

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-094-005

Adjudicator: Chris Forbes

Appellant: Kevin Bussey

Respondent/Authority: Town of Bay Roberts

Date of Hearing: August 27, 2025 and December 1, 2025

Start/End Time: August 27, 2025: 11:00 a.m. – 1:30 p.m.
December 1, 2025: 9:00 a.m. – 10:30 a.m.

In Attendance

Appellant: Kevin Bussey

Respondent/Authority: Greg Squires, Director of Protective Services
Town of Bay Roberts

Dave Tibbo, Chief Administrative Officer
Town of Bay Roberts
In attendance on August 27, 2025 only

Ross Petten, Councillor
Town of Bay Roberts
In attendance on December 1, 2025 only

Appeal Officer: Sarah Kimball, Appeal Officer
Local Governance and Land Use Planning
Municipal and Community Affairs

Technical Advisor: Setare Vafaei, Planner III
Municipal and Community 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 *Bay Roberts Municipal Plan* (the “Municipal Plan”) and the *Bay Roberts Development Regulations* (the “Development Regulations”) when

it made the decision to deny a variance request in relation to development at 51 Cross Road, Bay Roberts.

Procedural Background

The hearing of this matter commenced on August 27, 2025, during which time Mr. Bussey was present as were Mr. Squires and Mr. Tibbo on behalf of the Authority. Subsequent to this hearing and in the course of scheduling a second hearing date, Mr. Bussey requested that a subpoena be issued for the attendance at the second hearing of Ross Petten, Councillor with the Town of Bay Roberts. The adjudicator thereafter issued a subpoena for Mr. Petten's attendance. The hearing continued and was completed on December 1, 2025, at which Mr. Bussey was present as were Mr. Squires and Mr. Petten.

I also note that, while the issuance of a Stop Work Order in relation to the subject property was identified in the Appeal Package as a ground of appeal, the Appellant indicated during the hearing that he took no issue with that. His appeal relates solely to the Authority's decision to deny a variance request in relation to the subject property.

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 Vafei dated August 11, 2025 (the "Technical Report").

She began her presentation by reviewing the "Background" and "Chronology" set out at page 6 of the Technical Report. She noted that the appeal was filed in accordance with legislative requirements.

The Technical Advisor reviewed the definition of "development" found in section 2(g) of the *Act* and indicated that building a dwelling unit falls within this definition. She confirmed that the subject property is designated as residential under the *Municipal Plan* and Future Land Use Map and is zoned Residential II (R2) under the *Development Regulations* and Land Use Zoning Map.

The Technical Advisor noted that the subject property was a corner lot bordered by both Cross Road and Peppers Road. She confirmed that, for the purpose of applying development standards, the Authority had determined that Cross Road constitutes the fronting street of the subject property. This is based on the fact that civic number 51 Cross Road is assigned to that property.

The Technical Advisor referenced the definition of “building line” found in the *Development Regulations* (section 18) and section 31 thereof which deals with building line setbacks. According to the submission materials, the required building line setback for the R2 zone is 8.0 metres. The real property report submitted on behalf of the Appellant to the Authority indicates a building line setback for the footings of the proposed dwelling of 7.52 metres, which is below the minimum standard required.

The Technical Advisor also referenced the minimum flanking yard setback for properties located on corner lots as being 6.0 metres per section 40 of the *Development Regulations*.

She noted that the Appellant claimed the setback deficiency was “minor” and requested that the Authority exercise its discretion under section 6 of the *Development Regulations* to approve a variance for the residential dwelling unit at the subject property or designate the address of the property as Peppers Road.

The Technical Advisor referenced section 12 of the *Development Regulations* under the *Act* which authorizes the Authority to grant a variance of up to 10% from applicable development standards where a proposed development does not meet those standards. She confirmed that, according to submission materials, the Authority denied the request for a variance because the Appellant relocated the dwelling from its originally approved position without submitting a revised plot plan.

