

## URBAN AND RURAL PLANNING ACT, 2000

### Section 40-46

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

Appeal #: 15-006-091-028

Adjudicator: Chris Forbes

Appellant: David Norris

Respondent/Authority: City of Mount Pearl

Date of Hearing: March 27, 2025

Start/End Time: 9:00 a.m. – 11:00 p.m.

#### **In Attendance**

Appellant: David Norris

Appellant's Representative: Stephen Saunders

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*, the *Occupancy and Maintenance Regulations* and the *City of Mount Pearl Municipal Plan and Development Regulations 2010* (the "Development Regulations") when it issued a Property Maintenance Order (the "Order") at 83 Commonwealth Avenue on August 23, 2024, pursuant to Motion 24-08-443.

### **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 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.

According to her, the Order was issued following the receipt by the Authority of complaints in relation to the property in July 2023. Specifically, the complaints were in respect of debris and broken windows, which were confirmed during subsequent inspections. According to the Technical Advisor, an inspection on August 16, 2023 confirmed the Appellant had not addressed these deficiencies, and a Violation Notice and fine were issued on August 21, 2023.

The Technical Advisor indicated that a further inspection on February 1, 2024 revealed deficiencies in the exterior of the Property. The St. John’s Regional Fire Department conducted an inspection on May 15, 2024 and identified safety-related problems, namely that windows in the subject property were covered with plexi-glass and plywood and were thus inoperable. The Appellant subsequently advised the City’s inspector and fire inspector that the living room containing the plexi-glass window had been sealed off to the property’s tenant and an egress window had been installed in a bedroom.

Thereafter, the Order was issued on August 23, 2024. It ordered the Appellant to replace window coverings with operable windows and replace and/or paint the exterior cladding.

According to the Technical Advisor, the Appellant appeals on the basis that plexi-glass should not be required to be replaced with glass as it serves the same purposes, namely allowing the tenant to see out, and the only sleeping area in the house has an operable window while areas covered with plywood are storage spaces.

The Technical Advisor noted that the Appellant did not file his appeal until September 20, 2024, which was more than 14 days after the issuance of the Order; however, she also noted that the Order expressly granted the Appellant thirty days in which to appeal the decision. The 30-day time frame is referenced in section 45 of the *Occupancy and Maintenance Regulations*, which are established under the Act.

She observed that the subject property falls within the General Commercial designation of the Authority's Future Land Use Map (found in the *Municipal Plan*) and is zoned Commercial-General under the *Development Regulations*.

The Technical Advisor noted that section 5 of the *Occupancy and Maintenance Regulations* states that all properties must be "maintained in a state of good condition and repair" in accordance with the regulations "and as otherwise ordered by the enforcement authority."

Subsection 26(1) of those *Regulations* requires that "every habitable room in a dwelling unit" contains "one or more operable windows."

Similarly, section 12 of those *Regulations* requires that exterior walls be maintained "to prevent their deterioration from any cause" and "as otherwise determined by the enforcement authority."

The Technical Advisor indicated that the Authority confirmed prior to the hearing that the exterior cladding of the Property has been painted and so only the plywood and plexiglass window coverings need to be addressed.

She stated that section 41 of the *Occupancy and Maintenance Regulations* sets out the power of the Authority to require "the owner of a dwelling unit or building which does not conform to the standard to ... undertake work to make the dwelling unit or building conform to the standard."

The Technical Advisor referenced the fact that the Appellant stated they received the Order via email, and she also referenced section 107 of the *Act*.

### **Appellant's Presentation and Grounds**

Mr. Saunders began by describing the subject property, noting it was at the most prominent intersection in the City and was an older house built in the 1950's or 60's. He said the house was structurally sound and is 1200 square feet.

While Mr. Norris owns the property, Mr. Saunders has a management contract for it. He indicated that police have attended at the house on numerous occasions. His clients are primarily individuals with special needs.

Mr. Saunders noted that the siding on the house has been painted and repairs have been done to its shingles.

He indicated that, looking at the house from the street, to the right is a room with a window that was broken. As the property has a history of broken windows, he did not want to replace it with glass. He indicated that he has blocked access to this space off from the tenant using a plywood barrier inside the house and the whole right side of the house could have its windows removed if need be. The right side of the house (approximately 50% of the house) is used solely for storage and is inaccessible to the tenant because of the barrier.

According to Mr. Saunders, the tenant solely lives in the left side of the house, consisting of a kitchen, bathroom and bedroom. The windows to these rooms can be opened. Under questioning, Mr. Saunders confirmed that these changes were made to the house to accommodate the tenant.

The Appellant's primary ground of appeal is that the side of the house with the window that is the subject of the Order is not habitable and as such the failure to include an operable window here is not in contravention of section 26(1) of the *Occupancy and Maintenance Regulations*.

