

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

Appeal #	15-006-072-025
Appellant(s)	Steve and Patricia Kelly
Respondent / Authority	Town of Gambo
Date of Hearing	April 27, 2022

Board Members

Chair (Acting)	Allan Scott
Member	Rebecca Redmond Mclean
Member	Charles Irving

Also in Attendance

Appellant(s)	Chris Kelly
Representatives for the Appellant(s)	
Representatives for the Authority	John Baird, Planning Consultant
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP
Interested Parties	
Start/End Time	10: 30 am – 11: 15 am

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 Central Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Gambo (the Authority) Revocation of a permit for an extension to a residence at 184 J.R. Smallwood Boulevard, Gambo is in accordance with the Urban and Rural Planning Act, 2000.

Background

On July 20, 2021, the Authority (Town of Gambo) issued a "Permit to Build / Renovate / Repair" as authorization for a proposed addition/renovation to an existing residential building at 184 J.R. Smallwood Boulevard, Gambo NL to enclose a 8' by 5' area of an existing verandah.

On August 23, 2021, the Appellants (Steve and Patricia Kelly) received the Authority's letter as notification of the Council's decision to revoke the previously-issued Building Permit on the basis of non-conformance with the Development Regulations, 2014.

On September 2, 2021, the Appellants filed appeal with the Secretary of the Central Newfoundland Regional Appeal Board.

Legislation, Municipal Plans and Regulations considered by the Board

- Urban and Rural Planning Act, 2000
- Town of Gambo Development Regulations, 2014
- Municipalities Act, 1999

Presentation During Hearing

Technical Advisor

The Board heard from the Technical advisor that the subject property is located in the 'Mixed Development' land designation, as established per the Future Land Use Map (see: Municipal Plan) and the Mixed Development (MD) Use Zone, as established in the Zoning Map (see: Development Regulations).

The Development Regulations, 2014 provide for a wide variety of land uses in the 'MD' Use Zone, including residential Single Dwellings and Double Dwellings which are listed as Permitted Uses (Schedule C'). The Use Zone development standards include building location requirements pertinent to the consideration of this matter:

DEVELOPMENT STANDARDS

Single Dwelling

Minimum sideyard setback (2 sides) 2 m + 1 m

Minimum distance from another building 3 m

The following regulatory land use definitions (Schedule 'A') may be applicable:

BUILDING means a structure, erection, excavation, alteration or improvement whatsoever placed on, over or under land (...) constructed for residential, commercial, industrial and other like uses, and any part of a building as so defined and any fixtures that form part of a building.

DEVELOPMENT means the carrying out of any building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use, or the intensity of use of any land, buildings, or premise and without limiting the generality of the foregoing, includes:

- (i) the making of an access onto a highway, road or way,
- (ii) the construction of a building, (...)

and excludes:

- (i) the carrying out of works for the maintenance, improvement or other alteration or any building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building, (...)

DISTANCE means the shortest separation, measured on a horizontal plane, between a lot line, street line, (...) or other point specified in these Regulations and the nearest part of a building, structure, excavation, or other use of land.

FLOOR AREA means the total area of all floors in a building measured to the outside face of exterior walls.

SIDEYARD SETBACK means the distance between the side lot line and the nearest sidewall of a building on the lot.

STRUCTURE means anything constructed or erected with a fixed location on or below the ground, or attached to something having a fixed location on the ground, and includes buildings, walls, fences, signs, billboards, utility poles, and similar items.

The Appellant's appeal submission package submits that the Town conducted a site inspection, as per Section 32 of the Regulation, for the purpose of determining the nature of building separation(s) at the subject property – however, detailed property measurements have not been provided within either appeal submission package.

32. Right of Entry

Any official authorized by Council may enter upon land and may at all reasonable times enter any development or building for the purpose of making inspections relative to the development.

The Appellant contends that the nature of the existing building/property and the proximity of the adjacent dwelling to the side yard lot line is relevant to the proposal and the appeal matter. It may be a valid contention that the provisions of the General

Regulations, as noted below, are intended to provide guidance in consideration of redevelopment alternatives where:

- a property does not comply with Regulations
- the development may increase non-conformity, and/or
- the proposal complements the existing building setbacks of adjacent property.

