

# MEMORANDUM



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To: Natalie Bray, City Clerk  
City of Elliot Lake

Date: May 26, 2021

JLR No.: 27335-002 (14)

CC:

From: Sarah Vereault, MCIP, RPP, Planner

Re: Additional Residential Units – Recommended Official  
Plan and Zoning By-law Amendments

## **BACKGROUND**

This report provides an overview of recent Planning Act regulations regarding “Additional Residential Units” and recommendations for amendments to the City of Elliot Lake’s (City) planning documents required to meet the new standards for Additional Residential Units.

The policies and provisions currently contained in the City’s Official Plan (2019) and Zoning By-law No. 18-36 for Secondary Dwelling Units (i.e., basement apartments, in-law suites) need to be revised in accordance with new policies which have been created for Additional Residential Units.

The purpose of the proposed Official Plan and Zoning By-law Amendments is to remove all provisions pertaining to Secondary Units or Accessory Apartments contained therein and replace them with new provisions for Additional Residential Units.

The proposed amendments will implement the “Additional Residential Units” provisions of the Planning Act and be consistent with the Provincial Policy Statement (2020). The proposed amendments apply to the entire City.

## **POLICY REVIEW**

### Ontario Planning Act

The Ontario Planning Act prescribes matters of Provincial Interest and establishes the ground rules for land use planning in Ontario which includes policies, regulations, and procedures related to Official Plans (Part III) and the passing of By-Laws (Part V).

The *Planning Act* was recently amended as a result of Bill 108 - *More Homes, More Choice Act*, 2019, which further amended the second unit framework in subsection 16(3) of the *Planning Act* with new provisions for “Additional Residential Units”. Bill 108 received Royal Assent in the Ontario Legislature on June 6th, 2019 and the enabling regulations were proclaimed in to force on September 3, 2019.

The recent regulatory changes made to the *Planning Act* that authorize the use of Additional Residential Units offer Municipalities an additional tool to help develop a range of housing options, with an emphasis on affordability.

Encouraging Additional Residential Units is important because they:

- (1) provide homeowners with alternative means of earning additional income to help meet the costs of home ownership;
- (2) support changes in demographics through housing options for immediate and extended families; and
- (3) maximize densities to support and enhance local businesses and labour markets, and efficiently use existing infrastructure.

Subsection 16(3) of the Planning Act provides the policies for Additional Residential Units:

*“(3) An official plan shall contain policies that authorize the use of Additional Residential Units by authorizing, (a) the use of two residential units in a detached house, semi-detached house or rowhouse; and (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse.”*

This would allow for two additional permitted residential units per property for a possible total of three per property.

While generally being permissive of Additional Residential Units, the Province indicates that: *“the Planning Act allows for local flexibility when implementing additional residential unit policies and by-laws to address local context and considerations. For example, municipalities can identify limits to the establishment of additional residential units if there are planning and policy considerations, such as health and safety (private roads not maintained) or the natural environment (hazard, flood-prone and waterfront areas). Municipalities can also establish limits through policies and by-laws for undersized lots on private services, prohibiting additional residential units on prime agricultural lands, or requiring demonstration of capacity for lots serviced by septic systems.”* These matters are addressed later in this report.

Section 35.1(1) of the Planning Act further requires that each local municipality ensure that the by-laws passed under Section 34 to give effect to the policies contained in Section 16(3). In other words, all relevant Official Plan policies for Additional Residential Units are to be reflected in municipal Zoning By-Laws.

