

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
CONDITIONAL USE PERMIT REPORT FCU-10-10
WHISTLING ANDY INC.
JULY 19, 2010

A report to the Flathead County Board of Adjustment regarding a request by Whistling Andy Inc. for a conditional use permit to allow for a Tavern in the Bigfork Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on August 3, 2010 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 Bigfork Land Use Advisory Committee (BLUAC) will hold a meeting regarding this proposal on July 29, 2010 at 4:00 pm in the Bethany Lutheran Church at 8559 Montana Hwy. 35 in Bigfork. BLUAC's recommendation will be forwarded to the Flathead County Board of Adjustment. This space is reserved for a summary of BLUAC's recommendation.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on August 3, 2010. 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

Whistling Andy, Inc.
20339 Montana Highway 35
Bigfork, MT 59911

ii. Landowner(s)

Whistling Andy, Inc.
20339 Montana Highway 35
Bigfork, MT 59911

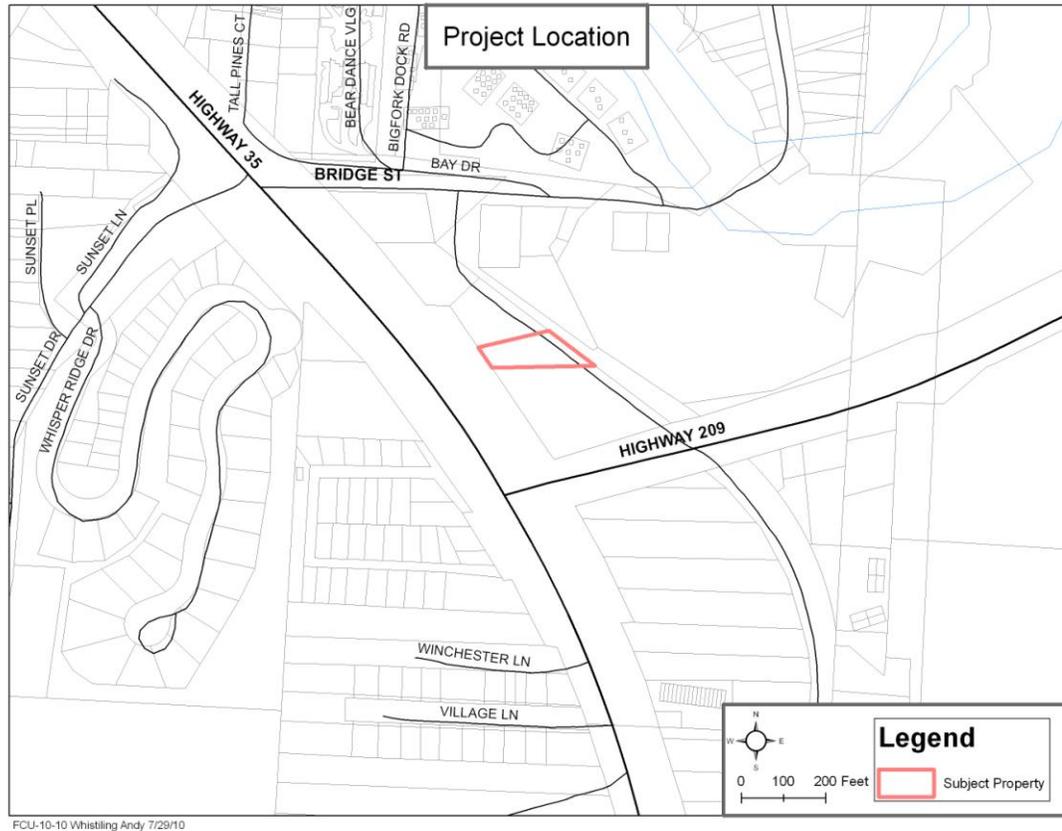
iii. Technical Assistance

Michael Marchetti
20339 Montana Highway 35
Bigfork, MT 59911

B. Property Location and Size

The subject property is located at 8541 Montana Highway 35 in Bigfork just north of the intersection of Montana Highway 35 and Montana Highway 209 (figure 1). The property can be legally described as JH Horn Track Number 2 in Lot 1A in Section 36, Township 27 North, Range 20 West PMM Flathead County Montana.

