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Planning Policy Branch
13th Flr, 777 Bay St
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Submitted via email to PlanningConsultation@ontario.ca and submitted online via Ontario's Regulatory Registry and the Environmental Registry of Ontario.

Dear Planning Policy Branch,

RE: ERO # 019-9210: Proposed amendment to Ontario Regulation 299/19 ADDITIONAL RESIDENTIAL UNITS, made under the Planning Act.

On behalf of the Ontario Federation of Agriculture (OFA)'s more than 38,000 farm family members, thank you for the opportunity to participate in the consultation process for ERO 019-9210: Proposed amendment to Ontario Regulation 299/19 ADDITIONAL RESIDENTIAL UNITS, made under the Planning Act. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations administered by all levels of government. We are passionate and dedicated to ensuring that the agri-food sector and rural communities are considered and consulted with for any new or changing legislation that would impact the sustainability and growth of our farm businesses.

OFA is committed to protecting agricultural lands in Ontario that grow food for today and for future generations. We maintain that agricultural activities make the highest value and best use of arable land, and that agriculturally managed landscapes provide environmental and ecological co-benefits for the people of Ontario when used for normal farm practices. Feeding a growing global population will depend on how well we manage this valuable, finite resource for future generations.

OFA continues to support the intensification of Ontario's urban settlement and built-up areas. The prosperity of Ontario's Agricultural System relies on protections that redirect non-agricultural uses and developments into appropriate areas, away from the countryside. Additional Residential Unit policies and regulations could support these intensification efforts. However, OFA is concerned about some perceived inconsistencies regarding O. Reg. 299/19:

- The Proposal Details both state that the proposed regulatory changes would only apply in serviced settlement areas and that planning authorities may apply O. Reg. 299/19 in rural areas on a discretionary basis. The proposal is written with an urban setting in mind and would be harmful to countryside if enacted as written.
- Waiving development applications will result in a loss of municipal revenue, which municipalities will need to pass on to the taxbase. This may be unpopular among residents who may feel development costs are being passed on to the taxpayer, particularly among residents living outside of development areas.

Barriers to Additional Residential Units (ARUs)

The proposed changes in ERO 019-9210 to O. Reg. 299/199 target barriers to constructing ARUs, specifically time and money. As Ontario's municipalities become increasingly complex in their local planning policies and regulations, the province has sought to "cut red tape" at various stages to get housing projects approved faster.

Planning application and development fees support the infrastructure associated with new developments. Roads, public transit, drinking water and wastewater services, community centres, fire and rescue, and police facilities all receive money from development fees. The proposed changes would mean that Minor Variances and Rezoning would not be required of ARU development applications. Therefore, in the absence of this revenue source, the cost of new and upgraded infrastructure will be subsidized by the taxpayer.

It will be important for MMAH to consult with experts at the municipal level to ensure that infrastructure service levels and capacities are not harmed through the elimination of fees associated with relevant development applications. After decades of under-investment and strained budgets, Ontario's municipal infrastructure has accrued a backlog of $52 billion of repairs and maintenance. Taxpayers may not be eager to absorb additional costs that have historically been offset by development fees.

Proposed Changes

The proposal is to amend O. Reg. 299/19, allowing Additional Residential Unit applicants to supersede Zoning By-Law requirements in settlement areas with full municipal water and sewage services. The proposed changes will automatically apply to residential uses in settlement areas with full municipal water and sewage services.

It is not entirely clear whether the proposed changes to O. Reg. 299/19 would apply in rural areas and settlement areas without full servicing. The proposal states that the existing "framework is discretionary" in rural areas with partial servicing but then goes on to say that changes "would not apply to rural areas, or settlement areas without full municipal servicing." The proposal does not state that the discretionary framework is being done away with. As ARUs in rural areas are an upcoming topic, **OFA has taken this as an opportunity to advise against using this framework in rural areas. Many of the proposed exceptions or relaxations of municipal planning tools are not appropriate in the countryside.**

There are five Zoning By-Law requirements discussed in the proposal. Each would normally be used to plan the density of an area or specific lot. This is done to ensure that municipal and on-site servicing capacities meet the needs of residents. The proposal is to exempt or to relieve ARUs from having to meet named Zoning By-Law requirements to reduce costs and regulatory barriers encountered by housing development proponents.

