

COMMITTEE OF THE WHOLE APRIL 3, 2006

**DEPUTATION – MR NORBERT STOECKL
WITH RESPECT TO PROPERTY CONCERNS**

Recommendation

The Commissioner of Planning and the Director of Building Standards recommends that this report be received and that no further action be undertaken by Staff.

Economic Impact

None.

Purpose

To respond to a request from the Committee of the Whole for a report regarding property matters at 15 Sundown Court.

Background - Analysis and Options

Council at it's meeting of February 13, 2006 adopted the following without amendment.

The Committee of the Whole recommends:

- 1) That the deputation of Mr. Norbert Stoeckl, 17 Sundown Court, Thornhill, L4J 3V4, and written submissions, one dated November 28, 2005, be received and referred to staff for a report; and
- 2) That the confidential memorandum of the Director of Building Standards, dated January 30, 2006, be received.

The following is a report from Staff respecting the subject matter.

Brief Chronological History

August 23, 1994	Order to Comply issued – construction of rear yard deck built without a building permit.
January 16, 1995	Building Permit application for rear yard construction.
March 4, 1996	Order to Comply issued – construction of rear yard deck built without a building permit.
February 25, 1997	Order to Comply issued – construction of rear yard deck and accessory without a building permit.
July 31, 1997	Application for a Minor Variance (A10/98) to allow for the maintenance of the existing rear yard decks and accessory building. The application proposed: Rear Yard Deck 1.20 metres Rear Yard Acc. Bldg. 0.30 metres Side Yard Acc. Bldg. 0.30 metres
February 19, 1998	Committee of Adjustment refused the application.

June 30, 1998 Ontario Municipal Board Order approved the Minor Variance application.
January 7, 1999 Building Permit issued for rear yard deck and accessory building.

The subject property is presently zoned "R5" (Residential Zone) under City of Vaughan Zoning By-law 1-88 as amended. The property is further subject to Exception Paragraph 9(479) and Schedule "T-70".

Committee at it's February 6,2006 meeting heard a deputation from the abutting owner where he expressed concerns regarding existing construction and offered opinions related to the same.

Building Staff have reviewed the opinions and do not concur. In accordance with Zoning By-law 1-88 the west lot line of the subject property, being the lot line that abuts Mr. Stoeckl's property, is permitted to have a zero (0) side yard setback (Schedule T-20 Subnote 2).

With regard to the question of decks being part of lot coverage Section 2.71 of By-law 1-88 excludes open and unenclosed porches located on a property from being included in lot coverage calculations.

A question surrounding the setback of the deck was also raised. The reduction in the rear yard setback for the deck was approved by the OMB. The OMB was privy to the plan showing all decks and their proximity to each other and the lot lines.

As for the concern regarding the shed exceeding the size permitted and the need to be included in coverage, staff have estimated that the property at 15 Sundown Ct. is permitted approximately 300 square feet of accessory buildings in accordance with the zoning by-law. The deputation indicated that the deck is 9.24 sq. m. which is approximately 99.5 square feet. As this is well within the permitted 300 square feet staff are satisfied that this is not an issue.

With respect to the above ground pool it has been the department's protocol to not include above ground pools in lot coverage. This interpretation application has been consistently applied. Were staff to now take the position that above ground pools should be included in coverage the majority of recently built residential units on smaller lots would not be permitted even the inexpensive yard pools available at some of our major retail outlets.

In summary, it is Staff's opinion that with the approval of the Minor Variance application by the Ontario Municipal Board, all relevant zoning matters respecting the existing structures located in the rear yard have been addressed.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

All relevant zoning matters have been addressed that would allow for the maintenance of the existing structures located in the rear yard and no further action is required from Staff. Staff will be contacting the owner of 15 Sundown Court in an effort to put closure to the existing deck permit.

Attachments

Copy of the deputation package presented at the Feb. 6, 2006 Committee meeting.

Report prepared by:

Leo Grellette, Director of Building Standards Ext. 8218

John Studdy, Manager of Customer and Administrative Services Ext. 8232

Respectfully submitted,

John Zipay
Commissioner of Planning

Leo Grellette
Director of Building Standards

(6a)
CW Feb. 6/06.
Submitted by the
deputan 4.

