

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF

P 18-0067

Aalbu

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND
CONDITIONS OF APPROVAL**

THIS MATTER, having come on before the Grant County Hearing Examiner on April 11, 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 20-ft. front yard setback and the 5-ft. side yard setback as defined in GCC § 23.12, Table 3, in order to enable construction of an 18' x 30' (approximately 540 sq. ft.) garage with an 11-ft. front setback and 2'-6" side setback on an approximately 7752 sq. ft. parcel in the Shoreline Development 4 Zoning District of Grant County.
2. The applicant/owners are Todd & Tamsie Aalbu, 9932 146th Ave NE, Granite Falls, WA 98252.
3. The site address of the subject parcel is 1161 S Section Place SW, Quincy, WA 98848.
4. The parcel number of the subject property is 05-0599-000.
5. The legal description of the subject property is Lot 10 Block 1 of Sunland Estates Division #3 and is in a portion of Section 12, Township 18 North, Range 22 East, WM, Grant County, WA.
6. The property is outside of an urban growth area (UGA).
7. The Comprehensive Plan Designation is Shoreline Development.
8. The zoning designation of the subject property is Shoreline Development 4.
9. The property to the north is zoned Shoreline Development 4.
10. The property to the south is zoned Shoreline Development 4.
11. The property to the east is zoned Rural Remote.
12. The property to the west is zoned Shoreline Development 4.
13. Pursuant to WAC 197-11-800(6)(e), this proposal is exempt from SEPA review.
14. 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 within 200 feet of the shoreline of the Columbia River. However, the subject parcel is not a waterfront property. There is a parcel in between the subject parcel and the river. The proposed garage is outside of the sixty-five (65) foot required riparian buffer and building setback line that is required in the Shoreline Residential shoreline designation.

15. A Public Notice of Application & Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on March 19, 2018, was mailed to property owners within 300 ft. of the subject parcel on March 16, 2018, was posted on the subject site by staff on March 14, 2018, 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 March 19, 2018. The public comment period ended on April 2, 2018. The following agencies provided comments:

- 15.1 Grant County Building Official responded on April 2, 2018
- 15.2 Grant County Fire Marshal responded on March 16 and April 2, 2018
- 15.3 Grant County Public Works Department responded on March 16, 2018
- 15.4 Grant County Assessor's Office responded on March 19, 2018
- 15.5 U.S. Bureau of Reclamation responded on March 22, 2018

16. The following agencies received notice but did not respond:

- 16.1 Grant County Health Department
- 16.2 Grant County Emergency Management
- 16.3 Grant County Auditor's Office
- 16.4 Grant County Treasurer's Office
- 16.5 Grant County Sheriff's Office
- 16.6 Grant County Fire District #3
- 16.7 Grant County PUD
- 16.8 Grant County Noxious Weed Control Board
- 16.9 Quincy Columbia Basin Irrigation District

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

- 17.1 Grant County Fire Marshal:

Amended Comments 4/2/18:

- 17.1.1. Fire Marshal approval for this variance is contingent on a requirement to construct a minimum 1 hour fire wall with no penetration on the side of the garage adjacent to the property line.
- 17.1.2. Fire Department response times, weather conditions, and the proximity to other buildings that are nearby warrant an increase in construction to delay the spread of a fire at this location.

Original Comments 3/16/18:

- 17.1.3. All real property development shall comply with all applicable local, state, and federal laws.
- 17.1.4. Minimum setbacks to property lines are meant to separate structures in the event fire occurs to keep the fire from spreading from one building to another. 5' to the property line on each side gives 10' between buildings that delays the spread of

fire and gives firefighters room to protect surrounding building to keep the fire from spreading.

17.1.5. The Fire Marshal's Office is against approving this variance.

17.2 Grant County Public Works Department:

17.2.1. Approach permit shall be obtained for County Road access.

17.2.2. The portion of cul-de-sac was vacated. Contact the Grant County Assessor's office to have the lot lines adjusted to reflect the vacation.

17.3 Grant County Assessor's Office:

17.3.1. Parcel 05-0599-000 is a 7752 sq. ft. lot with a SFR.

17.3.2. Owners are LT & Tamsie Aalbu as Trustee's.

17.3.3. No issues.

17.4 U.S. Bureau of Reclamation:

17.4.1. Although this proposal is within the Project and the District, it does not involve any Project facilities. Therefore, we have no comment regarding this proposal's impact on Project facilities or associated rights-of-way.

