

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Heather and Brad Bursey **Appellant(s)**

AND Town of Paradise **Respondent**

RESPECTING Order issued by the Town of Paradise (the Authority) on October 22, 2018. The Town ordered the appellant to bring the rear-yard fence and retaining wall on 17 Fairlane Street, Paradise into compliance with the Town of Paradise Fence and Retaining Walls Regulations (Fence Regulations).
File #: 15-006-057-038

BOARD MEMBERS Clifford Johnson, Chair
Bob Warren, member
Damian Ryan, member

DATE OF HEARING December 11, 2019

IN ATTENDANCE

Brad Bursey, appellant
Alton Glenn, Director of Planning and Development, Town of Paradise
Darren Randell, Planner, Town of Paradise
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Tolulope Victoria Akerele, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

Heather & Brad Bursey (Appellants) filed an appeal against an Order issued by the Town of Paradise (the Authority) on October 22, 2018. The Town ordered the appellant to bring the rear-yard fence and retaining wall on 17 Fairlane Street, Paradise into compliance with the Town of Paradise Fence and Retaining Walls Regulations (Fence Regulations). The appellant is appealing the Order regarding the fence restrictions only on the grounds that the height of the subject fence is consistent with the grade of the subject property.

BACKGROUND

August 3, 2018	The Town sent a letter to inform the appellants that there was no record of a permit being issued with respect to the ongoing fence construction on the subject property. The letter indicated a permit was required prior to the construction of fence and retaining wall and stated that the fence must not exceed the maximum height restrictions.
August 13, 2018	Appellant sent in an application to construct a fence and 'Senior Allan' block wall on the subject property while requesting an additional fence height.
August 28, 2018	Town issued a fence permit for the subject property. The permit stated the fence must not exceed the height of 1.8 metres as specified in the Fence Regulations.
October 17, 2018	The Town sent a notice of refusal of an application to construct a fence exceeding 1.8m in height and retaining wall exceeding 1.22m in height. The notice stated that the height being requested exceeded the maximum allowed by the Town's Fence and Retaining Wall Regulations.
October 22, 2018	The Town Council issued an Order to reduce the fence's height to 1.8m or remove fence from property. The Order stated that the fence was not in accordance with the building permit issued on August 28, 2018.
November 4, 2018	Appellant received the Order.
November 6, 2018	Council, during a public meeting confirmed the Order issued on November 22, 2018.
November 13, 2018	Appellant completed an appeal form.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000 Municipalities Act, 1999

Town of Paradise Development Regulations

Town of Paradise Fence and Retaining Walls Regulations

Matters presented to and considered by the Board

What is the subject matter under appeal?

All parties agree that the subject matter under appeal is the height of the fence only.

What is currently existing?

The appellant indicted to the Board that there was a fence on the property since 2010 (built under permit) which needed repair in 2018. The fence is 91 meter (300 feet) in total length, 18 meters (60 feet) exceeds maximum allowable height of 1.8 meters. Following a complaint to the town and inspection, the Town requested an application. The Town issued a permit on August 27, 2018 for the construction of a fence in the rear yard which stipulated maximum height of 1.8 meters. Subsequent to the issuance of the building permit, the town noted that the completed exceeded the height as stipulated by the permit. An Order was issued to the appellants on October 27, 2018 stipulating that the fence be reduced in height to the permitted 1.8 meters or removed from the property on or before November 5, 2018.

Does the Town have the authority to regulate fences?

The Board reviewed the Town of Paradise and confirmed that it has the right to plan and guide development under the *Urban and Rural Planning Act, 2000*. The Town's current Municipal Plan and Development Regulations has been in legal effect since April 6, 2018. The subject property, located at 17 Fairlane Street is zoned Residential Medium Density.

Section 414 (2) (hh) of the *Municipalities Act, 1999* directs Council to make regulations that prescribe the height and type of fence which the owner of the lot is expected to maintain to Council's satisfaction. In Pursuant of this, Section 15 of the Town's Fence and Retaining Wall Regulations prescribes 1.8 metres as the maximum height above grade for rear-yard fence on

residential lots.

Does the Town have the Authority to issue the Order?

The Board learned from the appellant that other fences in the proximity of the subject property appear to exceed the maximum height. The appellant provide a supporting petition from nearby property owners/residence as they feel that the property with slope issues taking into consideration regarding fences by the town. The Board notes however that the Town responded to a complaint and under the authority of section 4. and 21.(a) of the Town of Paradise fence and retraining wall regulations, and subsequently the *Municipalities Act 1999* issued the order regarding the height of the fence. The Board therefore determines that the Town had the authority to issue the order.

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 Board has determined that the Town was within its authority to issue the order dated October 22, 2018 regarding the height of the fence. .

Therefore, the Board *confirms* the Respondent's decision to issue the Order dated October 22, 2018.

Order

Based on the information presented, the Board orders that the decision by the Town of Paradise October 22, 2018 to issue an Order on the fence at property 17 Fairlane Street, be Confirmed.

The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

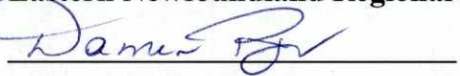
According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later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

DATED at Portugal Cove-St. Philips Newfoundland and Labrador, this 12 day of December 2019.



Clifford Johnston, Chair

Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member

Eastern Newfoundland Regional Appeal Board



Robert Warren, Member

Eastern Newfoundland Regional Appeal Board