

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-003
Appellant(s)	Ralph Carey
Respondent / Authority	Town of Witless Bay
Date of Hearing	November 16, 2021

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Lisa Slaney

Also in Attendance

Representatives for the Appellant(s)	Ralph Carey
Representatives for the Authority	Dan Noseworthy, LW Consultants Councillor Gerard Dunne
Secretary to the Board	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP

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 the Town of Witless Bay (the Authority) acted in accordance with the Witless Bay Municipal Plan and Development Regulations when it issued an Approval in Principle to Mr. Stephen Dunne (the Applicant) for a single dwelling at Civic # 32 Dunn's Lane, Witless Bay, on April 13, 2021.

Presentations During the Hearing

The following is a synopsis/summary of the verbal presentations made to the Board during the Appeal hearing. The Board also received and reviewed written submissions from the Technical Advisor, as well as representatives for the Appellant and the Authority.

1. Planner's Presentation

Elaine Mitchell, MCIP, presented the technical report noting that the subject property is located in the Residential future land use designation and zone. She outlined the development standards for the Residential zone and noted that the development application indicates that the lot area does not fulfill the minimal lot area requirement for a single dwelling in the Residential zone. She explained that the Authority processed a variance as provided for by Regulation 11 of the Witless Bay Development Regulations but that the variance did not address other potential deficiencies with respect to numeric lot standards. Ms. Mitchell outlined the definition of building line setback from the Development Regulations made under the *Urban and Rural Planning Act, 2000* and noted that it was measured from a line established by the Authority not the front property line. Ms. Mitchell stated that the Witless Bay Development Regulations specify a 15 metre road reservation for new subdivisions but no written policy was provided establishing a road reservation width for existing roads. Ms. Mitchell identified section 18 of the Residential zone requiring a geo-physical assessment for sites having a slope greater than 20 percent.

Ms. Mitchell explained that the Board had previously considered this application and ordered that the application be referred back to the Town for review and consideration under Regulation 47 of the Witless Bay Development Regulations. Regulation 47 of the Witless Bay Development Regulations outlines an exemption to the lot area requirement for lots that have insufficient lot area or frontage, which exist at the time that the Witless Bay Development Regulations comes into effect in a residential zone.

Ms. Mitchell noted that Regulation 10 of the Witless Bay Development Regulations provides Council with discretionary authority to approve an application with conditions or refuse an application and that Section 42 (11) of the Act specifies that the Appeal Board cannot insert its discretion for that the Authority.

2. Appellant's Presentation

The Appellant outlined his grounds of appeal. He noted that Council failed to address objections to the variance at a public meeting. He also stated that Council failed to consider Regulation 47 as instructed by Council and that the lot had insufficient area which created a safety issue with respect to the well on his property.

3. Authority's Presentation

Mr. Noseworthy noted that Councillor Dunne was attending as both Council representative and developer. Councillor Dunne noted that he was not on Council at the time that the decision with respect to this application was made.

- Mr. Noseworthy indicated that Section 47 of the Town's Development Regulations does give the Town authorize to approve a sub-standard lot without going through variance procedures.
- Mr. Noseworthy also indicated to the Board that he is not convinced that Section 47 of the Development Regulations is at all relevant to this application because the Town went through the variance procedure with a public notification process.
- Other points expressed by Mr. Noseworthy:
 - o The lot grade on the subject property is 14% and a geotechnical analysis was not required by the Town.
 - o The new house to be constructed is in accordance with the building line for other existing homes in the area.
 - o All other development requirements of the Town can be complied with by the application.

Board's Analysis

On February 10, 2021, the Eastern Newfoundland Regional Appeal Board ordered that the March 11, 2020 and May 19, 2020 decisions of the Town Council of Witless Bay to grant an Approval in Principle to the Application from Stephen Dunne for a single family home on a parcel of land at Civic # 2 Dunn's Lane, Witless Bay, be reversed. The Board further ordered 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.

- Q.** In making its decision of April 13, 2021 to approve the proposed single family home at Civic # 32 Dunn's Lane, subject to other permitting requirements of the Town and other agencies, did the Town fulfill the Appeal Board's Order of February 10, 2021?

- A.** The minutes of the April 8, 2021 the Town's Public Works Committee and the April 13, 2021 Town's Council Meeting do not specifically address Regulation 47; therefore, there is no evidence that this regulation was considered by Council or a Committee of Council as ordered by the Appeal Board on February 10, 2021.

Further, while the minutes of the April 8, 2021 Public Works Committee do reference an email representation dated March 28, 2021 from an adjacent resident (the Appellant) regarding concerns on the proposed residential development including sub-standard lot size, well placement, lot size, and steep slope, there is no indication in the Council Minutes of April 13, 2021 that this email representation was considered by Council before making its decision to issue an Approval in Principle to the application.

Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties at the Hearing, along with written submissions and 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 Authority has failed to fully comply with the Order issued by the Eastern Newfoundland Regional Appeal Board of February 10, 2021. Specifically, there was no evidence presented to the Board to demonstrate that the Authority reviewed the Application in respect of Section 47 of the Town's Development Regulations.

Board's Order

The Board orders that the April 13, 2021 decision of the Town Council of Witless Bay to grant an Approval in Principle to Stephen Dunne for a single family home on a parcel of land at Civic #32 Dunn'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.

Any future decisions of Council on this application should clearly document in Council minutes, that all applicable provisions of the Development Regulations have been considered by Council in its review of the application, and that any public representations received by the Town on this application, have been considered by Council before making any future decisions on the application. Additionally, should Council use its discretionary authority from any applicable provisions of the Town's Development Regulations respecting future decisions on this application, this too should be documented in the Council Minutes.

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

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Authority 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 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 9th day of December, 2021



Cliff Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member
Eastern Newfoundland Regional Appeal Board