

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # :15-006-091-044

Adjudicator: Clifford Johnston

Appellant: Michael Loder

Respondent / Authority: Town of Conception Bay South

Date of Hearing: June 20. 2025

Start/End Time: 9:00 am to 9:50am

In Attendance

Appellant: Michael Loder

Respondent/Authority: Corrie Davis, Director of Planning and Development and Christine Bussey, Development Control Coordinator

Appeal Officers: Sarah Kimball and Robert Cotter, Municipal Affairs and Community Engagement

Technical Advisor: Setare Vafaei, Planner III, Municipal Affairs and Community Engagement

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority, the Town of Conception Bay South, acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Conception Bay South Municipal Plan and Development Regulations when it made a decision on December 17, 2024 to reject an application from Michael Loder to construct an accessory building at Civic No. 2369 Topsail Road, Conception Bay South on the grounds that the accessory building would be located in the front yard of the subject property and would be visible

from the street and adjoining properties. Mr. Loder is appealing the Town's decision to reject his application. .

Hearing Presentations

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the appeal hearing. In addition, the Technical Advisor prepared a Technical Report on the appeal which was provided to and reviewed by the Adjudicator prior to the appeal hearing. The Technical Report was also provided to the Appellant and the Authority prior to the appeal hearing. The Technical Report is on file with the Appeal Officer.

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 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.

The following is a summary of the key verbal comments that the Planner provided to the Adjudicator at the appeal hearing. The verbal comments were a summary of the Technical Report that the Planner prepared for the appeal hearing.

*The subject property is located in the Residential Medium Density (R2) Zone as per the Town's Development Regulations.

*Section 5.3.1 of the Town's Development Regulations sets out where a

residential accessory building may be placed on a residential lot. This section of the Regulations provides that an accessory building shall not be placed any closer than 1.5 metres from a side or rear yard line, or 0.3 metres from an easement, or 3 metres from the main building or any other building. This section also provides that where no reasonable options are available, that an accessory building may be placed in front of the dwelling subject to specific conditions set out in Section 5.3.1(2) of the Development Regulations. The conditions include requirements that the slope of the building lot and/or natural screening effectively blocks the view of the accessory building in the front yard of the property from the street and adjoining properties and that the placement of the accessory building in the front yard of a property will not have a negative effect on adjoining properties.

The Appellant's Presentation and Grounds

*The subject property is unusually shaped/positioned.

*There is a topographical constraint on the lot that limits alternative placements for the accessory building.

*There is no clear definition for "front yard" in the Town's Development Regulations. If the proposed location of the accessory building on the lot is in fact in the front yard, the Development Regulations still make provision for the accessory building to be located there.

*The natural screening/landscaping on the property minimizes the visual impact of the accessory building in its proposed location in the front yard. As well, the accessory building would be in keeping with the exterior of the existing house on the subject property.

*There are other accessory buildings located in the front yards of other residential properties in Conception Bay South.

Authority's Presentation

Mr. Davis spoke on behalf of the Town. The following is a summary of the verbal points he made to the Adjudicator at the appeal hearing.

*The Town has reviewed the applicable sections of the Town's

Development Regulations and the Development Regulations under the Urban and Rural Planning Act, 2000 (also commonly referred to as the “Ministerial Regulations”), and has made a determination that the Appellant’s proposed location for the accessory building on the subject property would place it in the front yard of the subject property where an accessory building is normally not permitted to be located. The Town has determined that the proposed location of the accessory building is the front yard of the property after reviewing the Town’s Development Regulations and the Ministerial Regulations.

*Section 5.3.1 of the Town’s Development Regulations provides that an accessory building may be placed in front of the dwelling on a lot only where no reasonable options are available and subject to a series of conditions as set out in this section of the Development Regulations. The Town has determined that it does not wish to allow the accessory building to be sited in the front yard of the property. One of the concerns of the Town is that the accessory building would be visible from Topsail Road going eastbound.

