

DECISION AND ORDER

Decision Issue Date Thursday, September 12, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): VIRGINIA JOHNSON

Applicant: V ROSA DESIGNS LTD

Property Address/Description: 26 CHURCHILL AVE

Committee of Adjustment Case File: 18 259806 STE 19 MV

TLAB Case File Number: 19 149891 S45 09 TLAB

Hearing date: Monday, September 09, 2019

DECISION DELIVERED BY Ted Yao

APPEARANCES

Name	Role	Representative
Virginia Johnson	Owner/Appellant	
Mary Beth Jenner	Architectural Designer	
Victor Rosa (V Rosa Designs Ltd.)	Engineer	

INTRODUCTION

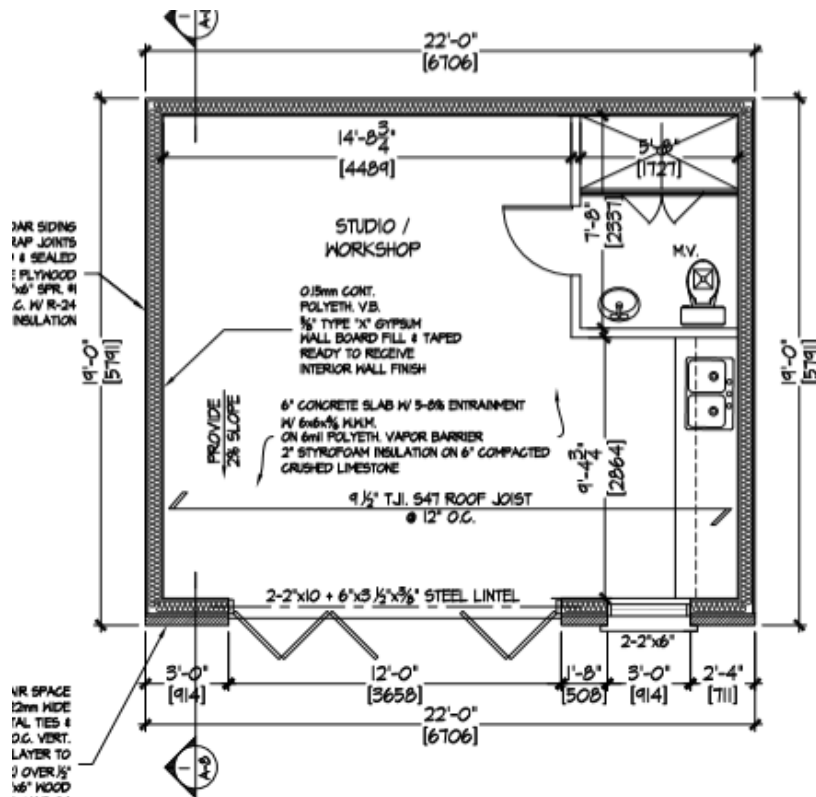
Virginia Johnson, who with Louis Trochatos, owns 26 Churchill Ave, wishes to build a shed at the extreme rear end of their back yard for use as an artist's studio. Ms. Johnson is an artist. She needs two variances to build the structure she contemplates:

Table 1. Variances sought for 26 Churchill Ave		
	Required	Proposed

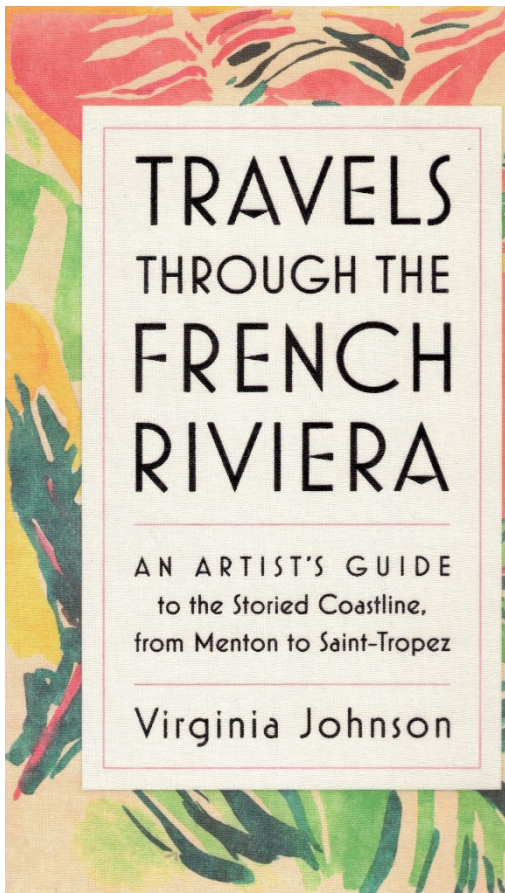
Table 1. Variances sought for 26 Churchill Ave			
Variances from Zoning By-law 569-2013			
1	Shed must be ancillary		Studio/Workshop use is not ancillary to a residential use.
2	Max permitted coverage of an ancillary building	5% of the lot area	11.6% of the lot area

On April 17, 2019, the Committee of Adjustment granted the variances subject to the following conditions:

- (1) The detached Studio/Workshop shall not be used as habitable space.
- (2) No water and/or sewage services shall be connected to or within the Studio/Workshop.



