

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-14-02)
JAMES AND NIKKEA WILLIAMSON
JULY 22, 2014

A report to the Flathead County Board of Adjustment regarding a request by James and Nikkea Williamson for a variance from Section 3.04.040(1), "Minimum Lot Area", of the Flathead County Zoning Regulations. The variance requested would apply to property located at 2109 Steel Bridge Road and is located within the East Side Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on August 5, 2014 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed amendment is not within the jurisdiction of any local land use advisory committee or local land use council.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on August 5, 2014. This section will be updated following the meeting.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant/Landowner

James and Nikkea Williamson
PO Box 8176
Kalispell, MT 59901

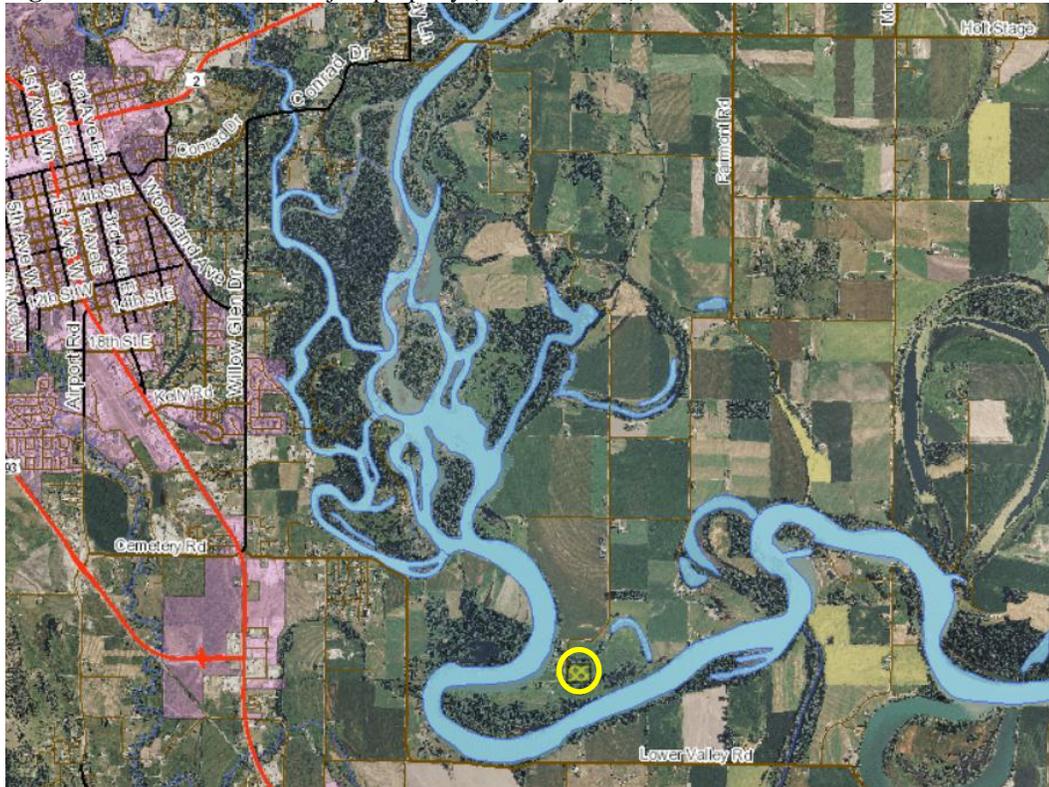
i. Technical Assistance

Jackola Engineering and Architecture
2250 Highway 93 South
Kalispell, MT 59901

B. Property Location

Situated east of the Flathead River approximately 7 road miles from Kalispell in the vicinity of 'Foy's Bend', the 10 acre subject property is located at 2109 Steel Bridge Road. The property can be legally described as Assessor's Tract 3 in Section 26, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

Figure 1: Location of the subject property (circled yellow)



C. Existing Land Use(s) and Zoning

It appears the property has been used for various agricultural purposes in the past, and the subject property is currently developed with a single family residence and an outbuilding as seen in Figures 2&3 below. According to the Montana State Department of Revenue, the residence was constructed in 2013.

