

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-033
Adjudicator: John R. Whelan Q.Arbitrator
Appellant(s): Michael Griffin
Respondent / Authority: Town of Carbonear
Decision Dated: February 12, 2025
Date of Hearing: February 10, 2025

Appearances:

Michael Griffin – For the Appellant

Ian Farrell – For the Respondent

Re: Appeal of Michael Griffin regarding the refusal of an application to construct a new dwelling at 74 Irishtown Road, Carbonear, NL

Procedural Background

On or about August 1, 2024, Michael Griffin (the Appellant) submitted a development application to build “a new two-story house with garage” along with a plot plan for 74 Irishtown Road (the Subject Property). On August 6, 2023, the Appellant was informed by a Municipal Enforcement Officer that the proposed development had insufficient set back from the rear property line.

There is some dispute regarding whether there was additional communication between the Appellant at the Town of Carbonear (the Respondent).

On October 3, 2024, the Economic Development, Planning and Land Use Development Committee (the Development Committee) of the Respondent recommended refusal of the application due to non-compliance with the Town of Carbonear Development Regulations (the Development Regulations).

On October 8, 2024, the Town Council of the Respondent passed Motion #24-297. The Motion refused the development application citing non-compliance with the minimum rear yard requirement.

On October 11, 2024 the Respondent notified the Appellant of its decision in writing and informed the Appellant of the right of appeal.

On October 15, 2024 a meeting occurred between the Development Committee and the Appellant to discuss the non-compliance with the minimum rear yard depth requirement.

On October 17, 2024 the Appellant filed the within appeal.

Grounds of Appeal

The Appellant is appealing the refusal on the following grounds:

- That the Town had permitted other developments within the municipality that, to the Appellant's belief, did not comply with the minimum rear yard depth requirement;
- That the Appellant was unaware of the minimum rear yard depth requirement in the Development Regulations; and,
- That the adjacent property to the Subject Property was owned by the Appellant and the Respondent was wrongfully claiming ownership of the property.

The Appellant asks that I return this decision to the Town and provide instructions regarding its proper consideration.

Position of the Respondent

That Respondent has taken the position that the Application was not compliant with the Development Regulations. The Respondent argued that it properly complied with its procedural obligations and that the refusal is a ultimately discretionary decision of Council that I may not overturn.

The Respondent submitted that I should uphold the decision of Council to refuse the application.

Onus

It may be helpful to remind the parties that in an Appeal, the onus rests upon the Appellant. In this instance, the Town is not under an obligation to justify its conduct. Rather, the Appellant must prove their case that the decision of the Town should be overturned.

Legislative and Regulatory Framework

Section 12 of the *Urban and Rural Planning Act, 2000* states that

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.

Section 41(1)(b) of the *Urban and Rural Planning Act, 2000* states that

41. (1) A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where...

(b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:

(i) an application to undertake a development,

(ii) a revocation of an approval or a permit to undertake a development, or

(iii) the issuance of a stop work order.

[Emphasis Added]

The options on disposition, 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.

Technical Report

The Technical Report noted that:

1. The Appeal was filed within the appropriate timeframe.
2. The Appeal is concerning a development application within the Town.

3. The construction of a new single dwelling is considered a development under s.2(g) of the *Urban & Rural Planning Act, 2000*
4. The Subject Property falls within the Residential – Medium Density (RMD) of the Land Use Zoning Map of the Respondent
5. A Single Dwelling is a permitted use within the RMD Zone
6. The RMD Zone requires a Single Dwelling to have a 9-meter minimum rear yard depth.
7. The Application submitted by the Appellant indicated a rear yard depth of 1.8 meters.
8. The MEO notified the Appellant of the non-conformance.
9. Section 8 of the Respondent's Development Regulations states that developments within the planning area must fully comply with all applicable standards.
10. Council passed Motion #24-297, endorsing the Development Committee's recommendation to refuse the development application of the Appellant.
11. The Respondent provided the Appellant with written reasons for its decision, specifically non-compliance with the rear yard setback minimums.
12. The Respondent, in its refusal letter, advised the Appellant of their right of Appeal.

Analysis

In his Appeal filing, the Appellant noted:

The town said I did not meet the minimum rear yard requirement of 9m. I was not aware of this requirement when I [filed] my permit. I can also provide many [properties] in the town that also [do not] have 9m rear yard that have been [built] in [recent years]. I have a deed for the land behind me as does the Town. This is where the problem is.

Based on the Appellant's filing, there are three noted grounds of appeal. First, that the Appellant was not aware of the 9m rear yard requirement. Second, the Respondent has inconsistently enforced the rear yard requirements. Third, that the Appellant owns the adjacent parcel of land and therefore, can satisfy the rear yard requirement if the lots are joined.

I will deal with each of these grounds in order.

Lack of Awareness of the Rear Yard Requirement

The Development Application used by the Respondent is a standard form. The application in question was submitted by the Appellant on August 2, 2024. The form includes standard language including:

I agree to comply with all Municipal Regulations... I make this solemn declaration, conscientiously believing it to be true, and knowing that is of the same force and effect as if made under oath.

The Application form was signed by the Appellant. The Appellant agreed to be bound by the Development Regulations. Further, the Appellant was bound by s.12(b) of the *Urban and Rural Development Act, 2000*.

The Appellant was bound to follow the Development Regulations by statute and made a solemn declaration that he would abide by them. That he now claims he was unaware of the rear yard minimum requirement is immaterial. I find this ground of appeal insufficient.

Inconsistent Enforcement of Rear Yard Requirements

In order to rely upon this argument, the Appellant needed to establish that the refusal of a variance by the Respondent constituted a procedurally unfair decision. Phrased plainly, the Appellant would have to demonstrate that he held a reasonable belief that a variance would have been granted based upon the past conduct of the Authority.

The Appellant submitted no evidence to support this claim other than the statement that he knew of multiple properties that were not compliant with the minimum rear yard distance. However, assertions are not enough. In order to establish the basis for a procedural fairness claim, the Appellant was required to demonstrate multiple properties within the jurisdiction of the Town of Carbonear that were in the RMD Zone, built within the application of the current Development Regulations, and not compliant with the rear yard minimums.

The Appellant did not satisfy the evidentiary threshold required for me to assess whether he had a reasonable expectation of being granted a variance.

I find this ground of appeal insufficient.

Competing Title Claims to Adjacent Property

The Appellant and Respondent have a parallel dispute regarding title to property that is adjacent to the subject property. I lack the jurisdiction to make any determinations about title to property and will not do so.

However, I do note that even if the Appellant was the rightful owner of the adjacent parcel of land, that does not mean that the application would have been compliant with the Development Regulations. Ownership of the adjacent parcel would not resolve the rear yard minimum deficiency unless a portion of the land from the adjacent parcel was transferred to the subject property in order to cure the rear yard deficiency.

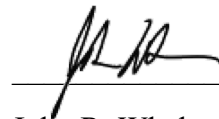
The Respondent was restricted to analyzing the development application that was before it. It did so. It was not required to resolve title disputes about adjacent parcels of land that would not resolve deficiencies that were readily observable on the application.

I find this ground of appeal to be inconsequential to the analysis of whether the Respondent discharged its duties in compliance with its Development Regulations and the *Urban and Rural Planning Act, 2000*.

Order

1. The Appeal is dismissed.
2. The Town's refusal is confirmed.

DATED at St. John's, Newfoundland and Labrador, this 12th day of February, 2025.



John R. Whelan Q. Arb

Adjudicator