

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Robert White **Appellants**

AND Town of Bay Bulls **Respondent**

RESPECTING Approval

BOARD MEMBERS Michelle Downey – Acting Chair
Bruce Strong
Mary Thorne-Gosse

DATE OF HEARING September 17, 2015

IN ATTENDANCE

Jonathan Dale – Solicitor for the 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

This appeal arises from the Town of Bay Bulls issuing a permit to Mr. Roger McGrath to develop a 30' x 40' garage at 47 Dunn Drive. Mr. McGrath submitted his application for the accessory building to the Town of Bay Bulls on December 3, 2014. The Town considered and approved Mr. McGrath's application at the December 8, 2014 Regular Meeting of Council. At the January 12, 2015 Regular Meeting of Council, Council revisited its December 8, 2014 decision and considered rescinding the approval, but the motion died. A condition was added to Mr. McGrath's permit which required the garage be 10 feet from the Town's easement. The Town issued a permit to Mr. McGrath on January 15, 2015.

Mr. Robert White, an interested third party, filed an appeal with the Eastern Newfoundland Regional Appeal Board against the approval issued by the Town of Bay Bulls to Mr. McGrath. In accordance with section 42(4) of the Urban and Rural Planning Act, 2000, the appeal was filed within the fourteen (14) day requirement. Additionally, Mr. White included the required information as per section 42(5) 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 Telegram* on March 7, 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 March 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Bay Bulls Municipal Plan and Development Regulations, 1999

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Matters presented to and considered by the Board

Should the Board grant the deferral request submitted?

The Secretary to the Board read into the record a request for a deferral submitted by Mr. Roger McGrath's lawyer, Mr. Ed Montegue. The Board considered this request but decided to proceed with the hearing as the Board felt it had all necessary information. The Town's lawyer, Mr. Jonathan Dale, did not object to the Board decision to proceed.

Did the accessory building exceed the size requirements in the Town's Development Regulations?

The Board reviewed Condition 16 of the Residential Use Zone Table in Schedule "C" of the Town's Development Regulations, which states:

Accessory buildings shall have a maximum floor area equivalent to the lesser of 50 m² or 7% of the total lot area and a height of no more than 4 metres. Non-residential accessory buildings, in any zone, when abutting a residential property or residential zone, shall not be located closer than 5 metres from the abutting residential property or zone. See also Development Regulation 33.

The Town's lawyer stated that the subject structure measured 30 feet by 40 feet or 111 square metres and conceded that it clearly exceeds the size requirements outlined in Condition 16 of the Residential Use Zone Table.

Should the Town of Bay Bulls have approved Mr. McGrath's application?

The Board accepts that the Town has the authority to approve accessory buildings within the Residential zone. However, the Town must consider and abide by the applicable regulations. In particular, condition 16 of the Residential Use Zone.

The Board questioned the Town's lawyer whether the accessory building was intended for residential or commercial use since this was questioned in the appellant's grounds. The Town's lawyer stated that the permit issued to Mr. McGrath was for an accessory building which did not specify the use of the structure. While information suggested Mr. McGrath intended to use the

accessory building to store commercial equipment, this could not be confirmed at the hearing. Although the intended use of the accessory building is unclear, the Board determined that this information was not pertinent in providing a decision. However, if the accessory building is intended for a non-residential use, then Council must consider the non-residential accessory building guidelines also outlined in Condition 16 of the Residential Use Zone Table.

Additionally, the Board reviewed section 6, Compliance with Regulations, of the Town's Development Regulations which requires all development comply with the Town's Development Regulations. Section 6 states:

No development shall be carried out within the Planning Area boundary except in accordance with these Regulations.

Therefore, the Board found that since the accessory building did not comply with Residential accessory building requirements, the Town should not have approved the application.

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 Bay Bulls erred in approving Mr. McGrath's application for a 30 feet x 40 feet accessory building as it clearly exceeded the maximum allowable size as outlined in Condition 16 of the Residential Use Zone Table in Schedule C of the Town's Development Regulations.

That is to say, that the decision made at the December 8, 2014 Regular Meeting of Council to approve Mr. McGrath's application for a 30 feet x 40 feet accessory building at 47 Dunn Drive is reversed. The Board derives its authority to reverse the decision being appealed from section 42(10) of the *Urban and Rural Planning Act, 2000*, which states:

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.

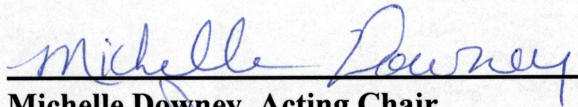
Order

Based on the information presented, the Board orders that the decision made by the Town of Bay Bulls on December 8, 2014 to approve a permit to Mr. Roger McGrath for a 30 feet x 40 feet accessory building at 47 Dunn Drive, be reversed.

The Board further orders that the Town of Bay Bulls pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

The Town of Bay Bulls and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

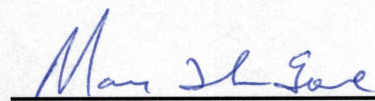
DATED at St. John's, Newfoundland and Labrador, this 17th day of September, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board