

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Paul Perham **Appellant**

AND Town of Paradise **Respondent**

RESPECTING Refusal

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

DATE OF HEARING November 25, 2015

IN ATTENDANCE

Paul Perham – Appellant
Alton Glenn – Authority
Ann-Marie Cashin - Authority
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Paradise rejecting an application submitted by Paul Perham on June 8, 2015 for an existing accessory building located at 4 Hickey's Road. The Town of Paradise issued a permit for the existing building in 1999. The structure, however, was not placed in the location approved by the Town. As a result, the accessory building does not meet the minimum setback of 1.2 metres from the rear lot line as prescribed by the Conservation zone. The Town considered and refused the June 8, 2015 application at the July 7, 2015 Regular Meeting of Council. The Town notified Mr. Perham of Council's decision in a notice dated July 8, 2015. The notice of refusal stated that the accessory building is non-compliant with section 40(2)(a)(i)(l) of the Paradise Development Regulations, 2004 since the existing set-back of 0.34 metres from the rear yard lot line does not meet the minimum setback of 1.2 metres. The letter noted Mr. Perham's right and process to appeal Council's decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, Mr. Perham filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application on July 21, 2015. Additionally, in accordance with section 42(5) of the *Urban and Rural Planning Act, 2000*, 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.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Telegram* on October 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 October 21, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Paradise Municipal Plan and Development Regulations, 2004

Matters presented to and considered by the Board

How is the subject application site zoned?

The Board confirmed that 4 Hickey's Road is partially zoned Residential Medium Density (RMD) and Conservation. The subject shed is located within the Conservation zone.

Are accessory buildings allowed within the Conservation zone?

The Board reviewed the Town of Paradise Development Regulations and found that accessory buildings are permitted in each use zone as stated in section 40.

Does the accessory building comply with the accessory building standards as prescribed in the Town’s Development Regulations?

The Board reviewed section 40, which states:

Accessory Buildings are permitted in each use class provided the buildings are clearly incidental and complimentary to the main buildings’ character, size, and use. The buildings must be located on the lot on which the main building is located except as provided for under the Conservation Use Zone in Schedule C of these Regulations. Accessory buildings are not permitted to be used for human habitation and commercial or industrial uses from an accessory building on a residential property, regardless of the use zone in which it is located, is prohibited unless Council has issued a permit for such use. Repairs to vehicles, other than minor vehicle maintenance, are also prohibited.

The construction of accessory buildings must meet the following conditions:

(1) RESIDENTIAL (OTHER THAN THE RESIDENTIAL WATERSHED ZONE)

Accessory buildings shall be permitted in the residential land use zones, with the exception of the Residential Watershed Land Use Zone, in accordance with the following:

- (a) Accessory buildings shall not be located;
 - i) within 1.2 m from any property boundary,
 - ii) 2.4 m from any building, and
 - iii) within any easement area.

The Board accepts that accessory buildings shall not be located within 1.2 metres from any property boundary, as stated in section 40(1)(a)(i) of the Town’s Development Regulations. The Board also reviewed the Conservation Use Zone Table found in Schedule C of the Town’s Development Regulations. Condition 1 of the Conservation Use Zone Table also requires accessory buildings be set back at least 1.2 metres from any property boundary. The Board learned from the appellant that one corner of the existing shed is located 0.34 metres from the rear lot property boundary. Therefore, the Board determined that the existing shed is non-compliant with the Town’s Development Regulations.

Did the Town have the authority to refuse Mr. Perham’s application?

The Board reviewed section 6 of the Town of Paradise Development Regulations, which requires all development comply with the Town’s Municipal Plan and Development Regulations. The

Town indicated at the hearing that non-compliances are often discovered during the sale of property when compliance letters are requested. The Board learned at the hearing that the Town enforces this setback requirement when non-compliances are found. The Board understands that the shed has existed since 1999 and a permit was issued by the Town of Paradise for the existing shed. However, the shed was constructed contrary to that permit. The Town stated that the onus is on the applicant to ensure development complies with all applicable regulations. While the Board understands that the appellant inherited the non-conformance, this does not negate the Town's responsibility to enforce and administer the Town's Development Regulations. Therefore, since the appellant's shed does not comply with section 40 and condition 1 of the Conservation Use Zone Table of Schedule C of the Town's Development Regulations, the Board determined that the Town had the authority to refuse Mr. Perham's application.

Did the Town of Paradise notify the appellant of its decision appropriately?

Yes. The Board reviewed section 24, Reasons for Conditions or Refusing a Permit, of the Town's Development Regulations and found that Council is required to state the reasons for refusing a permit in writing. The Board confirmed that the Notice of Refusal issued to Mr. Perham on July 8, 2015 clearly outlines the reasons for the Town's rejection.

The Board accepts that Council also notified Mr. Perham of his right and process to appeal in accordance with section 25 of the Town's Development Regulations, which states:

Where the Council makes a decision that may be appealed under Section 42 of the Act, the Council 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 appeal 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.*

The Board confirmed that the right to appeal was included in the July 8, 2015 Notice of Refusal issued to the appellant. Therefore, the Board concluded that the Town properly notified Mr. Perham of Council's reasons for its refusal and provided him with the required information regarding his right to appeal Council's decision.

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 Paradise had the authority to refuse Mr. Paul Perham's application and did so in accordance with the Town's Municipal Plan and Development Regulations, 2004. Therefore, the Board will uphold the Town's July 7, 2015 decision to reject Mr. Perham's application for the existing accessory building at 4 Hickey's Road.

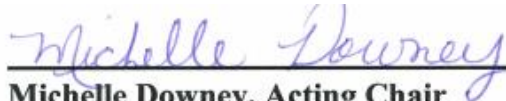
ORDER

Based on the information presented, the Board orders that the refusal issued to Mr. Paul Perham by the Town of Paradise for the existing accessory building at 4 Hickey's Road, be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the appellant(s).

DATED at St. John's, Newfoundland Labrador, this 25th day of November, 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