

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

**HEARING DATE:** AUGUST 24, 2021

**BOARD ORDER:** D10/2021

**LANDOWNERS / APPELLANTS:** KOURTNEY AND GRAHAM KERNAGHAN

**APPLICANT:** WEST LEGAL

**APPEAL AGAINST:** RELAXATION OF SETBACKS TO EXISTING STRUCTURE(S)

**SUBJECT PROPERTY:** PLAN 960J, BLOCK 1, LOTS 6-8; PTN: NW 19-17-28 W4M (THE "PROPERTY")

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS: RD MCHUGH, B. MEYERS, C. STORMES, P. STIER AND CLERK F. FAIRWEATHER

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**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 Landowners/Appellants, 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 automatic refusal of Development Permit 21D 158 for a relaxation of setbacks to existing structure(s) on PLAN 960J, BLOCK 1, LOTS 6-8; PTN: NW 19-17-29 W4M (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 158 for a relaxation of setbacks to existing structure(s) on PLAN 960J, BLOCK 1, LOS 6-8; PTN: NW 19-17-28 W4M.

The application is thereby APPROVED subject to the following conditions:

**APPROVAL DESCRIPTION:**

The existing 'Garage (7.37 x 7.37)' is permitted to remain, as depicted on the Real Property Report File No. 21-280 dated June 1, 2021 from SexSmith Surveys Ltd. All other existing and future development must meet the County setback requirements.

**ADVISORY REQUIRMENTS:**

The following requirements are provided by Foothills County as a courtesy to the applicant(s) and property owner(s). These comments will not form the basis of the decision to approve the development permit application. They are simply provided for information purposes.

1. All development is required to comply with all requirements of the Alberta Building, Plumbing, Electrical, and Fire Codes at all times;

2. The issuance of a development permit by the County does not relieve the landowners of the responsibility of complying with all other relevant County bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
3. 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 implementation of this permit;

### **INTRODUCTION**

- [1] The subject property is an existing 10,140 square foot Hamlet Residential District parcel located on Railway Avenue within the Hamlet of Cayley.
- [2] The Applicant submitted a Real Property Report (RPR) for compliance which notes that the existing garage (7.37 x 7.37) does not comply with the minimum set back distances as identified within the Hamlet Residential District, of the Land Use Bylaw 60/2014. An application was made for a Development Permit in accordance with the provisions of Land Use Bylaw 60/2014 of Foothills County in respect to the relaxation of setbacks to the existing garage (7.37 x 7.37).
- [3] On July 21, 2021, the Development Authority automatically refused Development Permit 21D 158 for a relaxation of setbacks to existing structure(s) on PLAN 960J, BLOCK 1, LOS 6-8; PTN: NW 19-17-28 W4M.
- [4] An appeal was received from the Appellants, Kourtney and Graham Kernaghan on August 10, 2021 against the refusal of Development Permit 21D 158.

### **ISSUES**

#### **1. Relaxation of Setbacks to an Existing Structure(s)**

- (i) The Development Authority submitted that the subject parcel is located on Railway Avenue within the Hamlet of Cayley.
- (ii) The Development Authority submitted that the Appellants are requesting the consideration to allow the existing garage to remain in its current location.
- (iii) The Development Authority submitted that Section 13.4.7.3 of the Land Use Bylaw 60/2014 states that the minimum side yard setback must be 1.5m (4.92 ft) from the side yard property line. The existing garage is located 0.86 metres from the south property line.
- (iv) The Development Authority submitted that Section 5.6.3 Land Use Bylaw states 'The Development Authority may allow with respect to existing development on Hamlet Residential District zoned property, a variance of a side yard setback to a maximum of 25% of the setback required by this Bylaw.' The application is requesting a 44.6% relaxation of setbacks which exceeds the maximum variance that the Development Officer may consider, and therefore the application was deemed an automatic refusal.
- (v) The Development Authority submitted that the Foothills County Safety Codes Officer was circulated. No concerns were presented by the Safety Codes Officer regarding the existing structure being permitted to remain on the subject property.
- (vi) The Appellant K. Kernaghan submitted that they no longer live on the subject property and that they are requesting approval of the development permit in order to bring the garage into compliance for the new landowners.