The Technical Advisor then discussed sections 11, 1 and 2 of the *Development Regulations*, as more fully discussed in the Technical Report. She referenced that the Stop Work order was issued pursuant to section 16(1) of those *Regulations*. She noted that the submission materials did not include any minutes of Council for the Authority or other documentation confirming the ratification of that Stop Work Order by Council. She also referenced the requirements of section 107(1) of the *Act* for service of such an order.

Appellant’s Presentation and Grounds

The Appellant began by noting that, given the current housing crisis, it would be appropriate for the Authority to exercise its discretion with prudence and take all relevant information into account when making its decisions. He argued that the Authority did not exercise its discretion and authority in this case in good faith. Specifically, he says the Authority’s reasoning for denying his request was punitive towards him rather than an attempt to make a fair and fully informed decision.

The Appellant outlined his experience in dealing with the process under which a variance is usually considered, and noted that it usually involves publication of the request for a variance and receipt of input from the community to ensure the variance would not negatively affect neighbouring properties. Such a process was not followed in this case. The Appellant indicated that instead, a meeting was called of the Council for the Authority and he had no insight into that meeting because no minutes of it were provided. He indicated no Councillor spoke to him prior to that meeting.

Mr. Bussey indicated that he has built 5 or 6 homes in Bay Roberts and is not intimately acquainted with the applicable development regulations. Those houses were not on corner lots. He met with Mr. Squires on at least one occasion for an explanation as to what the setback should be and he left that meeting with a clear impression that he only needed to setback from Cross Road by 6 metres. He also met with Mr. Squires on a later occasion on the subject property, at the rear of which were some trees. He indicated to Mr. Squires at that time he would move the proposed residence ahead to preserve

those trees. Had he known the setback was required to be 8 metres, he would not have done so, as it was this that resulted in the footings for the dwelling being placed in non-compliance with the setback requirement. He stated he relied on the expertise of the Authority to explain the regulatory requirements to him, although he indicated he agreed he was ultimately responsible for compliance. He also indicated he is only nominally offside the requirement at one end of the proposed residence since the residence will not be built parallel to Cross Road.

Mr. Bussey also indicated he sometimes found it difficult to access Mr. Squires and Mr. Tibbo.

The Appellant indicated that a variance of less than 10% is required to accommodate his proposed development. He confirmed he was not a “rogue” and did not intentionally violate the applicable *Development Regulations* at the time he had the footings for the building poured.

Authority’s Presentation

Mr. Tibbo confirmed he is the CAO of the Authority. He indicated a Special Meeting was held on April 15, 2025 to address the request of Mr. Bussey for a variance (as well as two other items). There were minutes created of this meeting. Those minutes were adopted on May 20, 2025. At that meeting, Council was presented with the memo found at pages 74-75 of the Appeal Package, which was prepared by Mr. Squires. Council voted unanimously to support the recommendation of Mr. Squires. He himself did not make any recommendation to Council. He confirmed that Council was well informed of the concerns of Mr. Bussey, as confirmed by this memo.

Mr. Tibbo indicated that this Special Meeting was not “hastily” called, contrary to the Appellant’s insistence; instead, it was expedited to satisfy Mr. Bussey, who was very anxious to have the issue of the variance addressed.

Mr. Tibbo emphasized that, since beginning his role with the Authority, he has insisted on strict compliance with the *Development Regulations*. He does not ordinarily get involved in day-to-day matters involving building permits, which is within the purview of Mr. Squires. He believes the Authority acted in good faith and based its decision squarely on the information set out in Mr. Squires’ memo.

The Appellant spent a good deal of time questioning Mr. Tibbo in relation to his frustration with the process of obtaining information from the Authority as well as the roles of Mr. Tibbo and Mr. Squires. Mr. Tibbo indicated he received 10-12 emails from Mr. Bussey prior to the Special Meeting that confirmed Mr. Bussey’s frustration with the process. Ultimately, much of this portion of the evidence was not relevant to the issues before me.

