

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND,
P16-105)	DECISION AND
Fox Variance)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on May 11, 2016, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This application is to provide a variance to the 20-ft. front setback requirement as defined in GCC § 23.12, Table 3, in order to enable construction of a 14'- 5" x 21'- 0" (approximately 303 square ft.) carport with a 5-ft. front setback on an approximately 0.13-acre parcel in the Shoreline Development 3 zoning district of Grant County.
2. The applicants are James & Shannon Fox, 34626 Swenson Drive SE, Snoqualmie, WA 98065.
3. The proposed project address of the subject parcel is 32746 Lakeshore Drive NE, Coulee City, WA. It is known as Lot 7, Block 2 of Blue Lake Summer Homes plat. The site is located approximately 2.00 miles northeast of the intersection of State Highway 17 and Moore Road NE, and approximately 0.06 miles northeast of the intersection of Lakeshore Drive NE and Mundy Lane NE, and in the NW quarter of Section 21, Township 24 North, Range 27 East, WM, Grant County, WA (Parcel #07-0907-000).
4. The zoning for the subject property is Shoreline Development 3.
5. The zoning for neighboring parcels is: To the northwest, Shoreline of Blue Lake; to the southwest, Shoreline Development; to the Southeast, Shoreline Development 3; and to the Northeast, Shoreline Development 3. The surrounding Development consists primarily of single-family residences.
6. The Comprehensive Plan designation for the subject property is Shoreline Development.
7. The Shoreline Environment Designation is Shoreline Residential.
8. Pursuant to WAC 197-11-800(6)(e), this proposal is exempt from SEPA review.
9. Pursuant to and in compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of the Grant County Unified Development Code, a critical areas review of the project site was conducted as part of the application process for this proposal. The subject area was found to be located in a section designated as a possible Cultural Resource area. However, according to WA State Dept. of Archaeology & Historic Preservation data, there are no known archaeological sites within 300 ft. of the subject area. The nearest known archaeological site is

approximately 1900 ft. away and on the other side of Blue Lake. As such, any known historical or culturally significant sites in the same section will be unaffected by this proposal. Also, the subject site lies inside the area of study of a Cultural Resource Survey performed by Northern Resource Consulting Environmental Services of Longview, WA in December of 2002 (File #02-3462). The findings and conclusions of this survey are still valid for the subject parcel, and therefore pertain to the variance requested by this project. This survey reported no evidence of any historical or culturally significant sites in the vicinity. It is also pertinent and should be noted herein that the subject parcel and its surrounding area are already heavily developed and greatly disturbed. The subject parcel contains an existing basement and carport, and the location of the proposed new carport is already disturbed in its entirety by grading activity. It can therefore be reasonably concluded that any unknown archaeological sites in the vicinity of the subject parcel will remain unaffected by development that would be enabled by approval of the proposed Variance. The inadvertent finding of yet-undiscovered buried cultural artifacts or archaeological sites is unlikely and improbable in this particular instance.

10. The northwest boundary of the subject parcel is a portion of the shoreline of Blue Lake, and thus a narrow wetlands area associated with the lake. According to the Grant County Shoreline Master Program, the subject parcel has a Shoreline Residential Shoreline Environment Designation. A minimum building setback of 15 feet from the shoreline, plus a Riparian Buffer Width of 50 feet, is required in the Shoreline Residential Shoreline Environment Designation. The location of the proposed carport is approximately 90 ft. from the shoreline, and is in its entirety a greater distance away from the shoreline than the existing basement on the parcel. Therefore, a determination was made that the proposed carport to be enabled by approval of this variance would have less impact to the shoreline than already-existing development on the site, and no shoreline permitting was required for this proposal.
11. The subject parcel was found to be not located in, nor to contain, any other Critical Areas as defined by Grant County Code.
12. A Public Notice of Application & Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on April 6, 2016, was mailed to property owners within 300 ft. of the subject parcel on April 1, 2016, and was posted on the subject parcel by Planning Department staff on April 1, 2016. The subject parcel remained posted until the open record public hearing date. Information about this project was also sent to all applicable agencies of jurisdiction for their review and comments on April 1, 2016. The public comment period ended on April 21, 2016. The following agencies provided comments:
 - 12.1 Grant County Building Department responded on April 20, 2016
 - 12.2 Grant County Fire Marshal responded on April 1, 2016
 - 12.3 Grant County Public Works Department responded on April 4, 2016
 - 12.4 Grant County Assessor's Office responded on April 4, 2016
13. The following agencies were notified but did not respond:
 - 13.1 Grant County Health District
 - 13.2 Grant County Emergency Management
 - 13.3 Grant County Auditor's Office
 - 13.4 Grant County Treasurer's Office
 - 13.5 Grant County Sheriff's Office

