

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Walter Hennessey **Appellant**

AND Town of Conception Bay South **Authority**

RESPECTING Refusal to Issue development permit for a residential building lot on property situated at 21 Greenslades Road, Conception Bay South
(15-006-054-005)

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

DATE OF HEARING October 22, 2018

IN ATTENDANCE

Walter Hennessey, Appellant
Corrie Davis, Director of Planning and Development; and
Sean McGrath, Development Control Officer for Respondent
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

On June 12, 2017 Walter Hennessey applied to the Town of Conception Bay South for approval to develop vacant, undeveloped land at 21 Greenslades Road, in Long Pond, Conception Bay South for a residential building lot for a single detached house. On June 22, 2017 the Town of Conception Bay South sent the Appellant a letter to inform him that his development application had been denied because the subject property does not have sufficient lot frontage for the Residential Medium Density (R-2) Zone (minimum 15 metres). The letter also advised Mr. Hennessey of his right to appeal the decision.

On July 5, 2017 the Appellant filed an Appeal with the Secretary of the Appeal Board. Cited as grounds for appeal were:

- The Town of Conception Bay has not been consistent in its refusal of applications with similar lot frontage deficiencies, and
- That the subject property has previously been approved for a more substantial development (a seniors' home).

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Conception Bay South Development Regulations

Matters presented to and considered by the Board

Q: Is a Single Detached Dwelling allowed in the Residential Medium Density (R-2) Zone?

A: Yes, in accordance with R-2 Zone requirements, which includes a minimum lot frontage requirement of 15 metres.

Q: How is Lot Frontage defined under the Conception Bay South Development Regulations?

A: Section 2.64 of the CBS Development Regulations defines Lot Frontage as “The horizontal distance between said lot lines measured at the Building Line”

Section 2.19 of the of the CBS Development Regulations defines Building Line as “A line established by an Authority that runs parallel to a street line and is set at the closest point to a street that a building may be placed”.

Q: What is the lot frontage of the subject property using the definition provided by the CBS Development Regulations?

A: Within the CBS R-2 Zone, a single dwelling must be set back a minimum 10 metres from the street line. The Town of CBS has determined that at the 10 metres mark, the proposed lot has a frontage of approximately 6.5 metres; this would be approximately 57% below the Town of CBS standard.

Q: Did the Town of Conception Bay South have the authority under the CBS Development Regulations to approve the subject property as a building lot despite the noted deficiency in lot frontage?

A: The CBS Development Regulations and the Urban and Rural Planning Act allow Council the discretion to grant a variance of up to 10% from the minimum zone requirements. In this case, the variance required would have been beyond that which could have been allowed.

Where there is a lot existing prior to the CBS Development Regulations coming into effect in July 2012, the CBS Development Regulations allow Council the discretion to approve development of a dwelling on a lot that has insufficient frontage or area. With the information it had available, the Town was unable to determine that 21 Greenslades Road was a lot prior to July 2012.

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 correct in its determination of lot frontage and that this determination and its decision to reject the development application was in conformity with the Town of Conception Bay South Development regulations and the *Urban and Rural Planning Act, 2000*.

Therefore, the Board confirm the Respondent's decision to reject the Appellant's development application.

ORDER

Based on the information presented, the Board orders that the decision of the Town of Conception Bay South to reject the application for a Development Permit for a residential building lot on property situated at 21 Greenslades Road, Conception Bay South be confirmed

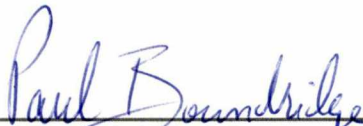
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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).

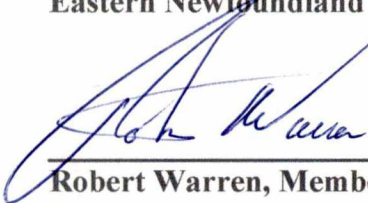
DATED at Portugal Cove-St. Philips, Newfoundland and Labrador, this 25th day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board