

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN	Cyril Langer	Appellant
AND	Town of Carbonear	Respondent
RESPECTING	Approval	
FILE NUMBER	15-006-044-45	
BOARD MEMBERS	Michelle Downey – Chair Mary Thorne-Gosse – Member Kay Young – Member	
DATE OF HEARING	August 23, 2017	

IN ATTENDANCE

Authority: Cynthia Davis, CAO, Town of Carbonear

Appellant: Cyril Langer – absent

Applicant: Shawn Stone, and Lisa Stone

Secretary to the Eastern Newfoundland Regional Appeal Board: Robert Cotter

Technical Advisor to the Eastern Newfoundland Regional Appeal Board: Kim Blanchard

DECISION

Facts/Background

This appeal arises from a decision made by the Town of Carbonear to grant a variance and issue a permit to Mr. Shawn Stone regarding the construction of an accessory building (garage) at 14 O'Driscoll's Lane. The proposed garage exceeded the maximum floor area and the maximum building height outlined in the Development Regulations for accessory structures in the Residential Medium Density (RMD) zone. Council advertised the application, as required by the Carbonear Development Regulations.

The Town received one objection, from Mr. Cyril Langer, who is the adjacent property owner at 12 O'Driscoll's Lane. Mr. Langer was opposed to any kind of garage on the property located adjacent to his, particularly the proximity of the proposed garage to his property boundary. Mr. Langer also suggested that the proponent completed repairs, washing and detailing of vehicles associated with commercial use at his property and expressed concerns about such potential use in the proposed accessory building.

On October 3, 2016, Council resolved to approve the variance that was necessary to accommodate the proposed garage, placing conditions on the permit to mitigate concerns expressed about the use. The conditional permit was issued in writing by the Town on October 18, 2016. Included on the permit was the notification of the right and process to appeal decisions of Council.

On November 9, 2016, Mr. Langer appealed the decision by Council to approve the garage. As the appellant was unable to attend the scheduled hearing, Mr. Langer provided an additional written submission to reiterate his arguments to the Board.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000;

Minister's Development Regulations, NLR 3/01;

Town of Carbonear Municipal Plan and Development Regulations, 2004

Matters presented to and considered by the Board

Is the appeal valid?

The provision for appeal is enabled under the Section 42 of the *Urban and Rural Planning Act, 2000* (URPA).

URPA S. 42(1) enables a person aggrieved of a decision to appeal that decision. This includes third party appeals. The legislation states:

- (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*
- (a) an application to undertake a development;*
 - (b) a revocation of an approval or a permit to undertake a development;*
 - (c) the issuance of a stop work order; and*
 - (d) a decision permitted under this or another Act to be appealed to the board.*

The Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* (the “Act”) which requires an appeal be filed within 14 days. Section 42(4) states:

An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

The Board considered case law, *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59, in which the Honourable Madam Justice Deborah J. Paquette stated that an appropriate interpretation of section 42(4) of the *Act* with respect to the commencement of a third party appeal period is when the public is notified of the decision being appealed. Judge Paquette’s rulings provided direction which the Board considered: there is no obligation from the Town to notify a particular third party in order to satisfy the public notification requirement, and the key to the appeal timeframes is the date that Council’s decision was made available to the public.

In considering its jurisdiction to hear the appeal, the Board asked for evidence to ascertain the date on which the applicant received the development decision, and the earliest date on which an interested party could have become aware, in order to determine whether the appeal was filed within the time limitations required by URPA S. 42(4).

The Board heard from Cynthia Davis, Carbonear CAO, that the Town had circulated a public notice regarding Council's consideration of the variance, and Mr. Langer had responded in objection to the proposed garage. Council then proceeded to make its motion and decision regarding the development at a subsequent public meeting on October 3, 2016. The Town issued a conditional permit on October 18, 2016. The Board found that Mr. Langer appealed the decision to approve the garage on November 9, 2016, some 22 days after the Town's written development decision was issued to the applicant.

The Board determined that the Appellant did not satisfy section 42(4) of the *Act*; therefore, the Board deemed the appeal invalid.

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 appeal was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* and, is therefore, invalid.

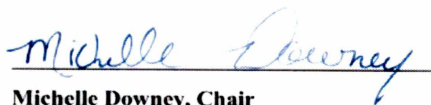
Order

Based on the information presented, the Board found that it was outside its jurisdiction to hear an appeal beyond the legislative timeframe stated in the *Urban and Rural Planning Act, 2000*. The Board therefore dismisses the appeal regarding the decision by the Town of Carbonear to grant a variance and issue a permit to Mr. Shawn Stone to construct an accessory building at 14 O'Driscoll's Lane.

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

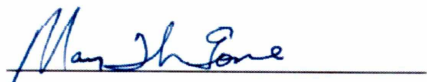
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the Appellant.

DATED at Mount Pearl, Newfoundland and Labrador, this 23rd day of August, 2017.



Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

Eastern Newfoundland Regional Appeal Board



Kay Young, Member

Eastern Newfoundland Regional Appeal Board