

Central Regional Appeal Board

Appeal #	15-006-072-010
Appellant(s)	Tonya and Dwayne Abbott
Respondent / Authority	Town of Gander
Date of Hearing	September 16, 2021
Board Members	
Chair	Bill Carter
Member	Charles Irving
Member	David Oxford
Member (Observer)	Allan Scott
Member (Observer)	Rebecca Redmond MacLean
Also in Attendance	
Solicitor for the Appellant(s)	Meaghan McCaw
Representatives for the Appellant(s)	Dwayne & Tonya Abbott
Representatives for the Authority	Brad Hefford, Town Clerk
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	
Time Start/End	9:00 am/9:47 pm.

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 Board is to determine whether the Town of Gander (the Authority) acted in accordance with the *Urban and Rural Planning Act, 2000* and the Gander Development Regulations when it issued a permit to Exploits Discovery Corporation to develop 131 Roe Avenue on May 20, 2021.

Presentations During the Hearing

1. Planner's Presentation

The Technical Advisory, Elaine Mitchell, MCIP, summarized the technical report which had been previously shared with all parties. She explained that the subject site is zoned 'Commercial General' under the Gander Development Regulations and Light Industry is listed as a discretionary use in the Commercial General zone. An application for a discretionary use must be advertised in accordance with Regulation 51 of the Gander Development Regulations and Council must consider any written submissions in accordance with Regulation 110. The technical advisor noted that the Town issued a discretionary use notice. The technical advisor stated that Schedule B includes examples of light industry uses and there is a definition of light industry and workshop in the Gander Development Regulations.

The technical advisor reviewed Regulation 29 of the Gander Development Regulations which outlines the Council's discretionary authority when considering an application for a permit:

29. Discretionary Powers of Authority

In considering an application for a permit [...], the Authority shall take into account the policies expressed in the Municipal Plan and any further [...] regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

2. Appellant's Presentation

The Appellants reviewed their appeal submission and outlined the definitions of Commercial General and Light Industry and highlighted "breaking up, demolishing" within the Commercial General definition versus "without hazard or intrusion" within the Light Industry definition. The Appellants stated that the operations of Exploits Discovery Corporation is a growing industry and that it should have not been classified as Light Industry. The Appellants outlined their concerns with respect to the separation of the two businesses, significant noise and dust coming from 131 Roe Avenue and operations being conducted in the accessory building with the garage door open. The Appellants explained that the operations at 131 Roe Avenue significantly impact their business and that they are unable to open windows within their restaurant and bakery

due to the dust, this dust being sucked into their restaurant through the exhaust fan and being adversely impacted by the constant noise from the sawing and truck traffic. The Appellants stated that Council should have considered the impacts on their existing business before issuing a permit. The Appellants explained that they run a popular restaurant and bakery with 22 employees with the dust and noise adversely impacting customers and staff. In addition, the slurry from the building has a smell like "rotting eggs".

The Appellants noted that the operations at 131 Roe Avenue are beyond what was authorized within the permit. The Appellants also stated that the operations continuing at 131 Roe Avenue despite the Appeal being filed on June 1, 2021.

3. Authority's Presentation

The Town's solicitor, Meaghan McCaw, asserted that the Town acted within their discretion to permit a Light Industry use in the Commercial General zone. She noted that the appropriate notification was made to the public regarding the application. She stated that Council considered submissions and issued a permit with three conditions:

- o Screening on the common boundary between 131 and 135 Roe Avenue;
- o Sound dampening for any saw cutting activities to maintain audible limits within those specified in the Town of Gander nuisance regulations; and
- o Dust Control measures to mitigate disruption to adjacent properties

Ms. McCaw acknowledges the concerns from Mr. and Mrs. Abbott in relation to the nuisance and impacts on their business but assert that these are an issue for Town enforcement, not the Appeal Board.

The Town gave written notice to Exploits Discovery Corporation to cease operation within 131 Roe Avenue while the Appeal is being dealt with. Mr. Hefford, Town Clerk, spoke of enforcement challenges due to limited resources.

Board's Analysis

What is the matter being considered by the Board?

The matter being considered by the Board is whether the Town of Gander was appropriate in issuing a permit at 131 Roe Avenue to conduct a mineral exploration company

What legislation did the Board consider?

The Board considered the *Urban and Rural Planning Act, 2000* and the *Town of Gander Development Regulations*. In particular, the following sections from the Town's development regulations:

29. Discretionary Powers of Authority

In considering an application for a permit [...], the Authority shall take into account the policies expressed in the Municipal Plan and any further [...] regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

51. Notice of Application

The Authority may [...] when the development proposed is listed as a discretionary use in Schedule C of the Regulations shall, at the expense of the applicant, give notice of an application for a permit [...] by public advertisement in a newspaper circulating in the area or by any other means deemed necessary [...] and allow a minimum period of 7 days for response.

110. Discretionary Uses

Subject to these Regulations, the uses that fall within the Discretionary Use Classes 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 51 and has considered any objections or representations which may have been received on the matter.

Did the Town act in accordance with its Development Regulations?

The Board determined that the Town acted in accordance with its Development Regulations. The Town gave notice of the application as required under Regulation 51, considered the written submissions and used its discretion to make a decision to approve the application with conditions under Regulation 29. The Board determined that: the Town issued the necessary Discretionary Notice in relation to the requested operations at 131 Roe Avenue; the Town used its discretionary authority to determine that the application was Light Industry and to attach three conditions to the permit.

Are there matters raised by the Appellant which are outside of the Board's jurisdiction?

The Appellants raised issues with respect to noise, dust and operations which were negatively impacting their restaurant and bakery business. The Board's powers under

section 42 (1) of the Act limits the Board's jurisdiction to an appeal with respect to an application. The Board does not have the authority to address these concerns raised by the Appellant which relate to enforcement.

Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the Authority made a discretionary decision to classify the application as a light industrial use. Light industry is a discretionary use in the Commercial General zone and Council advertised the application as required in section 51 of the Gander Development Regulations. Input was considered as required by section 110 of the Gander Development Regulations and Council issued a permit with conditions attached.

The Board does not have the authority under section 42 (11) to insert its discretion for that of the Council.

The Board determined that Council acted in accordance with the Gander Development Regulations.

Under the *Urban and Rural Planning Act, 2000*, Council has the authority to act if a development is, in their opinion, acting outside its permit use and may make an order to address such activity.

The Board under section 42 (10) of the *Urban and Rural Planning Act, 2000* has the authority to confirm, reverse or vary the decision being appealed.

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.

ORDER

The Board orders that the decision of the Town of Gander to issue a permit with conditions to Exploits Discovery Corporation to establish its operations at 131 Roe Avenue, Gander be confirmed.

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 Gander, Newfoundland and Labrador, this 16th day of September, 2021.



Bill Carter, Chair
Central Newfoundland Regional Appeal
Board



Charles Irving, Member
Central Newfoundland Regional Appeal
Board



David Oxford, Member
Central Newfoundland Regional Appeal
Board