Community Planning
P. O. Box 1614, 21 Reeve Street
Woodstock Ontario N4S 7Y3
Phone: 519-539-9800 • Fax: 519-421-4712
Web site: http://www.oxfordcounty.ca/

Our File: L11 Second Unit Regulation - 2019

July 31, 2019

Planning Act Review
Provincial Planning Policy Branch
777 Bay Street
13th floor
Toronto, ON M5G 2E5

To Whom it May Concern,

Re: Proposed Planning Act Regulation with respect to Bill 108 Implementation
EBR Posting 019-0181

This letter comprises the County of Oxford's comments with respect to the Ministry of Municipal Affairs current phase of consultation on the proposed regulatory changes to the Planning Act, with respect to Schedule 12 of Bill 108 implementation, as posted under the EBR posting no. 019-0181.

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

Concerning the proposed content suggested for Regulation 173/16 "Community Planning Permits", in this regulation (based on provisions outlined in Schedule 12 to Bill 108), the County requests that the Province provide further detail on the rationale for these changes so municipalities can better understand the intended goals and objectives of this amendment. The *More Homes, More Choice Action Plan* simply notes that the changes would enable the Minister to require the use of the community planning permit system (CPPS) in specific areas, such as transit station areas and provincially significant employment zones. We also note that through Bill 108 amendments, the Minister would have discretionary use of inclusionary zoning in areas where a CPPS has been required. Further, the description of the proposed changes indicates that both the Official Plan amendment and implementing by-law required to establish the CPPS would be non-appealable where the Minister has issued an order to require a municipality to adopt or establish such a system. The County is requesting clarification as to whether a Minister's order to adopt or establish such a system could applied (e.g. if requested by a municipality) for areas outside transit station areas and provincially significant employment zones, if deemed necessary or appropriate to address specific Provincial and/or Municipal planning objectives (e.g. provision of affordable housing). If so, what conditions or criteria might need to be addressed for it to be considered by the Minister for such other areas?

The County generally supports the concept of allowing for additional 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, garden suites, dwelling units in accessory buildings, purpose built duplexes and other multiple unit dwellings, in appropriate locations.

Although the County is very supportive of affordable housing options and the provision of additional tools and measures to assist municipalities in the provision of more affordable housing options, we have serious concerns with specific aspects of the proposed content for a new regulation under section 35.1 (2) (b) of the *Planning Act*, pertaining to additional residential unit requirements and standards. In general, the County is strongly of the opinion that municipalities are in the best position to determine the relevant land use planning considerations and potential impacts associated with such units and how they would best be addressed in their local context. As such, the County requests that the final regulation contains wording that makes it very clear that the Provincial intent is that additional residential units can only be established in areas/zones where a local municipality has determined that the establishment of such units would be sustainable and have no substantial negative impacts (e.g. only within settlements or areas of settlements where an appropriate level of water and wastewater services is available). Further, it should also be clear that such units must be in compliance with all requirements and standards set out in local zoning by-laws (i.e. are not simply intended to be permitted everywhere 'as of right') - provided such requirements and standards do not conflict with those set out in the regulations. The proposed content seems to try to address this concern to some extent in the last two points (i.e. for occupancy and date of construction), but wording such as "where permitted in the zoning by-law" should be repeated in the lead in of the regulation as well, and 'in accordance with all applicable provisions of the zoning by-law'. From our experience, general public perception of this issue can influence individual homeowners' renovation/construction decisions, which can create complications for municipalities. As such, we feel that Provincial clarification to ensure these units are not permitted everywhere is necessary (e.g. through the wording of the regulation and any associated guidelines).

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 additional 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 negative impacts on neighbourhood character (e.g. built heritage), municipal services and operations, and municipal fiscal sustainability.

As the requirements and standards set out in the list of proposed content is not an exhaustive list of considerations for local municipalities when determining appropriate locations for growth, it should be clear that they are not the only considerations for appropriately locating additional units. With a new provision to allow additional units in both the main dwelling and an ancillary dwelling, this is even more important.

With respect to the standards and barriers for additional units set out in the posting, the County, in consultation with Area Municipalities, has outlined the following specific concerns:

PARKING

Ensuring adequate and accessible parking is a primary concern for municipalities when evaluating whether the establishment of additional units on a property would be appropriate, especially in areas not served by higher levels of transit, like rural or smaller urban centres. Therefore, introducing arbitrary limitations that impede municipalities from adequately controlling and regulating parking could negatively impact willingness to implement additional unit provisions and broader permissions for establishing such units and reduce local acceptance of such units.

