

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING ADMINISTRATOR INTERPRETATION APPEAL 11-01
SEPTEMBER 19, 2011**

A report to the Flathead County Board of Adjustment regarding an appeal by the West Valley Pines Homeowner's Association of interpretations of the Flathead County Zoning Regulations made by the Zoning Administrator. The interpretations were made by the Zoning Administrator during the consideration and granting of a request by Tanner Marvin and Grosswiler Dairy, Inc. for an Administrative Conditional Use Permit (FACU-11-02) for a 2-day motocross race event held the weekend of July 16 and 17, 2011. The subject property on which the permit was granted is located at 1669 and 1775 West Valley Drive and is zoned "AG-80 Agricultural" and "WVO West Valley Overlay" in the Westside Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the appeal beginning at 6:00 pm on October 04, 2011 in the 2nd floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

I. APPEAL REVIEW UPDATES

A. Land Use Advisory Committee/Council

The subject property for which the interpretations were made is located within the West Valley Overlay, an overlay zone "to extend the provisions relating to the Land Use Advisory Committee..." (Section 3.35.010, FCZR). However, the West Valley Land Use Advisory Committee advises on matters related to "all subdivision and conditional use applications" (Section 3.35.020). Since appeals are neither of these, this report was not scheduled for review by the West Valley Land Use Advisory Committee.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on this appeal on October 04, 2011 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. Appellant Personnel

i. Appellant

West Valley Pines Homeowner's Association
105 East Bluegrass Drive
Kalispell, MT 59901
(No phone # provided)

