

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Kerry and Krista Arnold **Appellant**

AND Town of Whitbourne **Respondent**

RESPECTING Approval

BOARD MEMBERS Michelle Downey, Acting Chair
Bruce Strong
Harold Porter

DATE OF HEARING February 4, 2016

IN ATTENDANCE

Krista Arnold – Appellant

Joe Throne – Solicitor for Appellants

Greg French – Solicitor for 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 Whitbourne approving, subject to conditions, an application submitted by Mr. Char Newhook for a single dwelling and detached garage at 138-141 Amber Drive. The Town approved in principle, subject to conditions, Mr. Newhook's application at the August 5, 2015 Regular Meeting of Council. The Town notified Mr. Newhook that his application was approved in a letter dated August 7, 2015. The letter noted that the approval in principle was subject to approval from the Department of Health and any other necessary government agency. Additionally, the letter noted that a culvert crossing the driveway must be installed prior to the issuance of a building permit.

On December 3, 2015, Kerry and Krista Arnold filed an appeal with the Eastern Newfoundland Regional Appeal Board against the August 5, 2015 decision to approve in principle, subject to conditions, Mr. Newhook's application.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on January 16, 2016 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 5, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Whitbourne Municipal Plan and Development Regulations, 2013

Matters presented to and considered by the Board

Was the appeal filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*?

The Board reviewed section 42(4) of the *Urban and Rural Planning Act, 2000* which requires an appeal be filed within fourteen (14) days of the applicant receiving the decision being appealed.

At the hearing, the Appellants and the Authority agreed that the appeal was filed in accordance

with section 42(4). Therefore, the Board decided to proceed with the hearing.

What did Mr. Newhook apply to develop?

The Town’s solicitor maintained at the hearing that Mr. Newhook applied for a residential dwelling and detached garage. However, the Board reviewed Mr. Newhook’s Building Application dated August 5, 2015 and determined that Mr. Newhook applied for a house, and detached garage for a non-profit animal rescue. Mr. Newhook indicated his intention for the detached garage under Section b, Building Site Information, of the Building Application.

What did the Town approve?

The Town’s solicitor stated at the hearing that the Town approved a single dwelling and detached garage. The Board considered the Town’s Meeting minutes from the August 5, 2015 Regular Meeting of Council and found the minutes to be vague. According to Motion-2015-08-092, Council approved “the construction of the new construction on 139-141 Amber Drive in principal subject to approvals from Department of Health and any other government agencies.” There is no indication that Council approved a single dwelling and residential garage.

The Town issued two permits to Mr. Newhook: Permit No. 70 for a “New Building”; and Permit No. 71 for a “Garage”. The Board reviewed the two permits issued to Mr. Newhook and found that under section (F), the Town requires the developer to ensure construction is done in accordance with the Building Application. Since the Building Application refers to the construction of a garage for an animal shelter, the Board finds it reasonable to conclude that Mr. Newhook will construct the garage for an animal shelter.

Are single dwellings allowed within the Residential Large Lot zone?

The Board reviewed Schedule “C” of the Town’s Development Regulations which outlines what uses are permitted and discretionary within the Town’s use zones. The subject site is located within a Residential Large Lot Zone and single dwellings are listed as permitted.

Is an animal rescue shelter permitted within the Residential Large Lot zone?

The Board reviewed the Town’s Development Regulations, in particular Schedule B, Classification of Uses of Land and Buildings, and Schedule C, Use Zone Tables. According to

Schedule B, the Board found that under section G, Non-Building Uses, the Animal Use Class includes examples such as animal pound and commercial kennel.

(G) NON-BUILDING USES con't		
DIVISION	USE CLASS	EXAMPLES
1. Uses not directly related to Buildings	(e) Conservation	Nature Park/Sanctuary Watershed Steep Slope Buffer Strip Architectural, Historical and Scenic Site Walking and Hiking Trails
	(f) Cemetery	Crematorium Cemetery Graveyard
	(g) Scrap Yard	Car Wrecking Yard Junk Yard Scrap Yard Automotive Recycle
	(h) Solid Waste	Solid Waste Transfer Station Solid Waste Recycling Centre Sewage Treatment Plant
	(i) Animal	Animal Pound Commercial Kennel Riding/ Boarding Stable Veterinary Hospital

An animal shelter could be considered under (i) Animal Use Class. However, the Residential Large Lot Use Zone Table in Schedule C does not list Animal as permitted or discretionary.

ZONE TITLE	RESIDENTIAL LARGE LOT	(R1)
PERMITTED USES – see Regulation 90. Single dwellings, conservation.		
DISCRETIONARY USES – see Regulation 34 and 91. Subsidiary apartment, recreation open space, child care, office (home only), personal), antenna.		

Pursuant to section 92 of the Town’s Development Regulations, the Board determined that uses not listed as permitted or discretionary in a Use Zone Table are considered prohibited in that

zone. Therefore, based on Schedule B and C of the Town's Development Regulations, the Board concluded that animal shelters are prohibited in the Residential Large Lot Use Zone Table.

Did the Town have the authority to approve Mr. Newhook's application?

The Board reviewed section 6, Compliance with Regulations, of the Town's Development Regulations, which states: "Development shall be carried out in accordance with the Municipal Plan , [the Town's Development Regulations], and the conditions stated in a Permit to Develop." The Board determined that while a single dwelling is permitted within the Residential Large Lot zone, an animal shelter is prohibited. The Board therefore concluded that the Town did not have the authority to approved Mr. Newhook's application for a detached garage as proposed in the August 5, 2015 Building Application since the Building Application clearly indicated the intended use was for an animal shelter which is a prohibited use in the Residential Large Lot zone.

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 Whitbourne did not have the authority to approve Mr. Newhook's Building Application dated August 5, 2015 in its entirety as one of the proposed uses, an animal shelter, is prohibited in the Residential Large Lot zone. Despite the Town claiming it approved a residential dwelling and garage, the Board found that neither the August 5, 2015 Meeting minutes nor Permit No. 71 stated the approval was for a residential garage. In fact, the Board concluded that Permit No. 71 actually referred to the Building Application and required the developer comply with the Building Application.

Therefore, the Board will vary the Town's decision to approve Mr. Newhook's August 5, 2015 Building Application. That is to say, Permit No. 70 for the "New Building" remains in effect and

Permit No. 71 for the “Garage” is revoked. The Board derives its authority to vary the decision being appealed from section 42(10) of the *Urban and Rural Planning Act, 2000*, which states:

In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

Order

Based on the information presented, the Board orders that the decision made by the Town of Whitbourne on August 5, 2015 to approve in principle, subject to conditions, Mr. Chad Newhook's Building Application to develop a single dwelling with a detached garage for an animal shelter at 139-141 Amber Drive, be varied.

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

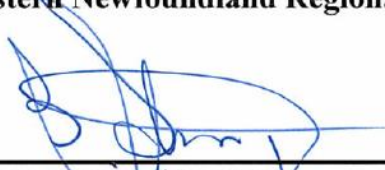
The Town of Whitbourne and the Appellants are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 appellant.


DATED at St. John's, Newfoundland and Labrador, this 4th day of February, 2016.



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

