

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
SHELLEY PIERSON ZONE CHANGE REQUEST
ZONING MAP AMENDMENT REPORT (#FZC-15-08)
DECEMBER 23, 2015**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Marquardt Surveying., on behalf of Shelley Pierson, for a zoning map amendment in the Evergreen Zoning District. The proposed amendment would change the zoning of the subject property from 'R-2 One Family Limited Residential' to 'R-3 One Family Residential'.

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on January 13, 2016 in the 2nd Floor Conference Room of the Earl Bennett Building located at 1035 First Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment. Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Planning Board

This space will contain an update regarding the January 13, 2016 Flathead County Planning Board review of the proposal.

B. Commission

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Owner/Applicants

Shelley Pierson
181 Park Ave
Kalispell, MT 59901

ii. Technical Assistance

Marquardt Surveying
201 3rd Ave W
Kalispell, MT 59901

B. Subject Property Location and Legal Description

The subject property consists of one tract totaling 0.8 acres. The property is located at 180 Birch Drive south of Evergreen Drive, as shown in Figure 1 below. The property can be legally described as Tract 2BAF in Section 4, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

D. General Character of and Reason for Amendment

The property is located on a relatively flat area that currently contains a single family dwelling, shop, and apartment (as shown in Figure of 4 below). According to the application, the amendment is needed “to be able to have the two dwellings on separate parcels of land.” The property would not be able to be subdivided under the current R-2 zoning, as the property is only 0.8 acres. If the zoning is changed to R-3 the lot could be split into two additional tracts because the minimum lot size would be reduced to 10,000 square feet. The proposed zone change would allow the applicants to subdivide the property to have a single dwelling unit on each property and come into compliance with Flathead County Zoning Regulations.

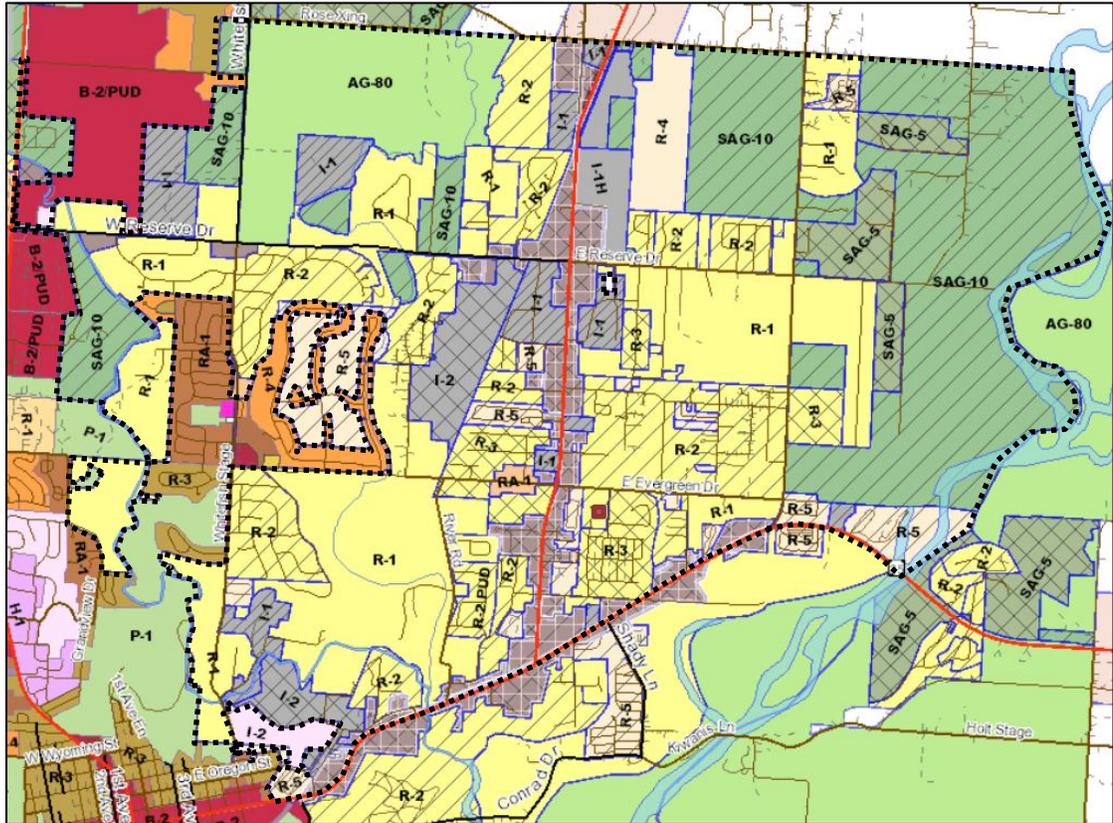
Figure 4: Aerial view of subject property (outlined in yellow)