Jim Thompson, President
Marti Palmer, Secretary
Jennifer Arterbury, Treasurer

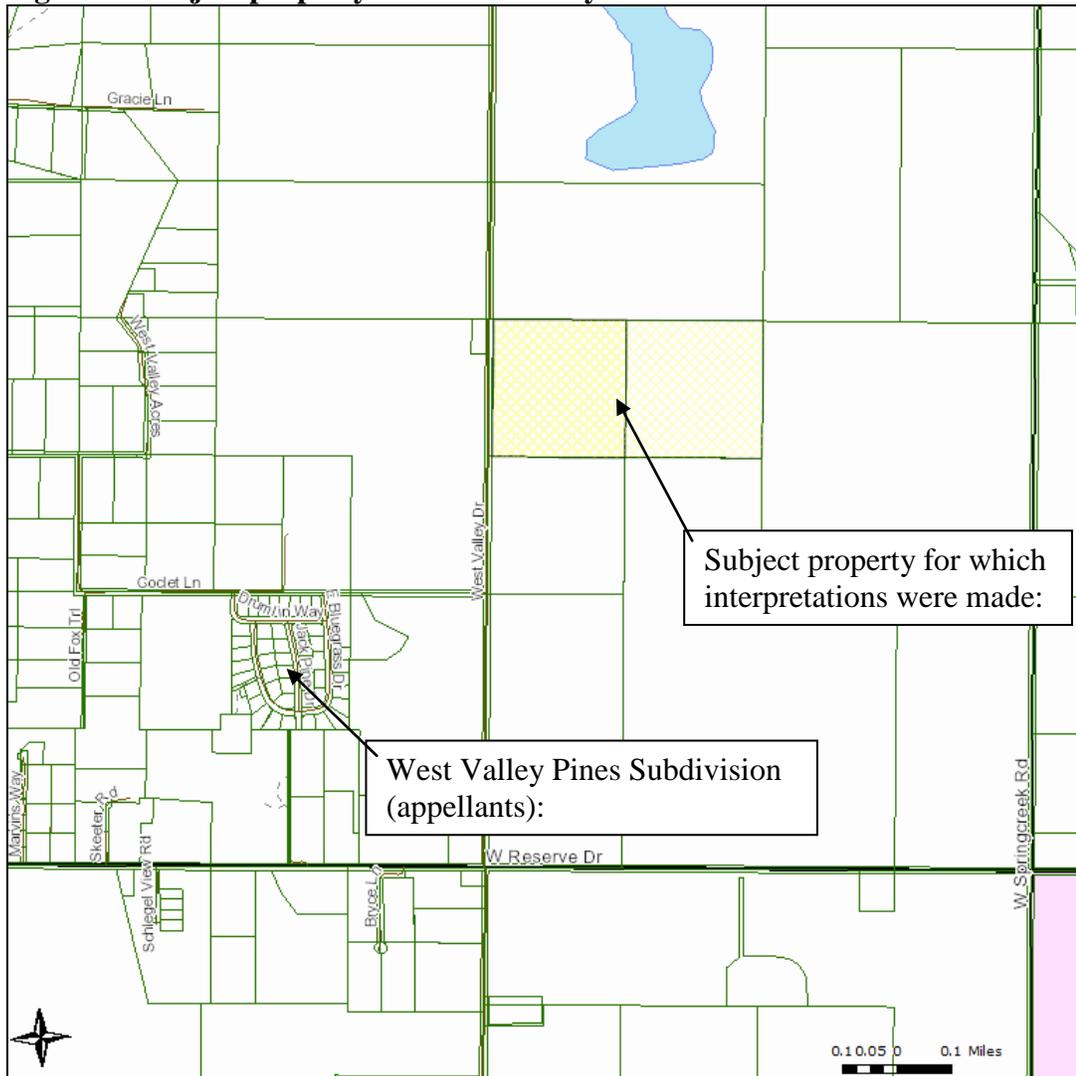
ii. Technical Assistance

N/A

B. Property Location

The subject property for which the interpretations were made is located at 1669 and 1775 West Valley Drive and can further be described as Assessor's Tracts 4 and 4A in Section 27, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. West Valley Pines Subdivision is located approximately .5 miles from the closest point of the subject property on which the interpretations were made. See Figure 1 below.

Figure 1: Subject property and West Valley Pines:



C. Existing Land Use(s) and Zoning

The subject property for which the interpretations were made is zoned “AG-80” in the West Side Zoning District. The property is also zoned “West Valley Overlay.” The overlay extends the advisory jurisdiction for subdivision and conditional use permit

applications as well as the clustering provisions of the West Valley Zoning. Neither of these apply to the review of this appeal.

- AG-80 Agricultural is a district intended *“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.”*
- West Valley Overlay (WVO) is *“a district to extend the provisions relating to the Land Use Advisory Committee and Residential Clustering of the WV West Valley Zoning District to other properties outside that district but within the jurisdiction of the West Valley Neighborhood Plan, County Resolution #1226-A.”*

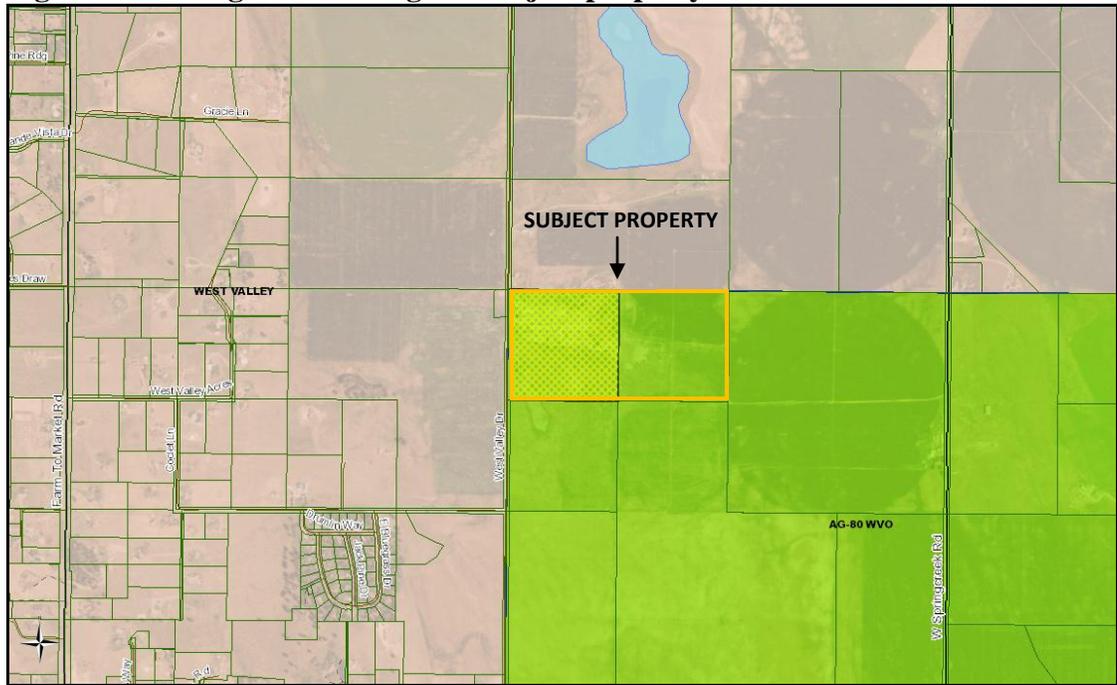
The subject property was used as a dairy in the past, and is currently developed with various residential and farm structures as well as a private motocross track.

