

THE FOLLOWING MEMOS HAVE BEEN SCANNED WITHOUT EXHIBITS FOR THE HEARINGS TO BE CONDUCTED BY THE BENTON COUNTY BOARD OF ADJUSTMENT ON AUGUST 5, 2010 AT 7 P.M. BENTON COUNTY PLANNING ANNEX 1002 DUDLEY AVENUE PROSSER, WA

IF YOU WISH TO OBTAIN A COMPLETE PACKET INCLUDING THE EXHIBITS PLEASE CONTACT THE BENTON COUNTY PLANNING DEPARTMENT BY CALLING 736-3086 TRI-CITIES, 786-5612 – PROSSER OR THE EMAIL ADDRESS IS [PLANNING.DEPARTMENT@CO.BENTON.WA.US](mailto:PLANNING.DEPARTMENT@CO.BENTON.WA.US)

**CONTINUED HEARING ITEM:**

**STAFF MEMO SP 10-04**

**APPLICANT: ROY R. CONLEY**

**PROPOSAL: OPERATION OF  
A MANUFACTURED HOME  
SET-UP BUSINESS**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

DATE: JULY 26, 2010

TO: BENTON COUNTY BOARD OF ADJUSTMENT

FROM: BENTON COUNTY PLANNING DEPARTMENT

RE: SPECIAL USE PERMIT – SP 10-04  
APPLICANT: ROY R. CONLEY  
REQUEST: OPERATION OF A MANUFACTURED HOME SET-UP BUSINESS

File No. SP10-04  
Date 8-5-2010  
Exhibit No. 30  
Received by AK

The Benton County Board of Adjustment on May 13, 2010 conducted a public hearing with regards to the operation of a manufactured home set-up business. The site is located at 19206 N Webber Canyon Road in Section 29 and 30, Township 9 North, Range 27 East, W.M. The Board reached a decision after hearing testimony presented both for and against this proposal to continue said action until August 5, 2010 – 7 p.m. Planning Annex – 1002 Dudley Avenue, Prosser, WA. The reasoning for the continuance was to allow the applicant 90 per his request to clean up his site, thereby making it compatible with the surrounding area. In addition, the applicant would need to provide the Board of Adjustment pictures that reveal that the site has been cleaned up from junk and debris that were noted in the enclosed Exhibit Nos. 15-23 taken on September 6, 2009 and Exhibit Nos. 24-29 taken on May 5, 2010 by a surrounding property owner in opposition to this special use permit. Exhibit Nos. 15-29 were presented to the Board of Adjustment on May 13, 2010.

The Board of Adjustment also instructed the Benton County Planning Department and the Benton County Code Enforcement Officer to monitor the site during these 90 days and document the applicant's progress with pictures. Enclosed is Exhibit Nos. 31-34 pictures taken June 17, 2010 by the Benton County Planning Department. Exhibit Nos. 35-47 pictures taken June 28 and received by the Planning Department on July 1, 2010 from the Benton County Code Enforcement Officer. Exhibit Nos. 48-57 – pictures taken July 26, 2010 by the Benton County Code Enforcement Officer.

The Board of Adjustment will need to continue their public hearing on this action for the taking of additional public testimony. Upon conclusion of the hearing the Board will need to reach on conclusion on this special us permit.

#### Enclosures:

- Exhibit Nos. 15-23 – pictures – September 6, 2009
- Exhibit Nos. 24-29 – pictures – May 5, 2010
- Exhibit No. 30 – Memo dated July 26, 2010
- Exhibit Nos. 31-34 – pictures – June 17 2010
- Exhibit Nos. 35-47 - pictures – June 28, 2010
- Exhibit Nos. 48-57 – pictures – July 26, 2010

**NEW BUSINESS:**

**STAFF MEMO SP 10-14**

**APPLICANT:**

**PAUL/VICKIE KITZKE**

**PROPOSAL: BUSINESS  
ACTIVITY FOR A STORAGE  
FACILITY, TASTING ROOM –  
INCLUDING ONSITE SALES  
AND OFFICE FOR KITZKE  
CELLARS**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

**MEMO DATE:** JULY 26, 2010

**MEETING DATE:** AUGUST 5, 2010

**TO:** BENTON COUNTY BOARD OF ADJUSTMENT

**FROM:** BENTON COUNTY PLANNING DEPARTMENT

**RE:** SPECIAL PERMIT APPLICATION – SP 10-14

**APPLICANTS/OWNERS:** PAUL & VICKIE KITZKE, 72308 E. 260 PR NE. RICHLAND, WA 99352

**SPECIFIC REQUEST:** The applicant, Paul & Vickie Kitzke, is requesting a special use permit for a business activity for a storage facility, tasting room – including onsite sales and office for Kitzke Cellars.

