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Phase 2 General Provisions Report

Town of Whitby Comprehensive Zoning By-law Study

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Prepared For: Whitby

IN THE ZONE

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1 Introduction



This report forms part of the Whitby Zoning By-law Review Study, a comprehensive phased undertaking that sets out to update Whitby's existing zoning by-laws into a new single Comprehensive Zoning By-law for the Town. The overall intent of the Zoning By-law Review Study is to create a new zoning by-law that will implement the Official Plan, that is clear, concise and easy to read and that provides necessary land use and built form direction while being flexible in implementation where appropriate.

Phase 1 of the Study consisted of a thorough review and comparison of the Town's existing Zoning By-laws, Zoning By-Law #1784 ("1784"), Zoning By-Law #2585 ("2585") and Oak Ridges Moraine Zoning By-Law #5581-05 ("5581-05") and identification of issues within.

Phase 2 focuses on analyzing the issues identified in the Phase 1 reports to develop recommendations and approaches for each of the topic elements.

The objective of this Phase 2 General Provisions Report is to provide strategic direction and a general blueprint for the General Provisions section of the Town's new Comprehensive Zoning By-law.

This report is broken down as follows:

Section 2: Provides a brief overview of the Phase 1 General Provisions Report.

Section 3: Outlines the recommended approach for the General Provisions section within the new Comprehensive Zoning By-law.

Section 4: Includes a summary of recommendations and outlines next steps.

2 Phase 1 Background



As part of the Phase 1 General Provision Report, a review and analysis of Whitby's existing Zoning By-Laws was undertaken to critically compare the existing General Provisions sections.

The review of the like sections highlighted some similar provisions across the zoning by-laws, as well as some differences. There were several provisions that appeared in one of the zoning by-laws, but not the other two. In the detailed analysis, components from each zoning by-law were identified to be carried forward, sometimes with edits, into the new Comprehensive Zoning By-law. The report identified key provisions from the existing Zoning By-laws that were to be carried forward, or potentially carried forward, including the following provisions:

- Public Uses
- Excepted Lands and Buildings (Legal Non-conformity)
- Lots Having Less Area and/or Depth and/or Frontage
- Frontage on Public Street
- Reduction of Requirements
- Sight Triangles
- Building Repair
- Accessory Uses
- Roads
- Ten Per Cent (10%) of Every Lot (Landscaping)
- Public Garages
- Greenbelt Zones
- Swimming Pools
- Accessory Buildings/Structures
- Yard Encroachments Permitted
- Group Homes
- Residential Sales Offices
- Model Home
- Recreational Propane Sales
- Accessory Apartment
- Home Based Business
- Building Extensions and Repair
- Height Exceptions
- Special Uses Permitted
- Detached Garage and Car Ports

- Existing Uses
- ORM Environmental Protection Zones/Greenbelt
- Special Setbacks (Minimum Distance Separation)
- Areas of High Aquifer Vulnerability
- Rapid Infiltration Basins and Columns
- Single Detached Dwelling on a Lot
- Zero Decimal Three (0.3) Metre Reserves
- Standards for Attached Private Garages on Lots Accessed by a Lane
- Standards for Attached Private Garages on Lots Accessed from a Street
- Height Exemptions
- Holding (H) Zone Provisions

In addition, a best practice review of other municipal zoning by-laws was undertaken, identifying potential provisions to be considered for inclusion into Whitby's new Comprehensive Zoning By-law. A long list of 70 provisions were identified that other municipalities address that are not addressed in the existing zoning by-laws. Introducing all of these provisions would be excessive and is not considered necessary. This report considers a scoped list of those provisions in the second part of Section 2.

The analysis undertaken in the Phase 1 General Provisions Report formed the basis of the next section of the report.

3 Recommended General Provisions



3.1 Recommendations on Existing Provisions

Table 1 proposes recommendations for the General Provisions section of the new Whitby Comprehensive Zoning By-Law, based on the analysis undertaken in Phase 1. Within the table, each existing provision that was recommended to be carried forward in Phase 1 is discussed. Edits are recommended to simplify wording and make it easier for the reader to comprehend and follow the provisions. Where suggested edits to the existing wording are recommended, these edits are shown in **bold** for additions and ~~strikethroughs~~ for deletions.

For the purposes of adhering to the Oak Ridges Moraine Conservation Plan, some provisions that apply within the boundaries of the Oak Ridges Moraine Conservation Plan need to be subject to different standards, relating to what is considered “existing”. Thus, a new schedule will identify the areas of the Oak Ridges Moraine Conservation Plan in the new Comprehensive Zoning By-law for the purpose of interpreting those provisions. Reference to that new schedule is made, as needed, in the suggested revisions in **Table 1**.

The ultimate organization of the general provisions section will be determined in Phase 3, when the first draft of the section is prepared. It is recommended that the organization of the section follow the example noted in some other municipality’s zoning by-laws, which group general provisions for uses such as home based-businesses, bed and breakfasts, etc. into one sub-section.

Table 1: Recommended General Provisions

Subsection	Purpose	Recommendation
Public Uses	That this zoning by-law does not prevent the use of land for public uses.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.1, with recommended edits. "Public Uses a) Nothing in this By-law shall prevent the use of any land as a public park, playground or road allowance. b) Notwithstanding any other provisions of this By-law to the contrary, the Town of Whitby or Region of Durham or any of their municipal service boards as defined in the Municipal Act, and any agency of the Federal or Provincial Government, or any telephone, telecommunications, cable, natural gas, railway, or pipeline company, may use any land or erect or use any building or structure in any zone provided the use of any land, building or structure is in compliance with the most restrictive regulations contained in the zone and is in compliance with the parking requirements ~~for such use~~ and provided ~~further that~~: (i) no goods, material or equipment shall be stored in the open, except as permitted in such zone, (ii) any building erected under the authority of this paragraph in any Residential ~~(LD, MD, HD)~~ Zone shall be designed and maintained in general harmony with residential building~~s~~ of the type permitted in such zone. c) ~~The exemption in~~ subsection **(a) and** (b) ~~for a use in any zone~~ shall not apply to:

