

## URBAN AND RURAL PLANNING ACT, 2000

### Section 40-46

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

**Appeal #:** 15-006-072-054  
**Adjudicator:** Paul Boundridge, MCIP  
**Appellant(s):** Randy Power and Sharon Power  
**Respondent / Authority:** Town of Chapel Arm  
**Date of Hearing:** 29 August 2023  
**Start/End Time:** 9:00 a.m. – 10:00 a.m.

#### In Attendance

**Appellant:** Randy Power  
**Authority Representative(s):** Jonathan Dale, Solicitor of the Town of Chapel Arm  
Tracy Smith, Town Clerk/Manager (by phone)  
**Appeal Officer:** Robert Cotter, Departmental Program Coordinator, Department of Municipal and Provincial Affairs  
**Technical Advisor:** Sean McGrath, Planner III, 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 Chapel Arm Municipal Plan and Development Regulations, 2017 when it refused an application to construct an engineered metal building on the footprint of an existing structure for personal storage on property located at 299 Main Road, Chapel Arm on November 16, 2021.

## 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 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.*

### Background

The Adjudicator heard from the planner that this appeal relates to a Development Permit Application submitted on October 20, 2021 by Randy Power and Sharon Power (the Appellants) to the Town of Chapel Arm for approval to construct an engineered metal building on the footprint of an existing structure for personal storage at 299 Main Street, Chapel Arm. The Authority (Town of Chapel Arm), at a regular meeting of Council of November 16, 2021, as per Motion 11-16-21-09 resolved to reject (refuse) the Development Permit Application submitted October 20th, 2021.

A letter of refusal was sent to the Appellant(s) on November 22nd, 2021 regarding their *Development Permit Application* at 299 Main Road, Chapel Arm. Reasons for refusal were provided and noted as:

*"As per Section III-29 (1) of the General Development Standards, "Accessory Buildings shall be clearly incidental and complementary to the use of the main building in character, use and size, and shall be contained on the same lot".*

*Section III-29 (11) of the General Development Standards and Section 4 (3) of the Conditions for the Mixed Development Zone states "Accessory Buildings must be compatible with the main building in terms of design, colour, and materials".*

*Council has determined that the style of building that you wish to construct does not adhere to the Chapel Arm Development Regulations for the Mixed Development Zone."*

The Appellant received the refusal letter on November 22nd, 2021, the right to appeal as per section 42 of the Urban and Rural Planning Act was included. The Appellant filed an appeal with the Eastern Regional Appeal Board on November 26th, 2021.

The Appellant's stated Ground for Appeal is that civic address 299 is a separate parcel from the lot featuring the existing residential dwelling.

The tax roll information provided by the Town presented by the Municipal Assessment Agency indicates the civic address of 299 Main Road as 299-303 Main Road. The *Property Summary Report* describes a land area of .8035 Acres featuring a primary residential structure with above ground square footage of 1360 square feet and a "shed" built in 1900, effective date 1955, featuring an area of 1,855 square feet, dimensions 53x35 feet. A survey conducted by a registered surveyor in Newfoundland and Labrador was not produced by the Appellant or the Authority defining the lot parameters of 299-303 Main Road. Therefore, it could not be determined based on the information provided whether the applied for is in fact on a separate lot than the primary residential structure.

The "shed" built in 1900, effective date 1955, featuring an area of 1,855 square feet, dimensions 53x35 feet, if used in conjunction with the residential use, is an existing non-conforming use with respect to standards. The Municipal Assessment Agency *Annual Assessment Roll*, page 28, Notice Mail Date: 31-May-2001, indicates the property is being taxed under a residential use.

### Jurisdiction

- The Appeal was filed within the prescribed period (14 days of becoming aware of the Council decision).
- The Appeal concerns an application for development, which is defined under the *Urban and Rural Planning Act, 2000* (URPA) as "*the carrying out of building, engineering, mining or other operations in, on over or under land or the making of any material change in the use, or the intensity of use of land, buildings or premises...*"
- This appeal is based on Section 42. (1) of the URPA with respect to development:  
*42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*  
*(a) an application to undertake development;"*

### Planning Considerations

Urban and Rural Planning Act, 2000

## Town of Chapel Arm Municipal Plan and Development Regulations, 2017

The Town of Chapel Arm Municipal Plan and Development Regulations, 2017 came into effect on August 2, 2018 and are binding on the Town, property owners and business operators in the Town.

