

Date: September 24, 2013

---

## MEMORANDUM

**TO:** Development Services Committee

**FROM:** Jim Baird, M.C.I.P., RPP - Commissioner of Development Services  
Rino Mostacci, MCIP, RPP - Director of Planning & Urban Design

**PREPARED BY:** Anna Henriques, MCIP, RPP - Senior Planner, Zoning & Special Projects, ext. 7922

**REVIEWED BY:** Tom Villella, MCIP, RPP – Senior Projects Coordinator, Zoning & Special Projects, ext. 2758

**SUBJECT:** PLANNING REVIEW PROCESS FOR REQUESTS TO PERMIT  
BACKYARD SWIM SCHOOLS AS HOME OCCUPATIONS

---

### RECOMMENDATION:

- 1) THAT the memorandum dated September 24, 2013, entitled “Planning Review Process For Requests to Permit Backyard Swim Schools As Home Occupations”, be received.

### PURPOSE:

The purpose of this memorandum is to provide information to Development Services Committee (DSC) on the City’s planning review process for considering requests to permit backyard swim schools as home occupations. A Committee of Adjustment application for a minor variance is the planning review process supported by the City’s Planning Department for considering requests to permit home occupation uses that are not permitted in the Home Occupation By-law 53-94, as amended.

### BACKGROUND:

**Minor variance application (A/36/13) submitted to permit backyard swim school (Russell Aquatics) at 22 Couperthwaite Crescent**

In August 2012, following the City’s investigation of a complaint concerning on-street parking generated by a swim school (Russell Aquatics) at 22 Couperthwaite Crescent, a zoning violation notice was issued to Russell Aquatics for failure to comply with the City’s Home Occupation By-law 53-94, as amended. Specifically, the City’s Home Occupation By-law 53-94, as amended (Appendix ‘A’) requires that home occupation uses be conducted entirely within an enclosed building whereas, the backyard swim school was operating within the rear yard of a residential property and not entirely within an enclosed building.

In March 2013, a minor variance application (A/36/13) was submitted by Russell Aquatics, seeking permission to operate a backyard swim school as a home occupation. Specifically, the minor variance requested was to permit the operation of a home occupation (backyard swim school) within the rear yard of 22 Couperthwaite Crescent, whereas the Home Occupation by-law requires that home occupations be conducted entirely within an enclosed building. In addition, a minor variance was also requested to permit a maximum of six (6) students at a

time (per lesson), whereas the By-law requires that any home occupation involving instructional activity be limited to a maximum of four (4) students at a time (per lesson).

**Minor variance application (A/36/13) approved to permit backyard swim school (Russell Aquatics) at 22 Couperthwaite Crescent**

On April 3, 2013, the Committee of Adjustment approved the minor variance application (A/36/13) submitted by Russell Aquatics for the requested variances as discussed above. The Committee's approval was subject to the following conditions:

- 1) That the variances apply only during the months of July and August, Monday through Friday (excluding holidays), between the hours of 9:30am-5:00pm.;
- 2) That the applicant complies with the City's Noise By-law 2003-137, as amended; and,
- 3) That approval be granted for a limited period of 5 years from the date of this decision.

**Request to Development Services Committee (DSC) to amend Home Occupation By-law 53-94, as amended, to permit backyard swim schools**

On April 23, 2013, a deputation was made to DSC by Kerri Russell (Russell Aquatics), requesting an amendment to the City's Home Occupation By-law 53-94, as amended, to permit backyard swim schools as home occupations, as of right, throughout the City. This deputation was accompanied by a petition signed by other City residents also in favour of the requested amendment to Home Occupation By-law 53-94, as amended (Appendix 'B'). The petition was received by the Development Services Committee and referred to the Commissioner of Development Services.

Kerri Russell advised DSC that she has been operating a backyard swim school at 22 Couperthwaite Crescent for nine (9) years and that the recent minor variance approval to permit the operation of her backyard swim school was temporary, for five (5) years only. The effect of Ms. Russell's proposed amendment would be to permit backyard swim schools as home occupations, as of right, throughout the City.

**DISCUSSION:**

**Official Plan – Urban Residential**

Lands designated 'Urban Residential' in the City's Official Plan are intended primarily for housing and residential uses, with limited opportunities for uses that are complementary to, or serve, basic residential uses.

