

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Brenda Martin **Appellant**

AND Town of St. Alban's **Respondent**

RESPECTING Approval

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Shawn Feener – Member

DATE OF HEARING February 17, 2015

IN ATTENDANCE

Brenda Martin – Appellant
W. Hartery Jr. – Support for Appellant
Sandra Cox – Authority (teleconference)
Jamie LeRoux – Authority (teleconference)
Kylie Collier – Applicant (teleconference)
Sharon Cox – Interested Party (teleconference)
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This is a third party appeal that arises from a decision made by the Town of St. Alban's to issue a permit to Mr. Kylie Collier. On July 10, 2013, Mr. Kylie Collier, on behalf of the Warehouse Bar and Grill, applied to the Town of St. Alban's for permission to construct a deck and stage at 202 Main Street. The Town considered the application at the July 11, 2013 Regular Meeting of Council and resolved to approve the application subject to approval from all necessary government departments. Approval letters were issued to the applicant on July 23, 2013 as well as April 8, 2013. Mr. Collier received permission from Government Services Centre for the construction of the deck on April 9, 2014. Mr. Collier notified the Town and subsequently received verbal permission from the Town Clerk. The Town issued a written permit to Mr. Collier on April 16, 2014 subject to no work commencing for fourteen (14) days from receipt of the permit.

On April 28, 2014, Brenda Martin filed an appeal with the Central Newfoundland Regional Appeal Board against Council's approval. The appeal was submitted in accordance with section 42 of the *Urban and Rural Planning Act, 2000*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Coaster* on December 8, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on January 13, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Town of St. Alban's Municipal Plan and Development Regulations, 2009

Matters presented to and considered by the Board

Did Council approve Mr. Collier's application in accordance with the Town's Development Regulations?

The subject property is located in the Mixed Development zone. The Board reviewed the Mixed Development Use Zone Table in Schedule "C" of the Town's Development Regulations and confirmed that Council must consult with residents prior to approving development applications in the Mixed Development zone. The Town conceded at the hearing that it did not consult with residents before issuing a permit to Mr. Collier for an addition of a deck to the Warehouse Bar and Grill. Therefore, the Board found that the Town did not approve Mr. Collier's application in accordance with the Town's Development Regulations.

Did the Town follow procedure when it notified Mr. Collier of Council's decision?

The Board accepts that a decision of Council must be communicated in writing and the applicant must be notified of their right and process to appeal in accordance with section 5 of the Minister's Development Regulations, 2000. Section 5 states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person's right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

While Mr. Collier was issued a permit in writing, the Town did not provide written notice of the right to appeal as required. While the Board acknowledges that the right to appeal was known as an appeal was filed by a third party in accordance with section 42 of the *Urban and Rural Planning Act, 2000*, this does not negate the Town's legislated responsibility to provide written notification of the right and process to appeal a decision as expressed in section 5 of the *Minister's Development Regulations, 2000*.

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.

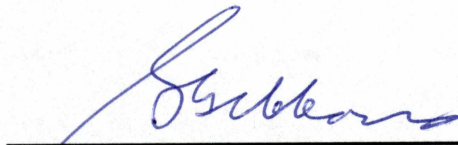
Order

Based on the information presented, the Board orders that the permit issued on April 16, 2014 by the Town of St. Alban's to Mr. Kylie Collier to construct a deck and stage at 202 Main Street, be vacated.

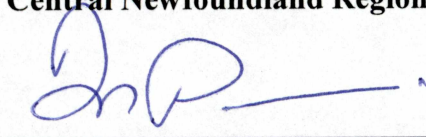
The Board further orders the Town of St. Alban's to pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

The Town of St. Alban's and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

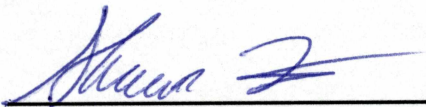
DATED at Grand Falls-Windsor, Newfoundland and Labrador, this 17th day of February, 2015.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Shawn Feener, Member
Central Newfoundland Regional Appeal Board