

CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

In the matter of a development appeal between:

Edwin Shu
Appellant / Developer

-and-

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

Issued: July 20, 2026

Appeal File: 200-D1-H1-26

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*, SNWT 2011, c.22 ("Act").

Date of Board Hearing: July 16, 2026

Board Members in Attendance: Ann Peters, Chairperson
Chris Van Dyke
Geoff Oldfield
Rob Warburton, and
Matthew Yap.

Cole Caljouw, Secretary

Appearances:

Edwin Shu	Appellant Developer
Bassel Sleem	Respondent Development Officer
Scott Robertson	Member of the Public

Decision:

After reviewing the submissions of the Appellant and Respondent Development Officer, hearing the evidence of the parties presented, and having due regard to the facts and circumstances, the merits of the Appellant's case and to the purpose, scope, and intent of the Community Plan and the Zoning By-law, it is the decision of the Development Appeal Board to **REVERSE** the decision of the development officer to refuse Development Permit Application #2026-0013.

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

BACKGROUND

1. This Board is established by the City of Yellowknife for the purpose of reviewing development decisions of the development authority made under a Zoning By-law. Under section 69 of the Act,
 - a. *The appeal board may confirm, reverse or vary a decision appealed, and may impose conditions that it considers appropriate in the circumstances.*
 - b. *A decision of the appeal board must not conflict with a zoning bylaw, subdivision bylaw, community plan or area development plan.*
2. On January 23, 2026 the Appellant submitted Development Permit Application No. PLDEV-2026-0013 to the Development Officer of the City of Yellowknife for the development of a six-unit Multi-Unit Dwelling on Lot 77, Block 308, Plan 4204, municipally known as 2 Findlay Point, Yellowknife, Northwest Territories.
3. On June 15, 2026, the Development Officer issued a Notice of Decision refusing Development Permit Application No. PLDEV-2026-0013.
4. On June 19, 2026, the Appellant filed a Notice of Appeal with the Secretary of the Development Appeal Board appealing the Development Officer's decision. A hearing of the appeal was subsequently scheduled for July 16, 2026.

Grounds of Appeal

5. In the June 19, 2026 Notice of Appeal to this Board, the Appellant submitted the grounds for appeal, summarized as follows:
 - a. The Development Officer applied an incorrect legal standard to a Permitted Use application.
 - b. The Development Officer acknowledged technical parking compliance is irreconcilable with a parking-based refusal.
 - c. The variance refusal misapplies and incompletely applies Section 4.9 of Bylaw 5045.
 - d. Discretionary Use criteria were imported into the Section 4.9 variance assessment.
 - e. The section 10.1 purpose statement was used to impose standards not found in the operative provisions.
 - f. Public Works and Engineering identified no traffic or infrastructure concerns with the proposed development.
 - g. The appellant's binding conditions package was not addressed, and the decision exceeded the prescribed processing timeline.
 - h. The decision is inconsistent with a prior approval on the same street.
6. The Appellant seeks the following relief, summarized as:

- a. That the Board reverse the decision of the Development Officer refusing Development Permit Application PLDEV-2026-0013 and direct that the Development Permit be issued, including approval of the requested rear yard setback variance; or, in the alternative,
- b. That the Board vary the decision of the Development Officer by directing that the Development Permit be issued with any conditions the Board considers appropriate, which may include revisions to the site plan to achieve full compliance with the setback requirements of Zoning By-law No. 5045 or changes to the number of on-site parking spaces provided.

Summary of Appellant's Evidence Presented

7. At the hearing the Appellant gave evidence, which can be summarized as follows:

- The Development Officer had, and continues to, acknowledge that the proposed development complied with the requirements of Zoning By-law No. 5045 in all material respects, with the sole exception being the requested rear yard setback variance of approximately 528 mm for only one corner of the proposed building.
- The proposed development satisfies all applicable development requirements under Zoning By-law No. 5045, including those relating to permitted use of the land, building height, density, lot coverage, unit count, parking, and required setbacks, except for one. The only variance sought was a rear yard setback variance of approximately 528 mm, which was required to orient the building parallel to the front of the lot and to accommodate the site's irregular geometry, bedrock conditions, and topography.
- Comparable setback variances had been approved by the Development Authority for other properties in the Niven neighbourhood, including on Findlay Point, in circumstances involving similar site constraints.
- An alternative site plan was presented showing that the development could proceed without the requested variance if the building were reoriented to demonstrate the requested variance was not necessary to increase density but to achieve a more practical and site-responsive design in light of the physical characteristics of the lot.
- The Appellant provided for car share arrangements to address the issue of parking and reliance on cars for residents of the development, in keeping with the City's objectives to encourage public transportation and car sharing.
- The proposed six-unit multi-unit building is consistent with the existing and evolving character of the neighbourhood, citing nearby multi-unit residential developments on Findlay Point, Niven Drive, and the Community Plan's objective of supporting a mix of residential housing types and densities within the Niven area.
- The site plan and the building design was adjusted to address several neighbourhood concerns, and discussed at a neighbourhood meeting convened by the Appellant.

