

DECISION

**2026 NSRAB 19
M12424**

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **JAMIE AND BRANDICE MURPHY** from a decision of the Development Officer for the Municipality of the County of Cumberland to refuse an application for a development permit to allow for the enclosure and roofing of an existing deck at 19 Memory Lane, Port Howe, Municipality of the County of Cumberland (PID 25120783)

BEFORE: Jennifer Nicholson, CPA, CA, Member

APPELLANT: **JAMIE AND BRANDICE MURPHY**

RESPONDENT: **MUNICIPALITY OF THE COUNTY OF CUMBERLAND**
Dennis James, K.C.

HEARING DATE: November 5, 2025

DECISION DATE: **February 4, 2026**

DECISION: **Appeal is dismissed.**

I INTRODUCTION

[1] The appellants are Brandice and Jamie Murphy. The Murphys own a waterfront cottage located at 19 Memory Lane in Port Howe, Nova Scotia (PID 21520783) which they use during the summer months. The cottage is about 630 square feet, with a 250 square foot attached deck. It is located on a 5,000 square foot lot overlooking a steep embankment. About half of the lot size is measured from the top of the bank to the high-water mark on the beach 50 feet below. This part of the lot is unusable because of the steep bank. The level portion of the parcel above the bank is approximately 2,500 square feet.

[2] The appellants applied for a development permit to screen in a portion of their cottage's existing deck (about 155 square feet). The deck is about 10 feet from the edge of the bank.

[3] On July 25, 2025, David Buell, a development officer with the Municipality of Cumberland, rejected the Murphys' development permit application. He said it did not comply with s. 4.16.1 and 4.16.2 of the municipal Land Use By-law (LUB). On August 8, 2025, the Murphys appealed this decision to the Nova Scotia Regulatory and Appeals Board (Board) under s. 250 of the *Municipal Government Act*, SNS 1998, c. 18 (*MGA*).

[4] The Board heard the appeal on November 5, 2025, at the Municipal Council Chambers in Upper Nappan, Nova Scotia. The Appellants were self-represented, with Mr. Murphy appearing on their behalf. Dennis James, K.C., appeared on behalf of the Municipality of Cumberland.

[5] There is a limited right of appeal under s. 250(2) of the *MGA*. The only issue the Board can consider in this case is whether the development officer's refusal of the development permit complies with the LUB. Upon reviewing the evidence, the Board finds

that the development officer's refusal of the development permit does not conflict with the LUB. The appeal is, therefore, dismissed.

II EVIDENCE

[6] At the hearing, the Board heard from three witnesses: Mr. Murphy, Glen Boone, Director of Development and Planning with the Municipality of Cumberland, and Mr. Buell, the Development Officer. Mr. Buell was qualified as an expert able to give opinion evidence on municipal land use planning, and the interpretation and application of the Municipality of Cumberland's municipal planning documents including the MPS and LUB.

Jamie Murphy

[7] Mr. Murphy testified that the cottage is approximately 100 years old, and the existing deck is over 17 years old. The Murphys' applied for a development permit to screen in about 60% of the deck, primarily because an increase in the mosquito population prevents them from sitting outside.

[8] The deck is uncovered and attached to the cottage. If the Murphys were permitted to screen in a portion of the deck, it would have remained in the same location and it would not be larger. Mr. Murphy testified that the proposed renovation to the existing deck would not encroach further on the shoreline than it currently does. He said there would be no negative impact on the environment if the deck was partially screened. In fact, he submitted, the deck would be strengthened and therefore less likely to have an impact on the shoreline in the future.

[9] Mr. Murphy, in relying on s. 4.7.4 of the LUB, noted that the deck and cottage are both non-conforming. They do not meet the requirements of the LUB, but both the cottage and the deck were constructed prior to the enactment of the current LUB.

[10] Mr. Murphy acknowledged that the deck is already within the shoreline buffer under the LUB. However, his intention is to install four posts, add a screen and a roof so they can “sit outside and enjoy the environment” which he said will not cause the deck to be closer to the bank nor will it increase the footprint.

