

**ROCKY VIEW COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD**

Board Order No.: 2020-SDAB-003

File No.: 05301006; PRDP20192968

Appeal by: Tinio Ramoncito

Appeal Against: Development Authority of Rocky View County

Hearing Date: 2020 January 29

Decision Date: 2020 February 11

Board Members: Daniel Henn, Chair
Tricia Fehr
Hazel George
Morrie M. Goetjen
Wendy Metzger

DEVELOPMENT APPEAL DECISION

INTRODUCTION

[1] This is an appeal to the Rocky View County Subdivision and Development Appeal Board (the Board) from a decision of the Rocky View County Development Authority issued November 12, 2019. In this decision, the Development Authority refused a development permit for the renewal of a home-based business, Type II, for an autobody shop at 250250 Range Road 281 (the Lands).

[2] Upon notice being given, this appeal was heard on January 29, 2020 in Council Chambers of Rocky View County's County Hall, located at 262075 Rocky View Point, Rocky View County, Alberta.

DECISION

[3] The appeal is allowed and the decision of the Development Authority is overturned. A development permit shall be issued subject to the following conditions:

Description:

- 1) That a home-based business, type II, for an autobody shop may operate on the Lands in accordance with the approved plans.

Permanent:

- 2) That the number of non-resident employees shall not exceed three at any time.
 - a. That an employee in the home-based business is a person who attends on the Lands more than once in a seven day period for business purposes.
- 3) That the operation of the home-based business may generate up to a maximum of eight business-related visits per day.
- 4) That the operation of the home-based business shall be secondary to the residential use of the Lands.
- 5) That the home-based business shall not change the residential character and external appearance of the land and buildings.
- 6) That the operation of the home-based business shall not generate excessive or unacceptable increases in traffic within the neighbourhood or immediate area.
- 7) That the home-based business shall not generate noise, smoke, steam, odour, dust, fumes, exhaust, vibration, heat, glare, or refuse matter considered offensive or excessive by the Development Authority and at all times the privacy of the adjacent residential dwellings shall be preserved and the home-based business use shall not, in the opinion of the Development Authority, unduly offend or otherwise interfere with neighbouring or adjacent residents. All waste fluids such as oil, cleaning products, antifreeze and contaminated water shall be stored in an approved storage container and transferred off site for proper disposal.
- 8) That the home-based business shall be limited to the accessory building and the outside storage area.
- 9) That all outside storage that is a part of the home-based business, type II, shall be completely screened from all adjacent lands with 6.0 feet tall semi-permeable wood fencing, shall meet the minimum setback requirements for buildings, and shall not exceed 500.00 sq. m. (5,381.96 sq. ft.).
- 10) That the hours of operation for the home-based business, type II, are limited to between 9:00 a.m. and 8:30 p.m. Monday to Saturday.
- 11) That all vehicles, trailers, or equipment that are used in the home-based business shall be kept within a building or the storage area in accordance with the approved site plan.
- 12) That an identification sign (maximum of 3.3 ft. x 2.0 ft.) may remain on the Lands, only for identification purposes, in keeping with the general appearance of the area, as approved by the Development Authority.
- 13) That no off-site advertisement signage associated with the home-based business is permitted.
- 14) That this development permit shall be valid until **September 6, 2024**.

Advisory:

- 15) That any other federal, provincial, or County permits, approvals, and/or compliances, are the sole responsibility of the Applicant/Owner.
- 16) That the County's *Noise Bylaw C-5772-2003* shall be adhered to at all times.

BACKGROUND

[4] On August 21, 2019, Tinio Ramoncito (the Appellant) submitted a development permit application for the renewal of a home-based business, type II, for an autobody shop on the Lands.

[5] The Lands are located at 250250 Range Road 281 (Lot 1 Block 1 Plan 0610678; NW-01-25-28-W4M), are 8.09 hectares (20.00 acres) in size, and owned by Bhupinder and Ravinder K Basati (the Owners).

[6] The Lands' land use designation is Agricultural Holdings and is regulated in section 46 of the Rocky View County *Land Use Bylaw C-4841-97* (the *Land Use Bylaw*).

[7] On December 12, 2019 the Development Authority refused a development permit application for the renewal of a home-based business, type II, for an autobody shop on the following grounds:

- (1) The total number of non-resident employees requested exceeds the maximum amount permitted, as defined in section 21.3 of the *Land Use Bylaw*.

Permitted: 2

Proposed: 3

[8] On December 30, 2019, the Appellant submitted an appeal the Development Authority's decision to refuse a development permit application for the renewal of a home-based business, type II, for an autobody shop on the Lands. The notice of hearing was circulated to 19 adjacent landowners in accordance with the *Municipal Government Act*, RSA 2000, c M-26 and Rocky View County Council policy C-327, *Circulation and Notification Standards*.

