

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P 17-0422)	DECISION AND
Smith)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on January 10, 2018, 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 variance request is from Trammel Smith for a variance to the 20-ft front setback requirement for construction of a residence with a 10-ft setback from the front property line.
2. The proponent is Trammel Smith, 133009 80th Ave E, Puyallup, WA 98373.
3. The project site is located at Sunland Estates at 1114 N Section Pl SW, Quincy WA 98848. It is known as Lot 8, Block #3 of Sunland Estates Division #3. The site is located approximately 8 miles west of George, WA and is in the NE quarter of Section 12, Township 18 North, Range 22 East, WM, Grant County, WA. Parcel #05-0618-000.
4. The zoning for the property is Shoreline Development 4.
5. The zoning for neighboring parcels is: To the north, Shoreline Development 4; to the south, Shoreline Development 4; to the east, Rural Remote; to the west, Shoreline Development 4.
6. The Comprehensive Plan designation for the subject property is Shoreline Development.
7. This project is SEPA exempt.
8. Pursuant to and in compliance with Grant County Code § 24.08, a critical areas review of the project area was conducted as part of the application process for this proposal. The subject parcel was found to be not located in, nor to contain, any critical areas.
9. A Public Notice of Application & Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on December 6, 2017, was mailed to property owners within 300 ft. of the subject parcel on December 6, 2017, was posted on the subject site by December 6, 2017, and 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 December 6, 2017. The public comment period ended on December 21, 2017.
10. The following agencies and County departments provided comments:
 - 10.1 Grant County Fire Marshal/Building Official responded on December 6, 2017;
 - 10.2 Grant County Public Works Department responded on December 6, 2017;
 - 10.3 Grant County Assessor's Office responded on December 7, 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 Emergency Management;
 - 11.4 Grant County Auditor's Office;
 - 11.5 Grant County Treasurer's Office;
 - 11.6 Grant County Sheriff's Office;
 - 11.7 Grant County Fire District #3;
 - 11.8 Grant County PUD;
 - 11.9 Grant County Noxious Weed Control Board;
 - 11.10 Quincy Columbia Irrigation District;
 - 11.11 U.S. Bureau of Reclamation.
12. **Agency Comments:** The following is a summary of comments received:
- 12.1 **Grant County Fire Marshal:**
 - 1. No adverse comments or concerns.
 - 12.2 **Grant County Public Works Department:**
 - 1. Approach permit shall be obtained for County road access.
 - 12.3 **Grant County Assessor's Office:**
 - 1. Parcel 05-0618-000 is a 9680 sq. ft. lot of land only, owners are Trammel Smith & Kimberly Stewart; no issues.
13. Public Comments that have been received:
- 13.1 1. **Larry and Susan Koch (December 13, 2017).**
Concerns regarding the work which has been done on the retaining wall on the north side of the property. Questioning whether the work needs to be permitted and whether it is safe.
14. This application was determined to be technically complete on November 29, 2017.
15. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. No critical areas were found to be located within 300 ft. of the project site.
16. 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.
17. The subject parcel is not located within a UGA of any city.
18. The subject parcel is located in the Shoreline Development 4 Zoning District.
19. Grant County Code § 23.12, Table 3 requires a twenty (20) foot front setback in the Shoreline Development 4 Zoning District.
20. A Building Permit was issued for file #15-3279 in order to remove the ecology blocks and some of the fill on the property. This permit was applied for after the septic system was installed.
21. A public comment was received from a neighboring property owner on December 13, 2017 which had some concerns regarding work done to the retaining wall on the north side of the

property. The pictures and email were presented to the Building Official and it was concluded that the applicant would need a Building Permit and be designed by an engineer. The response from the Building Official was forwarded to the applicant on December 28th, 2017.

22. An email was received from Jon Ness of the Grant County Health District that septic systems need to be installed in original, undisturbed soil. He also included WAC 246-272A-0234 which states that "a minimum of six inches of sidewall must be located in original undisturbed soil".
23. Planning Department staff conducted an on-site visit on November 14, 2017.
24. 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 this Staff Report and will be made available to the applicant. No adverse comments were expressed by any agency that would prohibit development.
25. The applicant has submitted a variance application for consideration by the Grant County Hearing Examiner. The applicant has requested a variance from the Development Standards as defined in GCC § 23.12, Table 3 in order to enable construction of a residence within the front setback of the subject parcel, which is in the Shoreline Development 4 Zoning District.
26. The applicant has indicated that unique circumstances exist on the property in order to allow construction of the residence within the typical front setback area.
27. 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 does comply with the Criteria of Approval for a variance as specified in GCC § 25.08.060(b). As such, the Planning Department recommended approval of the proposed variance. The approval criteria have been outlined below.
 - 27.1 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.
 - 27.1.1 The applicant's property has cliffs on the back 30 feet of the property so we are asking for a 10-ft. variance to be able to build a house with a garage like others on our street and in our community.
 - 27.1.2 The property abuts the cliffs down at Sunland Estates which includes hard bedrock on the east portion of the property. Although all the lots at Sunland Estates are similar in size, not all of the properties abut the cliffs. The cliffs limit where not only a residence can be located but also a septic and drainfield. The previous owner brought a large amount of fill onto the property immediately adjacent to N Section Pl SW which is not suitable for a septic and drainfield. The only place on the property a septic system could be located was in the native soil between the fill area and the bedrock.
 - 27.2 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
 - 27.2.1 The applicant is asking for the 10 feet variance to be able to have a house with a garage and front deck like others to utilize the view.

