

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-045

Adjudicator: Clifford Johnston

Appellant(s): Trina Molloy

Respondent / Authority: Town of Conception Bay South

Date of Hearing: June 20, 2025

Start/End Time: 11am to 11:30am

In Attendance

Appellant: Trina Molloy (by telephone conference)

Respondent/Authority: Corrie Davis, Director of Planning and Development and Daniel Barrett, Development Control Coordinator

Interested Party: Member of the Local Media

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

Technical Advisor: Setare Vafaei, Planner, Municipal Affairs and Community Engagement (via videoconference)

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 it made a decision on December 17, 2024 to refuse an application from the Appellant, Trina Molloy, for a business licence to serve alcohol at an existing spa operation located at Civic No. 11-13 Stanleys Road,

Conception Bay South.

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 this 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.

At the appeal hearing, the Adjudicator heard the following verbal summary points from the Planner from the information included in the Technical Report prepared by the Planner prior to the appeal hearing. This Technical Report was distributed by the Appeal Officer to the Adjudicator, the Appellant and the Authority prior to the appeal hearing.

*The property which is the subject of the appeal is zoned as Residential Medium Density (R2) under the Town's Development Regulations.

*The Appellant argues that a “spa” is not defined as a distinct land use classification in the Town’s Development Regulations. As well, the Development Regulations do not accurately reflect the scope/nature of services offered in some spa operations in present times.

*It appears the current spa operation is a legal non-conforming use given the Residential zoning designation of the subject property.

*Section 10.9 of the Town’s Development Regulations (“Classifications of Land Uses and Buildings”) allows the Authority to interpret the classifications of land uses and determine whether the use is permitted, discretionary or prohibited in the applicable land use zone.

*The Authority classified the proposed serving of alcohol at the spa business as a “Catering Use” which according to the Town’s Development Regulations, falls under the “General Assembly” use class. The Authority has determined that neither a “Catering Use” nor a “General Assembly” are listed as either Permitted Uses or Discretionary Uses in the R2 Zone designation of the subject property and thereby, the proposed serving of alcohol at the spa operations is prohibited at the spa under the current R2 Zone designation of the subject property.

The Appellant’s Presentation and Grounds

*The Appellant noted that she only wishes to serve wine to customers of her spa operation which is something that many spa operations now offer. She is also of the opinion that the terminology of the Town’s Development Regulations is outdated and overly broad and does not accurately reflect the scope and nature of services provided in modern spa operations.

Authority’s Presentation

Mr. Davis spoke on behalf of the Town. The following is a summary of his verbal comments to the Adjudicator.

*The Town is supportive of the Appellant’s application to serve alcohol at

the spa operation but was not able to approve the application under the Town's current regulatory regime as it applies to the current Residential Medium (R2) Zone designation of the subject property. The Town is considering other planning/regulatory measures to allow the spa operation to serve alcohol.

*The spa operation is a legal nonconforming use as defined under the Town's Development Regulations.

*There is no reference in the Town's Development Regulations to allowing ancillary uses to a non-conforming use such as the serving of alcohol in the spa operation.

*Under Section 10.9 of the Town's Development Regulations ("Classification of Land Uses and Buildings"), the Town has the discretionary authority to interpret a proposed use and determine whether it is permitted, discretionary or prohibited in the applicable use zone.

*The Town has determined the proposed serving of alcohol at the spa operation to be a "Catering" use which is prohibited in the Residential Medium (R2) Zone designation of the subject property.

*Under the provisions of Section 44(2) of the Urban and Rural Planning Act, 2000, an Adjudicator shall not overrule a discretionary decision of a municipal council. The authority of the Town under Section 10.9 of the Town's Development Regulations to interpret the classification of a proposed use is a discretionary decision under the authority of the Town and should not be interfered with by an Adjudicator.

Adjudicator's Analysis

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

Question/Answer.

Q. Is the proposed serving of liquor at the spa operation at the subject property considered “Development” under the Urban and Rural Planning, 2000?

R. Yes. Section 2(g) of the Urban and Rural Planning Act, 2000 provides a definition of “Development”. The definition is very comprehensive and includes the making of a material change in the use, or the intensity of use of land, buildings or premises. In the Adjudicator’s determination, the serving of alcohol at the spa operation is “Development” as defined under the Act.

Q. Does the proposed serving of alcohol at the spa operation require a permit from the Town of Conception Bay South?

R. Yes. Section 4.1 of the Town’s Development Regulations (“Development Approval Required”) stipulates that no person shall carry out any development within the Planning Area of the Town except as otherwise provided in the Regulations unless Development Approval for the development has been issued by the Authority.

Q. Does the Town of Conception Bay South have the authority to determine if the serving of alcohol at the spa operation which is presently located in a Residential Medium Density (R2) Zone is allowed in the R2 Zone?

R. Yes. Section 10.9 of the Town’s Development Regulations (“10.9 Classification of Land Uses and Buildings”) provides that the Town can interpret a proposed use and determine whether it is permitted, discretionary or prohibited in the applicable use zone.

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 has the authority under the Section 4.1 of the Town's Development Regulations to require the Appellant to have a permit from the Town to serve alcohol at the existing spa operation at the subject property. Further, the Adjudicator has determined that the Town has the discretionary authority under the provisions of Section 10.9 of the Town's Development Regulations ("Classification of Land Uses and Buildings") to determine if the serving of alcohol at the spa is allowed under the current R2 Zone designation of the subject property. The Town has used its discretionary authority to determine that the serving of alcohol is not allowed under the current zoning of the property and that serving alcohol is not an ancillary use to the current non-conforming use of the property as a spa operation.

The Adjudicator recognizes that he does not have the authority to overturn a discretionary decision of a municipal council. Having said that, I have reviewed the applicable definitions and sections of the Town's Development Regulations and concur with the Town that the serving of alcohol at the spa is not allowed under the current R2 Zone designation of the subject property.

ORDER

The Adjudicator orders that the decision of the Town of Conception Bay South made on December 17, 2024 to reject an application from Trina Molloy to serve alcohol at an existing spa operation located at Civic No. 11-13 Stanley Road, be **confirmed**. **The appeal is thereby denied.**

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 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 26th day of June 2025.

A handwritten signature in black ink, appearing to read "Clifford Johnston", is written over a horizontal line.

Clifford Johnston, Adjudicator

Urban and Rural Planning Act, 2000