



Report to: Development Services Committee

Report Date: October 15, 2024

SUBJECT: City of Markham’s Response to proposed Amendment to [O. Reg 299/19 \(Additional Residential Units\) More Homes Built Faster Act, 2022](#)

File No: PR 24 193731

WARD: City Wide
PREPARED BY: Brad Roberts – Manager of Zoning and Special Projects
Geoff Day, MCIP, RPP, Senior Planner, Zoning and Special Projects

RECOMMENDATION:

- 1) That the report titled, “City of Markham’s Response to proposed Amendment to O. Reg 299/19 (Additional Residential Units), File: PR 24 193731”, be received;
- 2) That this report be forwarded to the Minister of Municipal Affairs and Housing as the City of Markham’s comments to the proposed Amendment to O. Reg 299/19;
- 3) That Staff be authorized to bring forward proposed amendments to any in-force zoning By-law to address any zoning issues or inconsistencies in Markham’s zoning by-laws, and to give effect to changes made as a result of the proposed Amendment to O. Reg 299/19 receiving Royal Assent; and,
- 4) And that Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report is to provide comments to the Province on the proposed Amendment to O. Reg 299/19 relating to Additional Residential Units (ARU’s).

BACKGROUND:

The More Homes Built Faster Act, 2022, received Royal Assent on November 28, 2022, which authorized the Minister of Municipal Affairs and Housing to make regulations that established requirements and standards with respect to Additional Residential Units (ARU’s) located in a dwelling or ancillary building, on lands containing single detached, semi-detached and rowhouse (townhouse) dwellings. Additional residential units include but are not limited to: basement apartments, second or third suites in a main dwelling, coach houses, or dwelling units in detached accessory buildings.

On the June 26th, 2024 Council meeting, Staff reported on proposed amendments to the [Cutting Red Tape to Build More Homes Act \(185\)](#). Bill 185 proposed amendments to the Planning Act that included the authorization for the Minister to make regulations with respect to the establishment of ARU’s.

At that time, Staff recommended the Province consult with the City's Operations Department, and Emergency Services to discuss specific servicing limitations that exist for additional residential units, as well as certain life safety issues that arise when ARUs are located in accessory buildings. The life safety concerns include access routes that First Responders have to ARU's in accessory buildings, and the distance that accessory buildings containing ARU's are from hydrants.

On September 23, 2024, the Province released proposed additional regulations that, as stated:

“...could facilitate the creation of additional residential units, such as basement suites and garden suites, by eliminating barriers. Removing these requirements could potentially reduce or eliminate the need for rezoning or minor variances, saving time and money and helping to build more homes.”

The effect of these regulations would restrict municipalities from applying certain zoning restrictions identified below, to ARU's. The O.Reg states that public health and safety requirements, including those from the Building, Fire Code and other legislative tools would continue to apply.

DISCUSSION:

The proposed changes to O. Reg 299/19 would override several zoning standards where an ARU exists in a dwelling or ancillary building, on lands containing single detached, semi-detached and rowhouse (townhouse) dwellings, as follows:

1. Elimination of angular plane provisions;
2. A maximum lot coverage of at least 45% for all buildings and structures on parcels with ARUs;
3. Elimination of floor space index (FSI) provisions;
4. Elimination of minimum lot sizes; and,
5. Reduce the minimum building separation distance between a primary building and any ancillary structure to a maximum of 4 metres.

Staff comments and recommendations are outlined under each section below.

The City's Comprehensive Zoning By-Law 2024-19 (CZBL) was enacted by Markham Council on January 31, 2024. On September 19, 2024, the Ontario Land Tribunal (OLT) approved the City's CZBL on a City-wide basis, save and except for lands associated with remaining site-specific appeals. The OLT has ruled that the CZBL shall be deemed to have come into force on January 31, 2024. The CZBL applies to roughly 80% of the City, however some sites remain under older zoning by-laws including areas with upcoming new or updated secondary plans and site specific OLT appeals as noted above.

1. Angular Plane

Angular Plane is an imaginary line that originates from the lowest grade of a lot line or zone boundary and inclines at an angle identified in an applicable zone category (i.e. 45 degrees). Where an angular plane is applied to a property, no portion of a building shall project above the angular plane line.

Zoning by-laws can apply angular plane provisions to restrict the height of buildings in medium and high-rise zones adjacent to low-rise residential zones, as one tool for height transitions from taller buildings to low-rise areas. The proposed regulation will remove the application of angular plane requirements for buildings containing ARUs.

Staff Comments:

While the City's new Comprehensive Zoning By-law 2024-19 (CZBL) includes a definition of angular plane, no base zones contain specific provisions applying angular plane restrictions. In addition, none of Markham's other in-force zoning By-laws contain base zones that apply angular plane restrictions.

Staff have no comments on the elimination of angular plane relating to ARU's.

