

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

HEARING DATE: FEBRUARY 18, 2021

BOARD ORDER: D1/2021

APPLICANT / APPELLANT: ALLAN HELPIN

APPEAL AGAINST: RELAXATION OF SETBACKS TO PROPOSED ACCESSORY BUILDING (GARAGE)

SUBJECT PROPERTY: PLAN 3420IC, BLOCK 2, LOT 11; PTN. SE 22-22-03 W5M (THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS: RD McHUGH, V. LaROCKE, T. MILLS, B. DAYMENT, AND CLERK S. BOGART

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 Appellant in accordance with Section 685 of the Municipal Government Act against the refusal of Development Permit 21D 003 for a relaxation of setbacks to a proposed accessory building (garage) on PLAN 3420IC, BLOCK 2, LOT 11; PTN. SE 22-22-03 W5M (The "Property").

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

ALLOW the appeal and OVERTURN the automatic refusal of Development Permit 21D 003 for a relaxation of setbacks to a proposed Accessory Building (garage) on PLAN 3420IC, BLOCK 2, LOT 11; PTN. SE 22-22-03 W5M.

The application is thereby APPROVED subject to the following conditions:

PRE-RELEASE CONDITIONS:

Pre-release conditions must be complied with before the Development Permit will be signed and issued. Failure to complete the pre-release condition(s) on or before July 19, 2021 will see this approval be deemed null and void, unless a time extension is issued under agreement between the Development Authority and the Applicant(s).

1. Comprehensive Site Drainage Plan to be provided for the subject lands, prepared by a professional engineer to the satisfaction of the Public Works Department. The applicant is advised that review and acceptance of the required report may be subject to payment of review fee(s) as per the Foothills County fee schedule;
2. Lot Grading Plan to be provided for the subject lands, prepared by a professional engineer to the satisfaction of the Public Works Department. The applicant is advised that review and acceptance of the required report may be subject to payment of review fee(s) as per the Foothills County fee schedule;

ADDITIONAL CONDITIONS:

1. Upon completion of the Pre-Release conditions, this approval allows for an Oversized Accessory Building having a total area not to exceed 1,254 sq. ft. (116.31 sq. m.) to be located a minimum of 1.33 m (4.37 ft.) from the northwest, front yard property line and a minimum of 1.31 m (4.29 ft.) from the northeast, side yard property line, at its closest point;
2. This relaxation pertains only to the setback between the proposed Oversized Accessory Building, the northwest and northeast property lines as identified. All future development must meet the County setback requirements;
3. Development of the land is to comply with the requirements of the National Building Code, and Provincial Plumbing, Electrical and Fire Codes at all times. **Prior to construction, the applicants shall obtain the necessary building and safety code permits for the accessory building;**
4. Further to condition #3, it has been identified that the subject parcel lies within the floodplain of Fish Creek, therefore the applicant shall ensure that all future development of the land complies with the 1:100 year flood requirements of the Building, Plumbing and Electrical Codes. Engineered Building Drawings to be reviewed and accepted for the proposed accessory building, to the satisfaction of the Building and Safety Codes Department;
5. The applicant(s) shall execute a flood hold harmless agreement with the Foothills County;
6. The applicant(s) must comply with all requirements of Alberta Environment and Parks with respect to the proposed development;
7. The existing "Shed (3.72 x 3.11)" shall be removed from the subject property in its entirety. It is the applicant(s) responsibility to ensure appropriate and proper disposal of any materials resulting from the demolition of any structures on the subject property;
8. The applicant is to either remove the second approach from 228th Street W, reconfigure the approach to the satisfaction of the Public Works Department or submit a written letter to Council requesting their consideration of a second approach on a parcel of less than 10 acres in size. Failure to receive appropriate approval to allow for the second approach to remain shall see the second approach immediately removed and ditch remediated, to the satisfaction of the Public Works Department;
9. The height of the accessory building must not exceed 10.67m (35ft.) from grade to peak, which is the maximum permitted within the Hamlet Residential District;
10. All structures on this property are for personal use only and shall not be used in association with any business, or for the purpose of storing business related materials within, nor are they permitted to be used as a secondary residence, unless appropriate approvals are first obtained from Foothills County;
11. It is the applicant(s) responsibility to provide notification to the Development Authority upon completion of the development, as approved herein;
12. Natural drainage of the property must be maintained. Alteration to natural drainage may proceed only under the authorization of an approved Development Permit for Lot Grading, or as acknowledged within the required Site Drainage and/or Lot Grading Plan;
13. No topsoil is permitted to be removed from the property. When placing materials and conducting operations on the land, the applicant shall ensure that measures are taken to contain those materials and mitigate effects with respect to dust, erosion, and runoff;
14. All installation of exterior building and yard lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw 27/2009;

15. The issuance of a development permit from the Municipality does not relieve the applicant 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;
16. The applicant shall be responsible for payment of any professional costs including legal fees that may be incurred by the Municipality with respect to the development approved under this permit.

