URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #:	15-006-091-030
Adjudicator:	Chris Forbes
Appellant:	Marshall Brown
Respondent/Authority:	City of Mount Pearl
Date of Hearing:	March 27, 2025
Start/End Time:	11:00 a.m. – 12:00 p.m.

In Attendance

Appellant:	Marshall Brown
Respondent/Authority:	Stephanie Walsh, Legislative Officer & City Clerk City of Mount Pearl
	Kieran Miller, Manager of Development and Planning City of Mount Pearl
Appeal Officer:	Synthia Tithy, 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* and the City of Mount Pearl *Municipal Plan* and *Development Regulations 2010* (the "*Development Regulations*") when it issued an Order to cease and desist commercial operation at 18 Halleran Place on September 4, 2024 (the "Order"), which was later ratified by Council Motion #24-09-512.

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:
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> (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 March 13, 2025 (the "Technical Report").

The Technical Advisor began her evidence by summarizing the Chronology found at pages 3-5 of the Technical Report.

She summarized the events leading up to the issuance of the Order, as reported by the Authority. Specifically, a complaint was received in May 2023 by the Authority's Planning Division from a neighbour of the Appellant about a suspected commercial garage operating at the subject property. Evidence was subsequently collected by the Authority that showed a high volume of cars attending the property, a constant change of vehicles parked there, an individual in coveralls working on different vehicles that were hoisted on a vehicle lift in a garage on the property, deliveries from auto parts suppliers and overflowing garbage bins containing vehicle parts.

The Technical Advisor noted that the storage, repair and operation of machinery or equipment associated with a commercial operation falls within the definition of "development" found in section 2(g) of the *Act*.

She noted that the subject property is within the Residential designation of the Authority's Future Land Use Map (contained in the *Municipal Plan*) and is zoned Residential Medium Density under the Land Use Map and *Development Regulations*. She further noted that a commercial garage is not listed as a permitted use in that zone and, as such, would not be permitted within that zone pursuant to section 3.8 of the *Development Regulations*.

The Technical Advisor cited the definition of "Commercial Garage" found in the *Development Regulations*.

She went on to note section 6.2.2 of the *Development Regulations*, which prohibits the use of an "accessory building" for "commercial purposes."

Reference was made to section 10.10 of the *Development Regulations* and section 102(1) of the *Act*, which grant certain powers to the Authority to issue enforcement orders.

The Technical Advisor noted that, while the Order issued by the Authority did reference the right to appeal found in section 10.1 of the *Development Regulations*, it did not specify the 14-day timeframe for filing of an appeal found in that section.

Appellant's Presentation and Grounds

Mr. Brown began his presentation by acknowledging he is a mechanic by trade with a great deal of tools and equipment, including a "hobby lift" in his garage, where the ceiling is 6'7". He indicated he often helps his friends and family with vehicular repairs.

With respect to the number of vehicles attending his property, he stated that he has both children and step children who drive, and therefore within his family there are seven vehicles.

He acknowledged he helps people from time to time with their vehicles and does not charge them any money for that help.

Mr. Brown stated that his garage is too small for commercial work and is often used for hanging out (for example, it has a dart board in it). He fixes cars in the garage as well as lawnmowers and also does some carpentry work.

He stated that his job as a mechanic keeps him busy for an estimated 50 hours or more per week. He does not do any work for his employer from his property. He has been a mechanic for more than 20 years.

I also note certain materials found in the Appeal Package, namely an email from Dylan Smith, the President of Avalon Equipment, to Mr. Brown in which Mr. Smith indicated he completed a site inspection of Mr. Brown's home garage and confirmed that the equipment situated there was "classified as hobbiest equipment and would not pass a commercial inspection." The email also stated that the manufacturers and/or retailers of that equipment "cater to the hobbiest looking to complete personal tasks."

Authority's Presentation

In relation to the fact that the Order failed to include a reference to the 14-day time frame for an appeal, the Authority submitted that that omission should have no bearing on the matter.

