

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-14-01)**  
**ERIC AND MARCIA REIMERS**  
**JULY 22, 2014**

A report to the Flathead County Board of Adjustment regarding a request by Eric and Marcia Reimers for a variance from the 20-foot front and rear setbacks required in Section 3.12.040(3)(A) Flathead County Zoning Regulations (FCZR) “Minimum Yard Requirements” for a “R-4 Two-Family Residential” zone. The variance requested would apply to property located at 247 Beach Road and is located within the Bigfork Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on August 5, 2014 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 Bigfork Land Use Advisory Committee will hold a public hearing on July 31, 2014. This section will be updated following the meeting.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing on August 5, 2014. This section will be updated following the meeting.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Ron Inoronato & Co.  
PO Box 1956  
Bigfork, MT 59911

**ii. Landowner**

Eric and Marcia Reimers  
1235 Starwood Drive  
Missoula, MT 59808

**B. Property Location**

The subject property is approximately 4,356 square feet in size, is located at 247 Beach Road and accessed from Beach Road. The property can be legally described as Lot 11 and Lot 12 of Bigfork Shores of Section 36, Township 27 North, Range 20 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 Bigfork Zoning District and is currently zoned ‘R-4 Two-Family Residential,’ “A *district to provide lot areas for urban residential development. Development within the district will require all public utilities and all community facilities. A duplex is allowed in this district*” [per Section 3.12.010 FCZR]. The application entails a proposal to expand an existing structure to include a two car garage. Currently the existing house is on Lot 12 and the proposed location of the garage is on Lot 11 and 12 of the Bigfork Shores Subdivision. The applicant is in the process of a lot aggregation and boundary line adjustment. Lot 11 will be split in half with the southern half becoming part of Lot 12 and the northern half becoming part of Lot 10 and owned by a separate owner. Lot 11 is currently vacant as the previous structure on the property was recently removed and the applicant is not proposing to build a garage within the footprint of the structure that was removed.

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

The property is located on a peninsula on Flathead Lake and directly behind the property is water. The properties to the north, south and west of the subject property are single family residential on lots similar in size to the subject property. Properties immediately to the north, south, east, and west of the subject property are zoned “R-4 Two-Family Residential,” (See Figure 2).

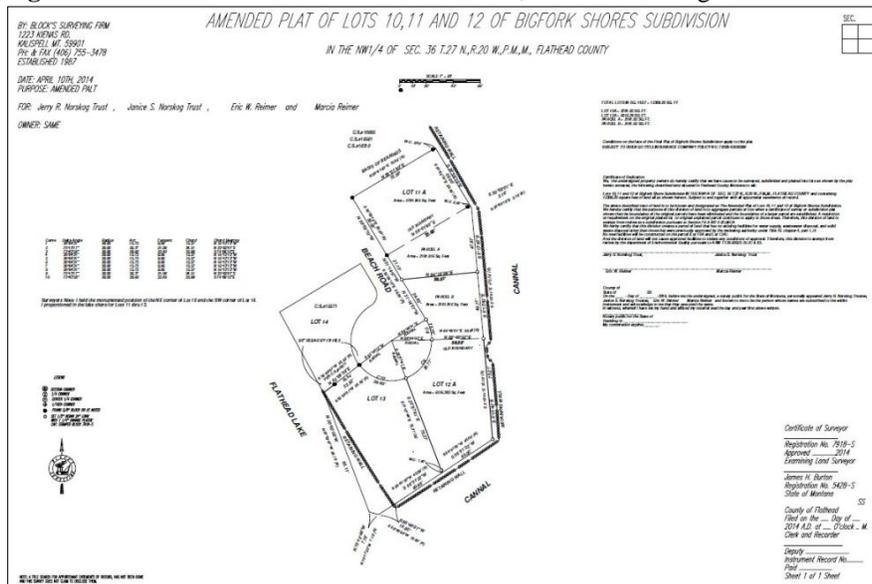
**Figure 2:** Zoning of the subject property (outlined in blue) and surrounding area



**E. Summary of Request**

The applicant is proposing to construct a second garage stall attached to the existing one car garage. As previously stated, currently the proposed location of the garage is on Lot 11 of the Bigfork Shores Subdivision and the existing house is on Lot 12. The applicant is in the process of a lot aggregation and boundary line adjustment which would split Lot 11 in half with the southern portion becoming part of Lot 12 and the northern portion becoming part of Lot 10. According to unrecorded Amended Plat of Lots 10, 11 and 12 of Bigfork Shores Subdivision the lot depth at the location of the proposed garage is approximately 43.85 feet and the lot depth on the north side of the amended lot is approximately 58 feet (see figure 3 below). The depth lot is defined as, “*The mean dimension of a lot from the front street line to the rear line.*” Staff calculated the mean dimension of the lot from the front street line to the rear to be approximately 50 feet on the east side of the property.