[11] Mr. Murphy commented on Mr. Buell’s decision letter dated July 25, 2025, wherein he stated that a “roof is expressly against the intent.” Mr. Murphy testified that s. 4.16.3 does not expressly use the word “roof.” Therefore, the LUB does not prevent a roofed deck from being built. He argued that their application for a development permit should have been approved based on s. 4.7 and s. 4.16.3 of the LUB which address non-conforming structures and buildings.

[12] Section 4.16.3 permits renovations, repairs, or alterations to existing buildings within shoreline buffers, on the condition that the building footprint does not expand and that required setbacks from the bank and property lines are maintained. The Murphys stated that their proposal to alter the existing structure by screening in a portion of the deck would not expand the building footprint and the property lines would be maintained. They stated the following in their closing submissions:

This framework aligns with the principle that one may build or modify within an existing footprint without violating the bylaw, supporting the position that the deck and its proposed screened-in enclosure are lawfully part of the principal building and permissible within the shoreline buffer. The permit proposes converting part of the existing deck into a screened-in area with a screen door and screened sections between a closed two-foot-high wall and headers attached directly to the building. These modifications go beyond a simple covered deck, increasing functional living space in line with bylaw regulations.

(Appellants’ Closing Submissions p. 2)

[13] The Murphys also made the point that the Municipality would not object to a screened-in room on the side of the cottage that would increase the building footprint while remaining connected to the principal building, provided the setbacks from the bank are maintained and within the setback requirement to other properties. This, they argued, shows discretion and flexibility in interpreting the LUB, especially the covered deck restrictions set out in s. 4.16.2 and the footprint limitations set out in s. 4.16.3.

[14] Mr. Murphy raised issues of fairness and consistency. He introduced into evidence Exhibit M-3, which in his view, showed comparable properties in the area where development permits were approved by the Municipality. He testified that from a fairness point of view he should have been given the same courtesy as other property owners in the area.

Glen Boone

[15] Mr. Boone gave evidence on behalf of the Municipality. He has worked for the Municipality as the Director of Development and Planning since 2023. He was involved in the recent review of the LUB, and particularly changes about undersized lots. He testified the review and changes were done to provide clarification for residents. The change to s. 4.16.2(b) of the LUB occurred in March 2025.

[16] He explained that the word “uncovered” was added to the description of allowed decks to provide clarity as to what is permitted in the shoreline buffer and because some residents in the area wanted to close in their decks. He stated that decks can be built within the shoreline buffer, but they must remain uncovered. He testified this is to protect the shoreline from additional erosion and to protect structures and buildings from risk of damage from increasing erosion. He said that once a roof and screen is added to a deck it turns it into additional living space and that walls may then be built increasing

the size of the cottage itself. Council's intent was to allow residents with generational properties to do minor improvements or expansions but to ensure this was done in a controlled and regulated way.

[17] Mr. Murphy asked Mr. Boone about the relevance of s. 4.7.3 of the LUB and the fact that non-conforming structures may be replaced or enlarged provided any such replacement or enlargement is substantially in the same location. Mr. Boone responded that upon receiving development permit applications, each section of the LUB must be considered. For example, s. 4.7.3 may be the starting point because the property is non-conforming, however, in this matter, the section that mentions shoreline buffers cannot be ignored. In addition, several sections, including s. 4.7.3, make it clear that all requirements of the LUB must be met.

David Buell

[18] As noted above, Mr. Buell was qualified as an expert to give opinion evidence on municipal land use planning, the interpretation and application of the Municipality of Cumberland's municipal planning documents including the MPS and LUB.

[19] Mr. Buell has been a development officer with the Municipality since 2016. He testified that he understood the Murphys were seeking a development permit to enclose a portion of the deck at their cottage. Because the cottage is on a waterfront lot it is subject to sections of the LUB regarding shoreline buffers.

[20] He confirmed that in his decision letter he referenced s. 4.16.1(b) of the LUB because it refers to the shoreline buffer. He also referenced s. 4.16.2(b) because it deals specifically with uncovered decks.

[21] When asked by counsel if he considered any other part of the LUB that was relevant to his assessment of the development permit, he replied that he considered the

LUB in its entirety. It was his conclusion that to permit a deck within the shoreline buffer to be roofed would be contrary to the LUB.

