

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Sylvia Hussey **Appellant**

**AND** City of Mount Pearl **Authority**

**RESPECTING** Decision to approve the Discretionary Use Application and issue a Development Permit to allow an assisted living facility in an existing apartment building at 835 Blackmarsh Road (MAE File #: 15-006-044-34)

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

**DATE OF HEARING** October 23, 2018

**IN ATTENDANCE**

Sylvia Hussey, Appellant  
Catherine Howell, City of Mount Pearl Manager of Planning and Development; and  
Felicia Tucker, Legal Counsel for Respondent

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



## **DECISION**

### **Facts/Background**

On September 6, 2016 the City of Mount Pearl Municipal Council considered and gave Discretionary approval to an application by Rockmount Properties Inc. to establish an assisted living facility at an existing condominium apartment building located at 835 Blackmarsh Road. The subject property is zoned Apartment (APT) under the City of Mount Pearl Development Regulations. On September 9, 2016 the City issued a Development Permit for the application.

On September 22, 2016 Sylvia Hussey, an interested third party, filed an appeal of the decision to issue a Development Permit with the Secretary of the Appeal Board. The grounds for appeal are contained in a letter dated September 21, 2016 from the Appellant to the Eastern Regional Appeal Board and can be summarized as follows:

- The City's approval would "render some of the current apartment units as non-compliant";
- An assisted living facility is not a permitted or discretionary use listed under the Apartment (APT) Zone;
- "The change of use will not only change the nature of the subject property but will result in a breach of contract between the developer and the existing occupants of the building"; and
- The change in use will detract from the residential character of the neighbourhood and will negatively impact the privacy and enjoyment of the surrounding residential properties.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.



## **Legislation, Municipal Plans and Regulations considered by the Board**

*Urban and Rural Planning Act, 2000*

*City of Mount Pearl Municipal Plan and Development Regulations 2010*

## **Matters presented to and considered by the Board**

**Q:** Is an assisted living facility allowed in the Apartment (APT) Zone?

**A:** Yes. An assisted living facility falls under the definition of Personal Care Use as defined by the City's Development Regulations. A Personal Care Use is allowed as a Discretionary Use in the Apartment (APT) Zone, subject to the requirements of Section 7.24 of the Development Regulations.

**Q:** Does the decision to issue the Development Permit "render some of the current apartment units as non-compliant" (i.e. cause them to become Non-Conforming)?

**A:** No, all remaining apartment units continue to remain a Permitted Use in the Apartment (APT) Zone in which the subject property is located.

**Q:** Will the change in use detract from the residential character of the neighbourhood and will it negatively impact the privacy and enjoyment of the surrounding residential properties?

**A:** The Respondent has reviewed the development proposal and determined, in accordance with Section 7.24 of the Development Regulations, that the use will not detract from the residential character of the neighbourhood and that the development respects the privacy and enjoyment of surrounding residential properties. Prior to making its decision to approve the application, the City conducted a public notification and consultation process in accordance with the requirements of its Development Regulations, including a public briefing session, and considered the public input received.



## **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.

Based on its findings, the Board determined that the decision of the City of Mount Pearl to approve the Discretionary Use Application for the proposed assisted living facility and to issue a Development Permit for the project is in compliance with the Mount Pearl Development Regulations.

Therefore, the Board confirms the Respondent's decision to issue the Development Permit - DP16-060.





**ORDER**

Based on the information presented, the Board orders that the decision by the City of Mount Pearl to issue the Development Permit (DP16-060) for the assisted living facility at 835 Blackmarsh Road stand.

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

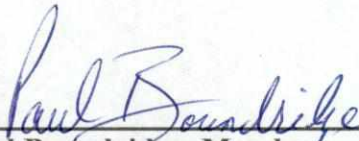
According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later 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 25<sup>th</sup> day of October, 2018.



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**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**



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**Paul Boundridge, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**

