

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
ZONING VARIANCE REPORT FZV-10-03  
OCTOBER 22, 2010**

A report to the Flathead County Board of Adjustment regarding a request by Wink, Clausen and Anderson Trust for a variance to Section 3.26.040(4), Bulk and Dimensional Requirements of the Flathead County Zoning Regulations.

The Flathead County Board of Adjustment will hold a public hearing on the proposed variance on November 9, 2010 beginning at 6:00 pm in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed variance is specific to a property located within the advisory jurisdiction of the Bigfork Land Use Advisory Committee (BLUAC). On October 28, 2010 at 4:00 pm in the Bethany Lutheran Church at 8559 Montana Highway 35 in Bigfork BLUAC will hold a public meeting to review the variance request and make a recommendation to the Flathead County Board of Adjustment. This space is reserved for a summary of the Committee's discussion and recommendation.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing on the proposed land use on November 9, 2010 beginning at 6:00 pm in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. This space is reserved for a summary of the Flathead County Board of Adjustment's discussion and decision at that hearing.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant(s)**

Wink, Clausen and Anderson Trust  
PO Box 365  
Bigfork, MT 59911

**ii. Landowner(s)**

Same as above

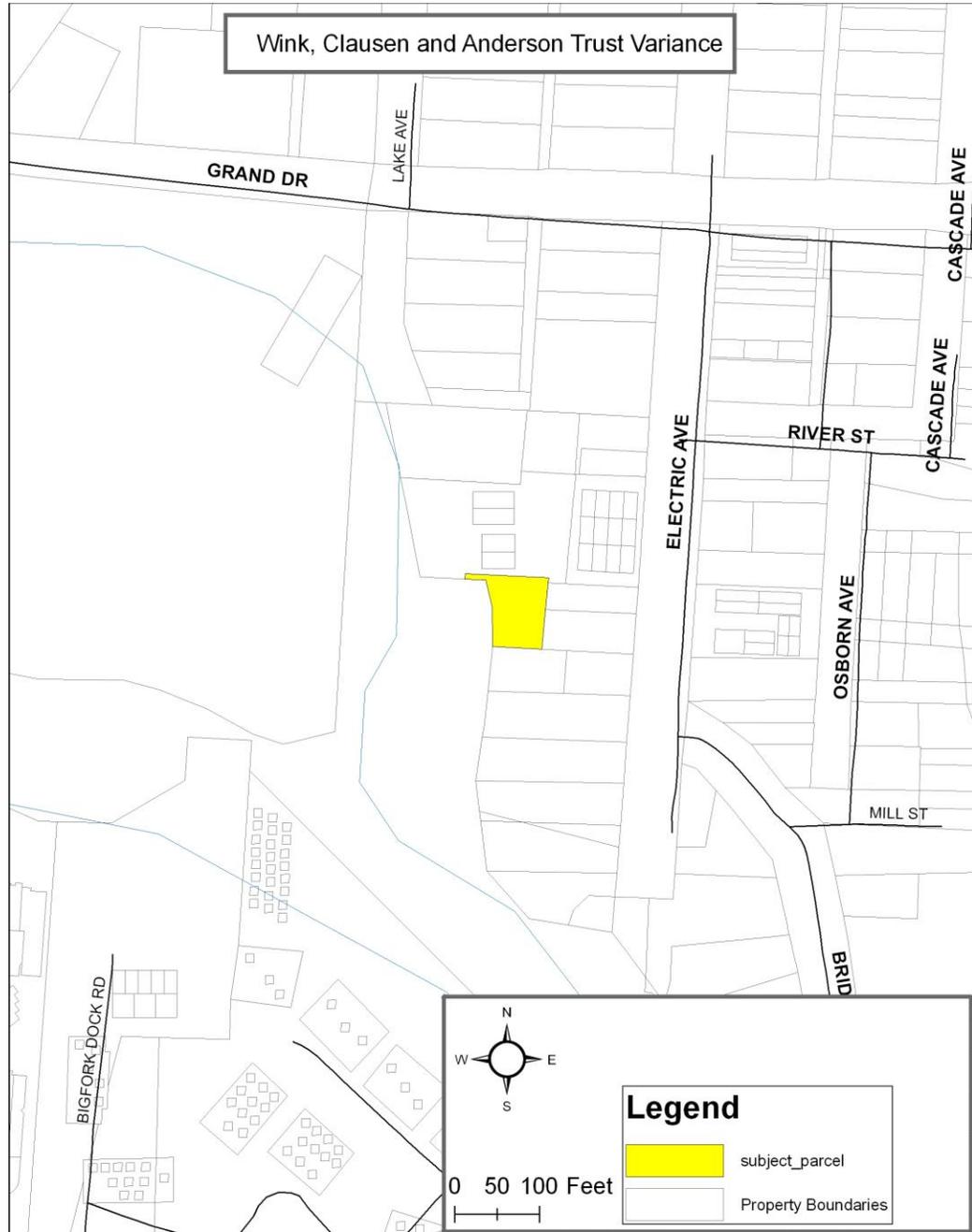
**iii. Technical Assistance**

Michael Fraser  
Fraser Management and Consulting, PLLC.  
690 North Meridian, Suite 103  
Kalispell, MT 59901

**B. Property Location (for which a variance is being requested)**

The subject property is located in downtown Bigfork, just west of Electric Avenue on Bigfork Bay. The property's address is 464 Electric Avenue. It can be legally described as Riverstreet amended Lot 5, 7, 8 Block 3 in Township 27 North, Range 20 West, Section 36 P.M.M. Flathead County, Montana.

