URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-083-0037

Adjudicator: John R. Whelan Q.Arb

Appellant(s): Melanie Cranford

Respondent / Authority: Town of Grand Falls - Windsor

Decision Dated: April 30, 2024

Re: Refusal of permit to park a travel trailer at 8 Ireland Drive, Grand Falls Windsor

Appearances:

For the Appellant: Melanie & Stephen Cranford

For the Respondent: Darren Finn – CAO – Town of Grand Falls – Windsor
Nelson Chatman – Director of Public Works & Development

Third Parties: Terry Lane & Rachael Lane

Date of Hearing: April 18, 2024

Procedural Background

[1] On September 13, 2023 the Appellants wrote the Respondent (hereinafter "the Town") to inquire about obtaining a permit for parking their travel trailer at their primary residence within the Town.

[2] On October 11, 2023 the Public Works & Development Committee reviewed the request from the Appellants and recommended that the permit not be issued.

[3] On October 24, 2023 the Town Council for Grand Falls – Windsor accepted the Committee recommendation and denied the permit.

[4] On November 7, 2023 a denial letter was sent to the Appellants. The denial letter did not include notice about time limits related to the appeal of a permit denial.

[5] On November 20, 2023 the Town wrote the Appellants and noted the omission of the appeal time limit in the November 7, 2023 correspondence. The Town stated that it would agree that the fourteen (14) day time limit to appeal would begin running on November 20, 2023.

[6] On December 4, 2023 the Appellants filed their Appeal.

[7] The Appeal was heard remotely by the undersigned on April 18, 2024.

Legislative and Regulatory Framework

[8] The *Urban & Reural Planning Act, 2000* defines "development," in part, as:

> *(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the*
>
> *(i) making of an access onto a highway, road or way,*
> *(ii) erection of an advertisement or sign,*
> *(iii) construction of a building,*
> *(iv) **parking of a trailer**, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,…*
>
> [Emphasis Added]

[9] The Town's Development Regulations contain the following relevant provisions:

> *3.3 ENFORCEMENT*
> *1. It is unlawful for any person to cause, suffer, or permit any building or structure to be constructed, reconstructed, altered, moved, extended, occupied, or used, or any land to be occupied or used, in contravention of the Development Regulations, or otherwise to contravene or fail to comply with the Development Regulations.*
> *2. No person shall carry out any development within the Municipal Planning Area Boundary except where otherwise provided in these Regulations unless a Development Permit or authorization for development has been issued by the Town.*
>
> *3.6.11 Reasons for Refusing Permit*
> *The Authority shall, when refusing to issue a Permit, state the reasons for refusing the Permit in writing.*
>
> *11.2 2. Within the Urban Development Area, parking or storage of the following shall be completely enclosed within a building, unless otherwise approved by the Authority through issuance of a permit, or as otherwise provided for within the Development Regulations:*

• Vehicles exceeding 4500 kilograms of gross vehicle weight.
• Equipment exceeding 300 kilograms that is used or designed for use in construction or maintenance purposes.
• Recreation vehicles, boat trailers or boats exceeding 7.5 m in length
[emphasis added].
• More than one unlicensed vehicle.
• Dismantled or wrecked vehicle.

[Emphasis Added]

[10] Recreational Vehicle is defined by the Town as:

> *Recreation Vehicle means a vehicle designed as a temporary seasonal dwelling for travel, recreational, and vacation use, and which is either self-propelled or mounted on, or pulled by another vehicle, and includes a travel trailer, camping trailer, truck camper, motor home, fifth wheel trailer, camper van, converted bus and boat. A Recreation Vehicle is not permitted to be used as a permanent Dwelling Unit within Grand Falls-Windsor.*

[11] My options, as an adjudicator, are guided by Section 44 of the *Urban and Rural Planning Act, 2000* which states, in part:

> *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.*

Jurisdiction

[12] In the instant case, no permit application was filed by the Appellant. The Appellant's stated that they simply sent an email to the Respondent to inquire about the process to obtain a permit to park their travel trailer at their residence. The Respondent indicated that they have no application specific to the issuance of a parking permit, that there is no associated fee for these types of permits, and that they treated the Appellant's email as an application to obtain a permit.

[13] The Appellant's acknowledge that their travel trailer is greater than 7.5m in length and that a permit would be required under the Respondent's Development Regulations.

[14] Taking a substantive view of the issue, I find that the Respondent was within its discretionary authority to treat the inquiry email as though it were a permit application.

[15] At the appeal, the Respondent argued that I lacked jurisdiction to hear the appeal because the permit did not fall within the definition of "development" as contemplated by the *Urban and Rural Planning Act, 2000* and the Respondent's Development Regulations. Respectfully, I disagree.

[16] While the Appellant's were not using the parked trailer as a dwelling unit, it is self-evident that a recreational travel trailer is a trailer. The parking of a trailer is clearly captured by s.2(g)(iv) of the *Urban and Rural Planning Act, 2000*. The parking of a trailer falls within the definition of development. The Respondent has codified the requirement to obtain a permit for the parking of a trailer that meets certain conditions. By extension, it has codified the requirement to obtain a permit for something the *Urban and Rural Planning Act, 2000* defines as "development." Therefore, the Appellant is entitled to appeal the decision as per s.41(1)(b)(i) of the *Urban and Rural Planning Act, 2000* and I have the jurisdiction to hear such an appeal.