- 13.6 Grant County Fire District #7
 - 13.7 Grant County P.U.D.
 - 13.8 Grant County Noxious Weed Control Board
 - 13.9 WA Department of Fish & Wildlife (Ephrata)
 - 13.10 WA State Department of Transportation
14. Agency Comments: The following is a summary of substantive comments received.
- 14.1 **Grant County Building Department:**
 - 1. The variance would not affect building (Building Department) setbacks.
 - 14.2 **Grant County Fire Marshal:**
 - 1. All real property development shall comply with all applicable local, state, and federal laws.
 - 14.3 **Grant County Public Works Department:**
 - 1. Approach Permit shall be obtained for County Road access.
 - 2. Structures shall not overhang into the County Road right-of-way.
 - 14.4 **Grant County Assessor's Office:**
 - 1. Parcel #07-0907-000 is a 5,767-square ft. lot with a single-family residence and carport; owners are Michael & Tamilyn Didonato.
15. No public comments were received.
16. This application was determined to be technically complete on March 31, 2016.
17. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
18. The subject parcel is not located within the Urban Growth Area boundary of any city in Grant County, WA.
19. Pursuant to GCC § 23.12, Table 3, the minimum front setback requirement in the Shoreline Development 3 (SD3) zoning district is twenty (20) feet. The applicants seek a variance to the front setback requirement in order to allow construction of a carport with a reduced front setback of five (5) feet on the subject parcel.
20. Pursuant to GCC § 25.080.010(b), a variance may only be granted for dimensional, bulk, and area requirements specified by Grant County Code Titles 22, 23, or 24. The 20-ft. front setback requirement in the SD3 zoning district is a dimensional requirement specified by GCC Title 23. As such, a variance request is applicable in this particular instance.
21. WAC 197-11-800(6)(e) states that the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density are exempt from SEPA review.

22. Planning Department staff conducted an on-site visit on March 31, 2016, and posted the subject property on April 1, 2016. Sam Dart of the Grant County Public Works Department met on-site with Planning Department staff on March 31, 2016. Prior to initiation of this application process, Mr. Dart indicated verbally that a 5-ft. front setback, as requested and if so approved, would be acceptable to the Public Works Department.
23. Information about this application was sent to all applicable agencies of jurisdiction for their review and comments. Agency comments and/or requirements specific/applicable to this proposal have been included as Conditions of Approval. All comments received have been included as part of the Staff Report and will be made available to the applicant. No adverse comments were expressed by any agency that would prohibit development.
24. On April 8, 2016, the applicants applied for a Building Permit (#BF16-0243) for construction of a single-family residence upon the existing basement on the subject parcel. Should the requested variance be approved, the applicants will apply for a separate Building Permit for the proposed carport. Approval of a Building Permit for the carport by the Planning Department (with the reduced front setback as proposed) is contingent upon approval of this variance application.
25. Pursuant to GCC § 23.12, Table 3, Footnote 25, external architectural features with no living area (such as eaves) shall not project into required setbacks more than one third the distance of the required setback or a maximum of two (2) feet, whichever is less. As such, in this instance, the maximum distance that the eaves of the proposed carport can project into the 5-ft. setback is 20 inches. On April 8, 2016, Planning Department staff received verbal confirmation from the applicants that eaves of the proposed carport will project 20 inches into the 5-ft. setback in order to meet this requirement. Condition of Approval #5(b) has been included to ensure that this requirement is met.
26. It should be noted herein that comparable variances in the Blue Lake area have been approved under similar circumstances. Said approved variances include the following:
 - 26.1 File #06-4556 for George & Thelma Treperinas at 32352 Lakeview Road NE to allow construction of a garage with a 5-ft. front setback (approved on 11-08-06).
 - 26.2 File #06-4646 for John Heffner at 32138 Lakeview Road NE to allow construction of a garage with an 11-ft. front setback (approved on 12-13-06).
 - 26.3 File #13-5795 for Karen Jewell at 32541 Lakeshore Drive NE to allow construction of a garage with a 5-ft. front setback (approved on 11-15-13).
 - 26.4 File #14-5899 for Ed Altman at 32696 Lakeshore Drive NE to allow construction of a garage with an 8'- 4" front setback (approved on 08-19-14).
27. The applicants, James & Shannon Fox, have submitted a variance application for consideration by the Grant County Hearing Examiner. Due to circumstances unique to the project site, the applicants have requested a variance from the 20-ft. front setback requirement in the Shoreline Development 3 (SD3) zoning district as defined in GCC § 23.12, Table 3, in order to enable construction of a carport with a front setback of 5 feet on the subject parcel. Eaves of the proposed carport will project into the 5-ft. front setback no more than 20 inches.