**BACKGROUND:**

Site Location: The site is located at 72308 E. 260 PR NE, Richland, WA on Lot 2 of Short Plat 1619 in Section 20, Township 9 North, Range 28 East, W.M.

Land Use: The site is currently developed with a single-family dwelling and a detached shop. The surrounding properties are developed with single-family dwellings or are undeveloped.

Zoning: The site and surrounding properties are zoned Agriculture. Parcels located immediately east of Dallas Road are within the City of Richland; areas to the West are Agriculture.

Benton County Comprehensive Plan Designation: The Benton County Comprehensive Plan designated the site and surrounding areas as "Rural Lands 5".

State Environmental Policy Act: Categorically exempt.

**APPLICABLE DEVELOPMENT REGULATIONS:**

1. The Benton County Code Section 11.16.010(o) (In the Agricultural Zoning District) states that: "Any of the following uses may be allowed by special permit issued by the Benton County Board of Adjustment after notice and public hearing as provided in BCC 11.52.090."

(17) Business activities, other than those set forth above, that are compatible with the principal uses and purpose of the underlying zone and the surrounding land uses may be conducted from within an approved detached accessory building if they meet the following criteria as well as any other conditions required by the Board of Adjustment:

(a) There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence.

(b) No more than four (4) non-resident persons, whether they work on site or not, may be employed by or be partners in the business.

(c) The business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within the detached accessory building.

(d) Only one approved detached accessory building on a parcel may be used for business activities. If more than one (1) business will be conducted within an approved detached accessory building, then a separate application must be submitted for each business activity, provided that the total area used by all business activities shall not exceed that permitted by subsection (c) above.

(e) No more than two (2) non-illuminating signs, with a maximum area of four (4) square feet each, shall be permitted in connection with the business activity. The posting of such signs is limited to the parcel on which the approved detached accessory building is located. On the Private Road (inside the road right-of-way) sign posting and sign posting, which interferes with the line-of-site for road intersections, are prohibited.

(f) Not more than three (3) vehicles marked to identify the business may be on the parcel at any one time. No other on-site outside storage of vehicles, equipment and/or supplies is allowed in connections with the business activity. This prohibition applies to, but is not limited to: lumber, plasterboard, pipe, paint, inoperable vehicles, and heavy equipment that are related to the business.

(g) The property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton county Fire Marshal, and the Benton-Franklin District Health Department, and all other local, state and federal regulations pertinent to the business activity pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations.

(h) Adequate off-street parking, as determined by the Board of Adjustment, must be provided.

(i) Any waste created as a result of the business activity must be disposed of off-site in compliance with all local, state and/or federal regulations.

(j) The presence of customers/clients and non-resident employees at the location of the business activity shall be limited to the days and hours of operation as determined by the Board of Adjustment.

2. Benton County Code Section 11.52.090(a) states:

"Conditional Use/Special Permit General Standards. The conditional use/special permit application process allows the Board of Adjustment to review the location and design of certain proposed uses, the configuration of improvements, and the potential impacts on the surrounding area. The application process also allows the Board of Adjustment to ensure development in each zoning district protects the integrity of that district. The notice, hearing, decision and enforcement procedures are as set forth herein and in BCC 11.52.089.

Certain uses are classified as conditional uses/special uses because of their unusual nature, infrequent occurrence, special requirements, or potentially significant impacts to the environment, public infrastructure or adjacent properties, and/or possible safety hazards and other similar reasons.

Once granted, a conditional use/special permit may be transferred by a holder thereof after written notice to the Board of Adjustment; provided the use and location must remain the same and the transferee must continue to comply with the conditions of the permit and, if applicable, the requirements set forth in BCC 11.52.070."

3. Benton County Code Section 11.52.090(d) states:

"Conditional Use/Special Permit—Permit Granted or Denied. A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;

- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and

If reasonable conditions cannot be imposed so as to allow the Board of Adjustment to make the conclusions required above, the conditional use/special permit application shall be denied."

**FINDINGS OF FACT:**

Based on the application and information received the planning staff makes the following findings.

