

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-094-027

Adjudicator: Lorilee A. Sharpe

Appellant(s): Pamela Westover

Respondent / Authority: Town of Bonavista

Date of Hearing: June 24, 2026

In Attendance:

Appellant: Pamela Westover

Appellant Representative(s): Dean Westover

Respondent/Authority: Town of Bonavista

Respondent Representative(s): Stephanie Lodge, CAO & Crystal Fudge, Economic Culture and Heritage officer

Appeal Officer: Sarah Kimball, Municipal and Provincial Affairs

Technical Advisor: Rutvi Patel

Observers: Christopher Niccoll, Steven MacInnis

Adjudicator's Role

The role of the Adjudicator is to determine if the Town of Bonavista acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Bonavista Municipal Plan and other applicable Regulations, including the Development Regulations and the Short-Term Rental Accommodation Regulations when it denied the Appellants application to undertake a development at 22 Sebastian Drive in the Town of Bonavista.

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, the details of which were set out in a technical report and filed as part of the Appeal package which has been thoroughly reviewed by the Adjudicator.

The chronology of relevant events in this matter was accurately summarized in the technical advisor report as follows:

"In August 2023, the Appellant submitted a development application (No.2023-079) to construct "an accessory building (garage)" at 22 Sebastian Drive (the property). On August 10, 2023, the Municipal Authority (Town of Bonavista) issued a building permit for the accessory building without water/sewer services. On August 21, 2023, Council passed a 5 Motion (No. 23-75) permitting water and sewer services to the accessory building, subject to the condition that the building is not used as a dwelling. On October 14, 2025, the Municipal Authority (Town of Bonavista) received an application from the Appellant, Dean and Pamela Westover, for a short term rental use within the accessory building located at 22 Sebastian Drive. The application proposed a one bedroom, one bathroom rental unit above the garage within the accessory building. On November 3, 2025, the Municipal Authority informed the Appellant that the application had been refused. On November 11, 2025, an appeal of the decision was received."

The Appellant's Presentation and Grounds

The Appellant Pamela Westover and Dean Westover were both sworn as witnesses and presented the grounds of appeal in addition to their written submissions which were also reviewed by the adjudicator.

The Appellants are appealing the Town's refusal to provide them with a permit to operate short-term rental accommodations from the accessory building on their property at 22 Sebastian Drive. Through their written and oral submissions they stated the following grounds for their appeal:

- 1) That accessory buildings are defined to include domestic garage and they understand this to include the ability to have a dwelling;
- 2) That the Town was unfair in allowing other properties, namely 40 Groves Lane, to use accessory buildings for rental properties;
- 3) That the Town was aware that they have used the accessory building as additional space for family and friends to stay when visiting them and has not done anything to prevent it;

- 4) That it would be beneficial to the Appellants as it would provide extra income for their retirement, and beneficial to the Town as business tax income and additional stock of accommodations for visitors to the Town during peak tourist season when accommodations are limited;
- 5) That the Town failed procedurally in not sending the matter to Town Council for decision; and
- 6) That 27 Sebastian Drive, which is a multi-unit building with permitted short term rental accommodations, should not be counted as a Sebastian Drive property since it has driveway access from Edmonds Lane and Keoughs Road.

Authority's Presentation

The Town of Bonavista gave evidence through its CAO Stephanie Lodge and staff member Crystal Fudge that confirmed the timeline of events set forth in their written submissions and the report of the technical advisor.

The Town refused the application of the Appellants to operate short-term rental accommodations from their property at 22 Sebastian Drive by letter of November 3, 2025 in which they provided the following reasons:

- 1) An accessory building cannot be used as a dwelling; and
- 2) They are unable at the present time to approve any properties on Sebastian Drive for short term rental accommodations because of the requirements of section 5(c) of the Town of Bonavista Short Term Rental Accommodation Regulations.

Section 5 (c) states:

No more than ten percent (10%) of the dwelling units on any street shall be approved for "short term rental accommodations", out of concern for traffic, parking, noise and vacant premises concerns.

Ms. Lodge testified that the ten percent was already exceeded for Sebastian Drive and that in determining the 10% for the purpose of applying section 5 (c), they use the number of residential dwelling units on the street as set out in the assessment roll from the municipal assessment agency. The calculation does not use the number of buildings on the street and it does not include any vacant lots.

Ms. Lodge also testified that the matter did not need to be brought to council for decision. She testified that council gave her authority to assess and approve or deny development applications and under the Short-term Rental Accommodation Regulations and she was able to assess when the criteria set out in the regulations such as section 5 (c) would apply.

