

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **DOUGLAS VEZINA AND CRYSTAL VEZINA** from a decision of a Development Officer for the Municipality of the County of Annapolis refusing an application for a development permit at 622 Hampton Mountain Road, Clarence West (PID: 05170741)

BEFORE: Bruce H. Fisher, MPA, CPA, Member

APPELLANTS: **DOUGLAS VEZINA
CRYSTAL VEZINA**

RESPONDENT: **MUNICIPALITY OF THE COUNTY OF ANNAPOLIS**
Jason T. Cooke, Counsel
Sarah MacLeod, Counsel

HEARING DATE: August 10, 2026

FINAL SUBMISSIONS: August 31, 2026

DECISION DATE: **September 11, 2026**

DECISION: **Appeal is allowed.**

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1.0 INTRODUCTION

[1] This is an appeal for the rejection of a development permit at 622 Hampton Mountain Road, Clarence West, Annapolis County. Douglas and Crystal Vezina (Appellants) applied for a development permit to build an addition onto their existing home in the Well Head 2 (GW2) Zone. The Development Officer for the Municipality of the County of Annapolis denied the permit, saying that the proposal was “not permitted within this zone. Furthermore, the bylaw does not include provisions for additions to existing dwellings in the GW2 zone; therefore, the proposed development cannot be approved.”

[2] Both parties agree on the facts of the case but disagree on the interpretation of the Annapolis County Land Use Bylaw (LUB).

2.0 BACKGROUND

[3] Mr. and Ms. Vezina own a single-story home at 622 Hampton Mountain Road, Clarence West, Annapolis County, on a large rural lot. The Vezinas also own the abutting vacant lot (abutting lot). The house is 40 feet long by 26 feet deep with the 40-foot side facing the street. In total the house is 1,022 square feet. On the side of the house that abuts their vacant lot (abutting side), there is an external staircase to the basement, which juts out from the main structure. There is a bedroom in the basement which is accessed from an external door off that staircase. That bedroom cannot be accessed internally from elsewhere in the house. One must exit the house to enter the basement bedroom.

[4] The house is angled slightly towards the abutting lot. The current setback to the abutting lot that the Vezinas own is not in evidence but, for context, appears to be almost 19 feet to the nearest main wall of the house.

[5] On March 25, 2026, the Vezinas applied for a development permit to build an addition to their home. The Vezina's intention was to add a 315 square foot extension to the abutting side of the house. The exterior staircase would be removed, and a new internal staircase would lead to the basement. This would allow the basement bedroom to be accessed from within the home, without exiting the house. The setback for the proposed addition would be roughly 5'-8" to the abutting lot.

[6] When the Vezinas purchased the home in September 2021 it was in the General Development Zone and complied with the LUB. On April 23, 2024, unbeknownst to them, the current Annapolis County Municipal Planning Strategy (MPS) and LUB were passed by Council and their home and surrounding area were rezoned to GW2 Zone. The only allowable uses under GW2 are water supply infrastructure and public trails. Hence, the Vezina's home became a legal non-conforming use. The parties also agree that it is a non-conforming structure. Importantly, under the GW2 Zone there are no provisions in the LUB about minimum lot area or frontage; and no setbacks on the front, side or rear yards.

[7] Both parties generally agree on the facts in the case. Much of the debate between the two parties is focused on their differing interpretations of s. 4.6 of the LUB on non-conforming uses and structures, in particular, the part dealing with enlargements and renovations:

Any legal use of land or the development of a building/structure completed or approved before the effective date of this Bylaw that does not meet the requirements of this Bylaw or the uses permitted within the zone in which the lot is located, shall be subject to the

[Municipal Government Act] MGA provisions respecting non-conforming uses and structures, unless otherwise stated in this Bylaw.

A non-conforming land use, building, or structure that does not meet the lot area, frontage, or setback requirements, may be enlarged, reconstructed, repaired, or renovated provided the development does not further reduce any non-conforming setbacks, lot area, or ground cover requirements and all other applicable requirements of this Bylaw are satisfied.

