

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000**

APPEAL

BETWEEN	Paul Williams	Appellant
AND	Town of Carbonear	Respondent
RESPECTING	Refusal	
FILE NUMBER	15-006-044-004	
BOARD MEMBERS	Michelle Downey — Chair Colleen Hanrahan — Member Raelene Thomas — Member	
DATE OF HEARING	November 14, 2017	
IN ATTENDANCE		
Authority:	Cynthia Davis, CAO, Town of Carbonear	
Appellant:	Paul Williams	
Representative:	Jerome Murphy	
Interested Party:	Art Cameron	
Secretary to the Eastern Newfoundland Regional Appeal Board:		Robert Cotter
Technical Advisor to the Eastern Newfoundland Regional Appeal Board:		Kim Blanchard

DECISION

Introduction

This appeal arises from the refusal of the Town of Carbonear to grant a permit to Mr. Paul Williams to extend an accessory building located at Gladstone Road, Carbonear.

The appeal was heard by the Eastern Newfoundland Regional Appeal Board on November 14, 2017. The Board assessed the Town of Carbonear's refusal to issue a permit to determine if the Town acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Minister's Development Regulations*, *NLR*

3/01, and the *Town of Carbonear Development Regulations, 2004*. For the reasons stated below the decision of the Town is upheld and the appeal is denied.

Facts/Background

In February 2016 Mr. Paul Williams applied to the Town of Carbonear to construct an extension to an existing accessory building located at 2 Gladstone Lane. The Town refused the application at the March 23, 2016 regular meeting of council. The Town notified Mr. Williams of its decision on April 5, 2016 and also advised Mr. Williams of the right to appeal this decision.

In accordance with the *Urban and Rural Planning Act, 2000* Mr. Williams filed an appeal of the decision on April 26, 2016. The appeal was advertised in *The Compass* on November 15, 2016 and appeal packages were distributed to all affected parties.

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

Evidence considered by the Board

The Board received Technical Information and Planning Advice prepared by Lindsay Church, MCIP and heard from the technical advisor, Ms. Kim Blanchard. The analysis noted that Council had considered the existing building as non-conforming as it was an accessory building located on a lot without a primary building. The town's development regulations would permit the non-conformance to be extended where a building zoned for residential purposes had 50% of the original structure destroyed, and provided that the extension was in accordance with the town's plan and regulation.

In considering the application to extend the building the Town applied Condition 8, Accessory Buildings of the Regulations and the Residential Medium Density Use Zone Table to application. The Town refused the application because the extension to the existing building would result in a structure with an area of 224.33 square meters which is in excess of the 81 square meters permitted.

Mr. Williams stated that he had purchased the building from Mr. Jerome Murphy. Prior to the purchase he and Mr. Murphy agreed that Mr. Williams would install new siding on the concrete block portion of the building. Mr. Murphy stated that the building had operated as a commercial property and he was not aware it had been rezoned prior to his selling it to Mr. Williams. During Mr. Williams' ownership he had received a permit to remove the wooden portion of the building and repair the concrete block portion of the building. Mr. Murphy had left the concrete slab foundation of the wooden portion of the building in place with the intention of having the wooden portion replaced at some point in the future.

Mr. Williams stated that he had taken the building from a dilapidated state and an eyesore to a better building. No one had told him or Mr. Murphy they would not be able to put the wooden part of the building back once it was removed. Mr. Williams noted the current concrete block building is used for personal storage and the extension to the building would also be used for personal storage.

Mr. Williams provided the Board with several photographs of the building prior to and after the demolition and repairs.

In reply to a question from the Board, Mr. Williams noted that he had discussed the application with several people and thought this application may be approved despite being told on earlier occasions that the extension would not be approved.

Ms. Davis, on behalf of the Town of Carbonear, provided a written brief to the Board.

In response to the appellant's presentation Ms. Davis noted that in November 2010 the Town had approved the demolition of the wooden section of the building and the restoration of the concrete block section of the building. The Town had adopted its first zoning regulations in 1986. At that time Gladstone Road was zoned as Residential Medium Density. Because the building existed prior to that date the building was considered to be non-conforming and could continue as a commercial operation provided that the commercial operations did not cease for a period of more than 12 months.

Ms. Davis provided the Board with a history of the ownership of the building, its uses and the applications that the Town received for development. The building had been used as a garage from the 1960's onward. Mr. Murphy had operated a garage on the premises. However, the last return to the Registry of Companies was filed in 1995. In 2011 the Town granted a permit to Mr. Murphy to demolish the wooden portion of the building and to renovate the block section of the building. The wooden portion of the building was removed and its concrete foundation was left in place. In March of 2012 Mr. Williams asked the Town if an extension built on the concrete foundation would be permitted if he purchased the building. The Town stated it would not permit an extension. In March 2014 Mr. Murphy, as the then owner, applied to construct an extension on the concrete foundation. Council refused the request. In February 2016 Mr. Williams, now owner of the building, applied to construct an extension to the building, was refused and it is this application which is before the Board.