Subsection	Purpose	Recommendation
		(iii) **permit uses in the** [**Natural Heritage**] ~~Greenbelt (G)~~ Zone except for linear infrastructure i**n accordance with the policies of the Oak Ridges Moraine Plan** and the uses otherwise permitted in that Zone; (iv) permit any outside storage, (v) permit a waste transfer or waste processing facility; (vi) permit any land, building or structure used by any local School Board, University or College. Or (vii) permit any land or building to be used for administrative offices, retail sales, or vehicular or equipment maintenance purposes of any utility company." c) Where a use addressed in this section is listed as a permitted use in a zone, it is also still permitted outside of that zone as per the provisions of this section.
Excepted Lands and Buildings (Legal Non-conformity)	Addresses legal- non conforming uses.	This provision should be moved to the Administration Section of the zoning by-law as described in the Phase 2 Administration Report and referred to as Legal Non-Conforming.
Lots Having Less Area and/or Depth and/or Frontage	Buildings and structures can be constructed on lots that are smaller than the requirements within this zoning by-law if the lot existed at the time the by-law comes into effect.	This provision should be moved to the Administration Section of the zoning by-law as described Phase 2 Administration Report and referred to as Legal Non-Compliance.

Subsection	Purpose	Recommendation
Building Repair	This zoning by-law does not prevent repairs of non-conforming uses as long as they do not cause major changes which contravene the provisions of the zoning by-law.	This provision should be moved the Administration Section of the zoning by-law as described Phase 2 Administration Report and referred to under Legal Non-Compliance.
Existing Uses	That uses that existed as of Nov. 15, 2001, may continue.	This provision should be moved to the Administration Section of the zoning by-law as described in the Phase 2 Administration Report and referred to under Legal Non-Conformity.
Frontage on Public Street	That a lot must front on a public street.	Carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.6. for simplicity, modified to address condominiums. Subsection c) to be addressed separately. ~~a)~~ No person shall erect any building or structure in any zone unless the lot upon which such building or structure is to be erected fronts upon a street~~. For the purposes of this subsection a "public street" shall not include a lane or private street.~~ b) Where a lot is separated from a street by land owned by the Town, the Region of Durham or the Province of Ontario **and** ~~which land is~~ held by such public agency for future road widening purposes or as a 0.3 metre reserve, a building may only be erected upon such lot if access to a street has been granted. c) ~~Where the lot and setback requirements in a zone apply to freehold lots abutting a public street, such provisions shall equally apply to freehold lots abutting a private street~~.

Subsection	Purpose	Recommendation
Frontage on a Private Street	Address frontage on a private street	Carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.6. c) Where the lot and setback requirements in a zone apply to freehold lots abutting a public street, such provisions shall equally apply to freehold lots abutting a private street.
Reduction of Requirements	Use, lot and building must meet zoning by-law requirements, and where conveyance for a public road occurs the remaining lot/use/building can continue to be used.	This provision should be moved to the Administration Section of the zoning by-law as described in the Phase 2 Administration Report under Legal Non-Compliance.
Sight triangles and visibility triangles	Sight requirements on corner lots.	This provision was carried forward from Zoning By-law #1784 (West Whitby Section 14) section 14.2.8. a) A sight triangle shall be required only where a visibility triangle abutting a corner lot has not been incorporated into the right of way of a public street. b) Notwithstanding any other provision of this By-law to the contrary, ~~in a sight triangle~~ no building, structure, fence, wall, driveway, hedge, tree, shrub or other vegetative planting or landscaping feature **that has a height of greater than 0.9 metres above finished grade level** shall be erected, maintained or permitted **in a sight triangle.** ~~that has a height of greater than 0.9 metres above finished grade level~~. c) Where a corner lot abuts a visibility triangle**,** the setback provisions and minimum front yard landscaped open space provisions shall be measured and/or calculated as if the visibility triangle had not been conveyed, provided all buildings are set back 0.6 metres from the

Subsection	Purpose	Recommendation
		visibility triangle with the exception that window sills, belt courses, steps, cornices, eaves, and eave troughs may project to within 0.3 metres of the lot line of the lot that forms one of the sides of the visibility triangle.
Accessory Uses	Where a land use, building or structure is allowed, it shall include accessory uses.	This provision was carried forward from Zoning By-law #1784 section 4.j), with edits. Where this By-law provides that land**,** ~~may be used or~~ a building or **a** structure may be ~~erected or~~ used for a purpose, that purpose shall include any accessory use **normally** incidental thereto.
Roads	Road allowance widths and building setbacks for specified roads.	Per discussions with the Town, this provision is not applied and is recommended to be deleted.
Ten Per Cent (10%) of Every Lot (Landscaping)	This area must be used for sodding and/or planting.	It is recommended that this provision be deleted and that landscaping strips and/or percent landscaping coverage be addressed by provisions in each applicable zone. If ultimately similar requirements are deemed appropriate for the different zones, and it is simpler to address in General Provisions Section, then a general provision will be considered at that time.
Public Garages Ramps	Provisions for public garages, specifically ramps.	Per discussions with the Town, this provision is outdated and is recommended to be deleted.
Environmental Protection Zones/ Greenbelt	These zones shall not be used to calculate lot area, frontage, coverage or yards in adjacent zones.	This provision is a combination of the Greenbelt Zone provision from Zoning By-law 1784 and from the Environmental Protection provision in Zoning By-law 5585-05. Ultimately it will be broadened to address any environmental zone. The Zone reference will have to be updated per the final environmental zones.

Subsection	Purpose	Recommendation
		Where a lot is divided into two or more zones, no part of an **[Environmental]** ~~ORM Environmental Protection (ORM-EP~~**) zone shall be used to calculate lot area, frontage, coverage or yards in adjacent zones on the same lot.**
Swimming Pools	Sets out permitted locations for swimming pools.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.11 with changes/additions. a) Notwithstanding any other provisions of this By-law to the contrary, an unenclosed, outdoor swimming pool, or hot tub may be permitted as an accessory use to a residential use in accordance with the following provisions: (i) Any swimming pool, or hot tub shall only be located in a rear yard or an interior side yard; (ii) Any **above or below ground** swimming pool or hot tub shall be set back a minimum distance of 1.0 metre from any side lot line or rear lot line and 4.5 metres from the front lot line ~~and the~~ **with the** setback ~~shall be~~ measured to the water's edge; (iii) Any recreational equipment, including slides, associated with a swimming pool, or hot tub shall not exceed a maximum height of 2.4 metres. (b) Where an outdoor swimming pool or hot tub is provided accessory to any other use, the minimum yards of the applicable zones shall apply and shall be measured to the water's edge.

