

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal: 15-006-077-027

Adjudicator: Cliff Johnston, MCIP

Appellant: Tina Tracey

Respondent / Authority: Town of Fermeuse

Date of Hearing: October 24, 2023

Start/End Time : 11am-12 pm

Location: Comfort Inn, St. John's

In Attendance

Appellant: Tina Tracey

Respondent/Authority Representatives: Jerome Kenney, Mayor of Fermeuse and Marsha Kenny, Town Clerk

Interested Party: Kevin Tracey (Appellant's spouse)

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

Technical Advisor: Sean McGrath, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority (the Town of Fermeuse) acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Fermeuse Municipal Plan and Development Regulations when it made a decision on September 1, 2022 to reject an application from the Appellant, Tina Tracey, to construct an accessory building on the property located at Civic Number 6 Brophy's Road, Fermeuse.

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 the Department of 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, Mr. McGrath, that this appeal relates to an appeal filed by Tina Tracey against the decision made by the Town Council of Fermeuse to reject her application to construct an accessory building at the property located at Civic Number 6 Brophy's Road, Fermeuse.

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 and the Authority prior to the appeal hearing. A verbal summary of the Technical Report was presented by the Technical Advisor at the appeal hearing. A summary of the key points from the summary is noted below. The full Technical Report is on file with the Appeal Officer.

- The Appellant's submission states that her application to the Town is to rebuild an accessory building that had previously existed on the property for over 50 years. The Planner advised that based on the information provided by the Appellant, the former accessory building on the subject property predated the approval and implementation of the Town's current Municipal Plan and Development Regulations.
- The Town's current Development Regulations will not allow an accessory building to be constructed closer to the front lot line than the main building on the property. The former accessory building was located closer to the front lot line than the main building on the property. The Appellant wishes to construct the new accessory building closer to the front lot line than the main building. The Development Regulations will not permit this.

- The Appellant had previously received approvals from the Town in 2014 and 2016 to rebuild the accessory building. These approvals occurred prior to the approval/implementation of the Town's current Municipal Plan and Development Regulations. The accessory building has not yet been constructed although some preliminary site preparation has apparently been undertaken.
- Section 3.6 of the Town's Development Regulations establishes the Town Council's discretionary authority to refuse a development application. This section of the Regulations does not give the Town Council the authority to approve a development application that contravenes the Town's Municipal Plan and/or Development Regulations.

The Appellant's Presentation and Grounds

The Appellant is appealing the Town Council's decision to refuse to issue a development permit (or revoke previously issued permit) on the following grounds which were outlined in her appeal application form:

- The previous accessory building existed on the property for over 50 years.
- The Appellant was advised by the Town that she did not need to reapply for a permit in year 2020 and could proceed with the construction of an accessory building as previously applied for in year 2016. She received verbal approval from the Town with the development and was not advised of conditions to the permit nor provided with a physical permit.
- The verbal approval granted in 2020 was after the current Town Municipal Plan and Development Regulations came into effect and the Appellant was not made aware of the specific requirements/limitations of the Development Regulations pertaining to her approval.
- The Appellant began their development in 2020 under an approval granted by the Town. The development included preparing the land and placing fill for a slab as well placing siding materials on the property. Work on the site then paused.
- The Appellant previously had the permit approved with no conditions attached and was not notified by the Town that the permits had expiry dates.

At the appeal hearing, the Appellant, Ms. Tracy and her spouse Mr. Tracey, outlined much of the same information included in the appeal application written form that was submitted. They advised that the Covid situation beginning in 2020 had unfortunately, delayed work on the new accessory building. They feel that the previous approval that was issued by the Town for the new accessory building in May, 2020 was revoked when the Town Council refused their August 26, 2022 development application for the same project. They also noted that they have seen other accessory buildings being constructed in Fermeuse and are not sure whether these structures had permits or not. Further, at the appeal hearing, they presented the Adjudicator with a petition from nearby residents/property owners advising they do not have concerns regarding the proposed placement of the new accessory building.

