

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-14-03)**  
**MICHAEL AND DEBBIE THOMAS**  
**DECEMBER 16, 2014**

A report to the Flathead County Board of Adjustment regarding a request by Michael and Debbie Thomas for a variance to the 35-foot maximum height restriction in a “RC-1 Residential Cluster” zone [Section 3.14.040(4) FCZR]. The variance would apply to property located at 156 Bjork Drive within the Bigfork Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on January 6, 2015 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this application are available for public inspection at the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

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

Update: 12/19/14

The Bigfork Land Use Advisory Committee held a public hearing regarding the proposed variance on December 11, 2014 at 4:00 P.M. at the Bethany Lutheran Church. The Committee recommended approval (3-2) of the variance to the maximum height on a property within the Bigfork Zoning District. As part of the motion the Committee chose to reject the staff report’s Findings of Fact 3, 4, 7, 8 and 9 and chose not to replace them.

**B. Board of Adjustment**

The Flathead County Board of Adjustment will hold a public hearing on January 6, 2015. This section will be updated following the meeting.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Michael Roessmann  
8000 Hwy 35  
Bigfork, MT 59911

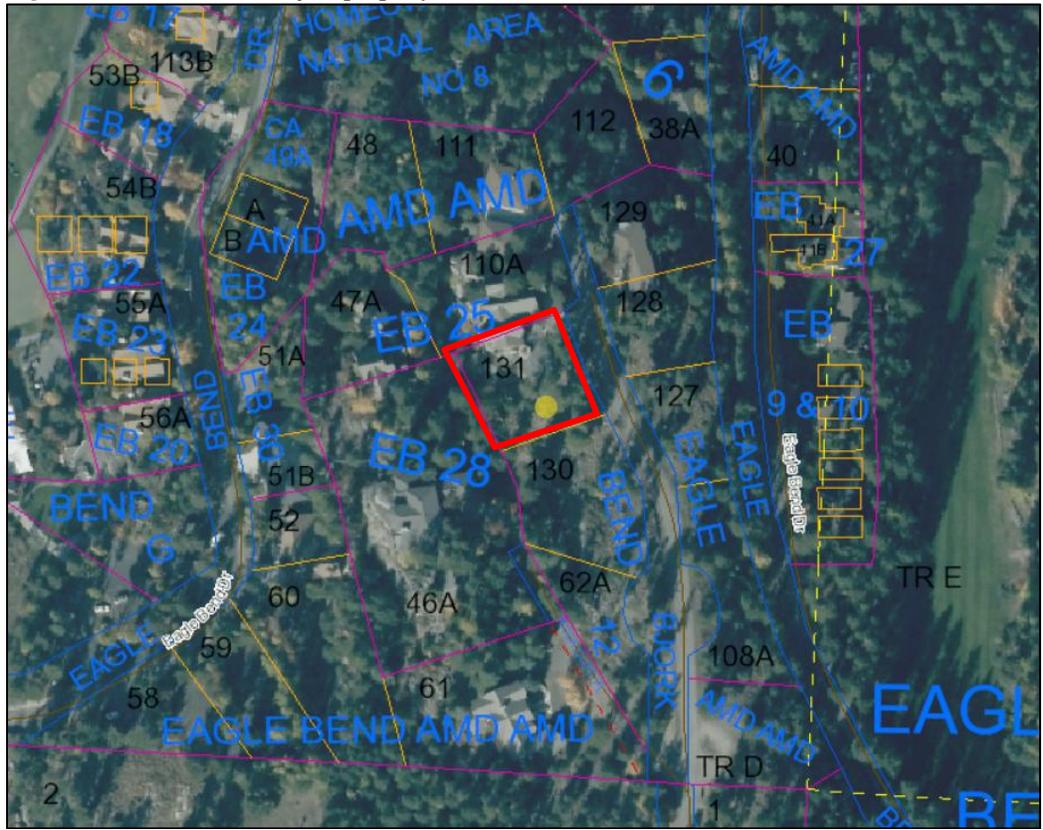
**ii. Landowner**

Michael and Debbie Thomas  
1100 Wigwam Parkway  
Henderson, NV 89074

**B. Property Size and Location**

The subject property is approximately 0.33 acres in size, is located at 156 Bjork Lane. The property can be legally described as Lot 131 of Eagle Bend No. 12 Subdivision in Section 26, Township 27 North, Range 20 West, P.M.M., Flathead County, Montana.

