

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT #FZV-10-02
JUNE 22, 2010

A report to the Flathead County Board of Adjustment regarding a request by Mary Alice Lapp for a variance to Section 3.09.040(1) of the Flathead County Zoning Regulations (FCZR).

The Flathead County Board of Adjustment will hold a public hearing on the proposed variance on July 6, 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 proposed variance is specific to a property not within the advisory jurisdiction of a specific local land use advisory committee.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on July 6, 2010 beginning at 6:00 P.M. in the 2nd floor conference room of the Earl Bennett Building. 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

Mary Alice Lapp
35 River Road
Kalispell, MT 59901
(406)755-1651, wmlapp@bresnan.net

ii. Landowner(s)

Same as applicant

iii. Technical Assistance

None

B. Property Location

The subject property is located along the east side of River Road, and can be legally described as Tract 3FA located in Section 4, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana. The subject property has two residential addresses, 35 River Road and 41 River Road, and the tract of land is approximately 3.3 acres in size (see Figure 1 below).

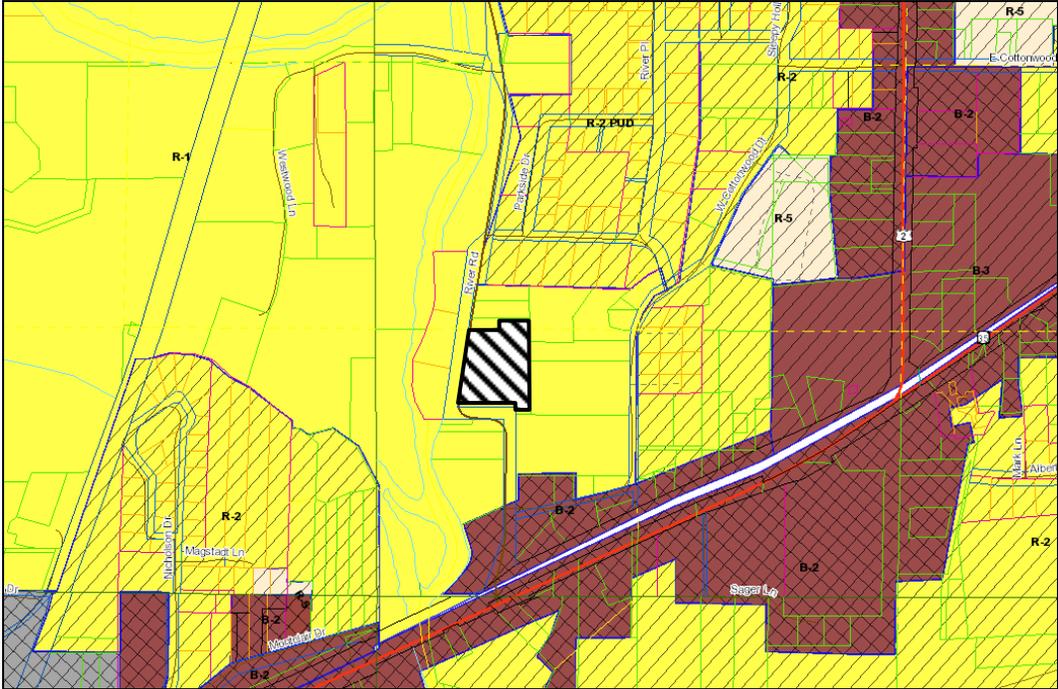
Figure 1: General site location (subject property highlighted in yellow).



C. Existing Land Use(s) and Zoning

The subject property is located within the Evergreen Zoning District and is zoned R-1 Suburban Residential. The property is currently used for residential purposes, and is developed with two single family residences situated on the north and south portions of the property (see Figures 2 and 3 below). The northern-most residence located at 41 River Road is used as a ‘rental’.

Figure 2: Current area zoning (subject property crosshatched black and white).



public health and safety. A copy of the agency referral letter is included in the file.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. Comments received subsequent to the date of this report will be verbally summarized at the public hearing on this proposal and an individual wishing to provide public comment on the application may do so during the public hearing scheduled for July 6, 2010.