The use of a non-conforming building/structure or land may be changed to a use permitted in the zone in which the lot is located, maintaining non-conforming setbacks, lot area, or ground cover requirements, provided all other applicable requirements of this Bylaw are met. [Emphasis added]

[8] I would note that the Municipality has offered to consider an MPS and LUB amendment to accommodate the Vezina's development permit request.

3.0 EVIDENCE AND SUBMISSIONS

[9] Both parties generally agree on the facts of the case but differ in their interpretations of the LUB.

[10] The Development Officer for the Municipality, Ali Comeau, appeared as an expert witness for the Municipality. She was qualified, without objection, to give "opinion evidence on municipal land use planning and the interpretation and application of the Municipal of Annapolis County's municipal planning documents, including the Municipal Planning Strategy and Land Use Bylaw."

[11] Mr. Vezina represented the Appellants at the hearing. Ms. Vezina did not attend the hearing.

3.1 The Municipality

[12] Ms. Comeau refused the Vezina's permission for a development permit on April 9, 2025, saying in her refusal letter that:

A municipal development permit **cannot be granted** for the proposed project, as it is located within the Well Head 2 (GW2) zone of the Annapolis County Planning Area. In accordance with Section 5.2.1.2 of the Annapolis County Land Use Bylaw, the proposed

development is not permitted within this zone. Furthermore, the bylaw does not include provisions for additions to existing dwellings in the GW2 zone; therefore, the proposed development cannot be approved. [Emphasis in original]

[Exhibit V-2, p. 1]

[13] In an April 17, 2026, follow-up email, Barbara Boateng, the Manager of Planning explained that:

In your case, no private development is permitted in the GW2 of which your property is located, hence, no setback requirement in the Bylaw which means no minimum setback requirement to compare with. Therefore, the building cannot be expanded. Additionally, the LUB has no requirements for existing buildings to expand in the GW2 zone.

[Exhibit V-3, p. 12]

[14] Ms. Boateng pointed out the uses allowed in the GW2 Zone, saying that MPS and LUB amendments would be required before the permit could be approved. She stated that “staff may be able to support a minimum side yard setback of 25ft” which would require the Vezinas to “consolidate the adjacent property with the subject property.”

[15] In its submission, the Municipality explained that:

[43] ... The intent and goal of the Land Use Bylaw is to ensure orderly, efficient, and sustainable development that maintains a high quality of life and protects the public good while ensuring proper development and economic opportunity through clearly defined rules and regulations. The above-noted zoning provisions and development permit application process meet these objectives and goals.

[Exhibit V-9, p. 15]

[16] Counsel for the Municipality also laid out additional reasons as to why the Development Permit could not be approved, arguing that the GW2 Zone “does not allow for any residential building” and that:

[40] ... non-conforming buildings may be enlarged only where **all other requirements of the Land Use Bylaw are satisfied**. As set out above, no residential building at all is allowed in the GW2 zone. Therefore, it logically follows that enlargement of a non-conforming residential building is similarly not permitted. [Emphasis added]

[Exhibit V-9, p. 14]

[17] The submission also stated that:

[41] Pursuant to Section 3.5 of the Land Use Bylaw, any use not listed as a permitted use in a zone is considered prohibited unless otherwise indicated. As such, enlargement of a non-conforming residential building in the GW2 zone which is not permitted is also prohibited.

[Exhibit V-9, p. 14]

[18] Ms. Comeau expanded on this in her testimony. She confirmed that because the use is not permitted, it could not be enlarged. However, under questioning, she stated that the Municipality has approved expansions and renovations for other non-conforming structures. In those cases, she said: “there are very clear setback requirements to measure for the s. 4.6 for non-conforming uses.” While she was unaware of any applications from other non-conforming uses, she explained that it was not just that the use was non-conforming, but if “there was a setback to compare to, it could be reviewed in that way.”