Figure 1: Subject property (pink)



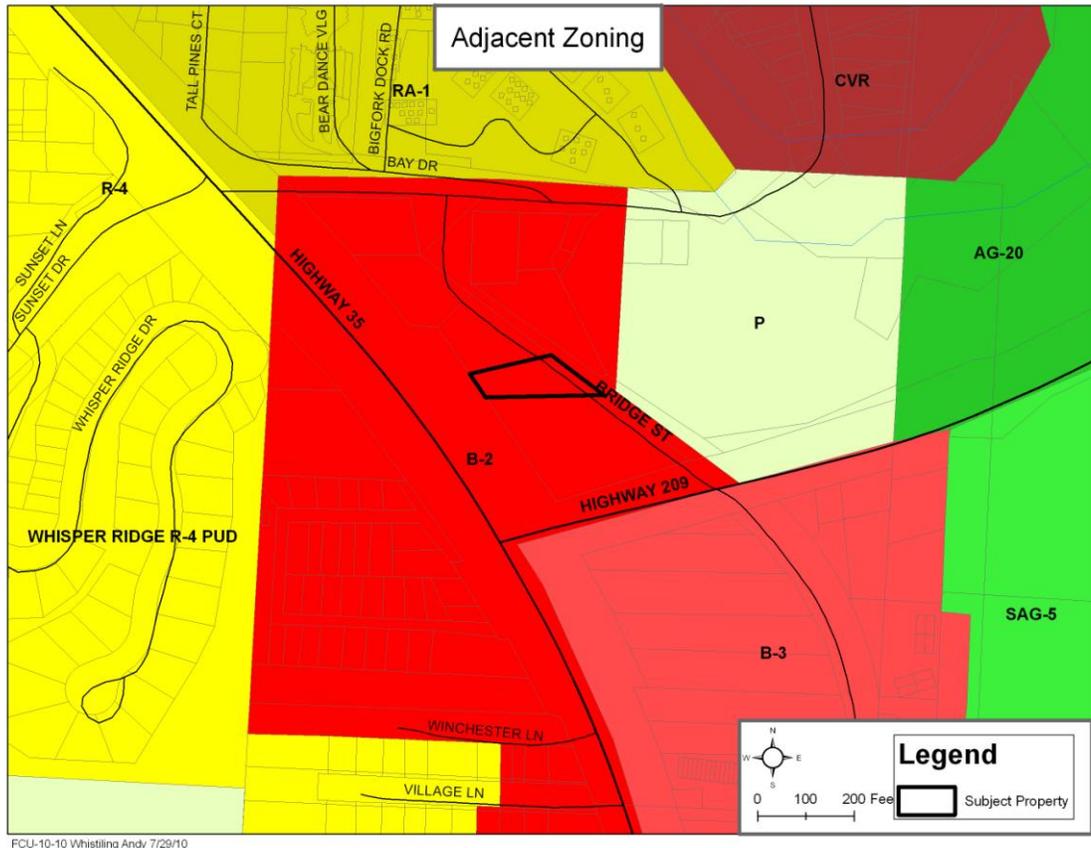
C. Existing Land Use(s) and Zoning

The subject property is zoned B-2. The current use of the subject property is commercial.

D. Adjacent Land Use(s) and Zoning

The zoning and uses on the adjacent properties to the north and the south is B-2. Properties to the east are zoned Public and commercial. The uses are park, and residential. Properties across Montana Highway 35 to the west are zoned B-2 and are mixed commercial and residential uses (figure 2).

Figure 2: Zoning in the surrounding area.



E. Summary of Request

The applicants are planning on operating a distillery and tasting room on the subject property. The distillery will operate according to state and federal regulations. The tasting room will be open to the general public between 10 am and 8 pm according to state regulations. This application is allowing multiple uses per single lot in accordance with Section 3.03.020 (3) Flathead County Zoning Regulations (FCZR).

F. Compliance With Public Notice Requirements

A notice of the request and public hearing was mailed to property owners within one hundred and fifty (150) feet of the subject property on July 7, 2010. Legal notice was published in the Daily Interlake newspaper on July 18, 2010.

G. Agency Referrals

Request for comments were sent to the following public agencies.

- Jean Crow, and James Freyholtz of the Montana Department of Transportation regarding the proximity to the highway and the existing approach

- Julie Spencer of the Bigfork Water and Sewer District because there is the potential for sewer infrastructure on and adjacent to the subject parcel
- Bigfork Fire Department to determine if they felt there were limitations for fire equipment

III. COMMENTS RECEIVED

A. Public Comments

As of 5:00 pm of July 19, 2010, no public comments have been received. Any public comments received after July 19, at 5:00 pm will be distributed directly to the appropriate boards at the time of the public meeting/hearing.

