

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Mary O'Brien **Appellant**

**AND** Town of Witless Bay **Authority**

**RESPECTING** Matter under appeal – Respecting a decision by the Town of Witless Bay to deny an application for an extension to an existing garage at 481 O'Brien's Road, Town of Witless Bay.  
(MAE File #:15-006-044-077)

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Paul Boundridge  
Member - Robert Warren

**DATE OF HEARING** October 17, 2018

**IN ATTENDANCE**

**Appellant:** Edward Vickers on behalf of Mary O'Brien

**Respondent:** Town of Witless Bay – Geraldine Caul, Town Clerk/Manager

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

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

## **DECISION**

### **Facts/Background**

This appeal arises from a decision made by the Town of Witless Bay Council on February 16, 2017 to deny an application from Mary O'Brien to construct an extension to an existing accessory building (garage) on her property located at 481 O'Brien's Road. The subject property is in the Residential (RES) Zone per the Town of Witless Bay Development Regulations.

On March 26, 2017, Ms. O'Brien filed an appeal with the Secretary of the Eastern Regional Appeal Board against Council's decision to deny her application. The grounds for appeal can be summarized as follows:

1. The Appellant feels that the Town's decision to refuse the garage extension is unjustified.
2. She argues that the garage is on a parcel of land that is over 1.5 acres in size.
3. She provided a copy of a survey of her property, illustrating the parcel area of 0.7306 hectares (1.8 acres).

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of appeal was published in The Telegram newspaper on September 28, 2018; and a notice of the time, date and place of the hearing was provided to the appellant and the authority as required by *the Urban and Rural Planning Act, 2000*.

### **Legislation, Municipal Plans and Regulations considered by the Board**

*Urban and Rural Planning Act, 2000*

*Town of Witless Bay Municipal Plan and Town of Witless Bay Development Regulations*

## **Matters presented to and considered by the Board**

### **Q: How does the Town define an Accessory Building?**

A: The Town of Witless Bay Development Regulations defines an Accessory Building as:

“**ACCESSORY BUILDING** is:

- (a) A detached subordinate building not used as a dwelling, located on the same lot as the main building or use to which it is accessory, and which has a use which is customarily incidental or complimentary to the main use of the building or land:
- (b) for residential uses such as domestic garages, carports, ramps, sheds, swimming pools, greenhouses, cold frames, fuel sheds, vegetable storage cellars, shelters for domestic pets, or radio and television antennae,
- (c) for commercial uses such as workshops, garages, and
- (d) for industrial uses such as garages, offices, raised ramps and docks.”

### **Q: Is an Accessory Building (garage) a Permitted Use in the Residential (RES) Zone?**

A: Yes, subject to the Town’s Development Regulations.

### **Q: Did the Town Council have the authority to deny the application for the extension to the existing Accessory Building?**

A: Yes. The Town Council, after reviewing the application, made the decision to deny the application. The Council, in making its decision noted that the existing Accessory Building already exceeds the maximum allowable size of 70 square metres.

The Town’s Development Regulations (Schedule C- Section 4) do provide that where it can be clearly demonstrated that a need exists for a larger Accessory Building, Council shall have discretion where the proposed Accessory Building will exceed the maximum floor area of 70 square metres, and the maximum height of 6 metres.

Council made the decision to not use its discretionary authority to allow the proposed extension. Council has the authority to use its discretionary authority as it feels appropriate. This Board notes that Section 42(11) of the Urban and Rural Planning Act, 2000 provides that where a council, regional authority or authorized administrator may, in its discretion, make a decision, an appeal board shall not make another decision that overrules the discretionary decision.

## 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 was acting within its authority under the Town's Development Regulations to deny the application for the extension to the Accessory Building. Therefore, the Board confirms the Respondent's decision and denies this appeal.



**ORDER**


Based on the information presented, the Board orders that the decision of the Town of Witless Bay of February 16, 2017 to deny the application from Mary O'Brien to construct an extension to an existing Accessory Building located at 481 O'Brien's Road, Witless Bay 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(s).

**DATED** at Portugal Cove-St. Philip's, Newfoundland and Labrador, this 25<sup>th</sup> day of October, 2018.

  
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**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Paul Boudridge, Member**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**