B. Agency Comments

As of the date this report was prepared, three agency responses have been received, generally indicating no concern with the request. Flathead County Road and Bridge Department provided a ‘no comment’ letter. The Evergreen Water and Sewer indicated both homes are connected to the District’s sewer collection system, but the District’s water service is not available to either of the homes. Flathead County Environmental Health Services indicated a division of the parcel is subject to review under the Sanitation in Subdivisions Act. Comments received subsequent to the date of this report will be verbally summarized at the public hearing on this proposal.

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;

The request indicates the applicants desire to be able sell the house and yard established on the NW corner of the subject property (41 River Road) because “it can longer be managed as in the past.”

The property is currently being used for two instances of residential use and small scale agriculture, and use of the property for those purposes may continue in compliance with the provisions of the Flathead County Zoning Regulations (FCZR). At approximately 3.3 acres in size, the subject property appears to have the ability to be divided in compliance with the provisions of Section 3.09.040(1) FCZR as the required minimum lot area is 1 acre. In the event the applicant determines to pursue a lot division in order to sell the house at 41 River Road, the parcel would be larger than the current established yard around the structure and the future owner of

the parcel would be in a position to determine the continued use of the house and property.

Finding #1

Strict compliance with the provisions of Section 3.09.040(1) of the Flathead County Zoning Regulations would not limit the reasonable use of property because existing uses are permitted and may continue, and although it is more land than the applicant would ideally like to ‘split off to sell the rental, there is adequate area to comply with the required 1 acre minimum lot area of the applicable R-1 zone in the event a division of land occurs on the subject property.

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

The request cites instances of “smaller lots” in the vicinity of the subject property which have been created since the 1980’s and are able to be developed or sold.

- The Evergreen Zoning District was adopted by Resolution 797A on July 17, 1990, and figure 2 above depicts the configuration of specific use districts in the vicinity of the subject property. Of nine adjoining tracts of record, three are less than 1 acre in size and all appear to have been created prior to 1990 through mechanisms other than subdivision review. Directly across River Road from the subject property is the Poole Subdivision which is comprised of three lots created in 1996 in compliance with the applicable 1 acre minimum lot area required per Section 3.09.040(1) FCZR.

Finding #2

Strict compliance with the provisions of Section 3.09.040(1) of the Flathead County Zoning Regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because other properties within the district and in the vicinity of the subject property have been created and developed in compliance with applicable zoning standards regarding minimum lot area.

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

Regarding ‘hardship’, the requests states “the zoning regulations were put into place after the rental house and yard were established on the property.”

- The property is relatively flat, has approximately 650 feet of frontage on River Road providing the ability for legal and physical access, and at 3.3 acres in size the property has three times the acreage required to comply with minimum lot area. Although the zoning regulations were adopted after the rental house and yard were established on the property, the regulations allow

for the continued uses of the property as established, and do not prohibit future division of the property.

Finding #3

There are no constraints associated with lot size, shape, topography, or other circumstances over which the applicant has no control which create a ‘hardship’ because existing uses may continue to be used, the property has the ability to be divided in compliance with applicable zoning standards regarding minimum lot area, and the property has the ability to be sold.

C. The hardship is peculiar to the property.

Regarding ‘hardship’, the request states “The hardship is the inability to sell the existing house and yard as a separate parcel from the residence in which the owner resides. This inability is due to zoning regulations that were enacted after the rental was in place.”

- The property is developed with two residential structures. Apparently the owner resides in the residence located in the southeast corner of the subject property at 35 River Road, and would prefer to sell the residence at 41 River Road with only the land currently established as its ‘yard’, approximately 18,816 ft² or 0.43 acres in size.

The applicant may sell the existing house and its yard located in the northwest corner of the subject property at 41 River Road. In order to sell the existing house and ‘yard’ as a separate parcel from the residence in which the owner resides, the applicant would need to engage in the applicable process to create a division of the tract of record. Such a division appears feasible because there is enough area to create at least 2 lots which would comply with applicable zoning standards regarding minimum lot area.

Finding #4

There is nothing peculiar to the property which would create a zoning ‘hardship’ because the property appears to have the ability to be divided in compliance with applicable zoning standards regarding minimum lot area, and there are no apparent physical constraints which would limit lot configuration of such a division to only the established ‘yard’ of the existing residence at 41 River Road, as desired by the applicant.

