

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-040
Adjudicator: Elaine Mitchell, RPP, MCIP
Appellant(s): Julia Parsons
Respondent/Authority: Town of Carbonear
Date of Hearing: June 25, 2024
Start/End Time: 11:03 am/11:47 am

In Attendance:

Appellant: Julia Parsons
Respondent Representative: Cynthia Davis, Chief Administrative Officer
Appeal Officer: Robert Cotter, Departmental Program Coordinator, Department of Municipal and Provincial Affairs
Technical Advisor: Setare Vafaei, Planner II, Department of Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals.

The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and Carbonear Municipal Plan and Development Regulations when it issued an order to the Appellant on January 2, 2024, ordering the removal of a greenhouse at 14 Quarter's Lane, Carbonear. .

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 provided for under the Appeal Boards (Rules of Procedure) Order, 1993:

10. The Hearing shall proceed in the following manner:

- (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 or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations in effect.

The Technical Advisor summarized their technical report noting that the *Urban and Rural Planning Act, 2000* defines “building” and “development” and the construction of a cold frame or greenhouse falls with these definitions. The technical advisor outlined the definition of an accessory building from Schedule A of the Carbonear Development Regulations, in which both a greenhouse and cold frame are included.

ACCESSORY BUILDING:

- (i) A detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory and which has a use that is customarily incidental or complementary to the main use of the building or land,
- (ii) for residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetables storage cellars, shelters for domestic pets or radio and television antennae, ...

Sections 7 of the Carbonear Development Regulations requires issuance of a permit for all development.

7. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

Appellant

The Appellant outlined her commitment of self-sufficiency noting that the greenhouse was an important component as she used it to start seeds, raise vegetables and as cold storage during the winter. She explained that the greenhouse was not a permanent structure and was designed to be collapsed and moved. She also noted that the greenhouse had to be located in front of her dwelling because of direct access to sunlight as well as limitations in her backyard because of the placement of a waterline serving her neighbours. She stated that none of her neighbours had complained about the greenhouse and that they supported her.

Authority

The Authority explained that Municipal Enforcement Officer had approached the Appellant about the placement of the greenhouse in front of the dwelling and without a permit. When the informal approach and follow up letter did not result in compliance with

the Carbonear Development Regulations, the Authority proceeded to serve an order under section 404 (1) (e) of the *Municipalities Act, 1999*.

The Authority noted that the definition of accessory building does not specify permanent structure but that the examples included in the definition specify "greenhouse" and "cold frame". As such, a permit is required from the Authority. The Appellant did not apply for a permit.

In this matter, the Carbonear Development Regulations prohibit the construction of an accessory building in front of the dwelling. As the accessory building does not comply with the Carbonear Development Regulations, and a permit could not be issued, the Authority issued an order requiring the removal of the greenhouse.

The Authority expressed their willingness to work with the Appellant if a location could be found which meets the requirements outlined in the Carbonear Development Regulations.

Adjudicator's Analysis

The following questions arise from this appeal:

1. Is a permit required for the construction of a greenhouse?

Yes. The Adjudicator is satisfied that a permit is required for the construction of a greenhouse. The definition of accessory building from the Carbonear Development Regulations includes "greenhouse" and "cold frame" as examples. The definition of building from section 2 of the *Urban and Rural Planning Act, 2000* includes "structure" or "erection" as well as "mobile structure".

- (c) "building" means
 - (i) a structure, erection, alteration or improvement placed on, over or under land or attached, anchored or moored to land,
 - (ii) mobile structures, vehicles and marine vessels adapted or constructed for residential, commercial, industrial and other similar uses, ...

The definition of development from section 2 of the *Urban and Rural Planning Act, 2000* includes the construction of a building.

(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,...

While the Adjudicator respects the desire of the Appellant to be self-sufficient, the Appellant is obligated to comply with the Authority's regulations. The Adjudicator accepts the argument from the Authority that a permit is required for the construction of the greenhouse whether or not it is a permanent structure.

From the information provided during the Hearing, the Appellant did not obtain a permit for the erection of the greenhouse at 14 Quarter's Lane.

2. **Can the Authority issue an Order?**

Yes. The Adjudicator is satisfied that the Authority can issue an order. Both section 102 of the *Urban and Rural Planning Act, 2000* and section 404 (1) (e) allow the Authority to issue an order.

Order

102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where the minister considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.

Council orders

404. (1) A council may make an order that
(e) the person pull down, stop construction, remove, fill in, alter or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has
(i) erected, extended, repaired, relocated or demolished,
(ii) changed the use of, or
(iii) after a 6 month vacancy, newly constructed or reoccupied, a building without a permit as required under section 194;

Conclusion

Section 44 of the *Urban and Rural Planning Act, 2000* outlines the provisions relating to the decision of an adjudicator.

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.

After reviewing the information presented, the Adjudicator concludes that a permit was required from the Authority for the erection of a greenhouse at 14 Quarter's Lane, Carbonear. As no permit was issued to the Appellant, the Authority had the ability to issue an order. In this case, the Authority issued an order under section 404 (1) (e) of the *Municipalities Act, 1999* ordering the removal of the greenhouse.

As the matter largely relates to the definition of an accessory building under the Carbonear Development Regulations and building and development as defined by the *Urban and Rural Planning Act, 2000*, ideally the order should have been issued in accordance with section 102 of the *Urban and Rural Planning Act, 2000*. However, section 194 of the *Municipalities Act, 1999* requires issuance of a written permit for erection of a building and section 404 (1) (e) allows for the issuance of an order where such a permit has not been obtained. Under both the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999*, the Authority can issue an order.

Order

The Adjudicator orders that the decision of the Authority to issue an order requiring the removal of a greenhouse erected without a permit at 14 Quarters Lane, Carbonear be confirmed. The Appellant shall have 14 days from this order to comply with the order issued by the Authority.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the 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 1st day of July 2024.



Adjudicator
Urban and Rural Planning Act, 2000