

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**ZONING VARIANCE REPORT (#FZV-15-03)**  
**IAN & REBEKAH WARGO ON BEHALF OF ELIZABETH PICKAVANCE**  
**AUGUST 14, 2015**

A report to the Flathead County Board of Adjustment regarding a request by Ian and Rebekah Wargo on behalf of Elizabeth Pickavance for a variance to the minimum lot size requirements of the River Place Subdivision Phase 3 R-1 Planned Unit Development (PUD). The variance requested would apply to property owned by Elizabeth Pickavance and located at 3083 Sweetgrass Lane in Evergreen which is zoned "R-1 PUD" and located within the Evergreen Zoning District.

The Flathead County Board of Adjustment will hold a public hearing on the variance request on September 01, 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**

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Council.

**B. Board of Adjustment**

This space will contain an update regarding the Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Landowner**

Elizabeth Pickavance  
3083 Sweetgrass Lane  
Kalispell, MT 59901

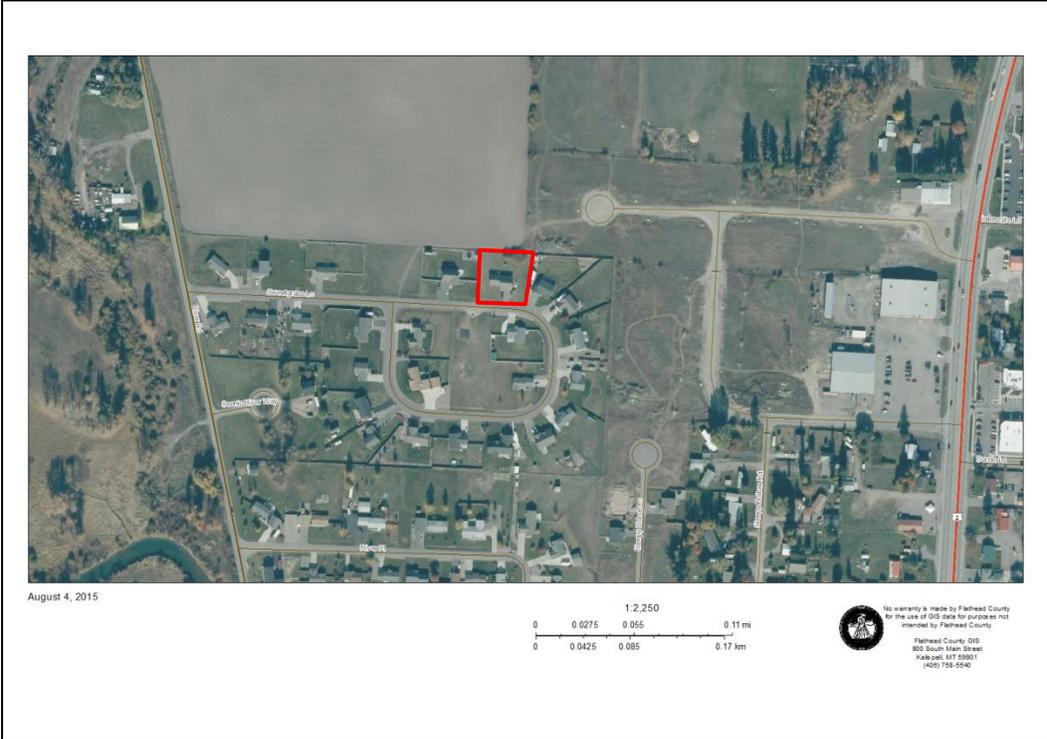
**ii. Applicants**

Ian and Rebekah Wargo  
3095 Sweetgrass Lane  
Kalispell, MT 59901

**B. Property Location**

The subject property is currently 0.4605 acres and is located at 3083 Sweetgrass Lane in Evergreen, MT (see Figure 1 below). The property can be legally described as Lot 82 of River Place Subdivision Phase 3 Corr. in Section 04, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana.

**Figure 1:** 2013 aerial image of the subject property (outlined in red) & surrounding area.



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

The subject property is located in the Evergreen Zoning District and zoned “R-1 PUD.” The R-1 zoning classification is defined as “A district to provide estate-type development. These areas would normally be located in rural areas away from concentrated urban development, typically not served by water or sewer services, or in areas where it is desirable to permit only low-density development (e.g., extreme topography, areas adjacent to floodplains, airport runway alignment extensions)” per Section 3.09.010 FCZR. The River Place Subdivision R-1 Planned Unit Development (PUD) zoning overlay was originally created as part of the three-phase River Place Subdivision in 1999. In 2003 a revised preliminary plat was approved for Phase 3 and the River Place Subdivision R-1 PUD was referenced in the review of that subdivision as being the basis for the 2 dwelling units/acre bonus density.

