

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

West Newfoundland Regional Appeal Board

Appeal #	15-006-077-033
Appellant(s)	Stacey Joyce
Respondent / Authority	Town of Steady Brook
Date of Hearing	January 18 th , 2023

Board Members

Chair	Lloyd Walters
Member	Boyd Noel
Member	Helen Reid

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Clyde Simmons Dean Joyce
Representatives for the Authority	Sarah Kennedy-Deputy Mayor Tracy Caines – Town Manager
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Interested Parties	
Start/End Time	9:00 am – 10:15 am

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Regional Appeal Board (the Board) is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Steady Brook Municipal Plan and Development Regulations when they refuse a development application to permit a single dwelling at 107 Marble Drive in the Town of Steady Brook.

Presentations During the Hearing

Planner's Presentation

On September 7, 2022 the Town issued a Stop Work Order to the Appellant after discovering that land clearing was occurring at 107 Marble Drive without a permit.

On September 19, 2022 the Authority received a development application for a permit to construct a dwelling at 107 Marble Drive that denoted zoning as Residential and would be developed using full municipal services. The application identifies all the Residential use zone development standards including servicing scenarios as template information.

On October 6, 2022 the Towns Committee of the Whole determined to pass a motion at the next regular Council meeting to refuse the application.

On October 20, 2022 the Authority resolved at its regular Council meeting to refuse the application.

On October 24, 2022 the Authority issued a letter to the appellant notifying of refusal to approve the application to construct a single dwelling at 107 Marble Drive in the Town of Steady Brook.

On October 25, 2022 the Appellant received the mailed letter confirming Council's decision to refuse the Development Permit application.

On November 4, 2022 the Appellant submitted an Appeal Application Form to the Secretary of the West Newfoundland Regional Appeal Board (with supporting information), which established the facts of the appeal and a summary of the grounds of appeal.

The appeal is based on the following provision of the Urban and Rural Planning Act, 2000: Section 42(1)(a) (an application to undertake a development).

The appellant appealed the decision of Council to refuse a Development Permit application which proposed a single dwelling at 107 Marble Drive in Steady Brook, NL on the following grounds: The proposed new build meets the requirements for variances set out by the Town of Steady Brook with water and sewer connected to town infrastructure. The proposal meets the criteria set out in the Town of Steady Brook Development Regulations s. 40, Part III – General Development Standards (ie: Lot Area and Size Exceptions).

The planner pointed out that upon review of the appeal application he found that the town had misinterpreted the actual zoning of the location the permit was being applied for. In reality this area is zoned, Open Space Conservation and was a designated floodway.

Lands designated Open Space Conservation on the Future Land Use Map are primarily for the protection of areas of physical instability (steep slopes, areas of high relief and/or unstable soil), protection of streams, and to reflect areas where development is restricted. Within areas designated for Open Space Conservation, lands will remain generally undisturbed. However, limited passive recreational uses such as walking trails can be permitted. 'Open Space Conservation' Use Zone standards provide for a limited range of uses which include; Permitted- Conservation and Discretionary- Recreational Open Space.

The Municipal Plan further outlines a general policy goal for the 'Designated Floodway' designation at Section 4.5.2: Lands designated as Designated Floodway are primarily meant for conservation, docks, recreational open space. Development of any structures such as homes or businesses is strictly prohibited. Discretionary uses include Antenna and Recreational Open Space.

A survey provided by the appellant, dated November 13, 1998, suggests that the lot may possibly be an official lot of record, however there is no correspondence provided indicating Council's formal approval of the lot creation. A review of the previous Town of Steady Brook Development Regulations in effect indicates the subject lot is indeed lacking in frontage with only 17.2 metres as opposed to the required 20 m in the 1988-1998 Development Regulations and a required 25 m in the 2010-2020 Development Regulations. However the subject lot has not been situated within a Residential zone at anytime since the Town has had a Municipal Plan or Development Regulations in effect and is therefore not applicable for consideration under this policy.

Regulations 1988 -1998) reveals that the subject lot was zoned as Open Space. The Open Space policy of the Municipal Plan 1988-1999 states that.

It appears that Council's determination of the applicable use zone was advised erroneously or relied solely on information supplied in the applicant's application which indicated that the lot was located in a Residential use zone as opposed to the Open Space Conservation and Designated Floodway zones in which it is actually situate.

Appellant's Presentation

The Appellant contends that it is pertinent to the Board's consideration of the appeal matter that he intends to connect to municipal services thus reducing the land area required for septic treatment. Mr. Joyce contends that he has been paying residential taxes for four years that a plot plan was provided and designed to include variances on setbacks that meet the Development Regulations, that the Appellants land can include other lands associated with former CP Rail lands that is used by other Marble Drive residents.

He contends that the proposed new build meets the requirements for variances to standards set out by the Town of Steady Brook Development Regulations and will be connected to town with water and sewer infrastructure. He is confident the proposal meets the criteria set out in the Town of Steady Brook Development Regulations s. 40, Part III – General Development Standards (ie: Lot Area and Size Exceptions .

The applicant also contends that the development concept provided is designed to meet eligible variances to the yard standards as part of their ground for appeal.

Authority's Presentation

Representatives for the Authority stated that the application was reviewed on the basis that the area was zoned residential. The application was denied because it did not meet the minimum lot area standards of 1400 m2 as per the Town of Steady Brook Development Regulations.

Board's Analysis

Q. How is the area zoned?

The Authority in its presentation indicated it treated the application as if the area was zoned Residential.

Upon review of the Town of Steady Brook Municipal Plan and Development Regulations and Land Use Zoning Map the board finds that a portion of 107 Marble Drive is actually zoned Open Space Conservation and the largest portion of the lot is actually in a designated floodway zone.

Q. Would the provision of municipal services affect the Town's decision on this application?

The Town stated that it could only provide water services in this area. That would still not reduce the lot size requirement sufficiently to meet the stipulated minimum lot size requirement even in a residential zone. In fact that is not the case since the area is zoned Open Space Conservation and designated floodway in which residential use is not a permitted or discretionary use.

Q. Does the payment of municipal taxes guarantee the owner the right to develop a property?

No. The right to develop property is based on the applicable Municipal Plan and Development Regulations, in legal effect. The Authority may impose real property taxes on the owners of real property within the municipality under section 112 of the Municipalities Act, 1999.

Q. Should the Council have considered the variances applied for in this application?

Even if the Council had applied all variances being applied for it would not have reduced the minimum lot size requirements sufficiently to allow a development to occur at 107 Marble Drive.

Q. Could former CNR lands have been included to increase lot size when considering this application?

Council can only legally consider the actual size of the lot for which development approval is being applied for when considering an application.

Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the Authority made a technical error in assessing this application. Therefore, the Board reverses the Town's decision.

(The Urban and Rural Planning Act, 2000 states

42. (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.)

That is to say, the Town erred when it assessed the proposed development as being located in a residential zone. The Board directs that the Town of Steady Brook reconsider this application and make a decision according to the Municipal Plan and Development Regulations in legal effect since October 14, 2011.

Order

The Board orders that the decision of the Town of Steady Brook of October 20, 2022 to refuse the application for a development permit at 107 Marble Drive be reversed.

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

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Authority 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 this 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 Deer Lake, Newfoundland and Labrador, this 18 January 2023.



Lloyd Walters, Chair

West Newfoundland Regional Appeal
Board



Boyd Noel, Member

West Newfoundland Regional Appeal
Board



Helen Reid, Member

West Newfoundland Regional Appeal
Board