D. Adjacent Land Use(s) and Zoning

All directly adjacent properties and the general area surrounding the subject property are used for agricultural purposes with limited residential development. The nearest instances of residential development occur approximately a half mile from the site, including residences within West Valley Acres to the west, residences along West Springcreek Drive, and West Valley Pines, a 48 lot residential subdivision situated approximately a half mile southwest of the subject property for which the original interpretations were made.

Adjacent tracts located to the east and south of the subject property are zoned “AG-80 WVO” and areas to the immediate west and north of the subject property are zoned “West Valley” within the West Valley zoning district (see Figure 2 below).

Figure 2: Zoning surrounding the subject property.



E. Summary of Appeal

On July 15, 2011, the Flathead County Zoning Administrator approved an administrative conditional use permit for a temporary use on the subject property. The temporary use was a 2-day motocross race event using the private motocross track on the subject property. Prior to and after issuance of the permit, the appellants communicated on a regular basis with the Planning and Zoning Office regarding their opposition to the existence of the private motocross track as well as the application for a 2-day motocross race event. During this time the Planning and Zoning Office informed the appellants of Section 2.04 of the Flathead County Zoning Regulations and of their right to appeal any interpretations of the Zoning Administrator to the Board of Adjustment. The appellants were informed of the criteria for appeal (specifically found in Section 2.04.010 of the Flathead County Zoning Regulations), the administrative fee charged for processing an appeal and the procedures for processing an appeal.

On August 11, 2011 the appellants submitted a letter to the Flathead County Planning and Zoning Office appealing some of the interpretations made in the approval of the Administrative Conditional Use Permit. In their letter of August 10, 2011, the appellants address a variety of issues. After review of the letter, the Zoning Administrator identifies four issues that are generally the result of interpretations of the zoning regulations made by the Zoning Administrator and are therefore appealable to the Flathead County Board of Adjustment. The issues addressed in the letter are as follows:

1. That the approved use was not specifically listed in the AG-80 zone as an administrative conditional use, and;

2. That neighborhood impact was not fully considered, and;
3. That the Zoning Administrator received letters from the residents of West Valley Pines protesting the proposed use and still issued the permit, and;
4. That the Zoning Administrator sent written notice of the proposed use to all those landowners within 150' of the subject property, but since "they were all mailed to Grossweiler Dairy, Inc.," presumably he should have sent them to a larger area.

F. Compliance With Public Notice Requirements

Legal notice of the appeal hearing appeared in the September 18, 2011 edition of the Daily Interlake, per Section 2.04.020(3) of the Flathead County Zoning Regulations.

Since the appeal involves a specific property, notice of the appeal hearing was sent to all those within 150' of the subject property for which the interpretations were made per Section 2.04.020(4) of the Flathead County Zoning Regulations.

G. Agency Referrals

Agency referrals are not required for appeal hearings, and none were sent since the nature of the appeal does not inherently involve any specific agencies.

III. COMMENTS RECEIVED

A. Public Comments

As of 5:00 pm on September 19, 2011, the date and time this report was completed for mailing to the Board of Adjustment, no public comments regarding the appeal hearing had been received. Any public comments received by 5:00 pm on October 04, 2011 will be presented verbally to the Board of Adjustment at the hearing.

B. Agency Comments

Agency referrals are not required for appeal hearings, and none were sent since the nature of the appeal does not inherently involve any specific agencies. As of 5:00 pm on September 19, 2011, the date and time this report was completed for mailing to the Board of Adjustment, no agency comments regarding the appeal hearing had been received. Any agency comments received by 5:00 pm on October 04, 2011 will be presented verbally to the Board of Adjustment at the hearing.