Summary of Respondent's Evidence Presented

8. The Respondent gave oral evidence during the hearing, which can be summarized as follows:

- The Respondent acknowledged that, apart from the requested rear yard setback variance, the proposed development complies with the requirements of Zoning By-law No. 5045, including those relating to permitted use, parking, 6-unit multi-unit building, height, lot coverage, and all setbacks except the requested 528 mm rear setback variance.
- The Respondent stated that the Development Permit application was refused not because of any non-compliance with the use or any specific minimum development standards of the Zoning By-law No. 5045, but due to concerns regarding the cumulative impact of the proposed development on the Findlay Point cul-de-sac and surrounding area, which in the Respondent's opinion would cause an overall negative impact on the community.
- The Respondent submitted that the public consultation process demonstrated substantial concern from neighbouring residents and supported the conclusion that the proposed development would have an overall adverse impact on the character, functionality, and livability of the Findlay Point area.

9. Scott Robertson, a resident of Findlay Point, provided evidence at the hearing, which may be summarized as follows:

- Mr. Robertson expressed concern that the proposed six-unit development would further increase the number of dwelling units and residents within the Findlay Point cul-de-sac, which he viewed as already highly developed.
- Mr. Robertson raised concerns regarding the scale and massing of the proposed building, also holding the opinion that the building itself was attractive, but not suitable because of the existing intensity of residential development on Findlay Point.
- Mr. Robertson expressed concern about the overall intensity of development in the area, noting that, in his view, the concentration of multi-unit residential buildings on Findlay Point exceeded that of comparable cul-de-sacs elsewhere in the Niven neighbourhood such as Stirling Court, Lyons Court, and McMahon Court.
- Mr. Robertson further submitted that the amount of on-site parking proposed was insufficient to serve the anticipated parking demand generated by the development and raised concerns that this would result in increased on-street parking and related traffic and safety issues within the cul-de-sac.

10. Mr. Ryan Plustwa, also a resident of Findlay Point, did not appear at the hearing, but made a written submission which may be summarized as follows:

- Municipal enforcement actions have been inadequate to resolve serious safety issues that have been created because of the extreme densification in the cul-de-sac resulting in an increase in traffic and parking demand
- Approving the development of a six unit dwelling will add more problems, and not take into consideration the impacts on those already living on the cul-de-sac.

- The proposed development will significantly impact his property value, reduce views and sunlight, and increase noise pollution
- A duplex building should be the maximum occupancy of Lot 77.

Analysis

11. The Board considered all of the evidence before it, both oral and written, and appreciated the very thorough, professional, and respectful submissions of each of the presenters.
12. When coming to a decision following an appeal hearing, the role of the Board is not to determine whether it would have made the same decision as the Development Officer, but rather to determine whether the proposed development complies with the applicable statutory and planning framework and whether the requested variance satisfies the applicable criteria in the Zoning By-law No. 5045.
13. The Board notes that, when Zoning By-law No. 5045 was adopted by City Council, the uses, forms and intensities of development permitted within the R1 Zone were determined to be consistent with and compatible with the Niven Residential planning and development objectives set out in section 4.5 of the Community Plan, and the Niven Lake Development Scheme. Specifically, these planning instruments, adopted as By-laws by City Council, contemplate a mix of residential types and densities in the area subject to compliance with applicable development regulations.
14. Upon review of all the evidence, the Board finds that, with the exception of the rear yard setback, the proposed development complies with the applicable regulations of Zoning By-law No. 5045, as set out in sections 7, 8, and 10, governing site planning, vehicular access and on-site traffic, landscaping, parking, use, building height, lot coverage, front and side yard setbacks, projections into yards setbacks and distances between primary and accessory buildings and outdoor wood pellet boilers. This is not in dispute by either party.
15. With respect to the requested rear yard setback variance at issue, the Board accepts the evidence of both the Appellant and the Respondent that an encroachment of approximately 528 mm into the rear yard setback occurs at only one corner of the proposed building and arises primarily from the irregular shape and topography of Lot 77. The Board also accepts the evidence of the Appellant that the building could be realigned to eliminate the need for the variance entirely, which supports the conclusion that the variance is not required to increase the density or intensity of the proposed development. The Board also accepts the evidence that similar variances have been granted in comparable circumstances.
16. The Board finds that the requested variance satisfies the evaluation criteria set out in Section 4.9 for the following reasons:
 - a. the variance is very minor in nature;
 - b. the variance will not unduly interfere with neighbourhood amenities;
 - c. the variance will not materially interfere with neighbouring properties;
 - d. the variance is desirable for the appropriate development of the parcel;
 - e. the variance conforms with the intent of the Community Plan; and
 - f. the variance conforms with the intent of the Zoning By-law.

