

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING VARIANCE REPORT (#FZV-16-03)
NORRED
JUNE 15, 2016

A report to the Flathead County Board of Adjustment regarding a request for a variance to yard setback requirements allowing a shop to be built in the front yard of the lot (Section 5.01.030(2) FCZR). The variance requested would apply to property owned by Steven and Cynthia Norred located at 140 Conifer Lane in Bigfork which is zoned "SAG-10" and within the Bigfork Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on July 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 land use is located within the Bigfork Land Use Advisory Committee area and will be heard by BLUAC on June 30, 2016. This space is reserved for an update of the meeting.

B. Board of Adjustment

This space is reserved for an update regarding the July 5, 2016 Flathead County Board of Adjustment review of the proposal.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant/ Landowner

Steven and Cynthia Norred
140 Conifer Lane
Bigfork, MT 59911

B. Property Location

The subject property is 5.7 acres and is located at 140 Conifer Lane in Bigfork, (see Figure 1 below). The property can be legally described as Lot 4 of Sarlida Estates in Section 17, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana.

Figure 1: Aerial image of the subject property (outlined in yellow)



C. Existing Zoning and Land Use(s)

The subject property is located in the Bigfork Zoning District and zoned “SAG-10.” The SAG-10 zoning classification is defined as “A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.” per Section 3.07.010 FCZR. The property is currently developed with an approximately 2,500ft² two-story single-family residence with an attached garage. The structure was built in 1993. The applicants began construction of the foundation for the shop but stopped when it was determined to be a zoning violation on May 6 and required a variance.

D. Adjacent Zoning and Land Use(s)

Subdivision lots surrounding the subject property are similarly zoned SAG-10 (see Figure 2 below) and land uses surrounding the subject property include similar density lots to the north and south all developed with single-family dwellings. Larger lots to the east and west, also zoned SAG-10, include 26 and 46 acre agricultural fields. Some I-1 zoning exists in the general area including the Swan River Center located to the east of the Sarlida Estates subdivision. Lots within the Sarlida Estates subdivision located along the western side of Conifer Lane have areas of significant topographic relief and are heavily forested.

2. Dave Prunty, Flathead County Public Works Department
3. Wendee Jacobs, Flathead City-County Health Department
4. Joe Russell, Flathead City-County Health Department
5. Jed Fisher, Flathead County Weeds & Parks Department
6. Peggy Weyant, Bonneville Power Administration

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 July 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 City County Health Department
 - Comment: “This department has no objection to the issuance of the Conditional Use Permit. The Lot has an existing Certificate of Subdivision Approval (COSA) which approves one individual living unit. The proposed shop cannot contain living quarters in order to maintain compliance with the existing COSA.”
- Bigfork Fire Department:
 - Comment: “The Bigfork Fire Department has no issues with the proposed building site. Bigfork Fire has no authority concerning enforcement ha fire codes, however there is not an issue with the location of the building site.”
- Bonneville Power Administration
 - Comment: “...it appears this request will not affect any BPA facilities located within this area.”
- Flathead County Road and Bridge Department
 - Comment: “At this point the County Road and Bridge Department does not have any comments on this request.”

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.”