**Figure 3:** Unrecorded Amended Plat of Lots 10, 11 and 12 of Bigfork Shores Subdivision



Because the applicant is proposing to attach the garage to the principle structure it would need to meet setbacks for a principle structure. The front and rear setback for a principle structure on the property is 20 feet, per Section 3.12.040(3)(A), which would leave an average of 10 feet of buildable area on the lot. Therefore the applicant is requesting a variance to Section 3.12.040(3)(A) of the FCZR regarding front and rear setbacks. The proposed addition to the garage will be 14 feet wide and 22 feet long. The applicant is proposing a 10 foot rear setback and because the lot is on a curve, the applicant is proposing a front setback that varies between 10 feet in the middle of the structure to no more than 12.5 feet on the end of the structure.

**Figure 4:** Location of proposed garage



#### **F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on July 18, 2014 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 July 20, 2014 edition of the Daily Interlake.

#### **G. Agency Referrals**

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

- Bigfork Fire District
  - Reason: The property is located within the Bigfork Fire District and has the potential to impact services.
- Bigfork Water and Sewer District
  - Reason: The property is located within the Bigfork water and

Sewer District and has the potential to impact services.

- Flathead City-County Health Department
  - Reason: The property is located within the department's jurisdiction.
- Flathead County Public Works Department
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact county facilities.

### **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 Bigfork Land Use Advisory Committee meeting scheduled for July 31, 2014 and at the Board of Adjustment meeting scheduled for August 5, 2014.

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

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
  - Comment: "Environmental Health does offer comments as this request does not affect programs administered through this office. The property resides within the Bigfork Sewer District. This proposal would not affect water or wastewater facilities."
- Flathead County Road and Bridge Department
  - Comment: "At this point the County Road Department does not have any comments on this request." Letter dated July 9, 2014.

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

Per Section 2.05.030 of the FCZR, 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 FCZR 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;**

The applicant believes strict adherence to setback requirements would limit the ability to expand the one car garage to a two car garage. According to the site plan submitted with the application the proposed garage addition is 14 feet wide and 22 feet long. The proposed garage would be located on the old property line which is 43.85 feet long. The lot depth at the south side of the proposed garage is approximately 44, the lot depth at the north side of the proposed garage is approximately 44.5 feet and in the middle of the proposed garage the lot depth is approximately 42 feet. The lot depth at the proposed location of the garage would leave 2 to 4.5 feet of buildable area between the 20 foot front and rear setbacks. The lot depth on the north side of the lot is approximately 56 feet which would leave 16 feet of buildable area. Staff calculated the mean dimension of the

lot from the front to the rear to be approximately 50 feet which would leave an average of 10 feet of buildable area on the lot (refer to Figure 5 on page 8 of this report).

The property is located along lakeshore and a portion of the proposed garage is within the Lakeshore Protection Zone (LPZ), as established by the Flathead County Lake and Lakeshore Protection Regulations (FCLR), which require a 20 foot setback from the average high water. The applicant would be required to apply for and receive a variance to the Lake and Lakeshore Protection Regulations prior to construction of the proposed garage as it would occur in the LPZ.

A detached garage on the north side of the property does not seem feasible because 16 feet is not deep enough to build a garage as most garages have a depth of greater than 20 feet.

The applicant has the ability to remodel or rebuild the structure within the existing footprint of the building to add a second garage stall adjacent to the existing garage. According to Section 2.07.040(3) FCZR, “A building or structure conforming with respect to use but non-conforming with respect to height, setback, or lot coverage may be altered or extended if the alteration or extension does not further deviate from these regulations.” The applicant would be able to add a second story to recapture some of the interior space lost for the second garage stall as long as the alterations do not expand the footprint further into the setbacks.

If the applicant did build a garage within the existing footprint and add a second story a variance to the FCLR may not be required if the building height is limited to 25 feet. Section 4.3(J)(2)(b) FCLR states, “Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided that the building height is limited to twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building, or the existing height, if the structure exceeds twenty-five (25) feet in height.” A lake and lakeshore construction permit would still be required for the reconstruction of an existing facility, per Section 2.5(N) FCLR.

