

**GRANT COUNTY  
LAND USE HEARING EXAMINER**

<b>IN THE MATTER OF</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
P16-0079	)	<b>DECISION AND</b>
McKean	)	<b>CONDITIONS OF APPROVAL</b>

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on April 13, 2016 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 application from Jeromy & Rosario McKean, PO Box 1175, Moses Lake, WA 98837 and is for a variance to the 4-ft. front yard (fence) height restriction as defined in GCC § 23.08.020(f), in order to enable construction of a 6-ft. tall security fence along property lines inside the 35-ft. front setback of an approximately 1.02-acre parcel in the Urban Commercial 1 zoning district of Grant County.
2. The applicants are Jeromy & Rosario McKean, PO Box 1775, Moses Lake, WA 98837.
3. The site address of the subject parcel is 3808 Ottmar Road NE, Moses Lake, WA. It is located approximately 0.03 miles north of the intersection of Valley Road NE and Ottmar Road NE, and in the NE quarter of Section 17, Township 19 North, Range 28 East, WM, Grant County, WA (Parcel #12-0589-000). The subject parcel in its present configuration was created by a Boundary Line Adjustment (Application #P15-0188) approved by the Planning Department on January 6, 2016, and recorded on January 8, 2016 (Auditor's File #1357433).
4. The zoning for the subject property is Urban Commercial 1.
5. The zoning for neighboring parcels are: To the north, Urban Residential 2; to the south, Urban Commercial 1; to the east, Urban Commercial 1; and to the west, Urban Residential 2.
6. The Comprehensive Plan designation for the subject property is Commercial (Urban).
7. 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 is not in, nor does it contain, any critical areas.
8. Pursuant to WAC 197-11-800(6)(e), this proposal is exempt from SEPA review.
9. The surrounding development consists of single-family residences to the north and small-scale commercial businesses to the east.

10. A Public Notice of Application & Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on March 7, 2016, was mailed to property owners within 300ft. of the subject parcel (and within 300 ft. of an adjoining property owned by the applicants) on February 29, 2016, was posted on the subject site by March 7, 2016, 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 February 29, 2016. The public comment period ended on March 22, 2016.
11. Public and agency comments that were received were considered by the Hearing Examiner in rendering this Decision and forming Conditions of Approval. The following agencies provided comments:
  - 11.1 Grant County Building Department responded on February 29, 2016.
  - 11.2 Grant County Fire Marshal responded on March 1, 2016.
  - 11.3 Grant County Public Works Department responded on February 29, 2016 and March 16, 2016.
  - 11.4 Grant County Assessor's Office responded on March 1, 2016.
12. The following agencies were notified but did not respond:
  - 12.1 Grant County Health District
  - 12.2 Grant County Emergency Management
  - 12.3 Grant County Auditor's Office
  - 12.4 Grant County Treasurer's Office
  - 12.5 Grant County Sheriff's Office
  - 12.6 Grant County Fire District #5
  - 12.7 Grant County PUD
  - 12.8 Grant County Noxious Weed Control Board
  - 12.9 City of Moses Lake, WA
  - 12.10 U.S. Bureau of Reclamation
  - 12.11 Moses Lake Irrigation & Rehabilitation District
  - 12.12 Grant County International Airport
13. The following is a summary of comments received:
  - 13.1 **Grant County Building Department:**
    - 13.1.1 No comment.
  - 13.2 **Grant County Fire Marshal:**
    - 13.2.1 No adverse comments or concerns.
  - 13.3 **Grant County Public Works Department [received on 02-29-16]:**
    - 13.3.1 Approach Permit shall be obtained for access onto County Road and approach shall be constructed per County approach standards.
    - 13.3.2 No signage, fencing, landscaping, swells, or any apertures related to them shall be erected in, on, or overhang into the County Road right-of-way.

