



Response to Decision Report, 65 Delhi Street Proposed Zoning By-law Amendment, File OZS21-004, re Conformity with Official Plan

The Delhi Eramosa Neighbourhood Advocates group disagrees with the Decision Report Planning Analysis contention that the requested rezoning would be in conformity with the Official Plan, as asserted in Attachment-8 Planning Analysis.

The Planning Analysis notes correctly that the subject site is designated predominantly Low Density Residential. It also correctly notes that the maximum residential density for Low Density Residential land is 35 units per hectare.

However, it contends that higher density permissions of 100 units per hectare would be permitted for the site because it is *“accessed via Delhi Street which is a collector road, and is bound by Eramosa Road which is an arterial road.”*

The specific section of the Official Plan that would permit 100 units per hectare is section 9.3.2.4. This states that notwithstanding maximums specified in sections 9.3.2.2 and 9.3.2.3, height and density may be permitted up to a maximum height of six storeys and a maximum net density of 100 units per hectare *“in accordance with the Height and Density Bonus policies of this Plan.”* Height and density bonus policies are laid out in Official Plan section 10.7.

The legal basis for section 10.7 was Planning Act section 37(1), entitled “Increased density, etc., provision by-law”: *“The council of a local municipality may, in a by-law passed under section 34, authorize increases in the height and density of development otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law.”* This section of the Planning Act was repealed and replaced under amendments (made by 2019, c. 9, Sched. 12, s. 1-8, 11, 13, 14, 16, 17 (3), (4) and 18-20) proclaimed on September 3, 2019.

With the amendment to the Planning Act proclaimed on September 3, 2019, the provisions for density and height bonuses in Official Plan section 10.7 are no longer permitted, as are the provisions for bonusing in section 9.3.2.4, which relies on section 10.7.

The Planning Analysis also asserts that because the proposed bylaw amendment is for 36 *“bedrooms for individual residents with shared kitchen and bath facilities within the building instead of standard dwelling units ... the residential portion of the proposed development would not be measured in the typical density of housing units per hectare.”*

This is incorrect. In all references to density, the Official Plan refers generically to “units”. The Glossary of the Official Plan does not provide an entry for this generic term, though it provides an entry for Dwelling Unit; and one for Lodging House that makes reference to Lodging Unit: *“any place, including but not limited to a dwelling unit, that is used to provide 5 or more lodging units for hire or gain directly or indirectly to persons.”* The Zoning By-law Definitions section also does not provide an explicit definition of Unit or a statement that Unit is synonymous with Dwelling Unit and that Lodging Units should be treated differently from Dwelling Units for the purpose of density calculations.

Therefore the maximum density provisions in section 9.3.2.3, i.e., 35 units per hectare, must prevail. Since the site is 0.53ha, the maximum permissible residential density for 65 Delhi Street is 18 units.

Per: Stephen Kilburn, for Delhi Eramosa Neighbourhood Advocates