

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

HEARING DATE: NOVEMBER 3, 2020

BOARD ORDER: D13/20

APPLICANTS/LANDOWNERS: DONALD & LESLIE REIDLINGER

APPELLANT: DWIGHT & OLWYN FRENCH, CURTIS & DESIREE HART

APPEAL AGAINST: THE APPROVAL OF DEVELOPMENT PERMIT 20D 122 FOR ONE PERMANENT SEA-CAN FOR PERSONAL STORAGE, AND A RELAXATION OF SETBACKS

SUBJECT PROPERTY: PLAN 0112224, BLOCK 1, LOT 6; PTN. SE 16-21-29 W4M

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS, R. TAYLOR, B. ROBSON, D. MACDONALD; AND CLERK, S. BARRETT

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, the Applicant and the Development Authority for Foothills County with respect to the appeals filed by the Appellants in accordance with Section 685 of the Municipal Government Act against the approval of the Development Permit 20D 122 for one permanent Sea-can for Personal Storage, and a relaxation of setbacks on Plan 0112224, Block 1, Lot 6; Ptn. SE 16-21-29 W4M (The "Property");

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

Deny the appeals and uphold the Development Authority's decision to approve Development Permit 20D 122 for one Permanent Sea-can for Personal Storage, and a relaxation of setbacks on Plan 0112224, Block 1, Lot 6; Ptn. SE 16-21-29 W4M.

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

CONDITIONS:

1. This approval is to allow for the placement and use of one (1) - 160 sq. ft. Sea-can (shipping container) for the purpose of personal storage on the subject property;
2. the Sea-can is permitted to remain 4.5m (15 ft.) from the west property line. This relaxation pertains only to the setback between the existing Sea-can and the west property line. All other development must meet County setback requirements;
3. the Sea-can shall at all times be maintained to be safe, functional, and in a good state of repair; including the preservation of the exterior finish to ensure that the Sea-can aesthetically complements the primary structure on the subject property. Any damage must be repaired in a timely manner and the unit shall be refinished at any such time that it begins to appear unsightly from age or degradation. Replacement of the Sea-can shall not proceed unless authorized under an independent application for development permit;
4. the existing, mature vegetation shall be maintained in order to support visual screening from adjacent lands and the municipal road surface. Plants are to demonstrate healthy and vigorous growth. Any dead stock must be replaced with similar or greater material(s) in order to ensure that the same or greater visual screening of the Sea-can is maintained;
5. the Sea-can shall be used for the storage of personal items, and/or equipment and materials for land maintenance and upkeep of the subject property only. Rental of, or use of the container in conjunction with a business, home occupation, or for any type of residential purpose – including for overnight stays, has not been considered under this approval. Any such additional use(s) will require approval under appropriate independent municipal application(s). Modifications to, or attachments/additions to the container is not permitted;
6. pre-existing drainage of the parcel shall be maintained. Alteration to natural drainage may proceed only under the authorization of an approved development permit for Lot Grading;
7. any new installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Foothills Dark Sky Bylaw;
8. the landowner(s)/applicant(s) indemnify and hold harmless the County against the cost of any claims or actions, or awards for loss or damage to the Owner(s) arising from the use of the Sea-can on this property;
9. issuance of a development permit by the municipality does not relieve the applicant 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 and/or the storage of materials on the property;
10. the applicant is responsible for payment of any professional costs, including legal fees, which may be incurred by the County with respect to the development approved on this permit.

INTRODUCTION

- [1] The subject property is a 5.04 +/- acre Country Residential parcel located on the south side of Willowside Drive within the Willowside Equestrian Estates subdivision, which is a group of 24 Country Residential District properties.
- [2] The application requests approval for the placement of one (1) 8' x 20' Sea-can (shipping container) to be located on the subject property, and a relaxation of setbacks for the proposed container.
- [3] The proposed location of the Sea-can in relation to the west, side-yard property line does not conform to setbacks as outlined in Land Use Bylaw No. 60/2014.
- [4] A Sea-can may be considered as an accessory building to be used for personal storage purposes provided that the exterior finish matches or compliments the exterior finish of the principal building(s) or is screened from view to the satisfaction of the Development Authority.
- [5] Appeals were received from Appellants, D. & O. French on October 5, 2020 and from Appellants C. & D. Hart on October 6, 2020, against the approval of Development Permit 20D 122.

ISSUES

PLACEMENT OF A SEA-CAN

- [6] The Development Authority submitted that the application is to allow for the permanent placement and use of one Sea-can container on the subject property, being Plan 0112224, BLOCK 1, LOT 6; PTN. SE 16-21-29 W4M, and the relaxation of setbacks for the container.
- [7] The Development Authority submitted that Sea-Cans may be considered as an accessory building to be used for personal storage purposes provided the exterior finish matches or compliments the exterior finish of the principal building(s) or is generally screened from view to the satisfaction of the Development Authority.
- [8] Section 9.2.8 of the Land Use Bylaw identifies that a Sea-can may be considered as an accessory building to be used for storage purposes only in accordance with the following:
 - a) On parcels 21 acres or more, one (1) Sea-can no larger than 48' in length and 10' in width, is permitted without a Development Permit, provided it meets the minimum setback requirements for that Land use District and does not exceed the maximum requirements under the applicable land use district;
 - b) In all other instances, a Development Permit is required for placement of a Sea-can and must be in compliance with Table 4.2.1.7A "Maximum Area for Accessory buildings not requiring a permit";