D. The hardship was not created by the applicant.

The request implies adoption of the applicable zoning regulations is the hardship, stating they were put in place by the county many years after the property was purchased and that the rental property was also established at that time.

- The current zoning allows for the continued use of the land as established at the time the regulations were adopted. As the subject property contains adequate space and configuration to be divided in compliance with applicable bulk and dimensional requirements outlined in Section 3.09.040 FCZR, the

current zoning would not prohibit the division of a new tract of record from the subject property, and the resultant tract could then be sold.

The land area surrounding the established yard is flat and open terrain which *could* be incorporated into the configuration of a new tract of record containing at least one acre of land, in compliance with applicable zoning standards regarding minimum lot area. The applicant would *prefer* to sell the second residence on the property with its current established 0.43 acre yard.

Finding #5

There is no hardship which is not created by the applicant because the subject property contains adequate space and configuration to be divided in compliance with applicable bulk and dimensional requirements outlined in Section 3.09.040 FCZR, and the request for a variance is the result of the applicant's desire to sell an existing residential structure with less than one acre of land.

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

The request states “the inability to sell the property or properly manage it as a rental property creates unnecessary stress for the elderly property owner.”

- The request indicates the perceived ‘hardship’ is economic, suggesting there is an inability to sell the property (residence at 41 River Road and its 0.43 acre yard), which is causing stress to the applicant. In order to sell the property with the existing residence located at 41 River Road, a division of the land must occur, and a division of land appears feasible in regard to the bulk and dimensional requirements of the current R-1 zoning.

The applicant's ability to properly manage the property as a rental property is not a matter of zoning because the applicable zoning does not prohibit the creation and sale of a new tract of record. The applicant's ability to properly manage the property as a rental property appears to be a matter of personal choice regarding management options and land use decisions.

Finding #6

The perceived ‘hardship’ is economic, because the request suggests there is an inability to sell the property if a new and separate tract of record was created in compliance with the 1 acre minimum lot area requirement of Section 3.09.040(1) of the Flathead County Zoning Regulations.

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

The request states “there are already many smaller lots in the vicinity of the subject property as seen on the attached GIS map.”

- The area in the immediate vicinity of the subject property does have instances of lots which are smaller than the applicable 1 acre minimum lot area, but

most instances of lots smaller than 1 acre in size are located within areas which are zoned as R-2, allowing ½ acre minimum lot areas. Adjoining lots and other vicinity parcels included in the R-1 zone which were created after the zoning was established in 1990 appear to have been created in compliance with applicable bulk and dimensional requirements.

The fact that other small lots exist in an area does not mean granting of the variance would not adversely affect neighboring properties or the public. Anticipated impacts of residential development on available public services and public health and safety were theoretically evaluated and considered upon adoption of the R-1 zoning in 1990. As the request would be applicable to the entire subject property, with no proposed limits on the minimum lot area or potential density on the subject property, granting the variance would introduce potential impacts to neighboring properties and road and utilities infrastructure which were not evaluated and considered upon adoption of the current zoning.

Finding #7

Granting the variance may adversely affect neighboring properties or the public because impacts associated with the proposed minimum lot area (approximately 0.5 acre) and potential residential density of the subject property were not considered during the adoption of the current zoning.

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

The request states “the owner is asking for a separate lot to be created around the established rental house and yard.”

- As discussed above in sub-sections A-F of the *Criteria Required For Consideration*, a valid ‘hardship’ does not appear to exist on the subject property relative to the applicable 1 acre minimum lot area requirement because there is adequate space on the subject property to reasonably divide the property in compliance with Section 3.09.040(1) FCZR.

To the contrary of alleviating the hardship, granting the requested variance may result in the creation of a future zoning violation because the applicant’s desire lot would be approximately only 112 feet wide, as indicated on the submitted site plan, and the minimum lot width is 150 feet per Section 3.09.040(2) FCZR.

Finding #8

A valid ‘hardship’ does not appear to exist based on the *Criteria Required For Consideration* because there are no constraints associated with lot size, shape, topography, or other circumstances over which the applicant has no control—therefore the variance requested is not the minimum variance which will alleviate the applicant’s perceived hardship.

