**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

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

Appeal #: 15-006-099-003

Adjudicator: Clifford Johnston

Appellants: Martina Aylward and Ernest Dunn

Respondent / Authority: Town of Witless Bay

Date of Hearing: October 28, 2026

Start/End Time: 11am-12:10pm

**In Attendance**

Appellants: Martina Aylward

Respondent/Authority: Neil Stamp, Town's Chief Administrative Officer; and Megan Hartery, Town's Planning and Development Officer; and Stephen Jewczyk, FCIP, Planning Consultant to the Town of Witless Bay

Proponent/Developer: Frazer Paul (attending by teleconference)

Appeal Officer: Robert Cotter, Department of Municipal and Community Affairs

Technical Advisor: Tastrophia Pham, Planner III, Department of Municipal and Community Affairs

**Adjudicator's Role**

The role of the Adjudicator is to determine if the Authority, in the case of this appeal, the Town of Witless Bay, acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Witless Bay Municipal Plan and Development Regulations when it made a decision on May 12, 2026 to grant an Approval-in-Principle, with conditions, for the construction of a single detached dwelling with a subsidiary apartment, on property located at Civic No. 8-12 Williams Lane, Witless Bay.

**Appeal Hearing Presentations**

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the appeal hearing.

**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 Adjudicator 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 Affairs and Community 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.

At the appeal hearing, Ms. Pham, the Planner assigned to this appeal, gave a verbal summary of the information included in the Technical Report that she prepared for the appeal hearing. The Technical Report was distributed by the Appeal Officer to the Adjudicator, the Appellants, the Town of Witless Bay and the Applicants prior to the Appeal Hearing. This Technical Report is on file with the Appeal Officer.

A summary of the Technical Report is as follows:

- The subject property is zoned as Residential (RES) under the Town's Development Regulations.
- The issue in this appeal is the scale of the proposed development and its compliance with the applicable standards set out in the Town's Development Regulations.
- The proposed new dwelling on the property will have a larger floor area and there will also be a subsidiary apartment located within the dwelling.
- The Technical Report set out the grounds for appeal by the Appellants.
- The Technical Report provided a chronology of the Town's processing of the application for the proposed new dwelling and set out the applicable sections of the Town's Development Regulations and the Urban and the Urban and Rural Planning Act, 2000, as pertaining to the application and the appeal.

**The Appellant's Presentation and Grounds**

As part of the filing of their appeal, the Appellants provided a written submission along with photos of the subject property and the single detached dwelling currently located on the subject property. This information was provided by the Appeal Officer to the Adjudicator, the Town of Witless Bay and the Applicants prior to the appeal hearing. This information is on file with the Appeal Officer.

At the appeal hearing, Ms. Aylward spoke in detail to the appeal. The following is a summary of the key points on the appeal.

- The subject property is located within the Residential (RES) Zone where a single detached dwelling with a subsidiary apartment is a permitted use and would not require discretionary use notification.
- The subject property has a lot area of 1390 m2 representing only approximately 75% of the minimum required lot size of 1860 m2 for the RES Zone. By permitting a bigger dwelling on an undersized lot, this extends the existing nonconformity.

- As approved, the proposed new dwelling would result in a building that is approximately three times larger than the existing dwelling, increasing the development intensity on a residential building lot that is already undersized.
- Section 47.1 of the Town's Development Regulations permits the development and replacement of a dwelling on a nonconforming lot where the development improves public safety and convenience. The Appellants question how the Town Council has determined that allowing the new larger dwelling with a subsidiary apartment improves public safety and convenience? Also, the Appellants note that Section 47.1 must be interpreted by the Town Council in conjunction with the Development Regulations as whole. Section 47.1 was not intended to permit substantial expansions that would otherwise contravene the Development Regulations.
- The Appellants feel that the Town's approval of the application allows development beyond the scope of Section 47.1 of the Development Regulations by allowing a substantially larger dwelling on a lot that does not meet minimum lot area requirements.
- The Town has read and utilized Section 47.1 of its Development Regulations in isolation of other applicable sections of the Regulations.
- The Appellants have some concerns about potential damage from downstream runoff from the proposed new single detached dwelling at the subject property onto nearby properties owned by the Appellants' family members.
- The Appellants expressed some concerns whether it was necessary for the Town to advertise the application for the proposed subsidiary apartment in the proposed new single detached dwellings as they understand a subsidiary apartment is a Permitted Use in the RES Zone. They also have concerns as to the public advertising procedure carried out by the Town for the application and whether the Town made the public adequately aware of the fact that the proposed new single detached dwelling and subsidiary apartment could not satisfy all applicable zone standards of the RES Zone.

