

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Coppercreek Eavestrough (Sherry Hass) **Appellant(s)**

AND Town of Baie Verte **Respondent**

RESPECTING Conditional Approval

BOARD MEMBERS Stephen Burbridge, Chair
Barry Thomson, Member
Bill Carter, Member

DATE OF HEARING August 22, 2018

IN ATTENDANCE

Authority: Brian Peach, CAO, Town of Baie Verte
Brandon Philpott, Mayor, Town of Baie Verte

Appellant(s): Bradley Haas
Sherry Haas

Secretary to the Central Newfoundland Regional Appeal Board: Robert Cotter
Technical Advisor to the Central Newfoundland Regional Appeal Board: Christopher Hardy

DECISION

Facts/Background

On July 20th, 2017 the appellant submitted a request for outline planning permission to the Authority to operate a “small general contracting business” at the subject property (17 Harbour View Terrace). The appellant outlined the type of business (general contracting), the equipment that would be used, and the location that equipment would occupy on the subject property.

On January 25, 2018, the Baie Verte Town council, at a regular meeting, approved a “development permit in principle (pending public notice)” with several conditions attached. A letter regarding the above approval in principle was sent to the applicant on January 29, 2018.

Ms. Haas filed an appeal of the decision on February 12, 2018. The Appellant is appealing the approval in principle on the grounds that there was no explanation for the second, third, and fourth conditions that were attached.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in the *Nor’Wester* on April 25, 2018. A notice of the time, date, and place of the Hearing was provided to the appellant(s) and respondent within the legislative requirements under the *Urban and Rural Planning Act, 2000*..

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister’s Development Regulations, NLR 3/01

Town of Baie Verte Municipal Plan and Development Regulations

Matters presented to and considered by the Board

Did the Town of Baie Verte have the authority to issue an approval in principle with conditions to Coppercreek Eavestrough?

The Board finds that the Town of Baie Verte did have the authority to issue an approval in principle. Regulation 19 of the Town's development regulations gives the Town Council the authority to grant "outline planning permission" if the Council is satisfied that the "proposed development is [...] in compliance with these Regulations." Also, Regulation 19 (2) reads:

"Where outline planning permission is granted under this Regulation, it shall be subject to the subsequent approval by the Authority of such details as may be listed in the outline planning permission, which shall also specify that further application for approval of these details shall be received not later than two years from the grant of outline planning permission."

Furthermore, Regulation 20 of the Town's development regulations allows the Town to attach conditions to an outline planning permission to ensure that the proposal will adhere to the Town's development regulations

Did the Town of Baie Verte exercise its authority appropriately in issuing an approval in principle with conditions to Coppercreek Eavestrough?

The Board finds that the Town failed to exercise its authority appropriately in attaching conditions to the approval in principle. Regulation 21 of the Town's development regulations state that "The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reason for so doing." The Town's response dated January 29, 2018 failed to conform with this requirement.

However, a more fundamental question that arose during deliberations was whether the Town had the authority to issue the approval in principle in the first place.

Evidence was presented to the Board that there is a single dwelling on the subject property. A single dwelling is a discretionary use within a rural zone and must be subsidiary to a farm or forestry operation. This residence is not associated with a farm or forestry use making the dwelling a non-conforming use.

The non-conforming single dwelling on the subject property is being used as a residence. The addition of a business to a dwelling would be considered a home occupation. In accordance with Section 87 of the Town of Baie Verte Development Regulation, the Rural zone does not identify home occupations as a permitted or discretionary use.

Therefore, the Board finds that the Town of Baie Verte did not exercise its authority appropriately in issuing an approval in principle to Coppercreek Eavestrough.

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. URPA, 2000 42(10) states that:

“(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.”

Based on its findings, the Board determined that the Town of Baie Verte did not exercise its authority appropriately in issuing an approval in principle to Coppercreek Eavestrough.

Therefore, the Board reverses the Respondent’s decision to issue an approval in principle to the applicant on January 29, 2018. That is to say, as the approval in principle with conditions that was issued on January 25, 2018 does not exist. It leaves the development application by the appellants before the authority without a decision.

Moreover, the Board has determined that under the current plan and regulations of the town, the residence and the proposed development is not permitted. The Board directs the respondent to consider the proposed application under its current plan, regulations and any other applicable legislation and make a decision in conformance.

Order

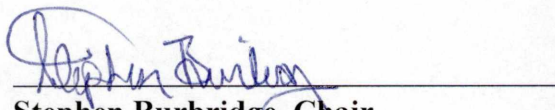
Based on the information presented, the Board orders that the decision by the Town of Baie Verte to issue an approval in principle to Coppercreek Eavestrough & General Contracting Ltd. On January 29, 2018 be reversed.

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

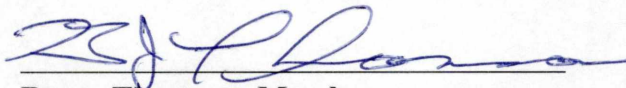
In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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

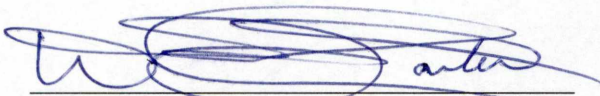
DATED at Grand Falls Windsor, Newfoundland and Labrador, this 22 day of August, 2018



Stephen Burbridge, Chair
Central Newfoundland Regional Appeal Board



Barry Thomson, Member
Central Newfoundland Regional Appeal Board



Bill Carter, Member