The Authority argued that traffic is a concern in relation to the property and also argued that a "private garage" can only be used for storage. On questioning, they indicated that any form of work on equipment such as a lawnmower or vehicle is technically in contravention of the *Development Regulations*.

Analysis

Did the Authority Have the Jurisdiction to Issue the Order?

No.

The Order appears to have been issued pursuant to section 10.10 of the *Development Regulations* and section 102(1) of the *Act*, although it is not entirely clear on its face. Both of those sections provide that the Authority may require a person to "pull down, remove, stop construction, fill in or destroy" a building or development where that building or development is undertaken or commenced "contrary to

a plan or development regulations." Therefore, a contravention is required before such an order can be issued.

I agree that the activities of the Appellant constitute "development" as defined in both the *Development Regulations* and the *Act*.

Section 11.5.1 of the *Development Regulations* permits the use of an "accessory building" (subject to section 6.2). A "Commercial Garage" (as defined in those *Regulations*) is not a permitted use and is therefore prohibited by section 3.8 of the *Development Regulations*.

I note that "Accessory Building" is defined in section 2 of those *Regulations* as follows:

> ""ACCESSORY BUILDING" includes
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> (a) 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,
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> (b) for residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetables storage cellars, gazebos, shelters for domestic pets or radio and television antennae,
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> (c) for commercial uses, workshops or garages, and
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> (d) for industrial uses, garages, offices, raised ramps and docks."

Further, section 6.2.2 expressly permits an accessory building "associated with a residential use," provided it is not "used for commercial purposes."

"Commercial garage" is defined in section 2 of the *Development Regulations* as follows:

> ""COMMERCIAL GARAGE" means a building or part of a building, other than a private garage, used for the repair of equipment or self-propelled vehicles and/or trailers, or where such vehicles are kept for remuneration, hire, or sale and may include the sale of gasoline or diesel oil."

It is therefore clear that, if the activities undertaken by the Appellant satisfy the definition of "commercial garage," then they are not a permitted use in the Residential Medium Density Zone. But the issue does not end there. Even if those activities do not meet the definition of "commercial garage," they must still fall within the express definition and conditions applicable to "accessory buildings," since that is the only permitted use in which they could fall under the *Development Regulations*.

On its face, the activities of the Appellant include "the repair of equipment or self-propelled vehicles," per the definition of "Commercial Garage;" however, there is an exception in that definition for "private garages." This term is not defined.

What is a "private garage?" It is appropriate to interpret the phrase in a way that is consistent with the definition of "accessory building" set out above and the condition included in section 6.2.2 of the

Development Regulations. In other words, a garage cannot be a private garage unless it is not "used for commercial purposes" and is "associated with a residential use."

I am also mindful of the fact that the use to which a private garage is put must be consistent with the zoning for this particular property.

"Commercial" is defined in *Black's Law Dictionary* as meaning "occupied with business or commerce, thus relating to the exchange of goods, production or property or business generally" (see *264215 B.C. Ltd. v. Surrey (City)*, 2009 BCSC 1336).

I find that the repair of vehicles and equipment by the Appellant in his garage does not constitute a "commercial use." These are not activities being undertaken in any manner associated with business or commerce of any kind, whether for remuneration or not. The evidence supports the argument that instead, these activities are a hobby for the Appellant. Indeed, if they were anything but a hobby, they would likely conflict with his duties to his employer, for whom he acts as a certified mechanic.

The Authority put forward the decision in *Clay Oates v. Town of Carbonear* as support for its position that activities such as those of the Appellant can be for a commercial purpose even when no remuneration is exchanged; however, in that case, the activities in question, while not being offered directly to the public, were part of the Appellant's general commercial operations. That is not the case here.

The question then becomes whether the activities in question are consistent with those found in a "private" or "domestic garage" and are "associated with a residential use." I find they are. The evidence substantiates that the work undertaken by the Appellant is largely if not exclusively done for friends and family as a hobby. Mr. Brown confirmed that he has a large immediate family that uses up to 7 vehicles. It is not reasonable to limit the definition of residential use to activities undertaken solely for the benefit of the owner of a property. This would effectively mean that activities done by or for a child or other full- or part-time occupant of the property could not be considered residential activities.