- 13.3.3 Entry gate shall be located/built off of the approach access so as to allow for a minimum of at least one vehicle to pull off the County Road right-of-way completely for entry into the storage facility.
- 13.4 **Grant County Public Works Department [received on 03-16-16]:**  
(In regards to revised Site Plan received on 03-15-16.) We do not have any additional comments on the updated site plan. Our original comments are still applicable.
- 13.5 **Grant County Assessor's Office:**  
Parcel #12-0589-000 is now a 1.03-acre parcel of land only; BLA 15-0188 has been completed, except on the T-2 side as we are still down. Owners are Jeromy & Rosario McKean.
14. No public comments were received.
15. This application was determined to be technically complete on February 29, 2016.
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 boundary of Moses Lake, WA.
18. Pursuant to GCC § 23.08.020(f), fences, walls, hedges, and similar enclosures not exceeding forty-eight (48) inches in height are permitted in any front yard. Thus, the maximum allowed front yard fence height (in any zoning district) is four (4) feet. The applicants seek a variance to increase the allowable front yard fence height to six (6) feet in order to construct a 6-ft. high security fence along the property lines inside the 35-ft. front setback of the subject parcel.
19. Pursuant to GCC § 25.080.010(b), a variance may only be granted for dimensional, bulk, and area requirements specified by Grant County Code Titles 22, 23, or 24. The applicants have requested a variance to one specific dimensional requirement for fences as specified by GCC Title 23. As such, a variance request is applicable in this particular instance.
20. WAC 197-11-800(6)(e) states that the granting of variances based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density are exempt from SEPA review.
21. Planning Department staff conducted an on-site visit on March 2, 2016.
22. On March 15, 2016, the Planning Department received a revised site plan for this project from the applicants. The proposed revisions involve minor changes to the spaces between the proposed structures, a reduction in size of one building, reduction of the proposed landscape areas from approximately 11% of the subject parcel to 8%, the addition of slats in the fencing along the north and west property lines (instead of landscaping) to provide visual screening, and relocation of the entry gate.

23. The revised site plan submitted on March 15, 2016 was reviewed by the Planning Department and the Public Works Department. A determination was made that the proposed revisions are minor in nature, do not significantly change or affect the overall impact of this project, and are well within the scope of this project as was originally proposed. Furthermore, all of the proposed revisions appear to be inconsequential as they relate to the requested variance. Consequently, the proposed revisions were accepted and approved by the Planning Department as a minor modification to this application.
24. Pursuant to Grant County Code § 23.04, Table 3, Mini-Storage Facilities are allowed in the Urban Commercial 1 zoning district subject to a Discretionary Use Review. Such a use is also subject to SEPA review. As such, a Discretionary Use Permit (DUP) and a SEPA Environmental Checklist are also required for the proposed use. The applicants submitted DUP and SEPA applications to Grant County on January 7, 2016. (A SEPA Determination of Non-Significance was issued for the proposed use on March 2, 2016.) Final approval of the DUP by the Planning Department, with a 6-ft. high fence inside the 35-ft. front setback as has been proposed, is contingent upon approval of the requested variance.
25. The applicants, Jeromy & Rosario McKean, have submitted a variance application for consideration by the Grant County Hearing Examiner. The applicants have requested a variance from a Performance & Use Standard as defined in GCC § 23.08.020(f), in order to enable construction of a 6-ft. tall security fence along the property lines inside the 35-ft. front setback of the subject parcel, which is in the Urban Commercial 1 (UC1) zoning district. The purpose of the fencing is to provide security for a proposed Mini-Storage Facility. The applicants seek a variance to the 4-ft. front yard height restriction for fences to allow for construction of a security fence as proposed.
26. The applicants have indicated that unique circumstances exist in that the proposed fence is necessary in order to provide security for a Mini-Storage Facility on the subject parcel. Construction of an appropriate 6-ft. high fence for security as has been proposed would allow the applicants to better secure and protect their customers' property being stored in the facility.
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 complies with the Criteria of Approval as listed below. As such, the Planning Department recommended approval of the proposed variance subject to the suggested Conditions of Approval.
28. Applicable criteria for approval were reviewed by Grant County Planning Department staff, and it has been determined that this proposal complies with them as follows:
  - 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 applicant would be deprived of the rights commonly enjoyed by other properties in the same district under the terms of GCC Titles 22, 23, and 24 by not allowing the 4-ft. front yard (fence) height restriction to be granted a variance to construct a 6-ft. high fence (inside the 35-ft. front setback) as proposed for security reasons and safety.
- 28.1.2 As was noted above, Planning Department staff conducted a site visit on March 2, 2016. A determination was made that special conditions and circumstances do exist that are unique to the subject parcel. Approval of the requested variance would enable construction of a security fence at a height appropriate for the situation. In this instance, literal interpretation and application of GCC§ 23.08.020(f) would not allow construction of a fence tall enough to achieve the desired result, and would thereby deprive the applicants of rights commonly enjoyed by other property owners in the same zoning district.
- 28.2 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
- 28.2.1 The 6-ft. high fence will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
- 28.2.2 Grant County Code Chapters 22, 23, and 24 are intended to carry out the goals and policies of the Grant County Comprehensive Plan. Based on a review of said goals and policies, and subject to the proposed Conditions of Approval, the Planning Department has determined that allowing the requested variance would conform to and be consistent with the requirements, purpose, and the intent of the Comprehensive Plan and GCC Chapters 22, 23, and 24.
- 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 The special circumstances of the property require the variance in order to have enjoyment of the property right for the safety and security of the business.
- 28.3.2 As outlined above, a variance has been deemed applicable and necessary in this instance in order to preserve the applicants right to provide security for a Mini-Storage Facility (a use allowed in the UC1 zoning district with a Discretionary Use Permit) on the subject parcel. Approval of the variance as requested would not give the applicants any special rights not already possessed by neighboring properties. It has already been determined as noted above that special circumstances peculiar to the subject property exist that would deny the applicants of rights commonly enjoyed by others.
- 28.4 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.

