

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-16-01)
JAMES AND KATIE STEPHENS
MARCH 10, 2016

A report to the Flathead County Board of Adjustment regarding a request by James and Katie Stephens for a variance from Section 3.37.050, "Maximum Density", of the Flathead County Zoning Regulations. The variance requested would apply to property located at 1175 Rogers Lake Road and is located within the Rogers Lake Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on April 5, 2016 beginning at 6:00 P.M. in the 2nd 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 amendment is located within the jurisdiction of the Rogers Lake Land Use Advisory Committee, however the application will not be reviewed due to a lack of quorum.

B. Board of Adjustment

The Flathead County Board of Adjustment will hold a public hearing on April 5, 2016. This section will be updated following the meeting.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant/Landowner

James and Katie Stephens
1175 Rogers Lake Road
Kila, MT 59920

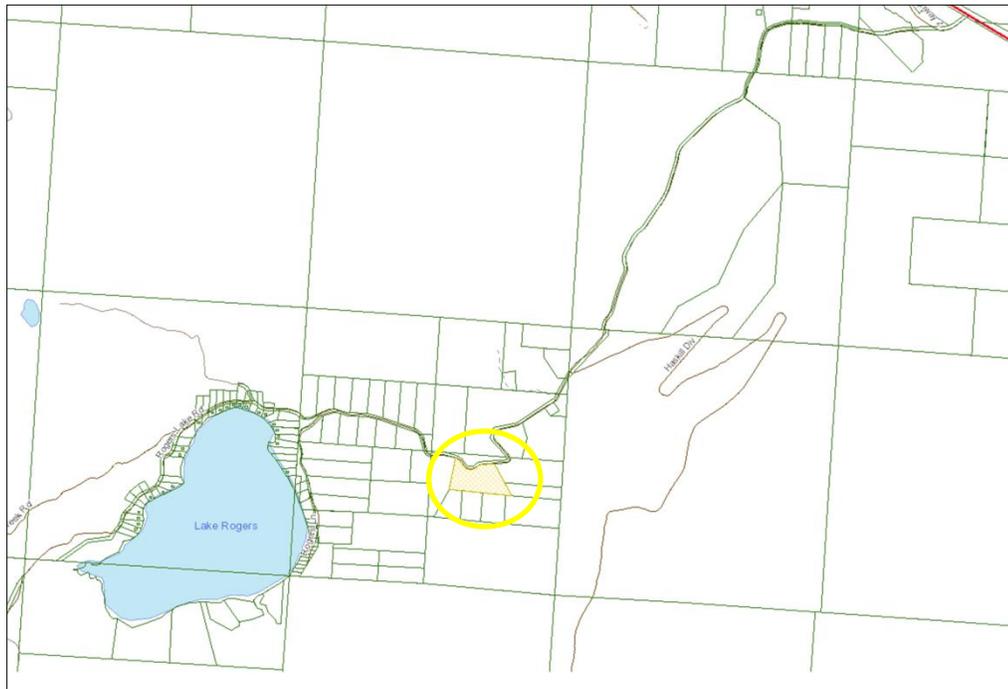
i. Technical Assistance

N/A

B. Property Location

Situated east of Rogers Lake approximately 3 road miles from the intersection of Highway 2 and Rogers Lake Road, the 12.65 acre subject property is located at 1175 Rogers Lake Road (see Figure 1). The property can be legally described as Assessors Tract 2BC in Section 29, Township 27 North, Range 23 West, P.M.M., Flathead County, Montana.

Figure 1: Location of the subject property (circled yellow)

