



**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
TOWN OF STONY PLAIN**

Legislative Services, Town of Stony Plain
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HEARING DATE: May 14, 2020
DEVELOPMENT PERMIT: 2020-D0038

NOTICE OF DECISION OF SUBDIVISION AND DEVELOPMENT APPEAL BOARD

INTRODUCTION

1. The Development Officer of the Town of Stony Plain conditionally approved a development permit application made by Kara Anderson (the “Applicant”) and Jordan Everett (the “Landowner”) for a discretionary use Home Occupation – Major (Personal Service – Esthetics) and relaxation of the on-site Parking requirements. The subject lands are located at 25 Brickyard Drive, Plan 152 0719 Block 2 Lot 12 in the Brickyard at Old Town subdivision, west of Old Town.
2. Anne Kihlbaum (the “Appellant”) appealed the issuance of the conditionally approved development permit 2020-D0038 on March 26, 2020.
3. The Subdivision and Development Appeal Board (the “SDAB”) heard the appeal on May 14, 2020.

PRELIMINARY MATTERS

A. Ministerial Order No. MSD:022/20 and MSD:036/20

On March 25, 2020, in response to the COVID-19 pandemic, Kelechi Madu, Minister of Municipal Affairs, issued Ministerial Order MSD:022/20, extending the time frame in which a notice of appeal could be filed. The Order affected Section 686(1) of the *Municipal Government Act*, RSA 2000, c. M-26 (the “MGA”) by extending the 21-day limit to file an appeal, to October 1, 2020.

This order affected all development permits that were issued, or under an appeal period at the time the order was signed; thus, extending the appeal period from the date noted on a Notice of Decision to the

applicant, the Notice sent to adjacent landowners, and Notice posted on the Town's website to October 1, 2020.

On April 17, 2020, the Minister of Municipal Affairs issued an update under Ministerial Order No. MSD:036/20, repealing MSD:022/20 and reverting the timeline for an appeal period back to those set out in MGA Section 686(1). However, the order reset the appeal period for those permits where the appeal began, or ended, between March 25, 2020 and April 17, 2020 to restart from the date Order No. MSD:036/20 was issued. The appeal period for the affected permits starts on April 17, 2020 and, subject to the mandatory 21-day appeal period, now expires on May 8, 2020.

B. Board Members

At the start of the hearing, the Chair of the SDAB asked if anyone in attendance would like to request a postponement of the hearing. No one came forward.

The Chair of the SDAB asked if anyone had an objection to the panel hearing the appeal. The Appellant and the Applicant both affirmed they had no objections.

C. Exhibits

The SDAB marked the exhibits as set out at the end of this decision letter.

D. Miscellaneous

The appeal was filed in time, in accordance with section 686 of the *Municipal Government Act*, RSA 2000, c. M-26.

At the beginning of the hearing the Chair of the SDAB asked the Appellant and the Applicant if they had concerns with the membership of the Board. The Appellant and the Applicant affirmed they had no issues with the membership of the Board.

At the end of the hearing the Chair of the SDAB asked the Appellant and the Applicant if they felt they had a fair hearing and opportunity to present their information. The Appellant and the Applicant affirmed they had.

The Chair of the SDAB closed the Public Hearing for Development Permit 2020-D0038 and advised that the Board has 15 days to make a decision. The decision will be prepared in the form of a letter on behalf of the SDAB by the SDAB Clerk.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

The Subdivision and Development Appeal Board deny the appeal and uphold Development Permit 2020-D0038 approving the relaxation of the required parking and with the following additional conditions:

1. A maximum of 5 clients per day, with no overlap in appointments.
2. The Home Occupation may operate 7 days per week, between the hours of 9:00 a.m. to 8:00 p.m.
3. The Applicant shall be the sole employee of the Home Occupation.

SUMMARY OF HEARING

The following is a summary of the oral and written evidence submitted to the SDAB. At the beginning of the hearing, the SDAB Members affirmed that they had reviewed all the written submissions filed in advance of the hearing, not visited the site, been in contact with anyone affected by this appeal, or feel they should be excused for any reason.

Development Authority Presentation

Summary:

The decision of the Development Authority to conditionally approve Development Permit 2020-D0038 for a Major Home Occupation, Personal Services (Esthetics), with a variance to the required parking, has been appealed.

