

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-049

Adjudicator: Chris Forbes

Appellant(s): Erin Murphy

Respondent/Authority: Town of Conception Bay South

Dates of Hearing: June 26, 2024

Start/End Time: 11:00 a.m. – 11:30 a.m.

In Attendance

Appellant: Erin Murphy

Respondent/Authority: Daniel Barrett, Development Coordinator,
Town of Conception Bay South
John Whelan, Manager of Planning and Development,
Town of Conception Bay South

Appeal Officer: Robert Cotter, Departmental Program Coordinator,
Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei, Planner II
Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* (the "Act") authorizes adjudicators to hear appeals and establishes the powers of adjudicators. The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, the Town of Conception Bay South *Municipal Plan 2011-2021* (the "Municipal Plan") and the Town of Conception Bay South *Development Regulations 2011-2021* (the "Development Regulations") when it refused to issue the Appellant a permit to construct a house at 16 Perrins Road, Conception Bay South.

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. Section 10 of that Order reads:

10. The Hearing will 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 outlined a report of the Department by Setare Vafaei dated June 20, 2024, noting that, on February 12, 2024, the Authority received an application from the Appellant to construct a single dwelling at 16 Perrins Road, Conception Bay South. The Authority refused the application on March 5, 2024, and notice of this decision was provided to the Appellant on March 11, 2024. This appeal was filed on March 25, 2024.

The Technical Advisor reviewed the definition of “development” found in the Act. She noted that constructing a building would fall within this definition. The subject property is designated as residential medium density under the Municipal Plan and is zoned Residential Medium Density (R2) under the Development Regulations. Single dwellings are a permitted use in that zone.

The Technical Advisor noted section 5.16 of the Development Regulations which prohibits the construction of residential buildings on a lot unless the lot fronts directly onto a street constructed to standards established by the Authority. Likewise, section 4.3.18 of the Municipal Plan stipulates that both residential and commercial developments must directly front a publicly owned and maintained street. The Technical Advisor also reviewed the definition of “lot frontage” found in section 64 of the Development Regulations.

It was indicated by the Technical Advisor that the minimum lot frontage for a single dwelling in this zone (section 10.11 of the Development Regulations) is 15 metres.

Appellant’s Presentation and Grounds

The Appellant explained the layout of the subject property. Her father owns 16 Perrins Road and her mother owns the adjacent 18 Perrins Road. 16 Perrins Road has a frontage of approximately 26.6 metres. 18 Perrins Road has a frontage of approximately 15 metres. The proposed single dwelling would be located on a lot entirely to the rear of the current 16 Perrins Road, and thus would require the construction of a new driveway that would pass through 16 Perrins Road, 18 Perrins Road or some combination thereof. If 16 and 18 Perrins Road lots were subdivided to accommodate such a driveway 16 Perrins Road would be left with 15 m of frontage but only 11.6 metres would be available to the Appellant. The Appellant acknowledged this would fall short of the required 15 metres.

The Appellant indicated that the Authority had ignored existing development in the area, which is an old neighbourhood, and allowed other buildings to be built that seemed to contravene Development Regulations. She referenced a new building with ten units being constructed on the lot that runs

adjacent to the back of 16 Perrins Road and which has a long driveway to Greenslades Road. She asked why this was permitted when all she was seeking to build was a single unit.

Ms. Murphy also indicated she has support from most of the neighbours she has been able to talk to, who think she should be able to build on the lot and want her to build it.

Authority's Presentation

Mr. Barrett indicated that neither 16 or 18 Perrins Road could be subdivided without creating non-conformities.

He indicated that the Appellant's grounds of appeal do not indicate any contravention by the Authority of the Municipal Plan or Development Regulations and appear to be based on other properties in the area.

Because the proposal submitted by the Appellant did not meet the Development Regulations respecting lot frontage, it was recommended for refusal.

The Authority referenced sections of the Development Regulations discussed by the Technical Advisor and applicable policies of the Municipal Plan, which set out the requirements for lot frontage.

Analysis

Did the Authority have the discretion to refuse the Application of the Appellant for a permit to construct a single dwelling on Perrins Road in Conception Bay South?

Yes.

The proposed development of the Appellant constitutes a "development" pursuant to the definition set out in section 2(g) of the Act. As such, it is required by section 12 of the Act to conform to the Municipal Plan and the Development Regulations.

Sections 4.1 and 4.2 of the Development Regulations prohibit development unless it is first approved by the Authority.

Pursuant to section 4.6 of the Development Regulations, Council has the discretion to approve, conditionally approve or refuse an application, taking into account the Municipal Plan and the criteria set out therein.

In light of the above, the Authority clearly has the discretion to refuse the Application of the Appellant.

If yes, was the Authority's decision to refuse the application of the Appellant in accordance with, and a reasonable use of, its authority?

Yes.

Lot frontage is defined in section 2.64 of the Development Regulations as meaning the horizontal distance between side lot lines measured at the building line.

The proposed driveway for the proposed single dwelling, as shown on page 32 of the appeal package, appears to front Perrins Road not on the lot on which the proposed dwelling would be located (civic number 18) but on the adjacent lot (civic number 16).

Section 5.16 of the Development Regulations stipulates that no residential building shall be erected “unless the lot on which it is situated fronts directly onto a street constructed to standards established by the Authority.” Since the proposed dwelling would be situated on the lot bearing civic number 16, but the driveway would appear to be located almost entirely if not entirely on the lot bearing civic number 18, this would contravene section 5.16 since it would result in no frontage for the proposed dwelling on the lot on which it is situated. This would also contravene Policy 4.3.18 of the Municipal Plan.

Nor would subdivision of the existing properties at 16 and 18 Perrins Road remedy this concern. As the Appellant confirmed, there is insufficient existing total frontage for those two lots to accommodate a driveway/frontage for a new dwelling that meets the minimal frontage requirements set out in section 10.11 of the Development Regulations (namely, 15 metres). Doing this would create new non-conformities with respect to the existing frontages of the existing lots and contravene section 5.14(1) of the Development Regulations.

While the Appellant noted other buildings in the neighbourhood that appear to contravene frontage requirements of the Development Regulations, I make no findings in this regard, as the specifics of other developments are not relevant to the matter under appeal.

In light of the above, the decision of the Authority was in accordance with, and a reasonable use of, its authority.

Decision of the Adjudicator

As Adjudicator, I am bound by section 44 of the Act, which states:

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.

Order

The Adjudicator orders that the decision of the Authority to refuse the application of the Appellant to construct a single dwelling at 16 Perrins Road be confirmed.

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 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.

DATED at St. John's, Newfoundland and Labrador, this 9th day of July, 2024.



Christopher Forbes

Adjudicator

Urban and Rural Planning Act, 2000