

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

Appeal #	15-006-072-056
Appellant(s)	Dominic Farrell
Respondent / Authority	Town of Flatrock
Date of Hearing	March 9, 2023

Board Members

Chair	Cliff Johnston, MCIP
Member	Paul Boundridge, MCIP
Member	Lisa Slaney

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Rita Farrell Dominic Farrell
Representatives for the Authority	Joshua Hancott: Solicitor, Andrew Tobin: CAO, Darren Thorne, Mayor
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Interested Parties	
Start/End Time	11:00 am – 12:20 p.m.

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 Regional Appeal Board (the Board) is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Flatrock Municipal Plan and Development Regulations when it issued two Orders on February 7, 2022 (one to cease

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development with respect to building at 34 Boyle's Lane – Motion 2022-025; one to remove the unpermitted construction – Motion 2022-026) to Dominic Farrell.

Presentation's During the Hearing

The Board had oral presentations from the following parties at the appeal hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority prior to the appeal hearing date. The Board also had access to the digital recording of the appeal hearing made by the Recording Secretary.

Planner's Presentation

The Appellant (Dominic Farrell) applied to the Authority (Town of Flatrock) for a permit to renovate an existing cabin. The Authority granted Farrell a renovation permit to replace the windows, doors, siding and replace concrete and rot under the old cabin. The Appellant poured a new concrete foundation and began building a new cabin located several feet from the old cabin. The Authority issued a stop work order however the Appellant continued to construct the new building. The Appellant, after receiving the stop work order, applied to the Authority for a permit to add an extension to the old cabin. The Appellant indicated the old cabin was a 2-story (20x24 per level) and 960 square feet, proposing a total cumulative square footage of 1260 square feet, inclusive of the extension.

The Authority examined the existing structure and determined it was a total of 480 square feet, and one floor. The Authority determined the application could not be approved as the extension was over the 50% extension limit allowed under Section 108 of the Urban and Rural Planning Act, 2000 and Section 49 of the Town's Development Regulations. The Town rescinded the Renovation Permit and declined the Development Application for the extension providing reasons. The Appellant continued to build the New Cabin and has since joined the New Cabin to the Old Cabin. The Town issued an additional Stop Work Order and a Removal order to the Appellant, these orders dated February 8th, 2022 pursuant to Motion(s) 2022- 025 and 2022-026 are the subject of this appeal.

Chronology

September 13th, 2021

The Appellant (Dominic Farrell) applied to the Authority (Town of Flatrock) for a permit to renovate an existing cabin, construction value estimated at \$13 000 CDN. The Authority granted Farrell a renovation permit to replace the windows, doors, siding and foundation repair.

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Note: permit was not included in the appeals package, only application for permit.

October 25th, 2021

The Appellant poured a new concrete foundation and began building a new cabin located several feet from the old cabin. The Authority issued a stop work order and included the right to appeal the Order within 14 days. The stop work order was not appealed. The order was served by hand (personally) with a compliance date noted October 26th, 2021 and was confirmed by a Motion of Council #2021-193 on November 1st, 2021.

October 26th, 2021

The Appellant, after receiving the stop work order, applied to the Authority for a permit to add an extension to the old cabin with an estimated construction value of \$35 000 CDN. The Appellant indicated the old cabin was a 2-story (20x24 per level) and 960 square feet, proposing a total cumulative square footage of 1260 square feet. The Authority examined the existing structure and determined it was a total of 480 square feet, and one floor.

November 1st, 2021

The Authority held a meeting with the Appellant. During the meeting the Appellant advised they would tear down the new structure under construction, renovate the old structure and not put in a new road. The Development Application submitted on October 26, 2021 was deferred to the next Town meeting of November 15th, 2021 as the Town wanted to see a plan for the addition to the Old Cabin. The Town also required further information regarding zoning and road regulations.

November 2nd, 2021

The Town informed the Appellant through writing the application had been deferred to November 15th, 2021.

November 8th, 2021

The Appellant gave the Authority their plans for the proposed extension with a total floor area of 1260 square feet.

