

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-064-002

Adjudicator: Cliff Johnston

Appellant(s): Ken and Wanda Barron

Respondent / Authority: Town of Marystown

I have been appointed as the Adjudicator to hear the appeal filed by Ken Barron and Wanda Barron ("the Appellants") against the decision made by the Town of Marystown in 2019 to grant conditional approval to the application submitted by Can-Am Platforms & Construction Ltd. ("the Applicant") to construct an extension to the commercial building located at Civic No. 130-140 Ville Marie Drive, Marystown.

This appeal was first heard by the former Eastern Newfoundland Regional Appeal Board on September 18, 2019. The Board made a decision to confirm the decision of the Town of Marystown to conditionally approve the proposed extension to the building on the subject property. The Appellants subsequently made a decision to appeal the Board's decision to the Supreme Court of Newfoundland and Labrador

Judge Valerie Marshall of the Supreme Court of Newfoundland and Labrador subsequently issued an Order dated November 17, 2021 that the decision of the former Eastern Newfoundland Regional Appeal Board as heard and ordered on September 18, 2019, was vacated in its entirety to be re-heard by the Board. In her report, Judge Marshall ordered that the matter be remitted back to the Board for a rehearing in accordance with the findings and directions laid out in her report.

The appeal is scheduled to be heard on March 26, 2024. As noted above, I have been appointed as the Adjudicator to hear the appeal.

I have reviewed the various background materials regarding the appeal that have been provided to me through the Appeals Officer, including the Order prepared by Judge Marshall. As part of this information package, I have reviewed correspondence dated December 6, 2022 from Cindy Picco, legal counsel for the Town of Marystown. Ms. Picco has noted that the applicant's plan for an extension to the building on the subject property was precipitated by a tender call by the provincial government for tender space. Ms. Picco advised that it is the Town's understanding that subsequent to the Appellants' appeal, the tender was cancelled. Ms. Picco also advised that it was the Town's

position that given the period since the Town's conditional approval of the application in early 2019, that the Town's approval for the application had expired as per the provisions of the Town's Development Regulations; further, that if the Applicant wishes to proceed with the proposed building extension, that they will be required to file a new application for development which would be reviewed against the Town's Development Regulations in effect at the time of submission of such an application.

Given the lengthy period since the application was submitted by the Applicant to the Town, approximately five (5) years, and the submission of Ms. Picco's correspondence dated December 6, 2022, as the appointed Adjudicator, on March 13, 2024 I requested that the Appeals Officer to contact the Town of Marystown and request the Town staff to make contact with the Applicant to determine if they still wish to move ahead with their application to construct the proposed extension to the commercial building.

Ms. Picco subsequently provided correspondence dated March 15, 2024 advising that she contacted Lee Noseworthy, Operations Manager for CAN-AM Platforms & Construction Ltd., the Applicant, in regards to this appeal. Correspondence dated March 14, 2024 from Mr. Noseworthy was provided to the Adjudicator along with Ms. Picco's correspondence.. Mr. Noseworthy advised that ...*"For tender purposes, and from my perspective, all was needed was a letter from the town confirming the appropriate zoning of the property. I believe I requested that, and I believe they provided it. A permit would not be required until further down the road, when the province actually awarded the lease of space tender. Originally, I had applied for the permit, just to keep the ball rolling, as no one would have imagined this type of delay."* In his correspondence, Mr. Nosewohty also went on to advise that ...*"I could potentially reapply for the building application in the future if the tender was ever awarded, but at this point, from what I can see, there is no requirement to do so until that time."*

Ms. Picco's correspondence dated March 15, 2024 advised that a new application to construct a proposed extension to the building on the subject property would be required if the Applicant wishes to proceed at some point in the future and that such an application would be evaluated under the Town's Development Regulations in effect on the date of application. Ms. Picco has also noted that it is the Town's belief that the Appeal is moot at this stage for the reasons set out in her correspondence of December 6, 2022. .

