



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA08018
Order LA09-01**

IN THE MATTER of an appeal by Josef
(Peter) Strubel and Lesley Strubel of a
decision of the Community of Borden-
Carleton, dated October 7, 2008.

BEFORE THE COMMISSION
on Friday, the 9th day of January, 2009.

John Broderick, Commissioner
Ernest Arsenault, Commissioner
David Holmes, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by Josef (Peter) Strubel and Lesley Strubel of a decision of the Community of Borden-Carleton, dated October 7, 2008.

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IN THE MATTER of an appeal by Josef (Peter) Strubel and Lesley Strubel of a decision of the Community of Borden-Carleton, dated October 7, 2008.

Appearances & Witnesses

1. **For the Appellants**
Josef (Peter) Strubel
Witness:
Leonard Harvey

2. **For the Respondent**
Charles McNally

IN THE MATTER of an appeal by Josef (Peter) Strubel and Lesley Strubel of a decision of the Community of Borden-Carleton, dated October 7, 2008.

Reasons for Order

1. Introduction

[1] The Appellants Josef (Peter) Strubel and Lesley Strubel (the Strubels) have filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, (the *Planning Act*). The Strubels' Notice of Appeal was received on October 27, 2008.

[2] This appeal concerns an October 7, 2008, decision of the Respondent Community of Borden-Carleton (the Community) to deny a permit for a mini-home relocation to 82 Borden Avenue, property number 381541, (the lot) located in the Community of Borden-Carleton.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on December 3, 2008.

2. Discussion

The Strubels' Position

[4] The Strubels' submissions may be briefly summarized as follows:

- The Strubels purchased the lot in 1994 as an investment. Over the years, different plans to develop this undeveloped lot were proposed. The current plan is to place a mini-home on the lot and locate Mr. Strubel's barber shop in the mini-home.
- Shortly after the Community's decision to deny a permit for a mini-home relocation to the lot, Mr. Strubel noticed that there was a mini-home adjacent to the highway within the Community. As well, the mini-home the Strubels wish to purchase was located within the Community.
- The Strubels feel that they are not being treated fairly as the placement of other mini-homes were previously approved by the Community.

[5] The Strubels request that the Commission allow their appeal and order the Community to issue a permit allowing a mini-home to be placed on their lot.

The Community's Position

[6] The Community's position may be briefly summarized as follows:

- Most of the lot is zoned residential. An 18 foot strip of the lot is zoned institutional, based on its former use as a church parking area. Mini-homes are not permitted in residential or institutional zones in the Community.
- One of the mini-homes referred to by Mr. Strubel, located along the main highway in the Community, is in the agricultural reserve zone. Mini-homes are allowed in that zone.
- While the mini-home the Strubels wish to purchase was located in a residential zone, it was utilized as a "garden suite". Garden suites are permitted in the residential zone to provide temporary housing for a family member related to the owner occupant of the primary residence located on the same parcel. If the ownership of the parcel changes, or if the family member is no longer residing in the garden suite, the garden suite must be moved off the parcel.
- Mr. Strubel had previously applied to construct townhouses on the lot and the Community approved this proposal with conditions and variances. However, Mr. Strubel did not proceed with the townhouse development. A single family dwelling would also be permissible on the lot.

[7] The Community requests that the Commission deny the appeal.

3. Findings

[8] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission to deny this appeal. The reasons for the Commission's decision follow.

[9] One of the fundamental principles of municipal land use planning is that certain land uses may be permissible in one particular zone, but not permitted in a different zone. A community's land use bylaw will set out permitted uses for each zone within the community.

[10] In the present appeal, the lot is located in the Community's residential zone. With the exception of garden suites, mini-homes are not permitted in a residential zone in the Community. Mini-homes are permitted in the Community's agricultural reserve zone.

[11] The Commission also notes that the Community's Zoning and Development Control Bylaw (the Bylaw) does not permit a commercial use in a residential zone unless the commercial use is of the nature of a home occupation secondary to the primary residential use of a single or two family dwelling.

[12] The Commission notes that the lot as currently zoned may be used for other purposes. A single family residence may be constructed on the lot, provided that the Bylaw requirements are met and a building permit has been issued by the Community. A home occupation would be permissible, providing that such use was secondary to the primary residential use of the dwelling.

[13] The Commission further notes that the Community had previously approved a townhouse proposal, with conditions, for the lot. The Commission wishes to point out that it is not uncommon for a municipality to require that conditions be met for a development to proceed.

[14] The Commission finds that the Community made no error and followed the requirements of its Official Plan and Bylaw when it made the decision to deny a permit to locate a mini-home on the lot.

[15] For these reasons, this appeal is hereby denied.

4. Disposition

[16] An Order denying this appeal follows.

IN THE MATTER of an appeal by Josef (Peter) Strubel and Lesley Strubel of a decision of the Community of Borden-Carleton, dated October 7, 2008.

Order

WHEREAS the Appellants Josef (Peter) Strubel and Lesley Strubel have appealed a decision of the Respondent Community of Borden-Carleton, dated October 7, 2008;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on December 3, 2008 after due public notice;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The appeal is hereby denied.

DATED at Charlottetown, Prince Edward Island, this 9th day of January, 2009.

BY THE COMMISSION:

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Ernest Arsenault*

Ernest Arsenault, Commissioner

(Sgd.) *David Holmes*

David Holmes, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.

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