

Appeal No.: 0262 002 2020  
Hearing opened and adjourned: March 26, 2020  
Hearing re-convened and adjourned April 30, 2020  
Hearing re-convened May 21, 2020

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: M. Kartusch  
PANEL MEMBER: R. Boerger  
PANEL MEMBER: T. Lacoste  
PANEL MEMBER: C. Mah  
PANEL MEMBER: G. Paradis

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BETWEEN:

CHRIS AND LEAH BARGEN  
Represented by Chris Borgen

Appellant

and

CITY OF RED DEER  
Represented by Beth Maclachlan, Development Officer

Development Authority

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**DECISION:**

The Red Deer Subdivision and Development Appeal Board VARIES the decision of the Municipal Planning Commission which approved the Appellant's application for a Development Permit for the Discretionary Use of a Home Occupation which will generate additional traffic, with one (1) additional commercial pickup truck and one (1) employee who does not reside at the Site, on the Lands located at 3337 43 Avenue, legally described Lot 17, Block 13, Plan 4512 MC (the "Site"), Red Deer, Alberta. 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

harmd 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. The Applicant shall ensure there is no outdoor storage of additional equipment, trailers, or materials (that have not been approved) associated with the business on the Site.
5. The Applicant shall utilize all on-site parking at the rear of the property before parking any commercial vehicles on the street.
6. The Applicant shall ensure that any commercial vehicle parked on the Site is parked on a constructed parking pad or driveway at the rear of the Site.
7. The Applicant shall ensure that any commercial vehicle parked on the Site is wholly contained on private property and does not overhang any property line.
8. The Applicant is prohibited from conducting any maintenance and/or cleaning of the commercial vehicles at the Proposed Site.

A detailed summary of the reasons and decision is provided herein.

#### **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 (the MGA) as amended.
2. The Board 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 Board. There were no conflicts identified by the Board Members.
4. There were no preliminary issues for the Board to decide.

#### **BACKGROUND**

5. All Home Occupations in the City of Red Deer are subject to the regulations in Section 4.7(8) of the LUB.
6. The Site is located in a R1 District (Residential – Low Density). A Home Occupation, which will generate additional traffic, is a Discretionary Use in the R1 district of the LUB.
7. On February 12, 2020, the Municipal Planning Commission (the MPC) approved the Development Permit Application from the Appellant (Chris & Leah Bargaen) with conditions as found on page's 62-63 of Exhibit B.1.

8. The Appellant filed an appeal of this decision to the SDAB on March 2, 2020 requesting that the original home occupation application be approved as proposed. This included three (3) additional commercial vehicles (a pickup truck, a gooseneck trailer and an enclosed cargo trailer) and one (1) employee who is not a resident of the home attending the Site of the home occupation.
9. The hearing opened and was adjourned on March 26, 2020 by mutual consent to April 30, 2020. The hearing re-convened on April 30, 2020 and was adjourned a further time, to May 21, 2020 by mutual consent.
10. The Board entered into evidence the following:

Exhibit A.1:	Hearing Materials with Agenda (3 Pages), Appeal Form, Notices of Hearing, Area Landowner Submissions (Pages 1 - 40)
Exhibit B.1:	Appellant Submission (Pages 41 – 58)
Exhibit C.1:	Development Authority Report (Pages 59 – 133)
Area Landowner Submission	Read into the record by the Clerk (1 Page)

**SUMMARY OF EVIDENCE AND ARGUMENT:**

*The Development Authority*

11. The Development Authority stated that all Home Occupations must abide by regulations found in Section 4.7(8) of the LUB, as well as Part 8 – Special Classes of Vehicles of the Traffic Bylaw. The Development Authority explained that the LUB defines a Home Occupation as “the conduct of a business or business related activity from a residential site”. The LUB allows a Home Occupation as a Permitted Use when it is an office only and as a Discretionary Use when it generates additional traffic.
12. The Development Authority further explained for the proposed Home Occupation the additional traffic is in the form of additional commercial vehicles parked on or adjacent to the Site and one employee who is not a resident of the home.
13. The Development Authority stated that the proposed Home Occupation requires two variances to the regulations in Section 4.7(8)(j).

Land Use Bylaw	Proposed
(ii) not more than two adult residents of the home are permitted to work in the home occupation	The Applicant proposes one employee who would attend the Site to pick up one of the commercial vehicles for the work day. The employee’s personal vehicle will remain parked on the street.
(vi) not more than one commercial vehicle used in conjunction with the home occupation may be parked on the site or any street adjacent thereto	The Applicant is proposing three (3) additional commercial vehicles, in the form of a pickup truck, a gooseneck trailer, and an enclosed cargo trailer.

