

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Richard Freake **Appellant(s)**

AND Town of Gander **Respondent**

RESPECTING Order

File # 15-006-054-039

BOARD MEMBERS Stephen Burbridge, Chair
David Oxford, Member
Gerald Thompson, Member

DATE OF HEARING January 22, 2019

IN ATTENDANCE

Authority: Garry Brown, Town of Gander
Mark McWhirter, Town of Gander
Justin Collins, Town of Gander

Appellant(s): Richard Freake (absent)

Interested Party: Dave Soucey

Secretary to the Central Newfoundland Regional Appeal Board: Robert Cotter
Technical Advisor to the Central Newfoundland Regional Appeal Board: Christopher Hardy

DECISION

Facts/Background

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).

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.

On 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 unpleasing 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.

Gander Town Council on January 17, 2018 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

A hearing was scheduled to be heard on August 23, 2018. On the day of the scheduled hearing the Central Newfoundland Regional Appeal Board became aware by the appellant to postpone the hearing. A medical note was received by the Secretary on August 22, 2018 indicating Mr. Freake’s inability to attend; the note covered a period from August 14, 2018 to September 17, 2018. The Appeal Board granted the postponement request.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Occupancy and Maintenance Regulations under URPA

Matters presented to and considered by the Board

This hearing was originally scheduled to be held August, 2018. It was postponed and rescheduled until today's date at the request of Mr. Freake. Mr. Freake was sent notification of today's hearing from the contact information he provided in the submitted appeal documents. Specifically, a Notice of Hearing was sent via E-Mail on December 18, 2018; that was followed up by registered notices sent on December 18, 2018 and January 7, 2019. Due to the efforts made to contact Mr. Freake and his lack of communication with the Secretary, the Board made the decision to proceed with the hearing in Mr. Freake's absence.

1. Did the Town of Gander have the authority to issue a Demolition Order for 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 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 Removal Order for the subject property.

3. Is the building dilapidated to the extent where a demolition order is warranted?

Based on photographs, video, and verbal presentations made by the Town of Gander, it is apparent that the building has deteriorated to the extent where it is both a public hazard and nuisance. This was supported by a technical presentation made by the Town's building inspection.

This position is further substantiated by the verbal presentation of Mr. Soucey, an adjacent residential property owner. Mr. Soucey reports seeing parts of the structure blowing off during storms and has taken to warning nearby children to stay clear of the building out of concern for their wellbeing.

Based on this evidence, the Board agrees that a demolition order is warranted in this case.

Conclusion

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 287 Elizabeth Drive.

Therefore, the Board confirms the Respondent's decision to issue an Order to Mr. Freake to demolish his building located at 287 Elizabeth Drive.

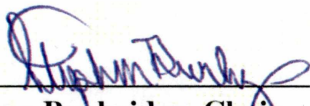
Order

Based on the information presented, the Board orders that the decision by the Town of Gander to issue a Demolition Order to the appellant on January 17, 2018, regarding the building at 287 Elizabeth Dr, be confirmed.

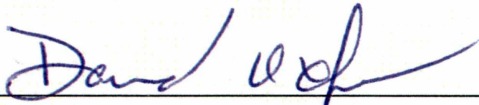
The Respondent and the Appellant(s) are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central Newfoundland 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 Grand Falls-Windsor, Newfoundland and Labrador, this 1 day of February, 2019



Stephen Burbridge, Chair
Central Newfoundland Regional Appeal Board



David Oxford, Member
Central Newfoundland Regional Appeal Board



Gerald Thompson, Member
Central Newfoundland Regional Appeal Board