

# MAKING A LOT OUT OF A LITTLE – LANEWAY HOUSING A NICHE MARKET OPPORTUNITY FOR MUNICIPALITIES, PROPERTY OWNERS, REAL ESTATE DEVELOPERS AND INVESTORS

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**Categories:** [Insights](#), [Publications](#)

Major Canadian cities including Toronto, Vancouver, Calgary, and Edmonton are currently facing housing market supply crises. As a result, these cities are reconsidering their respective regulatory regimes applicable to land use planning and are becoming more comfortable with unique and creative solutions, including laneway housing. For property owners, real estate developers and investors willing to navigate the shifting regulatory landscape of laneway housing, there is real opportunity to unlock otherwise unavailable residential real estate assets; for municipalities looking for solutions to increasing housing demand, laneway housing may be a great partnering opportunity.

## **Laneway Housing & its Relation to Increased Pressure on Housing Supply**

The concept of laneway housing is gaining popularity as a niche market opportunity, largely because it capitalizes on existing underutilized spaces by encouraging construction in often low density neighbourhoods located near infrastructure-rich areas. Laneway housing allows residential real estate owners and investors (with the assistance of experts in the industry) to achieve more density on otherwise limited residential property.

The City of Toronto recently legalized the construction of “Laneway Suites” in certain neighbourhoods through the passage of by-law 810-2018 in 2018 and subsequent by-laws which have amended the City of Toronto’s City Wide Zoning By-Law 569-2013.<sup>[1]</sup> In developing these standards and other policies related to such development, the City acknowledges that it is taking note of other similar municipalities facing the same issues, such as the City of Vancouver, which has formally recognized and regulated laneway suites since 2009.<sup>[2]</sup> Per the City of Toronto, a laneway suite is a self-contained residential unit typically located in the backyard of an existing detached house, semi-detached house, townhouse, or other low-rise house on a residential lot next to a public laneway, and is generally smaller in size and detached from the main house on the lot.<sup>[3]</sup> Property owners in Toronto are increasingly capitalizing on the City’s approximately 310km of laneways with potential for such development<sup>[4]</sup> – as of May 2021, the City has received more than 200 building

permit applications for laneway suites.[5]

It appears laneway suites are being used primarily as either a secondary suite for the principal residents (such as “in-law suites”), or otherwise for renting out as a source of additional income. In November 2017 (before the by-laws for laneway suites were passed), the City received over 100 responses from the public indicating that 53% of respondents wanted to build a laneway suite for rental income versus 40% were going to save a future laneway suite for use by extended family members.[6]

This rise in popularity of laneway suites coincides with the added pressure municipalities in Ontario are facing from the Government of Ontario in respect of the growing housing crisis, including by way of recent legislative changes. For example, under Bill 108 (the *More Homes, More Choice Act, 2019*),[7] the Province amended a number of pieces of legislation, including the *Planning Act*[8] and the *Development Charges Act*. [9] By way of this legislation, the *Planning Act* was amended to, amongst other things, broaden the requirement for a municipality’s official plan (being a higher-order planning document required under the *Planning Act*) from requiring policies authorizing “a second residential unit” to instead authorizing “additional residential units”, thereby providing further flexibility for property owners to add even more residential density to their lots. Similar changes through Bill 108 and subsequent legislation have enhanced municipalities’ ability to improve housing stock and affordability, such as policies on Inclusionary Zoning which require additional rental and affordable housing in respect of certain developments (see our bulletin on Inclusionary Zoning policies [here](#)).[10]

As with any new legislation, implementation takes time and the full impacts of these changes are still to be seen. Such impacts will likely include municipalities continuing to seek ways to encourage development of additional housing, especially larger-scale development of rental and affordable housing stock. While this will likely lead to procedural streamlining and more municipal support for projects that will increase housing supply, in the shorter term we see such support and efficiencies being directed to large-scale rental and affordable housing projects which will expedite an earlier increase in supply levels, instead of the gentler and more gradual forms of intensification such as laneway suites. We anticipate municipalities will continue to more cautiously evaluate applications for laneway suite developments in part because they typically occur within established residential neighbourhoods requiring additional attention to ensure the orderly development of communities as well as balancing related private and public interests (discussed further below). It will therefore be important for those interested in capitalizing on laneway housing opportunities in Toronto and beyond to have a team of experts familiar with the regulatory landscape, as well as the complexities and opportunities that come with such development forms.