The subject lands are located at 25 Brickyard Drive, Plan 152 0719 Block 2 Lot 12 in the Brickyard at Old Town subdivision, west of Old Town.

The Development Authority reviewed the application and determined that the proposed Home Occupation complies with the Land Use Bylaw regulations, except that the applicant would not be able to provide the required additional parking space for a home occupation on the subject lands. The Development Authority determined that a variance to the parking regulations was reasonable based on the limitations of the property and the proposed intensity of the home occupation as described in the Home Occupation Questionnaire submitted by the Applicant on February 14, 2020.

Land Use District and Use Class:

The Lands are located within the R5 – Small Lot Mixed-Form Residential District.

The Development Authority determined the proposed use to be a Home Occupation Major, which is listed as a Discretionary Use within Land Use Bylaw 2576/LUO/17 Section 2.6.0. R5 District.

Relevant Planning Documents – Uniquely Stony Plain Municipal Development Plan 2013:

The subject property is in the area identified as Residential Areas within the Municipal Development Plan.

Direction 3.1.a. The Town will support expansion and diversification of the economic base by allocating sufficient land for commercial and other employment land uses, including home-based businesses.

Direction 6.1.a. The Town will allow a range of uses to ensure a complete and balanced community to meet the challenges of growth in a sustainable manner and promote diverse residential development and associated home-based businesses.

Area Structure Plan:

The area is part of the Brickyard at Old Town Area Structure Plan, which designates the area as residential.

Land Use Bylaw 2576/LUO/17:

Section 1.2.4. - Development Permit Variance

Section 2.6.0. - R5 – Small Lot Mixed-Form Residential District

Section 3.19.0. - Home Occupations

Table 4.1.1.a. - Off-Street Parking Requirements for Residential Uses

Section 6.1.0. - Definitions - Home Occupation Major

Relevant Background Information:

On February 14, 2020, the Town received a home occupation questionnaire and a business license applicant for a home-based business at 25 Brickyard Drive to provide Esthetic Services from the residence. The Development Authority determined that, due to clients attending the residence, the proposed business qualified as a major home occupation under Land Use Bylaw 2576/LUO/17 R5 District and Home Occupation regulations and that it would be subject to a development permit application. It was noted that the application would require a variance to the parking regulations.

On February 20, 2020, The Town received a development permit application for the major home occupation.

Review and Discussion:

Upon review of Development Permit application 2020-D0038, the Development Authority found

- The application is for a major home occupation, which is a discretionary use within the Land Use Bylaw R5 Regulations;
- The proposed home occupation is to provide esthetic services;
- The subject lot is structured so that it has rear lane access with a 6.71 m x 7.0 m (22 x 23 feet) garage pad with grade beam (no garage) in the rear yard;
- The pre-installation of the garage pad by the builder makes it difficult to add a third parking space. There is not enough room on either side of the garage pad to accommodate a third stall. The minimum required parking space dimensions are 2.75 m wide by 6 m deep (roughly 9 x 20 feet).
- The home occupation questionnaire specified:
 - The Applicant is the sole employee, part-time
 - No employees attend the residence
 - The Applicant expects an average of 3 clients per day, one in attendance at a time
 - Hours of operation are between 9:00 am and 8:00 pm
 - Clients will park on the rear garage pad
 - The Applicant has one vehicle that will be used in the operation of the business, which will also be parked on the rear parking pad
 - The Applicant will use one room in the basement for the purpose of the business
 - There are no other businesses operating from the residence.
- A front driveway is not possible on the subject lot. The residence fronts onto a collector road. The Town's current Municipal Development Standards limits driveway access to a collector road. As well, the Land Use Bylaw allows only one access to a property.
- The collector road provides significant on-street parking for residents and their visitors

Rationale for Decision:

The Development Authority determined that the intensity of the proposed business is low and will have minimal impact on the neighborhood.

The home occupation meets the regulations of the Land Use Bylaw 2576/LUO/17 Section 3.19.0 Home Occupations, with exception of provision of one additional parking space on site.

A variance to the Land Use Bylaw Section 3.19.3.1.c. and Table 4.1.1.a. is reasonable for the following reasons:

- The intensity of the business is low
- The Applicant indicated that the parking will be made available on the rear garage pad
- Parking does not appear to be an issue during off-peak hours (8:30 am to 4:30 pm)
- The subject lot cannot accommodate an additional parking space on the property
- The Municipal Development Plan supports economic growth through home-based business opportunities

Response to the Appellants Concerns:

In response to the concerns of the Appellant(s) noted in the attachment to the Notice of Appeal dated March 26, 2020, the Development Authority provides the following to clarify the difference between a commercial business and a home occupation, zoning, where authority lies, standard procedure and what has been conditionally approved.

