

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Ger-Bar Holdings Limited **Appellant**

AND Town of Holyrood **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter – Member
Mary Thorne-Gosse – Member

DATE OF HEARING September 30, 2015

IN ATTENDANCE

Robert Regular – Lawyer for Appellant

Sarah Clarke – Lawyer for Appellant

Aimee Rowe – Lawyer for Authority

Gary Corbett - 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 Holyrood refusing an application to develop a 14 unit, 55 plus, seniors' complex at 7 Woodfords Station Road. On May 6, 2013, Jerry Barnes, President of Ger-Bar Holdings Limited, applied to the Town of Holyrood for approval. On behalf of Ger-Bar Holdings Limited, Brenda Jones submitted a building permit application to the Town on May 21, 2013. Also on May 21, 2013, a discretionary use notice was published in the Shoreline Newspaper advertising the subject application and requesting comments by May 31, 2013. While no comments were received by the deadline, the Town did receive a petition objecting the proposed development on August 5, 2013.

Council considered the application at the August 26, 2014 Regular Meeting of Council and determined that an additional advertisement was required to be published in the Shoreline Newspaper. A second notice was published in the Shoreline Newspaper on September 11, 2014.

Council discussed the application again at the Regular Meeting of Council held on October 28, 2014 and resolved to refuse the application. The Town notified the appellants of Council's decision in a letter dated October 31, 2014. The letter stated Council's reasons for refusal and noted the appellants' right to appeal.

In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (URPA), Robert Regular filed an appeal on behalf of Brenda Jones and Ger-Bar Holdings Limited with the Eastern Newfoundland Regional Appeal Board on February 2, 2015. Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of URPA.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on January 31, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on May 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Holyrood Municipal Plan and Development Regulations, 2001

Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Did the Town property classify the proposed development?

Yes. The Board reviewed the definition of an apartment building as defined in Schedule “A” of the Town’s Development Regulations, which states:

APARTMENT BUILDING: A building containing three or more dwelling units, but does not include a row dwelling.

The Board also referred to the definition of row dwelling to gain a better understanding of the definition of an apartment building, which states:

ROW DWELLING: Three or more dwelling units at ground level in one building, each unit separated vertically from the others.

The proposed development included seven (7) dwelling units on the first floor and seven (7) dwelling units on the second floor. Therefore, the Board accepts that the Town properly classified the proposed use as an apartment building.

Did the Appellant consent to the subject application being deferred?

Yes. The Authority submitted to the Board a letter dated August 20, 2014 letter from Robert Regular on behalf of his client, Ger-Bar Holdings Ltd., addressed to the Town which states that the applicant agreed to the deferral of the subject application since it was filed. The Board considered the August 20, 2014 as well as the continued communications between the Town and the appellant and found that this information amounted to an agreement to the deferral.

Did the Town consider the discretionary use application appropriately?

Yes. As outlined above, the Board accepts that the proposed development was properly considered as an apartment building which is listed as a discretionary use in the Residential Medium Density zone. The Board acknowledges that Council must consider discretionary use application in accordance with section 32 of the Town’s Development Regulations. Section 32 states:

The Authority may, and when a variance is necessary under Regulation 11 and the Authority wishes to consider whether to authorize such a variance, when a change in nonconforming use is to be considered under Regulation 49, or when the development proposed is listed as a discretionary use in Schedule C of the Regulations shall, at the expense of the applicant, give notice of an application for a permit or for approval in principle, by public advertisement in a newspaper circulating in the area or by any other means deemed necessary, and under Regulation 12 and the Authority shall give written notice of the proposed variance from development standards to all persons whose land is in the immediate vicinity of the land that is the subject of the variance, and allow a minimum period of 7 days for response.

The Board determined that the Town complied with section 32 when it advertised the application in *The Shoreline Newspaper* on May 21, 2013 and September 11, 2014. The Board found that section 32 does not set a limit to the number of notices that Council must insert in the local newspaper.

The Board accepts that the Town may schedule a public session to discuss a discretionary use application in accordance with section 32. The Board determined that section 32 enables the Town to give notice of a discretionary use application “by public advertisement in a newspaper circulating in the area or by any other means deemed necessary”.

Did the Town satisfy section 22 of the Town’s Development Regulations?

Yes. According to section 22 of the Town’s Development Regulations, the Authority must state the reasons for refusal in writing. The Board reviewed the October 31, 2014 decision letter issued to the appellant. The Board is satisfied that the Town clearly outlined the reasons and matters considered by Council when determining its 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 Holyrood had the discretionary authority to refuse the subject application and did so in accordance with the Town's Development Regulations. Therefore, the Board confirms the Town's decision to refuse the application for a 14 unit seniors' complex at 7 Woodfords Station Road.

Order

Based on the information presented, the Board orders that the decision made by the Town of Holyrood on October 28, 2014 to refuse the application submitted by Ger-Bar Holdings Limits for a 14 unit seniors' complex at 7 Woodfords Station Road, be confirmed.

The Town of Holyrood and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 1st day of October, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board