IV. REVIEW OF INTERPRETATIONS BEING APPEALED

A proposal to hold a 2-day motocross race event is unique and is not a land use specifically addressed in the Flathead County Zoning Regulations. Section 2.01.010 of the Flathead County Zoning Regulations charges the Zoning Administrator with interpretation of the regulations. The unique proposal for a 2-day motocross race event required some interpretation of the zoning regulations by the Zoning Administrator.

What follows is a review of each interpretation presumably appealed by the appellants in their letter to the Planning Office of August 10, 2011. Each interpretation being appealed will be listed. Following each interpretation, the Zoning Administrator will provide an explanation of how and/or why the interpretation was made along with relevant

supporting information. The explanation, along with the appellant's letter and testimony provided during the public hearing will assist the Board of adjustment in determining if the Zoning Administrator erred in the interpretation of the regulations.

Per Sections 2.04.010(1) and (2) and 2.04.020(6) of the Flathead County Zoning Regulations, if the Board finds that the Zoning Administrator erred and the error specifically aggrieves the appellant the Board may, by motion, overturn the interpretation of the Zoning Administrator. This decision to uphold or overturn the interpretation of the Zoning Administrator will provide a valuable precedent that the Zoning Administrator may administer in the future.

Interpretation #1:

That Grosswiler Dairy LLC could apply for an administrative conditional use permit for a 2-day motocross race in an AG-80 zone.

The subject property on which the interpretation was made is zoned AG-80 in the West Side Zoning District. In Chapter 3 of the Flathead County Zoning Regulations, "Temporary Buildings or Structures" is listed as a conditional use in the AG-80 zoning classification. Many conditional uses listed within the zoning classifications in Chapter 3 have a corresponding set of conditional use standards in Chapter 4. In Chapter 4 of the Flathead County Zoning Regulations, "Temporary Uses" is listed along with standards for temporary uses. "Temporary Uses" as it is listed in the conditional use standards (Chapter 4) is not listed in any classification in Chapter 3, and "Temporary Buildings or Structures" as it is listed in Chapter 3 does not have a specific standard in Chapter 4. This semantic discrepancy ("temporary *buildings or structures*" and "temporary *uses*") created a need for interpretation since it is unclear if the two terms reflect similar uses or different uses.

When the applicants for the 2-day motocross race event contacted the Planning and Zoning Office seeking a mechanism by which they could be reviewed for a temporary use, the Zoning Administrator made the interpretation that they could apply for an administrative conditional use permit for a "temporary building or structure" listed in the AG-80 zone and be reviewed as a "temporary use." In other words, the purpose of the regulations found in Section 1.02 of the Flathead County Zoning Regulations was met whether a temporary use of less than 12 months in duration had buildings or not. The zoning administrator made this interpretation for the following reasons:

1. An interpretation was required since having "Temporary buildings or structures" listed in the AG-80 uses with no corresponding conditional use standards and having "Temporary uses" as a conditional use standard with no corresponding use listed in the zoning classifications lacked clarity.
2. "Temporary Buildings or Structures" is listed as an Administrative Conditional Use in the AG-80 zone, indicating that temporary, as defined in Chapter 7 of the zoning regulations were contemplated in the AG-80 zone related to buildings, structures or the uses within them.
3. Although the language for "Temporary Buildings or Structures" as listed in Chapter 3 is slightly different than the "Temporary Uses" listed in Chapter 4,

temporary buildings or structures would typically *contain* uses, and temporary uses would typically require buildings or structures. Both “buildings or structures” and “uses” meet the concept of temporary, in that the impact is of a limited duration. So while review of temporary buildings *or* uses for impacts to neighbors is clearly appropriate, the review is administrative in nature due to the limited duration.

4. The Zoning Administrator did not feel it was defensible to take the position that a temporary use such as the proposed race event did not qualify for administrative review strictly because it didn't have temporary buildings or structures. If only “temporary buildings or structures” were to be accommodated in all zones and any temporary uses that didn't have a building or structure was therefore forbidden, then it makes no sense to have a conditional use standard for “temporary uses.” In other words, a wedding, fun run, benefit concert, auction, grand opening event or motocross race can't be requested in any zone, even though there is a conditional use standard for “temporary uses” simply because they lack a building or structure. This did not seem to be a reasonable interpretation or precedent of the Flathead County Zoning Regulations.
5. The requested event was to last 2 days and therefore complied with the timeframe presented in the conditional use standard for temporary uses.
6. The criteria for review of an administrative conditional use permit ensured review of the neighborhood impacts of the proposed 2-day motocross event.