PAGE 1 IS THE APPLICATION FOR MINOR VARIANCES AS FOLLOWS:

1. REAR YARD SETBACK FROM DECK, 1.2m.
2. REAR YARD SETBACK FROM SHED, 0.3m.
3. SIDE YARD SETBACK FROM SHED, 0.3m.

THIS APPLICATION WAS REFUSED BY THE COMMITTEE OF ADJUSTMENT BUT LATER GRANTED BY THE OMB.

THE NEXT SIX PAGES ARE THE EVIDENCE OUTLINE OF MICHAEL S. MANETT, WHO ACTED ON BEHALF OF 15 SUNDOWN CT. AT THE AFOREMENTIONED OMB HEARING.

ON PAGE TWO IN THE EVIDENCE OUTLINE OF MR. MANETT, HE STATES IN SECTION 1 - APPROPRIATE DEVELOPMENT OF THE PROPERTY "...THE EXISTING SWIMMING POOL AND ITS ASSOCIATED DECK, WHICH IS AN ABOVE GROUND STRUCTURE, IS A PERMITTED USE, CLEARLY CONTEMPLATED BY SECTION 4.1.1 d OF THE ZONING BY-LAW (1-88)."

ON PAGE FIVE OF THE EVIDENCE OUTLINE OF MR. MANETT, HE STATES, IN THE SECOND PARAGRAPH, "THE SHED IS APPROXIMATELY 10 ft. X 10 ft.(100 sq.ft.), WHICH EQUATES TO 9.24 sq.m. SINCE THE STRUCTURE EXCEEDS 6 sq.m., AS PROVIDED FOR IN SECTION 4.1.1 b,

PAGE 8 IS A LETTER FROM MR. T.O. FRASER, THE TOWN SOLICITOR AT THE TIME, IN WHICH HE STATES: "(2) AN ORDER HAS ISSUED UNDER THE BUILDING CODE ACT REQUIRING THE REMOVAL OF THE ENCROACHING DECK BY DECEMBER 16, 1983. " THE ENCROACHMENT WAS REMOVED FROM THE "EXISTING UPPER DECK" (PAGE 9- THE SKETCH SUBMITTED TO THE OMB HEARING MENTIONED EARLIER, AND REPLACED WITH THE "EXISTING LOWER DECK", THAT ENCROACHES APPROXIMATELY 7ft. INTO THE SIDE YARD.

PAGE 9 IS THE SKETCH THAT WAS SUBMITTED TO THE OMB HEARING. THE THREE CIRCLES ARE IN REFERENCE TO THE 3 MINOR VARIANCES THAT WERE GRANTED.

PAGE 10 CONTAINS EXCERPTS TAKEN FROM BY-LAW 1-88.

THE POOL IS 4ft. ABOVE GROUND AND IT SHOULD BE INCLUDED IN COMPUTING LOT COVERAGE."SECTION 2 BY-LAW 1-88 --DEFINITION 124.

THE DECK PORTION ON THE SOUTH SIDE OF THE POOL THAT WAS GRANTED A VARIANCE TO REDUCE THE SETBACK IS A STRUCTURE; (SECTION 2 - BY-LAW 1-88 DEFINITION 124) AND SHOULD BE INCLUDED IN COMPUTING LOT COVERAGE

THE SHED, WHICH IS 9.24 sq.m., EXCEEDS THE 6sq.m. EXCLUSION LIMIT AS STATED IN SECTION 4.1.1 c. BY-LAW 1-88 AND SHOULD BE INCLUDED IN COMPUTING LOT COVERAGE.

THE EXISTING UPPER AND LOWER DECK ARE CONSTRUCTED ON FOOTINGS AND SHOULD BE INCLUDED IN COMPUTING LOT COVERAGE.

