

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW AND,
P 18-0304)	DECISION AND
Gear)	CONDITIONS OF APPROVAL

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on November 14, 2018, 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 is an application for a variance from the 5 foot side-yard setback requirement as defined by GCC§ 23.12, Table 1, to allow a zero foot side-yard setback in order to subdivide a lot with an existing duplex on an approximately 24,552 sq. ft. parcel in the Urban Residential 3 zoning district of Grant County.
2. The proponent is Ron Gear, PO Box 426, Moses Lake, WA 98837.
3. The project site is located at 135 and 137 Schilling Dr. NE, Moses Lake, WA 98837. The subject parcel is Lot 232 of Larson Subdivision and is in a portion of Section 5, Township 19 North, Range 28 East, WM, Grant County, WA (Parcel #31-0232-000).
4. The zoning for the property is Urban Residential 3.
5. The zoning for neighboring parcels is: To the north, Urban Residential 3; to the south, Urban Residential 3; to the east, Urban Residential 3; to the west, Urban Residential 3.
6. The Comprehensive Plan designation for the subject property is Residential, Medium Density.
7. This project is SEPA exempt pursuant to WAC 197-11-800(6)(e).
8. The subject parcel was reviewed for Critical Areas and not found to be located within 300 feet of any Critical Area as defined by Grant County Code.
9. A Public Notice containing information on this project was published in the Columbia Basin Herald on October 9, 2018, 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/Building Official responded on October 19, 2018
 - 10.2 Grant County Building Official responded on November 2, 2018
 - 10.3 Grant County Health District responded on October 24, 2018
 - 10.4 Grant County Public Works Department responded on October 22, 2018
 - 10.5 Grant County Assessor's Office responded on October 22, 2018
11. The following agencies were notified but did not respond:
 - 11.1 Grant County Treasurer's Office

- 11.2 Grant County Emergency Management
- 11.3 Grant County Auditor's Office
- 11.4 Grant County P.U. D.
- 11.5 U.S. Bureau of Reclamation
- 11.6 Grant County Fire District #5
- 11.7 City of Moses Lake
- 11.8 Grant County Noxious Weed Control Board
- 11.9 WA State Department of Transportation
- 11.10 East Columbia Irrigation District
- 11.11 Grant County International Airport

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

12.1 **Grant County Fire Marshal:**

12.1.1 I have no adverse comments or concerns for this variance.

12.2 **Grant County Public Works Department:**

12.2.1 An approach permit shall be obtained for County road access.

12.2.2 A Work in Right of Way permit shall be obtained prior to any work being performed within Grant County road Right-of-Way.

12.3 **Grant County Assessor's Office:**

12.3.1 Parcel 31-0232-000 is a 24,552 sq. ft. lot with a SFR.

12.3.2 Owner is Ron Gear.

12.3.3 No issues.

12.4 **Grant County Health District**

12.4.1 Health has no comments

12.5 **Grant County Building Official:**

12.5.1 The proposed variance is for a reduced setback. Creating a property line between 2 attached structures. The use of the structures must comply with the townhouse provisions of the International Residential code R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by one of the following methods:

12.5.1.1 A common 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 and a fire sprinkler system in accordance with Section P2904 in both townhouses shall be provided.

12.5.1.2 A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 shall be provided.

12.5.2. Any owner or owner's authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure or to erect, install, enlarge, alter, repair, remove, convert or replace any gas, mechanical or plumbing system, the installation of which is regulated by International Building Code, International Residential Code, International Mechanical Code, or Uniform Plumbing Code, or to cause any such work to be performed, shall first make application to the Grant County Development Services, Building Division and obtain the required permit.

13. No public comments were received.

14. This application was determined to be technically complete on October 16, 2018.
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 300ft 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 located within the Urban Growth Area of the City of Moses Lake.
18. The subject parcel is located in the Urban Residential 3 (UR3) zoning district.
19. Pursuant to WAC 197-11-800 (6) (e), this variance application is exempt from SEPA review.
20. Grant County Code § 23.12, Table 1 requires a five (5) foot side setback in the Urban Residential 3 zoning district.
21. The Applicant has submitted a short subdivision for the subject property.
22. Planning Department staff conducted an on-site visit on October 18, 2018.
23. The existing duplex appears to have been built in 1961.
24. The Grant County Assessor's comment states that the structure is a single family residence. A permit was submitted (Building permit 2007-907) to change the existing duplex into a single family residence. This permit was never finalized. The Applicant submitted a permit (BF 18-0635) in order to return the structure to its original use.
25. 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 Applicants. No adverse comments were expressed by any agency that would prohibit development.
26. 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 1 in order to allow a zero (0) foot side-yard setback in order to subdivide a lot with an existing duplex on the subject property, which is in the Urban Residential 3 zoning district.
27. Grant County has granted seven variances for similar requests, dividing lots with duplexes in the Larson Subdivision since 2008 (Planning File Numbers: 08-5149, 08-5151, 08-5153, 08-5155, 08-5157, 10-5510, and 12-5740).
28. 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.
 - 28.1 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.