Subsection	Purpose	Recommendation
Accessory Buildings/Structures	Permitted uses, locations, setbacks, maximum heights and roof types for accessory buildings.	It is recommended that Zoning By-law #1784 (West Whitby Section 14) section 14.2.14 be carried forward and addressed in a table format. The suggested tables are included as Table 2 and 3.
Accessory Buildings	Permitted uses, locations, setbacks, maximum heights and roof types for accessory buildings.	Delete in favor of Accessory Structure provisions.
Yard Encroachments Permitted	Structures permitted to encroach into a yard.	It is recommended that Zoning By-law #1784 (West Whitby Section 14) section 14.2.15 be carried forward and addressed in a table format. The suggested table is included as Table 4.
Group Homes	Definition of Group Homes, as well as where they are permitted.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.16. a) A group home shall be permitted in all dwelling types within all zones where residential uses are permitted. b) A group home shall comply with the zone provisions, which apply to the type of dwelling unit within which the group home is located. c) Notwithstanding the above provisions, a group home with six or more residents, exclusive of staff, shall not be permitted to locate within a dwelling unit in an apartment building.

Subsection	Purpose	Recommendation
Residential Sales Offices	Permitted locations.	This provision was carried forward from Zoning By-law #1784 (West Whitby) Section 14.2.17 with changes/additions. a) Residential sales offices shall be permitted in all Residential Zones, Mixed Use Zones, Commercial Zones, **and Agricultural Zones**; b) Residential sales offices shall be **permitted** ~~located~~ on a proposed lot or block within a draft approved or registered plan of subdivision or within a unit of a draft approved or registered condominium building; c) Residential sales offices shall be constructed or located in accordance with the zone provisions for the lot or block within which they are located; d) **Residential sales offices may be permitted outside a draft approved or registered plan of subdivision, subject to complying with the Zoning By-law.** ~~e) and,~~ f) ~~[Repealed]~~
Model Home	Permitted locations.	This provision was carried from Zoning By-law #1784 (West Whitby) Section 14.2.18. a) A model home shall be permitted on lands that have received draft plan approval. b) A model home shall be constructed or located in accordance with the zone provisions for the lot within which it is located. c) Parking shall be provided for each model home in accordance with the parking requirements for the dwelling type and zone category in which the model home is located.

Subsection	Purpose	Recommendation
		d) In the case of a model home(s) being constructed without a separate and distinct residential sales office on site, the parking standards required for a residential sales office shall apply. e) The total number of model homes which may be permitted on lands that have received draft plan approval for residential purposes shall not exceed the lesser of ten (10) dwellings or ten percent (10%) of the total number of residential units in each individual phase of the development. f) For the purposes of establishing the location of the lot lines, the model home shall be built within the lot defined by the draft approved plan of subdivision within which it is located, as if these lots were defined by a registered plan of subdivision.
Recreational Propane Sales	Zones in which this use is permitted.	Recommend deletion of this provision. This would be a permitted use as a normally occurring accessory use to any gas station and to any hardware store such as a Canadian Tire.
Accessory Apartment	Provides provisions for accessory apartments in single detached, semi-detached dwellings and townhouse units.	Owing to the introduction of new Provincial direction on accessory apartments, there are options for how to address this use in the Town. A discussion of options is provided following this table.
Home Based Business	The provisions applying to home based businesses.	This provision was carried forward from Zoning By-law #1784 (West Whitby Section 14) section 14.2.20, with edits. a) A home based business shall be permitted in any zone that permits a dwelling unit subject to the following provisions: (i) the use is conducted entirely within a dwelling unit**,** ~~however limited storage is permitted in an attached~~ garage or accessory

Subsection	Purpose	Recommendation
		structure provided it does not obstruct or eliminate a required parking space; (ii) except for home daycare, no more than three persons at any one time shall be present in a single detached dwelling to receive teaching and/or instruction and no more than one person at any one time shall be present to receive teaching and/or instruction in any dwelling unit other than a single detached dwelling; (iii) no more than two persons at any one time shall be present in a single detached dwelling to receive client based treatment or services and no more than one person at any one time shall be present to receive client based treatment or services in any dwelling unit other than a single detached dwelling; (iv) the home based business may be operated only by the occupants of the dwelling unit and a maximum of one outside employee who is not an occupant of the dwelling and provided the business does not constitute a clinic; (v) the gross floor area occupied by all home based businesses is no more than 25% of the gross floor area of the dwelling unit**,** or 50 square metres whichever is less, and for this provision, gross floor area shall include any floor area in a basement or cellar. **This limit based on the size of the dwelling unit applies whether the home based business is located in a dwelling, garage or an accessory structure**;

Subsection	Purpose	Recommendation
		(vi) no goods or handicrafts are offered or displayed for sale other than goods or handicrafts produced on site; (vii) retail sales conducted by telephone, internet, mail order or other similar approach is permitted provided that customers do not enter the property to inspect, purchase or take possession of any goods; (viii) there is no outside storage or outside display of goods, handicrafts, equipment or supplies; (ix) there is no display of a sign advertising the existence of a home based business within the dwelling unit other than a sign erected in conformity with the Permanent Sign By-law of the Town; (x) there is no equipment or a process or activity which creates an adverse effect, or becomes obnoxious **including but not limited to** in regard to noise, odour, **dust,** fumes, vibration, glare, **radiation, refuse,** traffic, ~~or~~ parking, **delivery or pick-up** nor causes electrical interference with telephone, television, radio or satellite equipment; **(xi) A home based business for instruction of personal fitness, music or dance shall only be permitted in a single detached dwelling and only if that single detached dwelling does not also contain an accessory apartment; and**

Subsection	Purpose	Recommendation
		(xii) ~~there is no home based business on any lot containing an Accessory Apartment in either the principal dwelling unit or the Accessory Apartment~~. b) A home based business shall not include the following: • adult entertainment establishment • automobile sales establishment • body rub establishment • clinic • contractor's yard • eating establishment • escort service • kennel **or pet daycare** • motor vehicle paint and body shop • premises used as a base of operations to assemble persons for transportation to work off-site or the pick-up of goods, materials or equipment for distribution or use off-site • public garage • retail store • salvage yard • take out eating establishment • taxi establishment • Short term rental property.