Grounds of Appeal

[17] The Appellants have stated the following grounds of appeal:

> *[1] Town staff visited the property and agreed there were no concerns with parking the trailer in the driveway.*
> *[2] The trailer has been parked in this location since 2016 without issue.*
> *[3] Other individuals have similar travel trailers parked on their properties.*
> *[4] The Town did not provide an explanation or reason for the refusal other than citing Regulation 11.1 (2). The Regulation requires Appellants to park recreation vehicles over 7.5 m in length within a building unless otherwise approved through the issuance of a permit. The Appellants applied for a permit because the trailer exceeds 7.5 m in length; and*
> [5] *It is unfair to request the trailer be removed during the winter months.*

Position of the Respondent

[18] The Respondent, in its submissions, argued that:

> *[1] That the Town was within its discretionary authority to deny the permit.*

Arguments of the Appellant

[19] The Appellants have raised several grounds of appeal. I will deal with each of them below.

[20] First, the Appellants argued that town staff expressed no concerns with parking the trailer. I find that the opinion of town staff is not determinative of the matter. Simply put, the discretionary authority to grant a permit rests with the Council and not staff. While Councils often rely on the advice of staff, they are not bound to do so. Exercising discretionary authority in a manner contrary to staff opinion does not constitute an appealable error on the part of the Respondent.

[21] Second, the Appellants argued that they had parked the travel trailer in their driveway without issue since 2016. I note that the Respondent's Development Regulations came into effect on April 29, 2022. No evidence was placed before me to assess whether the parking of a travel trailer from 2016-2022 would constitute a pre-existing non-confirming use. No evidence was placed before me of any statement by the Respondent to the Appellants that would form the basis for an estoppel claim by the Appellants. Consequently, I have no evidence to determine that the parking of the trailer prior to the development application would either constitute a pre-existing non-conforming use, or ground an estoppel claim.

[22] Third, the Appellant's argued that other individuals within the Town have parked their travel trailers without permits. Again, no evidence was placed before me to demonstrate that the Town applied its discretionary authority in an inconsistent manner. No evidence was placed before me to demonstrate that the Appellants had a reasonable expectation of approval sufficient to ground a claim for procedural fairness. The Respondent has no obligation to justify its conduct, the burden rests upon the Appellant.

[23] Fourth, the Appellants argued that the Respondent failed to provide an explanation or reason for the refusal of the application. I find this argument to be well founded and will expand on it below.

[24] Fifth, that it was unfair to request that the trailer be moved during the winter months. I make no finding of fairness in this instance. However, fairness *simpliciter* no not a basis to overturn the discretionary authority of a Respondent if the authority has been properly exercised.

Sufficiency of Reasons

[25] Town does have the authority to deny the Appellant's permit in this instance. However, as noted in Regulation 3.6.11 of the Development Regulations:

> ***3.6.11 Reasons for Refusing Permit***
>
> *The Authority shall, when refusing to issue a Permit, state the reasons for refusing the permit in writing.*

[26] The November 7, 2023 denial letter states, in part:

> *Your request was reviewed by the Public Works and Development Committee and Council on October 11, 2023 (See attached). It was decided that the request be denied as the length of your trailer exceeds the allowable length under section 11.1 (2) of the Town of Grand Falls – Windsor Development Regulations 2022-2032 (see attached). Therefore, you must remove the travel trailer from the current location.*

[27] As noted, Section 11.1 (2) of the Development Regulations states:

> *2. Within the Urban Development Area, parking or storage of the following shall be completely enclosed within a building, unless otherwise approved by the Authority through the issuance of a permit…*
>
> - *Recreation vehicles, boat trailers or boats exceeding 7.5M in length…*

[28] Effectively, the November 7 letter from the Respondent states that the rationale for refusing the permit is because the trailer is large enough to require a permit.

[29] When an administrative body, such as a Respondent, is required to provide reasons those reasons must be reasonable. To be reasonable, the reasons must be sufficient. Sufficient means that the administrative body provided a response that was proportional to the question being asked, demonstrated fairness to the individuals impacted, and displayed coherent reasoning.

[30] This sufficiency of administrative decisions was recently assessed by Boone J. (as he was then) in *Buckingham v. Law Society of Newfoundland and Labrador.*[1] In that case, Boone J. was considering the administration of a Counsel to a member of the Law Society. There was no statutory or regulatory obligation for the Law Society to provide reasons to the lawyer. However, Boone J. found that there was a duty of procedural fairness owed to the Member and that the Law Society ought to have provided reasons.