- The Development Authority's jurisdiction lies within the Land Use Bylaw.
- Business licenses are regulated under the Business License Bylaw and are not issued by the Development Authority.
- Business licenses do not contain conditions. Conditions are applied to development permits.
- A commercial business license has not been issued. The Town cannot issue a commercial business license within a district that is zoned for residential use.
- A business operating within a residential district is considered a home occupation under the Land Use Bylaw. A home occupation business license can be issued once permits are obtained from the Town, if required.
- There are two classifications of home occupations, minor and major. Minor is typically a home office with no visitations from clients or employees. Major would be a small business where clients, and possibly employees, visit the residence.
- Approval of a Home Occupation, Major does not change the zoning of a property from Residential to Commercial.
- If a resident wants to operate a business from their residential property, they must complete a home occupation questionnaire, which helps the Development Authority determine if it is suitable for a residential property, or if it would be better suited for a location within a commercial or industrial district.
- Major Home Occupations are always a discretionary use and are required to undergo the development permit process and mandatory appeal period.

- If the development permit is conditionally approved, appealed and if the appeal has been denied by the SDAB, the Applicant must obtain a Home Occupation Business License, as required under the Town's Business License Bylaw.
- The Land Use Bylaw regulations in commercial districts do not apply to home-based businesses in a residential district. The Land Use Bylaw specifically deals with Home Occupations under Section 3.19.0. The parking requirements for a home occupation are different than those for commercial districts.
- The notice circulated to nearby landowners includes the conditions of the development permit approval. However, the home occupation questionnaire, which includes information such as number of employees, hours of operation, number of clients, etc., is not included with the notice. The Development Authority is available to answer questions regarding a development permit approval during office hours.
- The Development Authority would not require a 3rd party report regarding traffic and parking for a home occupation. This is something that would typically apply to a large scale development. If a home-based business is generating that much traffic, it belongs in a Commercial or Industrial District and would not be suitable in a Residential District.
- Home-based businesses are not traditional commercial services with a store front. They do not open the front door to walk-in clients as services are being provided from their personal residence.

Conclusion:

The Development Authority submitted that the Subdivision and Development Appeal Board consider upholding the decision of the Development Officer.

The decision of the Development Authority was made based on the information provided on the Home Occupation Questionnaire submitted by the applicant on February 14, 2020. Anything beyond what was specified on the questionnaire, including additional employees and an increase in clients attending the residence would constitute an increase in intensity of the business and would be subject to further review by the Development Authority, as per condition #5.

Condition #6 requires that a parking space for clients be made available on the property. If the applicant's personal vehicles are occupying both parking spaces on the rear garage pad during client visits, or if a garage is constructed on the garage pad and the parking is no longer available for the clients, the applicant will be in non-compliance with the conditions of the development permit approval. The applicant would then have to cease operation of the business in the residence and relocate to a location zoned for commercial use. This does not limit the Applicant's clients to parking on the rear pad only. If someone chooses to park on the street, which is public parking, and the rear parking space is available, the Applicant remains in compliance with the conditions of the permit.

The principal use of the property remains residential. A home occupation is to be incidental and subordinate to the principal use. A home occupation does not change the zoning of the property to commercial.

The Subdivision and Development Appeal Board has the authority to add any condition to mitigate or minimize potential impacts to adjacent landowners. This could include limiting the hours of operation.

Non-compliance with the Land Use Bylaw regulations and conditions of a development permit approval are enforceable under the Land Use Bylaw and can result in suspension or cancellation of a development permit, penalties and issuance of an Order under the Municipal Government Act.

Exhibits:

- A: Development Permit 2020-D0038 Decision
- B: Uniquely Stony Plain Municipal Development Plan 2013 Sections
- C: Land Use Bylaw 2576/LUO/17 Sections
- D: Context Map
- E: Photos of the Brickyard

Response to Questions from the Board:

In response to questions from the Board, Catherine Kozyra explained that she is unable to answer Alberta building code questions regarding egress windows as they are out of her jurisdiction. Ms. Kozyra also explained that the Home Occupation Questionnaire is not included with the notification of permit approval as it contains personal information, however it is something they will consider for the future.

