

**FOOTHILLS COUNTY
SUBDIVISION AND DEVELOPMENT APPEAL BOARD
Development Appeal Board Decision**

HEARING DATE: SEPTEMBER 10, 2020

BOARD ORDER: D11/20

APPLICANTS/LANDOWNERS: JOSEPH & RITA KERLEROUX

APPELLANT: PHILIP & ANNE MORRIS

APPEAL AGAINST: THE APPROVAL OF DEVELOPMENT PERMIT 20D 127 FOR A HOME BASED BUSINESS, MINOR – RESIDENTIAL FRAMING SERVICES

SUBJECT PROPERTY: PLAN 9813170, BLOCK 1, LOT 11; PTN. SW 32-19-29 W4M

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS: L. SPILAK, B. MEYERS, T. MILLS, R. PERCIFIELD; AND CLERK, J. CLEMENT

DECISION

Having been satisfied that notice of this hearing was provided in accordance with the Municipal Government Act, R.S.A. 2000, Chapter M-26;

And upon having read the materials provided, and upon having heard the representations from the Appellant and the Development Authority for Foothills County with respect to the appeal filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the approval of the Development Permit 20D 127 for a Home Based Business Minor – Residential Framing Services on PLAN 9813170, BLOCK 1, LOT 11; PTN. SW 32-19-29 W4M (The “Property”);

The Subdivision and Development Appeal Board for Foothills County (the "Board") has decided to:

Deny the appeal and upholding the Development Authority’s decision to approve Development Permit 20D 127 for a Home Based Business Minor – Residential Framing Services on PLAN 9813170, BLOCK 1, LOT 11; PTN. SW 32-19-29 W4M.

The application is thereby APPROVED subject to the following revised conditions:

HOME BASED BUSINESS, MINOR – RESIDENTIAL FRAMING SERVICES

PRE-RELEASE CONDITION:

(Pre-release Conditions must be fulfilled before the Development Permit will be signed and released. Unless a time extension is issued under agreement between the Development Authority and the Applicants, failure to complete the pre-release

condition on or before January 5, 2021 will see this approval be deemed null and void).

1. The applicant is required to submit a revised site plan and a screening plan, for review and acceptance by the Development Authority. The plans shall include: dimensioned location of the parking/loading area that is to accommodate the storage of business related trailers; dimensioned location of one parking stall for a non-resident employee; and detail with respect to proposed screening (including maintenance & timeline) that will be installed in order to obscure the view of the trailers from area lands (ie. vegetation, fencing). The fencing for screening purposes within the subject property shall not exceed the requirements as listed within the Foothills County Land Use Bylaw.

ADDITIONAL CONDITIONS:

1. This approval is for a Home Based Business, Minor for business operations supporting a residential framing company that operates primarily off site. A business office is to be located within the Dwelling, Single family on the property and business-related utility trailers and flat decks may be parked on the parcel. The applicant shall maintain business operations in accordance with the application for development permit and those conditions as contained herein. **Addition to, or revision to the uses approved herein may occur only upon obtaining appropriate municipal approvals;**
2. all business materials or goods related to the business shall be contained within the principal dwelling, or a permitted accessory building on the property;
3. a maximum of 3 vehicles and/or equipment (ie: the identified trailers) specific to the business may be stored outdoors at any given time. Any such equipment and/or vehicles shall be located so as to not be generally visible from a public road or adjacent property. The plan accepted by the Development Authority under the pre-release condition to this permit **shall be installed within 12 months of the date of this decision**, and maintained for the life of this approved development;
4. the development and use of the land are to comply with all requirements of the Alberta Building, Safety, and Fire Codes at all times. Any future installation of a building used in conjunction with the home based business shall comply with the requirements of the Land Use Bylaw; and all related Alberta Codes for the intended use and occupancy, to the discretion of the County's Safety Codes Officer;
5. the applicant must maintain an annual Business License from Foothills County. Failure to obtain this each year will result in this permit being considered null and void;
6. one business identification sign, no larger than 5.92 sq. ft. in area, is permitted to be placed within the legal ultimate property boundary, at the entry to the lot;
7. there shall be no long term storage of waste materials on the property, nor burning of waste materials on the property. All garbage and recycling materials shall be stored in weather-proof and animal-proof containers, and subsequently disposed of at an approved facility;
8. no more than four business related visits to the property are permitted on any given day;

