.

Bill 20 restores municipal authority to determine where new second units are to be permitted, and what standards apply. However, certain existing two-unit houses will be "grandfathered". These houses will be recognized as permitted uses for planning purposes. Bill 20 also gives municipalities the authority to require that houses with two units are registered.

In 1994, the Residents' Rights Act (Bill 120), among other things, amended the Planning Act to limit the authority of municipalities to prohibit second units in detached, semi-detached, and row houses, provided that building, fire and planning standards were met.

Municipalities remained concerned that the apartments in houses provisions of Bill 120 were an unwarranted intrusion into local zoning authority, and that municipalities were in the best position to determine the appropriate mix of housing types, and what standards should be applied. It was also felt that a province-wide solution could result in second units being allowed where they are not an appropriate use, or where they are not needed to address market demand.

The government responded to these concerns by including new provisions for apartments in houses in Bill 20.

1.2 The role of this update

At the time Bill 120 became law, the province published the *Apartments in Houses Municipal Guide* in order to assist municipal planners and enforcement officials in implementing this legislation. The Guide described how Bill 120, along with the Planning Act regulation authorized by the new legislation, affected municipal planning practice. The Guide also included a description of the building and fire standards which apply to houses with two units.

3. The new regulatory framework for apartments in houses

3.1. Conditions under which new second units are a permitted use

Bill 20 repeals the apartments in houses provisions of Bill 120. The effect is that municipal authority to determine where new second units are permitted, and what standards apply, is restored.

As a result, two-unit houses created after proclamation (either through constructing a purpose built two-unit house or through adding a second unit to an existing house) are only permitted where two-unit houses are permitted under municipal zoning.

The only exception would be houses with two units where the second unit was installed after May 22, 1996, but where the building or change of use permit required for the installation was issued on or before this date. Such two-unit houses would be "grandfathered" (see below), provided that the permit in question has not been revoked (e.g. because more than six months elapse between the issuance of the permit and the beginning of work).

3.2 Conditions under which existing seconds units are a permitted use

While Bill 20 restores full municipal authority over new second units, the legislation "grandfathers" certain existing two-unit houses. Such houses:

- continue to be subject to the Bill 120 planning rules, and remain permitted uses under municipal zoning; and
- continue to be subject to municipal zoning standards as "modified" by Ontario Regulation 384/94.

Grandfathering applies to two-unit houses:

- which had been made a permitted use as a result of Bill 120, and which are used or occupied as two residential units on November 16, 1995. The phrase "used or occupied" in Bill 20 refers to houses where the physical structure consists of two residential units, whether or not it was occupied by two separate households on the cutoff date. It is possible, therefore, for a house to be grandfathered even where one, or both, of the units was vacant on November 16, 1995.

- where the second unit is installed with a building or change of use permit issued on or before May 22, 1996, provided that such permit had not been revoked.

Grandfathering does not apply to two-unit houses which had not been covered by Bill 120. Two-unit houses on septic systems, for example, would not be protected, nor would two-unit houses located in zones which do not permit residential use. Similarly, premises which do not meet the definition of a two-unit house (e.g. because the kitchen is shared) would not be grandfathered.

Because grandfathering makes two units in a particular house a permitted use, it is not necessary for the two units to be in existence continuously for this entitlement to be preserved. As a result, a two-unit house could be:

- "deconverted" without losing the right to reestablish the second unit in the future.

- upgraded, altered or expanded.

Grandfathering, therefore confers broader protection than would legal nonconforming status under subsection 34(9) of the Planning Act.

It is also important to note that the grandfathered status of a two-unit house is not tied to whether premises comply with all applicable standards. This means, for example, that a two-unit house could be grandfathered even if:

- on November 16, 1995, the premises was not in compliance with applicable planning standards (e.g. minimum of two on-site parking spaces).

- in the months prior to introduction, a second unit was installed without a building or change of use permit.

- on November 15, 1995, the premises was not in compliance with the provisions of section 9.8 of the Fire Code.

In all cases, owners have a legal responsibility to comply with standards. Failure to do so could result in prosecution or the issuance of work orders requiring upgrades. However, because the two-unit houses involved remain permitted uses for zoning purposes, owners will still have the opportunity to conduct remedial work required to make their houses fully "legal".