E. Adjacent Zoning and Character of the Overall Zoning District

The subject property is located within the Evergreen Zoning District and bordered entirely by residential zoning (see Figure 2). To the north, west and south side of the property is ‘R-2 One Family Limited Residential’ zoning and to the east is ‘R-3 One Family Residential’ zoning. The character of the area surrounding the property is generally moderate density residential. To the west of the subject property there is R-5 zoned property with a mobile home park as well as commercial uses within the B-2/Evergreen Enterprise Zoning Overlay located along Highway 2.

Figure 5: Evergreen District (outlined with dashed black line & subject property outlined in red)



When an application appears to have the potential for spot zoning, the “three part test” established by legal precedent in the case of *Little v. Board of County Commissioners* is reviewed specific to the requested map amendment. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application.

i. The Zoning Allows A Use That Differs Significantly From The Prevailing Use In The Area.

The requested R-3 zoning classification would allow for many of the same permitted and conditional uses permitted within the current R-2. The main difference between the proposed R-3 and R-2 zoning would be the minimum lot size which would decrease from 20,000 square feet to 10,000 square feet, respectively. Adjacent subdivisions including the Springdale and Lapp Addition subdivisions to the east and south include lots .2 to .4 acres in size while Subdivision 214 to the immediate to the South includes two lots .4 acres in size. Finally, R-3 zoning already exists covering over a substantial area adjacent to the subject property. Therefore, the proposed zoning would allow uses and densities that do not significantly differ from the prevailing uses and densities in the area.

ii. The Zoning Applies To A Small Area Or Benefits A Small Number Of Separate Landowners.

Using standard ArcGIS software staff determined that the subject property is located within an R-2 zoning within the Evergreen Zoning district approximately 998.6 acre in size. The area of the proposed zoning map amendment is 0.8 acres or less than 1 percent of this existing R-2 district. If the zone change is approved the total R-3 district would be approximately 255.2 acres. So even though the property is only .8 acres and applies to one land owner the zone change would expand the existing R-3 designation currently east of the subject property.

iii. The Zoning Is Designed To Benefit Only One Or A Few Landowners At The Expense Of The Surrounding Landowners Or The General Public And, Thus, Is In The Nature Of Special Legislation.

The subject property is currently owned by a single landowner however, the properties to the east and south are currently zoned R-3. This proposed zone change would allow for the same uses that are currently permitted and currently exist in the adjacent R-2 zoning and therefore would not be at the expense of the surrounding landowners or the general public and thus is not special legislation.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #1: The proposed zoning map amendment from R-2 to R-3 does not appear to constitute spot zoning because it does not meet all three parts of the three part test established by the Montana Supreme Court in *Little v. Board of County Commissioners Flathead County* to determine whether a zoning amendment constitutes spot zoning.

