

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: C. Mah
PANEL MEMBER: K. Howley
PANEL MEMBER: G. Paradis

BETWEEN:

NICOLE WIWAT

Appellant

and

CITY OF RED DEER
Represented by Debbie Hill, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board (“SDAB”) revokes the decision of the Development Officer which refused the Appellant’s application for a Development Permit for a Discretionary Use of a Home Occupation, to operate a hair salon, on the lands zoned R1 Residential (Low Density) District, located at 4223 – 35 Street, Red Deer, Alberta and legally described as Plan 5082MC, Block 13, Lot 99 (the “Proposed Site”). The application is conditionally approved with the following conditions:

1. A Development Permit shall not be deemed completed based on this approval until all conditions except those of a continuing nature, have been fulfilled to the satisfaction of the Development Officer.
2. All Development must conform to the conditions of this Development Permit and the Approved Plans and any revisions thereto as required pursuant to this Approval. Any revisions to the Approved Plans must be approved by the Development Authority.
3. The Applicant shall repair or reinstate, or pay for the repair or reinstatement, to original condition, any public property, street furniture, curbing, boulevard landscaping and tree planting or any other property owned by the City which is damaged, destroyed or otherwise harmed by development or construction on the site. Repairs shall be done to the satisfaction of The City of Red Deer. In the event that the City undertakes the repairs the Applicant shall pay the costs incurred by the City within 30 days of being invoiced for such costs.
4. Client visits to the Proposed Site occupied by the Home Occupation shall be limited to the hours of 8:30 a.m. to 7:00 p.m. (last client to be finished by 7:00 p.m.) from Monday to Friday.

5. There shall be no more than three (3) client visits per day, to the Proposed Site occupied by the Home Occupation and a maximum of fifteen (15) client visits per week to the Site.
6. There shall be no more than one (1) client on the Proposed Site occupied by the Home Occupation at any given time.
7. There shall be no clients on the Proposed Site occupied by the Home Occupation outside the hours of operation for the Home Occupation.
8. Client visits shall be by appointment only.

A detailed summary of the decision is provided herein.

JURISDICTION AND ROLE OF THE BOARD:

1. The Subdivision and Development Appeal Board (SDAB) is governed by the Municipal Government Act, RSA 2000, c M-26 (the MGA) as amended. Planning and Development is addressed in Part 17 of the MGA, and also in the Subdivision and Development Regulation, Alta Reg 43/2002 (the SDR).
2. The SDAB is established by The City of Red Deer, By-law No. 3619/2019, *Appeal Boards Bylaw* (April 1, 2019). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under the MGA and The City of Red Deer, Bylaw No. 3357/2006, *Land Use Bylaw* (August 13, 2006) (the LUB).
3. None of the parties had any objection to the constitution of the SDAB. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the SDAB to decide.

BACKGROUND:

5. All Home Occupations in the City of Red Deer are subject to the regulations found in Section 4.7(8) and Section 4.7(9.6) of the LUB. A Home Occupation, with client visits to the Site, in a R1 zone (Residential – Low Density) is listed as discretionary use in the LUB.
6. On May 14, 2021, the Development Officer refused the application for a Development Permit for the following reason:
 - i. A Secondary Suite and a Discretionary Use Home Occupation are not allowed in the same Detached Dwelling unit.
7. The Appellant filed an appeal of this decision to the SDAB on June 1, 2021.
8. The SDAB entered the exhibits listed in Appendix “A” into the record.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

9. The Development Authority stated that the proposed application complies with the requirements for a Home Occupation found in 4.7(8) of the LUB. The operation of a hair salon would not cause excessive pedestrian or vehicular traffic or otherwise interfere with or detract from the peace and quiet of the residential neighbourhood.
10. The Development Authority stated however, that the application does not comply with s. 4.7(9.6)(d) of the LUB. A Secondary Suite and a Discretionary Use Home Occupation are not allowed in the same Detached Dwelling Unit.
11. The Development Authority explained the Development Officer has no discretion to vary the regulation in s. 4.7(9.6)(d).
12. The Development Authority stated that it is in the SDAB's discretion to determine if the Home Occupation in the application is an appropriate use of the Proposed Site, and must consider s. 4.7 (8)(a) of the LUB. The requirement that a Home Occupation does not cause excessive vehicular or pedestrian traffic or otherwise interfere with or detract from the peace and quiet of the residential neighbourhood.
13. The Development Authority explained that the application was not distributed to the neighbours as the Development Officer did not have the authority to approve this application. The adjacent land owners were only notified pursuant to any requirements of the appeal to the SDAB.

