

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

HEARING DATE: AUGUST 27, 2020

BOARD ORDER: D08/2020

LANDOWNER / APPELLANT: ROBERT & JULIE MUELLER

APPEAL AGAINST: RELAXATION OF SETBACKS TO EXISTING STRUCTURE

SUBJECT PROPERTY: PLAN 1510293, BLOCK 7, LOT 21; PTN: W 04-22-29 W4M (THE "PROPERTY")

BEFORE: CHAIRMAN, G. BEACOM; BOARD MEMBERS: B. ROBSON, L. SPILAK, D. MACDONALD, K. POPOVA, 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 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 129 for a relaxation of setbacks to existing structures on PLAN 1510293, BLOCK 7, LOT 21; PTN: W 04-22-29 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 20D 129 for a relaxation of setbacks to an existing structure on PLAN 1510293, BLOCK 7, LOT 21; PTN: W 04-22-29 W4M.

The application is thereby APPROVED subject to the following conditions:

CONDITIONS:

1. the existing Staircase off the Deck attached the Dwelling is permitted to remain 1.02m (3.35 ft.) from the west property line at its nearest point;
2. this relaxation pertains only to the setbacks between the identified staircase and the west property line as identified. All development must otherwise adhere to municipal setback requirements;
3. the issuance of a permit from the County does not relieve the landowner 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;
4. the landowners shall be responsible for payment of any professional costs including legal fees that may be incurred by Foothills County with respect to the development approved on the permit.

FINDINGS OF FACT

1. The subject property is an existing 1099.4 square meter Hamlet Residential Sub-District 'A' parcel that is located on Artesia Pointe within the Artesia at Heritage Pointe Subdivision.
2. On August 5, 2020, the Development Authority for Foothills County refused Development Permit 20D 129 for a relaxation of setbacks to existing structures on PLAN 1510293, BLOCK 7, LOT 21; PTN: W 04-22-29 W4M.
3. The Development Authority can approve a variance of up to 25% to a side yard setback through the Development Permit application process on a Hamlet Residential District parcel. 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. An appeal was received from the applicants, Robert and Julie Mueller against the refusal on August 5, 2020.

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

- (i) The application requests a relaxation of setbacks to the staircase from the rear deck of the dwelling.
- (ii) The residential dwelling meets the required setbacks with the exemption of the rear deck staircase along the west boundary. The staircase is located 1.02 meters (3.35 ft.) from the property line, but is required to be a minimum of 1.5 meters (4.92 ft.) from the property line.
- (iii) The Development Authority submitted that he is authorized to approve a maximum variance of 25% to a side yard setback, through the Development Permit application process on a Hamlet Residential District 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 an existing structure, as requested to bring the rear deck staircase into compliance, was refused.
- (iv) The Development Authority submitted that the non-compliant structure has been assessed by the Safety Codes department and by Foothills County Fire Services and there were no concerns with the safety of the staircase.
- (v) The appellants provided testimony explaining that the deck and staircase were completed during the original construction of the residence and were professionally installed by the homebuilder. At no time were the landowners made aware that they would require a variance for the staircase.
- (vi) The appellants provided testimony that the staircase from the rear deck of the residence has caused no issues for the homeowners or neighboring landowners, and that they only become aware that the staircase would require a variance when they obtained a Real Property report in order to sell the property.

REASONS FOR DECISION

The Board is OVERTURNING the Development Authority's decision to refuse Development Permit 20D 129 for a relaxation of setbacks to an existing 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 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 (outside staircase) presents no safety hazard to the applicants 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 27th day of August 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

M.D. of Foothills 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.

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.	R. Mueller	Appellant/Applicant

APPENDIX "B"

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

<u>NO.</u>	<u>ITEM</u>
1.	Submission from the Foothills County Development Officer
2.	Notice of Appeal submitted by R. & J. Mueller

APPENDIX "C"

EXHIBITS MADE AVAILABLE AT THE HEARING

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