

NOVA SCOTIA COURT OF APPEAL

Citation: *Halifax (Regional Municipality) v. 3230813 Nova Scotia Ltd.*,
2017 NSCA 72

Date: 20170822

Docket: CA 459462

Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

3230813 Nova Scotia Limited and Janet Helen Morris

Respondent

Judge: The Honourable Justice Peter M. S. Bryson

Appeal Heard: June 6, 2017, in Halifax, Nova Scotia

Subject: Municipal law - judicial review - procedural fairness - *Civil Procedure Rules* notice of cross-appeal; notice of contention

Summary: Ms. Morris obtained a variance to build a garden shed closer to streetline than by-law permitted. Numbered Company appealed to Community Council and then sought adjournment to accommodate availability of its architect who would make application on its behalf. The Company also argued that the Development Officer had no authority to grant variation and the by-law did not permit variance where difficulty experienced was “general to the area”. Council proceeded and dismissed the appeal. Judicial review judge quashed the decision holding Council should have granted an adjournment and finding that its reasons were inadequate. Municipality appealed, Company filed Notice of Contention seeking to uphold the outcome on substantive grounds on which the review judge had declined to rule.

Issues:

- (1) Was refusal of adjournment/lack of reasons procedurally unfair?
- (2) Could the Company's substantive arguments be addressed by Notice of Contention or was Notice of Cross-appeal required?
- (3) Did the Development Officer have authority to grant variance?
- (4) Did the by-law prohibit variance because difficulty was "general to area"?

Result:

Appeal allowed. The judge failed to conduct a contextual analysis of requirements of fairness and substituted her view for that of Council. Analyzed contextually, Council's procedural decision not to adjourn should be reviewed on a reasonableness basis. The Company's case was presented by another agent, a planner with great experience. There was no evidence that the Company was prejudiced. Council's adjournment decision was reasonable and the judge should have deferred to it. The comments of the local councillor in support of proceeding amply explained why adjournment was not granted.

The Court of Appeal could entertain the arguments of the Company advanced by way of Notice of Contention even if they should have been put forward by way of Notice of Cross-appeal because HRM had ample opportunity to respond to the arguments raised and it was in the interests of justice to have those matters heard on the merits at the appeal.

The Development Officer had authority to grant the variance requested. Council's interpretation of the by-law was correct. Whether the problem was "general to the area" involved a question of mixed fact and law to which a reasonableness standard of review applied. The decision and the outcome were reasonable.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 18 pages.