MEMO

To: Jeff
From: Dan
Re: grandfathering provisions for granny flats from Bill 20
Date: January 2, 2014

Background on Grandfathering of Granny Flats under Section 76 of the *Planning Act*

As you know, through Bill 20, the *Land Use Planning and Protection Act, 1996,* the Conservative government gave back to municipalities the ability to restrict granny flats through official plan policies and zoning by-laws. However, Bill 20 also grandfathered granny flats that were legally created pursuant to Bill 120, the *Residents' Rights Act, 1994,* by adding the current section 76 to the *Planning Act:*

> **76.** (1) If on November 16, 1995, a detached house, semi-detached house or row house was used or occupied as two residential units, section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of the Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to that house.
>
> (2) Section 1, subsections 16 (2), (3) and (4), 31 (3.1) and (3.2), 35 (1), (3) and (4) and 51 (28), (29) and (30) of the Act and Ontario Regulation 384/94, as they read on November 15, 1995, continue to apply to a detached house, a semi-detached house or a row house with two residential units if on or before November 16, 1995:
>
> (a) a permit has been issued under section 8 or 10 of the *Building Code Act* permitting the erection, alteration, occupancy or use of the house for two residential units; and
>
> (b) the building permit has not been revoked under section 8 of the *Building Code Act.*

According to section 76, certain pre-Bill 20 sections of the *Planning Act* and the related granny flat regulation (O. Reg. 384/94) continue to apply to a detached house, semi-detached house or row house that was used or occupied as two residential units on November 16, 1995. These provisions and the regulation also continue to apply where, even though the house was not yet occupied as two residential units, a building permit was issued on or before November 16, 1995, permitting the occupancy of the house for two residential units.

What Law Applies to Grandfathered Secondary Suites as a Result of Section 76?

Bill 120 had made a number of changes to the *Planning Act* in order to restrict municipalities from prohibiting granny flats. The relevant sections of Bill 120 are

discussed below. Some of these provisions continue to apply to granny flats that were legally created under Bill 120 by virtue of s. 76 of the *Planning Act.*

Firstly, amendments to section 16 restricted official plans from prohibiting the use of two residential units in a house, provided that residential use was permitted in the area. Section 16 also prevents official plans from creating standards for granny flats that conflict with O. Reg. 384/94. Section 16(2), 16(3) and 16(4) read as follows following the enactment of Bill 120:

> (2) No official plan may contain any provision that,
>
> > (a) has the effect of prohibiting the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or
> >
> > (b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect to a house described in clause (a), residential units contained in it or the land on which it is situated.
>
> (3) A provision in an official plan is of no effect to the extent that it contravenes the restriction described in clause (2) (a).
>
> (4) A provision in an official plan that contravenes the restriction described in clause (2) (b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

These subsections continue to apply to those units grandfathered through Bill 20 under s. 76 of the current *Planning Act.*

Secondly, Bill 120 amended section 31 of the *Planning Act* to add subsections that restrict municipalities from passing by-laws that conflict with the provincial regulations on granny flats. Conflicting by-laws would only have effect as if they matched the provincial standards for regulating granny flats. Subsections 31(3.1) and (3.2) read as follows as of November 15, 1995:

> (3.1) The authority to pass a by-law under subsection (3) does not include the authority to set out in a by-law requirements, standards or prohibitions that,
>
> > (a) conflict with the requirements, standards or prohibitions prescribed by the regulations; and
> >
> > (b) apply,

(i) in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law, and

(ii) to a house containing two residential units that is a detached house, a semi-detached house or a rowhouse, or to a residential unit contained in the house or the land upon which it is situated.

(3.2) A provision in a by-law passed under subsection (3) that contravenes the requirements, standards or prohibitions prescribed by the regulations for the purposes of subsection (3.1) has effect only as if it set out the prescribed requirements, standards or prohibitions.

(3.3) The authority to pass a by-law under subsection (3) does not include the authority to pass a by-law that sets out requirements, standards or prohibitions that have the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a property, including the occupancy or use as a single house-keeping unit.

(3.4) A provision in a by-law passed under subsection (3) is of no effect to the extent that it contravenes the restrictions described in subsection (3.3).

Subsections (3.1) and (3.2) continue to apply to units grandfathered under s. 76.

