

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
P 18-0044)	DECISION AND
Dreesen)	CONDITIONS OF APPROVAL

THIS MATTER, having come on before the Grant County Hearing Examiner on April 11th, 2018, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

FINDINGS OF FACT

1. This is a request for a variance to the five (5) foot front setback requirement in the RVR1 zone (GCC 23.12, Table 3) to allow a two foot six inch (2'6") side yard setback. The setback variance is to allow an addition to an existing shop/garage (the addition for which this variance is being requested, has already been constructed).
2. The applicant/owner is Randy Dreesen, 19542 Richmond Dr. NW, Shoreline, WA 98177.
3. The project site is located at 430 Spring Circle SW, Mattawa, WA 99349
4. The parcel number of the subject property is Parcel #02-0759-000.
5. The legal description of the subject property is the northwest ¼ of Section 26, Township 14 North, Range 23 East, W.M., Grant County, WA.
6. The property is not within an urban growth area (UGA).
7. The Comprehensive Plan designation is Rural Village.
8. The zoning designation is Rural Village.
9. The property to the north is zoned Rural Village Residential 1.
10. The property to the south is zoned Rural Village Residential 1.
11. The property to the east is zoned Rural Village Residential 1.
12. The property to the west is zoned Rural Village Open Space.
13. The subject parcel was reviewed for Critical Areas and was not found not to be located within 300' of any Critical Areas as defined by Grant County Code.

14. A Public Notice containing information on this project was published in the Columbia Basin Herald on March 12, 2018, was mailed to property owners within 300 feet of the subject properties, and was posted on site, by staff, where visible to the public. The following agencies responded:
 - 14.1 Grant County Building Official/Fire Marshal responded on March 13, 2018
 - 14.2 Grant County Assessor's Office responded on March 13, 2018
 - 14.3 Grant County Noxious Weed Control Board responded on March 26, 2018
15. The following agencies received notice but did not respond:
 - 15.1 Grant County Fire District #8
 - 15.2 Grant County Health District
 - 15.3 Grant County Public Works Department
 - 15.4 Grant County PUD
 - 15.5 Grant County Treasurer's Office
 - 15.6 Grant County Sheriff's Office
 - 15.7 Desert Aire Architectural Committee/Owners Association
 - 15.8 Grant County Auditor
16. The application was determined to be technically complete on March 1, 2018.
17. This proposal was processed as a Type III Quasi-Judicial Decision, 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.
18. 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' of the project site.
19. The proposal is not located within an Urban Growth Area.
20. Planning Staff did receive one public comment in opposition to this proposal.
21. Grant County Code 23.12, Table 3 requires a five foot building setback from a side/rear property line in the Rural Village Residential 1 (RVR1) zone.
22. The project site is Lot 224 of Desert Aire No. 2.
23. According to the Plat of Desert Aire No. 2, there is a 15 foot wide common area labeled as "Tract C" between Lot 224 (subject parcel) and the adjacent property to the west, Lot 185.
24. The Applicant submitted a Building Permit application for a garage addition on July 14, 2017 (BF17-0480). It was then determined that the structure had already been built, prior to the issuance of a building permit.
25. Site photos taken by Grant County Building Department Staff show that the proposed garage addition has been constructed approximately fifteen feet nine (15'9") inches away from the neighboring property owner's fence to the west. Assuming that the adjacent property owner's fence has been constructed on his property line, the proposed structure has been built only nine inches (9") from Mr. Dreesen's property line.

26. Staff's opinion is that the proposal as requested does not conform to the criteria for approval for a variance as specified in GCC § 25.08.060(b). Staff recommended denial of the proposed variance. The approval criteria are outlined below:

26.1 Special conditions and circumstances do not 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.

26.1.1 Applicant's Response:

26.1.1.1 In Title 22.04.010 (a)(1), 22.04.110(a)(4) and 22.04.110(b), state I did promote the effective utilization of the land, promote orderly division and development of lots with the intent that governs the minor adjustments of boundary line through the Boundary Line Adjustment process by applying for a variance. This is further shown that my examples of the before mentioned (55) parcels allowed to have dwellings and structures erected in the common areas within Desert Aire community previously without a variance granted.

26.1.1.2 In title 23.04.075(c)(6), the location size and height of the building/structure does not hinder or discourage the appropriate development or use of neighboring properties.

26.1.1.3 In title 24 I found nothing to the contrary as I would still have the right to appeal 24.04.220 and have paid the required fees 24.04.270.

26.1.2 Staff Response:

26.1.2.1 The applicant has not shown in the application materials, to the satisfaction of the Planning Department, that special conditions or circumstances exist. The applicant constructed the garage addition prior to obtaining the appropriate building permits. Additionally, alleging that other properties within the Desert Aire community have encroached into required setbacks does not serve to show that this project meets the applicable criteria of approval for a variance.

26.2 Allowing the variance will not be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.

26.2.1 Applicant's Response:

26.2.1.1 In allowing my variance request, this would be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.

26.2.2 Staff Response:

26.2.2.1 The granting of the proposed variance will not be in harmony with the intent and spirit of GCC Titles 22, 23, and 24. The proposed structure was constructed without an approved building permit and was built without conforming to the required setbacks.

