

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-083-019

Adjudicator: John Baird

Appellant(s): Robert Young, Barbara Young

Respondent / Authority: Town of Bonavista

Date of Hearing: May 15, 2024

Start/End Time: 9:00 a.m. – 9:35 a.m.

In Attendance

Appellants: Robert Young and Barbara Young

Respondent/Authority: Town of Bonavista

Respondent Representative(s) Stephanie Lodge, Crystal Fudge

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

Technical Advisor: Faith Ford, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the Urban and Rural Planning Act, 2000 (URPA) authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal No. 15-006-083-019, the role of the Adjudicator is to determine if the Town of Bonavista (Council) acted in accordance with the Urban and Rural Planning Act, 2000 and the Bonavista Municipal Plan and Development Regulations when it refused an application to develop five detached rental cabins on properties at 19-21 and 23-25 Rolling Cove Road, Bonavista.

Appeal No. 15-006-083-019

Hearing Presentations

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. 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 the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

At the Hearing, the technical adviser provided an overview of the application, Council's reasons for refusal, the Bonavista Municipal Plan and Development Regulations, and the Bonavista Short-Term Rental Accommodation (STRA) Regulations related to the matter of the appeal.

The Appellants applied to develop five daily rental cabins on their properties at 19-21 and 23-25 Rolling Cove Road on May 15, 2023. Council reviewed the application and found that the application does not comply with the Bonavista Development Regulations and the STRA Regulations.

In a letter dated May 23, 2023, Council informed the Appellants that the application was refused in the Residential zone because the proposed cabins do not comply with Section 5 of the STRA Regulations. A copy of the regulations was attached for their review.

The STRA Regulations define short-term rental accommodations as “non-owner occupied residential properties which are rented out for periods of less than thirty days, which are not subject to a landlord-tenant lease agreement and/or the provisions of the Residential Tenancies Act...” Section 2 of the STRA Regulations states that short-term rental accommodation uses fall within the boarding house residential use class under the Development Regulations.

In the Mixed Use zone, the letter stated that the application was refused because a rental cabin is not a permitted or discretionary use class in that zone. The only type of visitor rental accommodation that can be approved in the zone is a bed and breakfast.

The technical advisor stated that the refusal letter provided a reason the permit was denied and included a notice of the right to appeal. Regulation 17 of the Development Regulations requires Council to state in writing the reasons for refusing a permit. Regulation 18 requires Council to notify an applicant in writing of their right to appeal when making a decision that can be appealed.

Appellants

The Appellants stated that their application for daily rental cabins should have been approved given that Rolling Cove Road already has a number of short-term rental accommodations. Their submission indicated that the proposal met the following criteria outlined in Section 5 of the STRA Regulations:

- Section 5.a.i. - the proposed development will not be a hotel, motel, hostel, or other commercial residential use, which do not correspond to the definition of a short-term rental accommodation set out in the STRA Regulations.
- Section 5.b. - Rolling Cove Road has more than ten residential dwellings, therefore the development should not be restricted based on street size.
- Section 5.c. – more than 10% of the dwellings on the street already are used for short-term rentals.
- Section 5.e. – the development will not involve conversion of existing residential dwellings.
- Section 5.f. – the appellants are not in arrears of property tax.

Authority

Council's representative stated that the decision to refuse the Appellants' application was based on their review of the Bonavista Development Regulations and STRA Regulations.

She stated that a rental cabin cannot be approved in the Mixed Use zone because it does not meet the use classification of any of the permitted or discretionary use classes in that zone. Bed and breakfast is the only type of visitor rental accommodation that can be approved in the Mixed Use zone.

In the Residential zone, the reason given for the refusal is the restriction in Section 5.c. of the STRA Regulations that no more than 10% of dwelling units on a street can be approved for short-term rental accommodations. Council determined that Rolling Cove Road exceeds this maximum, therefore no additional short-term rentals can be approved. Council's representative stated that this was the sole reason that the application was denied. However, in answer to a question from the Adjudicator, she acknowledged that it is questionable whether a rental cabin meets the definition "boarding house residential", which is a requirement for short-term rentals under the STRA Regulations.

