

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

BETWEEN Ken and Wanda Barron Appellants

AND Town of Maystown Authority

RESPECTING Council's decision of approval to construct an extension to a commercial building at 130 – 140 Ville Marie Drive, Marystown. 15-006-064-002

Council's approval of a motion to amend related to development at 130 – 140 Ville Marie Drive Marystown. [File #: 15-006-064-008]

BOARD MEMBERS Cliff Johnston, Chair
Carol Ann Smith, Member
Robert Warren, Member

DATE OF HEARING September 18, 2019

IN ATTENDANCE

Judy Manning, Solicitor for the Appellants
Alje Mitchell, Director of Planning & Development Control, Town of Marystown
Robert Cotter, Secretary, Eastern Newfoundland Regional Appeal Board
Tolulope Victoria Akerele, Technical Advisor, Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

On February 5, 2019, the Marystown Town Council made a decision to approve the application to construct an extension measuring 65 feet by 40 feet to a commercial building at the property under appeal. The approval was subject to "Government Services, floor plan, surveyor's site location certificate and site inspection".

Subsequently, on April 2, 2019, the Council agreed to approve the same application subject to conditions which were different than the conditions from the February 5, 2019 decision of Council. On May 7, 2019, the Council agreed to amend the decision they made on April 2, 2019 respecting the application. Council's decision of May 7, 2019 continued its earlier approval of the application.

On April 15, 2019, the Appellants filed an appeal against the April 2, 2019 decision of the Town Council to approve the application.

On May 31, 2019, the Appellants filed an appeal against the May 7, 2019 decision of the Council.

Grounds for Appeal

Appeal File Number 15-006-064-002

The grounds of appeal for this file number are summarized as follows:

1. Section 108 of the Urban and Rural Planning Act, 2000 is contravened by increasing a non-conformity.
2. Section 64 and Schedule D of the Town's Development Regulations with respect to off-street parking.
3. The specifications for extension in the development plan submitted to the Town Council do not conform to the extension approved by the Town Council or the extension described in the application.

Appeal File Number 15-006-064-008

The grounds of appeal for this file number are summarized as follows:

The Town Council violated Section 45 of the Urban and Rural Planning Act by making a decision on May 7, 2019 to change the conditions of the approval of the proposed extension to the building on the subject property which had already been approved by Council on April 2, 2019. The Appellants indicate that in their opinion that the Council cannot make amendments to a development application which is already the subject of an active appeal to the Eastern Newfoundland Regional Appeal Board.

Legislation

Urban and Rural Planning Act, 2000

Town of Marystown Development Regulations 2002-2012

Town of Marystown Development Regulations 2017-2027

Ministerial Development Regulations

Matters Considered by the Board

Q. What is the zoning designation of the subject property and does it allow the proposed extension to the building?

A. The Town's Director of Planning advised the Board at the appeal hearing that the subject property had a commercial zone designation under the Town's Development Regulations 2002-2012 which were in effect at the time of the approval of the application which is subject of the appeal. That is to say, the decisions of the Town Council of April 2, 2019 and May 7, 2019. The Town's Director of Planning also advised the Board that the subject property also has a commercial zone designation under the Town's new Development Regulations 2017-2027 which are now in legal effect. The Director further advised the Board that, if the proposed building extension proceeds, that the Town will undertake all additional required review/processing of the development application for the building extension under the requirements of the Town's current Development Regulations 2017-2027.

The solicitor for the Appellants advised the Board at the Appeal Hearing that the Appellants concur the subject property had a commercial zone designation under the Town's previous Development

Regulations 2002-2012 and presently has a commercial zone designation under the Town's current Development Regulations 2017-2027.

The Board has concluded through investigation that the subject property previously had a commercial zone designation under the Town's Development Regulations 2002-2012 and currently has a commercial zone designation under the Town's Development Regulations 2017-2027.

Under a commercial zone designation, the Board has determined that the existing commercial use of the subject property is a Permitted Use under both the Town's former and current Development Regulations. The Board has further determined that the proposed extension to the building on the subject property is a Permitted Use under both the Town's previous and current Development Regulations.

Q. Is there a Non-Conformity respecting the proposed extension to the building on the subject property?

A. The Board has determined that there is not a non-conformity respecting either the existing use of the property or the proposed use of the existing building and the proposed extension to the building which has been approved by the Town Council. There is no non-conformity regarding usage under either the previous Development Regulations or the current Development Regulations.

The Board has determined that there may be an existing non-conformity respecting driving/parking aisle widths on the subject and the existing number of parking spaces on the site.