Adjudicator's Analysis

It was clearly established and not in dispute that the Appellant first applied for a development application in August 2023 to construct an accessory building, namely a garage, on the appellants' property at 22 Sebastian Drive. The Town of Bonavista issued a building permit for the accessory building on August 10, 2023 that did not include water and sewer services. On

August 21, 2023 the Town Council passed a motion to extend water and sewer services to the accessory building on the condition that the building was not to be used as a dwelling. The Town also submitted in its appeal package a copy of an email from the Town's Director of Public Works, Kirk Way, to appellant Dean Westover advising Mr. Westover that he could now have water and sewer connected to the accessory building *"providing the use of the building falls within the definition of an accessory building. The accessory building cannot be used as a dwelling"*. The email then goes on to provide Mr. Westover with the definition of "Accessory Building" from the Town of Bonavista Development Regulations which states:

4(1) (b) "accessory building" includes

- (i) a detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory and which has a use that is customarily incidental or complementary to the main use of the building or land,
- (ii) for residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetables storage cellars, shelters for domestic pets or radio and television antennae,
- (iii) for commercial uses, workshops or garages, and
- (iv) for industrial uses, garages, offices, raised ramps and docks;

[Emphasis Added]

I do not accept the Appellants contention that the term "domestic garage" in the above noted definition of "Accessory building" indicates that it may contain a dwelling. Section 4(1)(b)(i) makes it clear that all accessory buildings may not be used as dwellings. Subsections ii to iv then provide a listing of various sorts of buildings that may be erected as accessory buildings on the different classifications of properties: residential, commercial, and industrial. The term "domestic garage" in the list of accessory buildings for residential properties differentiates it from a "garage" that would be allowed on a commercial or industrial property so that the garage on residential properties is used only for domestic garage type purposes and not to offer commercial or industrial garage type services.

It was clear on the evidence presented that the Appellants were made fully aware by the Town when they constructed the accessory building and again when they hooked up water and sewer that they would not be allowed to use it for dwelling. The appellants apparently proceeded to renovate and use the accessory building as additional dwelling space without a permit from the Town. Even if the Appellants contention that some employees of the Town were aware that they have used the accessory building as additional space for family and friends to stay when visiting them and have not done anything to prevent it were true, it does not make the use a legal one nor does it compel the Town to issue a permit under the Short-Term Rental Accommodation Regulations.

The Appellant raised the issue that the Town was unfair in allowing other properties, such as 40 Groves Lane, to use accessory buildings for rental properties. The Adjudicator does not have jurisdiction to determine whether there has been abuse of power by a municipality or conflicts of interest in its decision making. Any decisions the Town may have made in relation to other

properties are not within the scope of review for this appeal. The Adjudicator only has jurisdiction to review the decision appealed in relation to the property at 22 Sebastian Drive and whether or not the Town properly applied the Regulations to that decision.

The Appellant also submitted that the Town failed procedurally in not sending the matter to Town Council for decision. The Appellant wanted the Town Council to understand the importance of the Short-Term Rental accommodations to them as additional income source in their retirement. They also wanted the Town to consider that the short-term rental accommodation would be beneficial to the Town in that it would provide an additional source of business tax revenue and provide another option for visitors to the Town during peak tourist season when accommodations are limited.

Under Section 109(2) of the Urban and Rural Planning Act a Town Council may delegate authority to employees to approve and reject applications to develop and the definition of development includes a change of use.

109. (2) A council or regional authority may appoint an employee of that council or authority to approve or reject applications, as designated by the council or regional authority, to develop land in accordance with the appropriate plan and regulations and that employee may outline the conditions applicable to that development.

2. In this Act

*(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, **or the making of a material change in the use, or the intensity of use of land, buildings or premises and the***

[Emphasis Added]

Ms. Lodge, the CAO/Town clerk for the Town testified that she understood that she had been given authority by her employer to review and approve or reject development applications subject to the regulations and the Appellant presented no evidence to the contrary. Ms. Lodge applied the objective criteria that had already been established by Town Council in its Development Regulations for accessory buildings and for short term rental accommodations in its adoption of the Short-Term Rental Accommodation Regulations. The building was clearly an accessory building and as such could not be used as a dwelling pursuant to section 4(1)(b)(i). There was no discretionary decision that would necessitate the matter being brought to Town Council for decision. There was no need for the Town to consider the application under the Short-Term Rental Accommodations Regulations since the accessory building could not be used as a dwelling unit pursuant to its Development Regulations. I find however that the Town clerk was also correct in her assessment under section 5(c) of the Short-Term Rental Accommodation Regulations. The provision uses clear objective criteria of 10% of dwelling units on a street. While the property is adjacent to three different streets, there is no obligation on the Town or the Municipal Assessment Agency to change the civic address to a different street in order to open up more dwelling units for Short term Rental Accommodations.

Adjudicators 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 Town of Bonavista was correct in its application of the Town of Bonavista Development Regulations and the Short-Term Rental Accommodation Regulations and the Town did not err procedurally.

Order

The Adjudicator orders that the decision of the Town of Bonavista dated November 3, 2025 denying the Appellants application to operate a Short-Term Rental Accommodation from the accessory building at 22 Sebastian Drive is confirmed.

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 Corner Brook, Newfoundland and Labrador, this 4th day of August, 2026.



Adjudicator

Urban and Rural Planning Act, 2000