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Our File: L11 Second Unit Regulation

June 5, 2017

Victor Doyle, Manager
Ministry of Municipal Affairs and Housing
Local Government and Planning Policy Division
Provincial Planning Policy Branch
777 Bay Street, Floor 13
Toronto ON M5G 2E5

Dear Mr. Doyle,

Re: Proposed Planning Act Regulation with respect to Second Units
EBR Posting 012-9694

This letter and the attached document comprise the County of Oxford's comments with respect to the Ministry of Municipal Affairs current phase on consultation on the proposed regulatory changes to the Planning Act, with respect to second residential units, as posted under the EBR posting no. 012-9694.

Please note that the attached comments are provided from the perspective of County staff, in consultation with Area Municipal staff and have not been formally endorsed by County Council.

Thank you for the opportunity to provide input on these draft regulations. We welcome the opportunity to discuss any questions or concerns you may have with this correspondence. Questions should be directed to the undersigned or Amelia Sloan, Policy Planner at asloan@oxfordcounty.ca or (519) 539-0015.

Yours Truly,

Encl.

Paul Michiels
Manager of Strategic Policy Planning

Comments on Proposed Regulations With Respect to Second Units

Planning Act Regulations

County of Oxford, June 2017

The County generally supports the concept of allowing for second units in appropriate settlement area locations to provide for additional affordable and/or alternative housing opportunities (e.g. housing options for elderly parents and/or live-in caregivers) and support residential intensification and efficient use of existing public services and infrastructure. As such, the County's Official Plan policies are already very supportive of residential intensification and providing for a range of housing choices and affordability, including converted dwellings, dwelling units in accessory buildings, purpose built duplexes and other multiple unit dwellings, in appropriate locations.

Although the County is generally supportive of the concept of second units, there are a number of questions and concerns with respect to the proposed changes to the *Planning Act* regulation that the County feels need to be addressed to allow for the appropriate and/or effective implementation of second units from a municipal planning, building, affordable housing and fiscal sustainability perspective. The County will also be submitting comments with respect to the associated changes to the *Development Charges Act* regulations (Ministry of Municipal Affairs proposal no. 17-MMA005), which will be provided under separate cover.

Overall, it is the County's position that municipalities are the level of government in the best position to determine the need for, appropriateness and impact of allowing such forms of housing in a particular area and what limitations and requirements, if any, are necessary and/or appropriate for the establishment of such units. As such, the County feels very strongly that municipalities should retain both the authority and discretion to determine whether and where second units are permitted and to establish appropriate definitions and provisions for such units. This would allow municipalities to ensure Provincial and local objectives for such units are addressed (e.g. remain secondary to the main dwelling unit and do not simply become purpose built duplexes that avoid development charges), while avoiding or acceptably mitigating negatively impacts on neighbourhood character (e.g. built heritage), municipal services and operations, and municipal fiscal sustainability.

It is the opinion of the County that the regulation, as proposed, may not be consistent with a number of the objectives of the *Strong Communities for Affordable Housing Act (2011)*, which include: providing homeowners with an opportunity to earn additional income; maximizing densities which make more efficient use of infrastructure; and supporting the changing demographics by providing more housing options for elderly parents and/or live-in caregivers. The rationale for this comment is outlined further in the following sections.

Illegal Units

Based on recent consultation with Area Municipal building department staff, existing illegal suites and accessory apartments were identified as being an issue that should be addressed in advance of implementing new initiatives to support second units. It was felt by some building department staff that this regulation may, in fact, have an adverse effect on existing compliance efforts to ensure illegal suites and accessory apartments are constructed in accordance to the standards in the Building and Fire Codes.

The risk of fire, carbon monoxide poisoning, injuries resulting from structural collapse, etc. are all higher for buildings with illegal/uninspected work. There is concern that the proposed regulatory changes are creating the province-wide public perception that all second units are now legal and permitted in every dwelling 'as of right', which may contribute to additional occupant health and fire safety issues with respect to the establishment of such units in the future, if not appropriately addressed.

Parking

The proposed parking provisions for secondary suites appears to be a Greater Toronto Area/large urban based regulation that fails to recognize the valid parking considerations associated with allowing such units within rural and smaller urban settlement areas. For instance, one tandem parking space may be appropriate for a large urban municipality, where it is less likely that a household will have a vehicle or more than one vehicle, there is good public transit and/or most day-to-day services are within reasonable walking distance. However, for smaller urban and rural settlement areas, arbitrarily limiting the required parking for such units to only one space that can be 'in tandem' will contribute to unnecessary inconvenience for tenants and on-street and/or on-lawn parking issues particularly given that, in virtually all cases, the additional parking spaces could easily have been accommodated on the property, if required by the municipality. Therefore, it is questioned why the Province would prevent municipalities from requiring more than one space or non-tandem space for a second unit with no consideration of context, when it is municipalities that are in the best position to understand the local impacts from such restrictions.

