

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Ray and Marilyn Carpenter **Appellants**

AND Town of Carbonear **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING October 1, 2015

IN ATTENDANCE

Ray and Marilyn Carpenter – Appellants

Cynthia Davis - 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 Carbonear refusing to issue a permit to Ray and Marilyn Carpenter for a subsidiary apartment a garage. In January 2014, the Town of Carbonear became aware of an apartment being rented above a garage at 192 Valley Road. The Town discussed this at the January 26, 2015 and March 9, 2015 Development Committee meetings and determined that subsidiary apartments are only permitted in the main dwelling, not an accessory building. The Committee recommended advising the property owner of this information in writing. The Town notified Ray and Marilyn Carpenter of its decision in a letter dated March 31, 2015. The letter also stated Mr. and Mrs. Carpenter's right and process to appeal the Town's decision.

In accordance with section 42 of the Urban and Rural Planning Act, 2000, Mr. and Mrs. Carpenter filed an appeal with the Eastern Newfoundland Regional Appeal Board against the Town's decision to refuse their request to rent an apartment located in the garage located at 192 Valley Road. The appellants initiated the appeals process on April 14, 2015. As required under section 42(5) of the Urban and Rural Planning Act, 2000, Mr. and Mrs. Carpenter filed a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Compass* on July 28, 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 September 3, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Carbonear Municipal Plan and Development Regulations, 2004

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Matters presented to and considered by the Board

Did Mr. and Mrs. Carpenter obtain a permit from the Town for their garage?

Yes. The Appellants as well as the Authority confirmed for the Board at the hearing that a permit was issued for the Appellants' garage located at 192 Valley Road. The Authority noted that the approval did not permit a subsidiary apartment on the second storey.

Are subsidiary apartments permitted within accessory buildings?

No. The Board found that regulation 59 within the Town's Development Regulations only allows subsidiary apartments within single dwellings. Regulation 59 states:

Subsidiary apartments may be permitted in single dwellings only, and for the purposes of calculating lot area and yard requirements, shall be considered part of the self-contained dwelling.

The Board reviewed the definition of a subsidiary apartment as defined in Schedule "A" of the Town's Development Regulations, which states:

SUBSIDIARY APARTMENT: A separate dwelling unit constructed within and subsidiary to a self-contained dwelling.

The Board also referred to the definition of accessory building as defined in Schedule "A" of the Town's Development Regulations, which states:

ACCESSORY BUILDING:

- (i) A detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory and which has a use that is customarily incidental or complementary to the main use of the building or land,*
- (ii) for residential uses, domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetables storage cellars, shelters for domestic pets or radio and television antennae,*
- (iii) for commercial uses, workshops or garages, and*
- (iv) for industrial uses, garages, offices, raised ramps and docks;*

Therefore, taking into consideration regulation 59 and the definitions of subsidiary apartment and accessory building, it is evident to the Board that a subsidiary apartment is not permitted in an accessory building.

Did the Town have the authority to refuse Mr. and Mrs. Carpenter’s application?

Yes. The Board accepts that the Town may refuse an application if it is found contrary to the Town’s Municipal Plan and Development Regulations. The Board found that since a subsidiary apartment is not permitted within an accessory building, the Town had the authority under regulation 7 of the Town’s Development Regulations to refuse the Appellants’ application.

Did the Town communicate its decision appropriately?

Yes. The Board reviewed regulation 22 of the Town’s Development Regulations which requires the Authority to state the reasons for refusing a permit. Regulation 22 states:

The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.

The Board is satisfied that the Town notified Mr. and Mrs. Carpenter of its decision as per regulation 22 in its decision letter dated March 31, 2014. Additionally, the Board found that the Town provided the appellants notice of their right and process to appeal in accordance with section 5 of the *Minister’s Development Regulations*, N.L.R 3/01.

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 Carbonear had the authority to refuse Ray and Marilyn Carpenter’s application for a subsidiary apartment in their garage at 192 Valley Road and did so in accordance with the Town of Carbonear Municipal Plan and Development Regulations.

Order

Based on the information presented, the Board orders that the decision made by the Town of Carbonear on March 31, 2015 to refuse Mr. and Mrs. Carpenter's application to develop a subsidiary dwelling in their accessory building at 192 Valley Road, be confirmed.

The Town of Carbonear and the appellants are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 1st day of October, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board

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