

FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING TEXT AMENDMENT REPORT (#FZTA-10-01)
JUNE 29, 2010

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by members of the Theodore R. Jeffers Trust for an amendment to the text of the Flathead County Zoning Regulations. The proposed amendment would add “community residential facilities” as a conditional use under the West Valley zoning designation.

The Flathead County Planning Board will conduct a public hearing on the proposed text amendment on July 14, 2010 in the 2nd Floor Conference Room of the Earl Bennett Building, located at 1035 1st Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will also hold a public hearing on the proposed amendment at a date and time yet to be determined. Documents pertaining to the proposed text amendment are available for public inspection in the Flathead County Planning and Zoning Office on the 2nd floor of the Earl Bennett Building, at 1035 First Avenue West in Kalispell. Prior to the Commissioner’s public hearing, documents pertaining to the text amendment will also be available for public inspection in the Flathead County Clerk and Records Office, located at 800 South Main Street in Kalispell.

I. APPLICATION REVIEW UPDATES

A. Land Use Advisory Committee/Council

The West Valley Land Use Advisory Committee met on June 22, 2010 at 7:00 P.M. in the Stillwater Grange Hall to review the proposed text amendment and make a recommendation to the Flathead County Planning Board. Following staff’s summarization of the report, the committee had questions regarding the different classes of community residential facilities proposed and/or allowed, as well as the difference between multi-family housing (which is not permitted under West Valley zoning) and a community residential facility. During public comment only one individual spoke, and asked staff to reiterate the court opinion that identified West Valley as a “residential” area. After the public comment portion of the meeting was closed, a motion was made and seconded by committee members to send a favorable recommendation for approval of the request to the Planning Board; upon roll call vote the motion passed unanimously.

B. Planning Board

The Flathead County Planning Board will hold a public hearing on July 14, 2010 in the 2nd Floor Conference Room of the Earl Bennett Building to review the proposed text amendment and make a recommendation to the Flathead County Commissioners. This space is reserved for a summary of the Flathead County Planning Board’s discussion and recommendation.

C. Commission

The Flathead County Commissioners will hold a public hearing on the proposed amendment on a date to be determined. This space is reserved for a summary of the Commission’s discussion and decision.

II. GENERAL INFORMATION

A. Application Personnel

i. Applicant

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Kalispell, MT 59901

ii. Technical Assistance

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B. Section(s) Proposed for Amendment

The proposed text amendment is to Section 3.34.030 of the Flathead County Zoning Regulations, regarding conditional uses in the West Valley zoning district. The amendment would add “community residential facilities” as a conditional use option in the district, with facilities serving eight or fewer residents eligible for an administrative conditional use permit (defined as Class I facilities according to Section 7.04.120 of the zoning regulations).

C. General Character of and Reason for Amendment

In March 2010, a representative for the Theodore Jeffers Trust contacted the planning office to determine whether a community residential facility would be permitted in the West Valley zoning district. The applicant was interested in operating a Class I residential facility on their property, which is zoned West Valley. Upon initial inspection it was determined West Valley zoning does not include any class of community residential as a permitted or conditional use in the district. However, both the County zoning regulations and the Montana Code Annotated define Class I community residential facilities as a conforming residential use in all residential zoning districts [pursuant to FCSR Section 7.04.120 and M.C.A. Section 76-2-412(1)]. Class II and III facilities are also considered appropriate in residential areas but are typically listed under conditional uses and require an additional level of review dependent on the zoning designation.

Community residential facilities have been included as administrative or conditional uses under every district classified ‘residential’ in the County zoning regulations, (inclusive) from SAG-10 through RA-1. Additionally, the North Fork zoning district identifies Class I community residential facilities as permitted uses in that zone, while the Lakeside zoning district lists community residential facilities, specifically nursing homes, as conditional uses. In a 2008 opinion from the Montana Supreme Court

(reference Flathead Citizens for Quality Growth; Tutvedt Family Part. v. Flathead County Bd. Of Adjustment, case #DA 06-0173), the West Valley plan area and zoning district was determined predominantly residential in character. The following text from that court case expressly supports this interpretation:

“...Even though the (West Valley) District embraces residential, agricultural and silvicultural uses, both the (West Valley) Plan and the Regulations themselves show that the primary purpose in rezoning the District was to regulate residential development and maintain the suitability of residences, alongside other uses which have been traditionally practiced in the West Valley area...”