FINDINGS OF FACT

1. The subject property is a 0.51 +/- acre Hamlet Residential parcel located within the Hamlet of Priddis, adjacently north of Fish Creek and is accessed from the end of 228 Street W.
2. On January 20, 2021, the Development Authority for Foothills County refused Development Permit 21D 003 for a relaxation of setbacks to a proposed garage on PLAN 3420IC, BLOCK 2, LOT 11; PTN. SE 22-22-03 W5M.
3. The Development Authority can approve a variance of up to 25% on proposed structures, provided the applicant can provide a rationale as to why the proposed location is the most appropriate location for the proposed structure. As the application requests a variance larger than the maximum under this section, this application is considered an automatic refusal and further consideration can only be considered by the Development Appeal Board.
4. An appeal was received against the refusal from the applicant Allan Helpin on January 21, 2021.

ISSUES

1. Relaxation of Setbacks to a Proposed Accessory Building

- (i) The application requests a relaxation of setbacks to a proposed 1254 sq. ft. Accessory Building (Garage). A structure of this size requires a development permit, as it exceeds the allowance for a garage; further, the location that the applicants have chosen requires a relaxation to the minimum front and side yard setback distances. The location of the proposed accessory building is also prone to flooding.
- (ii) The proposed 1254 sq. ft. Accessory Building (Garage) is intended to replace the existing structure. The Accessory Building is proposed to be placed 1.33 meters (4.37 ft.) from the northwest property line, when it is required to be placed 5.0 meters (16.4 ft.) back from this property line at its closest point. Therefore, the applicants are requesting a 3.67 meter (12.04 ft.) or a 73.4% relaxation of front yard setbacks.
- (iii) The Accessory Building is proposed to be placed 1.31 meters (4.29 ft.) from the northeast property line, when it is required to be placed 1.5 meters (4.92 ft.) back from this property line at its closest point. Therefore, the applicants are requesting a 0.19 meter (0.62 ft.) or a 12.7% relaxation of side yard setbacks.
- (iv) The Development Authority submitted that Section 13.4.7.3 of the Land Use Bylaw 60/2014 outlines the minimum setback distances for the subject parcel.
- (v) The Development Authority submitted that per Section 5.6.1 and 5.6.4 of the Land Use Bylaw 60/2014, she is authorized to approve a maximum variance of 25% on proposed structures for a relaxation of setbacks, through the Development Permit application

process on a Hamlet Residential District parcel. As the application requests a variance larger than the maximum allowable under the Land Use Bylaw, this application is considered an automatic refusal. As such the application for a relaxation of setbacks to a proposed Accessory Building was refused, and further consideration of this application can only be pursued through the Development Appeal Board.

- (vi) The Development Authority submitted that Section 4.2.1.9 of the Land Use Bylaw 60/2014 outlines that a parcel with a permanent single-family dwelling is permitted up to a maximum of two private garages, with a total size not to exceed 1,200 square feet.
- (vii) The Development Authority submitted that Section 4.2.1.9 of the Land Use Bylaw 60/2014 also outlines that parcels less than one (1) acre in size are permitted up to two accessory buildings with a total size not to exceed 450 square feet.
- (viii) The Development Authority submitted that Section 9.1.3 of the Land Use Bylaw 60/2014 delineates a flood hazard area.
- (ix) The Development Authority submitted that the subject property is located in both the flood fringe, and a floodway of a flood hazard area.
- (x) The Development Authority submitted that Section 11.1 of the Land Use Bylaw 60/2014 outlines the flood hazard protection overlay, and noted that because the subject property is located in the flood hazard area, a development permit is required for all permitted and discretionary uses listed under the Hamlet Residential District.
- (xi) The Development Authority submitted that the proposed accessory building is located within the flood fringe zone, and the applicant has provided engineered drawings with the application.
- (xii) The applicant provided testimony that the shed located on the subject property will be removed to comply with the Land Use Bylaw 60/2014.
- (xiii) The applicant provided testimony that this application was made so that the garage could be rebuilt, as it was originally constructed with a number of mistakes. The rebuilt garage will allow for additional storage and will allow more space for vehicles to be parked inside.
- (xiv) The applicant provided testimony that the overhang on the eaves is lower than the overhead doors, which makes it difficult to fit a vehicle inside.
- (xv) The applicant provided testimony that the spacing between the garage door does not provide enough room for a vehicle to pass through.
- (xvi) The applicant acknowledges that he has no concerns with the suggested conditions provided by the Development Officer but submitted a concern regarding the drainage issues for the rest of the property.
- (xvii) The applicant submitted a concern that if the second approach were to be removed, he would have difficulty accessing the garage and there could be emergency access issues. It was noted that if the group of trees in the center of the roundabout were removed, the two approaches would become one approach.
- (xviii) The applicant submitted that he has spoken to neighbouring landowners and there have been no concerns with the application he has made.