F. Public Services and Facilities

Sewer:	Evergreen Sewer
Water:	Evergreen Water
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Evergreen School District Flathead High School District
Fire:	Evergreen Fire District
Police:	Flathead County Sheriff's Office

G. Criteria Used for Evaluation of Proposed Amendment

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

H. Compliance With Public Notice Requirements

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on December 23,

2015. Legal notice of the Planning Board public hearing on this application was published in the December 27, 2015 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

I. Agency Referrals

Referrals were sent to the following agencies on November 9, 2015:

- Flathead County Sheriff
- Dave Prunty, Public Works/Flathead County Road Department
- Flathead County Solid Waste
- Flathead City-County Health Department (inter-office mail)
- Flathead County Weeds & Parks Department
- Bonneville Power Administration
- Evergreen School District
- Evergreen Water and Sewer District
- Kalispell Planning Department
- Montana Fish, Wildlife and Parks
- Evergreen Fire District

III. COMMENTS RECEIVED

A. Public Comments

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for January 13, 2016 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
 - Comment: "The tract was created by deed exhibit (DE 28512) in 1946 therefore no Certificate of Subdivision Approval exists. The proposed zone change and subsequent development would be subject to service by Evergreen Water and Sewer (Flathead Count Water and Sewer MT# 0001744) as it lies within their jurisdiction." Email dated November 23, 2015.
- Flathead County Road & Bridge Department

- Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated November 18, 2015.
- Flathead County Solid Waste District
 - Comment: “The Solid Waste District views no negative impacts with solid waste issues as this time”. Letter dated November 19, 2015

IV. EVALUATION OF PROPOSED AMENDMENT

A. Build Out Analysis

Once a specific zoning designation is applied in a certain area, landowners have land uses that are allowed by-right. A build-out analysis is performed to examine the maximum potential impacts of full build-out of those by-right uses. It is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

i. Current Zoning

The proposed zoning map amendment would change the zoning designation on the subject property from ‘R-2 One-Family Limited Residential.’ R-2 is defined in Section 3.10.010 FCZR as, ‘*A district to provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.*’ The following is a list of permitted uses in an R-2 zone:

1. Class A manufactured home.
2. Day care home.
3. Dwelling, single-family.
4. Home occupation
5. Homeowners park and beaches.
6. Park and publicly owned recreational facility.
7. Public transportation shelter station.
8. Public utility service installation. (A minimum of five feet of landscaped area shall surround such building or structure.)

The following uses are listed as conditional uses in an R-2 zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Bed and breakfast establishment.
2. Cellular antenna & monopole.
3. Church and other place of worship.
4. Community center building operated by a non-profit agency.
5. Community residential facility.* (administrative with 8 or fewer residents)
6. Day care center.
7. Dwellings, cluster development

8. Dwelling unit, accessory (ADU).*
9. Electrical distribution station.
10. Family hardship dwelling.*
11. Golf course.
12. Golf driving range.
13. Manufactured home park.
14. School, primary and secondary.
15. Temporary building or structure.*
16. Water storage facility.

The bulk and dimensional standards under R-2 zoning require a setback from the boundary line of 20 feet for the front, rear, and side-corner yards and 10 feet from the side for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner yards and 5 feet from the rear and side yards. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The subject property totals 0.8 acres and the current R-2 zoning requires a minimum lot area of 20,000 square feet. Under the current R-2 zoning no additional lots could be created.

ii. Proposed Zoning

As previously stated, the applicant is proposing R-3 is defined in Section 3.11.010 FCZR as, *'A district to provide adequate lot size for urban residential development; should have good thoroughfare access, and be in proximity to community and neighborhood facilities, i.e., schools, parks, shopping areas. This district will normally require all public utilities.'* The following is a list of permitted uses in an R-3 zone:

1. Class A manufactured home.
2. Day care home.
3. Dwelling, single-family.
4. Home occupation
5. Homeowners park and beaches.
6. Park and publicly owned recreational facility.
7. Public transportation shelter station.
8. Public utility service installation. (A minimum of five feet of landscaped area shall surround such building or structure.)

The following uses are listed as conditional uses in an R-3 zone. An asterisk designates conditional uses that may be reviewed administratively:

1. Bed and breakfast establishment.
2. Cellular antenna & monopole.
3. Church and other place of worship.
4. Community center building operated by a non-profit agency.
5. Community residential facility.* (administrative with 8 or fewer residents)

6. Day care center.
7. Dwellings, cluster development
8. Dwelling unit, accessory (ADU).*
9. Electrical distribution station.
10. Family hardship dwelling.*
11. Golf course.
12. Golf driving range.
13. Manufactured home park.
14. School, primary and secondary.
15. Temporary building or structure.*
16. Water storage facility.

