

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-009
Appellant(s)	Ralph Carey
Respondent / Authority	Town of Witless Bay
Date of Hearing	February 10, 2021

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Ralph Carey
Solicitor for the Authority:	
Representatives for the Authority	Pat Curran, CAO, Town of Witless Bay; Geraldine Cull, Town Clerk, Witless Bay
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Kim Blanchard, MCIP
Interested Parties	Stephen Dunne, Gerard Dunne

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Witless Bay acted in accordance with the Urban and Rural Planning Act, 2000; Town of Witless Bay Municipal Plan and Development Regulations when it granted an Approval in Principle on May 19, 2020 to Stephen Dunne to develop a single family home on a parcel of land on Dunne's Lane, Witless Bay.

Presentations During the Hearing

1. Planner's Presentation

The Technical Advisor presented the Technical Report prepared for the Appeal, highlighting several points. These include:

- The Authority issued an Approval in Principle for the project on March 11, 2020 which was prior to Council considering both the matter of variance and consulting nearby property owners/residents regarding the variances.
- Section 47 of the Town's Development Regulations provides that in the case of a pre-existing lot that the Town's Development Regulations shall not prevent the issuing of a permit by the Authority for the erection of a dwelling on that lot, provided that the lot coverage and the height are not greater than, and the yards and floor areas are not less than the standards set out in the regulations.
- During the review of the information submitted regarding this appeal, there is no evidence of the Town's consideration of the accuracy of the measurements of the proposal relative to the actual measurements of the property with the development standards applied for the setbacks of the lot and the street line (the road reserve was raised by the appellant in response to the variance notice), nor evidence of consideration of prior professional assessment of the grade of the land.
- In response to the notice of variance, it is known that the Appellant, Mr. Carey, expressed a number of concerns. There is no evidence if or how Town Council or staff addressed the Appellant's concern that the proposed location of the well to service the subject property is much closer than the recommended distance from his existing well. There is no mention in the Council Minutes of May 19, 2020 nor any written evidence that the Town's Public Works Committee considered the Appellant's concerns.
- In the Appellant's arguments, the calculations indicate that the variance from the development standards for the Residential zone would be 13.8%, in excess of the maximum cumulative amount of 10% variance enabled at the discretion of Council. It should be noted that, from a development control perspective, Section 47 of the Town's Development Regulations allows Council to consider the approval of a residence on parcel with sub-standard lot area, only if the calculation for the yards is sufficient to meet minimum requirements.

2. Appellant's Presentation

The Appellant mentioned many of the points set out in the Technical Report to support his appeal, including but not necessarily limited to the following:

- The Town gave Approval in Principle to the project on March 11, 2020 without first dealing with the matter of variance.
- There was no consideration by the Town Council of the grade of the land.
- The Appellant has a concern regarding the location of a new well for the proposed dwelling with respect to his own existing well.
- The Town's Approval in Principle granted on May 19, 2020 does not conform to Section 47 of the Town's Development Regulations.

3. Authority's Presentation

- The Town considers the property to be an existing lot, which has been assessed for some period of time for municipal property taxes.
- The Town considers the road reservation along Dunne's Lane to commence at the surveyed property lines of the properties on either side of the street.
- Town staff can verify that the responses from the Appellant to the Town regarding proposed variance were distributed to Council members prior to the Council's decision of May 19, 2020 to grant an Approval in Principle.

4. Interested Parties (Stephen Dunne, Developer; Gerard Dunne)

- Mr. Stephen Dunne advised that the road in front of his property was recently repaved approximately 6 m wide with 1 m to 1.5 m boundary on either side of Dunne's Lane so that if widening becomes necessary, it can be done.
- Mr. Gerard Dunne indicated that the Town Council had twice previously approved a single detached home on this property.
- Mr. Gerard Dunne also indicated that the recommendations regarding the placement of wells are just that – recommendations not regulations.

Board's Analysis

Q. Did the Authority follow correct procedures in its processing of this application?

A. The Board has determined that the Authority did not follow correct procedures as outlined below:

- The Town's Development Regulations define "Approval in Principle" as follows:
"...means that Council when considering a development application shall evaluate the application to the development requirements within the Town. If the proposed development meets the development requirements of the Town an approval in principle maybe given to the application. Final approval and issuance

of a permit to commence development are subject to the agreement by the applicant to meet specified conditions as outlined by Council.”

- Section 20 of the Town’s Development Regulations reads as follows:

“20. Approval in Principle

(1) The Authority may grant approval in principle for the erection, alteration or conversion of a building if, after considering an application for approval in principle made under these Regulations, it is satisfied that the proposed development is, subject to the approval of detailed plans, in compliance with these Regulations.

(2) Where approval in principle 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 approval in principle, which shall also specify that further application for approval of these details shall be received not later than two years from the grant of approval in principle.”

- The Town Council did not consider the matter of the proposed variance prior to granting Approval in Principle to the application on March 11, 2020 which is contrary to Section 20(1) of the Town’s Development Regulations.
- There is no written evidence to demonstrate that the Town Council gave consideration to the Appellants’ concerns regarding the application prior to granting a second approval in principle on May 19, 2020.
- There is no indication that the Town Council gave any consideration to a possible requirement for a geophysical assessment due to the steep slope of the subject property.
- It should be noted from a development control perspective, that Section 47 of the Town’s Development Regulations allows the Town Council to consider the approval of a residence on a parcel of land with a substandard lot area, only if the calculation for the yards is sufficient to meet the minimum requirements.

“47. Lot Area and Size Exceptions

Where, at the time of coming into effect of these Regulations, one or more lots already exist in any residential zone, with insufficient frontage or area to permit the owner or purchaser of such a lot or lots to comply with the provisions of these Regulations, then these Regulations shall not prevent the issuing of a permit by the Authority for the erection of a dwelling thereon, provided that the lot coverage and height are not greater than, and the yards and floor area are not less than the standards set out in these Regulations.”

The Town regards this property as an existing sub-standard lot, thereby approval for the proposed house on the property can only be considered by the Town Council if the calculation for the yards is sufficient to meet minimum requirements for the zoning of the property.

Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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 determined that the Town of Witless Bay did not correctly follow procedures set out in the Town's Development Regulations in processing and granting Approvals in Principles on March 11, 2020 and May 19, 2020 to Stephen Dunne to develop a single family home on a parcel of land on Dunne's Lane. Further, the Board has also determined that the Councils' decisions to grant Approvals in Principle to the application was contrary to Section 47 of the Town's Development Regulations.

Board's Order

The Board orders that the March 11, 2020 and the May 19, 2020 decisions of the Town Council of Witless Bay to grant Approval in Principle to the application from Stephen Dunne for a single family home on a parcel of land at civic 32 Dunne's Lane, Witless Bay, be reversed. As a result of the Board's Order, there are no longer any Town approvals in place for this application. The Board further orders that the Application be referred back to the Town for review and consideration in full compliance with all applicable requirements of the Town's Development Regulations, including Section 47.

The Board further orders that the Town of Witless Bay pay an amount of money equal to the value of the appeal fee (\$200.00 + HST = \$230.00) to the Appellant.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of this 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 St. John's, Newfoundland and Labrador, this 10 of February, 2021.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board