**Finding #1** - Strict compliance with the regulations would not limit the reasonable use of property because the applicant would be allowed to build a second garage stall within the existing footprint and add a second story to the existing structure to capture lost interior floor space without a variance.

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

The application lists other addresses on Beach Road that do not conform to setbacks and provides photos. The applicant stated, “Most of the lots have non-conforming structures regarding setbacks and some houses are built up to the road.” The application states, “All the lots on Beach Road do not conform to the new zoning.” During the site visit, staffs observed

most of the homes located on Beach Road in the vicinity of the subject property have similar setbacks from the road to what the applicant is proposing. In some cases dwellings are constructed only a few feet from the actual road.

The average lot depth for lots within the Bigfork Shores Subdivision is slightly over 70 feet. As previously discussed the subject property has a lot depth of approximately 44 feet at the location of the garage. If the applicant is required to build in strict compliance with FCZR, a setback of 20 feet for the front and rear would be required, and could deprive the applicant a right enjoyed by other properties situated within the same subdivision.

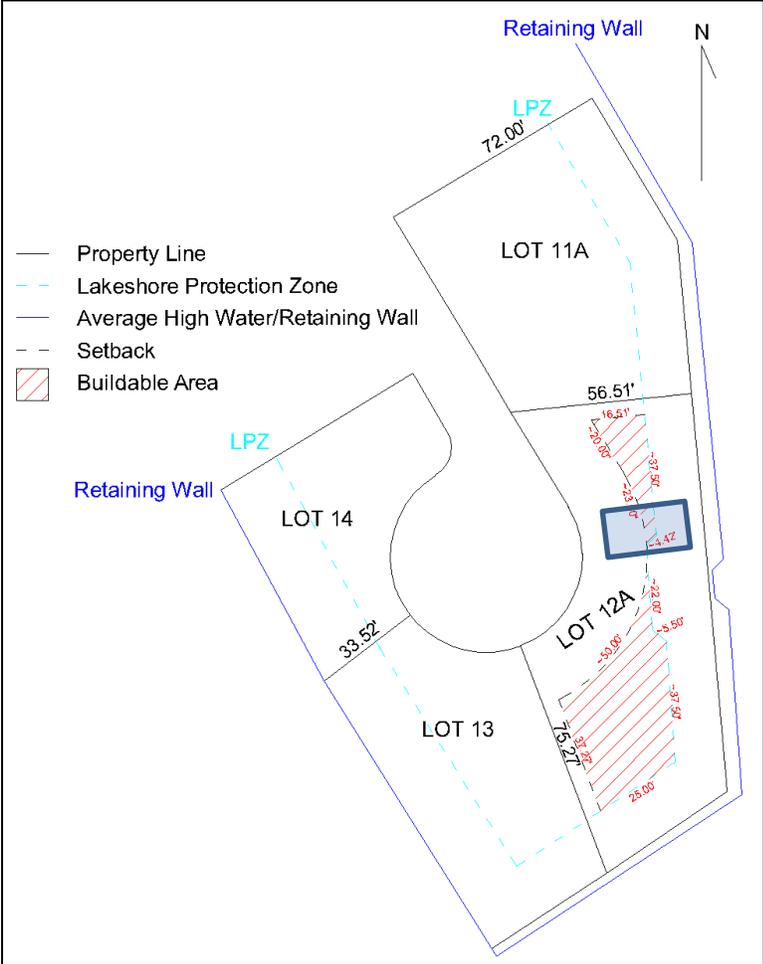
**Finding #2** - Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties on Beach Road because other properties have dwellings built within the setbacks, in some cases within a few feet of the road and the average lot depth is less than that of other lots on Beach Road.

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

A portion of the subject property is located within the Lakeshore Protection Zone, 20 feet on the east and south sides of the property. The front and rear setback for the R-4 zone is 20 feet and the side setback is 5 feet, leaving a small buildable area on the subject property (see Figure 5). The majority of the buildable area is currently occupied by the single family dwelling. The average lot depth at the proposed location of the garage is approximately 43.85 feet which would leave 3.85 feet between the setbacks for a building.

Staff researched the dates of the subdivision being recorded and the date the zoning, lakeshore and floodplain regulations were adopted by the County. The Bigfork Shores Subdivision was platted in 1971. The Bigfork Zoning District was adopted September 27, 1993, the Lake and Lakeshore Protection Regulations were adopted on April 13, 1982 and the Floodplain and Floodway Management Regulations were adopted on August 5, 1984. The regulations currently in place were adopted after the lots in the subdivision were created and after the existing house was constructed, therefore it appears the applicant did not have control over the size, shape and topography of the lot.