Based on the definitions in the County regulations as well as M.C.A., the Court opinion on the West Valley district and the consistent handling of community residential facilities in other residential zoning designations, it was conveyed to the applicant that the regulations would support their application for a Class I community residential facility on their property zoning West Valley without a text amendment. However, it was generally acknowledged by staff and the applicant’s technical representative that amending the text to include community residential facilities as conditional uses similar to all other residential zoning district would be most defensible in the long term application of West Valley zoning. Planning staff met with the applicant’s representatives on March 24, 2010 to discuss the text amendment process and the subsequent administrative conditional use permit process, should the text amendment be approved. The Planning & Zoning Office received the formal application for the text amendment on April 2, 2010.

D. Proposed Amendment(s):

The proposed amendment would include adding text (as follows) to Section 3.34 of the Flathead County Zoning Regulations:

SECTION 3.34 WV - WEST VALLEY

3.34.030 Conditional Uses

1. Animal hospitals/veterinary clinics.
2. RV parks with no tent camping.
3. Camp and retreat center.
4. Cellular towers.
5. Class 3 Landfills.
6. Communication towers, masts.
7. Golf course and related facilities (dwelling lots must be approved through the cluster provisions of these regulations).
8. Gravel extraction.
9. Gun clubs, shooting ranges.
10. Commercial hunting ranch for small game.
11. Kennels.
12. Neighborhood convenience store (See related performance standards).
13. Commercial stables/riding academies.

14. Temporary buildings or structures, occupied one year or longer.
15. Public utility installation, major (service area beyond neighborhood).
16. *Community residential facilities.**

**Administrative Conditional Use Permit, eight or fewer.*

E. Criteria Used for Evaluation of Proposed Amendment:

Amendments to the text of the Flathead County Zoning Regulations are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

F. Compliance With Public Notice Requirements:

Legal notice of the Planning Board public hearing on the proposed text amendment will be published in the June 27, 2010 edition of the Daily Interlake, in compliance with Section 2.08.020(5) of the zoning regulations.

Following the Planning Board hearing on July 14, 2010, public notice of the zoning text amendment will be physically posted in at least five public places within the affected zoning district, according to statutory requirements found in Section 76-2-205 M.C.A and according to Section 2.08.020(7) of the zoning regulations. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the date, time and location of the public hearing before the Flathead County Commissioners on the proposed text amendment.

G. Agency Referrals

No agency referrals were sent regarding this text amendment, as it applies to a broad geographic area and not a specific property requiring evaluation by a local or state agency.

III. COMMENTS RECEIVED

A. Public Comments

No public comments have been received to date regarding the proposed text amendment. It is anticipated any individual wishing to provide public comment on the proposal will do so during the Planning Board public hearing scheduled for July 14, 2010. Any written comments received following the completion of this report will be provided to the Planning Board and Board of Commissioners and summarized during the public hearing(s).

B. Agency Comments

No agency referrals were sent regarding the proposed text amendment; therefore this section is not applicable.

IV. EVALUATION OF PROPOSED AMENDMENT

A. Analysis of Potential Impact

The proposed text amendment would incorporate a new conditional use – community residential facilities – under the West Valley zoning district. While the addition of a new use option has the potential to impact the surrounding community, the addition of community residential facilities would have less of a direct impact because the proposed use would be ‘conditional’ and therefore require an added level of review based on the size and scope of the facility. Similar to other districts that incorporate community residential facilities, a Class I facility would be reviewed as an administrative conditional use, while Class II and Class III facilities would be required to undergo the full conditional use permit process involving a public hearing before the Board of Adjustment. All facilities would be required to meet the performance standards set forth in Sections 5.03 of the zoning regulations, which would help mitigate potential impacts resulting from the added use under West Valley zoning.