Subsection	Purpose	Recommendation
Building Extensions and Repair	Non-conforming buildings can be repaired for safety, without any increase in height, size or volume. Permits some extension to non-conforming buildings.	Delete these provisions, addressed above under building repair.
Height Exceptions	The structures for which height provisions shall not apply.	This provision was carried from Zoning By-law #2585 section 6.9 with changes/additions. Notwithstanding the height provisions herein contained, nothing in this By-law shall apply to prevent the erection and/or use of the following: (a) ~~church~~ spire **or steeple** (b) belfry (c) flagpole (d) clock tower (e) chimney (f) water tank (g) windmill (h) radio or television tower or antenna (i) elevator penthouse (j) air conditioner duct (k) agricultural buildings and structures including grain elevators, barns and silos **(l) hydro pole** **(m) light standard** **(n) cell tower** **(o) transformer**

Subsection	Purpose	Recommendation
		(p) Cupolas, finials and weather vanes, or similar ornamental features **(q) Lightning rod** **(r) Mechanical penthouses less than or equal to 6 metres in height;** **(s) Unenclosed mechanical equipment set back 5 metres from the roof edge** **(t) Skylights less than 0.6 metres in height.** **Notwithstanding (a) above, in a Residential Zone, flags poles and light standards shall not exceed 10 metres in height.**
Special Uses Permitted	Permits tool shed, scaffold or other buildings or structures incidental to construction.	This provision is recommended to be reworded per examples reviewed in other municipalities. **Construction Uses** **Notwithstanding any other provision of this By-law, *uses* incidental to construction such as a construction camp or other such temporary work camp, a tool shed, a scaffold or other *building* or *structure* incidental to the construction, and the parking or storage of any construction equipment or construction vehicle are permitted, subject to the following provisions:** **a) Such *uses* shall be permitted only for so long as are necessary for work in progress that has neither been finished nor discontinued for a period of 60 days;**

Subsection	Purpose	Recommendation
		b) A valid *building* permit or site alteration permit for the construction remains in place, if such a permit was required; and, **c) *Uses* incidental to construction may be undertaken on the *lot* prior to the erection of the main *building*, provided it is used for no purpose other than storage.**
Detached Garage and Car Ports	Provides yard, height and coverage requirements.	Delete this provision. Detached garages are addressed under the accessory structure provisions.
Special Setbacks (Minimum Distance Separation)	N/A: Addresses provisions for minimum distance separation.	This provision was carried from Zoning By-law #5581-05 section 4.23.1. No residential, institutional, commercial, industrial or recreational use, located on a separate lot **outside of the Urban Area and Hamlets/Settlements as shown in the Town of Whitby Official Plan** and otherwise permitted by this By-law shall be erected or enlarged unless it complies with the Minimum Distance Separation (MDS I) formula. In addition, notwithstanding any other yard or setback provision in this By-law, no livestock facility shall be erected or enlarged unless it complies with the Minimum Distance Separation Formula (MDS II).
Areas of High Aquifer Vulnerability	Prohibits certain uses within these areas.	This provision was carried forward from Zoning By-law #5581-05 section 4.25. **With the exception of those uses which lawfully existed on November 15, 2001,** the following uses are prohibited within an Area of High Aquifer Vulnerability ~~as indicated by single diagonal cross-hatching,~~ as shown on

Subsection	Purpose	Recommendation
		Schedule XX, attached hereto and forming part of this By-law~~, with the exception of those uses listed below which were lawfully existing on November 15, 2001 and which continue until the use(s) ceases~~: (a) generation and storage of hazardous waste or liquid industrial waste; (b) waste disposal sites and facilities, organic soil conditioning sites, and snow storage and disposal facilities; (c) underground and above-ground storage tanks that are not equipped with an approved secondary containment device; and (d) storage of contaminants listed in Schedule 3 (Severely Toxic Contaminants) to Regulation 347 of the Revised Regulations of Ontario, 1990. **Lawfully existing uses may continue until they cease.**
Rapid Infiltration Basins and Columns	Prohibits use of these within the Oak Ridges Moraine Plan Area.	This provision was carried from Zoning By-law #5581-05 section 4.26. New rapid infiltration basins and new rapid infiltration columns ~~as defined in Section X, of this By-law~~ are prohibited on lands within the Oak Ridges Moraine Plan Area, as shown on Schedule XX to this By-law.
Single Detached Dwelling on a Lot	Allows one single detached dwelling per lot.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.21. “No more than one single detached dwelling is permitted on a lot **except where part of a condominium description**.”

Subsection	Purpose	Recommendation
Zero Decimal Three (0.3) Metre Reserves	Specifies that the 0.3m reserve constitutes part of an abutting street.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.22. "For the purposes of this By-law, a 0.3 metre reserve shall be considered to be part of the abutting street."
Standards for Attached Private Garages on Lots Accessed by a Lane	Provisions for attached private garages.	This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.23. The general provisions report recommended combining this provision with accessory building provisions, however, it is recommended that they be kept separate to avoid confusion with detached garage standards. (a) Attached private garages that are part of the main building are permitted provided that the wall of the private garage facing the lane: (i) is located no further than 7.5 metres from the rear lot line; (ii) is located no closer than 1.75 metres to the rear lot line where a garage door faces the lane and access to the lane is provided on both sides of the lane and 2.5 metres to a rear lot line where a garage door faces the lane and access to the lane is provided only on one side of the lane.
Standards for Attached Private Garages on Lots Accessed from a Street	Provisions for attached private garages.	This provision was carried forward from Zoning By-law #1784 (West Whitby Section 14) section 14.2.24. In the final organization of the by-law, this provisions should be organized with the accessory structure section, so it is clear to the reader the distinction between the provisions for attached vs. detached garage sections. This provision is recommended to be updated to reflect that many existing buildings already exhibit the character permitted by this section. The edit will ensure exiting dwellings are not forced into a legal-non-conforming situation.

