

Central Newfoundland Regional Appeal Board

Appeal #	15-006-067-033
Appellant(s)	Todd Maye
Respondent / Authority	Town of Lewisporte
Date of Hearing	January 13, 2021

Also in Attendance

Board Members	Chair: Bill Carter Member: David Oxford Member: Charlie Irving
Representatives for the Authority	Todd Champion, Superintendent of Works
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Not Applicable

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 is to determine if the Town of Lewisporte acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Lewisporte Municipal Plan and Development Regulations when on August 3, 2020 the Town refused a development application made by Todd Maye. In rendering an appeal the Board is bound by Section 42(10) the appeal board shall:

(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.

Validity Requirements

According to the documents provided, the appeal was filed on September 22, 2020. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee. The Appellant did not receive a formal refusal from the Town but did receive an e-mail on June 9, 2020 indicating refusal would happen.

Grounds of Appeal

This appeal is based on the following section of the Act:

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;

The Appellant is appealing the refusal based on the following grounds:

1. No clear definition of "attached" to adhere to, and
2. Not receiving a timely response from the Town.

Planner's Analysis

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000. This will be referred to hence forth as *URPA*.

The Town of Lewisporte Municipal Plan and Development Regulations Council has the authority to refuse applications under section 10 of the *Town of Lewisporte*

Development Regulations:

10. Discretionary Powers of Authority

(1) In considering an application for a permit ... to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and ... [the Town's development] 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, ... refuse the application.

Moreover, if the application was not refused "properly", then the application would be deemed refused as per section 19 of the Town's development regulations:

19. Deferment of Application(2) Applications properly submitted in accordance with these Regulations which have not been determined by the Authority and on which a decision has not been communicated to the applicant within eight weeks of the receipt thereof by the Authority, and on which consideration has not been deferred in accordance with Regulation 18(1), shall be deemed to be refused.

Section 22 of the Town of Lewisporte Development Regulations which states:

22. Reasons for Refusing Permit

The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.

Land Use Planning

The zoning of the subject dwelling is 'Residential Medium Density'.

Detached garages (i.e., accessory buildings) are permitted in this use zone, subject to condition 10 of that zone.

Attached garages would be considered to be part of the dwelling on the subject property and would have to meet the development standards and conditions of the zone. It is not clear if the proposed attached garage would have met the above standards and conditions.

The Board's authority is restricted to those grounds with respect to compliance with legislation and regulations The Board will determine whether Council's decision to refuse to the Appellant on August 28, 2020 development of a garage was in compliance with the Urban and Rural Planning Act, 2000 and the Town of Lewisporte Municipal Plan and Development Regulations.

Presentations at the Hearing

During the hearing, the Board heard technical details about the Town's Municipal Plan and Development Regulations. In particular, the planner stated that the Council has the authority to refuse applications under section 10 of the Town of Lewisporte. The zoning of the subject dwelling is 'Residential Medium Density'. Detached garages (i.e., accessory buildings) are permitted in this use zone, subject to condition 10 of that zone. Attached garages would be considered to be part of the dwelling on the subject property and would have to meet the development standards and conditions of the zone. It is not clear if the proposed attached garage would have met the above standards and conditions.

The Appellant, Todd Maye, presented the following:

Mr. Maye filed an application in November 2019 for the development of a detached garage on his property understood to be at 221 Main Street

This application was denied in mid April 2020

Mr. Maye met with the Authority on April 30, 2020 to discuss the decision. During this meeting Mr. Maye questioned about the regulations around an attached garage and reportedly he was advised by the Authority that in general there are no regulations or clear definition around "attached". Reportedly this information was confirmed by Counselor Ken Tucker, Chair of the Town of Lewisporte Lands Committee

Subsequently Mr. Maye submitted a second application on May 13, 2020 for an attached garage at the same property

On June 9, 2020 Mr. Maye was advised in an email from Todd Champion that the "application will be denied" due to:

- "1. The new structure exceeds the building line setback minimum of 6 meters from the roadway easement as per our development regulations
- 2. The planner does not accept the definition of attachment as provided in your sketch"

Mr. Maye requested a meeting with the Authority on June 17, 2020

A meeting was scheduled on July 31, 2020 but the meeting did not go ahead as planned

Later that day, Development Regulations Amendment No. 28-2020 was released addressing the definition of "attached"

On August 3, 2020 there was a meeting held between the Authority and Mr. Maye. During this meeting it was agreed that Mr. Maye would address the easement issue by moving the garage back by 1 foot and reduce the size by 2 feet which was satisfactory to the Authority. It was further agreed that there would be no need to re-submit the application.