B. Review of Proposed Amendment (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

i. Whether the proposed text amendment is made in accordance with the Growth Policy and Neighborhood Plan.

Flathead County Growth Policy

Section 76-2-411 of the Montana Code Annotated defines community residential facilities as “a community group home for developmentally, mentally or severely disabled persons that does not provide skilled or intermediate nursing care; a youth foster home, kinship foster home, youth shelter care facility, transitional living program or youth group home as defined in 52-2-602; a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; a licensed adult foster family care home; or an assisted living facility licensed under 50-5-227.” Community residential facilities are similarly defined in the Flathead County Zoning Regulations as a “community or group home, which may provide for skilled or intermediate nursing care for developmentally, mentally or physically disabled persons.” Examples of such uses include youth foster homes, groups homes, halfway houses, convalescent homes, family care, personal care, nursing or retirement homes; however this list is not exhaustive. Based on the applicable definitions, the use is clearly residential in nature, and will be reviewed accordingly throughout this section as well as throughout the body of this report.

Chapter 3 of the Flathead County Growth Policy on ‘Demographics and Housing’ identifies specific goals and policies that support the inclusion of “community residential facilities”, as defined under M.C.A. and the Flathead County Zoning Regulations, in the West Valley zoning district. The following goals and policies found in Chapter 3 of the Growth Policy specifically support the text amendment requested:

- G.15 Promote a diverse demographic of residents.

- P.15.2 Provide services and facilities to support elderly and special needs residents.
- G.16 Safe housing that is available, accessible and affordable for all sectors of the population.

Other sections of the growth policy document generally support the proposed text amendment to the West Valley zoning district, with regard to transportation, health and safety, public facilities and services as well as land use. The following list of goals and policies would be applicable to a community residential facility and will be discussed under the applicable review criteria later in the report:

- G.8 Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety and general welfare of neighbors and efficiently provide local services.
- P.23.5 To protect public safety and allow safe travel, restrict development in areas without adequate road improvements.
- P.26.3 New development should be encouraged to utilize contractor haul of refuse.
- P.27.1 Contract hauling should be encouraged in all new developments to reduce traffic and disposal burden at satellite container sites (green boxes).
- G.28 Efficient and effective wastewater treatment and drinking water delivery.
- P.34.3 Promote land use patterns that permit logical, predictable and effective extension and integration of utilities.

West Valley Neighborhood Plan

The proposed text amendment would apply to the West Valley zoning district, a district *“to provide the orderly growth and development in the West Valley area consistent with the community vision statement as expressed by the text and map exhibits of the West Valley Neighborhood Plan”*. Areas impacted by the proposed text amendment would be those areas included in the neighborhood plan, and therefore any change proposed to the zoning district should also be consistent with the goals and policies of the neighborhood plan on which the zoning was based.

The Land Use section of the neighborhood plan identifies the character of West Valley as a mixture of residential, agricultural and forest uses. Based on this language in addition to the court opinion previously discussed, the West Valley plan area and zoning district is classified primarily “residential”. While the plan document does anticipate increased residential development in the area, it specifically discourages the inclusion of multi-family dwellings and mobile home parks within the West Valley area. Although community residential facilities

could be considered multi-family dwellings, the zoning regulations clearly separate the two uses by definition and based on applicable performance standards. There are no specific land use goals or policies that would restrict the inclusion of community residential facilities as a conditional use within the West Valley district, particularly given the added level of review involved in the permitting process supported by a number of goals and policies within the neighborhood plan. The following list of goals and policies generally support the proposed text amendment, and will be discussed as necessary under the applicable review criteria found in this report:

- Consider fiscal and service impacts of new development;
- Development of new uses and subdivision of land should not conflict with the normal and customary forest or agricultural practices occurring in the vicinity and covenants of new subdivisions should reference that such activities may be occurring in the vicinity;
- New residential developments should be located within the jurisdictional boundaries of the West Valley Fire & Rescue Department;
- Consider the adequacy of existing roads when reviewing new development proposals;

Finding #1 – The proposed text amendment would be consistent with the Flathead County Growth Policy because there are specific goals and policies that support the residential services provided by a community residential facility, and because the additional review required of a conditional use would promote the general goals and policies regarding transportation, health and safety and public utilities.