[19] Lastly, the Respondent also noted that:

[45] ... it appears that the Appellants are (at least in part) arguing that the applicable Land Use Bylaws are overly broad in their fulfillment of the water supply protection objectives, not that the Municipality failed to comply with the Land Use Bylaw as enacted. Insofar as this is the case, respectfully, this is not the issue before this Board, and this Board lacks the jurisdiction to consider same.

[Exhibit V-9, p. 15]

[20] In its post-hearing submissions, the Municipality reiterated its arguments, stating that the decision was “the only correct interpretation of the Land Use Bylaw.” It argued that as residential use was not permitted there were “no applicable setbacks, lot area, or ground cover requirements to compare the proposed enlargement against. Simply put, any enlargement at all of a residential land use within the GW2 Zone is not permitted...”

[21] Ms. Comeau confirmed in the hearing that there were no other reasons for the refusal of the Development Permit, and that it was “strictly the - the expansion of an

existing non-conforming structure on that lot, where no setbacks were applicable to the lot.”

3.2 The Vezinas

[22] In their Notice of Appeal, the Vezinas asserted that the decision “interprets the absence of specific provisions permitting additions to existing single-unit dwellings in the GW2 (Well Head 2) zone as a prohibition, when no such prohibition exists in the bylaw.” As there are no explicit prohibitions on additions or alterations, the decision “applies the bylaw more restrictively than its wording allows.”

[23] They describe the proposed addition as a “limited physical modification” that is “intended to improve safe and functional access to the basement level of the dwelling.”

They emphasize that the proposed addition:

- does not create an additional dwelling unit;
- does not add bedrooms or bathrooms;
- does not increase occupancy;
- does not alter existing well or septic systems; and
- does not change the residential use of the property.

[Exhibit V-6, pp. 4-5]

[24] They further opined that the refusal was based solely on an “overly rigid interpretation” of the LUB and not on:

- groundwater contamination concerns;
- servicing deficiencies;
- increased occupancy;
- environmental degradation; or
- any demonstrated increase in risk associated with the proposal.

[Exhibit V-6, p. 5]

[25] They state that the purpose of the GW2 Zone is “groundwater protection” and that “the proposed development does not undermine that”:

The Appellants submit that a reasonable and purposive interpretation of the Land Use Bylaw supports permitting modest, non-intensifying alterations to existing lawful dwellings where no increased groundwater risk is introduced.

[Exhibit V-6, p. 7]

[26] In their closing submissions, the Vezinas took issue with the Development Officer's interpretation of s. 4.6, saying she concluded that "there is no setback against which Section 4.6 can operate and therefore no enlargement may be permitted." They state that the Development Officer created "a Prohibition That Does Not Appear in the Bylaw":

Section 4.6 requires only that an enlargement not further reduce a non-conforming setback.

Where no setback exists, no setback can be further reduced.

Respectfully, the Development Officer's interpretation converts:

"Does not further reduce any non-conforming setbacks"

into

"A setback must first exist before enlargement can occur."

Those are fundamentally different requirements.

The latter wording does not appear anywhere in Section 4.6.

[Appellants' Closing Submissions, p. 4]

[27] In their reply to the Respondent's post-hearing submissions, after discussing several Supreme Court decisions, the Appellants argue that the Municipality's interpretation adds a restriction that is otherwise not there:

In **Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42, [2002] 2 S.C.R. 559 ("Bell ExpressVu")**, the Court cautioned against interpretations that effectively add words or requirements that do not appear in the legislation itself.

These cases establish a simple principle. Context and purpose are important, but decision-makers must still apply the words that were actually enacted. Restrictions that do not appear in the text should not be added through interpretation.

In this appeal, Section 4.6 expressly states that a lawful non-conforming building may be enlarged, reconstructed, repaired, or renovated, provided the conditions contained within that section are satisfied.

The Respondent asks the Board to conclude that enlargement is prohibited because residential use is no longer a permitted use in the GW2 Zone and because residential development standards do not exist within that zone.

