

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-10-08)**  
**JEANNINE ZOLLINGER**  
**JUNE 22, 2010**

A report to the Flathead County Board of Adjustment regarding a request by Jeannine Zollinger for a conditional use permit to allow for a family hardship dwelling in the West Valley zoning district.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on July 6, 2010 beginning at 6:00 PM in the 2<sup>nd</sup> 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 located within the advisory jurisdiction of the West Valley Land Use Advisory Committee. On Tuesday, June 22, 2010, beginning at 7:00 PM at the Stillwater Grange Hall the West Valley Land Use Advisory Committee will hold a public meeting to review the proposed land use and make a recommendation to the Flathead County Board of Adjustment. This space is reserved for a summary of the Committee's discussion and recommendation.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on Tuesday, July 6, 2010, beginning at 6:00 PM in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, located at 1035 First Avenue West in 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**

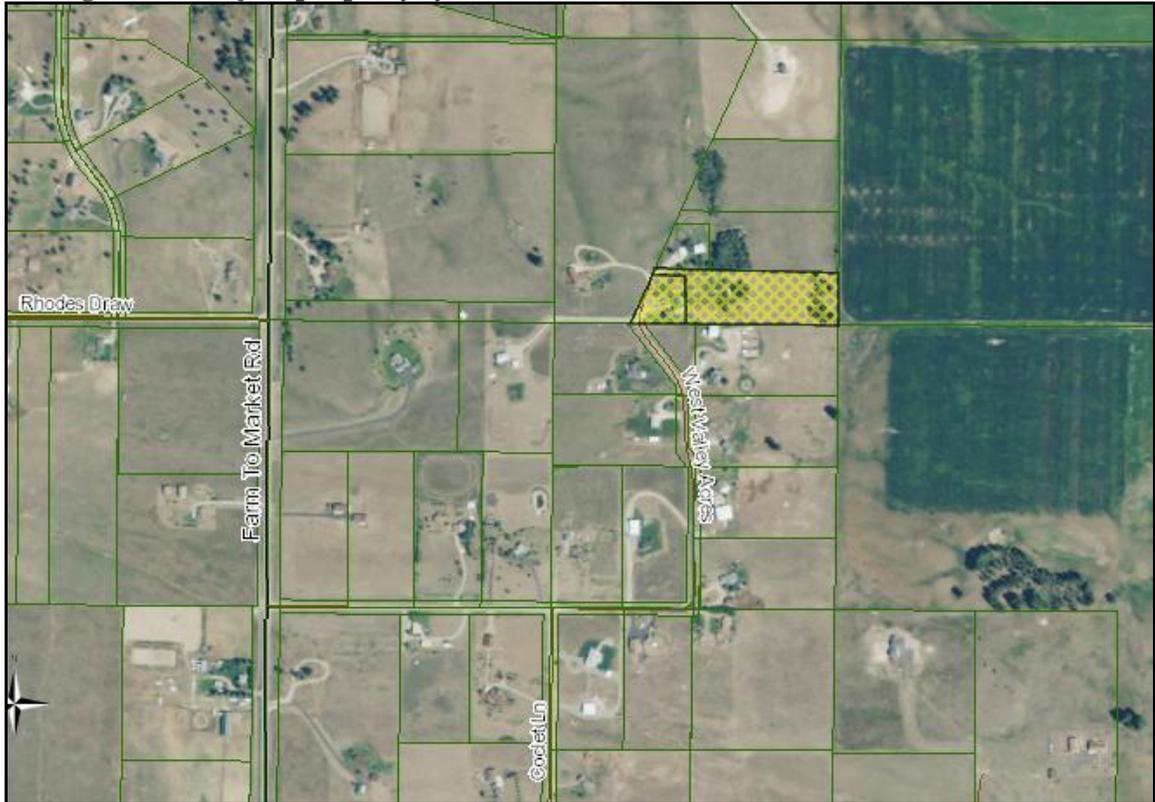
**i. Applicant**

Jeannine Zollinger  
161 West Valley Acres  
Kalispell, MT 59901  
(406) 257-5174  
[zollingerjeannine@yahoo.com](mailto:zollingerjeannine@yahoo.com)

**B. Property Location and Size**

The subject property is located at 161 West Valley Acres outside of Kalispell. On the Flathead County GIS map, the property is shown as two separate tracts of record, 4B and 4C. However, according to the Flathead County Plat Room, the tracts are actually one combined tract legally described as Parcel A of Certificate of Survey 3996 in Section 21, Township 29 North, Range 22 West. Therefore, for the review of the proposed use, this report will consider the entire property to be one tract of record. The subject property is shown in the figure below.