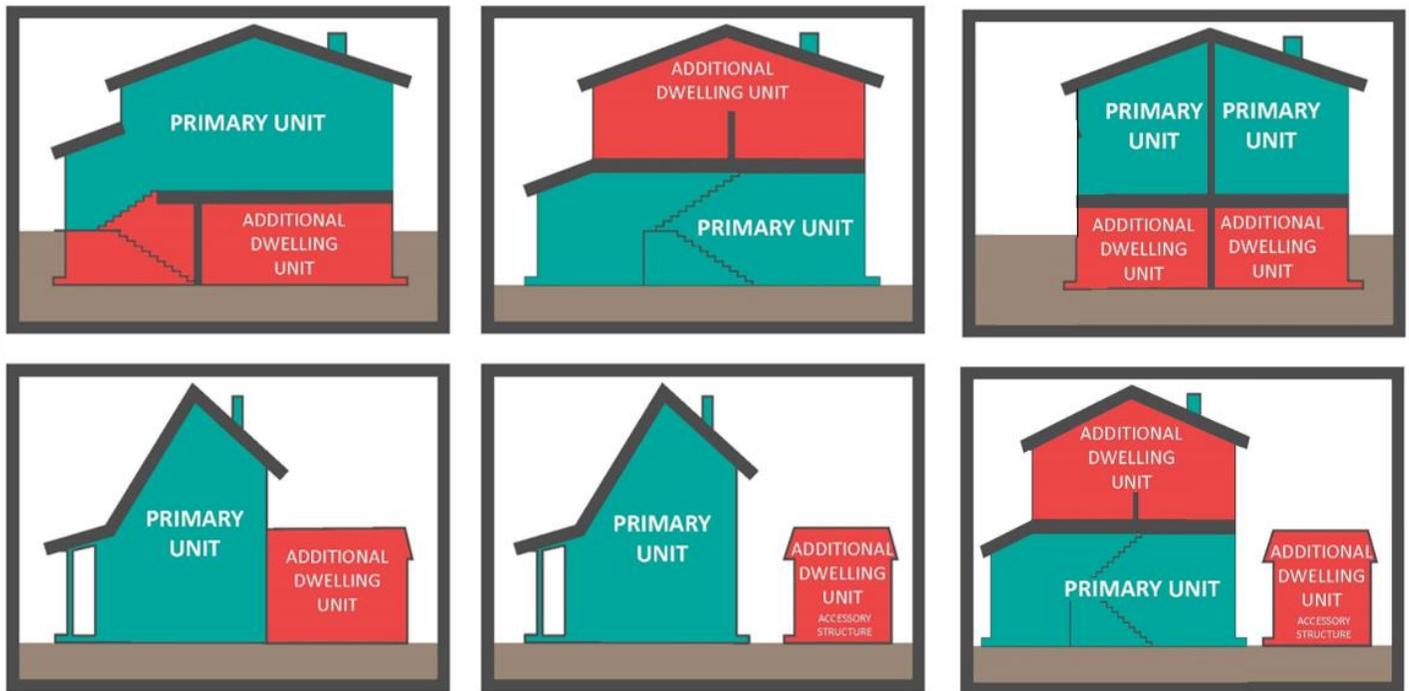


Figure 1: Additional Residential Units, possible configurations

Planning Act regulations on appeal processes as they relate to Additional Residential Units

It should be noted that policies and provisions on Additional Residential Units are afforded special protections under the Planning Act in that appeals related to Official Plan policies or zoning bylaw regulations that authorize the use of additional residential units are prohibited.

Subsections 17(24.1) and (36.1) prescribe that there are no appeal rights regarding the Official Plan policies described in subsection 16(3), including any requirements or standards that are part of such policies. Likewise, subsection 34 (19.1)

indicates that there are no appeal rights for those parts of a zoning by-law that give effect to policies described in subsection 16(3).

Ontario Regulation (O.Reg.) 299/19

Ontario Regulation (O.Reg.) 299/19 provides the implementing requirements and standards for Additional Residential Units. These regulations are to be adhered to per Section 16(3) of the Ontario Planning Act.

The following requirements and standards are established by Section 2 of the O.Reg. with respect to Additional Residential Units:

1. *“Each additional residential unit shall have one parking space that is provided and maintained for the sole use of the occupant of the additional residential unit, subject to paragraph 2.*
2. *Where a by-law passed under section 34 of the Act does not require a parking space to be provided and maintained for the sole use of the occupant of the primary residential unit, a parking space is not required to be provided and maintained for the sole use of the occupant of either additional residential unit.*
3. *A parking space that is provided and maintained for the sole use of the occupant of an additional residential unit may be a tandem parking space.*
4. *An additional residential unit may be occupied by any person regardless of whether,*
  - i. *the person who occupies the additional residential unit is related to the person who occupies the primary residential unit, and*
  - ii. *the person who occupies either the primary or additional residential unit is the owner of the lot.*
5. *Where the use of Additional Residential Units is authorized, an additional residential unit is permitted regardless of the date of construction of the primary residential unit.”*

It is also important to note that Section 3 of the O.Reg. provides that:

*“a by-law passed under section 34 of the Act that requires that no parking space be provided and maintained for the sole use of the occupant of one or both Additional Residential Units prevails over the requirement set out in paragraph 1 of section 2.”*

Other Planning Matters Not Covered Under Section 16(3) and O.Reg. 299/19

While there are very clear policies provided in the Planning Act and O.Reg. for the number of units permitted and the parking requirements, it is not clear how various other planning matters are to be addressed through the permitting and construction of “Additional Residential Units”. These include:

- legal non-complying / non-conforming lots;
- ability for private sewage/water services to provide adequate sewage capacity / water supply to each unit;
- increased densities for waterfronts and lakes at or near capacity;
- building height and setbacks (zone provisions);
- unit design and site plan control;
- consistency with built-form character / existing housing footprint; and
- keeping records of lots with Additional Residential Units.

