

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** March 3, 2015

**CASE NO(S):** PL131277

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Dan Mohr
Subject:	Application to amend Zoning By-law No. 03-57 – Refusal of application by Township of Adjala-Tosorontio
Existing Zoning:	Hamlet Residential One (HR1) Zone
Proposed Zoning:	Hamlet Residential One Exception 107 (HR1-20) Zone
Property Address/Description:	36 Moore Avenue
Municipality:	Township of Adjala-Tosorontio
Municipal File No.:	Z/06/13
OMB Case No.:	PL131277
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Heard: February 10, 2015 in Adjala-Tosorontio, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Dan Mohr

Self-represented

Township of Adjala-Tosorontio

J. Feehely\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY KAREN KRAFT SLOAN  
ON FEBRUARY 10, 2015**

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**INTRODUCTION**

[1] Dan Mohr (“Applicant/Appellant”) made an application to the Township of Adjala-Tosorontio (“Township”) for a Zoning By-Law Amendment (“ZBA”) to the

Comprehensive By-Law No. 03-57 to permit a 50 square metres (“sq m”) accessory dwelling unit within an existing dwelling at 36 Moore Avenue, Everett (“subject property”). The Township’s council refused the application and the Applicant/Appellant appealed to the Board pursuant to s. 34(11) of the *Planning Act* (“Act”).

[2] The ZBA would rezone the subject property from a Hamlett Residential One (HR1) Zone to a Hamlet Residential One Exception (HR1-2) Zone.

[3] The Board qualified Jackie Tschekalin, the Township’s Director of Planning, to provide evidence and expert opinion as a land use planner. The Appellant was self-represented and provided lay testimony. Thomas Boyd and Gail Ingram appeared as Participants, both opposed to the application.

[4] The subject property is located in a fully developed residential area in Everett and it is serviced by municipal water with a private septic system. An area above the garage was converted to a living space with separate access provided by external stairs on the west side of the garage. The apartment is not in compliance with Comprehensive By-law No. 03-57 because kitchen modifications were made to the living space. The ZBA would bring the apartment into compliance.

## **ISSUES AND EVIDENCE**

[5] The Applicant/Appellant identified various provisions in key planning documents and instruments to support his appeal. For example, he referenced the use of second unit accommodations to promote a range of residential housing options in policy 1.1.1(b) of the Provincial Policy Statement 2014 (“PPS”), intensification policies in the Growth Plan for the Greater Golden Horseshoe 2006 (“Growth Plan”), policies that permit accessory units to augment housing needs in policy 3.2.3 of the Township Official Plan (“OP”) and accessory dwelling units in a residential zone requirements in s. 3.3 of the Township Comprehensive By-Law No, 30-57. (Exhibit 2, Tab 14).

[6] Counsel for the Township informed the Board that the Township objects to the application on implementation grounds, specifically the ability of the subject property's private septic system to provide for the increase in capacity that will be required by the second unit. The Township wants to ensure that the obligation to provide septic service infrastructure lays with the Applicant/Appellant not the Township.

[7] Ms. Tschekalin provided background information on the ZBA application and the relevant planning documents and instruments that apply to the proposed ZBA. Ms. Tschekalin informed the Board that the subject property contained adequate parking. However, she underscored the problems that the Township has encountered in assessing whether or not the existing subject property's 30 year-old septic system has the capability to adequately provide septic services with the addition of the apartment. The Township determined that the existing septic system has capacity for a four-bedroom dwelling. However, a Township building inspection revealed the existence of a room in the basement that is considered a bedroom because the room contains a closet. The apartment and the basement bedrooms bring the dwelling's total bedrooms to five, which the Township has determined cannot be handled by the current septic system.

[8] Mr. Boyd, who lives beside the subject property, told the Board that he is concerned that the proposed ZBA will allow the Applicant/Appellant's property to become an investment property, which in his view would change the makeup of the neighbourhood. Mr. Boyd told the Board that the external staircase leading to the apartment above the garage is an eyesore. He has to see it every day as his property is adjacent to the side of the Applicant/Appellant's home where the external staircase is located. Ms. Ingram was also concerned about what impact a rental property would have on the neighbourhood as extra vehicles may lead to more traffic and she moved to Everett to get away from congestion. She told the Board that if the ZBA is approved it may result in more rental properties, which would negatively impact their neighbourhood.