2. Maximum Lot Coverage

Maximum lot coverage refers to the percentage of a lot that can be covered by buildings and structures. It regulates the amount of space that can be built upon, ensuring that there is adequate open space on a property. In Markham, lot coverage is calculated as a percentage of the area of the zone in which the building is located. The proposed regulation would permit a maximum lot coverage for all building on a lot of at least 45% for all lots containing ARU's.

Staff Comments:

Lot coverage is not applied in most of the City's newer neighbourhoods developed after 1996. The more compact design permits developments to approach or exceed a 45% lot coverage in most instances.

The use of lot coverage restrictions in the CZBL primarily applies to the City's established low rise residential zone (RES-ENLR). This zone is characterized by larger lots and greater setbacks between buildings in order to preserve the integrity and established character of these areas. Through an extensive public consultation process with residents of Markham, the development community and Markham Council over a 10 year period, the RES-ENLR zone contains maximum lot coverages for the first and second storey (30% and 20% respectively) of a main building as well as a separate maximum lot coverage of 35% for all buildings located on a lot (which includes the main building, sheds, detached garages, pool houses and ARU's).

As presently worded in the O. Reg, the proposed regulation would allow at least a 45% total lot coverage for lands that contain ARUs and would potentially permit significantly larger accessory buildings in certain circumstances. Existing setbacks and building depth requirements would generally retain the existing zoning standards for main buildings in the RES-ENLR zone, and it is the opinion of Staff that as presently worded, the existing main building lot coverages of 30% for the first storey, and 20% for the second storey would remain in force.

3. Floor Space Index (FSI)

While lot coverage generally applies to the footprint of the building, FSI is similarly calculated as a percentage of the lot area yet applies to all floors of a building. The proposed regulation would override all FSI requirements in a zoning by-law that applies to parcels containing ARU's.

Staff Comments:

Within the CZBL, FSI is only used as a tool in mid rise or high rise zones to help manage density of larger developments. FSI is not used in low-rise developments where ARU's are permitted under the Planning Act.

Staff have no comments on the elimination of FSI requirements relating to ARU's.

4. Minimum Lot Size

The proposed regulations will override all minimum lot sizes or lot area requirements specific to parcels containing ARU's. The stated goal of this provision is to:

“...ensure that the same lot size standards that apply to a house also apply to a house with an ARU.”

Staff Comments:

Where By-law 2024-19 uses minimum lot sizes, it does not distinguish between permissions for additional residential units, or main dwellings. While the gross floor area permissions for accessory buildings are based on lot sizes, the proposed legislation does not appear to impact those zoning provisions.

Staff have not identified zoning concerns with the proposed regulations as drafted.

5. Building Distance Separation

The proposed regulations will restrict building distance separation requirements associated with any building containing ARUs to a maximum of 4 metres.

Staff Comments:

Zoning by-laws generally require minimum distance setbacks between buildings on a lot. The setback requirements can vary based on building types, and the intent of the setback requirement. For example, detached garages on lots accessed by a lane require a 6 metre setback [separation] from the main building. The City's CZBL also requires a minimum 6 metre setback from a main building to a coach house, garden home or garden suite (defined as ARU's). These zoning standards were enacted in order to provide for useable at-grade amenity areas that allow light penetration and the reduction of potential shadowing that can occur when at-grade amenity areas are small in area. The proposed regulations would reduce the minimum required setback between a detached ARU and the main building to 4 metres.

While this reduction may have minor impacts as identified above, Staff have no significant concerns in reducing the separation requirements to 4 metres.

Additional Comments:

The proposed regulation will create separate development standards for lots with and without ARU's and may not always achieve the intended function of the regulation. During initial construction, property owners may construct an ARU and take advantage of the relief offered by the regulation. However, if the property owner later decides to remove the ARU, the property would be in violation of the City's in force zoning without the ARU as a use on the property.

The province has also indicated that existing public health and safety requirements, including those from the Building, Fire Code and other legislative tools would continue to apply. Markham's Fire and Emergency Services Staff have identified that requirements for appropriate path of travel and hose lay to dwelling units within detached accessory buildings are not explicitly prescribed in the Fire Code, and result in the application of different standards between municipalities.

CONCLUSION:

Following the October 15, 2024, Development Services Committee meeting, it is recommended that this Council resolution be forwarded to the Ministry of Municipal Affairs and Housing in advance of the ERO deadline of October 23, 2024.

It is also recommended that Council further authorize Staff to evaluate the impact of the final Regulations to ensure there are no unintended adverse impacts from the proposed regulation, and bring forward any necessary amendments to the City's zoning by-laws to refine or implement the proposed regulations as required or deemed necessary.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

Not applicable

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The provision of affordable housing, and response to Provincial changes to the Planning Act aligns with the City's strategic goal of building Safe, Sustainable and Complete Communities.

BUSINESS UNITS CONSULTED AND AFFECTED:

Fire and Emergency Services

RECOMMENDED BY:

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Director, Planning & Urban Design

Arvin Prasad, MCIP, RPP
Commissioner, Development Services