1. The applicants/properties owner is Paul & Vickie Kitzke, 72308 E. 260 PR NE Richland, WA 99352.
2. The applicant is requesting approval of a Special Permit Application for a business activity for a tasting room, storage and office space.
3. The application for SP 10-14 was submitted to Benton County on July 6, 2010 and declared complete on July 7, 2010.
4. Special Permit 10-14 did not require that a Notice of Application be published.
5. The notice for the Benton County Board of Adjustment Open Record Hearing for application SP 10-14 was published on July 22, 2010, in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for August 5, 2010.
6. Special Permit Application SP 10-14 is categorically exempt from the requirements of the Washington State Environmental Policy Act.
7. The Benton County Comprehensive Plan designated the site and surrounding areas as "Urban Growth Area". Parcels immediately to the east of Dallas Road are within the City of Richland. This application is within the City of Richland Urban Growth Area and the application was sent to the City of Richland. The City of Richland responded with a no comment response letter.
8. The existing building is 2583 plus the garage square feet, but the application provides that the business activity will only use 352 feet of the total 550 square feet of the attached garage. The building was originally permitted as a residential garage. A change of use and a building permit and inspection for the changes to the original residential garage must be obtained from the Benton County Building Department.

9. The application lists that there will be 10 parking spaces for the business activity. The applicant will need to show where the parking will be provided. Also at least one of the parking space must be paved and meet the handicapped parking standards. Parking will not be allowed on the fire access road (driveway).
10. The Benton-Franklin Health District commented (BOA 1.12) that they had no objections provided that:
  - The dwelling and business are each served by an approved public water supply in accordance with WAC 246-291.
  - The dwelling and business are each served by an on-site sewage disposal system that is permitted, installed and approved in accordance with Benton-Franklin District Board of Health rules and Regulations No. 2.
  - The lot must meet minimum land area requirements as specified in Benton-Franklin District Board of Health rules and Regulations No. 2.
11. The Benton County Department of Public Works provided that the existing approach to Dallas Road is paved to 96-05 standards.
12. The proposed use would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the Agriculture zoning districts such as schools, churches, libraries, community club houses, stills, packaging sheds and five borders and/or lodgers in any one family dwelling unit.
13. The surrounding area is not completely developed but the proposed use as shown in the application should not hinder or discourage the development of permitted uses on neighboring properties in this Agriculture zoning district as a result of this special permit.

**DISPOSITION OF THE APPLICANT'S REQUEST:**

**A conditional use/special permit shall be granted only if the Board of Adjustment can make findings of fact based on the evidence presented sufficient to allow the Board of Adjustment to conclude that, as conditioned, the proposed use:**

- (1) is compatible with other uses in the surrounding area or is no more incompatible than are any other outright permitted uses in the applicable zoning district;**
- (2) will not materially endanger the health, safety, and welfare of the surrounding community to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (3) would not cause the pedestrian and vehicular traffic associated with the use to conflict with existing and anticipated traffic in the neighborhood to an extent greater than that associated with any other permitted uses in the applicable zoning district;**
- (4) will be supported by adequate service facilities and would not adversely affect public services to the surrounding area;**

- (5) would not hinder or discourage the development of permitted uses on neighboring properties in the applicable zoning district as a result of the location, size or height of the buildings, structures, walls, or required fences or screening vegetation to a greater extent than other permitted uses in the applicable zoning district; and**

**CONDITIONS OF APPROVAL:**

If the Board of Adjustment decides to approve Special Permit Application 10-14, based on the information presented at the public hearing and after making such findings that support that decision, the Planning Department recommends that the following conditions be included:

1. Applicant shall not conduct any of the activities within the scope of Special Permit 10-14 until the applicant is in compliance with all conditions set forth herein. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the special permit until those conditions have been met. The special permit shall not become effective until issued by the Planning Department.
2. If the conditions of approval have not been met and the Planning Department does not issue the special permit within one (1) year from the time the Board of Adjustment conditionally approved the special permit, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicant shall be notified in writing at the applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. That the applicants obtain appropriate building permits to change the occupancy, if needed of the existing garage to be used for the business activity. Applicants must submit written documentation that all the required permits and approvals have been obtained from the Benton County Building Office. The applicants shall continue to occupy the on-site single family dwelling while Special Permit SP 10-14 is in effect.
4. That the applicants comply with all requirements included in the Benton Franklin Health District letter dated July 13, 2010 (BOA 1.12). The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
5. That the applicants provide at least 10 parking spaces and must show them on a site plan. At least one of the parking spaces must meet the requirements for handicap parking. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
6. There must be a residence on site, and at least one (1) of the proprietors of the business must be the owner or lessee of the property where the business and the residence are located and must reside in said residence. If the applicant no longer resides in the existing home, the business activity must be discontinued. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
7. That no (0) non-resident persons, whether they work on site or not, may be employed by or be partners in the business, at the request of the applicants. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.

