

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Rick Stanley – Ocean Quest **Appellant**

AND Town of Petty Harbour Maddox Cove **Authority**

RESPECTING Council’s Refusal of Application to Develop a Commercial Building at 56-58 Main Road, Petty Harbour-Maddox Cove. [MAE File: 15-006-057-004]

BOARD MEMBERS Chair – Cliff Johnston
Member – Paul Boundridge
Member – Damian Ryan

DATE OF HEARING March 8, 2019
LOCATION Mount Pearl City Hall Council Chamber

IN ATTENDANCE
Appellant: Rick Stanley; Dan Noseworthy, Appellant’s Representative
Respondent: Stephanie Stack, Chief Administrative Officer of Town of Petty Harbour Maddox Cove
Sam Lee, Mayor of Town of Petty Harbour Maddox Cove

Interested Parties: Jerry Hearn, Robert Chan

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of decision of May 22, 2018 to reject the application to develop a 50' x 80' commercial building (adventure centre, boat house and restaurant/kitchen multi-purpose room) "as Council felt that the scale of this development is too large for the area and will take away from the unique character of the Petty Harbour waterfront as it will dominant (sic) the views from all areas of the town."

The Appellant appealed the Order on the following grounds, summarized as follows:

- The proposed building is not intended strictly as a private commercial initiative, but also as a cultural and civic events centre for the community, including a boat building museum, workshop, catering hall, events centre, and opportunities to house local community organizations. It would offer economic development for the town and a way to promote a positive visitor experience.
- The size scale and character of the design is intended to be respectful and in keeping with the area and its historical architecture. The proposed wharf and "Dory Boat House" structure is reflective of the prior wharf and fishing structure that occupied the same footprint 80' in length.
- The proposed uses are totally in keeping with those outlined for the Harbourfront (H) use zone, and would respect the development standards.
- The proposal includes the relocation and upgrading of 30-year old municipal infrastructure (liftstation overflow and storm drain) that exist on the site. This would be at the proponent's expense, and to the benefit of the Town.
- 5 letters of objection from a population of 960 does not constitute significant community opposition, and there is considerable support for the project, including the Harbour Authority.
- The proposed building would replace a former similar sized structure, is not as large as others in the harbour area, and would be sensitively designed to fit in, with only a single story at the road and larger as the grade of the land slopes down to the water.
- The building location is private property and would not impede pedestrian traffic or public enjoyment of the area. As private property, it is not a public parking area; but, the proposed development would cater to locals as well as visiting tourists, providing access and parking.
- Neighbouring land owners might be enjoying views because the land is currently vacant; however, it was once a developed site, and private property rights and development potential must be considered.
- The proposed site plan will incorporate a storm management system to guard against any negative impact on neighbouring properties.

At the hearing, the Appellant's Representative verbally added to the above that it was perceived that a member of the Town Council who previously had been determined by Council to be in a conflict of interest on the subject development application should have not been involved in discussions concerning the development application or the Council decision on May 22, 2018 when the application was rejected.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000 (URPA);
 Town of Petty Harbour-Maddox Cove Municipal Plan 2015 and
 Town of Petty Harbour-Maddox Cove Development Regulations 2015

Matters presented to and considered by the Board

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Petty Harbour-Maddox Cove acted in accordance with the applicable legislation, policy and regulations when, on May 22, 2018, Council made a decision to refuse the application to develop a two-story 80 x 50' multi-purpose commercial building at 56-58 Main Road.

Q: What is the zoning of the subject property?

A: The property is in the Harbourfront (H) Zone.

Q: Does the Harbourfront Zone allow the proposed combination of uses, as proposed by the Appellant?

A: The Town's CAO, Stephanie Stack, verbally confirmed to the Appeal Board that all uses proposed are Permitted Uses in the Harbourfront Zone.

8.8.1. Permitted Uses

Bed and breakfast	Home Office
Outdoor market	Restaurant
Cultural and civic	Museum
General assembly	
General industry	Light Industry
Marina	Transportation (Wharves and docks)
Recreational open space	

8.8.2. Discretionary Use

Single family dwelling (limited to existing)	
Club and lodge	Convenience store
Shop	Take-out food service
Indoor market	
Hotel	
General service	Medical service
Office and professional service	Personal service
Passenger assembly	Taxi stand
Utilities	Telecommunication Structures and Antenna

8.8.3. Prohibited Uses

Temporary accommodations

Examination by the Board of the Town's Development Regulations reveals that Section 8.6.9 (Commercial Uses), requires that:

“Commercial uses such as restaurants, convenience stores and shops will only be permitted as a discretionary use under the following conditions:

- a) The store shall be located on the main road, or at an intersection with the main road;
- b) Parking, and building materials shall be similar in style and compatible with the Heritage Area;
- c) Shops selling craft products may be considered in locations off the main road.”

Q: On what basis was the application advertised for public review and comment?