THE "EXISTING LOWER DECK" IS CONSTRUCTED ON FOOTINGS AND THUS CONTRAVENES SECTION 3.14 BY-LAW 1-88 "PERMITTED YARD ENCROACHMENTS"

To: Committee of Adjustment
From: Laurie Aikenbrack, Building Standards Department
Date: January 30, 1998
Name of Owner: ESTATE OF DAVID LEIFER
Location: 15 Sundown Cr1 (Lot 77, 65M-2154)
File No.(s): A010/98

Zoning By-Law Number:

By-Law 1-88 as amended subject to the provisions of exception number 9(479).

Date Enacted by Council:

By-Law 1-88 : Sept. 19/88.

Date Approved by the O.M.B. or Effective Date under the Planning Act:

By-Law 1-88 : May 12/89.

Zone Classification:

R5, Single Family Detached Dwelling.

Does Staff consider this application to comply:

COMPOSITE ZONING BY-LAW 1-88

Proposal:

1. Rear yard setback from deck, 1.2m.
2. Rear yard setback from shed, .3m.
3. Side yard setback from shed, .3m.

By-Law Requirements:

1. Rear yard setback from deck , 5.2m.
2. Rear yard setback from shed, 7m.
3. Side yard setback from shed, 1.2m.

Stop Work Orders and Order to Comply:

The following orders have been issued with respect to the deck and shed.
Order No. C-940182 was issued August 23, 1994.
Order No. C-970104 was issued February 25, 1997.
Order No. C-960053 was issued March 4, 1996.

Building Permits Issued:

A building permit application has been made(95-0047) for the deck only.

Staff Comments:

Building staff have no additional comments in respect to the application.

Conditions of Approval:

If committee finds merit in the application, the following conditions of approval are recommended.

Building permit must be issued for the deck and shed.

EVIDENCE OUTLINE OF MICHAEL S. MANETT

re

15 Sundown Court, Minor Variances

OMB File #V980091 - June 22, 1998

I act on behalf of the owner of 15 Sundown Court, City of Vaughan, the subject property of this hearing and was retained on June 1, 1998 with respect to this hearing. The owner has appealed the decision of the Committee of Adjustment refusing an application for Minor Variances for the subject property which would have the effect of permitting an existing swimming pool structure and storage shed to remain on the property, as constructed. In order for these structures to remain on the property, the City advised that minor variances are required for the rear yard setback of the deck attached to the pool and the rear and side yard setbacks related to the shed.

It is my opinion that the existing development for which the variances are required complies with the general intent and purpose of the Official Plan and Zoning By-law, is desirable for the appropriate use of the property and the variances are minor, as no negative impact will be created on adjacent properties by the continuation of these uses.

THE PROPOSAL

The subject property, 15 Sundown Court, is a pie-shaped lot, located on the south side of Sundown Court, backing onto an Open Space corridor owned by the Toronto and Region Conservation Authority (T.R.C.A., formerly the M.T.R.C.A.). The storage shed, which is one of the two structures at issue in this hearing has been in its current location since 1983, the year in which the owner of the property moved into the house. The pool and its associated deck were built in the summer of 1994.

The City has advised that the following variances are required to permit the continuation of the pool deck and shed use, as built.

The by-law requires a deck to be set back 5.2m from the rear lot line, whereas the existing pool deck is set back only 1.2m;

The by-law requires a detached building to be set back 7.0 m from the rear lot line, whereas the existing shed is setback only 0.3m; and

The by-law requires a detached building to be a minimum of 1.2m from the side lot line, whereas the existing shed is set back 0.3m from the east lot line.

THE FOUR TESTS

In my opinion, the proposed development meets the four tests for a Minor Variance as provided for in The Planning Act for the following reasons:

1 Appropriate Development of the Property

It is my opinion that the existing pool deck and shed are desirable for the appropriate use of the subject property. The shed has been in use in its current location for fifteen years with no adverse impact on adjacent properties. The shed is an accessory building or structure, as defined in the Zoning By-law, which is clearly permitted on the property. The existing swimming pool and its associated deck, which is an above ground structure, is a permitted use, clearly contemplated by Section 4.1.1 d) of the Zoning By-law (1-88). The shed and swimming pool, with its associated deck, are common accessory uses which serve the normal recreational pursuits of the property owners and through their usage enhance the livability of the property. There is no negative impact on adjacent properties created by the existence and use of these accessory structures. Therefore, it is my opinion, that the proposed development (maintaining the existing deck, associated with the pool structure and maintaining the shed) meets the test of being desirable for the appropriate use of the property.

