

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-072-062
Adjudicator: Mary Bishop, RPP, MCIP, FCIP
Appellant(s): Harry and Rosemary Murphy
Respondent/Authority: Town of Placentia
Respecting: A development permit approval to construct a storage shed (residential accessory building) at #216, Harbour Drive, Dunville, Town of Placentia
Date of Hearing: Thursday, 26 October, 2023
Start/End Time : 9:00am – 10:20am

In Attendance:

Appellant: Rosemarie and Harry Murphy
Respondent/Authority: Mary Green, Acting CAO, Town of Placentia
Jeff Griffin, Municipal Enforcement Officer, Town of Placentia
Proponent/Developer: Felix Jones
Appeal Officer: Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor: Faith Ford, Planner III, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Town of Placentia Municipal Plan*, and the *Town of Placentia Development Regulations* when it approved a development permit application to construct a storage shed (accessory building) at 216 Harbour Drive on December 21, 2021 pursuant to Council Motion #21-474.

Validity of the Appeal

The technical report, prepared on October 4, 2023, and shared with all parties by the Appeal Officer, raised questions about the validity of the Appeal under Section 41 (3) and (4) of the Act: Section 41(3) and 41(4) of the Act state:

41. (3) *An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.*

41. (4) *An appeal shall be made in writing and shall include*

(a) a summary of the decision being appealed;

(b) the grounds for the appeal; and

(c) the required fee.³

According to the documents provided, the Authority approved the Development Permit application on December 21, 2021. The Appellant's submission states they became aware of the Authority's decision on December 21, 2021 during the public Council meeting. The Appellants filed the appeal on March 24, 2022, which is outside of the 14 day appeal period set out in Section 41(3) of the Act. A permit for the development of the accessory building was dated January 6, 2022. It is unclear from the submission documents when the Appellants learned of their right to appeal the decision.

At the start of the hearing, all parties were asked to address the questions of jurisdiction as a preliminary matter.

When did the Appellants become aware of their right to appeal the Town's decision of December 21, 2021 on the application for an accessory building?

The Appellants testified that they became aware of the Town's decision to approve the accessory building at Civic No. 216 on December 21, 2021 – the day it was approved by Council. In the days following, the Appellants corresponded with Town staff about the matter, raising objections to the approval. On February 22, 2022, the Appellants met with and presented their objections to the Town at a meeting of the Committee of the Whole. On March 17, 2022, the Town replied to the Appellants in writing, stating that the application met the Town's requirements for an accessory building and that the decision of December 21, 2021 would stand. The Appellants filed the appeal seven days later.

At the Hearing, the Appellants indicated that at no time did the Town advise them of their right to appeal Council's decision despite being in contact with the Town about the matter on a number of occasions. Under questioning from the Adjudicator, the Town could neither confirm nor refute that they had advised the Appellant of their right to appeal the December 21, 2021 decision at any time.

Was the right to appeal (including by third parties) included in the approval letter/development permit issued to the applicant?

Respondents from the Town indicated that the approval issued to the applicant did not indicate a right to appeal, either by the applicant or a third party.

Is a list of Permits/approvals published by the Authority?

The Town testified that minutes of Council meetings are posted on the Town's website. The Town also indicated that a list of permits is also posted on the website, but this could not be verified.

Did Council, after reviewing the materials submitted by the Appellants, reconsider the application and pass any resolution related to it at their meeting of February 22, 2022?

Respondents indicated that there were no additional Council resolutions with respect to the application for the accessory building as a result of the meeting with the Appellants on February 22, 2022.

At this point the Hearing recessed for consideration of the validity of the appeal.

Case Law on the issue of Validity of an Appeal

In determining the validity of this appeal, I considered the following case law:

In ***Laurel Construction Ltd. v. St. John's (City)*** (1997), 157 Nfld. & P.E.I.R. 343, (Nfld. S.C.(T.D.)), the court found that for appeals by third parties, the period of commencement of the 14 days under (now) Section 41(3) of the Act should be interpreted as the time the general public becomes aware of the decision being appealed from. Furthermore, that Boards must consider on the basis of evidence, when appropriate notification to the public was provided with respect to the decision.

In ***Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)***, 2012 NLTD(G) 59, the court found that the event which comprises "notification to the public" is to be determined by an examination of the facts of a particular case and does not impose an obligation to provide notice to particular third party appellants.

In ***Petty Harbour-Maddox Cove (Town) v. Eastern Newfoundland Regional Appeal Board***, 2015 NLTD(G) 111 the court, in considering whether the Board had interpreted the timeliness of an appeal under Section 42(4) of the URPA favours a standard of review of reasonableness.

In this case, I find that the Town failed in its duty to advise the applicant of a right to appeal the approval - by either the applicant or a third party. Furthermore, despite being aware of the Appellant's objections to its approval of the application and despite subsequent interactions with the Appellants following the approval, the Town failed to advise them of their right to appeal within the 14 days period referred to in Section 41(3) of the *URPA, 2000*.

Conclusion

After reviewing information provided in the technical report, hearing from both parties, and consideration of relevant case law, the Adjudicator has determined that a reasonable date from which an appeal by the Appellants could be considered under Section 41(3) would be the date on which they received correspondence from the Town which confirmed the Authority's decision on the application which was March 17, 2022. The appeal was filed within seven days of this date and as such, I find that the appeal filed by Rosemarie and Harry Murphy is therefore valid.

Hearing Presentations

Having made the determination on the validity of the appeal, the hearing proceeded to hear the matter that is the subject of the appeal.

Technical Advisor

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 outlined her report noting that the appeal is with respect to the approval of an application to undertake development of a residential accessory building at 216 Harbour Drive, Dunville, Placentia. The subject property is located within the Residential Land Use Designation in the Municipal Plan and zoned Residential (RES) under the *Town of Placentia Development Regulations* and Land Use Zoning Map where single dwellings are permitted.

