

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Appeal # : **15-006-094-003**

Adjudicator: Garreth McGrath

Appellant(s): David Nippard

Respondent / Authority: Town of Paradise

Date of Hearing: 5 March 2026

Start/End Time : 11:00 – 12:30

**In Attendance**

Appellant: David Nippard

Appellant Representative(s): N/A

Respondent/Authority: Town of Paradise

Respondent Representative(s): Kim Blanchard, Lucas Eastman, Andrew Harris

Interested Party: N/A

Appeal Officer: Sarah Kimball, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Rutvi Patel

**Board's Role**

The role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and Town of Paradise Municipal Plan and Development Regulations when it refused an application to undertake a development for an accessory building at 122 Summit Drive, Paradise, Newfoundland and Labrador (hereinafter the 'Subject Property').

**Hearing Presentations**

**Planner's Presentation**

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness.

Under the Rules of Procedure:

(a) there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities.

The Adjudicator heard from the planner that this appeal relates to conditional permit made regarding accessory buildings on the Subject Property and the requirement for accessory buildings to comprise of no more than 150 square meters of floor area, which in this case necessitated the removal of 9.7 square meters from the accessory building already in place at the Subject Property to accommodate a second accessory building. The Appellant then created a cantilevered section of 9.7 square meters, overhanging approximately 10 centimeters above the existing floor in the existing accessory building as the Authority outlined that an overhang would meet the requirements for the reduction in floor area. The Authority then took the position on 14 April 2025 after an inspection that these changes to the accessory building did not reduce the floor area as required by the development regulations of the Authority. As such the Authority informed the Appellant that the modifications did not satisfy the condition of the development approval required to build the second accessory building.

As per the Technical Report, the crux of this dispute relies on the requirements for floor area within the regulations. From the Technical Report:

“...the definition of Floor Area contained in the 2016 Town of Paradise Development Regulations, pursuant to subsection 4(1)(h) of the Development Regulations Under the Urban and Rural Planning Act, 2000 applies. Under these regulations, “floor area” means the total area of all floors measured to the outside face of exterior walls.”

From the Technical Report, neither the Urban and Rural Planning act, nor the Authority’s regulations and plan contain requirements for what constitutes an “exterior wall” other than generally understood definitions that an exterior wall is a wall that delineates or demarcates the wall where the general outdoors ends and an enclosed space begins.

This decision is what gives rise to this appeal today. There are no procedural defects in this application identified by the Planner.

### The Appellant’s Presentation and Grounds

The presentation of the Appellant focused on the technical requirements for building a wall and specifically what constituted a wall. The Appellant’s position as presented is that a cantilevered

section of the accessory building is not, for the purposes of defining the maximum allowed floor space for accessory buildings on the Subject Property, floor space.

Instead the position of the Appellant is that by adding the cantilevered section, the area under the cantilever is not floor space as the “exterior wall” is, by the arguments of the Appellant, the fixed ended portion of the cantilever which is circled on page 68 of the Appeal Package. Drawings to this effect which show the “old exterior wall,” which is still visible on Page 68, can be found on page 69 where the Appellant shows the area that they consider removed from the property and the fixed end of the cantilever which the Appellant contends is the new exterior wall for the purposes of calculating the total allowable floor space for accessory buildings.

### Authority’s Presentation

The Authority’s presentation focused on the fact that while this appeared to be a cantilevered construction, the construction was not within the definition of what put forward should be considered an exterior wall. Specifically, they focused on the remaining section of the wall that was originally used to calculate the exterior wall was still existing and that the section above the cantilever was still being used as a floor and storage space. Thus the position is that this still constitutes “floor area” for the total amount allowed by the regulations. It is the position of the Authority that this does not meet the requirements for approval of a development permit and until the Appellant changes the construction in a way that meets their approval for a reduction of floor area, a permit will not be issued.

The Authority also put forward the position that the Adjudicator does not have authority to hear this matter as it does not relate to a matter under Section 41 of the Urban and Rural Planning Act. To reiterate, the Act allows for appeals of:

- (i) an application to undertake a development,
- (ii) a revocation of an approval or a permit to undertake a development, or
- (iii) the issuance of a stop work order.

Upon review, the Adjudicator finds that this is a decision that was made regarding an application to undertake a development. Until the conditions of a reduction in the floor space of the existing accessory building, no approval would be granted. As such, I find that I have jurisdiction to hear this application as it related to an application to undertake a development.

### **Adjudicator’s Analysis**

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of Paradise’s Municipal Plan and Development Regulations and determined the following:

Question/Answer .

