

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 13, 2017

CASE NO(S): PL160795

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Mark Rajcsanyi
Subject:	Minor Variance
Variance from By-law No.:	22-90 As Amended
Property Address/Description:	8 Sunset Dr.
Municipality:	Town of Orangeville
Municipal File No.:	A-5/16
OMB Case No.:	PL160795
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OMB Case Name:	Rajcsanyi v. Orangeville (Town)

Heard: November 22, 2016 in Orangeville, Ontario

APPEARANCES:

Parties

Mark Rajcsanyi

Counsel

Patrick White

DECISION DELIVERED BY ANNE MILCHBERG AND ORDER OF THE BOARD

[1] Mark Rajcsanyi (“Applicant” and “Appellant”) has appealed the decision of the Committee of Adjustment (“CoA”) of the Town of Orangeville (“Town”) to deny two variances that he requested for his single detached residential property at 8 Sunset Drive (“the subject property”; “No. 8”). The variances are intended to permit the construction of a 9.14-metre (“m”) by 4.72 m swimming pool in the front yard of the subject property, and to legalize an already-built 1.8 m high fence in the front yard.

[2] The variances pertain to the following provisions of Town Zoning By-law No. 22-90, as amended (“ZBL”):

- **Section 5.2(2A)** of the ZBL requires ground-oriented amenity areas to be “located to the rear of the front wall of the main building, and shall not be located closer than 2 m to any lot line.” Section 2.61(ii) of the ZBL considers a swimming pool to be a ground-oriented amenity area. The Appellant has requested relief from s. 5.2(2A) to allow the pool to be built in the front yard.
- **Section 5.11** of the ZBL permits a maximum fence height of 0.9 metres (“m”) “in any front yard, but shall not be erected along the *street line* in any *sight triangle*”. The existing non-compliant fence, which was built within the last couple of years in the front yard, is 1.8 m in height. The Appellant has requested relief from s. 5.11 to permit the fence. The Town’s Swimming Pool Enclosure By-law No. 15-1993 (Exhibit 1, Tab 17) requires a 1.5 m high fence around a privately owned, outdoor swimming pool at a detached dwelling, but the Appellant is requesting permission for a taller fence for privacy reasons.

[3] Professional land use planning opinion evidence on this matter was provided by Nancy Frieday, a qualified land use planner retained by the Appellant.

[4] Eight of the Appellant’s neighbours from Sunset Drive attended the hearing. Of these attendees, Wayne Donnelly and Alan Toms participated in the hearing, on consent of the Appellant, and they provided testimony against the proposal. The rest of the neighbours chose to observe rather than participate.

[5] The Town did not participate in the hearing. Counsel for the Appellant requested the Board to make note of this, and advised that the Appellant might, at some point, seek costs against the Town due to its lack of appearance.

[6] Despite the Town's absence, the Board was provided with some details on the Town's position, as the Appellant included a couple of Town-issued documents in evidence, including the Planning Report recommending refusal of the proposal ("Town Planning Report"; Exhibit 1, Tab 3).

[7] The subject property is located in a quiet, established, tree-lined residential neighbourhood of single detached bungalows dating from the 1950s. Sunset Drive can be described as a squared-off loop, with 10 houses on the interior block of the loop, and approximately 20 houses on the exterior of the loop, facing inward. Northgate Drive feeds the Sunset Drive loop at its north-east corner; Faulkner Street feeds the loop at its southwest corner. The subject property is located at the southwest corner of the interior block of the loop, facing Sunset Drive in two directions as the road turns a corner. It also faces into the intersection where Faulkner Street feeds into Sunset Drive (the "T intersection").

[8] The subject property is zoned "Residential Zone 1" ("R1"), and designated "Low Density Residential" by the Town's Official Plan ("OP").

[9] Photographic exhibits provided by the Appellant (Exhibit 1, Tab 10) and by Mr. Toms (Exhibit 2) demonstrated to the Board the high degree of built-form consistency and order throughout the neighbourhood as expressed by front yard setbacks, the location of front yards, lush landscaping and a sense of visual openness.

ANALYSIS AND DISPOSITION

[10] The overarching issue in this hearing is lot orientation, and the matter raises two questions that require findings on the part of the Board:

- Is the subject property a *corner lot*?
- What should be considered to be the *front lot line*?

[11] The Town's ZBL defines *corner lot* and *front lot line* as follows:

s. 2.79 "LOT, CORNER" means a lot situated at the intersection of and abutting upon two or more streets provided that the angle of intersection of such streets is not more than 135 degrees.

s. 2.84 "LOT LINE, FRONT" means (i) for an interior lot, the line dividing the lot from the street, (ii) for a corner lot, the shorter lot line abutting a street, and (iii) for a through lot the lot line where the principal access to the lot is provided, and for the purposes of this subsection a sight triangle shall be considered part of the lot.