17.5 Grant County Building Official:

17.5.1. In regards to the reduced [side] setbacks, the International Building Code Under Table 302.1(1) allows for a wall to be built less than 5', but must comply with the requirements of the table which require a minimum 1 hour-tested in accordance with ASTM E 119 or UL 263 with exposure from both sides, and roof projections are not allowed, and no openings in that wall are permitted.

17.5.2. Also the wall adjacent the residence on the same lot, a ½" gypsum wall covering is required and must extend to the underside of the roof sheathing.

17.5.3. If the proper accommodations are made, it is reasonable to allow for a reduction in setback as supported by the International Residential Code.

18. No public comments were received:

19. This application was determined to be technically complete on November 6, 2017.

20. 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 300ft of the project site.

21. 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.

22. The subject parcel is not located within a UGA of any city.

23. The subject parcel is located in the Shoreline Development 4 (SD4) Zoning District.

24. The shoreline designation of the subject parcel is Shoreline Residential.

25. This property is not a waterfront property. Parcel 15-0007-000 is between the subject parcel and the Columbia River.
26. Grant County Code § 23.12, Table 3 requires a twenty (20) foot front setback and a five (5) foot side setback in the Shoreline Development 4 Zoning District.
27. The applicant has submitted a building permit for this garage (BF 17-0332).
28. Planning Department staff conducted an on-site visit on March 14, 2018.
29. The Grant County Fire Marshal's original comment on March 16, 2018 was against the approval of this project due to the close proximity of the proposed garage to the side property line. Upon further review, the fire marshall stated that a one (1) hour fire wall on the southern side of the garage will satisfy code and safety concerns. The requirement for a fire wall will be made a condition of approval.
30. 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 considered as Conditions of Approval. No adverse comments were expressed by any agency that would prohibit development.
31. The applicants have submitted a variance application for consideration by the Grant County Hearing Examiner. The applicants have requested a variance from the Development Standards as defined in GCC § 23.12, Table 3 in order to enable construction of a garage within the front and side setbacks of the subject parcel, which is in the Shoreline Development 4 Zoning District.
32. The applicants have indicated that unique circumstances exist on the property in order to allow construction of the residence within the typical front and side setback areas.
33. Based on the above review, comments, and analysis, and subject to the following proposed Conditions of Approval, Development Services 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, staff recommended approval of the proposed variance. The approval criteria have been outlined below.
 - 33.1.1 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.
 - 33.1.1 Applicant's Response:
 - 33.1.1.1 Construction of an on-site garage, compliant with minimum standard setback requirements, would not be feasible due to the small size of the lot, placement of existing structure, Columbia River to the south, onsite drain field.
 - 33.1.2 Staff Response:
 - 33.1.2.1 While the lots in Sunland Estates appear similar in size, not all lots have a sloping topography. The topography of the subject parcel and the placement of

the residence and drain field constructed by a previous resident create special circumstances that leave a limited buildable area for accessory structures.

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

33.2.1 Applicant's Response:

33.2.1.1 The requested variance to the front and side setbacks does not violate other aspects of the Grant County Code and thereby is in harmony with the intent of GCC Titles 22, 23, & 24.

33.2.2 Staff Response:

33.2.2.1 Allowing the variance will be in harmony with the intent and spirit of the GCC Titles 22, 23 and 24 because the variance will not approve a use which is prohibited in the Shoreline Development 4 Zoning District.

33.3 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.

33.3.1 Applicant's Response:

33.3.1.1 Other properties in the vicinity of the subject parcel have structures which encroach within the required front and side setbacks. Denial of the requested variance would result in creating a situation where other properties are offered enjoyment of use of these areas where the subject property owner is not granted the same encroachment.

33.3.2 Staff Response:

33.3.2.1 The special circumstances of residence and drain field placement and topography on this property limit the building area on the subject parcel. There have been variances to the front setback that have been previously approved by the Board of Adjustment (File #08-5115, #09-5275, and #15-6063) as well as by the Grant County Hearing Examiner, Mr. Yedinak (File # P17-0422).

