



Staff Report

Report Title: Sleeping Cabin Enforcement

Prepared By: Matt Farrell, Manager of Building and Planning

Department: Building and Planning

Date: Feb. 1, 2021

Report Number: BLDG-2021-02-4

File Number:

400 Reports

Attachments: Sleeping Cabins Enforcement Map

Recommendation:

That the Township of Huron-Kinloss Committee of the Whole hereby approves Report Number BLDG2021-02-4 prepared by Matt Farrell, Building and Planning Manager/CBO AND directs staff to continue to identify the number of illegal sleeping quarters in the Township AND FURTHER directs staff to take a proactive approach to enforcement against the use of accessory buildings as sleeping quarters as outlined in the report AND FURTHER directs staff to take the necessary actions to enforce compliance.

Background:

At the December 7th, 2020 Committee of the Whole meeting, staff was directed to bring back a report on current number and status of "Bunkies" on properties within the Township and a path forward to resolve their non-compliance.

Discussion:

The term "Bunkies" is generally understood to mean a stand-alone bunk house typically used for helping with the overflow of guests and family members that are visiting and need a place to sleep. However, it is not a term that is usually in a legal context or found in documents such as a Municipal Zoning By-Law.

When describing a building that is solely used for sleeping purposes, Zoning By-laws often refer to them as Sleeping Cabins. While electricity may be allowed, often the by-law provisions will restrict the installation of plumbing and kitchen facilities to ensure that the building remains subsidiary to the main dwelling. A size limit can also be attached to these types of buildings to ensure they cannot be illegally renovated to become another dwelling unit.

Similarly, Guest Cabins is another term that is used to define these types of structures with the variation that some services are permitted; typically a bathroom and electrical outlets to support small kitchen appliances.

In both cases, the underlying principle is that these buildings cannot support residential occupancy in isolation and require the existence of a main or principal dwelling in order to provide the needed living amenities.

Huron-Kinloss Zoning By-law

The Township's Comprehensive Zoning By-law 2018-98 does not contain definitions for "Sleeping Cabins", "Guest Cabins" or "Bunkies". When determining the types of uses that are permitted in Accessory Buildings, we have to look at the definition of Accessory which states:

shall mean a use, building or structure located on the same lot, detached from the main building, which is subordinate and incidental to the main use and is not used for human habitation unless specifically permitted in this By-law. Such uses shall include, but are not limited to, a private garage, a greenhouse, a pool, a satellite dish, or a storage building.

This wording is very similar to what was included in the Township's previous Zoning By-law 2001-87 and the former Township of Huron Zoning By-law 11-82. In each, it allows uses, buildings or structures that are subordinate and incidental to the main use.

It was not until Amending By-law 2019-123 was passed in September of 2019 that there was a definition for "Human Habitation" which is now prescribed as the occupation of a building by a person or persons for overnight accommodation, regardless of whether sanitary or cooking facilities are present.

Prior to this amendment, it was interpreted by current and previous Zoning Administrators that the ability to allow overnight accommodations did not make a building habitable if it did not include accompanying sanitary and cooking facilities. The building would still remain subordinate and incidental to the main dwelling as occupants could not rely on the accessory structure to provide those amenities.

Current Enforcement Practices

We currently take a reactive approach to enforcement. Most non-compliance information comes to us from rental advertisements or real estate listing where the owner is promoting the existence of a second dwelling on the property. This is clearly not permitted in the Township's Zoning By-law and the ads admitting non-compliance is enough evidence for us to compel the owner to rectify the issue.

We receive very few complaints from neighbors or other residents on the use of accessory buildings for overnight accommodations. Historically, there have only been 2 or 3 concerns raised as opposed to dozens of complaints about travel trailers being used for long periods of time on a property for accommodations.

Any type of enforcement on the unlawful residential occupancy of a building is very difficult as the Township must provide overwhelming evidence that a person is living there. Provincial Offence Officers do not have the right to enter any building that they suspect is being used as a residence unless granted permission by the occupant or obtaining a warrant from a Justice of the Peace.

Removal of Buildings

While the Township does have the ability to require a building to be renovated to restrict a non-compliant use, our authority to have a building removed outright is limited. All of the Zones within the Township's Zoning By-law allow for accessory buildings or structures. If the building is renovated to the point that it is in compliance with the use provisions of the By-law, meets the setbacks and other requirements and has previously obtained a building permit, it is hard to justify that it be removed. The legal costs incurred in pursuing such action would be rather significant and if the Township were ultimately successful, the owner could still just reapply for a new building.

