



**Date:** February 27, 2023

**To:** Mayor and Council

**Author:** George Robinson, MCIP, RPP  
Manager of Planning

**RE:** ZBA-2022-20 – Zoning By-law Update for Additional Dwelling Units

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### **RECOMMENDED ACTION**

1. That Zoning By-law Amendment ZBA-2022-20 to permit Additional Dwelling Units and update associated regulations in Zoning By-law 1-2014 **BE APPROVED**;
2. That **By-law 8-2023** being a by-law to amend By-law No. 1-2014, the Comprehensive Zoning By-law for the Town of Kingsville be taken as having been read three times and finally passed and the Mayor and Clerk **BE AUTHORIZED** to sign same; and
3. That Administration **BE DIRECTED** to prepare additional reference materials for residents regarding Additional Dwelling Units to be posted on the Town's website.

### **BACKGROUND**

At the December 12<sup>th</sup> meeting of Council, in response to a verbal report from Administration regarding Bill 23, the *More Homes Built Faster Act, 2022*, the following resolution was passed:

**399-12122022**

Moved By: Councillor Larry Patterson

Seconded By: Sheri Lowrie

That Administration **BE DIRECTED** to prepare Official Plan and Zoning By-law amendments as required to address legislative and regulatory changes associated with Bill 23, the *More Homes Built Faster Act, 2022*.

Changes to the Planning Act proposed through Bill 23, the *More Homes Built Faster Act, 2022*, are now in effect. The municipality is required to allow up to three units associated with any Single Detached, Semi-Detached, or Townhouse dwelling. These units can be arranged in several different ways, including allowing three units in the

main building, or allowing two units in the main building, and one unit in a detached accessory building (a backyard cottage for example).

Additional residential units were previously referred to as second units and were originally mandated in 2011 under Bill 140 the *Strong Communities through Affordable Housing Act*. Bill 108, *More Homes, More Choice Act*, 2019 amended parts of the Planning Act to improve the affordable housing system and required municipalities to establish Official Plan policies and zoning that authorized the use of additional residential units. Also known as accessory or basement apartments, secondary suites, accessory dwelling units, and in-law flats, additional residential units are self-contained residential units with sleeping, kitchen and bathroom facilities within dwellings or within accessory structures (i.e. such as above a detached garage).

Administration recommends using the term Additional Dwelling Unit (ADU) in the Official Plan policies and Zoning Bylaw regulations to collectively define all of these forms of dwelling units. In this context, the term 'ADU' refers to a dwelling unit which can be constructed in the principal building, or in a detached accessory building, interchangeably.

Additional dwelling units must comply with health and safety standards, which include the Building Code, Fire Code and any municipal by-laws. The changes to the Planning Act do not 'grandfather' any existing ADUs that do not meet applicable laws.

## **DISCUSSION**

### **1) Provincial Policy Statement (PPS), 2020:**

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. In respect of the exercise of any authority that affects a planning matter, section 3 of the Planning Act requires that decisions affecting planning matters "shall be consistent with" policy statements issued under the Act.

When reviewing a planning application to determine if it represents sound planning, it is imperative that the proposed development is consistent with the PPS: "The Provincial Policy Statement provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment."

Section 1.4.3 states that:

*"Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents of the regional market area by:*

*b) Permitting and facilitating:*

- 1. All forms of housing required to meet the social, health and well-being requirements of current and future residents, including special needs requirements and needs arising from demographic changes and employment opportunities; and*
- 2. All types of residential intensification, including additional residential units, and redevelopment in accordance with policy 1.1.3.3;”*

Section 3, entitled ‘Protecting Public Health and Safety’, prohibits development within the floodway and permits development within portions of the floodplain where it has been designed in accordance with flood proofing standards and vehicles and people have a safe way to enter and exit during times of flooding.

Comment: There are no issues of Provincial significance raised as a result of the proposed zoning-by-law amendment and permitting such development is encouraged by the Provincial Policy Statement. The recommended zoning changes in Section 3 of this report below prohibit ADUs in a basement or cellar in a floodplain in line with direction in the PPS.

## **2) Town of Kingsville Official Plan**

The Official Plan for the Town of Kingsville contains policies in both the Residential and Agricultural designations that are generally supportive of housing subject to criteria.

Section 3.1 Agriculture policies direct that the predominant use of land in this designation shall be agricultural and associated uses, but allows for residential uses on existing lots. Subsection (n) indicates that full municipal sewage and water service is the preferred means of servicing in the Agriculture designation, but development is permitted on private individual sanitary sewage services.