Corner Lot

[12] The ZBL defines and locates the *front lot line* on three different kinds of lots, one of which is a *corner lot*.

[13] In argument, Counsel for Appellant asserted that the subject property was not really a *corner lot* because the ZBL defines *corner lot* as the intersection of two or more streets, while the subject lot abuts two portions of a thoroughfare with the same name, Sunset Drive. The consequence of this, Counsel suggested, was that there was no ZBL instruction on how to locate the *front lot line* on the subject lands.

[14] Accordingly, for the avoidance of doubt and for clarity in this decision, the Board will find that the subject property is a *corner lot* even if the street name is the same on both portions. The name of the street may be the same even though the street bends, but the lot still forms a corner.

Front lot line

[15] The subject property at No. 8 is a *corner lot* (based on the finding above) facing Sunset Drive in two directions as the street loops around. The ZBL defines a *front lot line* for a corner lot as the shorter lot line abutting a street. The *front lot line* establishes the *front* wall of the main building on the subject property, and the ZBL requires the ground oriented amenity areas to be behind that *front* wall.

[16] At No. 8, the *front lot line* faces west, while the main entry for the dwelling is oriented to the south, facing the Side Lot Line along the looping portion of Sunset Drive. The Appellant testified that the dwelling was oriented this way when he bought the subject property several years ago, and that the ZBL-defined *front yard* has always served as a side yard for him. A 2015 aerial photo [Exhibit 1, Tab 8] shows that the other nine properties that share the western segment of Sunset Drive with No. 8 all have *front* entrances and *front yards* (a ZBL-defined term) oriented to their *front lot lines*, all facing towards the western segment of Sunset Drive. Only No. 8 digresses from this pattern, with the proposed swimming pool and 1.8 m fence facing the western segment of Sunset Drive, and the front entrance to the dwelling facing elsewhere, to the south.

[17] Ms. Frieday, the planning witness for the Appellant, opined that there were two ways of looking at *front lot line*: technical and functional. The technical *front lot line* was dictated by the Zoning By-law, while the functional frontage was, in her terminology, the frontage established through use. It was her professional opinion that the *front lot line* on the subject property ought to be based on the owner's preference and pattern of use.

[18] Mr. Toms, the next door neighbour at No. 10 - and a layperson - had a very different view of the matter. His family had owned No. 10 for almost 58 years, and he could recall a time when the front door for No. 8 was oriented in exactly the same way his front door was, facing west. At some point, through renovations, the orientation of No. 8's front door changed, though he was not sure exactly when that occurred. Until the fence was constructed, the landscaped treatment of the front yard at No. 8 was still consistent with the front yard treatment on Mr. Toms' property and on the balance of the block.

[19] Although Mr. Toms cited a number of adverse impacts related to the fence (which will be described further on in this decision), his comment that left the strongest impression with the Board had to do with consistency and predictability. From his layperson's point of view, the current ZBL controls on front yards provide stability and predictability for him, for his neighbours and for the neighbourhood as a whole.

[20] With lot orientation as a major underlying issue in the hearing, Counsel for the Appellant requested the Board to deem the south lot line to be the *front lot line* (notwithstanding the ZBL definition), and if the Board was not prepared to do so, then the Board should find merit in the proposal by considering the variances pursuant to s. 45(1) of the *Planning Act* ("Act"), which sets out four tests that a minor variance must meet.

[21] Having heard evidence on lot orientation from both the professional planner and the layperson, the Board prefers the evidence of the layperson in this instance, because residents in a stable residential neighbourhood should have some degree of built form and streetscape predictability, and ought to be able to enjoy their own properties without undue impacts resulting from the re-orientation of lots.

[22] In the Board's view, allowing a property owner free reign to choose and define their front, rear and side yards is generally not advisable; by-laws determine lot orientation for a reason. Allowing the basic rules of front/side/rear yard orientation to be broken by property owners who decide to move their front doors from one building face to another can, even on *corner lots*, can upset the built form consistency of an entire neighbourhood. Streetscapes could devolve into full-blown expositions of garden sheds, garbage enclosures, freestanding garages, swimming pools, bouncy castles and tall fences when front yards suddenly become side yards or (in the case of through lots) rear yards.

