

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-020
Appellant(s)	Gerald Drover
Respondent / Authority	Town of Upper Island Cove
Date of Hearing	March 10, 2021

## Board Members

Chair	Cliff Johnston
Member	Robert Warren
Member	Paul Boundridge

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Gerald Drover, Jean Drover and Angela Drover
Representatives for the Authority	Cindy Dobbin – Acting Mayor Neil Shute – Town Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Tolulope Victoria Akerele
Interested Parties	Jim Reardon and Joanne Reardon (Developer/Applicant)

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 Eastern Newfoundland Regional Appeal Board is to determine if the Town of Upper Island Cove decision of July 14, 2020 to approve a development application for three apartment dwelling units and a workshop/storage space at 599-603 Cranes Road was in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Upper Island Cove Municipal Plan and Development Regulations 2011-2021.

# Presentations During the Hearing

## 1. Planner's Presentation

The Appellant is appealing the decision based on the following grounds:

- The Town did not consider the petition with 21 names opposed to the development.
- The proposed development would affect the peaceful living of residents in the area.
- The area is zoned Residential and Council intends to change the zoning to accommodate the business.

The application site is zoned 'Residential I' under the Town of Upper Island Cove Development Regulations. The developer intends to convert the subject property into a three-apartment building and a storage space/workshop.

Within the Residential I zone, an apartment building is a discretionary use. In addition, a carpentry workshop, which may be classified as light industry, is also considered as a discretionary use within the subject zone.

The proposed apartment building and workshop/storage space is discretionary within the subject zone. As per the Town's Development Regulations, for Council to make a decision regarding a discretionary permit, the use must be advertised. During the review of the information submitted regarding this appeal, evidence of advertisement was found in the appeal package.

The appeal package revealed that the subject application was for the conversion of an existing property to a discretionary use within the Residential I Zone and not to change zoning as argued by the appellant.

## 2. Appellant's Presentation

The Town had not taken into consideration that the proposed development would adversely impact the neighbouring residential area in regard to noise, dust and potential fire hazard from the workshop/storage activities; increased traffic impacts (noise and safety); potential noise and traffic impacts from the three apartment units. The proposed development would not comply with the intent of the Town's municipal plan policies for residential areas.

## 3. Authority's Presentation

The Town is of the view that the uses being applied for could be allowed as a Discretionary Use in the Residential 1 Zone; that it had followed due procedure in making the public aware of the development application by posting a notice giving interested persons at least seven (7) days to make inquiries and submit written comments concerning the application to the Town; that representations were received in support of and in opposition to the development application; and that the Council took into account all representations received before it made its decision to approve the development application. The Town is of the opinion that the application is in full compliance with the policies and regulations of the Town's Municipal Plan and Development Regulations.

#### 4. Interested Parties (Applicant/Developer)

The Town has given approval for three (3) residential apartment dwelling units on the second floor of the existing building located on the subject property, with a separate (standalone) storage area/workshop on the ground floor associated with his contracting business; and the basement area contains space that would be used as a storage area for the proposed apartment dwelling units. Of the three (3) apartment units approved, he may only develop two (2).

### Board's Analysis

**Q:** What is the zoning of the subject property?

**R:** Residential 1

**Q:** Does the Residential 1 Zone allow the proposed uses?

**R:** In the Residential 1 Zone an apartment building may be allowed as a Discretionary Use; a light industrial use (workshop) may be allowed as a Discretionary Use as a Home Business/Home Occupation in accordance with Regulation 9 of the Residential 1 Zone.

*"9. Home Businesses • Office, Medical and Professional Service, Personal Service, and Light Industry Uses as Home Occupations*

*A Home Business is defined as an accessory use of a residential dwelling consisting of an occupation or profession which generates revenue for the resident.*

*Office, medical and professional service, personal service, and light industry uses may be permitted provided they are carried out as home occupations, businesses operated in the dwelling, or in a building subsidiary to the dwelling on the same lot, by the occupants of the dwelling, and meet the following requirements. (emphasis added)*

*(a) Office uses shall be limited to small business services and professional offices;*

*(b) light Industry uses shall be limited to fabrication for the production of handmade articles such as clothing, arts and crafts objects, and workshops; (emphasis added)*

*(c) The use is clearly subsidiary to the residential use, does not alter the residential character of the dwelling unit, and does not detract from the residential character of the neighbourhood. (emphasis added)*

*(d) No wholesale sales or storage of goods is carried out, any retail sales are incidental and subsidiary to the approved use, no repairs to vehicles or heavy equipment are carried out.*

*(e) Activities associated with the use are not hazardous and do not cause noticeable noise, odour, dust, fumes, or inconvenience to occupants of adjoining residences. (emphasis added)*

*(f) Activities associated with the use shall be carried on inside the dwelling or in a building separate from the dwelling.*

(g) One building only, separate from the dwelling, may be used in connection with a light industrial use and service use and shall conform to the Accessory Buildings condition height and floor area limit for this zone; child care use shall be carried out in the dwelling unit or be attached to the dwelling unit.