Adjudicator's Analysis

The following questions arise from this appeal.

Does the application conform to the Bonavista Development Regulations?

No.

The properties at 19-21 and 23-25 Rolling Cove Road are split between the Mixed Use and Residential zones.

Bed and breakfast is the only type of visitor rental accommodation listed as a land use class in the Mixed Use zone. As a rental cabin does not conform to the definition of bed and breakfast in the Development Regulations, it cannot be approved in the Mixed use zone.

Other than bed and breakfast, boarding house is the only type of short-term rental accommodation that can be approved in the Residential zone. Section 2 of the STRA Regulations categorizes short-

term rental accommodations under the class of “boarding house residential” as defined in the Development Regulations. Whereas “boarding house residential” is a discretionary use in the Residential zone, the STRA Regulations authorize Council to approve short-term rentals in the zone in accordance with the required procedures for a discretionary use application.

I find the STRA Regulations to be a convoluted approach to the regulation of short-term visitor rentals. Control of land development legislatively falls under the purview of the Urban and Rural Planning Act, 2000 and is normally dealt with directly under a town’s municipal plan and development regulations. Other types of municipal regulations fall under the Municipalities Act, 1999. Section 414 outlines the types of regulation that a municipality can adopt under the Municipalities Act. None of these include control over land development. In my opinion, the STRA Regulations have questionable legislative authority with respect to development control under the Urban and Rural Planning Act, 2000.

Nevertheless, my task is to determine if Council’s refusal of the application conforms to the Bonavista Municipal Plan and Development Regulations. In that regard, the important question is whether the proposed rental cabins can be considered a permitted or discretionary use in the Residential zone.

It has already been determined that rental cabins cannot be categorized as a bed and breakfast use, so the only possibility is boarding house residential. The definition of boarding house in the Development Regulations is “a dwelling in which at least 2 rooms are regularly rented to persons other than the immediate family of the owner or tenant.” The Regulations define dwelling unit as a self-contained unit consisting of one or more habitable rooms used or designed as the living quarters for one household. With respect to this definition, the Appellants’ applied to develop daily rental cabins, which is very different from a dwelling for the use of a household.

I find that a daily rental cabin does not conform to definition of a boarding house residential use because it is not a dwelling unit as defined the Development Regulations. Therefore, there was no need for Council to have considered the application under the boarding house residential use class or the STRA Regulations. Neither is it a permitted or discretionary use under any of the other use classes in the Residential and Mixed Use zones.

The application for five daily rental cabins does not conform to the Bonavista Development Regulations.

Did Council notify the Appellant appropriately?

Regulation 17 of the Bonavista Development Regulations states that the “*Authority shall, when refusing to issue a permit...state the reasons for so doing in writing.*”

Council sent a letter to the Appellants on May 23, 2023, informing them that in their application does not conform to the Development Regulations in the Mixed Use or Residential zone.

For the Mixed Use zone, it explained that rental cabins do not correspond to any of the permitted or discretionary use classes, therefore cannot be permitted.

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-016

Adjudicator: John Baird

Appellant(s): Robert Young, Barbara Young

Respondent / Authority: Town of Bonavista

Date of Hearing: May 15, 2024

Start/End Time: 9:00 a.m. - 9:35 a.m.

In Attendance

Appellants: Robert Young and Barbara Young

Respondent/Authority: Town of Bonavista

Respondent Representative(s) Stephanie Lodge, Crystal Fudge

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

Technical Advisor: Faith Ford, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the Urban and Rural Planning Act, 2000 (URPA) authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal No. 15-006-087-016, the role of the Adjudicator is to determine if the Town of Bonavista (Council) acted in accordance with the Urban and Rural Planning Act, 2000 and the Bonavista Municipal Plan and Development Regulations when it issued a Stop Work and Removal Order on July 12, 2023 to stop development of an unauthorized RV park at 19-21 and 23-25 Rolling Cove Road.

