

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-032
Adjudicator: Elaine Mitchell, RPP, MCIP
Appellant(s): Vaughan Paul
Respondent/Authority: Department of Digital Government and Service NL
Respecting: A refusal of the placement of a Recreation Vehicle (5th wheel), at PinSENT's Road, Dildo, made by the Department of Digital Government and Service NL on October 2, 2024 under the Protected Road Zoning Regulations, . . .
Date of Hearing: Wednesday February 19, 2025
Start/End Time: 9:00 a.m./10:35 a.m.

In Attendance

Appellant: Vaughan and Heather Paul
Appellant Representative: Randall Smith, Cox & Palmer
Respondent/Authority: Karen Tucker, Regional Support Supervisor, Department of Digital Government and Service NL (Virtual Attendance)
Appeal Officer: Synthia Tithi, 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* (the Act) authorizes adjudicators to hear appeals. The role of an adjudicator is to determine if the Authority acted in accordance with the Act, the Trinity South Highway Protected Road Plan and the Protected Road Regulations when it refused an application for the placement of a recreational vehicle (RV) at PinSENT's Road, Dildo on October 2, 2024.

Hearing Presentations

Technical Advisor

The role of the technical advisor is to act as an expert witness and provide information about the *Urban and Rural Planning Act, 2000* (Act), the Protected Road Zoning

Regulations made under the Act and the Trinity South Highway Protected Road Plan as outlined in the Appeal Board (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...

At the hearing, the Technical Advisor verbally summarized her written report which had been shared with all parties in the appeal package. She noted that the definition of "development" in section 2 (g) of the Act includes "the parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation.". She explained that the Department of Digital Government and Service NL is the authority for administering the Protected Road Zoning Regulations, that the subject property at Pinsent's Road lies within the building control lines for Route 80 (the Trinity South Highway). She explained that the subject property is located in the Mixed (M) zone according to the Trinity South Highway Protected Road Zoning Plan. The Technical Advisor explained that an RV is not a use listed as permitted in the Mixed (M) zone and that an RV cannot be classed as a dwelling or a cottage. The Technical Advisor also noted that Department of Transportation and Infrastructure had recommended refusal based on the Highway Access Management Policy (2019).

The Appellant Presentation and Grounds

Through questioning Mr. Paul, the Appellant's representative submitted two documents which were not included in the appeal package: a survey drawing of the subject property prepared by Paul Thoms in October 1983, and an aerial photograph with the subject property marked on it. The Appeal Officer agreed to share these documents with the Authority.

The Appellant's explained that they purchased the subject property from a family member in 1984 and, since that time, have used it for recreational purposes including camping. Recently, they placed recreational trailer on the property and applied to the Department of Digital Government and Service NL for an electrical hook-up and for a septic system. As a result, they were informed that an application was required under the Protected Road Zoning Regulations. This application was refused. The Appellant's expressed their desire to resolve the issues with the applicable government departments.

The Appellant's representative made the following arguments:

- 1) The use of the land for recreational purposes is grandfathered. The addition of a recreational trailer does not change the use, or the intensity of the use, of the land. He noted that the recreational use of the property pre-dates the Protected Road

Zoning Regulations. He argued that the recreational use of the subject property should be permitted to continue.

- 2) The recreational trailer could be considered a dwelling or a cabin as defined in the Protected Road Zoning Regulations.
- 3) No change to the existing access is proposed. The access was existing prior to 1979 and will be used in the same manner as it always has. The addition of the recreational trailer on the subject property will not increase the risk associated with, nor level of use of, the access.
- 4) That a variance could be applied to the location of the access.

The Appellant's representative also argued that the true intent of the Protected Road Zoning Regulations had to be examined in relation to this situation and a broad interpretation applied. He noted that the refusal has created great hardship for the Appellants.

Authority Presentation

The Authority's representative explained that Route 80 is a designated protected road and any development is subject to the Protected Road Zoning Regulations. She explained that an application for an electrical permit triggered an application under the Protected Road Zoning Regulations. She explained that applications are referred to government departments and agencies and, for this application, two departments recommended that the application be refused. The Land Use Planning Section of the Department of Municipal and Provincial Affairs recommended refusal as the subject property is in the Mixed zone where recreational trailers are not listed as a permitted use. The Department of Transportation and Infrastructure recommended that the application be refused because there was no possibility of an access on the subject property meeting the requirements of the Highway Access Management Policy (2019).

Analysis

Is the placement of a recreational trailer on the subject property development?

The placement of a recreational trailer on the subject property at Pinsent's Road is development as defined in section 2 (g) of the *Urban and Rural Planning Act, 2000*. This definition specifies that:

"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 an office, or for living accommodation.

In this case, the recreational trailer will be parked on the subject property to provide occasional living accommodation and, therefore, meets the definition of development.

A permit for the development is required under the Protected Road Zoning Regulations under section 4.

Control of development

4. (1) A person, corporation, partnership, association or other organization shall not carry out development of land within building control lines unless a permit for the development has been issued by the authority.

(2) Development of land within building control lines shall be carried out in accordance with these regulations and conditions set out in a development permit.

Can the recreational trailer be considered a dwelling or cottage?

