

HEARING DATE: APRIL 8, 2021 – 10:00 AM

BOARD ORDER: D2/21

LANDOWNERS: DOMINIK & VICKY TARDIF
APPELLANTS: D. & C. STABLER, L. STABLER

APPEAL AGAINST: RELAXATION OF SETBACKS TO EXISTING STRUCTURES

SUBJECT PROPERTY: PTN: SE 10-21-03-W5M; PLAN 0110248, BLOCK 2, LOT 1 (THE "PROPERTY")

BEFORE: CHAIRMAN, GAR BEACOM; BOARD MEMBERS, D. MILLER, R. PERCIFIELD, R. TAYLOR, B. MEYERS; 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 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 partial refusal of Development Permit 21D 022 for a relaxation of setbacks to existing structures on PLAN 0110248, BLOCK 2, LOT 1; PTN: SE 10-21-03-W5M (The "Property").

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

DENY the appeal and UPHOLD the Development Authority's decision to approve Development Permit 21D 022 for a relaxation of setbacks to existing structures on PLAN 0110248, BLOCK 2, LOT 1; PTN: SE 10-21-03-W5M.

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

CONDITIONS:

1. Removal of the existing Sea-can from the parcel no later than June 30, 2021.
2. This approval allows for the existing Shed (3.10m x 4.24m) to be located a minimum of 11.66 m (38.25 ft.) from the north , side yard property line, at its closest point;
3. The existing Shop (12.6m x 2.41m) is to be located a minimum of 10.47m from the north east, side yard property line, at its closest point;
4. This relaxation pertains only to the setback between the existing Shed (3.10m x 4.24m) and the existing Shop (12.6m x 2.41m), to the north and northeast property lines as identified. All future development must meet the County setback requirements;
5. All Development is to comply with the requirements of the National Building Code, and Provincial Plumbing, Electrical and Fire Codes at all times.
6. 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;
7. It is the applicant(s) responsibility to provide notification to the Development Authority upon completion of the development, as approved herein;
8. 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;

9. 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;
10. 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;
11. The issuance of a development permit from the County 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;
12. 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 under this permit;

ADVISORY COMMENTS:

The following advisory comments 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. All installation(s) of exterior lighting must adhere to the guidelines and technical specifications as outlined within the Dark Sky Bylaw.

FINDINGS OF FACT

1. The subject property is an existing 2.29 +/- acre Country Residential District parcel located directly east of 229th Street W and 90 meters north of Millarville Road. The subject parcel is located within the Hamlet of Millarville.
2. On February 18, 2021, the Development Authority for Foothills County approved Development Permit 21D 022 for a relaxation of setbacks to existing structures on Plan 0110248, Block 2, Lot 1; Ptn: SE 10-21-03-W5M.
3. Appeals were received from neighboring landowners Dean and Candace Stabler on March 15, 2021, and from neighboring landowner Loretta Stabler on March 17, 2021 against the approval.

ISSUES**1. Relaxation of setbacks to an existing building**

- (i) The Development Officer submitted that the application requested a relaxation of setbacks to three existing accessory buildings as follows:
 - Shed - (3.10m x 4.24m) is located 11.66m (38.25ft.) from the north property line, at its nearest point, when it is required to be set back 15.0m (49.21ft.) from this property line. Therefore, the applicants are seeking a 3.34m (10.96ft.) or 22.27% relaxation of setbacks for this structure from the north, side yard property line.
 - Sea-can - (12.16m x 2.41m) is located 9.80m (32.15ft.) from the northeast property line, at its nearest point, when it is required to be set back 15.0m (49.21ft.) from this property line. Therefore, the applicants are seeking a 5.20m (11.66ft.) or 34.67% relaxation of setbacks for this structure from the northeast, side yard property line.

- Shop - (12.85m x 9.17m) is located 10.47m (34.35ft.) from the northeast property line, at its nearest point, when it is required to be set back 15.0m (49.21ft.) from this property line. Therefore, the applicants are seeking a 4.53m (14.86ft.) or 30.20% relaxation of setbacks for this structure from the northeast, side yard property line. Further, the existing Shop (12.85m x 9.17m) is located 13.17m (43.21ft.) from the south property line, at its nearest point, when it is required to be set back 15.0m (49.21ft.) from this property line. Therefore, the applicants are seeking a 1.83m (6.00 ft.) or 12.20% relaxation of setbacks for this structure from the south, side yard property line.
- (ii) The Development Officer approved the relaxation of setbacks to the Shed, Sea-can, and shop as outlined in (i) above.
 - (iii) The Development Officer submitted that per Section 5.6.2 of the Foothills County land use bylaw (60/2014), she has the authority to approve a variance to a maximum of 90% on existing structures to property lines.
 - (iv) The Development Authority submitted that the Applicants submitted the application in order to bring the structures into compliance during a transaction to sell the property. There have been no complaints about the structures and this application was not the result of enforcement.
 - (v) The Development Officer submitted that per Section 4.2.1.13 of the Foothills County land use bylaw (60/2014) a Sea-can for personal storage is a permitted use on parcels 21 acres or more in size. As the subject parcel is 2.29+/- acres in size, an application for a Development permit would be required in order to bring the existing Sea-can into compliance as a discretionary use.
 - (vi) The Development Officer submitted that the new Landowners (Tardif) have opted instead to remove the Sea-can. The Landowners have committed to removing the Sea-can by June 30, 2021, in order to ensure no negative impacts to the drainage on the property.
 - (vii) The Development Officer submitted that per Table 4.2.1.7A in Section 4.2.1.7 of the Land Use Bylaw (60/2014), the Landowners are permitted up to a total of three accessory buildings, not to exceed a total of 1675 square feet, in addition to the primary residence and 1200 square foot attached or detached garage.
 - (viii) The Appellant Loretta Stabler submitted that the rules surrounding setbacks are there for a reason, and everyone should be following those rules. To allow for these relaxations to the setbacks will set a negative precedent and will lead to other undesirable developments that do not follow the rules.
 - (ix) The Appellant Ms. L. Stabler noted that the shop borders the environmental reserve where children play and people walk their dogs, which could present a safety hazard. There is a bridge on the Environmental Reserve that may not meet safety standards.
 - (x) The Appellant Candace Stabler stated that while setbacks in general are not a huge concern, this application is for substantial setbacks to multiple buildings which they do not agree with.
 - (xi) The Appellant Ms. C. Stabler is of the opinion that the shop is possibly too large for the lot size and was unaware that it was legally built without a permit. Also, although she has not personally seen the interior of the shop, she believes that it contains a secondary suite which is likely unpermitted, which is also a concern. The residents of the area do not feel that it should be operating as a rental or for other uses.