**Figure 1: Subject property (yellow)**



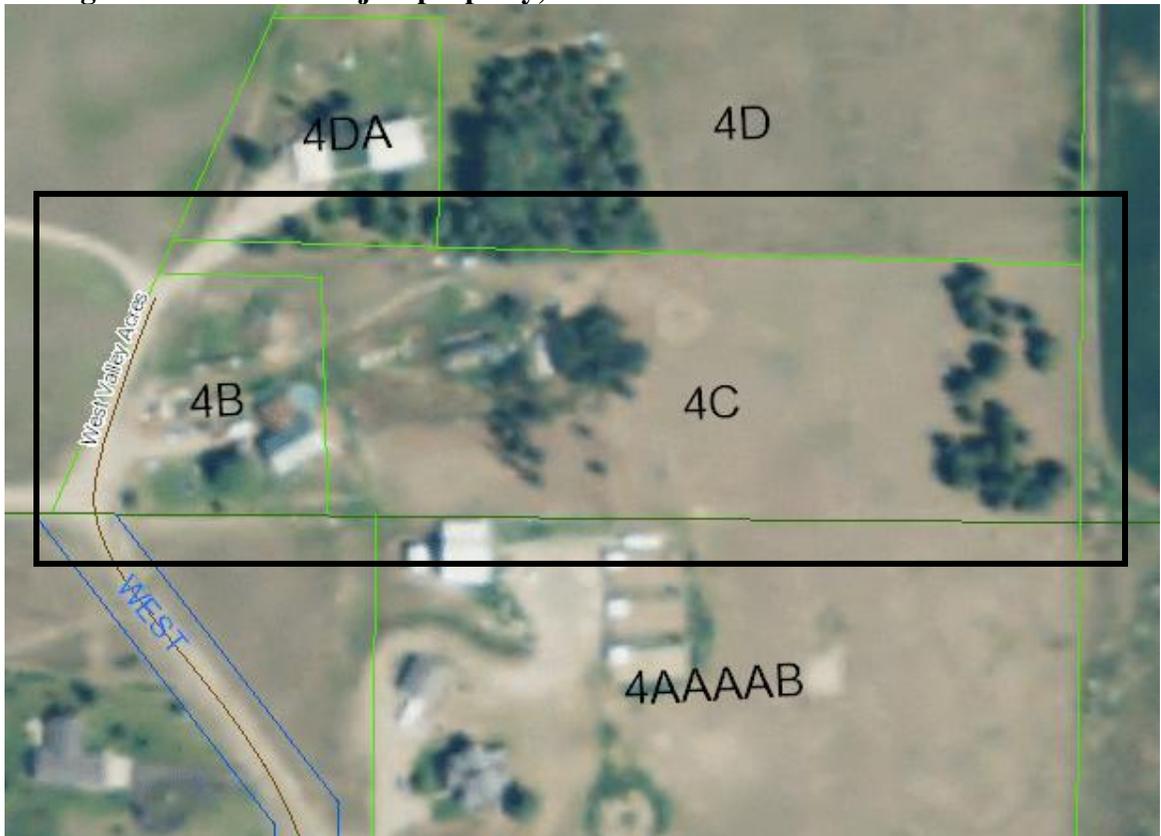
**C. Existing Land Use(s) and Zoning**

The property is currently zoned West Valley, which is depicted in Figure 2 below. There is an existing single family dwelling and an accessory building located on the property. Comment received during the administrative conditional use permit process indicates the accessory use is a kennel. The accessory building is not visible from the road, so staff could not verify its use as a kennel. This is shown in Figure 3 using the available 2009 aerial photography.

**Figure 2: Subject property (yellow)**



**Figure 3: Aerial of subject property, outlined in black.**



**D. Adjacent Land Use(s) and Zoning**

Adjacent land surrounding the subject property is zoned West Valley. The character of the surrounding area is rural residential with uses mixed between residential and agricultural.

