

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-077-017

Adjudicator: Cliff Johnston, MCIP

Appellant(s): Makala Sweeney

Respondent / Authority: Town of Carbonear

Date of Hearing: August 30, 2023

Location of Hearing: Comfort Inn, St. John's

Start/End Time : 9: 00 am to 9:50 am

IN ATTENDANCE

Appellant: Makala Sweeney, via teleconference

Respondent/Authority Representative(s) Cynthia Davis, Chief Administrative Office, Town of Carbonear

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

Technical Advisor: Darrin Randell, Planner, 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 Town of Carbonear Municipal Plan and Development Regulations when it issued an Order on May 4, 2022 to the Appellant to cease home based business operations for a nail salon in a private residence located at 49 Irishtown Road, Carbonear.

APPEAL HEARING PRESENTATIONS

PLANNER'S PRESENTATION ON THE TECHNICAL REPORT

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 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.

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 Planner that this appeal relates to an Order issued by the Town of Carbonear to the Appellant on May 4, 2022 to cease home business operations with respect to a nail salon at the private residence located at 49 Irishtown Road in the Town of Carbonear. The Town Council had decided at its Regular Meeting on April 12, 2022 that an Order to cease business operations be issued, As noted, the Order was served on the Appellant on May 4, 2022.

The Planner advised that the appeal was filed by the Appellant 13, 2022 which is within the prescribed period for filing appeals as set forth under the Urban and Rural Planning Act, 2000. Section 41(1)(b)(iii) of the Act provides that Stop Work Orders may be appealed.

The Planner advised that the property which is the subject of this appeal is zoned as "Residential Medium Density (RMD)" under the Town's Development Regulations. This zone allows personal care service types of uses as a Discretionary Use in the zone. A personal care service would include a nail salon.

In his technical report prepared for this appeal and in his presentation, the Planner outlined the main points in the chronology of this appeal matter. **A copy of the Planner's Technical Report prepared for this appeal is on file with the Appeal Officer.**

THE APPELLANT'S PRESENTATION AND GROUNDS

The Appellant spoke at the appeal hearing by teleconference.

While the Appellant did not submit any written grounds of appeal in the filing of her appeal, it was clear to the Adjudicator from her verbal comments that the Appellant was appealing the issuance of the Order to cease business operations for her Home Based Business (a nail salon) as she does not appear to believe that she is currently running a Home Based Business from her home at the present time. She advised the Adjudicator that she has found it difficult to establish

the nail salon as a profitable business; she would now prefer to operate the nail salon out of her home at the subject property as more of a “hobby” for family and friends.

AUTHORITY’S PRESENTATION

Ms. Davis, the Town’s Chief Administrative Officer, spoke to the appeal. She had also prepared a written submission which she submitted to the Adjudicator at the appeal hearing. A copy of this presentation was forwarded by the Appeal Officer by email to the Appellant subsequent to the appeal hearing. In response to a question from the Adjudicator, the Appellant verbally advised that she had no objections to the appeal hearing proceeding even though she did not have a copy of the Town’s most recent written submission in front of her. **A copy of the Town’s written submission presented at the appeal hearing is on file with the Appeal Officer.**

Ms. Davis summarized the written submission for the Adjudicator. The main points in the Town’s written submission were as follows:

*It is the Town’s position that it acted within its authority when it issued the Order to the Appellant to cease the business operations of the nail salon in the Appellant’s residence.

*The Town provided the Appellant every opportunity to submit the required application and pay the application processing fee to operate a nail salon from her home. The Appellant did submit an application but did not pay the required processing fee and then subsequently advised the Town she was withdrawing her application.

*The Town must follow its Municipal Plan and Development Regulations which require a Home Based Business to be advertised for public review/comment and referred to the Town Council for consideration of approval and the issuance of the application permits before a Home Based Business is permitted to commence operations.

ADJUDICATOR'S ANALYSIS

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

Q. What is the nature of the proposed development?

R. The Appellant has been operating a nail salon as a Home Based Business from her private residence located at 49 Irishtown Road in Carbonear.

Q. What is the current zoning of the subject property?

R. According to the Town of Carbonear and the Planner's Technical Report prepared for this appeal, the subject property located at 49 Irishtown Road is presently zoned as Residential Medium Density (RMD) under the Town's Development Regulations. According to these Regulations, the RMD Zone will allow a Personal Care Use as a Discretionary Use in this Zone. A Personal Care Use would include a nail salon.

Q. Is the operation of a Home Based Business such as a nail salon considered a "Development" under the Urban and Rural Planning Act, 2000 and the Town's Municipal Plan and Development Regulations?

R. Yes. As the appointed Adjudicator for this appeal, I have determined that the nail salon operating at the property which is the subject of this appeal, does in fact follow under the definition of "Development" as set out under the Urban and Rural Planning Act, 2000 and the Town's Development Regulations.

Q. Is the operation of a Home Based Business a Development controlled under the Town of Carbonear Development Regulations?

R. Yes. Regulation Number 6 of the Town's Development Regulations states that no development (in the case of this appeal, a change and intensification of a portion of the private residence for use as a nail salon) shall be carried out within the Town's Planning Area except in accordance with the town's Development Regulations. Regulation Number 7 of the Town's Development Regulations requires a permit for any development in the Town's Planning Area including a Home Based Business.

Q. Does the Appellant have a permit from the Town of Carbonear to operate a nail salon as a Home Based Business from her residence?

R. No. The Town of Carbonear has advised the Adjudicator that no permissions/approvals/permits have been issued to the Appellant for the nail salon business.

Q. Did the Town of Carbonear have the authority to issue an Order to the Appellant to cease the operation of the nail salon operating from the subject property at 49 Irishtown Road, Carbonear?

R. Yes. Section 102(1) of the Urban and Rural Planning Act, 2000, provides that where contrary to a municipal plan or development regulations a person has undertaken or commenced a building or other development, a municipal council may order that person to pull down, remove, stop construction, fill in or destroy that building or development and may order that person the site or area to its original state.

The Town Council made a decision on April 12, 2022 to issue an Order under Section 102(1) of the Urban and Rural Planning Act, 2000 to cease the operation of the nail salon at the Appellant's residence at 49 Irishtown Road. The Order was served to the Appellant on May 4, 2022.

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 submissions and evidence presented by the parties along with the technical information and planning advice, the Adjudicator has determined that the Authority, which in the case of this appeal is the Town of Carbonear, was within its authority to issue an Order on May 4, 2022 to the Appellant to cease business operations for a nail salon at the private residence located at 49 Irishtown Road, Carbonear.

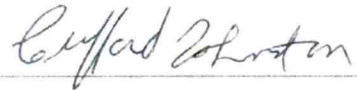
ORDER

The Adjudicator orders that the decision of the Town Council of Carbonear made on April 12, 2022 to issue an Order to Makala Sweeney to cease the operation of a personal care business, in this specific case, a nail salon at a private residence located at 49 Irishtown Road, Carbonear, **be confirmed. The appeal submitted by Ms. Sweeney is thereby denied.**

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 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 5th day of September, 2023.



Cliff Johnston, MCIP,
Adjudicator