



Prince Edward Island

Justice and
Public Safety

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Île-du-Prince-Édouard

Justice et
Sécurité publique

Services légaux
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Charlottetown PE
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November 28, 2025

VIA EMAIL – mwalshdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket #25022
Johnnie Barlow v. Minister of Housing, Land and Communities
Our File: LS27953

INTRODUCTION

1. We represent the Minister of Housing, Land and Communities (the “**Minister**”) in relation to the above noted appeal filed by Johnnie Barlow (the “**Appellant**”) on November 5, 2025 (the “**Appeal**”).
2. The Appeal arises from the Minister denying (the “**Denial**”) the Appellant’s development permit application, dated January 25, 2024 (the “**Application**”), in relation to PID# 694356, located at 115 Rainbow Drive, Tarantum, PE.

PRELIMINARY ISSUE

3. On November 5, 2025, the Commission requested written submissions with respect to a preliminary issue; namely, whether the Appeal was filed within the statutory timeline provided for in subsection 28(1.3) of the *Planning Act*, RSPEI 1988, c P-8 (the “**Act**”).¹
4. In his submissions with respect to this preliminary issue, the Appellant argues that:

“1. The letter is dated September 24, 2025. It was postmarked on Sept 25th.”

¹ *Planning Act*, RSPEI 1988, c P-8, <https://canlii.ca/t/5652r>, at subsection 28(1.3)

2. *The card from Canada Post had 10/15 written on it. I don't know if that's when they got it or sent out a card.*
3. *I don't check my mail very often as it's a 5 minute drive from my house.*
4. *I have a brain tumour that affects my Executive function. It makes tasks very difficult to complete.*
5. *I didn't fill out the proper form.*
6. *I had to go to the office to fill it out. The person I needed to see wasn't available to help me until the next day.*
7. *We were experiencing a postal strike.*

I would like to suggest that the date starts, when a person picks up a registered letter. Any time before that, is out of my control.

Also, not sure if it makes a difference, but my last name isn't Baker.”²

5. While the Minister is sympathetic to the Appellant's situation, it is the Minister's position that the Commission does not have the statutory jurisdiction to hear the Appeal as the Appellant failed to file his Notice of Appeal within the 21-day timeline set out in subsection 28(1.3) of the Act. The Appeal should therefore be dismissed accordingly.

SUBMISSIONS

Subsections 23.1(1) and (2) and Subsection 28(1.3) of the Act

6. Subsections 23.1(1) and (2) of the Act state:

23.1 Notice of decision of Minister or council

(1) Where

(a) the Minister makes a decision of a type described in subsection 28(1); or

(b) the council of a municipality makes a decision of a type described in subsection 28(1.1)

the Minister or council, as the case may be, shall, within seven days of the date the decision is made, cause a written notice of the decision to be posted

(c) on an Internet website accessible to the public; and

(d) at a location accessible to the public during business hours,

² Appellant's Submissions, <https://irac.pe.ca/wp-content/uploads/2025-11-06-submission-of-appellant-re-jurisdiction-issue-LA25022.pdf>

- (i) if the decision is made by the Minister, in
 - (A) a provincial government office in Charlottetown, and
 - (B) a provincial government office in the county where the land that is the subject of the decision is located, or
- (ii) if the decision is made by the council of a municipality, in that municipality.

Contents of notice

- (2) A notice of a decision that is required to be posted under subsection (1) shall contain
 - (a) a description of the land that is the subject of the decision;
 - (b) a description of the nature of the application in respect of which the decision is made;
 - (c) the date of the decision;
 - (d) the date on which the right to appeal the decision under section 28 expires; and
 - (e) the phone number of a person or an office at which the public may obtain more information about the decision.^{3***}

[*****Note:** Section 23.1 of the Act contains three subsections: (1), (2) and (3).⁴ However, on both the provincial government's website and on CanLii (hyperlinked in footnote 1), the subsections are listed as (2), (3) and (3), which appears to be a consolidation error. References to section 23.1's subsections in these submissions will be to the correct subsections, being (1), (2) and (3).]

7. Subsection 28(1.3) of the Act states:

Notice of appeal and time for filing

- (1.3) A notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed.⁵

8. The Commission does not have jurisdiction to hear an appeal that is filed outside the 21-day appeal period provided for in subsection 28(1.3) of the Act.⁶ The Commission also has no authority to extend this timeline.⁷

³ *Planning Act*, supra note 1, at section 23.1

⁴ *An Act to Amend the Planning Act*, SPEI 2006(2), c 15, <https://canlii.ca/t/55wcf>, at section 1
An Act to Amend the Planning Act, SPEI 2021, c 14, <https://canlii.ca/t/55x2q>, at section 7

⁵ *Ibid*, at subsection 28(1.3)

⁶ *Nicholson (Re)*, 2017 CanLII 153315 (PE IRAC), <https://canlii.ca/t/jswkk>, at para. 12

⁷ *Goops Wooldridge, Laurena Wooldridge, Robin Boutillier and Brian Chandler*, 2022 PEIRAC 1 (CanLII), <https://canlii.ca/t/jswkz>, at para. 27

