

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
JULY 5, 2006**

CALL TO ORDER The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, Gina Klempel, Scott Hollinger, Denny Rea and Mark Hash. George Smith, Jeff Harris, and Rebecca Shaw represented the Flathead County Planning & Zoning Office (FCPZ).

There were 23 people in the audience.

APPROVAL OF MINUTES Klempel made a motion seconded by Hollinger to approve the June 6, 2006 meeting minutes.

The motion was carried by quorum.

ZONING VARIANCE/HINCHEY (FZV 06-06) A request by Sean and Julianne Hinchey for a Zoning Variance to property within the Canyon Area Zoning District. Specifically, the variance is to Section 4.1E(3) of the Canyon Area Land Use Regulatory System, which states that new structures shall not be located within 50 feet of any natural water body. The applicant proposes to build 20 feet from the lake due to the size of the parcel and the close location of the existing road. The property is located at 796 Ross Point Drive, in West Glacier.

STAFF REPORT George Smith, of the Flathead County Planning & Zoning Office reviewed Staff Report FZV 06-06 for the Board.

BOARD QUESTIONS Klempel asked about the septic system and if it would have to be redone.

Hash asked about the 20-foot setback from the lake and asked how you define it.

Staff replied it's measured from the high-water mark and said building would not extend into the lakeshore protection zone.

APPLICANT Sean Hinchey said they are planning to build a log cabin to replace an existing mobile home. He said the neighbors are in support of the proposal.

PUBLIC COMMENT	None.
STAFF REBUTTAL	Staff said it's an odd piece of land and obtaining a variance would alleviate the problem.
APPLICANT REBUTTAL	None.
BOARD DISCUSSION	None.
MOTION	Hollinger made a motion seconded by Hash to adopt Staff Report FZV 06-06 and grant the variance.
ROLL CALL	On a roll call vote the motion passed unanimously.
ZONING VARIANCE/ GLACIER GUIDES (FZV 06-07)	A request by Glacier Guides, Inc. for a Zoning Variance to property located in the Canyon Area Zoning District. Specifically, the variance is to Sections 4.1A(2), and 4.1A(3)d of the Canyon Area Land Use Regulatory System. Specifically the applicants wish to add a freestanding highway sign, and increase the existing 40 square foot freestanding sign to 64 square feet. The property is located at 11970 Highway 2 East, in West Glacier.
STAFF REPORT	Rebecca Shaw of the Flathead County Planning & Zoning Office reviewed Staff Report FZV 06-07 for the Board.
BOARD QUESTIONS	<p>Klempel asked if Staff was suggesting they keep the sign the same size and just raise it up.</p> <p>Staff talked about the requested height increase.</p> <p>Sagami asked Staff how many signs there are that don't conform to the regulations.</p> <p>Staff said she noticed several while driving to the subject property but the applicant could probably better address it.</p>
APPLICANT	Cris Coughlin, of Glacier Guides, gave the Board the history of the business and subject property. She talked about the CALURS performance standards and said they haven't always been adhered to. She said this request is to add a second free-standing sign to the other side of the property. She talked

about surrounding properties and directed the Board's attention to a handout they received right before the meeting. She said they are asking for a useable amount of square footage for signage. She talked about a previous variance granted, which she feels set a precedent.

Sagami asked a question about the proposed signage.

Coughlin showed the Board a picture of the existing sign and explained what they plan to change.

Klempel asked about the height.

Sagami asked the applicant if they wanted to raise the existing sign, if that was an option, instead of increasing the face size.

Coughlin said she would be happy to take that option in the future, but doesn't plan to at this point.

Klempel talked about the topography.

**PUBLIC
COMMENT**

Onno Wieringa, of Glacier Raft Company, commended the County Planning Staff on the job they do. He said they were the recipients of the variance referred to in the applicant's presentation.

**APPLICANT
REBUTTAL**

Coughlin said they tried to get a TOD sign but couldn't get one from the highway department because they have highway frontage.

**STAFF
REBUTTAL**

Shaw said she was under the impression the both signs were going to be raised up.

Rea asked what Staff would recommend if they kept the existing sign as is and increased the size of the new sign.