1. Angular Plane Requirements

Angular Plane Requirements (APRs) are conceptually similar to Setback Requirements, however they operate in three-dimensional space to limit a landowner's "air rights" to erect tall structures. Where applied, an Angular Plane delineates the maximum built height within an imaginary inclined plane, originating at a specified point (e.g. a road centreline, a lot line, etc).

Municipalities use APRs in Zoning By-Laws to ensure that residents' homes have access to sunlight and a minimum level of privacy, that large structures do not create wind tunnels, and that new developments conform to the neighbourhood character (e.g. a low-rise neighbourhood). APRs are typically used within urban settings, although they do appear in rural settings.

The proposed change is to exempt ARUs from all APRs in municipal ZBLs. APRs are sometimes criticized for sacrificing density for neighbourhood character and ignoring how modern designs can mitigate privacy concerns and avoid wind tunnels.

OFA would caution that APR was developed as a planning tool to address issues related to urban comfort and lifestyles. We encourage the Planning Policy Branch to consult with municipal experts and engineers to ensure that this proposal does not compromise livability in urban areas. Relaxing APR, however, would result in more developable airspace in Ontario's urban areas.

2. Maximum Lot Coverage

Most Zoning By-Laws regulate the maximum area of a lot that may be developed into buildings, structures, and other permanent hardscape. Usually, this number is expressed as a percentage of the lot area. Maximum lot coverage (MLC) varies by Zone and municipality, but urban areas typically see a higher MLC than rural areas, representing the fact that urban areas are intended to be denser than rural areas. For example, a Residential Zone in an urban area may have an MLC of 40%, while in the countryside, a Rural Zone might allow 15%.

MLC requirements are meant to improve living conditions by ensuring properties have sunlight, air circulation, and space for recreation. MLC is also used to address issues related to overcrowding, such as capacity for on-site services, drainage, and environmental preservation.

The proposed change is to increase the MLC to 45% for lots that have, or are proposing, ARUs. As written, the MLC requirement exemption would apply "all buildings and structures" in addition to the lot's ARU. Where Zoning By-Laws permit a maximum lot coverage greater than 45%, this proposed supersession would have no effect.

3. Floor Space Index (FSI)

Floor Space Index (FSI) represents the maximum floor area that a building or structure can occupy. FSI is calculated by dividing the gross floor area of all structures on the lot by the lot area, then comparing that figure with an upper limit. Zoning By-Laws typically allow a high FSI in denser urban residential areas (ie. greater than 1), which results in multi-storey residential developments, while suburban and low-density residential areas have low FSIs.

The proposed change is to allow ARUs to override FSI requirements. Like the proposal regarding MLC, the proposed exemption to FSI requirements is worded such that it applies to the "parcel," and not ARUs specifically. Rather, as written, a parcel with one or more ARUs would be allowed to ignore FSI requirements.

4. Minimum Lot Size

Municipalities use their Official Plans and Zoning By-Laws to regulate the minimum size of lots. Minimum lot size (MLS) typically varies by Zone or by use, with residential lots typically being on the smaller side and agricultural lots being on the larger side. MLS is used to maintain both lifestyles and livelihoods, as a certain amount of space is necessary for human comfort, and different industries require different land areas to be effective or profitable.

The proposal is to override all MLS requirements for ARU applications, with regards to the total horizontal area of a lot (in plain language, the bird's eye view of the lot area), for lots with ARUs. Once again, as written, this proposal would mean that non-ARU structures and uses would be relieved of MLS requirements.

5. Building Distance Separation

Zoning By-Laws require the spatial separation of buildings and structures. Building distance separation requirements mitigate challenges associated with overcrowding, such as the transfer of noise, vibrations, smells, airborne particulate (e.g. smoke), and fire from one building to another. Unlike a setback, building distance separation applies between buildings, and not to lot lines.

The proposal is to reduce the minimum building distance separation for ARU-containing structures to a maximum of 4 metres. In situations where the minimum building distance separation is less than 4 metres, the smaller separation distance is respected.

An expected outcome is an increase in nuisance complaints about neighbours' activities. It might be expected that building engineers would interpret the Ontario Building Code to require higher standards of building materials to offset the risk of fire and heat being transferred between structures.

OFA recommends that the government make clear what kinds of building distance separation requirements are proposed to be overruled, as similar terms appear outside of Zoning By-Laws. Separation distance is also part of the Building Code, and it will be necessary for engineers and building designers to be informed of any changes.