The bulk and dimensional standards under R-3 zoning requires a setback from the boundary line of 20 feet for the front, rear, and side-corner yards and 10 feet from the side for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner yards and 5 feet from the rear and side yards. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The subject property totals 0.8 acres / 34,848 square feet and the proposed R-3 zoning requires a minimum lot area of 10,000 square feet. Under the proposed R-3 zoning up to two additional lots could be created. However, the actual number of lots created may be less due to access, lot layout, environmental and/or infrastructure requirements outlined in the Flathead County Subdivision Regulations.

In summary, the requested zone change from R-2 to R-3 has the potential to increase density, by allowing up to two additional lots through subsequent divisions. The bulk and dimensional requirements are the same in R-2 and R-3 and the zoning map amendment would allow uses that are typical of zoning districts in the area.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R). The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as ‘Residential.’ The proposed Residential zoning classification would appear to align with the current residential zoning designation.

Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
 - The proposed zone change would preserve the right of the property owner to divide the property.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
 - The R-3 designation would allow for densities of 1 dwelling unit per 10,000 square feet and have uses similar or identical to those of the surrounding R-2 and R-3.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
 - The subject property lies within the Evergreen School District and because the zone change will occur on .8 acres for the purpose of splitting off one lot, it appears that it would not adversely impact area schools because of the scope of the proposed zone change will add a limited number of students to area schools. No comments were received from the Evergreen School District therefore it appears the proposal would not adversely impact area school districts.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*
 - This report contains discussion on the adequacy of emergency service in Section B.ii.1 and B.ii.2 below.

Finding #2: The proposed zoning map amendment is found to generally comply with the Flathead County Growth Policy because applicable goals, policies, map and text appear to generally support the request.

ii. Whether the proposed map amendment is designed to:

1. Secure safety from fire and other dangers;

The subject property is located within the Evergreen Fire District and the nearest fire and emergency response center is located approximately .5 miles north of the property at the intersection of Highway 2 and Poplar Drive. The Evergreen Fire Department would respond in the event of a fire or medical emergency as the station is equipped with basic and advanced life support services.

According to the application, the requested zone change will allow the property owners to split the property so that the house and shop with apartment can be located on separate lots in order to comply with the zoning requirements of R-2 and R-3. Section 3.03.020(3) FCZR note that “*only one principal use shall be allowed per tract of record in the following zones: AG-*

80, AG-40, AG-20, SAG-10, SAG-5, R-1 through R-5, RA-1, and B-1". Because the subject property currently has two dwellings on it the proposed R-3 zoning would allow for a maximum of 3 lots and only one additional dwelling at most. Since there would be no significant increase in density as a result of the zone change, there would be minimal impact on safety from fire and other dangers.

The subject property is not within a County Wide Priority Area nor located in the Wildland Urban Interface. The property is located on Birch Road which is a paved two lane local County road within a 40 foot easement and appears adequate to provide ingress and egress for emergency services. The proposed map amendment would likely appear to secure safety from fire.

The subject property appears to be mapped as Zone X, areas determined to be within the 0.2% annual chance floodplain on FEMA FIRM Panel 30029C1810J also known as the 500 year floodplain.

Finding #3: The proposed map amendment would secure safety from fire and other dangers because it is not located within the WUI, emergency services are available, the property is .5 miles from the nearest fire station and the property is mapped as Zone X outside of the 100 year floodplain, but within the 0.2% annual chance floodplain.

2. Promote public health, public safety, and general welfare;

As discussed in the previous section, the subject property is located within the Evergreen Fire District and the nearest fire and emergency response center is located approximately .5 road miles north of the property at the intersection of Highway 2 and Poplar Drive. The Evergreen Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject property. Any subdivision of land, through either an exemption to the Montana Subdivision and Platting Act (such as family transfer) or through review under the act would be required to undergo review for compliance with the Sanitation in Subdivision Act, ensuring protection of public health with regard to water, wastewater, and storm water. Additionally, review under the Montana Subdivision and Platting Act would entail review of the primary review criteria (agriculture, agricultural water user's facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety).

