

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-048
Adjudicator: Mary Bishop
Appellant(s): Harry Murphy
Respondent/Authority: Town of Placentia
Date of Hearing: May 30, 2024
Start/End Time : 11:00am - 12:00pm

In Attendance

Appellant: Harry Murphy, Rosemarie Murphy
Appellant Representative(s):
Respondent/Authority: Town of Placentia
Respondent Representative(s): Gerry Hynes, Chief Administrative Officer
Jeff Griffin, Municipal Enforcement Officer (MEO)
Proponent/Developer:
Appeal Officer: Robert Cotter, Departmental Program Coordinator,
Municipal and Provincial Affairs
Technical Advisor: Faith Ford, Planner III, Department of Municipal and
Provincial Affairs

Adjudicator's Role

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

In the matter of Appeal **No. 15-006-087-048**, the role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, and the Town of Placentia Municipal Plan and Development Regulations when Council passed Motion #24-067 to approve an application for a residential extension and shed at 196 Harbour Drive on February 23, 2024.

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 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 presented her report. In July, 2023, the Authority became aware of a development taking place on the subject property for which no permit had been issued. This included construction of an addition to an existing dwelling and the placement of a shed on the property. The Town instructed the property owner to submit a development application which was subsequently received (July 18, 2023). The application was for the construction of an extension to the dwelling.

The Authority reviewed the application and advised the applicant that a survey of the property, showing the proposed development was required. This was received five months later on February 5, 2024, followed by an updated plot plan that showed the proposed dwelling extension and a shed. The application was reviewed and on February 20, 2024, Council passed Motion #24-067 to approve the application for an extension to an existing residence and shed. The Authority issued Permit #06-2024 on February 23, 2024.

As outlined in the Technical Advisor's report, dwellings and accessory buildings are permitted by the Placentia Municipal Plan and Development Regulations in the Residential land use zone. Standards for accessory buildings were included in the report.

In presenting her report, the Technical Advisor outlined the regulations for development permits set out in Section 16 of the Development Regulations. Under Section 16(1), the issuance of a development permit does not relieve an applicant from the requirement to comply with the Regulations. Under Section 16(5), the approval of an application and issuance of a permit does not prevent the Authority from requiring the removal of or remediation of a development that is different from the plans or drawings approved by the Authority or does not comply with the Development Regulations:

- 5) *The approval of any application and plans or drawings or the issue of a permit shall not prevent the Authority from thereafter requiring the correction of errors, or from ordering the cessation, removal of, or remedial work on any development being carried out in the event that the same is in violation of this or any other regulations or statute.*

Both the construction of the dwelling extension and the placement of the shed on the property were carried out without permits from the Town. In her report, the Technical Advisor indicated

that the Town could have issued an Order under Section 102(1) of the Urban and Rural Planning Act:

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.

As noted in the report, the issuance of an Order under Section 102 of the Act is a discretionary decision, and Section 102 does not mandate an authority or council to issue an Order. Based on the submitted materials no orders were issued by the Town with regards to the extension to the dwelling or the placement of the shed on the property.

With regards to the application, the initial application and plan submitted to the Authority was for an extension to a dwelling and did not include a shed. The only reference to the shed was on a revised plot plan submitted by the applicant. Based on the materials provided, the applicant did not submit a separate application for the shed.

Council passed Motion #24-067 to approve the extension to the existing dwelling and shed based on the revised plot plan. However, the permit issued on February 23, 2024 indicates it is for a residential extension (bedroom and laundry room) and makes no mention of the shed.

The Technical Advisor also noted that the Authority's submission does not indicate if the applicant was notified of the approval in writing or if the applicant was notified of the right to appeal and right of other interested parties to appeal as per Section 18 of the Development Regulations.

Appellant's Presentation

The Appellant outlined their grounds for the appeal as follows:

1. Two new developments are being undertaken on the property, both of which started without a permit from the Town.
2. The placement of the shed on the property is encroaching on property owned by the Appellant's sister. He indicated that he had informed the Authority of this concern, the Enforcement Officer visited the site, but no action was taken to have the shed removed.
3. The Authority approved development of the shed for which no application had been submitted. The Appellant pointed out the inconsistency between the application for the extension to the dwelling, and the permit issued which did not include the shed.
4. The Authority issued the permit for the shed before verifying its location. The Appellant indicated that the Town had agreed to assess the proposed location of the shed on the

basis of survey markers on the boundary of the adjoining lot. However, this was rendered impossible, as the shed had been placed over the survey markers.

