

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-13-01)**  
**GEORGE AND PATTI McCORMICK**  
**MARCH 18, 2013**

A report to the Flathead County Board of Adjustment regarding a request by George and Patti McCormick for a variance to Section 3.10.040(6) "Bulk and Dimensional Requirements" for an "R-2 One Family Limited Residential" zone, requiring front fences to have a maximum height of 4 feet. The variance requested would apply to property located at 376 Antelope Trail, which is currently accessed from U.S. Highway 93. The property is located within the Happy Valley Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on April 2, 2013 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed variance is 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 April 2, 2013. This section will be updated following the meeting.

**II. GENERAL INFORMATION**

**A. Application Personnel**

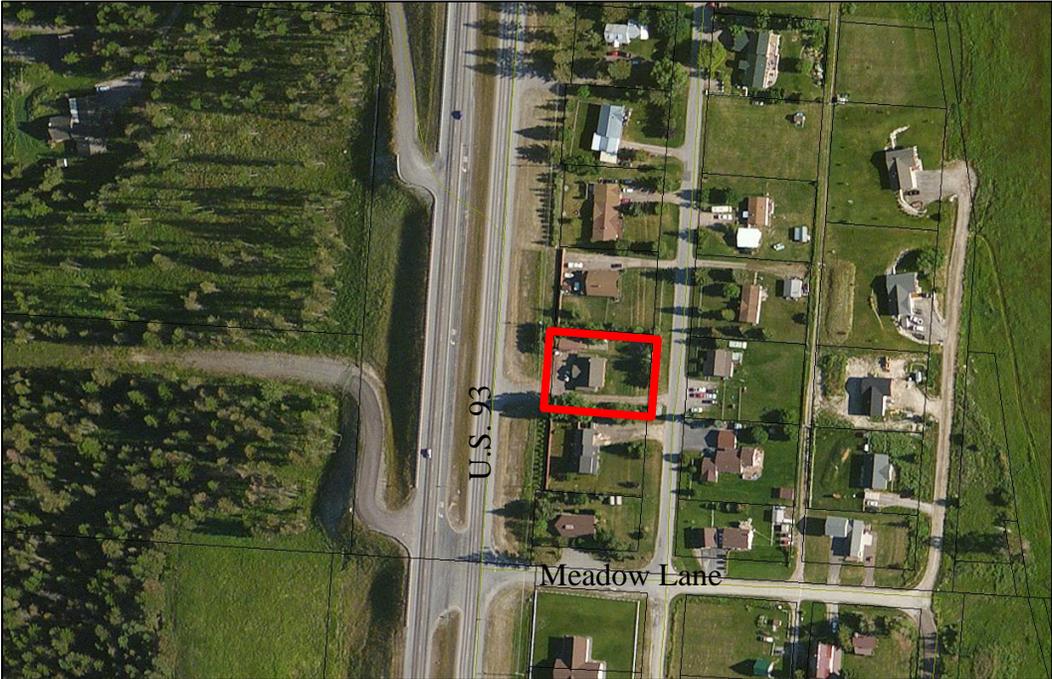
**i. Applicant/Landowner**

George and Patti McCormick  
318 5<sup>th</sup> Ave SE  
High River, AB Canada T1V-1H4  
(403) 652-8251

**B. Property Location**

The subject property is located at 376 Antelope Trail south of Whitefish, approximately 215 feet north of the Meadow Lane intersection, and is currently accessed from U.S. Highway 93 (U.S. 93) (see Figure 1 below). The property can be legally described as Lot 548 of the Happy Valley Home Sites Subdivision, located in Section 25, Township 30 North, Range 22 West, P.M.M., Flathead County, Montana.