November 10th, 2021

The Authority received a report from its Town Planner, Reginald Garland, respecting the subject Development Application. The report noted Section 49(3) of the Town's Development Regulations permits the Town to approve an extension of not more than 50% of the old Cabin.

November 12th, 2021

The Authority realized the Appellant had continued the erection of the new cabin in contradiction to the Stop Work Order issued October 25th, 2021.

November 15th, 2021

At a public meeting of Council, where the Appellant was present, Council passed two (2) resolutions to rescind the Renovation Permit (applied for September 13th, 2021) under Motion 2021-203 and refuse the Development Application (submitted October 26th, 2021) under motion 2021-204. The Authority determined the application could not be approved as the extension was over the 50% extension limit allowed under Section 108 of the Urban and Rural Planning Act, 2000 and Section 49 of the Town's Development Regulations. The Town rescinded the Renovation Permit and declined the Development Application for the extension providing reasons.

November 17th, 2021

The Authority issue two (2) letters to the Appellant, one confirming the renovation permit was rescinded (Motion 2021-203) and the other confirming the Development Application was refused (Motion 2021-204). Both letters contained the right to appeal the decision within 14 days, along with instructions on how to file an appeal. No appeal was filed with regards to the aforementioned.

January, 2022

The Authority received a "without prejudice" letter from the Appellants legal counsel.

February 7th, 2022

The Town held a meeting and passed Motion 2022-025 a Stop Work Order and Motion 2022-26 a Removal Order with regards to development at 34 Boyle's Lane, Flatrock.

February 10th, 2022

The Town served the Appellant with the Orders as passed by motion of council February 7th, 2022. Right to appeal was included.

GROUND OF APPEAL

This appeal is based on the following section of the Act: Section 42 (1)(c) with respect to the issuance of a stop work and removal order.

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;

- (b) a revocation of an approval or a permit to undertake a development;
- (c) the issuance of a stop work order; and
- (d) a decision permitted under this or another Act to be appealed to the board.

The grounds of appeal indicated in the Appellants submission are considered submitted evidence and can be reviewed by the Board.

LAND USE PLANNING

The Town of Flatrock Municipal Plan and Development Regulations came into legal effect on February 10th, 2017. The Town of Flatrock Future Land Use Map and Plan Policies must conform to the policies established in the St. John's Urban Region Regional Plan (SJURRP), 1976. The Town of Flatrock Municipal Plan, 2017 identifies applicable SJURRP policies under Section 1.8, as follows:

1.8 ST. JOHN'S URBAN REGION REGIONAL PLAN

St. John's Urban Regional Plan policies which apply to the Town of Flatrock include the following:

- Flatrock is designated in the Regional Plan as a Local Centre.
- Within Local Centers, residential uses shall generally be of a low density nature with a continuing predominance of single family dwellings.
- Two prime aims are to encourage the infilling and consolidation of presently semi-developed areas once essential public services are installed and to develop improved local road systems.
- Within areas designated for Agricultural Uses, the policy shall be to restrict development to agricultural and associated complementary uses. Non-agricultural-related uses may be allowed provided they are not considered to have an adverse impact on agricultural uses, are compatible with adjoining development, conform with the objectives of this Municipal Plan, and are approved by the Department of Forest Resources and Agrifoods under the Development Area (Lands) Act, Chapter 9S of the Revised Statutes of Newfoundland, 1970 and associated regulations.
- In areas designated for Agricultural Uses, where forest cover exists, it is desirable that this secondary forestry resource be maintained, managed and harvested in

such a way that its forestry potential can be best realized until it becomes necessary for the land to be cleared for development for the designated use.

Under the Town of Flatrock's Municipal Plan, 2017 the subject property is located in a Rural Land Use Designation as defined by the Future Land Use Map and Rural Land Use Policy. The Plan Policy for the Rural Zone is outlined by Section 3.2.9 of the Town's Municipal Plan which states:

3.2.9 Rural

The remaining lands within the Flatrock Planning Area are designated Rural and are intended to be used primarily for rural resource and open space uses. Uses such as public utilities or road construction and maintenance, consistent with the objective of retaining the qualities of the rural environment, may be permitted.

