

Central Newfoundland Regional Appeal Board

Appeal #	15-006-067-045
Appellant(s)	Colleen Hammond
Respondent / Authority	Town of Gander
Date of Hearing	January 14, 2021

Also in Attendance

Solicitor for the Appellant(s)	Not Applicable
Representatives for the Appellant(s)	Not Applicable
Representatives for the Authority	Mark McWhirther
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Not Applicable

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 *Development Regulations*; and the Town of Gander Municipal Plan and Development Regulations when it refused a development permit application from Colleen Hammond on September 16, 2020 regarding an accessory building at 22 Edinburgh Avenue.

Chronology assembled from the material submitted by the Applicant/Appellant and the Authority.

2020	Tarpaulin accessory building replaced with a metal shed
September 12, 2020	Appellant applied for a development permit for the new shed
September 16, 2020	Council refused the application
September 28, 2020	Letter sent to Appellant to inform the Appellant of refusal
October 5, 2020	Appellant received letter of refusal
October 13, 2020	Appellant sent a letter to the Town requesting a review of the decision (an "appeal" to the Town)
October 25, 2020	Phone call to Appellant from Town indicating the "appeal" of the decision on hold until new plan & development regulations in place
October 28, 2020	Second letter from Appellant to Town objecting the refusal and raising objections to the proposed plan & development regulations
November 9, 2020	Letter from Town to the Appellant in which option to appeal was highlighted and a permitted location of the shed was depicted
November 17, 2020	Letter from Appellant to Town
November 23, 2020	Letter from Appellant to Town again raising objections to the proposed plan & development regulations
November 23, 2020	Appeal registered by the Secretary of the Regional Appeal Boards
November 24, 2020	Reply from Town

Validity Requirements

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.

Planner's Analysis

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000. This will be referred to hence forth as *URPA*.

The Town of Gander Municipal Plan and Development Regulations Section 108 which says:

108. Non-conforming use

(1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

(3) A building, structure or development that does not conform to a scheme, plan or regulations made under this Act that is allowed to continue under subsection (1)

(c) shall not be reconstructed or repaired for use in the same non-conforming manner where 50% or more of the value of that building, structure or development has been destroyed;

(g) where the building or structure is primarily zoned and used for residential purposes, may, in accordance with the appropriate plan and regulations, be repaired or rebuilt where 50% or more of the value of that building or structure is destroyed.

According to the documents provided, the appeal was filed on November 23, 2020. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee. The Appellant was informed of the refusal via a letter from the Town dated September 28, 2020 but was informed of the right to appeal via another letter dated November 9, 2020.

The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing. See Section 35 (g) of the Urban and Rural Planning Act, 2000.

Land Use Planning

The subject land is zoned 'Residential Medium Density' under the Town of Gander development regulations. As per Schedule D of the Town's development regulations, a residential accessory building is permitted within the above zone type subject to the Town's accessory buildings regulation.

9. Accessory Buildings

An accessory building or structure shall be permitted in any residential use zone provided that the development meets the requirements of the Town of Gander Accessory Building Regulations.

As per the Town of Gander Accessory Building Regulations:

4. General Information

a) No accessory building or part thereof shall project in front of a

building line. ... At no time shall an accessory building be constructed less than 6.0 m from a property line;

b) If an accessory building projects in front of the rear building line, then Development Regulation sideyards are in effect;

f) Accessory buildings shall be constructed a minimum of 1.8ms from any dwelling unit;

The minimum side yards for the 'Residential Medium Density' zone are 1.5 and 3 metres. The metal shed does not appear to meet the minimum side yard requirements, nor the separation distance required from the dwelling. The zoning of the subject dwelling is 'Residential Medium Density'. Detached garages (i.e., accessory buildings) are permitted in this use zone, subject to condition 10 of that zone. Attached garages would be considered to be part of the dwelling on the subject property and would have to meet the development standards and conditions of the zone.

The Board's authority is restricted to those grounds with respect to compliance with legislation and regulations. The Board will determine whether Council's decision to refuse to the Appellant regarding an accessory building was in compliance with the Town's Municipal Plan and Development Regulations and the *Urban and Rural Planning Act, 2000*.