### **Recognizing the Logistic Complexities and Opportunities**

While one might think these smaller structures would meet little opposition and be easy to construct, there remain complexities in building a laneway suite and regulatory hurdles to cross. Typical land use considerations such as height, density and setbacks from lot lines, together with issues of sunlight, privacy, and maintaining neighbourhood character have necessitated municipalities' consideration of the balance required between public and private interests and orderly development of communities (e.g. an appropriate mix of housing types). This has led to additional regulations such as the amendments to the City of Toronto Zoning By-Law 569-2013 mentioned above which now expressly regulates laneway suites as a permitted form of development, allowing them as one additional unit to an existing residential lot, subject to use-specific standards (e.g., they may only be on a lot with a rear or side lot line abutting a lane for at least 3.5m).<sup>[11]</sup> This need to balance various interests has also resulted in a more robust development application processes – for example, in addition to the typical requirements for building applications, the City of Toronto also requires other information before a laneway suite can be approved and constructed, such as ensuring that emergency services can access the laneway suite, meet Toronto Fire Services' rules for firefighting access and the completion of numerous forms, including a Municipal Road Damage form.<sup>[12]</sup>

Currently, the City of Toronto does not appear to encourage or facilitate the severance of lots in order to build laneway suites as standalone properties that can be sold separately, although applications for severance can be made. In its report to Toronto and East York Community Council in April of 2018, the Acting Director of Community Planning expressly recommended against severance of laneway suites. Notwithstanding this general recommendation against severances, this 2018 report indicated it agreed with an earlier 2006 memo suggesting severances could be possible “in special circumstances, where a laneway house may be approved by City Council where it can be demonstrated that there are no adverse privacy, overlook, shadowing and engineering servicing implications in constructing the laneway house.”<sup>[13]</sup> Thus, where an owner wishes to develop and sell a laneway house as a separate parcel instead of creating a separate secondary suite such as for rental purposes, an application to the City of Toronto would be required, with a potential appeal of any resulting decision as a further possibility.

As a result of such requirements, laneway suites both necessitate and provide an opportunity for builders' creativity, particularly given the legal constraints on the dimensions of a laneway suite and the physical confines of the space. Laneway suites are an ideal setting for innovative architecture and use of new construction materials, as well as creating opportunities for builders and owners to engage with recent ESG initiatives in construction such as LEED and Passivehouse design. Similarly, using mass timber as a building material for construction of laneway suites may be a more desirable alternative to concrete and steel construction, as it is not only durable but also weighs much less. For further discussion of ESG in the construction and development industry, see our recent bulletin [here](#).

Some in the industry appear to have found a way to design and build such suites while taking some of this uncertainty out of the equation. For example, developer R-Hauz advertises that they provide “R-Suites” at a “fixed-price, prefabricated housing with pre-set design options” designed to meet the City of Toronto Laneway Housing Guidelines. Indeed, respecting the integration of ESG, R-Hauz’s website indicates that their laneway suites engage a number of sustainable features such as electric power, green roof, LED lighting, grey water recycling, and energy recovery ventilators.<sup>[14]</sup>

While usually smaller than a primary residence, a laneway suite can still be an expensive addition to an eligible property (costing at least six-figures to construct in some cases<sup>[15]</sup>) and construction can trigger additional development fees including under the *Development Charges Act*. Fortunately, where municipalities are encouraging such initiatives as a partial solution to the housing stock issue, some property owners may be eligible for a loan; for example, the City of Toronto offers loans worth up to \$50,000 to help cover the costs of building a laneway suite, or for a deferral of development charges.<sup>[16]</sup>

If you are looking for expert advice navigating laneway housing rules and regulations in the City of Toronto and beyond, including the application process, understanding development fees, or financing, please reach out to the authors of this bulletin to discover how McMillan LLP’s real estate, construction, and capital markets teams can assist.