28. In support of their request, the applicants have satisfactorily demonstrated that unique characteristics of the subject parcel (small size, steep slope, required area for placement of a septic drainfield and reserve drainfield) would prevent construction of a carport. The applicants have also indicated that the requested variance is the minimum necessary to afford relief. As such, the applicants have met the requirement of GCC § 25.08.030(a), which states that the burden of proof shall be on the person requesting a variance to bring forth evidence in support thereof.
29. Based on observations made during a site visit on March 31, 2016, Grant County Planning Department staff determined that special conditions and circumstances do exist on the subject parcel. The subject parcel is small in size. The site area slopes sharply downhill to the northwest from the road Lakeshore Drive NE). The existing basement and required areas for a septic drainfield and reserve drainfield will limit construction of a carport to the proposed area. The proposed area is not large enough to construct an adequately-sized carport and still meet the 20-ft. front setback requirement. Construction of the proposed carport with a reduced front setback as requested appears to be the most reasonable, if not the only, viable course of action. Therefore, a variance is both applicable and necessary in this instance.
30. Based on the above review, comments, and analysis, and subject to the following proposed Conditions of Approval, the Planning Department has determined that the requested variance complies with the Criteria of Approval as listed below. As such, the Planning Department recommended approval of the proposed variance subject to the suggested Conditions of Approval.
31. Applicable criteria for approval that should be considered and is set forth below, with facts to support each criteria:
 - 31.1 Special conditions and circumstances do exist that are peculiar to the land such that literal interpretation and application of the provisions of GCC Titles 22, 23, and 24 would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of GCC Titles 22, 23, and 24.

31.1.1 Applicant's Response:

The special conditions and circumstances on this property revolve around the tight nature of the property itself. There is virtually no area to expand the carport. The biggest hurdle is the Grant County Health Department's approved septic system design limitations including the septic tanks, septic field, and replacement field, as well as the setback requirements therein. Obviously, we cannot and should not drive over an active septic field; consequently, it leaves us with a very limited area to both drive and park our vehicles. We have included a site plan that illustrates the limited space for the carport construction. As you can see, we needed to cantilever the carport roof, at significant expense, just to meet the foundation setback requirements. The idea to shift the carport more to the west is virtually impossible because of the steep slope—the further west you go the steeper the slope. Even if we could it would be dangerous. The carport is essential for the safety and well-being for me and my wife. We are retired, in our mid-sixties, and do not get around as well as we used to. The absence of some kind of vehicle/human shelter to access our home would be something that would be hard to endure. Eastern Washington weather, especially in the rain, snow, and wind, would

make the trip from vehicle to the house difficult. Without the requested variance we will have no space at all for a functional carport. The variance to construct the carport 5 feet from the property line will give us a 20-ft. space to park 2 vehicles end-to-end. Even that space is very tight. If we are not approved for the variance, it is not even feasible to entertain the carport shelter at all. Leaving us stranded.

31.1.2 As was noted above, Planning Department staff conducted a site visit on March 31, 2016, and, based on that visit, determined that special conditions and circumstances do exist that are unique to the subject parcel as outlined in the above analysis. Approval of the requested variance would enable the applicants to construct a carport as proposed in what appears to be the most—if not the only—suitable and reasonable location on the site. Literal interpretation and application of GCC § 23.12, Table 3 in this instance would require a 20-ft. front setback, making construction of the proposed carport impossible on this site, and thereby depriving the applicants of rights commonly enjoyed by other property owners in the same zoning district.

