

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Monty Noble **Appellant**

AND Town of South River **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Bruce Strong

DATE OF HEARING December 14, 2015

IN ATTENDANCE

Monty Noble – Appellant

Majorie Dawson - 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 South River making a decision on an application submitted by Mr. Monty Noble for a residential garage at 91 Springfield Road. The Town reviewed Mr. Noble's application at the September 2, 2015 Regular Meeting of Council. Council decided at that meeting to approve the application provided the garage meets the Town's Regulations. The Town notified Mr. Noble of Council's decision in a letter dated September 15, 2015. The letter stated that Council refused his application at the September 2, 2015 Regular Meeting of Council as the proposed garage contravened section 33(3) of the Town's Development Regulations. The letter also noted that Council voted to approve Mr. Noble's application if the garage was moved to comply with the sideyard requirements.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000*, Mr. Noble filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application to construct a residential garage. Mr. Noble initiated the appeals process on September 30, 2015 and as required, 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 November 24, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on November 18, 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 South River Municipal Plan and Development Regulations, 1995

Matters presented to and considered by the Board

What was the decision of Council?

The Authority clarified at the hearing that Council discussed Mr. Noble's application prior to voting on the matter and found that the application contravened the Town's Development Regulations; specifically, the two (2) metre sideyard requirement. The Authority stated that Council decided to approve Mr. Noble's application if the accessory building were moved in order to comply with the development standards.

What are the side yard requirements within the Residential zone?

The Board reviewed the Town's Development Regulations and found section 33(3) provides direction to Council on accessory buildings. The Board confirmed at the hearing that an accessory building located in the Residential zone must be at least two (2) metres from the side property boundary. This is in accordance with section 33(3) and the Residential Use Zone Table in Schedule C of the Town's Development Regulations.

Does Mr. Noble's application comply with the sideyard requirements?

All parties agreed that Mr. Noble's application, as submitted to Council, does not meet the minimum two (2) metre sideyard requirement. Mr. Noble submitted a letter dated September 28, 2015 from John Bartlett, his adjacent neighbour, stating that Mr. Bartlett had no objection to a shed or garage being constructed within 2 or 3 feet from his property boundary. The Authority indicated that while Council had not received the subject letter, the decision was made in accordance with the Town's Development Regulations and the subject letter would not negate the Town from administering its Development Regulations. Therefore, the Board found that Mr. Noble's application does not comply with the two (2) metre sideyard requirement outlined in the Residential Use Zone Table in Schedule C of the Town's Development Regulations.

Did the Town have the authority to reject Mr. Noble's application?

The Board accepts that Mr. Noble's application contravened the Residential Use Zone standards. Since all development must comply with the Town's Development Regulations pursuant to section 6, the Board concluded that the Town had the authority to refuse Mr. Noble's application.

Did the Town appropriately notify Mr. Noble of Council's decision?

Yes. The Board found that the Town provided Mr. Noble with a written decision in the form of a letter dated September 15, 2015. The letter noted Council's reasons for its refusal as per section 21 of the Town's Development Regulations. Additionally, the Board determined that the Town complied with 5 of the *Minister's Development Regulations*, NLR 3/01 by notifying Mr. Noble of his right and process 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 South River had the authority to reject Mr. Noble's application and did so in accordance with the Town of South River Municipal Plan and Development Regulations, 1995.

Order

Based on the information presented, the Board orders that the decision made by the Town of South River on September 2, 2015 to reject Mr. Monty Noble's application for a residential garage at 91 Springfield Road, be confirmed.

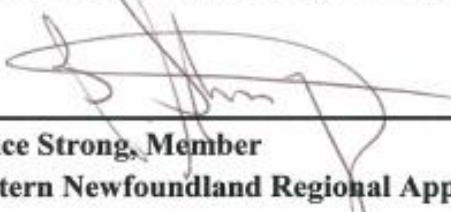
The Town of South River and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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.

DATED at St. John's, Newfoundland and Labrador, this 14th day of December, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board