9. a maximum of one non-resident employee is permitted to attend the property at any given time;
10. no offensive noise, vibration, smoke, dust, odor, heat, glare, electrical or radio disturbance detectable beyond the boundary of the lot to be produced by the business;
11. any new installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Foothills Dark Sky Bylaw;
12. it is the applicant's responsibility to provide notification to the Development Authority upon completion of the development;
13. issuance of a development permit by the County does not relieve the applicants of the responsibility of complying with all other relevant municipal bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
14. the applicants shall be responsible for payment of any professional costs including legal fees that may be incurred by the County with respect to the development approved on this permit.

INTRODUCTION

- [1] The subject property is an existing 3.51 acre Country Residential district parcel that is located on the west side of Clear Mountain Drive east, just south of 434 Avenue, and west of Highway 783, in the Clear Mountain Estates subdivision.
- [2] On August 5, 2020, the Development Authority for Foothills County approved Development Permit 20D 127 to locate a business office for a residential framing (construction) company within the existing Dwelling, Single Family on the property and has noted that business related utility trailers (i.e.: 6 ft. x 10 ft.), and flat decks may be parked on the property; however primary business activities occur off site.
- [3] Home Based Business, Minor is a Discretionary Use on Country Residential district properties.
- [4] Home Based Business, Minor means a business or occupation conducted within a dwelling and/or accessory building(s) or on a parcel on which a dwelling is located and where one or more residents of the parcel is the primary owner of the occupation or business.
- [5] Requirements for a Home Based Business, Minor include:
 - a. The necessity of obtaining a development permit and subsequent business license;
 - b. A maximum of 4 business visits on any given day
 - c. No more than one non-resident employee working on site at any given time
 - d. Storing business related materials/goods within the principal dwelling or an accessory building
 - e. Limiting the outdoor storage of business related vehicles and equipment to a maximum of 3 units on properties of less than 10 acres in size and;

- f. Limiting the visibility of vehicles parked outdoors i.e.: they are to be located so as to be not generally visible from a public road or adjacent property

[6] An appeal was received from the appellants Paul & Anne Morris, on August 14, 2020 against the approval of Development Permit 20D 127.

ISSUES

HOME BASED BUSINESS, MINOR – RESIDENTIAL FRAMING SERVICES

- [1] The application is to allow for the operation of a residential framing business from an office located on the subject property, as well as storage of related equipment and vehicles.
- [2] The Development Authority submitted that a Home Based Business, Minor requires a development permit to occur on a Country Residential parcel.
- [3] The Development Authority submitted that the primary business operations occur off-site and employees of the company work off-site. Employees do not come to the home office. A business office is to be located within the existing dwelling and only residents work on-site in the office.
- [4] The Development Authority submitted that on occasion, an enclosed utility trailer would be parked on site. On-site parking will include the landowner's personal vehicles and trailers.
- [5] The Development Authority submitted that the onsite business will be used Monday through Saturday for bookkeeping from 7:30 AM until 6:00 PM. The off-site business operates up to 7 days a week.
- [6] The Development Authority submitted that the construction aspect of the business does not produce waste that would be brought to the property for storage or disposal.
- [7] The Development Authority submitted that there may be possible future plans for development on the property to include an additional accessory building for storage of personal vehicles. The Land Use Bylaw supports that a building accessory to the residence on the property may be constructed without the benefit of a development permit as long as requirements are met.
- [8] The Development Authority submitted that any storage of the business-related vehicles or equipment must be screened as a requirement outlined in the conditions of the development permit.
- [9] The appellant, P. Morris provided testimony explaining concerns with a business operating within a Country Residential area.