14. The Development Authority explained that the Appellant would be required to comply with the remainder of the regulations listed in Section 4.7(8)(j), including no on-site advertising, no emissions of dust, noise, odour or smoke, and no outdoor storage.

15. The Development Authority stated that Part 8 (Special Classes of Vehicles) of the Traffic Bylaw, is applicable to this Home Occupation as it deals with parking vehicles in residential areas over 6.0 m in length.
16. The Development Authority explained that the Traffic Bylaw restricts the parking of vehicles which exceed 6.0 m in length in residential areas, including a vehicle with or without a trailer attached. The estimated lengths of the Appellant's vehicles range from 4.9 m to 6.0 m, however since the gooseneck and cargo trailers are not permitted to be parked unattached on the street the combination with a pickup truck would range from 10.7 m to 11.8 m.
17. The Development Authority stated that due to the above restriction imposed by the Traffic Bylaw for maximum allowable length, the Appellant's vehicles would exceed the 6.0 m if parked on the street. The Development Authority further stated that allowing the Appellant's request as proposed the commercial vehicle would contravene the Traffic Bylaw.
18. The Development Authority stated that the original Application requested "permission to park two pick-up trucks and two small work trailers on an underused street". The Development Authority explained that the approval authority for a Home Occupation, with all variances requested has no authority to vary the terms of the Traffic Bylaw. In other words the Appellant would still be required to abide by the Traffic Bylaw or may be ticketed or towed at the discretion of a Peace Officer. The Development Permit for a Home Occupation will not protect the Appellant from a ticket for a violation of the Traffic Bylaw.
19. The Development Authority stated that during the consultation portion of the application process many of the letters received from the area landowners within 100 m radius of the Site were not in support of the additional commercial vehicles. The letters in support of the Application, many recommended having only one additional commercial vehicle. The Development Authority provided the Board with a summary of those concerns and a summarized response to each of them (Page 115 Exhibit C.1).
20. The Development Authority stated that applications such as these are weighed on the need to balance small commercial business operations, while maintaining the integrity of the residential neighbourhood concerns. This particular Home Occupation has had a number of neighbourhood concerns since 2017, some of which are included in Exhibit C.1.
21. The Development Authority explained that these concerns were taken into consideration for the recommendation to MPC. Administration recommended approval of one (1) additional commercial pickup truck and one (1) employee who is not a resident of the home. This option would allow a slightly more intense commercial operation that would:
  - a. satisfy many of the concerns of the neighbourhood, and
  - b. be in compliance with the Traffic Bylaw.

#### *The Appellant*

22. The Appellant stated that the proposed Home Occupation is a small construction company that has been parking in the area on an underused street adjacent to the Site since 2016. The Appellant stated that the City informed him that continued parking on the street contravenes multiple bylaws.

23. The Appellant is requesting permission to park two pick-up trucks as well as two work trailers on a street near his home. The Appellant explained that he is aware that the SDAB does not have jurisdiction to change the Traffic Bylaw, however, he still wishes to move forward with his request.
24. The Appellant further stated the inconsistent application of the rules including the concerns related to the Traffic Bylaw make it impossible to move forward when the applicable Traffic bylaws are outdated and not cohesive with requirements of the Development Permit for Home Occupation.
25. The Appellant stated section 53 of the Traffic Bylaw makes an allowance for landscaping and construction equipment to be temporarily parked residentially “providing that such utility or other trailer does not obstruct other users of the highway and is clearly visible and attended to at all times.” The Appellant believes this to mean the vehicle is “attended to” and able to be “moved on short notice”, as is the case for the Appellant’s vehicles since they are parked at near his home.
26. The Appellant stated that the current economic climate is difficult for small business owners and without the requested approval the business would no longer be sustainable. The Appellant stated that the vehicles are only parked on the street during evenings and weekends as the business only operates during daylight hours. The Appellant further stated the vehicles were not parked on the street during times of high traffic congestion and that many vehicles such as RV’s are similar to the size and length of the vehicles that are used for his business.
27. The Appellant’s submission to the Board (Exhibit B.1) speaks to many of the concerns that were raised by the area landowners. The Appellant spoke briefly about these concerns, particularly in relation to the nearby school.
28. The Appellant stated that safety is a top priority and that the issues raised regarding the parking near a school should be a non-issue since the school has the option to offer more parking. The concerns regarding the school bus turning radius should not be a consideration for the Board since the buses should be regarded as no different than that of the larger vehicles; this concern is rarely an issue since the Appellant’s vehicles are generally gone during business hours.
29. The Appellant believes there is adequate room in the back alley. He stated that there is only inadequate room on rare occasions, during loading and unloading. He further stated that if asked, he would be able to move the vehicles at a moment’s notice. The vehicles are not left unattended as this is his residence; a knock on the door would suffice.
30. The Appellant does not believe the damage to the back alley was caused by any of the Appellant’s vehicles.
31. The Appellant stated that he has canvassed the neighbourhood and has received support from many area landowners including the three neighbours that are most affected by the requested variance. He stated that many of the neighbours did not take the time to respond. He interprets no response as having no serious concerns related the Appellants business operations.
32. The Appellant requested the Board to allow one employee that is not a resident at the site, as well as the ability to park on the underutilized street adjacent to the site. The Appellant stated it is essential to his business to have the employee pickup one of the commercial vehicles at the site.

