

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

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-047
Appellant(s)	Kelsey O'Brien
Respondent / Authority	Digital Government and Service NL
Date of Hearing	February 21, 2023

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Paul Boundridge, MCIP

Also in Attendance

Appellant(s)	Kelsey O'Brien; Beverly O'Brien (mother of Appellant)
Representatives for the Appellant(s)	
Representatives for the Authority	Karen Tucker, Regional Support Supervisor, Digital Government and Service NL Michael Duke, Manager of Operations, Digital Government and Service NL
Interested Parties	
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Darren Randell, Planner III ,MCIP, Municipal and Provincial Affairs
Start/End Time	9 00am – 9 45am

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 Eastern Newfoundland Regional Appeal Board is to determine if the decision made by Digital Government and Service NL on December 1, 2021 to issue a refusal letter to Kelsey O'Brien to construct a cottage on property located at the North Side of the Southern

Shore Highway, Cape Broyle, NL, was in accordance with the Urban and Rural Planning Act and the Protected Road Zoning Regulations.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Protected Road Zoning Regulations (Southern Shore Highway Protected Road Zoning Regulations)

Background:

On October 29, 2021, Kelsey O'Brien (Appellant) submitted a 'preliminary application to develop land' to Digital Government and Service NL (Authority) under the Protected Road Zoning Regulations for a cottage located at the North Side of the Southern Shore Highway, Cape Broyle, NL. The Authority consulted with other government departments and made a decision to refuse the application on December 1, 2021.

The refusal letter stated that the subject site is located within zones that do not permit the intended cottage use. The Appellant filed an appeal with the Eastern Newfoundland Regional Appeal Board on December 13, 2021.

Presentations During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

Technical Advisor

Chronology

Chronology assembled from the material submitted by the Applicant, Appellant, and the Authority.

October 29, 2021 Preliminary application to develop land submitted by Kelsey O'Brien to Digital Government and Service NL for a cottage.

November 3, 2021 Application referred to relevant government agencies for comments and recommendation.

December 1, 2021 Digital Government and Service NL issued a refusal letter and mailed to the applicant based on the referral response from the Department of Municipal and Provincial Affairs.

December 4, 2021 Applicant received the refusal letter.

December 13, 2021 Appeal registered by the Secretary of the Regional Appeal Boards

Grounds of Appeal

This appeal is based on the following section of the Urban and Rural Planning Act, 2000 - Section 42.1(a) (an application to undertake a development).

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 Appellant is appealing the decision to refuse the development permit based on the grounds that there are existing residential properties in close proximity to the property under appeal.

Land Use Planning

The subject site is located within the building control lines of Route 10 (Southern Shore Highway Protected Road. A portion of the subject site is within Cape Broyle's Municipal Planning Area which extends 100 metres from the centre line of Route 10, while the portion of the subject site outside Cape Broyle municipality is within the 400 metres building control line from the centre line of Route 10.

Building control lines established

5 (1) Subject to subsections (2), (3) and (4), there is established on each side of every protected road a building control line which is 400 metres distant, measured perpendicular, from the centre line of the roadway

(2) Within the municipal boundary of each incorporated municipality, the Building Control Line shall be (100) metres distant, measured perpendicular, from the centre line of the roadway

Section 4 of the Protected Road Zoning Regulations states that no one shall carry out development within the building control lines without a permit and that development shall conform to the

regulations and conditions on the development permit. A large portion of subject site is located within the building control lines of the Southern Shore Highway (Route 10). According to the Southern Shore Highway Protected Road Zoning Plan, this portion is zoned Rural Conservation. Cabins are considered development and are not permitted within this zone. See figure 1 above for list of permitted uses within the rural conservation zone.

Control of Development

4. (1) A person, corporation, partnership, association or other organization shall not carry out development of land within building control lines unless a permit for the development has been issued by the authority.

(2) Development of land within building control lines shall be carried out in accordance with these regulations and conditions set out in a development permit.

Section 10 of the Protected Road Zoning Regulations states that where a protected road runs through an area with an approved Municipal Plan made under the Act, land shall be used in accordance with that Municipal Plan and associated Development Regulations.

Areas with approved plans

10. Where a protected road passes through an area covered by an approved plan made under the provisions of Part II, III, IV, V or VI of the Act, the land included shall be used only in accordance with the approved plan and associated regulations.

As such, any development within the portion of the subject site located within Cape Broyle municipal boundary must adhere to the Town's municipal plan and development regulations (Section 7).