**E. Summary of Request**

The applicant is requesting a conditional use permit to allow a family hardship dwelling be placed on the property. A family hardship dwelling is normally processed as an *administrative* conditional use permit within the West Valley Zoning District. However, during the required adjacent property notification for the administrative conditional use permit, a large number of public comments were received concerning the proposed use in conjunction with accessory uses already located on the property. The administrative conditional use permit application was switched to a regular conditional use permit application pursuant to Section 2.06.045(5) of the Flathead County Zoning Regulations (FCZR). Additional referrals were sent during the conditional use permit process to agencies potentially involved based on the public comments submitted. The applicant is requesting a family hardship dwelling be placed on the subject property to allow her daughter to watch over and care for her. Family hardship dwelling is defined as *“a temporary dwelling used for housing a member of the immediate family whose physical or mental condition requires constant care or assistance.”*

**F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on June 6, 2010. Legal notice of the public hearing on this application will be published in the June 20, 2010 edition of the Daily Interlake.

**G. Agency Referrals**

Referrals were sent to the following agencies on May 28, 2010:

- Flathead County Public Works/Road Department-Dave Prunty
  - Reason: The proposal has the potential to impact County facilities.
- Flathead County Solid Waste-Jim Chilton
  - Reason: The proposal has the potential to impact County facilities.
- Flathead City-County Health Department-Glen Gray/Joe Russell
  - Reason: The proposed dwelling would utilize an existing septic drain field.
- Flathead County Animal Shelter-Cliff Bennett
  - Reason: Comments received during the Administrative Conditional Use permit request indicated there may be multiple uses occurring on the property potentially in violation of the Flathead County Zoning Regulations and the Flathead County Animal Control Ordinance.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

On June 21, 2010 comments were submitted to the conditional use permit file by surrounding landowners regarding the proposed use. Below is a brief summary of the submitted comments. Any additional comments received after the report is sent to the Board members will be presented and summarized verbally by staff at the hearing on July 6, 2010.

- Mark & Kari Boardman, Richard Morken, Tim & Colleen Whitish
  - The application is not in compliance with the protective covenants governing the neighborhood.
- Glen & Dawn Olson
  - The property is in violation of the registered covenants, and there are concerns regarding the number of accessory uses occurring on the property.
- Ed & Barb Myers
  - The property is in violation of the homeowner covenants.
  - There is inappropriate noise from the number of dogs on the property, and traffic has increased significantly on the road.
- Robert & Darleda Tedrow
  - The request violates the Declaration of Covenants affecting the property, and the applicant is currently in violation of the covenants.
  - They do not believe a legitimate hardship exists.
  - There are numerous dogs located on the property.
- James & Kathleen Kola
  - The property does not contain adequate space; however there is access to the back of the property.
  - There is a large amount of vehicles on-site, and the property generates a high amount of traffic.
  - The request is in violation of the covenants on the property.
  - They do not feel there is a necessary hardship.
- Jeanne & Dan Olson
  - The addition of another dwelling would adversely impact property values.
  - The property has existing covenants.
  - No confidence that the dwelling would be temporary and the hardship is valid.

#### **B. Agency Comments**

Below is a list of comments received from public agencies. Any comments received after the report is sent to the Board will be presented and summarized verbally by staff at the public hearing on July 6, 2010.

- Dave Prunty – Flathead County Public Works
  - The Road Department does not have any comments on the request.
- Glen Gray – Flathead City-County Health Department
  - The parcel was previously subdivided and approved for one single family dwelling by the Department of Environmental Quality.

- The parcel must again be reviewed under the Sanitation in Subdivisions Act for a second dwelling.
- The proposed water supply, sewage treatment and storm drainage are all subject to the review.
- Cliff Bennett – Flathead County Animal Shelter
  - Taken verbally over the phone: The property used to be a licensed dog kennel under an owner named Erickson, but no license currently exists for the current owner.
  - A kennel is defined in the Flathead County Animal Control Ordinance as “any establishment where five (5) or more dogs over the age of four (4) months are kept.”
  - No complaint has been officially submitted to the Flathead County Planning and Zoning office or to the Flathead County Animal Shelter; therefore, at this time there is no documented violation.
- James Chilton – Flathead County Solid Waste
  - The district anticipates no negative impact with solid waste issues at this time. They request that all sold waste generated at the proposed location be hauled by private hauler. Evergreen Disposal is the licensed hauler in the area.

