

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Ed and Deborah Simmons on behalf of Concerned Citizens **Appellant**

AND Town of Trinity **Respondent**

RESPECTING Approval

BOARD MEMBERS Vicki Connolly – Chair
Michelle Downey – Member
Bruce Strong – Member

DATE OF HEARING May 15, 2015

IN ATTENDANCE

Mary Bishop – Town Representative
Mary Clarke – Appellant
Geoff Dawe – Appellant
Gerald O’Brien – Lawyer for Developer
Gerald Hiscock – Developer
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Trinity issuing a conditional approval to Mr. Gerald Hiscock on April 6, 2015 to construct a shed at 16 Water Street. The Town's Heritage Committee reviewed Mr. Hiscock's application and recommended approval to Council. At the December 1, 2014 Regular Meeting of Council, the Town of Trinity approved in principle Mr. Hiscock's application. The Town advertised the subject application for thirty (30) days and received nine (9) objections. On April 6, 2015, at a Regular Meeting of Council, the Town approved Mr. Hiscock's application subject to conditions. The Town notified Mr. Hiscock of Council's decision in a letter dated April 10, 2015.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, Ed and Deborah Simmons, on behalf of a group of concerned citizens, filed an appeal with the Eastern Newfoundland Regional Appeal Board on April 13, 2015. Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Packet* on April 27, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on April 29, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Trinity Municipal Plan and Development Regulations, 2012

Matters presented to and considered by the Board

How did the Town classify Mr. Hiscock's proposed accessory building?

The Board reviewed section 9.7, Heritage Area Use Zone, of the Town's Development Regulations which states that residential shed are permitted and domestic garages are prohibited. The Town's representative indicated that a domestic garage is intended to house a vehicle which was not the proposed use of Mr. Hiscock's application. The Board learned at the hearing that Council deemed Mr. Hiscock's proposed accessory building as a residential shed since the purpose of the structure was to store residential items.

Did the Town have the authority to issue a conditional approval to Mr. Hiscock?

The Board accepts that the Town has the authority to attach conditions to a development approval in accordance with section 3.10.2, which states:

The Council may attach to an approval or permit such conditions, as it deems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations.

The Town conceded that the proposed development currently does not meet the Town's standards pertaining to accessory buildings within the Heritage Area. The Town's representative indicated that Council considered this when it attached conditions to the development approval.

Were the conditions attached to the permit in accordance with the Town's Municipal Plan and Development Regulations?

The Town of Trinity attached six (6) conditions to Mr. Hiscock's development approval. The Board reviewed each condition and determined:

- Condition 1 was included to ensure the applicant complied with the accessory building standards outlined in section 9.7.14 of the Town's Development Regulations.
- Condition 2 and 3 were included to ensure compliance with section 9.7.15 which outlines the design standards that must be followed within the Heritage Area.
- Condition 4 was included to ensure compliance with section 4.20 of the Town's Development Regulations, which requires all development located within 15 metres of the high water mark be approved by the Department of Environment and Conservation.
- Condition 5 was included to ensure the proposed use of the accessory building is residential in nature versus commercial.
- Condition 6 highlights that additional approval is required prior to construction commencing.

The Board concluded that the Town had the authority to attach conditions to Mr. Hiscock's application and attached conditions that were in accordance with the Town's Development Regulations.

Did the Town follow proper procedure when it considered Mr. Hiscock's application?

The Board reviewed section 3.12.1(c) of the Town's Development Regulations, which requires all new development proposed in the Heritage Area be advertised for thirty (30) days prior to Council considering the application. The Board confirmed that Council did advertise Mr. Hiscock's application and in turn received numerous submissions opposing the development. The Town indicated at the hearing that Council considered the submissions received when Council made its decision.

The Board accepts that the Town notified Mr. Hiscock of its decision in writing as required under section 3.2 and stated the applicant's right and process to appeal Council's decision also in accordance with section 3.2. For reference, section 3.2 states:

Decisions made by the Council with respect to an application required by these Regulations shall be made in writing to the applicant, and state the reasons for a refusal of, or conditions attached to an approval. The Council shall also advise the applicant of their right to appeal, in accordance with Section 42 of the Act and the requirements of Section 3.20, of these Regulations.

Therefore, the Board determined that the Town of Trinity followed proper procedure when it considered Mr. Hiscock's application as prescribed by the Town's Development Regulations.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

The Board is bound by section 42 of the *Urban and Rural Planning Act, 2000* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

Based on its findings, the Board determined that the Town of Trinity had the authority to conditionally approve Mr. Hiscock's application and did so in accordance with the Town's Development Regulations. Therefore, the Board confirms the Town's decision to conditionally approve Gerald Hiscock's application for an accessory building.

Order

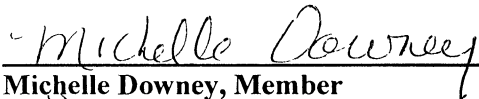
Based on the information presented, the Board orders that the decision made by the Town of Trinity on April 6, 2015 to conditionally approve Mr. Gerald Hiscock's application to construct a shed at 16 Water Street, be confirmed.

The Town of Trinity and the appellants are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

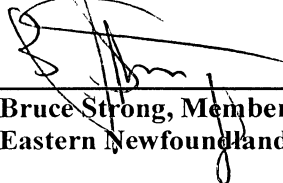
DATED at St. John's, Newfoundland and Labrador, this 15th day of May, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board