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



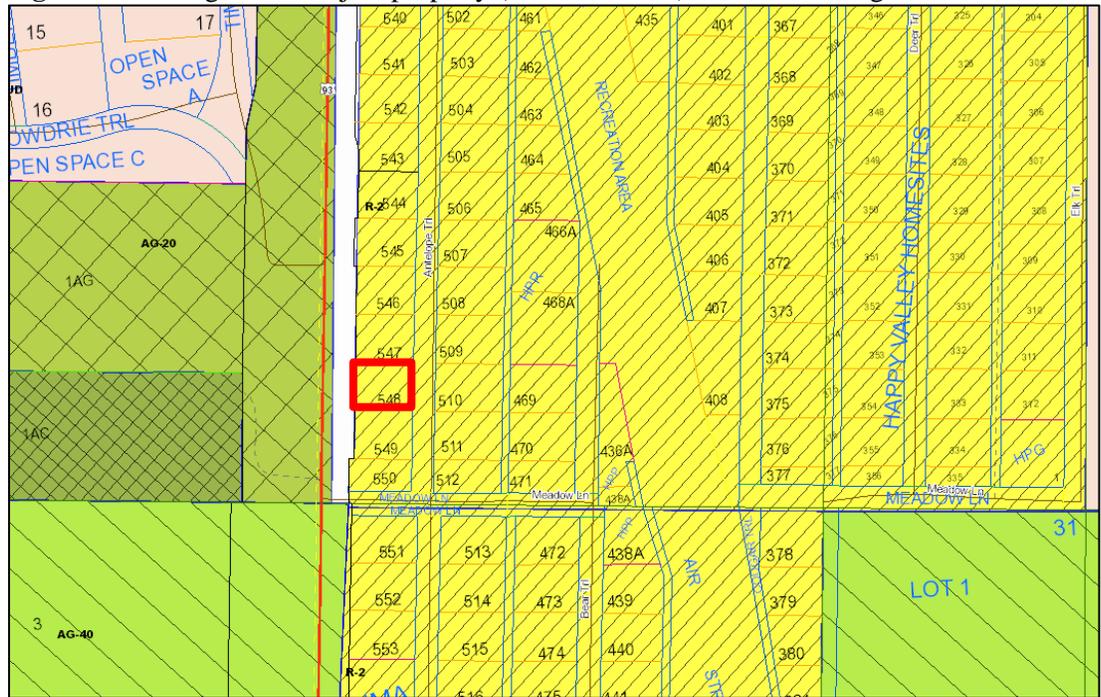
**C. Existing Land Use(s) and Zoning**

The subject property is located in the Happy Valley Zoning District adopted May 18, 1988 and is currently zoned “R-2 One Family Limited Residential”, a district intended to, “provide for large-tract residential development. These areas will typically be found in suburban areas, generally served by either sewer or water lines.” [FCZR Section 3.10.010] The property is currently developed with a single-family home, storage shed and garage.

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

Properties immediately to the north, south, and east of the subject property are zoned “R-2 One Family Limited Residential” (See Figure 2). The parcels to the west of the subject property, across U.S. 93 are zoned AG-20. The area surrounding the subject property to the north, south and east is residential in nature with many lots containing homes, and approximately a ½ acre in size. The properties located across U.S. 93 to the west are approximately 8.6 to 28 acres, forested and contain single family homes.

