

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Beverley Griffiths **Appellant**

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

RESPECTING Refusal

BOARD MEMBERS Vicki Connolly – Chair
Michelle Downey – Member
Mary Thorne-Gosse – Member

DATE OF HEARING June 17, 2015

IN ATTENDANCE

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

DECISION

Facts/Background

This appeal arises from the Town of Portugal Cove – St. Philip’s refusing to issue a permit to Beverley Griffiths. Ms. Griffiths applied to the Town for an extension to an existing shed located on her property at 109-113 Bennetts Road. The Town considered and refused the subject application at the January 13, 2015 Regular Meeting of Council. The Town notified Ms. Griffiths in a letter, dated January 15, 2015, that Council refused her application because it contradicted Plan Policy PW-6 and Development Standard 49 (3e) of the Town’s Municipal Plan and Development Regulations, 2014. The letter noted the right and process to appeal.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, Ms. Griffiths filed an appeal with the Eastern Newfoundland Regional Appeal Board on February 2, 2015. Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on April 29, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on June 5, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Portugal Cove-St. Philip’s Municipal Plan and Development Regulations, 2014
Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Is residential development permitted within the Protected Watershed zone?

The Board reviewed the Protected Watershed Use Zone Table in Schedule “C” of the Town’s Development Regulations and determined that residential development is prohibited.

Is the existing shed legal non-conforming?

The Board confirmed at the hearing that the existing shed is considered a non-conforming use by

the Town of Portugal Cove – St. Philip’s. The Town submitted a permit that was issued in 1998 for the demolition, removal and rebuilding of a shed on the subject property. Therefore, the Town can confirm that a structure has existed on the subject property prior to 1998.

Can legal non-conforming structures be expanded?

Yes. The Board reviewed section 108(3)(e) of the *Urban and Rural Planning Act, 2000* and found that legal non-conforming structures may be expanded up to 50 percent of the original building, at Council’s discretion. Section 108(3)(e) states:

(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) (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;

Does the proposed extension exceed 50% of the existing shed?

Upon receiving dimensions of the original and proposed shed extension from the Town, the Board found that the Town accurately deemed the extension greater than 50 percent of the existing structure. According to the Town, the original shed measured 7.86 m² and the proposed extension measured 13.84 m².

Did the Town use its discretionary authority appropriately when it refused Ms. Griffiths’ application?

The expansion of a non-conforming structure as well as whether the expansion exceeds 50 percent of the original structure are discretionary decisions of Council. Upon review of the facts presented to the Board and section 108 of the *Act*, the Board found that the Town used its discretionary authority appropriately when it refused Ms. Griffiths’ application.

Did the Town notify the appellant appropriately?

Yes. The Board concluded that the Town notified the appellant in writing of its decision. Reasons for refusing the permit were provided as required under section 23 of the Town’s Development Regulations. Additionally, notice of appeal was noted in the January 15, 2015 refusal letter issued to Ms. Griffiths in accordance with section 5 of the *Minister’s Development Regulations, 2000*.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

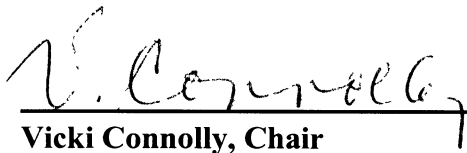
Based on its findings, the Board determined that the Town of Portugal Cove-St. Philip's had the authority to refuse the subject application and did so in accordance with the *Urban and Rural Planning Act, 2000* and the Town's Municipal Plan and Development Regulations. Therefore, the Board confirms the Town's decision to refuse Ms. Griffiths' application to extend the existing shed located at 109-113 Bennetts Road.

Order

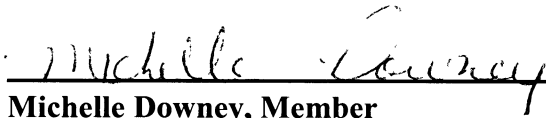
Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip’s on January 13, 2015 to refuse Ms. Beverley Griffiths application for an extension to an existing shed located at 109-113 Bennetts Road, be confirmed.

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

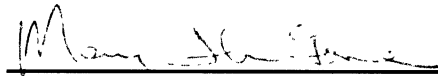
DATED at St. John’s, Newfoundland and Labrador, this 19th day of June, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board