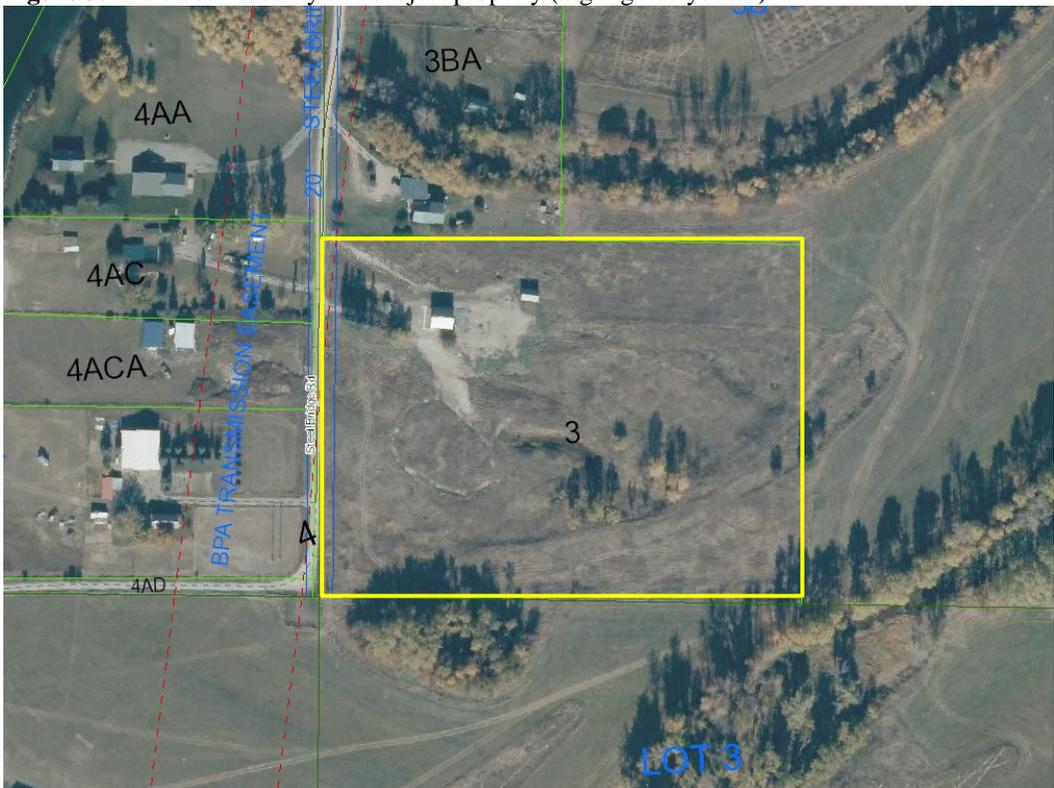
The property is currently zoned ‘AG-80 Agricultural’ within the East Side Zoning District which was originally adopted in 1977 pursuant to Resolution No. 266. Pursuant to Section 3.04 of the Flathead County Zoning Regulations (FCZR) the AG-80 Agricultural District is defined as “*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development.*”

The subject property (Tract 3) was originally a 144 acre tract which subsequently had Tract 3A (56 acres in 1943) and 3B (78 acres in 1968) divided from it resulting in its present configuration of approximately 775 feet (L) X 575 feet (w). As the subject property was less than 80 acres in size upon the adoption of the AG-80 zone, the property is recognized as a legally ‘non-conforming’ tract. Pursuant to Section 3.03.020(4) FCZR “*A lot or the aggregate of contiguous lots or parcels platted prior to the adoption of these regulations which has an area or dimension that does not meet the requirements of these regulations, may be put to a use permitted in that zone subject to all other requirements of the zone in which it is located.*”