Montgomery Cavendish Cottages Inc. v. Resort Municipality, 2025 PEIRAC 53
(“Montgomery”)

9. In *Montgomery*, the Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the “**Municipality**”) denied two subdivision applications on December 17, 2024. The appellant in *Montgomery* then filed Notices of Appeal with the Commission in relation to those denials on January 10, 2025.⁸
10. The appellant in *Montgomery* argued that the Municipality failed to give him proper notice that his applications were denied, as despite applying in his personal name and providing his personal contact information on his applications, the Municipality issued its decisions to the appellant’s business, Montgomery Cavendish Cottages Inc., and to an email address no longer used by the appellant.⁹
11. In response, the Municipality argued that the Act’s appeal period began to run not when the appellant received actual notice of the denials, but on December 17, 2024, when the Municipality posted notice of the denials in compliance with subsection 23.1 of the Act: (a) on the PEI Planning Decisions website, and (b) in the Municipality’s office.¹⁰
12. The Commission agreed with the Municipality and dismissed the appeal, holding that the appeal period under subsection 28(1.3) of the Act begins to run when notice of a decision has been posted in accordance with section 23.1 of the Act:

*24. Therefore, the Commission finds that the present appeal was filed outside the statutory appeal period. **We are satisfied that the Municipality posted public notice of the decisions in accordance with section 23.1 of the Planning Act on December 17, 2024. This constituted public notice of the decision and the 21-day appeal period, therefore, began to run from December 17, 2024.** The Notice of Appeal was not filed until January 10, 2025, three days after the expiry of the appeal period. In this case, we note that the date of the decision and the date of posting were the same;*

⁸ *Montgomery Cavendish Cottages Inc. v. Resort Municipality*, 2025 PEIRAC 53 (CanLII), <https://canlii.ca/t/kgb72>, at para. 1

⁹ *Ibid*, at para. 14

¹⁰ *Ibid*, at para. 17

*therefore, we do not need to determine whether a delay in complying with section 23.1 impacted the appeal period.*¹¹ [emphasis added]

Richard (Re), 2020 CanLII 125992 (PE IRAC) (“Richard”)

13. In *Richard*, the City of Charlottetown (the “**City**”) approved two applications made by a developer: one relating to the consolidation of four lots (the “**Consolidation Application**”), and another relating to a variance (the “**Variance Application**”).¹² The City posted notice of the Variance Application’s approval on its website and also made information relating to the Variance Application’s approval available to the public during business hours in its Planning and Heritage Department office. The City argued that this practice satisfies the requirements of section 23.1 of the Act.¹³
14. Although the Commission held that the City failed in its obligation to post public notice of its approval of the Consolidation Application, the Commission appears to have accepted that the City met its obligations under section 23.1 of the Act with respect to the Variance Application.¹⁴

Application to the Appeal

15. In this case, the Minister sent a letter (the “**Letter**”) to the Appellant respecting the Denial by registered mail that, unfortunately, was not delivered until October 23, 2025. Attached to these submissions is a copy of the Letter (see Appendix A) and a copy of the Registered Mail confirmation (see Appendix B).
16. However, the Minister posted notice of the Denial on the PEI Planning Decisions website on September 25, 2025,¹⁵ and information relating to provincial planning decisions is made available to the public on request during business hours in the provincial planning office located at 31 Gordon Drive in Charlottetown. The Letter was made available to the public through this service beginning on September 24, 2025. Both the Letter and the notice posted to the PEI Planning Decisions website

¹¹ *Ibid*, at para. 24

¹² *Richard (Re)*, 2020 CanLII 125992 (PE IRAC), <https://canlii.ca/t/jswkx>, at para. 1

¹³ *Ibid*, at para. 28

¹⁴ *Ibid*, at para. 23

¹⁵ <https://www.princeedwardisland.ca/en/feature/pei-planning-decisions/#/service/PlanningDecisionsOnline/PlanningDecisionsOnlineView?id=291957>

contained all of the necessary information for the purposes of subsection 23.1(2) of the Act.

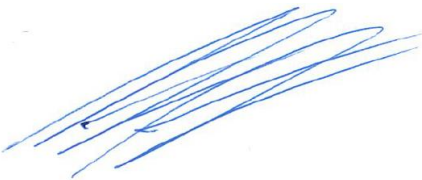
17. Accordingly, it is the Minister's position that the requirements of section 23.1 of the Act were satisfied on September 25, 2025, and the appeal period under subsection 28(1.3) of the Act began to run on that date. The appeal period then lapsed 21 days later, on October 16, 2025. When the Appellant filed his Notice of Appeal on November 5, 2025, he did so well outside the statutory limitation period.