The Town's Municipal Plan section 3.2.9(1)(3)(5) outlines the Plan policies for the Rural Land Use Designation with respect to permitted land uses, residential and cottage development, as follows:

Rural Policies:

Land Uses

1. The uses permitted in the designated Rural areas include agricultural, forestry, marine related industry, outdoor recreation and conservation uses, provided these uses do not detract from the rural character of the area.
3. Residential Use: Single residential dwelling use may only be permitted in conjunction with a permitted use such as forestry or agriculture.
5. Cottage Development: To prevent premature urban expansion and demand for services in rural areas, cottage development shall not be permitted in the Rural area.

The Towns Development Regulations, 2017, Schedule "C" Use Zone Tables provides a list of Permitted and Discretionary uses with in the Rural Land Use Class as follows:

Permitted: agriculture, forestry, marine related industry, recreational open space and conservation.

Discretionary: single dwelling, veterinary, outdoor market, outdoor assembly, light industry, mineral working, recreational open space, cemetery, animal, utilities (see condition 1); transportation and antenna.

The Towns Development Regulations, 2017, Schedule “C” Use Zone Tables provides conditions for Single Dwellings as a discretionary use with in the Rural Land Use Table under Condition 3, as follows:

CONDITIONS FOR RURAL ZONE

3. Single Dwellings Single residential dwellings may be permitted in conjunction with a permitted use such as agriculture. The agricultural uses shall be a commercial business and the full time farmer shall obtain a minimum of 50% of his or her gross income from the farm operation. The commercial operation shall be in operation for a minimum of two years before Council will approve any residential development.

The Towns Development Regulations, 2017, Schedule “C” Use Zone Tables provides conditions for Seasonal Residential with in the Rural Land Use Table under Condition 9, as follows:

CONDITIONS FOR RURAL ZONE

9. Seasonal Residential

Seasonal residential use and recreation cottage use shall not be permitted within the Rural land use zone.

Existing residential development, development being defined by Section 2(g) of the Urban and Rural Planning Act, 2000, with in the Rural Zone is considered an existing non- conforming use. Section 108 of the Urban and Rural Planning Act, 2000 legislates provisions for non-conforming uses as follows:

Non-conforming use

108. (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in

accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a

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regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

- (2) Notwithstanding subsection (1), a right to resume a discontinued non-conforming use of land shall not exceed 6 months after that discontinuance unless otherwise provided by regulation under this Act.
- (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)
 - (a) shall not be internally or externally varied, extended or expanded unless otherwise approved by the minister or appropriate council, regional authority or authorized administrator;
 - (b) shall not be structurally modified except as required for the safety of the building, structure or development;
 - (c) shall not be reconstructed or repaired for use in the same non-conforming manner where 50% or more of the value of that building, structure or development has been destroyed;
 - (d) may have the existing use for that building, structure or development varied by the appropriate council, regional authority or authorized administrator to a use that is, in their opinion more compatible with a plan and regulations applicable to it;
 - (e) may have the existing building extended by the appropriate council, regional authority or authorized administrator where, in its opinion that extension is not more than 50% of the existing building;
 - (f) where the non-conformance is with respect to the standards included in development regulations, shall not be expanded if the expansion would increase the non-conformity; and
 - (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 Development Regulations, 3/01 under the Urban and Rural Planning Act, 2000 provides provisions for Residential Non-Conformity under Regulation 14. pursuant to Section 108(3)(g), however Section 108(3)(g) is not applicable to this situation as the building or structure is not primarily zone for residential purposes. The Town's Development Regulations, 2017, Section 49. Non-Conforming Use provides regulation with respect to non-conforming uses pursuant to Section 108 of the Urban and Rural Planning Act, 2000:

49. Non-Conforming Use

Notwithstanding the Municipal Plan, scheme or regulations made under this Urban and Rural Planning Act, 2000, the Authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the Act, scheme or regulations made with respect to that kind of development or use.

Notwithstanding subsection (1), a right to resume a discontinued non- conforming use of land shall not exceed 12 months after that discontinuance.