## FINDINGS AND DECISION

[9] After carefully reviewing submissions and evidence provided by the Applicant/Appellant, the expert witness and the Participants, the Board finds that the determining factor for this appeal is whether or not the Township can be satisfied that the Applicant/Appellant will be able to provide the appropriate level of private septic infrastructure services if the ZBA is authorized. Counsel for the Township reiterated the Township's position, that they are against the appeal and that the ZBA should not be approved. However, counsel stated that if the Board decides to allow the appeal, and to approve the ZBA, the authorization of the ZBA should not occur until the following conditions ("Conditions") are met:

1. Documentation (which may include the requirement for a hydrogeological investigation) being provided to the Township's satisfaction, by a qualified professional, to indicate that adequate septic facilities are available on-site (including consideration of contamination attenuation zones); and,
2. Building permit(s), to address all requirements and deficiencies with the Ontario Building and Fire Codes, being applied for.

[10] The Board finds that the Conditions recommended by the Township are reasonable, and that the concerns of the Township with regards to adequacy of the subject property's septic system and issues related to the Applicant/Appellant's dwelling should be addressed. As these are the Township's primary objections to the proposal, it is ordered that Comprehensive By-law 03-57 is amended in accordance with the ZBA subject to the Conditions. The Board further finds that in light of the difficulties that the Township has encountered in establishing the current state of development of the Applicant/Appellant's house, and thus impeded the Township's ability to assess the capacity of the subject property's septic system, the Board will withhold its Order.

[11] The ZBA is set out in Attachment 1 to this Memorandum of Oral Decision.

[12] The Board withholds its Order until such time that the Board is advised by the Township that the Conditions have been met to the satisfaction of the Township.

*“Karen Kraft Sloan”*

KAREN KRAFT SLOAN  
MEMBER

**Ontario Municipal Board**

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ATTACHMENT 1

THE CORPORATION OF THE TOWNSHIP OF ADJALA-TOSORONTIO

BY-LAW NO. 13 -

A BY-LAW TO AMEND ZONING BY-LAW NO. 03-57, AS AMENDED OF  
THE TOWNSHIP OF ADJALA-TOSORONTIO

Part of Lot 11, Concession 5, former Township of Tosorontio  
36 Moore Ave (3T-300-86)

WHEREAS Zoning By-law No. 03-57, as amended, constitutes the comprehensive Zoning By-law for the Township of Adjala-Tosorontio save and except those lands within the Oak Ridges Moraine area;

AND WHEREAS it is deemed necessary and desirable to further amend By-law No. 03-57, as amended;

AND WHEREAS this amendment will conform to the Official Plan of the Township of Adjala-Tosorontio;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ADJALA-TOSORONTIO ENACTS AS FOLLOWS:

1. THAT Schedule "B-5" of Zoning By-law No. 03-57, as amended, is hereby further amended by changing the zoning on Part of Lot 11, Concession 5 of the former Township of Tosorontio, from a Hamlet Residential One (HR1) Zone to an Hamlet Residential One Exception 107 (HR1-20) Zone, as shown blackened on Schedule "A", attached hereto.
2. THAT Section 18.3 - Zone Exceptions for the Hamlet Residential One Zone in By-law No. 03-57, as amended, is hereby further amended as follows:  

**Section 18.3.20 (HR1-20 Zone)**

Notwithstanding anything to the contrary found in this By-law, one accessory dwelling unit with a minimum of 50m<sup>2</sup> floor area may be located within an existing single family dwelling.
3. THAT Schedule "A" is hereby declared to form part of this By-law;
4. THAT this By-law shall come into force on the date of passage and take effect the day after the last date for filing a notice of appeal where no notice of appeal is received, or, where a notice of appeal is received, upon the approval of the Ontario Municipal Board, and, in either case, in accordance with the provisions of Section 24(2) of the Planning Act, R.S.O. 1990, Ch. P.13, as amended.
5. THAT, notwithstanding anything contrary to the rules of procedure, this By-law, having been introduced and read a first and second time, be considered read a third time and finally passed this \_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MAYOR TOM WALSH

\_\_\_\_\_  
CLERK BARBARA KANE

Schedule "A"  
TO  
By-law No. 13-\_\_\_