Some of the above-noted issues related to building code (including private septic systems, for example) and fire code would be addressed through the building permit process.

The proposed amendments are based on our consideration of the issues described herein.

Provincial Policy Statement (2020)

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS provides for appropriate development while protecting resources of provincial interest, public

health and safety, and the quality of the natural and built environment. The latest update to the PPS was adopted on May 1<sup>st</sup>, 2020 and provides policies that encourage Additional Residential Units.

Section 1.1.1 states that healthy, livable and safe communities are sustained by (emphasis added):

*“accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, **Additional Residential Units**, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs.”*

The PPS considers the conversion or expansion of existing residential buildings to create Additional Residential Units as a part of its definition for “residential intensification”. The term “housing options” has been updated to mean a range of housing types which includes Additional Residential Units.

Generally, policies contained in Section 1.4.1 and 1.4.3 of the PPS support residential intensification that aims to provide for an appropriate range and mix of housing options. In order to support a range of housing, Section 1.4.3 prescribes 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:*

*... 2. all types of residential intensification, including **Additional Residential Units**, and redevelopment in accordance with policy 1.1.3.3;”*

## **CITY OF ELLIOT LAKE CURRENT POLICIES/PROVISIONS**

### City of Elliot Lake Official Plan (2018)

The City of Elliot Lake Official Plan (OP) has policies for Secondary Units. This term no longer applies and should be replaced with the term “Additional Residential Units”, in order to follow recent provincial regulation. Currently, the OP provides the following policies for Secondary Units:

#### *“4.6.4 Secondary Units*

*Secondary units (also known as accessory apartments, basement apartments, or in-law suites) are self-contained dwelling units with a separate entrance, located within and subordinate to a single-detached, semi-detached, or row house dwelling unit or within an accessory building.*

- 1. Secondary dwelling units will be permitted throughout the City in any land use designation that permits a residential use, provided that the unit complies with the Ontario Building and Fire Codes.*
- 2. The Zoning By-law shall include regulations for unit size, on-site parking, and other performance standards. “*

Additionally, the OP should reflect that up to two units are permitted in a detached dwelling, semi-detached dwelling or rowhouse, and the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse is also permitted. The OP should also include policies to ensure that no severance for new lots will be permitted to separate an additional residential unit from the primary dwelling.

The OP needs to be updated to reflect the requirements of the Planning Act and O.Reg. 299/19, but also align with other policies provided in the OP and address the other planning matters related to Additional Residential Units previously noted in this report.

### City of Elliot Lake Zoning By-Law (2018)

The City of Elliot Lake’s Zoning By-law currently provides the following definition for “Secondary Dwelling Unit (Basement apartment, or in-law suite)”:

*“Secondary Dwelling Unit (Basement apartment, or in-law suite): a single detached dwelling containing (1) dwelling unit constructed as a secondary place or residence and is not the principal place of residence by the owner or occupier thereof.”*

The definition currently does not align with ‘Additional Residential Units’ and should be updated to reflect the requirements of the Planning Act.

Section 5.1.2 of the By-law provides the following provisions for Accessory Dwelling Units, Secondary Units (basement apartments, in-law suites), and Garden Suites:

*“Where these uses are permitted, they are subject to the following provisions:*

- (i) No more than an amount equal to 40% of the gross floor area of the principal dwelling, use, may be developed for a secondary dwelling unit or garden suite, except where a basement unit is created, in which case, there is no maximum size;*
- (ii) The accessory apartment is designed and located in such a manner to not have an impact on the streetscape or character of the surrounding neighborhood;*
- (iii) Parking shall be provided in accordance with Section 6, and tandem parking in the existing driveway is permitted;*
- (iv) An accessory apartment is permitted in a detached dwelling which is serviced by private, individual systems, provided it can be demonstrated that the private sewage disposal system can accommodate the change in use; and*
- (v) Garden suites must comply with the setbacks for accessory buildings”*

Similar to the OP, the Zoning By-law needs to be updated to reflect the requirements of the Planning Act and O.Reg. 299/19 and address the other planning matters related to Additional Residential Units previously noted in this report, and further discussed below.