However, Section 4.6 contains no wording stating that:

- enlargement is unavailable unless residential setback standards exist;
- a listed setback is a prerequisite to enlargement; or
- lawful non-conforming dwellings within the GW2 Zone are excluded from the operation of Section 4.6.

The Appellants respectfully submit that adopting the Respondent's interpretation would require the Board to read an additional restriction into Section 4.6 that the Municipality did not enact. [Emphasis in original]

[Appellants' Response to Respondent's Closing Submissions, pp. 3-4]

[28] The Appellants also stated their position on s. 3.5 of the LUB, saying that the Board "is not being asked to authorize a new residential use" and that the Respondent "has not identified any provision stating that Section 3.5 overrides or excludes the operation of Section 4.6 for lawful non-conforming dwellings."

4.0 SITE VISIT

[29] Following the hearing the Board undertook a site visit of the property. The Board was unaccompanied by the parties although Mr. Vezina was present on the property. The Board walked fully around the property, viewing the abutting side where the proposed expansion would go. From the subject property, the Board was able to view the abutting property and the general area of the property line.

5.0 ANALYSIS AND FINDINGS

5.1 Jurisdiction and Legal Considerations

[30] This appeal to the Board is made under s. 247(3) of the *Municipal Government Act (MGA)*, SNS 1998, c 18, s. 1:

Appeals to the Board

- 247 (3) The refusal by a development officer to
- (a) issue a development permit;

...

may be appealed by the applicant to the Board.

[31] Section 250 of the *MGA* restricts the grounds for an appeal by an applicant respecting a development officer's refusal to issue a development permit:

Restrictions on appeals

(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 by-law**, a development agreement, an order establishing an interim planning area or an order regulating or prohibiting development in an interim planning area. [Emphasis added]

[32] The Board's jurisdiction and powers in its consideration of such an appeal are set out in s. 251:

Powers of Board on appeal

- 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. [Emphasis added]

[33] Thus, 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)).

[34] The Board's review will be guided by the modern principle of statutory interpretation. This was confirmed 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. 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).

[35] 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?

[36] The Board must interpret the LUB to determine whether the Development Officer’s decision conflicts with, or does not comply with, her interpretation. The Board must also consider the *Interpretation Act*, RSNS 1989, c 235, including ss. 9(1) and 9(5). 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.

[37] As this is a *de novo* hearing, there is additional evidence and argument beyond what is contained in the appeal record. The burden of proof is on the Appellants to show that the Development Officer erred in her decision not to issue the Development Permit.

5.2 Findings

[38] In reviewing the evidence and submissions, I have concluded that there are three issues in this appeal:

1. Does Section 4.6 necessitate a Setback Requirement before a non-conforming use or structure can be altered?
2. Does the phrase Section 4.6 “all other applicable requirements” in Section 4.6 include Usage?
3. Does Section 3.5 restrict the property from being “enlarged, reconstructed, repaired, or renovated”?

[39] Before reviewing these three issues, I would point out that the *MGA* has its own provisions on non-conforming use of land, use in a structure, and structure. Section 241(1) of the *MGA* prevents expansions and alterations of a non-conforming use in a structure and places limits on major repairs and rebuilds:

241 (1) Where there is a nonconforming use in a structure, the structure may not be

(a) expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature;

(b) repaired or rebuilt, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

[40] The *MGA*, however, allows for a municipality to relax these provisions:

Relaxation of restrictions

242 (1) A municipal planning strategy may provide for a relaxation of the restrictions contained in this Part respecting nonconforming structures, nonconforming uses of land, and nonconforming uses in a structure and, in particular, may provide for

(a) the extension, enlargement, alteration or reconstruction of a nonconforming structure;

(b) the extension of a nonconforming use of land;

(c) the extension, enlargement or alteration of structures containing nonconforming uses, with or without permitting the expansion of the nonconforming use into an addition;

(d) the reconstruction of structures containing nonconforming uses, after destruction;

(e) the recommencement of a nonconforming use of land or a nonconforming use in a structure after it is discontinued for a continuous period in excess of six months;

(f) the change in use of a nonconforming use of land or a nonconforming use in a structure, to another nonconforming use.