### **Authority's Presentation**

Ms. Walsh submitted that, regardless of whether a plywood barrier has been erected inside the house, the rooms to the right of the house are still habitable and as such require operable windows. She noted that it might still be possible for the tenant to gain access to those rooms. She also questioned how the rooms could be both closed off and not closed off for the purpose of storage.

She noted that no building permit had been obtained to install the plywood barrier or do other interior renovations.

Ms. Walsh also noted that the property owner had refused an inspection by the City and Fire Department.

### **Analysis**

#### **Did the Authority Have the Jurisdiction to Issue the Order?**

Yes.

The Order was issued pursuant to section 41(1) of the *Occupancy and Maintenance Regulations*. That section reads:

41. (1) The enforcement authority may direct the owner of a dwelling unit or building which does not conform to the standard
- (a) to undertake work to make the dwelling unit or building conform to the standard;
  - ...
  - (c) to clean and paint as required to provide a satisfactory condition of appearance and cleanliness,
- within the time that the enforcement authority may specify."

Thus, before an Order can be issued pursuant to subsection 41(1), there must be a non-conformity by the subject dwelling unit or building with a "standard".

It should be noted that the validity of the Order in issue depends on the state of the subject property as at the date of issuance of the Order, which was August 23, 2024. The parties agreed that the exterior cladding is no longer in issue since it has been painted; however, that does not negate the validity of the Order itself insofar as that particular issue is concerned. The evidence before me confirmed that the exterior of the dwelling was in poor condition as of August 23, 2024, and I uphold that portion of the Order as a result. The Order required Mr. Norris to "replace and/or paint the exterior cladding" within 90 days. Whether or not there has been a contravention of that requirement in the Order is not before me and so I make no finding in that regard.

The same is not true of the requirement in the Order pertaining to section 26 of the *Occupancy and Maintenance Regulations*. That section reads:

“26. (1) Every habitable room in a dwelling unit shall contain one or more operable windows.”

The evidence shows that, as of the date of the Order (August 23, 2024), a plexi-glass window had been installed in the property. The Order required Mr. Norris to replace it “with operable windows. The issue is therefore whether this part of the Order was valid. It was only valid if there had been a contravention of section 26.

With respect to section 26 of the *Occupancy and Maintenance Regulations*, the primary issue is whether the area of the house containing the inoperable window was “habitable.”

Prior to the issuance of the Order, the Appellant advised the Authority that “the living room which contains the plexi-glass window [had] been sealed off to the tenant and an egress window was installed in a bedroom” (see paragraph 8 of the Order). This was confirmed by Mr. Saunders, who indicated that a plywood barricade had been installed that effectively barred the tenant from using the right side of the house.

Is the living room a “habitable room”?

The dictionary definitions cited by the Authority are helpful. The Merriam-Webster Dictionary defines the term habitable as meaning “capable of being lived in” and “suitable for habitation.”

The Construction Dictionary cited by the Authority in its internal memorandum (p. 35 of the Appeal Package) defines “habitable room” as “a room used for normal domestic activities, and –

- (a) Includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room, home theatre and sunroom; but
- (b) Excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.”

In this case, I note that no permit was obtained for the interior renovations that resulted in a plywood barrier being set up to prevent access to the right side of the house. In my view, this supports the position that the right side of the house/living room is habitable. To find otherwise would effectively allow the owner of a building to skirt development regulations and municipal enforcement efforts by undertaking renovations in contravention of legal requirements.

In addition, no photographic evidence was provided showing the barrier. Who is to say the barrier cannot be put in place and then removed at will, even if it is with some degree of difficulty? Again, to find that this area of the house is not habitable because a barrier of some kind is set up seems to fly in the face of the purpose of the regulation requiring an operable window – namely, one of safety.

I must also be cognizant of the fact that the tenant actually occupied this side of the house at one point and that it was clearly built to accommodate occupancy, even if it is no longer used for that purpose. As such, it is “capable of being lived in,” per the dictionary definition.

I also note the submission of the Authority that, if this area of the house is used for storage, there must still be some means of accessing the area to remove and deposit items for that purpose. This is not a situation in which an area of the house is completely inaccessible, even if it cannot be accessed easily.

For all of these reasons, I find that the window/coverings referenced in the Order contravene section 26 of the *Occupancy and Maintenance Regulations*.

### **Did the Authority Properly Exercise Its Jurisdiction to Issue the Order?**

No evidence or argument was raised at the hearing suggesting that the Authority did not properly exercise its jurisdiction in issuing the Order.

I therefore find the Order was properly issued.

### **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 decision of the Authority to issue the Order dated August 23, 2024 is hereby confirmed.

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.



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Christopher Forbes

Adjudicator

*Urban and Rural Planning Act, 2000*