B. Agency Comments

As of 5:00 pm of July 19, 2010, two (2) agency comments have been received. Any agency comments received after July 19, at 5:00 pm will be distributed directly to the appropriate boards at the time of the public meeting/hearing.

- James Freyhotlz, MDOT
 - Thanks for contacting the Montana Department of Transportation (MDT) regarding the proposed Conditional Use Permit. The proposal will not change the existing accesses to MT 35 & Bridge Street. The proposal is not a significant change from the previous commercial use of the property, thus MDT has no concerns with the proposal.
- Julie Spencer, Bigfork Water and Sewer District
 - The District has reviewed the distillery's planned discharge to the sewer. It does not appear that it will create a problem in our system at the proposed volume and concentration of discharge.
 - I am a little concerned that they plan to continue to use the private well water instead of converting to District water. I informed them that the District does not treat its water. I was under the impression during discussions with the Distillery owners that they would be connecting to the District water since a curb stop is available on the Highway 35 side.
 - Apparently, many years ago, those buildings were allowed to use a private well because it was primarily industrial use--a car wash, auto repair, and a door company. The businesses that have used those buildings have had limited public exposure. The private well is not listed as a public water supply and is not tested or maintained as such. I would like to see a condition added to this application that they connect to the District water supply.

IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, 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 is approximately 15,799 square feet (0.36 acres). The use will occupy approximately 2,976 square feet of the existing building, the other half is occupied by another business. No alterations of the footprint of the building are planned. The applicant is planning on increasing the height of the building to accommodate the distillery equipment. Bulk and dimensional requirements in the B-2 zoning district restrict heights to 35 feet. The structure meets all other bulk and dimensional requirements. There are no improvements or changes planned to the exterior of the subject property except for signage. The current flow of traffic and parking arrangement will not be altered. The applicant has not indicated any outdoor seating is planned, but the property does not have an area where outdoor seating is possible. Any outdoor seating would require the alteration of parking or traffic flow. Outdoor seating should not be allowed unless the situation with the property changes.

Finding #1- There is adequate usable space for the proposed use because the building will meet all bulk and dimensional requirements of the B-2 zone and no alterations or improvements are planned to the parking or traffic circulation.

ii. Adequate access

The subject property can be accessed from Montana Highway 35 from the front or Bridge Street from the rear. The majority of traffic will enter from the front. Speed limits on Montana Highway 35 at the subject property are posted as 35 MPH. Sight lines at the subject property are unobstructed. The approach is shared with adjacent business. Comments from MDOT indicate no issues with the approach for the proposed use.

Finding #2- The access for the proposed use is adequate because access to the property is from Montana Highway 35, has unobstructed site lines, the posted speed limit is 35 MPH and MDOT indicates no issues with the approach for the proposed use.

iii. Absence of environmental constraints

The subject property is located in an area with an established commercial development pattern. According to FEMA Firm Panel 2315 G, the subject property is not in an area mapped with flood hazards. Both the subject property and the adjacent properties are developed and it is unlikely the subject property has any value to wildlife. According to the Bigfork Neighborhood Plan, groundwater is over 50 feet in depth.

Finding #3- The subject property is free of environmental constraints because there are no flood hazards, no value to wildlife, and groundwater depth is over 50 feet.

