

**CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Craig and Laura Waterman **Appellant**

**AND** Town of Gander **Respondent**

**RESPECTING** Order

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

**DATE OF HEARING** October 18, 2016

**IN ATTENDANCE**

Craig Waterman – Appellant  
Laura Waterman – Appellant  
Garry Brown – Authority  
Justin Collins – Authority  
Wanda-Lee Jenkins - 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 Gander issuing an Order (the “Order”) to Craig and Laura Waterman on September 8, 2016. The Order concerned “the construction of a shed attached to the deck at the rear of the house at 73 Yeager Street”. The Town issued the Order pursuant to section 102(1) of the *Urban and Rural Planning Act, 2000*. The Order stated that the accessory building contravened the Town of Gander Accessory Building Regulations as the structure is located closer than 1.8 metres from a dwelling. The Order also noted that the accessory building violates the Municipalities Act, 1999 and the *Urban and Rural Planning Act, 2000* and stated the right and process to appeal.

On September 21, 2016, Craig and Laura Waterman filed an appeal against the Order with the Central Newfoundland Regional Appeal Board in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”). Additionally, 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 as required under section 42(5) of the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Beacon* on September 29, 2016 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 11, 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 Gander Municipal Plan and Development Regulations, 2009

Town of Gander Accessory Building Regulations, 2014

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

**Is a “storage box” a “building”?**

The Board found that the Town of Gander does not define “storage box”, “deck box” or “deck accessories” in the Town’s Development Regulations or in the Town’s Accessory Building

Regulations. Therefore, it is the Town's discretion to determine how to define the subject structure.

The Board reviewed the definition of "building" as defined by section 2(c) of the *Act*, as well as the definition of "accessory building" as defined by section 4(1)(b) of the *Minister's Development Regulations*, NLR 3/01. The Board accepts the Town's argument that according to the definition of "building", the structure the appellants referred to as a "storage box" is a "building" as defined by the *Act*. Furthermore, the Board found that since the structure is a building, the building is therefore subject to the Town of Gander Accessory Building Regulations, 2014.

### **Does the accessory building conform to the Town of Gander Accessory Building Regulations?**

No. The Authority stated that the accessory building violated the setback requirement of 1.8 metres from a dwelling which is outlined in section 4(f) of the Town's Accessory Building Regulations. The Authority stated at the hearing that the current location of the accessory building was located underneath the eave of the appellants' house and therefore contrary to the Town's Accessory Building Regulations. Pictures provided by the Authority confirmed for the Board the location of the accessory building.

### **Did the appellants obtain a permit for the structure from the Town of Gander?**

The Board confirmed at the hearing that the appellants did not obtain a permit from the Town of Gander for their accessory building. The appellants indicated that they did not obtain a permit as they contend the structure is a storage box and not a shed. However, the Board reviewed the Town of Gander Development Regulations and confirmed that the Town must issue a permit for all development located within the Town's Planning Area boundary in accordance with section 26 of the Town's Development Regulations.

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

The Order was issued pursuant to section 102(1) of the *Act*. The Board reviewed section 102, 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 contravened section 26 of the Town's Development Regulations by not having a permit to develop as well as section 4(f) of the Town's Accessory Building Regulations as the accessory building is located closer than 1.8 metres from their house. Therefore, the Board found that the Town had the authority to issue the Order to Mr. and Mrs. Waterman.

### **Did the Town accurately issue the Removal 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 Mrs. Waterman on September 9, 2016 in person. The Order included the right and process to appeal as required under section 5 of the *Minister's Development Regulations*, NLR 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 *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 Gander had the authority to issue the Order to Craig and Laura Waterman, and did so in accordance with the *Act*. That is to say, the Order, dated September 8, 2016, remains in effect and Craig and Laura Waterman must now comply with the Order.

**Order**

Based on the information presented, the Board orders that the Order dated September 8, 2016 issued by the Town of Gander to Craig and Laura Waterman concerning the accessory building located at 73 Yeager Street, be confirmed.

The Town of Gander 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**