

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P17-0185)	DECISION AND
Wamatu & Nganga)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on July 5, 2017, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This permit application from John Nganga Wamatu & Veronica Wanjika Nganga, is for a Conditional Use Permit for a six (6) person Residential Care Facility.
2. The proponents are John Nganga Wamatu & Veronica Wanjika Nganga, 7340 Blue Good Rd, NE, Moses Lake, WA 98837.
3. The proposed subject site is an approximately 1.3 acre parcel (#12-0355-201). The site address is 3781 Thayer Rd NE. Located in the NE quarter of Section 17, Township 19 North, Range 28 East, WM, Grant County, WA.
4. The zoning for the subject property is Urban Residential 2.
5. The zoning for neighboring parcels are: To the north, Urban Residential 2; to the south, Urban Residential 2; to the east, Urban Residential 2; and to the west, Urban Residential 2.
6. The Comprehensive Plan designation for the subject property is Residential, Low Density.
7. Pursuant to GCC § 24.04.090(a)(1), this project is exempt from SEPA review.
8. Pursuant to and in compliance with GCC § 24.08 and GCC § 24.12, a critical areas review of the project area was conducted as part of the application process for this proposal. No Critical Areas were found to be located on the parcel.
9. A Public Notice containing information on this project was published in the Columbia Basin Herald on May 26, 2017, was mailed to property owners within 300 feet of the

subject property, and was posted on the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment.

10. The following agencies and County departments provided comments:

- 10.1 Grant County Fire Marshal responded on May 30, 2017;
- 10.2 Grant County Health District responded on May 31, 2017;
- 10.3 Grant County Assessor's Office responded on May 30, 2017;
- 10.4 City of Moses Lake responded on May 26, 2017.

11. The following agencies were notified but did not respond:

- 11.1 Grant County Building Department;
- 11.2 Grant County Health District;
- 11.3 Grant County PUD;
- 11.4 Grant County Emergency Management;
- 11.5 Grant County Treasurer's Office;
- 11.6 Grant County Sheriff's Office;
- 11.7 Grant County Auditor;
- 11.8 Grant County Noxious Weed Control Board;
- 11.9 Grant County Fire District #5;
- 11.10 Moses Lake Irrigation & Rehabilitation District;
- 11.11 Cascade Water Association.

12. **Agency Comments:** The following is a summary of comments received:

12.1 **Grant County Fire Marshal:**

- 1. All real property development shall comply with all applicable local, state, and federal laws.

12.2 **Grant County Assessor:**

- 2. Parcel 12-0355-201 is a 1.28 acre parcel of land only, owners are John & Veronica Wamatu; no issues.

12.3 **Grant County Public Works:**

- 1. An approach permit shall be obtained for County Road access.
- 2. No parking within County Road Right of Way is allowed.
- 3. No fencing material, landscaping, signage or any related appurtenances shall be placed in, on or overhang into the Grant County Road Right of Way.

12.4 **City of Moses Lake:**

- 1. My only comment is that on page titled Conditional Use Permit-Responses to Criteria For Approval, the end of #5 states "The home is about 3 miles from the City of Moses Lake and is therefore near to city authorities that

deal with storm water and sewage disposal facilities.” I’m not sure what they meant by this statement. Stormwater control is site-specific and typically needs to be addressed on-site. A house, even a quite large one, on 1.3 acres should have any problems retaining their runoff on site. And presumably for sewage disposal, there will be some sort of on-site or community septic system, rather than connection to City sewer, since 3 miles is not particularly near for extending sewer.

13. The application was determined to be Technically Complete on May 18, 2017.
14. This proposal was processed as a Type III Quasi-Judicial Application, in accordance with Chapter 25.04 “Permit Application and Review Procedures” and Chapter 25.08 “Conditional Uses and Variances” of the Grant County Unified Development Code.
15. The subject parcel is in the Urban Residential 2 zoning District of Grant County. Pursuant to GCC § 23.04, Table 4, Residential Care Facilities with more than 5 residents are allowed as a Conditional Use in the Urban Residential 2 zoning district. As such, a Conditional Use Permit has been required for this proposal.
16. This proposal was reviewed for compliance with Chapter 24.08 “Critical Areas and Cultural Resources” of Grant County Unified Development Code. The site was not found to be located in any Critical Areas as defined in Chapter 24.08.
17. This site is located in the Urban Growth Area (UGA) of Moses Lake. Comments were received from the City of Moses Lake during the comment period. However, they did not have any issues with the project moving forward. Their concern was addressed in the Staff Responses to the Criteria of Approval in the Staff Report.
17. The applicant has demonstrated compliance with GCC 23.08.320 Residential Care Facilities and Health Care Facilities. In the application it was stated that 6 residents would be living in the residence, the applicant would obtain state permitting after the residence is completed, 3 staff will work in the facility, the lot size is greater than 12,500 sq. ft., and they would provide adequate parking. These requirements have been made Conditions of Approval for the project.
18. Pursuant to GCC § 23.12 Table 5 Residential Care Facilities require 5 parking spaces plus 1 per 6 beds. The facility will have 6 beds and therefore, requires 6 total parking spaces be provided. The applicant submitted a site plan with the conditional use application which satisfies this requirement.
19. Pursuant to GCC 23.12.170 & GCC 23.12.180 the applicant is required to have at a minimum of 8% landscaping of the developed area and visually screen between adjacent uses. The applicant provided information in an email on 6-18-17 which states approximately 22, 000 sq. ft. of grass will be planted on site which exceeds the 8% landscaping requirement. The applicant has also stated that they will plant