Subsection	Purpose	Recommendation
		"**For new buildings and additions built after the passage of this by-law**, no part of a private garage shall project beyond the front wall of the first storey of the dwelling except where a porch is provided, in which case the private garage shall not project beyond the front of the porch."
Height Exemptions	Allows certain items to be exempt from maximum height requirements.	This provision was combined with height exceptions discussed previously in this table.
Holding (H) Zone Provisions	Prohibits use of land until "H" Holding symbol is removed.	Recommend that this provision be moved out of the General Provisions Section of the By-law and moved into a separate Holding Provisions section. This provision was carried from Zoning By-law #1784 (West Whitby Section 14) section 14.2.27, but updated. (a) Where a zone symbol is preceded by the letter "H", the lands subject to that zone shall only be used for the uses that existed at the date of the passing of By-law ~~#7252-17~~ [**XXXX**] until the "H" is removed. (b) Council may pass a by-law to remove the "H" holding symbol, thereby placing the lands in the zone indicated by the zone symbol, when all the applicable requirements have been met. (c) A by-law to remove the "H" holding symbol shall not be passed **in the area covered by the West Whitby Secondary Plan** until an Urban Design Plan has been prepared that addresses, at a minimum, the relevant matters outlined in subsection 11.12.2 Land Use Designations of the West Whitby Secondary Plan of the Town of Whitby Official Plan and such Urban Design Plan has been endorsed by Town Council.

3.1.1 Accessory Structure Provisions

As noted in **Table 1,** the accessory structure provisions should be re-organized in a table to facilitate the ease of finding the information. **Tables 2** and **3** below provide the suggested wording. An introduction to the provision will read as follows.

> "Accessory structures are permitted on a lot where a main building housing a principal permitted use already exists or is under construction ~~and except as otherwise provided herein~~. **Table 2 provides the requirements for accessory structures in Residential Zones and Table 3 provides the requirements for accessory structures in all other zones**."

Table 2: Provisions for Accessory Structures in Residential Zones and Residential uses in Agricultural Zones.

Note to be included to side of by-law for information: Examples of types accessory structures: detached garage, detached car port, gazebo, pergola, shed, etc.		
Permitted Yard	(a) Rear Yard; (b) Interior Side Yard; and (c) Exterior Side Yard.	
Minimum Setbacks for: (a) detached private garage, (b) detached carport, (c) storage shed, or (d) other such similar accessory uses in Residential Zones	Setback from street line	3.0 metres, (a) Except no closer than 5.8 metres to the lot line abutting the street where the vehicular access to a garage or car port faces the lot line abutting the street, and (b) Except an accessory structures with a floor area of 10 square metres or less and a height of 2.5 metres or less shall be located no closer than 1.0 metre from a street line or 0.3 m reserve.
	Setback from interior lot line or rear lot line	(a) 0.6 metres where there are no doors or windows in the wall facing that interior lot line or rear lot line; and (b) 1.2 metres to any interior lot line or rear lot line where there are doors or windows in the wall facing that interior lot line or rear lot line; (c) Except, **notwithstanding a) and b),** where a mutual garage is erected on a common lot line between two lots, no interior side yard is required.
	Set back to a lane where a garage door faces the lane	(a) 1.75 metres where vehicular access to the lane is provided on both sides of the lane; and (b) 2.5 metres to a lane where a garage door faces the lane and vehicular access to the lane is provided only on one side of the lane
	Set back to the main building on the lot where the opening for	(a) 5.0 metres; and (b) The parking of motor vehicles is not permitted between the private garage and the main building.

	vehicular access of the private garage faces the rear lot line	
Maximum Height	3.5 metres provided that: (a) a detached private garage with a flat roof shall not exceed a building height of 3.5 metres; and (b) a detached garage with a pitched roof shall not exceed a building height of 4.5 metres.	
Maximum lot coverage	The lesser of: (c) 10% of the lot area; or (d) 60 square metres of ground floor area.	
Maximum number of accessory structures on a lot	4 (four)	
Excluded **from the** Types of **permitted** Accessory Structures	Trailers, portable buildings and shipping containers. Except that, portable buildings and shipping containers are permitted and subject to the provisions in this table where they are: a) for non-residential purposes; and b) located in a rear yard of a commercial zone; or c) located in a yard that abuts only other commercially zoned rear yards.	

Table 3: Provisions for Accessory Structures in all other Zones

Permitted Yard locations	• Rear Yard • Interior Side Yard

	• Exterior Side Yard
Minimum Setbacks	Shall comply with the yard requirements of the zone in which the accessory structure is located
Maximum Height	3.5 metres
Maximum total combined lot coverage of all accessory structures	5%.

3.1.2 Yard Encroachment Provisions

Further, it is also recommended that Yard Encroachment Permissions be addressed in a table format (**Table 4**). The following is the recommended Yard Encroachments section, as carried forward from section 14.2.15 of Zoning By-law 1784.