Finding #2 – The proposed text amendment would be consistent with the West Valley Neighborhood Plan because a community residential facility is a residential use, the West Valley plan area is characterized as residential and because the amendment is generally supported by the goals and policies found in the neighborhood plan document.

ii. Whether the proposed text amendment is designed to:

1. Secure safety from fire and other dangers;

The text amendment proposed would incorporate a new conditional use, community residential facilities, into the West Valley zoning district. Conditional uses typically require additional review to ensure a proposed use complies with the applicable performance criteria and adequately addresses public health and safety, particularly where fire and emergency response times are concerned. The text amendment would not allow an outright permitted use in the West Valley district but would include community residential facilities as conditional uses, thereby requiring an additional level of review and ensuring public safety was accounted for in future development.

2. Promote public health, public safety, and general welfare;

As stated above, the text amendment proposed would add a new conditional use to the West Valley zoning district. As a conditional use, community residential facilities proposed in the future would undergo review and be required to receive approval from the Planning and Zoning Office prior to beginning operations. Part of the review process would include evaluating whether or not a proposed facility would have any impacts on public health, safety, or the general welfare of residents in the county. Through this mechanism the proposed text amendment would promote public health, safety and welfare.

The proposed text amendment would also promote general welfare by providing a service to a specific sector of the population that is expressly needed in the community. One of the policies included in Chapter 3 of the Growth Policy on demographics and housing specifically identifies the need to “provide services and facilities to support elderly and special needs residents” of the Valley. By including community residential facilities as a conditional use within the West Valley zoning district, the text amendment encourages the provision of a service to improve the health and general welfare of an important segment of the population.

Finding #3 – The text amendment proposed would secure safety from fire and other dangers and promote public health, safety and welfare because “community residential facilities” would be added as a conditional use under West Valley zoning and would require an additional level of review to address and mitigate all aspects of public health and safety.

Finding #4 – The text amendment would promote public health, safety and welfare by allowing the opportunity for a community residential facility within the West Valley district to provide services and facilities not currently available in the area but that are important to the health and welfare of a specific population.

3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

The addition of “community residential facilities” as conditional uses within the West Valley zoning district is consistent with their inclusion in other residential use districts, and the size and scale of a facility would be limited based on the availability of public services and utilities. A Class III facility serving over 12 individuals at any given time is required to be served by public water and sewer, pursuant to Section 5.03.010 (4) of the zoning regulations, and would therefore be limited to areas of the district that met these provisions. Public water and sewer facilities include community wells and septic systems having 15 or more service connections or serving more than 25 persons daily for 60 or more days in a calendar year [M.C.A. Section 75-6-102 (13) and (14)]. As a conditional use, all community residential

facilities would be required to undergo review to ensure the adequate provision of public services and facilities, regardless of the class of the facility.

Finding #5 - The addition of “community residential facilities” as a conditional use in the West Valley zoning district would facilitate the adequate provision of public services and facilities because a future community residential facility would undergo added review as a conditional use and would be required to meet the applicable performance standards and guidelines specific to the class and type of facility proposed.

iii. In evaluating the proposed text amendment(s), consideration shall be given to:

1. The reasonable provision of adequate light and air;

As conditional uses, community residential facilities would be required to adhere to the all applicable bulk and dimensional requirements of the West Valley zoning district regarding lot size, density, setback distances and building heights. The amendment would not alter any of the current provisions of the West Valley zoning district ensuring adequate light and air, with regard to future development. The added level of review necessary to obtain a conditional use permit for a community residential facility would ensure the bulk and dimensional requirements were met in the future.