I have reviewed the correspondence dated December 6, 2022 and March 15, 2024 from Ms. Picco on behalf of the Town of Marystown and the correspondence dated March 14, 2024 from the Operations Manager for the Applicant. I have also reviewed the applicable sections of the Town of Marystown Development Regulations, Section 2.5.5 of these Regulations provides that an approval-in-principle for an application is valid for a period of one (1) year and may be extended for one (1) additional year, up to a maximum of two (2) years. Section 2.5.6(3) of these Regulations provides that a development permit is valid for such period, not in excess of two (2) years, as may be stated therein, and if the development has not commenced, the permit may be renewed for a

further period not in excess of one (1) year, but a permit shall not be renewed more than three (3) years, except for Signs. I note Ms. Picco's comments in her correspondence dated December 6, 2022 in which she notes that "*Leaving aside the issue of the fulfillment of the conditions, an issued permit would have been valid until April 2, 2021 and could have been renewed for one more year to April 2, 2022. In order to proceed with its extension, Can-Am would have had to apply to have the permit renewed. No application or request for extension was received by the Town from the Proponent. Further, while the regulations also provide for approval of applications for development in principle, these applications are only valid for one year and may be extended for one year only. Thus, if the application is considered to have been approved in principal, it would have expired on May 7, 2021 at the latest date.*"

In my determination, the approval granted by the Town to the Applicant in 2019 was intended/classified by the Town as an "approval-in-principle" subject to a series of conditions. This approval-in-principle would be valid for one (1) year only and could be extended under Section 2.5.5 of the Town's Development Regulations for one (1) additional year, up to a maximum of two (2) years. As noted by Ms. Picco in her correspondence dated December 6, 2022, the Applicant did not apply for any extension of the approval-in-principle

I have determined as the appointed Adjudicator, based on my review of the information supplied to me and my review of the applicable sections of the Town's Development Regulations, that there is currently no active application on file from the Applicant to construct an extension to the commercial building at Civic No. 130-140 Ville Marie Drive, Marystown. This is the opinion of both the Town and the Applicant, and I concur with this opinion.

Section 41.1(1)(b)(i) of the Urban and Rural Planning Act, 2000 provides that an Adjudicator may hear appeals pertaining to an application to undertake a development. As there is no active application on file with the Town from the Applicant for the proposed development-i.e.-a proposed extension to the commercial building, there is thereby, no application for development to be appealed. Thereby, the Appeal filed by Ken Barron and Wanda Barron against the decision of the Town of Martystown made in 2019 to conditionally approve the application from the Applicant is moot.

I recognize that Judge Marshall has ordered that the Appellants' appeal is to be reheard in its entirety. However, I also note that Ms. Picco's correspondence dated December 6, 2022 and March 15, 2024 and the Applicant's correspondence dated March 14, 2024 was generated and provided to the Adjudicator after the issuance of Judge Marshall's Order and provides new important updated information regarding the status of the application and the provincial tender which was the impetus of the application.

If at some point in the future the Applicant wishes to proceed with their application to construct an extension to the building on the subject property, they may do so at their discretion, subject to

the applicable requirements of the Town's Development Regulations in effect at the time of application.

Adjudicator Powers

Section 43 (4) of the Urban and Rural Planning Act, 2000 allows an adjudicator to determine the jurisdiction of an appeal without a hearing.

43. (4) Where an adjudicator determines that the subject matter of an appeal is not within the jurisdiction of the adjudicator under section 41, the adjudicator may dismiss the appeal without holding a hearing

CONCLUSION AND ORDER

As the appointed Adjudicator, I have determined that the Appeal filed by Ken Barron and Wanda Barron against the decision by the Town of Marystown in 2019 to conditionally approve an application from CAN-AM Platforms and Construction Ltd. to construct an extension to the commercial building at Civic No. 130-140 Ville Marie Drive, Marystown is moot, as there is no active application presently on file with the Town from this company for this proposed development. Accordingly, I dismiss this appeal in accordance with Section 41(1)(b)(i) of the Urban and Rural Planning Act, 2000. Based on this ruling, there is no necessity for the appeal hearing that was scheduled to be heard on this appeal on March 26, 2024 to proceed and thereby this appeal hearing shall be cancelled.

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 this 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 22nd day of March 2024.



Clifford Johnston.

Adjudicator,

Urban Rural Planning Act, 2000