



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 11, 2024

Docket: LA22019

Type: Planning Appeal

INDEXED AS: MacKay v. Community of Linkletter
2024 PEIRAC 2 (CanLII)

Order No: LA24-02

BETWEEN:

Margaret MacKay

Appellant

AND:

Rural Municipality of Linkletter

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C. Chair

M. Douglas Clow, Vice-Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Corporate Services and Appeals

Written Submissions Filed by:

For the Appellant, Margaret MacKay:

Margaret MacKay

For the Respondent, Rural Municipality of Linkletter:

Michelle Perry, CAO,

Rural Municipality of Linkletter

1. INTRODUCTION AND BACKGROUND

1. This appeal relates to a decision of the Rural Municipality of Linkletter (“Linkletter” or “the Municipality”) to issue a development permit to an applicant to “repair and install an 8ft pre-existing fence” on PID 439216 in Linkletter.
2. On November 22, 2022, the Appellant, Margaret MacKay, filed a Notice of Appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the *Planning Act*¹. The Notice of Appeal was accompanied by 17 handwritten pages detailing Ms. MacKay’s grounds of appeal relating to the fence repair.
3. The fence belongs to the Appellant’s neighbour, and she alleges, among many other things, that the fence is within 2ft of her property, creates a “wind tunnel” and has damaged her trees. As relief, the Appellant requests the fence be removed and a fine issued to the offending parties.
4. On December 1, 2022, Linkletter responded to the Notice of Appeal with brief submissions and provided a copy of the Development Permit issued to the applicant on November 3, 2023, in accordance with the Linkletter Zoning and Subdivision Control Bylaw (the “Bylaw”).
5. The applicant/developer of the fence (“Developer”) chose not to participate in the appeal process.
6. After the initial submissions were received from Ms. MacKay and the Municipality, the Commission reviewed the Notice of Appeal and its accompanying materials, along with the submissions of the Municipality, and decided that the appeal would be determined without an oral hearing, pursuant to Rule 41 of the Commission’s Rules of Practice and Procedure.
7. Rule 41 states:

41. Written Submission Hearings

1. The Commission may, at its discretion, determine a matter without an oral hearing.
2. When the Commission proposes to determine a matter without an oral hearing:
 - (a) notice shall be given to the parties, and written submissions may be made on the matter; and
 - (b) upon review of the written submissions, the Commission may:
 - (i) make a final determination of the matter without an oral hearing; or
 - (ii) proceed to an oral hearing.
8. Therefore, in accordance with this rule, on April 21, 2023, the Appellant and Municipality were given notice that the matter would be heard in writing, and they were given an opportunity to provide additional submissions, should they choose to.

¹ *Planning Act*, RSPEI 1988, Cap. P-8.

9. On June 6, 2023, the Appellant provided additional submissions, along with several attachments, totaling 85 pages.
10. The Municipality did not make any additional submissions beyond those provided on December 1, 2023.

2. ISSUE

11. The primary issue to be decided in this appeal is whether the development permit to repair the fence was properly issued under the Municipality's Zoning and Subdivision Control Bylaw. More specifically, the Commission must consider whether the Municipality followed the proper procedure under the Bylaw and reasonably applied the Bylaw when it issued the permit.

3. DISPOSITION

12. The Commission denies the appeal. The development permit was issued in accordance with the provisions of the Bylaw.

4. ANALYSIS

Appellant's Position

13. The Appellant's appeal raises many issues with the fence. It seems her primary issue is that the fence was constructed 2 ft from her property line, and she submits that the fence forms a wind tunnel that will damage her trees.
14. The Appellant alleges that the Municipality has not consulted her with respect to the fence, that no one has done any inspections of the fence at any time, and that it blocks off her residence from the street.
15. The Appellant points to several relevant sections in the Bylaw (sections 3.1.1(c), 4.1 and 5.6) and she submits that nowhere in the Linkletter Bylaws does it say a fence can be 2 feet from a property line. She argues that the Bylaw does not say that replacing a fence is a reason to grant an irregular or any permit.

Municipality's Position

16. The Municipality explained that the fence at issue was originally built in 2014 and blew down during post-tropical storm Fiona, except for three sections of the fence that were still intact at the back of the property. On November 1, 2022, a Council Member observed the fence being repaired. The Council Member brought the issue to Council on the same day, and Council discussed the matter in light of the Linkletter Zoning and Subdivision Control Bylaw. Council determined that the fence repair required the Developer to fill out a "building permit". An application was dropped off to the Developer by the CAO on November 2, 2022, and it was returned, completed, by the Developer the next day. The permit was issued to erect the fence on November 3, 2022.

Findings

17. Section 3.1.1(c) of the Bylaw prohibits a person from erecting a fence greater than 4ft in height without first applying for and receiving a Development Permit.
18. The submissions from the Municipality indicate that upon being made aware the fence was being repaired, they informed the Developer that a permit was required under the Bylaw. The Developer submitted the permit application on November 2, 2023, to “[repair] an existing fence”.
19. Section 4.1.5 of the Bylaw states:

Upon being satisfied that the proposed development is in conformity with all relevant provisions of this bylaw, as well as any other relevant bylaws and policies within the Community, and upon receipt of the application fee, the Administrator may approve the Development Permit.
20. Section 5.6 of the Bylaw permits a fence to be placed or located in a yard, and directs that no fence may exceed 3.05m (10ft) in height.
21. There is no express provision in the Bylaw respecting setbacks of fences from property lines.
22. In this case, the Municipality, via its CAO Michelle Perry, issued a Development Permit to the Developer to “repair and install an 8ft pre-existing fence” subject to a 2ft setback from the Developer’s property line and on condition that the fence not exceed 10ft in height.
23. The Commission appreciates the submissions of the Appellant and understands her frustrations with the fence. However, the Commission’s role on appeal is to consider whether the Municipality followed the proper procedure under the Bylaw and reasonably applied the Bylaw when it issued the development permit to repair the fence. In this case, based on a review of the Bylaw, the Commission is satisfied that the “development” is in conformity with the provisions of the Bylaw and that the Development Permit was validly issued.

5. CONCLUSION

24. The appeal is dismissed.

IT IS ORDERED THAT

The Commission hereby orders:

1. **The appeal is dismissed.**

DATED at Charlottetown, Prince Edward Island, January 11, 2024.

BY THE COMMISSION:

Sgd. J. Scott MacKenzie, KC

J. Scott MacKenzie, K.C., Chair

Sgd. M. Douglas Clow

M. Douglas Clow, Vice-Chair

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 Court of Appeal upon a question of law or jurisdiction.

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

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.