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



**E. Summary of Request**

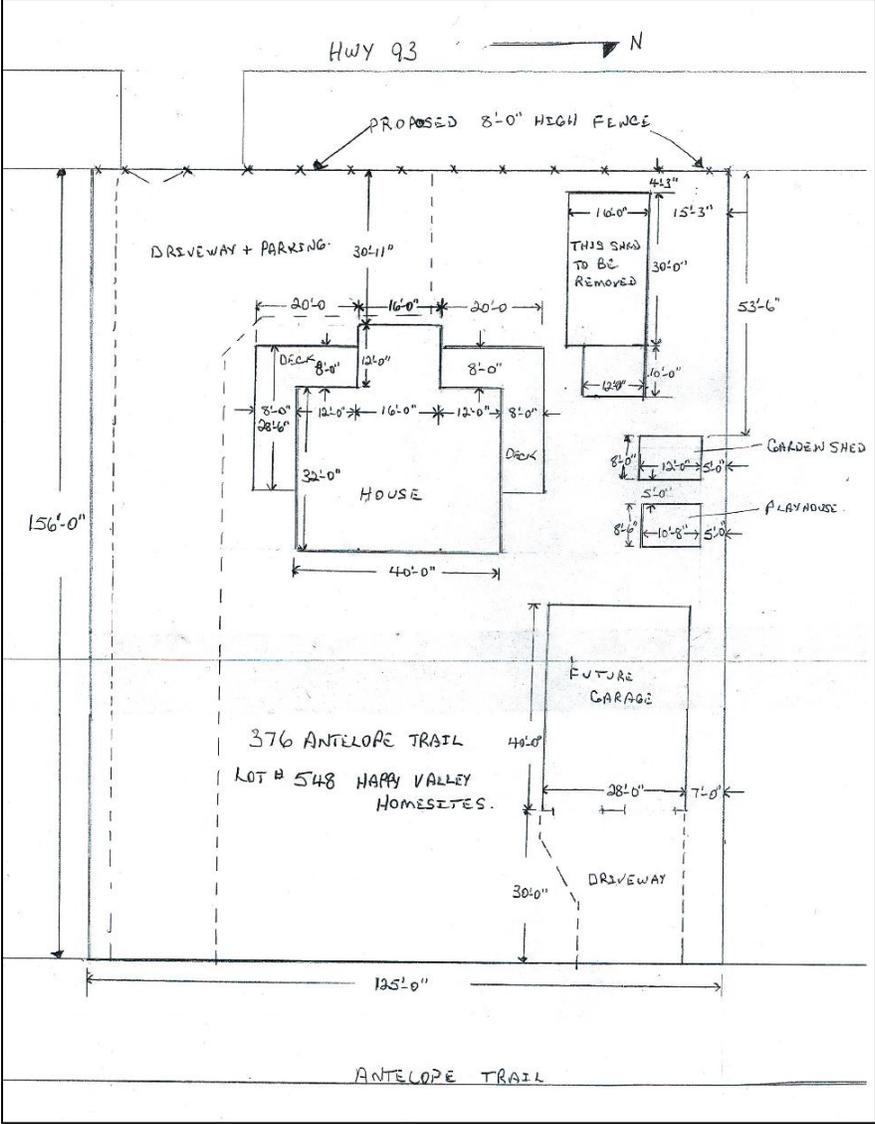
The applicant is requesting a variance to Section 3.10.040(6) of the Flathead County Zoning Regulations regarding “Bulk and Dimensional Requirements” for property located within an “R-2 One Family Limited Residential” zone. This section of the regulations requires a front fence to have a maximum height of four (4) feet. The applicant is requesting an additional four (4) feet of fence height in order to construct an eight (8) foot fence. The applicant is proposing the variance to build a security fence and noise barrier between the house and U.S. 93.

**Figure 3:** Location of proposed fence.



Although the property's address is 376 Antelope Trail, it is currently accessed off U.S. 93. The site plan shows that the applicant has plans to construct a new garage and driveway and change the access to Antelope Trail (see Figure 4). If the owner does construct the new garage and driveway off Antelope Trail the orientation of the lot would change, making the U.S. 93 side of the property the rear, instead of the front. The current maximum fence height for a rear yard in an R-2 zone is six (6) feet and the applicant would still need a variance for an additional two (2) feet to allow for a fence height of eight (8) feet.

**Figure 4:** Proposed layout for construction.



**F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on March 11<sup>th</sup>, 2013, pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the March 17<sup>th</sup>, 2013 edition of the Daily Interlake.

### **G. Agency Referrals**

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

- Happy Valley Water & Sewer District
  - Reason: The property is located within the Happy Valley Water & Sewer District service area.
- Montana Department of Transportation
  - Reason: The fence is proposed to be located adjacent to MDT right-of-way.

## **III. COMMENTS RECEIVED**

### **A. Public Comments**

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment meeting scheduled for April 2, 2013.

### **B. Agency Comments**

No written agency comments have been received to date regarding the variance request. It is anticipated any agency wishing to provide public comment on the application will do so during the public hearing at the Board of Adjustment meeting scheduled for April 2, 2013.

## **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 request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the Flathead County Zoning Regulations states “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;**

Currently the property is situated with a paved driveway off U.S. 93 that extends the length of the property and exits onto Antelope Trail. When the home was originally constructed the house and the driveway were oriented with the front facing U.S. 93. The applicant is planning to construct a garage and new driveway to access the property off Antelope Trail and constructed a fence along U.S. 93 with a gate placed in the spot of the current driveway to maintain access from the highway.

If a noise barrier is not constructed the applicant would likely not be able to enjoy the rear yard, and traffic could be heard from the highway while inside the house. Figure 5 shows a fence that is approximately eight (8) feet in height, superimposed on a picture taken from the edge of the highway. The top half of the house is visible from U.S. 93.