- 28.1.1 The special condition that applies for this particular piece of property is this duplex already exists. We are also proposing a short subdivision that will in fact create a new lot line effectively dividing the lot down the middle of the property creating two separate parcels. The new lot line will require a variance for a "0" foot setback variance to satisfy the 5 foot side yard setback requirement for residential structures (existing duplex) and solely for the side yard setback that would apply to the interior lot line created by the proposed short subdivision.
- 28.1.2 As the existing structure on-site is a duplex, there is no way the Applicant can divide the lot without the granting of a variance. The Larson Subdivision has seen many similar variances granted.
- 28.2 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
- 28.2.1 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23 and 24.
- 28.2.2 Allowing the variance will be in harmony with the intent and spirit of the GCC Titles 22, 23 and 24 because the variance will not approve a use which is prohibited in the Urban Residential 3 zoning district.
- 28.3 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.
- 28.3.1 A variance is necessary for the preservation and enjoyment of a property right possessed by others. The variance is necessary in order to take the current single unit and divide it into two separate units, so they can be sold as individual units.
- 28.3.2 Without the variance, the property owner would not be able to subdivide their property as other property owners have.
- 28.4 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.
- 28.4.1 The special conditions and circumstances described in Criteria #1 are not from deed restrictions or Applicant's own actions but rather the need for a "0" foot setback variance to satisfy the 5 foot side yard setback requirement for residential structures (existing duplex) and solely for the side yard setback that would apply to the interior lot line created by the proposed short subdivision.
- 28.4.2 The duplex has been on the property for a number of years. The lot has enough density in the Urban Residential 3 zoning district to be subdivided and meet zoning requirements, however due to the existing duplex crossing the proposed property boundary, a variance is necessary.

- 28.5. 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.
 - 28.5.1 The granting of the variance requested will not confer on the person seeking the variance any special privilege. It will simply divide the property into two parcels in order to split the single residence and make two separate units out of the existing duplex. Nothing physical will actually take place on the property besides the lot line adjustment which will be recorded by the county.
 - 28.5.2 Multiple variance have been granted within the Larson Subdivision for this same purpose. The Applicant would not be given any special privilege that has not been given to other property owners.
- 28.6 The variance requested is the minimum necessary to afford relief.
 - 28.6.1 The existing structure would cross the proposed property line, therefore a zero (0) setback is the minimum necessary to divide the lot.
- 28.7 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.
 - 28.7.1 The requested variance will not create significant impacts to critical areas or be detrimental to the public interest.
 - 28.7.2 There were no critical areas identified and the proposal will not be detrimental to the public as similar variance have already been granted to other properties in the vicinity.
- 28.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
 - 28.8.1 The variance will not permit a use prohibited by GCC Title 23.
 - 28.8.2 The variance will not allow a use prohibited in the Urban Residential 3 zoning district under GCC Title 23.
30. The Grant County Planning Department recommended approval of the requested permit, subject to the recommended Conditions of Approval.
31. An open record public hearing after due legal notice was held on November 14, 2018.
29. The entire Planning Staff file was admitted into the record at the public hearing.
32. Appearing and testifying on behalf of the Applicant was Earl Romig. Mr. Romig testified that he was an agent authorized to appear and speak on behalf of the property owner and Applicant. Mr. Romig testified that the Applicant concurred with the all of the representations set forth in the staff report and had no objections to any of the proposed Conditions of Approval.
33. 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 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 18-0304 is hereby APPROVED subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

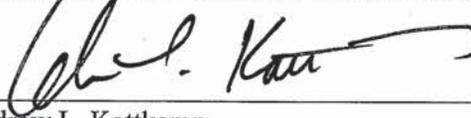
All Conditions of Approval shall apply to the Applicant, and the Applicant's heirs, successors in interest and assigns.

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 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.
3. The Applicant shall comply with all requirements as deemed necessary by the Grant County Public Works Department, including, but not limited to:
 - 3.1 An approach permit shall be obtained for County Road access.
 - 3.2 A Work in Right of Way permit shall be obtained prior to any work being performed within Grant County road Right-of-Way.
4. The Applicant shall comply with all requirements as deemed necessary by the Grant County Building Division, including, but not limited to:
 - 4.1 The use of the structures must comply with the townhouse provisions of the International Residential code R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by one of the following methods:

- 4.1.1 A common 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 and a fire sprinkler system in accordance with Section P2904 in both townhouses shall be provided.
 - 4.1.2 A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 shall be provided.
5. This variance applies only to the buildings as they currently exist. If a structure is removed or demolished, this variance for that property will automatically terminate.

Dated this 16th day of November, 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.