17. The Board then considered whether the requested variance of 528 mm to the rear yard setback, as distinct from the proposed development generally, would give rise to the negative impacts alleged by neighbouring residents. The evidence before the Board did not establish that the minor rear yard encroachment itself would materially increase traffic, parking demand, building intensity, or any other neighbourhood impact when compared with a fully setback-compliant version of the same permitted use. Instead, the Board accepted the evidence of the Appellant that granting the variance would improve the development as opposed to the development occurring without the variance being given.
18. The Board is therefore concludes that the variance should be approved.
19. With respect to concerns about the amount of on-site parking, the Board finds that the proposed development complies with the parking requirements of section 7.8 of Zoning By-law No. 5045 through the permissible provision of a car-share vehicle and associated parking space in accordance with section 7.8.10 of the By-law. In reaching this conclusion, the Board has considered the following:
 - a. City Council, through the adoption of Zoning By-law No. 5045, expressly contemplated and authorized car-share parking arrangements within the R1 Zone as an alternative to providing on-site parking in accordance with the requirements of section 7.8.4;
 - b. The parking standards contained in the Zoning By-law No. 5045 represent a policy determination by City Council of the level of parking that is appropriate to serve development within the neighbourhood, and to meet goals described in section 5.2 of the Community Plan to shift more transportation trips from private motor vehicles to more sustainable and more space efficient modes of transportation such as walking, cycling, and public transit.; and
 - c. The Appellant met the required parking and car-share requirements in their development application.
20. With respect to the reasons given in the Planning Report for refusing the development permit application, the Respondent submitted that it was a combination of considerations that led him to believe that the capacity of the street had been reached, and the cumulative effects of development within the Findlay Point area justified refusal of the application when the proposal was considered in its broader neighbourhood context. Based on the evidence presented, the Board finds that the concerns are primarily related to the parking capacity and traffic in the surrounding street network that would be affected by the proposed development, due to the number of dwelling units and potential number of occupants.
21. The Board accepts that the concerns of the Development Officer related to cumulative development impacts are genuinely and professionally held. It is clear that this development will increase the density and intensity of development on Findlay Point. The Board also accepts that cumulative neighbourhood impacts may constitute a legitimate planning consideration. However, the Board found no policy direction in the Community Plan or the Zoning By-law adopted by City Council requiring cumulative effects to be taken into consideration, nor any thresholds or limits as are typically defined in land use plans that

contain provisions for cumulative effects. Instead, the Board finds that the concerns of the Development Officer effectively challenge the density and form of development expressly contemplated and permitted by the Community Plan and Zoning By-law.

22. In the absence of a demonstrated by-law non-compliance, or objective evidence establishing impacts materially greater than those anticipated by Council when adopting the applicable planning framework, the Board assigns limited weight to cumulative impacts. Had the Board been presented with evidence establishing acceptable impact limits or thresholds in the legal planning framework, the analysis may have been different. On the evidence before it, however, the Board is not satisfied that this permitted development, subject to the conditions and standards of the By-law, would create impacts beyond those contemplated and authorized by the Community Plan and Zoning By-law.
23. The Board recognizes that the concerns of residents of Findlay Point are sincerely held and understandable. However, public concern, while relevant, is not by itself determinative. The Board must decide the appeal based upon the Act, the Community Plan, and the Zoning By-law. The evidence did not establish that the proposed development would generate impacts beyond those reasonably contemplated by those planning instruments.
24. Given the Board's findings respecting compliance with the Community Plan, Zoning By-law, and variance criteria, it is unnecessary to determine whether previous approvals constitute directly comparable precedents.
25. Having found that the application complies with the requirements of the By-law, subject to the variance granted herein, the Board concludes that the Development Permit ought to have been approved.

Disposition

26. The Board hereby REVERSES the decision of the Development Officer to refuse Development Permit Application #2026-0013.
27. The application for a development permit for a multi-unit dwelling, including the request for a variance to the minimum rear yard setback, on Lot 77 Block 308 Plan 4204 is therefore **APPROVED** in substantially the final form that was submitted to the Development Officer.
28. 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 20 day of July, 2026.

Ann Peters, Chairperson,

Cole Caljouw, Secretary