R-3 zoning classification would allow for many of the same uses as allowed within the current R-2 and therefore it is not anticipated to adversely impact public health, safety or general welfare. With regard to permitted uses, R-2 and R-3 are identical with the exception of 'Guest house' which is only permitted in R-2. Two uses are allowed with a conditional use permit in the R-2 designation that are not allowed within R-3, they include:

- 'Cemetery, mausoleum, columbarium, and crematorium'
- 'Water and sewage treatment plant'

There is one use allowed in the R-3 with a CUP that is not allowed in the R-2:

- 'Day care center'

The proposed R-3 zone would allow for similar uses to what is allowed within in the current R-2 designation and neighboring R-3, and review will be conducted by other applicable agencies when splitting the lot or other development, therefore it is not anticipated to adversely impact public health, safety or general welfare.

Finding #4: The proposed zoning map amendment would promote the public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Evergreen Fire Department, future development would be similar to uses already in the area and anticipated by service providers, the proposal would moderately increase residential density in an area that it can safely be accommodated.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

It is anticipated that actual future development would include subdivision review, at which time specific impacts to transportation, water and sewer services, would be considered and mitigated as determined to be appropriate. However, family transfers would be exempt from subdivision review. This zone change request is also an opportunity to assess if the property and public infrastructure could handle impacts associated with the proposed zone change.

Primary access to the property exists via Birch Drive. Birch Drive is a paved two lane local County road within a 40 foot easement. The latest traffic counts taken by the Road and Bridge Department for Birch Drive in 2010 indicate 839 average daily trips (ADT). At full build-out one additional single family home could be constructed on the subject property based on minimum lot size and existing development on the current lot. Using standard trip generation of 10 ADT per single family dwelling, the proposed zone change has the potential to generate an additional 10 ADT. The proposed zone change could contribute to an increase of 1.2% ADT on Birch Drive.

Comments received from the Flathead County Road and Bridge Department stated, “At this point the County Road Department does not have any comments on this request.” It is anticipated that because traffic would only increase insignificantly and the Road and Bridge Department has no comment, the effects on motorized transportation would be minimal.

Further subdivision of the property into parcels less than 20 acres would require Sanitation in Subdivisions Act review regardless of whether it is reviewed under the Montana Subdivisions and Platting Act. The subject property would likely connect to Evergreen Water and Sewer services currently utilized by the subject property. Although solicited, Evergreen Water and Sewer did not provide feedback.

The subject property is located within the Evergreen School District. As only two additional lots and one additional dwelling may be created as a result of this zone change it does not appear that impacts on local schools will be anticipated. No comments were received from the Evergreen School District.

It is anticipated that the school would have capacity should any growth occur as a result of the proposed zoning map amendment.

The proposal would amend the current 20,000 square foot minimum lot size to a smaller 10,000 square foot minimum lot size, it is anticipated that subsequent future development would require review and parkland would not be required at that time because only two additional lots would be created at most and parkland is not currently required for First Minor Subdivisions or subdivisions which create only one additional lot. There are a handful of parks, natural areas, and recreational opportunities within a short drive of the subject property.

Finding #5: The proposed zoning map amendment from R-2 to R-3 would facilitate the adequate provision of transportation because the existing infrastructure appears adequate to accommodate the change in zoning, the County Road Department had no comments regarding this proposal and traffic would increase 1.2% on Birch Drive which would be capable of accommodating the impacts of the proposed zoning map amendment.

Finding #6: The proposed zoning map amendment would not hinder the adequate provision of water, sewer, schools and parks because lots would connect to Evergreen Water and Sewer, the proposal may generate school children which would likely not impact schools and there are adequate parks and recreational areas within the vicinity.

iii. In evaluating the proposed map amendment, consideration shall be given to:

1. The reasonable provision of adequate light and air;

Any new structures on additional lots created as a result of this proposed zone change would be required to meet the bulk and dimensional requirements of the R-3 zoning classification. The bulk and dimensional requirements for the proposed R-3 zone are similar to the bulk and dimensional requirements for the existing R-2 with the lone exception being minimum lot size. The proposed R-3 zoning sets a maximum building height of 35 feet for all structures, the permitted lot coverage is 30% and the minimum lot area is 10,000 square feet. The proposed zoning map amendment has the potential to increase development density on the subject property as it has the potential to add two additional parcels.