**Figure 1:** Aerial of the subject property (outlined in red)



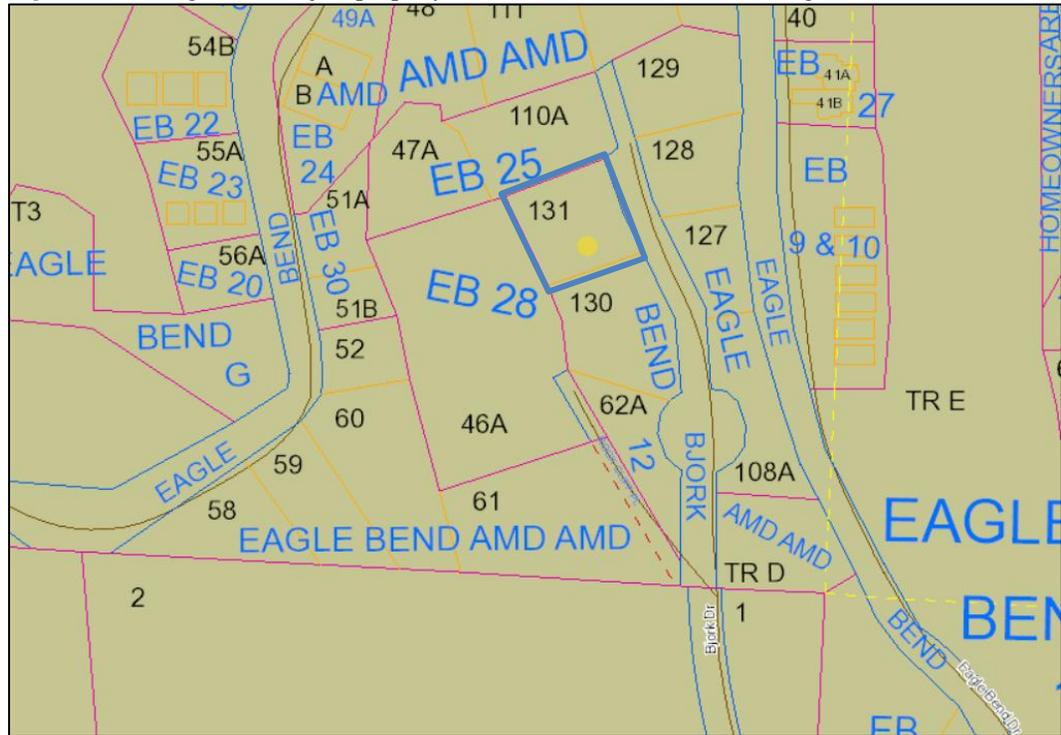
**C. Existing Land Use(s) and Zoning**

The subject property is located in the Bigfork Zoning District and is currently zoned ‘RC-1 Residential Cluster,’ “A district to provide a residential theme in a rural environment. The district is primarily intended to encourage a master planned community with a central recreational focus. A full range of public services, such as public water supplies and sewage treatment are generally required to serve the district. The gross density for units to be clustered is one (1) unit per acre (i.e., a one acre lot can only have one unit)” [per Section 3.14.010 FCZR]. Currently the property is vacant, forested and sloped down to the west from the road. The property contains a significant change in elevation between the front of the lot and the rear.

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

The property is located on a hill and the properties to the north, south, east and west of the subject property are single family residential on lots similar in size to the subject property. Properties immediately to the north, south, east, and west of the subject property are zoned “RC-1 Residential Cluster” (See Figure 2).