The Appellant

14. The Appellant stated that the proposed Home Occupation is on a Proposed Site which has a through street and has multiple entrances that negates vehicle congestion.
15. The Appellant explained that the hours of operation for the Home Occupation would be during the time her fiancé would be at work and that his vehicle would not be in the driveway, allowing for additional parking. However, the Appellant also said that the Proposed Site has a large driveway with additional parking for both a client and any tenant. The Appellant did confirm that she intended for clients to use the front left side of the driveway for parking instead of on street parking.
16. The Appellant stated there is no tenant in the Secondary Suite presently but would inform any future tenant of the Home Occupation on the Proposed Site and ensure the tenant is comfortable with the Home Occupation. The Appellant confirmed the Secondary Suite does have a separate entrance from the main house and the tenant would not share an entrance with her clients.
17. The Appellant informed the Board of her intention to turn a bedroom into a hair salon and that she would be the only person working in the salon. The Appellant also mentioned if her business grew to demand a larger space and additional hours of operation, she would not intend to continue with the Home Occupation on the Proposed Site but move to a new space outside of the home.

18. The Appellant agreed to the conditions and limitations suggested by the Development Authority in their submissions.

FINDINGS AND REASONS

19. The Development Authority is prohibited from issuing a Development Permit approval for a Discretionary Use of a Home Occupation, to operate a hair salon, in the same Detached Dwelling Unit as a Secondary Suite as per Section 4.7(9.6)(d) of the LUB.

20. The Development Authority agreed the proposed Home Occupation for a hair salon does comply with Section 4.7(8) of the LUB.

21. The Board considered Section 687(3)(d) of the MGA. This section provides the Board the authority to make a decision where a Proposed Development does not comply with the LUB:

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

22. The Board reviewed the LUB Section 4.7(9.6), which are the regulations applicable to all Home Occupations, this section speaks to the requirement that a Secondary Suite and a Discretionary Use Home Occupation are not allowed in the same Detached Dwelling Unit, is to limit over development of use of the residential Detached Dwelling Unit.

(9.6) Notwithstanding that a Secondary Suite may be listed as a Permitted Use or Discretionary Use in a district, such use is only allowed if the Secondary Suite meets the following requirements, which shall not be varied by the Development Authority:

- (a) Except as allowed by section 4.7(9)(9.4), a Secondary Suite may only be developed in a detached Dwelling Unit;
- (b) Not more than one Secondary Suite is allowed in a Dwelling Unit;
- (c) A Secondary Suite is not allowed in an Accessory Building; and
- (d) A Secondary Suite and a Discretionary Use Home Occupation are not allowed in the same detached Dwelling Unit.

23. The Board must decide if a Discretionary Use of the Home Occupation with client visits is an appropriate use for the Proposed Site, by considering the impact of the Home Occupation on the Detached Dwelling Unit and on the neighbourhood.
24. The Proposed Site is zoned R1 Residential (Low Density) District, with a through road for multiple entrances and exits. The through road would help alleviate concerns regarding excessive vehicular traffic.
25. The Proposed Site has adequate off street parking for the residents including the tenant of a Secondary Suite and a client. The illustration of the suggested off street parking provided by the Development Authority, on page 35 of its submissions (Exhibit B.1.), provides an example of adequate off street parking.
26. The Appellant stated she will be a sole proprietor for the business with no other employees and will use one room, a bedroom, for her Home Occupation. The Appellant confirmed only one client would on site at any given time and no more than three per day which addresses concerns of excessive pedestrian traffic.
27. The Appellant agreed she would accept to be bound by the conditions the Development Authority suggested in its submissions and her preferred hours of operations would be from 9 a.m. to 7 p.m. when her fiancé was working.
28. There is an email, marked as Exhibit "A.2", received from an adjacent landowner of the Appellant, in support of this application.
29. The Board is satisfied that the proposed Development is an appropriate use for the Proposed Site. Although it does not comply with the LUB, the Board is of the opinion that the use would not unduly interfere with the amenities of the neighbourhood or materially interfere with the use, enjoyment, or value of the Detached Dwelling Unit or the neighbouring parcels of land.

CLOSING:

30. For these reasons, the decision of the Development Authority is revoked and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 02nd day of July, 2021 and signed by the Chair on behalf of all panel members who agree that the content of this document adequately reflects the hearing, deliberations, and decision of the Board.



For: CAROL MAH, Chair
Subdivision & Development Appeal Board

APPENDIX “A”

- Exhibit A.1 Hearing Materials (9 pages)
- Exhibit A.2 Adjacent Landowner’s email (2 pages)
- Exhibit B.1 Respondent Submissions (42 pages)