

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-014

Adjudicator: John Baird

Appellant(s): Muhammad Siddiq

Respondent / Authority: Town of Clarenville

Date of Hearing: May 16, 2024

Start/End Time: 9:00 AM - 9:35 AM

In Attendance

Appellant: Muhammad Siddiq

Respondent/Authority: Rick Wells, Director of Public Works and Planning

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

Technical Advisor: Setare Vafaei, 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. 15-006-087-014, the role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and the Clarenville Municipal Plan and Development Regulations when it refused an application to develop an accessory building as a guest house at 2 Syenite Road, Clarenville.

Appeal No. 15-006-087-014

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 Clarenville Municipal Plan and Development Regulations related to the matter of the appeal.

The Appellant owns a single dwelling with a subsidiary apartment at 2 Syenite Road. On July 4, 2023, Council approved an application by the Appellant to subdivide this property to create a new lot to build another dwelling. On learning that there was a restrictive covenant against subdividing the property, the Appellant applied to construct a guest house in an accessory building on the same lot as the existing dwelling.

The technical advisor highlighted the following provisions in the Clarenville Development Regulations related to the matters of the appeal.

- The subject property is in the Residential Medium Density (RMD) zoned.
- The Town's definition of dwelling unit means a self-contained unit consisting of one or more habitable rooms designed as the living quarters for one household.
- The definition of accessory building states that it shall not be used as a dwelling.

Council refused the Appellant's application at a meeting on August 1, 2023, and notified the Appellant in a letter dated August 11. The letter stated that the application was refused because its definition does not allow an accessory building to be used as a dwelling.

Appellant

The Appellant stated that his property is sufficiently large to accommodate two houses. He stated that Council previously approved an application to divide the property into two lots to allow another dwelling to be constructed on the newly created lot. However, because of a restrictive covenant on the property imposed by the original developer, he decided against doing this.

The Appellant indicated that the proposed building would be a garage with a small guest house upstairs. He is aware of other accessory buildings in the town that contain similar living units.

The Appellant questioned why Council would approve two houses on two separate lots but not the same two houses on a single lot even though the footprint and appearance from the street would be no different. His appeal requested that the accessory building be permitted according to his application. He expressed a willingness to modify the size of the building if that was a concern.

Authority

Council's representative stated that the Clarenville Development Regulations prohibit the use of an accessory building as a dwelling. Specifically, section (a) of the definition of accessory building states that an accessory building cannot be used as a dwelling.

The representative noted that Council felt that two homes on one lot would not fit with the character of what was intended to be an executive subdivision. He acknowledged, however, that

Council's previous approval to subdivide the existing lot into two would have had the same effect in terms of density and aesthetics as allowing a second house on a single lot.

Adjudicator's Analysis

The following questions arise from this appeal.

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

No

The design drawings attached to the Appellant's application showed that the proposed accessory building would be developed as a dwelling. The design shows a single-bay garage, recreation room, and bathroom on the ground floor, and a kitchen, living/dining area, bathroom, and two bedrooms on the upstairs floor.

Permitted residential uses in the Residential Medium Density (RMD) zone include single dwellings, double dwellings, townhouses, row dwellings, and modular houses. Discretionary residential uses include apartment buildings, mini-homes, and subsidiary apartments. The application was refused because the Development Regulations prohibit an accessory building from being used as a dwelling.

Council's representative stated that Council also felt a second dwelling on a single lot would not fit with the character of the subdivision. This is inconsistent with Council's earlier approval of the Appellant's application to subdivide the lot, which would have had the same effect. It is also somewhat at odds with Policy 3.1.9 of the Clarenville Municipal Plan, which encourages intensification of development through infill housing on existing streets.

The application does not conform to the Clarenville Development Regulations.

Does the application conform to the Ministerial Development Regulations

Regulation 4 of the Clarenville Development Regulations states that the Ministerial Development Regulations enacted under the *Urban and Rural Planning Act, 2000* shall apply to development within the Planning Area. Where there is conflict between these and the Clarenville Development Regulations, the Ministerial Regulations shall prevail.

The definition of accessory building in the Ministerial Regulations is the same as the definition in the Clarenville Development Regulations. Therefore, if Council had alternatively decided to approve the application, that could have been overruled by the Ministerial Development Regulations.

The application does not conform to the Ministerial Regulations.

Adjudicator's Conclusion

Based on my review, I conclude that Council's refusal of the application for a guest house in an accessory building at 2 Syenite Road complies with the Clarenville Development Regulations. The Development Regulations do not permit a dwelling to be developed in an accessory building.

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.

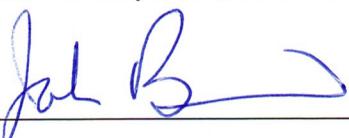
Order

The Adjudicator orders that the decision of the Town of Clarenville to refuse an application for an accessory guest house at 2 Syenite 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 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 Traytown, Newfoundland and Labrador, this 4th day of June 2024.



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