**Figure 5:** Buildable area on lot 12A (proposed garage location highlighted in blue)



**Finding #3** – The alleged hardship appears to be the result of lot size, shape, and topography because the subdivision was platted and the house was built prior to the adoption of the Flathead County Zoning Regulations, Lake and Lakeshore Protection Regulations and Floodplain and Floodway Management Regulations.

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

As previously stated, 20 feet of the east and south sides of the property is located within the Lakeshore Protection Zone. The property has a front and rear setback of 20 feet and side setback of 5 feet leaving a small buildable area on the subject property (see Figure 5 above). The majority of the buildable area is currently occupied by the single family dwelling. The average lot depth at the proposed location of the garage is approximately 43.85 feet which would leave 3.85 feet between the setbacks for a building.

The average lot depth for lots within the Bigfork Shores Subdivision is slightly over 70 feet. As previously discussed the subject property has a lot depth of approximately 44 feet at the location of the garage. If the applicant is required to build in strict compliance with the Flathead County Zoning Regulations, a setback of 20 feet for the front and rear would be required.

**Finding #4** – The alleged hardship appears to be peculiar to the subject property because the average lot depth for lots within the Bigfork Shores Subdivision is slightly over 70 feet and the subject property has a lot depth of approximately 44 feet at the location of the garage.

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

As previously stated, 20 feet of the east and south sides of the property is located within the Lakeshore Protection Zone. The property has a front and rear setback of 20 feet and side setback of 5 feet leaving a small buildable area on the subject property (see Figure 5 above). The majority of the buildable area is currently occupied by the single family dwelling. The average lot depth at the proposed location of the garage is approximately 43.85 feet which would leave 3.85 feet between the setbacks for a building.

According to the applicant, “The lots were created long before this new zoning requirements were adopted.” As previously stated, the Bigfork Shores Subdivision was platted in 1971. The Bigfork Zoning District was adopted September 27, 1993, the Lake and Lakeshore Protection Regulations were adopted on April 13, 1982 and the Floodplain and Floodway Management Regulations were adopted on August 5, 1984. The regulations currently in place were adopted after the lots in the subdivision were created and after the existing house was constructed, therefore it appears the applicant did not have control over the size, shape and topography of the lot.

**Finding #5** – The alleged hardship does not appear to be created by the applicant because the County adopted the Flathead County Zoning Regulations, Lake and Lakeshore Protection Regulations and Floodplain and Floodway Management Regulations after the subdivision was platted and the house was built.

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

As previously stated, the applicant has the ability to remodel or rebuild the structure within the existing footprint of the building to add a second garage stall adjacent to the existing garage. According to Section 2.07.040(3) FCZR, “A building or structure conforming with respect to use but non-conforming with respect to height, setback, or lot coverage may be altered or extended if the alteration or extension does not further deviate from these regulations.” The applicant would be able to add a second story to recapture some of the interior space lost for the second garage stall as long as the alterations do not expand the footprint further into the setbacks.

If the applicant did build a garage within the existing footprint and/or add a second story a variance to Flathead County Lake and Lakeshore Protection Regulations may not be required if the building height is limited to 25 feet. Section 4.3(J)(2)(b) FCLR states, “Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided that the building height is limited to twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building, or the existing height, if the structure exceeds twenty-five (25) feet in height.” A lake and

lakeshore construction permit would still be required for the reconstruction of an existing facility, per Section 2.5(N) FCLR.