The setback requirements in the proposed R-3 require a minimum of 20 feet for the front, rear, and side-corner and 10 feet for the side yards for principal structures and 20 feet for the front and side-corner yards and 5 feet for the side and rear yards for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. These bulk and dimensional requirements within the R-3 designation have been established to ensure a reasonable provision of light and air.

Finding #7: Adequate light and air would be provided by the proposed zoning map amendment because future development would be required to meet all

bulk and dimensional requirements including setback, maximum height and lot coverage requirements within the proposed R-3 designation.

2. The effect on motorized and non-motorized transportation systems;

The property is located approximately ¼ mile south of Evergreen Drive along Birch Drive which serves as the primary access to the property. Birch drive is a paved two land road within a 40 foot easement, which is classified as a local county road. The Road and Bridge Department traffic counts from 2010 indicate 839 ADT along Birch Road. Since the applicants are requesting a zone change to divide the lot into two so the two dwellings will be located on separate lots, and since minimum lot size requirements for the R-3 zone would allow for 3 lots on a .8 acre parcel, it is expected that one additional dwelling could be developed at a maximum on the property if the owners decide to create two more lots. With this in mind, 10 additional average vehicle trips per day could be expected with this zone change. Based on standard trip generation of 10 ADT per single family dwelling, the traffic generated by the proposed zone change could generate an increase of 1.2% ADT on Birch Drive. Comments received from the Flathead County Road and Bridge Department stated, “At this point the County Road Department does not have any comments on this request.” It is anticipated that because traffic would only increase by 1.2% on Birch Drive and the Road and Bridge Department has no comment, the effects on motorized transportation would be minimal.

There are no existing bike/pedestrian facilities currently located along Birch Drive. Because Birch Drive is considered a local road, the Flathead County Trails Plan does not designate the road for future trail development. However, area collector roads such as Evergreen Drive may be further developed with bike/pedestrian facilities in the future according to the Flathead County Trails Plan.

Finding #8: It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Birch Drive is a local county road, traffic would increase by 1.2%, the Road and Bridge Department has no comment and area collector roads may be developed with bike/pedestrian facilities, if it was deemed appropriate in the future.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The location of the proposed zoning map amendment is not directly adjacent to any city but is located with the boundaries of the City of Kalispell Growth Policy 2020 Land Use Map. According to this plan, the area is designated as ‘Urban Residential’ which the Plan denotes as:

10. Urban Residential:

- a. Urban residential areas shown on the plan map should be encouraged to be developed when adequate services and facilities are available.*
- b. Typical densities are four to twelve dwellings per gross acre.*
- c. Single-family houses are the primary housing type, but duplexes, guest*

houses, accessory apartments, and small dispersed areas of multi-family housing are also anticipated.

d. Urban and high density residential areas should be fully served by urban infrastructure and municipal services, including paved streets, curbs, sidewalks, landscaped boulevards and public sewer and water.

e. These areas should have convenient access to neighborhood business districts, parks and elementary schools.

The proposed R-3 zoning would encourage the type of density, uses, and most of the urban infrastructure required of “Urban Residential” development as described in Kalispell’s Growth Policy and therefore it appears the proposed zoning would be compatible with the surrounding urban growth. Since the subject property is located east of Kalispell it is not located within proximity to the City of Whitefish or within the Whitefish Master Plan area.

Finding #9: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell urban growth and it has been determined the map amendment is in substantial compliance with the surrounding urban growth based on the ‘Urban Residential’ designation of the area on the City of Kalispell Growth Policy 2020 Land Use Map.

4. The character of the district(s) and its peculiar suitability for particular uses;

The subject property is located within the Evergreen Zoning district and bordered by residential zoning. The property is bordered to the east by R-3 and on the north, west, and south by R-2. The character of the area surrounding the property is urban/suburban residential.