approximately 29 trees on the north side, 15 trees on the south side and 7 trees on the east side of the property which meets the visual screening requirements.

20. In an email dated May 18th, 2017 the applicant stated that the residence will have 8 bedrooms but only 6 will be used for residents, the additional rooms will be used for the family of the caregiver. This limitation has been made a Condition of Approval.
21. On May 26, 2017 Planning Department staff conducted a site visit of the property.
22. The project is for a six (6) person Residential Care Facility, which is allowed with a Conditional Use Permit in the Urban Residential 2 zone.
23. Grant County Planning Staff reviewed and considered the application materials and the comments received for the proposal. Based on the proposed conditions of approval specified below, and the current design of the project, staff recommended approval of subject Conditional Use Permit. The Hearing Examiner finds that this proposal complies with the Grant County Code as follows:
 - 23.1 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan because:
 - 23.1.1 The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive plan. This home will only be used as an adult family home taking care of elderly clients to make their lives much better and more comfortable. The proposed use is substantially compatible with other uses in the area, including factors relating to the nature of its location, operation, building design, site design, traffic characteristics, and environmental impacts.
 - 23.1.2 This use will not be contrary to the intent of the Grant County Code and the Comprehensive Plan. Grant County Code allows for Residential Care Facilities of more 5 residents with a Conditional Use Permit in all residential zoning districts.
 - 23.2 The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located because:
 - 23.2.1 The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located. This compliance will be assured by having an architectural designed building plan, thoroughly planned site design, vehicular and human traffic design and well planned landscaping

designs that go with the required regulations in the zone like setback rules and maintenance of high hygiene standards that comply with other developments in the area.

- 23.2.2 The proposal is appropriate in design, character, and appearance with the goals and policies for the applicable land use designation. The Residential Care Facility will resemble a Single Family Residence and will have the care givers family living with the 6 elderly residents. This project as conditioned will not be a detriment to any of those the neighboring uses.
- 23.3 The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval because:
 - 23.3.1 The proposed use will not cause significant adverse impact on human or natural environment that cannot be mitigated by conditions of approval. Compliance to this will be by maintaining a clean environment, doing proper landscaping by planting appropriate grass and tree species, by not interfering with air, water, soil or any natural endowment.
 - 23.3.2 The proposed use will not cause significant adverse impacts on the human or natural environment. Conditions of Approval are in place to ensure that the proposal, if approved, will meet all applicable performance and/or development standards specifically in GCC 23.08.320. Also, the site was not found to be located in any Critical Areas pursuant to GCC 24.08.
- 23.4 The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval because:
 - 23.4.1 The applicant shall ensure that the cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by conditions of approval.
 - 23.4.2 The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) will not produce significant adverse effects to the environment that cannot be mitigated by Conditions of Approval because this is a commercial use which is allowed with a CUP within the Urban Residential 2 zoning district.

- 23.5 The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities because:
- 23.5.1 The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities. The lot where the home will be located is next door neighbor to the Grant County Fire District 5 and is also next to the Cascade Valley Water District which is a community water supply facility. The home is about 3 miles from the City of Moses Lake and is therefore near to city authorities that deal with storm control and sewage disposal facilities.
- 23.5.1 The proposal will be served by adequate facilities including access, fire protection, water, stormwater control, and sewage disposal facilities. No adverse comments were received by agencies with jurisdiction therefore no specific Conditions of Approval were necessary for this project, except for obtaining an approach permit onto county roads and limiting uses with the public right-of-way. A statement regarding the close proximity to City of Moses Lake who deals with storm control and sewage disposal was made in the applicant responses submitted with the application, the intention for this project is to manage any stormwater on-site. The applicant was merely stating that being in close proximity to the incorporated city limits may help with being adequately served for the project. The parcel is located in the city of Moses Lake's Urban Growth Area but would not be served by the city until annexation.
- 23.6 The location, size, and height of buildings, structures, walls and fences and screening vegetation for the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties because:
- 23.6.1 The location, size and height of buildings, structures, walls and fences, and fences and screening vegetation for the proposed use shall not unreasonably interfere with allowable development or use of neighboring properties. The proposed use will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to the environment or to the property or improvements within the area.
- 23.6.2 The location, size, and height of buildings, structures, walls and fences, and screening vegetation for the proposed use will not unreasonably interfere with allowable development or use of neighboring properties because the project will meet all applicable setbacks as demonstrated in the site plan received with the application.

