

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Earle and Frances Wright **Appellant**

AND Town of Witless Bay **Respondent**

RESPECTING Refusal

BOARD MEMBERS Vicki Connolly – Chair
Mary Thorne-Gosse – Member
Bruce Strong – Member

DATE OF HEARING February 4, 2015

IN ATTENDANCE

Earle Wright - Appellant
Frances Wright - Appellant
David Wright – Support for Appellants
Geraldine Caul - Authority
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Witless Bay refusing to issue a permit to Earle and Frances Wright for the purpose of constructing a single dwelling at 241A Gallows Cove Road. The Town considered and refused the subject application at the September 9, 2014 Regular Meeting of Council. The Town refused the Wright's application because the property does not have a 6 metre wide access as per the Town's backlot development policies.

On September 22, 2014, Dr. and Mrs. Wright filed an appeal against Council's refusal with the Eastern Newfoundland Regional Appeal Board. The grounds of appeal can be summarized that Council unfairly refused the appellants' application since Council has granted numerous other building permits to the appellants in the past.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on January 10, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on January 8, 2014.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Witless Bay Municipal Plan and Development Regulations, 2005
Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

How is the subject property zoned?

The Town indicated at the hearing that the appellants' property was zoned Residential prior to 2005 but is currently zoned Rural. The Board reviewed the Town of Witless Bay Land Use Zoning Map, 2005 and confirmed that the appellants' property is located within a Rural zone.

Is backlot development permitted in the Rural zone?

No. The Board learned at the hearing that the Town of Witless Bay amended its Residential zone regulations in 2008 to allow backlot development. However, backlot development remains prohibited in the Rural zone.

Are single dwellings permitted in the Rural zone?

The Board reviewed the Rural Use Zone Table in Schedule C of the Town’s Development Regulations and determined that single dwellings may be permitted on a discretionary basis. According to Condition 3 in the Rural Use Zone Table, single dwelling may only be permitted in the Rural zone if it is in conjunction with an established agricultural use. Condition 3 specifically states:

A single dwelling may only be developed if it is associated with an approved, full time agriculture use that has been established for at least two years. Responsibility for access and servicing shall be the developer's, where the dwelling is not located along a publicly maintained road.

The Board learned at the hearing that the subject property is not and has not been used for agriculture.

Does the application meet the minimum access requirements?

The Board heard arguments pertaining to access requirements for backlot development in the Residential zone. The Town indicated that the application did not meet the 6 metre wide access requirement outlined in the Town’s Backlot Development policies for the Residential zone. However, since the appellants’ property is zoned Rural, not Residential, and backlot development is not permitted in the Rural zone, the Board determined the minimum access requirements for backlot development is moot. Therefore, while the Board sympathizes with the appellants, these arguments could not influence the Board’s decision.

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.

Based on its findings, the Board determined that the Town of Witless Bay had the authority to refuse the subject application. However, the Board determined that it did not do so in accordance

with the appropriate sections of the Town's Municipal Plan and Development Regulations. Therefore, the Board vacates the Town's decision to refuse Earle and Frances Wright's application to develop a single dwelling at 241A Gallows Cove Road. That is to say, the Town of Witless Bay has before it an application that requires a decision from Council.

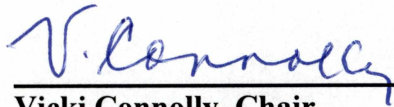
Order

Based on the information presented, the Board orders that the decision made by the Town of Witless Bay on September 9, 2014 to refuse Earle and Frances Wright's application to construct a single dwelling at 241A Gallows Cove Road, be vacated.

The Board further orders that the Town of Witless Bay pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellants to the appellants.

The Town of Witless Bay and the appellants are bound by this decision of the Eastern Newfoundland Regional Appeal Board.


DATED at St. John's, Newfoundland and Labrador, this 4th day of February, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Mary Thorne - Gosse, Member
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board