Appeal No. 15-006-087-016

Hearing Presentations

Technical Advisor

The role of the planner is to act as a technical advisor to the appeal process as outlined in the Appeal Board (Rules of Procedure) Order, 1993. 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 the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

The technical advisor highlighted the following appeal matters related to provisions in the Urban and Rural Planning Act, 2000 (URPA) and the Bonavista Development Regulations.

- The operation of an RV park, as well as the parking of RVs on a site for camping purposes, constitutes a development as defined under URPA because it is a material change in the use of land.
- The Appellants' property is split zoned between the Residential and Mixed Use zones. An RV park is not a permitted or discretionary use in either zone.
- RV park is not an established use in the town and is not defined in the Development Regulations.
- The Development Regulations require all development to comply with the Regulations and obtain a permit to carry out a development.
- Section 102 of URPA authorizes Council to issue a stop work order for a development that contravenes a municipal plan or development regulations.

The technical adviser provided a background on the stop work and removal order for the operation of an RV park at 19-21 and 23-25 Rolling Cove Road. Council staff became aware of RV campers using the property on July 4, 2023, and on that day sent a letter directing the Appellants to cease operations and apply for a permit. The Appellants responded that they were not charging a fee or operating a business, therefore should not require a permit from Council. They continued operating while communicating back and forth with Council staff. On July 12, the Town's Economic, Culture, and Heritage Officer issued a stop work and removal order, however the RV camping continued. At its regular meeting on July 17, Council passed a motion to pursue legal action if the RV park did not cease operating.

The Appellants filed their appeal on July 26, 2023.

Appellants

The Appellants stated that the RV camping on their property was not a business. The campers were simply their personal guests staying on the property for free. This was despite the campground being advertised by an online marketing company at a fee of \$30 per night. The Appellants stated that the \$30 fee was collected by the marketing company and none of the money came to them. When they realized the fee was being charged, the Appellants cancelled their arrangement with

the company. They stated that the RV campers were personal guests staying on their property for free, therefore the activity was not a business and should not require a permit from Council.

The Appellants stated that RV camping regularly occurs in various areas of the town and asked why that was allowed to occur when it could not on their property. They referred in particular to an occasion when a movie was being produced when RV camping was taking all over the town.

Authority

Council's representative stated that the properties at 19-21 and 23-25 Rolling Cove Road are located partially in the Residential zone and partially in the Mixed Use zone. Neither zone includes an RV campground as a permitted or discretionary use.

The stop work order was issued under Section 102(1) of URPA, which states that a council may issue an order to stop or remove a development that is contrary to a municipal plan or development regulations. The order was also issued under Section 1.2 of the Bonavista Development Regulations, which states that no person shall carry out any development unless a permit for the development has been issued by the authority.

On the assertion by the Appellants that RV camping is allowed in other areas of the town, Council's representative stated that the only permitted RV park in Bonavista is on municipal property at Cape Bonavista and that RV parks are not permitted in any other zones.

Council's representative stated that she issued the order in her position as the Town's Economic, Culture and Heritage Officer. She advised that she was one of three management staff that the mayor and councillors have authorized to issue orders on behalf of the Town. Section 109(3) of URPA states that an employee of council may issue an order under Section 102.

Adjudicator's Analysis

The following questions arise from this appeal.

Did the RV camping park at 19-21 and 23-25 Rolling Cove Road require a development permit from Council?

Yes.

Under Section 2 of its Development Regulations, Council has authority to require a permit for any activity that constitutes a development. The RV camping activity on the Appellants' property meets the definition of development, regardless of whether it is a business activity or simply RV campers staying there for free as guests of the property owners. In either scenario, the camping activity would require a development permit from Council.

Did Council have the authority to issue the stop work and removal order?

Yes.