A building, structure or development that does not conform to a scheme, plan or regulations made under the Act that is allowed to continue under subsection (1)

- (a) shall not be internally or externally varied, extended or expanded unless otherwise approved by the Authority;
- (b) shall not be structurally modified except as required for the safety of the building, structure or development;
- (c) shall not be reconstructed or repaired for use in the same non- conforming manner where 50% or more of the value of that building, structure or development has been destroyed;
- (d) may have the existing use for that building, structure or development varied by the Authority to a use that is, in the Authority's opinion, more compatible with the plan and regulations applicable to it;
- (e) may have the existing building extended by approval of the Authority where, in the Authority's opinion, the extension is not more than 50% of the existing building;
- (f) where the non-conformance is with respect to the standards included in these development regulations, shall not be expanded if the expansion would increase the non-conformity;

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- (g) where a building, structure or development does not meet the development standards included in development regulations, the building, structure or development shall not be expanded if the expansion would increase the non-conformity and an expansion must comply with the development standards applicable to that building, structure or development.
- (h) where the building or structure is primarily zoned and used for residential purposes, may, in accordance with the municipal plan and regulations, be repaired or rebuilt where 50% or more of the value of that building or structure is destroyed.

Section 6. of the Town's Development Regulations, 2017, Compliance With Regulations states:

6. Compliance With Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

Section 7. of the Town's Development Regulations, 2017, Permit Required states:

7. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

Section 35. Stop Work Order and Prosecution of the Town's Development Regulations, 2017, provides regulation for the issuance of a Stop Work Order as follows:

35. 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 35(1) is guilty of an offence under the provisions of the Act.

The Municipalities Act, 1999, Council Orders under Section 404(e) permit the Authority to issue an order as follows:

Council orders

404. (1) A council may make an order that

- (e) the person pull down, stop construction, remove, fill in, alter or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has
 - (i) erected, extended, repaired, relocated or demolished,
 - (ii) changed the use of, or
 - (iii) after a 6 month vacancy, newly constructed or reoccupied, a building without a permit as required under section 194

Where a Municipality has a Plan and Regulations in legal effect, Section 102 of the Urban and Rural Planning Act, 2000, is the paramount enabling legislation with respect to Orders related to Development under the "Act". Section 102 of the Urban and Rural Planning Act, 2000, permits an Authority to issue an order where contrary to a plan or development regulation(s) where a person has undertaken or commenced a building or other development. Section 102 states:

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.

The Urban and Rural Planning Act, 2000 defines building under Section 2(c), as follows:

- (c) "building" means
 - (i) a structure, erection, alteration or improvement placed on, over or under land or attached, anchored or moored to land,

- (ii) mobile structures, vehicles and marine vessels adapted or constructed for residential, commercial, industrial and other similar uses,
- (iii) a part of and fixtures on buildings referred to in subparagraphs (i) and (ii), and
- (iv) an excavation of land whether or not that excavation is associated with the intended or actual construction of a building or thing referred to in subparagraphs (i) to (iii);

The Urban and Rural Planning Act, 2000 defines development under Section 2(g), as follows:

- (g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the
 - (i) making of an access onto a highway, road or way,
 - (ii) erection of an advertisement or sign,
 - (iii) construction of a building,
 - (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,
 and excludes the
 - (v) carrying out of works for the maintenance, improvement or other alteration of a 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,
 - (vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,
 - (vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and

- (viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;

Section 42(9)(10)(11) of the Urban and Rural Planning Act, 2000, states:

- (9) A board shall consider and determine appeals in accordance with this Act and a plan, scheme and regulations that have been registered under section 24 and having regard to the circumstances and merits of the case.
- (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.
- (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.