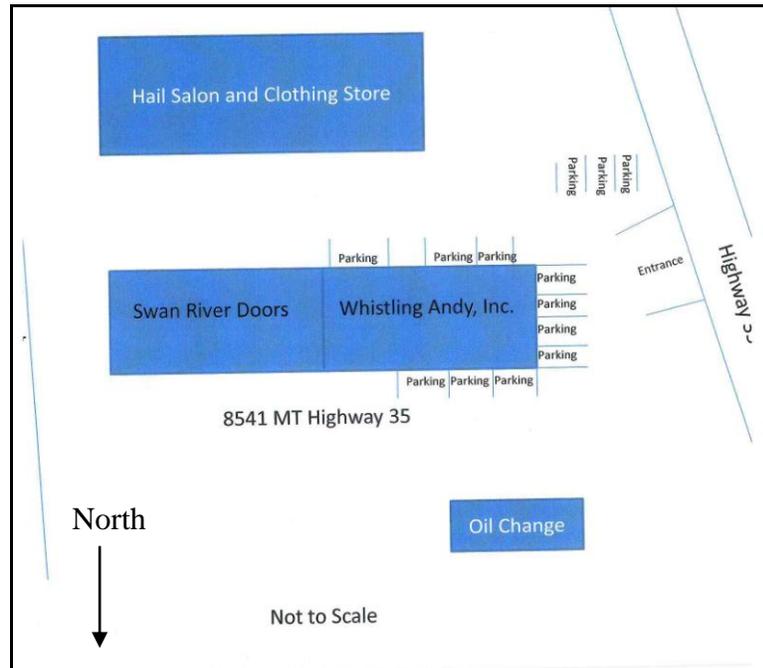
B. Appropriateness of design

i. Parking scheme

The applicant is proposing to have 14 parking spaces (figure 3). The applicant has stated there will be 4 to 6 employees on shift depending upon the needs.

The floor plan indicates there will be 11 seats in the tasting room. The Parking and Loading Standards, specifically Section 6.07.020 FCZR states an establishment selling beverages requires 1 space per 4 seats plus 1 space per employee on maximum shift. According to this section of the zoning regulations, the applicant will need a minimum 4 spaces for patrons, and 6 spaces for employees.

Figure 3. Proposed parking layout.



Finding #4- The proposed parking scheme is acceptable because the number of parking places proposed exceeds the minimum number required according to Section 6.07.020 FCZR.

ii. Traffic circulation

The majority of traffic will likely enter the subject property from the approach on Montana Highway 35. The lot is designed so traffic can drive completely around the structure either on the north or south side. On the east side of the property, traffic can enter or exit from Bridge Street. The property is large enough to accommodate the required parking and still allow for the flow of traffic.

Finding #5- The proposed traffic circulation is acceptable because the lot is designed so traffic can drive completely around the structure and the property is large enough to accommodate the required parking.

iii. Open space

The applicant is not proposing any open space. The properties directly adjacent to the subject property are commercial and the proposed use is not out of character with the adjacent uses. The proposal will not create any impacts that will require an open space component.

iv. Fencing/screening

The applicant is not proposing any fencing or screening. The properties directly adjacent to the subject property are commercial and the proposed use is not out of character with the adjacent uses. The proposal will not create any impacts that will require fencing or screening.

v. Landscaping

There is not landscaping on the subject property. The applicant is not proposing to do any landscaping. The uses adjacent to the subject property are commercial and the proposed use will not be out of character with commercial uses. No additional landscaping is required.

Finding #6- The proposed open space, fencing/screening and landscaping is acceptable because the proposed use will not be out of character with the adjacent commercial uses.

vi. Signage

The subject property is zoned B-2. The applicant has not provided specifics on the signage other than it will be lit according to the regulations. The size of any sign erected depends upon the type of sign and the location of the sign on the subject property. Any signs erected on the subject property for the proposed use would have to completely conform to the signage regulations in Section 5.11 FCZR.

Finding #7- Impacts from signage is expected to be acceptable because the area is zoned and Section 5.11 FCZR sets appropriate size and locations requirements for signs.

vii. Lighting

There is limited lighting on the subject property. Some lighting is proposed by the applicant for lighting signage. Lighting for signs must be done in accordance with Section 5.11.020 (9) FCZR. Any additional lighting added to the subject property must be done according to Section 5.12 FCZR.

Finding #8- Lighting for the proposed use is acceptable because any lighting would be required to conform to the appropriate lighting standards in the FCZR.

C. Availability of Public Services and Facilities

i. Sewer

The property is served by public sewer provided by Bigfork Water and Sewer District. The applicant has contact the District regarding sewer. The District has stated in agency comments it has no issue with the propose use.

ii. Water

The applicant states the property is served by a well shared with adjacent properties and this was the planned water supply. Comments from the Bigfork Water and Sewer District state this well was originally intended for the original uses on the property which were more industrial in nature. The District is

concerned the water supply is not appropriate for the type of use because the well is not tested or maintained as a public water supply. The water supply may not be appropriate for the proposed use and the applicant should connect to the districts supply.

