

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Debbie Penney **Appellant**

AND Town of Carbonear **Respondent**

RESPECTING Refusal

FILE NUMBER 15-006-044-013

BOARD MEMBERS Michelle Downey – Chair
Mary Thorne-Gosse – Member
Kay – Member

DATE OF HEARING August 23, 2017

IN ATTENDANCE

Authority: Cynthia Davis, CAO, Town of Carbonear

Applicant/ Appellant: Debbie Penney – absent

Secretary to the Eastern Newfoundland Regional Appeal Board: Robert Cotter

Technical Advisor to the Eastern Newfoundland Regional Appeal Board: Kim Blanchard

DECISION

Facts/Background

This appeal arises from a decision made by the Town of Carbonear to refuse the application submitted by Ms. Debbie Penney to subdivide property in the area of Pondsides Hill and Carlson's Place. Ms. Debbie Penney applied to the Town on March 1, 2016 to subdivide her property at 9A Pondsides Hill, which is zoned Residential Medium Density (RMD). The application involved the subdivision of Ms. Penney's property to separate her house from a portion of the property on which an accessory structure already existed (a 25 x 36' garage). The Town was made aware that the purchaser's plans were to construct a new home in the future, but there was no commitment that a house would be constructed within a specific timeframe.

On May 25, 2016, the Town wrote a letter to Ms. Penney to indicate that her application for a proposed subdivision at 9A Pondsides Hill was rejected. The Town indicated that the proposed subdivision would be contrary to the Town's Municipal Plan and Development Regulations, as the accessory building would exist on its own parcel without a primary structure, and this would not be compliant with the Development Regulations. The Town's correspondence noted the right and process for any interested persons to appeal the decision within 14 days of the applicant's receipt of the written development decision.

On June 7, 2016, Ms. Penney appealed the decision to reject the subdivision of her property. In her grounds for appeal, Ms. Penney argued that Council is being unfair in not allowing the subdivision, the property within the area is all owned by family, and the request to sell a portion of her property was to address her financial hardship.

The appeal package was sent to all parties, and the appellant was advised about the date of the appeal hearing. The appellant was not present for the hearing, and was unable to be reached. With a representative from the municipal authority in attendance at the meeting, the Board proceeded with the scheduled hearing. Due to the absence of the appellant, the Secretary read the grounds of appeal for the record.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000;

Minister's Development Regulations, NLR 3/01;

Town of Carbonear Municipal Plan and Development Regulations, 2004

Matters presented to and considered by the Board

Did the Town have the authority to refuse an application to subdivide land?

In considering the Town's authority respecting subdivision requirements, the Board reviewed the Town's Development Regulations, Part IV – Subdivision of Land, Regulation 70, Permit Required, which states:

No land in the Planning Area shall be subdivided unless a permit for the development of the subdivision is first obtained from the Authority.

The Board also considered the definition of "Subdivision of land", which is specified in the planning legislation, Section 2 of the *Urban and Rural Planning Act, 2000*, and states:

(q) "subdivision" means the dividing of land, whether in single or joint ownership into 2 or more pieces for the purpose of development;

Recognizing that the application to subdivide land at 9A Pondsides Hill involved the separation of an existing house from an existing accessory building (garage), the Board considered the definition and regulations for accessory buildings. The Board considered that an accessory building must be located on the same lot as the primary structure to which it is accessory, and per the definition of "accessory building", prescribed by the Minister's Development Regulations under the *Urban and Rural Planning Act, 2000* and also included in the Town of Carbonear Development Regulations:

... "accessory building" includes

(i) a detached subordinate building not used as a dwelling, located on the same lot as the main building to which it is an accessory and which has a use that is customarily incidental or complementary to the main use of the building or land...

The Board also considered the zoning requirements in the applicable zone. According to the Town's Development Regulations, Condition 8(3) of the Development Standards for Accessory Buildings in the Residential Medium Density (RMD) zone table states, "Accessory buildings shall be contained on the same lot as the residential building".