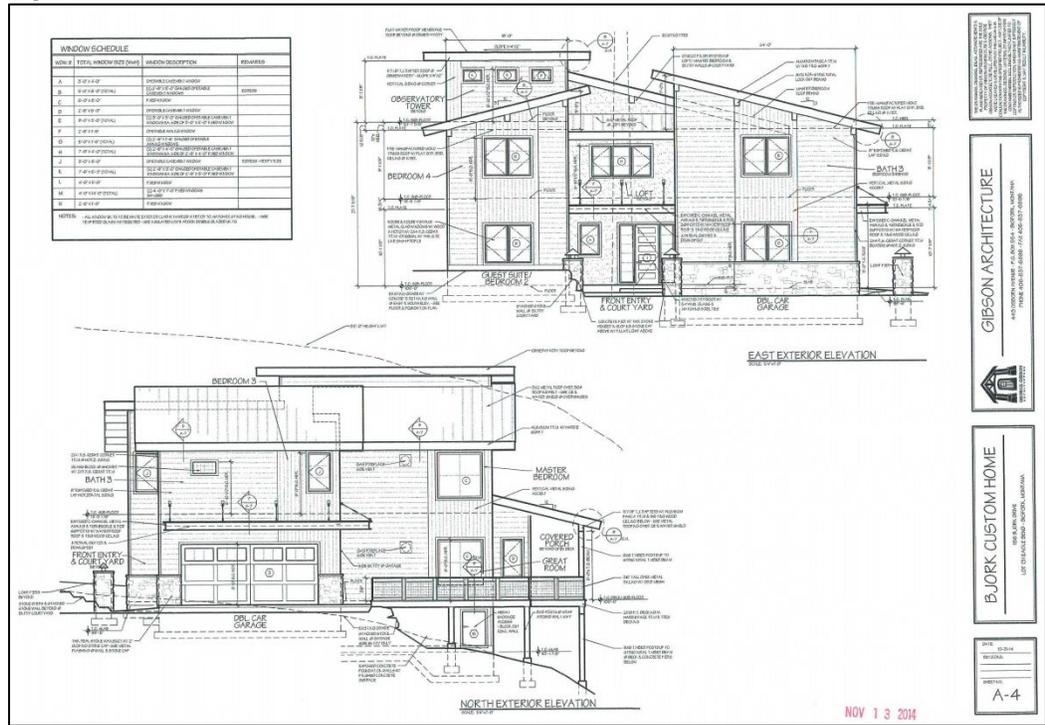
**Figure 2:** Zoning of the subject property (outlined in blue) and surrounding area



