

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-077-022

Adjudicator: Cliff Johnston, MCIP

Appellant: Shuang Li (Red Tomato)

Respondent / Authority: Town of Conception Bay South

Date of Hearing: October 24, 2023

Start/End Time: 9:00 am-10am

Hearing Location: Comfort Inn, St. John's

In Attendance

Appellant: Shuang Li

Respondent Representatives: Corrie Davis, MCIP, Director of Planning & Development and Christine Bussey, Development Control Coordinator, both staff members with the Town of Conception Bay South

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

Technical Advisor: Victoria Akerele, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority (the Town of Conception Bay South) acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Conception Bay South Municipal Plan and Development Regulations when the Town Council made a decision on August 16, 2022 to reject an application from Shuang Li to establish and operate a business involving the outdoor storage of rental vehicles at the property located at Civic Number 2676 Topsail Road, Conception Bay South.

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 appointed 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 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 Technical Advisor that this appeal relates to an appeal filed by Shuang Li against the decision made by the Town of Conception Bay South Municipal Council on August 16, 2022 to reject the application submitted by Shuang Li to establish and operate a business involving the outdoor storage of rental vehicles at the property located at Civic Number 2767 Topsail Road.

A detailed Technical Report for this appeal was prepared by a Planner from the Department of Municipal and Provincial Affairs and referred for information to the Adjudicator, the Appellant the Authority prior to the appeal hearing. A verbal summary of the Technical Report was presented by the Technical Advisor at the appeal hearing. The full Technical Report is on file with the Appeal Officer. A summary of the key points of the Technical Report is as follows:

- The majority of the application site is zoned as Residential Mixed Zone (R3) under the Town's Development Regulations with a portion of the property zoned as Residential Medium Density (R2) under the Development Regulations. It seems the proposed vehicle rental business would be wholly contained in that portion of the property zoned R3.
- According to their submission, the Town of Conception Bay South interpreted the proposed use, vehicle rental services as a General Service use in accordance with the Town's Development Regulations. General Service uses are listed as a discretionary use in the R3 Zone.
- The Appellant's submission states that the proposed use should be considered a Shop use rather than a General Service use.
- Section 10 of the Town's Development Regulations allows the Authority (the Town of Conception Bay South) to interpret a proposed use and determine if it is a permitted use, a discretionary use or a prohibited use. Both General Service Use and Shop uses are listed as discretionary uses in the R3 Zone.

- The application was advertised for public review and comment by the Town before the Town Council made its decision with respect to the application. Written submissions of objection/concern were received and reviewed by the Town prior to the Town Council making its decision to reject the application. These objections/concerns were related to traffic and parking in the area of the application site.
- The Town of Conception Bay South has the discretionary power to refuse an application under Section 4.6 of the Town's Development Regulations. When considering an application, the Authority must take into account the Town's Municipal Plan policies as well as criteria such as the general appearance of the development of the area, amenity of surrounding, public safety and convenience, and any other material considerations. Material considerations could include matters such as traffic generation or parking availability.

The Appellant's Presentation and Grounds

*The Appellant is appealing the rejection of their application on the following grounds:

a) the proposed business is for moving trucks only (not rental storage units) and therefore should be considered a Shop use; and

b) other existing businesses in the immediate area generate much more traffic than the truck rental business would.

*At the appeal hearing, the Appellant showed a series of recent photos she had taken pertaining to traffic and parking in other parts of the Town which she felt supported her opinion that her proposed rental vehicle business would be an appropriate use for the subject application site and that the business could operate without detriment to other land uses in the immediate area.

Authority's Presentation

The Town's Director of Planning & Development prepared and submitted a written brief outlining the Town's position on the appeal. This submission was provided to the Adjudicator and the Appellant and the Appeal Officer prior to the appeal hearing. A copy of this brief is on file with the Appeal Officer.