Finding #6 – The proposed text amendment to include community residential facilities as conditional uses under West Valley zoning would ensure the provision of adequate light and air because the added use would be conditional, requiring an added level of review for impacts, and because it would be required to meet all applicable bulk and dimensional requirements of the West Valley zoning district.

2. The effect on motorized and non-motorized transportation systems;

Impacts occurring as a result of the proposed text amendment would be reviewed on a case-by-case basis during the conditional use permit process. A community residential facility may fall into one of three different categories depending on the type and scale of the facility. During the conditional use permit review process, impacts to transportation systems would be assessed based on the location, classification and infrastructure available to serve a proposed facility. It is anticipated that any impacts from a proposal would be mitigated through conditions (of a CUP), or the facility would not receive approval. There would be no immediate effect on motorized and non-motorized transportation systems resulting from the addition of community residential facilities as a conditional use under West Valley zoning.

Finding #7– The text amendment would have no direct effect on motorized and non-motorized transportation systems because the added use – community residential facilities – would require review as a conditional use whereby

specific impacts based on the location, classification and existing infrastructure serving the proposed facility would be assessed and mitigated at that time.

3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The West Valley zoning district is located north and west of the city of Kalispell, south and west of the city of Whitefish. While distinctly rural in character, the area is unique in its proximity to more urbanized and suburban areas of the County such as Kalispell and Whitefish. As previously discussed, the neighborhood plan identifies the area as a mixture of residential, agricultural and silvicultural uses, with the intent of the district to maintain the rural and scenic quality of the area while providing opportunities for uses and growth consistent with the rural character and existing land uses. High density residential development of any kind is not considered appropriate to the West Valley plan area. While community residential facilities are conditionally permitted in urbanized areas of the County, the inclusion of this type of use in the West Valley zoning district would not result in the intrusion of urban uses in the landscape. By adding community residential facilities as a conditional use under the West Valley district, the area would be incorporating a use that is consistent with the goals, policy and vision of the neighborhood plan and the overall residential character of the district, and would involve a level of a review beyond an outright permitted use to ensure the resulting growth is consistent with the requirements of the zoning district.

Finding #8 – Including community residential facilities as a conditional use in the West Valley zoning district would encourage compatible growth in the area because the district is located in proximity to more urbanized areas, but incorporating the use conditionally would ensure the rural character of the area was maintained through an added level of review and consideration as well as impact mitigation.

4. The character of the district(s) and its peculiar suitability for particular uses;

As previously discussed, the 2008 Supreme Court opinion clearly identifies the predominant character of the West Valley district as “residential”. Community residential facilities are a residential use based on the definitions and text found in the County zoning regulations as well as Sections 76-2-411 and 76-2-412 of M.C.A. In addition Section 76-2-412 of M.C.A states these uses are to be permitted or conditionally permitted in residential zoning districts based on the classification or type of facility proposed. The proposed text amendment would be well-suited to the West Valley district because it would incorporate a residential use in a district that has been characterized as predominantly residential.

Finding #9 – The character of the West Valley zoning district is suited for the proposed text amendment because the district is residential and community residential facilities are a residential use appropriate for inclusion as permitted or conditionally permitted uses in all residential zoning districts.

5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

As previously stated, community residential facilities are a residential use consistent with other residential uses and included in residential zoning districts throughout Flathead County as a use requiring a CUP. The addition of this use under the West Valley zoning district would not alter the character of the area or incorporate a use that is inconsistent with other uses permitted or conditionally permitted within this or other districts.

Finding #10 - The proposed text amendment would encourage the most appropriate use of land throughout the West Valley zoning district because community residential facilities are residential uses that would be compatible with the existing permitted and conditionally permitted uses already incorporated within the district.

iv. Whether the proposed text amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The inclusion of community residential facilities in the West Valley district is consistent with the uses' inclusion in other residential districts throughout the County as well as within jurisdiction of both municipalities. The City of Kalispell includes community residential facilities as a conditional use in all residential districts and a few business districts as well; Kalispell defines the use pursuant to M.C.A Section 76-2-411. Similarly, the City of Whitefish includes the use under conditional uses in all residential districts, as well as the resort business districts. Both municipalities limit the facilities allowed in lower density residential districts to Class I facilities serving less than eight people. While this limitation slightly differs from the way community residential facilities are dealt with in County zoning, their inclusion in all residential districts indicates that incorporating the conditional use in the West Valley area would be consistent with the uses in place at the County level as well as in Kalispell and Whitefish.