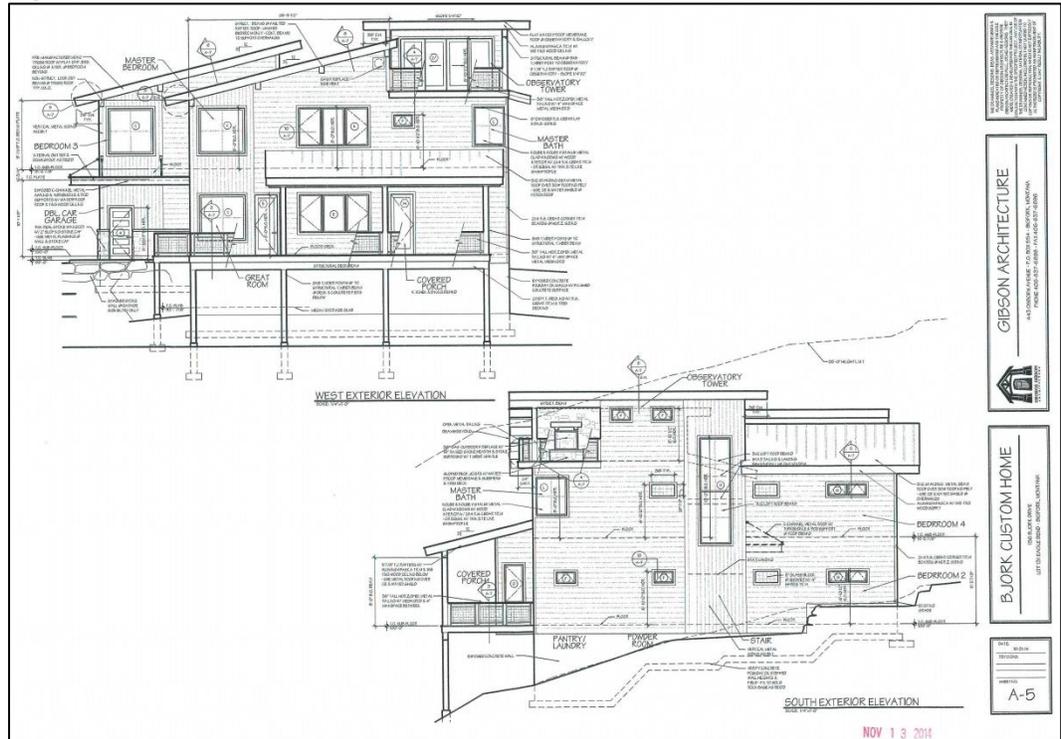
**E. Summary of Request**

The applicant has requested a variance to the 35-foot maximum height restriction in a “RC-1 Residential Cluster” zone [pursuant to Section 3.14.040(4) FCZR], in order to construct a roof over a covered porch. Building height is defined as, “The vertical distance from the undisturbed ground level at the perimeter (drip edge) of the building to a parallel plane at the highest point of the roof or parapet wall.” During the site visit staff determined that the lot has a significant drop in elevation from the front to the rear. Because of the elevation change from the front to the rear, the rear of the house is on piers approximately 12 feet high (as shown in Figure 3 and 4 below). The application states, “The request for a variance is to allow the roof over the covered porch to be maintained. Currently the third level consists of an interior area along with a small deck area which is over living space below. The objective is to allow this area to be built as designed to protect users from the elements as well as assist in maintaining long term health of the structure by minimizing the level of snow and moisture. With weather being an impactful aspect of life in the Flathead the covered porch affords a three season usage regardless of weather conditions. Currently a portion of the roof is approximately 3 feet above the allowable height of 35 feet.” Therefore the applicant has requested a variance to the height limit to allow for a 38 foot high building.

**Figure 3: North and East Exterior Elevation**



**Figure 4: South and West Exterior Elevation**



**Figure 5:** Rear of the proposed building



**F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on December 15, 2014 pursuant to Section 2.05.030(2) of the Zoning Regulations. Legal notice of the public hearing on this application will be published in the December 21, 2014 edition of the Daily Interlake.

**G. Agency Referrals**

Agency referrals were sent to agencies listed below regarding the variance request.

- Bigfork Fire District
  - Reason: The property is located within the Bigfork Fire District and has the potential to impact services.
- Bigfork Water and Sewer District
  - Reason: The property is located within the Bigfork water and Sewer District and has the potential to impact services.
- Flathead City-County Health Department
  - Reason: The property is located within the department’s jurisdiction.
- Flathead County Public Works Department
  - Reason: The property is located within the department’s jurisdiction, and has the potential to impact county facilities.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the variance request. It is anticipated any individual wishing to provide public comment on the application will do so during the public hearing at the Bigfork Land Use Advisory Committee meeting scheduled for December 18, 2014 and at the Board of Adjustment meeting scheduled for January 6, 2015.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bigfork Fire Department
  - Comment: “Bigfork Fire Department supports the request FZV-14-03 Thomas Zoning Variance. As a department, it will not effect our operations.” Email dated December 4, 2014.
- Flathead County Road and Bridge Department
  - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated December 3, 2014.

### **IV. CRITERIA REQUIRED FOR CONSIDERATION**

Per Section 2.05.030 of the FCZR, what follows are review criteria for consideration of a variance request, as well as suggested findings of fact based on review of each criterion. It should be noted Section 2.05.030 of the FCZR states “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;**

The application states, “By design the elevation of the house is 32 feet tall well within the maximum height. As the structure elevation is assessed along the descending hillside; the once compliant height quickly grows to approximately 38 feet which is no longer conforming to zoning. If the site had a more gentle slope, or none at all this design wouldn’t have any issues with conformance.”

The lot is approximately 14,475 square feet, with a buildable area outside the setbacks of approximately 8,830 square feet. The applicant is proposing to construct a house that covers approximately 2,786 square feet. The permitted lot coverage is 40% and the proposed structure would cover 19% of the lot.

As the applicant states, the property decreases in elevation to the west of the road and in the rear of the lot the slope is greater than the front. The rear of the house as proposed would require piers up to 12 feet in height. Because of these piers the first floor at the rear of the house is approximately 12 feet above the natural grade. The house would not be able to move forward on the lot because as it is currently proposed would be 20 feet from the right-of-way, which is equal to the front setback.

