

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-039

Adjudicator: Paul Boundridge, MCIP

Appellant(s): Stephen Puddicombe

Respondent / Authority: Town of Conception Bay South

Date of Hearing: 29 May 2024

Start/End Time: 9:00 a.m. – 9:32 a.m.

In Attendance

Appellant: Stephen Puddicombe

Authority Representative(s): Corrie Davis, MCIP, Director of Planning and Development
Eric Tarrant, Building Inspector

Appeal Officer: Robert Cotter, Appeals Officer, Department of Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei, Planner II, Department of Municipal and Provincial Affairs

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 the Town of Conception Bay South Municipal Plan and Development Regulations when on December 19, 2023, it refused an application to construct a swimming pool and ancillary structures at 11 Dannic Place, Conception Bay South.

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.

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 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."

The Adjudicator heard from the Planner/Technical Advisor that this appeal follows a series of interactions between the Appellant and the Town of Conception Bay South between September and December 2023 wherein the Authority became aware of the development (without a municipal Permit) of a swimming pool, deck and fence in the rear yard of a residential property 11 Dannic Place, Conception Bay South; the Appellant subsequently applied for a Permit for said swimming pool, deck and fence; and the application for a Permit being refused/denied by the Development Authority (on the recommendation of staff and the Planning and Development Committee) as it "being contrary to the Town's Development Regulations "in accordance with Section 5.3(1) of the Town's Development Regulations, Application Nos. 3525, 3524 and 3523 received November 22, 2023 for a swimming pool, and its ancillary structures, be refused in consideration that the cumulative lot coverage of all accessory buildings at the property would exceed 6%."

The Authority written decision stated the reason for the refusal and informed the Appellant of his right to file an Appeal to the Department of Municipal Affairs (DMAPA) within 14 days of the date of receiving the written decision.

The written appeal was submitted within the required timeframe, and was accompanied by the requisite processing fee and supporting information,

Appellant's Presentation and Grounds

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

- The Appellant claims that they have applied for a "miscellaneous permit" based on the Town's website, which only pertains to adhering to the fencing pool regulations.
- The Appellant argues that the patio and pool area were constructed following proper regulations, and the building inspector confirmed that there were no safety issues with the construction.
- The Appellant claims that they have occupied less than 50% of the rear land (only 39%), referring to Section 5.3.5 of the Town's Development Regulations.
- The Appellant raised concerns about the Regulations which prohibit having accessory buildings that cover more than 6% of the property.

Authority's Presentation

- The Town's Municipal Plan and Development Regulations came into effect on July 20, 2012 and are binding on the Town, owners of property within the Town, and anyone wishing to develop property within the Town of Conception Bay South Municipal Planning Boundary.
- The subject property at 11 Dannic Place is designated Residential Medium Density under the Town of Conception Bay South Municipal Plan and is zoned as Residential Medium Density as per Town's Development Regulations.
- The definition of accessory building comes from Section 2 of the Town's Development Regulations, includes:

“2.2 Accessory Building includes:

- a) *A detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory, and which has a use that is customarily incidental or complementary to the main use of the building or land;*
- b) *For residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetable storage cellars, shelters for domestic pets or radio and television antennae;* [emphasis added]
- c) *For commercial uses, workshops or garages; and*
- d) *For industrial uses, garages, offices, raised ramps and docks.”*

- The Town's Development Regulations define swimming pool (residential) as follows:

“103. Swimming Pool (Residential)

means any in-ground or above-ground structure that is located in a rear yard of a residential lot capable of containing water with a minimum depth of 61cm, including swimming pools, non-portable wading pools, and landscape water features, but excludes hot tubs and existing natural bodies of water or streams.”

- Section 5.22 of the Development Regulations establishes the provision for Residential Swimming pools:

5.22 Residential Swimming Pool

A residential swimming pool shall be a permitted accessory use subject to the following conditions:

- A swimming pool shall be located in the rear yard of a residential property with a minimum of 2m from any property boundary;*
- A swimming pool shall be enclosed by a fence constructed in accordance with the Conception Bay South Fence Regulations;*
- Not exceed 6.0% of the area of the lot; [emphasis added]*
- Not encroach upon any easement; and*
- Not be placed over any existing, on-site septic system*

According to Authority's submissions, the proposed swimming pool has a lot coverage of 24.5 m², equivalent to 4.9% of the lot area.

- The requirements for residential accessory buildings are set out in Section 5.3 of the Development Regulations:

5.3 Residential Accessory Buildings

1. In addition to the requirements of Section 5.2, Residential Accessory buildings shall be subject to the following requirements:

2. ~~On a lot that is less than 1150m² in area, the cumulative lot coverage of accessory building(s) on the lot shall not exceed 6%.~~ [emphasis added]

3. On a lot that is greater than or equal to 1150m² but less than 4050m² in area, the cumulative lot coverage of accessory building(s) on the lot

a. shall not exceed 70m², or

b. at the discretion of Council and following public consultation, may be permitted to a maximum of 6% of the lot area, provided that the lot coverage of the accessory building(s) does not exceed the lot coverage of the dwelling.

