



STAFF REPORT ACTION REQUIRED

Zoning Review of Reverse Slope Driveway Regulations

Date:	October 30, 2008
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	Pg080068

SUMMARY

The purpose of this report is to advise on two separate requests concerning reverse slope driveways. One request from Council directs a report to this Committee. The other is from North York Community Council to amend the North York zoning bylaw.

A further request involves amending the definition of boarding and lodging house. Both these matters are of city-wide concern being addressed in the city-wide zoning bylaw that is now being prepared.

To amend one zoning bylaw and not all the current zoning bylaws that share the issue jeopardizes the City's ability to defend such an amendment at the Ontario Municipal Board. It will give appellants a convenient argument of inconsistent treatment of similar properties across the City. In addition, appellants will have another opportunity to appeal as each successive existing zoning bylaw is amended.

Further, such action will take away staff resources needed to complete the city-wide zoning bylaw work. Amending the existing zoning bylaws is time-consuming work owing to the fact that there are 43 of them. In addition, should there be an appeal of any one of them, more staff resources will be required to defend the appeals.

The early part of 2009 is the target date for producing the draft city-wide bylaw for public consultation. In the interim, steps will be taken to highlight the basement flooding implications of reverse slope driveways for Committee of Adjustment panel members in their consideration of relevant variance applications.

RECOMMENDATIONS

The Chief Planner and Executive Director of the City Planning Division recommends:

1. No general zoning amendments be considered for the North York District prior to consideration of a comprehensive draft city-wide zoning bylaw with respect to:
 - a. the definition of Boarding or Lodging Houses, and
 - b. reverse slope driveways.
2. No statutory public hearing be held with respect to the above.
3. This report be forwarded to the North York Community Council for information at its meeting of November 18, 2008.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

On July 7, 2008, North York Community Council considered an information report from the City Solicitor (May 22, 2008) on the “Definition of Boarding or Lodging House in North York Zoning Bylaw 7625”.

<http://www.toronto.ca/legdocs/mmis/2008/ny/bgrd/backgroundfile-13806.pdf>

The Community Council adopted the following (NY17.27):

1. Requested the Chief Planner and Executive Director, City Planning Division, to submit a report to the North York Community Council meeting on November 18, 2008, regarding amendments to the North York Zoning Bylaw to the definition of Boarding or Lodging House that would be consistent with the approach taken in the former City of Toronto Zoning Bylaw as it applies to the area covered by the North York District.
2. Hold a statutory public meeting on November 18, 2008, on the definition of a rooming house in the North York bylaw for the area covered by the North York District.

In a separate action, on September 9, 2008, North York Community Council considered a Member Motion (September 9, 2008) on “Local Measures to Reduce Basement Flooding in the North York Community Council Area”.

<http://www.toronto.ca/legdocs/mmis/2008/ny/bgrd/backgroundfile-15555.pdf>

At its meeting of September 24 and 25, 2008, City Council considered the North York Community Council report (NY18.53) and adopted the following, as amended:

1. City Council direct the Chief Planner and Executive Director, City Planning Division, to report to the North York Community Council for its meeting on November 18, 2008, on possible amendments to the bylaws in the North District that will eliminate all, as-of-right, reverse sloped driveways in the North District.

2. City Council direct that this item be scheduled as a public hearing.

Also at the meeting of September 24 and 25, 2008, City Council considered a report from Toronto Water, dated August 18, 2008, “Update on the Engineering Review Addressing Basement Flooding” (EX23.16).

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-15074.pdf>

Among the several decisions coming from this, City Council directed City Planning to deal with zoning regulations in the new city-wide zoning bylaw that prohibit new reverse slope driveways, inform the Committee of Adjustment as to their impact, and:

“... in the interim, ... report to the November 13, 2008 meeting of the Planning and Growth Management Committee on possible other joint measures of the Toronto Water and Planning Divisions to give equivalent effect to this recommendation in the period prior to consideration of the new Zoning By-law.”

