

CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

IN THE MATTER of a development appeal between:

David LeBlanc

Appellant

- and -

The Municipal Corporation of the City of Yellowknife (Development Officer)

Respondent

Issued: April 4, 2023

File: 200-D1-H1-23

This is the decision of the City of Yellowknife Development Appeal Board ("Board") with respect to an appeal submitted pursuant to s. 62 of the *Community Planning and Development Act* ("Act").

Dates of Board Hearing:

March 14, 2023

Board Members in Attendance:

Mr. W.R. (Bill) Gault, Chairperson
Ms. Ann Peters,
Ms. Georgina Rolt,
Councillor Rob Warburton, and
Mr. Matthew Yap.

Mr. Cole Caljouw, Secretary

Appearances:

Mr. David LeBlanc

Appellant

Mr. Tatsuyuki Setta
Ms. Charlseay White

Manager, Planning and Lands, City of Yellowknife
Director, Planning and Development Department
City of Yellowknife

Ms. Kerry Thistle

Legal Counsel for the City of Yellowknife

Mr. Viktor Tarskii

Developer

Decision:

Written submissions of the appellant, developer, and Manager of Planning and Lands were reviewed by the Board following the Notice of Hearing being issued and prior to the hearing. Immediately upon commencing the hearing the Respondent City made a preliminary motion to dismiss the appeal for mootness. After hearing the motion of the City, the response from the Appellant, and no submissions to the motion from the Developer, the Board determined that it does not have the jurisdiction to hear an appeal respecting a development permit that has been withdrawn. As such, the appeal is dismissed.

The Board's reasons for this decision are as follows:

BACKGROUND

1. The role of the City of Yellowknife Development Appeal Board, as set out in the *Act*, is to review development decisions of the Development Officer made under a Zoning By-law. The Board has the power to confirm, reverse or vary the decision appealed from and may impose conditions or limitations that it considers appropriate in the circumstances.
2. On January 4, 2023, Mr. Viktor Tarskii submitted a variation request application to the Municipal Corporation of the City of Yellowknife's Development Officer to vary the front yard setback of a Multi-Unit Dwelling Fourplex at Lot 17, Block 309, Plan 4204 YELLOWKNIFE, within the municipal boundaries of the City of Yellowknife.
3. On February 1, 2023, the Development Officer issued a Notice of Decision granting the Developer Development Permit No. PL-2023-0001. The Notice of Decision approved variances to both front and rear yard setback requirements, but otherwise required the Developer to comply with the approved plan, drawings, and conditions outlined in the original Development Permit No. PL-2022-0047.
4. On February 13, 2023, the Appellant submitted his Notice of Appeal of Development Permit No. PL-2023-0001. Subsequently, a date was set for hearing the appeal for March 14, 2023.
5. On February 21, 2023, after the hearing was scheduled, the Board received a letter from Charley White, the Director of the Planning and Development Department of the City of Yellowknife. In the letter, Ms. White advised that, on February 20, 2023 the Developer requested the withdrawal and cancellation of application PL-2023-0001. Ms. White further advised "the application has been closed and no effective development permit will result from this application. As this application is withdrawn at the request of the applicant, no further decision on this application will be made by the Planning and Development Department."
6. Attached to the February 21, 2023 letter from Ms. White is the February 20, 2023 request

from the Developer to withdraw PL-2023-0001. In his letter, the Developer states he “decided to construct the building, in accordance with the plans, drawings and conditions outlined in the original and effective Development Permit PL-2022-0047,” which was issued April 6, 2022.

7. On March 1, 2023, the Appellant received a copy of the February 21, 2023 letter from Ms. White, and on March 5, 2023 the appellant provided his written submissions for the appeal hearing.

GROUND OF APPEAL

8. In the February 13, 2023 Notice of Appeal, the Appellant submitted the grounds for appeal, including:
 - i. no letter was issued to neighbours in the 30m vicinity to address the appellant’s concerns in March 2022;
 - ii. the developer is currently starting construction of the structure while the DP process is on-going with full knowledge that he is out of compliance;
 - iii. the developer was granted unprecedented access to the new building bylaw ruling which would allow for a 4-plex in a residential neighbourhood, and was able to circumvent the requirements of a rear setback definition and be granted relocation of crosswalk and proceeded to violate the ruling in 2 further instances;
 - iv. parking will not meet the requirements for water run-off;
 - v. the appellant had no ability to review the proposed plan;
 - vi. the appellant had no idea that a parking lot would be granted next to the appellant’s bedroom;
 - vii. the developer received a variance and proceeded to violate the setbacks in two other instances;
 - viii. the developer is making zero effort to improve the neighbourhood, in fact, each of his four builds in the area have gotten progressively less attractive and lowering property values;
 - ix. the developer made no attempt to communicate with neighbours regarding his plan or his lack of compliance with the set-backs; and
 - x. a letter from Convoy dated 05 May 2022 gave multiple opportunities for both the City and the Developer to address concerns that may result.

PRELIMINARY ISSUE

9. At the hearing, Kerry Thistle, counsel for the City, raised a preliminary motion questioning whether there is a development permit that requires a decision of the Board, and submitted that the hearing be dismissed for mootness.
10. The Board considered the parties written submissions, and heard representations from the Appellant, and the City regarding the preliminary issue. The Developer had no submissions on

this preliminary issue. The Board determined that prior to hearing the appeal on its merits, the Board must then consider whether there is a development permit that requires a decision of the Board.

11. The City's position is that no permit exists for the Board to consider. Citing section 5.1.4 of Zoning By-law, the City argues that the Board may only confirm, revoke or vary the decision of a Development Officer. The City further submits that with the variance application being withdrawn, Development Permit PL-2023-0001 is closed. As such, it is the City's position that the Board cannot deal with the merits of the appeal as the Board's jurisdiction with respect to the development has ceased due to withdrawal of the permit application. On this basis, the City asked that the appeal be dismissed.
12. The Appellant's submission with respect to the preliminary issue is that the City submission mentioned only one variance granted by PL-2023-0001, when there were two variances granted. When asked by the Board whether he had anything to add to his submissions respecting the City's motion to dismiss the appeal, the Appellant stated he had no further submissions.
13. The Board considered the submissions to the motion provided and determined Development Permit PL-2023-0001 was withdrawn after the date was set for the appeal hearing. The Board does not have the authority to deal with a permit that is no longer effective; therefore, the appeal is dismissed.
14. Pursuant to s. 70 of the *Act*, this decision of the Board is final and binding on all parties and is not subject to appeal.

Dated this 4th day of April, 2023.



Bill Gault, Chairperson



Cole Caljouw, Secretary