Proposed Finding #1:

The Zoning Administrator did not err in the interpretation of the regulations regarding “temporary *buildings or structures*” being administratively similar to “temporary *uses*” because the zoning regulations list “temporary building or structures” as a conditional use in most zones and it is reasonable to conclude that the conditional use standard found in Chapter 4 of the zoning regulations for “temporary uses” is the correct corresponding standard, and would include all temporary uses less than 12 months in duration, including those that do not necessarily have buildings or structures.

Interpretation #2:

That the criteria for reviewing the application by Grosswiler Dairy, LLC for an administrative conditional use permit and reviewing neighborhood impacts of the proposed use should be those listed in Section 2.06.080 of the Flathead County Zoning Regulations.

The appellants question the adequacy of the review given to the application for a 2-day motocross race event by stating in their letter that “Neighborhood impact was not fully considered...” Presumably, this calls into question the interpretation that the criteria for reviewing the application would be the same as any other conditional use permit.

Section 2.06.045(3) of the Flathead County Zoning Regulations clearly states that applications for administrative conditional use permits shall be reviewed using “...the same criteria as outlined in Section 2.06.080 (Criteria Required for Consideration of a Conditional Use Permit of the Flathead County Zoning Regulations.” The Flathead County Planning and Zoning Office reviewed the application for a 2-day motocross race event after the close of public comment, within the timeframe provided by the regulations, and prepared a 12-page report weighing all of the criteria outlined in Section 2.06.080 prior to making an administrative decision. Therefore, the temporary 2-day motocross race event was evaluated against the same criteria as any other conditional use. The report included the Zoning Administrator’s findings of fact upon which a decision was based and was and remains available for public inspection.

In their letter of August 10, 2011, the appellants fail to explain how the Zoning Administrator’s 12-page review of the temporary use does not fully consider neighborhood impact or how they are specifically aggrieved by this.

Proposed Finding #2:

The Zoning Administrator did not err in the interpretation of the regulations regarding criteria for reviewing neighborhood impact of an administrative conditional use permit because the zoning regulations state that administrative conditional use permit applications are to be reviewed using the same criteria as conditional use permits and the Zoning Administrator prepared a 12-page report reviewing the proposal against those criteria prior to approving the permit.

Interpretation #3:

That letters received from the residents of West Valley Pines were not cause for denial of the Grosswiler Dairy, LLC application for an administrative conditional use permit.

The appellant’s letter of August 10, 2011 states that the letters received from the “neighbors” were not considered. The appellant is presumably referring to comments submitted from residents of West Valley Pines, the subdivision for which the appellants are the HOA representatives. Of all the comments submitted and added to the original administrative conditional use file, 7 were specifically regarding the application for a temporary, 2-day motocross race event. The remaining comments were copies of comments submitted regarding an application for a permanent, low-impact recreation facility motocross track approximately one year earlier. These were not considered applicable since they reference a different application for a different use (permanent vs. temporary) and different review procedure requiring a full public hearing.

Section 2.06.045 of the Flathead County Zoning Regulations stipulates that notice of an application for an administrative conditional use permit shall be mailed to landowners within 150’. There is no provision for legal notice in the newspaper like there is for a full conditional use permit, nor is there a public hearing. Presumably

this notice only to those landowners within 150' is because the impacts of those uses for which administrative review is allowed are less substantial and only likely to impact those neighbors within closer proximity to the proposed use. Furthermore, Section 2.06.045(5) of the Flathead County Zoning Regulations specifically states that applications for administrative conditional uses are to be scheduled for full conditional use permit review when written opposition to the request is received from "the property owners within 150' of the property subject to the request" and the expressed concerns cannot be resolved by the applicant.

Of the 7 comments submitted specifically expressing concerns regarding the 2-day motocross race event, none were from property owners within 150' of the subject property. (See also the associated interpretation #4 below.)