Municipalities should retain the authority and responsibility for establishing the parking requirements for such residential uses, including ensuring the number and location of required parking spaces for second units is reasonable and appropriate given the local context. For instance, given the absence of public transit, larger lots, level of vehicle ownership and distance to work and services, many municipalities in Oxford currently require two parking spaces for an additional dwelling unit. As such, the County requests that this proposed regulatory restriction be eliminated, or only applied within large urban municipalities where those municipalities deem it to be appropriate.

Owner Occupancy/Date of Construction

In the March 8, 2017 webinar on Second Units, it was noted that Section 35(2) of the Planning Act does not provide 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 part thereof. As such, it was suggested that it would not be appropriate for a municipality to establish requirements for the main dwelling unit to be owner occupied in order to establish a secondary unit. However, section 35 (2) only refers to distinguishing between persons who are related and unrelated, not ownership of a dwelling unit or building. Therefore, it is questioned how that section would prevent a municipality from requiring the primary unit to be owner-occupied (e.g. through a zoning provision and/or licensing requirement) as a reasonable means of ensuring the second unit is, in fact, secondary (e.g. differentiated from a purpose built duplex).

Many municipalities use owner-occupancy as a requirement in Official Plan policies or zoning provisions for certain types of uses, with the understanding that it does not conflict with section 35 (2) of the Planning Act and is an effective means of ensuring certain planning objectives are achieved. For instance, home occupations, on-farm diversified uses and second houses on a farm are often permitted only if the owner resides on the subject lands/premises. Even the Provincial Policy Statement contains policies that are based on ownership (e.g. lot creation for a residence surplus to a farming operation as a result of farm consolidation). Therefore, using ownership as a legitimate consideration for the reasonable and appropriate implementation of various planning goals and objectives is already a well-established practice. Further, even if it were to be determined that the Planning Act provisions restrict municipalities from using zoning to distinguish on the basis of ownership than this regulation would be unnecessary/redundant, so why include it at all.

The Province's Fair Housing Plan that was released April 20, 2017 discusses the recent provincial actions to support homebuyers, increase supply of affordable and rental housing and promote fairness. It indicated that these actions include amending the Planning Act and the Development Charges Act to support second units, "allowing homeowners to create rental units in their primary residence and creating additional supply." The original intent of the Strong Communities for Affordable Housing Act, 2011 also spoke to "providing homeowners with an opportunity to earn additional income."

Providing homeowners with additional income sources seems to be a strong focus of the Province's communication regarding second units. Ensuring these units are only permitted in a primary residence (e.g. owner occupied) seems to be a reasonable way for municipalities to ensure these units remain secondary to the main dwelling unit and are differentiated from a converted dwelling or purpose built duplex. Similarly, being able to stipulate the age of construction of the dwelling seems to be a reasonable approach for differentiating such units from purpose built duplexes. Being able to distinguish such units from converted dwellings and purpose built duplexes is important for a number of reasons, including the proposed exemption from development charges for second units and the potential impact on density and residential intensification targets and objectives and on infrastructure and public services. We question why the Province would try to eliminate potentially appropriate and effective tools for municipalities to achieve the Provincial and local planning and affordable housing objectives for such units, while avoiding or mitigating unacceptable impacts.

For the above reasons, the County requests that the proposed regulations to remove the ability for municipalities to regulate the ownership and age of dwelling required for the establishment of secondary dwelling units be eliminated. Again, municipalities are in the best position to determine the need for, appropriateness and impact of allowing such forms of housing in a particular area and what limitations and requirements, if any, are necessary and/or appropriate for the establishment of such units.

Density

It is not clear how such units would contribute to and/or affect the achievement of a municipality's minimum residential density targets. Clarification of whether such units are intended to be included in the determination of residential density should be provided prior to the implementation of the second unit regulations.

If second units are to be permitted in new dwellings, it is important to understand whether they should be included in the determination of compliance with minimum density targets, particularly in the case of greenfield and infill subdivision projects. If they are to be included, it could inadvertently result in the creation of larger detached dwelling lots that make inefficient use of land, infrastructure and public services and/or reduce the need to incorporate other denser and more affordable housing forms (e.g. semi's, townhomes and mid-rise apartments) into new residential developments to meet minimum residential density requirements. The concern is that 'rouged in' or 'tenant ready' second dwelling units could be incorporated into single detached dwellings in new development simply to facilitate the creation of larger lots that 'on paper' appear to meet minimum density targets (e.g. due to second dwelling unit), without any intention that the second units ever be occupied.

If second dwelling units are intended to be clearly secondary to the main dwelling unit/principle residence (e.g. to provide housing options for elderly parents and/or live-in caregivers, rather than long term, rental apartments), it may not be necessary or appropriate to include them in residential density calculations, as they may have low average occupancies. However, if the Planning Act provisions and proposed regulations have the effect of simply allowing for purpose built duplex dwellings, converted dwellings and secondary rental units with typical dwelling unit occupancies on a continuous long term basis, it would likely be appropriate to include them in the determination of residential density. Such units would also have a similar impact on population density and demand for and use of services as any other two dwelling unit dwelling and, as such should not be exempted from development charges.

