

Central Newfoundland Regional Appeal Board

Appeal #	15-006-054-039 and 15-006-054-040
Appellant(s)	Richard Freake
Respondent / Authority	Town of Gander
Date of Hearing	January 13, 2021

Board Members

Chair	Bill Carter
Member	David Oxford
Member	Charlie Irving

Also in Attendance

Appellant(s)	Richard Freake
Representatives for the Appellant(s)	
Representatives for the Authority	Mark McWhirther, Town of Gander Solicitor
Representatives for the Authority	Justin Collins, Development and Control Inspector
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	David Soucy

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 Central Newfoundland Regional Appeal Board is to determine if The Town of Gander acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Occupancy and Maintenance Regulations*, and the Town of Gander Development Regulations when it issued an order on January 17, 2018 to Richard W. Freake to demolish the building situated at 287 Elizabeth Drive.

An order to demolish was issued by the Town of Gander (the Authority) to Richard W. Freake (the Appellant) on January 17, 2018 regarding the “condition of the building situated at 287 Elizabeth Drive” (the subject property). The Order outlined the following:

- Section 5 of the Occupancy and Maintenance Regulations requires structures within the Town to be “maintained in a state of good condition”,
- that the Appellant had not maintained the subject property,
- the specifics of the disrepair or need for maintenance,
- that the Authority has authority to direct property owners to maintain their properties in a state of good condition
- what the Authority had decided and the timeline in which the Order should be carried out,
- the consequences and penalties of not complying with the Order, and
- that the Order could be appealed and the process for doing so.

On February 1, 2019 the Central NL Regional Appeal Board rendered two decision on February 1, 2019 that the Town of Gander acted within their authority to issue demolition orders of Mr. Freake’s properties located at 283 & 287 Elizabeth Drive. Mr. Freake did not attend the hearing on February 1, 2019.

Mr. Freake subsequently appealed those decision to the Supreme Court based on lack of appropriate notification by the Board of the February 1st hearing. Despite several attempts via registered mail to notify Mr. Freake, the Court decided that the Board’s decision should be vacated and returned to the Board for a new hearing date to give Mr. Freake the opportunity to present his case. A hearing was scheduled on September 30, 2020. At that time Mr. Freake presented a medical note and was unable to proceed. The Authority agreed to a postponement of the hearing with date targeted for early January 2021.

May 14, 2009	Appellant was informed by way of a letter that the subject property was in violation of Section 5 of the Occupancy and Maintenance Regulations. The letter outlined the specifics of “deficiencies which are in need of attention”. The Town asked to be notified of the Appellant’s intentions within fourteen (14) days.
May 28, 2012	A visual inspection was conducted of several properties around and including the subject property. A memo was prepared outlining the deficiencies of the various properties.
November 15, 2017	Minutes of regular meeting of Council indicate a discussion by the Development Committee regarding “Building Safety Concerns” wherein the subject property is at issue. The minutes note that an adjacent business owner expressed safety concerns

	and described displeasing aesthetic appearance having a negative effect on his business. The CAO, along with a representative from Council, and the Director of Engineering, visited the site to see first-hand the conditions of the building. Committee recommends staff action to have the matter addressed in a timely fashion.
January 17, 2018	Gander Town Council, at a regular general meeting, carried a motion to issue an order to demolish the building at the subject property within thirty (30) days of the order being served
[no date]	The date on which the appellant received the Order is not specified
February 21, 2018	Appellant submitted appeal package
February 23, 2018	Secretary to the Regional Appeal Board acknowledged the appeal submission on by way of a letter to both the Appellant and the Authority

Validity Requirements

1. Validity

Section 42 (4) and (5) of the Act state:

42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

Section 45 of the *Occupancy and Maintenance Regulations* (OMR) requires that an appeal must be filed within 30 days from the date the applicant received the decision under appeal.

Section 42(5) of the Act requires that an appeal must be made in writing and shall include a summary of the decision being appealed, the grounds for the appeal, as well as the required fee.

According to the documents provided, the appeal was filed on February 21, 2018. The appellant's submission included the grounds for appeal, and appeal filing fee, but did not include an appeal summary form. Question 5 of the appeal summary form asks "When did the authority make its decision?" and Question 6 asks "When did you receive notification of this decision?" The applicant's completion of these dates would provide the necessary information to consider whether the appeal was filed within the required timeframe.

Grounds of Appeal

This appeal is based on the following section of the Act:

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

(d) a decision permitted under this or another Act to be appealed to the board.

The Appellant is appealing the Order on the following grounds:

1. that the Order to demolish should have followed an order regarding maintenance,
2. that current regulations and National Building Code of Canada cannot be applied,
3. that private property is subject to different standards than commercial properties,
4. that the Town staff who completed the inspections are not qualified to do so,
5. that the building is not dilapidated and is fit for human occupancy,
6. that the Town does not have jurisdiction to issue an order under Section 5 of the Occupancy and Maintenance Regulations,
7. that the Town is biased against the Appellant and therefore improperly exercised its authority by imposing the Order, and that the weather conditions at the time the Order was issued would make it more expensive and dangerous than at other times of the year.

Planner's Analysis

2. Legislation and Regulations

The applicable legislation with respect to this appeal is:

- *Urban and Rural Planning Act, 2000*
- *Town of Gander Municipal Plan and Development Regulations*
- *Occupancy and Maintenance Regulations (s44 R&S by SNL2008 c47 s13)*

Section 41 of the *Occupation and Maintenance Regulations* (OMR) under the Act gives an authority power to direct landowners to undertake work to bring that land or building into compliance with the OMR. The Authority's submission included a letter addressed to the Appellant and dated May 14, 2009. This letter outlines that the subject building is in violation of "Section 5 - Maintenance, of the Town of Gander's Occupancy & Maintenance Regulations" (the regulations referred to are the *Occupancy and Maintenance Regulations* under the *Urban and Rural Planning Act, 2000* (OC. 96-201) as per the link on the Town's website). The letter also outlines the deficiencies and requests the Appellant to address them within 14 days.