Thirdly, section 35 of the *Planning Act* was amended by Bill 120 to restrict municipalities from passing by-laws that prohibit granny flats in areas where residential use is permitted or from creating standards for granny flats that conflict with 0. Reg. 384/94 (this basically mirrors the restrictions on official plans that were added to section 16). Section 35 of the *Act* read as follows after Bill 120 came into effect:

35. (1) The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that,

(a) prohibits the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect to a house described in clause (a), residential units contained in it or the land on which it is situated.

(2) The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in

respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit.

(3) A provision in a by-law passed under section 34, subsection 38 (1) or section 41 or in an order made under subsection 47 (1) is of no effect to the extent that it contravenes the restrictions described in clause (1) (a) or subsection (2).

(4) A provision in a by-law passed under section 34, subsection 38 (1) or section 41 or in an order made under subsection 47 (1) that contravenes the restriction described in clause (1) (b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

Subsection 35(1) and 35(4) of the *Planning Act* have since been repealed and 35(3) has been amended, but the above versions continue to apply to s. 76 grandfathered units.

Finally, Bill 163, the *Planning and Municipal Statute Law Amendment Act, 1994* added the following subsections to section 51 of the *Planning Act,* restricting municipalities from using subdivision control powers to prohibit granny flats:

(28) The authority to approve a plan of subdivision, impose a condition or enter into an agreement under this section does not include the authority to prohibit the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law.

(29) A condition or provision made under this section is of no effect to the extent that it contravenes the restriction described in section (28).

(30) Subsections (28) and (29) do not apply to a condition or provision made or to the exercise of the powers under section 50 of the *Condominium Act.*

These subsections also continue to apply to granny flats that are covered by s. 76 of the current *Planning Act.*

CHAPTER 2

An Act to amend certain statutes concerning residential property

Assented to May 31, 1994

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

[_]

PART IV
PLANNING ACT

40. Section 1 of the Planning Act is amended by adding the following definition:

"residential unit" means a unit that,

(a) consists of a self-contained set of rooms located in a building or structure,

(b) is used or intended for use as a residential premises,

(c) contains kitchen and bathroom facilities that are intended for the use only of the unit, and

(d) has a means of egress to the outside of the building or structure in which it is located, which may be a means of egress through another residential unit. ("unit6d' habitation")

41. Section 16 of the Act is amended by adding the following subsections:

(2) No official plan may contain any provision that,

(a) has the effect of prohibiting the erecting, locating or use of two residential units in a detached house, semi-detached house or rowhouse situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect

to a house described in clause (a), residential units contained in it or the land on which it is situated.

(3) A provision in an official plan is of no effect to the extent that it contravenes the restriction described **in** clause (2) (a).

(4) A provision **in** an official plan that contravenes the restriction described in clause (2) (b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

42. (1) Section 31 of the Act is amended by adding the following subsections:

(3.1) The authority to pass a by-law under subsection (3) does not include the authority to set out in a by-law requirements, standards or prohibitions that,

(a) conflict with the requirements, standards or prohibitions prescribed by the regulations; and

(b) apply,

(i) in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law, and

(ii) to a house containing two residential units that is a detached house, a semi-detached house or a row-house, or to a residential unit contained in the house or the land upon which it is situated.

(3.2) A provision in a by-law passed under subsection (3) tnat contravenes the requirements, standards or prohibitions prescribed by the regulations for the purposes of subsection (3.1) has effect only as if it set out the prescribed requirements, standards or prohibitions.

(3.3) The authority to pass a by-law under subsection (3) does not include the authority to pass a by-law that sets out requirements, standards or prohibitions that have the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a property, includ-

ing the occupancy or use as a single housekeeping unit.

(3.4) A provision in a by-law passed under subsection (3) is of no effect to the extent that it contravenes the restrictions described in subsection (3.3).

(2) Subsection 31 (5) of the Act is amended by striking out "section 158 of the Provincial Offences Act" in the second and third lines and substituting "section 49.1".

(3) **Section 31 of the Act is amended by adding the following subsection:**

(5.1) No person shall obstruct or attempt to obstruct an officer or a person acting under the officer's instructions in the exercise of a power under this section.