A summary of the key points of the Town's brief is as follows:

- The Town takes the position that the Town Council has authority to make a discretionary decision for discretionary use applications and they acted within that authority to refuse the proposed discretionary use application for the vehicle rental business at the subject property.
- The Town submits that the Town Council's decision was made in accordance with the Town's Municipal Plan and Development Regulations.
- The Town submits that its decision to refuse the Appellant's discretionary use application under appeal was the result of a reasonable review and determination of the circumstances associated with the application.
- The Town submits that the Town properly interpreted and used its authority and there is no basis for the Adjudicator to either vary or vacate the Town Council's decision to reject the application.
- For the reasons noted above, the Town is of the opinion that the Town's decision of rejection of the Appellant's application must be confirmed by the Adjudicator.

Adjudicator's Analysis

The Adjudicator reviewed the Urban and Rural Planning Act, 2000 and

the Town of Conception Bay South Municipal Plan and Development Regulations and determined the following information through the questions and responses noted below.

Q. What is the zoning of the subject property?

R. That portion of the subject property proposed to be used for the vehicle rental business is presently zoned as Residential Mixed (R3) under the Town of Conception Bay South Development Regulations.

Q. Does the R3 Zone allow a vehicle rental business with the outdoor storage of the vehicles?

R. Yes. The Town has advised that a vehicle rental business with outdoor storage of the vehicles could be considered a General Service use under the Town's Development Regulations. A General Service use can be allowed as a Discretionary Use in the R3 Zone.

Q. Does the Town of Conception Bay South have the authority as to how to "define/classify" a vehicle rental business under the Town's Development Regulations?

R. Yes. Section 10.9 of the Town's Development Regulations authorized the Authority to interpret a proposed use and determine if it is a permitted use, a discretionary use or a prohibited use based on Schedule A of the Development Regulations. Both "General Service" and "Shop" are listed as discretionary uses in the Residential Mixed (R3) Zone.

Q. Did the Town of Conception Bay South process the Appellant's application in accordance with the applicable requirements of the Town's Development Regulations for discretionary uses?

R. Yes. Evidence provided in the Technical Advisor's report and by the

Town's Director of Planning and Development in his written submission prepared for the appeal shows to the satisfaction of the Adjudicator that the application was processed and reviewed appropriately including the public notification for public review of the application.

Q. Does the Town of Conception Bay South Municipal Council have the authority to refuse a discretionary use application?

R. Yes, Section 10.7 of the Town's Development Regulations provides the Town Council with the authority to refuse a discretionary use application. This section of the Regulations provides that subject to the Development Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zones **may be permitted** (*emphasis added*) provided that the Council is satisfied that the proposed development would not be contrary to the general intent and purpose of the Regulations, the Town's Municipal Plan, or any further scheme or plan or regulations pursuant thereto, and to the public interest and if the Council has first given notice of the application and has considered any objections or representations which have been received by the Town on the proposed development.

Based on the evidence provided to the Adjudicator, I am satisfied that the Town Council satisfied the requirements of Section 10.7 of the Town's Development Regulations in making its decision to reject the subject application. In the case of this application, the Town Council sought and received input from property owners/residents about the proposed vehicle rental business. Several submissions were received and expressed concerns in regard to new and cumulative negative impacts on traffic and parking in the general area of the application site. The Council reviewed and considered these comments/concerns and made a determination that the proposed vehicle rental business may increase traffic and parking demand that cannot be accommodated in the immediate area. Council then made a decision to reject the application.

ADJUDICATOR'S CONCLUSION AND DECISION

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 written information and evidence presented along with the technical information and planning advice, and the applicable provisions of the Town's Municipal Plan and Development Regulations, the Adjudicator has determined that the Authority, which in this case is the Town of Conception Bay South Municipal Council, was fully within its discretionary authority when it made its decision on August 16, 2022 to reject the application from Shuang Li to establish and operate a vehicle rental business with outdoor storage of the vehicles at the property located at Civic Number 2676 Topsail Road, Conception Bay South.


ORDER

The Adjudicator orders that the decision of the Town of Conception Bay South Municipal Council made on August 16, 2022 to reject the application from Shuang Li to establish and operate a vehicle rental business with outdoor storage of the vehicles at Civic Number 2676 Topsail Road, Conception Bay South, **be confirmed. The appeal submitted by Shunag Li is thereby rejected.**

The Authority and the Appellant 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 Appellant.

DATED at St. John's, Newfoundland and Labrador, this 27th day of October 2023.



Cliff Johnston, MCIP, Adjudicator