The residence as stated in the application will be approximately 20' in height which is consistent with GCC § 23.12.

- 23.7 The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood because:
- 23.7.1 The pedestrian and vehicular traffic associated with the conditional use will not be hazardous to existing and anticipated traffic in the neighborhood. This is because the number of trips to Moses Lake Clinic, Community health center, or Samaritan Hospital to take the residents for wellness amount to about 3 per week. Trips to go to Walmart, Safeway or Winco Foods for food and supplies also amount to about 3 per week. These trips exert normal traffic demands like those of a common single family resident.
 - 23.7.2 The pedestrian and vehicular traffic associated with the conditioned use will not be hazardous to existing and anticipated traffic in the neighborhood because the applicant has demonstrated that the project will produce a minimal amount of vehicle trips. This project was sent to Grant County Public Works who did not submit comments which would prevent the approval of the project.
- 23.8 The proposed conditional use will comply with all required performance standards specified in GCC § 23.08.
- 23.8.1 Land uses, activities, and structures that will be built will comply with required performance standards specified in GCC 23.08. The proposed use is in conformance with specific site location, development, and operation standards as required by the Zoning Code and will be geared to promote the health, safety and welfare of the public.
 - 23.8.2 The proposed conditional use will comply with all required performance standards in GCC 23.08.320 including but not limited to obtaining/maintaining a state license to operate the facility and limiting the number of residents at the facility to six (6).
- 23.9 The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70).
- 23.9.1 The proposal does not include any use or activities that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70). The building will be a one level house and will not cause any interference with aircrafts.

- 23.9.2 The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield RCW 36.70 because the Residential Care Facility will be approximately 3 miles away from Grant County International Airport and is located outside of the airport safety overlay. The residence will also be one story and have a peak height of roughly 20-ft. which is consistent with other residences in the area.
- 23.10 The proposal conforms to the standards specified in GCC § 23.12
- 23.10.1 The proposal conforms to the standards specified in GC 23.12. The proposed use will be consistent with the purposes of the Zoning Code as to provide a safe, durable and efficient integrated roadway system, protect public rights of way, etc. No structure will be built in a public land or space.
- 23.10.2 The project, as conditioned, complies with all applicable development standards found in GCC § 23.12 including visual screening and parking standards.
24. An open record public hearing after due legal notice was held on July 5, 2017.
25. The entire Planning Staff file was admitted into the record at the public hearing.
26. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended conditions of approval.
27. Appearing and testifying on behalf of the applicant was John Wamatu. Mr. Wamatu stated that he owned the property with his wife, Veronica Wanjika Nganga, and that they were the applicants in this matter. Mr. Wamatu indicated that he agreed with all of the representations in the staff report and had no objection to any of the proposed Conditions of Approval.
28. No member of the public appeared at the hearing.
29. 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 Shoreline Master Program, 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 P17-0185 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

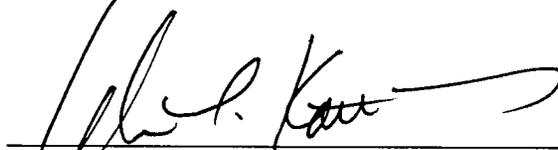
All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

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 obtain all permits required by all federal, state and local agencies with jurisdiction.
3. The Applicant shall comply with all federal, state and local laws and regulations.
4. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including but not limited to:
 - a. Applicant shall comply with any/all applicable requirements found in Grant County Code Chapters 23.08, Performance and Use Standards & 23.12, Development Standards including but not limited to landscaping, visual screening and parking.
 - b. Pursuant to GCC 23.08.320, the Conditional use approval is contingent upon obtaining and maintaining state licensing for operation of the facility. The Conditional use terminates when the state license is no longer in effect.

- c. Any increase in the number or change in the class of residents authorized by the state license terminates approval unless a new conditional use authorization is obtained for the new class or number of residents.
 - d. 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.
 - e. Dust and emissions to the air associated with the development shall be controlled by utilizing Best Management Practices (BMPs) and dust control during construction. Water shall be used on-site for dust control as needed during construction.
 - f. The development authorized through this Conditional Use Permit shall be completed within five (5) years from the approval date of the permit or the approval will become null and void.
5. 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. No parking within County Road Right of Way is allowed.
 - c. No fencing material, landscaping, signage or any related appurtenances shall be placed in, on or overhang into the Grant County Road Right of Way.

Dated this 7th day of July, 2017.

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.