Figure 2: Land use - vicinity and subject property (highlighted yellow)



Figure 3: Land use - vicinity and subject property (highlighted yellow)

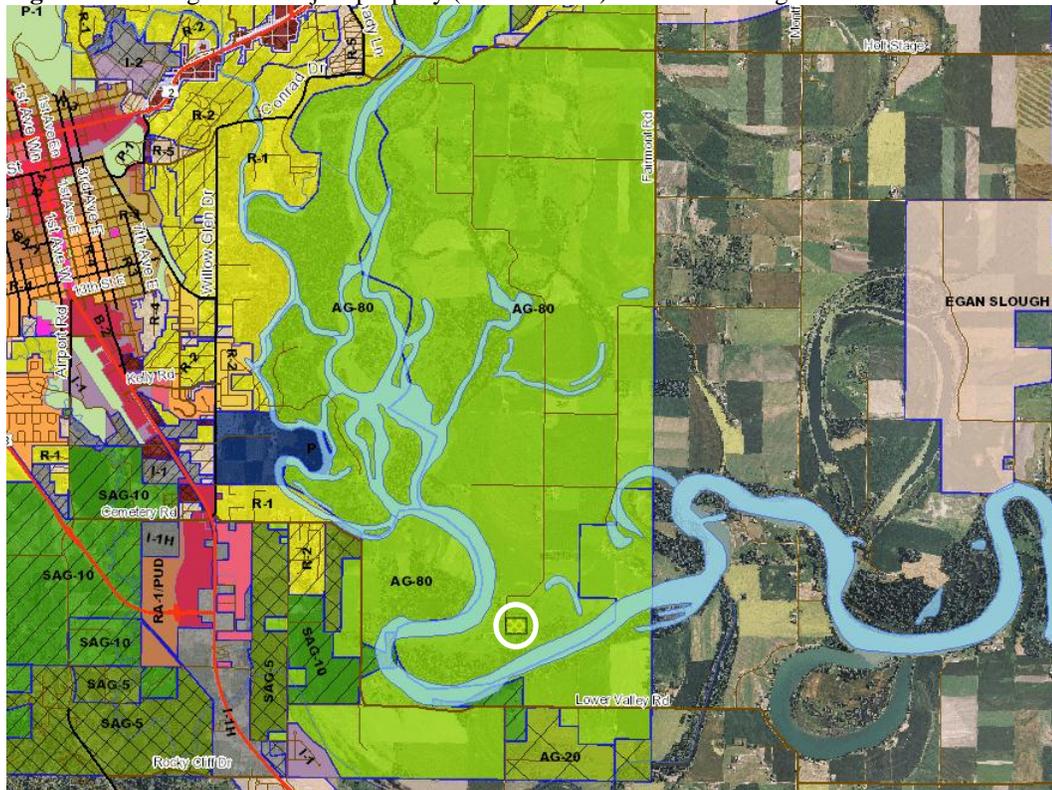


D. Adjacent Land Use(s) and Zoning

Adjacent properties in all directions of the subject property are zoned 'AG-80 Agricultural' as shown in Figure 4. The AG-80 zone extends approximately 4 miles to the North at Holt Stage Road, 0.5 miles to the south across the Flathead River, 0.85 miles to the east at the boundary of the East Side Zoning District, and 1.1 miles to the west across the Flathead River from the subject property.

The property is located on a peninsula feature of the Flathead River at an area referred to a Foy's Bend, and the area is predominantly used for various agricultural related and rural residential uses. Located to the north and west of the subject property are several small tracts of land ranging from 2.28-5.15 acres in size and the majority of these tracts are 'non-conforming' properties which were created prior to adoption of the AG-80 zoning and developed with residential uses similar to that of the subject property. With the exception of the relatively few cited 'non-conforming' properties adjacent to the subject property, the majority of properties in the immediate and greater vicinity are tracts of land ranging from 40-100+ acres in size which are both conforming and non-conforming with the AG-80 zoning in regard to size.