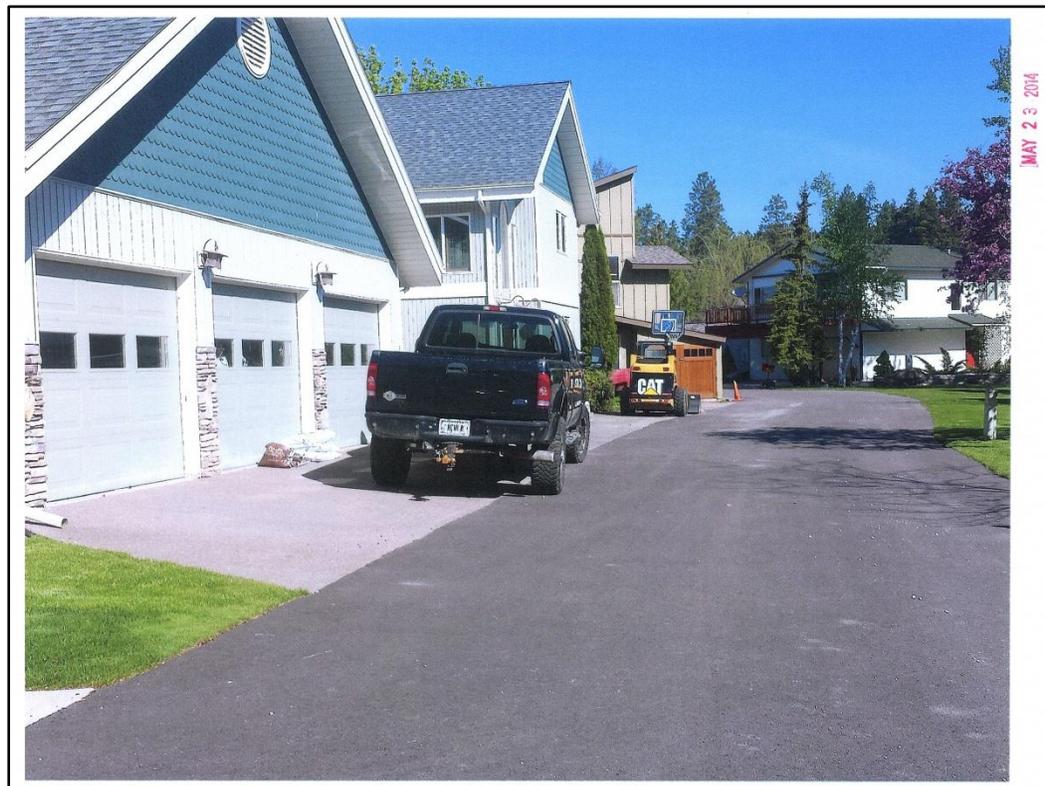
**Finding #6** – The alleged hardship appears to be economic because there are reasonable alternatives that exist for the subject property such as building a garage within the existing footprint of the structure and adding a second story, provided the alterations do not expand the footprint further into the setbacks.

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

The application states, “No please see attached photos of neighboring properties. In fact the building that was removed was non-conforming and is now mostly open park landscaping.”

The property is located at the end of the cul-de-sac with neighbors on both sides, but not in the rear or front of the property. The proposed garage would be constructed outside the side setback. During the site visit, staff observed most of the homes located on Beach Road have similar setbacks from the road to what the applicant is proposing. Many of the dwellings along Beach Road are within the front setback and some cases within a few feet of the road.

**Figure 6:** Photo submitted by the applicant



The property is relatively flat and the entire property is designated as Zone A on FEMA FIRM Panel 30029C2315G. Zone A is defined as, “Special flood hazard areas subject to inundation by 1% annual chance floor’ or 100 year floodplain. A floodplain development permit may be required “*in order to protect long term*

*public health, safety, and general welfare,”* per Section 1.02 of the Flathead County Floodplain and Floodway Management Regulations. A floodplain development permit could mitigate any adverse effects related to floodplain on a neighboring property or properties. The most likely impact to neighboring properties would be the potential encroachment of a future expanded structure within the setbacks which could decrease access to neighboring buildings.

**Finding #7** – Granting of the variance request would not have a significant impact on neighboring properties or the public because most of the structures on Beach Road are within the front setback and some cases within a few feet of the road.

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

If the applicant proposed to construct a detached garage the rear setback would be 5 feet and in this case no zoning variance would be required for the rear setback and a smaller variance would be required for the front setback. If the detached garage was located on the north property line it is possible no zoning variance would be required. However the Lake and Lakeshore Protection Regulations require a setback of 20 feet from the average high water line because storage buildings are not permitted within the Lakeshore Protection Zone. A greater variance would then be required to the Lake and Lakeshore Protection Regulations.

As previously stated, it appears the applicant has the ability to remodel or rebuild the structure within the existing footprint of the building to add a second garage stall adjacent to the existing garage. According to Section 2.07.040(3) FCZR, “*A building or structure conforming with respect to use but non-conforming with respect to height, setback, or lot coverage may be altered or extended if the alteration or extension does not further deviate from these regulations.*” The applicant would be able to add a second story to recapture some of the interior space lost for the second garage stall as long as the alterations do not expand the footprint further into the setbacks.

