

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

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Appeal #: 15-006-094-015
Adjudicator: Paul Boundridge, MCIP
Appellant(s): Calvin Morgan
Respondent / Authority: Town of Conception Bay South (CBS)
Issue: A decision to refuse an application to undertake a development of a single detached dwelling on property at Civic # 25-27 Shady Lane, off Morgan's Road in Seal Cove, CBS
Date of Hearing: 28 November 2025
Location of Hearing: 1st Floor, Beothuk Building, 20 Crosbie Place, St. John's, NL
Start - End Time: 2:00 p.m. – 3:15 p.m.

In Attendance

Appellant: Calvin Morgan
Appellant Legal Counsel: Andrew Seviour, LL.B.

Authority Representative(s): Corrie Davis, MCIP
Director of Planning and Development

Appeal Officer: Sarah Kimball,
Department of Municipal and Community Affairs

Technical Advisor: Rutvi Patel, Planner III
Department of Municipal and Community Affairs

ADJUDICATOR'S ROLE

Part VI of the *Urban and Rural Planning Act, 2000* (URPA) 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 URPA and the Town of Conception Bay South's Municipal Plan and Development Regulations, 2011 - 2021, when it refused the development application to build a single dwelling on property at civic # 25-27 Shady Lane, Conception Bay South, on July 3, 2025.

HEARING PRESENTATIONS

The Adjudicator heard oral presentations from the following parties at the appeal hearing. The Adjudicator also received written presentations from the Planner/Technical Advisor, the Appellant and the Authority prior to the appeal hearing date. The Adjudicator also had access to the digital recording of the appeal hearing made by the Appeals Officer.

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Planner's Presentation

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness. Under Section 10 (a) of the Rules of Procedure:

“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.

The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities.”

In accordance with the provisions under URPA, a technical report was prepared by a planner to outline the applicable legislative, policy, and regulatory framework within which the aggrieved decision was made.

- The technical report provided a summary of events associated with the application decision under appeal.
 - On June 18, 2025, the Appellant submitted a development application (No. 5565) to build “a single dwelling” at 25-27 Shady Lane (the property).
 - On July 3, 2025, the Municipal Authority informed the Appellant by email about the refusal citing the property does not front onto a street constructed to the standards established by the Town and in accordance with section 5.16 of the Town’s Development Regulations, 2011.
 - On July 11, 2025, the Appellant filed an appeal (#15-006-094-015) to the Appeals Officer of the Department of Municipal Affairs and Community Engagement, now Municipal and Community Affairs.
 - The materials submitted by the Authority and Appellant indicate the refusal to application No. 5565 was not rendered as a discretionary decision of the council.

- The Technical Advisor also informed the Adjudicator that the appeal was valid in terms of its conformity with Section 41. (3) and (4) which state:

- 41. (3) An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.
- 41. (4) An appeal shall be made in writing and shall include
 - (a) a summary of the decision being appealed;
 - (b) the grounds for the appeal; and
 - (c) the required fee.

According to the documents provided, the appeal was filed within 14-day timeframe established under Section 41(3) of URPA.

- The Technical Advisor also informed the Adjudicator of the provisions of the URPA and the Town of Conception Bay South Municipal Plan and Development Regulations 2011 which were relevant to the decision made by the Town that is the subject of this appeal; and that Council's decision was communicated to the Appellant in conformity with the requirements of URPA and the Town's Development Regulations – the reasons for the Town's decision were clearly stated and the Appellant/Applicant was informed of his right to file an appeal of the Town's decision.

- Planning Considerations

Urban and Rural Planning Act, 2000

1. The Act defines development under Section 2(g), as follows:

- (g) ***"development" means the carrying out of building, engineering, mining or other operations in, on, over or under land,*** [emphasis added] *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 as an office, or for living accommodation,*

2. Section 12 of URPA establishes the requirement for Council and any person undertaking a development in the planning area to adhere to the Municipal Plan and Development Regulations:

12. Application of plan

A plan and development regulations are binding upon

- a) municipalities and councils within the planning area governed by that plan or those regulations; and
- b) a person undertaking a development in the area governed by that plan or those regulations.