Section 108(3)(f) of the Urban and Rural Planning Act, 2000 provides that "where the non-conformance is with respect to the standards included in development regulations, shall not be expanded if the expansion would increase the non-conformity."

Thereby, the Board has determined that the Town Council has the Authority under the Urban and Rural Planning Act, 2000 to allow the proposed extension to the building on the subject property, provided any existing non-conformities of the existing building respecting the development standards of the current commercial zoning designation of the property, are not increased.

The Town's Director of Planning advised the Board at the Appeal Hearing, that that there would be no

increase in any possible existing deficiencies to driving/parking aisle widths with the construction of the proposed building extension. The Director further advised the Board that the applicant intends to provide additional on-site parking as part of the proposed building extension project, and that this increase in on-site parking will satisfy the parking requirements for both the existing building and building extension as per the parking requirements of the Town's current Development Regulations 2017-2027.

Q. Does the Board have the authority to hear Appeal Number 15-006-064-008?

A. This appeal pertains to the Appellant's appeal filed on May 31, 2019 against the Town Council's decision of May 7, 2019 to amend the conditions of the approval of the proposed building extension as initially approved by Council on April 2, 2019.

The Board has determined that it does not have the authority to hear Appeal Number 15-006-064-008 as the Board has determined that the nature of this appeal does not fall within the scope for appeals as prescribed in Section 45 of the Urban and Rural Planning Act. Section 42 of the Act notes:

Appeal

42. (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 further notes that Appeal Number 15-006-064-008 was filed by the Appellants on May 31, 2019 which is outside the fourteen (14) day appeal period to file an appeal against the Town Council decision of May 7, 2019 to approve the application.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence provided by the Appellants and the Authority, along with the technical information and planning advice from the Department of Municipal Affairs and Environment.

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.

With regards to Appeal File Number 15-006-064-002: Based on its findings, the Board has determined that the Town of Marystown Council had the authority to make its decision of May 7, 2019 to approve the application from Can-am Platforms and Construction to construct the proposed extension to the commercial building located at 130-140 Ville Marie Drive.

With regards to Appeal File Number 15-006-064-008: Based on its findings, the Board has determined it does not have the jurisdiction to hear this appeal.

Order

(Appeal File Number 15-006-064-002)

Based on the information presented, the Board orders that the decision dated May 7, 2019 of the Town of Marystown Council to approve the application from Can-am Platforms and Construction to construct an extension to the existing commercial building at 130-140 Ville Marie Drive, be confirmed

The Board's decision to confirm the Council decision is based on the Board's understanding and full expectation that the Authority (the Town) will ensure that the building extension will meet all applicable requirements of the Town's Development Regulations 2017-2027, including off-street parking requirements for both the existing building and the proposed building extension and further, that there will be no increase to any possible existing non-conformities respecting driving/parking aisle widths at the property.

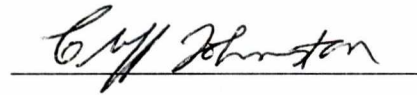
Appeal File Number 15-006-064-008

Based on the information presented, the Board has determined that it does not have the authority to confirm, reverse or vary the May 7, 2019 decision of the Town of Marystown Council to make an amendment to the April 2, 2019 decision of the Council respecting the application from Can-am Platforms and Construction to construct an extension to the existing commercial building at 130-140 Ville Marie Drive which Council decision was made prior to the appeal from Ken and Wanda Barron being considered by the Eastern Newfoundland Regional Appeal Board.

The Town of Marystown and the Appellants are bound by these decisions of the Eastern Newfoundland Regional Appeal Board.

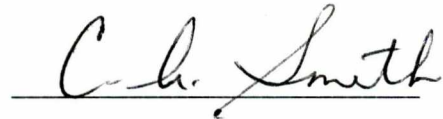
According to Section 46 of the Urban and Rural Planning 2000, these decisions of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed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

DATED at Portugal Cove-St. Philips, Newfoundland and Labrador, this 18th day of September, 2019

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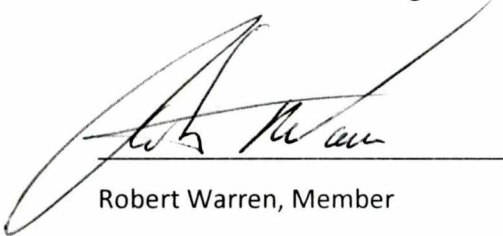
Cliff Johnston, Chair

Eastern Newfoundland Regional Appeal Board

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Carol Ann Smith, Member

Eastern Newfoundland Regional Appeal Board

A handwritten signature in cursive script, reading "Robert Warren", written over a horizontal line.

Robert Warren, Member

Eastern Newfoundland Regional Appeal Board