#### **IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations (FCZR), what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

##### **A. Site Suitability**

###### **i. Adequate usable space**

The subject property totals approximately 5 acres. There is an existing single family residence located near the front of the property on approximately 1 acre, and an existing accessory building. The property does appear to contain adequate usable space for the family hardship dwelling located towards the rear of the subject property on the remaining 4 acres. The family hardship dwelling must comply with the West Valley zoning setback requirements which are 20 feet from all property lines and road easements. Section 4.11 of the FCZR also lists performance standards for family hardship dwellings. Family hardship dwellings are defined in the FCZR under Section 7.05.110 as “*a temporary dwelling used for housing a member of the immediate family whose physical or mental condition requires constant care or assistance.*” Therefore the dwelling may not be rented or leased, is considered only temporary, and must be removed from the property once it is no longer required.

Significant public comment was submitted indicating the proposed use does not comply with covenants recorded on the property. While our office acknowledges the existence of these covenants, we cannot enforce their compliance. Any violation of property covenants must be resolved through civil court.

**Finding #1-** The subject property contains adequate usable space because there is a total of 5 acres, the family hardship dwelling will be located near the rear of the property, the dwelling will meet applicable setbacks, and the use is considered temporary based on the definition of family hardship dwelling.

**ii. Adequate access**

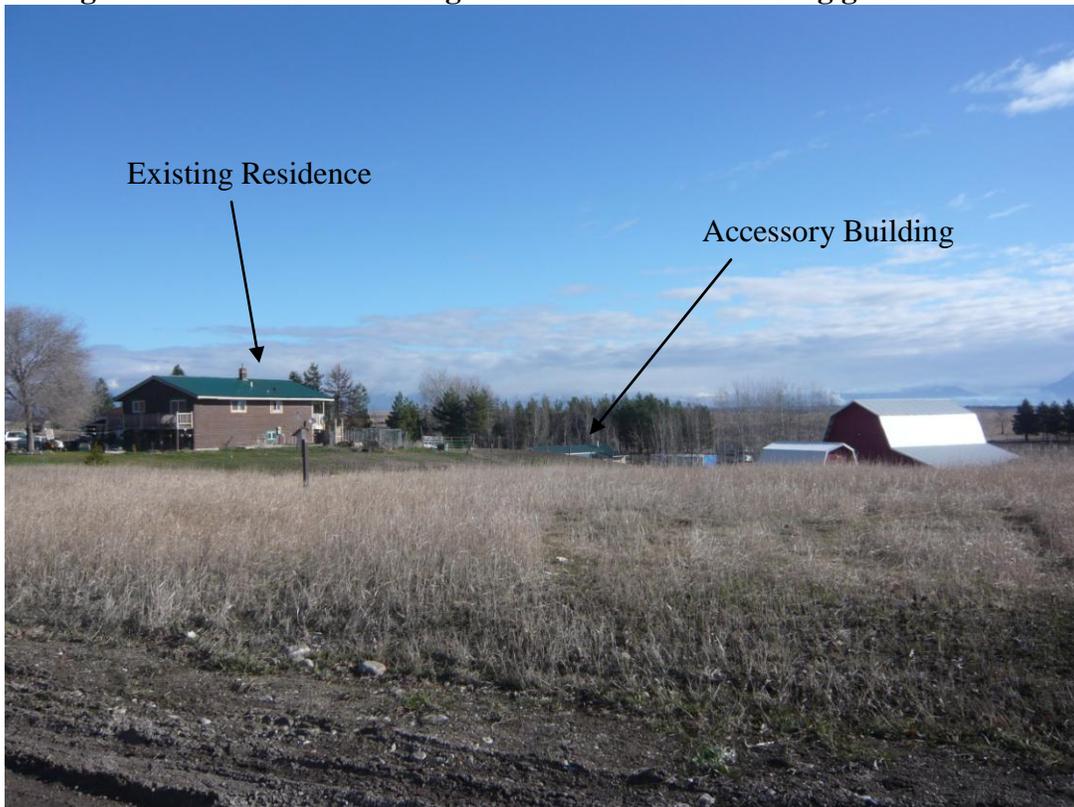
The subject property is located at the end of West Valley Acres, which is a privately maintained road. West Valley Acres is located east of Farm to Market, off Coclet Lane which is paved and maintained by Flathead County. West Valley Acres is a gravel road, with a travel surface at least 24 feet wide. It is shown as a 60 foot wide private road and utility easement on surrounding Certificates of Surveys.

**Finding #2-** There is adequate access for the proposed use because the subject property is located off of a private road which accesses paved County maintained roads.

