

**CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Patti and David Decker **Appellant**

**AND** Town of Fogo Island **Respondent**

**RESPECTING** Order

**BOARD MEMBERS** Sam Gibbons – Chair  
Fred Parsons – Member  
Wesley Harris – Member

**DATE OF HEARING** October 18, 2016

**IN ATTENDANCE**

Amanda McGrath – Authority  
Daphne Coles - Authority  
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board  
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

This appeal arises from the Town of Fogo Island issuing an Order to David Decker and Patti McCarthy. On July 22, 2016, Patti McCarthy and David Decker applied to the Town of Fogo Island for a permit to renovate their existing cottage located at 123 Southside Road by adding a 12' by 23' extension. After completing site visits of the subject property and consulting with Crown lands, the Town informed the applicants that the Town could not issue a permit for the proposed addition as it would extend into the 15 metre Crown land reserve measured from the high water mark. The Town did however issue a permit for an addition measuring 10' by 23' on July 28, 2016.

Upon discovering the subject site was prepared for a 12' by 23' extension, Council resolved to issue an Order (the "Order") pursuant to section 102(1) of the Urban and Rural Planning Act, 2000. The Town ordered David Decker and Patti McCarthy to obtain the necessary permits under the Lands Act, 1991 or move the back footings in accordance with the July 28, 2016 permit. The Town provided sixty (60) days to comply with the Order.

On August 18, 2016, Patti and David Decker (the "appellants") appealed the Order to the Central Newfoundland Regional Appeal Board. 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 Pilot* on September 7, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellants and authority by registered mail sent on September 16, 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 Fogo Island Municipal Plan and Development Regulations, 2015

Lands Act, 1991

## **Matters presented to and considered by the Board**

### **Should the Board proceed with the hearing without the presence of the appellants?**

The Board recessed briefly to discuss whether to proceed without the presence of the appellants.

The following factors were considered by the Board:

- the material submitted by the appellants prior to the hearing;
- the lack of request for postponement by the appellants;
- the appellants did not avail of the opportunity to participate via teleconference; and
- the Secretary confirmed that the appellants received the notice of hearing.

Therefore, based on the above mentioned information, the Board determined to proceed with the hearing in the absence of the appellants.

### **Did the appellants receive a permit for the extension to their cottage?**

The Board accepts that the Town issued a permit to the appellants for a 10' by 23' extension to their cottage and not a 12' by 23' extension, which is what the contractor initiated. The Board understands that an extension of 12' was not granted as that would have extended into the 15 metre shoreline reservation which requires prior approval from Crown lands under section 7 of the *Lands Act, 1991*.

### **Would the Town approve a 12' by 23' extension if Crown lands grants approval?**

The Town indicated at the hearing that it would allow the appellants to proceed with the 12' by 23' extension if Crown lands grants permission to develop within the 15 metre shoreline reservation. The Board acknowledges that the Order stated the necessary permit must be obtained pursuant to section 7 of the *Lands Act, 1991*.

### **Did the Town have the authority to issue the Order?**

The Board reviewed section 102 of the *Urban and Rural Planning Act, 2000*. The Order was issued pursuant to section 102(1), which states:

*Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove,*

*stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.*

The Board accepts that the Town may issue a removal order under section 102(1) if development has commenced contrary to the Town's Plan or Regulations. The Board determined that the appellants violated section 7 of the Town's Development Regulations by contravening their permit for an extension of 10' by 23'. Therefore, the Board found that the Town had the authority to issue the Order to David Decker and Patti McCarthy.

### **Did the Town accurately issue the Order?**

Part XI, *Enforcement*, section 102-107 of the *Act*, outlines how an order issued under section 102 of the *Act* shall be served. The Board reviewed section 107 of the *Act* and confirmed at the hearing that the Town served the Order to the appellants in person at the Town Hall.

### **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 *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 Fogo Island had the authority to issue the Order to David Decker and Patti McCarthy and did so in accordance with the *Act*. That is to say, the Order dated August 10, 2016, remains in effect.

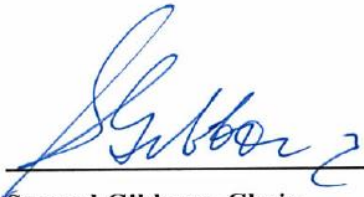
**Order**

Based on the information presented, the Board orders that the Order dated August 10, 2016 issued by the Town of Fogo Island to David Decker and Patti McCarthy concerning the extension of a cottage located at 123 Southside Road, Joe Batt's Arm in the Town of Fogo Island, be confirmed.


The Town of Fogo Island and the appellants are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central 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 Gander, Newfoundland and Labrador, this 18<sup>th</sup> day of October, 2016.



**Samuel Gibbons, Chair**  
**Central Newfoundland Regional Appeal Board**



**Wesley Harris, Member**  
**Central Newfoundland Regional Appeal Board**



**Fred Parsons, Member**  
**Central Newfoundland Regional Appeal Board**