

DECISION OF DEVELOPMENT APPEAL BOARD

June 25, 2015

File: 200-D1-H2-15

Appeal /02

Appellants: Mr. Bryan Manson
26 – 117 Moyle Drive
Yellowknife, NT X1A 0B6

Ms. Candace Cousineau
6 Stirling Court
Yellowknife, NT X1A 0B2

This is the decision of the City of Yellowknife Development Appeal Board with respect to an appeal submitted pursuant to Section 62 of the *Community Planning and Development Act* of the Northwest Territories.

A Notice was issued by the City Development Officer on May 8, 2015 to approve a Development Permit (No. PL-2015-0104) for the development of a 19-Unit Multi-family public housing building on Lot 12, Block 309 Plan 4204 (120 Moyle Drive).

The decision of the Development Officer was subsequently appealed on May 22, 2015 by Mr. Bryan Manson and Ms. Candace Cousineau.

Date of Board Hearing: June 18, 2015

Board Members in Attendance: Ms. Margaret Kralt,
Mr. Tim Nichols, and
Councillor Niels Konge.

Ms. Debbie Gillard, Secretary

Appearances: Mr. Jacob Larsen
Development Officer
City of Yellowknife

Mr. Bryan Manson
Appellant

Ms. Deana Twissell
In support of the Appellants

Ms. Mary Carol Miller
In support of the Appellants

Mr. Tony Whitford
In support of the Appellants

Ms. Amanda Peterson
In support of the Appellants

Mr. Larry Jones
Developer

Mr. Rod Kirkwood
In support of the Developer

Decision:

After reviewing the submissions of the Appellants and hearing the evidence of other 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 Appellants' cases 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 May 8, 2015 to approve Development Permit No. PL-2015-0104 be **confirmed**.

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 Development Appeal 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. In this case, the Development Appeal Board is required to consider whether there was a misapplication of the Zoning By-law in the Development Officer's decision to issue the Development Permit with a height variance.

2. The Board heard and reviewed Appellant Manson's evidence and submissions respecting the development. Mr. Manson raised issues respecting Public Notice of the development; the height variance and the potential loss of sunlight on his properties; the lack of a traffic impact study; and that the current Zoning By-law was made under the former Planning Act may no longer be enforceable under the new *Community Planning and Development Act*.
3. The Board reviewed Appellant Cousineau's submissions respecting the development. Ms. Cousineau raised issues respecting parking; traffic and shadow casting.
4. After hearing representations from the Appellants, Developer and the Development Officer, the Board is satisfied that the property which is the subject of the appeal is located in the "R3" – Residential Medium Density Zone ("R3" hereafter) as defined by Zoning By-law No. 4404, as amended (the "Zoning By-law"). Multi-family Dwellings are a permitted use within the R3 Zone.
5. Section 80(2)(d) of the *Community Planning and Development Act* states:

"a zoning bylaw made under the former Act remains in force and is deemed to be made under this Act, to the extent that it is not expressly inconsistent with this Act, until it is repealed or a new zoning bylaw is made in its stead;"

As such, the Board concludes that Zoning By-law No. 4404 is of full force and effect.

6. The Board heard evidence that on May 8, 2015 the Development Officer posted a Notice of Decision on site pursuant to s. 3.9 of the Zoning By-law. In addition, the Development Officer placed an ad in the May 15, 2015 issue of *Capital Update*, the City's weekly newsletter, which is not a requirement of the Zoning By-law. The Board is satisfied that the Notice requirement, as set out in the Zoning By-law, has been met.
7. The Board heard evidence that the Development Officer approved an 8% height variance above the 15 meter maximum for this zone, pursuant to s.3.5(4) of the Zoning By-law due to the site limitations of the subject lot as the site slopes from its highest point of 200.5 m about sea level along Moyle Drive (northwest corner) to its lowest point of 190.5 m above sea level on the flank abutting Moyle Park (southwest corner). Section 3.5 of the Zoning By-law states:

3.5(4) A variance may only be granted if, in the opinion of the Development

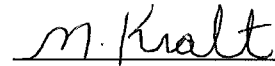
Officer or Council:

- (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 neighboring 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.
8. Pursuant to s.3.9(5) of the Zoning By-law, the Development Officer was not required to notify individual adjacent property owners via regular mail as the variance was not in excess of 10%.
9. The Board heard uncontested evidence that if the Developer were to fill the lot and raise the finished grade at the back to the same level as the front, the building height would be lower than 15 m and no variance would be required. It was further noted that there are no limitations on the Developer filling the lot in this manner; however, the Developer chose to minimally disturb the site.
10. The Board heard evidence that the Development Officer took into consideration a shadow study that was conducted on a separate development, the Shaganappy and Ptarmigan Apartments Redevelopment (hereinafter "Shaganappy"). The Development

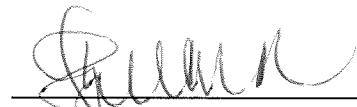
Officer noted that the height of these buildings is similar, however, the Shaganappy elevation was greater (a 3 m rise) and the distance between properties was less (31 m). The Development Officer noted that the Shaganappy shadow study showed that the level of shadow caused by the construction of these buildings would not impose excessive shadowing on adjacent properties. Given that this development has a lesser elevation, and the distance between the adjacent buildings is greater, the Development Officer determined that a shadow study for this development was not required.

11. The Board concludes that, based on the evidence presented, the Development Officer acted within his authority to grant the 8% variance. The Board is satisfied that there was no misapplication of the by-law and that the Development Officer complied with the applicable requirements under the Zoning By-law when authorizing the height variance. The Board further concludes that the Development Officer's finding that the variance would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of adjacent properties was reasonable.
12. The Development Appeal Board hereby **confirms** the Decision of the Development Officer to approve the issuance of Development Permit #PL-2015-0104.

Signed this 25th day of June, 2015.



Margaret Kralt, Chairperson



Debbie Gillard, Secretary