- [10] P. Morris submitted that there is no apparent screening on the property for the current trailers and vehicles on site. Appellant A. Morris stated that sufficient screening of the vehicles and trailers would help mitigate concerns.
- [11] The Neighbouring landowner in opposition of the application, D. Perlau, expressed concerns of businesses being conducted in a Country Residential district area.
- [12] D. Perlau provided testimony that location of the trailers, the screening of the trailers, and the business-related vehicles on site.
- [13] Applicant J. Kerleroux, provided testimony that the plans for the subject property have not been solidified; in particular, the location of screening, trailers, vehicles and the possibility of a secondary building. The applicant provided testimony that they are working on locating an area for the location of the vehicles that is of the least disturbance to the neighbouring landowners. J. Kerleroux stated that there are plans for screening, and that they are in the early stages of screening and planting.
- [14] The applicant provided testimony that there are 40 employees in the business, and that there is no more than one employee at any one time on the property exclusively for paperwork purposes.
- [15] The applicant R. Kerleroux stated that the property visually appears as a Country Residential area.
- [16] The Development Officer confirmed that if the potential accessory building meets the setback requirements, and all requirements outlined under the land use bylaw, it is permitted under current legislation.

REASONS FOR DECISION

The Board is denying the appeal and upholding the Development Authority's decision to approve Development Permit 20D 127 for a Home Based Business Minor – Residential Framing Services on PLAN 9813170, BLOCK 1, LOT 11; PTN. SW 32-19-29 W4M.

Based on testimony heard, the Board considered the application and the testimony of the Development Officer and the applicant. In their consideration of the information presented, and upon review of the legislation within the Land Use Bylaw, the Board believed that the application was deemed adequate and not unduly affecting neighbouring landowners.

CLOSING

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, R.S.A. 2000 Chapter M-26 which requires an application for leave to appeal to be filed and served within 30 days of this decision.

Dated at the Town of High River, in the Province of Alberta this 10th day of September, 2020 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



Mr. Gar Beacom, Chairman

RELEVANT LEGISLATION

FOOTHILLS COUNTY LAND USE BYLAW 60/2014

Definitions: Home Based Business (minor)

Home Based Business (Minor) means a business or occupation conducted within a dwelling and/or accessory building(s) or on a parcel on which a dwelling is located and where one or more residents of the parcel is the primary owner of the occupation or business and the following requirements apply:

- a maximum of four (4) business visits per day;
- no more than one (1) non-resident employee working on site;
- storage of materials or goods related to the business must be stored within the principal dwelling or accessory building;
- on parcels under 10 acres in size, a maximum of 3 vehicles or equipment may be stored outdoors;
- on parcels 10 acres and larger, a maximum of 5 vehicles or equipment may be stored outdoors;
- no offensive noise, vibration, smoke, dust, odor, heat, glare, electrical or radio disturbance detectable beyond the boundary of the lot;

10.12 HOME BASED BUSINESS

10.12.2 A development permit is required for all minor and major home based businesses in the county

10.12.3 Upon issuance of a Development Permit for any minor or major home based business, the applicant shall obtain a Business Licence from the County. If the business licence is not obtained or is revoked or suspended, the Development Permit shall be and remain suspended until the business licence is obtained or re-instated.

10.12.4 Any home business, minor or major, shall provide parking in accordance with Section 9.19 in addition to the required residential parking stalls. Any permitted

heavy vehicles shall be parked indoors or outdoors in a location that is not generally visible from a public road or adjacent property.

- 10.12.5 Minor home based businesses require a Development Permit and must comply with the criteria listed in Table 10.12 A.
- 10.12.6 Major home based businesses require a Development Permit and shall comply with the criteria listed in table 10.12 B.
- 10.12.7 A home based business, minor or home based business major shall not be operated from a Secondary Suite.

13.1 COUNTRY RESIDENTIAL DISTRICT

- 13.1.5 Discretionary Uses: Home Based Business, Minor

MUNICIPAL GOVERNMENT ACT, R.S.A. 2000, CHAPTER M-26

Hearing and Decision

687(3) In determining an appeal, the subdivision and development appeal board

- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) 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,

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APPENDIX "A"

PERSONS WHO WERE IN ATTENDANCE, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

	<u>NAME</u>	<u>CAPACITY</u>
1.	Brenda Bartnik	Foothills County - Development Officer
2.	Joseph and Rita Kerleroux	Applicant/Landowner
3.	Paul and Anne Morris	Appellant
4.	Darrel Perla	Gallery, in Opposition

APPENDIX "B"

- I. DOCUMENTS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AT THE HEARING:

NO. ITEM

1. Development Permit 20D 127
2. Notice of Appeal submitted by Phillip Morris

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Presentation by the Development Authority, Brenda Bartnik