31.2 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.

31.2.1 Applicant's Response:

We truly believe the variance is not only in-line but will be with the harmony and spirit of Titles 22, 23, and 24. You can see from the sketch and elevation drawings that the carport is designed to be open and airy in nature and is aesthetically pleasing.

31.2.2 Grant County Code Chapters 22, 23, and 24 are intended to carry out the goals and policies of the Grant County Comprehensive Plan. Based on a review of said goals and policies, and subject to the proposed Conditions of Approval, the Hearing Examiner determines that allowing the requested variance would conform to and be consistent with the requirements, purpose, and the intent of the Comprehensive Plan and GCC Chapters 22, 23, and 24.

31.3 A variance is necessary for the preservation and enjoyment of a property right possessed by other property in the same vicinity or district, but which is denied to the property in question because of special circumstances on that property.

31.3.1 Applicant's Response:

The property directly south of our parcel has a carport that was constructed some years ago and is closer to the front property line than our requested 5 foot from property line variance. The requested variance will not, in our opinion, obstruct the views from any adjacent properties—east, south, or north. There have been other recent variances approved for structures that have been built on Blue Lake regarding the front property line. Unfortunately, the lots are small and with septic system requirements it is difficult for space allocation.

31.3.2 As outlined above, a variance is applicable and necessary in this instance in order to preserve the applicants' right to construct a residential accessory use

structure (an allowed use) on the subject parcel. Approval of the variance as requested would not give the applicants any special rights not already possessed by neighboring properties. It has already been determined as noted above that special circumstances peculiar to the subject property exist that would deny the applicants of rights commonly enjoyed by others.

31.4 The special conditions and circumstances described in Criteria #1 above are specifically related to the property and are the result of unique conditions such as specifically irregular lot shape, size, or natural feature, and the application of GCC Titles 22, 23, or 24, and not, for example, from deed restrictions or the applicant's own actions.

31.4.1 Applicant's Response:

The property has a significant slope grade (about a 20-foot elevation drop from the high grade to the lake). It is natural and not man-made. Attempting to expand the new structure east to west would only disrupt the natural grade. There has been nothing done by us or past property owners to disturb the natural grade—other than excavating the spot for the existing basement structure.

31.4.2 As noted in the above analysis, special conditions and circumstances do exist that are unique to the subject parcel. The Hearing Examiner concurs that these conditions are natural features peculiar to the site, and not the result of any person's actions.

31.5 The granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances.

31.5.1 Applicant's Response:

We are not requesting a variance that is out of the ordinary boundaries of the environment. As you know, if you take a hard look at the existing structures on the water-side of Blue Lake, you will find structures very close to the road—whether those were permitted or not, we do not know. Our proposed structure will be far less obtrusive, in our opinion, because it will only be 20 feet wide with a foundation only on the south side. It will virtually be an open-air structure.

31.5.2 A determination has already been made that approval of the requested variance will not allow the applicants any special rights or privileges. Approval of the variance will enable the applicants to construct a carport on the subject site, which is an allowed use in the SD3 zoning district, as well as a right commonly enjoyed by adjacent property owners in the same zone.

31.6 The variance requested is the minimum necessary to afford relief.

31.6.1 Applicant's Response:

Yes, as stated above, the variance is the minimum necessary to afford relief. Case-in-point: two medium-sized cars end-to-end would measure roughly 30 feet. With the proposed length of the carport that still leaves a portion of the

second car without cover. We can only access the carport from east to west because of the “no drive zone” relative to the septic field requirements.