Proposed Finding #3:

The Zoning Administrator did not err in the interpretation of the regulations regarding consideration of written opposition because of the 7 opposition comments that were submitted that were specific to the application for a temporary, 2-day motocross race event, none were expressing concerns of property owners within 150' of the property subject to the request, as is required per Section 2.06.045(5) of the Flathead County Zoning Regulations to schedule the application for a full conditional use permit review.

Interpretation #4:

That the adjacent property notification for the Grosswiler Dairy, LLC application for an administrative conditional use permit should be mailed only to landowners within 150' of the subject property.

The Flathead County Planning and Zoning Office sent notice of the application for a 2-day motocross race event to all those property owners within 150' of the subject property on June 28, 2011. The requirement to mail notice, and distance from the subject property to which notice is mailed are specified in Section 2.06.045(2) of the Flathead County Zoning Regulations. The addresses to which notice was sent, as well as a map of those addresses is found in the Administrative Conditional Use permit application file (FACU-11-02). Given the size of the subject property and the multiple properties owned by the applicants around the subject property, the applicants received the majority of the notices. In fact only one notice was sent to anyone other than Grosswiler Dairy of members of the Grosswiler family, and that notice was sent to the West Valley Volunteer Fire Department.

The distance to which adjacent property notices are sent are clearly established in the regulations. There is no "gray area" or interpretation required for this determination. For the Zoning Administrator to send notice to a larger area such as a quarter mile or 100 yards would be arbitrary.

Proposed Finding #4:

The Zoning Administrator did not err in the interpretation of the regulations regarding the area to which adjacent property notification should be sent because adjacent property notification was sent on June 28, 2011 to those property owners within 150' of the subject property, in direct conformance with Section 2.06.045 of the Flathead County Zoning Regulations.

V. SUMMARY OF FINDINGS

Proposed Finding #1:

The Zoning Administrator did not err in the interpretation of the regulations regarding “temporary *buildings or structures*” being administratively similar to “temporary *uses*” because the zoning regulations list “temporary building or structures” as a conditional use in most zones and it is reasonable to conclude that the conditional use standard found in Chapter 4 of the zoning regulations for “temporary uses” is the correct corresponding standard, and would include all temporary uses less than 12 months in duration, including those that do not necessarily have buildings or structures.

Proposed Finding #2:

The Zoning Administrator did not err in the interpretation of the regulations regarding criteria for reviewing neighborhood impact of an administrative conditional use permit because the zoning regulations state that administrative conditional use permit applications are to be reviewed using the same criteria as conditional use permits and the Zoning Administrator prepared a 12-page report reviewing the proposal against those criteria prior to approving the permit.

Proposed Finding #3:

The Zoning Administrator did not err in the interpretation of the regulations regarding consideration of written opposition because of the 7 opposition comments that were submitted that were specific to the application for a temporary, 2-day motocross race event, none were expressing concerns of property owners within 150' of the property subject to the request, as is required per Section 2.06.045(5) of the Flathead County Zoning Regulations to schedule the application for a full conditional use permit review.

Proposed Finding #4:

The Zoning Administrator did not err in the interpretation of the regulations regarding the area to which adjacent property notification should be sent because adjacent property notification was sent on June 28, 2011 to those property owners within 150' of the subject property, in direct conformance with Section 2.06.045 of the Flathead County Zoning Regulations.

VI. CONCLUSION

The Zoning Administrator feels that the interpretations made during the acceptance, review, consideration and ultimate approval of FACU-11-02 were reasonable. Where interpretations were needed due to regulatory complexities or semantic inconsistencies,

the logic behind the interpretation is provided above. When the regulations were clear, the language of the regulations was followed and is also presented above.

However, the Zoning Administrator eagerly submits to the Board of Adjustment for their review and consideration of the interpretations being appealed. Per Section 2.04.010 of the Flathead County Zoning Regulations, if the Board finds the Zoning Administrator erred in the interpretation of the regulations, and can determine the manner in which the appellants were specifically aggrieved by the erroneous interpretation, staff will assist in crafting findings of fact to support the overturning of the interpretation. Guidance from the Board of Adjustment on any of the issues being appealed herein is welcome to establish an interpretive precedent for ongoing administration of the Planning and Zoning Office.