

LABRADOR REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Glen and Peggy Newman **Appellants**

AND Town of Happy Valley – Goose Bay **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinchard – Member
Bill Madore – Member

DATE OF HEARING November 15, 2016

IN ATTENDANCE

Glen and Peggy Newman – Appellants (Teleconference)
Randy Dillon – Authority (Teleconference)
Lindsay Church - Technical Advisor to the Labrador Regional Appeal Board
Robert Cotter - Secretary to the Labrador Regional Appeal Board

DECISION

Background/Facts

This appeal arises from the Town of Happy Valley – Goose Bay refusing to issue a permit to Mr. Glen Newman. On July 21, 2016, Mr. Newman applied to the Town of Happy Valley – Goose Bay for a permit to renovate an existing apartment building located at 24 Tenth Street. The Town refused Mr. Newman’s application on August 4, 2016 since “the area is zoned for Residential Mobile Homes (RMH) and apartments are not permitted in that zone”. The Town notified Mr. Newman of its decision in the form of a letter dated August 4, 2016 which included the right and process to appeal the Town’s decision.

On August 18, 2016, Mr. Michael Crosbie, solicitor for Glen and Peggy Newman, filed an appeal against the Town’s August 4, 2016 refusal. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”), the appeal was filed within the fourteen (14) day requirement. Additionally, the appeal included the required information as per section 42(5) of the *Act*.

In accordance with the *Act*, a public notice of the appeal was published in *The Labradorian* on August 29, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 26, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister’s Development Regulations, NLR 3/01

Town of Happy Valley – Goose Bay Municipal Plan and Development Regulations, 2008

Matters presented to and considered by the Board

How is the property zoned?

The Board understands that 24 Tenth Street is located in a Residential Mobile Home (RMH) zone and apartment buildings are prohibited in the RMH zone, according to the Town of Happy Valley – Goose Bay Development Regulations.

Does the apartment building still exist?

No. The Board learned from the appellants that the building was removed in August, 2016. As such, the Board found that the appeal regarding the refusal of a renovation permit is moot. However, due to the fact the appellants are seeking a permit to rebuild the apartment building, the Board concluded that it must consider whether the non-conforming use legislation applies.

Is the apartment building a non-conforming use?

The Board accepts that a non-conforming use may continue to exist pursuant to section 108 of the *Act*. The Board reviewed section 108(3)(g) in particular, which states:

- (3) A building, structure or development that does not conform to a scheme, plan or regulations made under this Act that is allowed to continue under subsection (1)*
- (g) where the building or structure is primarily zoned and used for residential purposes, may, in accordance with the appropriate plan and regulations, be repaired or rebuilt where 50% or more of the value of that building or structure is destroyed.*

The Board reviewed the Town's Municipal Plan and Development Regulations and found that section 60 pertains to non-conforming uses. Section 60(4)(g) of the Town's Development Regulations reiterates what is stated in section 108(3)(g) of the *Act*.

The Board understands that since the subject structure was used for residential purposes and was located in a residential zone, section 108(3)(g) could apply in this case. Section 108(3)(g) allows for a non-conforming building be rebuilt where 50% or more of the value of the building was destroyed.

The appellants indicated that the apartment building existed for at least thirty (30) years. The appellants argued that since there are two (2) power poles located on the subject property for the purpose of providing electricity to the apartment building, there must have been permits issued at some point. The appellants emailed a picture to the Secretary of the Regional Appeal Boards, which illustrated the placement of the power poles on the subject property. The Town did not provide any insight into this matter.

The Board learned that the subject property was in receivership when the appellants purchased the property in February, 2016. The appellants indicated that they paid the outstanding taxes and continued to pay property tax for four (4) units to the Town. Therefore, the appellants assumed that they could continue to use the building as an apartment building.

The Town indicated at the hearing that it does not have any record of any prior permits for the subject property or any record of the subject building being a non-conforming use.

Due to the fact there not being enough information before the Board to determine whether the apartment building is a non-conforming use as defined under section 108 of the *Act*, the Board will vacate the Town's decision and remit the matter back to the Town for consideration.

Did the Town have the authority to refuse Mr. Newman's application?

No. The Board concluded that the Town did not properly come to its decision to refuse Mr. Newman's application due to the fact it did not consider whether the apartment building was an existing legal non-conforming use prior to refusing the application.

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, 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 concluded that the Town did not properly come to its decision to refuse Mr. Newman's application since the Town did not consider whether the apartment building was an existing legal non-conforming use prior to refusing the application. That is to say, the Board will vacate the Town's decision and refer the matter back to the Town to reconsider with respect to section 108 of the *Urban and Rural Planning Act, 2000*.

ORDER

Based on the information presented, the Board orders that the decision made by the Town of Happy Valley – Goose Bay on August 4, 2016 to refuse Mr. Glen Newman’s application to renovate an apartment building located at 24 Tenth Street, be vacated.

The Town of Happy Valley – Goose Bay and the appellants are bound by this decision of the Labrador Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Labrador Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division 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 Board’s decision has been received by the Appellants.

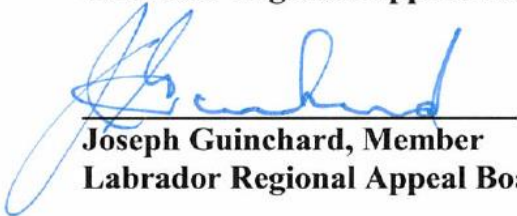
DATED at Deer Lake, Newfoundland and Labrador, this 15th day of November, 2016.



Gary Parsons, Acting Chair
Labrador Regional Appeal Board



Bill Madore, Member
Labrador Regional Appeal Board



Joseph Guinchard, Member
Labrador Regional Appeal Board