

Background #1

Phase 2 Issues and Concerns:

Text Amendments to the Edmonton Zoning Bylaw to Increase the Opportunity for Secondary, Garage and Garden Suites

This background report is a supplement to the Phase 2 Secondary, Garage and Garden Suites Bylaw 15036 Report 2008PDP492. The Bylaw report and attachments, along with other background information, including the Phase 1 monitoring report (2008PDP014, to Executive Committee, October 8, 2008) are available on the Secondary Suites web site, www.edmonton.ca/secondariesuites.

See also attachments 3 and 4 to this report: “Rationale for Changes Proposed for Phase 2, Secondary, Garage and Garden Suites Zoning Bylaw Text Amendments” and “Summary: Phase 2 Input and Circulation Responses” for related discussion. The Bylaw 15036 report and attachments are available on the Secondary Suites web site, www.edmonton.ca/secondariesuites.

This background report discusses some details of the concerns listed in the Bylaw 15036 report, as well as the Administration’s responses to these concerns and issues. is organized by issue (brought up by one or more stakeholders or members of the public), under the following topics:

1. Support for Secondary Suites
2. Support for Garage Suites
3. Location Restrictions: Secondary Suites
4. Location Restrictions: Garage and Garden Suites
5. Owner Occupancy
6. Density Controls (caps on number of Secondary Suites)
7. Discretionary or permitted Use (Secondary Suites)
8. Licensing or Temporary Use Permits
9. Privacy Regulations for Garage Suites
10. Garage Suites: Height and Shadowing Impacts
11. Parking
12. Secondary Suite Opportunity and Semi-detached Housing
13. Secondary Suite Opportunity and Direct Control Zones

1. Support for Secondary Suites

The Phase 2 Web Survey results show overwhelming support for Secondary Suites (Survey results available at www.edmonton.ca/secondariesuites). Most of the input received from the general public, the real estate and development industry, community leagues, housing advocates as well as the University of Alberta Student’s Union continues to show strong support for Secondary Suites

generally. The input received from the Edmonton Federation of Community Leagues (EFCL) Planning and Development Committee and individual community leagues shows support for Secondary Suites, but under quite specific conditions.

2. Support for Garage and Garden Suites

As with Secondary Suites, the Phase 2 Web Survey shows strong support for Garage and Garden Suites. Some community leagues (Rosssdale, Parkallen in Phase 2) as well as the Edmonton Federation of Community Leagues Planning and Development Committee have been more reluctant to support Garage Suites than Secondary Suites, with concerns that they will impact the character or privacy of neighbourhoods (see #9 Privacy Regulations for Garage Suites below).

Most stakeholders acknowledge that the take-up for Garage and Garden Suites will be significantly lower than that for Secondary Suites.

3. Location Restrictions: Secondary Suites

The feedback received from the general public from the open houses and the Phase 2 survey is supportive of removing the location restrictions for Secondary Suites that currently apply in the RF1 and RF2 zones. Consistent with EFCL's written submission to the Phase 1 Public Hearing, in Phase 2 the EFCL Planning and Development Committee supports the removal of these location restrictions under certain conditions; i.e. that they be discretionary uses, there is equitable distribution of Secondary Suites throughout neighbourhoods and an owner-occupied requirement is included (see #5, 6 and 7 below). In Phase 1, the Belgravia Community League also argued against location restrictions, but, like EFCL, included other conditions. Like EFCL, Belgravia also requested an owner-occupied requirement. In addition, Belgravia stated that target numbers of suites, or percentages (i.e. percent of properties with suites) per neighbourhood, be established.

Phase 1 location restrictions that apply to Secondary Suites within the RF1 Zone (and also apply to the RF2 Zone) represent the most frequently-mentioned concerns during the monitoring period of December 12, 2007 (Phase 1 Bylaw 14750) through to August 18, 2008.

The restriction of locations eligible for Secondary Suites within both the RF1 and the RF2 zones is proposed to be eliminated in the Phase 2 Bylaw, which would allow Secondary Suites to be developed anywhere within all low density residential zones (except for RMH Residential Mobile Home) on a permitted basis.

Proposed removal of location restrictions in Phase 2 (from the RF1 and RF2 Zones will increase by 170.6% estimated number of low density residential lots eligible for Secondary Suites, from 48,278 lots to some 140,390 lots (most of the increase attributed to the RF1 Zone opportunity).