Mr. Bussey questioned Mr. Tibbo as to how holding a Special Meeting would be of benefit to Mr. Bussey as opposed to having a regular meeting. Mr. Tibbo indicated he was of the view that expediting the decision of Council by holding a Special Meeting would be of benefit to Mr. Bussey, regardless of Council’s ultimate decision.

The Appellant also raised with Mr. Tibbo the issue of not knowing what was discussed at the Special Meeting, since the minutes did not reflect the substance of that discussion but simply set out the resolution passed by Council.

During his evidence on behalf of the Authority, Mr. Squires confirmed that the Special Meeting in issue had already been scheduled and Mr. Bussey's request for a variance was added to that meeting so that he would not have to wait until the next meeting for a decision from Council.

Under cross-examination, Mr. Squires confirmed he recommended that Council not approve the request for variance. He indicated that his recommendation was based not on any specifics regarding the subject property but instead the fact that the Appellant did not follow the proper process.

There was some confusion during the Appellant's presentation between "discretionary use" and the process engaged by a request for a variance. He indicated that the purpose of this discretion is to protect neighbours and communities and it cannot be used to punish someone. Mr. Squires clarified that the concept of discretionary use in a zoning context is completely different from a request for a variance.

Mr. Petten did not provide any evidence in chief, but was asked questions by Mr. Bussey. Mr. Petten indicated that, during the Special Meeting, Council had a lengthy discussion of the Appellant's request and the decision was unanimous. He was of the belief Council made an informed decision. Under questioning, he confirmed it did not occur to him to call the Appellant to get his "side of the story" prior to making a decision.

Analysis

Did the Authority have the discretion to Deny the Appellant's Request for a Variance?

Yes.

It goes without saying that any "development" (as that term is defined) under the *Rural and Urban Planning Act, 2000* must comply with applicable development regulations (per section 12 of that statute). In the Town of Bay Roberts, this legal requirement is echoed in sections 1 and 2 of the Town's *Development Regulations*. The starting point for the matter in this Appeal is that the Appellant, in developing the subject property, was required to abide by those *Regulations*, including the applicable building line setback. This is the case regardless of whether the Appellant was aware of the specifics of those setbacks or misunderstood or was led to misunderstand those specifics.

The Appellant placed great emphasis in this Appeal on the power of the Authority to exercise its discretion to allow his development to proceed notwithstanding that it was not compliant with the required building line setback. As he stated, the violation was relatively minimal (a matter of inches).

Section 6 of the *Development Regulations* grants to the Authority a general discretionary power. That section applies to requests for a development permit or approval in principle. It specifically requires the Authority, in considering such a request, to take into account "the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto" as well as other matters. This section itself does not, however, grant the Authority the power to ignore its own Regulations or vary from them, such as the setback requirement in issue in this Appeal. In fact, it does the opposite – it allows the Authority to conditionally approve or refuse a development application even though that application conforms with the requirements of those *Regulations*.

To interpret section 6 as permitting the Authority to ignore or vary the setback requirement at issue in this Appeal would render redundant the process and requirements set out in section 12 of the general

Development Regulations passed under the *Rural and Urban Planning Act, 2000* (which are also incorporated into and form part of the Authority's *Development Regulations*). It is therefore irrelevant to this Appeal.

Section 12 reads:

12. (1) Where an approval or permit cannot be given by an authority because a proposed development does not comply with development standards set out in development regulations, an authority may, in its discretion, vary the applicable development standards to a maximum of 10% if, in the authority's opinion, compliance with the development standards would prejudice the proper development of the land, building or structure in question or would be contrary to public interest.

(2) An authority shall not allow a variance from development standards set out in development regulations if that variance, when considered together with other variances made or to be made with respect to the same land, building or structure, would have a cumulative effect that is greater than a 10% variance even though the individual variances are separately no more than 10%.

(3) An authority shall not permit a variance from development standards where the proposed development would increase the non conformity of an existing development.