**Figure 1: Subject property (yellow)**



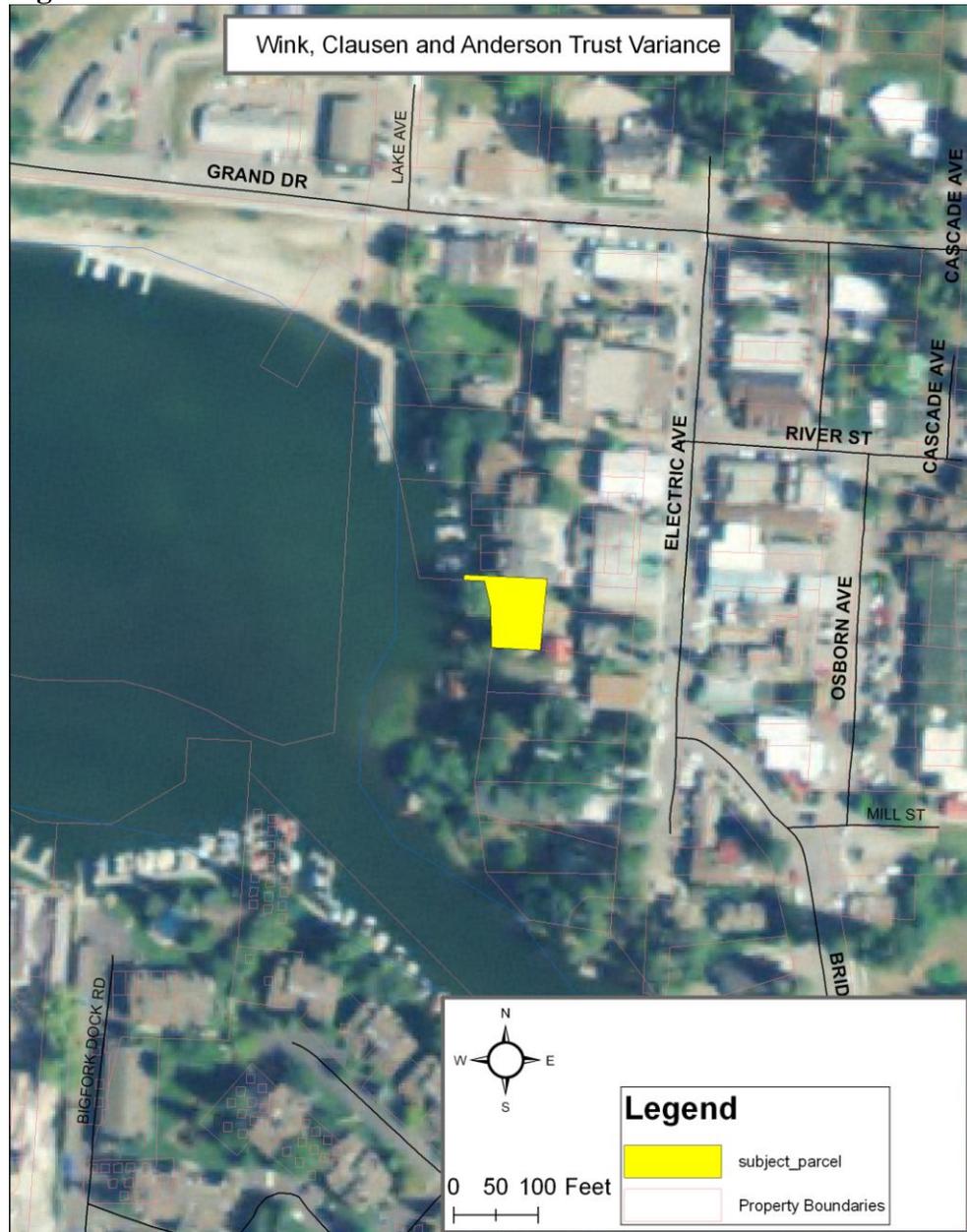
**C. Existing Land Use(s) and Zoning**

The property is currently vacant. The zoning is Commercial Village Resort (CVR) Section 3.26 Flathead County Zoning Regulations (FCZR).

**D. Adjacent Land Use(s) and Zoning**

The subject property is located on the bay on the west side of downtown Bigfork. The majority of the uses surrounding the property are commercial. Directly adjacent to the north are condominiums, and directly adjacent to the south is what appears to be a single family residence. All of the properties in the immediate area are zoned CVR.

**Figure 2: Character of the area**



**E. Summary of Request**

The applicant is intending to construct a 4 unit condominium similar to the Bay Landing Condominiums immediately to the north. Multi-family dwellings are a permitted use in the CVR zoning district (Section 3.26.020 (16)).

**F. Compliance with Public Notice Requirements**

Adjacent property notification was sent on October 13, 2010 to property owners within 150 feet of the subject property. Legal notice of the BLUAC's meeting and the Board of Adjustment's public hearing will be published in the Daily Interlake on October 24, 2010.

**G. Agency Referrals**

Agency referrals were sent via email on September 28, 2010 to Bigfork Water and Sewer Department because there is a sewer main on the subject property and to Bigfork Fire Department because of the proposed height of the building.

**III. COMMENTS RECEIVED**

**A. Public Comments**

As of 5 pm of October 22, 2010, no public comments have been received. Any public comments received after 5 pm on October 22, 2010 will be distributed directly to the appropriate boards at the time of their meeting.

**B. Agency Comments**

- Bigfork Water and Sewer