Figure 4: Zoning of the subject property (circled white) and surrounding area



E. Summary of Request

The applicant is requesting a Variance to Section 3.04.040(1), “Minimum Lot Area”, of the Flathead County Zoning Regulations. If granted, the requested Variance would allow the applicant to divide the existing non-conforming 10 acre tract into two 5 acre residential tracts within the AG-80 Agricultural zone. The application states “The purpose for the requested change is to allow the same use of the property as the residential tracts located to the north and west of the subject property.”

F. Compliance with Public Notice Requirements

Notification was mailed to adjacent property owners within 150 feet of the subject property on July 18, 2014 pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the July 20, 2014 edition of the Daily Interlake.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. Any written public comment received after July 22, 2014 will be summarized verbally and entered into the public record during the Board of Adjustment public hearing on August 5, 2014. Anyone wishing to provide verbal public comment may do so in person at the Board of Adjustment public hearing scheduled for August 5, 2014.

B. Agency Comments

No public agency comments have been received regarding the variance request.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states “No variance shall be granted unless the Board (of Adjustment) finds that all of the following conditions are met or found to be not pertinent to the particular case.”

A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property;

The application indicates the applicants acquired the property in 2013 and the subject property is currently used as a residence with a new structure constructed in 2013 according to data from the Montana Department of Revenue. The application recognizes the neighboring properties to the west which range in size from 2.28-5.15 acres in size and states “Strict compliance to the zoning will limit the reasonable use of the property and deprive the owner rights currently enjoyed by the surrounding residential properties.”

The properties cited by the applicant are formally recognized as ‘non-conforming’ pursuant to Section 2.07 FCZR as they were created prior to adoption of the AG-80 zoning. Research conducted by staff has found the cited properties were not created by their current owners, but were acquired by them with non-conforming

status and, as shown in Figure 3 above, have been developed with residential uses similar to the residential use established on the subject property.

Section 7.20.020 FCZR defines ‘Use’ as *“The specific purpose for which a building or lot is arranged, intended, designed, occupied, and maintained.”* Section 3.04.020(7) establishes ‘Dwelling, single family’ as a permitted use in the AG-80 zone. Pursuant to Section 3.03.020(4) FCZR *“A lot or the aggregate of contiguous lots or parcels platted prior to the adoption of these regulations which has an area or dimension that does not meet the requirements of these regulations, may be put to a use permitted in that zone subject to all other requirements of the zone in which it is located.”*

Based on the definition of use, the provisions of Section 3.04.020(4) FCZR, and observation of the developed residential use of subject property, it appears the property is able to be reasonably used under the currently applicable zoning.

Finding #1 - Strict compliance to the provisions of the AG-80 zoning would not limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the same district because ‘Dwelling, single family’ is a permitted use in the AG-80 zone and although the 10 acre subject property is ‘non-conforming’ in regard to size it is developed with a residential use comparable to that of similarly situated neighboring properties which are also ‘non-conforming’ in regard to size.

ii. Deprive the applicant of rights enjoyed by other properties similarly situated in the same district.

Based on the applicant’s response to this criterion it appears they perceive lot size as a ‘right’. Research conducted by staff has found the relatively small neighboring properties cited by the applicant were not created by their current owners, but were acquired by them already configured with ‘non-conforming’ size. Each of the cited small non-conforming neighboring properties are developed with residential uses, similar to the residential use established on the subject property owned by the applicants which demonstrates the applicants are not being deprived of rights enjoyed by other properties similarly situated in the same district. All properties in the AG-80 zone are subject to the requirements of Section 3.03.020(2) FCZR which states *“No lot dimension, yard, or off-street parking area existing on or after the effective date of these regulations shall be reduced below the minimum requirements contained herein”*.