The R-3 zoning classification would allow for many of the same uses as allowed within the current R-2. Within the R-2 zone a ‘Guest house’ is a permitted use and not permitted in R-3. Additionally, two uses are allowed with a conditional use permit in the R-2 designation that are not allowed within R-3, they include:

- ‘Cemetery, mausoleum, columbarium, and crematorium’
- ‘Water and sewage treatment plant’

There is one use allowed in the R-3 with a CUP that is not allowed in R-2:

- ‘Day care center’

The proposed R-3 zone would allow for similar uses to what already exists in the area and what is allowed within the current R-2 designation and neighboring R-3, and review will be conducted by other applicable agencies when splitting the lot or other development.

Lots within a quarter mile of the property vary in size from 8,700 square feet to 1.5 acres in size. Properties along the west side of Birch Drive consist primarily of lots .4 acres or larger while lots to the south and east located in the Springdale and Lapp Addition subdivisions have lots ranging from .2 to .4 acres in size. The proposed zoning map amendment would allow for the future division of the subject properties, with the potential to create lots with a

minimum size of 10,000 square feet. The smaller lots would be consistent with the character of the immediate vicinity of the subject property.

Finding #10: The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed R-3 zoning are similar to what is currently allowed and existing under the current R-2 and neighboring R-3 zoning and the minimum lot size allowed is similar to existing lots in the area.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Previous sections of this report have detailed the differences between permitted and conditional uses in the existing R-2 zoning and the proposed R-3 zoning. Conserving the value of buildings throughout the jurisdictional area is a function of allowing land uses that are appropriate and reasonable. Many of the land uses listed as permitted uses in the proposed R-3 zoning are already found in the area of the proposed zoning map amendment, or would not be out of character with the existing uses (examples include manufactured homes, single family dwellings, etc). These uses would not impact the value of buildings and would be appropriate land uses in this part of the Flathead Valley.

The land uses listed in the R-3 zoning that have the highest potential to impact neighbors and the value of buildings if not developed appropriately are on the list of conditional uses requiring public review through the Conditional Use Permit process. This review process ensures the mitigation of negative impacts, or may even result in the outright denial of a proposed land use if it is deemed by the Board of Adjustment to be noncompliant with the criteria for review. The proposed R-3 zoning contemplates land uses that are reasonable to consider for this area of the Flathead Valley based on the existing character of the district and the level of public services and infrastructure present on the subject property. Additionally, the conditional use permit process ensures the most appropriate use of the subject property (and all zoned properties) on a case by case basis at the time and in the manner the property is proposed for development.

Finding #11: This proposal appears to conserve the value of buildings and encourage the most appropriate use of land because the R-3 designation allows for the same uses as the neighboring R-3, similar uses to the existing R-2 and public infrastructure and services appear to be available to service smaller lots.

iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The location of the proposed zoning map amendment is not directly adjacent to any city. The nearest municipality is the City of Kalispell, the city limits of which are one mile east of the subject property. The downtown core of the City of Kalispell is located approximately 3.5 road miles away. As previously stated, the

subject property is included within the City of Kalispell Growth Policy Future Land Use Map, adopted by the City of Kalispell in 2007. The Kalispell Growth Policy Planning Area Map designates the property as “Urban Residential.” According to the Kalispell Growth Policy the “Urban Residential” is classified as,

10. Urban Residential:

- a. Urban residential areas shown on the plan map should be encouraged to be developed when adequate services and facilities are available.*
- b. Typical densities are four to twelve dwellings per gross acre.*
- c. Single-family houses are the primary housing type, but duplexes, guest houses, accessory apartments, and small dispersed areas of multi-family housing are also anticipated.*
- d. Urban and high density residential areas should be fully served by urban infrastructure and municipal services, including paved streets, curbs, sidewalks, landscaped boulevards and public sewer and water.*
- e. These areas should have convenient access to neighborhood business districts, parks and elementary schools.*

The designation of ‘Urban Residential’ generally complies with the proposed R-3 zoning as it would encourage a similar type of density, uses, and require most of the urban infrastructure needed for ‘Urban Residential’ development.