OFA Supports Urban Intensification

The proposed changes support the intensification of Ontario's urban settlement areas. Directing development into urban areas and away from the countryside is important to protecting Ontario's Prime Agricultural Areas and arable land.

The list of proposed changes does not include the expansion of settlement area boundaries or providing exemptions to Minimum Distance Separation (MDS) calculations. **OFA thanks the Planning Policy Branch and the MMAH for not including proposals of that kind. OFA supports fixed and permanent settlement area boundaries for municipalities; development beyond existing built-up areas should only be available to municipalities that have exhausted opportunities for infilling, brownfield and greyfield redevelopment, and have demonstrated how density targets have been met that are locally appropriate and support farmland preservation.**

MDS is an important tool for reducing land use conflicts between livestock facilities and residential uses, as it prohibits neighbouring residential uses and livestock facilities from being constructed in proximity. Allowing ARUs to encroach upon the countryside would effectively trade farmers' livelihoods for housing developments.

Lately, planning tools like Minor Variances have been used inappropriately by housing proponents to reduce MDS around existing livestock facilities, sometimes by 50% or more. Other difficulties have been encountered related to public notice. When an MDS calculation spills over municipal borders, sometimes municipal authorities do not extend notice to neighbouring municipalities' residents and farmers. In other cases, livestock farmers are not notified their facilities are being used in MDS calculations and the scale of their operations becomes misrepresented in determining separation distances. These issues are expected to worsen until they are addressed.

Regarding the proposed amendments to O. Reg. 299/19, OFA supports the use of MDS and appreciates this proposal leaving MDS intact. OFA would support future efforts to bolster municipal adherence to MDS and the timely circulation of public notices.

Rural Concerns Related to Additional Residential Units

Urban and rural lots differ in several important ways. Where intensification and development are concerned, tools like MLC, FSI, and MLS prevent lots from being severed and developed into small, over-built, and under-serviced lots, which ultimately take valuable land out of the Agricultural System.

The proposed changes target intensifying existing residential lots or opening opportunities to construct housing where none was previously permitted. In the urban setting, the planning requirements discussed above are used to ensure a minimum level of comfort, with access to sunlight, air flow, etc. In the rural setting, planning requirements for structures and hardscape are related to critical on-site servicing.

Rural lots, in comparison to urban lots, are large, often 40 hectares (100 acres) or larger. Lots of this size are necessary to enable agricultural uses, as it is often not profitable to farm small lots, or impossible to navigate with modern farming equipment. Providing ARUs with exemptions to MLC, FSI, and MLS would harm these lots' long-term agricultural potential. Notably, allowing 45% MLC on a 40-hectare (100-acre) lot could trade 18 hectares (45 acres) of farmland for housing that would be better placed in an area with municipal servicing. Farmland makes up less than 5% of Ontario's land base and is already being lost at an unsustainable rate.

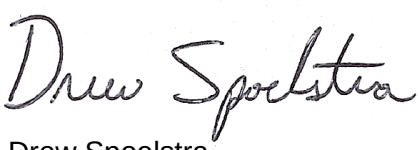
Agricultural lots are often required by the Zoning By-Law or Official Plan to have such large minimum sizes because they disincentivize non-agricultural uses. Allowing smaller lots would incentivize residential encroachment into the countryside, and through MDS between livestock facilities and residential uses, would dramatically reduce where livestock operations could be built or expand. **It is therefore not recommended to allow residential use on undersized lots, as this would incentivize taking farmland out of production for the sake of housing development.**

Closing Remarks

OFA appreciates the opportunity to provide our feedback and agricultural perspectives on the intensification of Ontario's residential areas. We look forward to working with the provincial government and our municipal counterparts to safeguard Ontario's farmlands as well as provide communities with access to usable natural landscapes.

ARUs will be a part of how Ontario addresses the housing crisis. OFA recommends that the government tread carefully in how it manages the permitting of those ARUs. The planning system has been defined and refined over many years with the intent of preserving the will of Ontario's residents, their lifestyles, and their livelihoods. Eliminating requirements may be a means of approving ARUs but it should be done with caution.

Sincerely,



Drew Spoelstra
President

cc: Hon. Rob Flack, Minister, Ontario Ministry of Agriculture, Food and Agribusiness
Hon. Paul Calanda, Minister of Municipal Affairs and Housing of Ontario
OFA Board of Directors