

Labrador Regional Appeal Board

Appeal #	15-006-064-019
Appellant(s)	Craig Simms
Respondent / Authority	Town of Labrador City
Date of Hearing	November 30, 2021

Board Members

Chair	Karen Oldford
Member	Carol Best
Member	Nina Rumbolt-Pye

Also in Attendance

Representatives for the Appellant(s)	Craig Simms
Representatives for the Authority	Craig Purves
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP

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 Labrador Regional Appeal Board is to determine if the Town of Labrador City (the Authority) acted in accordance with the Town of Labrador City Development Regulations when it made a decision on July 8, 2019 to refuse an application to cover a stair well at 217 Drake Avenue.

Presentations During the Hearing

1. Planner's Presentation

Elaine Mitchell, MCIP, summarized the technical report noting that section 108 of the *Urban and Rural Planning Act, 2000* allows a development or use of land to continue in a manner that does not conform to the development regulations that apply to the land provided that the development legally existed before the registration of those regulations. Subsection 108 (3)(b) only allows for structural modifications required for safety and subsection 108 (3)(f) does not allow expansion if the expansion increases non-conformity.

Ms. Mitchell stated that section 3.12 of the Labrador City Development Regulations requires that an application be made by the owner of the subject property. Ms. Mitchell reviewed the definitions of building and development.

2. Appellant's Presentation

Mr. Simms said that the building was in place for over 30 years, but at time of his purchase he believed he owned all the land surrounding the building. The Town of Labrador City did not require a survey to complete the purchase and transfer of property to Mr. Simms. Therefore, he was unaware that the existing building was in nonconformity, with a portion of it outside his property boundary.

In 2007, Council approved a subsidiary apartment at the subject address and required a fire escape as per the National Building Code. The appellant applied for a building permit re: entrance basement and received notice that the application to install a basement entrance was approved. The appellant constructed the basement entrance with stairs and concrete retaining wall and doorway to permit fire escape (full basement is eight feet underground/under grade requiring door well).

Mr. Simms stated that the creation of the enclosed stairwell corrects safety concerns related to snow build up preventing egress from the building in the winter and a fall hazard down the 8 ft. stairwell.

In 2019, the appellant was asked by the Authority to apply for a permit to enclose the basement stairwell access, after a site visit of other property improvements permitted. His application for the building permit, dated July 5, 2019, indicated it was a porch built on existing foundation.

After the permit was denied, Mr. Simms indicated that he purchased a survey and discovered that his building overlapped on land he did not own and that he has since spoken with IOC, the current owner of the land, and with the Department of Highways regarding the easement. He is willing to purchase the strip of land, however, IOC stated that the land will be passed over to the Town of Labrador City, which is from whom he would need to purchase the land.

3. Authority's Presentation

Mr. Craig Purves, Town Planner, stated that the stairwell is non-conforming because it is below grade and that application in 2007 did not specify the construction of the stairwell. He indicated that the enclosure increases the non-conformity, and that is the reason for the denial of the permit for the enclosure. He stated that the town did not have authority to permit the enclosure.

Board's Analysis

What is the matter under appeal?

The matter under appeal is whether the Town of Labrador City (the Authority) acted in accordance with the Town of Labrador City Development Regulations when it made a decision on July 8, 2019 to refuse an application to cover a stair well at 217 Drake Avenue.

How is the subject property zoned?

The Board learned that the property is located in a Commercial Core zone and the minimum rear yard set back is 6 metres.

On what grounds did the Town deny the application?

The Board learned that the letter of refusal, dated July 8, 2019, from the Authority stated that the application was denied because it did not meet regulation 6.12.3, specifically the rear yard set back of 6 metres for the Commercial Core zone. During the appeal hearing, the Authority also stated that allowing the applicant to enclose the stairwell would constitute an attachment to the main structure and increase the non-conformity of the building.

Would the stairwell enclosure increase non-conformity?

The Board learned that a permit was issued by the Authority on August 3, 2007 to install a basement entrance for an apartment in an existing building. The Board also learned that the building has been existing for over 20 years and that the building does not meet the rear yard setback of 6 metres. As a result of these two factors, the Board finds the non-conformity was legally established and section 108 of the *Urban and Rural Planning Act, 2000* applies. The Board determined section 108 (3) (f) of the *Urban and Rural Planning Act, 2000* states that an expansion to a non-conforming building or structure shall not increase non-conformity. The Board finds that the enclosure on the stairwell does not increase the non-conformity because the concrete stair well is a legally existing structure and the enclosure will not further reduce the rear yard setback.

Board's Conclusion

After reviewing the presentations by the Appellant and the Authority, the Board finds that the stair well is a non-conforming structure because it was legally established by a permit issued by Council in 2007. Section 108 of the *Urban and Rural Planning Act, 2000* states "a council... shall... 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 plan, scheme or regulations made with respect to that kind of development or use". The non-conformity is with respect to the rear yard setback.

The Board finds that the structure does not increase non-conformity with respect to the rear yard setback because it will be built on top of the existing concrete stair well. Subsection (3) (f) of the *Urban and Rural Planning Act 2000* states "*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*". The Board accepts the argument that where the concrete stairwell existed and the enclosure was being built on top of that structure such that the rear yard setback would not be affected.

Furthermore, the Board finds that section 108 (3) (b) of the *Urban and Rural Planning Act, 2000* states that a non-conforming development "*shall not be structurally modified except as required for the safety of the building, structure or development*". The Board accepts the argument of the Appellant that the enclosure was required for fire and life safety reasons.

After reviewing the information presented to this Board, the Board concludes that the completion of the enclosure will not increase the non-conformity because it is built on the existing concrete stairwell that was permitted by The Authority in 2007. Therefore the Board orders that the Authority's decision to refuse the application to cover a stairwell at 217 Drake Avenue be reversed. That is to say, the Authority shall issue a permit in accordance with section 108 of the *Urban and Rural Planning Act, 2000* on the grounds that the non-conformity is not increased and that the stairwell cover will improve health and life safety for the inhabitants of the basement.

The Board is bound by section 42 (10) of the *Urban and Rural Planning Act, 2000*.

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.

Board's Order

Based on the information at the appeal, the Board orders that the decision of the Authority to refuse the application for covering an existing stairwell at the rear of 217 Drake Avenue be reversed.

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

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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 Happy Valley-Goose Bay, Newfoundland and Labrador, this 30th day of November, 2021.



Karen Oldford, Chair
Labrador Regional Appeal Board



Carol Best, Member
Labrador Regional Appeal Board



Nina Rumbolt-Pye, Member
Labrador Regional Appeal Board