Other Municipalities

We talked with several other municipalities as to how they address Sleeping Cabins from a zoning perspective as well as enforcement.

Ashfield-Coulbourne-Wawanosh allows guest cabins in both their Year Round and Seasonal Residential Zones. The building is intended for guest accommodation accessory to an existing dwelling, and shall be used for sleeping accommodations only, shall not contain washroom facilities, shall not contain kitchen or food preparation facilities, and shall not exceed 23 square metres of total floor area.

Kincardine has very similar wording to Huron-Kinloss on restricting human habitation in accessory buildings. While they allow for washrooms in these structures, they do not permit any beds or other furniture used for sleeping to be in the building. They do not have a definition of "human habitation" in their by-law. They take a reactive approach to enforcement and will deal with illegal uses when complaints are filed or they become aware of non-compliance at the time of a property sale. They are currently in the process of updating their planning document and suspect that new Provincial Policy will require them allow accessory building to be used for additional residential units.

Saugeen Shores deals with accessory buildings in a very similar manner to Kincardine.

South Bruce Peninsula allows guest cabins in their residential zones and restricts them to a maximum of one storey in height without kitchen and/or washroom facilities and maintained for the accommodation of non-paying guests having a maximum ground floor area of 23.2 m² (249.7 ft²).

Northern Bruce Peninsula allows guests cabins in their R2 – Resort Residential Zone and follow the same definition as South Bruce Peninsula.

Staff also talked with several colleagues from the Muskoka and Haliburton Regions. They stated that sleeping cabins and/or guest cabins were universally permitted in every municipality in those areas. There are a variety of different controls for the types of structures permitted and limitations in the amenities they could include, but all permitted at least one detached accessory building to be used for sleeping purposes if the principal residence or cottage existed.

The main reason they were permitted was that they believed enforcement of an outright ban on sleeping cabins or guest cabins would be difficult and costly to enforce and that there are enough health and safety protocols in place to ensure occupants were not at risk. All areas required smoke and carbon monoxide detectors to be installed, safe egress be provided through required doors and windows and appropriate electrical approvals be obtained. Some also verify that the septic system is sized to accommodate the extra load and be upgrading if not in compliance.

Initial Scan of Accessory Buildings in the Lakeshore Area.

In order to take a proactive approach to enforcement against the use of accessory buildings as sleeping quarters, staff will have to identify properties with structures that could possibly be in contravention. Our first step was to do a table-top review of the most recent aerial photography from 2015.

Staff started with a small sample size in an area north and east of the Point Clark Light House. We looked at 125 properties using the County of Bruce GIS program and the 2015 aerial photography to identify and catalogue all the detached accessory structures. Based off our scanning criteria, we identified 28 in that area that warrant a ground level investigation. This exercise took approximately two and a half hours and to complete the entire lakeshore, would need another 35 to 40 hours.

The next step would be to perform a visual inspection of each of the properties to look for signs that these detached accessory building could possibly be used as sleeping or guest cabins. We would look for signs like the absence of a larger doors, drapery in windows or small porches or decks in front of the man door. We would estimate this would take an additional 50 to 60 hours to complete.

For the buildings we find with the attributes of a sleeping cabin, we would then have to obtain direct evidence that building is in fact being slept it; the contravention is in the actual use, not the ability to use. We would scan rental or real estate advertisements and hope to find some correlating properties to our database. We could also talk to neighbours and ask if they have witnessed people entering those buildings at night and exiting in the morning. It is hard to determine the amount of time to complete this task as we do not have an idea the number of properties we would have to target.

The final step would to approach the property owner directly. We would ask what the building in question is being used for and to perform an inspection of the building to look for signs of someone sleeping in it; essentially a bed. If the owner refuses to give us access, we would have to apply to a Justice of the Peace for a warrant and hope they accepted the evidence we have. We may have to start incurring legal costs at this point as well as the needed staff time.

Financial Impacts:

There are no financial impacts associated with this report.

Strategic Alignment / Link:

We are an accessible community by being open and transparent.

Respectfully Submitted By:

Matt Farrell, Manager of Building and Planning

Approved By:

Mary Rose Walden, Chief Administrative Officer