According to Section 7.07.060 FCZR Floor Area is defined as, “*The sum of the gross horizontal areas of the floors of a building or buildings measured from the exterior faces of exterior walls and from the centerline of division walls. Floor area shall include basement space where the ceiling is at least 30 inches above the ground elevation of adjacent portions of the lot, elevator shafts and stairwells at each floor, mechanical equipment rooms, or attic spaces with headroom of seven feet six inches or more, penthouse floors, interior balconies and mezzanines, enclosed porches. Floor area shall not include accessory water tanks and cooling towers, mechanical equipment or attic spaces with headroom of less than seven feet six inches, exterior steps or stairs, terraces, breezeways, and open spaces.*”

The proposed house would have a floor area of approximately 5,292 square feet; this includes the mechanical room in the basement, the garage, all the living space and the observation tower/balcony on the third floor. The plans submitted show a covered porch on the first floor and four floors (including the basement and the tower). Although the applicant wants to cover the porch on what is labelled an “observatory tower,” the applicant could include the observation tower/balcony in the construction of the house but not cover them with a roof. Not covering the observatory balcony would not preclude the construction of the rest of the 5,292 square foot home. Therefore it appears strict compliance with the height restriction would not deny the applicant of a reasonable use of the property.

**Finding #1** - Strict compliance with the regulations would not limit the reasonable use of the property because even though the house cannot be situated closer to the front of the lot, the proposed house already includes a covered porch and the proposed house is approximately 3,953 square feet which is a reasonable use of a single family lot of this size in this area.

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

During the site visit staff determined that there was only one house that was similarly situated as most of the lots on the road do not contain a house on them. The house to the north appears to be situated slightly higher than the subject property but appears to be only one story, on piers at the rear of the house and under 35 feet in height. The house to the north has a porch extending from the first floor similar to what is being proposed on the subject property but does not include a third floor observation tower.

As previously stated, the proposed house would have a floor area of approximately 5,292 square feet; this includes the mechanical room in the basement, the garage, all the living space and the observation tower/balcony on the third floor. Using information from the State of Montana’s Computer Assisted Mass Appraisal (CAMA) report the house to the north is approximately 3,647 square feet. As proposed the house

would be approximately 1,645 square feet larger than the house to the north. If the applicant is required to build in strict compliance with the regulations, a height requirement of 35 feet would be required and the proposed structure could still be built without the covered balcony. Requiring compliance with the 35 foot height restriction would likely not deprive the applicant a right enjoyed by other properties situated within the same subdivision.

**Finding #2** - Strict compliance with the regulations would likely not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the proposed house could still be built in compliance with the regulations if the roof over the observation balcony is not constructed.

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

The application states, “The hardship with this lot is threefold. First, the actual buildable envelope on this lot consists of approximately 40% of the lot. This is further constrained with the setbacks on the front and side yard. The second aspect is the steep nature of the slope which is not usable on the west side of the lot. The third component is the fact that this lot is solid rock monolith and to establish a true basement level would be to cost prohibitive to develop. The desire is to work with the building envelope as established and integrate the house into the site based on what the site will allow us to do.” Everything discussed by the applicant could still be done even without a covered balcony.

The lot was created in 1991 as part of the Eagle Bend No. 12 Subdivision, prior to the current owner purchasing the property. The subject property is relatively flat adjacent to the road with a significant drop in elevation on the west side of the lot. Much of the flat portion of the lot is within the 20 foot front setback. The drop in elevation is approximately 55 feet from the southeast corner to the northwest corner of the lot. The applicant is proposing to construct the majority of the house on the flatter portion of the lot. The site plan shows a drop in elevation of approximately 8 feet from the southeast corner to the northwest corner and a drop of 10 feet from the southeast corner to the southwest corner of the proposed structure. From the rear of the porch to the rear of the lot, the lot has a slope of approximately 50%. The hardship, which is being alleged by the applicant, appears to be attributable to topography, over which the applicant has no control because the proposed design would comply on a flat lot. However, whether or not the inability to construct a covered balcony on the observation deck on an otherwise compliant structure constitutes a hardship based on other variance criteria is the purpose of this review.

**Figure 6:** West half of the lot behind proposed house location



**Finding #3** – The alleged hardship appears to be attributable to topography because the subdivision was platted prior to the adoption of the Flathead County Zoning Regulations and the lot is located on ground with slopes of up to 50%.

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

According to the application, “This site is unique amongst the neighborhood as it has more substantial elevation drop immediately from the road level. Level ground is minimal at best, and what is sloped is aggressively sloped. This really limits the options for resolution by simple relocation of the structure within the building envelope.”

