

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

**HEARING DATE:** DECEMBER 3, 2020

**BOARD ORDER:** D14/2020

**LANDOWNER / APPELLANT:** PAT McGAFFEY/FRONTIER HOMES

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

**SUBJECT PROPERTY:** PLAN 1212691, BLOCK 1, LOT 1; PTN. NW 10-21-01 W5M (THE "PROPERTY")

**BEFORE:** CHAIRMAN, G. BEACOM; BOARD MEMBERS: RD McHUGH, B. MEYERS, R. PERCIFIELD, G. WILKINSON, AND CLERK S. BOGART

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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 185 for a relaxation of setbacks to a proposed Accessory Building on PLAN 1212691, BLOCK 1, LOT 1; PTN. NW 10-21-01 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 20D 185 for a relaxation of setbacks to a proposed Accessory Building on PLAN 1212691, BLOCK 1, LOT 1; PTN. NW 10-21-01 W5M.

The application is thereby APPROVED subject to the following conditions:

1. This approval allows for the proposed Accessory Building to be located a minimum of 10.30 meters (33.79 ft.) from the south property line, at its closest point, as per the submitted site plan;
2. 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 Foothills County;
3. No portion of the proposed accessory building is permitted to be used as a secondary residence, unless appropriate approvals are obtained from the Foothills County;
4. The applicant is required to obtain and maintain all necessary building and safety code permits for the construction of the Accessory Building. The applicant is to be aware that all Safety Codes Permits are to be doubled, as per the Fee Schedule, since the project commenced prior to appropriate approvals being in place;
5. 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;
6. No topsoil shall be hauled off of the subject lands;
7. It is the responsibility of the landowners to ensure that natural drainage patterns of the parcel are maintained. Alteration to drainage is to proceed only under approval by means of a lot grading permit from the County;

8. All installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw;
9. 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. Failure to comply with this condition could result in Section 7, the Enforcement Section, of the Land Use Bylaw being implemented which could result in a penalty as identified in Appendix D and/or the cancellation of this Development Permit under Section 7.3.1(e);
10. The applicant is wholly responsible for all costs of improvement and/or remedial works during and after development of the land;
11. Throughout the course of development, erosion protection shall be implemented and maintained where required;
12. It is the landowner's responsibility to provide notification to the Development Authority upon completion of the development, as approved herein;
13. The issuance of a Development Permit from the Municipality does not relieve the applicant of the responsibility of complying with all other relevant bylaws and requirements, nor excuse violation of any provincial or federal regulation or act which may affect use of the land;
14. The applicant 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 herein.

**FINDINGS OF FACT**

1. The subject property is a 2.0 +/- acre Country Residential parcel located approximately 1 km west of Highway 552 W., adjacently south of 306 Avenue W. and is accessed from 43 St. W.
2. On November 12, 2020, the Development Authority for Foothills County refused Development Permit 20D 185 for a relaxation of setbacks to a proposed Accessory Building on PLAN 1212691, BLOCK 1, LOT 1; PTN. NW 10-21-01 W5M.
3. The Development Authority can approve a variance of up to 25% on proposed structures, provided the applicant can provide rational 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. On inspection of the property the Development Officer observed the building under construction in what appears to be the location proposed within this application; no Building Permit has been obtained for this structure.
5. An appeal was received against the refusal from the applicant Pat McGaffey on November 18, 2020.

**ISSUES**

**1. Relaxation of Setbacks to a Proposed Accessory Building**

- (i) The application requests a relaxation of setbacks to a proposed 9.11 m. x 12.19 m. (29.89 ft. x 39.99 ft.) 111.05 sq. m. (1,195.34 sq. ft.) Accessory Building. A structure of this size is permitted on a parcel of this size; however, the location that the applicants have chosen requires a relaxation to the minimum side yard setback distance.

- (ii) The Accessory Building is proposed to be placed 10.30 meters (33.79 ft.) from the South property line, when it is required to be placed 15.0 meters (49.21 ft.) back from this property line at its closest point. Therefore, the applicants are requesting a 4.70 meter (15.42 ft.) or a 31.34% relaxation of setbacks.
- (iii) The Development Authority submitted that per Section 5.6.5 of the Land Use Bylaw, he is authorized to approve a maximum variance of 25% for 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. 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.
- (iv) The Development Authority submitted that construction of the proposed structure commenced prior to securing the appropriate Building & Safety Codes Permits, which contravenes Section 1.6.1 and 1.6.2 of the Land Use Bylaw, and which would also result in refusal of the application.
- (v) The Development Authority submitted that once a Development Permit application was submitted, alternate locations for the proposed structure were presented to the applicant that would fall within acceptable yard setbacks. The Applicant declined to relocate the structure, which was already under construction.
- (vi) The Development Authority confirmed that the proposed Accessory Building was the subject of a Stop Work Order issued on November 24, 2020, as construction continued on the Accessory Building following contact with County Staff, but prior to the required Development Permit Application approval or Building/Safety Code Permits being in place.
- (vii) The applicant provided testimony that the Accessory Building under construction was located in what he considers the most appropriate location, due to the natural features of and the improvements to the property.
- (viii) The applicant provided testimony that the alternate location #1 proposed by the Development Authority in the South East corner of the property would disrupt a major spillway/drainage course that runs from Northwest to Southeast across the parcel.
- (ix) The applicant provided testimony that the alternate location #2 proposed by the Development Authority in the Northeast corner of the property would situate the building overtop of the septic tank and/or septic field for the existing residence and would be unsuitable as a construction site.
- (x) The applicant provided testimony that the alternate location #3 proposed by the Development Authority on the West side of the existing residence would locate the detached shop/garage in the front yard, which is not aesthetically pleasing and would disrupt the streetscape of the estate neighborhood. Additionally, he believes that gas and water lines are run underground through the front yard site (West side of the parcel).

- (xi) The applicant acknowledges that his company commenced construction on the Accessory Building prior to securing all the necessary permits. He confirms that he will obtain all outstanding permits if the Development Permit Application is approved.

**REASONS FOR DECISION**

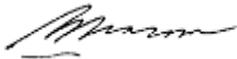
The Board is overturning the Development Authority's decision to refuse Development Permit 20D 185 for a relaxation of setbacks to a Proposed Accessory Building for the following reasons:

The Board notes and strongly denounces the Applicant's disregard for Foothills County rules and processes related to development on a Country Residential parcel. Based on testimony heard however, 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 3rd day of December 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**

- 5.6.1** - 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.
- 5.6.6** - 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.	L. Cox	Foothills County Development Officer
2.	P. McGaffey	Appellant/Applicant

**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 P. McGaffey
3.	Written submission/map submitted by P. McGaffey

**APPENDIX "C"**

EXHIBITS MADE AVAILABLE AT THE HEARING

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