5. The Authority should have issued a stop work order at the outset, once it became aware of the illegal activity.

The Appellant voiced frustration with the length of time this issue has continued, and with inconsistencies in the manner in which the Town administers and enforces its regulations.

Authority's Presentation

In their presentation, the Authority contended that once aware of development at 196 Harbour Drive taking place without proper permits, they proceeded to contact the property owner, advising that permits were required and that an application had to be made for the development. In this case, the Town reviewed the application and subsequently required a survey from the applicant showing the proposed development. Once received, the application was referred to the Planning and Development Committee and then to Council for approval.

The Authority stated that they acted appropriately in considering the shed as part of the proposed development as it was included on the survey plan drawing submitted by the applicant on February 9, 2024. They also indicated that the location of the shed will be verified once it has been moved to its approved location on the property.

Adjudicator's Analysis

The following questions arise from this appeal:

- 1. Was the approval of the extension to the dwelling done in accordance with the Town's Municipal Plan and Development Regulations?**

The Adjudicator is satisfied that the approval of the residential extension was done in accordance with the Placentia Municipal Plan and Development Regulations. The Town required an application to be submitted as well as a survey of the property.

Representatives of the Town indicated that a site inspection had been carried out and that standards of the Residential Use Zone had been met.

In issuing the permit for the residential extension, the Adjudicator finds that the Authority failed to advise the applicant of the right to appeal as required by Section 18 of the Placentia Development Regulations and Section 5 of the Provincial Development Regulations. However, this has not prevented an appeal to be made on this matter and I find that there would be little purpose in the Town re-issuing the permit simply to include a notice to the applicant of a right to appeal.

- 2. Was the approval of the shed done in accordance with the Town's Municipal Plan and Development Regulations?**

No. The placement of the shed on the property required a permit to be issued. To receive a permit, an application must be submitted to the Authority on forms prescribed by the Authority, for consideration. This could have been in the form of a separate application, or

a revision to the original application for the extension to the dwelling. The application submitted on July 18, 2023 was for the extension to the dwelling only. It included a hand drawn sketch of the property showing an existing dwelling and the proposed extension. There is no shed indicated on this drawing. In its presentation, the Authority indicated that it considered the application to include the shed, as the shed was shown on the resubmitted survey plan received on February 9, 2024.

The Council motion made February 20, 2024 was to approve the extension to the dwelling and shed as shown on the survey plan. However, the permit dated February 23, 2024 was for the residential extension and makes no mention of a shed.

I find that the approval included in Council Motion #24-067 pertaining to the shed was made in error, as no application for the shed had been submitted. Furthermore, that the permit issued to carry out the Council motion, did not include the shed, nor did it include notice of the right to appeal.

3. Was the Authority bound to issue a Stop Work Order once it became aware of the development taking place without a permit?

No. The issuance of an Order under Section 102 of the *Urban and Rural Planning Act* is a discretionary decision and does not mandate an authority to issue an Order. The Town, in its presentation, indicated that rather than issue an Order at the outset of becoming aware of development taking place without a permit, it prefers to work with property owners to resolve the issue. However, given the length of time this issue has taken to be resolved, the Town should have issued the Order and proceeded to ensure compliance.

Order

The Adjudicator orders that the decision of the Council of the Town of Placentia, made February 20, 2024 to approve an extension to a residential dwelling and shed in accordance with a survey plot plan submitted February 9, 2024 at Civic No. 196 Harbour Drive, be varied by removing reference to the shed. That is to say, by varying Council's decision, the Adjudicator orders that the Town's decision to approve the shed portion of motion #24-067 is removed and the development of the shed (accessory building) cannot be carried out: only the residential extension approval is correct and can proceed.

The Adjudicator further orders that the matter be referred back to the Town for consideration of the appropriate action necessary to ensure compliance with the Town's Development Regulations in a timely manner.

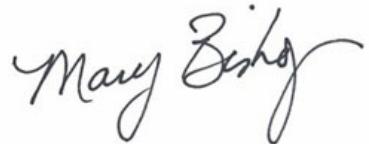
In future, the Town should ensure that all approvals and permits are issued in accordance with the full requirements of the Town's Development Regulations and specifically with Section 18 pertaining to notification of the right to appeal.

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

In accordance with section 45(2) of the *Urban and Rural Planning Act, 2000*, the Adjudicator further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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 14th of June, 2024.



Mary Bishop, RPP, MCIP, FCIP
Adjudicator
Urban and Rural Planning Act, 2000