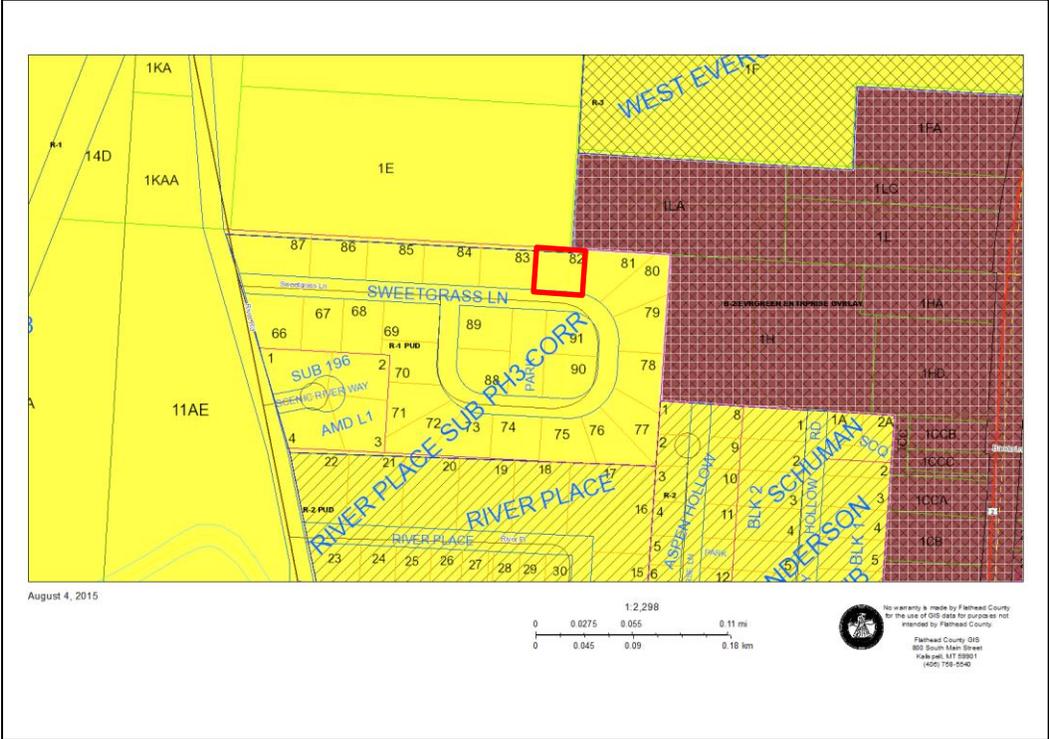
The property is currently developed with an approximately 1,500ft<sup>2</sup> one-story single-family residence with an attached garage. The structure was built in 2004.

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

Subdivision lots to the south, west and east of the subject property are similarly zoned River Place Subdivision Phase 3 R-1 PUD (see Figure 2 below). Vacant property to the northwest of the subject property is zoned R-1 Suburban Residential. Property to the northeast is zoned B-2 General Business and is overlaid with the “Evergreen Enterprise Zoning Overlay.

Land uses surrounding the subject property include similar density residential subdivision lots to the west, south and east, all developed with single-family dwellings (see Figure 1 above). Property to the northwest is 10 acres of vacant agricultural land. Property to the northeast is vacant land with a partially built internal subdivision road and electric utility vaults that was part of Evergreen Business Park, a 19-lot commercial subdivision received preliminary plat approval but never applied for final plat. The preliminary plat of that project died October 19, 2010.

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



**E. Summary of Request**

With the approval of and on behalf of the owner of the Lot 82, the owners of the Lot 81 are requesting a variance to the 20,000ft<sup>2</sup> minimum lot size in the River Place Subdivision Phase 3 R-1 PUD for Lot 82. If granted, the variance would allow the owners of Lot 81 (Ian and Rebekah Wargo) to purchase approximately 1,362ft<sup>2</sup> of Lot 82 by moving the boundary between the two lots exactly 10’ to the west. The relocation of the common boundary between Lots 81 and 82 would make Lot 82 approximately 18,697ft<sup>2</sup>, or 1,303ft<sup>2</sup> less than the 20,000ft<sup>2</sup> minimum lot size required by the PUD. The relocation of a common boundary between two lots in a platted subdivision is exempt from subdivision review, but is subject to zoning requirements, pursuant to 76-3-207(1)(d) Montana Code Annotated. A detailed site plan and visual representation of the proposed relocation of a common boundary is shown in Figures 3 and 4 below.