2. In keeping with the general intent and purpose of the Official Plan

The subject property is located within an area designated **Low Density Residential** according to the Thornhill-Vaughan Community Plan Review, Amendment No. 210 to the Official Plan of the City of Vaughan. The principal use of the subject property is residential in the form of a single family detached residence, which is a permitted use within this designation. Matters of setbacks for accessory buildings or structures, related to permitted residential buildings within an Official Plan designation, are not customarily dealt with in Official Plans or their policies and are not dealt with in the City's Official Plan.

My review of the relevant policies in this case would clearly indicate that the subject development meets the intent and purpose of the Official Plan, in that the use is permitted and no aspect of the proposed variances, which deal with structures accessory to the permitted use, take away from this use permission. It is my opinion that the Official Plan does not contain any policies that relate to the subject matter of this application, nor is it appropriate that an Official Plan should contain such policies. An Official Plan is intended to be a general policy document dealing with the physical/spacial development of a municipality. The level of detail in the subject application is not one which is customarily dealt with in an Official Plan but, more properly, is a matter for the Zoning By-law.

Although, in my opinion, the Official Plan is not an issue in this hearing, I feel obliged to address Official Plan matters as a result of issues raised by the City of Vaughan Planning

staff. The City of Vaughan Planning Department provided comments to the Committee of Adjustment on the subject application in a memo dated February 6, 1998. Staff commented that:

"Because the subject property abuts an open space area, a reduction in the rear yard from the required 5.2m to the 1.2m on the existing pool deck cannot be supported as it is not in keeping with the intent of the open space and valley land preservation policies of the Official Plan."

My review of the open space and valley land preservation policies of OPA #210 found no policies that I could relate to the subject application. As a result, I sought an interpretation of the staff report from its author and on June 2, 1998, met with James Stiver of the Planning Department. Mr. Stiver advised me that he had authored the February 6, 1998 report to the Committee of Adjustment and that the Official Plan policies that he had considered relevant to this application were as follows:

- 2.2.1 f) In areas where slopes exceed 10% and/or in areas adjacent to river valleys, land uses will only be permitted if the erosion and siltation control measures are satisfactory to the City of Vaughan, Ministry of Natural Resources and the Metropolitan Toronto and Region Conservation Authority.
- 2.2.5 m) There will be no development or placing of fill in areas regulated by the Metropolitan Toronto and Region Conservation Authority, unless duly authorized by the said authority.
- 2.2.5 n) Council, recognizing that the development of the watersheds located in the Thornhill-Vaughan Community could have an adverse effect on downstream municipalities, shall, in considering development proposals for areas, have regard for the cumulative effect - particularly in terms of flood control and water conservation - of such development on these downstream municipalities and may, when necessary, consult with these municipalities prior to permitting such development to proceed.

It is my opinion that these policies have no relevance whatsoever to the subject application. The subdivision that created the lot upon which the subject dwelling and accessory uses have been built was approved and registered following a full analysis of matters such as slopes, erosion potential, flood control and water conservation. The development of the subject property has occurred within the limits of the property boundary and there are no issues related to soil erosion, fill, flood control or water conservation that result from the existing shed or pool structure and its associated deck. There is no information on the application file that would indicate any of these issues have been raised

by any commenting agencies.

In this regard, I specifically met with Michael Harrison, Plan Review Technician in the Watershed Management Division of the T.R.C.A. on June 18, 1998 with respect to the subject application. He advised that the T.R.C.A. has no comments with respect to the application. This certainly supports the position that the above noted Official Plan policies have no relevance to the subject application, since the policies noted by City staff relate to matters clearly under the jurisdiction of the T.R.C.A. who have no comments.

It is, therefore, my opinion that the application before the Board is in keeping with the general intent and purpose of the Official Plan, which in this case, provides for the single family residential use of the property, along with uses accessory to the principal use.