The Appellant's Presentation:

Anne Kihlbaum, homeowner of 17 Brickyard Drive.

When notice of approval came out there were so many questions, which were answered listening now. The details were not included when the notice was received by mail and that's why there were lots of people that had questions and wanted to know, as stated per the attachment provided tonight. There was no disclosure provided to the residents of the area as to how many employees and/or clients that was going to be allowed to be operating within the residence at the same time. And there was no disclosure provided to residents of the area as to the business operating hours. I know that the residents who signed the disclosure attachment were hoping that nothing would be after six o'clock. From 9:00 a.m. to 6:00 p.m. was what everybody that has signed the petition here was thinking was okay. And then there was no disclosure provided to the residents as to the business parking, which we now have learned and now has been explained. There was also no disclosure provided to residents of the area i.e. third-party reporting regarding overcrowding of the parking and the effect of a business operating in a residential zone. There were concerns also about devaluing of the properties and if it's going to be allowed to have businesses in the subdivision. There was no disclosure to the residents of the area as to the conditions of the business license and therefore provides no power to enforce any breach of the conditions associated with the license.

There was nothing tangible that explained anything on the first paper that came. And they were very concerned because there are more people that do want to open their businesses like this, the smaller ones. There is a massage, gym, yoga, nutrition and hair so that's a lot of people that have this in mind. So, we can just see that people were concerned that it was going to explode and be lots of businesses coming around and that's going to affect our little smaller area in there with parking and clients coming and going. So that's where the main concern was too about the property value and stuff. So that's what I have, as I was kind of thrown into this.

I apologize but I was not going to be here today, the person that was going to come, had to go away so I am sorry that I'm not quite prepared. I was trying to say everybody's concerns.

Response to Questions from the Board:

In response to questions from the Board, Anne Kihlbaum explained that the first letters that were sent did not provide information regarding number of employees, business hours, parking and that they could not approve of something when they did not know the conditions. If someone was breaching something they would not know because they don't have the facts. She heard information earlier and there has been more information received today that she did not know prior to the hearing.

Ms. Kihlbaum stated, the main thing is, if anything is breached, how will the residents know.

The Landowner's Presentation (On Behalf of the Applicant):

Jordan Everett, landowner of 25 Brickyard Drive. Mr. Everett was present on behalf of the Applicant Kara Anderson.

Thank you, everyone for gathering here this evening in these unprecedented times. As a young family of 3 starting out, having the option of a homebased business is invaluable. It provides the flexibility of not finding childcare outside of our home and gives our family an opportunity to become a bigger part of what Stony Plain is made of.

We are confident that the additional parking space variance is one that will cause very little if any impact on our adjacent landowners, whom for the majority are using public parking on Brickyard Drive as an additional parking space without issue.

As listed in the conditions of our development permit, a parking space will be provided on our property for client visits. Our scheduling of client visits will consider our adjacent landowners and be staggered as such to ensure no overlapping of appointments.

Submitted this evening, are time and date stamped pictures that have been taken of the area directly in front of our residence on seven different days at different times depicting the available parking spots on Brickyard Drive. Public parking in front of our residence is ample and available.

With 25 Brickyard Drive being west of downtown Stony Plain, our customers will be driving by many businesses on the way to their appointment, which will benefit the Town regarding a possible new customer for another small or large business in the area.

To address the document attached to the notice of appeal by the Appellant (Page 75 in the agenda package) we believe that the Town of Stony Plain has addressed the concerns of the Appellant thoroughly. We did note the following:

1. Three of the residents who signed the document are not in the affected area.
 - 7 Brickyard Drive
 - 82 Brickyard Bend
 - 13 Brickyard Drive

2. Overall, it is our belief that we can conduct our esthetics business at 25 Brickyard Drive in a professional and courteous manner with minimal impact on the adjacent landowners and the Brickyard community.

Stony Plain is where we call home, we care about this Town and Community, and are thankful for the opportunities that have been presented to us by the Town of Stony Plain. We do not believe that what we are asking for is unreasonable and are confident that this homebased business will add to the already diverse Stony Plain economy.