Presentations at the Hearing

Planner – Christopher Hardy

During the hearing, the Board heard technical details about the Town's Municipal Plan and Development Regulations. In particular, the planner stated that the Council has the authority to refuse applications when considering:

Sections 108 of URPA (quoted above),

Provincial Development Regulations Section 5 which states:

5. Notice of right to appeal

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) persons right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

Town of Gander Regulations Section 9 quoted earlier and Section 4 (Accessory Building Regulations) which states:

4. General Information

- a) No accessory building or part thereof shall project in front of a building line. ... At no time shall an accessory building be constructed less than 6.0 m from a property line;*
- b) If an accessory building projects in front of the rear building line, then Development Regulation side yards are in effect;*
- f) Accessory buildings shall be constructed a minimum of 1.8ms from any dwelling unit.*

The zoning of the subject dwelling is 'Residential Medium Density'. Accessory buildings are permitted in this use zone, subject to condition in the zone. Accessory buildings would be considered to be part of the dwelling on the subject property and would have to meet the development standards and conditions of the zone.

Appellant - Colleen Hammond

Ms. Hammond presented the following:

- Pictures of her old shed versus the metal shed she erected
- She was unaware that a permit was needed to erect a shed

- Through discussions with Town officials she was advised to submit a building permit application. This was filed on August 13, 2020.
- On September 28, 2020 a letter from James Blackwood was written to Ms. Hammond stating that "... Council was unable to permit the location of the accessory building as requested."
- On October 13, 2020 a letter from Ms. Hammond to the Town of Gander noted that she had disability issues that should have been considered in their deliberations of permit refusal. She felt that the Town did not consider inclusivity which is outlined in Provincial regulations/guidelines and she felt that a variance or exemption should be considered under these circumstances.

The Authority – Town of Gander represented by Mark McWhirter

Mr. McWhirter presented the following:

- Allowing the shed to be grandfathered in as Ms. Hammond was requesting is at the discretion of the Town and therefore out of the jurisdiction of the Appeal Board
- The previous shed on the property did not exist legally as no permit was requested or provided for this shed so there was no ability to grandfather something that was never permitted.
- There was no need to provide appeal information to Ms. Hammond in the letter of September 28, 2020 given that while an application was filed, the required fee did not accompany the application so the formal review process had not begun.
- It is felt that an appeal was not needed as no formal application was submitted so therefore the appeal is not valid.

The Board received evidence that the Authority denied "the accessory building permit for the structure as it currently stands" through a letter from James Blackwood, Town of Gander Director of Engineering, on November 9, 2020 to Ms. Hammond.

The Board received evidence from the Town that the side yard measurement of the property were not within the 1 metre required by their regulations whereas Ms. Hammond spoke of her measurements being 4 feet which equal 1.2 metres.

Board's Analysis

Does the Appeal have merit?

- Each party was given the opportunity to present their arguments as noted above.
- There was evidence presented through a letter from James Blackwood on September 28, 2020 that the construction of Ms. Hammond shed was considered by council but it did not conform with the Town of Gander's Development Regulations.
- Further evidence was presented that a formal application was not registered with the Town due to the fact that Ms. Hammond had not paid the required fee. They also advised that they would connect with Ms. Hammond to request the fee so they could proceed with the application. Despite this information, it appears that the Town still acted upon the request by denying the development of the shed on Ms. Hammond's property.
- By the Town's own admission, it appears that the application process was not properly done.

Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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 the information presented, the Board determined that the Town Council of Gander did not exercised its authority appropriately because they dealt with an Building Permit Application that reportedly was not filed properly with the appropriate fee. Further to that, Ms. Hammond request for development was clearly dealt with by Town employees as well as Town Council. Therefore, the Town decision is reversed. That is to say, any further applications should be considered by Council in accordance with all applicable regulations and legislation.

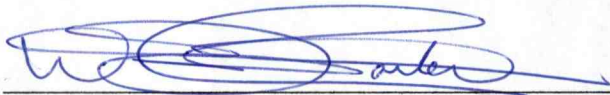
Board's Order

Based on the information presented, the Board orders that the decision by the Town of Gander on November 9, 2020 to deny the accessory building be reversed.

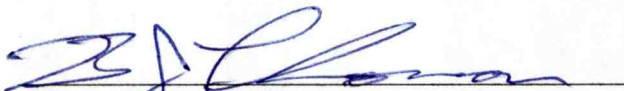
In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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).

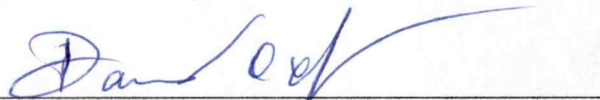
DATED at Gander, Newfoundland and Labrador, this 14th day of January, 2021.



William Carter, Chair
Central Newfoundland Regional Appeal
Board



Barry Thomson, Member
Central Newfoundland Regional Appeal
Board



David Oxford, Member
Central Newfoundland Regional Appeal
Board