

CITY OF YELLOWKNIFE DEVELOPMENT APPEAL BOARD

IN THE MATTER of a development appeal between:

Catherine Seale and John Guy

Appellant

- and -

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

Respondent

Issued: August 8, 2024

File: 200-D-H2-24

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 15, 2024

Board Members in Attendance: Ms. Ann Peters, Chairperson
Mr. Eric Cameron,
Mr. Geoffrey Oldfield,
Mr. Chris Van Dyke, and
Councillor Rob Warburton.

Mr. Cole Caljouw, Secretary

Appearances:

Mr. John Guy
Ms. Catherine Seale

Appellants

Mr. Andrew Treger
Mr. Tatsuyuki Setta
Mr. Rylund Johnson

Development Officer, City of Yellowknife
Manager, Planning & Environment, City of Yellowknife
Legal Counsel for the City of Yellowknife

Mr. Micheal Dawodu
Mr. Solomon Bucknor

Developer
Executive Director, Nunik Care Services Ltd

Decision:

After reviewing the written submissions and hearing the evidence of the parties present at the hearing, and having due regard to the facts and circumstances, the merits of the Appellants' 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 CONFIRM the Development Officer's decision to approve the issuance of Development Permit No. PL-2024-0004.**

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

BACKGROUND

1. The Board is established for the purpose of reviewing development decisions of the development authority made under a Zoning By-law. Under section 69 of the Act,
 - (1) *The appeal board may confirm, reverse or vary a decision appealed, and may impose conditions that it considers appropriate in the circumstances.*
 - (2) *A decision of the appeal board must not conflict with a zoning bylaw, subdivision bylaw, community plan or area development plan.*
2. On January 12, 2024, the Developer submitted a development application to the City of Yellowknife's ("City") Development Officer for a Change of Use from an existing Single Detached Dwelling to a Special Care Residence ("Proposed Development") at Lot 31, Block 150, Plan 863 YELLOWKNIFE (56 Rycon Drive) within the municipal boundaries of the City of Yellowknife. No external changes to the existing structures are requested as part of the Proposed Development. The subject property is located in a RC-1 zone.
3. On June 4, 2024, the Development Officer approved PL-2024-0004 for a Change of Use at 56 Rycon Drive from a Single Detached Dwelling to a Special Care Residence. The application was approved with the following conditions:
 - a. The development shall comply with the approved and stamped drawing for PL-2024-0004 and with all By-laws in effect for the City of Yellowknife;
 - b. The minimum Front Yard setback has been decreased from 6.0m to 5.79m; and
 - c. The minimum Side Yard setback has been decreased from 1.50m to 0.86m.
4. On June 18, 2024, the Appellants submitted a notice of appeal respecting the Development Officer's decision. Subsequently, a hearing date of July 15, 2024 was scheduled.

GROUPS OF APPEAL

5. The Appellants submit the grounds for appeal include three different misapplications of Zoning By-law No. 5045 (the "Zoning By-law"):
 - i. the Zoning By-law was not properly applied in the application of the front yard setback requirement and granting of the front yard setback variance;
 - ii. the Zoning By-law was misapplied in the calculation and determination of the size and number of parking spaces on the approved site plan that was attached to the decision; and
 - iii. the Zoning By-law was not properly applied in the posting and maintaining the notice of decision.

6. The Appellants seek the following relief:
 - i. the decision respecting development permit PL-2024-0004 be reversed;
 - ii. the Zoning By-law be revised to clarify the definition of "special care residence" and describe the types and levels of care permitted in a "special care residence";
 - iii. the City standard be updated to define the occupancy standards, building requirements (construction standards, electrical, mechanical, and ventilation requirements, and barrier-free requirements) for special care facilities for the associated types and levels of care; and
 - iv. This project be deferred until such time as City by-laws and standards, and territorial government standards and requirements are updated to include:
 - a. proper definition of a "special care residence" including the scope and limitations on types of care,
 - b. care-specific building code and occupancy requirements including life safety and fire protection requirements, barrier-free requirements, room sizing associated with the various types of care, heating ventilation and cooling requirements and any other relevant requirements prescribed by the various authorities having jurisdiction over "special residential care" of vulnerable populations.