- 26.3 A variance is not 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 questions because of special circumstances on that property.
- 26.3.1 Applicant's Response:
- 26.3.1.1 A variance is necessary to allow a reduced setback from the common area yet maintains the existing common area between all (4) adjacent properties at the stated 15 feet.
- 26.3.2 Staff Response:
- 26.3.2.1 Grant County Planning Staff does not believe this variance is necessary for the preservation and enjoyment of a property right. The parcel already contains an accessory structure (garage), this application is to allow an addition. Additionally, the application has not shown that there are "special circumstances" on the property that would necessitate a variance.
- 26.4 The special conditions and circumstances described in 26.1 above, are not 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, and 24, and not, for example, from deed restrictions or the applicant's own actions.
- 26.4.1 Applicant's Response:
- 26.4.1.1 The special conditions and circumstances are due to improper notification from the HOA building department of Desert Aire community, not from the applicant's own actions, and therefore should be an application of GCC Titles 22, 23, and 24.
- 26.4.2 Staff Response:
- 26.4.2.1 Special conditions have not been shown to exist. This variance request is necessary because the applicant has constructed an addition to a garage that encroaches into the required setback prior to obtaining a Building Permit or variance. The application has not shown that a special condition or circumstance exists that is unique to the property. Improper notification from the HOA is not a special condition as the required setbacks in question are governed by Grant County Code, not covenants enforced by an owners association.
- 26.5 The granting of the variance requested will confer on the person seeking the variance any special privilege that is denied by this Chapter to other lands, structure, or buildings under similar circumstances.
- 26.5.1 Applicant's Response:
- 26.5.1.1 The granting of this variance request will not confer for myself any special privilege in this Chapter to other lands, structure, or buildings under similar circumstances.

- 26.5.2 Staff Response:
- 26.5.2.1 Approval of this variance would confer a special privilege. Approval of this application could encourage other property owners to construct buildings prior to obtaining the necessary permits with the intent of obtaining a variance after the fact.
- 26.6 The variance requested is the minimum necessary to afford relief.
- 26.6.1 Applicant's Response:
- 26.6.1.1 This variance request is the minimum necessary to afford relieve as I am only asking for 2.5-foot relief for a total length of 18 feet of the addition built from the required 5-foot setback from the common area.
- 26.6.2 Staff Response:
- 26.6.2.1 The variance requested would be the minimum necessary to afford relief. The applicant has constructed a building that encroaches into the setback. Approval of the requested variance would be the minimum necessary to permit the structure as constructed.
- 26.7 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.
- 26.7.1 Applicant's Response:
- 26.7.1 The requested variance will not create significant impact to critical areas and will not be detrimental to the public welfare, injurious to the right of other three property owners in the vicinity, or contrary to the public interest.
- 26.7.2 Staff Response:
- 26.7.2.1 Approval of this variance will not have a negative effect on Critical Areas. No critical areas were found to be present on or within 300 feet the parcel. Approval of this application would be contrary to the public interest as it would encourage other members of the public to construct structures that do not conform to the required Development Standards without appropriate permits.
- 26.8 The variance will permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
- 26.8.1 Applicant's Response:
- 26.8.1.1 The variance will not hinder the common area already located between the existing (4) properties located in Desert Aire community.

26.8.2 Staff Response:

26.8.2.1 Approval of this variance request would not allow a use prohibited by Chapter 23 of Grant County code. A garage is considered a residential accessory use and is an allowed use in the RVR1 zone.

27. An open record public hearing was held on April 11, 2018.
28. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
29. Appearing and testifying on behalf of the applicant was Randy Dreesen. Mr. Dreesen testified that he was the applicant and the property owner. Mr. Dreesen testified that he had relied on the Desert Aire Home Owner's Association's information that had been provided prior to constructing this addition. He was not aware that he needed a permit from the county. He freely admits that he did not investigate any further as to the need for a permit from the County. He states that the home owner's association representative incorrectly stated that this was a 12' wide common area. He testified that after the addition had been built, he was told by the home owner's association that he needed to get a permit. Mr. Dreesen freely admits that this request for a variance does not satisfy all of the criteria set forth for a variance in the Grant County Unified Development Code, but this is his only avenue to try to bring his addition into compliance. Finally, Mr. Dreesen testified that other variances had been allowed in this subdivision to build within the common areas.
30. No member of the public testified at this hearing.
31. The Grant County Hearing Examiner considered all evidence within the record in rendering this decision.
32. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

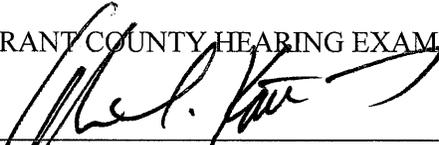
1. The Hearing Examiner has been granted authority to render this Decision.
2. As conditioned, the proposed use is not consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the use does not comply with all required performance standards as specified in the Grant County Code.
4. As conditioned, the proposed use would be contrary to the intent or purposes and regulations of either the Grant County Code or the Comprehensive Plan.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, P 18-0044, Dreesen, is hereby **DENIED**.

DENIED this 12th day of April, 2018.

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.