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The Town of Conception Bay South's Municipal Plan and Development Regulations, 2011

- The Town of Conception Bay South's Municipal Plan and Development Regulations, 2011 came into force on July 20, 2012. The subject property is designated Residential Low-Density (R-1) under the Town's Municipal Plan Future Land Use Map and is zoned Residential Low- Density (R-1) as per Town's Development Regulations Land Use Zoning Map.
- A Single dwelling is listed as a permitted use in Residential Low-Density (R1) Zone under the Town's Development Regulations and subject to the R-1 zoning standards. According to the submission materials, the property associated with development application No. 5565 fronts onto an access extending from the Cul-de-sac at the terminus of Shady's Lane, providing a 'lot frontage' measuring 10feet/ 3metres in width.
- Section 5.15 of the Town's Development Regulations, 2011 states:

5.15 Lot Area and Size Exceptions

1. The Authority may approve development of a dwelling on a lot that Exists at the time of coming into effect of these Regulations that has Insufficient frontage or area to permit the owner or purchaser of the lot to comply with the provisions of these Regulations.
2. Such approvals shall only be issued where the lot coverage is not greater; and the yards.

- Section 5.16 of the Town's Development Regulations outlines that no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street constructed to standards established by the Authority.

5.16 Lot Frontage

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Except where specifically provided for in the Use Zones set out in Section 10 of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street constructed to standards established by the Authority.

- The Building Permit and Development application form and Town Mapping indicate town services (water and sewer) are not provided on shady lane; therefore, the lot is considered unserviced. Under the Residential Low Density Use Zone of the Town's Development Regulations, 2011, the minimum required frontage is 30m for unserviced dwelling and 21m for a serviced dwelling.

Section 5.25 Servicing Development of the Town's Development Regulations, 2011 states:

5.25 Servicing Development

1. Except where permitted as part of an approved Residential Estate Lot Subdivision, development of backlands or beyond the end of existing public streets, will only be permitted on the basis of full municipal water and sewer servicing.
 2. Servicing with on-site well and septic systems may be permitted as infill development along existing public streets.
 3. Where permitted, private on-site septic systems, shall be properly designed, installed and maintained. Approval for on-site septic systems is required from the Government Service Centre.
 4. Where development on the basis of water supply wells (either in unserviced infill areas or in a Residential Estate subdivision) an assessment of groundwater quantity and quality may be required in accordance with the Provincial Department of Environment and Conservation Groundwater Supply Assessment and Reporting Guidelines for Subdivisions Serviced by Individual Private Wells, 2009.
 5. Where there is insufficient groundwater yield to support any development proposed on the basis of a well, the Authority shall refuse the development.
- An Addendum submitted with the application notes the 'right-of-way' or 'access' extending off the Cul-de-sac is 60 meters in length and is intended to accommodate service vehicles. This right-of way currently functions as an access for the subject

property. The submission materials do not include documentation confirming ownership or title for the right-of-way.

Access is defined under section 4.(1)(a) of the Development Regulations under the Urban and Rural Planning Act, 2000 as:

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
- (a) "access" means a way used or intended to be used by vehicles, pedestrians or animals in order to go from a street to adjacent or nearby land or to go from that land to the street;

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Street is defined under section 4.(1)(t) of the Development Regulations under the Urban and Rural Planning Act, 2000 as:

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
- (t) "street" means a street, road, highway or other way designed for the passage of vehicles and pedestrians and which is accessible by fire department and other emergency vehicles;

The Town's Development Regulations, 2011 defines Access and Street under section 2(1) and section 2(97) as:

As Per Section 2(1) of Town's Development Regulations, an Access means a way used or intended to be used by vehicles, pedestrians or animals in order to go from a street to adjacent or nearby land or to go from that land to the street.

As Per Section 2 (97) of Town's Development Regulations, a Street is defined as street, road, highway or other way designed for the passage of vehicles and pedestrians and which is accessible by fire department and other emergency vehicles.

- The application was processed in compliance with the requirements of the Town's Development Regulations.

4.1 Development Approval Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless Development Approval for the development has been issued by the Authority.

4.2 Compliance with Regulations

Development shall be carried out and maintained within the Planning Area in accordance with the municipal Plan, these Regulations, conditions stated in a Development Approval, and any thereby-law or regulation enacted by the authority.

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4.5 Approval Not to be Issued in Certain Cases

No approvals shall be issued for development within the Planning Area when, in the opinion of the Authority, it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by the Authority and such cost shall attached to an upon the property in respect of which it is imposed.

- The Authority notified the Appellant about the refusal of the development application No. 5565 [citing regulation 5.16 of the Town's Development Regulation,] on July 3, 2025 and of his Right of Appeal.

