

**DECISION OF DEVELOPMENT APPEAL BOARD**

**September 29, 2020**

**File: 200-D1-H1-20**

**Appeal /200-D1-H1-20**

**Appellant:** Kevin Mindus

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* of the Northwest Territories.

A Notice was issued by the City Development Officer on June 26, 2020 to approve Development Permit No. PL-2019-0379 for a Multi-Family Dwelling on Lot 9, Block 203, Plan 4460 (4835 and 4841 School Draw Avenue). Mr. Milan Mrdjenovich, 5437 Nunavut Ltd., is the applicant for the Development Permit.

The decision of the Development Officer was subsequently appealed on July 7, 2020 by Kevin Mindus and a hearing date of August 5, 2020 at 7:00 p.m. was scheduled.

**Date of Board Hearing:** August 5, 2020

**Board Members in Attendance:** Mr. Terry Testart,  
Mr. Justin Adams,  
Mr. Bill Gault,  
Ms. Ann Peters,  
Mr. Matthew Yap, and  
Councillor Rommel Silverio.

Ms. Debbie Gillard, Secretary

**Appearances:** Ms. Sarah Bercu,  
Development Officer  
City of Yellowknife

Mr. Kevin Mindus  
Appellant

Ms. Megan Mindus  
Co-Appellant

Ms. Maureen Connolly  
Property Owner within 30m

Mr. Milan Mrdjenovich  
Developer

## Decision:

After reviewing the submission of the Appellant, Developer and Development Officer and hearing the evidence of the parties present at the Hearing, and after reviewing the written submissions filed with the Board; the Board, having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope, and intent of the General Plan and the Zoning By-law, determined that the decision of the Development Officer dated June 26, 2020 to approve Development Permit No. PL-2019-0379 be **varied by removing the site area density variance.**

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

1. The role of the Development Appeal Board, as set out in the *Community Planning and Development Act*, is to review development decisions of the Development Officer made under the 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. The property which is the subject of appeal is located in a "R3 – Residential Medium Density" Zone as defined in the Zoning By-law. Section 10.9 of Zoning By-law No. 4404 regulates the R3 – Residential Medium Density Zone development and the purpose of the Zone is to provide areas for medium density residential development with a mixture of residential buildings.
3. The Development Officer issued the Development Permit for two multi-family dwellings with a 50% variance to the Rear Yard Setback and a Site Area Density Variance from 125 sq. m / dwelling unit to 109.13 sq. m / dwelling unit.
4. The Appellant submitted that the grounds for their appeal included:
  - Blocked Sunlight;
  - Loss of Privacy;
  - Adequacy of Parking;
  - Traffic Generation;
  - Noise and Disturbance;
  - Loss of Trees;
  - Building Does Not Fit with Surrounding;
  - Loss of Property Value;
  - Chimney Smoke;
  - Contradicts Intensification Compatibility Points from the General Plan; and
  - There was a misapplication of the Zoning By-law when granting the Site Area Density Variance.
5. In this case, the Board determined that it is required to consider whether there was a misapplication of Zoning By-law No. 4404 (the "Zoning By-law") in the Development Officer's decision to issue the Development Permit for two multi-family dwellings with:

- a. a Rear Yard setback variance of 50%; and
  - b. a site area variance from 21 units to 24 units.
6. The Board heard evidence that the Development Officer granted a variance of 50% to the minimum 6m Rear Yard setback due to a rock outcrop that has caused an irregular lot line, thus presenting difficulties in meeting the zoning regulations for Rear Yard setbacks prescribed in the Zoning By-law. The Board finds that the variance granted by the Development Officer to be reasonable in these circumstances and confirms this decision.
7. The Board determines that the Zoning By-law provides a maximum site area density with a minimum of 125 sq. m per dwelling unit and that the site density variance was not granted correctly in accordance with the Zoning By-law.
8. The Development Officer provided a history of the subject lot noting that it had been for sale since 2012 by the registered owner at the time, the City of Yellowknife. In 2016 a different developer expressed interest in purchasing and developing the property, however, the developer stated that they would require an increase to the site area density. Administration sought City Council's approval to grant a site area variance allowing 26 units instead of 21. City Council approved this variance on August 22, 2016 by Council Motion #0196-16, which reads:

That Council approve a 19.4% variance to site area per dwelling unit (site density) at Lot 9, Block 203, Plan 4460 located at the southern end of School Draw Avenue to allow for the development of a 26-unit multi-family dwelling subject to conditions as required by the Development Officer at the Development Permit stage."
9. The Development Officer has included a Memorandum to Committee relating to the 2016 decision of Council as part of their written submission. The Memorandum to Committee states the issue as:

"Whether to promote the sale of the School Draw property (legally known as Lot 9, Block 203, Plan 4460) by allowing a variance to the minimum site area per dwelling unit (site density)."