**F. Compliance with Public Notice Requirements**

Notification was mailed to adjacent property owners within 150 feet of the subject property on August 14, 2015 pursuant to Section 2.05.030(2) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the August 16, 2015 edition of the Daily Interlake pursuant to Section 2.05.030(1) of the Flathead County Zoning Regulations.

**G. Agency Referrals**

Agency referrals were mailed to agencies listed below on July 24, 2015 regarding the variance request:

- Flathead County Road and Bridge Department.
- Flathead County Solid Waste
- Evergreen Elementary School District
- Flathead High School District
- Bonneville Power Administration
- Montana Department of Natural Resources and Conservation
- Evergreen Water and Sewer District
- Evergreen Fire District
- Flathead City-County Health Department
- Flathead County Weed & Parks Department.

**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 Board of Adjustment meeting scheduled for September 01, 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:

- Flathead City County Health Department
  - Comment: “The proposed boundary line adjustment would not affect county or state environmental health regulations, therefore; no comment is offered at this time.”
- Bonneville Power Administration
  - Comment: “...it appears this request will not affect any BPA facilities located within this area.”
- Flathead County Road and Bridge Department
  - Comment: “At this point the County Road and Bridge Department does not have any comments on this request.”

**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;**

Ian and Rebekah Wargo, the owners of Lot 81, allege that reasonable use of their property includes a detached accessory garage/shop and that this reasonable use is limited by both the triangular shape of the lot, as well as the location of a 10’ wide pedestrian access easement on their side of the common boundary with Lot 82. This 10’ wide pedestrian access easement was a condition of preliminary plat approval for the subdivision due to the the location of the Evergreen School to the north and the high likelihood of school-aged children residing in the subdivision. Staff has confirmed that the subdivision does contain many school-aged children, and dirt trails are visible in the grass leading to the school.

The Wargos claim that in order to build an accessible accessory structure (garage/shop) in their backyard and maintain the required 10’ wide pedestrian access easement, the common boundary line with Lot 82 must be relocated. The Wargos have proposed purchasing land and moving the common boundary 10’ to the west as the minimum necessary to alleviate their alleged hardship.

The R-1 PUD requires each lot in the subdivision to be no less than 20,000ft<sup>2</sup>. Strict compliance with this minimum lot size requirement would prohibit relocation of the common boundary between Lots 81 and 82 since Lot 82 is currently only slightly over 20,000ft<sup>2</sup> in size. The Wargos have explored other options, such as jogging the property line or removing the pedestrian access easement, but these solutions have been determined to be unworkable or not allowed by Flathead County. Applying for a variance to setbacks on their own property (Lot 81) to allow for the construction of the garage/shop would not work because even if the side setback from the west property line was reduced, any structure within that area would be placed in the 10’ pedestrian access easement. The pedestrian access easement, combined with the triangular shape of the property and location of the existing home creates an extremely tight side yard area that is unique to Lot 81. The pedestrian access easement is a requirement of final plat approval, but only needs to be located “between Lots 81 and 82.” The Wargos have explored the option of moving the easement to the lot 81 side of the boundary, but according to a discussion between staff and Rebekah Wargo during a August 05, 2015 site visit, the owner of Lot 81 would prefer to sell the Wargos land, rather than accept the easement.

Therefore the Wargos would like to move the boundary line (and pedestrian access easement) 10' to the west by purchasing 1,362ft<sup>2</sup> of property from Lot 82 to alleviate their alleged hardship and build a garage/shop in their backyard.

Given the characteristics of the residential area observed during a site visit on August 05, 2015 and reviewed in aerial imagery, a detached garage/shop in the backyard of the subject property is a reasonable use that is common in the area. On August 05, 2015 the garage/shop foundation had already been poured (see Figure 6 later in this report). Based on the size of the garage/shop size, the current location is likely the only location that doesn't result in bisecting the backyard with an access, and retains usefulness of the yard.

