

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Gerry and Karen Power **Appellants**

**AND** Town of Paradise **Respondent**

**RESPECTING** Refusal

**BOARD MEMBERS** Michelle Downey, Acting Chair  
Harold Porter  
Mary Thorne-Gosse

**DATE OF HEARING** November 25, 2015

**IN ATTENDANCE**

Gerry and Karen Power - Appellants  
Alton Glenn – Authority  
Ann-Marie Cashin - Authority  
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board  
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

This appeal arises from the Town of Paradise refusing an application for approval in principle to subdivide land at 29 Donna Road into two parcels. The new parcel would front onto Sunvalley Drive. Mr. Gerry Power submitted his application on May 23, 2015. The Town considered and refused Mr. Power's application at the July 7, 2015 Regular Meeting of Council. The Town issued a notice of refusal to Mr. Power on July 8, 2015. The notice stated that Council refused his application because the subdivision plan illustrated the deck extending into the rear yard by 65.57%, which is contrary to Schedule "C", section 4, of the Town of Paradise Development Regulations, 2004. The notice also stated Mr. Power's right and process to appeal Council's decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, Gerry and Karen Power filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse the aforementioned subdivision application. As required under section 42(5) of the *Urban and Rural Planning Act, 2000*, 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.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Telegram* on October 28, 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 October 21, 2015.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Paradise Municipal Plan and Development Regulations, 2004

### **Matters presented to and considered by the Board**

#### **How is the subject property zoned?**

The Board confirmed that Parcel A (property fronting Donna Road) is designated as Residential and zoned Residential Low Density, while Parcel B (property fronting Sunvalley Drive) is designated Residential and zoned Residential Medium Density.

### **Does Mr. Power's application comply with the Town's Development Regulations?**

The Board confirmed at the hearing that the Town refused Mr. Power's application due to its non-compliance with section 4. Specifically, the existing deck on Parcel A protrudes more than 50 percent into the rear yard. The Board reviewed section 4, Obstruction of Yards, under Schedule C in the Town's Development Regulations, which states:

*No person shall erect a building or accessory building that would obstruct any yard requirements (side yard, rear yard, etc.) as provided for in these Regulations, except as in conformity with the following:*

- *Open decks, landings or platforms not projecting more than 2 metres into any required front yard, building line set back; Steps associated with these structures are permitted to project into front yard an additional 2 metres maximum.*
- *Patios, decks and landings (including steps) not projecting more than 50% into the rear yard and maintaining a minimum of 1.2 m from any side lot line.*
- *Open steps, including entrance wells and platforms, not projecting more than 50% into any side yard provided the sideyard is a minimum of 2.4 m in width.*
- *Chimney breasts, eaves, sills, or cornices not projecting more than 0.5 metres into any required side yard, or more than 1.0 metres into any required front yard, building line set back or rear yard.*

The appellants conceded at the hearing that they understand the Town's rules and regulations but disagree with the standards. The Town indicated that with a 10 percent variance the deck would still extend 55 percent into the rear yard and require a portion be removed. The Board learned that the alternative to removing a portion of the deck is to move the rear lot line of Parcel A, creating a smaller Parcel B. The Town stated that the latter option would allow the deck to remain intact and the new size of Parcel B would comply with the minimum lot size requirements of the Residential Medium Density zone.

### **Is Council's approval required for an approval in principle for a subdivision?**

The appellants expressed at the hearing their confusion as to why their application went to Council for approval. The Board reviewed section 21(8) of the Town's Development Regulations and found that an application for an approval in principle to subdivide property requires Council approval.

### **Did the Town have the authority to refuse Mr. Power's application?**

The Board reviewed section 6 of the Town of Paradise Development Regulations, which requires all development comply with the Town's Municipal Plan and Development Regulations. As the application contravenes section 4 under Schedule C of the Town's Development Regulations, the Board accepts that the Town had the authority to reject Mr. and Mrs. Power's application.

**Did the Town of Paradise notify the appellants of its decision appropriately?**

The Board reviewed section 24, Reasons for Conditions or Refusing a Permit, of the Town's Development Regulations and found that Council is required to state the reasons for refusing a permit in writing. The Board confirmed that the Town outlined its reasons for rejection in the July 8, 2015 Notice of Refusal that was issued to Mr. Power. As previously mentioned, it was evident the appellants understood the reasons for their denial but simply disagreed with the regulations.

The Board found that the Town notified Mr. Power of his right and process to appeal in accordance with section 25 of the Town's Development Regulations, which states:

*Where the Council makes a decision that may be appealed under Section 42 of the Act, the Council 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 appeal 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.*

The Board confirmed that the right to appeal was included in the Notice of Refusal issued on July 8, 2015 to Mr. Power. Therefore, the Board concluded that the Town properly notified Mr. Power of Council's decision and provided Mr. Power with the required information regarding his right to appeal Council's decision.

**Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 Paradise had the authority to refuse Mr. Gerry Power's application and did so in accordance with the Town's Municipal Plan and Development Regulations, 2004. Therefore, the Board will uphold the Town's decision to reject Mr. Power's application for an approval in principle to subdivide his land at 29 Donna Road into two parcels.

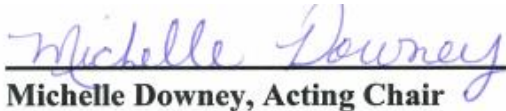
**ORDER**

Based on the information presented, the Board orders that the decision made by the Town of Paradise to reject an application from Mr. Gerry Power for the subdivision of 29 Donna Road, be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division 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 appellants.

**DATED** at St. John's, Newfoundland Labrador, this 25<sup>th</sup> day of November, 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**