Authority's Presentation

- The Town Clerk advised at the appeal hearing that the Town's letter to the Appellant dated September 23, 2022 states that the permits previously issued to the Appellant for the new accessory building were valid for a period of two (2) years and had expired rather than being revoked by the Town.
- The Town feels that the fee paid by the Appellant to the Town in June of 2020 was meant by the Appellant to be in reference to the approval issued by the Town for the project in 2016.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the Town of Fermeuse Municipal Plan and Development Regulations and determined the following information through the questions and responses noted below:

Q. What is the zoning of the property which is the subject of this appeal?

R. The Technical Report prepared for the appeal has advised that the property is zoned as "Mixed Development" under the Town's Development Regulations.

Q. Does the current zoning of the property allow the construction of an accessory building.

R. Yes, the current zoning allows an accessory building subject to Section 4.2 of the Development Regulations which sets out conditions for accessory buildings. Section 4.2.1 of these Regulations requires that accessory buildings cannot be located closer to the front lot line than the main building. The Appellant's application to the Town indicates that the new building will be located closer to the front lot line than the main building on the property.

Q. Is a permit required from the Town for the construction of an accessory building?

R. Yes. Sections 3.1 (Permit to Develop Required) and 3.2 (Compliance with Regulations) of the Town's Development Regulations outline the requirement to obtain a permit from the Town prior to undertaking any development in the town and require any development carried out in the town to adhere to the Town's Municipal Plan and Development Regulations.

Q. Is an accessory building a “development” and is a municipal permit required to construct one?

R. Yes. The definition for “development” contained in the Urban and Rural Planning Act, 2000 and the Town’s Development Regulations is quite broad/encompassing and would include the construction of an accessory building. Section 3.1 of the Development Regulations requires that a permit must be issued by the Town before any development commences.

Q. Was the Town Council in a position to approve the application submitted by the Appellant in August of 2022 for the proposed new accessory building?

R. No. The proposed location of the accessory building being located closer to the front lot line than the main building on the subject property does not conform to Section 4.2.1 of the Town’s Development Regulations regarding conditions for constructing accessory buildings. Section 12 of the Urban and Rural Planning Act, 2000 establishes the requirement for a municipality or council, including the Town of Fermeuse, to adhere to their Municipal Plan and Development Regulations and requires any person undertaking development in the planning area to comply with the applicable Municipal Plan and Development Regulations.

Adjudicator’s 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 written information and evidence presented, along with the technical information and planning advice, the applicable provisions of the Urban and Rural Planning Act, 2000 and the Town's Municipal Plan and Development Regulations, the Adjudicator has determined that the Authority, in the case, the Town of Fermeuse, was within its authority when the Town Council made its decision on September 1, 2022 to reject the application from the Appellant to construct an accessory building at Civic No. 6 Brophy's Road. The Town Council could not approve the application as it did not conform to the requirements of Section 4.2.1 of the Town's Development Regulations which prohibits accessory buildings to be constructed closer to the front lot line than the main dwelling on the property. Under Section 12 of the Urban and Rural Planning Act, 2000, the Town Council must adhere to the Town's Municipal and Development Regulations when making decisions on development applications.

I would note that in hearing this appeal, it seems that there is a level of misunderstanding/miscommunication between the Appellant and the Town on what approvals/permits might previously have been granted/issued for what specific purposes and what fees that were paid by the Appellant were specifically in regard to. The Appellant and the Town have differing opinions as to whether the Appellant's previous approvals were revoked by the Town or expired. I found no evidence that the Town Council made a decision to revoke any previous approvals/permits.

I believe that at least some of the misunderstanding/miscommunication between the Appellant and the Town can be attributed to the fact the Appellant has advised that she was not made aware by the Town that the permit issued by the Town in 2016 for the proposed accessory building had a two (2) year validity period only. I would suggest that if this is not yet currently being done, that the Town, in issuing approvals/permits for developments, ensure that applicants are made aware in writing that per Section 3.12.4 of the Town's Development Regulations, that a permit for a specific development is valid for two (2) years but may be renewed once for a period not in excess of one (1) year.

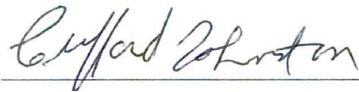
ORDER

The Adjudicator orders that the decision of the Town of Fermeuse Municipal Council made on September 1, 2022 to reject the application from Tina Tracey to construct an accessory building at the property located at Civic Number 6 Brophy's Road, Fermeuse, **be confirmed. The Appellant's appeal 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 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 27th day of October 30, 2023.

A handwritten signature in cursive script, reading "Clifford Johnston", is written above a horizontal line.

Cliff Johnston, MCIP Adjudicator