In refusing the application Council followed section 108 of the Urban and Regional Planning Act, which provides for an expansion of not greater than 50% of a non-conforming building where the building has been destroyed; the loss of the right to non-conforming use where a building is not used for more than six months; and, limits such that an expansion cannot occur where the expansion would increase the non-conformity. Council held the opinion that the proposed extension would increase the non-conforming use and would not be in conformance with the Municipal Plan which had as one of its objectives to promote a "safe and serviced residential environment by controlling the classes of land use and characteristics of development permitted within residential areas."

In response to a question from the Board, Ms. Davis noted that a variance could not be approved where the non-conformity is in excess of the regulations. Ms. Davis noted that the application had not been advertised for commentary from neighbouring property owners as the initial decision was to reject the application.

Analysis

The role of the Eastern Newfoundland Regional Appeal Board is to assess the processes undertaken by authorities in reaching their decisions to determine if the authority acted in accordance with the applicable legislation, regulation and policy. Section 42(3) of the *Urban and Rural Planning Act, 2000*, requires that "An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed."

Did the Town of Carbonear have the authority to refuse an application to extend the building?

In considering whether the Town of Carbonear had the authority to accept, review and approve or reject the application of Mr. Williams, the Board reviewed Sections 5 and 7 of the *Town of Carbonear Development Regulations, 2004*, which state:

5. Authority

In these Regulations, "Authority" means the Council of the Town of Carbonear.

7. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

In light of the forgoing, the Board finds the Town had the authority to accept, review and approve or reject the application of Mr. Williams to construct an extension to the building located at 2 Gladstone Road.

Did the Town of Carbonear exercise its authority appropriately in its refusal to authorize the extension to the building located at 2 Gladstone Road?

The evidence provided to the Board established the building at 2 Gladstone Road had existed as a garage prior to the zoning regulations adopted by the Town of Carbonear in 1986. The area was zoned Residential Medium Density and with the adoption of the zoning the building became a non-conforming use within that zone.

The building's non-conforming use as an operating commercial garage was permitted to continue as long as the commercial garage continued in operation. Mr. Murphy and Mr. Williams stated the building had ceased operation as a garage in 1995. The building continued to be considered by the

Town as non-conforming because it was an accessory building located by itself on a lot without a main residential building.

Ms. Davis testified that in reviewing the application the Town had considered Section 49 of its *Development Regulations* and relied upon Sub-sections 3(a), 3(d), 3(e), 3(f) and 3(g). Those sub-sections state:

(3) A building, structure or development that does not conform to a scheme, plan or regulations made under the Act that is allowed to continue under subsection (1)

(a) shall not be internally or externally varied, extended or expanded unless otherwise approved by the Authority;

(d) may have the existing use for that building, structure or development varied by the Authority to a use that is, in the Authority's opinion, more compatible with the plan and regulations applicable to it;

(e) may have the existing building extended by approval of the Authority where, in the Authority's opinion, the extension is not more than 50% of the existing building;

(f) where the non-conformance is with respect to the standards included in these development regulations, shall not be expanded if the expansion would increase the non-conformity;

(g) where a building, structure or development does not meet the development standards included in development regulations, the building, structure or development shall not be expanded if the expansion would increase the nonconformity and an expansion must comply with the development standards applicable to that building, structure or development.

As the building was used as an accessory building for personal storage the Town considered the *Development Regulation* that governed accessory buildings. Schedule C, Section 8, limits the floor area of accessory buildings to the lesser of 7% of the lot size or 81 square meters.

The Board finds that the proposed extension would result in a building with a floor area of 224.3 square meters and that the proposed floor area would increase the non-conformity of the structure contrary to Section 49 and Schedule C, Section 8 of the *Town's Development Regulations*.

The Board finds that the Town made its decision in accordance with the legislation and the Municipal Plan and *Development Regulations* when it refused to grant the permit to extend the building as requested and processed the application accordingly. The Board finds that the Town made its decision appropriately, and thus confirms Council's decision to refuse the application.

Conclusion

For the reasons outlined above the Board finds the Town of Carbonear had the authority to accept, review and approve or refuse the application of Mr. Paul Williams.

The Board further finds that the Town of Carbonear issued the refusal in accordance with the *Urban and Rural Planning Act, 2000* and the Town's Municipal Plan and *Development Regulations*, as the extension to the building would be contrary to the planning requirements for non-conforming use and limitations placed on the floor area for accessory buildings. Therefore, the Board confirms the decision of Council.

Order

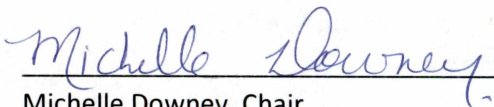
Based on the information presented, the Board orders that the decision made by the Town of Carbonear to reject the application to extend an accessory building located at 2 Gladstone Road, Carbonear be upheld.

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*, this 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.

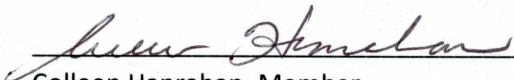
The Board of Appeal thanks the Appellant, the representatives of the Appellants, the technical advisor and the Officers of the Town of Carbonear for their presentations.

DATED at St. John's, Newfoundland and Labrador, this 27th day of November, 2017.



Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Colleen Hanrahan, Member

Eastern Newfoundland Regional Appeal Board



Raelene Thomas, Member

Eastern Newfoundland Regional Appeal Board