7 Compliance with Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

According to the Cape Broyle Municipal Plan and Development Regulations which came into legal effect on January 15, 2010, the subject site is located in the Mixed Development zone. Seasonal dwellings are not listed as permitted or discretionary use within subject zone. According

to section 87, a use that does not fall within the permitted or discretionary use is considered prohibited within that zone.

87 Uses Not Permitted – Prohibited Uses

Uses that do not fall within the Permitted use Classes or discretionary Use Classes set out in the appropriate Use Zone Tables in Schedule C, shall not be permitted in that Use Zone and are deemed to be prohibited uses

**USE ZONE TABLE
MIXED DEVELOPMENT (MD) ZONE**

ZONE TITLE	MIXED DEVELOPMENT (MD)	(Cape Broyle)
PERMITTED USE CLASSES - (see Regulation 85)		
Bed and Breakfast, Conservation, Child Care, Recreational Open Space and Trails, Single Dwelling, Subsidiary Apartment and Subsidiary Dwelling.		
DISCRETIONARY USE CLASSES - (see Regulations 23 and 86)		
Agriculture, Animal, Antenna, Business and Personal Service Uses Group, Campground, Catering, Cemetery, Clubs and Lodges, Commercial - Residential, Cultural and Civic, Double Dwelling, Family and Group Care Centre, Fire Station, General Assembly, General Industry, Indoor Market, Light Industry, Mineral Exploration, Mobile Home, Outdoor Market, Place of Worship, Police Station, Public Utility, Service Station, Shop, Transportation and Utility.		

The Appellant:

The Appellant contends that her application site is totally outside the Municipal Boundary of the Town of Cape Broyle. She provided a letter dated February 10, 2023 from the Town Clerk/Manager to that effect.

The Appellant advised the Board that she wishes to have a year-round residence, not a seasonal residence as she had applied for.

The Appellant contends that the refusal of her development application is not justified based on the presence of nearby permanent year-round residences.

The Authority:

The representatives of Digital Government and Service NL advised the Board that when referrals to applicable Government agencies for this application were done, a response back from the Department of Municipal & Provincial Affairs recommending rejection. This recommendation was based on the Protected Road Zoning Regulations which do not permit residential development in this area. According to the Southern Shore Highway Protected Road Zoning Plan, the subject site is located in the Rural Conservation Zone where cabins and/or dwellings are not permitted. As such, Digital Government and Service NL had no authority to approve the application as presented.

The representatives of Digital Government and Service NL are of the opinion that a portion of the application site is located within the municipal boundaries of Cape Broyle.

BOARD ANALYSIS

Q. What is the zoning of the subject property?

A. According to the rejection letter dated December 1, 2021 issued by Digital Government and Service NL, the majority of the application site is located outside of the Cape Broyle Municipal Boundary and is subject to the Southern Shore Highway Protected Road Zoning Plan. According to this Plan, the subject site is located in the Rural Conservation Zone. This letter also indicates that the portion of the property inside Cape Broyle Municipal Boundary is subject to the Cape Broyle Municipal Plan and Development Regulation, and located in the Mixed Development Zone.

Q. Do either of the Zoning designations noted above permit residential development (seasonal dwelling) on the subject property?

A. According to the refusal letter dated December 1, 2021, neither zoning designation allows seasonal dwellings.

Q. Did Digital Government and Service NL have the authority to approve the Appellant's application to construct a seasonal dwelling?

A. As a seasonal dwelling is not allowed in the Rural Conservation Zone under the Southern Shore Highway Protected Road Zoning Plan, Digital Government and Service NL was not legally authorized to approve the application and was required to reject it.

BOARD'S CONCLUSION

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 Department of Digital Government and Service NL applied its authority correctly in making its decision of December 1, 2021 to reject the application from Kelsey O'Brien to construct a seasonal dwelling on the North Side of the Southern Shore Highway, Cape Broyle.

Urban and Rural Planning Act, 2000

Section 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.

BOARD'S ORDER

The Board orders that the decision made by the Department of Digital Government and Service NL on December 1, 2021 to reject the Application from Kelsey O'Brien to construct a seasonal dwelling on the North Side of the Southern Shore Highway, Cape Broyle, be confirmed.

The Authority 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 Appellant have received the Board's decision.

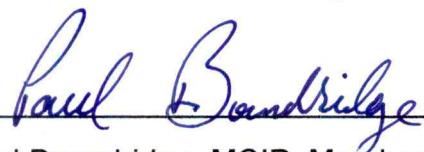
DATED at St. John's, Newfoundland and Labrador, this 21st of February, 2023



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member
Eastern Newfoundland Regional Appeal Board