

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

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Appeal #: 15-006-083-003

Adjudicator: Paul Boundridge, MCIP

Appellant(s): Chris Caddigan

Respondent / Authority: Town of Logy Bay-Middle Cove-Outer Cove

Date of Hearing: 8 November 2024

Start/End Time: 2:30 p.m. – 3:30 p.m.

In Attendance

Appellant: Chris Caddigan

Authority Representative(s): Susan Arns, Town Manager/Clerk
Stephen Jewczyk, FCIP, Town's Planning Consultant
Shane Williams, Development Officer

Interested Party: Bernard Murphy, Cousin of Appellant

Appeal Officer: Synthia Tithi

Technical Advisor: Setare Vafaei, Planner II, 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 (URPA), and the Town of Logy Bay-Middle Cove-Outer Cove Municipal Plan and Development Regulations 2021 when, on April 10, 2023 it refused an application involving property at 16A Murphy's Lane, for a permit to demolish an existing structure and construct a new single-family dwelling with a proposed access from Skip's Place to 16A Murphy's Lane.

HEARING PRESENTATIONS

The Adjudicator heard oral presentations from the following parties at the appeal hearing. The Adjudicator also received written presentations from the Planner/Technical Advisor, the Appellant and the Authority prior to the appeal hearing date. The Adjudicator also had access to the digital recording of the appeal hearing made by the Appeals Officer.

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Planner's Presentation

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness.

Under the Section 10 (a) of the Rules of Procedure:

"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/Technical Advisor that this appeal follows a series of preceding events dating back to 2010 between the Appellant and the Town wherein approval to demolish an existing structure and build a new dwelling on the subject property was twice sought, granted and expired.
- The Technical Advisor also informed the Adjudicator that the appeal was valid in terms of its conformity with Section 41. (3) and (4) which state:

41. (3) An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.

41. (4) An appeal shall be made in writing and shall include
(a) a summary of the decision being appealed;
(b) the grounds for the appeal; and
(c) the required fee.

According to the documents provided, the appeal was formally filed on April 25, 2023. According to the Appellant, they learned of the decision on April 12, 2023. The appeal was filed within 14-day timeframe established under Section 41(3) of URPA.

- The Technical Advisor also informed the Adjudicator of the provisions of the URPA and the Town of Logy Bay-Middle Cove-Outer Cove Municipal Plan and Development Regulations 2021 which were relevant to the decision made by Council that is the subject of this appeal; and that Council's decision was communicated to the Appellant in conformity with the requirements of URPA and the Town's Development Regulations – the reasons for Council's decision were clearly stated and the Appellant/Applicant was informed of his right to file an appeal of the Council decision.

Appellant's Presentation and Grounds

The Appellant is appealing the refusal based on the following stated grounds:

- The initial permit application was reviewed and accepted by the Town's Engineering Company, Kavanagh and Associates Limited. Although the application was not pursued at that time, it demonstrates a prior acceptance of the proposed development.
- Previous concern, such as access to a public road, was addressed and waived during the initial submission in 2010. These considerations were noted in the Engineering letter at that time.
- The subject property has been in the family's possession for 60 years, with a 39.65 lot Frontage along Murphy's Lane Extension.

At the appeal hearing, the Appellant stated he was aware that Murphy's Lane Extension was not a public road but that it has been historically (60+ years) under the ownership and control of his family; that the Caddigan Family's longstanding ownership and connection to the subject property should allow the recent development application to be "grandfathered" in spite of the failure to meet the requirements of the Town's Municipal Plan and Development Regulations; and that the derelict structure on the subject property, a vacant dwelling, had been last occupied and used as a residence about 25 years ago. The Appellant also stated that, contrary to the letter accompanying his application for appeal that was received by the Department of Municipal and Provincial Affairs on April 25, 2023, the applications of 2010 and 2015 were not for approval to develop a dwelling on the subject property but for neighbouring parcels of land.

