

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Jennifer Rose and Tony Powell **Appellants**

AND Town of Stephenville **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinchard – Member
Bill Madore – Member

DATE OF HEARING July 7, 2015

IN ATTENDANCE

Jennifer Rose – Appellant
Tom Rose – Support for Appellant
Joanne Rose – Support for Appellant
Wayne Reilly – Authority (teleconference)
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Stephenville refusing to issue a permit to construct a single dwelling on property north of Hillier Avenue. The Town considered and refused the subject application submitted by Jennifer Rose and Tony Powell at the March 12, 2015 Regular Meeting of Council. The Town notified the Ms. Rose and Mr. Powell of its decision in a letter dated March 19, 2015. The letter indicated that single dwellings are not permitted in the CDA-R zone and the proposed development is premature as the area is not serviced with water and sewer as required by the Town's Municipal Plan. The letter also noted the appellants' right and process to appeal Council's decision.

Jennifer Rose and Tony Powell filed an appeal with the West Newfoundland Regional Appeal Board against the Town's decision to refuse their application to construct a dwelling north of Hillier Avenue. In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (the "URPA"), the appeal was filed within the fourteen (14) day requirement. Additionally, the appellants included the required information as per section 42(5) of the URPA.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Western Star* on June 3, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on June 5, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Town of Stephenville Municipal Plan and Development Regulations, 2000

Matters presented to and considered by the Board

How is the property zoned?

The Board accepts that the subject property is designated Residential and zoned Comprehensive Development Area – Residential (CDA-R). Additionally, since the site is in a Residential designation, the area is also located within an Urban Group, as per section 2.3.2.2 of the Town's

Municipal Plan, which states:

The land use designations or districts are set out below:

- a) Urban and Rural Groups - all designations fall into one or both of these groups;*
- b) Residential, which includes various commercial and public uses along with recreational open space and conservation - Urban Group;*
- c) Community Services, includes Commercial, Institutional, and certain types of recreational facilities - Urban Group;*
- d) Major Industrial (Port, the Paper Mill, Industrial subdivisions, and Airport) - Urban Group;*
- e) Conservation - Urban and Rural Groups;*
- f) Rural - Rural Group;*
- g) Well Head Protection Area and Protected Water Supply - Rural Group, and part, Urban Group (south of Hansen Highway).*

Are single dwellings permitted within the CDA-R zone?

Yes. The Board acknowledges that the CDA-R zone, prior to 2005, did not permit single dwellings. However, Development Regulations Amendment No. 4, 2005, amended the CDA-R zone to permit single dwellings subject to condition 2. Condition 2 states:

One single dwelling in addition to what is present can be allowed without recourse to the adoption of a comprehensive plan, provided that the dwelling fronts on a public road, meets the standards for the Residential Rural Zone, and provided that Council is satisfied that the dwelling will not impede the future development of the area.

This amendment was registered on April 7, 2005 with the Department of Municipal Affairs and published in the Newfoundland and Labrador Gazette on April 15, 2005. The Board reviewed section 25 of the *Urban and Rural Planning Act, 2000* (the “Act”), which provides Council with the authority to amend its Municipal Plan and Development Regulations registered under section 24 of the *Act*. Section 24(3) of the *Act*, states that the date upon which a notice is published in the Gazette is the date upon which the amendment comes into legal effect. While the Authority argued an amendment is intended for the individual who paid for the amendment, this contravenes the *Act* and is therefore false. Once an amendment is registered under section 24 of the *Act* and upon publication in the Newfoundland and Labrador Gazette, the amendment becomes legally binding as per section 12, Application of plan, of the *Act*. Section 12 states:

A plan and development regulations are binding upon

(a) municipalities and councils within the planning area governed by that plan or those regulations; and

(b) a person undertaking a development in the area governed by that plan or those regulations.

Does the property front onto a publicly maintained road?