ISSUE 1 - MISAPPLICATION OF THE ZONING BY-LAW #1: DIMENSIONS OF VARIANCE GRANTED

7. With respect to the first ground of appeal, the Appellants allege there are numerical errors in the application drawings that raise doubt the variance could be completed in a manner that satisfies the Zoning By-law requirements. Specifically, the Appellants allege there are inaccuracies in the Developer's drawing and uncertainty about the actual location of the building on the property. Such factors, in conjunction with the lack of current legal survey in the City files, the Appellant

argues, lead to a misapplication of the Zoning By-law in the approval of the Development Permit.

8. Regarding the alleged inaccuracies in the Developer's drawings, the Appellant's argue the drawing indicates a front yard setback of 5.79m, while the dimensions provided elsewhere in the same drawings indicated a front yard setback of 4.73m. Furthermore, the Appellants conducted their own measurements of the site and allege the setback measured from the garage indicates a 1.2m deviation from the figures on the stamped drawings supporting the application. The Appellants offered no evidence as to how these alleged discrepancies in setback calculations adversely affects the Appellants.
9. In response to the Appellants' allegations, the Board heard evidence from the Development Officer that the Proposed Development complies with all applicable regulations of the Zoning By-law with the exception of two variances needed for the existing building: a reduction of the minimum front yard setback from 6.00m to 5.79m, and a reduction of the minimum side yard setback from 1.50m to 0.86m. According to the Development Officer, these two variances are required as part of the development permit application because there are existing non-conformities related to the attached garage/sundeck. These non-conformities were created at the time of construction in 1983 and are required to be addressed and legitimized as part of this development permit application approval process.
10. Specifically with regard to the surveyed lot dimensions, the Development Officer confirmed the site plan provides lot lines with dimensions copied from a legal plan of survey, as required by the Zoning By-law. On examination of the surveyed lot dimensions, the Development Officer confirmed the front yard setback of 5.79m and 0.86m side yard setback and notified the Developer of same. The Developer subsequently submitted a variance applications for the two setbacks, which the Development Officer approved.
11. The Development Officer also gave evidence that it is the Developer's responsibility to ensure the accuracy of the application information, including the site drawings. He also confirmed that even if the measurements submitted as part of the application were slightly different, as the Appellants allege, the Development Officer's decision to approve the variances and permit would not change. This is because the building has existed on site for over 30 years and the development permit at issue does not propose to alter or expand the building.
12. The Developer submits there is nowhere on the approved plan that indicates a front yard setback of 4.73m and argue the Appellants appear to be relying on information not included in the submitted plans. Further, the Developer argues that the Appellants' visual observations cannot be substituted for measurements taken by an architectural firm.
13. The Board considered the evidence and submissions provided are not persuaded that the alleged differences in potential variance measurements result in a misapplication of the Zoning By-law in the approval of the application. According to the evaluation criteria for a variance at section 4.9.1 of the Zoning By-law, a Development Officer may grant a variance "if the proposed variance will 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 the neighbouring parcels of land.” The Appellants provided no evidence as to how the small difference in potential variance measurements will unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment or value of the neighbouring properties. Therefore, the Board dismisses this ground of appeal.

