

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

## Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-005
Appellant(s)	Glen and Irene Murphy
Respondent / Authority	Town of Placentia
Date of Hearing	April 21, 2022

**Board Members**

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Carol Ann Smith

**Also in Attendance**

Appellant(s)	Glen & Irene Murphy
Representatives for the Appellant(s)	Michael Crosbie, Solicitor
Representatives for the Authority	Giles Ayres, Solicitor Jonathan Galgay, CAO Town of Placentia
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP
Interested Parties	Adrian Canning , Developer

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

### Board's Role

The role of the Eastern Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Placentia (the Authority) to issue a Stop Work Order to Adrian Canning for the property at 104 Orcan Drive, Placentia, is in accordance with the Urban and Rural Planning Act, 2000.

## **LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD**

- Municipalities Act, 1999
- Urban and Rural Planning Act, 2000
- Town of Placentia Municipal Plan, 2014-2024
- Town of Placentia Development Regulations, 2014-2024

### **Background:**

On May 27, 2019, the Authority (Town of Placentia) issued a letter as notification of Council's decision to issue a Development Permit for a residential building extension at 104 Orcan Drive, Placentia.

The Appellants (Glenn and Irene Murphy) are an interested third-party (owners of adjacent property) to the issuance of a Stop Work Order by the Authority related to the development of a residential dwelling at 104 Orcan Drive, Placentia.

On April 30, 2021, the Appellants filed an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board.

### **Presentations During Hearing**

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

#### **Technical Advisor:**

The Town of Placentia Development Regulations, 2014-2024 came into effect on November 6, 2015.

The subject property is located in the Heritage Conservation (HC) Use Zone, as established in the Zoning Map. The Development Regulations provide for a range of residential dwellings in the HC Use Zone as both Permitted Uses (eg. Apartment Buildings, Single Dwellings) and Discretionary Uses (eg. Commercial Residential).

The Authority's appeal package outlines that the Town received a permit application on March 22, 2019 for a residential extension at 104 Orcan Drive. The appeal package materials and the Council meeting minutes of April 30, 2019 establish that Council considered the permit application and Development Regulation standards, and passed the following motion:



## MOTION #19-101

Deputy Mayor Pearson/Councillor Fitzpatrick

Be it resolved that the motion to approve the residential extension application from Adrian Canning located at #104 Orcan Drive, Placentia is adopted.

(CARRIED: Mayor Power, Deputy Mayor Pearson, Councillors Collins, Collins-Power, and Smith voted in favour of the motion.)

The Authority's appeal package further establishes that the Town's staff conducted a Site Inspection on April 13, 2021 "in relation to a recently issued development permit". Importantly, however, the Town has not evidenced that Council resolved to issue an Order and has not forwarded a copy of any Stop Work Order issued on April 19, 2021 as alleged by the Appellant.

The Authority's appeal package materials do, incidentally, evidence that the Town's Chief Administrative Officer issued a second Stop Work Order on May 3, 2021, as notice to the property owner at 104 Orcan Drive that development activities "shall not proceed or be carried out, pending a decision of the board."

The Appellant alleges that the Authority issued a Stop Work Order on April 19, 2021 that specifically exempted activities associated with Development Permit #16-2019 from the requirements of the Order.

The Appellant contends (see: Grounds of Appeal) that it is pertinent to the Board's consideration of the appeal matter that the Stop Work Order by the Town:

- does not define the scope of development subject to the Order
- does not address 'use class' or 'development standards'
- appears to allow the property owner to distinguish applicability

The Appellant is appealing the Town's decision to issue a Stop Work Order because, in their opinion, the order does not directly address the known concerns of adjacent neighbours and the order should involve revocation of all or part of the original permit.

The Appellant contends that the following Development Regulations for the Heritage Conservation HC zone (Schedule C) are relevant development standards to this appeal matter:

### ZONE TITLE HERITAGE CONSERVATION (HC)

#### PERMITTED USE CLASSES - (see Regulation 108)

Apartment Building, Bed and Breakfast, Boarding House, Conservation, Double Dwelling, General Service (Home Business), Light Industry (Home Business), Marina, Personal Service (Home Business), Medical and Professional (Home Business), Office (Home Business), Public Utility, Recreational Open Space, Row Dwelling, Single Dwelling and Antenna.

## 2. Development Standards

(1) The development standards for residential uses in this zone shall be as follows:

- (a) Minimum Building Line Setback 3.0 metres
- (b) Minimum Side yards Width 1.5 metres
- (c) Minimum Rear yard Depth 4.0 metres

The Appellant further contends that the Authority did not adequately avail of its development control authority, as established in Section 16(6) of the Development Regulations, which provides for a Council to issue an Order and/or revoke a permit for a property development, where:

- issued in error
- issued on the basis of incorrect information, or
- involving development that may violate any other regulations or statutes

The Urban and Rural Planning Act, 2000 provides the authority for Council to issue a stop work order where land use development is contrary to municipal regulations:

Order:

102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.

As noted above, the Town of Placentia Development Regulations, 2014-2024 reiterate the authority for the Council to issue a Stop Work Order and pursue enforcement, particularly where permits may have been issued on the basis of incorrect information or where there may be a violation of any other regulations or statutes:

### 16. Development Permit

5) The approval of any application and plans or drawings or the issue of a permit shall not prevent the Authority from thereafter requiring the correction of errors, or from ordering the cessation, removal of, or remedial work on any development being carried out in the event that the same is in violation of this or any other regulations or statute.