(4) Subsection 31 (22) of the Act is repealed and the following substituted:

(22) A person who contravenes subsection (5.1) or an owner who fails to comply with a final and binding order made under this section and, if the person or owner is a corporation, every director or officer of the corporation who knowingly concurs in the contravention or failure to comply, is guilty of an offence and on conviction is liable to a fine of not more than $2,000 for a first offence and to a fine of not more than $10, (XX) for any subsequent offence.

43. Section 35 of the Act is repealed and the following substituted:

35. (1) The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that,

(a) prohibits the erecting, locating or use of two residential units in a detached house, semi-detached house or row-house situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law; or

(b) sets out requirements, standards or prohibitions that conflict with the requirements, standards or prohibitions prescribed by the regulations with respect

to a house described in clause (a), residential units contained in it or the land on which it is situated.

(2) The authority to pass a by-law under section 34, subsection 38 (1) or section 41 does not include the authority to pass a by-law that has the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy or use of a building or structure or a part of a building or structure, including the occupancy or use as a single housekeeping unit.

(3) A provision in a by-law passed under section 34, subsection 38 (1) or section 41 or in an order made under subsection 47 (1) is of no effect to the extent that it contravenes the restrictions described in clause (1) (a) or subsection (2).

(4) A provision in a by-law passed under section 34, subsection 38 (1) or section 41 or in an order made under subsection 47 (1) that contravenes the restriction described in clause (1) (b) has effect only as if it set out the requirements, standards or prohibitions prescribed by the regulations for the purposes of that clause.

44. (1) Section 39 of the Act is amended by adding the following subsections:

(1.1) In this section, "garden suite" means a one-unit detached residential structure containing bathroom and kitchen facilities that is ancillary to an existing residential structure and that is designed to be portable.

(1.2) As a condition to passing a by-law authorizing the temporary use of a garden suite under subsection (1), the council may require the owner of the suite or any other persons to enter into an agreement with the municipality under section 207.2 of the Municipal Act.

(2) Subsection 39 (2) of the Act is amended by striking out "three years from the day of the passing of the by-law" in the fifth and sixth lines and substituting:

(a) ten years from the day of the passing of the by-law, in the case of a by-law authorizing the temporary use of a garden suite; or

(b) three years from the day of the passing of the by-law, in all other cases.

45. (1) Subsection 49 (3) of the Act is amended by striking out "section 158 of the Provincial Offences Acf in the second and third lines and substituting "section 49.1".

(2) Section 49 of the Act is amended by adding the following subsection:

(4) No person shall obstruct or attempt to obstruct an officer or a person acting under the officer's instructions in the exercise of a power under this section.

46. The Act is amended by adding the following section:

49.1 (1) A provincial judge or justice of the peace may at any time issue a warrant in the prescribed form authorizing a person named in the warrant to enter and search a building, receptacle or place if the provincial judge or justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that,

(a) an offence under section 31 or 67 has been committed; and

(b) the entry and search will afford evidence relevant to the commission of the offence.

(2) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize anything that, based on reasonable grounds, will afford evidence relevant to the commission of the offence.

(3) Anyone who seizes something under a search warrant shall,

(a) give a receipt for the thing seized to the person from whom it was seized; and

(b) bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law.

(4) A search warrant shall name the date upon which it expires, which shall be not later

than fifteen days after the warrant is issued.

(5) A search warrant shall be executed between 6 a.m. and 9 p.m. unless it provides otherwise.

(6) Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications in respect of any thing seized under this section.

47. Section 51 of the Act is amended by adding the following subsections:

(6.1) The authority to approve a plan of subdivision, impose a condition or enter into an agreement under this section does not include the authority to prohibit the erecting, locating or use of two residential units in a detached house, semi-detached house or row-house situated in an area where residential use is permitted by by-law and is not ancillary to other uses permitted by by-law.

(6.2) A condition or provision made under this section is of no effect to the extent that it contravenes the restriction described in subsection (6. 1).

(6.3) Subsections (6.1) and (6.2) do not apply to a condition or provision made or to the exercise of the Minister's powers under section 50 of the Condominium Act.

48. Subsection 67 (1) of the Act is repealed and the following substituted:

(1) Every person who contravenes section 41, section 46, subsection 49 (4) or section 52 or who contravenes a by-law passed under section 34 or 38 or an order made under section 47 and, if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, is guilty of an offence and on conviction is liable,

(a) on a first conviction to a fine of not more than $25,000; and

(b) on a subsequent conviction to a fine of not more than $10,000 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.