**iii. Absence of environmental constraints**

The elevation of the subject property changes substantially beginning at the front property line and moving towards the rear. The property begins to slope dramatically after the existing residence, as shown in Figure 4 below, and then levels out behind the existing accessory building. The property is not considered to contain steep slopes because after the ground elevation drops it levels back out for adequate buildable area. The family hardship dwelling would be located towards the rear of the property, well below the existing residence and private road. The site does not contain areas of wetland vegetation or areas designated as floodplain (FEMA FIRM Panel 30029C 1395G).

**Figure 4: Elevation of existing residence and surrounding ground**



**Finding #3-** The proposed family hardship dwelling will not impact the environment because the subject property does not contain any areas with steep slopes, wetlands, or floodplains.

**B. Appropriateness of design**

**i. Parking scheme**

There appears to be adequate space for any necessary parking. Chapter 6 of the FCZR lists parking requirements for specific uses. Section 6.02.010 requires 2 parking spaces per dwelling unit for a single-family home. Therefore, 2 parking spaces will be required for the family hardship dwelling in addition to the current parking spaces used for the existing residence.

**Finding #4-** There is adequate parking for the proposed use because 2 additional parking spaces will be provided for the family hardship dwelling based on the residential parking requirements of the Flathead County Zoning Regulations.

**ii. Traffic circulation**

The subject property is accessed by an existing residential driveway located at the end of a privately maintained road. The private road, West Valley Acres, is accessed from Coclet Lane which is a paved county road. There is adequate

space at the end of West Valley Acres for vehicles to turn around as the road does dead-end.

**Finding #5-** Traffic circulation is satisfactory because the subject property is accessed through a paved county road and a private gravel road, and there is adequate space for vehicles to turn around at the end of the private road.

**iii. Open space**

There is no percentage listed for permitted lot coverage under the West Valley Zoning District in Section 3.34 of the FCZR. The property consists of approximately 5 acres, and there does appear to be adequate open space to accommodate any on-site stormwater runoff as a result of the family hardship dwelling.

**Finding #6-** There is adequate open space for the proposed use because there is no maximum permitted lot coverage stated in the West Valley zoning and the property consists of approximately 5 acres.

**iv. Fencing/screening**

There is existing wire fencing surrounding the majority of the property. The applicant is not proposing any additional fencing. If the applicant wishes to construct additional fencing in the future, it must comply with Section 5.04 of the FCZR performance standards regarding fences.

**v. Landscaping**

The property does have existing trees and shrubs located through the 5 acres. The applicant does not propose any additional landscaping other than for residential purposes.

**vi. Signage**

The applicant is not proposing any signage other than normal residential signage which is exempt under Section 5.11.010(2) of the FCZR. In the future, if the applicant wished to erect any non-residential signage, it would be required to comply with Section 5.11 of the FCZR.

**Finding #7-** The proposed family hardship dwelling is not anticipated to impact surrounding properties because there is existing fencing located on the subject property, the area will be landscaped using traditional residential techniques, and no signage is proposed as part of the request.

**vii. Lighting**

The applicant has stated they will install a light on the family hardship dwelling, as well as a flood light. All proposed lighting must comply with Section 5.12 of the FCZR.

**Finding #8-** The proposed lighting is acceptable for the family hardship dwelling because it shall comply with residential lighting requirements located in the Flathead County Zoning Regulations.

**C. Availability of Public Services and Facilities**

**i. Sewer**

The property currently uses a septic system approved by the Flathead County Department of Environmental Health for one single family dwelling. Comment received on June, 14, 2010 from the department indicates the property must be reviewed again under the Sanitation in Subdivisions Act for a second dwelling. Performance standards for family hardship dwellings listed under Section 4.11 of the FCZR also state the structure must be connected to an approved utility and septic system. As a condition of approval, the applicant must contact the Flathead County Department of Environmental Health to obtain a new septic approval which can accommodate the proposed added use.

**ii. Water**

The property is currently served by an individual well. Comment received from the Flathead County Department of Environmental Health indicates the property must be reviewed again under the Sanitation in Subdivisions Act for a second dwelling. This review will also look at the proposed water supply. Performance standards for family hardship dwellings listed in Section 4.11 of the FCZR also require the structure be connected to an approved utility system.

**iii. Storm Water Drainage**

The applicant has not submitted any information regarding additional stormwater management systems besides what is already used for the residential property. The stormwater drainage system would also be reviewed under the Sanitation in Subdivisions Act completed by the Flathead County Department of Environmental Health.