3. In keeping with the general intent and purpose of the Zoning By-law

The subject property is zoned R5 pursuant to By-law No. 1-88. This zoning permits single family residential uses and uses accessory thereto. The swimming pool and its attached deck and the shed are permitted accessory uses.

The variances requested by this application are to reduce the rear yard setback for the existing deck structure which is attached to the swimming pool and the rear and side yard setbacks of the existing shed. These accessory uses comply with all of the zoning by-law standards except for rear yard and side yard setbacks. The intent of the setback provisions is to provide spacing between properties to avoid impacts that may result from buildings or structures very close to lot lines.

With respect to the rear yard setback, the adjoining property is zoned open space and is owned by the T.R.C.A., which has no comments on the application. With respect to the side yard, the shed is abutting the property to the east, the owners of which have no objection to the application.

In my opinion, the general intent and purpose of the Zoning By-law is maintained by this proposal.

4. Is the Variance Minor

The Shed

In dealing first, with the shed, Section 3.16 of the Zoning By-law provides a definition for **Accessory Uses, Buildings and Structures**. Under Sub-section a) if a building on the land is erected or used for a specific purpose, (in this case a single detached residence) accessory uses are permitted. Therefore, it is appropriate to conclude that the shed, as

an accessory use, is clearly permitted. The construction of the shed took place in 1983 and it has remained in place since that time. The shed is located in the most south easterly part of the subject property and is used for storage and occasionally for persons changing clothes to use the swimming pool. The structure is buffered from the adjacent property to the east by significant vegetation at the rear of the adjacent property and is on the other side of the property from the objecting neighbour to the west.

The shed is approximately 10 ft. X 10 ft. (100 sq.ft.), which equates to 9.24 sq.m. Since the structure exceeds 6 sq.m., as provided for in Section 4.1.1 b), the setbacks from the adjacent lot lines are required to be the same as for the main dwelling. These setbacks are 7m from the rear lot line and 1.2m from the side lot line. The shed as noted above, was constructed in 1983 at a location 0.3m from the adjacent lot lines. There have never been any complaints about the location of the shed by the adjacent neighbours to the east, and in my opinion its location, with the reduced setback, has had and will continue to have, no impact on the adjacent properties. It should be noted that, if the shed had been smaller (under 6 sq.m.), the required setback from the side and rear lot lines would have been only 0.6m (1.96 ft.) as indicated in Section 4.1.1 b) of the Zoning By-law.

It is understood that in determining whether or not a variance is minor, does not involve a mathematical calculation, but rather, whether there is any negative impact on adjacent properties or neighbours as a result of the development which may result from the variance. In my opinion the variances associated with the shed are minor, since no impact results from the location of the shed. The neighbours most affected by its location, the property owners to the east, have never had any concerns with the shed's location and have no objection to the minor variances requested.

The Deck

The deck which is the subject of the third minor variance is attached to the existing swimming pool. Section 4.1.1 d) provides for:

"A private swimming pool shall be constructed only in the rear yard and notwithstanding Subsection 3.16, not nearer to any lot line than 1.5 metres (4.92 ft.) or to any street line than 4.5 metres."

The swimming pool itself is located approximately 1.82 metres (6 ft.) from the rear lot line. The deck portion, which is attached to the south side of the pool to allow occupants of the pool to sit on the edge, or exit the pool from the south side, is 0.6 metres (2 ft.) wide and therefore encroaches into the rear yard setback, which is 5.2 metres (17 ft.) from the rear property line.

Two key factors should be noted here. First, the pool structure is above ground, therefore it is not possible to sit adjacent to the pool without some form of deck or platform attached

to the pool structure. Secondly, the pool itself is clearly permitted by the Zoning By-law to encroach well within the 5.2m rear yard setback. In my opinion, the deck, attached to the pool along its south, east and west sides creates no additional impact than the permitted pool structure and certainly enhances its usability by the owners and provides added safety for pool users. There are no residences to the south which might be affected by the deck, since the lands to the south are in the adjacent open space valley lands. The principal intent and purpose of rear yard set backs is to maintain a separation of uses between properties abutting at the rear lot lines. As noted above, in this location, the only use to the rear of the subject property is valley open space.