In order for a single dwelling to be permitted within the CDA-R zone, without connection to a comprehensive plan for the area, the subject property must meet the requirements of Condition 2: front on a public road, meet the standards for the Residential Rural Zone, and Council must be satisfied that the dwelling will not impede the future development of the area. The appellants indicated at the hearing that the property has a 50' frontage on Hillier Avenue. The appellants explained that they own a 50' road reserve that connects the northern section of Hillier Avenue, a publicly owned and maintained street, to the subject property. According to the Authority, this does not satisfy the frontage requirements as per the Town's Development Regulations. The Board reviewed section 43, Lot Frontage, of the Town's Development Regulations and determined that a privately owned road reserve does not constitute road frontage. The property must front directly onto the publicly maintained road as expressed in section 43. Section 43 states:

Except where specifically provided for in the Use Zone Tables in Schedule C of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street or forms part of a Comprehensive Development Scheme.

The Board also reviewed the Town's definition of *street*, which is defined in Schedule "A" of the Town's Development Regulations as follows:

Any street, road or highway or any other way designed or intended for public use for the passage of vehicles and pedestrians, owned by the Authority or other public agency and maintained at public expense, and is accessible to Fire Department vehicles and equipment.

Taking into consideration the definition of a *street*, section 43 requires a residential lot to front directly onto a publicly owned and maintained street, not simply a road intended for vehicle travel. Therefore, a single dwelling could not be permitted within the CDA-R zone since it does not satisfy at least one of the requirements outlined in Condition 2 of the CDA-R Use Zone Table in Schedule C of the Town's Development Regulations.

Does the site require municipal services?

The Board accepts that the site is located within a Residential designation. Section 2.3.2 of the Town's Municipal Plan states that all residential designations are included in the Urban Group. Furthermore, the Board acknowledges that all development within the Urban Group must be connected to municipal sewer and water services as indicated in section 2.3.7, Municipal Services, of the Town's Municipal Plan. Therefore, the Board found that the Authority accurately referenced the aforementioned requirement in its refusal letter to the appellants.

Does section 42, Lot Area and Size Exceptions, of the Town's Development Regulations apply?

The appellants provided a brief history of the property and explained that the property existed as a residential lot since 1988, prior to the 2000 Town Plan coming into legal effect. As such, the appellants argued that section 42, Lot Area and Size Exceptions, of the Town's Development Regulations should apply. The Board reviewed section 42, which states:

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 Board accepts that the lot existed prior to the 2000 Town Municipal Plan. As previously stated, the Board found that the subject property does not have frontage onto a publicly maintained road. The Board distinguished between having insufficient frontage, less than the required 30 metres but more than 0 metres, and not having any frontage. Therefore, since the subject property does not have any frontage, the Board determined that section 42 of the Town's Development Regulations does not apply.

Did the Town have the authority to refuse the subject application?

In accordance with section 6, the Board accepts that all development must comply with the Town's Regulations. The Board determined that the proposal does not conform to the necessary policy statements and regulations outlined in the Town's Municipal Plan and Development Regulations, and therefore, the Town had the authority to refuse the subject application.

Did the Town follow proper procedure when it refused the subject application?

Yes. The Board found that the Town of Stephenville notified the appellants of Council's decision in accordance with section 21, Reasons for Refusing Permit, and section 5 of the Minister's Development Regulations, 2000. Section 5 states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person's right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by Section 42 of the *Urban and Rural Planning Act* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

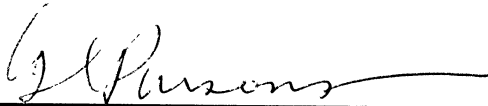
Based on its findings, the Board determined that the Town of Stephenville had the authority, and exercised it appropriately, when it refused to issue a permit to Jennifer Rose and Tony Powell for the purpose of constructing a single dwelling north of Hillier Avenue.

ORDER

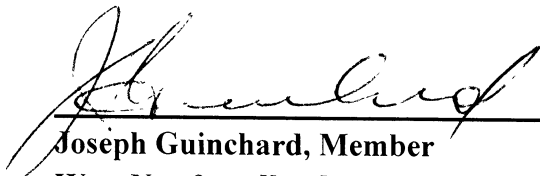
Based on the information presented, the Board orders that the decision made by the Town of Stephenville on March 12, 2015 to refuse the application submitted by Jennifer Rose and Tony Powell for the purpose of constructing single dwelling north of Hillier Avenue, be confirmed.

The Town of St. Stephenville is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

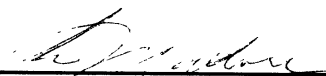
DATED at Stephenville, Newfoundland and Labrador, this 7th day of July, 2015.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board



Bill Madore, Member
West Newfoundland Regional Appeal Board