28.4.1 A 6-ft. high fence will be required for the security and safety of the business.

28.4.2 Construction of a security fence around the perimeter of the subject parcel as proposed appears to be the most viable and reasonable option to provide security as appropriate and necessary for the Mini-Storage Facility. The circumstances related to the subject parcel are unique to the site, and not the result of any person's actions.

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 There are no special privileges granted by allowing the variance to the property owner.

28.5.2 A determination has already been made that approval of the requested variance will not allow the applicants any special rights or privileges. Approval of the variance will enable the applicants to construct a security fence tall enough to prevent people from trespassing onto the subject parcel and thereby secure a business which is an allowed use subject to a Discretionary Use Permit in the UC2 zoning district, as well as a right commonly enjoyed by other property owners in the same zone.

28.6 The variance requested is the minimum necessary to afford relief.

28.6.1 It has been demonstrated above that literal interpretation and application of the Performance & Use Standards for fences as defined in GCC § 23.08.020(f) in this particular situation would not allow the construction of a security fence tall enough to prevent trespassers from entering the subject parcel. The applicants have requested a variance in order to enable construction of a security fence capable of achieving the desired result. The Planning Department concurs that the variance as requested is the most viable option and the minimum necessary to afford relief.

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 There will be no significant impacts to critical areas, and will not cause any detriment to the public welfare, nor injury to the right of other property owners in the vicinity, or contrary to the public interests.

28.7.2 Based on our review of this project, the Planning Department has determined that this proposal will cause no significant impacts to critical areas, and that

public use and interest will not suffer any detrimental effects due to approval of the variance or construction of the 6-ft. tall security fence that it will enable. Furthermore, this project has been proposed and will be conditioned in such a manner that will maintain public safety and welfare, will not be injurious to other property owners in the vicinity, and will not be contrary to the public interest.

