



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: November 21, 2011

SUBJECT: Report PLPD11-084
Non-Conforming Two and Three Unit Dwellings

PURPOSE

An information report regarding options to address non-conforming two and three unit dwellings in the City of Peterborough.

RECOMMENDATIONS

That Council approve the recommendations outlined in Report PLPD11-084 dated November 21, 2011, of the Manager, Planning Division, as follows:

- a) That Report PLPD11-084 be received.
- b) That no specific action to legalize existing non-conforming two and three unit dwellings be taken until the City considers an amendment to the Zoning By-Law to permit accessory dwelling units.

BUDGET AND FINANCIAL

There are no direct budget or financial implications arising from the receipt of this report.

BACKGROUND

This report is in response to a request from Planning Committee at its meeting of July 18, 2011, and confirmed by Council at its meeting held August 2, 2011, to report on non-conforming two and three unit dwellings in the City and recommending ways to ensure additional units are built to Building Code requirements.

The August 2, resolution of Council stated:

“That the report on non-conforming two and three unit dwellings in the City, recommending ways to ensure that the additional units are built to building code, previously requested on April 11, 2011, be provided to Planning Committee by the end of the calendar year.”

Council has considered several zoning amendment applications to recognize existing duplex and triplex dwellings. It is recognized that these applications represent only a small number of existing illegal units within the City. As a result of the number of applications before it, Council has expressed an interest in understanding options to ensure the safety of these units by way of compliance with the Ontario Building Code.

There is no way to definitively find the number of non-conforming units in the City. The City's database provides some information based on Assessment Data from Municipal Property Assessment Corporation (MPAC) regarding the number of units assessed at specific addresses within the City. When that information is compared to the residential zoning districts for up to two units, it can be determined that there are in excess of 580 units that are assessed but not zoned for a greater number of units within a dwelling zoned for a single or a duplex. When reviewing metering information from Peterborough Utilities it reveals that there would be as many as 1,000 additional units. Some of these may have existed prior to the current zoning coming into force and effect or alternatively, were recognized through the Apartments in Houses Legislation in 1994 (Ontario Regulation 384/94 to the Planning Act), which permitted accessory apartments in single and semi-detached dwellings as-of-right, and are considered Legal Non-Conforming. This would entitle these units to continue without further zoning consideration.

A significant number of illegal units have been created by dividing older homes into multiple units without building permits. This is an issue from both a safety perspective, as well as the impact these have from a planning perspective. Planning challenges in legalizing these units are often related to zoning regulations associated with parking and the size of the lots. A property that is too narrow or too small, results in an intensification of density beyond that which is contemplated for 'low density residential'. There can also be problems with a lack of off street parking. This has the potential of altering the character of the area with new demands for parking and fire escapes. While this may not be an issue in some existing built up areas, it is a concern in others.

There are municipal challenges in facing the issue of non-conforming dwelling units that should be considered when reviewing options to address this situation. First, many owners simply renovate buildings for additional units without building permits and any regard for the existing zoning. These situations largely go unnoticed until complaints are received from neighbours or inspections resulting from property sales reveal illegal units. Secondly, enforcement is a challenge because of the specific features required to constitute a dwelling unit under the City's definition in the Zoning By-Law. For example, a finished basement with bathroom facilities and two bedrooms, which would be a common scenario in many single detached homes, does not qualify as a separate dwelling unit. If kitchen facilities were also provided, but no separate entrance, it also would not comply with the definition of 'dwelling unit'. Although the space, in this instance, could function as a separate dwelling unit, a second kitchen in the basement of a single detached dwelling is not uncommon in certain cultures. Second kitchens are not currently prohibited when applications for building permits are made even though some of these evolve into illegal dwelling units. The City has typically relied on the existence of a locked separate entrance to determine the presence of a dwelling, however, gaining entry to a building to make this determination can be challenging. Enforcement and ultimately prosecution, is a challenge.

ANALYSIS

In addition to continuing to process zoning applications on a case-by-case basis as illegal units come forward, there are really only 2 main options that can be considered to address the issue of non-conforming two and three unit dwellings within the City. These options present their own challenges and are briefly described below.

OPTIONS:

1. Amnesty By-Law – Zoning Amendment

The City could process a zoning by-law amendment to be in place for a certain time period to permit secondary apartments within R.1 and R.2 – Residential District zoning districts to legalize any existing units. Once the established time period expires the City would then have to process another by-law amendment to remove the ability to create additional units, and any secondary units existing and/or created during this timeframe would acquire legal non-conforming status, as long as the use is continuous. Under this scenerio it is anticipated that the City would process the zoning by-law amendment and the onus would then fall to the property owners to come forward to "legalize" the units.

Challenges with this measure would include two zoning by-law amendment processes and the administration of the records associated with these units to verify legal non-

conforming status. Furthermore, this measure would not ensure compliance with Building and/or Fire Code unless made a requirement. Compliance with the Building Code is further complicated by the fact that these units exist and there are certain building components that cannot be inspected because walls have been closed in. Inspectors would only be able to inspect what is visible.

Would problem properties be addressed? It is difficult to assess how many units would be legalized through an “amnesty by-law”. While many units owners may come forward to legalize units, it is very likely that if compliance with the Building and Fire Codes were a requirement, many substandard units would not be brought forward because compliance would be too onerous.

2. Accessory Units Zoning Permission

The City’s Official Plan encourages the creation of secondary suites in identified areas. Section 4.2.3.9 of the Official Plan provides the policy framework to encourage secondary suites within areas to be identified by the Official Plan. These areas could include certain built up areas, new subdivisions or the City at large. It is intended that zoning regulations such as adequate parking, servicing and access to parks and amenities should be considered when identifying areas suitable for secondary suites.

These provisions could be permitted as of right in zoning for new developments (i.e. new subdivisions), but could also be applied to existing units located in areas identified by the Official Plan. As with the amnesty by-law option there is no way to determine the impact of such a strategy on existing illegal units. Such an approach would provide the opportunity for many units to come forward, however, it is safe to assume that many substandard units that cannot meet any zoning regulations put in place, and Building and Fire Code regulations would remain illegal.

SUMMARY

In 1994, the City took issue with the Apartments in Houses legislation which permitted an accessory apartment in every single and semi-detached dwelling unit, as-of-right. There was a concern that these units should not be allowed as-of-right, without any regard to land use considerations. It continues to be staff’s position that a zoning “amnesty” to legalize existing units, subject only to Building Code and Fire Code requirements, would have the same effect as the 1994 legislation.

Staff are working towards the implementation of a secondary suite by-law, which would establish appropriate zoning regulations which would see the creation of secondary suites in identified areas, subject to certain regulations. Secondary suites provide affordable housing for lower and modest income households, for elderly parents, other family members or live-in caregivers. These units also assist home buyers to afford homes by assisting with making mortgage payments.

By having a secondary suites by-law in place, it will allow illegal units to come forward and be legitimized, subject to meeting applicable regulations, and it will allow new suites to be created without dramatically altering the neighbourhoods in which they are located. While there will continue to be enforcement and administrative issues, a secondary suite by-law will give the City a better level of control than with a zoning amnesty.

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