

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Tom Collingwood **Appellants**

AND Town of Portugal Cove – St. Philip’s **Respondent**

RESPECTING Refusal

BOARD MEMBERS Vicki Connolly – Chair
Mary Thorne - Gosse – Member
Bruce Strong – Member

DATE OF HEARING February 4, 2015

IN ATTENDANCE

Les Spurrell – Authority
Ashley MacKinnon - Authority
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

In October, 2013, the Town became aware of two accessory buildings being constructed without permits at 13 Emylia Place. The Town wrote to Mr. Tom Collingwood to notify him of the matter and requested he submit the required material and application forms. On August 5, 2014, Mr. Collingwood applied to the Town of Portugal Cove-St. Philip's for permits to construct two accessory buildings at 13 Emylia Place: one measuring 89.2 m² and the second measuring 32.6m².

This appeal arises from the Town of Portugal Cove – St. Philip's refusing to issue a permit for Mr. Collingwood's second accessory building measuring 32.6 m² at the August 26, 2014 Regular Meeting of Council. Council rejected Mr. Collingwood's second accessory building because it was contrary to section 7 and 38(2)(b) of the Town's Development Regulations.

On September 23, 2014, Mr. Collingwood filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application for an accessory building measuring 32.6 m². The grounds for appeal are summarized as follows:

- the accessory building complies with all Town regulations and development conditions;
- while the accessory building is located closer to the street than the dwelling, Council should consider the fact that the dwelling is setback 85 metres from the streetline and the accessory building meets all other applicable conditions;
- it is not uncommon to have accessory buildings in front of the main dwelling for the subject location and the design of the structure meets the Town's traditional and historical development patterns;
- the Town did not consider the septic field location as well as the size of the back yard of the subject lot;
- the accessory building is located 15 metres from the

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on October 18, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on January 8, 2014.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Matters presented to and considered by the Board

Is the appeal valid?

The Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* (the "Act") which requires an appeal be filed within 14 days. Section 42(4) states:

An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

The Board considered the Appellant's Appeal Summary Form and determined that the Mr. Collingwood received Council's decision on September 5, 2014. The Appellant filed his appeal with the Eastern Newfoundland Regional Appeal Board on September 23, 2014, which was outside the 14 day requirement outlined in section 42(4) of the *Act*.

The Board determined that the Appellant did not satisfy section 42(4) of the *Act*. In accordance with section 6(5) of the Minister's Development Regulations, "[w]here an appeal of a decision and the required fee is not received by a board in accordance with this section and Part VI of the *Act*, the right to appeal that decision shall be considered to have been forfeited."

Should the Board defer the appeal hearing?

The Appellant requested the Board defer the hearing as he could not attend due to his work schedule. Since the Board deemed the appeal invalid, the Board decided to not grant Mr. Collingwood's deferral request.

Conclusion

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.

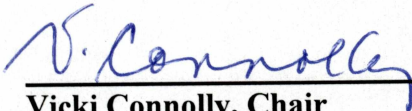
Based on its findings, the Board determined that the appeal was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* and is therefore, invalid.

Order

Based on the information presented, the Board dismisses the appeal regarding the decision made by the Town of Portugal Cove-St. Philip's on August 26, 2014 to refuse Mr. Tom Collingwood a permit to construct a second accessory building at 13 Emylia Place.

The Town of Portugal Cove – St. Philip's and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

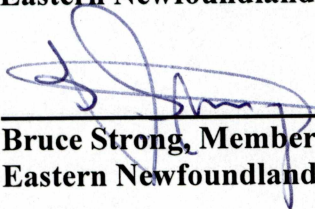
DATED at St. John's, Newfoundland and Labrador, this 4th day of February, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board