URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

Appeal # :15-006-099-018

Adjudicator: Lorilee A. Sharpe

Appellant: Melanie Luther

Respondent / Authority: Town of Deer Lake

Date of Hearing: October 15, 2026

In Attendance:

Appellant: Melanie Luther

Appellant Representative: Ruth Luther

Respondent/Authority: Town of Deer Lake

Respondent Representative: Lori Humphrey, Town Clerk

Appeal Officer: Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Tastrophia Pham

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 SNL 2000 Ch. U-8*, the *Towns and Local Services Districts Act SNL 2023 Ch. T-6.2*, and the Town of Deer Lake Municipal Plan and Development Regulations when it denied an application to approve a development at 9 Stella's Place in the Town of Deer Lake on July 2, 2026.

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 a tied vote of Deer Lake Town Council with respect to an application to develop a duplex with a third dwelling unit proposed to be located on the upper level of an accessory building.

The Appellant's Presentation and Grounds:

The Appellant presented three grounds of appeal. First, that the Authority has been inconsistent in utilization of its discretion by allowing development of multiple units of three or more in Residential Medium Density (RMD) zones in other areas of the Town of Deer Lake whilst denying her application to develop one at 9 Stella's Place. In particular, she provided evidence that the Authority had approved a three unit development at 12 Queen Street (also RMD zone) during the same council meeting where it had considered and denied her application to develop three units at 9 Stella's Place. The Appellant also provided evidence of other multiple unit developments that had been approved in the Town of Deer Lake municipal boundaries such as Whites Road, Airport Avenue, and Nicholsville Road.

Secondly, the Appellant takes the position that the Authority ought not to have engaged in speculation as to future events in making its decision. In particular, she submitted that the Authority ought not to have considered the prospect that other people might build around her.

Third, the Appellant took issue with the Authority having considered that Stella's place, being a cul de sac, has only one access for emergency vehicles. The Appellant provided evidence of other streets within the Town of Deer Lake that also have only one access for municipal services but which also contain lots that have been developed with multiple dwelling units.

The Appellant acknowledged that none of the other multiple unit developments that she had presented as comparable to her own contained a ground floor garage with a dwelling unit constructed above it.

Authority's Presentation:

The Authority presented evidence to show that they had advertised for public input in relation to both the subject application pertaining to 9 Stella's place and the 12 Queen Street development. The Authority showed that they had received a significant number of objections from residents with respect to the Appellant's development application with respect to 9 Stella's place and there were no resident concerns received with respect to the 12 Queen Street development application. Further, the Authority indicated that it was not appropriate to compare the 9 Stella's place application with other areas as the Stella's place was a cul de sac subdivision that consisted of all single dwelling homes. The Authority also indicated that they appropriately considered that the

nature and character of the 12 Queen Street property differed from Stella's Place as 12 Queen Street is in close proximity to a commercial building (a Home Hardware building supply store).

Adjudicator's Analysis

The Adjudicator has thoroughly reviewed the technical report from the Planner and the regulations and legislation applicable to this matter. I would like to commend the Planner for compiling a most competent report that has been of great assistance in my review of the technical issues in this matter.

The Planner correctly advised that while the Appellant's application was for a "triplex" and the Authority also referenced it as a "triplex", there is no such classification in the Town of Deer Lake Development Regulations.

The Town's Development Regulations do however, provide for Double Dwellings and for Row Dwellings/Townhouses. In the Residential Medium Density use zone under Part 9 of the Town of Deer Lake Development Regulations, a Double Dwelling is listed as a permitted use and a Row Dwelling is listed as a discretionary use.

A Double Dwelling is defined in the Town's Development Regulations as *"a building containing two dwelling units, placed one above the other (duplex), or side by side (semi-detached), but does not include a single dwelling containing a subsidiary apartment".*

A Row Dwelling or Townhouse is defined in the Town's Development Regulations as *"a dwelling containing not less than three and no more than four* ***dwelling units at ground level in one building****, each unit separated vertically from the others and* ***with individual entrances directly from the outside."*** **[Emphasis Added]**

The Appellant's application for development does not comply with either classification. The Appellant's proposal is to construct a duplex with an accessory building (garage) containing a third residential living space above the garage. To be classified as a row dwelling or Townhouse, all three dwelling units must be at ground level with entrances directly from the outside.

Regulation 5.2 (1)(b) of the Town of Deer Lake Development Regulations anticipates that accessory buildings may be adjacent to the side of a main building but Regulation 5.2(1)(e) stipulates that an accessory building may not contain a separate dwelling unit:

> *Accessory Buildings*
>
> *5.2 (1) General Requirements*
>
> *(a) An accessory building will be contained on the same lot as the main building and will be incidental and complementary to the use of the main building.*
>
> *(b) No accessory building will be located closer than 1.2 metres to a property boundary,* ***or, if adjacent to the side of the main building****, within the minimum sideyard setback of the main building.*

(c) No accessory building will be located closer than 3.0 metres to another building, whether on the same lot or an adjoining lot.

(d) No accessory building will be erected upon an easement.

(e) No accessory building will contain a self-sufficient living unit.

The Appellants application was not a development that could have been approved by the Authority as the three units did not meet the requirements for a row house since the design proposed for the third unit was above the garage rather than at ground level and it would not have an individual entrance directly from the outside. Further, the above garage unit would have violated Development Regulation 5.2(1)(e) as it is designed as a self-sufficient living unit located within an accessory building.

As such, the Authority ought not to have considered this development as one that was within their discretion to approve. They could have approved the first two units as a duplex which is a permitted use, but they could not have approved the third unit located above the garage.

Thankfully, the Authority did not violate their own Regulations by approving the development as a "triplex". The vote on the motion having been a tie was defeated pursuant to section 44(5) of the *Towns and Local Services Districts Act, SNL 2023 Ch. T-6.2*:

s.44(5) *"Where there is a tie vote on a motion, that motion shall be considered defeated."*

The Appellant raised grounds of appeal addressing the manner in which council used its discretion. As I have concluded that this development was not within Council's discretion to approve, those grounds of appeal are moot. However, for the benefit of both parties as those grounds may apply to future applications for development I will clarify that Council's inconsistency in approval of three unit developments in other RMD zones and denial of this application in relation to Stella's Place was not in error. Approval of a discretionary development in one area of a municipality does not mean that Council must approve similar developments in all other areas of a municipality that are located in the same use zone. Council in considering discretionary uses are required to publicly advertise and consider the input received from the public. The nature and character of a particular subdivision, surrounding uses, increased traffic flows and emergency vehicle access are all appropriate matters for a Council to consider in making of a decision with respect to a discretionary use. Likewise, speculation of future events such as plans for other properties in an area and further similar applications for development is likewise a legitimate and necessary aspect of municipal planning.

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 and for the reasons stated in my analysis above, the Adjudicator confirms the decision of the Authority to deny the Appellants application for a three unit development at 9 Stella's Place in the Town of Deer Lake.

Order

The Adjudicator orders that the decision of the Town of Deer Lake of July 2, 2026 to refuse the application of Melanie Luther to develop a three unit dwelling at 9 Stella's Place in the Town of Deer Lake is confirmed.

As I have confirmed council's decision to be correct, the appeal was not successful and the Appellant is therefore not entitled to any payment under section 45 (2) of the *Urban and Rural Planning Act, 2000.*

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 Adjudicator 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 Corner Brook, Newfoundland and Labrador, this 16th day of November, 2026.

Adjudicator Lorilee A. Sharpe

Urban and Rural Planning Act, 2000