The order was issued in accordance with the following provisions:

- Section 101(2) of URPA, which authorizes a council to issue a stop work order for a development that does not comply with its development regulations.
- Regulation 2 of the Development Regulations, which states that no person shall carry out any development without a permit from the Authority.
- Regulation 31 of the Development Regulations, which states that the authority may order a person to stop a development that is contrary or apparently contrary to the regulations.
- The Residential and Mixed Use zone tables in the Development Regulations. An RV camping park is not a permitted or discretionary use class in either zone, therefore as per Regulation 87 of the Development Regulations, it is not permitted.

Considering the above, the Adjudicator finds that Council had the authority to issue the order requiring the Appellants to stop the development of an RV campground at 19-21 and 23-25 Rolling Cove Road.

Did Council issue the stop work and removal order appropriately?

Yes

The stop work order was sent to the Appellants by registered mail, which is in accordance with Section 107(1) of URPA.

The stop work order notified the Appellants of their right to appeal and the time and process for filing an appeal, which is in accordance with Regulation 18 of the Development Regulations.

Section 109(3) of URPA states that an employee of council may issue an order under Section 102. Section 109(4) states that an order made by an employee shall be confirmed by a majority vote at the next meeting of council after the order is made. At its regular meeting of July 17, 2023, Council discussed the stop work order and passed a unanimous motion to take legal action against the Appellants if the RV park continued to operate. While it did not state directly that the order was confirmed, the motion clearly substantiated the order issued by the employee.

Adjudicator's Conclusion

Based on my review, I conclude that Council's order that the Appellants cease the development of an RV park business at 19-21 and 23-25 Rolling Cove Road complies with the Urban and Rural Planning Act, 2000 and the Bonavista Development Regulations. Council had the authority to issue the stop work and removal order.

For the most part, Council issued the order appropriately. The only exception to this was that Council's motion at its July 17 meeting did not explicitly confirm the order issued by an employee. However, I consider this a minor error. The motion that was passed clearly supported the employee's action.

Decisions of Adjudicator

As Adjudicator, I am bound by Section 44 of 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.
- (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.

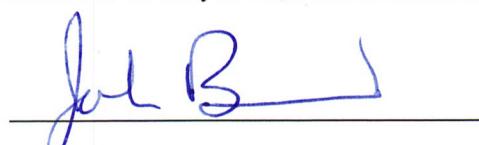
Order

Concerning Appeal No. 15-006-087-016, the Adjudicator orders that the Stop Work and Removal Order issued by the Town of Bonavista on July 12, 2023, to stop the development of an RV camping park be confirmed.

Bonavista Town Council and the Appellant 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) or the Authority.

DATED at Traytown, Newfoundland and Labrador, this 4th day of June 2024.


John Baird, MCIP
Adjudicator
Urban and Rural Planning Act, 2000

For the Residential zone, the letter stated that the application does not meet Section 5 of the Short-Term Rental Accommodation Regulations. It provided no further explanation but referred the Regulations to the applicants for their own review. At the hearing, Council's representative presented a more detailed reason for the refusal. She indicated that the application does not conform to Section 5.c., which states that the maximum number of short-term rentals cannot be more than 10% of total dwelling units on any street.

While Council's letter did provide a reason for refusing the application in the Residential zone, the explanation was not of a standard one should expect in meeting the requirement in Regulation 17.

Regulation 18 of the Bonavista Development Regulations states that where the Authority makes a decision that may be appealed, it shall notify the applicant of their right to appeal and provide information on the time and manner for making an appeal. Council's refusal letter met the requirements of Regulation 18. It notified the applicants of their right to appeal and the time and process for submitting an appeal.

Adjudicator's Conclusion

Based on my review, I conclude that Council's refusal of the development application for five rental cabins at 19-21 and 23-25 Rolling Cove Road complies with the Bonavista Municipal Plan and Development Regulations. The Development Regulations do not permit this type of development in either the Mixed Use zone or the Residential zone.