### The Municipal Plan

The subject property is located in the Mixed Development (MD) Land Use Zone as per the Town's Future Land Use Map. The Town's Municipal Plan. Section 3.4.3 *Mixed Development Area* provides the plan policy for the *Mixed Development Area* as follows:

*"A range of use classes are accommodated in the Mixed Development area — including assembly, institutional, residential, business and personal service, service station, mercantile, industrial, and a range of non-building uses — as reflected in the Mixed Development zoning. The mixed development area comprises the older and more traditional part of Chapel Arm, and it includes predominantly residential, blended with commercial (including commercial residential), small industrial, open space, and harbour-related uses.*

*The predominant use in this area shall be residential, and residential development shall be permitted, although mobile homes may be treated as discretionary uses under the development regulations. Residential uses include single dwellings, double dwellings, subsidiary apartments, boarding-house residential, childcare, and home-based businesses.*

*1) Smaller scale commercial and light industrial development that is compatible with residential development may be permitted throughout and adjacent predominantly residential areas in Chapel Arm, as discretionary uses under mixed development zoning. Commercial and marine related industrial and recreational development may be permitted as discretionary uses at the marina situated at Wester Cove zoned Mixed Development.*

### The Development Regulations

#### 1. The Town's Development Regulations *Schedule C – Use Zones, Mixed Development* permits the following as **Permitted Use Classes**:

Double Dwelling, Single Dwelling, Subsidiary Apartment, Home-based business (Office; Medical, Professional, and Personal Service), Boarding House Residential, Child Care, Conservation, and Recreational Open Space, Marina (see condition 20).

#### 2. The Town's Development Regulations *Schedule C – Use Zones, Mixed Development* permits the following as **Discretionary Use Classes**:

*Business or Personal Services use group, Catering, Cemetery, Club and Lodge, Commercial Residential, Cultural and Civic, Educational, General Assembly use division, Light Industry, Indoor Assembly, Light Industry, Mercantile use group uses except for shopping centre, Mobile Home, Outdoor Assembly, Place of Worship, Service Station, Transportation, Kennel, and Antenna.*

3. The Town's Development Regulations *Schedule C – Use Zones, Mixed Development Condition 4. Accessory Buildings* states:
  4. *Accessory Buildings (See also 29 regarding Accessory Buildings).*
    - 1) *The cumulative lot coverage of accessory buildings shall not exceed 50% of the available rear lot area of a residential lot and if there are more than one accessory building, they shall be separated by 2.4 metres;*
    - 2) *Accessory buildings shall not be higher than the height of the residence.*
    - 3) *Accessory buildings must be compatible with the main building in terms of design, colour, and materials.*
    - 4) *Accessory buildings shall not be closer to the front line than the main building, two (2) metres*
4. The Town's Development Regulations *Schedule A – Definitions*, defines *Accessory Building* as:

**ACCESSORY BUILDING:** means a detached subordinate building not used for human habitation, located on the same lot as the main building structure or use to which it is accessory, the use of which is naturally or customarily incidental and complementary to the main use of the building, land or structure, and shall include:

  - a) *In the case of 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;*
  - b) *In the case of commercial uses: workshops or garages;*
  - c) *In the case of industrial uses: garages, offices, raised ramps, and docks.*
5. The Town's Development Regulations *Schedule A – Definitions*, defines *Quonset Hut* as:

**QUONSET HUT:** means a lightweight prefabricated structure of corrugated steel having a semicircular cross section.
6. Quonset Hut is only found under Schedule C – Use Zones, Commercial Industrial Zone of the Towns Development Regulations, as follows under Condition 3 - Accessory Buildings:
  3. *Accessory Buildings*

*The use of a Quonset Hut as an accessory building shall be restricted to the Commercial – Industrial (CI) use zone, subject to the following conditions: [.....]*
7. Regulation 46 of the Town's Development Regulations (**Uses Not Permitted**) states that:

*"Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes identified in the appropriate Use Zone Tables in Schedule C shall not be permitted in that Use Zone."*
8. Regulation II-(1) of the Town's Development Regulations (**Compliance With Regulations**) states that"

*"No development shall be carried out within the Planning Area except in accordance with the Chapel Arm Municipal Plan, 2017 and these Regulations."*