8. The business activity, including all storage space, shall not occupy more than eighteen hundred (1800) square feet of total floor area within the detached accessory building. No outside storage of business related materials would be allowed. Only one (1) approved detached accessory building on a parcel may be used for business activities. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
9. That no more than one (1) non-illuminating sign, as requested by the applicants with a maximum area of four (4) square feet each, shall be permitted in connection with the business activity. The posting of such signs is limited to the parcel on which the approved detached accessory building is located. On street (inside the road right-of-way) sign posting, which interferes with the line-of-site for road intersections, are prohibited. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
10. That not more than two (2) vehicles marked to identify the business may be on the parcel at any one time. No other on-site outside storage of vehicles, equipment and/or supplies is allowed in connection with the business activity. This prohibition applies to, but is not limited to: lumber, plasterboard, pipe, paint, inoperable vehicles, and heavy equipment that are related to the business. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
11. The property owner and the proprietor(s) of the business shall comply with all requirements of the Benton County Building Department, the Benton County Fire Marshal, the Benton-Franklin District Health Department, and all other local, state and federal regulations pertinent to the business activity pursued. The requirements of or permission granted by the Board of Adjustment shall not be construed as an exemption from such regulations. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.
12. That any waste created as a result of the business activity must be disposed of off-site in compliance with all local, state and/or federal regulations.
13. The presence of customers/clients at the business activity shall be limited to Friday, Saturday, and Sunday between the hours 12:00 p.m. to 5:00 p.m. as stated in the application. The applicants shall continue to meet all such requirements while Special Permit SP 10-14 is in effect.

**NEW BUSINESS:**

**STAFF MEMO VAR 10-02**

**APPLICANT:**

**DARRELL/JO LEA NICKERSON**

**PROPOSAL: VARIANCE FROM  
BCC 11.12.040 FOR A FOUR FOOT  
REDUCTION FROM THE  
REQUIRED 10 FOOT SIDE YARD  
SETBACK AND A VARIANCE  
FROM BCC 11.12.050 FOR A 21  
FOOT REDUCTION FROM THE  
REQUIRED 25 FOOT BACK YARD  
SETBACK.**

# Benton County Planning Department

Planning Annex, P.O. Box 910, 1002 Dudley Avenue, Prosser WA 99350, Phone: (509) 786-5612 or (509) 736-3086, Fax (509) 786-5629

**MEMO DATE:** JULY 23, 2010  
**HEARING DATE:** AUGUST 5, 2010  
**TO:** BENTON COUNTY BOARD OF ADJUSTMENT  
**FROM:** BENTON COUNTY PLANNING DEPARTMENT  
**RE:** VARIANCE APPLICATION – VAR 10-02

**APPLICANTS/  
PROPERTY OWNERS:** DARRELL & JO LEA NICKERSON  
1244 N. NEEL LOOP  
KENNEWICK, WA. 99336

**SPECIFIC REQUEST:**

The applicant is requesting a variance from BCC 11.12.040 for a four foot reduction from the required 10 foot side yard setback and a variance from BCC 11.12.050 for a 21 foot reduction from the required 25 foot back yard setback.

**BACKGROUND:**

Site Location: The site is located at 1244 N. Neel Loop. Kennewick, WA 99336 on Lot 40 of Lampson Homesites, in Section 34, Township 9 North, Range 29 East W.M.

Land Use: The surrounding land uses are developed as residential, located within the Urban Growth Area and surrounded by the City limits of Kennewick.

Zoning: Site and surrounding areas: Suburban.

Comprehensive Plan Designation: Urban Growth Area.