- 31.6.2 It has been demonstrated above that literal interpretation and application of GCC § 23.12, Table 3 in this instance would require a 20-ft. front setback, making construction of the proposed carport impossible on this site. The applicants have proposed to build only a minimal-sized carport with a 5-ft. front setback. The Planning Department concurs that the Variance as requested is the most viable option and the minimum necessary to afford relief.
- 31.7 To afford relief the requested variance will not create significant impacts to critical areas and will not be materially detrimental to the public welfare, injurious to the right of other property owners in the vicinity, or contrary to the public interest.
 - 31.7.1 There are no impacts to critical areas, public welfare or injurious rights to other property owners. Additionally, with the proposed variance there are no safety concerns. The structure is well below road grade and the road above is on a straight-a-way—there will be no driver or pedestrian obstruction issues.
 - 31.7.2 Based on the review of this project, the Planning Department has determined that this proposal will cause no significant impacts to critical areas, and that public use and interest will not suffer any detrimental effects due to approval of the variance or construction of the carport that it will enable. Furthermore, this project has been proposed and will be conditioned in such a manner that will maintain public safety and welfare, will not be injurious to other property owners in the vicinity, and will not be contrary to the public interest.
- 31.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
 - 31.8.1 Applicant’s Response:
It is our understanding that the variance will not permit a use prohibited by GCC Title 23 in which the property is located.
 - 31.8.2 It has already been noted herein that approval of the requested variance will enable the applicants to construct a carport on the subject parcel which is an allowed use in the SD3 zoning district.
- 32. An open record public hearing after due legal notice was held on May 11, 2016.
- 33. The entire Planning Staff file was admitted into the record at the public hearing.
- 34. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended conditions of approval.
- 33. Appearing and testifying on behalf of the applicant was James Fox. Mr. Fox testified that he was the proposed buyer of the property and was the applicant and the agent authorized to appear and speak on behalf of the property owner. Mr. Fox agreed that there would be no

storage of vehicles or parking on the drainfield or the reserved drain field. He further testified that all of the proposed Conditions of Approval were acceptable.

34. No member of the public appeared at the hearing.
35. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the proposal does conform to the standards specified in Grant County Code Section 23.12.
4. As conditioned, the use will comply with all required performance standards as specified in Grant County Code 23.08.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
6. As conditioned, this proposal does comply with Comprehensive Plan, the zoning code and other land use regulations, and SEPA.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Conditional Use Permit Application P16-0105 is hereby APPROVED subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. All conditions imposed herein shall be binding on the "Applicant," which terms shall include the owner or owners of the property, heirs, assigns and successors.
2. The Applicant shall comply with all federal, state and local laws and regulations.
3. Construction shall proceed substantially as shown on the application materials on file with Grant County, except as modified by conditions below.

4. The landowner/applicant is responsible to determine if other permits and/or licenses will be required by other local, state, and federal agencies. The landowner/applicant shall acquire all such permits and/or licenses as required.
5. The development authorized by this Variance shall be completed within five (5) years of the date of permit approval or the permit shall become null and void. An extension of up to one (1) year may be granted by the Decision Maker if the permittee demonstrates good cause for an extension.
6. A Variance to the 20-ft. front setback requirement in the Shoreline Development 3 (SD3) zoning district has been granted in order to allow only the construction of a 14'- 5" x 21'- 0" (approximately 303 square feet) carport with a 5-ft. front setback on the subject parcel (Parcel #07-0907-000) as depicted in the submitted application materials. Any further development beyond the scope of this project as proposed, including changes to the development or any requests for additional construction, shall be reviewed by the Grant County Planning Department and may require other permitting.
7. The applicant shall comply with all requirements as deemed necessary by the Grant County Public Works Department, including, but not limited to:
 - a) An Approach Permit shall be obtained for County Road access.
 - b) The proposed structure shall not overhang into the County Road right-of-way.
8. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including, but not limited to:
 - a) Upon approval of the requested Variance, the applicants shall limit the scope and extent of the proposed carport as depicted in the submitted application materials.
 - b) Eaves of the proposed carport shall project no more than 20 inches into the 5-ft. front setback.
 - c) The applicants shall acquire Building Permits, as required, prior to the onset of development of the subject site (Parcel #12-0589-000).
 - d) Any further development within 200 feet of the shoreline of Blue Lake and beyond the scope of this permit, including but not limited to landscaping, development of structures, or alteration of the natural shoreline, may require additional review and/or permitting.
 - e) Pursuant to GCC § 25.08.100(b), this Variance shall be recorded with the Grant County Auditor. Evidence of recording shall be provided by the applicant to the Grant County Planning Department.
9. There will be no parking of any motor vehicles for any amount of time on the area above the drain field and the reserve drain field.

Dated this 18th day of May, 2016.

GRANT COUNTY HEARING EXAMINER



Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as “(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available” or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) “...the date the decision is entered into the public record.” Anyone considering an appeal of this decision should seek legal advice.