

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-16-02)
RONALD PLATKE
APRIL 15, 2016

A report to the Flathead County Board of Adjustment regarding a request by Ronald Platke for a variance to the requirement found in Section 5.08.010(3) Flathead County Zoning Regulations (FCZR) that permit flag lots in “R” districts only. The variance request would apply to property located at an unnumbered lot along Mannington Street (Assessors No. 0014906) which is zoned SAG-5 (Suburban Agricultural) and located within the Highway 93 North Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed variance on May 3, 2016 beginning at 6:00 pm in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Council.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on May 3, 2016 beginning at 6:00 pm in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment’s discussion and decision at that hearing.

II. GENERAL INFORMATION

A. Application Personnel

i. Landowner/Applicant(s)

Ronald Platke
PO Box 2092
Whitefish, MT 59937

ii. Technical Representative

Marquardt Surveying
201 3rd Ave West
Kalispell, MT 59901

B. Property Location (for which a variance is being requested)

The subject property is approximately 10 acres and is located at an unnumbered lot along Mannington Street (Assessors No. 0014906) in Kalispell, MT. The property can be legally described as Tract 2AA in the Northeast ¼ Northwest ¼ of Section 20, Township 29 North, Range 21 West, P.M.M. Flathead County, Montana.

Figure 1: Aerial of the subject property (outlined in red)



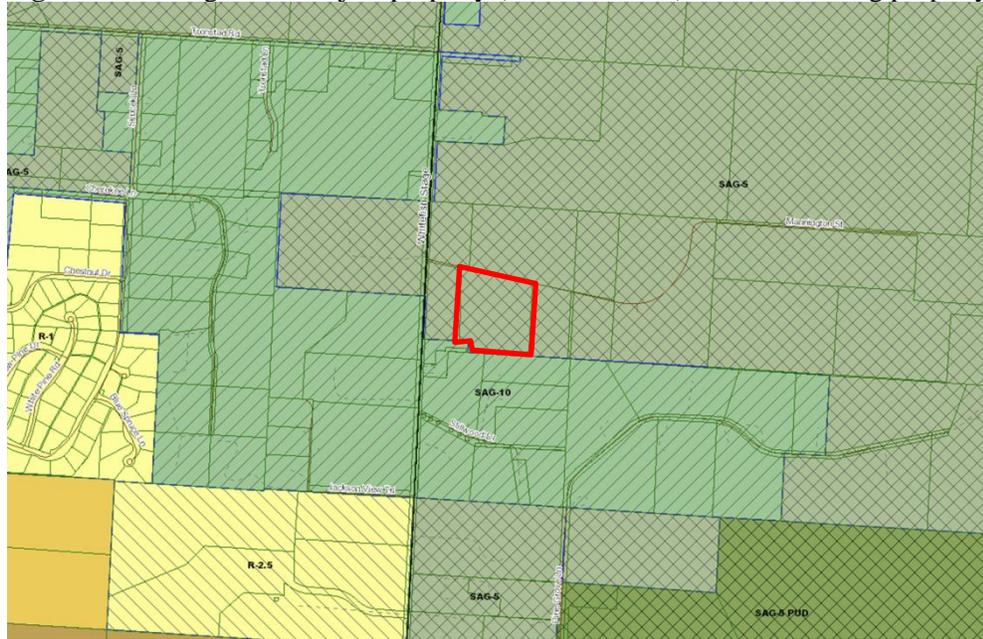
C. Existing Land Use(s) and Zoning

The subject property is located in the Highway 93 North Zoning District and is zoned SAG-5. The SAG-5 zoning classification is defined as, “*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate type residential development.*” Currently, the property is undeveloped.

D. Adjacent Land Use(s) and Zoning

The surrounding land uses consist of low density residential development on relatively estate-sized lots. Many of the larger lots in the area, including those directly east of the subject property have been utilized for agricultural production.

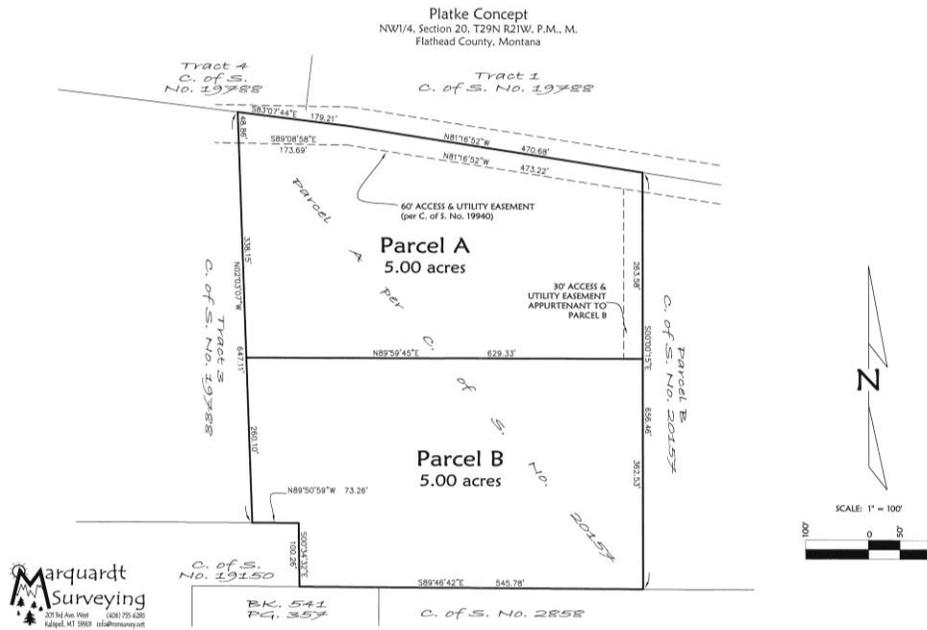
Figure 2: Zoning of the subject property (outlined in red) and surrounding property