As previously stated the subject property is relatively flat adjacent to the road with a significant drop in elevation on the west side of the lot. Much of the flat portion of the lot is within the 20 foot front setback. The drop in elevation is approximately 55 feet from the southeast corner to the northwest corner of the lot. The applicant is proposing to construct the majority of the house on the flatter portion of the lot. The site plan shows a drop in elevation of approximately 8 feet from the southeast corner to the northwest corner and a drop of 10 feet from the southeast corner to the southwest corner of the structure. From the rear of the porch to the rear of the lot the lot has a slope of approximately 50%.

The lots directly to the south and north are situated on the top of a hill, have steep slopes west of the road and would have a building footprint similar to the subject property. Figure 7 below show the property directly to the south, the figure shows

a steep drop in elevation at the west side of the lot similar to the subject property. Therefore, the alleged hardship does not appear to be peculiar to the subject property in this area.

**Figure 7:** Property to the south from the road



**Finding #4** – The alleged hardship does not appear to be peculiar to the subject property in this area because the properties to the north and the south are similarly situated at the top of a hill, have steep slopes west of the road and would have a building footprint similar to the subject property.

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

The application states, “The hardship was not created by the applicant. It’s very difficult to predetermine the outcome of design in relation to the lot’s limitations or unique features prior to the design process reaching its conclusion. We have made every effort to minimize the issue given the limitations that we’ve had to deal with.”

The property is located within the Bigfork Zoning District, which was adopted on September 27, 1993. As previously stated, the lot was created through subdivision in 1991, prior to the current owner owning the property and prior to zoning being adopted. At the time the lot was created no front setback would have existed and a house could have been constructed in the relatively flat area of the lot. As currently proposed only a small area in the west side of the house would require the variance. The slope at the back of the house is approximately 50% and the slope at the front of the house is approximately 18.5%. Because of the slope change the rear of the house has been designed to sit on piers.

However, the proposed house would have a floor area of approximately 5,292 square feet; this includes the mechanical room in the basement, the garage, all the living space and the observation on the third floor. The plans submitted show a covered porch on the first floor and four floors (including the basement and the tower). Although the applicant wants to cover the porch on what is labelled an “observatory tower,” the applicant could include the observation tower/balcony in the construction of the house but not cover them with a roof. Not covering the observatory balcony would not preclude the construction of the rest of the 5,292 square foot home. If the applicant was to build the structure without the covered balcony on the observation deck the house would be compliant with zoning. Therefore, the hardship appears to have been created by the applicant because the single family residential land use in the RC-1 zone of an approximately 5,292 square feet house could be built without a variance.

**Finding #5** – The alleged hardship appears to be created by the applicant because the proposed house could be constructed without the roof on the observation balcony and no variance would be required.

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

The application states, “Given the built in fireplace and the living space below the deck; as much protection that can be included in this design, makes the most sense. Also the fact that options to move the structure to a more favorable location within the lot are non-existent; there doesn’t appear to be any other options other than to pursue a variance.”

It appears two alternatives exist which would comply with the maximum height requirement of the RC-1 zone. The proposed house is approximately 48 feet by 54 feet. Because the house has not been constructed and the lot is vacant the applicant has the ability to reduce the width or not incorporate a roof over the balcony. If the proposed house was reduced in width, a variance would not be required because the house would not extend over the 50% slope. The first option would drastically reduce the size of the house unless the applicant made the house longer and extended further to the north.

The second option of removing the roof from the balcony would allow for the same living space and provide the same views if the balcony contained a roof or not. The top of the railing on the balcony without a roof would equal approximately 33 feet which would be 2 feet under the maximum height requirement.

**Finding #6** – While the variance is for a 2 feet height difference from the existing height restrictions, reasonable or viable alternative appears to exist because the house has not been constructed and it could simply be built without a roof on the balcony which would reduce the height at the rear of the house to 33 feet above the natural grade which is below the maximum height requirement for a RC-1 zone.

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

The application states, “From the road (east elevation) the structure will have a much lower visual due to the fact that the road is 5 feet higher than the front entry. The north side has an existing residence that is not going to have a clear visual of the roof in question. The neighbor to east will have a front elevation view of the residence and will see the compliant interior portion fo the third level. The lot to the south is not yet developed and it sits higher in elevation as the rock outcrop rise to the south. The neighbor to the west sits well below the structure level and is screened by trees.”