According to the Federal Highway Administration (FHWA), “The noise barrier must be tall enough to block the view of the highway from the area that is to be protected, the ‘receiver.’ Noise barriers provide very little

benefit for homes which rise above the barrier. A noise barrier can achieve a five (5) decibel noise level reduction, when it is tall enough to break the line-of-sight from the highway to the home. After it breaks the line-of-sight, it can achieve approximately one and a half (1.5) decibel of additional noise level reduction for each meter of barrier height.” Based on design guidelines from the FWHA it appears that an eight (8) foot high fence would not be tall enough to effectively reduce traffic noise. The applicant would however be able to use the back yard and be out of the site line of the highway, which could reduce the noise level by five (5) decibels.

**Figure 5:** Property with approximately an 8 foot fence



A four (4) foot fence or no fence would not provide much security for the applicant. The applicant may not be able to leave things laying in the yard, because they would be visible from the highway. The front yard would remain fairly visible from the road even with a four (4) foot fence in place.

If the applicant were to change the orientation of the property a six (6) foot tall fence would be permitted along U.S. 93 because it would be considered the rear yard of the property. Restricting the landowner to construct a six (6) foot fence would not limit the reasonable use of the property.

**Finding #1** - Strict compliance with the regulations would not limit the reasonable use of property because other alternatives exist that would similarly reduce noise and provide security on the subject property, such as changing the lot orientation so the lot fronts Antelope Trail and constructing a six (6) fence.

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

The applicant states, "Other adjacent properties have eight (8) foot high fences, and the property is immediately adjacent to U.S. 93." The neighbor directly to the north has a fence approximately six (6) feet high and the neighbor directly to the south has a fence approximately seven and a half (7 ½) feet high.

The neighborhood in which the subject property is located is predominantly residential. Many of the lots front Antelope Trail unlike the subject property and many of these neighboring properties would be allowed to construct six (6) foot fence along U.S. 93. The majority of properties in the neighborhood do not have fences. If any of the neighbors decide to build a fence they would be permitted a six (6) foot tall fence in the rear yard and four (4) foot tall fence for the front yard. If the applicant is required to build in strict compliance with Flathead County Zoning Regulations a fence height of a maximum four (4) feet would be required, and would not be deprived a right enjoyed by other properties similarly situated.

**Finding #2** - Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated because all other residential properties with the rear located along U.S. 93 can only have six (6) foot high fence and properties fronting U.S. 93 can have a four (4) foot high fence.

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

The property is a through lot fronting two streets that do not intersect, U.S. 93 and Antelope Trail. Currently the property is situated with a paved access off U.S. 93 that extends the length of the property and exits onto Antelope Trail. When the home was originally constructed the house and the driveway were oriented with the front of the lot facing U.S. 93.

According to best available data, from the Montana Cadastral site, the house appears to have been built in 1982. Since the house was constructed the State of Montana has reconstructed U.S. 93, widening the highway from a two lane road to a four lane road with a landscaped median. The widening of the highway allowed for a greater volume of vehicles, with the higher volume of traffic the noise increased becoming more constant and it could also be argued that the higher volume of traffic could lead to a greater security risk.

**Finding #3** – The applicant had no control over the alleged hardship because it is the result of U.S. Highway 93 being widened to four lanes and the house being built with the front yard oriented towards U.S. 93.

**C. The hardship is peculiar to the property.**

The majority of the lots in the district that are adjacent to U.S. 93 and front Antelope Trail are permitted to construct a six (6) foot tall fence along the highway. The majority of those houses were similarly constructed prior to the

widening of the highway. A small percentage of the properties located within Happy Valley Zoning District are oriented with the property fronting U.S. 93 and would similarly be allowed to have a four (4) foot maximum fence height.

As previously stated, according to best available data, from the Montana Cadastral site, the house appears to have been constructed in 1982. Since the house was constructed the State of Montana has reconstructed U.S. 93, widening the highway from two lanes to four lanes with a median. The widening of the highway allowed for a greater volume of vehicles, increase noise, and increases the security risk. All the other lots that access front U.S. 93 would similarly have been affected by the widening of the highway.

**Finding #4** – The alleged hardship is not peculiar to the subject property because similarly oriented lots adjacent to U.S. Highway 93 would not be permitted to construct an eight (8) foot fence.

**D. The hardship was not created by the applicant.**

The current orientation of the lot does not appear to have been created by the applicant. Were the applicants to utilize the property in its current configuration, as permitted under the applicable R-2 zoning, there would be no hardship relating to use on the subject property, other than the limitation placed on the fence height permitted in the front yard.