49. Section 70 of the Act is amended by adding the following clauses:

(c.1) prescribing classes of detached houses, semi-detached houses or rowhouses to which clause 16 (2) (a), subsection 31 (3.1) or clause 35 (1) (a) applies;

(c.2) exempting detached houses, semi-detached houses or rowhouses serviced by prescribed classes of sanitary, septic or sewer system from the application of clause 16 (2) (a), subsection 31 (3.1) or clause 35 (1) (a);

(c.3) exempting such areas near or adjacent to the Bruce Nuclear Power Development as the Lieutenant Governor in Council specifies, from the application of clause 16 (2) (a), subsection 31 (3.1) or clause 35 (1) (a);

(c.4) prescribing requirements, standards or prohibitions that relate to the erecting, locating, use or occupancy of two residential units in detached houses, semi-detached houses and rowhouses for the purposes of clause 16 (2) (b), subsection 31 (3.1) or clause 35 (1) (b);

(d.1) prescribing the form of a warrant and the form in which the information on oath will be taken under section 49.1.

[...]

PART VI
COMMENCEMENT AND SHORT TITLE

52. (1) This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Despite subsection (1), when a section in Part II comes into force, it shall be deemed to have effect from November 23, 1993.

(3) For greater certainty, the expression "the day this subsection comes into force" in subsections 3 (7), 9.1 (1), (2), (4) and (5) and 103 (2) of the Rent Control Act, 1992, as amended by this Act, means the day named in the proclamation issued under subsection (1) as the day on which subsection 9 (3),

section 13 and subsection 22 (1) of this Act come into force and not November 23, 1993.

53. The short title of this Act is the Residents' Rights Act, 1994.

Planning Act
Loi sur l'amenagement du territoi re

ONTARIO REGULATION 384/94

APAR1MEN1SIN HOUSES

ConsoHdatlion Period: From July 14, 1994 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

DEFINITIONS

1. (1) Inthis Regulation,

"building"means an enclosed structure permanently erected at one location, the various components of which are linked, at least above grade;

"grade", in respect of a house, means the average elevation of the ground adjacent to the exterior walls on any side of the house;

"installation of a second residential unit", with respect to a house, means the creation of a second residential unit in the house regardless of whether the physical alteration of a house containing one residential unit is required to create two residential units, and includes associated alterations to the property on which the house is located;

"planning document" means,

(a) an approved official plan,

(b) a by-law passed under section 31 or 34 or subsection 38 (1) or section 41 of the Act, or

(c) an order issued under subsection 47 (1) of the Act.

(2) This Regulation applies in respect of detached houses, semi-detached houses and rowhouses. 0. Reg. 384/94, s. 1.

CLASSES OF HOUSES

2. (1) Subject to subsection (2), clause 16 (2) (a), subsection 31 (3.1) and clause 35 (1) (a) of the Act apply to the following classes of houses:

1. A detached house, if it occupies the whole of a building.

2. A semi-detached house if,

i. it occupies part of a building, where the remainder of the building is occupied by another semi-detached house and the two houses are divided on the vertical plane in such a manner that there is no internal access from one semi-detached house to the other, and

ii. it has not been created through the alteration of a detached house.

3. A rowhouse if,

i. it occupies part of a building, where the remainder of the building is occupied by two or more rowhouses and the rowhouses are divided on the vertical plane in such a manner that there is no internal access from one to any other, and

ii. it has not been created through the alteration of a detached or semi-detached house.

(2) A house belongs to one of the classes set out in subsection (1) only if,

(a) it consists of space currently used for, or intended for use for, primarily residential purposes;

(b) it contains one or two residential units;

(c) it is not ancillary to any other house or use; and

(d) it is located in a zone that permits residential use other than as an ancillary use.

(3) Subsections (1) and (2) apply to a house regardless of whether the house is constructed before or after the day section 49 of the *Residents' Rights Act, 1994* is proclaimed in force and, in the case of a house with two residential units, regardless of whether,

(a) the installation of the second residential unit occurs before or after the day that section 49 of the *Residents 'Rights Act, 1994* is proclaimed in force; or

(b) the installation of the second residential unit occurs at the time of the original construction of the house. 0. Reg. 384/94, s. 2.

