

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Valerie Alexander **Appellant(s)**

AND Town of Stephenville **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Bill Madore - Member
Joseph Guinchard - Member

DATE OF HEARING May 25, 2016

IN ATTENDANCE

Valerie Alexander – Appellant
Dominic Alexander – Support for Appellant
Mike Campbell – Authority (teleconference)
Joanne Rose – Interested Party
Tom Rose – Interested Party
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Stephenville refusing to issue a permit to Valerie and Dominic Alexander for the purpose of constructing a single dwelling at 30A Hillier Avenue. The Town considered and refused the subject application at the August 20, 2015 Regular Meeting of Council. The Town notified the applicants of its decision in a letter dated August 21, 2015. The letter referred to section 2.3.7 of the Town of Stephenville Municipal Plan which requires all development within the Urban Area be connected to municipal water and sewer. The Town indicated that the subject application was refused because municipal services are unavailable in the proposed location. The letter also noted the applicants' right and process to appeal Council's decision.

Valerie Alexander filed an appeal with the West Newfoundland Regional Appeal Board against the Town's decision to refuse her application to construct a dwelling at 30A Hillier Avenue. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act"), the appeal was filed within the fourteen (14) day requirement. Additionally, the appellants included the required information as per section 42(5) of the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Western Star* on September 21, 2015 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Authority on February 9, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Stephenville Municipal Plan and Development Regulations, 2000

Matters presented to and considered by the Board

How is the subject property zoned?

The Board reviewed the Town of Stephenville Municipal Plan and Development Regulations, 2000 and confirmed that the property located at 30A Hillier Avenue is designated Residential and zoned Country Living Residential (CLR). The Board also acknowledges that 30A Hillier Avenue is located within the Urban Group according to section 2.3.2.2 (b), Land Use Designations and Policies – Land Use Designations, of the Town's Municipal Plan, which specifically states the following:

The land use designations or districts are set out below:

- a) Urban and Rural Groups - all designations fall into one or both of these groups;*
- b) Residential, which includes various commercial and public uses along with recreational open space and conservation - Urban Group;*
- c) Community Services, includes Commercial, Institutional, and certain types of recreational facilities - Urban Group;*
- d) Major Industrial (Port, the Paper Mill, Industrial subdivisions, and Airport) - Urban Group;*
- e) Conservation - Urban and Rural Groups;*
- f) Rural - Rural Group;*
- g) Well Head Protection Area and Protected Water Supply - Rural Group, and part, Urban Group (south of Hansen Highway).*

Are single dwellings permitted within the CLR zone?

Yes. The Board reviewed the CLR Use Zone Table in Schedule C of the Town's Development Regulations and confirmed that single dwellings are listed as permitted.

Does the site require municipal services?

The Board acknowledges that all development within the Urban Area must be connected to municipal water and sewer services except in the Cold Brook and Noel's Pond areas in accordance with section 2.3.7 of the Town's Municipal Plan, which states:

2.3.7 Municipal Services

Except for the Cold Brook and Noel's Pond communities, all development within the Urban Area shall be connected to municipal sewer and water services.

The Board acknowledges that the Town amended its Development Regulations in 2008 (Development Regulations Amendment 14, 2008 (DRA 14, 2008)) to create the CLR zone. According to the DRA 14, 2008, the intention of the CLR zone was to allow large unserved residential development. Despite the intent and the fact that the amendment was brought into legal effect in accordance with the process prescribed in the *Urban and Rural Planning Act, 2000*, the amendment did not alter plan policy 2.3.7. That is to say, since plan policy 2.3.7 has not been amended to date, plan policy 2.3.7 remains in legal effect. It is the Board's understanding that in the event a development regulation contradicts plan policy, the plan policy precedes. Therefore, since 30A Hillier Avenue is neither located in Cold Brook nor Noel's Pond, the property must be connected to municipal services in order to comply with the Town's Municipal Plan.

Did the Town have the authority to refuse Mr. and Mrs. Alexander's application?

Yes. The Board determined that the Town had the authority to refuse Mr. and Mrs. Alexander's application for unserved residential development as the proposal contravenes section 2.3.7 of the

Town's Municipal Plan.

Did the Town follow proper procedure when it refused the subject application?

The Board found that the Town of Stephenville notified Mr. and Mrs. Alexander of Council's decision in accordance with section 21, Reasons for Refusing Permit, which states:

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

Additionally, the Town notified Mr. and Mrs. Alexander of their right and process to appeal in accordance with section 5 of the *Minister's Development Regulations, NLR 3/01*, which states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority 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 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.*

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by section 42 of the *Urban and Rural Planning Act* 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 Stephenville had the authority, and exercised it appropriately, when it refused to issue a permit to Dominic and Valerie Alexander for the purpose of constructing an unserviced single dwelling at 30A Hillier Avenue.

ORDER


Based on the information presented, the Board orders that the decision made by the Town of Stephenville on October 22, 2015 to refuse the application submitted by Valerie and Dominic Alexander for the purpose of constructing an unserviced single dwelling at 30A Hillier Avenue, be confirmed.

The Town of Stephenville is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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 Steady Brook, Newfoundland and Labrador, this 25th day of May, 2016.


Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board


Bill Madore, Member
West Newfoundland Regional Appeal Board


Joseph Guinchard, Member
West Newfoundland Regional Appeal Board