[23] In this case, although the Appellant has testified that he bought the subject property with the front door already reoriented away from the front yard, and would now like to accommodate a pool on his property on what was originally the front yard, visual evidence [2015 Aerial photo - Exhibit 1, Tab 8] indicates that doing so would upset the built form consistency of the western segment of Sunset Drive. .

[24] Accordingly, the Board will not deem the *front lot line* of the subject property to be other than that defined by the ZBL.

[25] With the *front lot line* established, the Board considered the proposal against the four tests set out in the Act, namely:

- Does the proposal conform to the general intent and purpose of the OP?
- Does the proposal conform to the general intent and purpose of the Zoning By-law?
- Are the proposed variances minor in nature?
- Is the proposal desirable for the appropriate development or use of the land?

Conformity to General Intent and Purpose of OP

[26] It was Ms. Frieday's uncontroverted planning opinion that the proposal conformed to the general intent and purpose of the Town's OP. The Town Planning Report (Exhibit 1, Tab 3) contained the same planning opinion.

[27] The Board finds that the proposed swimming pool and fence conform to the OP because the "Low Density Residential" land use designation on the subject property permits ground-oriented amenity areas and fences.

Conformity to General Intent and Purpose of ZBL

[28] The Town Planning Report notes that the ZBL control requiring ground-related amenity areas (including swimming pools) to be placed to the rear of the front wall of a dwelling is intended "to maintain the residential character of an area, to protect a neighbourhood's streetscape and to protect the privacy of the owners of a subject property as well as the adjacent neighbours." (Exhibit 1, Tab 3)

[29] It is the Town's position that placing a swimming pool in the front yard of No. 8 would diminish the character of the neighbourhood and have a negative impact on the streetscape, and, in addition, be located directly adjacent to the front yard and driveway of No. 10, diminishing the privacy of the neighbours.

[30] The Applicant's request to legalize the 1.8 m high fence in the front yard arises from their need to maintain privacy around the proposed swimming pool in the front yard. The Town Planning Report states that:

The general intent of the maximum height of 0.9 m [for a fence in a front yard].... is to protect the streetscape as well as to ensure sight lines are maintained. By allowing a fence with a maximum height of 1.8 m in the *front* yard, it negatively impacts the streetscape which predominantly consists of larger *front* yard setbacks and mature trees.

In terms of sight lines, fortunately, due to the expanded width of the right-of-way, there appears to be sufficient space to allow for adequate visibility in and around the subject property. However, the fence does impede visibility for the resident(s) of 10 Sunset Drive. Furthermore, given that the fence is a wooden privacy fence, it does not allow the resident(s) of the adjacent property to see through it for oncoming cars and therefore, they could potentially have difficulty backing out of their driveway. (Exhibit 1, Tab 3)

[31] For these reasons, the Town Planning Report opined that the proposal to locate a swimming pool and fence in the front yard of No. 8 was not in keeping with the ZBL.

[32] In contrast, it was Ms. Frieday's planning opinion that the proposal conformed to the general intent and purpose of the ZBL. The Board finds that there was insufficient evidence from Ms. Frieday to effectively counter the comments in the Town Planning Report on streetscape impact.

[33] The Board concurs with the planning opinion set out in the Town Planning Report and prefers it to that of Ms. Frieday, specifically on the matter of streetscape impact.

Are the Proposed Variances Minor in Nature?

[34] Variances can be deemed "minor" if there are no undue impacts arising.

[35] Though Ms. Frieday testified that there would be no such impacts, Mr. Toms provided counter-evidence that he and his neighbours would be negatively impacted in by the proposal to allow the 1.8 m fence and swimming pool in the front yard of No. 8. He provided photos to the Board which effectively showed that the existing, non-

compliant fence does not maintain the streetscape, and serves as a negative visual focus (Exhibit 2, photos 1 – 4).

[36] Mr. Toms' photos also showed the Board the fence's potential for visual obstruction when he backs his car out of his driveway into the road allowance, close to the uncontrolled T-intersection at Sunset Drive and Faulkner Drive, even though there is a wide boulevard.

[37] For these reasons, the Board will not find the proposed variances to be minor.

Desirability Test

[38] Due to the demonstrated negative impact that the proposal would have on the streetscape, the Board finds that an amenity space such as a swimming pool is not desirable or appropriate in the front yard of the subject property, nor is the 1.8 m privacy fence.

CONCLUSION AND ORDER

[39] Based on the evidence before it, the Board finds that three of the four tests have not been satisfied.

[40] The Board orders that the appeal is dismissed and the variances are not authorized.

“Anne Milchberg”

ANNE MILCHBERG
MEMBER

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Ontario Municipal Board

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