> "No part of any required yard **in any zone** shall be encroached upon except as permitted in Table XX"

Table 4: Permitted Yard Encroachments(1)

Structure or Feature	Applicable Yard	Maximum Encroachment into a Required Minimum Yard
Window sills, belt courses, cornices, pilasters, eaves, and other similar architectural details	All	0.6 metres or half the distance of the required yard, whichever is less, except that eaves troughs may encroach beyond this limit.
Chimney breast and fireplaces	Front, exterior side or rear	0.6 metres
	Interior side	Half the distance of the required yard but no closer than 0.6 metres of the lot line.
Clothes poles, arbors, flag poles, garden trellises, fences, retaining walls, or similar structure or garden feature elements	All	To the lot line
Drop awning, cantilevered canopy or other weather shelter	All	To within 0.6 metres of a lot line.
A fire escape or exterior staircase	Interior side exterior side, rear	1.5 metres or half the distance of the required yard, whichever is less
Unenclosed barrier free ramp	All	To within 0.3 metres of the lot line
Deck less than or equal to 0.6 metres above grade	Front, exterior side	2.0 metres

Structure or Feature	**Applicable Yard**	**Maximum Encroachment into a Required Minimum Yard**
	Interior side, rear	To within 0.6 metres of the side lot line or rear lot line
Deck greater than 0.6 metres above grade(1) and/or Porches with or without foundations	Front, exterior side	2.0 metres
	Interior side	1 metre, but no closer than 0.6 metre from the lot line
	Rear	3.5 metres
Stairs to a deck or porch	Front, exterior side	To within 0.3 metres of the front or side lot line
	Rear	To within 0.6 metres of rear lot line
	Interior side	To within 0.6 metres of the interior side lot line
Balcony (1) (2)	Front, rear	1.5 metres
	Interior side, exterior side	1.5 metres or one-third the distance of the required yard, whichever is less
Bay, box or bow window, with or without foundation, having a maximum width of 4.0 metres	All	0.6 metres or half the distance of the required yard, whichever is less
Air conditioners, heat pumps, swimming pool pumps, treatment filters, and heaters.	Rear, Interior side, exterior side	To within 0.6 metres of the lot line

Structure or Feature	**Applicable Yard**	**Maximum Encroachment into a Required Minimum Yard**
Below grade access stairs	Rear, Interior side	1.5 metres, but no closer than 0.6 m from the lot line.
Underground garage for multiunit development	All yards	To within 0.0 metres of the lot line
(1) Where a deck, porch or stairs to said deck or porch or a balcony are related to a townhouse **or semi-detached** dwelling, the maximum encroachment may be to within 0.0 metres of the interior side lot line **where the building side yard setback is zero, however, support for the structure may not be shared between adjacent lots.** (2) Where a balcony is located on the roof of a porch or above a driveway, it may encroach to the maximum permitted for a deck or porch.		

(1) Where a deck, porch or stairs to said deck or porch or a balcony are related to a block townhouse dwelling unit the yard encroachment provisions of Table 14.2(1) shall apply as if each dwelling unit is located on a separate lot.

3.1.3 Accessory Apartments

Through Bill 108, the Province of Ontario updated requirements in the Planning Act for accessory apartments. Specifically, the Planning Act requires, under section 16 (3), that Official Plans authorize what is referred to as "additional residential units", by permitting two residential units in a detached house, semi-detached house or townhouse, as well as permitting a residential unit in an accessory structure to any of those same three types of dwelling. The Additional Residential Unit Regulations 299/19 also requires that each unit have one parking space, unless it is within a zone where no parking is needed for the primary unit and that any required parking spaces may be provided in tandem. The regulations also clarify that these permissions are not related to either the age of the building and the relationship of the occupant of the second unit to the owner and/or occupant of the main building.

Per this policy direction, the Town is required to address accessory units, but as part of this study will need to consider any constraints to these permissions. For example, further discussion with public works will be required to understand if any logistical restrictions need to be addressed within the Town. For example, in Windsor, basement apartments are not permitted in flood plain areas, and there is also a requirement for sump pump/ backwater valves. Kingston similarly has restrictions related to servicing. Further discussion is needed to understand if any Whitby specific constraints need to be considered and applied in the zoning by-law.

Locational attributes can also be considered, such as whether certain areas of Whitby should be exempt from permission for these units. In the City of Toronto for example, accessory apartments above garages referred to as laneway houses are not permitted in certain areas of the City or where they do not meet certain access or locational requirements (i.e., distance to a public road). Further, the Oak Ridges Moraine (ORM) Plan does not permit accessory dwellings in accessory buildings, however in the Greenbelt Plan, outside of the ORM areas, the units would be permitted in either single detached dwellings or in accessory buildings associated with the same.

Further, additional criteria could be considered per input from the Building department or Fire department. For example, whether there needs to a be a requirement for the accessory dwelling unit in the accessory building to be accessed directly from a lane or street, or if not, is there a need for a maximum distance from the accessory dwelling to front lot line, in order to ensure fire access from the street. If for example, a unit in an accessory building is located in a rear yard, there may also be a minimum side yard requirement to ensure passage by emergency services into the rear yard. Further, internal townhouse units may not have appropriate access for a unit in a detached structure. Discussion will be undertaken with the appropriate members of the Town Staff to investigate these considerations further.

Another consideration could be the requirements for entrances. Hamilton, for example, restricts additional entryways on the front face of a dwelling except in the Downtown, owing to the impact on the streetscape character.

As a starting point, the following is a suggested provision for accessory units, which may be further refined as some of the other above noted considerations are explored.

"Notwithstanding any other provisions of this By-law to the contrary, an Accessory Apartment shall be permitted in any single detached dwelling, ~~or~~ semi-detached dwelling, link dwelling **street townhouse or block townhouse dwelling** subject to the following provisions:

b) A maximum of 1 accessory apartment is permitted in any single detached dwelling, semi-detached dwelling, link dwelling or townhouse dwelling and an additional accessory unit may be provided in an accessory building.
c) Required parking for an accessory apartment can be tandem parking.
d) A wall containing a door to the accessory unit must be a minimum of 1.5 metres from a lot line.

In terms of parking, a review was conducted of municipalities that have updated their zoning by-laws in response to Bill 108. This review identified examples where parking for the additional unit was not required in Downtown, Mixed Use or Core Area zones. This lack of parking requirement was present in the Hamilton, Kitchener and Windsor by-laws. In addition, London does not require parking spaces for accessory units anywhere in the municipality, and Toronto does not require parking for the first secondary unit, but does require one space for the second unit. Kingston does require parking for accessory units, but provided policy direction that specifically addresses applications seeking relief for parking, including that the application be within walking distance to transit, commercial uses and parks/open space/communities uses.