- (xii) The Appellant Ms. C. Stabler expressed concern that the new Landowners may be engaging in commercial activities related to their concrete business on the subject property. This is also a concern, as the property is close to the Millarville School.
- (xiii) The Appellant Ms. C. Stabler notes that her concerns related to the Sea-can have been addressed, as the Sea-can will be removed from the property.
- (xiv) The Appellant Ms. C. Stabler submitted that the lot and its accessory buildings are highly visible and it is disappointing that the County's Land Use Bylaw is not being enforced. She submits that County bylaws are in place to protect property values and ensure safety and a desirable aesthetic for all property owners in the area and that relaxing setbacks sets a precedent that may lead to other undesirable development in the future – residents expect that bylaws will be upheld.
- (xv) The Landowner/Applicant Vicky Tardif submitted that she and her husband do own a construction company, but aside from bookkeeping no business operations take place on the property.
- (xvi) The Landowner/Applicant Ms. Tardif confirmed that the Sea-can will be removed, but that due to the frost line and the drainage course through the property they have requested additional time to complete the removal. The Sea-can will be removed by June 30, 2021.
- (xvii) The Landowner/Applicant Ms. Tardif confirms that there is plumbing, including washroom facilities on the upper level of the shop. There are no plans to rent the space or use it as additional living space. The upstairs area of the shop is used as a lounge area for their children with a couch and television.
- (xviii) The Landowner/Applicant Dominik Tardif submitted that there would be no way to fit the shop as built within the setback requirements, due to the shape and features of the parcel. The shop was already built before they purchased the property, In their opinion, the shop was built in the most appropriate location and is positioned on the lot in order to fit with the existing landscaping and to be considerate of the views of the adjacent neighbours.

REASONS FOR DECISION

The Board is upholding the Development Authority's decision to approve Development Permit 21D 022 for a relaxation of setbacks to existing structures for the following reasons:

Based on testimony heard, the Board considered the application and the testimony of the Development Officer, the Appellants, and the Landowners. In their consideration of the information presented, the Board found that there was not sufficient evidence presented to demonstrate that the Relaxation of Setbacks to Accessory Buildings unduly interferes with the amenities of the neighbourhood, or materially interferes with or affects the use, enjoyment or value of neighbouring parcels of land. The Board has added three (3) conditions to the Development Permit Approval to address concerns regarding the uses on this Country Residential parcel.

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 April, 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 5.6 – VARIANCES

5.6.2 - The Development Authority may allow with respect to existing development, a variance of any yard setback to a maximum of 90% of the setback required by this Bylaw, with the exception of Hamlet Residential District lands.

SECTION 4.2 - ACCESSORY BUILDINGS/STRUCTURES

4.2.1.7

Table 4.2.1.7A

PARCEL SIZE	SIZE OF ACCESSORY BUILDING
Less than 1 acre	Maximum of two (2) buildings with a total cumulative size not to exceed 41.8 sq. m. (450 sq. ft.) accessory to the residence
1.0 - 1.99 acres in size	Maximum of three (3) buildings with a total cumulative size not to exceed 88.26 sq. m. (950 sq. ft.) accessory to the residence
2 - 2.99 acres in size	Maximum of three (3) buildings with a total cumulative size not to exceed 155.6 sq. m. (1,675 sq. ft.) accessory to the residence

4.2.1.13 - On parcels 21 acres or more, one Sea-can, no larger than 48’ in length and 10’ in width, is permitted per parcel, provided it meets the minimum setback requirements.

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.	T. Chipchase	Foothills County - Development Officer
2.	C. Stabler	Appellant
3.	L. Stabler	Appellant
4.	D. & V. Tardif	Landowners/Applicants

APPENDIX “B”

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

NO.	ITEM
1.	Notice of Appeal submitted by D. & C. Stabler
2.	Notice of Appeal submitted by L. Stabler
3.	Written Submission from L. Stabler
4.	Written Submission from D. & V. Tardif
5.	Development Officer’s Decision of February 18, 2021

APPENDIX “C”

EXHIBITS MADE AVAILABLE AT THE HEARING

NO.	ITEM
1.	Presentation by the Foothills County Development Officer
2.	Photographs of Subject Parcel – Presented by L. Stabler