CONCLUSION

18. For these reasons, the Commission does not have jurisdiction to hear the Appeal, and the Appeal should be dismissed accordingly.
19. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact the undersigned.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Stephen Flanagan
Lawyer for the Minister of
Housing, Land and Communities



31 Gordon Drive
PO Box 2000, Charlottetown
Prince Edward Island
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Housing, Land
and Communities

Logement, Terres
et Communautés



31, promenade Gordon
C.P. 2000, Charlottetown
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Canada C1A 7N8

September 24, 2025

Johnnie Barker
115 Rainbow Drive
Tarantum, PE C1B 3C5

Dear Applicant:

Re: Development application – PID #694356, Rainbow Drive, Tarantum

The Department of Housing, Land and Communities has completed the evaluation of your development permit application that you submitted January 25, 2024, requesting permission to locate a 20'x24' Residential accessory structure on property #694356 located at Rainbow Drive in Tarantum.

A. Decision

The Subject Property is within a geographic area where land use and development is not regulated by a local official plan or zoning by-law. Therefore, the Subject Property falls within the jurisdiction of this Department. Land use and development are regulated by the *Planning Act* Subdivision and Development Regulations and other provincial laws and regulations.

Pursuant to sections 3(2)(a) and 38(1)(a) of the *Planning Act* Subdivision and Development Regulations, the above noted application is Denied. The reasons for this decision are explained in detail below.

B. Reasons

***Planning Act* Subdivision and Development Regulations**

3.(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would:

(a) not conform to these regulations or any other regulations made pursuant to the Act.

38. (1) No person shall locate a building or development closer than 15 feet (4.6 metres) to a side or rear lot line except as follows:

(a) an accessory building, if located in a rear yard, may be located no closer than 3 feet (0.9 metre) to a side or rear lot line;

As stated in section 38. (1)(a) of the ***Planning Act Subdivision and Development Regulations***, a building must be located no closer than 15 feet to a side or rear yard. An accessory building may be located no closer than 3 feet to a side or rear yard, only if the building is located in a rear yard. The application is to locate the accessory building in the front yard, meaning the setback to the side yard must be no closer than 15 feet. Only a 3 foot setback is proposed to the side yard.

C. Right of Appeal

Notice of this decision will be posted on the PEI Planning Decisions website. We suggest typing "PEI Planning Decisions" into your internet search engine to link to the website.

Please be advised that pursuant to section 28 of the *Planning Act*, this decision may be appealed to the Island Regulatory & Appeals Commission ("IRAC") (PO Box 577, Charlottetown, PE, C1A 7L1: <http://www.irac.pe.ca>). An appeal must be filed within 21 days after the date of this letter or the Commission is under no obligation to hear the appeal. For more information about appeals, please contact IRAC.

If you have any questions in regards to this decision, contact me at (902) 569-0573 or smacvarish@gov.pe.ca.

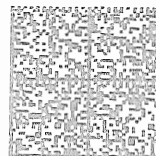
Sincerely,



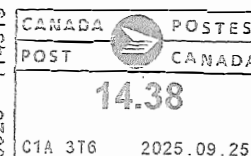
Sarah MacVarish
Senior Development Officer



HOUSING, LAND
AND COMMUNITIES
31 GORDON DRIVE
PO BOX 2000
CHARLOTTETOWN PE C1A 7N8
CANADA



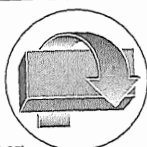
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FLIP
OVER



VOIR AU
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40-076-685 (07-05)

Johnnie Barker
115 Rainbow Drive
Tarantum PE C1B 3C5

10/15 J. Barker 236



REGISTERED RECOMMANDÉ



RN 807 558 745 CA



RN 807 558 745 CA



SIGNATURE



TRACKING NUMBER RN 807 558 745 CA N° DE REPÉRAGE

33-086-584 (17-12) Sender warrants that this item does not contain non-mailable matter.
L'expéditeur garantit que cet envoi ne contient pas d'objet inadmissible.



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KINLOCK PD
MURPHY'S KINLOCK PHARMACY
1-14 KINLOCK ROAD
STRATFORD PE
C1B 1R0

10/15



FSC® C002262



Appendix B

Tracking number:

RN807558745CA

Delivered

Sender: Unavailable

Delivery standard: Oct. 15

Latest updates

| Date | Time | Location | Progress | Post office |
|---------|----------|------------------|---|-------------|
| Oct. 23 | 2:08 pm | | Signature available | |
| Oct. 23 | 2:08 pm | STRATFORD,PE | Delivered | |
| Oct. 22 | 8:46 am | STRATFORD,PE | Final Notice; Item will be returned to sender if not collected within 10 days | KINLOCK PD |
| Oct. 15 | 2:42 pm | STRATFORD,PE | Item available for pickup at Post Office | KINLOCK PD |
| Oct. 15 | 1:56 pm | CHARLOTTETOWN,PE | Notice card left indicating where and when to pick up item | |
| Oct. 15 | 10:21 am | CHARLOTTETOWN,PE | Item out for delivery | |
| Oct. 14 | 7:35 pm | CHARLOTTETOWN,PE | Item processed | |
| Oct. 14 | 4:17 pm | CHARLOTTETOWN,PE | Item processed | |

Features and options

Signature Required