As a standard provision of zoning administration, in order to divide a property in compliance with adopted zoning, an owner must have twice the minimum lot size established for the district. Although the cited neighboring properties are smaller than the applicant’s, those properties were created in the 1970’s prior to adoption of the current applicable zoning, and the size of those lots are not the result of their respective owners exercising their rights. Converse to the applicant’s stance, all property owners in the East Side AG-80 District are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties.

Finding #2 - Strict compliance to the provisions of the AG-80 zoning would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because neighboring properties which are smaller than the subject property were created in the 1970's prior to adoption of the current applicable zoning and the size of those tracts are not the result of their respective owners exercising their rights.

Finding #3 - Limitations imposed by the applicable AG-80 zoning on the applicant's right to further divide the subject property are shared and common among all property owners within the same East Side AG-80 Zoning District because all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum lot size of the district as required pursuant to Section 3.03.020(2) of the Flathead County Zoning Regulations which states "*No lot dimension, yard, or off-street parking area existing on or after the effective date of these regulations shall be reduced below the minimum requirements contained herein*".

B. The hardship is the result of lot size, shape, topography, or other circumstances over which the applicant has no control.

The application indicates "the hardship is the result of the blanket AG-80 zoning being adopted and applied. The zoning was not representative of the existing tracts in the immediate vicinity of the applicants property...". The comment indicates that if the applicant was able to divide the subject property into two 5 acre tracts that those tracts would not be out of character with the other non-conforming properties immediately adjacent to the subject property.

The East Side AG-80 zoning was adopted August 3, 1977 pursuant to Resolution No. 266. Based on information contained on the submitted application it appears the applicants acquired the property on March 29, 2013. Considering the application discussion on this criterion the applicants base their case for hardship on *other circumstances over which the applicant has no control* - the very adoption of the AG-80 zoning at the location of the subject property. The applicants would have had the capability to understand limitations presented by the applicable AG-80 zoning through due diligence research prior to acquiring the property, and therefore it is reasonable to presume they had control over whether or not to purchase the property along with the applicable zoning limitations which are presented by the AG-80 zoning at the location, which has been applicable on the subject property for 34 years.

Finding #4 – While the applicants base their case for hardship on other circumstances over which the applicant has no control, the very adoption of the AG-80 zoning at the location of the subject property, there is no such hardship because the applicants had control over whether or not to purchase the property along with the restrictions and limitations presented by the AG-80 zoning at the location which has been applicable for more than three decades.

C. The hardship is peculiar to the property.

The application indicates “the hardship is not peculiar to the property as there are a small number of clustered residential properties in the East Side Zoning district AG-80 zoned area. It is peculiar to the south half of the zoning district as this is the only cluster of small acreage residential tracts ”.

As stated above the AG-80 zone is “*A district to protect and preserve agricultural land for the performance of a wide range of agricultural functions. It is intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development*”. As indicated in the submitted comment there is no hardship peculiar to the property, which is a requirement for a variance to be granted. The application again cites the relatively small neighboring properties which are not technically “clustered residential properties” but are in fact ‘non-conforming’ properties which were not designed and intentionally created as clustered residential properties pursuant to the applicable zoning but were instead created through unrelated ad-hoc processes prior to the adoption of the zoning. Regarding permitted uses and dimensional regulations, Section 3.03.020(4) FCZR states “*A lot or the aggregate of contiguous lots or parcels platted prior to the adoption of these regulations which has an area or dimension that does not meet the requirements of these regulations, may be put to a use permitted in that zone subject to all other requirements of the zone in which it is located.*” As the zoning regulations contemplate the occurrence of ‘non-conforming’ parcels upon adoption of zoning districts and provides provisions for reasonable use of such properties per Section 3.03.020(4) FCZR, the occurrence of non-conforming properties in the south half of the East Side AG-80 zone, including the subject property, does not constitute a peculiar hardship.