III ANALYSIS

[22] I will start by addressing the Murphys' submissions about fairness. Much of Mr. Murphy's evidence and submissions referred to a separate variance application that is before the Municipality. That variance application is not related to this matter. He stated that the process followed by the Municipality for the variance application was unfair. Although the variance application relates to the subject property and many of the facts are the same, it is a separate application that is not before the Board and is not relevant. The Municipality in their submissions stated:

Respectfully, the Board does not have jurisdiction on this appeal to consider a request for variance from the LUB, other properties, or fairness generally. This is the appeal of a development permit decision made by a development officer. The MGA clearly sets out the parameters which the Board may consider when hearing the appeal of a development officer's decision not to grant a development permit. The Board may only allow an appeal if it decides that the development officer's refusal conflicts with the provisions of the Land Use Bylaw or the subdivision Bylaws (MGA, s. 250 (2) and 3034875 Nova Scotia Ltd, Re at para. 102).

(Respondent's Closing Submissions, p. 7)

[23] I agree. The Board does not have jurisdiction under the *MGA* to hear variance appeals (see *Bouchard, Re*, 2018 NSUARB 217). The Board's decision-making authority is limited to the legislation that created the Board and any legislation that allows the Board to hear an appeal or make other decisions.

[24] The *MGA* is the statute that governs planning matters in the Municipality of Cumberland where the Murphys' property is located. Section 250 of the *MGA* allows an applicant to appeal to the Board if a development officer refuses to issue their development permit. The Murphys can only appeal the decision on the grounds

that the refusal of their development permit “does not comply with” the LUB (under s. 250(2) of the *MGA*).

[25] Section 250 of the *MGA* states:

Restrictions on appeals

250 (2) An applicant may only appeal a refusal to issue a development permit on the grounds that the decision of the development officer does not comply with the land-use bylaw, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area. [Emphasis added.]

[26] Section 251 of the *MGA* outlines the Board’s authority with respect to appeals under s. 250:

251 (1) The Board may

(a) confirm the decision appealed from;

...

(d) allow the appeal and order that the development permit be granted;

...

(2) The Board shall not allow an appeal unless it determines that the decision of council or the development officer, as the case may be, does not reasonably carry out the intent of the municipal planning strategy or conflicts with the provisions of the land-use by-law or the subdivision by-law.

[27] To allow the appeal and reverse a development officer’s decision to refuse the development permit, the Board must find that the decision “conflicts with” the LUB (s. 251(2)). Although the wording of the legal tests in s. 250(2) and 251(2) are not the same, the two provisions work together. As the Board found in *Halifax Regional Municipality Charter (Re)*, 2023 NSUARB 214, a decision that does not comply with a LUB also conflicts with it.

[28] Because the issue in this appeal involves the interpretation of a bylaw, the review is guided by the modern principle of statutory interpretation, which was recently re-affirmed by the Supreme Court of Canada in *Canada (Minister of Citizenship in Immigration) v. Vavilov*, 2019 SCC 65, and summarized by the Nova Scotia Court of

Appeal in *Sparks v. Holland*, 2019 NSCA 3, paragraph 27, where Justice Farrar stated:

[27] The Supreme Court of Canada and this Court have affirmed the modern principle of statutory interpretation in many cases that “[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at 21).

[29] Justice Farrar explained that the Court applies the following three questions derived from Professor Ruth Sullivan’s text, *Sullivan on the Construction of Statutes*, 6th ed (Markham, On: LexisNexis Canada, 2014) at pp. 9-10:

1. What is the meaning of the legislative text?
2. What did the legislature intend?
3. What are the consequences of adopting a proposed interpretation?

[30] The Board’s task is to interpret the applicable provisions of the LUB to determine whether the development officer’s decision conflicts with, or does not comply with, that interpretation. The Board must also have regard to the *Interpretation Act*, RSNS 1989, c. 235, including ss. 9(1) and 9(5), which are consistent with, and complementary to, the “modern principle” and Professor Sullivan’s three questions.