Shaw said the face of the existing sign would still increase slightly. She said she would still recommend the same thing.

Harris talked about other signs in the area being made larger and doesn't think it set a precedent to allow for larger signs in general. He said Staff doesn't have a problem with them raising the height of the sign in the area so people can see it.

**BOARD
DISCUSSION**

Rea said it's two-fold. He talked about approving the sign and if they would be allowed to increase the height without increasing the face size.

Harris said the Board can approve the height and maintain the integrity of the face area of the sign; it's at their discretion. He said the Canyon Plan addresses outdoor advertisement and CALURS addresses on-premise signage and said there's probably a reason they felt 20 sq. ft. was a good size. He's spoke with residents of the area and said they are concerned with protecting the gateway to Glacier National Park.

Hash asked Staff when they measured the square footage for signage, how they measured the structure that supports the sign.

Smith said if the area is used as a marketing device it would count towards the square footage. He said if it's an identifiable graphic device, which speaks of the business, it becomes part of the sign.

Hash talked about the distinction factors between a previously granted variance and this application and asked Staff how it affected the recommendation.

Shaw said the other variance was from 2000 and she didn't agree with the decision at the time. She said she talked with other planners about it.

Hash said this is an intense commercial area and in the past the Board has recognized the intent to maintain the corridor.

Shaw wanted to look at this application without taking into consideration a variance that was done six years ago.

Hash asked if the location of this signage is different. He asked what business is across the street.

Shaw said the other rafting business is across the street.

Coughlin said Krueger Helicopters is about a mile up the road.

Hollinger said there's a point of service vs. safety and talked about the sign being able to be seen by people going the speed

limit on that highway.

Klempel agreed with Hollinger and can't believe the speed limit is 70 mph on that highway.

Sagami said the applicant isn't proposing to increase the width of the current sign; he said it's just a modification.

Hash said his concern is a precedent issue if the Board is to grant the variance.

Sagami agreed with Hash and again talked about the width of the existing sign.

Hash said he's concerned with the spirit and integrity of what they're trying to do here.

Klempel asked Hash if he was agreeing to the height limit but not an increase in width.

Hash said yes.

Sagami agreed with Hollinger and said the new sign should conform and said he doesn't have a problem with the existing sign.

Hash talked about the Board being fair to everyone and not giving special privilege.

Sagami thinks it can be reworded so that it's not considered "special."

Rea said there should be a motion on the existing Staff Report and a denial of the expansion of the existing sign. He said it's a "catch-22". You either have the sign go up in the air or stay where it is and increase the lettering.

Hollinger asked if you could make 2 motions on one application.

Harris said yes.

Hash doesn't think what's being proposed is a significant change. He said the problem is the overwhelming effect on the future. He said it is unfair because there are other larger

signs that are grandfathered in but he wants protection of that corridor.

Rea asked what would be more intrusive, increasing the size of the lettering or raising the sign up into the air.

Shaw agreed with Hash and said it can be unfair. She said according to the application she understood both signs were to have a bigger face.

Hash asked Staff if there would be a solution to give the applicant what they need while keeping in conformance.

Sagami asked the applicant if the new high sign would conform to the 20-ft face area.

Coughlin said no, it would be 79 sq. ft. and that it would be single-sided. She rebutted Hash's comment about precedent. She said precedent has already legally been set because variances have been granted to other area businesses.

Sagami asked what the size the new sign would be.

Coughlin said it would be an 8' x 12' oval and said the paddles would be used to support it.

Hollinger asked if there was a "science" used to establish the square footage in the regulations.

Shaw said the current sign complies with the regulations.

Harris said Staff couldn't answer that for sure because Staff wasn't present when the regulations were first written. He said they choose a certain sign face area for a reason, which was probably to maintain the corridor. He said Staff is concerned with safety as well and hopes signs won't cause accidents.

Hash asked if there's a way to give the applicant what she wants without compromise to the area.

Shaw said the new sign that's being requested is the first sign you would see and things the safety issue would be addressed by having the second sign.

Harris said Staff has an issue with a sign that is 4x's larger than what is allowed.

Klempel asked if there is anything in the CALURS regulations that allow for exemptions due to topography or if it's a "one size fits all".