3. *On a lot that is greater than or equal 4050m² in area, the cumulative lot coverage of accessory building(s) on the lot*
 - a. *Shall not exceed 70m², or*
 - b. *at the discretion of Council and following public consultation, may be permitted to a maximum of 6% of the lot area.*
4. *In this section, lot area shall include the cumulative lot area for both the main lot and the adjoining lot where a proposed accessory building is considered under Section 5.2(1) of these Regulations.*

Under the Town's Development Regulations, the cumulative lot coverage of residential accessory buildings shall not exceed 6% of lot area. The Authority has determined that the combined area covered by the pool and garage on the property would be approximately 57.2m², which is equivalent to 11.38% of the lot area based on a lot area of 502.85m².

- Sections 4.1 and 4.2 of the Development Regulations establish the requirement for all development to comply with the Regulations and the requirement to obtain a permit prior to carrying out development:

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.

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 other by-law or regulation enacted by the Authority.

- When making a decision on an application, Council has the authority to approve, conditionally approve or refuse an application. Section 4.6 of the Town's Development Regulations establishes the Authority's discretionary powers and directs the Authority to take into account the policies of the Municipal Plan and consider the criteria outlined below when making a decision on an application:

4.6 Discretionary Powers

In considering an application to carry out development, *the Authority shall* take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion,

and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

In closing, the Appellant noted that it had no authority to approve the Appellant's development application and was compelled by the *Urban and Rural Planning Act, 2000* (URPA) and the Town's Municipal Plan and Development Regulations to reject it.

ADJUDICATOR'S ANALYSIS

Q: Is a Swimming Pool, whether in-ground or above-ground, an Accessory Building under the Conception Bay South Development Regulations?

R: Yes. The definition of Accessory Building comes from Section 2 of the Town's Development Regulations, and includes:

"2.2 Accessory Building includes:

e) *A detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory, and which has a use that is customarily incidental or complementary to the main use of the building or land;*

f) *For residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetable storage cellars, shelters for domestic pets or radio and television antennae;* [emphasis added]

g) *For commercial uses, workshops or garages; and*

h) *For industrial uses, garages, offices, raised ramps and docks."*

Q: Is there a limit on the area of a residential lot which may be occupied by a pool and other accessory buildings?

R: The requirements for residential accessory buildings are set out in Section 5.3 of the Development Regulations:

5.3 Residential Accessory Buildings

1. *In addition to the requirements of Section 5.2, Residential Accessory buildings shall be subject to the following requirements:*

2. On a lot that is less than 1150m² in area, the cumulative lot coverage of accessory building(s) on the lot shall not exceed 6%. [emphasis added]

3. On a lot that is greater than or equal to 1150m² but less than 4050m² in area, the cumulative lot coverage of accessory building(s) on the lot

a. shall not exceed 70m², or

- b. at the discretion of Council and following public consultation, may be permitted to a maximum of 6% of the lot area, provided that the lot coverage of the accessory building(s) does not exceed the lot coverage of the dwelling.*
- 3. On a lot that is greater than or equal 4050m² in area, the cumulative lot coverage of accessory building(s) on the lot*
 - a. Shall not exceed 70m², or*
 - b. at the discretion of Council and following public consultation, may be permitted to a maximum of 6% of the lot area.*
- 4. In this section, lot area shall include the cumulative lot area for both the main lot and the adjoining lot where a proposed accessory building is considered under Section 5.2(1) of these Regulations.*

Under the Town's Development Regulations, the cumulative lot coverage of residential accessory buildings shall not exceed 6% of lot area. The Authority has determined that the combined area covered by the pool and garage on the property would be approximately 57.2m², which is equivalent to 11.38% of the lot area based on a lot area of 502.85m².

Q: Did the Town have the authority to approve the Appellant's development application?
R: Sections 4.1 and 4.2 of the Development Regulations establish the requirement for all development to comply with the Regulations and the requirement to obtain a permit prior to carrying out development:

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.

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 other by-law or regulation enacted by the Authority.

When making a decision on an application, Council has the authority to approve, conditionally approve or refuse an application. Section 4.6 of the Town's Development Regulations establishes the Authority's discretionary powers and directs the Authority to take into account the policies of the Municipal Plan and consider the criteria outlined below when making a decision on an application:

4.6 Discretionary Powers

In considering an application to carry out development, *the Authority shall* take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of

the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

In consideration of the foregoing, it is observed that the Authority had no authority to approve the Appellant's development application and was compelled by the *Urban and Rural Planning Act, 2000* (URPA) and the Town's Municipal Plan and Development Regulations to reject it. To do otherwise would have been Illegal.

Q: Has the Appellant brought forward any evidence to demonstrate that the Town of Conception Bay South has not acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Conception Bay South Municipal Plan and Development Regulations when on December 19, 2023, it refused an application to construct a swimming pool and ancillary structures at 11 Dannic Place, Conception Bay South?

R: No.

ADJUDICATOR'S 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.

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.”*

After reviewing the information presented, the Adjudicator concludes that the Town of Conception Bay South was within its authority under the Urban and Rural Planning Act, 2000, the Town of Conception Bay South Municipal Plan, and Town of Conception Bay South Development Regulations to make its decision on December 19, 2023 to refuse/reject the application by Stephen Puddicombe for a permit to construct an above-ground swimming pool, deck and fence in the rear yard of his house on property located at civic #11 Dannic Place, Conception Bay South.

ADJUDICATOR'S ORDER

The Adjudicator orders that the decision of the Town of Conception Bay South of December 19, 2023 to refuse/reject the application by Stephen Puddicombe for a permit to construct an above-ground swimming pool, deck and fence in the rear yard of his house on property located at #11 Dannic Place, Conception Bay South **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 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 16th day of June, 2024.



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