9. Regulation II-6(1) ***Discretionary Powers of Council*** permit the Authority (Council) to conditionally approve or refuse an application for development. Regulation II-6 states:

***Discretionary Powers of Council***

(1) *In considering an application for a permit or for approval-in-principle 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, shall consider any applicable report and recommendation submissions from a qualified consultant, and shall assess the general appearance of the development of the area, the amenity of the surroundings, potential environmental effects, availability of municipal services and utilities, public safety and convenience, and any other considerations which are, in its opinion, material. 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.*

**Procedural Compliance**

1. The minutes indicate Councillor Patrina Murphy declared a conflict of interest regarding Motion 11-16-21-09 and left the meeting at 8:58pm. The Province of Newfoundland and Labrador's Municipal Conduct Act, 2021 came into legal effect on Sept 1st, 2022. Part II of the Municipal Conduct Act, 2021 replaces Section 207 of the Municipalities Act, 1999. Since Motion 11-16-21-09 occurred prior to the enactment of the Municipal Conduct Act, 2021, Section 207 of the Municipalities Act, 1999 applies to this matter, pursuant to Section 212 which states:

***Voting***

212. (2) *A councillor shall not abstain from voting on a motion or resolution before the council unless he or she is required to abstain from voting because of a conflict of interest under section 207 or he or she has been permitted to abstain by a majority vote of the other councillors in attendance at the meeting.*

**Section 207 of the Municipalities Act, 1999 prior to Sept 1st, 2022 states:**

***Conflict of interest***

207(1) *A councillor shall not vote on or speak to a matter before the council or a committee of the council where:*

- (a) The councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;*
- (b) The councillor has a monetary interest directly or indirectly in the matter;*
- (c) A relative of the councillor has a monetary interest in the matter; or*
- (d) The councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.*

The submitted documentation from the Authority inclusive of the council minutes from November 16th, 2021 did not include information regarding the nature of the conflict of interest or if Councillor Patrina Murphy has been permitted to abstain by a majority vote of the other councillors in attendance at the meeting.

2. As required by the Town's Development Regulations (Regulation II-17 *State Conditions of Reasons For Refusing Permit*) a letter was subsequently sent to the Appellant stating the reasons for refusal of the development application and advising of the Right to Appeal the Council decision.

### **Appellant's Presentation**

The Appellant informed the Adjudicator that:

- The subject property had been owned by his family for nearly 200 years.
- He always viewed it as comprising several distinct parcels (#297, #299, #301) which in his mind meant that this was separate lots.
- The subject property (#299) had been used by his father as a "commercial scrap yard" until his father passed away in 2001. There had been no active use of the land and building at #299 since his father passed away in 2001.
- In his mind, the property had been previously zoned for Commercial Use and he feels that the Town has changed this without his permission or knowledge.
- He has spent a lot of time cleaning the property up (removing old vehicle wrecks).
- He feels that the proposal to install the engineered metal building will be an improvement for the community.
- He does not understand what the Town's Municipal Plan and Development Regulations would allow him to do with his property.

### **Authority's Presentation**

Mr. Dale advised that:

- Randy and Sharon Power (collectively "Power") are identified by the Municipal Assessment Agency as being the owners of a single parcel of real property within the Town bearing civic address 299-303 Main Road (the "Property"). The Town has no record of having ever received an application to subdivide the Property.
- The Property is within the Town's Mixed Development Zone. By development application dated October 20, 2021, Randy Power and Sharon Power applied to the

Town to construct an accessory building (the "Proposed Accessory Building") on the Property (the "Development Application").

- The Development Application includes a drawing showing the location of the Proposed Accessory Building in reference to the residence and also includes construction drawings as subsequently provided by Power showing the structural particulars of the Proposed Accessory Building. In reference to the Development Application:
  - (a) The Proposed Accessory Building would be 30' by 50', for a total square footage of 1,500 square feet;
  - (b) The Proposed Accessory Building would be 18' high;
  - (c) The Development Application notes that the Proposed Accessory Building is for a "new engineered metal building" and the construction drawings, prepared by Future Steel Buildings Intl., show the Proposed Accessory Building having a semicircular cross section and being made of pre-fabricated steel; and,
  - (d) The Development Application notes the Proposed Accessory Building would be "*used for personal storage.*"

Council has determined that the style of building that Power wishes to construct does not adhere to the Chapel Aram Development Regulations for the Mixed Development Zone and cannot be considered for approval.