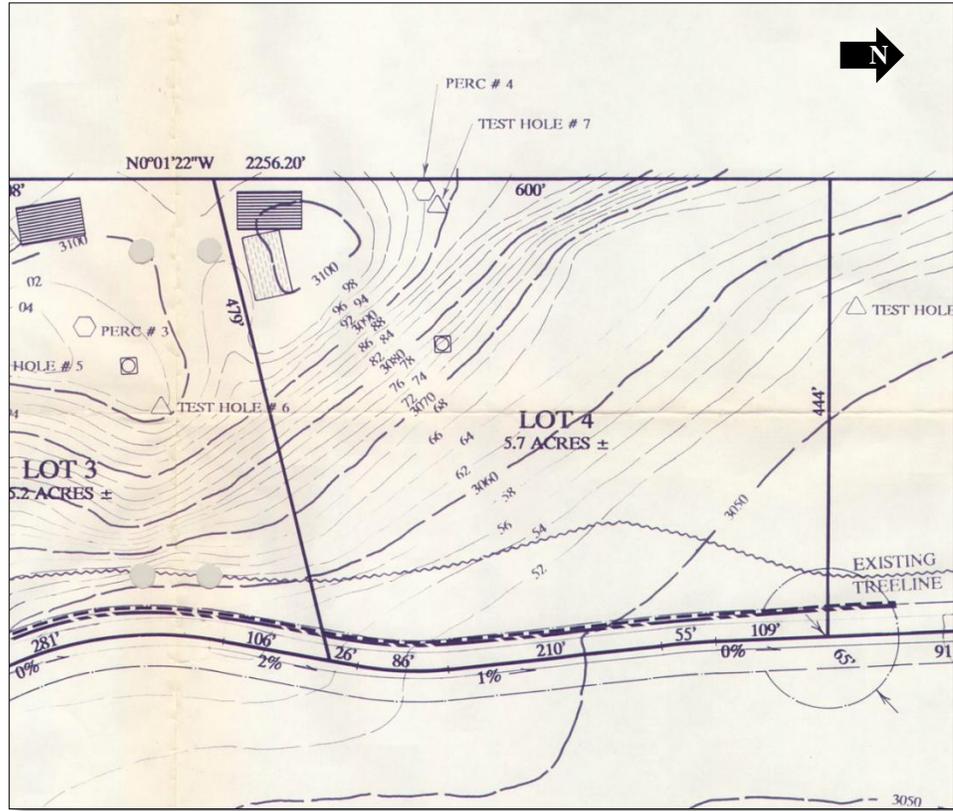
A. Strict compliance with the provisions of these regulations will:

i. Limit the reasonable use of property;

The applicant believes strict adherence to setback and accessory structure placement requirements would prevent a shop to be built which is a permitted accessory structure in the SAG-10 district and enjoyed by many others on the street. The proposed shop would be approximately 40 foot

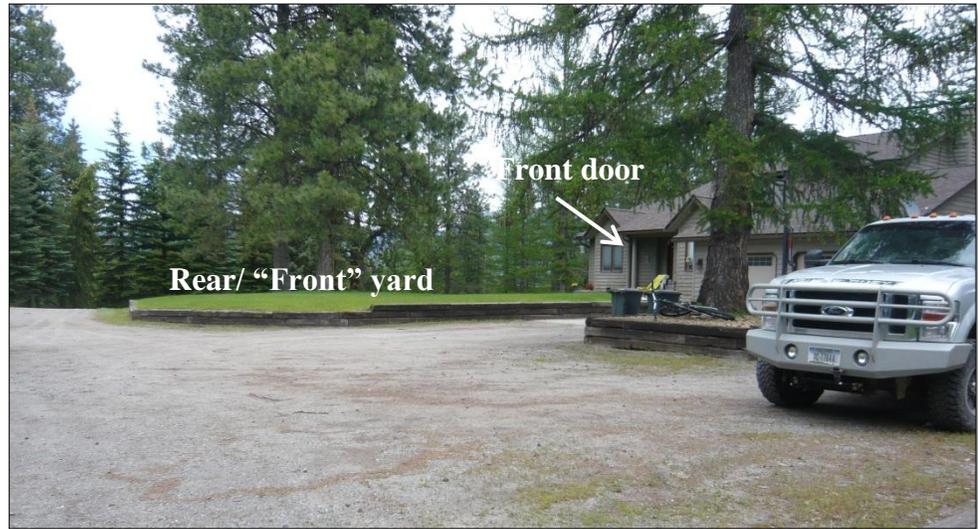
wide and 48 feet long. According to staff site visit and the site plan the single family dwelling is located towards the southwest corner of the lot, on top of the hill. Because the dwelling is located towards the back of the property, the front yard of the lot is proportionally much larger than the rear yard. Ground contours illustrated on the preliminary plat of the Sarilda Estates preliminary plat show steep topography between the southwest and northeast corner of the property (see Figure 3).

Figure 3: Topography of Lot 4 from Sarilda Estates Preliminary Plat



While the dwelling is located adjacent to a flat, grassy yard which would appear to accommodate the proposed shop, the plat and Certificate of Subdivision Approval (COSA) indicate that this is the location of the drainfield and can not accommodate the proposed structure. A “rear yard” adjacent to the dwelling may be able to accommodate the shop but would be located by the front entrance of the home in what could colloquially be the “front yard” (see Figure 4). Because a shop is a permitted accessory structure in the SAG-10 zoning district and because the topography would limit the structure to the front yard setback or the colloquial “front yard”, it appears that strict compliance with the regulations would limit the reasonable use of the property.