- 27.2.2 Allowing the variance will be in harmony with the intent and spirit of the GCC Titles 22, 23 and 24 because the variance won't approve a use which is prohibited in the Shoreline Development 4 zoning District. There was also a variance approved on June 10, 2009 (File #09-5275) by the Grant County Board of Adjustment for a 12-ft. reduction to the front setback requirement on N Section PI SW.
- 27.3 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.
- 27.3.1 A variance is necessary for the applicant to have a front deck on the front of the home facing the river like every other home on our road and in Sunland Estates because of the cliffs the applicant is asking for a 10-ft. variance so they can build the home they want with a front deck which would be the top of their garage.
- 27.3.2 The variance won't approve a use prohibited by the UDC and constructing a residence anywhere else on the parcel would be challenging due to the cliffs and location of the septic system. There was also a variance approved on June 10, 2009 (File #09-5275) by the Grant County Board of Adjustment for a 12-ft. reduction to the front setback requirement on N Section PI SW.
- 27.4 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.
- 27.4.1 With the back 30-ft. unusable because of the cliffs and cliff rocks and having to put the septic tank and drainfield in the only spot available because of the previous land owner bringing fill dirt on the front part of the property, which after having the septic tank and drainfield in the spot that did not have cliffs and did not have organic dirt. We removed the non-organic fill on the front of the property for parking cars and RV's and now would like to build a house with the garage and deck on the front of the home keeping the natural topography slope of the land in place.
- 27.4.2 The property abuts the cliffs down at Sunland Estates which includes hard bedrock on the east portion of the property. Although all the lots at Sunland Estates are similar in size, not all of the properties abut the cliffs. The cliffs existed on the property since the property was platted back in 1967. Also, the previous owner brought a large amount of fill onto the front end of the property adjacent to N Section PI SW which was not suitable for placement of a septic and drainfield. The only place on the property a septic system could be located was in the native soil between the fill area and the bedrock. Although the septic system was installed by the current owner applying for this variance, he did not have control over the in-organic soils being located on the property.
- 27.5 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.

- 27.5.1 The applicant is asking for a variance which other with cliffs on the back of their properties have asked for and received to build their home. They would like to build a home with a garage and a front deck.
- 27.5.2 At Sunland Estates there have been several variances approved regarding setbacks (15-6063, 09-5275 and 08-5115).
- 27.6 The variance requested is the minimum necessary to afford relief.
 - 27.6.1 With the area the applicant is working in, the 10-ft. variance they are requesting is the minimum room needed to build the home with the garage and deck they are wanting to build.
 - 27.6.2 With the placement of the septic and drainfield needing at least a 5-ft. setback from the residence and the topography of the parcel, this is the minimum necessary to afford relief.
- 27.7 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.
 - 27.7.1 Allowing this variance will not impact any other property owners and will be back far enough from the front property line to avoid any impact to any others or public interest.
 - 27.7.2 No critical areas were found to be present on the parcel. The variance, if approved, would not be detrimental to public welfare, injurious to the right of adjacent property owners, and would not be contrary to the public interest.
- 27.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
 - 27.8.1 The applicant needs the variance to be able to build a home with a garage and deck. This is not a use prohibited by GCC title 23.
 - 27.8.2 The variance will not allow a use prohibited in the Shoreline Development 4 Zoning District.
- 28. An open record public hearing after due legal notice was held January 10, 2018.
- 29. The entire Planning Staff file was admitted into the record at the public hearing.
- 30. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended conditions of approval.
- 31. Appearing and testifying on behalf of the applicant was the owner Trammel Smith. Mr. Smith testified that he agreed with all of the representations in the staff report and had no objection to any of the proposed Conditions of Approval.
- 32. There was no testimony in opposition to this project. No member of the public appeared at the hearing.
- 33. 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 P 17-0353 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

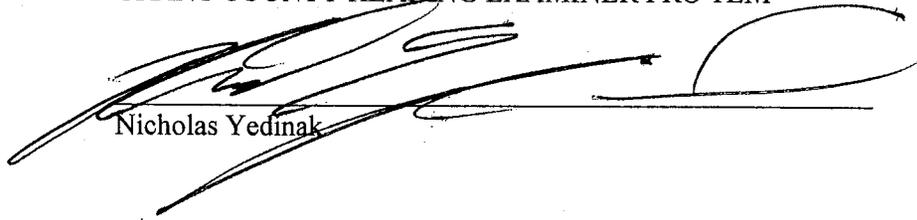
All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

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 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. A Variance to the Development Standards as defined in GCC § 23.12 Table 3 in the Shoreline Development 4 Zoning District has been granted in order to allow only construction of a residence with a deck on parcel #17-0367-000 as depicted on a revised Site Plan submitted to the Grant County Planning Department by the applicants on November 30, 2017. 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.
6. The applicant shall comply with all requirements as deemed necessary by the Grant County Public Works Department, including, but not limited to:

- 6.1 Approach permit shall be obtained for County road access.
7. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including, but not limited to:
- 7.1 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.

Dated this 19th day of January, 2018.

GRANT COUNTY HEARING EXAMINER PRO TEM



Nicholas Yedinak

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.