As discussed under Criteria IV.B above, the property is a through lot between U.S. 93 and Antelope Trail and oriented with the front of the lot facing U.S. 93. The orientation of the residence was established by the previous owner and builder. The applicants purchased the property as is, with knowledge of the existing constraints.

Additionally since the house was constructed in 1982 the State of Montana has reconstructed U.S. 93, widening the highway from a two lane road to a four lane road with a landscaped median. The widening of the highway allowed for a greater volume of vehicles to travel on the highway, increased noise and a greater security risk.

**Finding #5** – The alleged hardship was not created by the applicant because the placement of the house and the widening of U.S. 93 are outside of the applicant's control.

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

There are other alternatives to an eight (8) foot high fence that the applicant could construct to create a noise barrier which would have similarly limited effect. According to the Federal Highway Administration, in addition to walls, noise barriers can be berms, vegetation, or a combination of a berms and vertical walls. Additionally, if the applicant were to construct a new garage and effectively change the orientation of the lot a six (6) foot tall fence would be permitted adjacent to the U.S. 93.

There appears to be reasonable or viable alternatives that the applicant could undertake that would have similar results to constructing an eight (8) foot high

security fence and noise barrier. The applicant could construct a berm, or construct a berm and place a four (4) foot fence on top; both could reduce the noise generated by the traffic. A four (4) foot tall fence on a berm would not be as effective for security purposes.

The other alternative is to construct a new garage and driveway changing the access to Antelope Trail which would effectively change the orientation of the property. The site plan submitted with the application shows a new driveway and garage to be constructed off Antelope Trail. This would require the applicant to remove the driveway from the highway and construct a new driveway off Antelope Trail. This new driveway and garage would essentially change the orientation of the property making U.S. 93 the rear. If U.S. 93 becomes the rear of the property the applicant would be able to construct a six (6) foot tall fence in the rear yard. A six (6) foot fence would have a similarly limited effect on noise, but would be effective for security purposes.

**Finding #6** – The alleged hardship does appear to be economic because there are reasonable alternatives that exist for the subject property such as berm construction and changing the orientation of the lot, which the applicant is already proposing.

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

The application states, “Neighbors on both sides have high fences.” As previously stated, the neighbor to the north has a six (6) foot tall fence and the neighbor to the south has a seven and a half (7 ½) foot tall fence. There appears to be many lots that do not have fences at all. A taller fence would not adversely affect neighboring properties. The variance would appear to have no adverse impacts to the visibility of the roadway, or existing traffic because the highway is straight at that location and the property is set below the level of the highway. Thus granting the variance would not adversely affect the neighboring properties of the public.

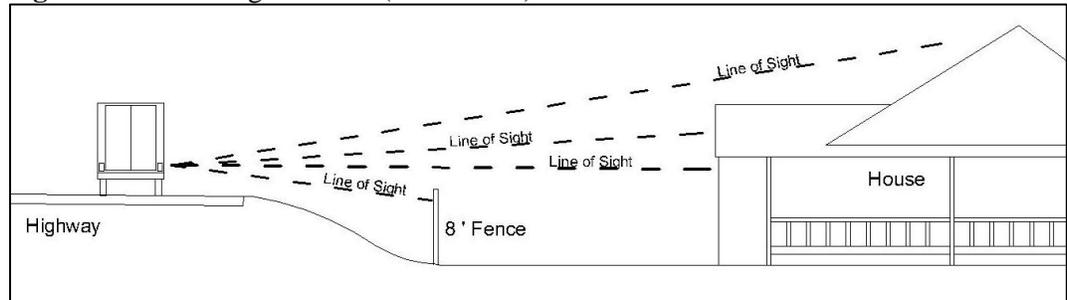
**Finding #7** – Granting of the variance request would not have a significant impact on neighboring properties or the public because the proposed fence height would be similar in height to the adjacent property and the fence would have no adverse impacts to the visibility of highway traffic.