Figure 4: Alternative location for the shop



Finding #1 - Strict compliance with the regulations would limit the reasonable use of property because a shop is a permitted accessory use within the SAG-10 district and the topography of the lot would limit the shop to the few flat portions of the property.

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

The application states, “similar properties have accessory buildings configured in front yard giving them a place to store their personal property for security, protection from elements”. During staff site visit, it appears that the neighbor to the north has an accessory shed in the front yard setback of that house as well. The proposed shop is a permitted accessory use in the SAG-10 zoning designation and the applicant should have the right to develop a shop on the property either to zoning standards or in the most appropriate place given constraints. Because the proposed shop is approximately 1,920 sq.ft. it would appear that a shop this size would only fit within the proposed placement. However, the applicants also have a rear yard/“front” yard that could technically accommodate a shop of a smaller size. This alternative would allow the applicants to enjoy the right to a shop but the placement in front of the front door may be an illogical place given the existing configuration of the house.

Finding #2 - Strict compliance with the regulations would not entirely deprive the applicant of rights enjoyed by other properties on Conifer Lane because the applicant could construct a smaller shop in front of the doorway of the house within the rear yard.

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

As illustrated in Figure 3, Lot 4 of Sarlida Estates is subject to significant topography relief with two main buildable areas: the southwest corner where the drainfield and dwelling was placed and the northeast corner adjacent to the

roadway where the proposed shop will be developed. The rest of the lot is subject to steep slopes that make construction and access to the shop difficult. Additionally, because the drainfield and dwelling was placed towards the back corner of the lot, the majority of the property is considered “front yard” per the definition of yard in the FCZR. This limits the buildable area for accessory structures and would require that a shop of this size be located within the front yard of the property.

Finding #3 – The alleged hardship is directly associated to the topography of the lot because the house and drainfield were placed on the flat, back corner of the property making the majority of the lot front yard and limiting area for the shop to the front corner near Conifer Lane.

C. The hardship is peculiar to the property.

As previously stated, the subject property is 5.7 acres in size and is subject to significant topographic relief across the majority of the lot. Two flat, buildable areas exist on the lot: the southwest corner toward the back of the lot and the northeast corner at the front of the lot. Because the house was developed with the drainfield towards the back of the lot, the majority of the lot is considered front yard and therefore unbuildable. The hardship resulting from topography is specific to the property. While other properties along Conifer Lane are subject to steep slopes, limits to development vary from lot to lot.

Finding #4 – The alleged hardship appears to be peculiar to the subject property because the topography of the lot was a determining factor in locating the house towards the back of the lot thereby making the majority of the property “front yard” and unbuildable.

D. The hardship was not created by the applicant.

According to the applicant, the “previous house placement and topography created the hardship.” Because the lot’s developable potential is significantly limited by the topography, it would appear that the hardship is not the result of actions taken by the homeowner. When the Sarlida Estates subdivision was approved in 1992, the MDEQ approved drainfield was located towards the back, flat portion of land. The home was placed next to the drainfield and the front door was directed westward toward the technical “back yard”. This configuration was probably chosen because the driveway and access to the house was on level ground. It would appear that a smaller shop could be built behind the house in this “back yard” but the direction of the house would mean that the shop would be located in front of the front door.

Finding #5 – The alleged hardship does not entirely appear to be created by the applicant because the topography of the lot influenced the location and configuration of the single family dwelling towards the back corner of the lot.

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

This request is a result of a zoning violation that the applicant was made aware of on May 6th after a previous and erroneous approval of the accessory structure at this location. The applicant had already constructed the concrete footing for the

proposed shop but halted construction in order to apply for the variance. The concrete footing measures 40 feet by 48 feet and the only location for a shop of the size is the front corner near the roadway as proposed. As noted earlier, the applicants could place a smaller shop in the “back yard” of the lot but this would be in front of the front door. Another alternative would be to bring in fill to establish a buildable area towards the northwest side of the lot across the driveway. This configuration would provide a zoning compliant location for the shop.

Finding #6 – The hardship may be economic because although the hardship is caused by the lot’s topography, a smaller shed in front of the house door or bringing in fill to create a level buildable area on the northwest side of the property are two zoning compliant alternatives.