33.4 The special conditions and circumstances described in Finding 33.1 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.

33.4.1 Applicant's Response:

33.4.1.1 There are no deed restrictions in existence on the subject parcel.

- 33.4.2 Staff Response:
- 33.4.2.1 The natural feature of topography limits the buildable area for the proposed 18' x 30' shop. The placement of the residence and the drain field also limit the buildable area. The residence and drain field were built and installed by a previous owner and not by the applicants themselves.
- 33.5 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.
- 33.5.1 Applicant's Response:
- 33.5.1.1 The granting of the requested variance does not constitute a special privilege to the subject parcel owner that others would not, or could not, be granted.
- 33.5.2 Staff Response:
- 33.5.2.1 In Sunland Estates there have been several variances approved regarding setbacks (P17-0422, 15-6063, 09-5275, and 08-5115). Granting of the variance requested will not confer on the persons seeking the variance any special privilege.
- 33.6 The variance requested is the minimum necessary to afford relief.
- 33.6.1 Applicant's Response:
- 33.6.1.1 The proposal requested is the minimum size for the specified need. The need is for a detached storage/garage building for a boat and other residential storage. 18' x 30' is not an excessive size request.
- 33.6.2 Staff Response:
- 33.6.2.1 The applicant has proposed an eighteen (18) foot by thirty (30) foot garage to use for boat and residential storage. The side and front setbacks are the minimum distances necessary to afford relief.
- 33.7 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.
- 33.7.1 Applicant's Response:
- 33.7.1.1 The surrounding critical areas are not impacted by the requested variance. There are existing structures and developed space between the proposed development area and the river.

33.7.2 Staff Response:

33.7.2.1 The parcel is within 200 feet of the shoreline of the Columbia River, however subject parcel is not a waterfront property and the proposed shop is outside of the fifty (50) foot riparian buffer and the fifteen (15) foot building set back line required in the shoreline designation of Shoreline Residential. 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.

33.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.

33.8.1 Applicant's Response:

33.8.1.1 The requested variance would not permit a prohibited use. A residential garage/storage building is consistent with the current permitted uses within the zone and surrounding uses.

33.8.2 Staff Response:

33.8.2.1 The variance will not allow a use prohibited in the Shoreline Development 4 Zoning District.

34. An open record public hearing was held on April 11, 2018.
35. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
36. Appearing and testifying on behalf of the applicant was Mr. Todd Aalbu. Mr. Todd Aalbu is the applicant and property owner. Mr. Todd Aalbu testified that he agreed with all of the representations of Staff. Mr. Todd Aalbu indicated that the applicant had no objection to any of the proposed conditions of approval.
37. No member of the public testified at this hearing.
38. The Grant County Hearing Examiner considered all evidence within the record in rendering this decision.
39. 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 consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the proposal will conform to the standards specified in the Grant County Code.

4. As conditioned, the use will comply with all required performance standards as specified in the Grant County Code.
5. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of either 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.

DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, P 18-0067, Aalbu is hereby APPROVED, subject to the conditions noted below.

CONDITIONS OF APPROVAL

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. Construction shall proceed substantially as shown on the application materials on file with Grant County, except as modified by conditions below.
5. 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.
6. 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 residential garage on parcel #17-0367-000 as depicted on a Site Plan submitted to the Grant County Development Services - Planning Division by the applicants on February 28, 2018. 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. Approach permit shall be obtained for County Road access.

8. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including, but not limited to:
 - a. 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.

9. The applicant shall comply with all requirements as deemed necessary by the Grant County Fire Marshal's Department, including, but not limited to:
 - a. Fire Marshal approval for this variance is contingent on a requirement to construct a minimum one (1) hour fire wall with no penetrations on the side of the garage adjacent to the property line.

10. The applicant shall comply with all requirements as deemed necessary by the Grant County Building Official, including, but not limited to:
 - a. A minimum one (1) hour-tested wall in accordance with ASTM E 119 or UL 263 with exposure from both sides is required.
 - b. Roof projections on the wall adjacent to the side southern property line are not allowed.
 - c. No openings in the wall adjacent to the side southern property line are permitted.
 - d. For the wall adjacent the residence on the same lot, a one-half (½) inch gypsum wall covering is required and must extend to the underside of the roof sheathing.

Approved 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.