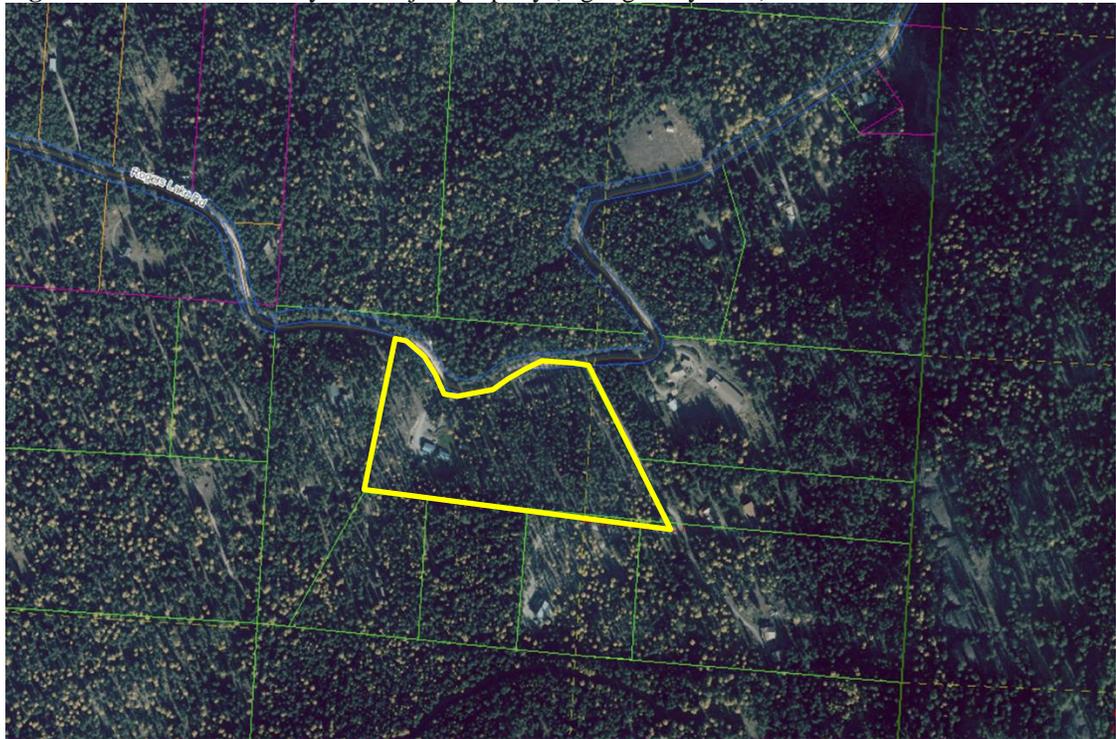


C. Existing Land Use(s) and Zoning

The subject property is located within a heavily forested and hilly area of Flathead County. It appears the lot is currently developed with a single family residence, garage, shed, and another multi-story garage (see Figure 2). According to the Montana State Department of Revenue, the residence was constructed in 1997 and the remaining accessory structures were built between 1995 and 2002.

The property is currently zoned ‘Rogers Lake’ within the Rogers Lake Zoning District which was originally adopted in 1997 pursuant to Resolution No. 1255A. According to Section 3.37 of the Flathead County Zoning Regulations (FCZR), the Rogers Lake District is defined as a “*development code designed to implement the Rogers Lake Neighborhood Plan by protecting the quality, character and openness of Rogers Lake and the surrounding neighborhood and by providing guidance for future development.*” The subject property would be considered a “View lot” and as it is not located in Section 31, Township 27 N, Range 23 W, the applicable density is 1 lot/residence per 10 acres.

Figure 2: Land use - vicinity and subject property (highlighted yellow)



D. Adjacent Land Use(s) and Zoning

Adjacent properties in all directions of the subject property are zoned ‘Rogers Lake’ as shown in Figure 3. The Rogers Lake zone extends approximately 1/4 mile to the east, 1/2 mile to the north, 1.5 miles to the west, and 1.4 miles to the south of the subject property. The Rogers Lake Zoning District covers 2560 acres, including the lake bed of Rogers Lake.

The property is located in a heavily forested and mountainous area primarily characterized by rural residential uses with some large lot U.S. Forest Service, Plum Creek Timberlands, and Stoltze Land and Lumber properties. Adjacent lots include tract land ranging in size from 3 acres to 30.6 with some legally non-conforming 5 acre lots immediately southeast of the subject property.

Figure 3: Zoning of the subject property (circled blue) and surrounding area



E. Summary of Request

The applicant is requesting a Variance to Section 3.37.050(2), “Maximum Density”, of the Flathead County Zoning Regulations. If granted, the requested variance would allow the applicant to divide the existing 12.65 acre tract into two residentially developable tracts within the Rogers Lake zone which is not permitted now due to the 10 acre maximum density requirements. The application states “My husband and I bought 12.72 acres with the plan to family transfer any allotted amount to his parents. We wanted to gift this to them so they could have it in their name and build a small residence on their property. His parents are disabled and need to be close to us.”

F. Compliance with Public Notice Requirements

Notification was mailed to adjacent property owners within 150 feet of the subject property on March 18, 2016 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 20, 2016 edition of the Daily Interlake.