Authority's Presentation

The Authority's written and verbal submissions can be summarized as follows:

- The Town of Logy Bay- Middle Cove- Outer Cove Municipal Plan and Development Regulations came into legal effect on February 3, 2023. The subject property at 16A Murphy's Lane designated Rural Residential under the Town's Municipal Plan and is zoned Rural Residential Two (RR2) as per Town's Development Regulations. It is this Municipal Plan and Development Regulations which the Town and persons wanting to develop property/land within the Town are required to act in conformity with.
- Section 4.2.6 of the Municipal Plan stipulates that all developments must directly front a publicly owned and maintained street:

4.2.6 Site Access and Public Street

Policy

- a. All development shall front on a publicly-maintained street, unless otherwise specified in this Plan. Development of each lot shall have an individual access from a public street. Joint use of an individual access for more than one lot
- Section 5.22 of the Town's Development Regulations establish provisions regarding the lot frontage:

5.22 Lot Frontage

Except where specifically provided for in the Use Zone Tables in Section 11-27 of these Regulations, no new residential, commercial, public Building or other main Building shall be erected on a Lot that does not front directly on a public Street or forms part of a Comprehensive Development Scheme.

- The Town's Development Regulations define "public street" as follows:
PUBLIC STREET means a portion of land for the purpose of a Street, road or highway, which has the following characteristics:
 - a) it is designed for the passage of vehicles and pedestrians and is Accessible to fire trucks and other emergency vehicles,
 - b) it includes all Street-related infrastructure, for example, the roadway itself, its shoulder, side ditches, culverts and bridges, and
 - c) its maintenance is the responsibility of Council or the Provincial Department of Transportation and Infrastructure.

Murphy's Lane Extension is not a Public Street, it is not maintained by the Town or the Province, it is a public right-of-way in which the Appellant and unnamed individuals have an interest.

- The subject property is in the Rural Residential 2 (RR2) Zone in which a residential dwelling could be allowed provided it is on a Lot which could be developed in compliance with the requirements of the Development Regulations and Municipal Plan, which includes a minimum Frontage of 45 metres along a Public Street.
- Replacing or constructing a building is considered as a development based on URPA.

Section 12 of URPA requires municipalities and Councils as well as anyone undertaking a development to adhere to the plan and development regulations in effect for the planning area:

Application of plan

12. A plan and development regulations are binding upon

- (a) municipalities and councils within the planning area governed by that plan or those regulations; and
- (b) a person undertaking a development in the area governed by that plan or those regulations.

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- Section 3.1 of the Town's Development Regulations establish the requirement for all developments to comply with the Regulations and the requirement to obtain a permit prior to carrying out development:

3.1 Compliance with Regulations

Development shall be carried out within the Planning Area in accordance with the Municipal Plan, these Regulations, the conditions stated in an Approval in Principle, Development Permit and/or Building Permit and any other bylaw or regulation enacted by Council.

In summary, under the Town's Municipal Plan and Development Regulations, the Town had no authority to approve the development application submitted by the Appellant and was compelled to reject it.

Interested Party's Presentation

Mr. Murphy identified himself as a Cousin of the Appellant and said that the ownership of the public right-of-way, Murphy's Lane Extension, is under dispute.

ADJUDICATOR'S ANALYSIS and CONCLUSION

In arriving at his conclusion, the Adjudicator has reviewed the submissions and evidence presented by all parties, along with technical information and planning advice.

The Adjudicator is bound by Section 44 of the Urban and Rural Planning Act, 2000 and must therefore make a decision that complies with the applicable legislation, policy and regulations. Page | 6

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.”

Having considered the regulatory regime and the related provisions of the Development Authority's Municipal Plan and Development Regulations, I can find no basis for the Appellant's position that the refusal to grant the development permit was in error.

The Development Authority considered the Appellant's application and decided that the application was not in compliance with the Town's Municipal Plan and Development Regulations. The Development Authority rejected the application and informed the Appellant of his right to appeal.

I find no technical, analytical, or procedural deficiency with the Development Authority's conduct in this instance. I find no misapplication of the Municipal Plan or the Development Regulations.

ADJUDICATOR'S ORDER

1. The Adjudicator orders that the decision of the Development Authority of April 10, 2023 to refuse an application involving property at 16A Murphy's Lane for a permit to demolish an existing structure and construct a new single-family dwelling with a proposed access from Skip's Place to 16A Murphy's Lane is confirmed
2. The Appellant is unsuccessful in this matter and therefore not entitled to repayment of his appeal fee.

The Authority and the Appellant are bound by this decision.

According to Section 46 of the Urban and Rural Planning Act, 2000, the decision of this Appeal 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 19th day of November, 2024.

Paul Boundridge, MCIP
Adjudicator
Urban and Rural Planning Act, 2000