

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

15-006-057-052

APPEAL

BETWEEN Randolph Russell **Appellant(s)**

AND Town of Conception Bay South **Respondent**

RESPECTING Order: requiring the completion of the siding on the accessory building and the removal of all wrecked and inoperable vehicles from the property located at 2619 Topsail Road, Conception Bay South

BOARD MEMBERS Cliff Johnston, Chair
Paul Boundridge, Member
Robert Warren, Member

DATE OF HEARING February 13, 2020

IN ATTENDANCE
Randolph Russell, Appellant
Ed Jarvis, Enforcement Officer, Town of Conception Bay South

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Background

On March 8, 2019, the Town of Conception Bay South (the Authority) issued an Order to Randolph Russell regarding his property located at 2619 Topsail Road, CBS.

The Town ordered Mr. Russell to complete siding work partially done on the accessory building, and to remove all wrecked and inoperable vehicles from the property located at 2619 Topsail Road, CBS. In the Order, the Town outlined the aspects of the property that Council had deemed non-compliant, and provided a 14 day timeframe for compliance. The Order cited the legislative and regulatory authority for its issuance. Also noted was the right and process for appealing the Order, and the timeframe within which an appeal must be filed.

Mr. Russell appealed on the grounds that the timeframe to respond to the Order was unrealistic and unreasonable. In his grounds, Mr. Russell explained that he had requested Town authorization to work on the exterior cladding of the property May 2018. Undertaking the work involved removal and reinstallation of a door and window, and chimney work. The work took time, up to November 2018, at which time the work was halted for winter. Mr. Russell argued that vinyl siding work should not be done in winter months. He also asserted that he had a large collection of vehicles, but none were wrecked or inoperable as contended by the Town's officials, and he is prepared to confirm this with the Town at a mutually agreeable time.

Chronology

Chronology assembled from the material submitted by the Appellant and the Authority:

- December 5, 2018 Letter to Randolph Russell from CBS municipal enforcement officer noting concerns with the property which contravene the Town's regulations (namely that there is a scrapped vehicle which appears to be in a derelict conditions and the siding remains incomplete on the accessory building), and asking for him to bring the property into compliance within 14 days.
- March 8, 2019 Order issued by Town's CAO.
- March 11, 2019 Order served to Randolph Russell at 2619 Topsail Road by personal delivery of municipal enforcement officer, sworn in Affidavit of Personal
- March 12, 2019 Order of March 8, 2019 to Randolph Russell regarding property at 2619 Topsail Road was tabled at Administrative Services Committee and the recommendation for the issuance of the order was confirmed.

- March 19, 2019 Order was confirmed at the Regular Public Meeting of Council.
- March 22, 2019 Notice of Appeal submitted by Randolph Russell, outlining the grounds for appealing the Order.
- March 22, 2019 Appeal payment received from Randolph Russell.
- May 16, 2019 Appeal summary form submitted

The Board accepts the chronology order and notes that it was not contested at the hearing.

Land Use Planning/Development Control

The Town of Conception Bay South is authorized for enforcement and the issuance of orders through both the *Municipalities Act* and by the *Urban and Rural Planning Act*. As outlined in Section 404 of the *Municipalities Act*, and Sections 102-107 of the *Urban and Rural Planning Act*, the municipality has authority to enforce planning and may issue orders and prosecute those that are not compliant with planning and development requirements or municipal regulations.

Legislation, Municipal Plans and Regulations considered by the Board

Municipalities Act, 1999

Urban and Rural Planning Act, 2000

Town of Conception Bay South Waste Disposal Regulations

Occupancy and Maintenance Regulations

Matters presented to and considered by the Board

Appellant's Grounds of Appeal:

On March 8, 2019, the Town of Conception Bay South (the Authority) issued an Order to Randolph Russell regarding his property located at 2619 Topsail Road, CBS.

The Town ordered Mr. Russell to complete siding work partially done on the accessory building, and to remove all wrecked and inoperable vehicles from the property located at 2619 Topsail Road, CBS. In the Order, the Town outlined the aspects of the property that Council had deemed non-compliant, and provided a 14 day timeframe for compliance. The Order cited the legislative and regulatory authority for its issuance. Also noted was the right and process for appealing the Order, and the timeframe within which an appeal must be filed.

Mr. Russell appealed on the grounds that the timeframe to respond to the Order was unrealistic and unreasonable. In his grounds, Mr. Russell explained that he had requested Town authorization to work on the exterior cladding of the property around May 2018. Undertaking the work involved removal and reinstallation of a door and window, and chimney work. The work took time, up to November 2018, at which time the work was halted for winter. Mr. Russell argued that vinyl siding work should not be done in winter months. He also asserted that he had a large collection of vehicles, but none were wrecked or inoperable as contended by the Town's officials, and he is prepared to confirm this with the Town at a mutually agreeable time.

Analysis

Q: How did the Town determine that the Appellant was in contravention of the legislation and/or regulations governing building state and/or storage of vehicles on property?

A: The Town's Enforcement Officer, in response to complaints received by the Town, visited the subject property several times to investigate and confirm that the accessory building siding installation was incomplete and the state and condition of vehicles parked on the subject property. During this period there had been ongoing discussion between the Enforcement Officer and Mr. Russell. This information was relayed to senior Town staff and the Town Council.

Q: Does the Town have the Authority to Issue the Order that is being appealed?

A: Yes, in consideration of the following, the Town has the Authority to issue said Order:

Section 404 of the Municipalities Act, 1999 provides that:

"404. Council Order

(1) A council may make an order that:

(f) where a building is in a dilapidated state, or is, in the opinion of the council (emphasis added), unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs;

(1) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.”

The Occupancy and Maintenance Regulations (subordinate legislation of the Urban and Rural Planning Act, 2000), state that:

“5. Maintenance

All properties in the areas listed in the Schedule including land, buildings, structures, dwellings, fences, sheds, garages, parking lots, driveways, landscaping and all appurtenances shall be maintained in a state of good condition and repair in accordance with the standards set out in these regulations and as otherwise ordered by the enforcement authority.”

“12. Exterior Walls

(2) Exterior cladding and covering must be reasonably durable and be maintained in accordance with the standards set out in these regulations and as otherwise determined by the enforcement authority.”

The Town Of Conception Bay South Waste Disposal And Property Regulations, 2010, Regulation 3, state that:

“3. General Duties and Obligations

3.4 No person shall deposit, discard or keep a wrecked, discarded, dismantled, inoperative, unused (emphasis added), or abandoned vehicle, trailer, or other machinery or any parts thereof on any property within the Town except where the vehicle or parts thereof are enclosed within a building. Such a building shall be subject to Council's approval and must comply with the provisions for accessory buildings in the Town's Development Regulations.”

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

The Board has determined that the Town had the authority to issue the Order on March 8, 2019 regarding the state of the accessory building and the storage of vehicles on the property.

Order

Based on the information presented, the Board orders that the Authority's decision to issue the Order to complete the installation of vinyl siding on the accessory building and the removal of inoperable vehicles on property at civic number 2619 Topsail Road, Conception Bay South, be confirmed.

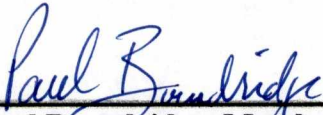
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 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 Portugal Cove-St. Philip's, Newfoundland and Labrador, this 13th day of February 2020.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board