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

The request suggests the variance is needed for the applicant/owner to share privileges enjoyed by similar properties in the same district, citing instances of vicinity lots smaller than 1 acre in size that are able to be sold.

- Granting the variance request would enable the applicant to create a new tract(s) of record smaller than allowed for similar properties in the same R-1 zoning district. As noted above, the area in the immediate vicinity of the subject property does have instances of lots which are smaller than the applicable 1 acre minimum lot area, but most instances of lots smaller than 1 acre in size are located within areas which are zoned as R-2, allowing ½ acre minimum lot areas. Adjoining lots and other vicinity parcels included in the same R-1 zone which were created after the zoning was established in 1990 appear to have been created in compliance with applicable bulk and dimensional requirements.

Finding #9

Granting the variance would confer a special privilege that is denied other similar properties in the same R-1 district because those properties have been and are required to comply with applicable minimum lot area standards of Section 3.09.040(1) FCZR.

V. SUMMARY OF FINDINGS

Finding #1

Strict compliance with the provisions of Section 3.09.040(1) of the Flathead County Zoning Regulations would not limit the reasonable use of property because existing uses are permitted and may continue, and although it is more land than the applicant would ideally like to ‘split off to sell the rental, there is adequate area to comply with the required 1 acre minimum lot area of the applicable R-1 zone in the event a division of land occurs on the subject property.

Finding #2

Strict compliance with the provisions of Section 3.09.040(1) of the Flathead County Zoning Regulations would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because other properties within the district and in the vicinity of the subject property have been created and developed in compliance with applicable zoning standards regarding minimum lot area.

Finding #3

There are no constraints associated with lot size, shape, topography, or other circumstances over which the applicant has no control which create a ‘hardship’ because existing uses may continue to be used, the property has the ability to be divided in compliance with applicable zoning standards regarding minimum lot area, and the property has the ability to be sold.

Finding #4

There is nothing peculiar to the property which would create a zoning ‘hardship’ because the property appears to have the ability to be divided in compliance with applicable zoning standards regarding minimum lot area, and there are no apparent physical constraints which would limit lot configuration of such a division to only the established ‘yard’ of the existing residence at 41 River Road, as desired by the applicant.

Finding #5

There is no hardship which is not created by the applicant because the subject property contains adequate space and configuration to be divided in compliance with applicable bulk and dimensional requirements outlined in Section 3.09.040 FCZR, and the request for a variance is the result of the applicant’s desire to sell an existing residential structure with less than one acre of land.

Finding #6

The perceived ‘hardship’ is economic, because the request suggests there is an inability to sell the property if a new and separate tract of record was created in compliance with the 1 acre minimum lot area requirement of Section 3.09.040(1) of the Flathead County Zoning Regulations.

Finding #7

Granting the variance may adversely affect neighboring properties or the public because impacts associated with the proposed minimum lot area (approximately 0.5 acre) and potential residential density of the subject property were not considered during the adoption of the current zoning.

Finding #8

A valid ‘hardship’ does not appear to exist based on the *Criteria Required For Consideration* because there are no constraints associated with lot size, shape, topography, or other circumstances over which the applicant has no control- therefore the variance requested is not the minimum variance which will alleviate the applicant’s perceived hardship.

Finding #9

Granting the variance would confer a special privilege that is denied other similar properties in the same R-1 district because those properties have been and are required to comply with applicable minimum lot area standards of Section 3.09.040(1) FCZR.

VI. RECOMMENDATION

In the absence of constraints associated with lot size, shape, topography, or other circumstances over which the applicant has no control, the applicant desires to create and sell a new tract of record with a lot area smaller than the 1 acre minimum lot area required per Section 3.09.040(1) FCZR. Although compliance with applicable bulk and dimensional requirements may inconvenience the applicant, there does not appear to be a valid case of ‘hardship’ pursuant to the review criteria for consideration of a variance. Therefore, Staff recommends the Flathead County Board of Adjustment adopt Staff Report FZV-10-02 as findings of fact and deny the request for a variance to Section 3.09.040(1).