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*Case Name:*

**Trans Canada Pipelines Ltd. v. Oakville (Town)**

**IN THE MATTER OF subsection 45(12) of  
the Planning Act, R.S.O. 1990, c.**

**P.13, as amended**

**Appellant: Trans Canada Pipelines Limited**

**Applicant: Jonas Israel, Rene Israel**

**Subject: Minor Variance**

**Property Address/Description: 3365 Liptay Avenue**

**Municipality: Town of Oakville**

[2012] O.M.B.D. No. 64

Municipal File No.: A/18/2011, OMB Case

No.: PL111327, OMB File No.: PL111327

Ontario Municipal Board

**Panel: J. de P. Seaborn, Vice Chair**

Oral decision: January 30, 2012.

Filed: February 1, 2012.

(8 paras.)

**Appearances:**

Trans Canada Pipelines Limited: Harold Elston, counsel.

Jonas and Rene Israel: Bryan Wing, agent.

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**MEMORANDUM OF ORAL DECISION DELIVERED**

**BY J. DE P. SEABORN ON JANUARY 30, 2012 AND ORDER  
OF THE BOARD**

**Introduction**

1 Pursuant to s. 45(12) of the *Planning Act* (Act), Trans Canada Pipelines Limited (Trans Canada) has appealed a decision of the Committee of Adjustment of the Town of Oakville (Town) dated November 8, 2011. The Committee authorized a variance from the provisions of the Town's zoning by-law to permit the development of a pool by Jonas and Rene Israel (Applicants) with a reduced rear yard setback. The Town did not appear.

**Evidence and Findings**

2 The hearing was held by way of telephone conference call. In advance of the hearing the parties advised the Board that they had reached a settlement. While the Committee authorized a reduced rear yard setback of 1.5 metres from the boundary of Trans Canada's easement, the parties settled the matter on the basis that a reduced setback of 3 metres was acceptable. Under the By-law, the setback is set at 7 metres.

3 Planning evidence was filed by way of an affidavit (Exhibit 1), sworn by Mr. Lehman, a land use planner. The Applicant's property is located at 3365 Liptay Avenue. They wish to construct a pool in their rear yard and a site plan has been prepared to that effect. However, in order to accommodate the pool the Applicants required relief from the by-law requirements. They were successful at the Committee. Thereafter, Trans Canada appealed, expressing safety concerns in respect of a reduced setback from the Trans Canada easement. However, they were prepared to agree to setback of 3 metres, as opposed to the decision of the Committee which authorized 1.5 metres.

4 The Board amends the application from that before the Committee to reflect the request for a 3 metre variance. The Board is not required to give notice if the amendment to the original application is minor. The Board finds it is minor and therefore no notice of the amended application is necessary.

5 The Board may authorize a variance from a by-law if each of the four tests set out in s. 45(1) of the Act are satisfied. Based on the evidence of Mr. Lehman and the submissions of Counsel the Board finds that the variance maintains the general intent and purpose of both the official plan and zoning by law, is desirable for the appropriate development of the land and is minor in impact. Minutes have been executed (Exhibit 2) which include a site plan showing the location of the proposed pool and the setbacks.

**Decision and Order**

6 For all of the reasons given, the Board finds that the variance, as amended, meets the four tests

set out in s. 45(1) of the Act. In arriving at this decision, there has been regard to matters of provincial interest, as required under s. 2 of the Act. The decision is consistent with applicable policy statements and conforms with provincial plans, as required under ss. 3(5)(a) and (b) of the Act.

**7** The appeal is allowed and a variance is authorized to permit a setback of 3.0 metres from the boundary of the Trans Canada easement, subject to the condition that the pool will be constructed substantially in accordance with the site plan filed with the Board and dated January 17, 2012.

**8** So orders the Board.

J. de P. SEABORN  
VICE CHAIR

qp/e/qlspi