- 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 Issuance of this variance will not permit a use prohibited by GCC Title 23 in the district in which the property is located.
  - 28.8.2 It has already been noted herein that approval of the requested variance will enable the applicants to construct a fence tall enough to prevent people from trespassing onto the subject parcel and thus provide security as appropriate for a business which is allowed with a Discretionary Use Permit in the UC2 zoning district.
29. An open record public hearing after due legal notice was held on April 13, 2016.
30. The entire Planning Staff file was admitted into the record at the public hearing.
31. The Grant County Department of Land Services recommended approval of this preliminary plat, subject to the recommended conditions of approval.
32. Appearing and testifying on behalf of the applicant was Rosario McKean. Ms. McKean testified that she owned the property with her husband, Jeromy. She testified that the use of the property will be a mini storage facility. There is other land not being developed that may be developed in the future. She testified that all of the proposed Conditions of Approval were acceptable. She also testified that, based on the Hearing Examiner's questions, that they had no objection to an additional Condition of Approval that limited this variance approval to use of the property as a mini storage, and not for any commercial use.
33. The Hearing Examiner did have concerns regarding this variance request. It is the Hearing Examiner's opinion that this variance can only be approved because of the specific use to be made of the property. It cannot be approved based upon any commercial use. That is because the Grant County Unified Development Code, as established by the County Commissioners, has already set maximum fence heights to be 4-ft. in commercial zones. If the Hearing Examiner were to grant variances for any commercial use, this would be counter to the Commissioner's intent. It is for this reason that the approved variance is limited to use of the property as a mini storage, and not for any commercial use.
34. No member of the public testified at the hearing.
35. The proposal is appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.

36. The proposed use will not cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
37. The proposal will be served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
38. 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.
4. As conditioned, the use will comply with all required performance standards as specified in Grant County Code.
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 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, Application P16-0079, is hereby **APPROVED** subject to the following Conditions of Approval.

## **IV. CONDITIONS OF APPROVAL**

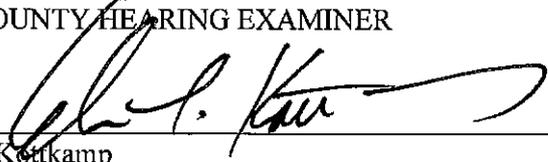
All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

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 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.
4. A variance to the Performance & Use Standards for fences as defined in GCC § 23.08.020(f) in the Urban Commercial 1 (UC1) zoning district has been granted in order to allow only construction of a 6-ft. tall security fence inside the 35-ft. front setback of the subject parcel (Parcel #12-0589-000) as depicted on a revised Site Plan submitted to the Grant County Planning Department by the applicants on March 15, 2016. 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.
5. The applicant shall comply with all requirements as deemed necessary by the Grant County Public Works Department, including, but not limited to:
  - a) An Approach Permit shall be obtained for access onto a County Road and the approach shall be constructed per County approach standards.
  - b) No signage, fencing, landscaping, swells, or any apertures related to them shall be erected in, on, or overhang into the County Road right-of-way.
  - c) Entry gate shall be located/built off of the approach access so as to allow for a minimum of at least one vehicle to pull off the County Road right-of-way completely for entry into the storage facility.
6. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including, but not limited to:
  - a) Upon approval of the requested variance, the applicants shall limit the scope and extent of the proposed fence as depicted on a revised Site Plan received from the applicants by the Planning Department on March 15, 2016.
  - b) The security fence shall be six (6) feet tall as so specified in the application materials.
  - c) The applicants shall acquire Building Permits and a Discretionary Use Permit, as required, prior to the onset of development of the subject site (Parcel #12-0589-000).
  - d) Construction enabled by approval of this variance will be subject to and shall comply with all requirements for compliance and Conditions of Approval of Discretionary Use Review (#P16-0002) upon its approval and issuance by the Planning Department.
7. Approval of this variance is strictly limited to use of the subject property as a mini storage facility and not for any other use. In the event the subject property is not used for a mini storage, this will require the property owner to apply for a new variance, or to remove the portion of the fence in which this variance was granted, and construct a fence consistent with the then applicable zoning code requirements.

Dated this 18<sup>th</sup> day of April, 2016.

GRANT COUNTY HEARING EXAMINER

  
\_\_\_\_\_  
Andrew L. Kotkamp

**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.**