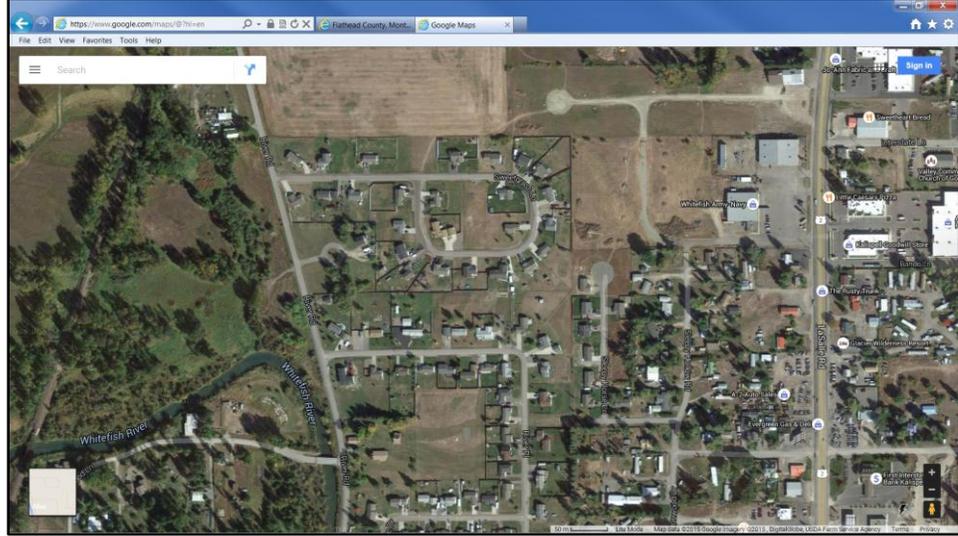
**Finding #1** - Strict compliance with the regulations could limit the reasonable use of the property because a triangular shaped lot creates minimal side yard on either side of the existing home and a 10' pedestrian access easement further encumbers the property preventing the landowners from building a zoning compliant detached accessory garage/shop.

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

There are many other homes in the area that have sheds and/or detached accessory structures. See Figure 04 below. Many of the lots in the same subdivision even have similar triangular shapes. However, side setbacks are 5 feet for detached accessory structures and other properties are not encumbered by a 10' pedestrian access easement that was a requirement of preliminary plat approval. The 10' pedestrian access easement makes the space between the home and the side property line on the Wargo's triangular-shaped lot even more unique.

The only way to remove the pedestrian access easement would be subdivision review which is a significant undertaking for the Wargos. Therefore the Wargo's allegation that they are being deprived of a right enjoyed by many other properties similarly situated in the Evergreen Zoning District is reasonable. Moving the lot line and creating a slightly non-conforming Lot 82 (with regards to minimum lot size) appears to be a reasonable solution.

**Figure 5:** Aerial image showing similarly situated lots and homes near subject property.



**Finding #2** - Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the same district because many other homes have accessory structures similar to the one desired by the Wargos and moving the common boundary between Lot 81 and 82 to the west (thereby making Lot 82 nonconforming with regard to minimum lot size) appears to be a reasonable solution to allow the Wargos a similar accessory structure that is enjoyed by others in the Evergreen Zoning District.

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

The hardship alleged by the applicants is an inability to build a modest detached accessory structure in the side yard of Lot 81 without moving the side property line to the west, making Lot 82 slightly smaller than the minimum lot size in the zoning. The hardship appears to exist because of the unique triangular shape of the lot which creates a very small side yard adjacent to and behind the existing home. The home is of a similar size to other homes in the subdivision and was constructed in the middle of the lot a typical distance from the road in this neighborhood.

The side setback matter is further complicated by a 10' pedestrian access easement that was placed entirely on Lot 81 by the developers to comply with requirements of preliminary plat approval. It would appear that the easement could have been placed half on Lot 81 and half on Lot 82 which would have been more consistent with side setbacks for each lot, but this was not done. Neither of these two complicating factors creating the alleged hardship were created by the owners of Lots 81 and 82.

**Finding #3** – The alleged hardship appears to be attributable to lot shape and other circumstances over which the applicant has no control because the lot is a triangle with a very small side yard and the original developers placed a 10’ pedestrian access easement entirely on Lot 81 to comply with a condition of preliminary plat approval and a reasonable way to alleviate the hardship is to move the common boundary with Lot 82 to the west 10’, which will make Lot 82 less than 20,000ft<sup>2</sup>.