Many towns and villages in Oxford do not allow on-street parking overnight or in the winter months, which increases the need to ensure adequate on-site parking is provided for the occupants of every residential unit. Further, many families in Oxford require more than one vehicle to access employment opportunities and other services. As such, the proposed limitations on the number of spaces that can be required for additional units and ability to provide tandem spaces will only aggravate existing parking, property standards and related enforcement issues. Allowing up to three units on a lot that was intended for a single unit presents obvious restrictions for vehicle space, and could add pressure to parking/property standards by-law enforcement role. Therefore, it is questioned why the Province would prevent municipalities from requiring more than one space or non-tandem space for any additional units 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 additional 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

A requirement to permit the second and third additional units to be occupied by any person, regardless of whether the primary unit is occupied by the owner of the property, should be left to the discretion of a local municipality. It is understood that there was previously a concern that municipalities cannot pass by-laws that have the effect of distinguishing between persons who are related and persons who are unrelated in respect of the occupancy of use of a building or structure; however, section 35 (2) of the *Planning Act* only refers to distinguishing on the basis of relationship, not ownership of a dwelling unit or building.

Additionally, other implementation tools (such as registration or licensing) could potentially limit occupancy based on ownership, if the local intent was to ensure ‘additional units’ remained ‘secondary’ to the main unit (e.g. to ensure they can be clearly differentiated from purpose-built duplexes and converted dwellings). Many short-term rental licensing schemes are contemplating the restriction of rentals based on whether the unit is the landowner’s principle residence. There could also be condominium provisions that may regulate/limit the ability of landowners to rent units on their property, and these would supersede the zoning provision. Therefore, including this stipulation in the regulation would complicate and confuse the issue for landowners and unduly limit municipalities. It could also prevent a municipality from requiring the primary unit to be owner-occupied as a reasonable means of ensuring the additional units are, in fact, secondary in nature (and 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 then this regulation would be unnecessary/redundant, so why include it at all.

The Province's *More Homes, More Choice Action Plan* discusses the recent provincial actions to support homeowners in increasing the supply of affordable and rental housing. It indicated that these Planning Act amendments will "make it easier for homeowners to create residential units above garages, in basements and in laneways" which implies that the additional supply will be created on their primary residence. Providing homeowners with additional income sources seems to be a strong focus of the Province's communication regarding second/additional 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 additional units and the potential impact on density and residential intensification targets, as well as 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 additional 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.

SERVICING

The Province should identify the key considerations that should be reviewed by municipalities in the establishment of appropriate regulations for additional units, such as servicing and unit size, through updates the guidance documents previously provided. In regard to servicing, it is noted in the Spring 2017 Info Sheet that, "*in areas with municipal services, second units should be permitted without a requirement to demonstrate sewer or water capacity, unless there are previously documented servicing constraints."* The County feels that this statement is too simplistic and does not adequately address the potential implications of increasing density (even if only allowing one or two additional units on an existing property) in smaller, fully-serviced villages with municipal sewer and water services. It is the position of the County that nothing should limit a municipality's ability to regulate the creation of second (or third) unit(s) in settlements (or areas within settlements) where the municipality deems it to be

inappropriate based on the type or availability of water and wastewater services (e.g. not a reverse onus as implied in the Spring 2017 Info Sheet).

To provide an example that would better illustrate this problem, a typical serviced village in Oxford County with a population of about 1,500, in about 650 homes, would have a forecasted growth of about 250 households over the planning horizon. Permitting an additional unit as-of-right in existing and new homes would result in approximately 90-180 new units (an estimate if only 10-20% uptake) needing to be accommodated by the existing water and wastewater infrastructure. This could nearly double the expected growth that the system was planned to accommodate, increasing demand on planned infrastructure upgrades in a manner that would be unknown by the upper-tier government overseeing water and wastewater services. Without the ability to oversee, monitor, or track these new units, issues with water treatment and distribution, as well as wastewater collection and treatment would likely result. In the short term, this could trigger unforeseen, untimely and uneconomical upgrades of existing municipal water and/or wastewater infrastructure in order to meet residential demand. In many cases, this could cause upgrades to systems that were not intended to be upgraded within the planning horizon. 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.

DENSITY

It is not clear how these additional 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 these regulations. If second or third 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. semis, townhomes and mid-rise apartments) into new residential developments to meet minimum residential density requirements. The concern is that 'roughed in' or 'tenant ready' additional 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 additional, unused units), without any intention that the additional units ever be occupied.

If additional dwelling units are intended to be 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 unit dwelling type 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 additional rental units, where they deem it necessary and appropriate to do so.

The County of Oxford recognizes additional units like converted houses, accessory apartments, garden suites, and coach houses as desirable forms of housing that can increase density in a manner that maintains neighbourhood character and considers the impacts of the new units on existing infrastructure, operations, and public services. That said, we feel that the Province should not unduly limit the approaches that municipalities may utilize to ensure that additional units can be appropriately defined, located and regulated so that both Provincial and local municipal objectives can be achieved (e.g. land use, servicing, affordable housing, and fiscal sustainability).

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 x3205.

Yours Truly,

Paul Michiels
Manager of Planning Policy