(2) The policies adopted in accordance with this Section shall be carried out through the land-use by-law and may require a development agreement.

[41] As will be discussed, the MPS enables some relief from the *MGA* standards. The LUB, in the first paragraph of s. 4.6, outlines that the *MGA* provisions apply, “unless otherwise stated” in the LUB:

Any legal use of land or the development of a building/structure completed or approved before the effective date of this Bylaw that does not meet the requirements of this Bylaw or the uses permitted within the zone in which the lot is located, **shall be subject to the MGA provisions respecting non-conforming uses and structures, unless otherwise stated in this Bylaw.** [Emphasis added]

[42] As will be discussed, the second paragraph of s. 4.6 provides different restrictions than the *MGA* provisions. However, should the subject property not be entitled to the relaxed restrictions in s. 4.6 or elsewhere in the LUB, it would, by default, fall under the *MGA* provisions and the residence could not be expanded or altered.

[43] There is a second topic that also needs to be addressed. The parties all agree that the subject property is a non-conforming structure. On reviewing the evidence, however, I have concluded that this is incorrect. Section 2(h) of the *MGA* defines non-conforming structure as “a structure that does not meet the applicable requirements of a land-use by-law”. The structure meets all the requirements of s 5.3.1.1. I cannot find in the evidence any applicable LUB requirements that the structure does not meet. Ms. Comeau’s testimony supports this conclusion as she agreed that the water utility could purchase the Vezina’s home and renovate or expand as they saw fit “if it fell into one of the permitted uses”. The challenge for the Vezinas is not the requirements of s 5.3.1.1 but the use provisions in s. 5.2.1.2. Their home is a legal non-conforming use but it is not a non-conforming structure.

5.2.1 Does Section 4.6 Necessitate a Setback Requirement before a non-conforming use or structure can be altered?

[44] Both parties have differing opinions on the “setback requirements” in s. 4.6 of the LUB. To repeat, the second paragraph of s. 4.6 reads:

A non-conforming land use, building, or structure that does not meet the lot area, frontage, or setback requirements, may be enlarged, reconstructed, repaired, or renovated provided the development does not further reduce any non-conforming setbacks, lot area, or ground cover requirements and all other applicable requirements of this Bylaw are satisfied.

[45] As quoted previously, the Respondent argues that “no private development is permitted in the GW2 of which your property is located, hence, no setback requirement in the Bylaw which means no minimum setback requirement to compare with.” The Appellants argue that as there is no setback specified, that the Municipality has added a condition that does not otherwise exist in the LUB.

[46] I have carefully considered the arguments of both parties, contemplating the specific words of the LUB, and its context and purpose. There are a variety of groundwater well fields in the Municipality. The Groundwater Supply Designation is enabled through Policy 5.3.1 of the MPS. The purpose of the designation can be seen as to “limit development” to protect the quality and quantity of the groundwater. I would point out that the MPS uses the term “limit”, not more exclusionary words such as “prevent” or “reject”:

Policy 5.3.1 Groundwater Supply Designation

It is the policy of Council to designate lands containing a municipally operated well field and surrounding lands that may affect the water quality in a well field within the Annapolis County Plan Area as a Groundwater Supply Protection Area. In such areas, the Municipality shall adopt zones and other land use designations to **limit development that may impact the quality and/or quantity of water supplied to residents.** First consideration shall be given to adopting the zones and related standards applied to Lawrencetown water supply through Policy 5.3.2 but shall not limit the consideration of **differing measures designed to address the features of each ground water supply area.** [Emphasis added]

[47] Policy 5.3.1 also requires the adoption of zones “and related standards” and allows “differing measures” for the “features” of individual well fields but does not specify what these measures might be or to which well fields they might apply.

