

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Edward Vickers **Appellant**

AND Town of Witless Bay **Respondent**

RESPECTING Approval

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING November 23, 2015

IN ATTENDANCE

Edward Vickers – Appellant
Geraldine Caul – Authority
Gary Churchill – Interested Party
A. Murphy – Interested Party
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Witless Bay issuing a permit to Gary and Ann-Marie Churchill. On August 6, 2015, Gary and Ann-Marie Churchill applied to the Town of Witless Bay for a permit to construct a gazebo on their property located in Gallows Cove. Council considered and approved Mr. and Mrs. Churchill's application at the August 11, 2015 Regular Meeting of Council. A permit was issued to the applicants on August 12, 2015.

On August 24, 2015, Mr. Edward Vickers, an interested party, filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's approval of the above noted application. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act"), the appeal was filed within the required timeframe. Additionally, the appellant included the required information as per section 42(5) of the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Telegram* on September 15, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 21, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, N.L.R. 3/01

Town of Witless Bay Municipal Plan and Development Regulations, 2005

Matters presented to and considered by the Board

How is the subject property zoned?

The Board reviewed the Town's Municipal Plan and Development Regulations and confirmed that the subject property is designated and zoned Rural.

Did the Town process the application in accordance with the Town's Development Regulations?

The Board learned that the Town determined the gazebo was a discretionary use but could not clarify how the Town classified the proposed gazebo in accordance with the Rural Use Zone Table in Schedule C of the Town's Development Regulations. The Rural Use Zone Table is as follows:

Zone Title	RURAL	(R)
PERMITTED Use Classes (See Regulation 85 and Conditions)		
Agriculture, forestry and conservation..		
DISCRETIONARY Use Classes (See Regulations 22 and 86 and Conditions)		
Outdoor assembly, single dwelling, veterinary, office, outdoor market, general industry, light industry, mineral working, hazardous industry, recreational open space, cemetery, animal, transportation, antenna.		

The Board heard from Mr. Gary Churchill, the developer, at the hearing and learned that Mr. Churchill applied for the gazebo under the recreational open space use class, which is listed as a discretionary use in the Rural zone. Mr. Churchill stated that the proposed gazebo is not an accessory building and should not be reviewed under that assumption.

The Authority indicated at the hearing that there was a brief discussion at the August 11, 2015 Regular Meeting of Council as to whether the application required public notification and it was determined by the Mayor that notification was not required, despite the application being deemed a discretionary use. The Board reviewed section 32 of the Town’s Development Regulations, which states:

The Council may, and when a variance is necessary under Regulation 11 and the Council wishes to consider whether to authorize such a variance, when a change in nonconforming use is to be considered under Regulation 49, or when the development proposed is listed as a discretionary use in Schedule C of the Regulations shall, at the expense of the applicant, give notice of an application for a permit or for approval in principle, by public advertisement in a newspaper circulating in the area or by any other means deemed necessary, and under Regulation 12 and the Council shall give written notice of the proposed variance from development standards to all persons whose land is in the immediate vicinity of the land that is the subject of the variance, and allow a minimum period of 7 days for response.

As outlined in section 32, the Board found that discretionary use applications must be advertised in a locally circulated newspaper prior to Council making a decision on the application. Since Council deemed the gazebo as a discretionary use and did not advertise the subject application, the Board determined that the Town of Witless Bay contravened section 90 of the Town’s Development Regulations. Section 90 states:

Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Council has given notice of the application in accordance with Regulation 32 and has considered any objections or representations which may have been received on the matter.

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 Town of Witless Bay may have the authority to approve the subject application. However, the Board found that the Town failed to comply with section 90 and 32 of the Town's Development Regulations when it issued a permit to Mr. and Mrs. Churchill for a gazebo in Gallows Cove. That is to say, the Board will vacate the Town's decision made at the August 11, 2015 Regular Meeting of Council to approve Mr. and Mrs. Churchill's application for a gazebo. The Town must reconsider Mr. and Mrs. Churchill's application by publishing a discretionary use notice in the locally circulating newspaper in accordance with section 32 of the Town's Development Regulations. The Town must consider any comments or objections received as a result of the public advertisement prior to making a decision in accordance with section 90 of the Town's Development Regulations.

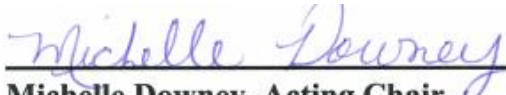
Order

Based on the information presented, the Board orders that the decision made by the Town of Witless Bay on August 11, 2015 to approve Gary and Ann-Marie Churchill's application to develop a gazebo in Gallows Cove, be reversed.

The Board further orders that the Town of Witless Bay pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

The Town of Witless Bay and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland Labrador, this 23rd day of November, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board