4. Location Restrictions: Garage and Garden Suites

The feedback received from the general public from the open houses and the Phase 2 on-line web survey support removal of location restrictions for Garage Suites that currently apply in the RF1, RF2 and RF3 zones, and no restrictions for Garden Suites, however, there is more support for removing the location restrictions for Secondary Suites than for Garage Suites and Garden Suites.

Phase 2 will not result in a net increase the number of eligible locations for Garage Suites, but will modify the location restrictions in the RF1, RF2, and RF3 zones. Phase 2 will also include the same location restrictions in the smaller-lot zones.

In Phase 1, there was very little demand observed for Garage Suites within the smaller-lot residential zones. This lack of demand appears to be mainly due to the larger lot-size requirement for Garage Suites (460 m² vs. 360 m² for a Secondary Suite) and typical site layout and/or lack of lane access within some zones. The overall impact of adding the same modified location restrictions that would apply to the RF1, RF2 and RF3 zones to the smaller-lot zones is expected to be very small, given that most of these lots were not able to meet the existing regulations in Phase 1 (apart from lot location).

Two locations have been removed (lots abutting commercial and industrial-zoned sites). Three have been added. The following location restrictions are also proposed to apply to Garden Suites in most low density residential zones:

1. Lots abutting sites zoned for public parks as permitted uses
2. Lots abutting Community Service Zones, and;
3. Lots backing onto lanes running parallel and adjacent to an arterial road (where a landscaped boulevard is located between the lane and the arterial road)

The rationale for these changes is discussed in the Bylaw 15036 (Phase 2) Report, 2008PDP492, Attachment 3, p.p. 3-4 (available on the web site, www.edmonton.ca/secondariesuites).

5. Owner Occupancy

Community groups supporting an owner occupancy requirement for properties that contain a Secondary, Garage or Garden Suites in Phase 2 include the EFCL Planning and Development Committee, Grovenor Community League, Rosedale

Community League and the Central Area of Community Leagues. EFCL, the Central Area of Community Leagues, the Belgravia Community League and the Realtors' Association of Edmonton also supported an owner-occupied requirement in Phase 1. Concerns include:

- Properties that are not owner occupied would not be maintained to the same standards as those that are owner occupied
- Tenant behaviour is positively impacted through owner occupation on the same property.
- Speculators may purchase multiple properties within one neighbourhood, and rent out both the principal dwelling and a secondary suite contained in the same building with little regard to property maintenance or tenant behaviour.

Staff indicated in Phase 1 planning reports that the *Municipal Government Act* does not have provisions to regulate users, only uses, and therefore a requirement restricting Dwellings with Suites to having an owner occupancy requirement is seen as a requirement above and beyond the regulation of land uses, and may be subject to legal challenge.

6. Density Controls (caps on number of Secondary Suites)

The preference to include caps on the number of Secondary Suites, or other forms of density controls within any one neighbourhood through the Zoning Bylaw and/or Area Redevelopment Plans has been brought up in Phase 2 by the EFCL Planning and Development Committee, community league representatives (Central Area of Community Leagues, Mature Area Action Group) and some members of the public. The concern appears to be greater than in Phase 1 due primarily to the proposed removal of location restrictions in the remaining zones that have location restrictions: RF1 and RF2 (where locations currently discretionary would become permitted).

In some cases, the desire for caps within any one neighbourhood has been emphasized due to the lack of an owner-occupied requirement (see #5 above) and/or due to the proposal to increase the opportunity for Secondary Suites on a permitted, rather than discretionary, basis (see #7 below).

Without caps on the number of Secondary Suites, concerns expressed include:

- No limits on the numbers of Secondary Suites in high demand areas (especially in large-lot zones, most conducive to Secondary Suites: RF1, RF2 and RF3).
- Concerns over on-street parking congestion
- Speculative purchases of multiple rental properties with Secondary Suites within the same neighbourhood, without concern to the maintenance of properties and behaviour of tenants.

- Concerns over tenant behaviour could be magnified without limits on the number of suites.

The administration has the following reasons for not placing density caps or limits to the number of suites in any one neighbourhoods:

- a) Limits on the number of suites are not seen as entirely consistent with the philosophy of allowing Secondary Suites throughout the City on an equitable basis, which was contained in the “Land Use Measures for Affordable Housing” report 2007PDP104 to the Executive Committee and Council, accepted by Council on January 30, 2007.
- b) Development Permit numbers, including existing ones on Posse, could be tracked, with some increase in staff work load. However, it would be difficult to also track the number of illegal suites, which still make up the majority of existing suites, in any one neighbourhood. Restrictions would also tend to favour early applicants over new residents/suites. It would also be difficult to track suites that cease to be rental accommodations and revert back to living space.
- c) Typically between 10-20% of single family homes will have Secondary Suites, with or without regulations to accommodate them.