The Board found that the Town had the authority to refuse the application by Ms. Penney to subdivide property at 9A Pondsides Hill as the creation of a separate parcel with an accessory building on a lot without a house would be in contravention of the Town's Municipal Plan and Development Regulations. The Board accepted that an accessory building in the RMD zone must be on the same lot as a residential home and it would not be compliant for the shed to stand alone on a parcel of land.

The Board also learned that the proposed separate parcel for the accessory building is of minimal standard according to the Town's lot size requirements in the RMD zone, and the development standards would leave little space to develop a dwelling; hence, the CAO suggested to the Board that this would not be a viable stand-alone lot, but could be developed if combined with an additional parcel of adjacent land. The Board accepted that the land on which the accessory building stood could be combined with other land for a residential dwelling, but was not a viable distinct lot in accordance with the current zoning requirements.

Did Council exercise its authority appropriately in its refusal to authorize the subdivision?

The Board reviewed the material provided in the appeal package, and heard from the Carbonear CAO, Cynthia Davis, that the Town was unable to accommodate the request because it was contrary to the Town's Development Regulations, and also contrary to the *Urban and Rural Planning Act, 2000*. The Board found that the Town's refusal letter had articulated Council's reasons for refusal, as required by Regulation 22 of the Town's Development Regulations, Reasons for Refusing Permit, which states: "*The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.*"

The Board acknowledged that the Town's refusal letter noted that the Town's Municipal Plan and Development Regulations require that accessory buildings must be located on the same lot as the main dwelling. The submitted application would result in an existing accessory building without a dwelling, contrary to the Town's Plan and Regulations.

Although Ms. Penney did not attend the appeal hearing or send a representative, the Board learned at the appeal that the Town had considered ways to accommodate the application so that the property owner could benefit from the sale of a portion of the property. The CAO explained to the Board that the Council may have considered approval of the subdivision with strict conditions if there had been a development application to construct a residence on the lot within a defined time in the near future – such as a two year time frame for development – to enable the parcel to meet the requirements and confirm to the Town's planning framework. The Board learned that there was no commitment by the purchasers to build a house in the near future, and the Town was unable to create a separate lot that was non-compliant for an indefinite period of time.

The Board found that the Town had made its decision in accordance with the legislation and the Municipal Plan and Development Regulations when it refused to subdivide the land as applied, and processed the application accordingly. The Board determined that the Town made its decision appropriately, and thus confirmed Council's decision to refuse the subdivision.

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 Carbonear had the authority to refuse the application to subdivide the property at 9A Pondsides Hill to create separate parcels for the house and the garage. The Board further determined that the Town issued the refusal in accordance with the *Urban and Rural Planning Act, 2000* and the Town's Municipal Plan and Development Regulations, as the subdivision would be contrary to the planning requirements for subdivision and the definition of "accessory buildings". Therefore, the Board confirms the decision of Council made on May 25, 2016 to reject the subdivision application.

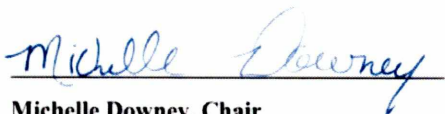
Order

Based on the information presented, the Board orders that the decision made by the Town of Carbonear to reject the application to subdivide the property at 9A Pondsides Hill into two separate parcels (one containing the house, and the other containing an accessory building) be confirmed.

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

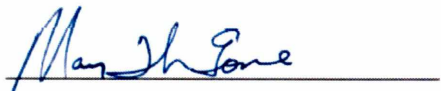
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the Appellant.

DATED at Mount Pearl, Newfoundland and Labrador, this 23rd day of August, 2017.



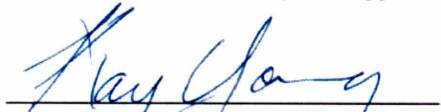
Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

Eastern Newfoundland Regional Appeal Board



Kay Young, Member

Eastern Newfoundland Regional Appeal Board