With respect to the Residential zone, the reason for my conclusion differs from the reason presented by Council. Council's reason was that the number of dwelling units on Rolling Cove Road used for short-term rentals already exceeds the 10% maximum permitted in the STRA Regulations. It is my conclusion that rental cabins do not fall under the definition of dwelling unit as provided in the Development Regulations, therefore correspondingly cannot be classified as a boarding house as interpreted by Council. Neither do rental cabins fall under any of the other permitted and discretionary use classes in the Residential zone. Consequently, the determination that short-term rentals exceed the 10% maximum of dwelling units on Rolling Cove Road is a moot point.

With respect to Regulation 17 of the Development Regulations, Council provided a reason for refusing a development permit for the rental cabins. However, the explanation was so vague that it put the onus on the Appellants to figure out the actual reason for the refusal.

With respect to Regulation 18 of the Development Regulations, Council properly notified the applicants of their right to appeal and the time limit and process for submitting an appeal.

While Council can improve its process with respect to meeting its obligation under Regulation 17, the refusal itself complies with the provisions of the Bonavista Development Regulations.

Decisions of Adjudicator

As adjudicator, I am bound by Section 44 of the *Urban and Rural Planning Act, 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.
- (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.

Order

The Adjudicator orders that the decision of the Town of Bonavista to refuse an application for five daily rental cabins at 19-21 and 23-25 Rolling Cove Road be confirmed.

Council and the Appellant 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) or the Authority.

DATED at Traytown, Newfoundland and Labrador, this 4th day of June 2024.



John Baird, MCIP
Adjudicator
Urban and Rural Planning Act, 2000

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-007

Adjudicator: John Baird

Appellant(s): Robert Young, Barbara Young

Respondent / Authority: Town of Bonavista

Date of Hearing: May 15, 2024

Start/End Time: 10:12 a.m. – 10:42 a.m.

In Attendance

Appellants: Robert Young and Barbara Young

Respondent/Authority: Town of Bonavista

Respondent Representative(s) Stephanie Lodge, Crystal Fudge

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

Technical Advisor: Faith Ford, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the Urban and Rural Planning Act, 2000 (URPA) authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal No. 15-006-087-007, the role of the adjudicator is to determine if the Town of Bonavista acted in accordance with the Urban and Rural Planning Act, 2000 and the Bonavista Municipal Plan and Development Regulations when it refused an application to demolish a structure at 19-21 and 23-25 Rolling Cove Road, Bonavista.

Appeal No. 15-006-087-007

Hearing Presentations

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. 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 the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

At the Hearing, the technical adviser provided an overview of the application, Council's reasons for refusal, and the provisions of the Bonavista Municipal Plan and Development Regulations related to the matter of the appeal. The subject properties are located partially in the Residential zone and partially in the Mixed Use zone.

On June 16, 2023, the Appellants applied to demolish a dwelling and a shed on their properties at 19-21 and 23-25 Rolling Cove Road. Council reviewed the application and on June 30 sent a letter to the Appellants approving the demolition of the dwelling and refusing the demolition of the shed. The letter explained that the demolition of the shed was denied because of its heritage significance and contribution to the historic character of Bonavista.

The technical advisor referenced the following provisions in Provincial legislation and the Bonavista Development Regulations aimed at preserving heritage values.

- Section 200(1) of the Municipalities Act, 1999 states that a building or structure designated by a council as heritage structure shall not be demolished except under a written permit of the council.
- Section 200(2) of the Municipalities Act, 1999 states that a council may establish a heritage advisory committee to advise on regulations with respect to heritage buildings and structures.
- Section 414 (2) of the Municipalities Act, 1999 states that a council may make regulations to designate real property as a heritage building, structure or land.
- The Bonavista Development Regulations - Condition 9 of the Residential use zone table states that heritage buildings designated under federal, provincial, or municipal legislation shall not be demolished without approval of Council and any other agency required by legislation.
- The Bonavista Development Regulations - Condition 2 of the Mixed Use zone table states that it is the intent of Council that community heritage will be preserved in all Mixed Use zones.

The technical advisor advised that Council considered the age, architectural significance, and heritage value of the shed and the provisions of the Development Regulations when it refused a demolition permit for the structure.

