

Committee of Adjustment / Land Division Committee
DECISION OF COMMITTEE WITH REASONS

[The Planning Act, R.S.O. 1970, chapter 349, section 42 (9) and (11)]

IN THE MATTER OF AN APPLICATION FOR

(a) Indicate which decision is applicable by checking the appropriate box.

- CONSENT - In making its decision upon this application for consent the Committee in addition to other matters has had regard to the matters that are to be had regard to under subsection 4 of section 33 of The Planning Act, R.S.O. 1970, chapter 349 and considered whether a plan of subdivision under section 33 of the land described in the application is necessary for the proper and orderly development of the municipality.
MINOR VARIANCE - In making its decision upon this application for a variance the Committee in addition to other matters has considered whether or not the variance was minor and desirable for the appropriate development for use of the land and that the general intent and purpose of the zoning by-law and the official plan be maintained.
NON-CONFORMING USE - In making its decision the Committee in addition to other matters has had regard to whether or not this application met the requirements of section 42 (2) of The Planning Act.

(b) Description of property

in respect of (b) 31 First Street Orangeville
Part of Lot 4 and all of Lots 5 & 6, Block 7
which is located on Lot No. 159

(c) City, town, village, township.

in the (c) Town of Orangeville

(d) Delete where not applicable.

We the undersigned concur in the following decision and reasons for decision of the (d) Committee of

(e) Name of municipality.

Adjustment/Land Division Committee for the (e) TOWN OF ORANGEVILLE

(f) Date of decision

made on the (f) 28th of November 1979.

DECISION: Consent to grant a minor variance on the above mentioned property.

GRANTED.

This decision has been made subject to the following conditions.

(g) State conditions to be satisfied before actual granting of consent.

CONDITIONS (g): nil.

(h) State reasons for decision.

REASONS FOR DECISION (h): See attached.

Signature of Member of committee.

Signature of member of committee.

Signature of member of committee.

Signature of member of committee. [Handwritten signature]

Signature of member of committee. [Handwritten signature]

Signature of member fo committee.

CERTIFICATION

[The Planning Act, R.S.O. 1970, chapter 349, section 42 (11)]

I Ann E. Armstrong

(i) Delete where not applicable.

Secretary-Treasurer of the (i) Committee of Adjustment/Land Division Committee for the TOWN OF ORANGEVILLE in the County of DUFFERIN

HEREBY certify that the above is a true copy of the decision of the Committee with respect to the application recorded therein.

Dated this 4th day of December 19 79.

Last date of appeal - December 27th 1979.

Signature of Secretary-Treasurer
Committee of Adjustment
for the Municipality of the
CORPORATION OF THE TOWN OF ORANGEVILLE.

REASONS FOR DECISION

Application No. A-6-79, an application by Ann W. Church for a minor variance to permit use of a tool shed constructed on her property being part of Lot 4 and all of Lots 5 and 6, Block 7, Town of Orangeville, Municipally known as 31 First Street.

At the hearing Mrs. Church was sworn and stated that the subject "Tool Shed" was located at the rear of the lot and was of aluminum construction, placed on a cement pad. The "Tool Shed" is located 2.78' and 2.48' from the side lot line. Mrs. Church further stated that it was impossible to place the "Tool Shed" further away from its present location because of guy wires located on her property, from the hydro and telephone poles. Mrs. Church further stated that the owner of the property most affected, Dr. Price, had advised her that he had no objection to the location of the tool shed, also the owner of the property on the north side of her lot, Dr. Scott, had no objections.

Mr. Hewlett and Mr. Sever appeared in opposition to the application. It appears that both of these gentlemen live on the other side of Town and a considerable distance from the subject property. They however stated that they objected as citizens that a minor variance should be granted and the distance of 4' to the lot line be strictly adhered to for all buildings.

Mrs. Church entered as exhibits several photographs taken by her which showed "tool sheds" erected on new properties in the Town which were located less than 4' from the side yard line.

On receipt of the Notice of Hearing prior to the hearing, I, as Chairman of the Committee, consulted the Zoning By-law No. 9-66 and also the Planning Act, R.S.O. 1970, to ascertain the status of a "tool shed". By-law 9-66 and the Planning Act were of no assistance, "tool sheds" not being mentioned therein.

Indeed the frames of the By-law did not even attempt to define what constitutes a "building" or a "structure". They do define "accessory when used to describe the use, building or structure shall mean a use, building or structure which is subordinate to and devoted exclusively to the main use or building located on the same lot."

"Side Yard" is defined as "a yard or open space extending from the front yard to the rear yard between the side lot line and the nearest part of any building or structure on the lot or parcel of land."

"Yard" is defined as "an open space uncovered and unoccupied except by accessory buildings appurtenant to a building or structure and extending for the full width or length of a lot or parcel of land and from the lot line to the nearest main wall of the building or buildings for which such yard is required."

To arrive at a satisfactory definition for the word "building" I referred myself to several authorities and it appears that the nearest attempt to define the word is in the case of STEVENS V GOURLEY (1850) 7 C.B.N.S. P.99 where at pages 112,113, Byles J. states;

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"What is a building? Now, the verb 'to build' is often used in a wider sense than the substantive 'building'. Thus a ship or a barge-builder is said to build a ship or a barge, a coach-builder a carriage; so, birds are said to build nests; but neither of these when constructed can be called a 'building'..... The imperfection of human language renders it not only difficult, but absolutely impossible to define the word 'building' with any approach to accuracy. One may say of this or that structure, this or that is not a building; but no general definition can be given, and our lexicographers do not attempt it. Without, therefore, presuming to do what others have failed to do, I may venture to suggest that, by a 'building' is usually understood a structure of considerable size, and intended to be permanent, or at least to endure for a considerable time. A Church, whether constructed of iron or wood, undoubtedly is a building. So a 'cow-house' or 'stable' has been held to be a building, the occupation of which as tenant entitles the party to be registered as a voter.... On the other hand, it is equally clear that a bird-cage is not a building, neither is a wig-box, or a dog kennel, or a hen-coop - the very value of these being their portability." (The underlinings are mine)

"What is a Structure?"

