

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Charles Jerrett Jr. **Appellant**

AND Service NL **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Bruce Strong

DATE OF HEARING December 15, 2015

IN ATTENDANCE

Stan Blackmore – Authority

Theresa Murphy – Authority

Charles Jerrett Jr. – Appellant

Robert Pittman – Solicitor for Appellant

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 Service NL refusing to issue a permit to Mr. Charles Jerrett Jr. for the purpose of constructing a dwelling at 54A Beach Road, Cavendish. Service NL assessed Mr. Jerrett's application in accordance with the *Protected Road Zoning Regulations* (hereinafter referred to as "*the Regulations*") as the proposed development is located along the Trinity South Highway. Service NL notified Mr. Jerrett that his application was refused in a letter dated September 9, 2015. The letter outlined the reasons for refusal and Mr. Jerrett's right and process to appeal the decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, Mr. Robert Pittman filed an appeal on behalf of Mr. Jerrett with the Eastern Newfoundland Regional Appeal Board. 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 November 27, 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 November 18, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Protected Road Zoning Regulations, CNLR 996/96

Trinity South Highway Protected Road Zoning Plan, 1995

Matters presented to and considered by the Board

How is the application site zoned?

The Board accepts that the subject property is located within the 100 metre building control line

of the Trinity South Highway (Route 80). The Board acknowledges that the Trinity South Highway has a protected road zoning plan in effect and reviewed the plan to confirm the zoning. According to the Trinity South Highway Protected Road Zoning Plan, 1995, the site is zoned Mixed.

Does Mr. Jerrett need a permit to develop?

In accordance with section 4(1) of the *Regulations*, the Board accepts that all development located within the building control lines of a protected highway requires a permit from Service NL prior to any development commencing. The Board learned that the appellant's house was constructed without a permit from Service NL. The appellant indicated at the hearing that he learned of this requirement when he applied for a septic system.

Did Service NL have the authority to refuse Mr. Jerrett's application?

The Board reviewed the *Regulations* and determined that Service NL has the authority under section 13(1) to refuse an application for development when it does not conform to the *Regulations*. Service NL stated at the hearing that its decision was made in accordance with the recommendations to refuse the application received from the Department of Transportation and Works and the Department of Municipal and Intergovernmental Affairs.

Mr. Jerrett's solicitor questioned the Department of Transportation and Work's comments. Service NL indicated that the comments received from the Department of Transportation and Works, while brief, were accepted to be accurate.

Mr. Jerrett's solicitor also questioned why the comments from the Department of Municipal and Intergovernmental Affairs (MIGA) changed from *approved* to *refused*. The Board learned that Service NL contacted MIGA to discuss a possible error on the recommendation form. As a result, MIGA altered the recommendation to *refused* because the property did not meet the frontage requirements outlined in section 23 of the *Regulations* and there are no provisions for backlot development in the *Regulations*.

The Board found that Service NL acted in accordance with section 13(1) of the *Regulations* when it refused Mr. Jerrett's application as a result of the intergovernmental referral procedure.

Did Service NL follow proper procedure when it refused Mr. Jerrett's?

As per section 13(1) of the *Regulations*, Service NL is required to consult with other government agencies prior to making a decision on an application for development. The Board accepts that Service NL followed proper procedure when requesting comments from government agencies and as a result of those comments, refused Mr. Jerrett's application.

Service NL notified Mr. Jerrett, in writing, that his application was refused and indicated the right and process to appeal the decision in accordance with section 5 of the *Minister's Development Regulations*, NLR 3/01.

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 Service NL had the authority, and exercised it appropriately, when it refused Mr. Jerrett's application for a single dwelling at 54A Beach Road, Cavendish.

Order

Based on the information presented, the Board orders that the decision made by Service NL to refuse Mr. Jerrett's application to construct single dwelling at 54A Beach Road, Cavendish, be confirmed.


Service NL and the appellant 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 appellant.

DATED at St. John's, Newfoundland and Labrador, this 15th day of December, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board