G. Agency Referrals

Agency referrals were mailed to agencies listed below on February 25, 2016 regarding the variance request:

- Flathead County Road and Bridge Department.
- Flathead County Solid Waste
- Bonneville Power Administration
- Montana Department of Natural Resources and Conservation
- Smith Valley Fire District

- Flathead City-County Health Department
- Flathead County Weed & Parks Department.

III. COMMENTS RECEIVED

A. Public Comments

No written public comments have been received to date regarding the variance request. Any written public comment received after March 22, 2016 will be summarized verbally and entered into the public record during the Board of Adjustment public hearing on April 5, 2016. Anyone wishing to provide verbal public comment may do so in person at the Board of Adjustment public hearing scheduled for April 5, 2016.

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 County Road and Bridge Department
 - Comment: “The Road and Bridge Department does not have issue with the requested family transfer as stated in the request. Of concern at this point from our perspective is the possible approach needed from Rogers Lake Road to the property. This section of road is very steep and could have sight distance issues depending on the applicant’s requested location for an approach.” Letter dated March 3, 2016.
- Flathead County Environmental Health Department
 - Comment: “A family transfer will require review in compliance with the Sanitation in Subdivision Act and Flathead County Regulations for Onsite Sewage Treatment Systems. If an on-site individual water and wastewater treatment systems are proposed then the parcel must be approximately 1 acre in size to meet all setbacks required through subdivision review and FCROSTS.” Letter dated March 4, 2016.
- Flathead County Solid Waste District
 - Comment: “The Solid waste District views no negative impact with solid waste issues at this time. The District requests that all solid waste generated at the proposed location be hauled by a private hauler. Evergreen Disposal is the licensed (PSC) Public Service Commission private hauler in this area.” Letter dated February 26, 2016.
- Flathead County Weed District
 - Comment: “One noxious weed species was found on this property during a visual inspection last week, Houndstongue. Some of the property has been disturbed, which is concerning because weeds could easily infest the area. A soil disturbance management plan will be required for this property.” Letter dated March 9, 2016.

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 subject property has been owned by the current owners since 2015 and has been utilized as the residence for the Stephens family. According to the Montana Cadastral property record card, the lot contains a single family dwelling constructed in 1995. A 216 square foot shed was also built in 1995 and two additional garages totaling approximately 1466 square feet were constructed in 2002. Both the sheds and garage are listed as permitted accessory uses in the Rogers Lake zoning district per Section 3.37.030(4).

The applicants are now requesting a variance to the maximum density allowed for view lots, 1 lot/residence per 10 acres (Section 3.37.050(2)(a)) so that they may create another parcel via family transfer and build another residence for the Stephen’s older parents. According to the Rogers Lake zoning, it would appear that the applicants could avoid subdividing the property by utilizing the “caretaker’s facility” use allowed as a permitted accessory use per Section 3.37.030(2). A “caretakers facility” is defined in Section 7.04.025 as “*a dwelling which is constructed and designed to provide living quarters for caretakers and/or property managers and is clearly subordinate to the principal use with regard to size and location.*” Once the caretaker’s facility is no longer needed, the unit could be utilized as a guest house.

Due to the permitted and accessory uses allowed in the Rogers Lake zoning, it would appear that there is no limitation to the reasonable use of the property that would necessitate a variance to maximum density because the landowners have utilized the lot for single family residential use to date and permitted accessory uses could allow for a caretakers facility without subdivision of the lot.

Finding #1 - Strict compliance to the provisions of the Rogers Lake zoning would not limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the lot has been utilized for single family residential use and construction of a caretakers facility, an allowed permitted use, could alternatively be utilized to house the Stephens as they care for their parents.

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

According to the applications, adjoining landowners were allowed to split their lots to create an additional dwelling which is essentially comparable to this variance request. The application states that the neighbors to the south were allowed to divide their property into lots less than 10 acres in size after the Rogers Lake zoning district was established in 1997. In fact, many of the surrounding properties are lots between 4 to 10 acres in size. Based on staff research, these lots were either created before the zoning district was established, making them legally non-conforming lots, or were divided from a parcel at least 20 acres in size. While the minimum lot size is 1 acre, the maximum density of 10 acres

makes it necessary to have 20 acres in order to functionally utilize a lot that is split in half. Specifically, the lots to the southeast (COS 17759) that were addressed in the application were divided by family transfer in 2007 into 17.17 and 2.84 acre parcels. A subsequent boundary line adjustment was conducted to the current tract configuration (COS 17943). Since the division met the minimum lot size of 1 acre and the total lot area was 20 acres, the division allowed the owners of both new lots to build a dwelling on each parcel.