Also of importance here is section 13 of the *Development Regulations* which reads:

13. Where an authority is to consider a proposed variance, that authority shall give written notice of the proposed variance from development standards to all persons whose land is in the immediate vicinity of the land that is the subject of the variance.

Reading these sections together, two things become apparent:

First, consideration of a request for a variance by a Council requires that Council to consider whether compliance with the applicable development standards (in this case, the building line setback specified for zone R2) "would prejudice the proper development" of the subject property "or would be contrary to public interest." It is only if Council answers one or both of these questions in the affirmative that the Council may agree to the variance. It is not required to agree; however, it must at least consider these questions in making its decision.

Second, before making its decision, a Council is required to comply with section 13. This makes sense, since it is difficult to see how a Council could effectively consider the question of whether requiring compliance with a development standard in a particular case "would be contrary to public interest" without first seeking input from the public. This does not mean that if others in the vicinity take no issue with the proposed variance/development that the requested variance must be approved, but it must be considered by Council before it makes its decision on the variance under section 12.

In short, while Council has the discretion to refuse a request for a variance, prior to doing so it must at a minimum provide notice in accordance with section 13 and take into account the considerations set out in section 12.

Did the Authority Properly Exercise its Discretion to Refuse to Approve the Variance?

No.

Before considering the manner in which Council exercised its discretion, I note that the Appellant strenuously argued during the hearing that Council for the Authority set out to punish him for his non-compliance with the Development Regulations. I find no evidence of that. While the Appellant may have interpreted the refusal of his request for a variance as punishing, there was no evidence of specific intent or bad faith on the part of Council to punish him. Rather, the evidence confirmed that Council was focused on ensuring compliance with the Development Regulations. Indeed, this is confirmed by the materials contained in the Appeal Package and the evidence of Mr. Tibbo, Mr. Squires and Mr. Petten.

Additionally, much of the evidence put forward by the Appellant in this case was not particularly relevant and seemed to confuse the Authority's broad discretionary power under section 6 of the *Development Regulations* with its specific obligations and powers under section 12.

In regard to how Council specifically exercised its discretion, the evidence during the hearing as to what was specifically discussed by members of Council at the Special Meeting in question on April 15, 2025 was relatively sparse. I understand a lengthy discussion took place amongst the members; however, its content was unclear for the most part. Further, a review of the memo supplied by Mr. Squires to Council on that date (pages 74-75 of the Appeal Package) and the minutes of the Special Meeting do not give any additional insight into the content of the discussion. As such, the only conclusion I can draw is that the substance of the meeting concerned whether to grant the request for a variance in light of the fact that the Appellant had failed to provide a new plot plan when deciding to relocate the dwelling on the subject property (as this was what was referenced in the minutes). This may have properly factored into the Council's decision – I make no finding in that regard – but Council at a minimum should have turned its mind to whether requiring the Appellant to comply with the specific setback requirements “would prejudice the proper development” of the subject property “or would be contrary to public interest” (per the criteria set out in section 12). Additionally, it should have made this determination only after complying with the notification requirement in section 13 of the *Development Regulations* (under the Act).

In short, while the Authority may or may not ultimately exercise its discretion under section 12 of the *Development Regulations* under the Act to allow for the Appellant's requested variation (keeping in mind it has discretion in this regard), it must be able to establish that prior to making its decision it took into account the appropriate considerations and published the appropriate notice under section 13.

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 variation decision made by the Authority pursuant to Motion 2025-1319 in relation to the subject property is hereby reversed and nullified and the Authority is directed to reconsider the request of the Appellant in this regard in compliance with sections 12 and 13 of the *Development Regulations* under the Act.

The Adjudicator further orders that the Authority pay to the Appellant the amount of \$230.00, representing the fee paid by the Appellant to file the appeal herein.

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 8th day of January, 2025.



Christopher Forbes

Adjudicator

Urban and Rural Planning Act, 2000