E. Summary of Request

The applicant is requesting this variance to allow for a boundary line adjustment to create a lot with no direct access to a roadway. Instead the proposed Parcel B will be accessed via a 30' access and utility easement. Section 5.08.010(3) FCZR permits flag lots in "R" districts only. Section 7.12.090 FCZR defines a flag lot as *"an irregularly shaped lot typified by being almost entirely land-locked and having limited access and/or no direct frontage on a road. Access to a public or private road is typically by an extended strip or land either deeded or by easement."* The applicants have indicated that this configuration is the only way in which the lot will be developable as the western side of subject property contains high groundwater and would not support a wastewater treatment system or well. A detailed site plan and visual representation of the proposed boundary line adjustment and access easement is shown in Figures 3 below.

Figure 3: Site Plan



F. Compliance with Public Notice Requirements

On April 19, 2016, notification was mailed to adjacent property owners within 150 feet of the subject property. On April 19, 2016, legal notice of the public hearing was published in the *Daily Interlake*.

G. Agency Referrals

Agency referrals were sent to agencies listed below regarding the variance request.

- Flathead City-County Health Department
- West Valley Fire Department
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- Bonneville Power Administration
- Flathead County Road and Bridge Department

III. COMMENTS RECEIVED

A. Public Comments

No written comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment hearing scheduled for May 3, 2016.

B. Agency Comments

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

- Flathead Road and Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated April 1, 2016.
- Bonneville Power Administration

- Comment: “In reviewing the proposed plan, it appears this request will not affect any BPA facilities located within the area.” Email dated March 29, 2016.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance and suggested findings of fact based on review of each criterion. Specifically, per Section 2.05.030 of the Flathead County Zoning Regulations, “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:

Strict compliance with the zoning regulations could limit the applicant’s ability to utilize this property for a single family dwelling which is a permitted use in the SAG-5 zoning district. The applicant states the topography, ground water and existing utilities within the parcel will not allow for the western property to be utilized as a single family residential parcel because of the buildable area and approvable areas for wells and septic systems. Because the 10 acres parcel is located in an area where 5 acre minimum lots were anticipated, the density and uses of the SAG-5 zoning district would be reasonable to expect in the area.

Finding #1 - Strict compliance with the regulations could limit the reasonable use of the property because the topography, ground water and location of existing utilities is the main reason for limiting the creation of lots and permitted uses within an area zoned SAG-5.

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

The applicant states the existing division of the property was required to in order to be able to divide the property in accordance with zoning regulations. However, the only way in the lots would be usable is if the boundaries are modified to align east/west to accommodate buildable area, well, and septic system. Environmental constraints deprive the applicant of rights enjoyed by other properties situated in the same district (SAG-5.) In order for both lots to be enjoyed similarly to other properties situated in the same district, the property would need to be split east/west, requiring a flag lot via an access easement.

Finding #2 - Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the district because the surrounding property owners are able to enjoy their rights listed as permitted uses on their five acre lots with buildable area and approvable septic system sites in SAG-5 zoning designations.

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

The subject property is 10 net acres in size and there are topographic challenges on the property. The property owners recently subdivided the property via an immediate family transfer into two, five acre parcels. The topography, ground water, and existing utilities within the parcel will not allow development on the western property with the current north/south split required for direct access to Mannington Street. A boundary line

adjustment changing the properties to an east/west split would allow for two, five acre parcels with buildable area and approvable wells, but would create a flag lot not allowed the SAG-5 zoning.

Finding #3 - The alleged hardship appears to be attributable to the topography and presence of high groundwater on the property which are circumstances out of the control of the applicant.

C. The hardship is peculiar to the property.

The minimum lot size in the SAG-5 zoning district is five (5) acres. The subject property was 10 acres and was able to be divided via family transfer because the created lots complied with the zoning regulations. However, because of the presence of topographical challenges, high groundwater, existing utilities, and the absence of these issues on adjacent properties, the hardship appears to be peculiar to the subject property.

Finding #4 - The alleged hardship appears to be peculiar to the subject property because of its topographical challenges, high groundwater, existing utilities, and the absence of these issues on adjacent properties.