PROCEDURAL COMPLIANCE

Section 6 of the Town's Development Regulations, 2017, Compliance With Regulations states:

5. Compliance With Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

Section 7 of the Town's Development Regulations, 2017, Permit Required states:

6. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

Section 8 of the Town's Development Regulations, 2017, Permit to be Issued states:

8. Permit to be Issued Subject to Regulations 9 and 10, a permit shall be issued for development within the Planning Area that conforms to:

- (a) the general development standards set out in Part II of these Regulations, the requirements of Part V of these Regulations, and the use classes, standards, requirements, and conditions prescribed in Schedule C of these Regulations for the use zone in which the proposed development is located;
- (b) the standards set out in the Building Code and/or other ancillary codes, and any Building Regulations, Waste Disposal Regulations, and/or any other municipal regulation in force in the Planning Area regulating or controlling development, conservation and use of land and buildings;
- (c) the standards set out in Part III of these Regulations in the case of advertisement;
- (d) the standards set out in Part IV of these Regulations in the case of subdivision;
- (e) the standards of design and appearance established by the Authority.

Council has the ability to defer decision on the conditional approval or refusal of an application to undertake Development as defined by Section 2(g) of the Urban and Rural Planning Act, 2000, as per Section 19. of the Town's Development Regulations, 2017, as follows:

19. Deferment of Application

(2) The Council may defer consideration of an application where additional information or consideration is required.

At a regular meeting of Council on Monday November 1, 2021, Council deferred decision on the Appellants application dated October 26th, 2021 for an addition to an existing cabin, as follows:

Delegation regarding property on 34 Boyley's Lane was in attendance. The delegation said they will tear down the new build and renovate the existing building and will not put in a new road. Deferred to next meeting for more information.

Application for 1300' addition to existing cabin at 34 Boyley's Lane was deferred.

Notice of deferment of application for an extension for the cabin at 34 Boyles Lane was issued to the Appellant on November 2, 2021. Reasons for the deferment were provided as follows:

Your application for an extension for the cabin at 34 Boyles Lane has been deferred until the next meeting on November 15th, 2021. Council deferred the application for the following reasons:

1. We required a set of plans for the extension as requested at the November 1st, 2021 meeting.

2. To obtain more information regarding the road regulations.
3. To obtain more information to confirm if the extension is permitted under current zoning and road condition.

Council under Section 10. Discretionary Powers of Authority has the ability through a Motion of Council to conditionally approve or refuse an application for development on the condition Councils discretionary decision is in conformance with the Municipal Plan and Development Regulations in legal effect and the Urban and Rural Planning Act, 2000 and/or regulations made under the "Act". Section 10. of the Town's Development Regulations state:

10. Discretionary Powers of Authority

- (1) In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.
- (2) An authority may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the authority's regulations as discretionary, permitted or prohibited uses for that area

Council at their Discretion as per Section 10. of the Town's Development Regulations, 2017 resolved through Motion of Council to deny (refuse) the application dated October 26th, 2021 for an addition to an existing cabin as follows:

2021 -204 Teny Humber/Marion McCarthy

Be it resolved that the Town Council of Flatrock do make a motion to deny the application for a 1300' extension to an existing cabin at 34 Boyley's Lane under section 49 [2] of the Town of Flatrock Development Regulations in the Town of Flatrock Plan 2015-2025. Section 49 Non - Conforming Use

[2] states "a right to 'resume a discontinued non -conforming use of land shall not exceed 12 months after that discontinuance". Also, regulation

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49.e. A building, structure or development that does not conform to a scheme, plan or regulations made under the Act that is allowed to continue under subsection (I) may have the existing building extended by approval of the Authority where, in the Authority's opinion, the extension is not more than 50% of the existing building. In Favor Mayor Darrin Thorne, Deputy Mayor Terry Humber, Councilors Marion McCarthy, Michelle Martin, Jeffrey Connors, Kevin Parsons and Brian Waterman. Abstaining 0 Against 0 Carried.

The Authority notified the Appellant in writing on November 17th, 2021 of Council's decision to refuse application submitted October 26th, 2021 for an addition to an existing cabin. Included in the letter were the reasons for refusal as per Section 22. of the Town's Development Regulations, 2017, and the right to appeal pursuant to Section 42 of the Urban and Rural Planning Act, 2000 and Section 5. Notice of Right to Appeal of the Development Regulations under the Urban and Rural Planning Act, 2000 (Newfoundland and Labrador Regulation 3/01).