3.2 Additional General Provisions

Upon review of other municipal zoning by-laws in the Phase 1 Report, a number of potential new provisions were identified for further consideration. **Table 5** provides recommendations for inclusion of additional general provisions, as well as some general provisions identified as potentially needed in response to specific policy sections in the Official Plan. **Table 5** also addresses some new provisions raised during feedback on Phase 1.

Table 5: Recommended administrative provisions from other municipalities' Zoning By-laws or per the Official Plan.

Topic	Provision	Recommended Wording	Example City/Town
Uses Prohibited in All Zones		Prohibited Uses a) Notwithstanding anything contained in this By-law, the following uses shall not be permitted within any zone: b) the manufacturing, refining, rendering or distilling of acid, ammonia, chlorine, coal, creosote, explosives, fireworks, petroleum and tar; c) manufacture of ammunition; d) an arsenal; e) the manufacture of fertilizers, oil or glue from human, fish or animal matter; f) a track for the racing or testing of automobiles, motorcycles, go-carts or snowmobiles g) privately owned trailer camps (other than those existing prior to the passing of this By-law); h) storage of polychlorinated biphenyl (PCB's); i) bulk open storage of coal or coke or other material which may be noxious by emission of dust or odours; j) smelters; k) tanning; l) any use which, from its nature or the materials used therein, is declared to be a noxious or offensive trade; m) Body Rub Parlour; n) the use of any tent, trailer, recreational vehicle or motor vehicle for human habitation, except where such tent, trailer, recreational vehicle or motor	City of Barrie 4.3, Innisfil 3.48, Oakville 4.20, Vaughan 4.12

		vehicle is located in a campground, a trailer park or in a mobile home park, that is expressly permitted by this By-law; o) the use of a truck, bus, coach body or rail car for storage purposes; p) the storage of inoperable motor vehicles, not including motor vehicles which are intended to be repaired in association with a motor vehicle repair garage or motor vehicle body shop; q) Large scale outside storage of road salt, road sand or other de-icing materials; r) A disposal site for solid waste; s) An obnoxious use as defined by this By-law or other uses similar to those listed in this section; t) Any other use not expressly permitted by this By-law.	
Uses Permitted in All Zones		The following uses shall be permitted in all zones: a) Temporary farmers markets; b) Accessory uses, unless this By-Law specifically restricts or does not permit an identified accessory use; c) Accessory buildings and structures, except no detached accessory building or structure may be used for human habitation or an occupation for gain, unless specifically permitted by this By-Law.	East Gwillimbury 4.30.2 and Newmarket 4.1
Temporary Uses	Provisions applicable to temporary uses related to	Temporary use of movable storage structures, including shipping containers is not permitted except: a) A movable storage structure or a shipping container is permitted in the driveway of a	Town of Oakville Zoning By-law section 4.25 and Town of Milton Zoning By-law section 4.20.2.

	construction, sales and customer services.	residential property for the purpose of the temporary loading or unloading of household items during the process of moving and for a period not exceeding ten (10) days provided it does not exceed a maximum height of 3.0 m and a maximum length of 6.1 m. However, in no case shall a shipping container encroach onto a public sidewalk; be located closer than 0.3 m from the back of curb in situations where no sidewalk exists; or create a site line obstruction; and b) a movable storage structures or a shipping container is permitted on a construction site with a valid building permit in any Zone for the purposes of temporary storage of equipment and materials incidental to construction only provided the shipping container is removed from the site within 30 days of work cessation, defined as 30 days from final inspection by the building official	
`	Stacking Space Requirements and necessary provisions for drive through facilities.	A stacking lane provision is recommended to be addressed in the parking section and appropriate provisions will be considered under separate cover as part of the Phase 2 Parking Report.	
Bed and Breakfast Establishments	General use provisions for bed and breakfast establishments.	Where a bed and breakfast use is permitted in accordance with this By-law, the following provisions shall apply: a) A bed and breakfast shall be permitted only in a single detached dwelling in the zones indicated in	Town of Innisfil Zoning By-law section 3.9 with changes/additions and Welland 5.5

		this By-law and shall be clearly accessory to the main residential use and shall not change the residential character of the lot. b) A bed and breakfast shall contain no more than **3** guest rooms. c) The bed and breakfast establishment shall have the operator residing on the premises and no person other than the person(s) residing in the residence containing the bed and breakfast shall be employed except as is necessary for housekeeping and food preparation purposes. d) The guest rooms shall not contain kitchen facilities. e) The bed and breakfast shall provide meals to guests of the bed and breakfast only.	
Community gardens	General-use and parking provisions for Seasonal.	A Community Garden shall be permitted in all zones except the [Environmental Zones.]	City of St. Catharines Zoning By-law section 2.13.
Medical Marihuana Production Facilities/Cannabis Facilities	General use provisions for Cannabis Production Facilities	Recommend permitting updating provisions for medical marijuana facilities to address licenced cannabis facilities. "Notwithstanding any other provisions in this by-law to the contrary, the following provisions shall apply to permitted cannabis facilities in the permitted zones specified in this by-law: a) All operations related to the use, including cultivation, production, processing, packaging and storage of cannabis, shall be located within an enclosed building at least 150 metres from	Based on SGL's cannabis work

		any property used for or zoned to permit a sensitive land use. b) Notwithstanding subsection a), in zones where residential uses are permitted on the same lot as the cannabis facility, a 150 metre separation distance shall not be required to the residential use located on the same lot. c) Outdoor storage is prohibited. d) The use shall not emit any outside odours.	
Restaurant Patios	General use provision for Restaurant Patios.	A Restaurant Patio is permitted in any non-residential Zone subject to the following: a) The Restaurant Patio is permitted as an accessory use to a permitted Restaurant located within a principal building; b) Restaurant Patios shall be permitted in any yard; c) In the case of a roof-top Restaurant Patio, it shall be located directly above the permitted Restaurant; d) A Restaurant Patio shall not be permitted in any yard abutting a residential Zone, or in the case of a roof-top patio / terrace it shall not be located on lands abutting a residential Zone; e) The Restaurant Patio shall not be fully enclosed; and, f) Notwithstanding any requirements to the contrary, a restaurant patio may encroach into a Landscape Buffer, with exception of a landscape buffer abutting a Natural Heritage System Zone or a Residential Zone, but at no time shall the occupied area be included in landscape open space calculations.	Town of Milton Zoning By-law section 4.18.