In its letter dated June 30, 2023, Council informed the Appellant that the demolition application for the shed was refused due to its heritage significance and the Town's intention to preserve Bonavista's historical significance. The letter notified the Appellants of their right to appeal.

Appellant

The grounds of appeal submitted by the Appellants included the following:

- The structure is not located in a heritage district or in the Mixed Use Heritage zone.
- The structure is located behind an abandoned house, which has no heritage value.
- Council gave no specifics on the architectural/visual prominence of the structure, only that it was built before 1960.
- The Appellants were not previously notified that their shed was a designated heritage structure. They found out only when they received the notice from Council that the demolition application was refused.
- They will not maintain the structure; therefore, it will become a safety hazard over time.
- Council should prioritize safety over heritage.

At the hearing, the Appellants disagreed with Council's determination that their shed has heritage value. They stated that the house and the shed were built at the same time, so questioned why the shed was designated heritage while the house was not. They added that the shed has no floor, is rotted out inside, is unsafe, and they have no intention to restore it.

They also suggested that not all members of the Bonavista Heritage Advisory Committee had been consulted on the decision to refuse the application.

Authority

Council's representative stated that the review of the Appellants' demolition application considered the heritage provisions in the Bonavista Development Regulations. The Residential use zone table includes a condition that designated heritage buildings will not be demolished without Council's approval. The Mixed Use zone table states that community heritage will be preserved in all Mixed Use zones. She stated that the review of a development or demolition application affecting a heritage structure requires input from the Bonavista Heritage Advisory Committee.

The representative stated that she referred the application by email to members of the advisory committee on June 27, 2023, recommending that the proposed demolition be refused. The email included photos, a brief description of the building, and its proximity to another heritage structure on a separate property. The email asked if there were any questions or objections to denying the demolition permit. She stated that all members of the advisory committee were contacted and none of them disagreed with the recommendation. She confirmed that the building is included in an inventory of heritage structures compiled in the 1990's and maintained by the Bonavista Historic Townscape Foundation.

The decision to refuse the application was communicated to the Appellants in a letter dated June 30, 2023. It stated the reason as the shed's architecture, age, visual prominence, and contribution to the historical character and cultural landscape of the area. The letter indicated that the decision was in accordance with the heritage preservation provisions in Development Regulations.

Adjudicator's Analysis

The following questions arise from this appeal.

Does Council's refusal of a demolition permit conform to the Bonavista Municipal Plan and Development Regulations?

Yes.

Heritage preservation is a major theme of the Bonavista Municipal Plan. Section 1.1 states that it is objective of the plan “to preserve and enhance Bonavista’s rich cultural heritage, thinking specifically of heritage buildings and structures, traditional laneways, historic neighbourhoods and marine heritage in and around the harbour.” The Plan draws a correlation between heritage preservation and strengthening economic and employment opportunities. References to the importance of heritage for the town’s economic development are prevalent throughout the document.

The Appellants’ properties at 19-21 and 23-25 Rolling Cove Road are split between the Mixed Use and Residential zones. The Mixed Use and Residential use zone tables include conditions aimed at preserving and protecting heritage assets.

Council’s refusal to approve a demolition permit for the building is consistent with the objectives and land use policies in the Municipal Plan and the zoning provisions in the Development Regulations.

Was the Order properly addressed and served?

Yes.

The refusal letter sent to the Appellants clearly informed them of the reason their demolition application was refused. It conforms to Regulation 17 of the Development Regulations, which states that the *“Authority shall, when refusing to issue a permit...state the reasons for so doing in writing.”*

The letter informed the applicants of their right to appeal and the time and process for submitting an appeal. It conforms to Regulation 18, which requires Council to notify applicants of their right to appeal a Council decision.

Adjudicator's Conclusion

Based on my review, I conclude that Council’s refusal of the demolition application for a heritage building at 19-21 and 23-25 Rolling Cove Road complies with the Bonavista Municipal Plan and Development Regulations. The Development Regulations give Council authority to refuse a demolition permit for a designated heritage structure in the Mixed Use and Residential zones.