4.3 Decisions of the Authority

Decisions made by the Authority with respect to a Development Approval required by these Regulations, shall be made in writing and state the reasons for a refusal of, or conditions contained within the Development Approval. The Authority shall also advise the person to whom the decision applies of their right to appeal, in accordance with Section 42 of the Act and he requirements of Section 3, Regulation 5 of these Regulations.

Appellant's Presentation and Grounds

The Appellant is appealing the refusal based on the following stated grounds:

- Recognition and Maintenance of the Lane
The Appellant asserts that Dawes Lane (now Shady Lane) historically extended to the subject property. Following the incorporation of Seal Cove into the Town of Conception Bay South in the 1980s, the Town identified the terminus of Shady Lane as a cul-de-sac, assumably due to its natural pause. As a result, Shady Lane up to the cul-de-sac is recognized and maintained as a municipal street whereas the remaining extension to the subject property is treated as a right-of way and not considered a municipal street.
- Incorrect Assumption About the Lane Terminus
The Appellant states that the Town incorrectly assumed the rightful terminus of Shady Lane, leading to the approval of a house adjacent to the lane without respecting the required setback distances measured from the lane's centerline. This oversight effectively deprived the Appellant's opportunity to obtain necessary road width to fully develop the property once adjoining development occurred.

At the Hearing, the Appellant stated that the property had not been approved by the Town in the past as for development as a residential building lot.

Authority's Presentation

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The Authority's written and verbal submissions can be summarized as follows:

- Section 5.16 of the Town's Development Regulations requires that no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street constructed to standards established by the Authority.

5.16 Lot Frontage

Except where specifically provided for in the Use Zones set out in Section 10 of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street constructed to standards established by the Authority.

- Shady Lane is an "Access," not a "Street"

2 Definitions

1) Access means a way used or intended to be used by vehicles, pedestrians or animals in order to go from a street to adjacent or nearby land or to go from that land to the street.

97) Street means a street, road, highway or other way designed for the passage of vehicles and pedestrians and which is accessible by fire department and other emergency vehicles.

- The application was processed in compliance with the requirements of the Town's Development Regulations.

4.1 Development Approval Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless Development Approval for the development has been issued by the Authority.

4.2 Compliance with Regulations

Development shall be carried out and maintained within the Planning Area in accordance with the municipal Plan, these Regulations, conditions stated in a Development Approval, and any thereby-law or regulation

- Section 12 of URPA establishes the requirement for Council and any person undertaking a development in the planning area to adhere to the Municipal Plan and Development Regulations:

12. Application of plan

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- a) municipalities and councils within the planning area governed by that plan or those regulations; and
- b) a person undertaking a development in the area governed by that plan or those regulations.

In conclusion, the Town had no authority under the *Urban and Rural Planning Act, 2000* (URPA) and the Town's Municipal Plan and Development Regulations to approve the Appellant's development application. It could only reject it.

ADJUDICATOR'S ANALYSIS and CONCLUSION

In arriving at his conclusion, the Adjudicator has reviewed the submissions and evidence presented by all parties, along with technical information and planning advice.

The Adjudicator is bound by Section 44 of the Urban and Rural Planning Act, 2000 and must therefore make a decision that complies with the applicable legislation, policy and regulations. Page | 10

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.”

Having considered the regulatory regime and the related provisions of the Development Authority's Municipal Plan and Development Regulations, and the *Urban and Rural Planning Act, 2000*, I can find no basis for the Appellant's position that the refusal to grant the development permit was in error.

The Development Authority considered the Appellant's application and decided that the application was not in compliance with the Town's Municipal Plan and Development Regulations. The Development Authority rejected the application and informed the Appellant of his right to appeal.

I find no technical, analytical, or procedural deficiency with the Development Authority's conduct in this instance. I find no misapplication of the Municipal Plan or the Development Regulations.

ADJUDICATOR'S ORDER

1. The Adjudicator orders that the decision of the Development Authority of July 3, 2025 to refuse an application involving property at 25-27 Shady Lane for a permit to develop a new single-family dwelling is confirmed
2. The Appellant is unsuccessful in this matter and therefore not entitled to repayment of his appeal fee.

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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 this Appeal 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 13th day of December, 2025.


Paul Boundridge, MCIP
Adjudicator
Urban and Rural Planning Act, 2000