**Authority's Presentation**

Prior to the appeal hearing, the Town of Witless Bay submitted background materials on the application for the proposed new single detached house with a subsidiary apartment on the subject property. These written materials were provided by the Appeal Officer to the Adjudicator, the Appellants and the Applicants prior to the appeal hearing and are on file with the Appeal Officer.

Mr. Stephen Jewczyk, FCIP, a planning consultant for the Town of Witless Bay, outlined the Town's position on the appeal. Mr. Jewczyk noted that the Town is of the opinion that the Town Council has discretionary authority under Section 47.1 of the Development Regulations entitled "Lot Area and Size Exceptions-Existing Development" to approve or reject applications for development on nonconforming lots and to use Council's discretionary authority to determine the development standards in such cases.

Mr.Jewczyk noted that there are a number of nonconforming lots in Witless Bay. In adopting Section 47.1 of the Development Regulations through an amendment to the Regulations, Council wanted to have broad scope to review applications involving nonconforming lots on a case by case basis.

Mr. Jewczyk noted that it was the Town's view that it was in the interest of public safety and convenience to approve the application for Civic No. 8-12 Williams Lane and Council used its discretionary authority to approve the application.

In response to a point raised by the Appellants, Mr. Jewczyk noted that the Town has not yet established development standards for the proposed new dwelling with a subsidiary apartment at Civic No. 8-12

Williams Lane because the Applicants need to secure approval from Service NL for well and septic before the Town will issue any permits .Service NL's review of the application may determine what development standards will be set by the Town.

**Interested parties**

Frazer Paul who is one of the Applicants, attended the appeal hearing by teleconference call. He asked for the opportunity to speak. He noted that he already has received approval from Service NL for well and septic for the proposed new dwelling and subsidiary apartment. He also noted that in his opinion, the only key standard that matters is the footprint of the new house. In his view, it does not matter if the proposed new dwelling has one or two storeys nor does the total floor area of the new dwelling matter.

**Adjudicator's Analysis**

In my role as the appointed Adjudicator, I have reviewed the Urban and Rural Planning Act, 2000, the Town of Witless Bay Municipal Plan and Development Regulations, the Technical Report prepared by the Planner assigned to this appeal, and the written and verbal representations from the Appellant, the Town of Witless Bay and the Applicants and have determined the following:

**Question/Answer**

Q. What is the current zoning of the property located at Civic No. 8-12 Williams Lane which is the subject of this appeal?

R. The subject property is zoned as Residential (RES) under the Town of Witless Bay Development Regulations.

Q. Does the Residential (RES) Zone allow a single detached dwelling with a subsidiary apartment?

R. Yes. The Residential (RES) Zone allows single detached dwelling as a Permitted Use in the Zone. The Zone allows a subsidiary apartment in a single detached dwelling as a Discretionary Use. This information was verbally confirmed by the Town's Planning Consultant, Mr. Jewczyk, at the appeal hearing.

Q. How is the existing residential lot at Civic No. 8-12 Williams Lane categorized /recognized by the Town of Witless Bay?

R. The Town of Witless Bay categorizes/recognizes the subject property as a "non-conforming lot". In the context of municipal planning/land use control, a nonconforming lot is a lot that legally exists at the time a municipality's zoning/development regulations come into force and where the subject lot does not meet the applicable requirements of the municipality's zoning/development regulations.