In reviewing the refusal letter sent to the Appellant’s dated June 30, 2023, I conclude that Council provided adequate reasons for the refusal. Furthermore, the letter properly notified the applicants of their right to appeal and the time limit and process for submitting an appeal.

Decisions of Adjudicator

As Adjudicator, I am bound by Section 44 of the *Urban and Rural Planning Act, 2000*, which states:

44. (1) In deciding an appeal, an adjudicator may do one or more of the following:

- (a) confirm, reverse, or vary a 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.

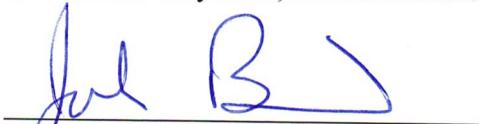
Order

The Adjudicator orders that the decision of the Town of Bonavista to refuse a demolition application for a designated heritage building at 19-21 and 23-25 Rolling Cove Road be confirmed.

Council 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 or the Authority.

DATED at Traytown, Newfoundland and Labrador, this 4th day of June 2024.



John Baird, MCIP
Adjudicator
Urban and Rural Planning Act, 2000

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-077-031

Adjudicator: John Baird

Appellant(s): Robert Young, Barbara Young

Respondent / Authority: Town of Bonavista

Date of Hearing: May 15, 2024

Start/End Time: 10:50 am – 11:22 a.m.

In Attendance

Appellant: Robert Young, Barbara Young

Respondent/Authority: Town of Bonavista

Respondent Representative(s) Stephanie Lodge, Crystal Fudge

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

Technical Advisor: Faith Ford, Planner, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the Urban and Rural Planning Act, 2000 (URPA) authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal No. 15-006-077-031, the role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and the Bonavista Municipal Plan and Development Regulations when it refused an application to develop a U-Haul rental business at 23-25 Rolling Cove Road, Bonavista.

Appeal No. 15-006-077-031

Hearing Presentations

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. 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 the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

At the Hearing, the technical adviser provided an overview of the application, Council's reasons for refusal, and the provisions of the Bonavista Municipal Plan and Development Regulations related to the matter of the appeal.

The Appellants applied to develop a U-Haul business at 23-25 Rolling Cove Road on September 7, 2022. In a letter dated September 28, Council informed the Appellants that the application was refused due to residential and mixed use zoning restrictions. The letter advised that this type of business should be conducted in a commercial or light industry zone.

With respect to procedural compliance, the technical advisor stated that the refusal letter informed the Appellants of the reasons their application was denied. Regulation 17 of the Development Regulations requires the Council to state in writing the reasons for refusing a permit.

The technical advisor stated that the refusal letter did not include a notice of the right to appeal as required under Section 18 of the Development Regulations.

Appellants

The Appellants stated that Council's refusal letter did not advise them of their right to appeal. The letter informed them that their application was denied due to residential and mixed-use zoning restrictions. They stated that they found out they had a right to appeal from an official at the Department of Municipal and Provincial Affairs.

The Appellants argued that the proposed U-Haul business should be classified as a General Service, which is listed as a discretionary use class in the Mixed Use zone. They pointed out that the Municipal Plan includes a goal to encourage additional employment opportunities and that no other U-Haul service is offered in Bonavista.

Authority

Council's representatives stated that the decision to refuse the Appellants' application was based on the determination that the proposed U-Haul rental business should be classified as light industry use, which is not a permitted or discretionary use in either the Residential or Mixed Use zones. They indicated that a previous U-Haul business in Bonavista was located in the Commercial-Light

Industrial zone in a different area of the town. They stated that they had advised the Appellants that that zone was more appropriate for the proposed business.

Adjudicator's Analysis

The following questions arise from this appeal.

Does the application conform to the Bonavista Municipal Plan and Development Regulations?