Section 3.6.1 Residential policies support intensification as appropriate. Subsection (g) states that “*residential infill development in areas of significant historical, architectural or landscape merit shall be encouraged provided:*

- i. sensitive to the existing scale, massing and pattern of the area;*
- ii. be consistent with the existing landscape and streetscape qualities; and*
- iii. will not result in the loss of any significant heritage resources.”*

Comment: Required and recommended Zoning regulations in Section 3 of this report were designed to comply with policies contained in the Official Plan, except Section 2.10 (OPA #5, file OPA-01-16) which related to Secondary Dwelling Units.

The current version of the Official Plan (2012 as amended) is not in compliance with Provincial requirements introduced through Bill 23, the *More Homes Built Faster Act, 2022*. Council has already endorsed changes to the Official Plan through the ongoing five year review, which is currently at the County for review and acceptance. Administration expects that revised policies in the updated Official Plan will be required to comply with Provincial law and have suggested amended text for Section 2.10 to the County. The County Planner has provided an opinion that proceeding with this Zoning By-law amendment prior to finalization of the updated Official Plan is acceptable and encouraged, given the recent changes to Provincial law that supersede local Official Plan policies.

### 3) Comprehensive Zoning By-law

Bill 23, the *More Homes Built Faster Act, 2022* includes a number of changes to the *Planning Act* that require changes to Kingsville's Comprehensive Zoning By-Law 1-2014. This report also includes recommended changes to the Zoning By-Law that could be made to existing regulations to facilitate the development of Additional Dwelling Units (ADUs, formerly referred to as Secondary Dwelling Units or SDUs).

#### Required Changes

The municipality is required to allow up to 3 units associated with any Single Detached, Semi-Detached, or Townhouse dwelling.

Table 1 below indicates the current zoning provisions in the Kingsville Zoning By-law 1-2014, and the recommended change to reflect what we are now required to allow:

Table 1 - Required		
ZONING PROVISION	CURRENT	CHANGE
Definition (Section 3.4.15.1).	Dwelling Unit, Secondary shall mean a dwelling unit ancillary and subordinate to an owner occupied primary single detached, semi-detached or townhouse dwelling unit, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupant thereof.	Dwelling Unit, Additional shall mean a dwelling unit ancillary and subordinate to a primary single detached, semi-detached or townhouse dwelling unit, in which food preparation, eating, living, sleeping and sanitary facilities are provided for the exclusive use of the occupant thereof.
Permitted locations (Section 4.35.1).	A secondary dwelling unit shall be permitted in any zone where a residential	An additional dwelling unit shall be permitted in any zone where a residential

	use is a permitted main use and full municipal services are available.	use is a permitted main use or accessory use and municipal water service is available.
Number of SDUs (Section 4.35.1(b))	A maximum of one secondary dwelling unit will be permitted per lot.	A maximum of two additional dwelling units will be permitted per lot: i) Up to two additional dwelling units will be permitted in the Main Building or; ii) One additional dwelling unit will be permitted in the Main Building and one additional dwelling unit will be permitted in an accessory building;
Parking for SDUs (Section 4.35.1(c))	One additional parking space shall be required.	One additional parking space shall be required per additional dwelling unit.
Minimum Floor Area (Section 4.35.1(e))	Minimum area – 25 sq. m.	Delete clause. No longer permitted to require minimum.
Maximum number of bedrooms	Maximum number of bedrooms – one (1) (Section 4.35.1(g)).	Delete clause. No longer permitted to regulate number of bedrooms.
Parking for Single Detached, Semi-Detached, and Townhouse dwellings (Section 5.17, Table 4)	2 spaces/unit.	1 space/unit.

Allowing an additional dwelling unit in any zone where a residential use is a permitted main use or accessory use and municipal water service is available (indicated as 'Permitted Locations' above) goes beyond the minimums in the Planning Act that requires municipalities to permit additional residential units where water and sewer services are available. This change would allow an ADU accessory to a single detached dwelling on an Agricultural parcel that has municipal water service, but has a private septic system.

#### Recommended Changes

The following recommended changes should be made to existing regulations to facilitate the development of Additional Dwelling Units are outlined in table 2 below.

<b>Table 2 - Recommended</b>		
<b>ZONING PROVISION</b>	<b>CURRENT</b>	<b>CHANGE</b>
Accessory Building Side and Rear Yard Setback	1 m	1.2 m for buildings containing a dwelling or 1.5 m for any building with a height over 5 m.
Accessory Building Maximum Lot Coverage	10%	12%
Accessory Building Height	5 m in a residential zone, or 6 m in an agricultural zone.	Max 8 m for buildings containing a dwelling, but no taller than the existing primary building on the lot. Retain existing limit for other accessory buildings.
Maximum Floor Area	Maximum area not to exceed 40% of the total building area (Section 4.35.1(f)).	Maximum area not to exceed 100 sq. m (1076 sq. ft).
Parking for Duplex Dwellings	1.5 spaces/unit (Section 5.17, Table 4).	1 space/unit.
Prohibition on basement units in a floodplain	None	Where a lot is located in a floodplain, an additional dwelling unit within a basement or cellar is prohibited.

