

CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

IN THE MATTER of a development appeal between:

Bryan Manson

Appellant

- and -

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

Respondent

Issued: December, 21, 2023

File: 200-D1-H2-23

This is the decision of the City of Yellowknife ("City") 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: November 7, 2023

Board Members in Attendance: Mr. Bill Gault, Chairperson
Ms. Ann Peters, and
Ms. Georgina Rolt.

Mr. Cole Caljouw, Secretary

Appearances:

Mr. Bryan Manson Appellant

Mr. Peter Harte In support of the Appellant

Mr. Ryan Plustwa In support of the Appellant

Mr. Andrew Treger Development Officer, City of Yellowknife
Mr. Tatsuyuki Setta Manager, Planning & Environment, City of Yellowknife
Mr. Rylund Johnson Legal Counsel for the City of Yellowknife

Mr. Hazem Kobaissi

Developer

Decision:

After reviewing the submissions of the Appellant, the Developer, and the Respondent, and on hearing the evidence of the persons present at the hearing, the Board, having due regard to the facts and circumstances, and to the purpose, scope, and intent of the Community Plan and the Zoning By-law, determined that it does not have the jurisdiction to hear the appeal as there is no valid ground of appeal. As such, the appeal is dismissed.

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

BACKGROUND

1. The role of the 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 August 15, 2023, the Developer submitted to the City an application to vary development permit PL-2021-0202 of a Multi-Unit Dwelling (4-Unit) at Lot 83, Block 308, Plan 4204 (7 Findlay Point).
3. On September 27, 2023, the Development Officer issued a Notice of Decision granting Development Permit No. PL-2022-0151 with four variances:
 - i. A reduction of the minimum rear yard setback from 6.0m to 3.50m;
 - ii. A reduction of the minimum side yard setback from 1.50m to 1.00m;
 - iii. An increase to the maximum building height from 12m to 14.50m; and
 - iv. A reduction of the minimum required number of parking spaces from 4 spaces to 3 spaces.
4. On October 10, 2023, the Appellant submitted a notice of appeal respecting the Development Officer's decision. Subsequently, a hearing date of November 7, 2023 was scheduled.
5. In City's written submission, the City raised a preliminary issue of whether the Development Appeal Board has the jurisdiction to hear the appeal on the basis that the matters raised by the Appellant do not meet the statutory criteria specified in section 62 of the *Act*.
6. At the hearing, the Board determined that it would first hear the preliminary issue of whether the appeal met the requirements of the *Act* and whether the Board had jurisdiction to hear the appeal. The Board subsequently determined that it would reserve its decision on the preliminary issue and proceed to hear arguments with respect to the substance of the appeal.

GROUNDS FOR APPEAL AND RELIEF SOUGHT

7. The Appellant submits that the grounds for appeal include:
 - i. the term “rear set-back” is not clearly defined in the Zoning By-law No. 5045;
 - ii. the term “density” is ambiguous and not clearly defined;
 - iii. that a variance granted by the City in 2012 is no longer valid; and
 - iv. the parking variance reducing parking spaces from four spaces to three spaces will have a detrimental effect on the neighborhood with regards to street parking.

8. The Appellant seeks the following relief:
 - i. that the City cease issuing all residential development permits for all R1 zones until the City amends the Zoning By-law to clearly define “density” and all of the “set-backs”.

PRELIMINARY ISSUE

9. The Board considered the parties’ written submissions, and heard representations from the Appellant and the City regarding the preliminary issue of whether the appeal meets the requirements of the *Act* and whether the Board had jurisdiction to hear the appeal. The Developer had no submissions on this preliminary issue.

10. The City’s position is that the Appellant has not raised a valid ground of appeal and, as such, the appeal should be dismissed. Specifically, the City argues that the basis of the appeal is that the Zoning Bylaw is incorrect, which is not an enumerated ground of appeal under section 62 of the *Act*.

11. The City relies on *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 S.C.R. 140 at paragraph 35 for the proposition that administrative tribunals and boards, as statutory creations, may exercise only those powers granted to them by their enabling statute and they “cannot trespass in areas where the legislature has not assigned them authority”.

12. Further, the City argues that the Board cannot grant the relief sought by the Appellant because there is no available remedy to the Board to order changes to definitions in the Zoning By-law or order the City to cease issuing further development permits.

13. In oral submissions, the Appellant requested to revise the remedy he is seeking to confine the relief sought to 7 Findlay Point, the development permit currently at issue, and either revoking or varying the variances on the development permit. The Appellant also requested the Board consider as substantive issues on appeal the matters of site coverage and elevation variance, though not raised in his original appeal.

14. With respect to the preliminary issue, the Appellant submits that he should have standing before the Development Appeal Board because he was consulted by the City's Development Officer prior to approval of the development permit at issue, he lives within 30 meters of the development, and he will be affected by the variances granted, especially the parking variance. The Appellant further stated that his desire to appear before the Board is apparent through his actions, including visiting the Development Officer, requesting an appeal through the Board, and completing submissions for the Board.
15. The *Community Planning and Development Act* was enacted in 2013 and outlines who, other than the applicant for a development permit, may appeal the issuance of a development permit. Section 62 states:
 62. (1) A person other than an applicant for a development permit may only appeal to the appeal board in respect of an approval of an application for a development permit on the grounds that the person is adversely affected and
 - (a) there was a misapplication of a zoning bylaw in the approval of the application;
 - (b) the proposed development contravenes the zoning bylaw, the community plan or an area development plan;
 - (c) the development permit relates to a use of land or a building that had been permitted at the discretion of a development authority;
 - (d) the application for the development permit had been approved on the basis that the specific use of land or the building was similar in character and purpose to another use that was included in a zoning bylaw for that zone;
 - (e) the application for the development permit had been approved under circumstances where the proposed development did not fully conform with a zoning bylaw; or
 - (f) the development permit relates to a non-conforming building or non-conforming use.
 - (2) For greater certainty, an appeal respecting the approval of an application for a development permit for a use specified in a zoning bylaw as a permitted use of land or a building, as referred to in subparagraph 14(1)(c)(i) or (ii) of this Act, may only be made if there is an alleged misapplication of the bylaw in the approval of the application.
 - (3) An appeal under subsection (1) must be commenced by providing a written notice of appeal to the appeal board within 14 days after the day the application for the development permit is approved.

16. The Act at Section 65, outlines what must be contained in the notice of appeal as follows:

- 65. (1) A notice of appeal to the appeal board must
 - (a) state the reasons for the appeal;
 - (b) summarize the supporting facts for each reason;
 - (c) indicate the relief sought; and
 - (d) if applicable, be submitted with the filing fee required by the zoning bylaw.

17. The Board finds that the legislature intended to limit the range of persons who may initiate an appeal, and the available grounds for appeal, with the enactment of the *Community Planning and Development Act*. The wording of the legislation is not discretionary and the notice of appeal must meet the statutory requirements of sections 62 and 65 of the Act.

18. The Board finds that the grounds of appeal set out in the Appellant’s notice of appeal are not statutory grounds for appeal as set out in section 62(1) of the Act. As such, the Board does not have the jurisdiction to hear the appeal and the appeal must be dismissed.

19. Pursuant to section 70 of the Act, this decision of the Board is final and binding on all parties and is not subject to appeal.

Dated this 21 day of December, 2023.



Bill Gault, Chairperson



Cole Caljouw, Secretary