

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Sun Construction Company Ltd. **Appellants**

AND Town of Spaniard's Bay **Respondent**

RESPECTING Approval

BOARD MEMBERS Michelle Downey, Chair
Colleen Hanrahan, Member
Mary Thorne-Gosse, Member

DATE OF HEARING December 8, 2017

IN ATTENDANCE:

Sun Construction Company Ltd, Richard Gosse, Appellant
Anthony Ryan, - Town Manager
Reg Garland, Planning Consultant
Paul Brazil, Town of Spaniard's Bay
Jennifer Lynch, Developer

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

DECISION

Background

An application was submitted by Darrel and Jennifer Lynch to the Town of Spaniard's Bay on May 24, 2017 to construct a 30 x 35 foot detached garage at their residential property located at 19-21 Gosse's Drive. On June 12, 2017, Council acknowledged that the application was larger than allowable, but asserted that a 10% variance could be considered to accommodate the development, and approved the proposed development subject to the Town's Development Regulations. On July 12, 2017, the Town issued approval-in-principle, subject to conditions outlined in the correspondence. The conditions state "as per application and plan submitted dated May 24, 2017. Accessory building to be 30 ft. by 35 ft. approved by Motion of council in accordance with Development Regulation 10".

A third party appeal was filed against the development decision of Council by Mr. Richard Gosse, on behalf of Sun Construction Company Limited. As the original developer of the subdivision, Mr. Gosse had previously applied to the Town for approval to develop the subject property. He argued that he was told that he must be compliant with the Development Regulations, specifically Condition 8 of the Residential Medium Density (RMD) zone, which regulates Accessory Buildings, and the property owners are now developing a garage much larger than allowed.

After being advised on September 15, 2017 that the matter was under appeal, the Town of Spaniard's Bay issued a Stop Work Order which was hand-delivered by a representative of the Town on September 15, 2017. The Order cited Section 42(1) and 42(2) of the Urban and Rural Planning Act 2000, which enables persons aggrieved of a development decision to file an appeal; Section 8 of the Minister's Development Regulations, and Section 45(1) the Urban and Rural Planning Act 2000, which requires that, upon registration of an appeal, development on the subject property is prohibited pending a decision of the appeal board.

Matters presented to Board and considered by the Board

Urban and Rural Planning Act, 2000

Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board), 2012 NLTD(G) 59

Jurisdiction of Board

Is the Appeal valid?

The provision for appeal is enabled under the section 42 of the *Urban and Rural Planning Act, 2000*

S 42. Appeal

(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* which required an appeal be filed within 14 days of the decision of Council.

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. The Honourable Madam Justice Deborah Paquette stated that an appropriate interpretation of section 42(4) of the statute with respect to the commencement of a third party appeal period is when the public is notified of the decision being appealed.

The Board considered the direction provided by Madam Justice Paquette. There was no obligation on the Town to notify a *particular* third party in order to satisfy the public notification requirement. The key issue with respect 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 requested evidence to ascertain the date on which the appellant filed the appeal.

The Board heard from the town representative Reg Garland, Planner for the Town of Spaniard's Bay, that the permit was issued July 12, 2017. Furthermore the Town Clerk, Anthony Ryan, advised that minutes of the meetings of council are posted the day following which would be July 13, 2017, as well they are published in the local paper.

Jennifer Lynch (owner of property) spoke to Board confirming that the fees for permit were paid. Ms. Lynch also stated the construction began shortly after the permit was issued on July 12, 2017. Prior to the appeal being submitted the wall, roof, and shingles were completed.

Mr. Gosse stated that he did not file the appeal within 14 days because he was not aware of the date by which the appeal had to be filed.

The Board is satisfied the public notice was provided by the Town of Spaniard's Bay. Based on this finding the Board determined that the appeal was not filed within the 14 day timeline of permit issuance. In accordance with Section 42(4) of the *Urban and Rural Planning Act, 2000*, the appeal is invalid and beyond the jurisdiction of the Board.

Order

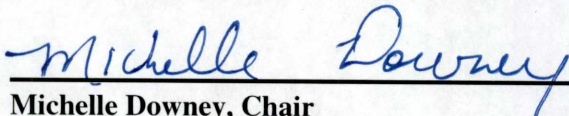
Based on the information presented, the Board found that it was outside its jurisdiction to hear an appeal beyond the legislative requirement stated in Section 42(4) of the Urban and Rural Planning Act, 2000.

The Board will make no order regarding reimbursement of the appeal filing fee of \$230.00 paid by the appellant.

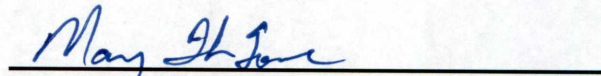
The Town of Spaniard's and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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.

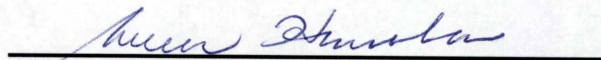
DATED at St. John's, Newfoundland and Labrador, this 14h day of December, 2017.



**Michelle Downey, Chair
Eastern Newfoundland Regional Appeal Board**



**Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board**



**Colleen Hanrahan, Member
Eastern Newfoundland Regional Appeal Board**