Finding #2 - Strict compliance to the provisions of the Rogers Lake zoning would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because adjacent lots smaller than 10 acres were created prior to adoption of the zoning district or were in compliance with the applicable densities requirements and therefore not given special privileges denied to the applicant.

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

The application indicates that the hardship is “the result of the lot size not being 20 acres.” As mentioned before, the lot was created in 1977 as a 15.678 acre parcel divided by Rogers Lake Road. The lot was subsequently deeded into two separate lots 3.026 acres and 12.652 acres in size. The subject property, which is 12.65 acres, is a lot too small to divide and develop with a second lot due to the density requirements of the Rogers Lake zoning district. Therefore the hardship is influenced by the lot size. However, the applicants would have had the capability to understand limitations presented by the applicable Rogers Lake zoning through due diligence research prior to acquiring the property. It is therefore reasonable to presume they had control over whether or not to purchase the property along with the applicable zoning limitations which are presented by the density-based zoning at the location, which has been applicable on the subject property for 19 years.

Finding #3 – It appears that the hardship is based on lot size since the lot is too small to divide and develop with a second dwelling however, zoning information was available at the time the applicants purchased the property suggesting that the lot size was not a circumstance over which the applicant had no knowledge or control.

C. The hardship is peculiar to the property.

The application indicates the hardship is “keeping us from having our disabled, low income parents, that need assistance in taking care of, from being able to have their own property and build a home on it near to us.” It is not apparent from this answer that the hardship is peculiar to the property. Since the property is currently being reasonably utilized in accordance with the Rogers Lake zoning, it is only the lot size that is a characteristic of the property preventing them from subdividing the lot and constructing a second dwelling. Since the zoning regulations were available at the time the property was purchased, a lack of due diligence should not constitute a reason to claim hardship peculiar to the property.

Finding #4 – There is no hardship peculiar to the property because the subject property is simply a lot too small to divide and construct a second home based on the density requirements of the Rogers Lake zoning and information on the lot size and zoning information was available at the time the property was purchased.

D. The hardship was not created by the applicant.

The application suggests the hardship was not created by the applicant as “the plan is very misleading and unclear.” While the applicants were not involved with the family transfer (COS 2851) done in 1977 that created the lot as it exists today, and zoning was adopted well after the parcel was created, the lot is not currently considered a “non-conforming” lot with regard to density or lot size. The hardship claimed by the applicants is their perceived and denied right to build a second home on the lot. However, proper due diligence would have illuminated the zoning prior to acquisition of the property therefore the applicants had control over whether or not to acquire the property along with the restrictions and limitations presented by the Rogers Lake zoning at the location.

Finding #5 – While the applicants were not involved in the family transfer (COS 2851) done in 1977 creating the lot which is not further developable, the claim that the plan was misleading should not be considered a reason for hardship as due diligence could have clarified the zoning restrictions at the subject property.

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

The application response to this criterion states the hardship is not economic because “we are attempting to gift them a portion of our property. They can not afford buying land elsewhere.” It would appear that the reason for the hardship is economic since the price of land is too expensive for the applicants to purchase another property for the parents. An alternative to dividing the lot and building a dwelling is to build a “caretakers facility” on the lot which is a permitted use in the Rogers Lake zoning district. This option would allow the parent’s to live on the property without having to create another lot which could be sold for profit.

Finding #6 – It appears that the hardship may be economic because the applicants insist on dividing the property and building a dwelling which could be sold for a profit and another alternative exists for which no new lot would need to be constructed.

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

The application response to this criterion simply indicates that the variance will not adversely affect the neighboring property. However, the Rogers Lake neighborhood plan and zoning was established as density- based land use regulations because of neighborhood involvement in the planning process. However, the property is 12.65 acres in size and a second dwelling on the relatively forested property does not appear to significantly impact neighboring properties since adequate space appears to exist for the dwelling, driveway, and septic system to be constructed on the proposed new lot.

While it seems reasonable to consider there may not be apparent direct impacts to neighboring properties or the public, the application does not address other factors such as impacts to service providers such as mail delivery, solid waste, school district bussing, and medical and emergency care. Further the application fails to recognize the subject property is located on a relatively steep unpaved road and fire hazards as a result of the heavily forested and rural area may impact neighboring properties. The Flathead County Road and Bridge Department issued a comment indicating concern

about the steep roadway and sight visibility in the area if an additional approach was requested for the proposed new lot.