Council has the ability to revoke a permit, require the correction of errors, order the cessation or removal of development for failure by the developer to comply with the Municipal Plan and Development Regulations, or any condition attached to the Permit to Develop, or where it was issued in error or was issued on the basis of incorrect information as per Section 21(4)(5), of the Town's Development Regulations, 2017. Section 21(4)(5) states:

21. Development Permit

(4) The issuance of a Permit to Develop shall not prevent the Council from requiring the correction of errors, or ordering the cessation, removal of, or remedial work on any development being carried out that is in violation of the Municipal Plan and these Regulations.

(5) The Council may revoke a Permit to Develop for failure by the developer to comply with the Municipal Plan and these Regulations, or any condition attached to the Permit to Develop, or where it was issued in error or was issued on the basis of incorrect information.

Council, through Motion 2021-203 voted to retract (rescind) Renovations Permit number 1650, dated September 13, 2021, for 34 Boyles Lane on November 15, 2021 as follows:

2021 -203 Terry Humber/Jeffrey Connors

Be it resolved that the Town Council of Flatrock do make a motion to retract the Renovations permit, number 1650 dated September 13, 2021, for 34 Boyley' s Lane. 'Renovation means the repair and restoration of a building to good condition but shall not include its replacement' and based on Town of Flatrock Development Regulations in the Town of Flatrock Plan 2015- 2025. Section 49 Non -Conforming Use [2] states "a right to resume a discontinued non -conforming use of land shall not exceed 12 months after that discontinuance". In Favor Mayor Darrin Thorne,

Deputy Mayor Ten-y Humber, Councilors Marion McCarthy, Michelle Martin, Jeffrey Connors, Kevin Parsons and Brian Waterman. Abstaining O Against O Carried.

The Authority notified the Appellant in writing on November 17th, 2021 of Councils discretionary decision to rescind Permit 1650 submitted September 13th, 2021, for renovations on the cabin located at 34 Boyles Lane. Included in the letter were the reason for refusal as per Section 22. of the Town's Development Regulations, 2017 and the right to appeal pursuant to Section 42 of the Urban and Rural Planning Act, 2000 and Section 5. Notice of Right to Appeal of the Development Regulations under the Urban and Rural Planning Act, 2000 (Newfoundland and Labrador Regulation 3/01).

The Authority may issue an order under section 102 of the Urban and Rural Planning Act, 2000 if a person has started a building or development contrary to a Municipal Plan and/or Development Regulations. Section 102 states:

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.

Under section 102 (4) of the Urban and Rural Planning Act, 2000, Council may stipulate the time limits for compliance with an order.

Order

102 (4) A council, regional authority, authorized administrator or the minister may, in an order made under this section, specify a time within which there shall be compliance with the order.

Section 109 (3)(4) of the Urban and Rural Planning Act, 2000 outlines how an order shall be confirmed. As per section 102 of the Urban and Rural Planning Act, 2000, an Authority by motion of council may issue an order to be served or an authorized administrator may issue an order as per Section 109(3) on the condition the order is confirmed by majority vote of the members of the council at the next meeting of council.

Delegation

109. (1) The minister may delegate his or her duties, powers and functions under this Act to an employee of the department.

(3) An employee of a council or regional authority may issue an order under section 102.

(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.

Section 36 of the Flatrock Development Regulations, 2017 Delegation of Powers, states:

36 Delegation of Powers

An authority shall, where designating employees to whom a power is to be delegated under subsection 109(3) of the Act, make that designation in writing.

The information provided by the Authority did not include the Town's Delegation of Powers however did include minutes of council confirming the order(s) as a motion of council instructing the issuance of the order(s).

Regarding Stop Work Order – Council Meeting Date: Monday November 1st, 2021 Confirming Order Issued: October 25th, 2021

2021 - 193 Terry Humber/Kevin Parsons

Be it resolved that the Town Council of Flatrock do make a motion for a Stop Work Order issued at 34 Boyley's Lane as presented. In Favor Mayor Darrin Thorne, Deputy Mayor Terry Humber, Councilors Marion McCarthy, Michelle Martin, Jeffrey Connors, Kevin Parsons and Brian Waterman. Abstaining 0 Against 0

Carried.