**Home Occupation By-law 53-94, as amended**

The City's Home Occupation By-law 53-94, as amended, permits certain non-residential uses in residential zones, subject to conditions (Appendix 'A'). For example, a home occupation is only permitted provided the home occupation use is clearly a secondary use of the dwelling unit as a private residence and provided the use is conducted entirely within an enclosed building. Furthermore, to limit any potential negative impacts of the home occupation use on the residential character of the surrounding area, the By-law regulates matters such as:

- 
- gross floor (GFA) devoted to the home occupation use
  - total number of employees (other than dwelling residents)
  - number of students for home occupations involving instructional activity
  - parking
  - signage
  - outdoor storage and display of goods, materials and equipment
  - noise, vibration, fumes, odour, dust, glare and radiation levels

See by-law attached as Appendix 'A' for applicable restrictions on home occupation uses.

**Backyard swim schools not permitted as home occupations**

The City's Home Occupation By-law 53-94, as amended, requires that home occupation uses be conducted entirely within an enclosed building. Backyard swim schools are clearly an outdoor use and therefore, are not permitted as home occupations.

**The Planning Act provides two (2) means for considering a land use that is not permitted in the zoning by-law**

From a planning perspective, there are two (2) means for considering a land use that is not permitted in the zoning by-law: (1) a zoning by-law amendment; and, (2) a Committee of Adjustment application for a minor variance. Both options will be discussed as they relate to the recent request to DSC to permit backyard swim schools as home occupations.

**(1) Zoning by-law amendment to Home Occupation By-law 53-94, as amended**

To permit backyard swim schools as a home occupation in the Home Occupation By-law 53-94, as amended, a zoning by-law amendment would be required to permit a home occupation use (backyard swim school) that is not conducted entirely within an enclosed building. The effect of such by-law amendment would be to permit backyard swim schools as home occupations, as of right, throughout the City. City planning staff are not supportive of a City-wide "blanket" zoning amendment to permit this use for the following reasons:

i) Non-residential uses generally not intended for residential areas

As discussed earlier in this report, lands designated Urban Residential in the City's Official Plan are intended primarily for housing and residential uses, with limited opportunities for uses that are complementary to, or serve, basic residential uses. The general intent of the City's Home Occupation By-law is to permit certain non-residential uses as home occupations, subject to conditions, as outlined in the By-law (Appendix 'A'). These conditions are general in nature and are intended to ensure that home occupation uses are compatible with the residential character of the area in which they are located. The introduction of non-residential uses in residential areas, other than what is contemplated in Home Occupation By-law 53-94, as amended, may lead to the establishment of non-compatible uses with potential negative impacts on residential areas in the City, with little ability to mitigate such impacts. Potential negative impacts include, but are not limited to, increased noise, traffic, parking, etc.

ii) Amendment to Home Occupation By-law 53-94, as amended, may set precedent

An amendment to the City's Home Occupation By-law, 53-94, as amended, to permit backyard swim schools as home occupations, as of right, in the City, may set a precedent to establish other non-residential, and potentially more offensive, uses in residential areas throughout the City.

**(2) Committee of Adjustment application for a minor variance**

A Committee of Adjustment application for a minor variance is the planning review process supported by the City's Planning Department for considering requests to permit home occupation uses that are not permitted in the Home Occupation By-law 53-94, as amended. Property owners seeking permission to operate a backyard swim school as a home occupation would be required to submit a Committee of Adjustment application for a minor variance. Specifically, a minor variance would be required to permit a home occupation use (backyard swim school) that is conducted in the rear yard, whereas, the By-law requires that home occupation uses be conducted entirely within an enclosed building.

The Planning Act [s. 45 (1)] provides the Committee of Adjustment with the authority to grant a minor variance from the provisions of a zoning by-law in respect of the land, building, structure, or the use thereof, if in the opinion of the Committee, the following four (4) tests are satisfied with respect to the requested minor variance:

- i) Is it minor in nature?
- ii) Is it desirable for the appropriate development or use of the land, building or structure?
- iii) Does it meet the general intent and purpose of the zoning bylaw?
- iv) Does it meet the general intent and purpose of the official plan?

The Planning Act also provides the Committee of Adjustment with the authority to grant minor variances subject to conditions. Section 45 (9) of the Planning Act states:

*"Any authority or permission granted by the committee.....may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision."*

Upon submission of an application for a minor variance, staff would review the requested variance and provide comments which outline any issues or concerns associated with the requested variance and may include a recommendation for approval, a recommendation for approval subject to conditions, or a recommendation for denial. Written notice of the requested variance and Committee hearing date and time is mailed out to all property owners within a sixty (60) metre radius of the property requesting a minor variance. This provides nearby residents, who may potentially be impacted, with the opportunity to provide input. Input from area residents, staff and agencies is taken into consideration by the Committee prior to granting any minor variance, and applying any conditions deemed to be appropriate.

