

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
P 19-0112)	AND DECISION
Jerry Cabe)	

THIS MATTER, having come on before the Grant County Hearing Examiner on June 12, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision as follows:

FINDINGS OF FACT

1. This is a request for a variance to the five (5) foot side-yard setback requirement as defined by GCC §23.12, Table 3, to allow a two (2) foot side-yard setback as well as a variance to the ten (10) foot front-yard setback requirement as defined by GCC §23.12, Table 3, Footnote 24a, to allow a six and a half (6.5) foot front-yard setback. Both variances are needed so that the Applicant to build a 12.5 foot x 37 foot lean-to over the existing trailer and tip out on an approximately 2,218 sq. ft. parcel in the Shoreline Development 3 Zoning District of Grant County.
2. The applicant and owner of the property is Jerry Cabe, 7442 N Folk Road SE, Snoqualmie, WA 98065.
3. The site address of the subject parcel is 31478 Moore Rd NE #330 Rimrock Cove, Coulee City, WA 99115.
4. The parcel number of the subject property is Parcel #07-1070-000.
5. The legal description of the subject property is in a portion of Section 29, Township 24 North, Range 27 East, WM, Grant County, WA.
6. The Comprehensive Plan designation is Shoreline Development.
7. The zoning designation is Shoreline Development 3.
8. The property to the north is zoned Shoreline Development 3
9. The property to the south is zoned Shoreline Development 3
10. The property to the east is zoned Shoreline Development 3
11. The property to the west is zoned Shoreline Development 3

12. Pursuant to WAC 197-11-800(6)(e), this proposal is exempt from SEPA review.
13. The subject parcel was reviewed for Critical Areas and was not found to be located within 300ft of any Critical Areas as defined by Grant County Code.
14. A Public Notice of Application and Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on May 13, 2019, was mailed to property owners within 300 ft. of the subject parcel on May 10, 2019, was posted on the subject site by staff on May 8, 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 May 10, 2019. The public comment period ended on May 28, 2019.
15. The following is a list of agencies notified and the date they responded:
 - 15.1 Grant County Fire Marshal responded on May 13, 2019.
 - 15.2 Grant County Building Official responded on May 21, 2019.
 - 15.3 Grant County Health District responded on April 1, 2019.
 - 15.4 Grant County Public Works Department responded on May 13, 2019.
 - 15.5 Grant County Assessor's Office responded on May 13, 2019.
 - 15.6 Grant County Noxious Weed Board responded on May 21, 2019.
 - 15.7 Grant County Fire District #7 responded on May 15, 2019.
16. The following agencies were notified but did not respond:
 - 16.1 Grant County Treasurer's Office
 - 16.2 Grant County Emergency Management
 - 16.3 Grant County Auditor
 - 16.4 Grant County PUD
17. **Agency Comments:** The following is a summary of comments received:
 - 17.1 **Grant County Fire Marshal comments:**
 1. The purpose of the side setback is to give more time to the fire department to respond to a fire and keep the fire from spreading to the structure next door. Decreasing that distance increases the likelihood of a fire spreading to the property next door.
 2. The separation on the opposite side of this variance request already looks like it does not meet the requirements for setbacks and is dangerously close to their neighbor's property. From a fire safety standpoint, increasing the footprint of this property any more than it already is would increase the possibility of a large fire that could damage numerous properties and I would be against granting this variance
 - 17.2 **Grant County Fire District #7 comments:**
 1. Grant County Fire District 7 is against this variance request. The County & Fire Departments met with the Rimrock Cove Board and clear rules were set. This is outside that. The rules were based on Public Safety and Emergency services getting in/out and safely working in the area. We would not like this to happen.

17.3 Grant County Public Works Department:

1. Grant County Public Works has no comment at this time.

17.5 Grant County Assessor's Office:

1. Parcel 07-1070-000 is a 2218 sq. ft. lot with a manufactured home and storage building.
2. Owners are Jerry Cabe, Cindy Mallery & Pattie Cabe.
3. No issues.

17.6 Grant County Noxious Weed Board:

1. It's all good.

17.7 Grant County Building Official:

1. The Building Department set back is determined by the fire separation distance that is required to protect human safety. Fire separation distance is defined as: the distance measured from the building face to one of the following:
 - 1.1 To the closest interior lot line.
 - 1.2 To the centerline of a street, an alley or public way
 - 1.3 To an imaginary line between two buildings on the lot.
 - 1.4 The distance shall be measured at a right angle from the face of the wall.
2. Table R302.1(1) exterior walls not fire-resistance rated, and 0 hours rating, shall have a minimum fire separation distance greater than or equal to 5'. For the purpose of fire separation, this may be measured to the center of the pathway, and in no case may the posts be any closer than 10' to any adjacent structure. In order to reduce this distance, each wall/post shall be protected by a minimum 1 hour fire-resistance rating- tested in accordance with ASTM E 119 or UL 263 with exposure from both sides.
3. 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.

17.8 Grant County Health District:

1. Rimrock is on a community water system, and they have a community lagoon waste water system, so there are no septic systems on the individual lots. I do not see a need for health to review this project, but if planning feels otherwise and needs a signed land use proposal form (i.e. Water and sewer availability), send them over.