Section 42 of the OMR outlines that, if an owner fails to comply with enforcement directions, the Town may exercise its authority to issue orders and carry out municipal action at the cost to the owner as a civil debt. An order under section 42(1)(a) may require that work be performed to bring a building into conformance with standards, or section 42(1)(b) may require the demolition of the building.

Section 5 of the OMR does not make a distinction between property types (i.e., private or commercial), but refers to “all properties... including land, building, structures, dwellings...” Section 6 also does not make a distinction and indicates that “all buildings shall be” ... “free from deterioration, loose jointing, sagging, bulging and excessive deflection”. Sections 10 to 20, and others in the OMR, outline the required state of maintenance for many aspects of buildings.

Section 4 of the OMR outlines that a dwelling or structure may not be occupied for human habitation if the dwelling or structure does not comply with the standards of the *Occupancy and Maintenance Regulations*.

Section 41 of the OMR provides that the enforcement authority may order a landowner to bring a building into conformance with the standards outlined in the OMR.

Presentations at the Hearing

The Appellant, Richard Freake, presented the following:

- The Town issued a maintenance order in May 2009 on 283 & 287 Elizabeth Drive both of which dismissed through legal proceedings
- A demolition order was issued as apposed to a second maintenance order
- He acknowledged that 283 Elizabeth Drive was beyond repair and should be taken down
- He spoke of electricity still within 287 and believes that 287 can be repaired rather than demolished.
- He noted that there is a demolition order for 285 Elizabeth which is between both of his properties. He further questioned why the town has not acted on this order and how it will impact his ability to demolish 283 & 287 without impacting 285.

The Authority presented the following:

- The Town proposed that the maintenance order that was issued in 2009 and subsequently dismissed has no bearing on the demolition orders that were issued for both properties in 2018
- The Town does not own 285 and any references to this location is irrelevant to the appeal hearing.
- The fact that 287 Elizabeth Drive has electrical service does not impact the serious concerns within the building necessitating its demolition.
- The Town asserted that there is no requirement for a second maintenance order within URPA 2000 before a demolition order can be issued
- Any perceived bias by Mr. Freake is not grounds to overturn the demolition order
- Justin Collins provided further details on the “general disrepair” and safety concerns for both properties

Cross Examination of Evidence

Mr. Freake questioned Mr. Collins about the frequency of visits to the properties. The Board heard that Mr. Collins completes approximately 2 visits per month where he drives by the properties and have inspected them from the outside only.

Mr. Freake questioned whether the Town owns 285 Elizabeth Drive which the Authority verified that they do not.

Interested Party, Mr. Soucy, presented the following:

- He verified that he was the one who made the initial complaint of concern for building materials that were blowing off the properties, the safety concerns to children and other

individual that would be utilizing the nearby businesses and playground and Mr. Freake did not appear to have any plans for the properties.

- He asserted that the properties need to come down

At Mr. Freake's request, the Board provided Mr. Freake the opportunity to question Mr. Soucy with regards to the properties. However, the board chair had to close this line of questioning when Mr. Freake referred to conversation and an encounter between him and Mr. Soucy outside of a court room that was not related to the demolition order(s) of 2018.

Closing Statements

Mr. Freake asserted that the demolition orders should be dismissed and a second maintenance order issued for both properties. He further asserted that the issues with 285 Elizabeth Drive should be dealt before any further decision on his properties.

The Town reasserted that there is no legislative authority requiring that 285 Elizabeth Drive be demolished before dealing with his properties.

Board's Analysis

The Board concludes that the Town was in compliance with legislation and regulations when it issued the demolition order for 283 & 287.

1. Did the Town of Gander have the authority to issue a Demolition Order for 283 & 287 Elizabeth Drive?

The Board finds that the Town of Gander did have the authority to issue a demolition order.

Section 5 of the Occupancy and Maintenance Regulations reads:

"All properties in the areas listed in the Schedule including land, buildings, structures, dwellings, fences, sheds, garages, parking lots, driveways, landscaping and all appurtenances shall be maintained in a state of good condition and repair in accordance with the standards set out in these regulations and as otherwise ordered by the enforcement authority."

2. Did the Town of Gander exercise its authority appropriately in issuing a Demolition Order for 283 & 287 Elizabeth Drive?

The appellant stated that the demolition order was not valid because it ought to have been preceded by a maintenance order. The Occupancy and Maintenance Regulations under URPA does not set out any such requirements.

Therefore, the Board finds that the Town of Gander did exercise its authority appropriately in issuing a Demolition Order for the subject property at 283 and 287 Elizabeth Drive, Gander.

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 of Gander did exercise its authority appropriately in issuing a Demolition Order for 283 & 287 Elizabeth Drive.

Board's Order

Based on the information presented, the Board orders that the decision by the Town of Gander on January 17, 2018 to demolish the properties at 283 & 287 Elizabeth Drive be confirmed.


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

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).

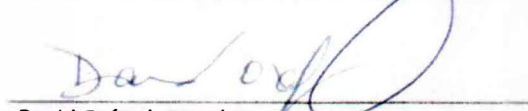
DATED at Gander, Newfoundland and Labrador, this January 13, 2021.



William Carter, Chair
Central Newfoundland Regional Appeal Board



Charlie Irving, Member
Central Newfoundland Regional Appeal Board



David Oxford, Member
Central Newfoundland Regional Appeal Board