

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-015
Appellant(s)	Jennifer Aspell
Respondent / Authority	Town of Witless Bay
Date of Hearing	March 9, 2021

Board Members

Chair	Clifford Johnston
Member	Carol Ann Smith
Member	Robert Warren

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Jennifer Aspell and Mark Aspell;
Representatives for the Authority	Vince Swain, Councillor; Pat Curran, CAO; Joe Thorne, Solicitor;
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Mitch & Jodi Humphries, Developers; Greg Kirby, Solicitor for Developers; George Kean, family relative to developers and is a carpenter.

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 Regional Appeal Board is to determine if Town of Witless Bay made an error when it issued a permit to develop an accessory building at 17 Andrews Lane. The Board must determine if the Town of Witless Bay acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Witless Bay Municipal Plan and Development Regulations when the decision was made on June 9, 2020.

Presentations During the Hearing

1. Planner's Presentation

This appeal is based on the following section of the Act:

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

(a) an application to undertake a development;

The Appellant is appealing the development permit based on the following grounds:

1. The proposed garage would negatively impact the view of the ocean from the Appellant's property;
2. Components required to be submitted with a development application were not submitted by the Applicant; and
3. The height and size of the proposed garage exceed the development standards outlined in the Town's development regulations.

According to the Town, the subject land is zoned 'Residential' (RES). A garage (an accessory building) would be permitted in this zone type but must comply with the Town's development regulations, especially the conditions of the applicable zone, including:

4. Accessory Buildings

(a) All accessory buildings shall have a maximum floor area of 70 m².

(c) Accessory buildings shall located be on the same lot as the residential dwelling and shall be clearly incidental and complementary to the main use of the residential dwelling in character, use, style and exterior finish, and shall be located so as to minimize any visual impacts on adjoining properties.

(d) The maximum height shall be 6 m with a minimum of 1 m from any property line and 2 m from the nearest corner of a residential dwelling.

(e) Accessory buildings (private garages only) may be permitted in the sideyard at Council discretion, but not in the flanking sideyard of a corner lot.

(f) Residential lots may have more than one accessory building provided that the maximum combined floor area of all buildings, including a second storey, shall not be greater than the maximum area as set out in the General Development Regulations and this Land Use Zone Table.

(g) Aside from minor vehicle maintenance, no person shall use an accessory building for the purpose of performing major repairs, painting, dismantling, or scrapping of vehicles or machinery.

(h) Where it can be clearly demonstrated that a need exists for a larger accessory building, Council shall have discretion where the proposed accessory building will exceed the maximum floor area of 70 m², and the maximum height of 6 m.

A garage is permitted in the subject zone as an accessory to a single dwelling. In considering an application, the Authority (the Council of the Town of Witless Bay) must follow the process outlined in Regulation 10 when making its decision to (conditionally) approve a development permit. The conditions of the permit should reflect pertinent aspects of the Town's development regulations, including building location, setback, height, size, and style; however, and person developing such a building is obligated to follow the Town's development regulations regardless.

2. Appellant's Presentation

The Appellant advised the Board that the proposed size and location of the accessory building will obstruct the ocean view from her property, located at 21 Andrew's Lane, and will also result in a devaluing of her property.

The Appellant further advised the Board that the 2-story accessory building will exceed the maximum allowable floor space for accessory buildings, as set out in the Town's Municipal Plan and Development Regulations. Additionally, the Appellant noted that the Town did not issue a written public notice of proposed variance from the Town's development standards for the proposed accessory building.

3. Authority's Presentation

Both the Town's CAO and the Solicitor advised the Board that the proposed accessory building meets the requirements of the Town's Development Regulations for accessory buildings and thereby the Town issued a development permit. They further advised the Board that a public notice of proposed variance for the accessory building was not issued by the Town as no variance is required to allow the construction of the accessory building as designed.

Councillor Swain confirmed he visited the application site, and advised the Board that in his opinion, the proposed design of the accessory building will not have significant impact on the Appellant's ocean view, based on the elevation contour of the Applicant's land.

4. Interested Parties

Mr. George Kean advised the Board that he is an experienced carpenter. In his professional view, he does not believe that the size and location of the proposed accessory building will have significant impacts on the Appellant's ocean view.

Mr. Mitchell Humphries advised the Board that he and his wife have no intentions of exceeding the Town's building requirements for accessory buildings.

Board's Analysis

Q. Are accessory buildings allowed in the zoning of the property for the application site?

A. Yes. According to the Town, the subject land is zoned 'Residential' (RES). A garage (an accessory building) would be permitted in this zone type but must comply with the Town's Development Regulations for accessory buildings:

4. Accessory Buildings

(a) All accessory buildings shall have a maximum floor area of 70 m².

(c) Accessory buildings shall be located on the same lot as the residential dwelling and shall be clearly incidental and complementary to the main use of the residential dwelling in character, use, style and exterior finish, and shall be located so as to minimize any visual impacts on adjoining properties.

(d) The maximum height shall be 6 m with a minimum of 1 m from any property line and 2 m from the nearest corner of a residential dwelling.

(e) Accessory buildings (private garages only) may be permitted in the sideyard at Council discretion, but not in the flanking sideyard of a corner lot.

(f) Residential lots may have more than one accessory building provided that the maximum combined floor area of all buildings, including a second storey, shall not be greater than the maximum area as set out in the General Development Regulations and this Land Use Zone Table.

(g) Aside from minor vehicle maintenance, no person shall use an accessory building for the purpose of performing major repairs, painting, dismantling, or scrapping of vehicles or machinery.

(h) Where it can be clearly demonstrated that a need exists for a larger accessory building, Council shall have discretion where the proposed accessory building will exceed the maximum floor area of 70 m², and the maximum height of 6 m.

Q. Is there any indication that the proposed accessory building does not meet the Town's requirements for accessory buildings?

A. No evidence was presented to the Board to indicate that the proposed design of the accessory building fails to meet the Town's requirements.

Q. Is it incumbent on the Town of Witless Bay to protect private views when reviewing and processing development applications?

A Section 4(c) of the Town's Development Regulations notes that:

"(c) Accessory buildings shall located be on the same lot as the residential dwelling and shall be clearly incidental and complementary to the main use of the residential dwelling in character, use, style and exterior finish, and shall be located so as to minimize any visual impacts on adjoining properties."

The Town has advised the Board that the placement of the proposed accessory building will have minimal impact on the Appellant's ocean view. The Board has not been provided by the Appellant with any specific references from the Town's Municipal Plan and Development Regulations regarding the protection/preservation of private views, including private ocean views.

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.

After reviewing the information presented to this Board, the Board concludes that the Town of Witless Bay has the authority under its Development Regulations to approve the proposed design of the application to construct an accessory building at 17 Andrews Lane, Witless Bay and used this authority correctly.

Board's Order

The Board orders that the decision made by the Town of Witless Bay on June 9, 2020 to allow the construction of an accessory building at 17 Andrew's Lane, be confirmed.

The Authority 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 April 5, 2021.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal
Board