[48] Policy 5.3.2 enables the establishment of five well head zones and their uses, including Well Head 2, the GW2 Zone that applies to the subject property:

2. **Well Head 2 (GW2) Zone** in which only passive recreation uses; public utilities; municipal service facilities; and government owned, operated, and maintained water extraction, water treatment, water retention, and water distribution uses including structures or facilities for the display and interpretation of the waterworks, its groundwater management plan and protection strategy; and storm water management facilities will be permitted shall be applied to all lands within the 0 to 2-year capture zone around an active well head.

[49] While the MPS allows passive recreation, it clearly limits most uses to public utilities and government owned water and other facilities. It also specifies the zone area as “all lands within the 0 to 2-year capture zone around an active well head.” No party challenged whether the subject property was in the correct zone.

[50] The MPS has several policies on non-conforming use and structures. Policy 6.2.1.6 allows for the expansion of buildings not meeting setback requirements, but is silent on non-conforming uses:

Policy 6.2.1.6 Buildings on Undersized Lots

It is the policy of Council to include provisions in the Annapolis County LUB to allow a building **legally erected on a lot on or before the effective date of the Annapolis County LUB coming into force that does not meet the requirements of the LUB respecting lot area, frontage, or setbacks to be enlarged, reconstructed, repaired, or renovated**, except as provided for in other policies of the MPS. [Emphasis added]

[51] The MPS, through Policy 7.3.2, requires the LUB to include “provisions, regulations, and development standards” on setbacks and on non-conforming uses of land, structures, and uses in a structure. It does not specify the content of those provisions, standards or regulations. Nor does the MPS shed light on how such requirements should reflect the intent of the broader MPS:

It is the policy of Council to **regulate the use and development of land, buildings and structures in the LUB. This LUB shall also contain provisions, regulations, and development standards, which may vary according to the use, zone and location, including but not limited to:**

...

6. **Regulate the location of buildings and structures relative to property boundaries**, allowing for a waiving of setbacks of common boundaries where the properties under consideration are owned by the same person.

...

10. **Nonconforming uses of land, nonconforming structures and nonconforming uses in a structure.** [Emphasis added]

[52] In the LUB, the GW2 Zone is established under s. 5.2.1.2 that specifies the permitted uses are public trails and water supply infrastructure. Height, lot and yard requirements are set under s. 5.3.1.2. That section allows for front, side and rear setbacks. Both the GW1 and GW2 Zones have “N/A” under all the requirements for the section. At the hearing, Ms. Comeau confirmed that “N/A” meant there was no setback, saying that this was intentional:

A. I believe that they wanted to minimize the development in that area. So, the GW1 and GW2 zones, both are not allowing development in that area. There is a list of - of specific developments that are able to be developed, but residential single-unit dwellings aren't permitted.

[Transcript, p. 50]

[53] Based on the hearing testimony, permitted uses such as water supply infrastructure have no setback requirements. Ms. Comeau agreed that hypothetically the water utility could purchase the Vezina's home for their own use and, as there are no required setbacks, could renovate the basement or expand the structure to the property borders.

[54] Under questioning, Ms. Comeau testified as to other circumstances when residential properties applied for developments permits to be “enlarged, reconstructed, repaired, or renovated.” When asked, she stated that if Mr. Vezina's house burnt down, while she was not certain, she thought it “may be able to be rebuilt within the same footprint, just not expanded.” Likewise, if the roof was hypothetically damaged, s. 4.7 of

the LUB permits “restoration to a safe condition of any building or structure as outlined within the MGA.”

[55] Looking at the issue broadly to determine the intent and purpose of the LUB provisions, the Board concludes that the GW2 Zone was created to protect well heads and that development was to be limited to protect water quality and quantity. The MPS (Policy 7.3.2) requires LUB provisions, regulations, and development standards for non-conforming uses and structures, and for setbacks, thus allowing relief from the *MGA* provisions. Thus, the MPS signals that it intends to balance the limits on development with rights provided to non-conforming uses and structures. However, it is silent on how it will balance the two and provides no great light as to whether an existing non-conforming structure or use in the GW2 Zone may renovate or expand.