Section 2 of the Protected Road Zoning Regulations includes the following definitions:

- (j) "cottage" means a dwelling containing one or more sleeping units, with or without cooking facilities, which is intended and designed for use and occupancy for recreational purposes and occasional living;
- (l) "dwelling unit" means a dwelling containing one or more habitable rooms used or intended to be used together for living and sleeping purposes for not more than one family, plus toilet and cooking facilities, where the whole is a self-contained unit;
- (kk) "travel trailer" includes a trailer trailer, a tent trailer or a recreational trailer having a maximum width of 2.6 metres, a maximum length of 8.5 metres which is licensable under the *Highway Traffic Act*.

The 5th wheel recreation vehicle placed on the property meets the definition of "travel trailer. The definitions of "dwelling unit" and "cottage" imply a permanent building.

Section 5, subsection 2 of the Trinity Highway Protected Road Zoning Plan outlines the purpose of the Mixed zone which is to designate areas within or adjacent to communities for infilling of mixed development uses. The intent of the Mixed zone is to permit a wide range of urban uses which does not include a travel trailer or a cottage. In the Mixed zone in Appendix A of the Protected Road Zoning Regulations, Residential is listed as a permitted use with reference to the Residential zone. The Residential zone does not list "cottage" or "travel trailer" as a permitted use. As such, the recreational trailer is not permitted in the Mixed zone.

Can the placement of the recreational trailer on the property be permitted under the non-conforming use provisions of the *Urban and Rural Planning Act, 2000*?

Section 108 of the *Urban and Rural Planning Act, 2000* allows development, or use of land, which does not conform to the regulation or plan to continue, provided that it legally existed at the time the plan or regulation was registered.

Non-conforming use

108. (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

The Trinity Highway Protected Road Zoning Plan was prepared in July 1998 and the Protected Road Zoning Regulations came into effect in 1996. By evidence given at the hearing, the Appellant's have been using the subject property since its purchase in 1984 for recreational purposes including overnight tent camping. This evidence establishes the use of the land as recreation with no fixed structures or buildings and that this use of the land pre-dates the Trinity Highway Protected Road Zoning Plan and the Protected Road Zoning Regulations. This established use of land is permitted to continue.

However, the placement of the recreational trailer on the property, and the plans to install an electrical service and septic system, are material changes to the non-conforming use. Section 108 (3) (d) of the *Urban and Rural Planning Act, 2000* allows for a variation in the existing use provided that the use is more compatible with the applicable plan and regulations.

Non-conforming use

108. (3) A building, structure or development that does not conform to a scheme, plan or regulations made under this Act that is allowed to continue under subsection (1)...

(d) may have the existing use for that building, structure or development varied by the appropriate council, regional authority or authorized administrator to a use that is, in their opinion more compatible with a plan and regulations applicable to it;

In this case, the addition of a recreational trailer on the subject property does not increase compatibility with the Trinity Highway Protected Road Zoning Plan and Protected Road Zoning Regulations as the Mixed zone is intended to permit urban uses and does not allow for a travel trailer.

Can a variance be applied to the access location requirements?

The Minister's Development Regulations, made under the *Urban and Rural Planning Act, 2000*, establishes a standard definition of variance which is to be included in all regulations:

Interpretation

4. (1) In development regulations and other regulations made with respect to a planning area the following terms shall have the meanings indicated in this section

(x) "variance" means a departure, to a maximum of 10% from the yard, area, lot coverage, setback, size, height, frontage or any other numeric requirement of the applicable Use Zone Table of the authority's regulations...

In this case, the access location is set by the Department of Transportation and Infrastructure under its Highway Access Management Policy (2019). As this policy is not a numeric standard in the Protected Road Zoning Regulations, a variance cannot apply.

Adjudicator's Conclusion

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.

After reviewing the information presented, the Adjudicator concludes that the placement of the recreational trailer on the subject property constitutes development and a permit is required under the Protected Road Zoning Regulations. Through evidence given by the Appellant's, the use of the subject property is established as recreation with no fixed structures. This use is non-conforming because it is not listed a permitted use in the Mixed zone and was established prior to the Trinity South Highway Protected Road Zoning Plan and the Protected Road Zoning Regulations. The placement of the recreational trailer on the subject property does not meet the standard established in section 108 (3) of the *Urban and Rural Planning Act, 2000*. The recreational trailer is not more compatible with the urban uses permitted in the Mixed zone.

That is to say, the decision of the Department of Digital Government and Service NL, made on October 2, 2024, to refuse the application to place a 5th wheel recreational trailer on the subject property at Pinsent's Road, Dildo, is consistent with the Trinity Road Highway Protected Road Zoning Plan, the Protected Road Zoning Regulations and the *Urban and Rural Planning Act, 2000*.

Order

The Adjudicator orders that the decision of the Department of Digital Government and Service NL, on October 2, 2024, to refuse an application for a 5th wheel recreational vehicle at Pinsent's Road, Dildo, be confirmed.

The Adjudicator further orders that the 5th wheel recreational vehicle placed on the subject property at Pinsent's Road, Dildo be removed by October 2, 2025.

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 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 St. John's, Newfoundland and Labrador, this 5th day of March 2025.



Elaine Mitchell, RPP, MCIP
Adjudicator
Urban and Rural Planning Act, 2000