- c) The exterior finish should match or compliment the exterior finish of the principal building or be screened from view to the satisfaction of the Development Authority.
- [9] The Development Authority submitted that a parcel of between 5.0 and 9.9 acres in size may have a total of four accessory buildings not exceeding 3500 sq. feet. No additional accessory buildings are on the subject parcel at present.
- [10] The Development Authority submitted that the location of the Sea-can is proposed to encroach into the west yard setback distances, which normally require a setback of fifteen (15) meters. The Sea-can is currently located four and one half (4.5) meters from the West property line.
- [11] The Development Authority submitted that the application was the result of a complaint and subsequent enforcement by a Peace Officer.
- [12] The Appellants, Mr. and Mrs. French provided testimony that the Sea-can is visible within the community and negatively impacts the neat and tranquil appearance of their Country Residential neighborhood. Mrs. French noted that restrictive covenant agreements have been registered on the properties that set out specific guidelines for accessory buildings. Additionally, there is an architectural committee within the Homeowner's Association, that should be consulted before anything is placed on the property. They feel it is important that the rules be followed in all cases. They are concerned that if the Applicant's Sea-can is permitted to remain, it will lead to other Sea-cans or other structures that do not adhere to the restrictive covenants being added to the area.
- [13] The Appellant, Mr. Hart provided testimony that he concurs with the statements provided by Mr. and Mrs. French. He submitted that he represents other homeowners in the area including T. Ternes, S. Eozio, and M. & S. Deangelis who also oppose the approval of a Sea-can. He submits that the Sea-can is an eyesore that negatively impacts the visual appeal of their Country Residential community and that theirs is an Estate area with high property values, and a Sea-can will be detrimental to his property value. He reiterated that the Applicant has signed an agreement with the Homeowner's Association and is aware that certain standards apply to outbuildings but has chosen to ignore them. Mr. Hart also noted that the Sea-can does not meet the County's standard for an approved Sea-can, as the exterior color does not match that of the existing residence. He shares the concern that if one Sea-can is approved, it will set a precedent for further sub-standard outbuildings to be installed in the area.
- [14] Member of the gallery, R. Mckie addressed the board to express opposition to the placement of a Sea-can. He is also a neighboring landowner. He submitted that as homeowners in the area, they want to keep their subdivision attractive. Given that the parcels are smaller (approx. 3.0 to 5.0 acres), a Sea-can is hard to conceal from neighboring properties and it negatively impacts other people. He submits

that the established rules are in place for a reason and all homeowners in the area need to follow them.

- [15] The Applicant/Landowner Mr. Reidlinger provided testimony that he feels the application for the placement of one Sea-can on his property for personal storage is reasonable. The Sea-can will provide storage for personal items such as patio furniture, landscaping tools and equipment, and mowers, the purpose of which is to ensure that his yard is tidy and uncluttered. He submitted that he was initially unaware that a moveable structure such as a Sea-can required a Development Permit from the County, but has since taken all required steps to bring the container into compliance. He states that the reason the Sea-can does not adhere to setback requirements is because it's location was specifically chosen to ensure maximum screening from mature coniferous trees, and that if the Sea-can were to be moved to meet setback requirements, it would be more visible to neighboring properties and the roadway. He submits that the Sea-can is kept in good condition and compliments the principal residence. He submits that he may eventually construct a more permanent shed or other accessory building, but has no timeline for that at present.
- [16] The Applicant/Landowner Mr. Reidlinger provided testimony that the most affected property owners, those that share the West fence line, are in support of the application. Mr. Reidlinger provided a written submission to the Development Appeal Board that references supportive emails from neighboring landowners.

REASONS FOR DECISION

The Board is **denying** the appeals and **upholding** the Development Authority's decision to approve Development Permit 20D 122 for the permanent placement and use of one (1) Sea-can, on the subject property Plan 0112224, BLOCK 1, LOT 6; PTN. SE 16-21-29 W4M.

Based on testimony heard, the Board considered the application and the testimony of the Development Officer, the Applicants, and the Appellants. In their consideration of the information presented, the Board found that it is outside their jurisdiction to consider matters related to Homeowner's Association Agreements, Restrictive Covenants, Architectural Controls, etc. The Foothills County Land Use Bylaw No. 60/2014 allows for the placement of Sea-cans on a Country Residential parcel within the County, as a discretionary use.

The Board may only consider testimony regarding the location of the Sea-can in relation to the required relaxation of setbacks. The Board noted through the applicant's submission, that the most affected neighbor (West property line) does not oppose the location of the Sea-can. As such, the Board found that there was not sufficient evidence presented to demonstrate that the Sea-can in its existing location would 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 3rd day of November, 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

ACCESSORY BUILDINGS AND USES

- 9.2.8 A Sea-Can may be considered as an accessory building to be used for storage purposes only in accordance with the following:
- a) On parcels 21 acres or more, one (1) Sea-can no larger than 48' in length and 10' in width, is permitted without a Development Permit, provided it meets the minimum setback requirements for that Land use District and does not exceed the maximum requirements under the applicable land use district;
 - b) In all other instances, a Development Permit is required for placement of a Sea-can and must be in compliance with Table 4.2.1.7A "Maximum Area for Accessory buildings not requiring a permit";
 - c) The exterior finish should match or compliment the exterior finish of the principal building or be screened from view to the satisfaction of the Development Authority.

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.	Brenda Bartnik	Foothills County - Development Officer
2.	Donald Reidlinger	Applicant/Landowner
3.	Curtis Hart	Appellant
4.	Dwight & Olwyn French	Appellants
5.	Robbie McKie	Gallery

APPENDIX "B"

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

NO. ITEM

1. Development Permit 20D 122
2. Notice of Appeal submitted by Curtis & Desiree Hart
3. Notice of Appeal submitted by Dwight & Olwyn French

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

NO. ITEM

1. Presentation by the Development Authority, Brenda Bartnik