[56] The test, however, that I must resolve is whether the decision of the Development Officer “conflicts with the provisions of the land-use by-law.” In considering the evidence I have considered how s. 4.6 was constructed. It may be seen as having three distinct parts within its second paragraph. Again, I will repeat, the second paragraph of s. 4.6:

A non-conforming land use, building, or structure that does not meet the lot area, frontage, or setback requirements, may be enlarged, reconstructed, repaired, or renovated provided the development does not further reduce any non-conforming setbacks, lot area, or ground cover requirements and all other applicable requirements of this Bylaw are satisfied.

[57] The second paragraph provides a relaxation of the *MGA* provisions under certain conditions. I see this paragraph as consisting of three specific parts, the latter two of which were contested by the parties, and the first part which was not discussed or raised.

[58] The first part of the second paragraph specifies that this section applies to a “non-conforming land use, building, or structure that does not meet the lot area, frontage, or setback requirements”. The Vezina’s home is a non-conforming use, thus meeting the requirements of this part. (Uses do not have lot areas, frontages or setbacks so those references in this part are not relevant). None of the parties discussed this part of s. 4.6. Rather they appeared to implicitly assume that, other considerations aside, the property would be eligible for relief under this section.

[59] The second part of the paragraph specifies that a property in one of these three circumstances “**may** be enlarged, reconstructed, repaired, or renovated **provided** ...” [Emphasis added]. The construction of these words is important. The section does not provide a list of specific situations where enlargement, reconstruction, repair or renovation may occur. Rather it says that all eligible non-conforming uses, buildings and structures may be enlarged, reconstructed, repaired, or renovated. The right to enlarge, reconstruct, repair and renovate is expansive, not restrictive, and is limited only by the conditions that follow the word “provided.”

[60] The third part of s. 4.6 are the conditions that follow the word “provided.” Specifically, “**provided the development does not further reduce any non-conforming setbacks, lot area, or ground cover requirements** and all other applicable requirements of this Bylaw are satisfied.” [Emphasis added] This is the chief area of contention, with the Respondent saying that a setback must exist so “there are very clear setback requirements to measure for the s. 4.6 for non-conforming uses.” As there is no setback requirement in the GW2 Zone, the Respondent argues the subject property cannot be expanded.

[61] I do not accept this argument. There are no setback, lot area or groundcover requirements for structures in the GW-2 zone. The Municipality could have established these but chose not to do so. There is no need to measure because the property meets the setback requirements of the LUB. It is the use requirements that it fails to meet.

[62] The April 17, 2026, follow-up email from the Manager of Planning to the Appellants implies that, as the legal uses in the zone are restricted to public developments, a setback is not required. I don't think this is a relevant point. Even if a setback was not required to regulate any new developments in the zone, it still does not exist for *any* developments. If the Municipality wishes to restrict or forbid the enlargement or renovation of non-conforming uses, buildings or structures in the GW-2 zone it might have chosen to do so in a variety of ways. It did not do so, either by conscious choice or, possibly, by mere omission. Having not done so, however, it may not read in a requirement that does not exist.

[63] The proposed development does not breach the conditions of s. 4.6. An expansion, reconstruction, repair or renovation cannot "further reduce any non-conforming setbacks" because, as Mr. Vezina argues, there is no setback to reduce. Section 4.6 provides a right to enlarge, reconstruct, repair and renovate a non-conforming use in that circumstance.

5.2.2 Does the phrase "all other applicable requirements" in Section 4.6 include Usage?

[64] There is an additional restriction attached to the wording of s. 4.6 that follows the word "provided." In full, that part of the section reads "provided the development does not further reduce any non-conforming setbacks, lot area, or ground cover requirements and **all other applicable requirements of this Bylaw are satisfied**"

[Emphasis added]. The Respondent has suggested in their submission that the restriction on residential buildings in the GW2 Zone should be included as an applicable requirement, and hence enlargements cannot occur under s. 4.6.