Home Industries	General use provisions for Home Industries.	a) A home industry shall employ not more than two (2) persons in addition to the owner residing on the premises, on a full-time basis. b) On lots less than 0.4 hectares, the maximum gross floor area of a permitted home industry shall be 50% of the gross floor area of the principal dwelling on the lot. c) On lots greater than 0.4 hectares, the maximum gross floor area of a home industry shall be 500.0 square metres. d) A home industry shall be clearly secondary to the main use of the lot and shall not change the character of the lot or create or become a public nuisance, particularly in regard to noise, traffic, loading or unloading, odours, dust, fumes or parking. e) An accessory building or structure used for the home industry shall be permitted only in the rear yard in accordance with the provisions for Accessory Buildings and Structures in Section XX. f) Outdoor storage of goods or materials related to a home industry is permitted in the rear yard and interior side yards only, provided that the area occupied by such outdoor storage of goods or materials does not exceed 25% of the gross floor area of the home industry and the goods and materials are screened from view from neighbouring properties and the street. g) The use must not include the selling of any goods on the property other than those goods constituting the finished product of the home	Town of Innisfil Zoning By-law section 3.22. Subsections i), j), and k) were carried from the Town of Milton Zoning By-law section 4.13 subsections v), vi), viii). City of Welland 5.17.

		industry, except that the sale of goods or items over the internet, mail or telephone is permitted, provided that customers do not enter the property to inspect or take possession of goods.	
Micro-Industrial Uses	General use provisions for Micro-Industrial Uses.	Where a micro-industrial use, including a micro-brewery, is permitted outside of an industrial zone, the following requirements shall apply: a) A micro-industrial use is only permitted when accompanied by a retail and/or restaurant use retailing products produced on-site. b) All production, retailing, and distribution associated with a micro-industrial use must take place within a building and no outdoor storage is permitted. Outdoor areas for consumption are permitted subject to all requirements of this by-law. Note: a definition of micro-industrial will need to be added to the definitions and the definition will include a micro-brewery and distillery.	Town of Newmarket Zoning By-law section 4.19.5 with changes/additions.
Short-Term Accommodation	General use provisions for Short-Term Accommodations.	Pending the outcome of the of the Town's ongoing Study on short term rentals, appropriate provisions may be prepared for the new Comprehensive Zoning By-law.	
Setbacks from a Railway Right-of-Way	Setback provisions for Railway Right-of-Ways	Adjacent to the CN or CP rail lines, all permitted buildings and structures, excluding accessory building, within such zones shall be set back a minimum of 30 metres from the edge of the railway right-of-way.	Town of Ajax Zoning By-law section 4.21.2, simplified.

Setbacks from a Pipeline Right-of-Way	Setback provisions for Pipeline Right-of-Ways	Notwithstanding any other provision of this By-law, no permanent building or structure shall be located within 7.0 metres of the Trans Canada Pipeline right-of-way identified on Schedule X. Accessory buildings or structures, including swimming pools, decks, detached garages, sheds, and similar structures, shall have a minimum setback of 3.0 metres from the pipeline right-of-way.	Town of Innisfil Section 3.46.
Conformity with an Established Building Line	Setback provisions for new developments situated between existing buildings.	For all zone categories, the minimum required front yard and/or minimum required exterior side yard may be reduced to the average of the established front and/or exterior side yards : a) On abutting lots on either side of the subject lot; b) On a corner lot, the average of the established front and/or exterior yard will be calculated from the immediate abutting occupied lot and the occupied lot across the road on the same side of the road; c) Where an abutting lot or adjacent lot thereto, or a lot across the road and on the same side of the road, is vacant, the next closest occupied lot on the same side of the road to the vacant property will be utilized to calculate the average of the established front and/or exterior yard; provided that, with the exception of the [XX/Downtown] Zone, the building line is setback a minimum 1 m from the lot line after any required road widening.	St. Catharines section 2.17
Food Vehicles	General-use and parking	a) Parking of a Refreshment or Frozen Treat Vehicle, as defined by By-law 7512-19, as	

	provisions for Food Vehicles.	amended, as an accessory use is not permitted in a Residential zone. b) No customer parking spaces are required for a Food Vehicle.	
Seasonal Garden Centre and Commercial Uses	General-use provisions for Seasonal Outdoor Uses.	Nothing in this By-law shall prevent an area set aside outside of a building or structure within a Commercial Zone and located on the same lot, to be used for the accessory display or retail sales of seasonal produce or merchandise, provided such area: a. Is seasonal in nature and does not include a permanent retailing area; b. Is not located within a fire lane, parking or loading spaces required to fulfill the provisions of the By-law or a driveway or passageway which provides an access route for vehicular traffic across the lot or to an improved street which abuts said lot; and c. Is located at least 1.0 metre away from any side or rear lot line; d. Is located at least 3.0 metres from a street line; e. Is not located within a visibility triangle.	City of Welland Zoning By-law section 5.34 & 5.35 with changes/additions.
Rooftop Gardens		Any rooftop gardens accessible to residents can be counted towards minimum required outdoor amenity areas.	n/a
Height restrictions around airports	Any height restriction around the airport will be brought into the zoning by-law.	Notwithstanding any provisions of the by-law, within the airport approach area identified on schedule X, building heights shall not exceed those set by and confirmed by the Transport Canada.	n/a

Cultural Hubs	Allow flexibility of use of spaces of cultural events or uses.	Nothing in this by-law shall prevent the use of an existing building in a non-residential, non-employment, non-natural hazard zone, as a temporary accessory use for a maximum of 7 days by a cultural organization or for a cultural event or gathering, provided there is sufficient parking to accommodate the use and the use causes no noise nuisance.	n/a

4 Conclusion and Next Steps



This report identifies the recommended provisions that should be carried forward, as well as new provisions that should be introduced, into the General Provisions section of Whitby's new Comprehensive Zoning By-law. In Phase 3, the recommendations of this report will be used to draft this new General Provisions section.