Because the subject property is located over a mile away from the nearest Kalispell zoning, the proposed R-3 zoning should be compared to Kalispell zoning adopted within areas that the Kalispell Growth Policy has designated as “Urban Residential”. The Kalispell R-1 through R-5 zones located in “Urban Residential’ areas appear to be similar to the Flathead County R-3 zoning proposed for the subject property because Kalispell residential zones allow for single family dwellings, parks, and public uses such as schools and fairgrounds, uses allowed in Flathead County R-3 zoning. While Kalispell R-2 through R-4 allow for townhouses, this type of density requires Conditional Use Permit from the city of Kalispell. A request for agency comment was sent to the City of Kalispell Planning Department on November 9, 2015 and as of the finalizing of this staff report, no comment has been received.

Finding #12: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the subject property is classified as ‘Urban Residential’ within the Kalispell Growth Policy and the zoning associated with this designation appears to be similar in use and density to the R-3 zoning proposed.

V. SUMMARY OF FINDINGS

Finding #1: The proposed zoning map amendment from R-2 to R-3 does not appear to constitute spot zoning because it does not meet all three parts of the three part test established by the Montana Supreme Court in *Little v. Board of County Commissioners Flathead County* to determine whether a zoning amendment constitutes spot zoning.

Finding #2: The proposed zoning map amendment is found to generally comply with the Flathead County Growth Policy because applicable goals, policies, map and text appear to generally support the request.

Finding #3: The proposed map amendment would secure safety from fire and other dangers because it is not located within the WUI, emergency services are available, the property is .5 miles from the nearest fire station and the property is mapped as Zone X outside of the 100 year floodplain, but within the 0.2% annual chance floodplain.

Finding #4: The proposed zoning map amendment would promote the public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Evergreen Fire Department, future development would be similar to uses already in the area and anticipated by service providers, the proposal would moderately increase residential density in an area that it can safely be accommodated.

Finding #5: The proposed zoning map amendment from R-2 to R-3 would facilitate the adequate provision of transportation because the existing infrastructure appears adequate to accommodate the change in zoning, the County Road Department had no comments regarding this proposal, and traffic would increase 1.2% on Birch Drive which would be capable of accommodating the impacts of the proposed zoning map amendment.

Finding #6: The proposed zoning map amendment would not hinder the adequate provision of water, sewer, schools and parks because lots would connect to Evergreen Water and Sewer, the proposal may generate minimal additional school children which would likely not impact schools and there are adequate parks and recreational areas within the vicinity.

Finding #7: Adequate light and air would be provided by the proposed zoning map amendment because future development would be required to meet all bulk and dimensional requirements including setback, maximum height and lot coverage requirements within the proposed R-3 designation.

Finding #8: It is anticipated that the proposed zoning map amendment would have minimal effect on the motorized and non-motorized transportation systems because Birch Drive is a local county road, traffic would increase by 1.2%, the Road and Bridge Department has no comment and area collector roads may be developed with bike/pedestrian facilities, if it was deemed appropriate in the future.

Finding #9: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell urban growth and it has been determined the map amendment is in substantial compliance with the surrounding urban growth based on the 'Urban Residential' designation of the area on the City of Kalispell Growth Policy 2020 Land Use Map.

Finding #10: The character of the district appears suitable for the proposed zoning map amendment because the uses permitted and conditionally permitted within the proposed R-3 zoning are similar to what is currently allowed and existing under the current R-2 and neighboring R-3 zoning and the minimum lot size allowed is similar to existing lots in the area.

Finding #11: This proposal appears to conserve the value of buildings and encourage the most appropriate use of land because the R-3 designation allows for the same uses as the

neighboring R-3, similar uses to the existing R-2 and public infrastructure and services appear to be available to service smaller lots.

Finding #12: The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Kalispell because the subject property is classified as ‘Urban Residential’ within the Kalispell Growth Policy and the zoning associated with this designation appears to be similar in use and density to the R-3 zoning proposed.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: REE