SEWAGE EXEMPTION

3. Those houses serviced by the following classes of sanitary, septic or sewage systems are exempt from the application of clause 16 (2) (a), subsection 31 (3.1) and clause '35 (1) (a) of the Act:

1. Sewage systems as defined in Part VIII of the *Environmental Protection Act.*

2. Sewage works that are regulated under section 53 of the *Ontario Water Resources Act* and that are not owned or operated by a municipality or the Province of Ontario. 0. Reg. 384/94, s. 3.

BRUCE NUCLEAR FACILITY EXEMPTION

4. Those parts of Bruce and Kincardine townships that are within the boundaries of the Controlled Development Area identified on Schedule "A" of the Bruce County South Official Plan as approved on June 23, 1982 and September 28, 1984 are exempt from the application of clause 16 (2) (a), subsection 31.(3.1) and clause 35 (1) (a). 0. Reg. 384/94, s.4.

5. Except as provided for in sections 6 through 16, no planning document shall apply to a detached house, semi-detached house or rowhouse containing two residential units standards that are more restrictive or onerous than standards which would apply to a detached house, semi-detached house or rowhouse, as the case may be, that contains one residential unit and is at the same location. 0. Reg. 384/94, s. 5.

INSTALLATION AND RENOVATION OF SECOND UNITS

6. (I) For the purposes of this section,

"building envelope", in respect of a building, means the three dimensional area within which the building may be erected, located or used as determined by the application of standards in planning documents.

(2) No planning document shall prohibit,

(a) exterior alterations required for the installation of a secorid residential unit in a house; or

(b) the alteration of a house containing two residential units,

unless, as a result of those alterations, the house would contravene standards in the planning documents which relate to the building envelope of the house.

(3) Despite subsection (2), a planning document may,

(a) restrict exterior alterations to the front facade of a house or any other facade that faces a public road that abuts the frontage, as identified in a planning document, of the property relating to the house; and

(b) regulate the minimum distance between a window in a house and any other window which it faces.

(4) Subject to subsection (7), no planning document shall prohibit the installation of a second residential unit in a house on the basis that the house, but for subsection 34 (9) of the Act, would contravene a standard in the planning document.

(5) Subject to subsection (7), no planning document shall prohibit the continuing use or the renovation of a house described in paragraph 2 of subsection 2 (1) on the basis that,

(a) the house was originally built to include two residential units and the house, but for subsection 34 (9) of the Act, would contravene a standard in the planning document; or

(b) the installation of a second residential unit was undertaken in compliance with the planning documents then in effect, but the resulting house containing two residential units, but for subsection 34 (9) of the Act, would contravene a standard in the planning document.

(6) Subject to subsection (7), no planning document shall prohibit the installation of a second residential unit in a house on the basis that an alteration to the interior of a house would result in a contravention of or would extend or enlarge an existing contravention of standards in a planning document which have the effect of regulating,

(a) the permitted number or location of floors in the house used or capable of being used for

human habitation;

(b) the relationship between the area of a house which can be used for human habitation and the area of the property on which the house is located; or

(c) the maximum area of a house which can be used for human habitation.

(7) Subsections (4), (5) and (6) only apply,

(a) where there is no exterior change to the house;

(b) where, as a result of an exterior change, the house does not contravene any standard in the planning documents related to the building envelope of the house; or

(c) if, but for subsection 34 (9) of the Act, the house would contravene standards in the planning documents related to the building envelope of the house, where no exterior change to the house will create a greater contravention of any of those standards. 0. Reg. 384/94, s. 6.

SIZE oF UNITS IN HousEs WITH TWO UNITS

7. (1) Inthis section,

'habitable floor area", in respect of a residential unit, means its floor area measured from the inside walls of the unit, but does not include,

(a) unfinished areas below grade,

(b) areas occupied by furnaces, hot water heaters and laundry equipment,

(c) rooms, other than rooms used for sanitary or cooking purposes, that have no natural lighting, and

(d) areas which cannot be heated to municipal standards or, in the absence of municipal standards, to the standards in the regulations under the *Rent Control Act, 1992.*

(2) No planning document shall require that a residential unit in a house containing two residential units exceed the habitable floor area requirements set out in the following Table:

TABLE
MAXIMUM MINIMUM UNIT AREA REQUIREMENTS

Residential unit type	Maximum required habitable floor area
Studio (bachelor)	25 m. sq.
1 bedroom	32 m. sq.
2 or more bedrooms	32 m. sq. as required for a one bedroom unit plus 9 m. sq. for each additional bedroom

(3) Inthe case of a house containing two residential units, no planning document shall regulate the relationship between the size of the two residential units. 0. Reg. 384/94, s. 7.