**Finding #9-** The subject property must be re-reviewed for sewer, water, and stormwater drainage under the Sanitation in Subdivision Act for the proposed family hardship dwelling because comment was received from the Flathead County Department of Environmental Health indicating the property is currently approved for only one single family dwelling, and performance standards listed in Section 4.11 state the structure must be connected to an approved septic system.

**iv. Fire Protection**

Fire protection would be provided by the West Valley Fire District. No significant impact to the District is anticipated as a result of the proposed use because the district is already equipped to handle the addition of a residential structure.

**v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. There is no significant impact anticipated to the Department as a result of the proposed use because the department is already equipped to address the needs of one additional residential structure.

**Finding #10-** The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, and the departments are equipped to handle the addition of only one residential structure.

**vi. Streets**

The subject property is located at the end of West Valley Acres which is a privately maintained gravel road. Since the road is not maintained by Flathead County, the applicant is not required to obtain an approach permit from the Flathead County Road Department. West Valley Acres has a travel surface at least 24 feet wide, and is located within a 60 foot wide private road easement. West Valley Acres connects to Coclet Lane which is a paved county road that accesses Farm to Market.

Staff researched if any Road User's Agreement existed for the private road. When asked, the applicant stated the road technically ends at the southern boundary of the property, and that when normal maintenance is performed on the road, it always stops at the southern property line. According to the Flathead County Clerk and Recorder's Office, there is no recorded Road User's Agreement which specifically addresses road maintenance and how costs are divided amongst property owners. The Clerk and Recorder's did locate covenants associated with the property, but they do not address any road maintenance. The road easement is show on Certificate of Survey #1921 and #1922. Both support the applicant's statement that the road technically ends at the southern property line. Since staff has not been able to uncover any recorded Road User's Agreement and the applicant has no knowledge of one as well, it can be assumed there is not an agreement in place for West Valley Acres.

**Finding #11-** The subject property has adequate access for the proposed family hardship dwelling because it is located on a privately maintained gravel road accessed from a paved County road, the private road is at least 24 feet wide with a 60 foot wide easement, and the temporary addition of 1 single family dwelling will not violate a road user's agreement regarding maintenance of the private road.

**D. Immediate Neighborhood Impact**

**i. Excessive traffic generation**

There are no traffic counts for West Valley Acres because it is a privately maintained road. The Flathead County Road Department does have traffic counts for Coclet Lane east of Farm to Market which are available on their website. During July of 2008, the Road Department counted a weekly total of

583 vehicle trips with a daily average of 97 vehicle trips. Residential structures are estimated to contribute up to 10 vehicle trips per day. Therefore the proposed use would add 10 trips per day and 70 trips per week, which would increase the weekly total to approximately 653 vehicle trips and the daily average to approximately 107 vehicle trips. Based on the number of vehicle trips already occurring on the Coclet Lane, the additional 10 trips per day is not anticipated to have a negative impact on the road and surrounding property owners.

**Finding #12-** It is not anticipated that the proposed use would have a negative impact on the road and surrounding properties because the number of vehicle trips per day would only increase by 10 trips.

**ii. Noise or vibration**

The proposed use is a residential family hardship dwelling. It is not anticipated that the proposed use will generate any excessive noise or vibration above what is acceptable and normal for residential use.

**iii. Dust, glare or heat**

The proposed family hardship dwelling is not anticipated to produce any excessive glare or heat. Since the private road which accesses the property is gravel, there is the possibility for increased dust. However, it is not anticipated to be a problem beyond what is acceptable for a private gravel road.

**iv. Smoke, fumes, gas, or odors**

No smoke, fumes, or other odors are anticipated other than what is acceptable for normal residential use.

**Finding #13-** It is not anticipated the requested family hardship dwelling will generate excessive noise, vibration, glare, heat, smoke, fumes, or other odors because the proposed use is residential and will not contribute any impacts other than those associated with normal residential activities.

**v. Inappropriate hours of operation**

As the proposed use is a family hardship dwelling, much like a normal single family residence, there are no proposed hours of operation. The proposed use is residential, not commercial.

**Finding #14-** There are no inappropriate hours of operation proposed because the use is residential and will be utilized in a manner similar to a single family home.

## V. SUMMARY OF FINDINGS

**Finding #1-** The subject property contains adequate usable space because there is a total of 5 acres, the family hardship dwelling will be located near the rear of the property, the

dwelling will meet applicable setbacks, and the use is considered temporary based on the definition of family hardship dwelling.