Ms. Johnson appealed condition (2), and thus this comes before the TLAB.



MATTERS IN ISSUE

I must be satisfied that the applications meet the four tests under s. 45(1) of the *Planning Act*; that is, whether they individually and cumulatively:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are for the appropriate development or use of the land; and
- are minor.

A condition to a variance may be imposed if it is “advisable”.

ANALYSIS, FINDINGS, REASONS

The appeal means the whole application must be proved anew. As may be seen from the fact that there is no opposition and four letters of support, including the local councillor, Ana Bailão. The variances are not

controversial although I have an independent duty to be assured that they meet the above four tests and in so doing I will analyse whether the conditions are “advisable.”

Ms. Johnson is a professional artist, specializing in fabric design, clothing creation (both retail and wholesale) and water colour painting. She illustrated her own book *Travels through the French Riviera*, (above inset) and is currently working on an illustrated children’s book. In 2015 she wound up her clothing store with its off-site office and five employees and downsized to work at home.

The proposed interior layout is shown on the previous page. Ms. Johnson will have a bathroom with shower, and a long counter with a sink, and washer and dryer. With all these fixtures, it is understandable why the Committee of Adjustment was concerned that the shed might be used for human habitation. Ms. Johnson explained that she will require that fabrics be washed and dried prior to dying, and that the shower area will be needed to hang dripping fabrics and will not be for personal use.

I now consider each of the issues around “ancillary use” and “coverage”.

Ancillary use

The proposed use could be an “artist's studio”, which is permitted in a RAC Residential Apartment Commercial or RC Commercial Residential. However, the lands

are zoned R Residential, which does not permit an artist's studio. Alternatively, the use could be categorized as a "home occupation," but that does not assist Ms. Johnson, because a home occupation is not permitted in an ancillary building.

"Ancillary" is a confusing word because it could apply to either the building or the use. The shed is not the main building, so it would be an ancillary **building**. The plan examiner requires a variance with respect to an ancillary **use**. This is defined as a use that is:

. . .naturally and normally incidental, subordinate in purpose or floor area, and exclusively devoted to a permitted use,

I interpret the required variance to be from the words "**normally**" and "**exclusively devoted to the residential use.**" First, I note that the bolded words are themselves elastic. What is a "normal" use for residential is blurry in this day where many people work from home or could work from home. But the plan examiner's interpretation, which is conclusive, is that people do not normally design fabrics and clothing on the scale that Ms. Johnson wishes to do. Nor do most residential uses include fabric design as being an exclusively devoted use.

In my view, Ms. Johnson pursues a specialized business requiring a dedicated, well lighted space with additional plumbing. Ms. Johnson's track record as an artist suggests she intends to use the space for her studio and is not a pretext for a secondary habitable space. There are Official Plan policies supportive of the arts and home businesses¹. Fabric design would be a permitted home occupation if not in an ancillary building and fits the words in the definition "devoted to a permitted use". Moreover, condition (2) as written by the Committee of Adjustment, with due respect, would not conform to the Official Plan in the footnote below.

Coverage

The location is advantageous. The proposed shed will be 22 feet wide on a 24-foot lot, leaving a one-foot side yard setback and a one-foot rear yard setback to the rear lot line. On the east side her neighbor is a contractor, who uses his rear building for his business. On the west side the neighbour has a vegetable garden and child's swing set. On the north side is a wooded area, part of the open space portion of a block

¹ Toronto's future must be one where: . . .the arts and culture are actively promoted; (A City of Beauty, page 1-4);

1. Toronto's economy will be nurtured and expanded to provide for the future employment needs of Torontonians and the fiscal health of the City by j) recognizing the full diversity of employment activities that are increasingly taking place in non-traditional employment areas, such as homes and public spaces, and strengthening the necessary regulatory frameworks and policies to support this employment. (3.5.1 Creating A Strong and Diverse Civic Economy, p 3-40)

of land from Dovercourt to Ossington and used for two schools (one being Ossington Old Orchard elementary school which her daughter attends) and a day care centre.

A typical double-car garage is considered by the Buildings Department to have dimensions of 18 by 18 feet, so this 19 x 22 shed differs from the typical double car garage size in only a minor way. But I note an 18 x 18-foot building is 30.1 m² and would still exceed the 16.7 m² permitted. I find that the 38.8 m² coverage is a minor variance. The lot is unusually long; 150 feet long; and the shed will be 55 feet from the main residence and will not cause undue adverse impact on the neighbours. I find the conditions which I will impose are advisable.

In conclusion, I find that statutory tests are met, cumulatively and individually. The variances should be granted, with condition (1), to which Ms. Johnson agrees. I find that condition 2 should be varied as desired by Ms. Johnson.

DECISION AND ORDER

I authorize the variances in Table 1, on the following conditions:

- (1) The detached Studio/Workshop shall not be used as habitable space.
- (2) Only those water and/or sewage services shown in the plans on page 2 of this decision shall be connected to or within the Studio/Workshop.



T. Yao
Panel Chair, Toronto Local Appeal Body