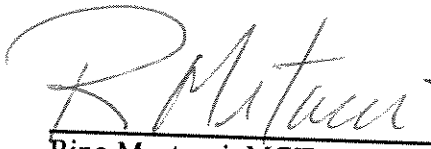
Provided the Committee of Adjustment is satisfied that the four (4) test have been met, they have the ability to permit backyard swim schools as home occupations, on a case by case basis, subject to any conditions they deem necessary. For instance, the Committee may approve a minor variance application to permit a backyard swim school as a home occupation, subject to

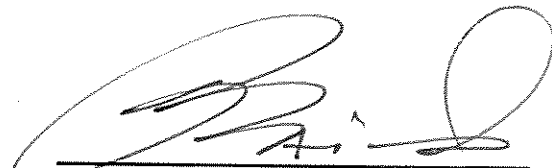
conditions that limit the months and hours of operation; limit the time frame of approval limit the maximum number of students and/or employees; etc. Conditions of approval may be imposed by the Committee, on a case by case basis, to mitigate any issues or concerns raised by staff, agencies or the public.

**SUMMARY & CONCLUSION:**

As discussed, requests to permit backyard swim schools as home occupations in the City may be considered by the Committee of Adjustment through an application for a Minor Variance. This provides the opportunity to consider each request individually, on a case by case basis, with the ability to review each application on its own merits and take into consideration local and contextual circumstances which may vary throughout the City. In addition, the Committee has the ability to impose conditions of approval to address issues and concerns raised by staff, agencies and/or the public. As such, this will be the preferred approach recommended by staff.

**RECOMMENDED BY:**

  
Rino Mostacci, MCIP, RPP  
Director of Planning & Urban Design

  
Jim Baird, MCIP, RPP  
Commissioner, Development Services

**ATTACHMENTS:**

Appendix 'A' – Home Occupation By-law 53-94, as amended  
Appendix 'B' – Petition to amend Home Occupation By-law 53-94, as amended, to permit backyard swim schools

## APPENDIX A

### THE CORPORATION OF THE TOWN OF MARKHAM

BY-LAW NO. 53-94

A by-law to amend By-laws 1229, 1442, 1507, 1767, 2150, 2237, 2489, 2571, 2612, 2325-68, 11-72, 122-72, 83-73, 84-73, 151-75, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 72-81, 90-81, 193-81, 221-81, 194-82, 196-82, 304-87 and 19-94, as amended

---

WHEREAS THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HAS CONSIDERED IT APPROPRIATE TO ENACT A ZONING BY-LAW TO PERMIT HOME OCCUPATIONS AND REGULATE THEIR SIZE AND NATURE;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HEREBY ENACTS AS FOLLOWS:

1. Town of Markham By-law Nos. 1229, 1442, 1507, 1767, 2150, 2237, 2489, 2571, 2612, 2325-68, 11-72, 122-72, 83-73, 84-73, 151-75, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 72-81, 90-81, 193-81, 221-81, 194-82, 196-82, 304-87 and 19-94, as amended, are hereby further amended as follows:

- 1.1 Notwithstanding any definition within the aforementioned by-laws the following definitions shall apply within the context of this by-law:

"DRIVEWAY means that portion of a LOT used to provide access from the street to a parking space or spaces and which has been graded and gravelled or surfaced with concrete, asphalt, crushed stone or other hard surface and dustless materials and has a maximum width equal to that of the garage on the LOT. Where there is no garage on the LOT a DRIVEWAY shall not exceed a width of 3 metres.

"FLOOR AREA, GROSS means the total of the floor areas of a building(s), above or below grade, measured between the exterior faces of the exterior walls of the building at each floor level."

"HOME OCCUPATION means a SECONDARY USE of a DWELLING UNIT and its ACCESSORY BUILDINGS by at least one of the permanent residents of such DWELLING UNIT to conduct a gainful occupation or business activity."

"KENNEL means an establishment for the keeping, breeding and raising of domesticated animals for profit or gain."

"MOTOR VEHICLE REPAIR GARAGE means a building or structure where the service performed or executed on motor vehicles for compensation shall include the installation of exhaust system, repair of the electrical system, transmission repair, brake repair, radiator repair, tire repair and installation, rustproofing, motor vehicle diagnostic centre, major and minor mechanical repairs or similar use."

"RETAIL STORE means a building or part thereof in which one or more articles of merchandise or commerce are sold at retail."

"SECONDARY USE means any use, except those uses contained in the prohibited uses section of this by-law, which is subordinate and incidental to the residential use and does not compromise the residential character of the property."