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

The variance requested does not appear to be the minimum to alleviate the alleged hardship. According to the FWHA, “highway traffic noise barriers can reduce loudness of traffic noise by as much as half, do not completely block all traffic noise, can be effective regardless of material used, must be tall and long with no openings, do not increase noise levels perceptibly on the opposite of the highway; and substantially reduce noise levels for people living next to the highways. The noise barrier must be tall enough to block the view of the highway from the area that is to be protected, the ‘receiver.’ Noise barriers provide very little benefit for homes which rise above the barrier. A noise barrier can reduce a five (5) decibel noise level reduction, when it is tall enough to break the line-of-sight from the

highway to the home. After it breaks the line-of-sight, it can achieve approximately one and a half (1.5) decibel of additional noise level reduction for each meter of barrier height. To effectively reduce the noise coming around its ends, a barrier should be at least eight times as long as the distance from the home (see Figure 5).”

**Figure 6:** Line of sight exhibit (not to scale)



The property and the house is located several feet below the level of the highway and an eight (8) foot fence would likely only reach the elevation of the road, and not be in the line of sight of the top half of the house. Based on information from the FWA and the layout of the property it appears that the proposed 8 foot fence would be insufficient as a noise barrier because it is too low.

However, as a security fence the eight (8) foot fence height appears to be more than the minimum required to alleviate the alleged hardship. A six (6) foot fence similar to what is allowed for rear yards in an R-2 zone would be sufficient for security purposes.

**Finding #8** – The variance requested is less than the minimum variance which would alleviate the alleged noise hardship because the fence would likely not be effective as a noise barrier as sound could travel over the fence and reach the house.

**Finding #9** – The variance requested is not the minimum variance which would alleviate the alleged security hardship because the fence could be six (6) feet high, once the property is re-oriented and still provide adequate security to the property.

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

Granting the requested variance appears to confer a special privilege for the applicant that other properties are denied. The applicant is proposing a taller fence than other residential properties located along U.S. 93 would be permitted. One adjacent property along 93 has a fence that is seven and a half (7 ½) feet in height. However, the neighbor to the north has a six (6) foot tall fence, and many of the neighboring properties do not have fences. If any of the neighbors decide to build a fence they would be permitted a six (6) foot tall fence in the rear yard and four (4) foot tall fence for the front yard.

**Finding #10** – Granting of the variance would appear to confer a special privilege that is denied to other properties in the district because under the current zoning all other residential properties with the rear located along U.S. 93 can only have

six (6) foot high fence and properties fronting U.S. 93 can have a four (4) foot high fence.

**V. SUMMARY OF FINDINGS**

1. Strict compliance with the regulations would not limit the reasonable use of property because other alternatives exist that would similarly reduce noise and provide security on the subject property, such as changing the lot orientation so the lot fronts Antelope Trail and constructing a six (6) fence.
2. Strict compliance with the regulations would not deprive the applicant of rights enjoyed by other properties similarly situated because all other residential properties with the rear located along U.S. 93 can only have six (6) foot high fence and properties fronting U.S. 93 can have a four (4) foot high fence.
3. The applicant had no control over the alleged hardship because it is the result of U.S. Highway 93 being widened to four lanes and the house being built with the front yard oriented towards U.S. 93.
4. The alleged hardship is not peculiar to the subject property because similarly oriented lots adjacent to U.S. Highway 93 would not be permitted to construct an eight (8) foot fence.
5. The alleged hardship was not created by the applicant because the placement of the house and the widening of U.S. 93 are outside of the applicant's control.
6. The alleged hardship does appear to be economic because there are reasonable alternatives that exist for the subject property such as berm construction and changing the orientation of the lot, which the applicant is already proposing.
7. Granting of the variance request would not have a significant impact on neighboring properties or the public because the proposed fence height would be similar in height to the adjacent property and the fence would have no adverse impacts to the visibility of highway traffic.
8. The variance requested is less than the minimum variance which would alleviate the alleged noise hardship because the fence would likely not be effective as a noise barrier as sound could travel over the fence and reach the house.
9. The variance requested is not the minimum variance which would alleviate the alleged security hardship because the fence could be six (6) feet high, once the property is re-oriented and still provide adequate security to the property.
10. Granting of the variance would appear to confer a special privilege that is denied to other properties in the district because under the current zoning all other residential properties with the rear located along U.S. 93 can only have six (6) foot high fence and properties fronting U.S. 93 can have a four (4) foot high fence.

**VI. CONCLUSION**

Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent

to a particular application. Based upon the 10 draft findings of fact presented in this staff report, which are based on staff's research and the applicant's information, the variance request does not appear to meet all eight criteria for review.

Planner: EKM