For these reasons it is important municipalities be given the tools and authority to clearly differentiate between units (e.g. suites) that are secondary to the main dwelling unit (e.g. similar to the Planning Act provisions for garden suites) and purpose built duplex dwellings, converted dwellings and permanent second rental units, where they deem it necessary and appropriate to do so.

Infrastructure and Public Services

The County has concerns with the potential impact that allowing secondary dwelling units 'as of right' may have on existing water and/or wastewater systems and other infrastructure and public services in some areas. In some areas, such as smaller built out settlements with an existing efficiently utilized water and/or wastewater system with little to no remaining capacity, the establishment of second units may be sufficient to trigger unnecessary, premature or uneconomical upgrades or expansion of existing municipal water and/or wastewater services. The municipal financial impacts of any such upgrade or expansion would be compounded by the fact that such units are proposed to be exempted from development charges.

In the March 8th webinar it was indicated that, unless previously documented servicing constraints existed in a settlement, servicing should not be a barrier to second unit. It is the position of the County that nothing should limit a municipality's ability to limit or restrict the creation of second units in settlements or areas of settlements where the municipality deems it to be inappropriate based on the availability of infrastructure or public services.

Affordability

The County questions the overall premise/assumption that second units will improve the supply of affordable housing and housing affordability.

One of the concerns is that allowing second units 'as of right' in single detached, semi-detached and townhouse dwellings may benefit existing property owners, but have the unintended effect of significantly increasing the overall purchase price of such housing for new home owners. Once the income-generating potential from the ability to have a secondary unit in such dwellings is realized, it may simply get factored into the purchase price of the home (e.g. increase in price proportionate to the potential rental income). This would have the effect of driving up the price of such homes, making them less affordable for purchasers who do not wish to incorporate/operate a rental unit and leaving affordability relatively unchanged for those who do choose to incorporate a rental unit (e.g. as rental income from a second unit has already been factored into the purchase price).

Despite being implied in the various Provincial communications that such units are to be secondary to the main dwelling unit and affordable in nature, there does not appear to be anything in the *Planning Act* or the proposed regulations that would ensure or even encourage the achievement of such objective. In fact, the only requirement appears to be that the second dwelling unit must be smaller than or equal to the gross floor area of the main dwelling unit to be exempt from development charges, which in no way ensures such units will be secondary or *affordable* to *low and moderate income households*, as defined in the Provincial Policy Statement. Furthermore, the terminology being proposed by these regulatory changes is inconsistent. The *Planning Act* regulation discusses 'second residential units', while the *Development Charges Act* proposal discusses an exemption for 'secondary suites'. The recent Building Code changes, coming into effect July 1, 2017, discuss a third term: 'second dwelling unit'. It is unclear if the intent and objectives of the *Long-term Affordable Housing Strategy (2010*) to increase second units as an affordable rental housing option is the foundation for each of these regulation changes. If that is the case, clear and consistent wording should be employed for each of these changes.

Although it appears improving the affordability of single unit dwellings may have been part of the rationale used to support the province's proposed requirements for second units, we are not aware of any compelling evidence or research to justify the creation of secondary dwelling units on that basis, or to warrant a statutory development charge exemption for such units. As such, there should be further research and analysis completed by the Province to understand the actual (versus perceived) costs and benefits for current and future homeowners and the servicing and financial impacts on municipalities (particularly rural and smaller urban municipalities) from second units. This is particularly critical given that no regulations have been proposed to ensure such units remain clearly secondary to the main dwelling unit with low average occupancy (e.g. limited additional impact on infrastructure and public services).

Conclusion

It is the opinion of the County that the proposed Provincial regulations for secondary units extend well beyond matters of direct provincial interest and would unnecessarily interfere with municipal authority and discretion with respect to local responsibilities such as establishing appropriate zoning standards and

managing potential impacts on municipal services and finances. The role of the Province should simply be to clearly establish the Provincial interest (e.g. facilitate the creation of secondary dwelling units in appropriate locations) and rationale for that interest and then allow municipalities to determine how best to implement that Provincial direction in their particular local context. As such, the Province should not arbitrarily limit the tools or approaches that municipalities may use to ensure reasonable and appropriate implementation of such Provincial direction in their particular local context, particularly without having a detailed understanding of potential local impacts. The Province already has the opportunity to review and approve new municipal Official Plan policies and review and comment on municipal zoning provisions, which should provide sufficient opportunity to ensure local implementation of second units is consistent with the Provincial direction, without limiting municipalities through regulation.

The proposed provincial direction and associated regulations are very Greater Toronto Area/large urban focused and do not appear to have given adequate consideration to implementation in rural and smaller urban municipalities, such as those in Oxford County. For the reasons outlined in this submission, the County does not support the proposed regulations, as they would appear to unnecessarily restrict a municipality's ability to reasonably and appropriately implement Provincial direction with respect to secondary units, particularly in a rural/small urban context.

Thank you for providing the opportunity to review and comment on the proposed *Planning Act* Regulation. The County would welcome the opportunity to discuss these comments in greater detail and/ or to work with the Province to identify potential solutions for addressing the concerns raised. Comments on the proposed changes to the Development Charges regulations will be provided under separate cover.