  - On this applicant's project that was completed just North of the proposed project, a variance was given by the District allowing them to construct the building within 7.5' of the sewer main instead of the 10' setback normally required. It turned out that the developer only kept the foundation back 7.5' from the sewer main. Decks, stairways and substantial landscaping features were put over the sewer main entirely blocking District access to the main. It appears the developer plans to do the same with this building. The District will not grant a variance for the sewer main setback, and all improvements must be outside the setback.

Any agency comments received after 5 pm of October 22, 2010 will be distributed directly to the appropriate boards at the time of their meeting.

**IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Section 2.05.030 of the Flathead County Zoning Regulations, what follows are review criteria for consideration of a variance and suggested findings of fact based on review of each criterion. Pursuant to Section 2.05.030 of the Flathead County Zoning Regulations, "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;**

A four-plex is a reasonable use of the property in the CVR zoning district. Section 3.26.020 FCZR lists the permitted uses in the CVR zoning district, item 16 lists multi-family dwellings. There are multi-family dwellings in downtown Bigfork including a four-plex on the property directly adjacent to subject property on the north. The applicant could build a four-plex on the property if they could comply with the bulk and dimensional requirements in the CVR district. There are unique factors outside the applicant's control that require the proposed four-plex to build up, not out. Strict compliance with the regulations limits the ability to build a four-plex without a variance.