[31] Boone J., at paragraph 22 noted:

> *[22] The primary factor in assessing the reasonableness of the CAC decision is the context in which it was made. In some contexts, decision makers are required only to provide a binary answer in the form of the proverbial mere thumbs-up or thumbs-down and that will still clearly justify its decision; in other cases, detailed reasoning is required. There is a spectrum between those two extremes along which a particular decision maker's obligations may fall depending on the legal and functional context in which the decision is made.*[2]

[32] Boone J. then adopted the factors cited by the Supreme Court of Canada in *Vavilov*

[1] 2022 NLSC 37. Affirmed by the NLCA in *Law Society of Newfoundland and Labrador v. Buckingham*, 2023 NLCA 17. Hereinafter, *Buckingham.*

[2] 2022 NLSC 37, at para 22.

[28] Whether and to what extent reasons are required is a contextual matter that depends upon consideration of several factors. In Vavilov, the Supreme Court described the requisite analysis:

> *77 It is well established that, as a matter of procedural fairness, reasons are not required for all administrative decisions. The duty of procedural fairness in administrative law is "eminently variable", inherently flexible and context-specific: Knight v. Indian Head School Division No. 19, 1990 CanLII 138 (SCC), [1990] 1 S.C.R. 653 (S.C.C.) , at p. 682; Baker v. Canada (Minister of Citizenship & Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817 (S.C.C.) , at paras. 22-23; Moreau-Bérubé , at paras. 74-75; Dunsmuir , at para. 79. Where a particular administrative decision-making context gives rise to a duty of procedural fairness, the specific procedural requirements that the duty imposes are determined with reference to all of the circumstances: Baker , at para. 21. In Baker , this Court set out a non-exhaustive list of factors that inform the content of the duty of procedural fairness in a particular case, one aspect of which is whether written reasons are required. Those factors include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made by the administrative decision maker itself: Baker , at paras. 23-27; see also Congrégation des Témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité), 2004 SCC 48, [2004] 2 S.C.R. 650 (S.C.C.) , at para. 5. Cases in which written reasons tend to be required include those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal: Baker , at para. 43; D. J. M. Brown and the Hon. J. M. Evans, with the assistance of D. Fairlie, Judicial Review of Administrative Action in Canada (loose-leaf), vol. 3, at p. 12-54.*[3]

[33] Having considered situations in which the obligation to provide reasons arises, Boone J. then assessed the sufficiency of those reasons when provided. Boone J. again adopted the Supreme Court's assessment criteria from *Vavilov*:

[35] In Vavilov, the Supreme Court said:

> *127 **The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties.** The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural*

[3] *Ibid.,* at para 28.

> *fairness and is rooted in the right to be heard: Baker , at para. 28.* ***The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.***
>
> *128 Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (Newfoundland Nurses, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.* ***However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: Baker , at para. 39.*** [4]
>
> [Emphasis Added]

[34] It is settled law in this province that the above analysis is applicable to administrative decisions made by municipal entities.

[35] It is established that administrative decisions need to be logical and internally coherent. The reasons for the decision contained with the November 7 letter fail the requirement to provide a sound rationale to the applicant. Specifically, the letter exhibits circular reasoning. Essentially, the Respondent stated that the permit was denied because the trailer is large enough to require a permit. It is illogical to state that a permit was denied because a permit was required.

[36] During oral argument, the CAO for the Respondent highlighted the various discretionary criteria that the Town could have used to deny the permit. I agree. The issue is not whether the Town had discretionary authority, the issue is whether the factors relied upon to exercise the discretionary authority were articulated in the November 7 letter. They were not.

[37] The November 7 letter failed to provide a logical response to the Appellant's that clearly articulated the rationale for the denial. Consequently, it is not a reasonable response. The Appellant is entitled to a proper answer.

[38] For clarity, the conclusion that the Respondent failed to provide sufficient reasons is not the conclusion that the ultimate result was beyond the authority of the Respondent. The

[4] *Ibid.,* at para 35.

Respondent's CAO articulated many reasons why the application could have been denied. No evidence was before me to suggest that the results of the Council decision was inappropriate, only that it was inarticulate. To determine that the Council needs to issue a better decision is not overruling the discretionary decision, only the manner by which it was executed.

Appeal Fee

[39] Section 45(2) of the *Urban and Rural Planning Act*, 2000 states:

> *(2) Where an appeal under section 41 is successful, the council, regional authority or authorized administrator that made the decision that was appealed shall pay the person or group of persons who brought the appeal an amount of money equal to the fee paid under subsection 41(4).*

[40] I find that the Appellants have been successful in their Appeal. Accordingly, I will Order that the Town pay them an amount equal to their appeal fee.

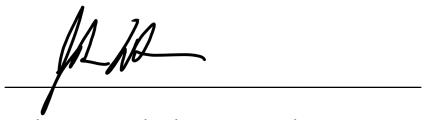
[41] The Authority and the Appellant(s) are bound by this decision.

Disposition

[42] I hereby allow the appeal. I reverse the decision of the Respondent to deny the permit and direct the Council to reconsider the application of the Appellants and provide a response that accords with the Respondent's duty to provide a coherent articulation of its discretionary authority. Further, the Respondent shall pay to the Appellants an amount equal to their appeal fee.

[43] 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, this 30th day of April, 2024.



John R. Whelan Q.Arb
Adjudicator