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[1][ps2id id='1' target=''] Chief Planner and Executive Director, City Planning, “[Changing Lanes: The City of Toronto’s Review of Laneway Suites – City-wide Expansion of City-Initiated Official Plan Amendment and Zoning Amendment – Final Report](#)” (5 June 2019), online (pdf): *Toronto* at 1; see also City of Toronto, by-law 810-2018, *To amend Zoning By-law 569-2013, as amended to permit laneway suites* (29 June 2018); City of Toronto, by-law 1210-2019, *To amend Zoning By-Law 569-2013, as amended, with respect to laneway suites* (18 July 2019).

[2][ps2id id='2' target=''] “[Laneway Housing](#)” (2021), online: *City of Vancouver*; Acting Director, Community Planning, Toronto and East York District, “[Changing Lanes: the City of Toronto’s review of Laneway Suites – City-Initiated Official Plan Amendment and Zoning Amendment – Final Report](#)” (16 April 2018), online (pdf): at 40.

[3][ps2id id='3' target=''] “[Changing Lanes: Laneway Suites in the City of Toronto](#)” (2021), online: *Toronto*.

[4][ps2id id='4' target=''] “Changing Lanes: The City of Toronto’s Review of Laneway Suites – City-wide Expansion of City-Initiated Official Plan Amendment and Zoning Amendment – Final Report” (5 June 2019), *supra* note 1 at 3.

[5][ps2id id='5' target=''] “Changing Lanes: Laneway Suites in the City of Toronto”, *supra* note 3.

[6][ps2id id='6' target=''] Acting Director, Community Planning, Toronto and East York District, “[Changing Lanes: The City of Toronto’s Review of Laneway Suites – City-Initiated Official Plan Amendment and Zoning](#)

[Amendment – Final Report](#)” (16 April 2018), *supra* note 2 at 65; see also comments by Leith Moore in Courtney Shea, “[Laneway houses are this man’s business – and business is booming](#)” (14 September 2021) online: *Toronto Life*.

[7][ps2id id='7' target=''] Bill 108, *An Act to amend various statutes with respect to housing, other development and various other matters*, 1st Sess, 42nd Leg, Ontario, 2019.

[8][ps2id id='8' target=''] RSO 1990, c P 13 [*Planning Act*].

[9][ps2id id='9' target=''] SO 1997, c 27 [*Development Charges Act*].

[10][ps2id id='10' target=''] Bill 108, *supra* note 7 at Schedule 12; see also *Planning Act*, *supra* note 8 at s 16(3)(b).

[11][ps2id id='11' target=''] City of Toronto By-law No. 569-2013, s.150.8.20.1.

[12][ps2id id='12' target=''] “[New Laneway Suite](#)” (2021), online: *Toronto*.

[13][ps2id id='13' target=''] Acting Director, Community Planning, Toronto and East York District, “Changing Lanes: the City of Toronto’s review of Laneway Suites – City-Initiated Official Plan Amendment and Zoning Amendment – Final Report” (16 April 2018), *supra* note 2 at 34-35.

[14][ps2id id='14' target=''] [R-Hauz website on R-Suites](#), accessed online on October 18, 2021.

[15][ps2id id='15' target=''] Andrea Yu, “[This guy built a \\$330,000 laneway house. Now he’s renting it out for \\$1,800 a month](#)” (22 January 2021), online: *Toronto Life*.

[16][ps2id id='16' target=''] “[Laneway Suites Programs](#)” (2021), online: *Toronto*.

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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