

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-091-034**

Adjudicator: Gareth McGrath

Appellant(s): Colin Tibbo

Respondent / Authority: Town of Holyrood

Date of Hearing: 18 June 2025

Start/End Time : 14:00-15:00

In Attendance

Appellant: Colin Tibbo, Carol Tibbo

Appellant Representative(s): N/A

Respondent/Authority: Town of Holyrood

Respondent Representative(s): Robert Stacey, Travis Payne

Proponent/Developer: N/A

Developer Representative: N/A

Interested Party: N/A

Appeal Officer: Sarah Kimball; Robert Cotter; Departmental Program Coordinators, Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and Town of Holyrood Municipal Plan and Development Regulations when it denied an application for an accessory building shed at 17 Healey's Cove Road, Holyrood, NL on 10 October 2024.

Hearing Presentations

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 the Rules of Procedure:

(a) there shall be a technical advisor to the Adjudicator who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether 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.

The Adjudicator heard from the Planner that this appeal relates to the denial of an application for an accessory building shed at 17 Healey's Cove Road, Holyrood, NL on 10 October 2024 (the 'Subject Property'). The planner outlined the regulations as they apply to a Residential Medium Density property like Subject Property and the requirements for an accessory building shed. Key to this is that an Accessory Building cannot project in front of any building line.

When outlining what a Building Line for a property is, the Planner outlined that a building line was "**BUILDING LINE** means a line established by the Council that runs parallel to the street line and is set at the closest point to a street that a building may be placed. **A corner lot is deemed to have a building line setback on both the primary and flanking streets.** [emphasis added]."

The Planner also outlined "In accordance with the development standards for the Residential Medium Density (RMD) Zone, the minimum building line setback for a dwelling is 9 meters, and this requirement applies to both the primary and secondary streets where the property is located on a corner lot. According to the Authority's submission map, the setback from the proposed shed to Cove/Garden Road is approximately 7.6 meters, and the setback from Healey's Cove Road is approximately 13.7 meters."

The Appellant's Presentation and Grounds

The Appellant outlined their grounds of appeal as

- 1) The Authority did not properly inform the Appellant that their application had been dismissed, nor did they properly inform them of the right to appeal to this body.
- 2) That the flanking road, as it is not the main building road, doesn't have any setback or frontage requirements.

- 3) That there previously was a shed on the property and as such the application should be approved as there is a non-conforming use that predates the current regulations.
- 4) It was implied but more heavily submitted in oral arguments that the Authority had not properly exercised their discretion when council failed to consider the application as a whole, rather than delegating that discretion to the Planning and Development Committee.

Finally there are some questions about the uniqueness of the property referenced by the Appellant. While there is no doubt that this building and layout are unique as much real property is, uniqueness does not exempt a property from the application of the Urban and Rural Planning Act, 2000 and Town of Holyrood Municipal Plan and Development Regulations.

Authority's Presentation

The Authority's presentation outlined their response to the appeal of the Appellant as:

- 1) The Authority admits they may have failed originally, but as they properly informed the Appellant and the matter is before the Adjudicator, the matter is moot.
- 2) There is a clear building line on both the main and flanking road and an accessory building cannot be between that frontage and the main building of the property.
- 3) The non-conforming status of the shed was lost when it was removed as part of the remodeling of the property as well as the new shed not being the same as the old shed.
- 4) The Authority met their obligations by having the matter heard by the Planning and Development Committee.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of Holyrood Municipal Plan and Development Regulations and determined the following:

- 1) Does the failure to notify the Appellant of their right to appeal reverse or vary the decision?

To this the Adjudicator must find that no, it does not reverse or vary the decision of the Authority. If the Authority had failed in their job to notify the Appellant of their right to appeal and then tried to rely on the failure to appeal to block the application of the Appellant, there would then naturally be a reason for the Adjudicator to hear the matter for natural justice reasons. Instead, the Authority rectified the decision by informing the Appellant of their right to appeal. The Appellant then exercised that right, within the time required, and the matter is being heard.

- 2) Is there a building line on both sides of the property for the main and flanking street which an accessory property cannot be in front of?

As seen in the presentation of the Planner, when a property is located on a corner lot, that property is deemed to be on two roads, both the main road and the flanking road. Both the main road and the flanking road have their own build lines from which no accessory building shall project in front of. As such, according to the regulations “38. (2) No accessory building or part thereof shall project in front of any building line.”

That is to say, an accessory building cannot be between the main building and the building line. Because of the way this property is laid out, with the majority of open space between the building line and the main building, this leaves most of the property unable to have an accessory building placed upon it under the regulations as it would project in front of the building line.

As such, an accessory building cannot be approved in the area that the Appellant submitted and the Adjudicator must confirm the decision of the Authority to reject on these grounds.

3) Was there a pre-existing non-conforming structure that allows this application to be made as a non-conforming structure?

Prior to the application there was an approximately 13x12 shed on the property that would have not been allowed had it been an application made under the current regulations. However, that shed from all information predated the regulations and as such had earned a non-conforming status. When the current owners were undergoing renovations to the property, the shed was removed and not returned to the property. Instead the Appellant made this application to build a new 18x14 shed that would partly overlap the original shed’s location as well as the original main building’s footprint from the submitted materials.

First, when a non-conforming building is destroyed or removed and not replaced, that building loses its non-conforming status. As the shed was removed and not returned to its original place, there could no longer be a non-conforming structure there and any new structure would require conformity with the Urban and Rural Planning Act, 2000 and Town of Holyrood Municipal Plan and Development Regulations.

Not only is this application not for a return of a shed to the non-conforming status it had before, but the proposed dimensions of the new shed are significantly different than the dimensions of the non-conforming structure. It is clear that this new Shed cannot avail of the non-conforming status of the old shed and as such the Adjudicator must confirm the decision of the Authority on these grounds.

4) Did the council properly exercise their discretion?

In delegating the authority to hear Planning and Development Committee, the Authority delegated their powers under section 10 of the Town’s Development Regulations to hear applications for new properties to be developed.

In doing so, the Authority never completely stated that their discretion to hear applications was totally subsumed by the Planning and Development Committee. There were still democratic methods available to the Appellant to speak to their councilors to attempt to have the matter

brought forward by the Authority. The Planning and Development Committee, as heard in oral testimony, also features members of the Council who were free to exercise their discretion to bring the matter before council if they felt that an application was in the best interests of the grounds outlined in Section 10 of the Town's Development Regulations. Instead, the Planning and Development Committee exercised their delegated authority to deny the application as the proposed accessory building could not conform to the requirements of the Town's Development Regulations and the Authority has not otherwise exercised their authority to hear the matter or conditionally approve it, and the Adjudicator has no power to substitute their discretion for that of the Authority. As such, the Adjudicator must confirm the decision of the Authority.

Adjudicator's Conclusion

Urban and Rural Planning Act, 2000Decisions 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.

After reviewing the information presented, the Adjudicator concludes that the Authority acted within the scope of their authority when they denied the application for an accessory building shed at 17 Healey's Cove Road, Holyrood, NL on 10 October 2024. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the Authority has the power to allow their Planning and Development Committee the right to deny applications that do not conform to the Town's Development Regulations. Because the Accessory Building would be in front of the building line on the subject property, the application was denied.

Order

The Adjudicator orders that the decision of the Town of Holyrood to be confirmed.

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

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this 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 16 July 2025.

Garrett McGrath

Adjudicator

Urban and Rural Planning Act, 2000