6) The Authority may revoke a permit for failure by the holder of it to comply with these Regulations or any condition attached to the permit or where the permit was issued in error or was issued on the basis of incorrect information.



### 30. Stop Work Order and Prosecution

1) Where a person begins a development contrary or apparently contrary to these Regulations, the Authority may order that person to stop the development or work connected therewith pending final adjudication in any prosecution arising out of the development.

2) A person who does not comply with an order made under Regulation 30(1) is guilty of an offence under the provisions of the Act.

The Authority's appeal submission package indicates that development review, control and enforcement proceedings related to the property at 104 Orcan Drive and Development Permit #16-2019 involved the following:

- Council consent to the issuance of a Development Permit
- Town initiated on-site inspection and discussion with property owner
- Issuance of a Stop Work Order related to the registration of an Appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board
- Notice of the right of appeal and the associated application process for the Eastern Newfoundland Regional Appeal Board

The Board must contemplate whether Council, in carrying out the decision to issue a Stop Work Order at 104 Orcan Drive, did so in accordance with the provisions of the legislative, policy, and regulatory framework.

### **The Appellant:**

#### Michael Crosbie

- The Town of Placentia did not adequately/correctly process the Application before issuing a development permit. Such issues as the existence of a flood plain, rear yard requirements and footprint of the building extension were not adequately considered by the Town.
- Section 42 of the Urban and Rural Planning Act, 2000 and Section 16(5) and (6) of the Town's Development Regulations authorizes the Appeal Board to correct errors that were made by the Town in the issuing of the development permit.
- Acknowledged the Appeal filed by the Murphy's was regarding the Stop Work Order issued by the Town to Mr. Canning, but that the Board cannot consider the merits of the Appeal without also considering the deficiencies in the Town's original decision to grant the development permit to Mr. Canning.

Glen Murphy

- He reiterated that the original permit was issued contrary to Provincial Policy regarding the flood plain and not in accordance with the Town's Planning Regulations applicable to the subject property.
- The Town has been selective in choosing which violations were included in the Stop Work Order.

**The Authority:**Giles Ayres

- The Stop Work Order issued by the Town enables the developer to continue with work that is permitted under his permit.
- It is not the role of the Appeal Board to question the discretionary authority of the Town to issue a Stop Work Order to the developer.
- The relief that the Appellants are seeking regarding the development is not within the Board's purview to grant.

**Interested Parties:**

- Adrian Canning (owner of subject property/developer), advised the Board that there was previously a workshop building on that portion of the property where the extension is now being constructed.
- It is his intention at this time that the building will remain a single family home that he occupies once the construction of the extension is completed.

## **BOARD ANALYSIS**

Q. Does the Town of Placentia have the authority to issue Stop Work Orders?

A. Yes. Section 102(1) of the Urban and Rural Planning Act, 2000 and Sections 2, 30(1), and 30(2) of the Town of Placentia Development Regulations provide the Town with the authority to issue a Stop Work Order where it considers necessary to do so.

Q. Did the Town of Placentia properly issue the Stop Work Order?

A. Yes. The Board has reviewed the information provided, and has determined that the Order was issued in compliance with applicable legislation.

Q. Is the decision of Council to issue the Stop Work Order a discretionary decision?

A. Yes. The Urban and Rural Planning Act, 2000 and the Town's Development Regulations indicate that the Town "may" issue a Stop Work Order where the Town considers it appropriate to do so.

Q. Does the Appeal Board have the authority to insert its discretion in place of that of a Town Council?

A. No. Generally the Board cannot interfere with a Town Council's exercise of discretion, and Section 42(11) of the Urban and Rural Planning Act, 2000 states as follows in that regard:

"(11) Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision."



## **BOARD'S CONCLUSION AND DETERMINATIONS**

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.

Both the Appellant/their legal representative and representatives for the Authority (Town of Placentia) agreed at the Appeal Hearing that the subject of the appeal was the Stop Work Order issued by the Town of Placentia to Adrian Canning regarding a building extension for the property at 104 Orcan Drive. The Board's deliberations, findings and Order are based on the Stop Work Order alone, not the original decision of the Town Council of Placentia on May 27, 2019 to issue a permit for the building extension.

Based on its findings, the Board determined that the Town of Placentia had the authority to issue a Stop Work Order to Adrian Canning on May 3, 2021 regarding the extension to his building at 104 Orcan Drive, Placentia, and did so in accordance with the Urban and Rural Planning Act, 2000 and the Town of Placentia Municipal Plan and Development Regulations.



**BOARD'S ORDER**

The Board orders that the decision made by the Town of Placentia on May 3, 2021 to issue a Stop Work Order to Adrian Canning for a building extension at 104 Orcan Drive, Placentia, be confirmed.

The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

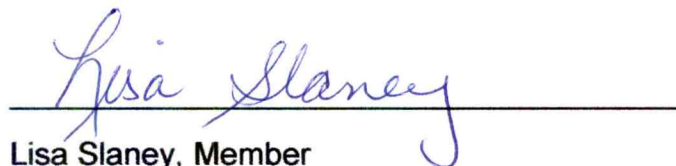
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this April 21, 2022.



Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member

Eastern Newfoundland Regional Appeal Board