Finding #11 - The text amendment to include community residential facilities as conditional uses would provide consistency between West Valley and other County zoning designations and would promote compatibility with zoning in adjacent urbanized areas because both Kalispell and Whitefish include community residential facilities as conditional uses in all residential zoning districts and define the use similarly to County zoning regulations and based on the applicable section(s) of M.C.A.

V. SUMMARY OF FINDINGS

1. The proposed text amendment would be consistent with the Flathead County Growth Policy because there are specific goals and policies that support the residential services provided by a community residential facility, and because the additional review required of a conditional use would promote the general goals and policies regarding transportation, health and safety and public utilities.
2. The proposed text amendment would be consistent with the West Valley Neighborhood Plan because a community residential facility is a residential use, the West Valley plan area is characterized as residential and because the amendment is generally supported by the goals and policies found in the neighborhood plan document.
3. The text amendment proposed would secure safety from fire and other dangers and promote public health, safety and welfare because “community residential facilities” would be added as a conditional use under West Valley zoning and would require an additional level of review to address and mitigate all aspects of public health and safety.
4. The text amendment would promote public health, safety and welfare by allowing the opportunity for a community residential facility within the West Valley district to provide services and facilities not currently available in the area but that are important to the health and welfare of a specific population.
5. The addition of “community residential facilities” as a conditional use in the West Valley zoning district would facilitate the adequate provision of public services and facilities because a future community residential facility would undergo added review as a conditional use and would be required to meet the applicable performance standards and guidelines specific to the class and type of facility proposed.
6. The proposed text amendment to include community residential facilities as conditional uses under West Valley zoning would ensure the provision of adequate light and air because the added use would be conditional, requiring an added level of review for impacts, and because it would be required to meet all applicable bulk and dimensional requirements of the West Valley zoning district.
7. The text amendment would have no direct effect on motorized and non-motorized transportation systems because the added use – community residential facilities – would require review as a conditional use whereby specific impacts based on the location, classification and existing infrastructure serving the proposed facility would be assessed and mitigated at that time.
8. Including community residential facilities as a conditional use in the West Valley zoning district would encourage compatible growth in the area because the district is located in proximity to more urbanized areas, but incorporating the use

conditionally would ensure the rural character of the area was maintained through an added level of review and consideration as well as impact mitigation..

9. The character of the West Valley zoning district is suited for the proposed text amendment because the district is residential and community residential facilities are a residential use appropriate for inclusion as permitted or conditionally permitted uses in all residential zoning districts.
10. The proposed text amendment would encourage the most appropriate use of land throughout the West Valley zoning district because community residential facilities are residential uses that would be compatible with the existing permitted and conditionally permitted uses already incorporated within the district.
11. The text amendment to include community residential facilities as conditional uses would provide consistency between West Valley and other County zoning designations and would promote compatibility with zoning in adjacent urbanized areas because both Kalispell and Whitefish include community residential facilities as conditional uses in all residential zoning districts and define the use similarly to County zoning regulations and based on the applicable section(s) of M.C.A.

VI. RECOMMENDATION

Upon review, the proposed text amendment to include “community residential facilities” as a conditional use under the West Valley zoning district meets all 10 review criteria required of a zoning text amendment under M.C.A. Section 76-2-203 M.C.A. and Section 2.08.040 of the Flathead County Zoning Regulations. Based on the 11 Findings of Fact above, staff recommends the Flathead County Planning Board adopt staff report FZTA-10-01 as findings of fact and recommend approval of the zoning text amendment to the Flathead County Commissioners.