Hash talked about compliance to regulations and said he would feel uncomfortable doing something different than what the Planning Office recommended.

Harris said he's not sure if Staff can offer a solution given the size of the sign; he said the height of the sign is not an issue. He said they could recommend, for example, going 2x's larger than what's allowed but where would you stop.

Coughlin commented she's the last one with tree's standing and this would be the last of the issues....

Hash said the Board can do what it wants to do. He talked about other commercial developments in the area.

Sagami asked about the signage.

Shaw said it's an oval shaped sign.

Hash asked about the portable sign.

Shaw said it's smaller than the big sign but wasn't sure of the measurements.

Hash asked if Staff included the paddles, which prop the sign up, into the square footage since they could be construed as marketing.

Shaw thought they were included.

Sagami agreed with Hash and said it's too big.

MOTION

Sagami made a motion seconded by Hollinger to adopt Staff Report FZV-06-07 as findings of fact and grant the variance request for the sign height, to be measured from the US Highway 2 road grade and deny the request for a second sign to exceed the 20 square foot sign face area.

ROLL CALL

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Coughlin asked if she had to comply with the square footage.

Rea said they approved the Staff Report as findings of fact and that's what the Board approved.

**CONDITIONAL
USE PERMIT/
WAYNE TURNER
FCU-06-10**

George Smith of the Flathead County Planning & Zoning Office asked the Board to take a short recess to consider new public comment received since the writing of the Staff Report and mailing of the Board packets.

A request by Wayne Turner for a Conditional Use Permit to operate a rock crusher on property within the Westside I-2 (Heavy Industrial) Zoning District. The property is located south of US Highway 2, off of Appleway Drive.

Klempel disclosed she and her husband own a gravel pit but had no interest in this request.

STAFF REPORT

George Smith reviewed Staff Report FCU 06-10 for the Board.

**BOARD
COMMENTS**

Hash asked Staff the nature of the letters and petition received.

Smith said the letters were from adjacent property owners and said the petition consisted of 104 signatures from people opposed to the project. He said all letters received were in opposition.

APPLICANT

Hubert Turner spoke on behalf of his father Wayne Turner. He clarified Montana Forest Products is not a participant in this application. He went through some of the findings-of-fact. He said a floodplain delineation study is in the works and a copy would be submitted to the County when it's done. He talked about the subject property and said it's been an industrial use for many years and existed before the residences in the area. He talked about the speeding problem off Highway 2 onto Appleway Drive and said that's something the Kalispell Police Department should take care of; they shouldn't be punished because people speed on that road. He talked about the access onto Appleway and said it's been there for about 80 years. He talked about one of his dump truck drivers and said he takes offense to the fact people don't think they will drive safely. He said he's not in the gravel

business; he's in the subdividing business and is proposing this crusher because he can't get a reasonable product from existing gravel pits. He said this application is to allow a rock crusher for his own use. He doesn't totally agree with the Staff Report and said there would be dust abatement on the site.

Sagami asked what months they would be crushing gravel.

Turner said primarily during the winter months. He reiterated he's in the developing business, not gravel, and said they may need gravel during other times of the year if they were to run out.

Rea asked how many truckloads per day he is proposing.

Turner said between 100-150 trucks at maximum capacity.

Rea asked him what kind of rock crusher he would have.

Turner said it would be a diesel-powered machine, because there's not electricity on-site, but doesn't have anything in mind yet.

**PUBLIC
COMMENT**

Irene Houston, 1314 2nd St W, said the land was agricultural at one point; it hasn't always been industrial.

Sue Ennis, owns 2 properties in the area, 1330 A & B and 1201 2nd St W, and said that's a growing residential area. She said there was a mill on the subject property when she brought her properties and she was okay with that. She knows the area is growing but would like the area to continue to be beautiful and safe. She thinks it would cause traffic problem and knows how busy Appleway Road is because she has to cross the Highway 2 intersection daily to go to work at National Flood Services. She said it will be hot, dirty, and noisy and thinks it would be poor planning to allow this. She would like to see something more conducive to a residential neighborhood.

