

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

**HEARING DATE:** OCTOBER 8, 2020

**BOARD ORDER:** D12/2020

**LANDOWNER / APPELLANT:**

**APPEAL AGAINST:** RELAXATION OF SETBACKS TO PROPOSED ACCESSORY BUILDING

**SUBJECT PROPERTY:** PLAN 0211088, BLOCK 3, LOT 5; PTN. E 29-22-03 W5M

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS: D. MILLER, C. STORMES, GLORIA WILKINSON, R. HANSEN, AND CLERK S. BARRETT

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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 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 refusal of Development Permit 20D 146 for a relaxation of setbacks for a proposed structure on PLAN 0211088, BLOCK 3, LOT 5; PTN. E 29-22-03 W5M (The "Property").

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

Allow the appeal and overturn the refusal of Development Permit 20D 146 for a relaxation of setbacks for a proposed structure on PLAN 0211088, BLOCK 3, LOT 5; PTN. E 29-22-03 W5M.

The application is thereby APPROVED subject to the following conditions:

**PRE-RELEASE CONDITIONS:**

**(Conditions must be complied with before the development permit will be signed and released. Unless a time extension is issued under agreement between the development officer and the applicants, failure to complete these pre-release Conditions on or before March 8, 2021 will see this approval be deemed null and void.)**

1. Obtain a roadside development permit from Alberta Transportation;
2. Submit a stormwater management/drainage and grading plan prepared by a professional engineer, to the satisfaction of the public works department;
3. Confirm that the proposed building is to be located more than 30 meters away from a 15% slope OR submit a geotechnical report for slope stability, to the satisfaction of the public works department.

**CONDITIONS**

1. Upon completion of the pre-release conditions, this approval allows the proposed 1,450 sq. ft. accessory building to be located no closer than 2.0 meters from the south side yard property line and 21 meters from the west front yard property at its nearest points;
2. This relaxation of setbacks pertains only to the setbacks between the proposed accessory building and the south and west property lines as identified. All other existing and future development must meet County setback requirements, unless approved under an independent development Permit;

3. The proposed accessory building is for personal use only. No portion of the structure shall be used in association with any business, or for the purpose of storing business related materials within, without receiving appropriate approvals from the county;
4. The proposed accessory building shall not exceed a maximum height of 10.67 meters (35 ft.), which is the maximum permitted within the Country Residential Land Use District;
5. All installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw;
6. No topsoil shall be hauled off the subject lands. If materials are to be brought onto the property (i.e. clay, fill, soils, etc.), the applicants must ensure a road use agreement, or a waiver of such, is obtained from the Public Works Department;
7. Throughout the course of development, erosion protection shall be implemented and maintained where required;
8. Development shall comply with the Alberta building, safety and fire codes at all times. The applicants shall obtain and maintain all permits and inspections applicable to use and occupancy of the building;
9. The applicants are required to notify the Development Authority upon completion of this development;
10. The 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;
11. 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 operation approved on this permit.

### **FINDINGS OF FACT**

1. The subject property is an existing 2.66 acre Country Residential District parcel located at the end of the cul-de-sac on Ranchers Hill Road, to the east of Highway #22 west.
2. On September 10, 2020, the Development Authority for Foothills County refused Development Permit 20D 146 for a relaxation of setbacks to a proposed structure on PLAN 0211088, BLOCK 3, LOT 5; PTN. E 29-22-03 W5M.
3. The Development Officer has the authority to approve up to a 25% variance to setback requirements for proposed development. As this 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 from the applicants, Shawn Green and Amanda Moore against the refusal on September 14, 2020.

### **ISSUES**

#### **1. Relaxation of Yard Setbacks**

- (i) The application requests a relaxation of setbacks for a proposed 1,450 sq. ft. accessory building to be located on the South side of the yard site.
- (ii) The accessory building itself is permitted on a property of this size without having to obtain approval under an application for development permit, however the applicants are proposing to locate the building contrary to the setback requirements that are in place under the land use district.
- (iii) The Accessory Building is proposed to be placed 2 meters (6.56 ft.) from the south side yard property line when it is required to be placed 15 meters (49.21 ft.) back. Therefore, the application requests a 13 meter (42.65 ft.) or 87% relaxation of setbacks for the

proposed building on the South side. Additionally, the Accessory building is proposed to be located 33.5 meters from the center of the municipal road to the West, when it is required to be located 48 meters back from the center of that road, or a 30% variance.

- (iv) The Development Officer submitted that she has the authority to approve a maximum variance of up to 25% to a side yard setback, through the Development Permit application process on a Country Residential parcel. As the application requests a variance larger than the maximum allowable under the Land Use Bylaw, this application is considered an automatic refusal.
- (v) The appellants provided testimony explaining that there were several reasons that they opted to move the proposed building to the specified location. The first was to preserve their neighbors views to the extent that it would be possible, the second was to preserve the stand of trees on the East side of the property, and the third reason was that given the slope and topography of the pie-shaped lot, they are somewhat limited for suitable locations for a structure of that size.
- (vi) The appellants provided testimony that the building will be strictly for personal storage and personal use, such as to store hobby supplies, tools, and fitness equipment.
- (vii) The appellants provided testimony that they have spoken with the three neighbors who would be most impacted by the proposed structure and submitted that the neighbors do not object to the construction of the Accessory building, as proposed.
- (viii) The appellants provided testimony that they have committed to their neighbors that they will build the Accessory building in a style and using materials that closely match that of the existing residence for consistency and to ensure that it blends with the overall design of the neighborhood.
- (ix) The appellants confirm that if the proposed Accessory building permit application is approved, they will proceed immediately with the work required to satisfy the pre-release conditions, including a geotechnical report, stormwater and drainage report, and a roadside development permit. They have no concerns with the requirements stipulated.

**REASONS FOR DECISION**

The Board is OVERTURNING the Development Authority's decision to refuse Development Permit 20D 146 for a relaxation of setbacks to a proposed structure 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 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 8th day of October 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.



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Mr. Gar Beacom, Chairman

**RELEVANT LEGISLATION**

**M.D. of Foothills Land Use Bylaw 60/2014**

**SECTION 5.6 – VARIANCES**

**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.

**5.6.5** The variance power given to the Development Authority under Section 5.6.4 of this Bylaw shall not be exercised with respect to a proposed development unless the landowner can demonstrate that the proposed location is the most appropriate site for the proposed development”.

**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. Bartnik	Foothills County Development Officer
2.	A. Moore	Applicant/ 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 S. Green & A. Moore
3.	Submission from TC Energy
4.	Submission from neighboring landowner, F. Brooks.

**APPENDIX "C"**

EXHIBITS MADE AVAILABLE AT THE HEARING

<b>NO.</b>	<b>ITEM</b>
1.	Presentation by the Foothills County Development Officer