

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-021
Appellant(s)	Ed Vickers
Respondent / Authority	Town of Witless Bay
Date of Hearing	March 23, 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)	Ed Vickers
Representatives for the Authority	Pat Curran, CAO
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Kim Blanchard, MCIP
Interested Parties	Colleen O'Keefe (Developer)

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 Regional Appeal Board is to determine if the Town of Witless Bay made an error when it approved an application on July 14, 2020 to allow the reconstruction of a single detached dwelling at 215 – 217 Gallows Cove Rd. (former house previously damaged by weather event, then fully removed).

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 July 14, 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 approval based on the following grounds:

- The development approval is contrary to the Town's municipal plan and regulations as well as legislation;
- Council acted beyond its authority, negligent in its duties and responsibilities, and in violation of the rules of office.
- The application does not meet the zoning requirements for lot area (it is an undersized lot), or frontage (deficient frontage)

The lot formerly held a small house that was damaged beyond 50% nine years ago. A former request to rebuild was refused by Council and the remains of the house were removed from the site.

In accordance with the Witless Bay Development Regulations, Regulation 47 outlines exceptions for lot area requirements. In circumstances where a lot is considered an established pre-existing lot, insufficient frontage or area to comply with the zone table would not prevent Council from permitting the development, as long as the other standards are compliant, such as the front, rear, and side yards. This provision, known as "once a lot, always a lot" essentially allows for the "grandfathering" of an established sub-standard building lot, provided other established development standards are met. While there is nothing in the information provided to suggest that the yards or other standards are not compliant, the application was processed with a stated measurements to suggest deficiency in both lot area and frontage.

Regulation 47 allows for an exemption from requirements for lot area or frontage. This regulation allows Council to consider the approval of a residence on parcel with sub-standard lot area, only if the calculation for the other development standards are sufficient to meet minimum requirements.

2. Appellant's Presentation

- The Town Council's actions, procedures and approval of this development are not in compliance with the intent, provisions and requirements of the Town's Municipal Plan and Development Regulations, the Urban and Rural Planning Act, 2000, and the general intent of the Town's planning framework and the public interest.
- Council acted beyond its authority
- The application for the proposed house re-construction does not meet the minimum requirements of the Town's Development Regulations for this type of development; more specifically, but not limited to minimum lot size and public road frontage.
- There was previously a small very old house without a concrete foundation located on this property, occasionally used a summer cottage. The structure has not existed for 9 years. The structure had been damaged and/or destroyed beyond 50%. This background history of the property can not have any bearing on the decision of the Council or the Appeal Board to approve the application.

3. Authority's Presentation

The Town submitted a copy to the Board of their Planning Consultant's report regarding this application. This report noted that though the application was not capable of meeting the current requirements of the Residential (RES) Zone for lot area and lot frontage, it could be approved by Council applying Regulation 47 (Lot Area and Size Exceptions) and Regulation 10 (Discretionary Powers of Authority). The report recommended that Council approve the application, subject to certain conditions identified by the Planning Consultant. The Board notes that the Planning Consultants Report was dated July 17, 2020 while Council approved the application three (3) days earlier on July 14, 2020.

4. Interested Parties

Colleen O'Keefe advised the Board that her application was made in good faith; she has no intent to cause any negative impacts in the community; the proposal would have a minimum impact, having a small building footprint, on the old foundation, but a new build; and she intends to follow good development practices.

Board's Analysis

Q. What is the zoning of the subject property?

A. The subject property is zoned "Residential (RES)" under the Town's Development Regulations. This zone allows a single detached dwelling as a

permitted use, subject to the development standards outlined in the RES Use Zone Table. For a single detached dwelling, the minimum lot area is 1860 square meters, while the minimum lot frontage is 30 meters.

- Q. What are the dimensions of the subject property?
- A. According to the application and survey, the lot size is 1295 square meters, with a measurement along the front boundary measuring 25.152 meters.
- Q. How is the subject property classified by the Town?
- A. The Town regards this property as a "substandard lot" in the RES Zone. A single detached home previously existed on the property. This structure was removed a number of years ago.
A "substandard lot" is a type of "once a lot, always a lot" provision in municipal planning. This essentially allows the "grandfathering" of a substandard residential building lot provided other established development standards are met.
- Q. Can a new single detached dwelling be constructed on a substandard lot in the RES Zone?
- A. Regulation 47 of the Town's Development Regulations allows for an exemption from requirements for lot area or lot frontage. This Regulation allows Council to consider the approval of a single detached dwelling on a parcel of land with substandard lot area or substandard lot frontage – however **not both**. The calculations for the other development standards of the RES Zone must be sufficient to meet requirements.

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 construction of a new single detached dwelling on the existing substandard residential lot, located at 215-217 Gallows Cove Road, provided that all the applicable requirements of the Town's Development Regulations pertaining to substandard lots are applied to and satisfied by this application.

Board's Order

The Board orders that the decision made by the Town of Witless Bay on July 14, 2020 to allow the construction of a new single detached dwelling on the existing residential lot at 215-217 Gallows Cove Road, be varied.

The Planner's Technical Report provided to the Board notes that while there is nothing in the information provided to suggest that the yards are not compliant, the application was processed with stated measurements to suggest deficiency in both lot area and lot frontage. The Board orders that before any development permits or building permits are issued by the Town to allow any development relating to the construction of a new single detached house on the subject property, that the Town must ensure that the application meets the requirements of the Town's Development Regulations respecting minimum lot area, minimum lot frontage, and all other applicable requirements of the RES Zone and any/all other applicable requirements of the Development Regulations respecting this application. The Board further orders that if it is determined upon further review of the application by the Town that it cannot meet the full applicable requirements of the Town's Development Regulations, that the Town Council rescind its decision of July 14, 2020 to grant approval to the development.

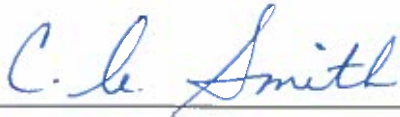
The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

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 8, 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