Melissa Evanoff, 1311 4th St W, was opposed to this project. She said traffic is a huge issue. She expressed concern about the Great Northern Bike Trail, where families recreate, and talked about the danger of a dump truck hitting someone on the trail. She said no matter what vehicle you're driving, accidents happen. She said if they can hear traffic on Hwy 2,

they would hear the crusher. She talked about the eco-system and the effects on Ashley Creek. She talked about Stoneridge subdivision and said people who buy those lots won't want to someday look down on an Empire Estates type of subdivision. She asked when enough is enough. She talked about the fine powder that comes from rock crushers and about the red powder that used to come from the mill.

Sean Conrad, of Kalispell Planning, said the City has concerns of potential impacts of a rock crusher including Appleway Drive, city streets, and air quality. He pointed out a conditional use permit is a discretionary entitlement and the permit runs with the property if it were to be sold.

William Chilton, 1220 3rd St W, talked about the safety factor of Highway 2 and Appleway Drive. He asked the applicant about gravel extraction on the site.

Rea called a point of order reminding Mr. Chilton to address the Board. He said this permit request is not for a gravel pit.

Chilton wanted to know if the site has been approved for a gravel pit and continued to talk about the crusher. He said this proposal is out of the question. He said there would be fine dust blowing halfway across town. He talked about the old mill and said there were enough particles carried in the air to turn the Peterson School playground red.

Jeff Cardsock, 1334 2nd St W, had concerns about the Rails to Trails path and doesn't want to see a truck driver hit anyone. He said he's been a truck driver for 10 years and was 2 trucks behind the driver who killed the girl by the new high school. He said you can't always see a small person that's right in front of you.

Jim Aho, 212 S Meridian Rd, said he's had many years experience with rock crushers and said anyone who says they aren't noisy is crazy. He said there's a huge amount of dust and the winds from the west would blow the dust into Kalispell. He said it would pollute the air and there's no way to control the dust in the air, only on the ground.

Don Snow, 66 Stonecrest Dr, wanted to ask the Turner's the number of homes proposed in their neighboring development.

Rea said he would have to ask the Turner's after the meeting.

Bob Hafferman, 1337 3rd St W, expressed concern for the intersection of 2nd St W and Meridian Rd and said it's a heavy use area especially when school is in session. He said if the Board issues the requested permit, he would like to see them condition it so no trucks could access 2nd St W. He commented on Sean Conrad's remarks and talked about a report that has not been adopted by the City Council.

**STAFF
REBUTTAL**

Smith said Staff has never disputed the property is properly zoned but is concerned with public health and safety. He said just because industrial use was okay 50 years ago doesn't mean it's a suitable use today. He said Staff isn't trying to punish the applicant but are addressing safety issues. He said you can't expect a 5 year old kid to yield to dump trucks. He thinks it's an unacceptable use and a risk to the public.

Sagami asked about uses, which could be permitted, that might cause just as much or more traffic. He asked how you balance that consideration with what's being requested tonight.

Rea called a point of order and said the Board has to consider the request before them tonight and will deal with other things as they come along.

Harris talked about the vehicle trips per day and broke it down to 2 vehicle trips every 5 minutes.

**APPLICANT
REBUTTAL**

Turner asked Harris how many trips per day are generated from a residential home.

Harris replied 10 trips per day.

Turner spoke hypothetically about how many vehicle trips per day would be generated from a residential development in that area. He addressed some of the concerns brought up during public comment. He said he is working to clean-up the site and said it's more dangerous in its current condition than it would be if it were used as a rock crushing site. He talked about air pollution and DEQ. He talked about bike path and said he would have to cross the path at some point whether it be further west, by the weigh station, at West Valley Dr, or as proposed in this application. He said the crusher would be ½

mile from city limits and the sound wouldn't carry that far. He said he wouldn't be opposed to a condition restricting their access onto 2nd St W, although he wouldn't like it. He talked about "grandfathered" uses and said it does stand for something.

**BOARD
DISCUSSION**

Klempel asked Staff if Rails to Trails was built on their industrial ground or if it's a separate piece of land.

Staff replied it's on railroad right-of-way.

Hollinger talked about the Bypass and said that may alleviate some of the concerns about routing.

Turner pointed out the Bypass was indicated on the map provided.