The Residential (RES) Zone under the Town's Development Regulations requires a minimum lot area of 1860 m2. The subject lot has an area of approximately 1390m2 with 50m2 of lot frontage. The existing building lot is not compliant with the minimum lot area requirement for the RES Zone. The current location of the existing house is noncompliant with the Town's Development Regulations in that the RES Zone requires a minimum building line setback of 8 metres and the house is located 2.85 metres from

the front property boundary. As well, approximately half the location of the existing dwelling on the north east portion of the dwelling does not meet the minimum rear yard depth requirement of 9 metres in the RES Zone.

The Applicants propose to demolish the existing house and a shed on the property. The house would be replaced by a larger single detached house with a subsidiary apartment in the house. The new single detached dwelling would meet the 8 merre minimum building line requirement of the RES Zone. The new dwelling is proposed to be shifted to the west of the current location of the existing dwelling. A portion of the new dwelling will not meet the minimum 9 metre rear yard standard of the RES Zone, but apparently less of the new dwelling will encroach into the rear yard than does the existing dwelling.

Q. Does the Town of Witless Bay Municipal Council have the authority under the Town's Development Regulations to grant an Approval-in-Principle to the Applicants to remove the existing single detached dwelling on the subject property and to construct a larger single detached dwelling with a subsidiary apartment located within the new dwelling?

R. Yes. After having reviewed the verbal and written submissions from the Technical Advisor, the Appellants, the representatives from the Town of Witless Bay and the Applicants, and the Town of Witless Bay Municipal Plan and Development Regulations and the Urban and Rural Planning Act, 2000, I have determined that the Town Council has the authority to make this decision to grant the subject Approval-in-Principle.

In February of 2026, the Town Council adopted Development Regulations Amendment No. 10, 2025 which provided the Council with the authority to permit the relocation or removal and reconstruction or reestablishment of nonconforming residential developments that encroach upon streets in order to mitigate/lessen encroachment and public safety issues.

Amendment No. 10, is now incorporated as Section 47.1 of the Town's Development Regulations: "Lot Area and Size Exceptions-Existing Development"). Section 47.1 allows the Town Council to consider applications such as the one for the subject property at Civic No. 8-12 Williams Lane and for Council to use its discretion to determine whether the application is acceptable or not. Section 47.1 allows the Council to determine the lot standards for the replacement of a single detached dwelling on a nonconforming lot if Council determines that the replacement building on the lot is in the public interest and improves public convenience and safety.

Section 47.1 of the Development Regulations reads as follows:

*"47.1 Lot Area and Size Exceptions-Existing Development*

*(a) Notwithstanding Regulation 47, where residential development exists prior to the existing Development Regulations coming into effect and:*

1. *the residential development is non-compliant with the development standards for the use zone in which the development is located;*
2. *The property has not been subdivided since the existing development regulations came into effect;*
3. *3. The development encroaches upon or may provide difficulties in the upgrading of roads or public infrastructure; amd*
4. *Where the property owner wishes to demolish the existing dwelling and relocate the dwelling on the non-compliant lot;*

*The Council may use its discretion to determine the lot standards for the replacement of the dwelling if the location of the replacement dwelling on the lot is in the public interest and improves public convenience and safety.*

*(b) The replacement or relocation of the dwelling on the property will require the approval for a new well and septic tank from the Department of Government Services, pursuant to the Sanitation Regulations under the Health and Community Services Act."*

I agree with the conclusions of the Town's planning consultant, Stephen Jewczyk, FCIP, who in a written report to the Town Council dated May 7, 2026, noted that there is no limitation in Section 47.1 of the Development Regulations with respect to setbacks, location of size of a dwelling within the boundary of a nonconforming lot provided that the development receives Provincial approval for the well and septic tank on a subject property. As part of the conditions of the Approval-in-Principle granted by the Town Council for the application on the property which is the subject of this appeal, the Applicants are required by the Town to receive approval/permit from Service NL for well and septic before any permits will be granted by the Town.