D. The hardship was not created by the applicant.

The applicant states that the hardship was created by topography, high ground water, and existing utilities and not a result of actions taken by the property owner. The applicants participated in a subdivision pre-application meeting on January 12, 2016 at which time the issue of high ground water was suggested. The division of the property via family transfer was approved by the County Commissioners on March 1, 2016 which means that the applicants may have been aware of the issue of high ground water and divided the lot in anticipation that the lot would be developed when this variance for a flag lot was granted. The best and only viable option is for a variance to create a flag lot so the high ground water on the western part of the lot does not affect the property owner's ability to place a building, well and septic sites on the eastern portion of the lots if the variance is granted.

Finding #5 - The alleged hardship does not appear to be created by the applicant as the issues requiring the boundary line adjustment are environmental in nature and out of the control of the applicant, although it is unclear whether the applicant knew about the issues of the property prior to purchasing and dividing the property.

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

In order for the proposed flag lot to exist in compliance with zoning regulations, the property would have to be rezoned as an "R" district. The applicant states the hardship is present because of zoning regulations and environmental constraints. It also does not appear that a viable alternative exists for the lot to be fully developed with the uses and density anticipated for the area.

Finding #6 -The hardship does not appear to be economic because the only reason for the proposed lot configuration is due to environmental constraints and the requested variance appears to be the only viable option in order to develop the lot appropriately.

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

Granting the variance should have very little impact on the neighboring properties or the public because the parcels will have a similar shape, size and use as the surrounding properties. The applicant has decided to extend an easement across the lot rather than extend the property boundaries to the access road. While the easement serves the same function as the extended property line, the lack of direct access to Mannington Street may cause some landowner issues in the future. To mitigate potential problems the applicants could extend Parcel B to Mannington Street. No other neighboring properties should be impacted by the proposed lot configuration.

Finding #7 - Granting the variance request would not appear to have a significant impact on the neighboring properties or the public because the parcel would be of similar shape, size and use as surrounding properties.

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

The applicant states this is the minimum variance which will alleviate the hardship because it will allow the parcels to be configured similarly to the surrounding areas and for both parcels to be developed accordingly with permitted uses with the five acre minimum lot size. Since topography and environmental constraints are the reason for the change in lot configuration, it would appear that the only way in which to develop two 5 acre lots is to conduct a boundary line adjustment to create the flag lot as proposed.

Finding #8 - The variance requested appears to be the minimum variance which would alleviate the alleged hardship because the topography, high ground water and existing utilities would not allow for development of the western lot because of the lack of buildable area or approvable area for a septic system and no other alternatives appear to exist to overcome these environmental constraints.

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

The applicant states that other properties in this area do not have the same environmental constraints as the subject property. In fact, if the property were not burdened by the topography and high groundwater issues, the lots as created by the family transfer would comply with zoning as all other properties would have to comply with.

Finding #9 - Granting the variance would likely not confer a special privilege that is denied to other properties in the district because the size and use of the lot will be similar to other properties in the area.

V. SUMMARY OF FINDINGS

Finding #1 - Strict compliance with the regulations could limit the reasonable use of the property because the topography, ground water and location of existing utilities is the main reason for limiting the creation of lots and permitted uses within an area zoned SAG-5.

Finding #2 - Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the district because the surrounding property owners are able to enjoy their rights listed as permitted uses on their five acre lots with buildable area and approvable septic system sites in SAG-5 zoning designations.

Finding #3 - The alleged hardship appears to be attributable to the topography and presence of high groundwater on the property which are circumstances out of the control of the applicant.

Finding #4 - The alleged hardship appears to be peculiar to the subject property because of its topographical challenges, high groundwater, existing utilities, and the absence of these issues on adjacent properties.

Finding #5 - The alleged hardship does not appear to be created by the applicant as the issues requiring the boundary line adjustment are out environmental in nature and out of the control of the applicant, although it is unclear whether the applicant knew about the issues of the property prior to purchasing and dividing the property.

Finding #6 -The hardship does not appear to be economic because the only reason for the proposed lot configuration is due to environmental constraints and the requested variance appears to be the only viable option in order to develop the lot appropriately.

Finding #7 - Granting the variance request would not appear to have a significant impact on the neighboring properties or the public because the parcel would be of similar shape, size and use as surrounding properties.

Finding #8 - The variance requested appears to be the minimum variance which would alleviate the alleged hardship because the topography, high ground water and existing utilities would not allow for development of the western lot because of the lack of buildable area or approvable area for a septic system and no other alternatives appear to exist to overcome these environmental constraints.

Finding #9 - Granting the variance would likely not confer a special privilege that is denied to other properties in the district because the size and use of the lot will be similar to other properties in the area.

1. **CONCLUSION**

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. Upon review of this application, the request to allow for a flag lot in an area outside of an “R” district is supported by the review criteria and the Findings of Fact listed above. If the variance is granted, it may be considered that the flag lot follows the same special standards outlined in 5.08.010(3).