

**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** June 24, 2015

**IN ATTENDANCE**

Brenda Martin – Appellant  
William Hartery Jr. – Support for Appellant  
Sandra Cox – Authority  
Jamie LeRoux – Authority  
Sharon Cox – Representative for Warehouse Bar & Grill (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 March 17, 2015, Kylie Collier, on behalf of the Warehouse Bar and Grill, applied to the Town of St. Alban's for permission to construct a deck at 202 Main Street. Council advertised the application in the Advertiser on March 23, 2015 and March 30, 2015. The Town also notified neighbouring residents, in writing, of the application and requested comments by April 6, 2015. The Town received one submission from Brenda Martin and William Hartery, which was considered at the April 6, 2015 Regular Meeting of Council. After the Town consulted with the developer, the Town considered and approved the subject application at the April 21, 2015 Regular Meeting of Council. A permit was issued to Warehouse Bar and Grill on May 4, 2015. The Town notified the residents opposed to the application in a letter dated May 4, 2015.

Brenda Martin, an interested third party, filed an appeal with the Central Newfoundland Regional Appeal Board against Council's approval. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, the appeal was filed within the fourteen (14) day requirement. Additionally, Ms. Martin included the required information as per section 42(5) of the *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Advertiser* on June 1, 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 8, 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**

#### **Should the Board grant a deferral request from the appellant?**

The appellant requested the Board postpone the hearing until such time as Mr. Hartery's Access to Information and Protection of Privacy (ATIPP) request is completed. The Board learned at the hearing that Mr. Hartery submitted an ATIPP request for the 1992 Appeal Board decision regarding a similar development at 202 Main Street. According to Mr. Hartery, the 1992 Council refused a similar application and that decision was upheld by the 1992 Appeal Board. The Authority indicated at the

hearing that the Town does not dispute the information submitted by Mr. Hartery. Subsequently, the Board vacated the room and recessed briefly to discuss the appellants' request.

The Board considered Mr. Hartery's request and decided to proceed with the hearing for the following reasons:

- The Municipal Plan and Development Regulations that existed in 1992 are no longer in legal effect.
- The decision under appeal was made under the 2009 St. Alban's Municipal Plan and Development Regulations.
- The Board is neither bound by the rules of evidence nor precedent.

### **What is the role of the Board with respect to this appeal?**

The Board acknowledges the comments made by the appellants regarding snow clearing, parking, and day-to-day operations of the Town. However, reviewing the Town's daily operations is not within the Board's jurisdiction. The role of the Board is to determine whether the Town complied with all applicable legislation, policy and regulations when it considered an application to construct a deck at 202 Main Street.

### **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. Specifically, Condition 2(1), Non-Residential Uses Location, of the Mixed Development Use Zone Table states:

*(1) The Town will consult with and consider legitimate concerns of surrounding residents and property owners before granting approval for any development in the Mixed Development Zone. If a proposed development is considered to be unacceptable, a permit may be refused. If measures such as buffering, screening, landscaping and/or property maintenance can render negative effects innocuous they will be required, at the developers cost. Conversely, if someone wishes to build a residence or undertake some other development next or near to a pre-existing but potentially conflicting use, Council may refuse the application or require the applicant to provide mitigated measures. (sic)*

The Board found that the Town acted in accordance with Condition 2(1) as it provided written notification to six (6) neighbouring residents, published a notice in the Advertiser on March 23, 2015 and

March 30, 2015, and considered the comments received in response to the public notification process.

### **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.

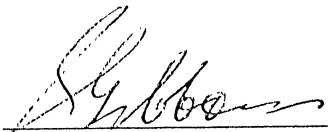
Based on its findings, the Board determined that the Town of St. Alban's had the authority to issue a permit to Mr. Collier (Warehouse Bar & Grill) to construct a deck at 202 Main Street and did so in accordance with the Town's Municipal Plan and Development Regulations.

**Order**

Based on the information presented, the Board orders that the permit issued on May 4, 2015 by the Town of St Alban's to the Warehouse Bar and Grill to construct a deck at 202 Main Street, be confirmed

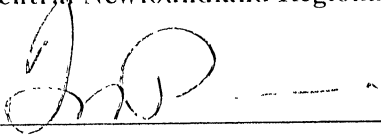
The Town of St Alban's and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board

**DATED** at Grand Falls-Windsor, Newfoundland and Labrador, this 24<sup>th</sup> day of June, 2015



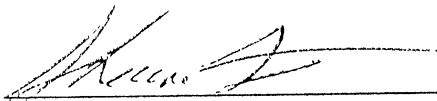
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Sam Gibbons, Chair  
Central Newfoundland Regional Appeal Board



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Fred Parsons, Member  
Central Newfoundland Regional Appeal Board



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Shawn Feener, Member  
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