SIZE OF HOUSE

8. No planning document shall require that a house containing two residential units have a minimum sizt(or floor area that exceeds the minimum size or floor area requirement for a house containing one residential unit. 0. Reg. 384/94, s. 8.

UNIT DENSITY

9. No planning document shall prohibit the installation of a second residential unit in a house on the basis that such an installation would mean that the maximum number of units permitted per hectare or acre or permitted for a particular geographic area is exceeded. 0. Reg. 384/94, s. 9.

AGE OF STRUCTURE

10. No planning document shall require, as a precondition to the installation of a second residential unit or the continued use of two existing residential units in a house,

(a) that it be constructed before or afte_r a certain date; or

(b) that it be at least or no more than a certain age. 0. Reg. 384/94, s. 10.

UNITS BELOW GRADE

11. Subject to section 13, in the case of a house containing two residential units, no planning document shall,

(a) prohibit the location of one residential unit below grade;

(b) require that the floor of a residential unit be located less than a certain distance below grade;

(c) require that the ceiling of a residential unit be located at least a certain distance above grade; or

(d) require that a certain proportion of the wall area of a residential unit be located above grade. 0. Reg. 384/94, s. 11.

AMENITY AREA

12. (1) In this section,

"amenity area", in respect of the property on which a house is located, means the outdoor area intended for active or passive recreational use or aesthetic purposes and may include landscaped areas, patios and decks.

(4) In the case of a house containing two residential units, no planning document shall require that,

(a) two separate amenity areas be provided;

(b) one or both units have direct access to an amenity area; or

(c) the size of the amenity area exceed the requirement applied to a house with one residential unit at the same location. 0. Reg. 384/94, s. 12.

FLOOD PLAINS

13. (1) In this section,

"flood plain" means,

(a) areas susceptible to flooding during a regional storm as set out in maps referred to in regulations made under section 28 of the *Conservation Authorities Act* relating to the applicable conservation authority,

(b) if no conservation authority regulation is in place that refers to maps, areas identified as being susceptible to flooding in a planning document, or

(c) if no conservation authority regulation is in place that refers to maps and no areas are identified as being susceptible to flooding in a planning document, areas susceptible to flooding during a regional storm as referred to in regulations made under section 28 of the *Conservation Authorities Act* relating to the applicable conservation authority;

"floodfringe" means the outer portion of the flood plain between the floodway and the limit of the regulatory flood;

"floodway" means that portion of the flood plain that is a channel of a watercourse or the inner portion of the flood plain;

"special policy area" means an area within the limit of the regulatory flood that the Minister of Municipal Affairs and the Minister of Natural Resources have identified in an Official Plan an area where limited development is permitted to occur.

(2) This Regulation does not apply to standards in planning documents which prohibit the installation of a second residential unit in a house if the house is located within the boundaries of,

(a) a floodway identified in mapping which covers all or part of a flood plain and which specifies the location of the floodfringe and the floodway, where the mapping is,

(i) completed or approved by a conservation authority or the Ministry of Natural Resources, or

(ii) completed or approved by a municipality and approved by a conservation authority or the Ministry of Natural Resources; or

(b) a flood plain where,

(i) mapping referred to in clause (a) does not exist, and

(ii) the house is not located within a special policy area which permits residential use.

(3) Subject to subsection (4), this Regulation does not apply to standards in planning documents which require that houses with two residential units meet specified floodproofing standards or standards which prohibit an increase in the habitable area of a house if the house is located within the boundaries of,

(a) a floodfringe identified in mapping referred to in clause (2) (a); or

(b) a special policy area.

(4) Subsection (3) does not apply unless the standards are applied to all alterations to houses, whether or not there has been an installation of a second residential unit. O. Reg. 384/94, s. 13.