No

The Appellants' property at 23-25 Rolling Cove Road is split between the Residential and Mixed Use zones. Council refused their application to develop a U-Haul business because of residential and mixed use zoning restrictions. They were advised that this type of business should be conducted in a commercial or light industrial zone.

In its submission, Council indicated that it had interpreted the proposed U-Haul business as a light industry use class, which is not a permitted or discretionary use in the Residential or Mixed Use zones. The Appellants stated that the business should be classified as General Service, which is a discretionary use class in the Mixed Use zone. Regulation 84 of the Development Regulations authorizes Council to determine the specific uses to be included in each use class in accordance with the classification and examples set out in Schedule B. Schedule B provides the following examples of General Service: self-service laundries, dry cleaners, small tool and appliance rentals, and travel agents. None of these examples is similar to a U-Haul business, which would involve outdoor parking or storage of trucks and trailers. Based on Regulation 84, I find that Council was correct in its determination that the proposed U-Haul business was not a General Service use.

The application does not conform to the zoning requirements of either the Residential or Mixed Use zones that cover the property at 23-25 Rolling Cove Road.

Did Council notify the Appellant appropriately?

Regulation 17 of the Bonavista Development Regulations states that the "*Authority shall, when refusing to issue a permit...state the reasons for so doing in writing.*"

Council sent a letter to the Appellants on September 28, 2022, informing them that their application was denied due to residential and mixed use zoning restrictions and that this type of business should be conducted in a Commercial or Light Industrial zone. The letter provided no further explanation for the refusal. The letter did not specify what the zoning restrictions were.

Regulation 18 of the Bonavista Development Regulations states that where the Authority makes a decision that may be appealed, it shall notify the applicant of their right to appeal and provide information on the time and manner for making an appeal. Council's refusal letter did not notify the Appellant in accordance with Regulation 18.

Adjudicator's Conclusion

Based on the information presented, I conclude that Council's refusal of the application for a U-Haul rental business at 23-25 Rolling Cove Road complies with the Bonavista Development Regulations. This type of business is not permitted in the Residential or Mixed Use zones.

In reviewing the letter sent to the Appellant's on September 28, 2022, I conclude that Council did not notify the Appellant in accordance with Regulation 17 or Regulation 18 of the Bonavista Development Regulations. It vaguely referred to zoning restrictions but did not explain what those restrictions were. Furthermore, it did not notify the Appellants of their right to appeal.

Council had authority to refuse the subject application. It considered the application in accordance with the Bonavista Development Regulations and refused the application because the proposed U-Haul business did not qualify as a permitted or discretionary use in the Residential or Mixed Use zones.

However, Council failed in its decision letter to the Appellants to provide a clear reason for its refusal of their application as required under Regulation 17 of the Development Regulations. Furthermore, the letter did not advise the Appellants of their right to appeal the decision as required under Regulation 18.

Council's refusal of the application for a U-Haul rental business is therefore reversed and the matter is sent back to Council. This decision does not authorize the Appellant to proceed with the U-Haul business at 23-25 Rolling Cove Road. Instead, it finds that Council did not meet their requirements under Regulation 17 and Regulation 18. It is still within the powers of Council to deny the U-Haul business as they did on September 26, 2023, provided they meet their procedural requirements under the Development Regulations.

Decisions of Adjudicator

As adjudicator, I am bound by Section 44 of the *Urban and Rural Planning Act, 2000*, which states:

- 44.** (1) In deciding an appeal, an adjudicator may do one or more of the following:
 - (a) confirm, reverse, or vary a 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.

Order

The Adjudicator orders that the decision of the Town of Bonavista to refuse an application for a U-Haul rental business at 23-25 Rolling Cove Road be reversed.

In accordance with section 45(2) of the Urban and Rural Planning Act, 2000, the Adjudicator further orders that the Town pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

Council and the Appellant 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) or the Authority.

DATED at Traytown, Newfoundland and Labrador, this 4th day of June 2024.



John Baird, MCIP
Adjudicator
Urban and Rural Planning Act, 2000