I also concur with Mr. Jewczyk's same report of May 7, 2026 in which he states that Section 47.1 of the Development Regulations is not limited by the variance provisions of the Town's Development Regulations. I note that Section 47.1 does not specifically indicate that this section must be read in conjunction with/comply with other sections of the Town's Development Regulations regarding variances.

I note that the application which is the subject of this appeal is the type of application for which the Town Council adopted Development Regulations Amendment No. 10, 2025. The Town verbally advised the Adjudicator at the appeal hearing that there are many existing nonconforming lots in the town, and the Town Council wanted a mechanism to have a board scope to review applications involving nonconforming lots on a case by case basis and to have discretionary authority to either approve or reject such applications

I note that as per the requirements of the Urban and Rural Planning Act, 2000, that when the Town Council adopted Amendment No. 10, 2025, the amendment was required to then be sent by Town staff to the Department of Municipal and Community Affairs, Government of Newfoundland Labrador for review against Provincial interests and requirements and the Urban and Rural Planning Act, 2000 before ithe amendment could by registered and Gazetted by the Province and subsequently come into legal effect. I understand that the Department of Municipal and Community Affairs had no objections/concerns with respect to Amendment No. 10, 2025.

Section 44(1) of the Urban and Rural Planning Act provides that "*Notwithstanding subsection 1, a decision of an Adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator."* The decision of the Witless Bay Town Council to approve the construction of a new replacement single detached dwelling with a subsidiary apartment at the subject property was a discretionary decision of Council made under Section 47.1 of the Town's Development Regulations. Council has used its discretionary authority to determine that allowing a replacement single detached dwelling with a subsidiary apartment on the subject property is in the public interest and improves public safety and convenience. I see no evidence that this discretionary authority has been improperly interpreted/employed by the Town Council in the case of this application.

With regards to Town's advertising of this application for public review and comment, I understand that this advertising process was in regards to the Applicants' request to construct a subsidiary apartment in the proposed new single detached dwelling. A subsidiary apartment is a Discretionary Use in the RES

Zone. It is my determination that the Town followed the required public notification process as set out in the Town's Development Regulations and made best efforts to provide an opportunity for public review and comment on the matter of the subsidiary apartment.

**Decisions of Adjudicator per the Urban and Rural Planning Act, 2000**

***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.*

**Adjudicator's Conclusion**

After reviewing all the information presented to me, I conclude as the appointed Adjudicator for this appeal, that the Town of Witless Bay Municipal Council had the discretionary authority under Section 47)1) of the Town of Witless Bay Development Regulations to either allow or deny the construction of a new single detached dwelling with a subsidiary apartment at the existing nonconforming residential lot located at Civic No. 8-12 Williams Lane, Witless Bay. In the case of this application which is the subject of this appeal, the Town Council used its discretionary authority to grant an Approval-in-Principle to the application. The Town Council determined that a decision for approval of the application was in the public interest and would improve public safety and convenience and subsequently used its discretionary authority to make the decision for approval.

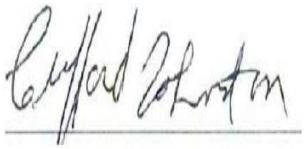
Order

The Adjudicator orders that the decision of the Town of Witless Bay Municipal Council made on May 12, 2026 to grant an Approval-in-Principle to construct a new replacement single detached dwelling with a subsidiary apartment on the property located at Civic No. 8-12 Williams Lane, Witless Bay, be confirmed. The appeal that was made against this Council decision is thereby denied. .

The Authority and the Appellants are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the 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 Appellants.

DATED at St. John's, Newfoundland and Labrador this 2nd day of November 4, 2026.



Clifford Johnston, Adjudicator

Urban and Rural Planning Act, 2000