- (vii) The Appellant K. Kernaghan provided testimony that in the Fall of 2020, both herself and G. Kernaghan hired a professional contractor to build the garage as well as receive the appropriate permits and inspections for the garage. K. Kernaghan noted that all the inspections were passed. Upon requesting a Real Property Report (RPR) they found that the garage did not comply with the County's Land Use Bylaw.
- (viii) The Appellant G. Kernaghan provided testimony in agreement with K. Kernaghan, that the garage was completed, and they were informed that all permits and inspections had passed. They were only made aware the garage was not compliant once they requested the RPR. The Appellant G. Kernaghan stated that the contractor did not send them any records of the inspection.
- (ix) The Appellant K. Kernaghan explained that they did not receive a compliance certificate from the County once it was completed.
- (x) The Development Authority explained that the letter of compliance on the County file was not recent and only refers to two sheds and does not pertain to the garage in question. Since the letter of compliance was issued, the two sheds have been removed. The Development Permit was required to bring the property into compliance.
- (xi) The Appellant G. Kernaghan provided testimony that he confirmed with the contractor that drawings with measurements were provided to the County prior to construction of the garage and expressed his concern that the setback measurements should have been corrected prior to the construction of the garage.
- (xii) The Development Authority stated that the County does have the building permit for the structure on file and the file notes that all building permits, final inspections and safety code requirements were completed. Development Authority noted that the submitted site plan for the garage provided measurements and illustrated that the garage would meet set back requirements. During the construction of the garage the setback requirements were not followed.

**REASONS FOR DECISION**

The Board is OVERTURNING the Development Authority's decision to automatically refuse Development Permit 21D 158 for a relaxation of setbacks to existing structure(s) for the following reasons:

Based on testimony heard, the Board considered the application as presented, and the reasons for the refusal. The Board found that the existing development does 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. Additionally, the structure (existing garage) presents no safety hazard to the landowners or neighboring 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 24<sup>th</sup> day of August 2021 and signed by the Chairman of the Subdivision and Development Appeal Board who agrees that the

**DEVELOPMENT APPEAL BOARD**

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content of this document adequately reflects the appeal hearing, deliberations and decision of the Subdivision and Development Appeal Board.



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Mr. Gar Beacom, Chairman

**RELEVANT LEGISLATION**

**Foothills County Land Use Bylaw 60/2014**

**SECTION 5.6 – VARIANCES**

**5.6.3** - The Development Authority may allow with respect to existing development on Hamlet Residential District zoned property, a variance of a side yard setback to a maximum of 25% of the setback required by this Bylaw.

**SECTION 13.4.7 – DEVELOPMENT REQUIREMENTS**

**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. 15m (49.21 ft) from internal subdivision road outside of a hamlet boundary;
  - iv. 4m (13.12 ft) from the right of way of a municipal road or internal subdivision road located within a hamlet boundary.
  
- b) Side Yard Setbacks:
  - i. 1.5m (4.92 ft) from the property line.
  - ii. Notwithstanding sub-section 13.4.7.3 (b)(i), the side yard setbacks do not apply to the common wall side of a structure where a common wall exists
  
- 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.);

**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.	K. Kernaghan	Appellant
3.	G. Kernaghan	Appellant

**APPENDIX "B"**

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

<b>NO.</b>	<b>ITEM</b>
1.	Submission from the Foothills County Development Officer
2.	Notice of Appeal submitted by K. and G. Kernaghan

**APPENDIX "C"**

EXHIBITS MADE AVAILABLE AT THE HEARING

<b>NO.</b>	<b>ITEM</b>
1.	Presentation by the Foothills County Development Officer
2.	Verbal Presentation by the Appellants K. and G. Kernaghan