12. Variances

(1) Where an approval or a permit cannot be given by Council because a proposed development does not comply with development standards set out in these Regulations, Council may, in its discretion, vary the applicable development standards to a maximum of 10 percent if, in Council's opinion, compliance with the development standards would prejudice the proper development of the land, building or structure in question or would be contrary to the public interest.

(...)

(3) Council shall not permit a variance from the development standards where the proposed development would increase the non-conformity of an existing development or would result in the creation of non-conformity of any existing legal development.

42. Building Line and Setbacks

(3) Notwithstanding the minimum front, side and rear yard requirements set out under Schedule C, Council, at its discretion, may allow development to complement existing building setbacks of adjoining properties by varying the yard requirements after notification of the proposed variance is given to neighbouring property owners in accordance with Regulation 13 - Notice of Variance and Regulation 30 - Notice of Application of these Regulations.

The Authority's appeal submission package indicates that the Town considered and did the following in conjunction with the revocation of a Building Permit:

- The Town re-evaluated the basis on which a Building Permit was issued
- Council determined that the proposed construction does not demonstrate conformance with the development regulation standard for building separation
- Issued a letter as confirmation of Council's decision to revoke a permit
- Notified of the right of appeal and the associated appeal application process for the Central Newfoundland Regional Appeal Board

The Appellant

The Appellant provided evidence that there were a total of three building permits issued for the property in question in 2012, 2014, and 2016. The Appellant contends that the 8' x 5' verandah that is proposed to be enclosed was the subject of the 2014 building permit.

Mr. Kelly explained that in 2012 that a verandah was completed as permitted on the rear of the house. In 2014 an application was applied to extend the verandah to the full rear width of the house and cover with a roof. In 2016 an application was also applied to extend part of the house to enclose a portion of the verandah to construct a bedroom. The remaining verandah was left in place.

In addition, the Appellant contended that during the site inspection in July of 2021 for the renovation/addition in question, his parents were assured by an employee of the Authority that enclosing the verandah would not be an issue, as neither the footprint of the home nor the roofline were changing, and all work that had been done to the home in the past (including the building of the verandah that was to be enclosed) was done under the 2012, 2014 and 2016 building permits.

The Appellant also contends that the neighboring home is not in compliance vis a vis its side yard with the Town of Gambo Development Regulations, as it is 12 inches from the property line, which is less than the 2 + 1 meter required under the Town of Gambo Development Regulations outlined above. The Appellant argues that this non-compliance is the reason that there is not the requisite 3 meters between the 2 houses.

In conclusion, the Appellant contends that the Authority did not satisfy the requirements of the Act and the Development Regulations because:

- the Council reviewed the matter in a privileged meeting
- the proposed addition/renovation is not inconsistent with adjacent land uses in the MD Use Zone

TOWN

The Town of Gambo acknowledges the three building permits. The Authority provided the Appellant with a copy of the 2012 permit during the hearing.

On the request of the Board, the Authority checked their records for the 2014 and 2016 permits. The Authority was able to provide the Board and the Appellant with the 2016 permit which was to enclose a portion of a verandah. The enclosure of the balance of that verandah is now in question. The application for the 2016 permit shows the 8'x5' portion now in question. The Authority states that the 2014 permit cannot be located, but acknowledges its existence.

The Town explained the development standards.

DEVELOPMENT STANDARDS

Single Dwelling

Minimum sideyard setback (2 sides) 2 m + 1 m

Minimum distance from another building 3 m

The following regulatory land use definitions (Schedule 'A') may be applicable:

BUILDING means a structure, erection, excavation, alteration or improvement whatsoever placed on, over or under land (...) constructed for residential, commercial, industrial and other like uses, and any part of a building as so defined and any fixtures that form part of a building.

DEVELOPMENT means the carrying out of any building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use, or the intensity of use of any land, buildings, or premise and without limiting the generality of the foregoing, includes:

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The Town also noted that corner piece is currently in their view non – compliant and may be subject to a removal order. The Town confirmed that the deck in question is part of the footprint of the house.