Response to Questions from the Board:

In response to questions from the Board, Jordan Everett explained that the Home Occupation Questionnaire was completed based on a 7 days per week schedule. He works full time Monday to Friday until 4:30 p.m. and most appointments will occur when he is home to care for their daughter.

Mr. Everett stated they do not have a current list of existing clients. He also stated that they are not expecting more than three clients per day with a projected maximum of five clients per day on weekends.

Mr. Everett confirmed it would not be a tremendous imposition to be restricted to operate five or six days per week provided they could operate on weekends.

Mr. Everett assured the board they would comply with the Development Permit requirements and that client appointments would not overlap. Also, client appointments would be completed by 8:00 p.m.

EVIDENCE

Evidence presented to the SDAB and related to the SDAB hearing can be found in the SDAB Agenda Package dated May 14, 2020. All evidence is retained as per the Town's retention schedule.

FINDING OF FACT

1. The Appellant shared that insufficient information was provided regarding the impact of the Development Permit when the letter was circulated to the neighborhood.
2. The Appellant stated that she received the information she was seeking in closing remarks.
3. The Applicant shared that the home occupation provided the flexibility of not finding childcare outside the home.
4. The Applicant stated that the appointments will happen when he is home to watch their child.
5. The Applicant stated there will be no overlap in appointments so that parking space provided on the parking pad will always be available.
6. There was photo evidence presented that showed plenty of on street parking in the neighborhood.

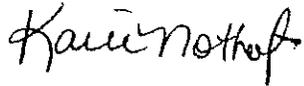
REASON FOR DECISION

The Board is of the opinion:

- If the intensity of the home occupation changes the development permit will be reviewed.
- The intensity of the business is low.

- The Applicant indicated that the parking will be made available on the rear garage pad.
- The subject lot cannot accommodate an additional parking space on the property.
- The Municipal Development Plan supports economic growth through home-based business opportunities.

This decision was issued on this 14th day of May 2020 for the Town of Stony Plain Subdivision and Development Appeal Board.



Karie Nothof, SDAB CLERK
On behalf of Bruce Lloy, Chair
Subdivision and Development Appeal Board

**APPENDIX A:
REPRESENTATIONS**

PERSONS APPEARING

1. Catherine Kozyra, Development Officer I
2. Anne Kihlbaum, Appellant
3. Jordan Everett, Applicant

**APPENDIX B:
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB**

	Description	Date	Pages
1.	Notification Letter of Conditional Approval of Development Permit 2020-D0038	March 9, 2020	67
2.	Notice of Appeal	March 26, 2020	74 & 75
3.	SDAB Agenda Package	May 14, 2020	1-94
4.	Submission by the Development Authority	May 14, 2020	33-72
5.	Submission by the Appellant	May 14, 2020	90
6.	Submission by the Applicant	May 14, 2020	Exhibit F

EXHIBIT F:

5/14/20

Good evening ladies and gentlemen, my name is Jordan Everett, homeowner of 25 brickyard drive, I'm standing here before you today on behalf of the applicant Kara Anderson.

We want to first and foremost thank everyone for gathering here this evening in these unprecedented times.

As a young family of 3 starting out, having the option of a home based business is invaluable, it provides the flexibility of not finding child care outside of our home and gives our family an opportunity to become a bigger part of what stony plain is made of.

We are confident that the additional parking space variance is one that will cause very little if any impact on our adjacent land owners, whom for the majority are using public parking on brickyard drive as an additional parking space without issue.

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With 25 Brickyard drive being west of downtown stony plain, our customers will be driving by many businesses on the way to their appointment, which will benefit the town in regards to a possible new customer for another small or large business in the area.

To address the document attached to the notice of appeal by the appellant (Pg.75 in the agenda package) we believe that the town of stony plain has addressed the concerns of the appellant thoroughly. We did note the following.

1. 3 of the residents who signed the document are not in the affected area.

- 7 brickyard drive

- 82 brickyard bend

- 13 brickyard drive

- Overall, it is our belief that we can conduct our esthetics business at 25 brickyard drive in a professional and courteous manner with minimal impact on the adjacent land owners and the brickyard community.

Closing comments

Stony Plain is where we call home, we care about this town and community, and are thankful for the opportunities that have been presented to us by the town of Stony Plain

We do not believe that what we are asking for is unreasonable and are confident that this home based business will add to the already diverse stony plain economy. Thank you to everyone for their time and consideration.







05.11.2020 14:28



05.11.2020 14:28























