

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
NOVEMBER 3, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present was Gina Klempel, Scott Hollinger, Gary Krueger and Craig Wagner. Mark Hash was absent. Allison Mouch and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 10 people in the audience.

**APPROVAL OF
MINUTES**

No minutes for approval.

**PUBLIC
COMMENT
*(not related to
agenda items)***

None.

**FAITH BAPTIST
CHURCH
(FZV 09-06)**

A request by Faith Baptist Church for a Zoning Variance to property within the Evergreen, R-2 (One-Family Limited Residential) Zoning District.

STAFF REPORT

Allison Mouch reviewed Staff Report FZV 09-06 for the Board.

**BOARD
QUESTIONS**

Hollinger and Mouch discussed the dimensions of the lot.

**APPLICANT
PRESENTATION**

Clint Theline handed out hand outs to the board and clarified the dimensions of the lot. He explained the handouts given the board which included previous and current buildings, past history of the property, setbacks and improvements. He said they were not asking for special privilege since other structures in the neighboring area were also non conforming to the setback regulations. He discussed options to remedy the problem and the pros and cons to each.

**BOARD
QUESTIONS**

Klempel asked if the previous owner offered any surveys of the land.

Theline said no, they went off the word of the previous owner which was Mrs. Sauerbeir and were shocked when they were told the perceived property line was not the actual property line.

Krueger asked if there was a contractor involved in the construction of the current structure.

TheLINE said no, church volunteers helped with the construction.

Krueger asked if TheLINE was involved in the original conditional use permit application.

TheLINE said yes and no, he helped with it but due to health problems was not able to personally oversee the process.

Krueger went over the conditional use permit and the responsibilities of the permit. He asked how much it would cost to remove the portion of the church which was over the setback.

TheLINE said he did not have a quote.

Krueger asked if it would be a financial hardship upon the church and the people who would help with the deconstruction and reconstruction.

TheLINE said yes, it would, but if it had to be done, it had to be done.

**PUBLIC
COMMENT**

Noah Bodman, Fisher Law Firm at 502 2nd Ave E, Kalispell, represented the applicant. He spoke in opposition to the variance and made legal points which concerned the criteria for granting variances and how the application did not meet them.

Brad Blasdel, 1417 Lake Blaine Rd, Kalispell was in favor of the variance. He said they discussed property lines with all the surrounding neighbors and the consensus was the property lines were where they thought they were. They checked with the neighbors again to make sure that everyone was happy with the situation and everyone was. Then Mr. Sauerbier purchased the property from his mother and since then the complaint had been filed. He said they made the mistake of where the property line was honestly. They thought they had done things correctly and then found out they had not and he wanted to make sure the board knew that they would do whatever the board recommended to make it right.

Steve Rutledge, 195 Wilson Heights Rd, Kalispell spoke in favor of the variance. He reiterated what Brad Blasdel said and also

added they had made many improvements to the property. To take apart the part of the building in violation and move it would be, in his opinion, a hardship monetarily as well as labor wise to do. Although, they would do whatever the board recommended.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Mouch clarified how the lots were aggregated for the board.

**BOARD
DISCUSSION**

Klempel asked how many other properties in the area did not meet setback requirements.

Mouch said she did not know. Staff could not patrol the county, it would take an army. Staff, to an extent, relied on the community to bring to their attention any violations through complaints. She felt there were probably similar violations across the county but until they received the go ahead from their bosses, staff would not be patrolling the county for violations. She did understand the argument and the unfairness of it.

Krueger said there was a difference between being in the setback and a non conforming use. He asked when the R-2 zone was implemented in that area. He asked if the Cherry Lynn subdivision was after or before the R-2 zone designation.

Mouch did not know.

The board and Mouch discussed possible violations of the mandated setback distance in the neighboring areas.

Wagner and Steve Rutledge discussed the configuration of the heat pump and air conditioning unit.

Klempel asked if there was anything in writing about the property lines or was it just an oral conversation.

It was not written, only in conversation.

The board, staff and Theline discussed the approved site plan, who installed the cooling system, if a quote had been obtained to move it, if there was a previous system in place before this one, the details on the cooling and heating system now in place and possible options to remedy the problem.

Krueger wanted to make a motion that the removal of the part of the building in violation of the setback would be a hardship. He said there were other buildings in the area that were in violation.

Wagner said they did not have proof of that fact.

Krueger said he personally went into the surrounding subdivision and measured the setbacks on other properties and there were violations. He would not say if anyone present at the meeting had violations, but he was convinced there was at least one violation. He said there were other options that allowed a building another 10 feet farther in the setback. That option did not make much sense to him. He said a variance did not set precedence. They could put in a variance that said they would allow 13 feet, 7 inches of rear setback for both detached or principle structures. That would allow the church to leave the building attached, and give the person directly behind the building in question the assurance there would not be an accessory building built within five feet of the fence line.