The Town stated that the minimum variance allowed by the Authority would still leave the minimum distance of 2.78 meters between buildings.

Board's Analysis

Did the Town provide adequate reasons for revoking a permit?

No. The Board learned that the Town received a request from a resident for review of a permit. Upon review the Town determined that the distance between the Kelly's home and the neighboring home did not meet the required three (3) meters. However, the corners of the two homes have been less than three (3) meters apart since the Town granted the Kelly's a permit in 2014. The Town did not explain why the Kelly's renovation would add to any existing non conformity of the Town of Gambo Regulations. Therefore the reason(s) that the Town provided are not sufficient to revoke a permit.

The Board accepts that the development to Mr. and Mrs. Kelly's home is not changing the distance between the corner of the subject property and the neighboring property. The Town confirmed that the deck is considered part of the footprint of the house. Therefore the permit requested will not change any building standards as approved under previous permits.

It's the Board determination that the permit that the Kelly's have will not increase the existing non-conformity of the side yard as allowed under previous permits.

The board notes that there were no surveys provided by either the Applicant or the Authority.

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 determined that the Town of Gambo failed to properly exercise its authority in revoking a Permit for an addition/renovation to a residence at 184 J.R. Smallwood Boulevard, Gambo. The Board is satisfied that the proposed addition/renovation will not create any change to the existing foot print of the home or the roofline of the home. The Board is further satisfied that all prior work to the home, including building the verandah, was properly permitted based on the information provided by the Appellant and the Authority. That is to say, the Board reverses the Town of Gambo council's decision to revoke permit to renovate the residence at 184 J.R. Smallwood Boulevard, Gambo.

ORDER

Based on the information presented, the Board orders that the decision made by the Town of Gambo on August 23, 2021 to revoke the permit issued to Patricia and Steve Kelly regarding an addition/renovation at 184 J.R. Smallwood Boulevard, be reversed.

The Board further orders the Authority to pay the Appellant in the amount equal to the Appeal Fee of \$200.00 plus HST.

The Town of Gambo and the Appellant 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 Appellant.

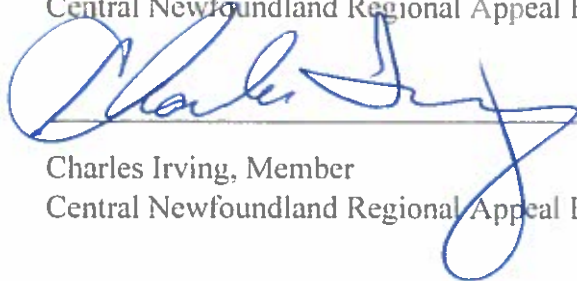
DATED at Gander, Newfoundland and Labrador, this 12, day of May, 2022.



Allan Scott, Acting Chair
Central Newfoundland Regional Appeal Board



Rebecca Redmond MacLean, Member
Central Newfoundland Regional Appeal Board



Charles Irving, Member
Central Newfoundland Regional Appeal Board

PART III – Appeal Fee

An appeal fee of \$200 and HST (\$230 total) must accompany this form in order for the appeal to be registered.

How did you submit the appeal fee?

- ☒ A cheque payable to the "Newfoundland Exchequer" with my appeal documents;
- ☒ A money order payable made out to the "Newfoundland Exchequer" with my appeal documents;
- ☒ Paid cash at the Province's Central Cashier's Office;
- ☒ Paid by telephone by calling (709) 729-3042; or
- ☒ Please note receipt number:

PART IV – Contact Information

Name/Company: STEVE & PATRICIA KELLY

Address for correspondence: 184 J.A. Smallwood Blvd
Box 131 GAMBO, NL, A0G 2E0

Phone number: 709-674-4314 or 709-690-3194

Fax number: Kelly.ic@outlook.com

E-mail address: Steve.PAT.NF@gmail.com

Are you submitting this appeal on behalf of someone else? ☒ Yes ☒ No

If so, whom: