

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000
APPEAL**

BETWEEN James Piccott **Appellant**

AND Town of Conception Bay South **Authority**

RESPECTING The applicant appealed the Conception Bay South Town Council's decision of June 12, 2018 to refuse variances to reduce the minimum building lot area to accommodate construction of two duplexes at 7-9 Cliffside Avenue, Manuels "as the variances would result in development that is inconsistent with the character of the neighbourhood that is primarily comprised of single story dwellings". [File #: 15-006-057-007]

BOARD MEMBERS Cliff Johnston, Chair
Paul Boundridge, Member
Damian Ryan, Member

DATE OF HEARING August 29, 2019

IN ATTENDANCE

Daniel Bennett, Appellant's solicitor
James Piccott, Appellant
John Whelan, Development Control Officer - Town of Conception Bay South
Corrie Davis, Director of Planning and Development
Robert Cotter, Secretary, Eastern Newfoundland Regional Appeal Board
Tolulope Victoria Akerele, Technical Advisor, Eastern Newfoundland Regional Appeal Board
Paula Kieley, Neighbourhood resident

DECISION

Facts/Background

On May 2, 2018 James Piccott (Appellant) applied for approval to construct two (2) duplex dwellings on property situated at 7-9 Cliffside Avenue, Manuels. The development would subdivide an existing residential building lot into two (2) lots.

The application involved a request to the Town for a variance to the minimum lot area per dwelling required. The variance request was advertised in the *Shoreline* newspaper on May 9, 2018 and subsequently considered by the Planning and Development Committee of the Town of Conception Bay South (the Authority) on June 4, 2018. The Committee recommended refusal to Council on the basis that the proposed duplex development was inconsistent with the density and character of the surrounding neighbourhood.

Council, at a Regular Meeting held on June 12, 2018 resolved unanimously (as documented in Resolution #18-195) to refuse the variance request based on the recommendation of the Committee. The Town Council sent written correspondence dated June 14, 2018 regarding its refusal outlining the reason for refusal and providing guidance on the appellant's right and process to appeal the decision to the Eastern Newfoundland Regional Appeal Board.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

The Minister's Development Regulations

Town of Conception Bay South Municipal Plan & Development Regulations

Matters Considered by the Board

1. How is the subject property zoned and is the proposed use a Permitted Use?

The subject property is located in a Residential Medium Density (R2) Zone as established by the Conception Bay South Municipal Plan and Development Regulations, 2012. Double Dwellings are a Permitted Use in this zone. Section 2.33 of the Development Regulations define a Double Dwelling as "a Building containing two Dwelling Units, placed one above the other, or side by side, but does not include a single dwelling containing a subsidiary apartment."

(5) The perception that the size and scale of the development would be inconsistent with the municipal plan.

5. Did Council have the authority to deny approval of the requested variance?

The granting of a minor variance involves the exercise of discretionary authority by Council. In considering an application for a minor variance, Council is bound to follow due process (advance notification of consideration of the variance application to neighbouring property owners); however, Council is not automatically bound to exercise its discretionary authority and to grant approval to an application for a minor variance. It must take into account municipal land use planning policies and other matters that it may consider relevant.

Section 4.6 of the Town's Development Regulations (Discretionary Powers) states that "In considering an application to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application."

6. Did the town provide the reason for the refusal of the minor variance to the Appellant?

In a letter dated June 14, 2018 from the Town, the Appellant was advised that it was the decision of the Council to refuse the variances for the following reason – "the variances would result in development that is inconsistent with the character of the neighbourhood which is primarily comprised of single story dwellings."

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. The Eastern Newfoundland Regional Appeal Board derives its authority from the Urban and Rural Planning Act 2000. Section 42(11) of the Act states that “Notwithstanding subsection 10, where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules a discretionary decision.”

Based on its findings, the Board determined that Council had the authority to make the discretionary decision to deny the requested variances for reduction of the minimum lot area requirement and that the Town properly used its discretion in making that decision.

Therefore, the Board confirms the Respondent’s decision to deny the requested variances.

Order

Based on the information presented, the Board orders that the Town of Conception Bay South Municipal Council decision of June 12, 2018 to deny the lot area variances to allow the development of two duplex dwellings at 7-9 Cliffside Place, Manuels, be confirmed.

The Respondent 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 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 29th day of August, 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member
Eastern Newfoundland Regional Appeal Board