

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
FEBRUARY 1, 2011**

**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 were Gina Klempel, Mark Hash, Gary Krueger and Terry Kramer. Scott Hollinger had an excused absence. Alex Hogle represented the Flathead County Planning & Zoning Office.

There were 2 people in the audience.

**APPROVAL OF MINUTES**

Klempel motioned and Hash seconded to approve the November 9, 2010 minutes. The motion passed unanimously with Kramer abstaining.

**ELECTION OF NEW BOARD CHAIR AND VICE CHAIR**

Klempel nominated Hollinger for chair.

With no other nominations, Hollinger was appointed chair by acclamation.

Kramer nominated Krueger for vice chair.

With no other nominations, Krueger was appointed vice chair by acclamation.

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

None.

**EVERGREEN SPA FCU 10-16**

A request by Kent & Betty Heitmann of Evergreen Spa, for a Conditional Use Permit to expand an existing non-conforming use within the Evergreen, R-2 (One-Family Limited Residential) Zoning District. The property is located at 112 Sleepy Hollow Road.

**STAFF REPORT**

Alex Hogle reviewed staff report FCU 10-16 for the board.

**BOARD QUESTIONS**

Klempel asked if anything was ADA (American Disability Act) compliant in the report.

Hogle could not answer specifically and said the applicant was in the audience and could answer that question.

Hogle and Klempel discussed briefly if the parking lot would be ADA compliant and where the ADA compliant spaces could be located.

Krueger and Hogle discussed road parking, what qualified for road parking, and the easement width.

**APPLICANT  
PRESENTATION**

Betty Heitmann, applicant, showed the board a map where she described where they could have adequate parking. She gave a brief history of the application and brought up questions she had concerning the hours of operation in the staff report, and the need for a buffer screen. She briefly outlined an alternate route for entering and leaving.

**BOARD  
QUESTIONS**

Klempel asked for clarification if they had an approach permit.

Heitmann said they were told they did need to have one, so her husband did acquire an approach permit. She went on to explain more of what they had done as far as procedure and what they still planned as far as construction to make the spa safer.

Kramer asked for clarification if the applicant had an approach permit.

Hogle, Kramer, Krueger and Heitmann discussed when the permit would be awarded, the specifics of the permit, zoning regulations and the fee for a second approach.

Kramer asked how long the spa's hours of operation had been until 9 o'clock in the evening.

Heitmann said for approximately 7 years.

**STAFF  
REBUTTAL**

Hogle said the only reason the hours did not go until 9 pm was because the applicant specified 'daytime hours' on the application. Staff was not opposed to the requested hours of 8 am to 9 pm.

**PUBLIC  
COMMENT**

None.

**BOARD  
DISCUSSION**

Hash, Hogle and Heitmann discussed the specifics on a buffer screen which included acceptable materials, a low profile, and the five foot wide buffer if it was landscaping.

Kramer wanted to see the condition #9 changed to reflect the requested hours from the applicant.

Hash and Heitmann discussed when the spa opened for business, when the classes were, how late the spa was open at night, and the busyness of the spa.

Krueger thought the board should allow these businesses to have as much opportunity to operate as they could. He felt residential areas woke up at 6 am and went to bed around 10 pm. He wanted to see hours geared more toward those hours. He proposed a scenario where the spa might want to open up earlier. He did not feel it would impact the general health or welfare of the surrounding area for the spa to have the hours from 6 am to 10 pm or around there.

Hash was a little uncomfortable imposing hours starting at 6 am, especially since the applicant said 8 am was fine with her. If the spa was not in a residential area, he would feel more comfortable with the earlier hour. The applicant wasn't asking for an earlier starting hour.

Krueger said he understood that. They had seen this before where the board had given hours until 9 pm such as wine tasting businesses and now state law would probably change that and so he felt there would be a whole slew of people who might have to come before the board and ask for an extra hour or two. If the board said the hours fit the neighborhood, there were many people who get up early to go to a 7 am job that were up around 6 am. Most residential areas wind down around 10 pm. That was why he was looking at the hours between 6 am to 10 pm.

Hash felt if the starting hour would be 6 am, the neighborhood should have a chance to speak before the board. Again, the applicant wasn't asking for a 6 am starting hour. He asked Hogle for his opinion.

Hogle said it wasn't like a restaurant or pub. He didn't feel they could change from one none conforming use to another under the current rules. He didn't have an opinion. He did feel sometimes people did like to get up early and get in a workout before work and others liked to work out after work.

Hash and Hogle discussed if it would interfere with the neighborhood if the starting time was at 6 am.

Kramer asked if the applicant had a rated capacity.

Heitmann said 101 people, but there were never that many people using the facilities. She lived next door to the spa, and explained how the spa was located at the beginning of the neighborhood, so there would not be any high traffic times. She described the existing traffic flow, clientele they serviced and the fact the spa had been in existence for 40 years.

Kramer commented the facility didn't produce noise; the only noise would be traffic. He knew from firsthand knowledge where the spa was located in the neighborhood. He could not see any impact on the neighborhood.

The board and Hogle briefly discussed the procedure they needed to follow.

**MAIN MOTION  
TO ADOPT  
F.O.F.  
(FCU 10-16)**

Hash made a motion seconded by Klempel to adopt staff report FCU 10-16 as findings-of-fact.

**BOARD  
DISCUSSION**

None.

**ROLL CALL TO  
ADOPT F.O.F.  
(FCU 10-16)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION  
TO AMEND  
CONDITION #9  
AND APPROVE  
(FCU 10-16)**

Hash motioned and Kramer seconded to approve FCU 10-16 with the amendment to condition #9 to read:

9. Hours of operation for the facility shall be permitted from 6:00 AM to 10:00 PM seven days a week year round.

**BOARD  
DISCUSSION**

None.

**ROLL CALL TO**

The motion passed unanimously.

**AMEND  
CONDITION #9  
AND APPROVE  
(FCU 10-16)**

**OLD BUSINESS** None.

**NEW BUSINESS** None.

**ADJOURNMENT** The meeting was adjourned at approximately 6:40 pm. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on May 3, 2011.

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Scott Hollinger, Chairman

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Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 7 / 5 / 11*