**Figure 3: The subject property is the vacant property; the condo on the left of the picture is the project immediately to the north of the subject property.**



**Finding #1-** Strict compliance with the provisions of the regulations would limit the reasonable use of the property because multi-family dwellings are a permitted use in the CVR zoning district that other property owners enjoy and the subject property has unique characteristics that limit the ability to build a four-plex without a variance.

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

As discussed in item A(i.), multi-family dwellings are a permitted use within the immediate vicinity in the CVR district and there other properties in the CVR zoning district that enjoy multi-family dwellings. The property directly to the north of the subject property enjoys a similar four-plex to the one the applicant is proposing.

**Finding #2--** Strict compliance with the provisions of the regulations would deprive the applicant of rights enjoyed by other properties similarly situated in the same district because multi-family dwellings are a permitted use in the CVR zoning, the property adjacent on the north to the subject property has a four-plex, and there are other multi-family dwellings in the district.

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

The Flathead County Zoning Regulations measures the height of buildings from the undisturbed ground level or “natural grade.” Over the course of time, it appears fill has been added to the subject property. The applicant is not able to determine what the “natural grade” is, and therefore is considering the fill to be the natural grade. The fill, which was not added by the applicant, extended the upper flat portion of the property which resulted in a steeper drop. At the toe of the slope is the Bigfork Water and Sewer main. The sewer main requires a 10 foot setback. Because of the location of the sewer main, and the need for access and a parking area on the eastern portion of the parcel, the four-plex would have to be situated on the steep hill. Furthermore, the lot is smaller and a different shape, square rather than rectangle, than other lots on this part of the bay. All of these factors result in a limited buildable area. The hardship is a result of the size and shape of the lot, the location of the sewer main, and the topography of the lot. The applicant has no control over any of these characteristics.

**Finding #3-**The hardship is created by circumstances over which the applicant has no control because the hardship is due to the location of the sewer main, the topography of the lot, and the size and shape of the lot.

**C. The hardship is peculiar to the property.**

The subject property is situated on the slope leading down to Bigfork Bay. When comparing the subject property to other properties located along this portion of the bay it does appear that the subject property has been filled and the slope is much more abrupt than neighboring properties. When comparing the subject property to other properties in the CVR district, the slope is unique. Furthermore, the square shape and small size of the subject property appears to be unique when comparing it to other properties along the bay. Sewer mains typically run along streets. In this situation the sewer main runs along the bay, likely because it was

the easiest place to locate the line. The sewer main running across the property is likely unique to the properties along the bay.

**Finding #4-** The hardship is peculiar to the property because the physical characteristics of the property, the location of the sewer main, and the size and shape of the lot combine to make a situation that is not found elsewhere in the CVR district.

**D. The hardship was not created by the applicant.**

It is not known when the fill was placed on the property but the applicant has stated it was prior to them purchasing the property. The sewer line was also placed on the property before it was purchased by the applicant. The applicant has no control over the topography of the subject property or the location of the sewer main on the property. The applicant also has no control over the size of the lot. The most recent survey of the property was done in 2000, which was for a boundary line adjustment because of a building encroaching on the property line. According to the survey, the current owner of the property did not own the property at that time.

**Finding #5-** The hardship was not created by the applicant because the fill, sewer line, and lot size were existing conditions on the subject property that were not within the control of the applicant.

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

The building envelope on the subject property is limited because of the constraints on the property such as the location of the sewer main, steep slopes, and the size and shape of the lot. For a four-plex to work on the property, the applicant must build up instead of other options like a stepped building. The design of the building was chosen not because it was the least expensive option, but because it was the only option for a four-plex that was viable for the property.

**Finding #6-**The hardship is not economic because the building design is a result of topography, the location of the sewer main, and the size and shape of the lot.