PARKING

14. (1) In this section,

"driveway" means an area on a property with access to a public or private road where,

(a) the area has a surface suitable for the movement and storage of automobiles,

(b) the area is used for the parking of automobiles or to gain access to a parking area for

automobiles,

(c) the area is for the exclusive use of the occupants of one house, and

(d) the house is located on the same property.

(2) No planning document shall require that the property on which a house containing two residential units is located have more than two parking spaces.

(3) Where planning documents relating to a house do not contain any standard for parking spaces for a residential unit in the house that results from the installation of a second residential unit, the standard shall be deemed to be one parking space for the second residential unit unless, in the result, the propertyon which the house is located would then be required to have more than two parking spaces.

(4) If a planning document sets a standard for parking spaces to be located on the property on which a house containing two residential units is located,

(a) parking spaces that are situated in such a manner that it is necessary to traverse one space to gain vehicular access to the other from a public or private road shall be considered in the same manner as parking spaces that are not so situated;

(b) subject to subsections (5) and (6), parking spaces that are not located in a garage or other enclosed space shall be considered in the same manner as parking spaces that are located in a garage or other enclosed space; and

(c) parking spaces that are located in the driveway shall be considered in the same manner as parking spaces which are not located in the driveway.

(5) No planning document shall require that the width of a driveway for a house containing two residential units be greater than the lesser of 6.56 metres or 50 per cent of the narrowest frontage of the property on which the house is located.

(6) A planning document may require that a parking space required to meet the on-site parking requirement for a house containing two residential units be located in a garage or other enclosed space if,

(a) a building permit for the house is issued after the day section 49 of the *Residents' Rights Act, 1994* is proclaimed in force and contains two residential units both of which are built at the time of construction; and

(b) the planning document requires that the same standard in respect of the provision of a garage or other enclosed space be applied to a house with one residential unit.

(7) A planning document may require that existing parking spaces located in a garage or other enclosed space be maintained upon the installation of a second residential unit if,

(a) the spaces are required to meet the on-site parking requirement applicable to the house; and

(b) the planning document requires that the same standard in respect of the provision of a garage or other enclosed space be applied to a house with one residential unit. O. Reg. 384/94, s. 14.

15. (1) An information to obtain a search warrant under section 49.1 of the Act shall be in Form 1.

(2) A search warrant under section 49.1 of the Act shall be in Form 2. O. Reg. 384/94, s. 15.

16. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 384/94, s. 16.

FORM 1
INFORMATION TO OBTAIN SEARCH WARRANT UNDER SECTION 49.1 OF THE PLANNING ACT

Planning Act

ONTARIO COURT (PROVINCIAL DIVISION)
PROVINCE OF ONTARIO

This is the information of

[illegible] ....
(name) *(occupation)*

I have reasonable [illegible]

.... [illegible] of the *Planning Act* [illegible] and [illegible] place [illegible]

....
(building, receptacle or place)

[illegible] ....
(address)

[illegible] evidence: ....

[illegible] ....

[illegible]

....

[illegible] ....

[illegible]

....

....

Therefore, I request that a search warrant be issued to

☐ enter and search the said [illegible] for the said evidence.

check appropriate box

☐ enter and search the said ....
(building, receptacle or place)
[illegible] and [illegible] the following things: ....

(describe things to be seized)

Sworn before me at

Et ...

Provincial Judge or Justice of the Peace

0. Reg. 384/94, Form 1.

FORM 2
SEARCH WARRANT UNDER SECTION 49.1 OF THE PLANNING ACT

Planning Act

ONTARIO COURT (PROVINCIAL DIVISION) [illegible]
PROVINCE OF ONTARIO

To: ....

Where [illegible] ....,
[illegible]

the offence of .... [illegible]
of the *Planning Act* [illegible]

[illegible]

that there is reasonable ground to believe will afford evidence of the said

[illegible] ....

....
[illegible]

at .... [illegible]
(address)
[illegible]

This is [illegible] you [illegible] ....

(name or location of building, receptacle or place)

between the hours of 6 a.m. and 9 p.m.

at ....
[illegible]

[illegible] appropriate [illegible]

☐ [illegible] search [illegible] evidence

☐ [illegible] for the said [illegible]

seize the following things ....

(describe [illegible])
and carry them before [illegible]

[illegible] 19....., a day [illegible]

Issued ....

[illegible] 19.....

Provincial Judge or Justice of the Peace

0. Reg. 384/94, Form 2.

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