**DISCUSSION/ RECOMMENDATION**

Policies and provisions that align with the regulations provided in the Planning Act and reinforced by O.Reg. 299/19 need to be implemented in the City’s Official Plan and Zoning By-law. In response to the local flexibility provided for in the Planning Act and planning matters presented earlier in this report, the following recommendations have been developed for consideration:

*Table 1: Recommendations regarding Additional Residential Unit Policies / Provisions*

<b>Concern</b>	<b>Applicability</b>	<b>Recommended Amendment(s)</b>
Legal non-complying/ non-conforming lots	Will be subject to the provisions established for Additional Residential Units, as long as they can meet the applicable Zoning By-law Provisions	
Capacity of an existing well to serve additional units on the existing lot	Confirmed at building permit	Official Plan should be updated to generally address servicing requirements.  Zoning By-law should be updated to require confirming that the well has capacity for the proposed development if privately serviced, as part of the building permit application.
Capacity of the septic system/tile field to accommodate additional septic loading	Confirmed at building permit	Official Plan should be updated to generally address servicing requirements.

Concern	Applicability	Recommended Amendment(s)
		Zoning By-law already requires confirmation of appropriate servicing, no substantial revisions required.
Increased densities for waterfronts and lakes at or near capacity	Protection of the natural environment is a consideration for additional waterfront development.  Shoreline residential development in the City is intended to provide recreational dwellings as an alternative residential living environment, rather than as an opportunity for residential intensification.	It is recommended that the Official Plan and Zoning By-law provide that shoreline residential areas be limited to one (1) dwelling unit as of right, with consideration for additional dwelling units on a case-by-case through a Zoning By-law Amendment to review site-specific considerations.
Building height and setbacks	Subject to applicable provisions of the Zoning By-law	Zoning By-law should be updated to require that Additional Residential Units shall be subject to the corresponding zone provisions if in the primary structure.  Zoning By-law should be updated to provide that for Additional Residential Units in an accessory structure, a minimum 3.0m interior/rear yard setback is recommended. The front/exterior yard setbacks apply for the primary structure.
Unit Design and Site Plan Control	Additional Residential Units are subject to building permits as any building renovations and development of a building greater than 10m <sup>2</sup> is subject to the Ontario Building Code (Plumbing, Electrical, and Fire Safety)  Subject to applicable provisions of the Zoning By-law	The City may consider including Additional Residential Units on property which abuts a waterbody as being subject to Site Plan Control
Consistency with built-form character/ existing housing footprint	Subject to building permit and zoning provisions	No additional revisions required.
Keeping records of lots with Additional Residential Unit(s)	Subject to building permits	The City could require registration of Additional Residential Units through a By-law passed under the Municipal Act.

Following the determination of municipal response to the planning matters noted herein, it is recommended that the City amend the Official Plan and Zoning By-law to align with the Additional Residential Units provisions of the Planning Act.

The Official Plan Amendment should include:

- Removal of “Secondary Units” terminology, and replacement with Additional Residential Units;
- Creating updated policies for Additional Residential Units, to include:
  - Permitting Additional Residential Units in single detached dwellings, semi-detached dwellings and rowhouses, and in an accessory structure;
  - Requiring site-specific zoning by-law amendment for land designated Shoreline Residential or lots abutting a waterbody;

- Prohibiting the severance of an Additional Residential Unit from the primary dwelling; and
- Further implementation of regulations through the Zoning By-law.

The Zoning By-law Amendment should include:

- Removal of Secondary Dwelling Unit (Basement apartment, or in-law suite) terminology;
- Adding a definition for Additional Residential Units;
- Creating updated provisions for Additional Residential Units, to include:
  - Permitting Additional Residential Units in single detached dwellings, semi-detached dwellings and rowhouses, and in an accessory structure;
  - Requiring site-specific zoning by-law amendment for the Shoreline Residential (RS) or Limited Service Residential (RL) Zones,
  - No restrictions on unit size;
  - Requiring a confirmation of servicing (water/septic) if privately serviced;
  - Additional Residential Units in the primary structure shall be subject to the provisions of the corresponding zone;
  - Additional Residential Units in an accessory structure shall be subject to the provisions of an Accessory Use of the corresponding zone, except a minimum 3.0m interior/rear yard setback is recommended. The front/exterior yard setbacks apply for the primary structure.
  - Additional Residential Units may not be severed from the lot containing the primary residential use.
  - Requiring one (1) parking space per Additional Residential Unit; and
  - Amending the various residential zones to permit Additional Residential Units in accordance with the recommended provisions.

A draft Official Plan and Zoning By-law Amendment for Committee's consideration has been attached to this report.

Finally, it has been noted that to record the creation of Additional Residential Units the City can require registration of such units through a By-law passed under the Municipal Act.

Should you have any questions or require further information please contact the undersigned.

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