### *Area Landowners*

33. During the hearing the Board heard from one area landowner that was in favor of the Application and two area landowners that were opposed.
34. The speaker that spoke in favor of the Application stated that he has had no issues with the Appellant's business; they are a small business that does not interfere with the use and enjoyment of the neighbourhood.
35. The speakers opposed to the Application raised concerns related to the safety of children due to the Appellant's vehicles parked on the street creating sightline difficulties for the motorists and pedestrians which can make it dangerous for traffic movement due to the size of these vehicles.
36. Opposed landowners also raised concerns about the wear on the condition of the back alley with the movement of the larger commercial vehicles, as well as the noise generated from these vehicles.
37. Both speakers objected to the suggestion that they request the Appellant move vehicles from the alley when needed. They stated that is not reasonable to put the onus on them and also expressed concern for emergency services being able to access the alley. The area landowners also provided numerous pictures for the Board in their submission to show the parking as well as the back alley issues from loading and unloading contained in Exhibit C1 page 28 – 37 & page 41.
38. The Board also read multiple area landowner written submissions both in favor and in opposition to the Application.

### **FINDINGS AND REASONS**

39. The Development Authority stated the jurisdiction of the Board is limited to refusing or approving (with or without conditions/with or without variances) a Development Permit for the Home Occupation. The Board agrees with this statement and confirms that it cannot vary the terms or waive the Traffic Bylaw.
40. Given that, the Board focused only on the portion of the Home Application that does not involve the Traffic Bylaw. On street parking is not regulated by the LUB and is therefore not a consideration for the Board with regards to "permission to park two pick-up trucks and two small work trailers on an underused street."
41. All applications before the Board must comply with the use prescribed for the property. In this case, the property is zoned R1, and the application for a Development Permit for a Home Occupation that will generate additional traffic, is a discretionary use.
42. The conditional approval by the MPC and the comments (verbal and written) from area landowners indicate that the request to have one additional employee that was not a resident of the home was not a concern. After hearing the verbal testimony and reviewing the written submissions, the Board believes that the variance request for the additional employee is reasonable and will not interfere with the neighbourhood.

43. The conditional approval by the MPC and the comments (verbal and written) from area landowners indicate that the request to have three additional commercial vehicles, parking on nearby or adjacent streets of the Site, are a concern for noise and safety reasons.
44. The Appellant and the Development Authority provided the Board with information regarding the two pickup trucks and two trailers for the business. The pickup trucks are similar in length to other pickups used for personal purposes, which are approximately 6.0 m in length, and the two trailers lengths range from 4.9 to 6.0 m.
45. The objections raised by the neighbours were supported by pictures (Page 28-37 & 41 Exhibit C.1) of the back alley showing the larger commercial vehicles parked both day and night. The Board is persuaded by these pictures that parking these commercial vehicles in the back alley would interfere with, or detract from, the peace and quiet of the residential neighbourhood.
46. Notwithstanding this, the Board was mindful of the balance that was imposed in the conditional approval by the MPC, and the recommendation from the Development Authority to allow one additional commercial vehicle (in the form of a pickup truck), thus satisfying many of the neighbourhood concerns. The Board is persuaded that this balance would allow the Appellants small business to grow while maintaining the residential neighbourhood's integrity.
47. The Board reviewed the LUB section 4.7(8), which are the regulations applicable to all Home Occupations and is satisfied that the Application conforms to all other aspects of the City's LUB. The Board findings as well as the information provided by the Development Authority confirm the Home Occupation is an appropriate use in the R1 residential district given the conditions imposed.

**CLOSING:**

48. For these reasons, the decision of the MPC is varied, and the application is approved with conditions as stated above.

Dated at the City of Red Deer, in the Province of Alberta, this 5th day of June, 2020 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.



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L. Stubbard, Board Clerk  
On behalf of  
M, Kartusch, Chair  
Subdivision & Development Appeal Board

**APPENDIX A**

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