

Appeal No.: SDAB 0262 007 2018
Hearing Commenced: September 5, 2018

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: Karen Handley
PANEL MEMBER: Tyler Lacoste
PANEL MEMBER: Frank Yakimchuk

BETWEEN:

MEGAN SAKATA

Appellant

and

CITY OF RED DEER

Represented by Debbie Hill & Beth McLachlan, Development Officers

Development Authority

DECISION:

The application for a Development Permit for the discretionary use of a Home Occupation (sewing and alterations), as shown on the plans provided to the Subdivision and Development Appeal Board on September 5, 2018, and stamped as 'Approved', copies of which form part of the approval (collectively referred to as the 'Approved Plans') on the lands zoned R1, located at 217 Carrington Drive, in Red Deer, Alberta legally described as Lot 8, Block 6, Plan 1025218 is approved subject to the following conditions:

- A. 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;
- B. All development must conform to the conditions of this development permit and the Approved Plans and any revisions as required pursuant to this Approval. Any further revisions to the Approved Plans must be approved by the Development Authority;

- C. If repairs are necessary, 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 the development or construction on the site. Repairs shall be done to the satisfaction of the City. 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.

- D. There shall be a maximum of three (3) client visits to the residential premises occupied by the home occupation per week, with no more than one (1) client on the residential premises at any given time.

JURISDICTION AND ROLE OF THE BOARD

- 1. The Subdivision and Development Appeal Board (the Board) is governed by the *Municipal Government Act*, RSA 2000, c M-26 (MGA) as amended, in particular s. 687.
- 2. The Board is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). 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 Board. There were no conflicts identified by the Board Members.
- 4. There were no preliminary issues for the Board to decide.

BACKGROUND:

- 5. On July 24, 2018 the Development Authority refused an application for a Development Permit for a Home Occupation (the 'Permit') on the lands zoned R1(Low Density Residential), located at 217 Carrington Drive, in Red Deer, Alberta and legally described as Lot 8, Block 6, Plan 1025218t.
- 6. Because the nature of the business requires client visits to the home, the Permit is a discretionary use. The Permit complies with s. 4.7(8) of the LUB which sets out the regulations that all Home Occupations must follow.

7. The site consists of a detached dwelling with a development permit for a Secondary Suite. The Permit does not comply with s. 4.7(9.6)(d) of the LUB which prohibits a Secondary Suite and a discretionary use Home Occupation from being located on the same site.
8. The Appellant filed an appeal with the Board on August 7, 2018.

SUMMARY OF EVIDENCE AND ARGUMENT:

The Development Authority

9. The Development Authority stated that the application complies with the requirements for a home occupation found in s. 4.7(8). Sewing and alterations would not emit any noise, odour, smoke or dust. There is only one employee, no on site advertising, storage, commercial vehicles or retail sales.
10. The Development Authority stated that home occupations that have visits to the home are discretionary and that the LUB does not limit the amount of visitors to the site. The Development Authority evaluates each application on its own merit and can impose conditions such as the amount of visitors to the site to help ensure that the home occupation would not unreasonably interfere with the neighbourhood.
11. It is the Development Authority's opinion that the Permit would not cause excessive vehicular or pedestrian traffic or interfere with the peace and quiet of the neighbourhood.
12. However, the Development Authority advised that the Permit does not comply with s. 4.7(9.6)(d) of the LUB which prohibits a Secondary Suite and a discretionary use Home Occupation from being located on the same site and noted that the Development Authority must abide by the LUB.

The Appellant

13. The Appellant stated that the clientele will be friends, family and referrals so there will be minimal impact to the neighbourhood.
14. The Appellant stated that there is dedicated parking at the rear of the property for the secondary suite (which has a rear entrance) and that she has the entire garage and 2 lane driveway.

15. The Appellant stated that the landowner and neighbours fully support the Permit. In support of this, she referred the Board to letters from neighbours (221 Carrington Drive & 2 Castella Crescent); a form letter in support of the application with 8 signatures (including the resident of the secondary suite); and a letter of support from the landowner.

FINDINGS AND REASONS

16. There is no dispute that the application is a discretionary use that complies with the LUB with the exception of s. 4.7(9.6) which states:

- (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.

17. The Board must make decisions in accordance with its governing legislation. In particular in this case, the Board considered s. 687(3)(d). This section grants the Board authority to make a decision even if the proposed development does not comply with the LUB if, in the Board's opinion, 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.

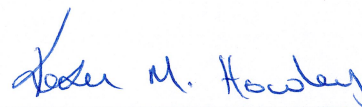
18. There were 65 area landowners notified of the application before the Board and the only comments received were in support of the application - there were no objections. Further, the Board notes that the person likely to be impacted the most by the application is the resident of the secondary suite who indicated his support of the application (Exhibit 2 page 14).
19. There was no evidence or argument presented to the Board to indicate that the application would affect the amenities of the neighbourhood, materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.
20. The Board also considered the statement of the Development Officer, that s. 4.7(9.6)(d) is in place to limit the over development or over intensification of use of the dwelling. While the Board sees merit in that objective, it believes that any potential over development or over intensification resulting from this application is well mitigated by: the ample existing parking on the site; the minimal client visits to the site (3 per week / 15 per month), the hours of operation being outside of current, full time employment; and there being no further employees on site.

CLOSING:

21. For the reasons detailed above, the Permit is approved with conditions as stated earlier.

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served **within 30 days** of this decision.

Dated at the City of Red Deer, in the Province of Alberta this 12 day of September, 2018 and signed by the Chair on behalf of all three panel members who agree that the content of this document adequately reflects the hearing, deliberations and decision of the Board.



K. Howley, Chair
Subdivision & Development
Appeal Board

EXHIBIT LIST

- EXHIBIT 1: Hearing Materials - 11 pages
- EXHIBIT 2: Development Officer (Respondent) Report – 41 pages
- EXHIBIT 3: Appellant Letter – 1 page
- EXHIBIT 4: Area Landowner Letter – 1 page