ISSUE BACKGROUND

North York Community Council has requested two reports from City Planning to be submitted to its meeting of November 18, 2008 about:

- (1) amending the zoning bylaw for the former City of North York as it applies to the area covered by the North District to revise the definition of Boarding or Lodging House; and
- (2) amending the zoning bylaws that apply to the area covered by the North York District to eliminate all as-of-right permission for reverse slope driveways in the North York District.

The North York Community Council also requested that statutory public hearings for such amendments be held at its meeting of November 18, 2008.

These two zoning amendment requests are being addressed in this one report because they share the same procedural and administrative problems, in addition to being complex matters that are important to the city as a whole.

Changes to the rooming / boarding / lodging house definition and regulations restricting reverse slope driveways (and related basement flooding) are both of concern to the entire city. Like other city planning initiatives that cross community council boundaries, the Planning and Growth Management Committee is the appropriate forum to deal with such requests.

COMMENTS

The following remarks briefly summarize some of the key concerns over both the rooming house definition and the reverse slope driveway permissions to indicate the importance of dealing with them on a city-wide basis in the new zoning bylaw.

Rooming House Definition

North York Zoning Bylaw 7625, which applies to all of the former City of North York, uses the terms “Boarding House” and “Lodging House” instead of the more commonly used term “Rooming House”, but it is basically describing the same thing. The North York bylaw says:

“Boarding or Lodging House shall mean a dwelling in which lodging with or without meals is supplied for gain, but shall not include a hotel, hospital, children’s home, nursing home, home for the aged or other similar establishment”.

Both the East York and York zoning bylaws use the same terms. The Etobicoke zoning code refers only to Lodging House. The zoning bylaw of the former City of Toronto just uses Rooming House. The Scarborough bylaws use “Rooming and/or Boarding House”. All the bylaws have somewhat different definitions.

The main concern of the North York Community Council, based on its response to the City Solicitor’s information report of May 22, 2008, is that the phrase “for gain” in the definition creates some difficulty in prosecuting illegal rooming houses. Since it is difficult to prove that rent is being paid for the rooms, it is hard to claim the place is indeed a boarding or lodging house for purposes of the bylaw.

Among all the definitions for rooming / boarding / lodging houses in these former municipalities’ zoning bylaws, only the bylaw of the former City of Toronto does not include a reference to payment. East York also says “for gain”, York includes “for compensation”, Etobicoke is “for remuneration”, and the Scarborough bylaws use “for valuable consideration”.

Having different terms for the same land use is a typical problem stemming from having different bylaws applying to different parts of the same city. For example, a “townhouse” in one part of the city would be a “rowhouse” in another area, or a “multiple attached dwelling” in yet another area. Having a harmonized language applying to all of Toronto is a primary objective of bringing in a new city-wide zoning bylaw.

Reverse Slope Driveways

The topic of reverse slope driveways is also dealt with differently in the various zoning bylaws of the former municipalities. The bylaws that would have to be addressed by the direction emanating from the North York Community Council include those from North York, Toronto, East York and York since the North York District covers some portions of each of those former cities.

Driveways that lead downward to a parking area below ground, or in the lower levels of a building, are common to many land uses. They are expected in most large buildings, such as offices and apartments. Underground parking is even permitted in some parks.

The issue that is of concern in this situation is where a driveway is leading downward from the street into a parking area in the lower level in a house – usually detached or semi-detached houses, and individual townhouse units that front onto a street.

These have been the subject of a number of criticisms, ranging from safety to aesthetics; but the prime focus of attention is on the high risk of basement flooding posed by this design element. This has been highlighted in the August 18, 2008 report from Toronto Water, “Update on the Engineering Review Addressing Basement Flooding”. When City Council dealt with this report at its meeting of September 24 and 25, 2008 (EX23.16), several directions were adopted, including:

“14. The Chief Planner and Executive Director, City Planning, in consultation with the General Manager, Toronto Water, the Chief Building Official and the City Solicitor, prepare zoning regulations, in his report on the new Zoning By-law, that prohibit the construction of any new reverse sloped and below grade driveways and that pending the Zoning Amendments, the Chief Planner and Executive Director, City Planning, in consultation with the General Manager, Toronto Water, inform and educate all Committee of Adjustment Panels as to the significant impact of approving variances that permit reverse slope driveways”.