1.2 Notwithstanding any other provisions contained within the aforementioned by-laws, HOME OCCUPATIONS shall be permitted in any Residential ZONE subject to the following:

- (a) the HOME OCCUPATION use is clearly a SECONDARY USE of the DWELLING UNIT as a private residence and is conducted entirely within an enclosed BUILDING;
- (b) the HOME OCCUPATION use does not occupy more than 25% of the total combined GROSS FLOOR AREA of the DWELLING UNIT and any associated ACCESSORY BUILDINGS on the SAME LOT;
- (c) such HOME OCCUPATION shall not create noise, vibration, fumes, odour, dust, glare or radiation which is evident outside of the DWELLING UNIT and which exceeds limits established by Town by-laws and Provincial legislation;
- (d) other than members of the household residing in the DWELLING UNIT there shall be no more than one employee, provided that one off-street PARKING SPACE is available solely for use by such an employee;
- (e) there shall be no exterior storage or display of goods, materials or equipment associated with the HOME OCCUPATION;

- (f) retail sales shall be limited to those goods and articles which are produced within the DWELLING UNIT or its accessory buildings (excepting mail order sales, which shall not be subject to this restriction);
- (g) any HOME OCCUPATION involving instructional activity shall be limited to a maximum of 4 students at a time;
- (h) there shall be no commodities sold or services rendered that require receipt or delivery of merchandise, goods, or equipment by other than a passenger motor vehicle or by parcel or letter carrier mail service using vehicles typically employed in residential deliveries;
- (i) where a HOME OCCUPATION use is present, the following special PARKING restrictions shall apply:
  - (i) no required PARKING SPACE shall be located in the FRONT YARD,
  - (ii) parking or storage of vehicles in the FRONT YARD or FLANKAGE YARD shall be prohibited except on a DRIVEWAY;
- (j) an ACCESSORY BUILDING may be used for a HOME OCCUPATION only if it complies with the setback requirements established for the MAIN BUILDING; and
- (k) signs advertising the HOME OCCUPATION shall not be permitted.

1.3

HOME OCCUPATIONS shall not include the following business activities:

- OFFICE OF A PHYSICIAN, DENTIST or DRUGLESS PRACTITIONER except in accordance with the provisions of Section 1.4
- MOTOR VEHICLE REPAIR GARAGE
- SCRAP YARDS
- dating bureau/escort service
- public bath/whirlpool
- vehicle towing
- contractor's yards
- taxi service
- KENNELS
- ANIMAL HOSPITAL
- ADULT ENTERTAINMENT PARLOUR
- RETAIL STORE
- RESTAURANT
- FAST FOOD RESTAURANT



- 7-
- TAKE OUT RESTAURANT
  - sales or service of motorized vehicles, machinery or equipment
  - sales or installation of automotive and audio products
  - any use which, from its nature or operation, creates a nuisance or is liable to become a nuisance or offensive by the creation of noise or vibration, or by reason of the emission of gas, fumes, dust or objectionable odour, or by reason of the matter, waste or other material, and without limiting the generality of the foregoing shall include any uses which under the appropriate regulations may be declared to be a noxious or offensive trade, business or manufacture.
  - any other use or uses prohibited pursuant to the PROHIBITED USES Section of the applicable Zoning By-law(s).

1.4 Notwithstanding the provisions of Section 1.3, the offices of physicians, DENTISTS and DRUGLESS PRACTITIONERS shall be permitted only on LOTS in a Residential ZONE having a FRONT YARD or FLANKAGE YARD on a Provincial Highway, Major Arterial Road, Minor Arterial Road or Major Collector Road as designated in the Official Plan of the Markham Planning Area provided that the DWELLING UNIT is used by the said physician, DENTIST or DRUGLESS PRACTITIONER as his/her private residence.


1.5 The provisions of Section 1.2(b) shall not apply to HOME OCCUPATIONS which are regulated by By-law 19-94, the Buttonville Core Area By-law.

2. All other provisions of Town of Markham By-laws Nos. 1229, 1442, 1507, 1767, 2150, 2237, 2489, 2612, 11-72, 2325-68, 122-72, 83-73, 84-73, 151-75, 127-76, 250-77, 145-78, 162-78, 163-78, 184-78, 72-79, 91-79, 118-79, 134-79, 153-80, 72-81, 90-81, 193-81, 221-81, 194-82, 196-82, 304-87, and 19-94, as amended, not inconsistent with the provisions of this by-law, shall continue to apply.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 29TH DAY OF MARCH, 1994.