[31] In these circumstances, to decide if the development officer’s decision conflicts with the LUB, as directed by the *MGA*, the Board must determine the meaning of the applicable LUB provisions based on the principles of statutory interpretation discussed above. That is to say, the Board must read the words of the LUB in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the LUB, the object of the LUB, and the intention of the Municipality in enacting the LUB.

[32] Planning appeals are *de novo* hearings, which means that parties can submit additional evidence beyond what is contained in the appeal record. They can make other arguments beyond what was presented to the first decision-maker. Therefore, the Board has more information than the development officer had when he made his decision

to reject the Murphys' application. The burden of proof is on the Appellants to show that the development officer erred in his decision not to issue the development permit.

[33] Mr. Murphy stated in his testimony that one of the key sections in the LUB that is applicable to the facts of this matter is s. 4.7.4: Non-conforming Uses and Structures which states:

Non-conforming structures may be replaced, reconstructed, enlarged, renovated, and/or repaired, provided:

- (a) any such construction does not further infringe on the By-law requirement(s) that created the non-conformity; and
- (b) all other requirements of this By-law are met.
- (c) any such replacement or enlargement is substantially in the same location. [CHG-407]

[Exhibit M2. p. 206]

[34] The parties agree that the deck attached to the Murphys' cottage is a non-conforming structure. As noted above, s. 4.7 allows for the replacement and renovation of non-conforming structures.

[35] Mr. Murphy also referred to s. 4.16.3 of the LUB which states:

Existing buildings located within a watercourse or shoreline buffer may be reconstructed, renovated, repaired, moved, or replaced provided that the work does not increase the building's footprint within the buffer and all other applicable requirements of this By-law are met.

[Exhibit M-2, p.208]

[36] The Murphys argue that s. 4.7.4 and s. 4.16.3 allow non-conforming structures to be replaced, reconstructed, enlarged, renovated, and/or repaired if such replacement or enlargement is substantially in the same location. Because they are enclosing only a portion of their deck, and the footprint would not be altered and would be in the same location, the Murphys said the development permit should have been approved. However, as pointed out by Mr. Boone, s. 4.7.4 also states that all other requirements of the LUB must be met.

[37] Mr. Buell's decision stated that the "application proposal is noncompliant with the municipal LUB regarding the following section(s)." He then referred to s. 4.16.1 and 4.16.2 which state as follows:

- 4.16.1 All development and outdoor storage, with the exceptions of those developments listed in Subsection 4.16.2, shall be prohibited within the following areas:
- (b) 30.5 horizontal metres from the top of bank along shorelines identified as "increased Shoreline Buffer" on Schedule C, Watercourse & Shoreline Buffer Map.
- 4.16.2 Development permitted within watercourse and shoreline buffers (subject to zone requirements for permitted uses) are:
- (b) One accessory building or structure or one attached uncovered deck which, in total, shall not be larger than 20 m².

[Exhibit M2, p.208]

[38] There is no dispute that the Murphys' cottage and deck are located within a shoreline buffer on an undersized lot. According to s. 4.16.6, existing buildings within a shoreline buffer may be reconstructed, provided the work does not increase the building's footprint within the buffer. In addition, the expansion of an existing building on an undersized lot is permitted provided it does not further reduce the existing distance from the top of the bank to the watercourse. As noted above, s. 4.7.4 allows structures to be modified if the replacement or enlargement is substantially in the same location.

[39] The LUB defines a "building" as a "structure, whether temporary or permanent, that is roofed and that is used for shelter or accommodation of persons, animals, material or equipment but does not include frames for sheltering crops." [Emphasis added.] A "structure" is defined as "anything that is erected, built or constructed of parts joined together or any such erection fixed to or supported by the soil or by any other structure, and includes a building."

[40] As described earlier in this decision, the Board must apply the modern principle of statutory interpretation that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: see *Rizzo & Rizzo Shoes* at paragraph 21. The interpretation of a statutory provision “must be consistent with the text, context and purpose of the provision”: see *Vavilov*, paragraph 120.