7. Discretionary or Permitted Use (Secondary Suites)

There has been a divided response on the issue of increasing the opportunity for Secondary Suites on a permitted or discretionary basis in the RF1, RF2 and RF3 zones. Phase 2 on-line web survey respondents, and open house attendees overwhelmingly supported a permitted approach. When considering discretionary uses, the Development Authority is not obligated to approve discretionary Permits and as such can control the number of units.

At the Phase 2 EFCL Planning and Development Committee meeting with Planning and Development Staff (August 11, 2008) discussions included the following points:

- EFCL maintained that Secondary Suites should be discretionary, rather than permitted uses
- Closely associated with the desire to control distribution of Secondary Suites within neighbourhoods (see #6 Density Controls, above)
- Prefers a **discretionary** option to increasing opportunity for Secondary Suites in locations where they are not currently allowed in the RF1 and RF2 zones (i.e., mid-block locations) (this was one option presented at the June 2008 open houses) (6/8 Committee members attending the meeting indicated this)
- Do not support the **permitted** option to increasing opportunity for Secondary Suites (proposed in the Phase 2 Bylaw), the other major option at the June 2008 open houses.

In Phase 1, EFCL supported Secondary Suites as discretionary uses. Some stakeholders specifically requested that Secondary Suites be permitted uses in Phase 1, including: the Canadian Home Builders' Association, the University of Alberta Students' Union, and the Edmonton Coalition to End Homelessness.

Staff have continued to support expanding Secondary Suite opportunities on a permitted basis, provided that other criteria are met, including minimum lot size, on-site parking, separate access, and area of Secondary Suite for the following reasons:

- a) The Development Permit process for permitted uses is substantially easier for both the applicant and Staff due to shorter timelines and without the need for permit application notification;
- b) The limited overall impact of Secondary Suites on neighbourhood character;
- c) Relatively low uptake on the use opportunity;
- d) In the discretionary context, typically there would be a higher number of new illegal Secondary Suites, due to the requirement for neighbourhood notification that would discourage some potential applicants;
- e) The granting of discretionary permits can be held up substantially and property owners may be discouraged from seeking permits due to the potential for appeal by neighbours through the Subdivision and Development Appeal Board (SDAB);
- f) A review of Bylaws in Canada shows that most Bylaws provide for Secondary Suites on a permitted, rather than discretionary basis (including, most recently, St. Albert).

Alternative Bylaw Approach

Rather than increasing the opportunity for Secondary Suites on a permitted basis in locations where they are not currently allowed, a more restrained approach to increasing the use opportunity in Phase 2, would be to allow them as discretionary uses. As discussed above, such an approach has a higher degree of acceptance to EFCL, and some of the mature area community leagues.

A discretionary option would allow Secondary Suites in locations where they are not currently allowed on a discretionary, rather than permitted, basis, within the RF1 and RF2 zones. This is the same as the existing use opportunity for Secondary Suites in the RF3 zone (permitted in specified locations; discretionary in all others). Under this scenario, the existing RF3 Zone would remain the same as in the Phase 1 (current) Bylaw.

While a discretionary approach throughout the RF1 and RF2 zones would be a simpler option, such an option would actually reduce the opportunity from Phase 1 in the locations where Secondary Suites are currently allowed on a permitted basis.

The advantages of a discretionary approach, as outlined above, include:

- a) This could be considered to be an interim step to increasing the opportunity for Secondary Suites. Such an approach could be reviewed in the future (i.e. "Phase 3");
- b) More acceptance by the Edmonton Federation of Community Leagues, some of the mature area community leagues and some of the other stakeholder groups;
- c) Compared with the current restrictions in the RF1 and RF2 zones, allowing discretion in approvals in locations where Suites are not currently allowed provides significantly more potential Secondary Suites. It also provides a degree of control if demand is higher than anticipated in some areas;
- d) A discretionary opportunity would allow for balancing Secondary Suites with other forms of infill within the RF1, RF2 and RF3 zones.

8. Licensing or Temporary Use Permits

As an alternative to an owner-occupied requirement (see #5 above), the concept of licensing Secondary Suites, or creating a temporary use permit for Secondary and Garage Suites, was discussed as a way to monitor suites and to ensure that they are operated in an acceptable manner at the August 11, 2008 EFCL Planning and Development Committee meeting.

