

# West Newfoundland Regional Appeal Board

Appeal #	15-006-067-025
Appellant(s)	Jennifer Galliot
Respondent / Authority	Town of Woody Point
Date of Hearing	April 21, 2021

## Board Members

Chair	Lloyd Walters
Member	Leona Gillette
Member	Helen Reid

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	Tanya Osmond- Town Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

## Board's Role

The role of the West Newfoundland Regional Appeal Board is to determine if the Town of Woody Point acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Town of Woody Point Municipal Plan and Development Regulations* when on August 5, 2020 it refused a development application made by Jennifer Galliot.

## Presentations during the Hearing

### 1. Planner's Presentation

During the hearing, the Board heard technical details about requirements under the *Urban and Rural Planning Act, 2000* and the Woody Point Development Regulations. In particular, the Board heard that the Appellant (Jennifer Galliot) operates a business at the subject address (10 Water Street, Woody Point). The building on the subject property has existed for decades and is non-conforming as per s. 108 of the Act.

In 2020, the Appellant thought it necessary to have some minor renovations completed (e.g., fixing clapboard) as well as the addition of a fire escape. The neighbouring business, on the side of the Appellant's business with the fire escape, complained about the fire escape on the grounds that scaffolding would no longer fit between the two buildings and therefore maintenance requiring scaffolding could not be performed.

The Board further heard from the Technical Adviser that the subject land is zoned Mixed Development under the Town of Woody Point development regulations. All business uses in Group D (Business & Personal Service Uses) of Schedule B and mercantile uses are discretionary within that zone type. The side yard requirements of this zone are 4 metres and 2.3 metres.

During the review of the information submitted regarding this appeal, the Technical Adviser indicated that a permit for the subject development (i.e., the fire escape) could not be located. A permit is required under section 7 of the Town's development regulations.

### 2. Appellant's Presentation

The appellant indicated she was requesting that the town extend the existing non-conformity to allow for the installation of a fire escape.

She indicated that all buildings in that area are very old and non-conforming and that the proposed fire escape would not restrict the business next door from doing maintenance on their property.

She further stated that there was previous encroachment onto her property from the neighbouring property that was settled in 2004 with an Easement being provided by the then owner.

Ms. Galliot claimed that the town was biased in that it had provided permits in that area since 2016 that allowed increased non-conformity on adjacent properties.

### 3. Authority's Presentation

The Town manager, Ms. Osmond agreed that most properties on the water front are non-conforming. However, the application was not approved based on the fact that it would increase the non-conformity of the existing property.

She reiterated that the Town of Woody Point was standing by their development regulations and enforcing them.

Ms. Osmond requested specific details regarding any extensions to non-conformity of existing properties and denied that there have been any permits approved since 2016 that increased non-conformity of any properties in that area.

## Board's Analysis

### Why did the Town refuse the application?

The town, in its letter dated August 17, 2020 stated that the application was refused because it did not meet the minimum side yard requirements within the town's planning regulations.

It stated; " which on one side is 3 metres, which is approximately 10 feet and on the other side the width is 4 metres or approximately 13 feet."

In addition there is an issue on the non-conforming nature of the property cited by the town at the hearing.

### What is the Zoning of the subject property?

The Board confirmed using the land use zone maps available on the Department of Municipal and Provincial Affairs website that the subject zoning is 'Mixed Development'.

### Why is the existing business permitted?

The existing building was in existence prior to the adoption of the Town Plan and regulations for the Town of Woody Point in 2016. Therefore, in order to allow for the continued use of the property it was classified as a non-conforming use.

### What changes are allowed in a Non-conforming use?

The Board reviewed section 108: Non-conforming Use, of the town's development regulations, which state;

(3) A building, structure or development that does not conform to a scheme, plan or regulations made under this 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 ... appropriate council ... ;

(b) shall not be structurally modified except as required for the safety of the building, structure or development;

(e) may have the existing building extended by the appropriate council, regional authority or authorized administrator where, in its opinion that extension is not more than 50% of the existing building;

(f) where the non-conformance is with respect to the standards included in development

What development was proposed in the current application?

The subject application dated July 27, 2020 requests permission to; "install door for upstairs access, siding, stairway, painting".

Is the proposed development permitted under the Town's development regulations?

As a non-conforming use property all future development must comply with existing regulations in the town plan. Specifically, section 108 references the non-conforming regulations which must be adhered to. The installation of a stairway that encroaches onto the side yard requirement does not comply with the existing regulations and would in fact extend the non-conformity which is not permitted under the regulations.

Was the refusal motioned by council?

The Board reviewed the documentation provided by the Town Clerk of the regular meeting of council on August 4<sup>th</sup> and are satisfied that the refusal was appropriated motioned and carried at a regular meeting.

## Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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.

In particular, Section 42 (10) of the Urban and Rural Planning Act, 2000 specifies that the Board may only confirm, reserve or vary the decision under appeal.

*42. (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*

After reviewing the information presented to this Board, it concludes that the Town of Woody Point acted in accordance with its Town Plan and Development Regulations when it denied the application for development from Ms. Jennifer Galliot.

Section 12 of the *Urban and Rural Planning Act, 2000* states:

- A plan and development regulations are binding upon*
- (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
  - (b) a person undertaking a development in the area governed by that plan or those regulations.*

## Board's Order

Based on the information presented, the Board orders that the decision by the Town of Woody Point on August 4, 2020 to deny a permit for development of a property located at 10 Water Street, Woody Point, NL be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of this 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 Deer Lake, Newfoundland and Labrador, this 21<sup>st</sup> day of April, 2021.



Lloyd Walters, Chair  
West Newfoundland Regional Appeal  
Board



Leona Gillette, Member  
West Newfoundland Regional Appeal  
Board



Helen Reid, Member  
West Newfoundland Regional Appeal  
Board