This was augmented in a similar direction, quoted in part:

“16. ... in the interim, the General Manager, Toronto Water and the Chief Planner and Executive Director, City Planning, be requested to submit a report to the November 13, 2008 meeting of the Planning and Growth Management Committee on possible other joint measures of the Toronto Water and Planning Divisions to give equivalent effect to this recommendation in the period prior to consideration of the new Zoning By-law”.

The city-wide zoning bylaw that is now being drafted includes regulations to this effect.

The relevant regulations in the current zoning bylaws do not all refer to this matter in the same way. The North York bylaw addresses the elevation of the floor of a garage at its entrance, in relation to the established grade. The bylaw from the former City of Toronto refers to the floor level of a garage being below grade. In East York, the reference is to garages being below finished grade. Each of the bylaws define their version of “grade” differently, so the outcome of the rules also differ.

In the former City of Toronto, several types of residential buildings cannot have a garage that is below grade when the garage is integrated into the building and the garage entrance is in the front wall. In the Leaside part of East York, garages cannot be below finished grade in two particular residential zones. In the bylaw for the former Township

of East York, this prohibition extends to more zones. In North York, the floor of the garage in a detached house is not to be below the elevation of the centre-line of the street, but only in certain circumstances.

The York bylaw uses a sub-heading called depressed driveways while the text refers to the maximum downward slope of a driveway leading to a depressed garage. Both the North York bylaw and the Toronto bylaw also have regulations relating to the maximum slope of a driveway. Where permitted, the allowable slope of a driveway would have to be no greater than 6% in one area, 10% in another area, and 15% in yet another.

In York, the depressed garages are permitted, subject to a maximum gradient of 6% for the driveway. The zoning bylaws in Etobicoke and Scarborough do not address the topic, so downward sloping driveways are permitted there. The latter two former cities are not in the North York District, but they are covered by the City Council directions noted above.

Until such time as city-wide amendments are brought forward, basement flooding will be highlighted when staff advice is provided to Committee of Adjustment panels in their consideration of variance applications for garages at lower elevations, where current zoning would not have allowed them.

Toronto Water staff is preparing criteria to help the Committee of Adjustment assess the implications for every application for such a variance. Planning staff will recommend, for the relevant applications, that the Committee impose a condition of approval ensuring Toronto Water is satisfied with the drainage design for any proposal the Committee is otherwise prepared to approve.

A training day has been scheduled for Committee of Adjustment panellists on November 28, 2008. This matter is on the agenda for that day.

CONCLUSION

Regulations restricting reverse slope driveways, to partly address the concern over basement flooding, are a city-wide issue. Similarly, the definition of boarding and lodging house needs to be amended and for the sake of consistency and fairness, it would be more appropriate to amend all the bylaws at one time. More importantly, amending one zoning bylaw or portion of the land area it affects, will compromise the City's ability to defend such an amendment at the Ontario Municipal Board. It may also appear that bylaw is directed at a specific group of property owners. Appellants also would have another opportunity to appeal the zoning when the rest of the City's bylaws are amended.

Further, such action will take away staff resources needed to complete the city-wide work.

A harmonized definition for rooming houses and restrictions on reverse slope driveways will be in the city-wide zoning bylaw that is now being drafted. The early part of 2009 is the target date for producing the draft city-wide bylaw for public consultation. Redirecting staff resources to implement these amendments could jeopardize the target dates for the city-wide zoning bylaw project.

A training day has been scheduled for the Committee of Adjustment panel members (November 28, 2008), at which time the basement flooding implications of reverse-slope driveways will be addressed. Toronto Water is preparing criteria to help the Committee of Adjustment assess variance applications for garages with low elevations.

The City Solicitor and the General Manager of Toronto Water have been consulted in the preparation of this report.

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SIGNATURE

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