Finding #9- The availability of sewer and water is adequate because the Bigfork Water and Sewer District has no issues with the sewer connection, and the applicant will be required to connect to public water.

iii. Storm Water Drainage

The majority of the subject property is covered with impervious surfaces. Currently, storm water drainage is likely to leave the property. All of the impervious surfaces pre-date this application, and the applicant is not planning on altering the footprint of the building or the parking area and will therefore not increase the amount of impervious surfaces. The amount of storm water that leaves the property prior to this application will not change if the use is allowed. The proposed use would not have an impact on storm water drainage.

Finding #10- The proposed storm water drainage is acceptable because applicant is not proposing alterations to the impervious surfaces that would increase stormwater runoff from existing levels.

iv. Fire Protection

The property is in the Bigfork Fire District. The nearest station is located about seven-tenths of a mile away from the subject property on Montana Highway 35, response times would be similar to other areas in the Bigfork Fire District. The impacts to the Bigfork Fire District as a result of the proposed action is likely to be very low because no fuels or other combustible materials will be stored on site and the scope of the proposed use is comparable to other commercial activities in the area.

v. Police Protection

The Flathead County Sheriff Department is responsible for law enforcement. The proposed use is not expected to result in increased response times because the proposed use is similar to uses in other rural areas of Flathead County.

Finding #11- The change in impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

vi. Streets

The subject property is accessible by Montana Highway 35 and Bridge Street. Maintenance of and access to Montana Highway 35 is the responsibility of the Montana Department of Transportation (MDOT). Maintenance and access to Bridge Street is the responsibly of Flathead County Road and Bridge Department. Bridge Street has an approximately 22 foot wide paved travel surface. The Bigfork Neighborhood Plan has designated the future land use in the area as commercial based on the availability of services such as roadways. The streets in the area should be able to accommodate the change in use.

Finding #12- The impacts to streets are acceptable because they are maintained by MDOT and Flathead County Road and Bridge and according to the Bigfork Neighborhood Plan the roads are capable of accommodate increased traffic.

D. Immediate Neighborhood Impact

i. Excessive traffic generation

According to the Institute of Transportation Engineers Trip Generation report 5th Edition, a Drinking Place “contains a bar, where alcoholic beverages and snacks are served” generates an average of 15.59 trips per peak hour for 1000 square feet. According to the floor plan in the application, the tasting room is roughly 1000 square feet. The proposed use may generate up to 15.59 trips per hour at the peak, the majority of those trips would likely utilize Montana Highway 35. Montana Highway 35 can accommodate the potential increase in traffic.

Finding #13- The impacts from traffic generation are acceptable because the proposal may generate up to 15.59 trips per hour the peak hour which can be accommodated on Montana Highway 35.

ii. Noise or vibration

The proposed distillery and tasting room will occur inside the existing structure. Noise or vibration generated by equipment and patrons will be mitigated by the structure. The state regulates the hours of operation from 10 am to 8 pm. The impacts would not be out of character with the area.

Section 16-3-306 M.C.A. discusses distances liquor licenses must be from schools and churches. In a phone conversation between staff and Delores Stroh, Licensing Specialist with the Liquor Control Division for Flathead County, on July 20 2010, Ms. Stroh clarified the minimum distance between a school or church and a establishment with a liquor license is 600 feet on same street, from front door to front door. Bethany Lutheran Church is on the same street as the subject property (Montana Highway 35), but appears to be about 630 feet from front door to front door. The Liquor Control Division will make the official determination on the distance when they review of the liquor license application.

Finding #14- The impacts from noise and vibration are acceptable because the impacts generated would be contained within the facility and the distance from front door to front door of the proposed use and Bethany Lutheran church appears to be over 600 feet.

iii. Dust, glare or heat

The process of distilling may create dust from grains being milled and heat from cooking mash. The milling and cooking of mash will occur within the structure. Heat and steam will be dissipated through a venting system out of the roof. The impacts from dust and heat will be either contained on site because they will be enclosed in the structure, or released through ventilation and should not impact adjacent properties.

Finding #15- The impacts from dust, glare, or heat are acceptable because dust will be contained in the building and heat will be vented from the roof.

iv. Smoke, fumes, gas, or odors

The proposed use will not produce smoke, fumes or gas, but may produce some odors similar to a small brewery. Land uses surrounding the subject property are predominantly commercial. The closest residential zoning to the subject property is over 400 feet to the west. However, there are residential uses within the B-2 zoning to the north that are as close as 150 feet from the location of the distiller. The discharge of fumes from the distilling process will be vented from the building according to state regulations.