Regarding Stop Work Order – Council Meeting Date: Monday February 7th, 2022 Confirming and Directing Order Issuance: February 8th, 2022

2022 -025 Terry Humber/Jeffrey Connors

Be it resolved that the Town Council of Flatrock issue a Stop Work for 34 Boyley's Lane as presented. In Favor Mayor Darrin Thome, Deputy Mayor Terry Humber, Councilors Marion

McCarthy, Michelle Martin, Jeffrey Connors, Kevin Parsons and Brian Waterman. Abstaining O
Against O Carried.

Regarding Removal Order – Council Meeting Date: Monday February 7th, 2022 Confirming and
Directing Order Issuance: February 8th, 2022

2022 -026 Terry Humber/Marion McCarthy

Be it resolved that the Town Council of Flatrock issue a Removal Order for 34 Boyley's Lane as
presented. In Favor Mayor Dal.Tin Thorne, Deputy Mayor Terry Humber, Councilors Marion
McCarthy, Michelle Martin, Jeffrey Connors, Kevin Parsons and Brian Waterman. Abstaining O
Against O Carried.

Section 107 (1) of the Urban and Rural Planning Act, 2000 outlines how an order shall be
served.

Service

107. (1) Unless otherwise stated in this Act, a notice, order or other document required to be
given, delivered or served under this Act is sufficiently given, delivered or served where
delivered personally or sent by registered mail addressed to the person at the latest known
address of that person.

Motion Number	Method	Service Address - Flatrock	Service Date
2021 - 193	Personally	34 Boyles Lane	October 25th, 2021
2022 -025	Personally	285 Pouch Cove Road/Hwy	February 8th, 2021
2022 -026	Personally	285 Pouch Cove Road/Hwy	February 8th, 2021

The Appellant and the Authority indicate the order was served by hand (personally) as indicated
on the orders, pursuant to Section 107(1) of the Urban and Rural Planning Act, 2000. Notice of
right to appeal was included in the orders pursuant to Section 42 of the Urban and Rural Planning
Act, 2000 and Section 5 Notice of right to appeal of the Development Regulations under the Urban
and Rural Planning Act, 2000 (Newfoundland and Labrador Regulation 3/01).

The Appellant's Presentation

- The cabin has existed since 1971, preceding the implementation of the Town's Municipal Plan and Development Regulations and has been taxed since 1975.
- The cabin has been continually used since its construction and has the status of a legal Non-Conforming Use.
- Other Non-Conforming Uses (dwelling units) in the area in the Town of Flatrock have been allowed by the Town to expand.
- The Town received advice from its Planning Consultant concerning the proposed extension of the cabin, in that it would be required to be advertised for public review and comment. Public advertisement was not undertaken.
- The Town's Removal Order should not be allowed to stand.

The Authority's Presentation

- The Town's Stop Work Order and Removal Order of February 7, 2022 were issued correctly and were consistent with the Urban and Rural Planning Act, 2000; the Municipalities Act, the Flatrock Municipal Plan and the Flatrock Development Regulations.
- The Town recognizes the existing cabin as a Legal Non-Conforming Use.
- The Town had, in its discretion, issued a Permit for the renovation of the Non-Conforming cabin (replacement of windows, doors, cladding, etc,) as could be allowed under the Urban and Rural Planning Act and the Town's Development Regulations.
- The Town became aware that the work on the Non-Conforming cabin had proceeded beyond what had been approved.
- The Town's decision to issue a second set of Orders on February 7, 2022 followed the Appellant's non-adherence to a Stop Order issued on October 25, 2021, which was not appealed. The February 7, 2022 decision to issue new Orders was to allow the Appellant to submit an appeal to the Eastern Newfoundland Regional Appeal Board and make its presentation on the Town's decisions.
- The Town Council, under the requirements of the Town's Development Regulations, is not authorized to grant approval of a building extension greater than 50% of the floor area of the existing Non-Conforming Use.

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Appeal Board Analysis

Q: What applications has the Appellant made to the Town?

R: The Appellant applied on September 13, 2021 to the Town for a Permit to Renovate the existing seasonal dwelling on the subject property. This was to replace doors, windows, cladding and do foundation repair. A Permit was issued by the Town for the building renovation.