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

Public health and safety is the primary reason there is a height restriction of 35 feet. Special equipment for firefighting may be necessary for accessing the higher floors of a building if taller than 35 feet. The special equipment necessary may not be accessible for volunteer fire departments in rural areas. In this particular situation, the portion of the property accessible by fire trucks would be about 25 feet. The portion of the structure above 35 feet would not be accessible to emergency vehicles regardless of the height because there is no vehicular access to the part of the property along the bay. The bottom two floors of the structure would be similar to a daylight basement with part of the structure underground

and part above. As a result the entire height of the building would be accessible to emergency vehicles from the uphill side and therefore the impacts to the general welfare of the public would be minimal.

Because the structure will be built into the hillside, it will not appear to be taller than the surrounding buildings. The proposed structure will actually appear a few feet shorter than the four-plex directly to the north. From the uphill side of the property, the proposed structure will be about 25 feet tall. The proposed structure will not intrude into the skyline more than any other building in downtown Bigfork.

**Finding #7-**The proposed variance will not adversely affect the neighboring properties or the public because the building will not appear to be taller than any other building in downtown Bigfork and public emergency services will access the property from the uphill side where the height will be 25 feet from natural grade.

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

In the application, it is stated that other designs were considered and the proposed design was the option that intruded the least past the 35 feet limit. The applicant believes it is not possible to construct a four-plex on the property that would not require a variance. Because of the sewer line, area required for parking and turn around space, and small lot size, the building envelope is constrained. A stepped building is not possible partially because of the constrained building envelope and partially because an elevator in the design requires the building to be aligned vertically.

**Finding #8-** The variance request is the minimum variance which will alleviate the hardship because the physical constraints of the property limit the building envelope therefore a vertical design is the only practical design.

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

Multi-family dwellings are a permitted use within the CVR zoning district. There is a building similar to the proposed structure that is immediately to the north of the subject property. The subject property is burdened with unique characteristics such as the topography and the sewer main that are not within the applicant's control. The combination of the topography, sewer main and small parcel size limits the buildable space.

**Finding #9-** The proposed variance will not confer a special privilege that is denied other similar properties in the same district because multi-family dwellings are a permitted use in the CVR district and the properties immediately to the north of the subject property has a four-plex similar to the proposed structure.

## V. SUMMARY OF FINDINGS

**Finding #1-** Strict compliance with the provisions of the regulations would limit the reasonable use of the property because multi-family dwellings are a permitted use in the CVR zoning district that other property owners enjoy and the subject property has unique characteristics that limit the ability to build a four-plex without a variance.

**Finding #2--** Strict compliance with the provisions of the regulations would deprive the applicant of rights enjoyed by other properties similarly situated in the same district because multi-family dwellings are a permitted use in the CVR zoning, the property adjacent on the north to the subject property has a four-plex, and there are other multi-family dwellings in the district.

**Finding #3-**The hardship is created by circumstances over which the applicant has no control because the hardship is due to the location of the sewer main, the topography of the lot, and the size and shape of the lot.

**Finding #4-** The hardship is peculiar to the property because the physical characteristics of the property, the location of the sewer main, and the size and shape of the lot combine to make a situation that is not found elsewhere in the CVR district.

**Finding #5-** The hardship was not created by the applicant because the fill, sewer line, and lot size were existing conditions on the subject property that were not within the control of the applicant.

**Finding #6-**The hardship is not economic because the building design is a result of topography, the location of the sewer main, and the size and shape of the lot.

**Finding #7-**The proposed variance will not adversely affect the neighboring properties or the public because the building will not appear to be taller than any other building in downtown Bigfork and public emergency services will access the property from the uphill side where the height will be 25 feet from natural grade.

**Finding #8-** The variance request is the minimum variance which will alleviate the hardship because the physical constraints of the property limit the building envelope therefore a vertical design is the only practical design.

**Finding #9-** The proposed variance will not confer a special privilege that is denied other similar properties in the same district because multi-family dwellings are a permitted use in the CVR district and the properties immediately to the north of the subject property has a four-plex similar to the proposed structure.

## VI. RECOMMENDATION

Staff recommends the Flathead County Board of Adjustment adopt staff report FZV-10-03 as findings of fact and approve the variance from Section 3.26.040(4), Bulk and Dimensional Requirements of the Flathead County Zoning Regulations.