**APPLICABLE DEVELOPMENT REGULATIONS:**

1. **The Revised Code of Washington RCW 36.70.810**, requires that the following findings be made prior to the granting of the variance and the applicant should be prepared to demonstrate before the Board of Adjustment that such findings exist.
  - a. Variances granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations on the other properties in the vicinity and the zone in which the property is situated.
  - b. That strict application of the Zoning Ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zoning classification because of special circumstances applicable to subject property including size, shape, topography, location or surroundings

- c. That the granting of the variance will not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity and zone in which the subject property is situated.

2. **Benton County Code Section 11.52.088(b) states:**

"Variance—General Standards. The variance application process allows the Board of Adjustment in specific cases, as provided in RCW 36.70.810, to grant a variance to the provisions of this title when it can be demonstrated that such variance is in harmony with the general purpose and intent of this title and is accordance with the requirements of this section. However, the Board of Adjustment shall not grant variances to land uses or density requirements."

3. **Benton County Code Section 11.52.088(e) provides:**

"Variance—Permit Granted. (1) A variance shall be granted only if the Board of Adjustment concludes that based on its findings and the conditions imposed, if any, that:

- (i) granting of the proposed variance will not permit a use that is not classified as an allowable or conditional use in the zoning district wherein the use would be located;
- (ii) special circumstances such as lot size, slope, topography or necessary size or shape of the building prevent compliance with the applicable property development standards;
- (iii) due to special circumstances applicable to the subject property, strict application of the zoning district property development standards would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification;
- (iv) the problem sought to be addressed by the variance is related to the physical features of the particular property or building and would exist regardless of the identity of the owner;
- (v) the problem sought to be addressed is not common for other properties in the surrounding area;
- (vi) the variance would not be materially detrimental to public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;
- (vii) the variance will not adversely affect the health or safety or persons residing or working in the neighborhood in which the variance is being requested; and,
- (viii) the variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

- (4) **The Board of Adjustment** may grant a variance subject to specified conditions designed to ensure that the purpose and intent of this title and

the Comprehensive Plan will not be violated; provided, the specified conditions are needed to make the conclusions required by subsection (e)(1) above.

(5) **BCC 11.08.040 Setback Requirements:**

All lands, structures, and uses in the Residential District shall conform to the following minimum side yard setback requirements;

- (a) There shall be a side yard of at least ten (10) feet on each side of any dwelling, multiple family dwelling, or accessory structure, provided that on a corner lot the side yard on the street side shall be at least fifty-five (55) feet from the centerline of any city, county, or state road right-of-way sixty (60) feet or less in width. If the right-of-way width exceeds sixty (60) feet, the setback shall be at least twenty-five (25) feet from the property line.
- (b) No building shall be hereafter erected or altered so that any portion thereof shall be nearer to the side lot line than the distance indicated by the width of the side yard, EXCEPT:
  - (1) Eaves, cornices, belt courses and similar ornamentations may extend over a side yard for a distance of not more than two (2) feet.
  - (2) Platforms, terraces and steps not over forty-two (42) inches in height may extend into the side yard.
  - (3) Fireplaces may extend into a side yard a distance of not more than eighteen (18) inches.
- (c) There shall be a side yard setback of not less than twenty-five (25) feet from any access and/or combined access and utility easement adjacent to or within the property.

**FINDINGS OF FACT:**

If the Board of Adjustment makes a decision to either approve or deny this proposal, the Board shall include in a written record of the case the findings of fact upon which the action is based. The following is information compiled by the Planning Staff as of the date of this memo. The following should be considered by the Board of Adjustment and may be used in the Board's findings of fact for this proposal.

1. The property owner/applicant is Darrell & Jo Lea Nickerson, 1244 N. Neel Loop, Kennewick, WA 99336.
2. The applicants are requesting approval for a variance to BCC 11.08.040(a) for a reduction of 4 foot from the required ten (10) foot side yard setback and 21 feet from the rear yard setback of 25 feet for the construction of a garage addition leaving a four foot backyard setback.
3. This site is located at 1244 N. Neel Loop Kennewick, WA 99336, Lampson Home Sites, Lot 40 in Section 34, Township 9 North, Range 29 East W.M.
4. The application for VAR 10-02 was submitted to Benton County on July 9, 2010 and was determined a complete application for processing on July 12, 2010.
5. The proposed variance application did not require that a Notice of Application be

published.