A: Section 3.13.2 of the Town’s Development Regulations (below) give Council the discretionary authority to require a public notice of a development application to occur where Council is of the opinion that the notice is required for information and public consultation purposes.

“3.13. Public Notice

2. Council may require public notice of any development application where, in the opinion of Council, such notice is required for information and public consultation purposes.”

Q: What response was received to the public notices issued by the Town for this development application?

A: Five (5) written responses were received by the Town expressing concerns about the proposed development.

Q: What authority/latitude is given the Town under its Development Regulations when reviewing and deciding upon development applications?

A: Section 3.5 (Discretionary Powers) of the Development Regulations require that Council:

“3.5. Discretionary Powers

In considering an application for a permit or for approval in principle to carry out development, Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.” [emphasis added]

Q: Are there municipal land use policies which Council relied upon for guidance when considering the development application?

A: Yes. The Board understands that the Town was guided by several municipal land use policies contained in the Town’s Municipal Plan, with primary consideration being given to:

“Protect the Built Heritage

Policy G-1 Townscape Character

It shall be the intention of Council to protect and enhance the Town’s unique sense of place and ensure that new development is consistent with current style, size, scale and form of development in the Town, with special consideration given to the designated Heritage Area.”

“Protect the Natural Environment

Policy G-6 Natural Environment and Resources

Protecting the natural environment provides many benefits to the community, such as conserving the picturesque setting, natural drainage systems, recreational opportunities and other values.

1. Within the Planning Area, development will be carried out so as to minimize its impact on the natural environment. Measures shall be taken to protect natural drainage systems, wildlife, and plant or fish habitats.”

Q: Did the town provide reasons for rejection?

A: Yes. In the May 23, 2018 letter to the Appellant from the Town’s Chief Administrative Officer, it is stated that “Council feels that the scale of this development is too large for the area and will take away from the unique character of the Petty Harbour waterfront as it will dominant (sic) the view from all areas of the town.”

Q: The verbal concern raised by the Appellant and their representative at the appeal hearing over the perception of conflict of interest by a member of the Town Council – would it be sufficient to invalidate the decision made by Council to ultimately reject the development application?

A: In the Authority’s submission, it is indicated that at the Council Meeting of April 9, 2018 the matter of a potential Conflict of Interest arose (the development application was first brought forward to Council for discussion and consideration) when a Council member declared a Conflict of Interest and Council subsequently determined by majority vote that the Councillor was in conflict.

Following this, at the Council Meeting of May 7, 2018 the Council considered another aspect of the same application (when the question of approval for use of a temporary holding tank for the subject development application was discussed). At this meeting, the same Council member again declared a Conflict of Interest; however, the Council decided by majority vote that the Councillor who was previously in Conflict was not in fact, in conflict.

At the Council Meeting of May 22, 2018, by majority vote (4:3) Council made the decision to defeat a Motion to approve-in-principle the development application, thus rejecting the application. The Councillor whom had previously been determined by Council to be in a Conflict of Interest voted against the Motion for approval-in-principle.

The Board has reviewed the Conflict of Interest provisions of the *Municipalities Act* and has noted that the Act provides that:

“Decision of council

209. (1) Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall make a disclosure and the council may decide the question by majority vote and its decision on the matter is final.

(2) A councillor whose possible conflict of interest is being voted on is not entitled to vote.”

Council had not determined Section 209 to be relevant when the development application was being considered and decided on at the May 22, 2018 Council Meeting.

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.

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.

The Board has concluded that the Council decision of May 22, 2018 to reject the Appellant's development application to develop a two-story 80' x 50' multi-purpose commercial building at 56-58 Main Road was in accordance with the applicable legislation, policy and regulations when one considers Section 3.5 of the Town's Development Regulations, which states:

"In considering an application for a permit or for approval in principle to carry out development, Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulation pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Council may, in its discretion, as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application."

The Board is aware that Section 42.11 of the Urban and Rural Planning Act 2000 provides that:

"Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision."

The Board thereby confirms the Council decision of May 22, 2018 to reject the development application for a commercial building at 56-58 Main Road, Petty Harbour-Maddox Cove.

ORDER

Based on the information presented, the Board orders that the Council decision of May 22, 2018 to reject the development application for a commercial building at 56-58 Main Road, Petty Harbour-Maddox Cove, be confirmed.

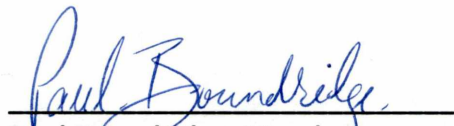
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern 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).

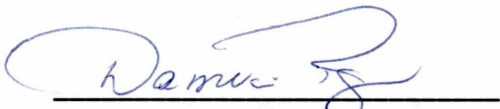
DATED at Mount Pearl, Newfoundland and Labrador, this 12th day of March, 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member
Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member
Eastern Newfoundland Regional Appeal Board