Q: Was there a reduction in floor area as required by the regulations by constructing a cantilevered section inside the existing accessory building which constitutes a change of the exterior wall of the building?

As discussed above, the crux of this matter turns on what the Adjudicator finds is the exterior wall of the accessory building on the Subject Property. As quoted from the Technical Report:

“...the definition of Floor Area contained in the 2016 Town of Paradise Development Regulations, pursuant to subsection 4(1)(h) of the Development Regulations Under the Urban and Rural Planning Act, 2000 applies. Under these regulations, “floor area” means the total area of all floors measured to the outside face of exterior walls.”

When the exterior wall is determined, then the floor area can be determined. As stated above, the position in the submitted materials of the Appellant is that the exterior wall is the fixed end of the cantilever. This is because there is no technical definition or minimum requirements for the height of a wall, but instead the general definition that a wall is the demarcation of indoors vs outdoors.

If we were to take the Appellant on their position and accept their definition, then this change to the building may constitute a change to the position of the exterior wall. However, this is why hearings are necessary and oral evidence can determine the outcome of a hearing, as evidence that was not presented in the Appeal Package was found in the hearing.

In the hearing, the Appellant while under question testified to the state of the cantilever. As seen in the pictures produced in the Appeal Package, the cantilever section extends out to the edge of the building and the area underneath the cantilever can be seen on pages 67 and 68. In testimony on these pictures, the Appellant testified that this opening seen on page 67, above the foundation, was left uncovered so that an inspector could easily examine the section where the cantilever was placed. The Appellant then testified that once the inspection was complete, that the exposed area on Page 67 was then closed off as they believed there was no more need for the inspector to see inside.

This testimony evidence defeats the argument of the Appellant. While there may be no technical definition to be found for the standards of a exterior wall in the Act, Regulations, or Development Plans, if a person hopes to rely on a strict technical definition, they must also adhere to that strict technical definition. The Appellant, by their own admissions, understand that the fixed end of the cantilevered section is not the exterior wall of their space. If they did, they would leave the crack open as seen on page 67 because the space under the cantilever would not be part of the building. It would be outside as demarcated by the “exterior wall” of the cantilever’s fixed end inside the former exterior wall. If their position were truly that this was an exterior wall, the Appellant would be fine with the space filling with debris, water, snow, dirt, and anything else that may come and enter into the crack and fill the space under the cantilever because it is outdoors, should we accept the definition put forth by the Appellant. Instead the Appellant took steps to cover that hole that left the area under the cantilever exposed, placing the fixed end inside the new exterior wall.

The Appellant, in their actions, have defeated their own argument. They have shown that the fixed end is not what they considered to be their exterior wall, as they then took steps to install an exterior wall over the hole on Page 67, turning what they claim to be an exterior wall into a step up to an area of the accessory building that is higher than it was before via a cantilever. The Appellant, by their own testimony, took actions to install a wall where the old wall was, in essence creating a new wall and setting the floor area of the Accessory Building back to where it was originally, defeating any purpose of the cantilever space.

Should that space have been left open, the Adjudicator would have discussed whether the fixed end of the cantilever was an exterior wall. However, on the facts, this issue has been rendered moot by the action of the Appellant to establish an exterior wall where one existed previously, showing that the Appellant did not consider the cantilever's fixed end to be the exterior wall. As such, I must find that the Authority has acted within their powers and that their decision is confirmed.

### Adjudicator's Conclusion

### Urban and Rural Planning Act, 2000

#### Decisions of adjudicator

44. (1) In deciding an appeal, an adjudicator may do one or more of the following:
- (a) confirm, reverse or vary the decision that is the subject of the appeal;
  - (b) impose conditions that the adjudicator considers appropriate in the circumstances; and
  - (c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.
- (2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.
- (3) An adjudicator shall not make a decision that does not comply with
- (a) this Act;
  - (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and
  - (c) a scheme, where adopted under section 29.
- (4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision.

After reviewing the information presented, the Adjudicator concludes that the Authority acted within their authority and was authorized to refuse an application to undertake a development at the Subject Property. As such the decision of the Authority is confirmed.

That is to say, the Appellant did not meet the requirements to reduce the square footage of their accessory building and as such has not met the requirements when it comes to building a secondary accessory building on the Subject Property where all accessory buildings must constitute less than 150 square meters.

Order

The Adjudicator orders that the decision of the Town of Paradise to be confirmed. The appeal by Mr. Nippard is denied.

The Authority and the Appellant(s) are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Adjudicator's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 25 March 2026.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000