The board discussed the pros and cons as well as options to Krueger's proposal.

**MAIN MOTION
TO ADOPT
F.O.F. AND ADD
FINDING OF
FACT**

Krueger made a motion seconded by Klempel to adopt staff report FZV 09-06 as findings-of-fact and add a finding of fact that there had been testimony to the fact the removal of the part of the building in violation of the setback would be a hardship and that a variance would not be contrary to public interest and grant a variance of 13 feet 7 inches to both principle structures and accessory structures from the rear of the property.

**BOARD
DISCUSSION**

Hollinger said he knew the board's rules and the state rules were in conflict in some places and perhaps the best way to go the route of the motion was to look at the findings and see if some of them were not relevant. He said finding H would not be relevant because parts of the condition of the variance would not be giving special privilege.

The board and Grieve discussed how the violations were created by the applicant, the benefit of the motion, and what the timeline was for curing the violation if a variance was not granted.

Hollinger asked Mouch if she had looked at the definition for accessory building.

Mouch said she had not because it was not on the table at the time she made her report, but was familiar with the term.

Hollinger and Mouch briefly discussed the definition of accessory building.

Grieve added for the record clarification of the statutes Krueger had quoted in his argument for the motion.

Hollinger said he was a champion of massaging things to make them work. Unfortunately, there were a sufficient number of the criteria which had not been met.

Klempel wanted to add that she would like an estimate or some sort of proof if someone claimed an unnecessary economic hardship. She said this was a tough problem before the board.

Krueger said it was in their bylaws they did have the authority to grant a variance in the terms of the resolution. The resolution was the eight criteria.

Wagner said they did not meet six of the eight criteria.

Krueger said they still had the authority to say they do not have to be met in this particular instance to grant a variance because they create an undue hardship. He said this was what the Board of Adjustment was for. One or both parties could go to district court if they did not agree with what the board passed.

**MOTION TO
CALL FOR THE
QUESTION**

Wagner made a motion, seconded by Krueger to call for the question.

**ROLL CALL
FOR CALL FOR
QUESTION**

The motion passed unanimously.

**ROLL CALL TO
ADOPT F.O.F.
AND ADD
FINDING OF
FACT**

On a roll call vote the motion failed with Krueger voting yes.

**BOARD
DISCUSSION**

The board discussed reconsideration of the motion.

Krueger declined to reword the motion.

Grieve said the applicants had a right to due process with the right to be approved, declined or approved with conditions.

The board and Grieve discussed the details of due process.

Wagner thought they should look at what was going on in the neighborhood around the church deeper since Krueger had gone out and measured other properties and found violations.

**MOTION TO
HAVE STAFF
LOOK INTO
NEW FINDINGS
OF FACT**

Wagner motioned that due to the fact the original request for a variance was denied, the board direct staff to look into new findings of fact for the creation of this variance.

THE MOTION DIED DUE TO A LACK OF A SECOND.

**BOARD
DISCUSSION**

Grieve said it would be challenging for staff to do that because what was of concern was the issue before them concerning a specific property.

Hollinger asked Wagner if he wanted to reword his motion.

Wagner said it had not been seconded yet.

Klempel and staff discussed the eight criteria for approval.

The board discussed how to proceed.

**MOTION TO
RECONSIDER
PENDING
LEGAL ADVICE**

Krueger motioned and Wagner seconded to reconsider the motion pending legal advice at the next scheduled meeting on January 5, 2010.

ROLL CALL

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Grieve asked for clarification from the chair on what he wanted from the result of the vote and motion.

Hollinger and Grieve discussed the motion and what action would be necessary which included Krueger getting thoughts from the county attorney's office on the issue, and the applicant could bring back further information on alternate choices and costs.

OLD BUSINESS None.

NEW BUSINESS Hollinger asked the schedule for January. He asked which members terms were expiring at the end of the year which were Hollinger, Krueger, and Klempel.

The board and Grieve discussed the procedure for the appointment of new members and training.

Klempel asked if staff could put a stipulation that the property needed to be surveyed before a variance could be granted. That stipulation would alleviate a lot of the issues the board saw.

The board discussed the issue.

Grieve said if it was a conditional use permit for a use which came before construction, then the board could consider adding a condition because of the benefit it would serve to public.

ADJOURNMENT The meeting was adjourned at approximately 7:38 pm. on a motion by Wagner. The next meeting will be held at 6:00 p.m. on January 5, 2010.

Scott Hollinger, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 2/2/10