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

The alleged hardship is an inability to build a modest garage/shop on Lot 81 due to the small side yard that results from the triangular shape of the lot, as well as a 10’ pedestrian access easement placed entirely on Lot 81 by the developers that technically prevents access to or construction of the garage/shop in a reasonable area of the lot. There are other lots in the subdivision with similar triangular shape, but none of them have the added encumbrance of a 10’ pedestrian access easement preventing use of over 75% of the space between the home and the side lot line. Two reasonable alternatives to remedy the alleged hardship appears to be to move the easement to elsewhere “between Lot 81 and 82” (such as 5’ on either side of the line or similar sharing of the easement) or keep the easement entirely on Lot 81 by moving the lot line and make Lot 82 less than 20,000ft<sup>2</sup>. The applicants have approached the owner of Lot 82 about sharing the easement, but she would prefer to move the lot line, so the Wargos are pursuing the variance to allow this alternative.

**Finding #4** – The alleged hardship on Lot 81 which requires the applicants request for a variance to minimum lot size on Lot 82 appears to be peculiar to the subject property because the lot is one of a small number of triangular shaped lots which create very small side yards, and this particular triangular shaped lot (Lot 81) has a 10’ pedestrian access easement encumbering over 75% of the space between the home and the current side lot line.

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

The applicant purchased the property with knowledge of the shape of the lot and the ability to learn of the 10’ pedestrian access easement by looking at a copy of the final plat. However, if the Board of Adjustment accepts that a modest garage/shop in the side and rear yard of a typical half-acre lot in this area of Evergreen is a reasonable use, then the inability to build such a structure due to lot shape and a unique condition of preliminary plat approval is a hardship that was not created by the applicant.

**Finding #5** – The alleged hardship does not appear to be created by the applicant because without a variance to the minimum lot size for Lot 82, Lot 81 can’t be developed with a detached accessory garage/shop due to the shape of Lot 81 and the existence of a 10’ pedestrian access easement entirely on Lot 81 placed by the developers to comply with a condition of preliminary plat approval.

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

The inability of the Wargos to build a modest garage/shop on their property without a variance to the minimum lot size on the adjacent property is not an economic hardship. Alternatives were researched and discussed with planning staff, but each option was either not reasonable or not allowable by Flathead County. Jogging the lot line to maintain the minimum lot sizes creates an awkward side yard for construction purposes and a corresponding jog in the pedestrian easement that would still be behind an existing fence. Extinguishing the easement would be a violation of the preliminary plat condition. Moving the easement would require approval of Lot 82 and this approval has not been granted. Building the garage/shop structure elsewhere is impractical due to the shape of the lot and access to the structure would still be through the pedestrian easement.

Since the owner of Lot 82 is unwilling to accept a portion of the 10' pedestrian access easement (and it would be unreasonable to simply expect the adjoining landowner to accept half an easement simply because the Wargos wish to build a garage) a reasonable alternative for both parties is for the Wargos to purchase the land and move the property line and easement to the west. This would also place the official pedestrian easement on the land that is currently functionally used by pedestrians, rather than behind the Wargos' fence. The Wargos are willing to purchase the land, so the alternative being pursued has a cost to the Wargos so they are not claiming an economic hardship.

**Finding #6** – The alleged hardship does not appear to be economic because the Wargos recognize the need to acquire land to build an accessory structure and comply with regulations and are willing to do so, but need a variance to minimum lot size on Lot 82 to make the purchase and all other options explored and discussed with staff (such as jogging the property line, vacating the easement, or building elsewhere in the triangular shaped lot) are either not reasonable or allowed by Flathead County.

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

If the variance is granted to Lot 82 to reduce the lot size below the 20,000ft<sup>2</sup> minimum, the new lot size of Lot 82 will be 18,697ft<sup>2</sup>. It is highly unlikely any adjoining landowner or passerby will notice any difference at all. In fact, staff observed on August 05, 2015 that the area of land that will become the property of the Wargos is clearly currently used for pedestrian access to Evergreen school to the north (see Figure 6 below). Additionally, the Wargos state in their application that the fence will remain in place and children in the neighborhood will have access to walk to school on the intended pedestrian access easement (see Figure 3 earlier in this report). Granting the variance will therefore have a *positive* impact on neighboring properties and the public.