6. The notice for the Benton County Board of Adjustment Open Record Hearing for application VAR 10-02 was published on July 22, 2010, in the Tri-City Herald and mailed to property owners of record within 300 feet of the outer boundaries of the parcel. The Open Record Hearing is scheduled for August 5, 2010.
7. The Benton County Building Department required that a building permit be obtained, Benton County Fire Marshal commented that the exterior walls and openings must comply and meet the IBC building requirements.
8. The City of Kennewick had the following comments: "The City of Kennewick minimum side yard setback is 5'-0". Construction of a garage addition is permitted in the Residential Zoning District as per BCC 11.08.050(c) "The usual accessory buildings commonly appurtenant to any of the above uses when located on the same lot with such use."
9. The applicant is asking for a side and rear yard setback variance as he has a non-typical lot and the dimensions and size do not allow him to construct and stay out of the normal county setbacks. His lot is narrow in the front at 55 feet and longer in the back measuring 145 feet.
10. A reduction in the side yard setback of 6 feet would provide for the 30X40 garage addition, but would not meet the pre-zoned requirements of Residential, Low by the City of Kennewick.
11. The back lot line is located within a 16 - foot Utility Easement, as per the deeds to this property and adjoining properties " **subject to a 16 foot utility easement within the said vacated alley. Together with all appurtenances thereunto appertaining: The grantees agree for themselves and their successors that no permanent building will be maintained on the premises described**".
12. Benton County Public Works states: The alley along the NW side of Lot 40 was vacated by resolution on July 17, 1975. An easement was retained with the vacation for public utilities. The easement should be retained for the utilities.

#### **DISPOSITION OF THE APPLICANT'S REQUEST:**

A variance shall be granted only if the Board of Adjustment concludes that based on its findings and the conditions imposed, if any, that:

- (i) granting of the proposed variance will not permit a use that is not classified as an allowable or conditional use in the zoning district wherein the use would be located;
- (ii) special circumstances such as lot size, slope, topography or necessary size or shape of the building prevent compliance with the applicable property development standards;
- (iii) due to special circumstances applicable to the subject property, strict application of the zoning district property development standards would deprive the subject property of rights and privileges enjoyed by other properties in the vicinity and under the same zoning district classification;
- (iv) the problem sought to be addressed by the variance is related to the

- physical features of the particular property or building and would exist regardless of the identity of the owner;
- (v) the problem sought to be addressed is not common for other properties in the surrounding area;
  - (vi) the variance would not be materially detrimental to public welfare or injurious to the property or improvements in the vicinity under the same zoning classification;
  - (vii) the variance will not adversely affect the health or safety of persons residing or working in the neighborhood in which the variance is being requested; and,
  - (viii) the variance would not deny the preservation and enjoyment of substantial property rights of those owning property in the vicinity.

**CONDITIONS:**

The Board of Adjustment may grant a variance subject to specified conditions designed to ensure that the purpose and intent of this title and the Comprehensive Plan will not be violated; provided, the specified conditions are needed to make the conclusions required by the subsection above. If the Board of Adjustment decides to approve Variance Request – VAR 10-02 then the following are suggested conditions recommended by the Planning Department:

1. Any conditions imposed by the Board of Adjustment shall be completed prior to the Planning Department issuing the variance. The applicant shall notify the Benton County Planning Department in writing when the conditions set forth herein have been completed. The Planning Department shall not issue the variance until those conditions have been met. The variance shall not become effective until issued by the Planning Department.
2. If the conditions of approval have not been met and the Planning Department does not issue the variance within one (1) year from the time the Board of Adjustment conditionally approved the variance, the Board of Adjustment may declare its approval null and void at a regular Board of Adjustment meeting. Prior to doing so, the applicant shall be notified in writing at the applicant's last known address at least twelve (12) days in advance of the upcoming Board of Adjustment meeting.
3. The applicant will need to obtain a building permit from the Benton County Building Department for the construction of the garage addition.
4. The applicant for Variance VAR 10-02 must have a Washington State Licensed Surveyor mark the property line adjacent to the location of the proposed building prior to the inspection by the Building Department.
5. The variance is limited to a 4-foot reduction of the required 10-foot side yard setback for the garage addition. A 3-foot setback would be compatible with the City of Kennewick's prezone of Residential, Low for the neighborhood.
6. **The second variance request should be denied as the applicants cannot have a structure located within the 16 foot utility easement within the vacated alley on the back line of their property.**

7. The deed to the property states "SUBJECT TO Easements, Covenants, Conditions, Reservations and Restrictions of Record; Liability for future assessments as levied by Kennewick Irrigation District".