18. No public comments were received.

19. The application was determined to be technically complete on May 6, 2019

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 Urban Growth Area of any city.
23. The subject parcel is located in the Shoreline Development 3 (SD3) Zoning District.
24. Grant County Code § 23.12, Table 3, Footnote 24(b) requires a ten (10) foot front setback for the development commonly known as Rimrock Cove in the Shoreline Development (SD3) Zoning District.
25. Grant County Code § 23.12, Table 3, Footnote 24(a) requires a five (5) foot rear and side setback for the development commonly known as Rimrock Cove in the Shoreline Development 3 (SD3) Zoning District except that the rear setback shall be zero (0) feet when abutting an open space common area.
26. The setbacks specific to Rimrock Cove were established through Grant County Ordinance No. 18-056, an amendment to the Unified Development Code (Planning File P18-0072).
27. The applicant has submitted a building permit for this lean-to (BF 19-0035).
28. Planning Division staff conducted an on-site visit on May 8, 2018.
29. In response to the comment received from the Grant County Health District, the lean-to does not require a land use availability form as there is no water being used in the lean-to project.
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 included as Conditions of Approval. All comments received have been included as part of this Decision.
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, Footnote 24 in order to enable construction of a lean-to over the existing trailer and tip out within the front and side setbacks of the subject parcel, which is in the Shoreline Development 3 Zoning District
32. Based on the Hearing Examiner's review of the facts, the Hearing Examiner finds that the requested variance does not comply with the Criteria of Approval for a variance as specified in GCC § 25.08.060(b).
33. 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 because:
 - 33.1 The footprints of the structures are as they were when we took over the property, carport, trailer, etc. within the 10 foot setback.
 - 33.2 The intrusion on the front would be 1 post side of the trailer, the rest above the structure, with possibly 1' sticking out past existing trailer above.
 - 33.3 On the side variance there would be 4 posts on our property within the 5' setback from the common ground path. There would be no interference to use of sidewalk at all. There are six common ground walkways in the community, this one uniquely next to our property. If the path were not there, these posts would not be a problem.

- 33.4 The lots in Rimrock Cove are similar in size and 28 lots share a property line with a public access walkway. The variance is requested to cover the RV that was not required to have a building permit. The existing carport appears to have been in place prior to Mr. Cabe's ownership of the property. The carport does not have a verifiable permitting history with the county.
34. Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24 because:
- 34.1 Allowing the variance will not be in harmony with the intent and spirit of the GCC Titles 22, 23 and 24. The unified development code is in place for the benefit and safety for all residents in Grant County. The UDC was amended in 2018 to make consideration for the unique community known as Rimrock Cove. The setbacks in place are the minimum necessary to protect the public health, safety, and welfare of the community.
35. 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 because:
- 35.1 The side variance is special to only 6 of 198 lots in Rimrock Cove. Some of them have structures within 1 foot of the pathway that were built before the 2018 UDC amendment.
- 35.2 The existing trailer does not conform to minimum setback distances for structures in this zone. The new proposed structure would further exacerbate the non-conformity of this site.
36. The special conditions and circumstances described 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 because:
- 36.1 The applicant did not place the park model home and did not own the property at the time at which the carport appears to have been built. The carport does not have a verifiable permitting history with the County.
37. The granting of the variance requested would 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 because:
- 37.1 Grant County Ordinance No. 18-056 established setbacks specific to the Rimrock Cove community. Granting this variance would allow the applicant special privilege beyond the already reduced setbacks established for Rimrock Cove.
38. The variance requested is not the minimum necessary to afford relief because:
- 38.1 UDC Amendment application (Planning file P18-0072) was approved through Grant County Ordinance No. 18-056. The setbacks established for Rimrock Cove through this application and Ordinance were determined to be the minimum necessary for room to park a vehicle while keeping the road clear. There is also sufficient common area to use for additional/overflow parking if necessary. Rimrock Cove covenants require the roads to be kept clear and no street parking is allowed which will ensure proper access for emergency vehicles. The Grant County Fire Marshall and Fire District #7 were opposed to the variance. The code required front setback of ten (10) feet, side setback of five (5) feet, and the rear setback of zero (0) feet are the minimum necessary to protect the public health, safety, and welfare.

39. To afford relief the requested variance will 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 because:
 - 39.1 The construction of the lean-to will not create any significant impacts to critical areas. Allowing the structure inside the required setback may be materially detrimental to the public welfare in the event of an emergency, such as a fire. The proximity of buildings in the area may lead to a fire spreading easily. The lean-to is proposing a two (2) foot setback from the property line adjacent to the public walkway.
40. The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located because:
 - 40.1 Not being sure of exact wording of GCC Title 23, our intent is to comply with GCC rules and not to interfere with out neighbor's access to common ground.
 - 40.2 The variance will not allow a use prohibited in the Shoreline Development 3 Zoning District.
41. An open record public hearing was held on June 12, 2019.
42. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
43. Appearing and testifying on behalf of the applicant was Jerry Cabe. Mr. Cabe testified that he was the property owner along with his sisters and was also the Applicant. He stated that they just wanted to build a cover for their trailer similar to that on other properties in the area. He stated that the structure would be further away from the road than their current carport. He stated that other properties in the vicinity are also non-conforming as to covers over the trailers.
44. No member of the public testified at this hearing.
45. The Grant County Hearing Examiner considered all evidence within the record in rendering this decision.
46. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

CONCLUSIONS OF LAW

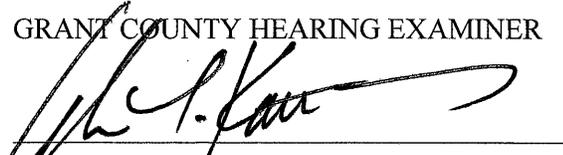
1. The Hearing Examiner has been granted authority to render this Decision.
2. This proposed use is not consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. This proposal does not conform to the standards specified in the Grant County Code.
4. The proposed use is 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 19-0112 is hereby **DENIED**.

Denied this 13th day of June, 2019.

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.