

Appeal No.: 0262 003 2019
Hearing Date: August 14, 2019

SUBDIVISION & DEVELOPMENT APPEAL BOARD DECISION

CHAIR: K. Howley
PANEL MEMBER: V. Foster
PANEL MEMBER: M. Kartusch
PANEL MEMBER: T. Lacoste
PANEL MEMBER: D. Wyntjes

BETWEEN:

RYAN MORGAN
Self Represented

Appellant

and

CITY OF RED DEER
Represented by Beth MacLachlan, Development Officer

Development Authority

DECISION:

The Red Deer Subdivision and Development Appeal Board varies the decision of the Municipal Planning Commission which denied the Appellant's application for an Auto Detailing Home Occupation at 50 Allard Crescent (Lot 48, Block 5, Plan 022 3893) zoned R1 Residential (Low Density) District. The application is conditionally approved, until July 25, 2020, with the following conditions:

- I. 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.
- II. 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 further revisions to the Approved Plans must be approved by the Development Authority.
- III. All Client visits to the Site occupied by the Home Occupation must be by appointment only.

- IV. There shall be no more than seven (7) client visits to the Site occupied by the Home Occupation per week, with no more than one (1) client on Site at any given time. There shall be no more than two (2) client visits to the Site per day.
- V. There shall be no clients on the Site occupied by the Home Occupation outside operating hours.
- VI. There shall be no overnight parking of client vehicles on the Site occupied by the Home Occupation.
- VII. Client visits to the Site occupied by the Home Occupation shall be limited to the hours of Monday to Saturday from 9:00 AM to 8:00 PM excluding statutory holidays, when there shall be no client visits.
- VIII. All auto detailing shall be contained within the front attached garage, with the door closed. The Applicant shall minimize, to the best of their ability, all noise from any detailing equipment.
- IX. There shall be no washing of vehicles on the Site.
- X. The Applicant shall ensure that the Home Occupation does not emit or cause excessive dust, noise, odour or smoke.

A detailed summary of the 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 found in s. 4.7 (8) of the LUB. A Home Occupation in an R1 zone (Residential – Low Density) is listed as discretionary in the LUB.

6. On July 3, 2019, the Municipal Planning Commission (the MPC) declined an application from the Appellant for a home occupation (Auto Detailing) at 50 Allard Crescent. The reasons given by the MPC for the refusal were:
 - i. A Home Occupation for auto detailing at this site is an inappropriate use for an R1 residential area due to the noise and odor concerns, and unknown chemical storage.
 - ii. The possibility of washing material or chemicals entering into the storm water system which would contravene the Utility Bylaw.
7. The Appellant filed an appeal to the Board on the grounds that noise and odour would be minimal, and no chemicals would be discharged into the storm water system.
8. The Board entered into evidence the following:

Exhibit A.1:	Hearing Materials (12 pages)
Exhibit B.1:	Respondent Report dated August 14, 2019 (41 pages)
Exhibit C.1:	Appellant Submission filed August 8, 2019 (8 pages)

SUMMARY OF EVIDENCE AND ARGUMENT:

The Appellant

9. The Board heard from the Appellant. He stated that he currently holds a license for a mobile detailing service and also has a full time job. He advised the Board that auto detailing is his passion and he would like to grow the business as a Home Occupation before opening a storefront business. In order to receive training for things such as car wraps and paint protection film, he must have a business license.
10. The Appellant explained that most of the cars are specialty cars and the focus of the Home Occupation is detailing cars, not washing them. A small car can take 4-5 hours. He advised that instead of using chemicals, he uses an innovative new process that uses steam and hot water followed by polishing with a microfiber cloth. He stated that he did not have an opportunity to explain this to the MPC.
11. The Appellant addressed the concerns expressed by area landowners relative to smell and noise. He stated that he uses a small shop vacuum as well as an air compressor. He advised that these are of the type that are found in many residential garages and that he has already purchased noise reduction accessories for them in an effort to reduce noise.
12. In support of this, the Appellant provided a chart showing common noises and related decibel levels. The noise from a lawnmower is rated at 90 decibels, while both the air compressor and

vacuum are rated between 60-85 decibels. The Appellant also stated that he would be willing to build a noise reduction box around the equipment, if necessary.

13. With respect to use, storage and odour from chemicals, the Appellant confirmed that the material safety data sheets do not include instructions for special storage. The Appellant stated that there is a fire extinguisher in the garage.
14. He referred to the use of hot water and steam over chemicals and pointed out that the person doing the cleaning is the person most exposed to any chemicals. He said that he has only received compliments on the smell, not complaints. The Appellant pointed out that he has children and would not want to expose them to harmful chemicals.
15. After hearing the traffic and parking concerns expressed by area landowners, the Appellant advised that he has two family vehicles which can be accommodated on the outside garage pad therefore there will be no need for street parking at all. There is one person renting the basement who has a vehicle however, he is there only three days per week.