(h) Except for child care, no more than 30% of the total floor area of the dwelling is devoted to the use.

(i) The use shall not generate traffic, parking, sewage or water use in excess of what is normal in the residential area.

(j) Activities associated with the use are not hazardous and do not cause a noticeable increase in noise, odour, dust or fumes, nor cause electrical interference or in any other way result in a nuisance to the occupants of surrounding residences. (emphasis added)

(k) The residential lot has sufficient area to accommodate the parking requirements of the dwelling unit and the home occupation.

(l) No regular parking of commercial vehicles except for one vehicle with a gross weight of no greater than one tonne will be permitted on the lot or on the road reservation adjacent to the lot.

**Q:** How do the Town's Development Regulations treat Discretionary Uses?

**R:** A Discretionary Use is a use which has been specifically identified as one and is within the Discretionary Use Class, it is considered to be complementary to permitted uses in the same zone, it may be required to meet specified standards/regulations, and it is subject to a level of public consultation before being referred to Council for consideration of approval.

**"DISCRETIONARY USE** means a use that is listed within the discretionary use classes established in the use zone tables of the Council's Development Regulations."

**"90. Discretionary Uses**

*Subject to these Regulations, the uses that fall within the Discretionary Use Class, as set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Authority is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Authority has given notice of the application in accordance with Regulation 32 and has considered any objections or representations which may have been received on the matter.*

Under Schedule C of the subject regulations, the following standard condition applies to all discretionary uses within all zones in the Upland Island Cove Municipal Planning Area.

***“Discretionary Uses***

*The discretionary uses listed in the use zone tables may be permitted at the discretion of Council, provided that they are complimentary to uses within the permitted use class, or that their development will not inhibit or prejudice the existence or the development of such uses. Reference should be made to the General Development Standards.”*

**Q:** Do the Town’s Development Regulations give the Town the authority to approve the development of a light industrial use (standalone workshop/storage area) as a Discretionary Use in the Residential 1 Zone?

**R:** The Board has determined that the Town’s Development Regulations do not give the Town the authority to approve the development of a standalone workshop/storage area not associated with any of the proposed apartment dwelling units as a Discretionary Use in the Residential 1 Zone.

The Town’s Development Regulations specify that in the Residential 1 Zone, Discretionary Uses can be allowed by Council provided they are compatible or complementary to uses within the Permitted Use classes, or that their development will not inhibit or prejudice the existence or the development of such uses.

The Town’s Development Regulations specify that light industrial uses can only be allowed in the Residential 1 Zone provided they are operated as a Home Occupation/Home Business use and within a dwelling unit. The developer has advised that the proposed workshop/ storage area would not be associated with any of the proposed apartment dwelling units: the space would be used in association with his contracting business; the applicant has indicated that he does not intend to live in the proposed mixed-use building.

**Q:** Does this development application involve the rezoning of the subject property?

**R:** This application has been processed by the Town as a Discretionary Use, and the Town has not expressed any need or intent to rezone the subject property in order to allow the development application.

**Q:** Did the Town consider all written and verbal public representations received before making its decision to approve the development application?

**R:** The Town’s representatives advised at the appeal hearing that all representation received were fairly considered upon completion of the required public notification process.

## Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by the parties present at the Hearing along with the technical information, including the Town's Municipal Plan and Development Regulations. 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.

After reviewing the information presented, the Board has determined that:

1. The Town had the authority to approve the development of the proposed three (3) apartment dwelling units; and
2. The Town does not have the authority to approve a light industrial use (proposed storage area/workshop) in the Residential 1 Zone where it is not associated with a residential occupancy, which is to say, it is being carried out as a Home Based Business/Home Occupation.

## Board's Order

The scope of the Board in considering an appeal is set out in Section 42(10) of the *Urban and Rural Planning Act 2000*, as follows.

"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."*

The Board orders that the decision by the Town Council of Upper Island Cove of July 14, 2020 to allow the conversion of the property at 599-603 Cranes Road to three (3) residential apartments on the second floor with a separate light industrial use (storage area/workshop) on the ground floor and not as a Home Based Business/Home Occupation, be reversed. As noted in the Board's Decision, the Town Council has the authority under the Town's Development Regulations to approve the three (3) apartment dwelling units; however, the Town does not have the authority to approve a storage area/workshop that is not a Home Based Business/Home Occupation.

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.

The Authority 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 St. John's, Newfoundland and Labrador, this March 10, 2021.



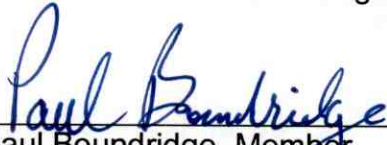
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Cliff Johnston, Chair  
Eastern Newfoundland Regional Appeal Board



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Robert Warren, Member  
Eastern Newfoundland Regional Appeal Board



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Paul Boundridge, Member  
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