The property is located on a dead-end road and the house to the north sits higher on the hill and the roof line would be above the roof of the proposed house. There is no house on the properties directly to the south and the house to the west is located at the bottom of the hill well below the proposed house. It is unlikely that the proposed variance would adversely affect the neighboring properties because of the placement of the neighboring houses. The property is located near the end of a dead-end road and the variance is unlikely to impact the general public.

**Figure 8:** House to the north of the subject property



**Finding #7** – Granting of the variance request would not appear to have a significant impact on neighboring properties or the public because the property is located on the end of a dead-end road, the house sits to north sits at a higher elevation and the house to the west sits at the bottom of the hill.

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

The application states, “Given the fact that the third level including the interior portion as well as the deck itself comply with elevation restrictions; we only request that the detail be allowed to conclude as drawn allowing the roof to remain over the existing deck.” If the house was constructed as shown in the elevations the variance requested would be for 3 feet for a height of 38 feet. The variance requested would be the minimum variance which allow for the balcony to be covered.

However, as previously stated, the applicant could remove the roof over the balcony from the design which would allow for the same living space and provide the same views if the balcony contained a roof. The top of the railing on the balcony without a roof would equal approximately 33 feet in height which would be 2 feet under the maximum height requirement and no variance would be required.

**Finding #8** – The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the house could be constructed without a roof over the balcony and no variance would be required.

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

The applicant stated, “I believe that this variance should be granted on the basis that this problem is consistent with numerous lots and locations that tend to have heavy sloping.” During the site visit, staff observed that many of the lots in the vicinity of the subject property are vacant. The property to the north contains a house which appears to be only one story and on piers at the rear of the house. The house on the neighboring property does not appear to extend above the 35 foot height restriction and does not have an observation tower/balcony on a third floor.

As previously stated, the proposed house would have a floor area of approximately 5,292 square feet; this includes the mechanical room in the basement, the garage, all the living space and the observation tower/balcony on the third floor. The house to the north is approximately 3,647 square feet. As proposed the house would be approximately 1,645 square feet larger than the existing house on the property to the north. If the applicant is required to build in strict compliance with regulations, a height requirement of 35 feet would be required, and would likely not deprive the applicant a right enjoyed by other properties situated within the same subdivision.

**Finding #9** – Granting of the variance would likely confer a special privilege that is denied to other properties in the district because there is one home that does comply with zoning in the neighborhood and the proposed house and other houses not built will have the same height restrictions when built-out.

**V. SUMMARY OF FINDINGS**

1. Strict compliance with the regulations would not limit the reasonable use of the property because even though the house cannot be situated closer to the front of the lot, the proposed house already includes a covered porch and the proposed

house is approximately 3,953 square feet which is a reasonable use of a single family lot of this size in this area.

2. Strict compliance with the regulations would likely not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the proposed house could still be built in compliance with the regulations if the roof over the observation balcony is not constructed.
3. The alleged hardship appears to be attributable to topography because the subdivision was platted prior to the adoption of the Flathead County Zoning Regulations and the lot is located on ground with slopes of up to 50%.
4. The alleged hardship does not appear to be peculiar to the subject property in this area because the properties to the north and the south are similarly situated at the top of a hill, have steep slopes west of the road and would have a building footprint similar to the subject property.
5. The alleged hardship appears to be created by the applicant because the proposed house could be constructed without the roof on the observation balcony and no variance would be required.
6. While the variance is for a 2 feet height difference from the existing height restrictions, reasonable or viable alternative appears to exist because the house has not been constructed and it could simply be built without a roof on the balcony which would reduce the height at the rear of the house to 33 feet above the natural grade which is below the maximum height requirement for a RC-1 zone.
7. Granting of the variance request would not appear to have a significant impact on neighboring properties or the public because the property is located on the end of a dead-end road, the house sits to north sits at a higher elevation and the house to the west sits at the bottom of the hill.
8. The variance requested does not appear to be the minimum variance which would alleviate the alleged hardship because the house could be constructed without a roof over the balcony and no variance would be required.
9. Granting of the variance would likely confer a special privilege that is denied to other properties in the district because there is one home that does comply with zoning in the neighborhood and the proposed house and other houses not built will have the same height restrictions when built-out.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a variance to the maximum height for a principal structure located within the RC-1 zone is not supported by all the review criteria and the Findings of Fact listed above. Section 2.05.030(3) of the Flathead County Zoning Regulations states a variance shall not be granted unless all of the review criteria have been met or are found not to be pertinent to a particular application.

Planner: EKM