Finding #16- The impacts from smoke, fumes and odors are acceptable because the character of the area is predominantly commercial and discharge of fumes will be done in accordance with state regulations.

v. Inappropriate hours of operation

The State of Montana regulates the hours of operation for serving at a distillery from 10 am to 8 pm. The hours of operation for proposed tasting room will be 10 am to 8 pm. The hours of operation are not out of character with commercial uses in the immediate area.

Finding #17- The hours of operation for the proposed use are appropriate because they are regulated by the State of Montana and are not out of character with the commercial uses in the immediate area.

V. SUMMARY OF FINDINGS

Finding #1- There is adequate usable space for the proposed use because the building will meet all bulk and dimensional requirements of the B-2 zone and no alterations or improvements are planned to the parking or traffic circulation.

Finding #2- The access for the proposed use is adequate because access to the property is from Montana Highway 35, has unobstructed site lines, the posted speed limit is 35 MPH and MDOT indicates no issues with the approach for the proposed use.

Finding #3- The subject property is free of environmental constraints because there are no flood hazards, no value to wildlife, and groundwater depth is over 50 feet.

Finding #4- The proposed parking scheme is acceptable because the number of parking places proposed exceeds the minimum number required according to Section 6.07.020 FCZR.

Finding #5- The proposed traffic circulation is acceptable because the lot is designed so traffic can drive completely around the structure and the property is large enough to accommodate the required parking.

Finding #6- The proposed open space, fencing/screening and landscaping is acceptable because the proposed use will not be out of character with the adjacent commercial uses.

Finding #7- Impacts from signage is expected to be acceptable because the area is zoned and Section 5.11 FCZR sets appropriate size and locations requirements for signs.

Finding #8- Lighting for the proposed use is acceptable because any lighting would be required to conform to the appropriate lighting standards in the FCZR.

Finding #9- The availability of sewer and water is adequate because the Bigfork Water and Sewer District has no issues with the sewer connection, and the applicant will be required to connect to public water.

Finding #10- The proposed storm water drainage is acceptable because applicant is not proposing alterations to the impervious surfaces that would increase stormwater runoff from existing levels.

Finding #11- The change in impacts to fire and police protection would be acceptable because response times to the subject property will be similar to other uses in the area.

Finding #12- The impacts to streets are acceptable because they are maintained by MDOT and Flathead County Road and Bridge and according to the Bigfork Neighborhood Plan the roads are capable of accommodate increased traffic.

Finding #13- The impacts from traffic generation are acceptable because the proposal may generate up to 15.59 trips per hour the peak hour which can be accommodated on Montana Highway 35.

Finding #14- The impacts from noise and vibration are acceptable because the impacts generated would be contained within the facility and the distance from front door to front door of the proposed use and Bethany Lutheran church appears to be over 600 feet.

Finding #15- The impacts from dust, glare, or heat are acceptable because dust will be contained in the building and heat will be vented from the roof.

Finding #16- The impacts from smoke, fumes and odors are acceptable because the character of the area is predominantly commercial and discharge of fumes will be done in accordance with state regulations.

Finding #17- The hours of operation for the proposed use are appropriate because they are regulated by the State of Montana and are not out of character with the commercial uses in the immediate area.

VI. RECOMMENDATION

Staff recommends that the Flathead County Board of Adjustment adopt staff report FCU-10-10 as findings of fact and approve the Conditional Use Permit for a tavern.

VII. CONDITIONS

1. The footprint of the existing building shall not be expanded.
2. The height of the building shall conform to the bulk and dimensional requirements within Section 3.17 FCZR.
3. A minimum of 14 parking spaces shall be maintained for the distillery and tasting room.
4. Any existing yard, parking, and security lighting shall be reconfigured to conform to Section 5.15 FCZR and all new yard, parking and security lighting shall conform to Section 5.15. FCZR.

5. Any sign erected for the proposed use shall completely conform to Section 5.11 FCZR.
6. The applicant shall receive the appropriate liquor license from the State of Montana prior to operation. The liquor license shall be available upon request.
7. The applicant shall connect to the Bigfork Water and Sewer District for the water supply. The applicant shall not use the existing well for the proposed use.
8. All exhaust created by the distilling operation shall be vented from the roof in accordance with state regulations.
9. The hours of operation shall be 10 am to 8 pm Monday through Sunday.
10. There shall be no outdoor seating.