

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Darren Brake (K.S.A.B Construction Ltd.) **Appellant**

AND Town of Norris Point **Authority**

RESPECTING File #: 15-006-054-004
Refusal to issue a permit for construction of a commercial building
at 238B Main Street.

BOARD MEMBERS Chair – Lloyd Walters
Member – Helen Reid
Member – Leona Gillette

DATE OF HEARING February 21, 2019

IN ATTENDANCE

Darren Brake - Via Teleconference: Appellant
Herb Johnson - Via Teleconference for the Appellant

For The Respondent: Town of Norris Point
Jennifer Samms, Town Clerk/ Manager Town of Norris Point
James Goudie, Counsel for the Town of Norris Point

Robert Cotter, Secretary, West Newfoundland Regional Appeal Board
Christopher Hardy, Technical Advisor to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

On December 20, 2016, Darren Brake (the appellant) completed an application for a commercial development at 238B Main Street, Norris Point. This application was submitted to the Town on January 11, 2017 by email and, on January 12, 2017, the commercial use was confirmed as a coffee shop. At its June 20, 2017 regular meeting, the Town Council of Norris Point refused this application on the grounds that it was unable to grant access through the adjacent town property. The Town sent a letter, dated June 21, 2017, to the appellant outlining Council's decision. The appellant filed an appeal on June 27, 2017.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Norris Point Development Regulations

Matters presented to and considered by the Board

Q. How is the property zoned?

A: The subject property is located in the Mixed Development zone.

Q: Did the town have the authority to refuse the application?

A: Yes

In its letter of refusal, dated June 20, 2017, the Town indicated:

"Council is unable to approve your application at 238B Main Street as we are unable to grant you access through the adjacent town property."

The representative of the town indicated to the board at the hearing that the site did not front onto a publicly maintained road and there was no direct road access to the location. Therefore the site applied for did not comply with section 40 of the Town regulations.

The board in its deliberations referred to section 40 of the Town of Norris Point Development Regulations.

The relevant section reads:

"40. Lot Frontage - Except where specifically provided for in the Use Zone Tables in Schedule C of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street which has been constructed to standards established by the Authority."

Therefore, the town acted properly and within its powers when it refused the subject application.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present along with the technical information and planning advice. In addition the site location was reviewed by the board at the hearing and the zoning confirmed.

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.

As part of the appellant's submission references were made that the previous owners of the property had been granted permission to build on that site. The board reviewed correspondence between the Town and the previous owners and found that in a letter to Terry and Brenda Pittman, dated June 28, 2012 the town stated:

"The area is zoned for mixed development. A permit for development would only be issued after a detailed application is submitted to council for review and comment."

Therefore, the board concludes that there was no previous approval given by the town to develop the lot.

Based on its findings, the Board determined that the Town was acting within its authority under the Municipal Plan and Town of Norris Point Development Regulations. Therefore, the Board confirms Council's decision to refuse the application.

Order

Based on the information presented, the Board orders that the decision of the Town of Norris Point dated, June 21, 2017 pertaining to property at 238B Main Street, Norris Point be confirmed.

The Respondent and the Appellant(s) are bound by this decision of the West Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West Newfoundland 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 Board's decision has been received by the Appellant(s).

DATED at Deer Lake, Newfoundland and Labrador, this 21st day of February, 2019.



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Helen Reid, Member
West Newfoundland Regional Appeal Board



Leona Gillette, Member
West Newfoundland Regional Appeal Board