[41] In their submissions, the Murphys stated that if screened walls and a roof were installed, the functional space would be increased. Mr. Murphy testified that the space would be furnished with a couch where they could comfortably sit and enjoy a beverage. Mr. Boone testified that in his experience, once you put a roof on a deck, developments become more enhanced, and that the purpose of the restrictions in the LUB is to limit those enhanced developments. The Murphys’ intentions for this space are further clarified in their submissions, are summarized:

The permit proposes converting part of the existing deck into a screened-in area with a screen door and screened sections between a closed two-foot-high wall and headers attached directly to the building. These modifications go beyond a simple covered deck, increasing functional living space in line with bylaw regulations.

(Appellant’s Closing Submissions p. 2)

[42] Based on the above, the Board finds that if the Murphys were to add screened walls and a roof as proposed, it would be a roofed structure used for shelter of persons. Therefore, the deck would become an addition to the cottage building. This increases the size of the building and reduces the distance from the top of the bank to the cottage which is contrary to s. 4.16.6:

Notwithstanding Section 4.16.1 and Section 4.16.4, the expansion of any existing main building on an undersized lot may be permitted, provided any addition does not further reduce the existing distance from the top of the bank of the watercourse/shoreline to the main building. [CHG-408]

[Exhibit M-2, p. 209]

[43] The only exception that is applicable is set out in s. 4.16.2(b). It states that one accessory building or structure or one uncovered deck is permitted, but it cannot be larger than 20 m². In this matter, we are not dealing with an accessory building, which is defined as “a separate building located on the same lot as the main building.” “Uncovered deck” is not defined, but the Board interprets it to mean an open deck with no roof.

[44] Whether it is defined as a structure or an uncovered deck, it cannot be larger than 20m². The Murphys’ uncovered deck is larger than 20 m². However, because the deck was constructed prior to the enactment of the LUB, it is considered a lawful non-conforming structure. However, if changes to the lawful non-conforming structure are being considered, the LUB applies. In other words, if a development permit were to be issued, the LUB would apply, and the accessory building or structure or uncovered deck is permitted (s 4.16.2(b)) but it must be less than 20 m² and uncovered.

[45] The Municipality in their closing submissions state:

There are, however, certain exceptions to the prohibition in 4.16.1(b), which are listed in 4.16.1 of the LUB. The Appellants’ proposal does not fall within any of the listed exceptions. Rather, section 4.16.2(b) specifically allows one attached uncovered deck. The specification that one uncovered deck is allowed means that attached covered decks are prohibited.

(Respondent’s Post Hearing Submissions, p. 5)

[46] The Board agrees with this interpretation.

[47] The Board concludes that when reading s. 4.7 and 4.16 together, it is clear that an existing building located within a watercourse may be reconstructed, renovated, repaired, moved or replaced provided that the work does not increase the building’s footprint within the buffer and all other applicable requirements of this bylaw are met. However, as noted above, applying the definitions in the LUB, if a roof is added to the deck, the building’s lot coverage will increase making it non-compliant with s. 4.7.4 and increasing its footprint within the buffer contrary to s. 4.16.3. Only uncovered

decks are permitted within the buffer under s. 4.16.1(b) and 4.16.2 (b), so adding a roof to the deck structure would not meet all other requirements of the LUB, as required by s. 4.16.3 and 4.7.4.

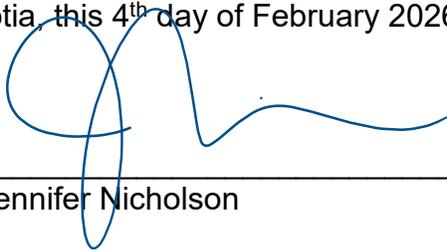
[48] Under s. 251 of the *MGA*, the Board can only reverse the development officer's refusal of the development permit if the decision "conflicts with" the LUB. For the above reasons, the Board concludes that the development officer's decision to refuse the development permit did not conflict with the provisions of the LUB. The appeal is dismissed.

V CONCLUSION

[49] Under s. 250 of the *MGA*, there is a limited right of appeal. The only issue that the Board can consider is whether the development officer's refusal of the development permit complied with the LUB. After having reviewed the evidence, the Board finds that the development officer's refusal of the development permit complies with the LUB. The appellants have not met the legal test that would result in a successful appeal. The appeal is dismissed.

[50] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 4th day of February 2026.



Jennifer Nicholson