[65] If accepted, this argument means the more general provision of “all other applicable requirements” overrules the specific requirements of s. 4.6. However, s. 4.6 must be read in a manner that is purposeful and gives meaning to the words. To argue that the section of the LUB that allows non-conforming uses, buildings and structures to renovate only applies where they conform with the land use requirements (i.e., are not non-conforming) creates an absurd result. Under that argument, non-conforming uses, buildings and structures could never be eligible under s. 4.6. Under the modern principal of statutory interpretation, that could not be the meaning that Council intended. Indeed, Ms. Comeau herself testified that she has approved development permits for non-conforming buildings under s. 4.6, contradicting the argument made in the Municipality’s submission. I find that, in this context, the term “all other applicable requirements” refers to requirements other than those requirements that give rise to the non-conforming status.

5.2.3 Does s. 3.5 restrict the property from being “enlarged, reconstructed, repaired, or renovated”?

[66] Both in their submissions and at the hearing the Respondent referred to s. 3.5 of the LUB as preventing the application from being approved. Section 3.5 on Permitted Uses states:

In this Bylaw, any use not listed as a permitted use in a zone is considered prohibited unless otherwise indicated. Where a permitted use is defined in this Bylaw, the uses permitted include *any similar* uses that satisfy such definition, except where a definition specifically excludes any similar use.

[67] Mr. Vezina described s. 3.5 as “just kind of a general use provision where s. 4.6 was pretty specific.”

[68] I do not find s. 3.5 to be relevant in this matter. Both parties agree that the subject property is a non-conforming use. Section 3.5 simply provides a general provision on usage but adds no clarification or restrictions related to setbacks or non-conforming uses or structures. Ms. Comeau confirmed this herself at the hearing when she was asked if the section added “something additional other than what's in 5.3.1.2” and replied “No.”

6.0 SUMMARY

[69] Douglas and Crystal Vezina were denied a development permit to enlarge their home by the Municipality of the County of Annapolis. Their residence is in the GW2 Zone, which does not allow residential units following amendments to the LUB in 2024. When they purchased their home, the previous zoning in effect at the time allowed residential uses, hence, it is considered a legal non-conforming use. They have appealed the decision of the Development Officer to the Board. The only issue that the Board can consider is whether the Development Officer's refusal of the Development Permit conflicts with the LUB.

[70] This issue turns on the interpretation of s. 4.6 of the Land Use Bylaw. That section allows enlargement, reconstruction, repair or renovation of non-conforming uses and buildings if the proposed development does not “further reduce any non-conforming setbacks, lot area, or ground cover requirements.”

[71] The LUB does not specify a setback for the GW2 Zone. The Municipality has argued that, as there is no setback, it cannot measure whether there has been any reduction. The Appellants have argued that there is no setback to reduce and that the Municipality is creating a restriction that does not otherwise exist.

[72] I have thoroughly reviewed the evidence and arguments. An expansion or renovation cannot “further reduce any non-conforming setbacks” because there is no setback to reduce. The Municipality may not infer a requirement that does not exist.

[73] In making this conclusion I have carefully considered the words, context and purpose and the outcomes that this decision implies. It follows that the Vezinas, or their neighbours, could, hypothetically, expand their properties to the limits of the lot boundaries. Considering the importance of the water supply the Municipality is unlikely to appreciate this outcome. However, the municipality created the GW2 Zone with no setbacks or other restrictions while also allowing relief for non-conforming uses. This is an instance where the general provision in s. 4.6 on non-conforming uses, buildings and structures may not function satisfactorily in specific zones. The Municipality may find it prudent to consider clarifying the LUB requirements to address its concerns. Regardless, the decision of the Development Officer clearly conflicts with the words of the LUB which cannot support the interpretation the Municipality has argued for.

[74] I find that the Development Officer's refusal of the Development Permit conflicts with the Land Use Bylaw and that the Appellants have met the legal test for a successful appeal. The Appeal is allowed.

[75] An Order to issue a development permit will issue accordingly.

DATED at Halifax, Nova Scotia, this 11th day of September 2026.



Bruce H. Fisher