- On August 28, 2020 Mr. Maye was informed by Todd Champion by email that the Lands Committee decided not to overturn the denial for the Accessory Building permit.
- Mr. Maye spoke that his application was not for an accessory building, it was for an attached garage.
- Mr. Maye believes that without the Authority having a clearly defined regulation around “attached”, his permit should not have been denied.

The Authority, Todd Champion, presented the following:

- Being a “unique situation”, Mr. Champion confirmed that at the time there was no clearly defined definition or regulations around “attached”
- The Authority engaged in due diligence to determine how “attached” would be defined within their Town
- This engagement brought about the Development Regulation Amendment No. 28-2020 which would add a definition for “attached”. It would be presented for public consultation from August 3 – 14, 2020.
- Following this engagement, the Authority would amend the Development Regulations by adding:
 - ATTACHED: means a building, or part thereof, physically joined, fastened, or connected to another building for structural support by way of a roof line or common shared wall. Development contrary to this definition shall be considered as an accessory (building).

Board's Analysis

Did the Town follow proper procedures and adequately notify the Appellant of the Council's decision?

- Yes. On June 9, 2020 the Authority provided written notification to Mr. Maye by email. Under (URPA 2000, Section 35.1.g which states: "requiring that a decision of the a council or regional authority with respect to a permit be in writing and state reasons for refusal of or conditions placed upon a permit"). The email explained that the permit would be refused given that the proposed garage did not meet easement requirements and that Mr. Maye's definition of "attached" did not conform with their interpretation. The Authority defined it as an accessory building based on the application presented which would not permit Mr. Maye to "attach" the garage as proposed.
- Further to this, Todd Champion issued a further email on August 28, 2020 confirming that the Lands Committee would not overturn the permit refusal.

Did the Town have the authority to refuse the application?

- Yes. The Board determined that the Authority acted appropriately as per Section 10 of the Town of Lewisporte Development regulations which says:
 - *10. Discretionary Powers of Authority*

(1) In considering an application for a permit ... to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and ... [the Town's development] 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, ... refuse the application.

- The Board determined that while there were no specific regulations at the time of application regarding "attached", thus in that absence, the Authority does have the ability under Section 10 to assess what "attached" refers to in relation to Mr. Maye's application.

The Board concludes that the Town was in compliance with legislation and regulations when they refused the application under appeal to develop a garage.

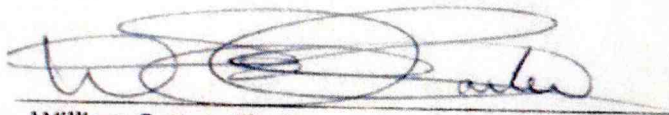
Board's Order

Based on the information presented, the Board orders that the decision by the Town of Lewisporte on August 3, 2020 to deny the application for an attached garage as proposed by Mr. Maye be confirmed.

The Respondent 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 Board's decision has been received by the Appellant(s).

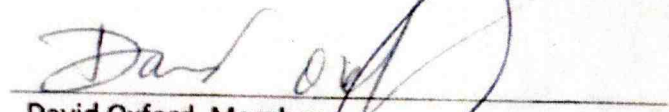
DATED at Gander, Newfoundland and Labrador, this January 13, 2021.



**William Carter, Chair
Central Newfoundland Regional Appeal Board**



**Charlie Irving, Member
Central Newfoundland Regional Appeal Board**



**David Oxford, Member
Central Newfoundland Regional Appeal Board**