If the applicant did build a garage within the existing footprint and add a second story a variance to Flathead County Lake and Lakeshore Protection Regulations may not be required if the building height is limited to 25 feet. Section 4.3(J)(2)(b) FCLR states, “*Existing dwelling units situated in the lakeshore protection zone may be remodeled and maintained, provided that the building height is limited to twenty-five (25) feet as measured from the finished grade nearest the shoreline to the highest point on the building, or the existing height, if the structure exceeds twenty-five (25) feet in height.*” A lake and lakeshore construction permit would still be required for the reconstruction of an existing facility, per Section 2.5(N) FCLR.

**Finding #8** – The variance requested appears to be the minimum variance which would alleviate the alleged hardship because while there are alternatives that exist such as building a garage within the existing footprint of the structure and adding a second story alternatives may trigger applicability of other permitted requirements.

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

The application lists other addresses on Beach Road that do not conform to setbacks and provides photos. The applicant stated, “Most of the lots have non-conforming structures regarding setbacks and some houses are built up to the road.” The application states, “All the lots on Beach Road do not conform to the new zoning.” During the site visit, staff observed most of the homes located on Beach Road have similar setbacks from the road to what the applicant is proposing. Many of the dwellings along Beach Road are within the front setback and some cases within a few feet of the road.

The average lot depth for lots within the Bigfork Shores Subdivision is slightly over 70 feet. As previously discussed the subject property has a lot depth of approximately 44 feet at the location of the garage. Granting the variance to allow the applicant to build within the 20 foot setback for the front and rear setback would not appear to confer a special privilege that is denied other properties located along Beach Road.

**Finding #9** – Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district because other properties in the vicinity appear to have built inside the setbacks.

**V. SUMMARY OF FINDINGS**

1. Strict compliance with the regulations would not limit the reasonable use of property because the applicant would be allowed to build a second garage stall within the existing footprint and add a second story to the existing structure to capture lost interior floor space without a variance.
2. Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties on Beach Road because other properties have dwellings built within the setbacks, in some cases within a few feet of the road and the average lot depth is less than that of other lots on Beach Road.
3. The alleged hardship appears to be the result of lot size, shape, and topography because the subdivision was platted and the house was built prior to the adoption of the Flathead County Zoning Regulations, Lake and Lakeshore Protection Regulations and Floodplain and Floodway Management Regulations.
4. The alleged hardship appears to be peculiar to the subject property because the average lot depth for lots within the Bigfork Shores Subdivision is slightly over 70 feet and the subject property has a lot depth of approximately 44 feet at the location of the garage.
5. The alleged hardship does not appear to be created by the applicant because the County adopted the Flathead County Zoning Regulations, Lake and Lakeshore Protection Regulations and Floodplain and Floodway Management Regulations after the subdivision was platted and the house was built.
6. The alleged hardship appears to be economic because there are reasonable alternatives that exist for the subject property such as building a garage within the

existing footprint of the structure and adding a second story, provided the alterations do not expand the footprint further into the setbacks.

7. Granting of the variance request would not have a significant impact on neighboring properties or the public because most of the structures on Beach Road are within the front setback and some cases within a few feet of the road.
8. The variance requested appears to be the minimum variance which would alleviate the alleged hardship because while there are alternatives that exist such as building a garage within the existing footprint of the structure and adding a second story alternatives may trigger applicability of other permitted requirements.
9. Granting of the variance is not likely to confer a special privilege that is denied to other properties in the district because other properties in the vicinity appear to have built inside the setbacks.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a variance to the front and rear setbacks for a property located within the R-4 zone is not supported by all the review criteria and the Findings of Fact listed above. 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.

If the Flathead County Board of Adjustment choose to adopt staff report FZV-14-01, modify the draft Findings of Fact and approve the variance based on public comments and board discussion then the following draft conditions could ensure appropriate measures to mitigate impacts:

## **VII. CONDITIONS**

1. Lots 11 and 12 shall be aggregated prior to the construction of the attached garage.
2. A minor lakeshore variance is required prior to the construction of the garage on the subject property.
3. A floodplain development permit is required prior to the construction of the garage on the subject property, if the FEMA FIRM Panels have not been revised to remove the subject property from the Zone A.
4. The variance shall be valid indefinitely, provided it is exercised within one year of the date of issuance or as otherwise provide for by the Board of Adjustments. [FCZR Section 2.05.030(9)].
5. At the end of 12 months from the date of authorization of this permit staff will inspect to verify compliance [FCZR Section 2.05.030].

Planner: EKM