CHRISTINE PALMER, DEPUTY CLERK



FRANK SCARPITTI, MAYOR

# APPENDIX B

1

PETITION THE CITY OF MARKHAM TO CHANGE BY LAW #53-94, WHICH SHOULD ALLOW BACKYARD SWIM SCHOOLS TO OPERATE FROM THEIR HOME BACKYARD POOL

NAME	SIGNATURE
SUSMITA SAHU	<i>[Signature]</i>
JODIE YEW	<i>[Signature]</i>
KEN LA FLICK	<i>[Signature]</i>
EUGENE LIU	<i>[Signature]</i>
Ernesta Ross	<i>[Signature]</i>
Greg Aligiannis	<i>[Signature]</i>
JAMILA DHANJI	<i>[Signature]</i>
Tiffany Ho	<i>[Signature]</i>
Stephen Hatzes	<i>[Signature]</i>
Kerri Russell	<i>[Signature]</i>

RECEIVED  
MAR 27 2013  
CITY OF MARKHAM  
CLERKS DEPT.

**PETITION THE CITY OF MARKHAM TO CHANGE BY LAW #53-94, WHICH  
SHOULD ALLOW BACKYARD SWIM SCHOOLS TO OPERATE FROM THEIR HOME  
BACKYARD POOL**

NAME	SIGNATURE
Lih Lingchung	Lih Lingchung
Jennifer Chen	Jennifer Chen
CRAIG CHEN	Craig Chen
SU CHIN CHEN	SU CHIN CHEN
Eric Loi	Eric Loi
SUSIE BARBOSA	SUSIE BARBOSA
Mauricio Mejia	Mauricio Mejia
FLORA HO	FLORA HO
TERESA MEJIA	TERESA MEJIA
Brittney Manginong	Brittney Manginong
Philippe Guimard	Philippe Guimard
Daranay Ung	Daranay Ung
Ingrid Bowman	Ingrid Bowman
VINCE LIU	VINCE LIU
Hinda Liu	Hinda Liu
MAUMITA CHOWDHURY	MAUMITA CHOWDHURY
MARIO NGUYEN	MARIO NGUYEN
Mark Till	Mark Till
Tania Braganza	Tania Braganza

RECEIVED

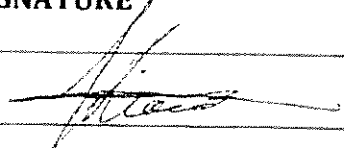
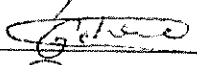
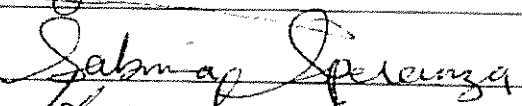
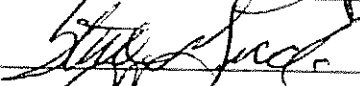

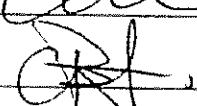

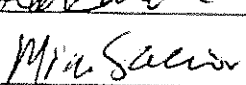
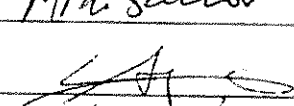
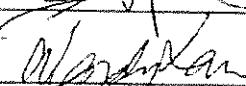
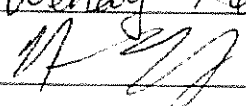
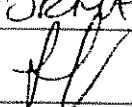
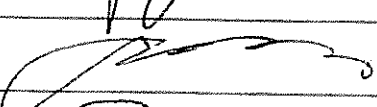
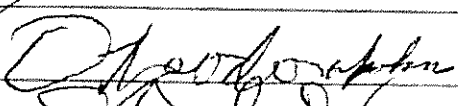


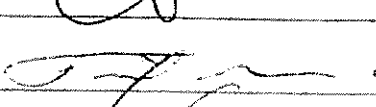
MAR 27 2013

CITY OF MARKHAM  
CLERKS DEPT.

(Club Markham).

1

**PETITION THE CITY OF MARKHAM TO CHANGE BY LAW #53-94, WHICH  
SHOULD ALLOW BACKYARD SWIM SCHOOLS TO OPERATE FROM THEIR HOME  
BACKYARD POOL**

NAME	SIGNATURE
Kiana Parhizi	
Belene Bicko	
Sabrina Speranza	
Steve Guard	
Christina Rovito	
Casandra Bryant	
IDA BARBER	
NINA SACCO	
Connie Diep	
Wendy Lou	
	NORM TRIFON
LARRY TRIFON	
Judy Lou	
Diana Theodorakakos	
STEFANIE DALLK	
Cristina Furlano	
Faisal Merali	
Kenia Jetha	