Accessory Buildings – in order to make it easier to construct additional dwelling units in accessory buildings located in the rear yard of the primary dwelling, the following updates are recommended:

- Side and Rear Yard Setback – increase to 1.2 m to match provisions in Part 9 of the Ontario Building Code to allow openings (windows). If upgrading or adding to an existing garage to include an ADU, recommend that the 1.2 metre setback only applies to the portion of the building that is being altered.
- An earlier regulation requiring accessory buildings with a height over 5 m (16.4 ft.) to have a side yard and rear yard setback of 1.5 m (5 ft.), minimum is recommended to be retained to create additional separation from higher accessory buildings since these structures are located in the rear yard.
- Lot coverage – increase accessory building lot coverage to 12% to allow larger single storey dwellings to provide options for accessibility (no step entry) and

aging in place. Would still be subject to lot coverage maximums in the main residential zone that applies.

- Height – increase to 8m to allow a dwelling above a garage. Put a restriction in place to limit the height to no taller than the existing primary building on the lot to keep development contextual and limit impact (not allow two storey ADU in the backyard of single storey house).

It is also recommended that the maximum floor area be increased to 100 sq. m (1076 sqft) to allow the development of two bedroom units. The 40% of Floor Area restriction is difficult to calculate for laypeople and requires additional review from Town staff. This rule also limits the full use of basements for an ADU in split-level bungalow house designs.

As noted above, parking for Single Detached, Semi-Detached, and Townhouse dwellings as well as additional dwelling units has been capped at one space per unit. It is recommended that this cap be extended to Duplex Dwellings in order to not disadvantage this built form over other similar low profile residential dwelling types.

It is also recommended that zoning prohibit ADUs in a basement in Floodplain or other hazard areas in line with the Provincial Policy Statement (PPS). Administration will consult further with the Essex Region Conservation Authority (ERCA) to identify areas that are flood prone, and not appropriate for basement units.

As per section 34(19.1) of the Planning Act there is no appeal in respect of the parts of a by-law that are passed to permit the use of additional residential units.

## **FINANCIAL CONSIDERATIONS**

Development of additional housing units would add to the tax base. Although the Province has indicated through changes to the Development Charges Act that these units are exempt from Development Charges, they all require a Building Permit and associated Building Permit fees would be collected as per the Fees By-law.

## **ENVIRONMENTAL CONSIDERATIONS**

Allowing additional housing units on sites that are already developed and serviced by municipal water represents a less carbon intensive form of development than new suburban development. An ADU added to an existing structure has minimal external footprint on the site, reducing the impact of the development on soft landscaping. Redevelopment and renovation of existing buildings to add additional housing units is both a lower financial and environmental cost on a per square foot basis.

## **CONSULTATIONS**

### **Public Consultations**

In accordance to O. Reg 545/06 of the *Planning Act*, notice of this Zoning By-law Amendment was posted on the Town of Kingsville website on January 26<sup>th</sup>, and advertised in the following local newspapers:

Harrow News – January 31<sup>st</sup>

Southpoint Sun – February 1<sup>st</sup>

Essex Free Press – February 2<sup>nd</sup>

Since Bill 23 was first announced by the Provincial government last fall, the Planning Department has been fielding a minimum of 2 calls or emails per week from residents inquiring about adding a unit to their existing property. In discussing their inquiries, many residents want to add a unit to their basement, a backyard cottage, or suite above a garage for a family member. We have had a number of inquiries relating to backyard housing options for seniors, older children, or an extended family member. These conversations have helped to inform the recommendations contained in this report.

### **Agency & Administrative Consultation**

In accordance with O. Reg 545/06 of the Planning Act, Agencies and Town Administration received the Notice of Public Meeting by email. At the time of writing, the no comments have been received from circulated agencies.

Senior Management Team, Technical Advisory Committee, and other internal staff were consulted on the development of the zoning regulations. County of Essex was consulted on policy matters related to the Provincial Policy Statement and Official Plan.

PREPARED BY:



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**Manager of Planning and Development Services**

REVIEWED BY:



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Richard J.H. Wyma, CSLA

**Acting CAO/ Director of Community and Development Services**