- The Town's Development Regulations clearly define what an Accessory Building is and what a Quonset Hut is. The Regulations require an Accessory Building to be accessory/secondary to a Permitted Use on the same lot. If the Town was to accept the Appellant's position that #299 is a standalone property separate from #333, the Development Regulations would not authorize Council to issue a permit for an Accessory Building.
- A Quonset Hut is prohibited in the Mixed Development Zone and explicitly restricted to the Commercial Industrial Zone (subject to conditions. The Development Regulations would not authorize Council to issue a permit for a Quonset Hut on the subject property.

Ms. Smith advised, when questioned, that the nature of Councillor Patrina Murphy's stated Conflict of Interest was that she is a sibling of the Appellant (Randy Power). This was commonly known by all members of Council. It was not felt that it necessary to put this before Council to formally declare a Conflict of Interest and relieve the Councillor of her duty to vote on the matter before Council.

## ADJUDICATOR'S ANALYSIS

**Q:** What is the Zoning of the subject property?

**R:** The subject property is zoned Mixed Development (MD) under the Town of Chapel Arm Development Regulations.

**Q:** What is the nature of the proposed development?

**R:** An engineered metal building, which falls under the definition of Quonset Hut as set out in the Town of Chapel Arm Development Regulations.

*"QUONSET HUT: means a lightweight prefabricated structure of corrugated steel having a semicircular cross section."*

**Q:** Is development of a Quonset Hut allowable in the Mixed Development Zone?

**R:** Development of a Quonset Hut is not allowable in the Mixed Development Zone. Quonset Hut is only found under **Schedule C – Use Zones, Commercial Industrial Zone** of the Towns Development Regulations, as follows under Condition 3 - Accessory Buildings:

### **3. Accessory Buildings**

*The use of a Quonset Hut as an accessory building shall be restricted to the Commercial – Industrial (CI) use zone, subject to the following conditions: [.....]*

Furthermore, **Regulation 46 of the Town's Development Regulations (Uses Not Permitted)** states that:

*"Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes identified in the appropriate Use Zone Tables in Schedule C shall not be permitted in that Use Zone."*

Further to this, **Regulation II-(1) of the Town's Development Regulations (Compliance With Regulations)** states that"

*"No development shall be carried out within the Planning Area except in accordance with the Chapel Arm Municipal Plan, 2017 and these Regulations."*

In short, the Council would have no authority under the Chapel Arm Municipal Plan and Development Regulations to have approved the development permit application which is the subject of this appeal. The Council was compelled to reject the development permit application.

**Q:** Has the Appellant's Ground for Appeal, that #299 MainStreet, Chapel Arm is not part of #299-#303 Main Street, Chapel Arm been proven?

**R:** No, documentation has not been brought forward by the Appellant to support his assertion.

**Q:** If #299 Main Street, Chapel Arm was not part of #299-#303 Main Street, Chapel Arm, Could Council have considered his Application for a Development Permit for a Quonset Hut for approval?

**R:** No, the Mixed Development zoning of the subject property remains. The Development Regulations restrict a Quonset Hut to the Commercial Industrial Zone. Therefore, Council not have considered his Application for a Development Permit for a Quonset Hut for approval.

## 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 Chapel Arm was within its authority under the Town of Chapel Arm Municipal Plan and Development Regulations to make its decision on November 16, 2021 to refuse/reject the application by Randy Power and Sharon Power for a permit to construct an engineered metal building (Quonset Hut) for personal storage on the footprint of an existing building on property located at #299 Main Street, Chapel Arm.

## ADJUDICATOR'S ORDER

The Adjudicator orders that the decision of the Town of Chapel Arm of November 16, 2021 to refuse/reject the application by Randy Power and Sharon Power for a permit to construct an engineered metal building (Quonset Hut) for personal storage on the footprint of an existing building on property located at #299 Main Street, Chapel Arm 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 29<sup>th</sup> day of August, 2023.

A handwritten signature in blue ink that reads "Paul Boundridge". The signature is fluid and cursive, with "Paul" on the first line and "Boundridge" on the second line.

Paul Boundridge, MCIP

Adjudicator

Urban and Rural Planning Act, 2000