Some members of the EFCL Planning and Development Committee see a licensing system (i.e. that would be renewed annually) or a temporary use permit (e.g. 5 year permit) could be used in a similar way to a discretionary Permit: there would be certain conditions that would need to be adhered to in order for the Secondary or Garage Suite to continue (i.e., to meet standards as a rental operation).

A business licensing model would require substantial human resources to follow up on existing suites every year, however, the licensing fees could be used to cover or off-set such costs.

The Administration is not recommending a licensing system or temporary development permit for Secondary, Garage or Garden Suites for the following reasons:

- a) A licensing and/or a temporary permit system could discourage owners or potential owners of suites from obtaining development permits, knowing that they could be shut down within a relatively short period of time;
- b) A proposal by Strathcona County to have Secondary Suites on temporary use permits in 2008 was not adopted by Council due to concerns about the substantial investments that secondary suite owners would have to make without long term assurance of the continuance of the development permit.

9. Privacy Regulations for Garage Suites

Privacy regulations that were put into the Phase 1 Bylaw (Bylaw 14750) for Garage Suites developed above detached garages (no at-grade suites were introduced in Phase 1) were well-received in the Phase 2 survey, with the privacy regulations pertaining to window placement (off-setting and size/placement consideration to limit overlook into neighbouring yards), and balcony and deck placement, receiving from 50% to 65% support for each of the four regulations that were placed within the Garage Suite regulations (of 48 respondents). These regulations are proposed to be maintained in the Phase 2 Bylaw.

Despite these regulations, there continues to be some apprehension with Garage Suites developed above a detached garage. Comparatively less concern has been expressed toward the introduction of Garden Suites and at-Grade Garage Suites (single level detached dwellings, subordinate to the principal dwelling) due to their lower height (maximum 4.3 m).

The proposed Phase 2 Bylaw applies the same privacy regulations put in for Garage Suites (above Grade) to Garden Suites and Garage Suites (at Grade) in Phase 2. With the exception of the GLG Griesbach Low Density with Garage Suite Zone, Garage Suites (and Garden Suites) will continue to be discretionary uses with detailed review required prior to the issuance of development permits.

10. Garage Suites: Height and Shadowing Impacts

There were divisions as to the desired height of Garage Suites (above Grade), including:

- Those interested in developing Garage Suites tending to see the maximum height (6 m, not to exceed the height of the principal dwelling) as too low (particularly the part restricting the maximum height of the principal dwelling), and some community stakeholders worried that the Garage Suites could impact shadowing on neighbouring properties, and/or privacy.

In Phase 1, the Zoning Bylaw regulations restricted the Garage Suite height so that it would not exceed the height of the principal dwelling. This was put into the Bylaw partly as a result of concerns expressed that Garage Suites (above Grade) could significantly change the character of neighbourhoods. The height restriction keeps the Garage Suite subordinate to the principal house.

The Phase 2 survey did show some opposition to the height restriction, but it was divided:

- 31% of respondents agreed with the height restriction and
- 52% of respondents disagreed with the height restriction (of 48 respondents).

However, of those who disagreed (out of 25 respondents):

- 68% indicated the height was too low, with 20% indicating that it is too high.

Comparatively less concern has been expressed toward the introduction of Garden Suites and Garage Suites (at Grade) (single level detached dwellings, subordinate to the principal dwelling) due to their lower height (maximum 4.3 m).

Bungalow owners restricted by height:

During the Phase 1 monitoring period, Staff received a number of inquiries (telephone, in-person, and at the open houses) from owners of bungalows within mature neighbourhoods who complained that the Bylaw essentially restricts them from developing Garage Suites (above Grade). The introduction of at-grade Garage Suites (single level suites attached to a detached Garage) and Garden Suites is expected to at least partly mitigate the height restriction that applies to Garage Suites (above Grade) affecting lots with bungalows, as the maximum height would not be restrictive in this case (provided that they are willing to consider an at-grade Suite as opposed to an above-grade suite)

Another change in Phase 2 is some added flexibility for Garage Suite maximum height (see Attachment 5 for detailed reasons for the changes). The proposed Bylaw would:

- Increase the maximum height from 6.0 m to 6.5 m where the roof is sloped, and
- Decrease maximum height from 6.0 m to 5.5 m where the roof is flat.
- Height may not exceed the height of the principal dwelling (as in Phase 2).