[Note: Subsequent to the issue of the Permit to Repair, the Town became aware that the Appellant had poured a new concrete foundation and had begun building a new cabin located several feet from the existing cabin. The Town subsequently issued a Stop Work Order on October 26, 2021.]

On October 26, 2021, after receiving the Stop Work Order from the Town, the Appellant submitted an Application to enlarge the seasonal dwelling by a factor well in excess of 50%, and apparently continued with the unauthorized construction. Processing of the second application was deferred by the Town to allow the Appellant to submit more detailed plans and to allow the Town to seek the advice of its Planning Consultant.

[Note: Following this, the Town became aware that in spite of the October 2021 Stop Work Order, construction on the unapproved cabin had substantially continued. This eventually led the Town to issue on February 7, 2022 the Stop Work Order and the Removal Order that are the subject of this appeal.]

Q: Which Order (Orders) is (are) under Appeal?

R: The Appellant has appealed the two Orders issued by the Town on February 7, 2022. These are the two Orders that the Board will consider

Q: What is the zoning of the subject property?

R: The subject property is zoned Rural.

Q: Is a Seasonal Dwelling allowed in the Rural Zone?

R: The conditions for the Rural Zone contained in the Town's Development Regulations specifically indicate that seasonal residential use and recreation cottage use shall not be permitted in the Rural Zone.

Q: What is the planning status of the existing cabin building development?

R: The cabin development has the status of a previously existing legal Non-Conforming Use.

- Q: Is a Non-Conforming use allowed to be repaired/renovated or to expand (be enlarged)?
- R: Yes. Section 49 of the Town's Development Regulations authorizes the Town Council, at its discretion, to allow the renovation/repair of a building that is an existing Non-Conforming Use and to allow an extension of no more than 50% of the floor area of an existing building.
- Q: Could the Town have approved the October 26, 2021 application?
- R: No, the Town had no legal authority to approve a Permit for the extension to the original cabin greater than 50% of the existing floor area.
- Q: Does the Town have the Authority to issue a Stop Work Order and a Removal Order?
- R: The Town's Development Regulations provide for the following:

5. Compliance With Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

6. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

35. 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 35(1) is guilty of an offence under the provisions of the Act.

The Municipalities Act, 1999, permits the Authority to issue an order as follows:

404. (1) A council may make an order that

- (e) the person pull down, stop construction, remove, fill in, alter or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has
 - (i) erected, extended, repaired, relocated or demolished,

- (ii) changed the use of, or
- (iii) after a 6 month vacancy, newly constructed or reoccupied, a building without a permit as required under section 194

Where a Municipality has a Plan and Regulations in legal effect, Section 102 of the Urban and Rural Planning Act, 2000, is the paramount enabling legislation with respect to Orders related to Development under the “Act”. Section 102 of the Urban and Rural Planning Act, 2000, permits an Authority to issue an order where contrary to a plan or development regulation(s) where a person has undertaken or commenced a building or other development. Section 102 states:

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.

Appeal Board Conclusion

Section 42 (10) of the Urban and Rural Planning Act, 2000 specifies that

42. (10) *In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*


The Board has determined that the Town of Flatrock was authorized under Sections **404 (1) (e)** of the Municipalities Act, 1999 and Section 102 of the Urban and Rural Planning Act, 2000 in making its decision of February 7, 2022 to issue a Stop Work Order (Motion 2022-025) and a Removal Order (Motion 2022-026) with regards to development at 34 Boyle's Lane. Flatrock. Further, Section 12 of the Urban and Rural Planning Act (Application of Plan) and Sections 6 and 7 of the Flatrock Development Regulations requires the Town to act as it did. Therefore, the Board has determined that the decision of the Town of Flatrock under appeal was correct, and should be confirmed.

BOARD'S ORDER

The Board orders that the decision made by the Town of Flatrock on February 7, 2022 to issue two Orders (Stop Work Order – Motion 2022-025 and Removal Order – Motion 2022-026) to Dominic Farrell with regards to development at 34 Boyle's Lane, Flatrock, **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 10 of March, 2023.




Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board