The Technical Advisor outlined the definition and requirements for accessory buildings set out in Regulation 33 of the Development Regulations, noting that the Development Regulations require plans and drawings submitted with an application to include all proposed buildings and accessory structures but do not establish the requirement to provide a legal survey with an application for a permit. The Technical Advisor indicated Motion No. 21-389, passed by Council October 26, 2021 that in essence indicates that a legal survey of property which is the subject of a development application *“is “preferred”, but if not available, a detailed drawing outlining all dimensions of the development, dimensions of any existing structures and all side yard distances may be accepted.”*

The Technical Advisor also outlined the Town’s obligation to provide application forms, but noted that such forms are not considered regulations.

With regards to decisions, the Technical Advisor indicated that Section 18 of the Placentia Development Regulations (and Section 5 of the Provincial Development Regulations) require Council to notify an applicant, in writing, of their right to appeal:

18. Notice of Right to Appeal

Where the Authority makes a decision that may be appealed under Part VI of the Urban and Rural Planning Act, the Authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the:

- (a) person’s right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

The Appellant’s Presentation and Grounds

In their presentation, the Appellants stated that the Town did not adhere to its Development Regulations when it approved the storage shed (accessory building) at Civic 216 Harbour Drive. Specifically, that a legal survey had not been submitted with the application, and that required dimensions and other information were missing from the application submitted. They further

asserted that no survey of the property had been submitted for the initial approval issued by the Town for the existing dwelling.

In addition, they further assert that Town's decision to approve the accessory building was based upon inaccurate property information and questioned the ownership of the property in the absence of a legal survey document. In response to questions from the Adjudicator, the Appellants also indicated that as result of excavation in the rear yard of the subject property, they are experiencing flooding on their property and are concerned the placement of the accessory building will further exacerbate the problem.

Authority's Presentation

The Town's Municipal Enforcement Officer (MEO) described the process he went through to evaluate the application for the accessory building. The building is a small, 14ft by 16ft shed to be constructed behind an existing residence on the subject property. The MEO indicated he assessed the application against the requirements of Regulation 33 of the Development Regulations and conducted a site visit to verify the location of the proposed building, checking that all minimum yard requirements were met.

In response to questions concerning ownership of the property, the Town indicated that they consider the applicant is the owner of the property at Civic 216 Harbour Drive, and this is reflected in the Town's Assessment Roll.

Developer Presentation

The applicant for the accessory building stated that he is the owner of the property in question and has deeds to the land located at 216 Harbour Drive.

Adjudicator's Analysis

Does the Town have the authority to issue a permit for development of an accessory building?

Yes. An accessory building is considered a development for which a permit is required under the Town's Development Regulations.

Does the proposed accessory building meet the requirements of Regulation 33 of the Development Regulations?

Based on the information provided by the Technical Advisor, the Appellants and the Town, I find that the accessory building as proposed, meets the standards set out in Regulation 33. While information on dimensions presented on the site plan were incomplete, the field inspection verified that minimum building setbacks would be met. Based on the information provided, it appears that minimum yard requirements were greater than required.

With regards to the accuracy of the property information, the Authority has decided to accept and process applications for development without requiring a (current) legal survey. While I consider this to be bad practice, As Adjudicator, I do not have any jurisdiction to settle boundary disputes in the appeal process. I recognize that Council has the discretion to decide what information is necessary for the purposes of considering and processing applications for development. In this case, the Authority has accepted the site plan submitted with the application and did not require anything further.

Did the Authority inform the applicant of his right to appeal, as required by Section 18 of the Development Regulations?

No. The Town provided a copy of the Development Permit issued to the applicant. Nowhere on the permit was there any reference to a right to appeal the permit. The Town, under questioning by the Adjudicator confirmed that they did not advise the applicant of his right to appeal.

Conclusion

After reviewing the information presented in the Technical Report and after hearing from all parties during the hearing, I conclude that the Authority reviewed and processed the application for an accessory building at Civic 216 Harbour Drive in accordance with Regulation 33 of the Placentia Development Regulations. I also conclude that the Authority exercised its discretion under Section 16 (2) of the Development Regulations to attach a condition to the permit to absolve itself of any responsibility for issues that may result from the ownership of the property.

In issuing the permit for the accessory building the Authority failed to advise the applicant of his right to appeal as required by Section 18 of the Placentia Development Regulations and Section 5 of the Provincial Development Regulations. However, this has not prevented an appeal to be made on this matter and I find that there would be little purpose in the Town re-issuing the permit simply to include a notice to the applicant of a right to appeal.

Decisions of adjudicator

As Adjudicator, I am bound by Section 44 of the URPA, 2000, which states:

- 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.***

Order

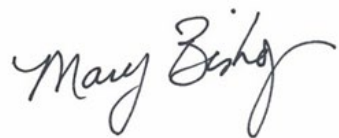
The Adjudicator orders that the decision of the Council of the Town of Placentia, made December 21, 2021 to approve the application for development of a residential accessory building at Civic No. 216 Harbour Drive, be confirmed. While Council made an error with respect to one's right to appeal, this did not prejudice an appeal being made under the *Urban and Rural Planning Act, 2000* as outlined in my reasons above.

In future, the Town should, ensure that all approvals and permits are issued in accordance with the full requirements of the Town's Development Regulations and specifically with Section 18 pertaining to notification of the right to appeal.

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 6th day of November, 2023.

A handwritten signature in cursive script that reads "Mary Bishop".

Mary Bishop, RPP, MCIP, FCIP
Adjudicator
Urban and Rural Planning Act, 2000