I do not agree with the submission of the Authority that any work or repairs done to a vehicle in a property owner's garage is technically in violation of the *Development Regulations.* So long as those activities are not done for commercial purposes, they are not, absent other considerations, inconsistent with the *Regulations*. Indeed, to find otherwise would likely come as a great surprise to many people who do any kind of repair or maintenance work to their family vehicle, including changing tires or wiper blades, adding antifreeze, etc. I appreciate that the degree of repairs being done by the Appellant likely goes beyond such examples but that in itself is insufficient to mean that doing such repairs in a garage means the garage is not "private" or "domestic" as opposed to being used for a "commercial purpose."

Accordingly, I find that the activities outlined in the Order meet the definition of "private" or "domestic garage" (for the purpose of the definition of "accessory building" and the exclusion found in the definition of "commercial garage" in the *Development Regulations*) and are therefore permitted uses.

It should also be noted that, notwithstanding the activities of the Appellant may be permitted uses, those activities are subject to the power of the Authority to prevent certain nuisances under section 6.29 of the *Development Regulations*.

What Effect, if any, Does the Failure of the Order to Include the Time Frame for Filing of an Appeal Have on the Order?

I further find that the failure of the Authority to include a reference to the 14-day time frame for the filing of an appeal fatal to that Order.

Section 5 of the *Development Regulations* passed under the *Act* states as follows:

> "5. Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the
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> (a) persons right to appeal the decision to the board;
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> (b) time by which an appeal is to be made;
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> (c) right of other interested persons to appeal the decision; and
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> (d) manner of making an appeal and the address for the filing of the appeal."

It is clear the Order did not include reference to the "time by which an appeal is to be made" (section 5(b) above).

It is unclear which specific statutory provision the Order was issued under. I note there is reference in the Order to the *Act*, to the *City of Mount Pearl Act*, to the *Development Regulations*, to the Mount Pearl *Building Regulations 2011* and to the *Occupancy and Maintenance Regulations.* However, no specific provision is referenced.

Section 238 of the *City of Mount Pearl Act* authorizes the Authority to issue certain orders where "the use of an existing building is changed" without a permit, and section 240 of that statute permits an appeal under the *Act*. However, such an appeal, which would be brought under section 41(1)(a) of the *Act*, must still adhere to section 5 of the *Development Regulations* cited above.

Likewise, sections 10.10 and 10.12 of the Mount Pearl *Development Regulations* empower the Authority to order a person to stop a "development" where it is undertaken without a permit. However, this does not mean that the Authority does not need to comply with section 5 of the *Act*'s *Development Regulations* when issuing an Order under those sections.

In *Janes v. Embree (Town)*, 2022 NLCA 36, the Court of Appeal of Newfoundland and Labrador considered the effect on a removal Order issued by the Town of Embree of that Order's failure to include reference to the right of appeal under section 5 of the *Development Regulations*. The removal Order was issued under section 404 of the *Municipalities Act*.

The Court found that non-compliance with section 5 of the *Development Regulations* renders the non-compliant Order "a nullity or invalid" (per para. 32). While I appreciate this case dealt with section 404 of the *Municipalities Act*, the general context is the same insofar as the Order in question here is a municipal Order that is provided to a person "whose private property rights may be seriously impacted" (see para. 78 of the lower court decision in 2018 NLSC 127, at para. 78).

Accordingly, I find the Order at issue in this case to be a nullity and invalid.

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:
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> (a) confirm, reverse or vary the decision that is the subject of the appeal;
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> (b) impose conditions that the adjudicator considers appropriate in the circumstances; and
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> (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.
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> (2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.
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> (3) An adjudicator shall not make a decision that does not comply with
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> (a) this Act;
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> (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and
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> (c) a scheme, where adopted under section 29.
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> (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 issue the Order to cease and desist commercial operation at 18 Halleran Place on September 4, 2024 is hereby reversed.

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 24th day of April, 2025.

Christopher Forbes
Adjudicator
Urban and Rural Planning Act, 2000