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

The application states, “Neighboring properties have similar buildings in similar locations violating zoning regulations already. Also building proposed is similar in shape and size of many surrounding properties. Our road is private and setback from public roadways and should have no effect to the public.”

The property is located on a private, dead end road. The area is heavily vegetated and forests buffer much of the development in the area. During the site visit, staff observed some properties on Conifer Lane in the vicinity with accessory structures located within the front yards. The proposed shop would be located along Conifer Lane but would be shielded from the neighbor by the trees along the northern boundary line. While some larger pine trees surrounded the proposed shop, the location of the shop may have some visual impact on the neighbor across the street if a dwelling were constructed and those traveling down Conifer Lane.

Figure 4: Vegetation around the shop looking towards Conifer Lane



Finding #7 – Granting of the variance request would minimally affect neighbors because the area is heavily vegetated and a tree buffer exists between the property to the north, however the shop will be minimally shielded from the property across the road and those driving down Conifer Lane, a private dead end road.

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

As previously stated, it appears that the lot topography limits development to two locations on the property. Because the house is configured with the front door and driveway located in a westward direction toward the technical back yard, a smaller shop could be placed within this flat area in conformance with the setback requirements of the SAG-10 zoning designation, however it would cause the shop to be placed in front of the doorway. The only other alternative to develop a shop of this size would be to bring in fill to create a level building area on the other side of the driveway towards the northwest corner of the lot. This would bring the location of the shop into compliance with the zoning regulations but would require a considerable amount of fill and engineering to establish a structurally sound shop. It would therefore appear that the only place to put a shop of this size would be in the proposed location in the northeast corner of the lot.

Finding #8 – The variance requested appears to be the minimum variance which would alleviate the alleged hardship because the shop would be located in the only other reasonable building site.

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

The application notes, “Similar properties around are not limited by the same topography constraints and peculiar house placement on lot allowing them to stay in compliance with zoning regulations.” Because a shop is a permitted accessory structure in the SAG-10 zoning designation, the creation of the shop would not be granting a privilege to the landowner that is denied to other properties in the same district. The request is to place the permitted accessory structure within the front yard because the topographic relief of the property limits buildable area.

Granting the variance to allow the applicant to build an accessory structure in the front yard would not appear to confer a special privilege that is denied other properties located along Conifer Lane.

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 because the topographic constraints requiring the proposed placement of the shop are unique to the subject property and other lots may be able to stay in compliance with applicable zoning regulations.

V. SUMMARY OF FINDINGS

Finding #1 - Strict compliance with the regulations would limit the reasonable use of property because the topography of the lot would limit the permitted accessory shop to the technical northeast front yard setback or the colloquial “front yard”.

Finding #2 - Strict compliance with the regulations would not entirely deprive the applicant of rights enjoyed by other properties on Conifer Lane because the applicant could construct a smaller shop in front of the doorway of the house within the rear yard.

Finding #3 – The alleged hardship is directly associated to the topography of the lot because the house and drainfield were placed on the flat, back corner of the property making the majority of the lot front yard and limiting area for the shop to the front corner near Conifer Lane.

Finding #4 – The alleged hardship appears to be peculiar to the subject property because the topography of the lot was a determining factor in locating the house towards the back of the lot thereby making the majority of the property “front yard” and unbuildable.

Finding #5 – The alleged hardship does not entirely appear to be created by the applicant because the topography of the lot influenced the location and configuration of the single family dwelling towards the back corner of the lot.

Finding #6 – The hardship may be economic because although the hardship is caused by the lot’s topography, a smaller shed in front of the house door or bringing in fill to create a level buildable area on the northwest side of the property are two zoning compliant alternatives.

Finding #7 – Granting of the variance request would minimally affect neighbors because the area is heavily vegetated and a tree buffer exists between the property to the north, however the shop will be minimally shielded from the property across the road and those driving down Conifer Lane, a private dead end road.

Finding #8 – The variance requested appears to be the minimum variance which would alleviate the alleged hardship because the shop would be located in the only other reasonable building site.

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 because the topographic constraints requiring the proposed placement of the shop are unique to the subject property and other lots may be able to stay in compliance with applicable zoning regulations.

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. Upon review of this application, the request to allow for a variance to building a shop in the front yard in the “SAG-10” zoning is not supported by the review criteria and the draft findings of fact listed above.

Planner: RE