The Development Authority

16. The Development Authority started by saying that all Home Occupations must abide by regulations found in s. 4.7(8) of the LUB. Some of these are: restricting employees to only residents of the home, no advertising is permitted on site, and no storage of hazardous, noxious or dangerous goods is permitted. Because the Home Occupation in this application is a discretionary use, the Development Authority may impose additional conditions on the license.
17. In the Development Authority's recommendation to the MPC, the Development Authority recommended approval of the application and included 9 proposed conditions that intended to minimize the amount of noise, smells and traffic (if any) that may be caused by the Home Occupation (see Exhibit B.1 page 25 and 26). The Development Authority explained that vehicle traffic could be controlled by restricting the number of clients per day, that the garage door could be closed to minimize smells and that the Appellant could be required to have noise reduction measures in place.
18. The Development Authority stated that thorough consideration was given to the nine proposed conditions and if approved, recommended that the Board consider imposing same. The Development Authority advised that noncompliance with the conditions or regulations could result in fines and/or revocation of the license.
19. The Development Authority also spoke to concerns of the area landowners that were submitted to the MPC and to the Board at the hearing. The Development Authority provided the Board with a summary of those concerns and a summarized administrative response to each of them.

FINDINGS AND REASONS

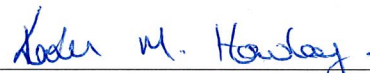
20. All applications before the Board must comply with the use prescribed for the property. In this case, the property is zoned R1 in which a Home Occupation is a discretionary use.
21. Both the denial by the MPC and the comments (verbal and written) from area landowners indicate that traffic, parking, potential noise, odours and the storage of chemicals are a concern. In response to the noise, odours and storage concerns, the Appellant was prepared to provide extensive written documentation to the Board (in excess of 600 pages). However, after having heard the verbal testimony and reviewing the written submissions, the Board was satisfied that it had adequate information on which to base its decision.
22. The Appellant drew a distinction between car washing and auto detailing, stating that the Home Occupation license is for detailing of vehicles and most of his clients bring vehicles that are already washed. The Appellant stated that he does not use chemicals that require special storage or handling. One of the products is flammable and there is a fire extinguisher on site.
23. The Board was not persuaded that storage of chemicals is a concern.
24. The MPC was also concerned about the possibility of washing material or chemicals entering into the storm water system. The Appellant described that he will be using new, innovative products that wipe on and off with a micro-fibre cloth and use a maximum of 4 litres of water (that will be captured in a bucket). Further, the Appellant indicated that he uses mostly steam and hot water and any chemicals used do not require special handling. The Board was not persuaded there is a risk to the storm water system.
25. The Appellant provided the Board with information regarding the equipment used for detailing purposes – an air compressor and a shop vacuum. These are not special-use pieces of equipment; any person at a retail store can purchase them. The information provided to the Board with respect to decibel levels was clear – the sound of the equipment is lower than a lawnmower. Notwithstanding this, the Appellant is already using noise reduction accessories.
26. The Board is satisfied that if these precautions remain in place, combined with an additional condition restricting hours of operation, there should be no excessive noise from the home occupation. As such, it will have no material interference with or detract from the peace and quiet of the residential neighbourhood.
27. The main concerns for the use were traffic issues, which, having heard from the Appellant will be minimal. The Board reviewed s. 4.1(1)(b)(ix) of the LUB which specifically allows “home occupations which will generate additional traffic subject to 4.7(8)”. Both the Development Authority and the Appellant confirmed that the Home Occupation complies with s. 4.7(8), which are the regulations applicable to all Home Occupations. It seems that there is no contravention of the City's LUB in this matter.

28. The intended use will see minimal vehicles at the property. Further, the use will be entirely behind closed doors with the Appellant having no desire to cause disruption to nearby residences. It should be noted that the Appellant's closest neighbour takes no issue with the use.
29. The objections raised by neighbours were speculative and were not supported by evidence. The Board is persuaded that the Home Occupation would not cause excessive vehicular or pedestrian traffic, or otherwise interfere with, or detract from, the peace and quiet of the residential neighborhood. Notwithstanding this, the Board was mindful of the concerns of area landowners and has imposed conditions on the license that will regulate the traffic.
30. The information provided by the Development Authority along with the Board findings regarding the noise, odour, chemical storage and possibility of washing material/chemicals entering the storm water system confirm that this home occupation is an appropriate use in the R1 residential district.

CLOSING:

31. Based on the verbal evidence and responses to the questions of the Board, the Board is satisfied that the concerns with regard to excessive odours and noise, use of chemicals and impact on traffic can be effectively addressed with the use of conditions placed on the permit. 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 28 day of August 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.



K. Howley, Chair
Subdivision & Development Appeal Board

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal, 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** after the issue of this decision.

APPENDIX A

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| Exhibit A.1: | Hearing Materials (12 pages) |
| Exhibit B.1: | Respondent Report dated August 14, 2019 (41 pages) |
| Exhibit C.1: | Appellant Submission filed August 8, 2019 (8 pages) |