ISSUE 2 – MISAPPLICATION OF THE ZONING BY-LAW #2 - PARKING

14. The Appellant alleges numerous misapplications of the Zoning By-law related to parking on the approved site plan. First, the Appellants allege the parking space in the existing garage is not included in the calculation of the required parking spaces. The Appellants’ argument appears to be that if the garage parking space is not included as parking for the Proposed Development, the intended use of the garage remains unknown, resulting in incomplete information regarding the change of use application. As such, the Appellants argue the Zoning By-law has been misapplied and the decision to approve the Proposed Development should be reversed.
15. The Appellants also argue that the proposed parking space exceeds the width required under the Zoning By-law. Further, they raise concerns about the Proposed Development’s required bicycle parking being improperly used for motorcycle parking. Finally, the Appellants raise concerns that the bicycle parking spaces will be used for motorcycle parking absent enforcement by the City.
16. In response, the Development Officer submits the Zoning By-law requires Special Care Residences to provide, at minimum, one parking space per five dwelling units. The Zoning By-law does not regulate the maximum number of parking spaces in the RC-1 zone. Therefore, as the Proposed Development includes one dwelling unit, the minimum parking requirement is one parking space.
17. With respect to bicycle parking space, the Development Officer submits that section 7.8.13(b)(iii) of the Zoning By-law requires Special Care Residences to provide one bicycle parking space per three rooms. Furthermore, section 7.8.13(d)(iv) of the Zoning By-law requires bicycle parking be placed on level asphalt or concrete base to which it can be secured. As the Proposed Development includes four bedrooms, the two approved bicycle parking spaces are sufficient to meet the requirements of the Zoning By-law.
18. The Developer argues the parking plan for the Proposed Development meets the minimum requirements under the Zoning By-law and City of Yellowknife Design Standards manual (Table 8-1) and asks that this ground of appeal be dismissed on that basis.
19. The Board finds that Proposed Development meets the Zoning By-law’s minimum vehicle and bicycle parking requirements. The Board further finds that enforcement issues raised by the Appellants are beyond the Board’s scope of authority. Therefore, this ground of appeal is dismissed.

ISSUE 3 - MISAPPLICATION OF THE ZONING BY-LAW #3: NOTICE OF DECISION

20. The Appellants allege the City misapplied the Zoning By-law by failing to ensure that the public posting was (i) legible and accurate in communicating the decision, and (ii) maintained and available to be publicly viewed for the duration of the required notice period.
21. The Appellants submitted evidence the notice of decision stated the side yard setback was increased to 8.86m, when the actual decision was to decrease the side yard setback to 0.86m. This error in the notice of decision, the Appellants argue, fails to meet the purpose and intent of the City's obligation to give public notice of development decisions.
22. The Appellants further submit that the drawing of the approved site plan on the notice of decision was too small, making it impossible to review the approved setbacks. The Appellants also submit the City failed to keep the public notice of decision accessible and viewable, having observed that on approximately June 15, 2024 the notice of decision fell down, possibly as a result of wind. According to the Appellants, the accessibility of the notice of decision sign is critical because the approved drawings and planning report were not available on the City's Planning and Development Department's website.
23. In response, the Development Officer agrees there was a typographical error on the notice of decision post regarding the side yard setback. The Development Officer also provided evidence that a letter mailed to neighbours within 30m of the Proposed Development confirmed the correct measurements for the side yard setback variance. The Development Officer was not made aware that the notice of decision sign had fallen down. All materials posted on site and mailed to the neighbours advised that additional information and materials were available for viewing at City Hall or by contacting the Development Officer. In fact, in the Appellants' written submissions, they provided copies of emails between themselves and the Development Officer wherein the Development Officer provides the Appellants with answers to their questions about the Proposed Development, including sending the Appellants the stamped plans and planning justification report.
24. Section 4.11.4 of the Zoning By-law states that the City must conspicuously post a notice of decision on the prescribed form on the site for which the application has been approved. The City met that requirement. While the error in side yard variance on the notice of decision posted is unfortunate, there was accurate information disseminated to the neighbourhood and additional information was available through the City on request. The Board finds that there was no misapplication of the Zoning By-law in the approval of the development permit application by virtue of the typographical error on the posted notice of decision. Therefore, this ground of appeal is dismissed.

DISPOSITION

25. The Development Appeal Board hereby **CONFIRM** the Development Officer's decision to approve the issuance of the Development Permit No. PL-2024-0004.

26. 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 8th day of August, 2024.



Ann Peters, Chairperson



Cole Caljouw, Secretary