11. Parking

The parking requirements in Bylaw 15036 are proposed to be the same as in Phase 1 – minimum of one extra on-site parking space per every Secondary, Garage (or Garden Suite in Phase 2), plus two for the principal dwelling minimum 3 on-site parking spaces in total). Tandem parking is allowed. Feedback on parking requirements in Phase 2 has been mixed: some support extra on-site parking spaces, while other community representatives (Parkallen Community League and Grovenor Community League) have the view that this could lead to the paving of yard green spaces or could limit suites in high demand areas. In Phase 1, Belgravia Community League submitted similar concerns to those of Parkallen and Grovenor in Phase 2.

Parking needs and standards are currently in the process of being reviewed by the City and parking standards for Secondary, Garage and Garden Suites will continue to be monitored.

12. Secondary Suite Opportunity and Semi-detached Housing

There have been a number of inquiries from owners of Semi-detached housing (i.e., side-by-side duplex dwellings) regarding the potential to develop Secondary Suites. This includes 44 inquiries to Housing's Cornerstones Secondary Suites Grant program, 13 recorded inquiries to the Zoning Bylaw and Development sections from December 12 to October 6, 2008, and questions from attendees at the June 2008 Secondary, Garage and Garden Suites Public Open Houses and the September 30 Smart Choices Public Open House.

Also, there have been a few inquiries proposing Garage Suites within lots with Semi-detached Housing (but with detached rear garages, not attached to the neighbouring Semi-detached Dwelling's garage).

There are a number of illegal Secondary Suites developed within Semi-detached housing, with many Semi-detached Dwellings having second side entrances that lend themselves to basement suites. While lot sizes for Semi-detached Housing tend to be smaller than for Single Detached Housing, there is some potential opportunity for Secondary Suites within Semi-detached Housing, even using the same minimum Site (lot) area that applies to Single Detached Housing with Secondary Suites (360 m²). Most of the opportunity would be in the RF4 Semi-detached Residential Zone, which has the largest number of Semi-detached Housing units.

The following summarizes a review of the proportion of Semi-detached Housing Dwellings within the RF1 through RF4 zones that comply with the existing minimum lot size requirement:

RF4: 2,370 Semi-detached Dwellings, or 38.6% meeting the minimum site size.
RF3: 218 Semi-detached Dwellings, or 13.3% meeting the minimum site size.
RF1: 113 Semi-detached Dwellings, or 37.7% meeting the minimum site size;
RF2: 62 Semi-detached Dwellings, or 9.7% meeting the minimum site size;

The phased approach to Secondary Suites did not contemplate allowing Secondary Suites within Semi-detached Housing; instead the approach emphasized increasing the opportunity for Secondary Suites within Single Detached Housing, and refining locations for Garage and Garden Suites within Single Detached residential lots, over two phases.

The main concern with regard to Semi-detached Housing has been that allowing Suites on both sides would result in a de-facto "fourplex" building. It is suggested that the Administration continue to monitor the demand for Secondary Suites within Semi-detached housing and consider regulations for Secondary Suites within Semi-detached Housing in the future.

13. Secondary (and Garage) Suite Opportunity and Direct Control Zones

The Phase 1 and proposed Phase 2 Bylaws did not include existing Direct Control zones for consideration for Secondary Suites. Unlike the amendments to the regular residential zones, Direct Control zones are location-specific, and any Zoning Bylaw amendments would require notification to landowners adjacent to, and located within, the sites already zoned as Direct Control 1 zone, which is a more involved Zoning Bylaw amendment process.

A review of DC zones shows that only the Oliver area DC1s allow Secondary Suites. Many of the DC zones that allow or include pre-existing Single Detached Housing are transition zones that encourage higher density housing, or transition into two-unit housing, and therefore Secondary Suites, and in some cases, Garage and Garden Suites, would meet with the intent of these DC zones and/or the Area Redevelopment Plan for the neighbourhood in which they are contained.

Staff have received 19 recorded inquiries regarding Secondary and/or Garage Suites within properties zoned DC1 (15 inquiries to the Housing Branch, and four within the Zoning Bylaw sections and some to the Housing Branch and Development sections). Housing has also received five inquiries on properties zoned DC2. Inquiries have included DC1 lots located within the Boyle-McCauley, Garneau, Riverdale, and Westmount, neighbourhoods. A review of DC1 zones that allow Single Detached Housing, shows areas in Cloverdale, Riverdale, Rosssdale, Stadium, and Garneau have the potential to include Secondary Suites while meeting the intent of the zone and not necessarily requiring major changes to the applicable Area Redevelopment Plans. It is suggested that the Administration consider amendments to facilitate the inclusion of Secondary Suites within these areas.