

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

15-006-057-051

APPEAL

BETWEEN Vanessa and Gerard Furey **Appellant(s)**

AND Town of Torbay **Respondent**

RESPECTING Council's refusal of an application to construct a double dwelling (duplex) at 21 Brown's Lane, Torbay ["The property is located within the Residential Mixed Density (RMD) Land Use Zone. The proposed location of the dwelling is considered backlot development. Backlot development is not permitted in the Residential Medium Density (RMD) Land Use Zone."]

BOARD MEMBERS Cliff Johnston, Chair
Paul Boundridge, Member
Robert Warren, Member

DATE OF HEARING February 13, 2020

IN ATTENDANCE
Vanessa Furey, Appellant
Gerard Furey, Appellant
Brian Winter, Town of Torbay

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

BACKGROUND

An application to develop a duplex at 21 Brown's Lane was refused by the Town of Torbay (the Authority) on February 26, 2019. Correspondence to that effect was sent to the Applicant/Appellants (Vanessa Furey) outlining that Council had refused the development of the subject property due to the fact that the proposed location is considered backlot development, which is not permitted. The correspondence from the Town also outlined that the decision Council can be appealed, and the cost and process for filing an appeal.

Chronology

Chronology assembled from the material submitted by the Appellants and the Authority:

- October 15, 2018 Application by Vanessa Furey, for double dwelling (duplex) at 21 Brown's Lane, Torbay, accompanied by survey dated May 25, 2014 titled "Joseph Furey – Duplex proposal, Brown's Lane, Torbay, NL"
- February 4, 2019 Application (#C2018-128) was tabled and considered at Planning and Development Committee and recommended for refusal
- February 11, 2019 Application refused by the Town at a regular public meeting of Council
- February 26, 2019 Letter sent to the applicant/appellants by the Town informing them of Council's decision to refuse the development
- March 5, 2019 Date indicated on appeal form by the applicant/appellants as having received notification of decision
- March 15, 2019 Appeal submitted registered by the Secretary of the Regional Appeal Boards

The Board accepts the chronology order and notes that it was not contested at the hearing.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000;
Town of Torbay Municipal Plan and Development
Regulations 2015-2025

Land Use Planning

The subject property is located within the Residential Medium Density (“RMD”) land use zone. Double dwellings, including duplexes, are listed as a Discretionary Use in the RMD zone, subject to development standards and conditions outlined in the RMD use zone table.

Grounds of Appeal

In the appellant’s grounds for appeal, the Fureys argue that this application is a renewal of a previous application to develop the property. Reference is made to a prior refusal for approval to develop the subject property as a building lot for a single dwelling that was successfully appealed to the Eastern Newfoundland Regional Appeal Board in 2015 and referred back to Council. The approval for a lot for a single dwelling lapsed - due to personal circumstances of financial challenges and market changes, the bad luck and bad timing experienced by the couple resulted in them being unable to develop the property as previously permitted. It is argued that the current application is now refused and should be allowed on the basis of the 2015 Council approval of the subject property as a residential building lot.

The current application is for the development of a duplex. From the perspective of land use, the proposed use for a double dwelling may be accommodated in the RMD Zone, subject to the discretionary use process, as well as the development standards, conditions, and regulations being met.

Upon review of the refusal letter from the Town to the applicant, the Town stated that the development application received October 15, 2018 to construct a duplex at 21 Brown's Lane was considered at the Regular Public Meeting of Council on February 11, 2019 and refused for the following reason(s):

“The property is located within the Residential Mixed Density (RMD} Land Use Zone. The proposed location of the dwelling is considered backlot development. Backlot

development is not permitted in the Residential Medium Density (RMD) Land Use Zone.”

Matters presented to and considered by the Board

Q: What is the history of the property?

A: The Board was advised at the Hearing that previously there was a single detached dwelling on the subject property that had become dilapidated and was demolished by the Council more than 15 years ago. There is a private right-of-way that runs from Brown’s Road to the subject property that was historically associated with the property and remains. This information was not disputed by the Town.

Q: How is the property currently zoned?

A: Residential Medium Density (RMD)

Q: Is a Duplex Dwelling allowed in the RMD Zone?

A: A Duplex Dwelling may be allowed as a Discretionary Use (emphasis added) subject to the applicable requirements of the Town’s Development Regulations for a Duplex in the RMD Zone.

Q: Based on the information contained in the development application to the Town, could it be determined that the applicable requirements of the Town’s Development Regulations for a Duplex in the RMD Zone, could be satisfied?

A: Based on the information submitted as part of the appeal package, it appears that RMD Zone requirements for a Duplex could be met, except for minimum lot frontage on a public road – the property has no public road frontage.

Q: Do the Town’s Development Regulations allow for the development of a property that is zoned for residential use to be developed, if the property does not meet the current requirement/standard for frontage on a public street?

A: Regulation 47 of the Torbay Development Regulations states that:

“47. Lot Frontage

Where, at the time of coming into effect of these Regulations, one or more lots already exist (emphasis added) in any residential zone, with insufficient frontage or area (emphasis added) to permit the owner or purchaser of such a lot or lots to comply with the provisions of these Regulations, then these Regulations shall not prevent the issuing of a permit by the Authority for the erection of a dwelling thereon, provided that the lot coverage and height are not greater than, and the yards and floor area are not less than the standards set out in these Regulations.”

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 Council failed to acknowledge and apply, as directed, an applicable provision of the Town’s Development Regulations in its consideration of this application. Specifically, Regulation 47 provides for Town consideration to approve an existing lot in a Residential Zone provided that the lot coverage and height are not greater than, and the yards and floor area are not less than the standards set out in these Regulations. This Regulation could be termed as the “once a lot, always a lot principle”. As previously noted, the Town has not disputed that a house previously existed on the subject property which utilized a private right-of-way over adjoining land; and that in 2015 the Town gave approval to the use of the subject property as a building lot for a single detached dwelling.

In addition, the Board has determined that Council, in its letter to the applicant advising of its decision, has demonstrated that it did not decide on the Discretionary Use application before it but on a separate matter.

Therefore, the Board reverses the Respondent’s decision to reject the Appellant’s Discretionary Use application to construct a Duplex Dwelling at 21 Brown’s Lane, Torbay.

Order

Based on the information presented, the Board orders that the decision of February 11, 2019 to deny approval for the construction of a Duplex Dwelling at 21 Brown's Lane, be reversed. The Discretionary Use application is therefore referred back to Council for processing in accordance with all applicable provisions of the Torbay Development Regulations, including Regulation 47.

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

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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. Philip's, Newfoundland and Labrador, this 13th day of February, 2020



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board