Finding #5 – There is no hardship peculiar to the property because the subject property is simply a relatively small ‘non-conforming’ property in the AG-80 zone which was adopted after the creation of the 10 acre subject property to promote agricultural functions and discourage the further intrusion of incompatible residential uses though the implementation of restrictive bulk and dimensional requirements.

D. The hardship was not created by the applicant.

The application suggests the hardship was not created by the applicant as the 10 acre subject property and surrounding smaller tracts existed prior to adoption of the zoning.

According to the Planning and Zoning Department Director, he discussed the topic of AG-80 minimum lot size and the related limitation regarding division of the subject property with Mrs. Williamson on May 23, 2013, which was prior to May 29, 2013 which is the date the applicants acquired the property. The zoning was adopted after the subject property and other neighboring ‘non-conforming’ properties were established, however, the applicants were aware of the zoning prior to acquisition of the property and had control over whether or not to acquire the property along with the restrictions and limitations presented by the AG-80 zoning at the location.

Finding #6 – The applicants alleged hardship that the subject property pre-dating the current zoning is too small to divide under the current applicable AG-80 bulk and dimensional requirements was created by the applicants because the applicants had the

capability to understand the zoning limitations presented by the AG-80 zoning at the location and had control over whether or not to acquire the property along with the restrictions and limitations posed by the zoning which was already adopted.

E. The hardship is not economic (when a reasonable or viable alternative exists).

The application response to this criterion states “The hardship is not economic, it’s a deprivation of rights enjoyed by immediately adjacent property owners”.

The applicant’s response has failed to address or explain why or how the requested variance is not economic. As discussed above, neighboring properties which are smaller than the subject property were created in the 1970’s prior to adoption of the current applicable zoning, and the size of those tracts are not the result of their respective current owners exercising their rights.

Finding #7 – The submitted application does not indicate or explain how the hardship is not economic because the response to this criterion addresses a different tangent stating “...it’s a deprivation of rights enjoyed by immediately adjacent property owners.”

F. Granting the variance will not adversely affect the neighboring properties or the public.

The application response to this criterion indicates there would be no adverse impact to neighboring properties or the public because the 5 acre lot sizes which would result from the division, if the variance is granted, would be comparable to neighboring property sizes and the neighboring property owned by Montana Department of Fish, Wildlife, and Parks would not be affected because it is used for agriculture.

While it seems reasonable to consider there may not be apparent direct impacts to neighboring properties or the public, the application does not address other factors such as impacts to service providers such as mail delivery, solid waste, school district bussing, and medical and emergency care. Further the application fails to recognize the subject property is located at the end of a dead-end road in an area susceptible to relatively shallow groundwater and floodplain considerations with gravel roads extending nearly four miles to reach the property.

Finding #8 – While direct adverse effects to neighboring properties or the public would not be anticipated through granting of the variance, there would likely be indirect adverse effects to the public and various service providers because the subject property is located at the end of a dead-end road in an area susceptible to relatively shallow groundwater and floodplain considerations with gravel roads extending nearly four miles to reach the property.

G. The variance requested is the minimum variance which will alleviate the hardship.

The application response to this criterion indicates the requested variance is the minimum variance which will alleviate the hardship since only two tracts are being requested.

While the response seems ‘minimal’, the application has not definitively established a valid hardship, and it appears the request is the minimum which will satisfy the applicants desire to be able to divide the 10 acre ‘non-conforming’ tract within the AG-80 zone with a minimum lot size of 80 acres per tract.

Finding #9 – The applicants suggest the requested variance is the minimum variance which will alleviate their hardship because only two 5 acre tracts would be divided from the 10 acre ‘non-conforming’ tract within the AG-80 zone with a minimum lot size of 80 acres per tract.

H. Granting the variance will not confer a special privilege that is denied other similar properties in the same district.

The applicants suggest granting of the variance would permit a similar and consistent use to the existing adjacent residential properties.