REASONS FOR DECISION

The Board is overturning the automatic refusal of Development Permit 21D 003 for a relaxation of setbacks to a Proposed Accessory Building (Garage) for the following reasons:

Based on testimony heard, the Board considered the application as presented, and the reasons for the refusal and found that the proposed 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.

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 18th day of February 2021 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

SECTION 4.2 – NO DEVELOPMENT PERMIT REQUIRED

4.2.1.9 - Permanent dwellings, are permitted up to two private garages, attached to the permitted dwelling or detached, so long as the total cumulative area does not exceed 111.48 sq. m. (1,200 sq. ft.), excluding any lands designated sub-district “A” or Flood Hazard Protection Overlay District;

SECTION 5.6 – VARIANCES

5.6.1 - The Development Authority may exercise its variance powers, prescribed in Sections 5.6.2 to Section 5.6.5, and approve a development permit for a permitted or discretionary use, with or without conditions, which does not comply with the regulations of this Bylaw, if the Development Authority determines that:

- a. The proposed development would not unduly interfere with the amenities, use, enjoyment, or value of adjacent lots;
- b. The proposed development would be consistent with the general purpose or character (urban or rural) of the district;
- c. There are factors unique to the development, use and site (such as the location of existing buildings) which are not generally common to other development and land in the same district and which would result in unnecessary hardship or practical difficulties for the proposed development to comply with the provisions of this Bylaw; and
- d. There are mechanisms to mitigate the effect on adjacent lots.

5.6.4 - The Development Authority may allow with respect to a proposed development, a variance of any yard setback to a maximum of 25% of the setback required by this Bylaw.

SECTION 9.1 – ACCESS TO PROPERTY

9.1.3 - For purposes of this Bylaw, an easement agreement or easement does not constitute legal access unless a future road dedication or utility right of way has been registered over the easement area and the County has become a party to the easement to ensure that it cannot be removed without Council resolution.

SECTION 11.1 – 2013 FLOOD HAZARD PROTECTION OVERLAY

11.1.1 - The general purpose of this section is to provide for the safe and efficient use of lands within the floodway and flood fringe of all the rivers, streams, creeks and waterways as they are defined under the Alberta Environment’s Flood Hazard Identification Program, as well as the areas impacted by June 2013 flood event within the Foothills County.

The intent of this section is to discourage new development on lands subject to flooding and achieve the long term goal of maintaining and decreasing the overall density of development on lands that may be subject to flooding.

SECTION 13.4 – HAMLET RESIDENTIAL DISTRICT

13.4.7.3 - Minimum Yard Setbacks Requirements

- a) Front Yard Setbacks:
 - i. 40m (131.23 ft.) from the ultimate right of way or 70 meters from the centreline of a Provincial highway, whichever is greater;
 - ii. 48m (157.48 ft) from the centreline of a Municipal road;
 - iii. 5m (16.40 ft) from internal subdivision road – property line;
 - iv. 4m (13.12 ft) from the right of way of a municipal road located within a hamlet.

- b) Side Yard Setbacks:
 - i. 1.5m (4.92 ft) from the property line.

- c) Rear Yard Setbacks:
 - i. Principal Building – 8m (26.25 ft) from the property line;
 - ii. Accessory Building – 1m (3.28 ft.) from the property line; and
 - iii. Decks and associated staircases (steps) may project into the rear yard setback to a maximum of 1.5m (4.92 ft.);

- d) If the title to a lot is subject to a caveat in respect of a land dedication or an agreement for the acquisition of land for road widening purposes, the dedicated area or area of future road widening shall be considered the future property boundary for which setback distances set out shall apply.

- e) See Section 13.4.8 “Exceptions” for any setbacks exemptions that have been approved by Bylaw for particular developments.

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,

APPENDIX "A"

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

	<u>NAME</u>	<u>CAPACITY</u>
1.	B. Hornsby	Foothills County Development Officer
2.	A. Helpin	Appellant/Applicant

APPENDIX "B"

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

NO.	ITEM
1.	Submission from the Foothills County Development Officer
2.	Notice of Appeal submitted by A. Helpin

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO.	ITEM
1.	Presentation by the Foothills County Development Officer