

## URBAN AND RURAL PLANNING ACT, 2000

### Section 40-46

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

Appeal #: 15-006-087-022

Adjudicator: Elaine Mitchell, RPP, MCIP

Appellant(s): Karen Cormier

Respondent / Authority: Town of Spaniard's Bay

Date of Hearing: March 12, 2024

Start and End Time: 11:00 am to 12:07 pm

#### In Attendance

Appellant: Karen Cormier

Respondent/Authority: Anthony Ryan, Town Clerk/Manager

Respondent Representative(s): Stephen Jewczyk, FCIP

#### Interested Parties:

Sean Fitzgerald, spouse of appellant

Laura Smith, friend of appellant

Michelle Newton, friend of appellant

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

Technical Advisor: Faith Ford, MCIP, Department of Municipal and Provincial Affairs

#### **Adjudicator'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 the Spaniard's Bay Municipal Plan and Development Regulations when it refused an application for a business providing children's events with a focus on inclusionary activities at 89 Brazil's Hill, Spaniard's Bay. Council's decision was made on September 12, 2023. The Authority informed the Appellant of its decision in a letter dated September 13, 2023. The Appellant filed an appeal on September 22, 2023.

## **Hearing Presentations**

### **Technical Advice**

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the Appeal Board (Rules of Procedure) Order, 1993.

10. The Hearing shall proceed in the following manner:

- (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 in effect...

At the hearing, the technical advisor provided an overview of the provisions of the Spaniard's Bay Municipal Plan and Development Regulations related to the matter of this appeal. The Spaniard's Bay Municipal Plan and Development Regulations came into legal effect on May 20, 2022. The subject property is located in the Residential Medium Density zone. Commercial uses are limited to those listed in the Residential Medium Density use zone table. Personal service uses must be subsidiary to a residential use. The Authority determined that the proposed development was a discretionary use. The application was advertised. The objections received were considered and Council passed motion #23-270 refusing the application based on these objections.

The technical advisor noted that the Authority has discretionary authority in accordance with section 10 of the Spaniard's Bay Development Regulation, but in exercising that discretion, the decision cannot contravene the Municipal Plan and Development Regulations.

#### ***10. Discretionary Powers of Authority***

*(1) In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, approve with conditions or refuse the application.*

### **Appellant**

The Appellant explained her business concept noting that she wanted to provide events and learning opportunities that were inclusionary. She explained that she has little knowledge about the application process and depended upon the Town Clerk/Manager

to provide her with advice. She stated that she expected to have an opportunity to present her business proposal to Council before the decision was made on her application. She stated that other applicants had been provided with this opportunity. She also noted that she expected an opportunity to submit detailed site plans and development concept once the discretionary use notice was completed. She also questioned whether the material that she submitted to the Authority was an application. She noted that her business concept could be interpreted to meet a range of use classes such as childcare. She expressed her frustration with the process. She stated that there are issues with respect to procedural fairness as Council did not provide her with an opportunity to outline her proposal and address any objections. Mr. Fitzgerald, an interested party spoke stating that other businesses are located on the same street and that the objections came from those businesses.

### **Authority**

The Authority's representative stated that the Authority tried to accommodate the application within the confines of the Spaniard's Bay Municipal Plan and Development Regulations. According to the Spaniard's Bay Municipal Plan and Development Regulations, there is no provision to accommodate a commercial use unless associated with a residence. He noted that three submissions were received about the proposed development. These submissions were reviewed by the Planning Committee. The Planning Committee determined that it had sufficient information to make a decision with respect to the application. Mr. Jewczyk noted that in order for the application to proceed, the land needs to be rezoned.

The Town Clerk/Manager addressed the issue of whether than application had been submitted. He stated that it was his understanding that the information submitted by the applicant constituted an application. He indicated that it was the Authority's practice to accept emails outlining proposals as an application and that applicants were not required to complete an application form.

### **Adjudicator's Analysis**

I reviewed the *Urban and Rural Planning Act, 2000* and the Spaniard's Bay Municipal Plan and Development Regulations in relation to this matter.