SUMMARY OF EVIDENCE

[9] The Board heard verbal submissions from:

- (1) Christina Lambardo, Planner, for the Development Authority;
- (2) Sean MacLean, Supervisor Planning and Development, for the Development Authority; and
- (3) Bhupinder Basati, the Owner who appeared on behalf of the Appellant.

[10] The Owner submitted four letters of support from:

- (1) Sahib Judge;
- (2) Mark McElroy;
- (3) Narinper S. Saini; and

(4) Jensen Baker.

[11] The Board received one letter in opposition from Matthew and Nancy McElroy.

Development Authority's Submissions

[12] A home-based business, type II, is a discretionary use on the Lands in accordance with section 46.3 of the *Land Use Bylaw*.

[13] Section 21.3 of the *Land Use Bylaw* permits two non-resident employees for a home-based business, type II. A non-resident employee is an employee who attends a property more than once in a seven day period for business purposes.

[14] The Development Authority inspected the Lands on January 28, 2020 and found one sign on Range Road 281 and additional vehicles parked beside the existing building; these items were not identified at the time of application.

[15] The Development Authority provided proposed conditions of approval for the Board to reflect the signage and additional parking area. The Owner had opportunity to review the proposed conditions before the hearing began.

[16] The *Land Use Bylaw* does allow for signage of a certain size under the regulations for a home-based business, type II.

[17] There are no open enforcement matters on the Lands.

Bhupinder Basati Submissions – The Owner on behalf of the Appellant

[18] Bhupinder Basati has owned the Lands since 2016 and is representing the Appellant who lives on the Lands and works for the autobody shop.

[19] Bhupinder Basati submitted four letters of support from neighbours and indicated that they all live adjacent to the Lands.

[20] There is some screening around the storage area for the autobody shop. The wind frequently knocks the screening down.

[21] Bhupinder Basati and his employees are willing to meet any conditions required by the Board, including requiring more robust screening.

[22] Bhupinder Basati is requesting approval, including conditions for additional parking storage and signage.

[23] One employee works Monday to Saturday between 9:00 a.m. and 5:00 p.m. while three other employees work part-time between 5:30 p.m. and 9:00 p.m. on week days.

[24] There was once numerous enforcement matters on the Lands but they have been closed since Bhupinder Basati purchased the Lands.

[25] Bhupinder Basati was not aware of any garbage issues as outlined in the opposition letter received by the Board and is confident fixing the screening will deal with these issues.

Development Authority's Final Comments

[26] The *Land Use Bylaw* does not outline any operating hours regulations for a home-based business, type II, but it is in the Board's discretion to institute operating hours.

Bhupinder Basati Final Comments – The Owner on behalf of the Appellant

[27] The Owner had no final comments.

FINDINGS & REASONS FOR DECISION

[28] The Board finds that a home-based business, type II, for an autobody shop is a discretionary use in the Agricultural Holdings District in accordance with section 46 of the *Land Use Bylaw*.

[29] The Board finds it has the authority to make a decision on this matter pursuant to section 687(3)(d) of the *Municipal Government Act*.

[30] The Board reviewed all evidence and arguments, written and oral, submitted by the parties and focused on the most relevant evidence and arguments in outlining its reasons. The Board also considered the context of the development, sound planning considerations, the merits of the application, and all applicable legislation, plans, and policies.

[31] The Board is satisfied that the development permit application is for the renewal of a home-based business, type II, that has been operating on the Lands since 2011 and has the support of adjacent neighbours. The Board is satisfied the home-based business, type II, fits the rural nature of the area.

[32] The Board is satisfied that increased screening and hours of operation conditions will mitigate potential impact on adjacent properties.

[33] Given the above findings and pursuant to section 687 of the *Municipal Government Act*, the Board finds that the development would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The Board also finds the development conforms to the use prescribed for the Lands in the *Land Use Bylaw*.

CONCLUSION

[34] For the reasons set out above, the appeal is allowed and the decision of the Development Authority is overturned.

Dated at Rocky View County, in the Province of Alberta on February 11, 2020.



Daniel Henn, Chair
Subdivision and Development Appeal Board

EXHIBIT LIST

Documents presented at the hearing and considered by the Board

NO.	ITEM
1.	Development Authority's Report to the Board (29 pages)
2.	PowerPoint presentation submitted by the Development Authority (11 pages)
3.	Alternate conditions of approval submitted by Development Authority (5 pages)
4.	Letter of opposition submitted by Matthew and Nancy McElroy (1 page)
5.	Letters of support submitted by the Owner from Sahib Jedge (1 page), Mark McElroy (1 page), Narinper s. Saini (1 page), and Jensen Baker (1 page).