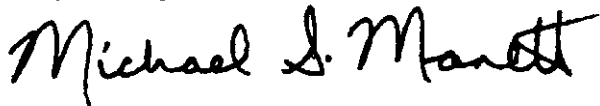
There are no impacts on the adjacent properties to the east and west, as a result of the pool decking. The deck area which is the subject of the variance is quite modest and where it is closest to the objecting neighbour to the west it is only 2 feet in width and, therefore, cannot accommodate any seating or amenity space. It merely serves as a safety feature to allow for access to and egress from the pool. It should also be noted that the property to the west is buffered considerably by existing vegetation.

For these reasons, in my opinion, the variances for the deck and shed are minor.

CONCLUSION

On the basis of the foregoing, it is my opinion that the subject application meets the four tests under the Planning Act and the application should be approved and the appeal allowed.

Respectfully submitted.



Michael S. Manett, M.C.I.P., R.P.P.





TOWN OF VAUGHAN

Telephone 832-2281

Municipal Offices, 2141 Major Mackenzie Drive, Maple, Ontario L0J 1E0

December 15th, 1983

John R. Cirillo, Esq.,
Barrister & Solicitor,
3701 Chesswood Drive,
Suite 200,
Downsview, Ontario.
M3J 2P6

Dear Sir:

RE: Norm Stoeckel
17 Sundown Court
Thornhill, Ontario

*10/16
m...*

Further to your letter of November 10th, 1983.

- (1) The overhang of the eaves on your client's premises does not contravene any by-law.
- (2) An order has been issued under the Building Code Act requiring the removal of the encroaching deck by December 16th, 1983.

*Neighbour
cat*

Yours very truly,

TOF

Mr. T.O. Fraser, Q.C.,
Town Solicitor,
Town of Vaughan.