*Since the Town’s rejection of the Appellant’s application and the filing of the Appellant’s appeal in December, 2024, Town staff have worked with the Appellant to determine if there is another location on the subject property where the accessory building can be located which would satisfy the requirements of the Town’s Development Regulations. A location on the property has been identified and the Appellant was conditionally approved by the Town on March 18, 2025 to construct an accessory at this revised location.

*The decision whether or not to allow an accessory building in the front yard of a residential property is a use of the Town’s discretionary authority and the appeal process does not authorize an Adjudicator to overturn a discretionary decision of a municipal council.

Adjudicator’s Analysis

I have reviewed the Urban and Rural Planning Act, 2000, the Town of Conception Bay South Municipal Plan and Development Regulations and the Development Regulations under the Urban and Rural Planning Act, 2000 and have determined the following.

Q. Does the Town of Conception Bay South have the authority to require a permit for the construction of an accessory building on a residential property and can the Town regulate the placement of the accessory building on the property?

R. Yes. Section 2(g) of the Urban and Rural Planning Act, 2000 provides a definition of “Development”. The definition is very comprehensive and would include the construction of an accessory building on a residential property. Section 4.1 of the Town’s Development Regulations (“Development Approval Required”) stipulates that no person shall carry out any development within the Planning of the Town except as otherwise provided in the Regulations unless Development Approval for the development has been issued by the Town. Section 4.2 of the Development Regulations (“Compliance with Regulations”) requires that Development shall be carried and maintained within the Planning Area of the Town in accordance with the Town’s Municipal Plan and Development Regulations, conditions stated in a Development Approval and any other by-law or regulation enacted by the Town. Sections 5.2 (“Accessory Buildings”), and 5.3 (“Residential Accessory Buildings”) of the Development Regulations authorize the Town to regulate the size, appearance and location of an accessory building on a residential lot.

Q. Has the Town satisfactorily demonstrated that the site of the proposed accessory building is in the front yard of the subject property.

R. Yes. As the appointed Adjudicator, I have reviewed the applicable sections of the Town’s Development Regulations and the Development Regulations under the Urban and Rural Planning Act, 2000 and I concur with the Town that the proposed location of the accessory building is in the front yard of the subject property.

I am also aware of the provisions of Section 4.6 (“Discretionary Powers”) of the Town’s Development Regulations which provides that when making a decision on an application, the Town Council has the authority to approve, conditionally approve or refuse an application. Section 4.6 of the Regulations establishes the Town’s discretionary powers and directs the Town to take into account the policies of the Town’s Municipal Plan and to consider the criteria set out in this Section when making a decision on an application.

I also note that the decision whether to allow a residential accessory building to be located in the front yard of a property is a discretionary decision on the part of the Town and the Town has made its discretionary decision to not allow the accessory building to be located in the front yard of the subject property.

I note that Section 44(2) of the Urban and Rural Planning Act, 2000 stipulates that notwithstanding Section 44(1) of the Act, an Adjudicator shall not overrule a discretionary decision of a municipal council, regional authority or authorized administrator.

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.

After reviewing the information presented, the Adjudicator concludes that the Town of Conception Bay South has the authority under the provisions of the Town's Development Regulations to reject the Appellant's application to construct an accessory building in the front yard of the subject property. I concur that the Town has interpreted the

applicable sections of the Town's Development Regulations and the Development Regulations under the Urban and Rural Planning Act, 2000 correctly as it applies to the Appellant's application.

ORDER

The Adjudicator orders that the decision of the Town of Conception Bay South made on December 17, 2024 to reject the application from Michael Loder to construct a residential accessory building in the front yard of the property located at Civic No. 2369 Topsail Road, Conception Bay South **be confirmed. The appeal is thereby rejected.**

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 27th day of June, 2025.

A handwritten signature in blue ink, reading "Clifford Johnston", is written over a horizontal line.

Clifford Johnston, Adjudicator

Urban and Rural Planning Act, 2000