Finding #7 – While direct adverse effects to neighboring properties or the public would not be anticipated through granting of the variance, there would likely be indirect adverse effects to the public and various service providers because the subject property is located on a relative steep, unpaved road and fire danger as a result of the rural, forested nature of the area would increase with the addition of a dwelling.

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

The application response to this criterion indicates the requested variance is the minimum variance which will alleviate the hardship since only two tracts are being requested.

While the response seems ‘minimal’, the application has not definitively established a valid hardship, and as mentioned above it appears that an alternative to land division and a second single family dwelling exists. The Rogers Lake zoning allows for a ‘caretakers facility’ as a permitted use which could be built on the same lot without violating density requirements outlined in the zoning regulations. The caretaker’s facility could also be utilized as a guest house once the caretaker’s facility is no longer required. While the Stephen’s parents would not own the property, they would be able to live on the same lot as the applicants.

Finding #8 – The applicants suggest the requested variance is the minimum variance which will alleviate their hardship because only two tracts would be created, however it does not appear that the request is the minimum variance to alleviate the hardship because a valid hardship has not been established and utilizing a caretakers facility could be a viable alternative.

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

Through reference to the Flathead County Zoning Regulations, it would appear that granting the variance would confer a special privilege that is denied other similar properties in the same district because all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each new lot created after adoption of the zoning would meet the established minimum density requirements of the district.

Finding #9 – Granting the requested variance to minimum density, thus allowing further division and development of the subject property size would confer a special privilege that is denied other similar properties in the same district because while the subject property is currently in use as a residential property, consistent with use of other neighboring properties in the district, all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide land based upon the acreages of their properties and whether or not they possess enough acreage such that each dwelling created after adoption of the zoning would meet the established maximum density of the district.

V. SUMMARY OF FINDINGS

Finding #1 - Strict compliance to the provisions of the Rogers Lake zoning would not limit the reasonable use of the property and deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the lot has been utilized for single family residential use and construction of a caretakers facility, an allowed permitted use, could alternatively be utilized to house the Stephens as they care for their parents.

Finding #2 - Strict compliance to the provisions of the Rogers Lake zoning would not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because adjacent lots smaller than 10 acres were created prior to adoption of the zoning district or were in compliance with the applicable densities requirements and therefore not given special privileges denied to the applicant.

Finding #3 – It appears that the hardship is based on lot size since the lot is too small to divide and develop with a second dwelling, however zoning information was available at the time the applicants purchased the property suggesting that the lot size was not a circumstance over which the applicant had no knowledge or control.

Finding #4 – There is no hardship peculiar to the property because the subject property is simply a lot too small to divide and construct a second home based on the density requirements of the Rogers Lake zoning and information on the lot size and zoning information was available at the time the property was purchased.

Finding #5 – While the applicants were not involved in the family transfer (COS 2851) done in 1977 creating the lot which is not further developable, the claim that the plan was misleading should not be considered a reason for hardship as due diligence could have clarified the zoning restrictions at the subject property.

Finding #6 – It appears that the hardship may be economic because the applicants insist on dividing the property and building a dwelling which could be sold for a profit and another alternative exists for which no new lot would need to be constructed.

Finding #7 – While direct adverse effects to neighboring properties or the public would not be anticipated through granting of the variance, there would likely be indirect adverse effects to the public and various service providers because the subject property is located on a relative steep, unpaved road and fire danger as a result of the rural, forested nature of the area would increase with the addition of a dwelling.

Finding #8 – The applicants suggest the requested variance is the minimum variance which will alleviate their hardship because only two tracts would be created, however it does not appear that the request is the minimum variance to alleviate the hardship because a valid hardship has not been established and utilizing a caretakers facility could be a viable alternative.

Finding #9 – Granting the requested variance to minimum density, thus allowing further division and development of the subject property size would confer a special privilege that is denied other similar properties in the same district because while the subject property is currently in use as a residential property, consistent with use of other neighboring properties in the district, all property owners in the district are subject to compliance with the adopted zoning and are thus limited in their ability to further divide

land based upon the acreages of their properties and whether or not they possess enough acreage such that each dwelling created after adoption of the zoning would meet the established density requirements of the district.

VI. CONCLUSION

Upon review of the submitted application, the request to allow for a variance from Section 3.37.020(2), “Maximum Density”, of the Flathead County Zoning Regulations, more specifically to the maximum density of view lots of the Rogers Lake zone within the Rogers Lake Zoning District, is not supported by 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.

Staff: REE