**Figure 6:** Area of land to become part of Lot 81 (August 05, 2015 staff site visit).



**Finding #7** – Granting of the variance request will not adversely impact neighboring properties because the reduced size of Lot 82 will not be noticeable to anyone and the Wargos will maintain the property as it currently exists, creating a benefit to the neighborhood and children using the shortcut to Evergreen school.

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

The Wargos are seeking to acquire only enough of Lot 82 to move the 10' pedestrian easement 10' to the west, outside the Wargo's existing fence. As mentioned earlier, the amount of land to be impacted by moving the common boundary between Lots 81 and 82 is only 1,362ft<sup>2</sup> and if the variance is approved this movement of the common boundary will likely not be noticeable to anyone. Any less of a variance would not be enough to adequately re-locate the easement, and any more of a variance would be more than the minimum necessary to alleviate the alleged hardship on Lot 81.

**Finding #8** – The variance requested appears to be the minimum variance which would alleviate the alleged hardship because moving the common boundary between Lots 81 and 82 exactly 10' to the west and reducing Lot 82 by 1,362ft<sup>2</sup> is just enough to move the 10' wide pedestrian easement outside the existing fence

and allow for access to and placement of a modest detached accessory structure (garage/shop) in the side yard of Lot 81.

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

If the requested variance to minimum lot size is granted, after the boundary is moved Lot 82 will be 18,697ft<sup>2</sup>, or 93% of the 20,000ft<sup>2</sup> minimum of the R-1 PUD. Given the unique circumstances creating the alleged hardship on the adjacent Lot 81 and the minimal amount of variance being requested, it is reasonable to conclude that granting the variance would not confer any sort of “privilege” on Lot 82 that would not be granted to any other lot in the same district under similar unique circumstances. It is certainly true that other lots in the R-1 PUD must be 20,000ft<sup>2</sup> or greater, but reducing Lot 82 to 7% below this minimum will not create a benefit to either Lot 81 or 82 that would be unfair to or desired by other lot owners.

**Finding #9** – Granting of the variance would not confer a special privilege that is denied to other properties in the district because other properties are not subject to a unique 10’ pedestrian access easement encumbering an already constrained side yard, and the minimal amount of the variance requested on Lot 82 to alleviate the hardship on Lot 81 will not create any significant benefit to either Lot 81 or 82 that will be the envy of the neighborhood.

**V. SUMMARY OF FINDINGS**

**Finding #1** - Strict compliance with the regulations could limit the reasonable use of the property because a triangular shaped lot creates minimal side yard on either side of the existing home and a 10’ pedestrian access easement further encumbers the property preventing the landowners from building a zoning compliant detached accessory garage/shop.

**Finding #2** - Strict compliance with the regulations could deprive the applicant of rights enjoyed by other properties similarly situated in the same district because many other homes have accessory structures similar to the one desired by the Wargos and moving the common boundary between Lot 81 and 82 to the west (thereby making Lot 82 nonconforming with regard to minimum lot size) appears to be a reasonable solution to allow the Wargos a similar accessory structure that is enjoyed by others in the Evergreen Zoning District.

**Finding #3** – The alleged hardship appears to be attributable to lot shape and other circumstances over which the applicant has no control because the lot is a triangle with a very small side yard and the original developers placed a 10’ pedestrian access easement entirely on Lot 81 to comply with a condition of preliminary plat approval and a reasonable way to alleviate the hardship is to move the common boundary with Lot 82 to the west 10’, which will make Lot 82 less than 20,000ft<sup>2</sup>.

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**Finding #6** – The alleged hardship does not appear to be economic because the Wargos recognize the need to acquire land to build an accessory structure and comply with regulations and are willing to do so, but need a variance to minimum lot size on Lot 82 to make the purchase and all other options explored and discussed with staff (such as jogging the property line, vacating the easement, or building elsewhere in the triangular shaped lot) are either not reasonable or allowed by Flathead County.

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**Finding #9** – Granting of the variance would not confer a special privilege that is denied to other properties in the district because other properties are not subject to a unique 10’ pedestrian access easement encumbering an already constrained side yard, and the minimal amount of the variance requested on Lot 82 to alleviate the hardship on Lot 81 will not create any significant benefit to either Lot 81 or 82 that will be the envy of the neighborhood.

## **VI. CONCLUSION**

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. Upon review of this application, the request to allow for a variance to minimum lot size in the River Place Subdivision Phase 3 R-1 Planned Unit Development is supported by the review criteria and the draft findings of fact listed above.

Planner: BJ