The Memorandum to Committee also provides a description and drawings of a proposed development and indicates that the variance being requested is for 26 units, whereas the Zoning By-law permits 21 units.
10. Ultimately, that developer did not follow through on the purchase of the property and no development permit application was ever made. The subject property was subsequently sold to the current developer in 2019 and they submitted an application for a development permit for a different development in October, 2019.

11. The Development Officer argues that the variance to site density which was granted by Council in 2016 was to facilitate the sale of the land, and is not tied to a specific development or design. The Development Officer is of the view that the variance therefore runs with the land and is tied to this particular development permit application, or any other. However, the Development Officer failed to provide any authority to support this proposition.
12. The Appellant submitted that the development contemplated and presented to Council in 2016 is substantially different from the development being reviewed by the Board. At that time, Council relied on and considered drawings of a previous proposal in making their decision to grant a site area density variance. The Appellant submitted that it would be incredibly deceptive to say that Council, in 2016, authorized this particular development. The Appellant further argued that provisions of the Zoning By-law have not been met in approving the variance as s. 3.5(6) states "All variances shall be approved through a development permit." The Appellant is of the view that even if a development permit had been pulled, it has been almost four years since that variance was granted and therefore should be null and void as s. 3.9(7) of the Zoning By-law states "If a development authorized by an approved permit is not commenced within 12 months from the date issued... the development permit shall be void."
13. Section 3.5 of the Zoning By-law No. 4404 regulates Variance Authority as follows:

#### 3.5 Variance Authority

- (1) Upon application by the property owner or agent, the Development Officer may allow a variance in regard to site coverage; building height; front, side and rear yard setbacks; landscaping; parking; lot depth and width; floor area; and site area.
- (2) (Section 3.5(2) deleted by By-law No. 4612 March 28, 2011 )
- (3) Upon application by the property owner or agent, Council may consider allowing a variance in regard to site density provisions.
- (4) A variance may only be granted if, in the opinion of the Development Officer or Council:
  - (a) The proposed variance would not result in a development that will:
    - (i) unduly interfere with the amenities of the neighbourhood; or
    - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

- (b) The subject site has irregular lot lines or is a size and shape that presents challenges to development.
  - (c) The subject site has physical limitations relating to terrain, topography or grade that may create difficulties in meeting the zoning regulations as prescribed in this by-law.
  - (d) The subject site has natural features such as rock outcrops or vegetation that may create difficulties in meeting the zoning regulations as prescribed in this by-law.
  - (e) An error has occurred in the siting of a structure during construction.
  - (f) The proposed development conforms to the uses prescribed in this by-law.
- (5) In considering a variance, the Development Officer and Council shall:
- (a) Not grant a variance which would infringe on Airport zoning regulations.
  - (b) Have regard to the purpose and intent of the zone and the nature of developments on adjoining properties.
- (6) All variances shall be approved through a development permit and the Development Officer shall specify the nature of the variance in the development permit approval.
- (7) Variance approval is subject to the notice provisions under Section 3.9.
14. The Board concludes that it is incumbent on Council to consider specific development proposals when determining whether to authorize a site area density variance. The Board therefore rejects the Development Officer's argument that the 2016 variance approval carries with the land.
15. There was no evidence presented to the Board by the Development Officer that an application for the variance had been made with respect to this development application and that Council did not consider the variance request in light of this specific development, as required by the Zoning By-law.
16. The authority to grant a site area variance lies solely with City Council and not with a Development Officer. An owner of a property must, in accordance with the Zoning By-law, make application to City Council for a site area density variance. Council, when considering the application, must have regard for the impacts of a proposed variance on the amenities of the neighbourhood and whether the proposed variance will materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. That did not take place and as such the Board determines that the minimum site area density permitted for this development to be 125 sq. m per dwelling unit,

resulting in a maximum of 21 units, in accordance with the existing restrictions of the Zoning By-law.

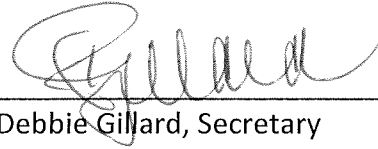
17. The Board considered and dismisses the remaining grounds of appeal.
18. The Development Appeal Board hereby **varies** the Decision of the Development Officer by removing the site area density variance from Development Permit No. PL-2019-0379.

Signed this 29 day of September, 2020.



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Terry Testart, Chairperson



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Debbie Gillard, Secretary