

LABRADOR REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Dan Cole **Appellants**

AND Town of Happy Valley – Goose Bay **Respondent**

RESPECTING Order

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

DATE OF HEARING November 15, 2016

IN ATTENDANCE

Dan Cole – Appellant (Teleconference)
John Duggan – Appellant’s Solicitor
Randy Dillon – Authority (Teleconference)
Doreen Best – Interested Party (Teleconference)
Lindsay Church - Technical Advisor to the Labrador Regional Appeal Board
Robert Cotter - Secretary to the Labrador Regional Appeal Board

DECISION

Background/Facts

On May 25, 2015, the Town of Happy Valley – Goose Bay issued a Building Permit to build a garage at 29 Markland Road to Mr. Dan Cole as per the plans submitted and in accordance with the Town of Happy Valley – Goose Bay Development Regulations.

This appeal arises from the Town of Happy Valley – Goose Bay issuing a Remediation Order (the “Order”) to Mr. Cole on June 21, 2016 regarding his garage situated at 29 Markland Road. The Order stated that the garage was built too close to Markland Road and is therefore contravening the setback requirements outlined in the Town’s Development Regulations as well as the approved plans associated with Mr. Cole’s Building Permit. The Order required the garage be relocated or removed no later than September 21, 2016. Additionally, the Order recommended that Mr. Cole consult with the Town prior to relocating the structure to ensure compliance with all regulations.

On July 4, 2016, Mr. Cole filed an appeal with the Labrador Regional Appeal Board against the Order dated June 21, 2016. In accordance with section 42(4) of the *Act*, the appeal was filed within the fourteen (14) day requirement. Additionally, Mr. Cole 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 Labradorian* on August 29, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 26, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Minister’s Development Regulations, NLR 3/01

Town of Happy Valley – Goose Bay Municipal Plan and Development Regulations, 2008

Matters presented to and considered by the Board

How is the property zoned?

The Board accepts that 29 Markland Road is located in a Residential Medium Density (RMD) zone according to the Town's Municipal Plan and Development Regulations.

What are the setback requirements for accessory buildings in the RMD zone?

The Board confirmed that the Town requires a 7 metre setback for all buildings within the RMD zone which is stated in the RMD Use Zone Table in Schedule C of the Town's Development Regulations. The Board found that this setback of 7 metres applies to accessory buildings as outlined in section 30(2) of the Town's Development Regulations, which states:

Building Line - The minimum building line (distance from the front lot line) for an accessory building shall be as that set out in Schedule C Use Zone for principal and other buildings.

Does the accessory building comply with the setback requirements?

No. The Board accepts that the existing location of Mr. Cole's accessory building is not in compliance with the 7 metre setback requirement for accessory buildings located within the RMD zone. While the appellant argues his accessory building is setback 8.53 metres, the survey dated June 9, 2016 illustrates that the accessory building is setback approximately 3.6 metres from the front lot line. Mr. Cole stated during the hearing that the setback distance of 8.53 metres was measured by himself, not by a professional surveyor.

Does the accessory building comply with the Building Permit issued to Mr. Cole?

No. The Board accepts that all stipulations outlined in a Building Permit must be considered. In this case, the Town included the requirement that the approved accessory building comply with the Town's Development Regulations. The Board learned that the Town's Development Regulations are available to the public upon request at the Town and are available on the Town's website.

Did the Town have the authority to issue the Order to Mr. Cole?

Yes. The Board found that the Town had the authority to issue the Remediation Order under

section 102 of the *Urban and Rural Planning Act, 2000*, section 404(1)(e) of the *Municipalities Act, 1999*, and section 21(5) of the Town's Development Regulations to Mr. Cole on the basis that the accessory building contravened section 7 of the Town's Development Regulations and section 194 of the *Municipalities Act, 1999*.

Did the Town issue the Remediation Order appropriately?

Yes. The Board determined that the Order was confirmed at the next scheduled meeting of Council held on June 30, 2016 as required when a Town employee issues an order pursuant to section 109(4) of the *Urban and Rural Planning Act, 2000*.

In accordance with section 5 of the *Minister's Development Regulations, NLR 3/01*, the Order noted the appellant's right and process to appeal, 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, 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 Happy Valley – Goose Bay had the authority, and exercised it appropriately, to issue the Remediation Order to Mr. Cole on June 21, 2016 regarding the placement of his accessory building located at 29 Markland Road.


ORDER

Based on the information presented, the Board orders that the decision made by the Town of Happy Valley – Goose Bay on June 21, 2016 to issue a Remediation Order to Mr. Dan Cole regarding an accessory building located at 29 Markland Road, be confirmed.


The Town of Happy Valley – Goose Bay and the Appellant are bound by this decision of the Labrador Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Labrador 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.

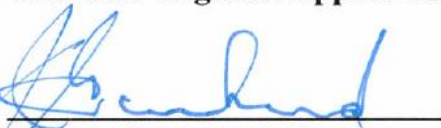
DATED at Deer Lake, Newfoundland and Labrador, this 15th day of November, 2016.



Gary Parsons, Acting Chair
Labrador Regional Appeal Board



Bill Madore, Member
Labrador Regional Appeal Board



Joseph Guinchard, Member
Labrador Regional Appeal Board