**Finding #2-** There is adequate access for the proposed use because the subject property is located off of a private road which accesses paved County maintained roads.

**Finding #3-** The proposed family hardship dwelling will not impact the environment because the subject property does not contain any areas with steep slopes, wetlands, or floodplains.

**Finding #4-** There is adequate parking for the proposed use because 2 additional parking spaces will be provided for the family hardship dwelling based on the residential parking requirements of the Flathead County Zoning Regulations.

**Finding #5-** Traffic circulation is satisfactory because the subject property is accessed through a paved county road and a private gravel road, and there is adequate space for vehicles to turn around at the end of the private road.

**Finding #6-** There is adequate open space for the proposed use because there is no maximum permitted lot coverage stated in the West Valley zoning and the property consists of approximately 5 acres.

**Finding #7-** The proposed family hardship dwelling is not anticipated to impact surrounding properties because there is existing fencing located on the subject property, the area will be landscaped using traditional residential techniques, and no signage is proposed as part of the request.

**Finding #8-** The proposed lighting is acceptable for the family hardship dwelling because it shall comply with residential lighting requirements located in the Flathead County Zoning Regulations.

**Finding #9-** The subject property must be re-reviewed for sewer, water, and stormwater drainage under the Sanitation in Subdivision Act for the proposed family hardship dwelling because comment was received from the Flathead County Department of Environmental Health indicating the property is currently approved for only one single family dwelling, and performance standards listed in Section 4.11 state the structure must be connected to an approved septic system.

**Finding #10-** The proposed use is not anticipated to impact public services as fire and police protection are available to the subject property, and the departments are equipped to handle the addition of only one residential structure.

**Finding #11-** The subject property has adequate access for the proposed family hardship dwelling because it is located on a privately maintained gravel road accessed from a paved County road, the private road is at least 24 feet wide with a 60 foot wide easement,

and the temporary addition of 1 single family dwelling will not violate a road user's agreement regarding maintenance of the private road.

**Finding #12-** It is not anticipated that the proposed use would have a negative impact on the road and surrounding properties because the number of vehicle trips per day would only increase by 10 trips.

**Finding #13-** It is not anticipated the requested family hardship dwelling will generate excessive noise, vibration, glare, heat, smoke, fumes, or other odors because the proposed use is residential and will not contribute any impacts other than those associated with normal residential activities.

**Finding #14-** There are no inappropriate hours of operation proposed because the use is residential and will be utilized in a manner similar to a single family home.

## **VI. RECOMMENDATION**

Upon review of this application, the request for a family hardship dwelling on the subject property is supported by the review criteria and all 15 Findings of Fact listed above. Staff therefore recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-08 as findings of fact and approve the conditional use permit, subject to the following 8 conditions:

## **VII. CONDITIONS**

1. The proposed family hardship dwelling shall be in substantial conformance with the original application and site plan submitted and approved by the Board of Adjustment.
2. The family hardship dwelling shall be used solely for the purpose of 'temporarily housing a member of the immediate family whose physical or mental condition requires constant care or assistance,' as defined in Section 7.05.110 of the Flathead County Zoning Regulations. The family hardship dwelling shall not be rented, leased or occupied by anyone other than the person(s) identified in the application.
3. The family hardship dwelling shall meet all applicable bulk and dimensional requirements of the West Valley zoning district in which it is located.
4. The applicant shall provide 2 parking spaces for the family hardship dwelling as required under Section 6.02.010 of the Flathead County Zoning Regulations.
5. All proposed lighting on the family hardship dwelling shall be shielded/downward pointing and directed in such a way that it lights only the intended area and does not intrude into roadways or onto adjoining properties in compliance with Section 5.12 of the Flathead County Zoning Regulations.
6. The applicant shall obtain an updated septic permit applicable to the family hardship dwelling from the Flathead County Department of Environmental Health. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.

7. This permit is valid for a period of one-year from the date of authorization. The permit is subject to renewal by the Zoning Administrator upon the presentation of evidence of continued need, in accordance with Section 4.11.010 of the Flathead County Zoning Regulations. If a renewal request is not received by this office within the one year timeframe allotted, this permit will expire.
8. Upon expiration of this permit, the family hardship dwelling shall be removed from the property within 90 days, as required by Section 4.11.010 of the Flathead County Zoning Regulations.