The adjacent residential properties are actually ‘non-conforming’ properties and the size of existing properties does not equate with ‘use’ of a property. The ‘use’ of the subject property is already similar and consistent to the use of the adjacent properties because they are all already developed with a residential ‘use’. Through reference to the Flathead County Zoning Regulations, Staff contends that granting the variance would confer a special privilege that is denied other similar properties in the same district because all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum lot size of the district.

Finding #10 – Granting the requested variance to minimum lot size, thus allowing further division of the subject property which is non-conforming in regard to size would confer a special privilege that is denied other similar properties in the same district because while the subject property is currently in use as a residential property, consistent with use of other neighboring properties in the district, all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum lot size of the district.

V. SUMMARY OF FINDINGS

1. Strict compliance to the provisions of the AG-80 zoning would not limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the same district because ‘Dwelling, single family’ is a permitted use in the AG-80 zone and although the 10 acre subject property is ‘non-conforming’ in regard to size it is developed with a residential use comparable to that of similarly situated neighboring properties which are also ‘non-conforming’ in regard to size.
2. Strict compliance to the provisions of the AG-80 zoning would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because neighboring properties which are smaller than the subject property were

created in the 1970's prior to adoption of the current applicable zoning and the size of those tracts are not the result of their respective owners exercising their rights.

3. Limitations imposed by the applicable AG-80 zoning on the applicant's right to further divide the subject property are shared and common among all property owners within the same East Side AG-80 Zoning District because all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum lot size of the district as required pursuant to Section 3.03.020(2) of the Flathead County Zoning Regulations which states "*No lot dimension, yard, or off-street parking area existing on or after the effective date of these regulations shall be reduced below the minimum requirements contained herein*".
4. While the applicants base their case for hardship on other circumstances over which the applicant has no control, the very adoption of the AG-80 zoning at the location of the subject property, there is no such hardship because the applicants had control over whether or not to purchase the property along with the restrictions and limitations presented by the AG-80 zoning at the location which has been applicable for more than three decades.
5. There is no hardship peculiar to the property because the subject property is simply a relatively small 'non-conforming' property in the AG-80 zone which was adopted after the creation of the 10 acre subject property to promote agricultural functions and discourage the further intrusion of incompatible residential uses though the implementation of restrictive bulk and dimensional requirements.
6. The applicants alleged hardship that the subject property pre-dating the current zoning is too small to divide under the current applicable AG-80 bulk and dimensional requirements was created by the applicants because the applicants had the capability to understand the zoning limitations presented by the AG-80 zoning at the location and had control over whether or not to acquire the property along with the restrictions and limitations posed by the zoning which was already adopted.
7. The submitted application does not indicate or explain how the hardship is not economic because the response to this criterion addresses a different tangent stating "...it's a deprivation of rights enjoyed by immediately adjacent property owners."
8. While direct adverse effects to neighboring properties or the public would not be anticipated through granting of the variance, there would likely be indirect adverse effects to the public and various service providers because the subject property is located at the end of a dead-end road in an area susceptible to relatively shallow groundwater and floodplain considerations with gravel roads extending nearly four miles to reach the property.
9. The applicants suggest the requested variance is the minimum variance which will alleviate their hardship because only two 5 acre tracts would be divided from the 10 acre 'non-conforming' tract within the AG-80 zone with a minimum lot size of 80 acres per tract.

10. Granting the requested variance to minimum lot size, thus allowing further division of the subject property which is non-conforming in regard to size would confer a special privilege that is denied other similar properties in the same district because while the subject property is currently in use as a residential property, consistent with use of other neighboring properties in the district, all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum lot size of the district.

VI. CONCLUSION

Upon review of the submitted application, the request to allow for a variance from Section 3.04.040(1), "Minimum Lot Area", of the Flathead County Zoning Regulations, more specifically to the minimum lot size of the AG-80 Agricultural zone within the East Side Zoning District, is not supported by the review criteria and the Findings of Fact listed above. Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application.