In Words and Phrases Legally Defined, 1969, under 'structure' Lord Hodson is quoted as having said: "Structure is a word which is wide enough to cover every kind of building and erections of various kinds which could not properly be described as buildings. Nevertheless it has sometimes been used judicially as primarily indicating something less than a permanent building, but judges have hesitated to give a definition to either word.

Perhaps the nearest attempt at a definition, which lends support to the contention of the valuation officer, is to be found in the judgement of Byles J. in *Stevens v Gourley*. (The underlining is mine).

"What Then is a Shed?"

M.R.Vamos (1851) 2 Den.65 C.C.R. it is noted that the prisoner was indicted for arson. The building burnt down was 25' square, its sides of wood, with glass windows, its roof slated, and it was commonly called "the workshop". It was used as a storehouse for seasoned timber, as a place for deposit of tools, and a place where timber was worked up into proper forms and prepared for use. The question was whether the building was a "shed" .

Patterson J. at p. 68 states:"This is certainly a shed. It is a temporary building, it has a covering and whether it be slight or no is matter of opinion."

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Conclusions.

This is the first application to be brought to the Committee of Adjustment for the Town of Orangeville in respect to a "Shed" or in this case what is described as a "Tool Shed". To avoid the risk of setting a precedent the Committee felt that the fullest consideration be given to the matter.

On reviewing the law as stated supra and the Zoning By-law for the Town of Orangeville the Committee has arrived at the following conclusions:

- 1) In Stevens v Gourley a "building" is described as "a structure of considerable size, and intended to be permanent, or at least to endure for a considerable time " and further on it is stated: "On the other hand, it is equally clear that a bird-cage is not a building, neither is a wig-box, or a dog kennel or a hen-coop - the value of these things being their portability."
- 2) Per Lord Hodson on structures: "Nevertheless it has sometimes been used judicially as primarily indicating something less than a permanent building."
- 3) Per Patterson J. on "Sheds": "This is certainly a shed. It is a temporary building...."
- 4) The Committee finds the definitions given in the By-law are ambiguous namely:
  - (a) Under "Accessory" what is meant by .. "a use, building or structure which is subordinate to and devoted exclusively to the main use or building located on the same lot. "
  - (b) "Side Yard"... "extending from the front yard to the rear yard..." Does this mean to the commencement of the rear yard or to the rear lot line?
  - (c) "Yard"... "An open space uncovered and unoccupied except by accessory buildings..." Here again it is not too plain what is meant by an accessory building. Other than a garage, large storage shed, workshop or childrens' play house are there other types of buildings that could be permitted?
- (5) The Committee grants the application for the following reasons:
  - (a) We find the erection to be a "Tool Shed" because of its size (98 sq. feet), its portability and its non-permanent nature;
  - (b) The "Tool Shed" being under 100 sq. feet did not require a building permit and therefore does not come under the supervision of the Building Inspector;

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- (c) The By-law is silent as to "Sheds" and where they may be located on the lot;
- (d) The "Tool Shed" is at its closest point to the side lot line is 2.48 feet so therefore we consider an encroachment of 1.52 feet to be a minor variance for a small building;
- (e) Neither of the owners on either side of the Church property have objected to the location of the "Tool Shed" as has no other person in the neighbourhood;
- (f) It has been demonstrated to us by the exhibits filed by the applicant that many other such "Tool Sheds" are located as close to and in some cases closer to the side lot lines than that of the applicant;
- (g) It appears to us that there is no requirements as to the location of "Tool Sheds" on Town building lots. It, therefore, appears to us that the doctrine of "de minimus non curit lex" applies and that the By-law does indeed ignore small things.

These reasons delivered by A.G.B. Campbell and fully concurred in by Mr. V.W.Yates, Committee Member.

November 30th 1979.

EXHIBIT "A"

THE  
COMMITTEE OF ADJUSTMENT  
OF THE  
TOWN OF ORANGEVILLE

IN THE MATTER of an application by Ann W. Church, 31 First Street, Orangeville, Ontario, for a Minor Variance to By-law 9-66 (5.6) (f) and By-law 60-77 and amendments thereto of the Town of Orangeville for part of Lot 4 and all of Lots 5 and 6, Block 7, Plan 159, of the Town of Orangeville, under the provisions of Section 42 of the Planning Act R.S.O. and amendments thereto.

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APPOINTMENT FOR HEARING

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THE COMMITTEE OF ADJUSTMENT of the Town of Orangeville hereby appoints the 28th day of November, 1979, at the hour of 7.30 o'clock in the afternoon (local time) at the Council Chambers, Municipal Building, 87 Broadway, Orangeville, Ontario, for the hearing of all parties interested in supporting or opposing this application.

Ann E. Armstrong,  
Secretary-Treasurer,  
Committee of Adjustment.

Explanatory note:

A Minor Variance is required to permit the use of a tool shed, 8.82 sq. metres (98 Sq. feet), recently constructed on the property. The shed in question is located approx. .84 metres (2.78 feet) and .75 metres (2.48 feet) from the lot line on the south side of the property.