#### **Was an application submitted to the Town by the Appellant?**

At the hearing, I learnt that the Appellant wrote to Council outlining her business concept and the location of the property that she was considering purchasing. The Authority responded outlining the advertising process for an application for a discretionary use and additional information required. The Appellant subsequently informed the Authority that she had purchased the subject property and advised that she was ready to move forward with the discretionary use advertisement.

Section 17 of the Spaniard's Bay Development Regulation sets out the requirements for an application which specify that the application must be made by the property owner,

be on a form as prescribed by the Authority and include a property description and the location of the proposed development.

#### 17. Form of Application

- (1) An application for a development permit or for approval in principle shall be made only by the owner or by a person authorized by the owner in writing and signed by the owner to the Authority on such form as may be prescribed by the Authority. The ownership information must be sufficient to meet the satisfaction of Council. Every application shall include a property description and the location of the proposed development, and such plans, specifications and drawings as the Authority may require, and be accompanied by the permit fee required by the Authority.
- (2) The Authority shall supply to every applicant a copy of the application forms referred to in Regulation 17(1) and a description of the plans, specifications and drawings required to be provided with the application and any information or requirements applicable to the application.

At the hearing, the Authority advised that it is standard practice to accept emails and letters as an application.

As the Appellant provide a letter outlining the development proposal along with a property location and expressed a willingness to proceed with the discretionary use notice, and that the Authority accepted letters and emails as applications, rather than following best practice and having an applicant complete an application form and check list to ensure that all related documentation iare on file, I accept that an application was submitted.

Making this determination is an important consideration as section 41 (1) of the *Urban and Rural Planning Act, 2000* establishes decisions that may be appealed. If no application had been submitted, Council's decision could not be appealed.

- 41.** (1) A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where
- (a) the decision is permitted to be appealed to an adjudicator under this Act or another Act; or
  - (b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:
    - (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.

## Does the Application Conform to the Spaniard's Bay Municipal Plan and Development Regulations?

At the hearing, I learnt that 89 Brazil's Hill is located within the Residential Medium Density (RMD) zone. In the Residential Medium Density (RMD) zone, permitted uses are single dwelling, double dwelling, and recreation open space. Row dwelling, apartment, mini home and modular home, boarding house residential, place of worship, educational, convenience store, catering, childcare, bed and breakfast, home occupation (see Schedule A), cultural and civic uses, special care institutional uses (seniors living and long-term care home), light industry, personal service, traditional agriculture, utilities, antenna, and cemetery are listed as discretionary uses. The Residential Medium Density (RMD) use zone table contains condition 5 which limits personal service and light industry uses to those that are subsidiary to a residential use.

### 15. Personal Service and Light Industrial Uses

Personal service and light industrial uses may be permitted as a discretionary use in the form of personal services, small business services, small appliance repair, workshops and similar uses provided that:

- (a) The use is clearly subsidiary to the residential use and the primary use of the property remains residential...

The subject property is vacant. The Appellant's application does not include the construction of a dwelling. Section 6 of the Spaniard's Bay Development Regulations requires development to comply with the Development Regulations. The application does not conform to the requirements of the Spaniard's Bay Development Regulations.

### Adjudicator's Conclusion

After reviewing the information presented by all parties, I conclude that the decision by the Authority to refuse the application for a business providing children's parties and events at 87 Brazil's Hill complies with the Spaniard's Bay Municipal Plan and Development Regulations. The subject property is located in the Residential Medium Density zone which provides limited opportunities for commercial development. The subject property is vacant and section 15 of the Residential Medium Density zone requires personal service uses to be subsidiary to a residential use. While the Authority could improve its processes with respect to receiving applications and supporting documentation, its decision refusing the application complies with the provisions for development in the Residential Medium Density zone.

Section 44 of the *Urban and Rural Planning Act, 2000* outlines the action of an adjudicator in deciding an appeal.

**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.

### **Order**

The Adjudicator orders that the decision of the Town of Spaniard's Bay to refuse an application for a business providing children's events at 87 Brazil's Hill be 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 an 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 St. John's, Newfoundland and Labrador, this 21<sup>st</sup> day of March 2024.



Elaine Mitchell, RPP, MCIP  
Adjudicator  
Urban and Rural Planning Act, 2000