MOTION

Hash made a motion seconded by Hollinger to adopt Staff Report FCU 06-10 and **deny** the Conditional Use Permit.

**BOARD
DISCUSSION**

Hash said George Smith spent a lot of time on this and said the Staff Report was one of the strongest the Board has seen from the Planning Office.

Sagami asked about the potential rezoning of this property to R-1 or R-2 and ask how many truckloads would go through this area if it were developed into residential.

Smith said at some point, gravel will be going in there; he knows the trail will be crossed somewhere. He said the crossing is in a high density area as of now; it's at the head of the trail and gets the most use.

Sagami asked if the applicant were to limit their operating months to January, February, and March, when the traffic counts are less, if it would alleviate any concern.

Smith said that doesn't alleviate concerns, just reduces the impact on the bike path. He said traffic on Appleway road is still a concern.

Rea talked about the road infrastructure and said some of the hauling would have to be done at night. He commented on how long they've been working on Meridian Road and said it has to do with the time of the day the work is done.

Sagami said the community would have a problem with this going forward. He said there are a lot of things that could go on an industrial piece of property without the Board of Adjustment's approval.

Rea said perhaps the neighbors need to look into coming up with a neighborhood plan.

Klempel read a section pertaining to Industrial uses. She said it's a "bundle" of contradictions, which makes it difficult for both the neighbors and the applicant.

Sagami thinks there's an inconsistency because the Turner's paid good money for an industrial property, which they intended to use but there's also a safety issue.

Hollinger talked about other uses that could go in on this property and said safety is an issue.

Hash said there are different industries this Board doesn't see and said the Board can only do what they can as things come before them.

Sagami said there are some intrusive allowable uses that could occur. He is concerned with safety and talked about adding a condition to restrict the traffic during certain months. He said the applicants are willing to restrict the traffic to a certain time of year and wondered what would be worse, having this restriction or something potentially worse coming in.

Hollinger said this permit could go on for a certain number of years.

Harris reminded the Board the permit would run with the land.

Hollinger said you could condition it for a certain amount of time and restrict the hours, however he does understand the safety concern regarding people recreating on the bike path.

Rea asked about putting a time limit on the permit.

Harris said the Board has the authority to limit the time during which a permit is valid.

Rea said the applicant may find out a permit, limited to 18 or 24 months, might not be feasible.

Harris gave the Board some conditions to consider.

Sagami said he's worried about the alternative if the Board denies this permit.

Smith said there's no way to anticipate what the property owners may choose to do with the property. He said the Board has to deal with applications as they come in. It doesn't do any good to add conditions that can't be enforced and doesn't believe it is a safe use for the property.

Harris talked about land use patterns and what would be appropriate for the area. He talked about the Bypass going through the site and said that would enable more growth in the area. He said the Board may be able to limit the life of the permit, but if not, the permit runs with the property. He said that's a difficult situation but Staff has put limits on certain permits to maintain some sort of control.

Hollinger talked about the uses on the site.

Smith talked about the surrounding uses in the area and said it's mostly residential.

Hollinger asked about it facilitating more residential development.

Hash said the Board needs to look at the criteria for the conditional use permits and take the neighbor's concerns into consideration. He said he's worked in a gravel operation and noise and dust are a problem. He said the Board needs to respect the Planning Office's recommendation.

Sagami asked the applicant the minimum amount of time in a year they would need for it to be viable.

Wayne Turner said 2 months per year for 10 years depending upon the winter.

Hollinger asked the applicant if they've looked on-site for gravel deposits.

Turner said there is none. The highway department drilled 100-ft deep there and he said it consists of layers of sediment.

ROLL CALL On a roll call vote the motion passed 4-1 with Sagami dissenting.

OLD BUSINESS Hash about a cell tower on the O'Connell property and talked about FAA requirements.

NEW BUSINESS Harris said each Board member was given a Draft Growth Policy and Staff would appreciate comments.

ADJOURNMENT The meeting was adjourned at 9:00 p.m. on a motion by Hollinger. The next meeting will be held at 6:00 p.m. on August 1, 2006.

Dennis Rea, President

Jill Goodnough, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 9/5/06