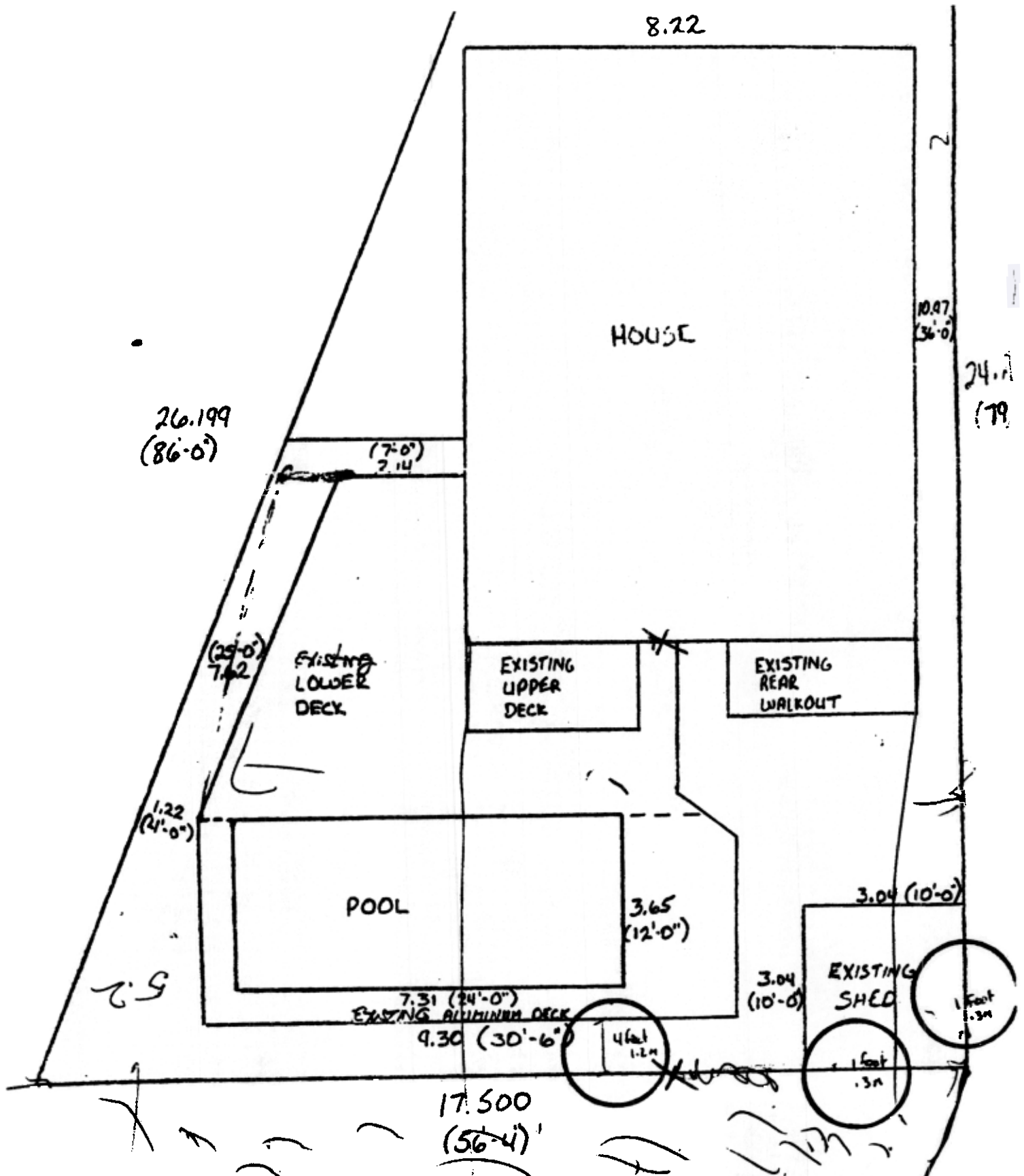
*MRS Teely
Custom
Solicitor
City*

TOF/da

c.c. Mr. E.R. Williams,
Director of Building Standards.

RECEIVED
DF

BUILDING DEPT



EXISTING POOL -
LEIBER RESIDENCE
15 SUNDOWN CO.
THORNHILL, ONT.
MAY 23, 1997.

2.0 DEFINITIONS

124. **STRUCTURE** – Means anything that is erected which requires location on the ground, but does not include swimming pools constructed not more than 0.3 metres above finished grade.

Accessory Buildings and Structures

- a) The percentage of the lot area covered by all accessory buildings and structures other than those attached to the main building shall not exceed ten percent (10%) or 67 square metres, whichever is the lesser;
- b) The following provisions apply to a detached building not exceeding six (6) square metres in floor area used as a garden or storage shed or cabana accessory to the residential use:
 - i) no part of the accessory building shall be nearer to the rear lot line than 0.6 metres;
 - ii) no part of the accessory building shall be nearer to an interior side lot line than 0.6 metres;
 - iii) no part of the accessory building shall be nearer to exterior side lot line than 4.5 metres;
 - iv) the maximum height of the accessory building shall not exceed 2.5 metres from finished grade to the highest point of the structure;
- c) In computing lot coverage, a detached accessory building shall not be included provided that it:
 - i) does not exceed six (6) square metres in floor area;
 - ii) is erected in the rear yard; and
 - iii) is used only as a garden or storage shed or cabana;
- d) A private swimming pool shall be constructed only in the rear yard and notwithstanding Subsection 3.16, not nearer to any lot line than 1.5 metres or to any street line than 4.5 metres

All references are from City of Vaughan Zoning By-law 1-88 (January 1997)

3.14 PERMITTED YARD ENCROACHMENTS AND RESTRICTIONS

Every part of any required yard or required open space shall be open and unobstructed by any structure from the ground to the sky, except for the following:

- c) Subject to Paragraph (b), exterior stairways, porches and balconies which are open and unenclosed and a bay window or similar projection which is not constructed on footings may extend into a required interior side yard to a maximum distance of 0.3 metres and may extend into a required front, exterior side or rear yard to a maximum distance of 1.8 metres.

ACCESSORY USES, BUILDINGS AND STRUCTURES

- a) Where this By-law provides that land may be used or a building or structure may